SUMMARY OF TRUST MANAGEMENT PROBLEMS, NEED FOR ACTION AND SPECIAL TRUSTEE'S STRATEGIC PLAN RECOMMENDATIONS

SUMMARY

The Special Trustee for American Indians proposes a single organization which will manage the U.S. Government's trust responsibilities to American Indians and American Indian Tribes for trust resource management, trust funds management and land title and records management (collectively, trust management activities).

This will involve consolidating trust management activities into a single, independent institution with its own management structure to assume the responsibility for the reforms identified in the Strategic Plan, to implement the reforms over a two year period and to provide for the ongoing management of the U.S. Government's trust responsibilities to American Indians for trust management activities. The institutional unit should be organized by business line or function and should be dedicated exclusively to trust management activities. The institutional unit should be managed by a full time Chairman and Chief Executive Officer (CEO) and a Board of Directors appointed by the President and confirmed by the Senate.

The unit's proposed organizational form is an independent Government Sponsored Enterprise (GSE) subject to Congressional oversight. The unit's generic name is referred to throughout the Strategic Plan as the American Indian Trust and Development Administration (AITDA).

The proposal would represent a major change in the way the U.S. Government manages its trust responsibilities to American Indians. It would for the first time clearly differentiate trust management activities that arise from the trust management of American Indian Tribal and individual lands and natural resources such as lease approvals and monitoring, timber sales, managing land, oil, gas, timber, and other trust assets; collecting, depositing, investing and disbursing funds derived from the Indian lands and Indian economic activities; and managing the land title and ownership records from those other activities that fall under what the courts have called the general trust responsibility, such as education, housing, welfare programs of all types, law enforcement and other American Indian services provided by the Federal Government.

Generally, the Strategic Plan also proposes, directly and indirectly, that all policies, procedures, systems and practices for trust management activities meet at a minimum the regulatory standards and best practices of national bank trust departments and companies. These modern regulatory standards are based on Anglo-American principals of trust law which have developed over the past several centuries. These standards are guided by, regulated, supervised and enforced by the U.S. Office of the Comptroller of the Currency (OCC). It is proposed that OCC regularly examine and supervise AITDA in much the same way OCC conducts examination and supervision of national bank trust departments. Similarly, the trust powers and account administration flexibility for various types of investments are also modeled after the powers and fiduciary flexibility available to national bank trust departments. In short, the American Indian trust beneficiaries will be receiving equivalent trust services to those trust services provided by the national bank trust departments to their trust customers. These private sector standards are proven, efficient and effective. Notably, no national bank since the 1930s has failed because of losses taken by bank trust departments and companies.

The reforms just noted and the other reforms identified in the Strategic Plan are urgently needed. The principal causes of the long standing trust problems have resulted in conditions which are unacceptable by any reasonable standards and continue to do significant harm and damage to American Indian trust beneficiaries. They have also caused permanent damage to the core trust management systems the government uses to manage the Indian lands and monies. These defective systems prevent the government from meeting the fiduciary, accounting and reporting standards required by the American Indian Trust Fund Management Reform Act of 1994 and standards of ordinary prudence applicable to all trustees, public or private. The failure of the trustee to perform its fiduciary duties in a manner consistent with accepted fiduciary standards represents a significant potential financial liability for the Federal Government as well as damage to its reputation for its failure to act in a responsible manner.

So long as the organization and management of the trust management activities remain status quo and as long as the trust management activities are mingled with general trust functions and other government programs and activities, it is unlikely that any meaningful reforms will be implemented and unlikely that these activities will receive appropriate allocations of financial and managerial resources sufficient to allow them to be administered according to the high moral obligations and trust and exacting fiduciary standards the United States has undertaken and assumed. For these reasons, the Special Trustee believes that the Department of the Interior and the Bureau of Indian Affairs (BIA) do not have and will not have the financial and managerial resources to undertake and implement the reforms proposed by the Strategic Plan.

Special Trustee's Assessment and Need for an Independent Administration of Trust Management Activities

The problems in the trust management systems are longstanding ones. Mismanagement and neglect have allowed the trust management systems, record keeping systems and risk management systems to deteriorate over a 20 to 30 year period and become obsolete and ineffective. For many of those years, including many years since 1990, the trust programs were seriously under staffed and under funded. The result was that the government increasingly was unable to keep pace with the rapid changes and improvements in technology, trust systems and prudential best practices taking place in the private sector trust industry. This gap continues today and will continue to increase until the reforms outlined in the Strategic Plan are funded and implemented.

There are four principal causes of the mismanagement and neglect which have contributed to the trust management problems both currently and in the past:

1. The primary cause of the trust management problems both historically and currently can be attributed to the trade-offs of financial and managerial resources which take place at every level of government between trust management activities (trust resource management, trust funds management and land title and records management) and other activities and programs of the Bureau of Indian Affairs, the Department of the Interior, the Administration and the Congress. History has consistently shown these politically expedient government trade-offs of competing financial and managerial resources to be adverse and detrimental to the effective and proper administration and funding of the trust management activities.

   These trade-offs have been made and are continuing to be made even in the face of a long history of court cases which have consistently held the trust relationship between the United

States and the American Indians to be a distinctive one. Decisions of the Supreme Court reviewing the legality of administrative conduct in managing Indian property have held officials of the United States to "moral obligations of the highest responsibility and trust" and "the most exacting fiduciary standards," and "bound by every moral and equitable consideration to discharge its trust with good faith and fairness."

A trustee is not and should not be relieved of his duties, responsibilities and accountability to trust beneficiaries because the trustee lacks the financial and managerial resources to administer the trusts. To be so relieved for this reason is not acceptable for a private trustee. Yet, the most frequently cited reason and excuse for the Federal Government's historical and continued failure to address and resolve the longstanding trust management problems and, by so doing, to fulfill its trust responsibilities is the lack of funding and staffing for the American Indian trust management programs. While most certainly the lack of financial and managerial resources is the primary causal factor for the Federal Government's failure in this regard, under no circumstances should it also serve as an acceptable excuse for the continued neglect of the Federal Government's trust responsibilities to American Indian trust beneficiaries. Yet, this is exactly the case for the executive and legislative branches of the Federal Government. Lack of financial and managerial resources has become the standard and institutionally acceptable excuse for the Federal Government's continued failure to address and resolve the trust management problems. Because it is by now a well established standard and acceptable excuse, no one and no government management unit has been or is likely to be held accountable for this neglect at any level of the Federal Government. This is a policy of political and self-serving convenience and not one worthy of a Federal trustee who has charged itself with moral obligations of the highest responsibility and trust or one to be judged by the most exacting fiduciary standards. In addition, this policy of political and self-serving convenience not only facilitates and perpetuates the neglect of the American Indian trust management programs but continuously adds to it. This is because it is convenient, easy and politically desirable to make even more choices and trade-offs detrimental to the American Indian trust management activities in favor of other government programs which are politically more popular. All with the knowledge that the most the Federal Government or individuals making the choices and trade-offs will suffer from such behavior is some criticism from American Indians and their supporters. No real accountability will be exacted in the near or medium terms and if it is, it will be by the judicial branch of the Federal Government over the long term. The Strategic Plan proposes that the Federal Government provide sufficient financial and managerial resources to ensure that it can meet its trust responsibilities to the American Indians.

2. Another important cause of the trust management problems is the way the BIA is organized and manages trust management activities. The BIA's organizational alignment causes decision-making and management for Individual Indian Money (IIM) and Tribal issues to be an intricate and complex coordination process and an ineffective one at times. Responsibilities fall within 16 separate organizations all reporting directly to one entity, who has direct line authority for every other Bureau organization and program. Further, the activities are carried out by over 100 field offices. The BIA's organizational structure prevents in many instances informed and expeditious decisions because of the number of entities involved and the large number and complexity of the decisions their activities generate. That structure also results at times in trust management responsibilities of a higher order not receiving the attention and focus they deserve and/or being traded off against other Bureau priorities of a lower order, which are erroneously considered to be more important than trust management. The BIA offices must expend significant resources to coordinate with managers, supervisors and staff across the Bureau to obtain cooperation. Coordination and cooperation often breaks down. Field offices often manage their operations

autonomously with little discipline and control being exerted or enforced at either the local, area or Washington administrative levels. Further, because the BIA is not organized and managed by function, all too often policies and procedures written for specific trust programs or functions are not universally followed because the staff that perform the activities take their direction from general managers in area or field offices, not the trust program offices. Nor can discipline, control and accountability be enforced by a good management assessment and audit system since standardized policies, procedures and practices are rare and insufficient financial and managerial resources are provided for audit and risk management of any type. The Strategic Plan proposes a single unit organized along business lines to resolve these issues.

3. The two causes just described acting together over many years have resulted in a third causal factor for the longstanding trust management problems: lack of competent managerial resources to manage effectively and efficiently the trust management responsibilities to the American Indians. Managers and staff of the BIA have virtually no effective knowledge or practical experience with the type of trust management policies, procedures, systems and best practices which are so effective, efficient and prevalent in private sector trust departments and companies. The BIA area and field office managers do not have the background, the training, the experience, and the financial and trust qualifications and skills, necessary to manage the Federal Government's trust management activities according to the exacting fiduciary standards required in today's modern trust environment. Thus, and through no fault of their own, and even assuming adequate financial resources were made available, they are not capable of managing effectively and efficiently the Federal Government's trust management activities on a par with that provided by private sector institutions to their trust customers.

   The lack of trust managerial competence and the lack of financial trust orientation and focus throughout the BIA and the Department of the Interior have been institutionalized over many years and are now inherent in the BIA organizational culture. It is the reason in large part:
   - Why the BIA has never originated meaningful reforms of the trust management processes in the last 25 years.
   - Why the BIA has resisted and ultimately failed to implement nearly all of the meaningful reform efforts attempted in the last 25 years.
   - Why a new organizational structure, new management and massive re-training are necessary for the future management of the Federal Government's trust responsibilities to American Indians and the management of the implementation of the reforms identified in the Strategic Plan.

4. Another fundamental problem is fractionation of American Indian Allotment interests. The vast majority of accounting, basic record keeping and other operating problems affecting trust resource management, trust funds management and trust land records and ownership management originate from one source: the ever increasing fractionation of undivided realty interests owned by Individual American Indian allottees.

   Fractionation is a direct result of the Federal Government's policies and laws relating to lands owned by American Indians back to at least 1887.

   As originally envisioned in the late nineteenth century, allotments were to be held in trust by the United States for their Indian owners no more than 25 years, after which the land would be conveyed in fee simple to its Indian owners. Many allottees died without wills during the 25

year trust period, and it also became evident that many allottees continued to need Federal protection. Consequently, 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. Nevertheless, Congress continued to extend the period of trust protection but did not amend the probate laws. Under the Indian probate laws, as individuals died, their property descended to their heirs as undivided fractional interests in the allotment. As the years passed, fractionation has expanded geometrically to the point where there are hundreds of thousands of tiny fractional interests. These fractional interests have nominal economic value but pose an enormous cost burden estimated at about $33 million per year on the Federal Government's trust management activities.

Congress attempted to address the fractionation problem with the passage of the Indian Land Consolidation Act (ILCA) in 1984. The ILCA authorized the buying, selling and trading of fractional interests, but most importantly it provided for the escheat to Tribes of interests of less than two percent. 55,000 of the two percent-or-less fractional interests have escheated since 1984, but the fractionation problem continues to worsen. Moreover, the 1997 Youpee vs. Babbitt Supreme Court decision called into question the legality of the escheated property since 1984, further complicating the fractionation problem. Maintaining the heirship and land records and administering the land is inordinately expensive, and the administration of the records pertaining to the money earned by each individual allottee is equally expensive and difficult. In addition, utilization and conveyance of the fractionated property by the numerous owners is difficult because of the need to secure the numerous consents required. Finally, the difficulty in dealing with the fractionated interests often effectively precludes the highest and best use of the land for economic development and the maximization of investment income, thus diminishing its economic value.

Legislation is therefore needed which would consolidate the large number of existing fractionated interests and prevent further fractionation. This alone would remove a primary obstacle to the efficient administration of the trust management systems and provide a major catalyst for the timely resolution of most of the operational problems associated with trust management activities, including trust resource and realty management, probate, land titles and ownership records management, IIM accounting, collections, deposits, investments and disbursements, customer service and record keeping for all trust management activities. An added benefit is the annual administrative cost savings estimated at the same $33 million mentioned above.

Conclusion of Assessment

These principal causes of the trust management problems have resulted in conditions which are unacceptable by any reasonable standards and continue to do significant harm and damage to American Indian trust beneficiaries. They have also caused permanent damage to the core trust management systems the government uses to manage the Indian lands and monies. These defective systems prevent the government from meeting the fiduciary, accounting and reporting standards required by the American Indian Trust Fund Management Reform Act of 1994 and standards of ordinary prudence applicable to all trustees, public or private.

So long as the management and organization of the trust management activities remain status quo and

as long as the trust management activities are mingled with general trust functions and other government programs and activities, it is unlikely that any meaningful reforms will be implemented and unlikely that these activities will receive appropriate allocations of financial and managerial resources sufficient to allow them to be administered according to the high moral obligations and trust and exacting fiduciary standards the United States has undertaken and assumed. For these reasons, the Special Trustee believes that the Department of the Interior and the BIA do not have and will not have the financial and managerial resources to undertake and implement the reforms proposed by the Strategic Plan.

Special Trustee's Recommendations

To resolve the long standing trust management problems, the Special Trustee recommends as follows:

1. That the American Indian Trust and Development Administration be approved and be provided with the financial and managerial resources to manage the U.S. Government's trust management responsibilities to American Indians and American Indian Tribes for Trust Resource Management, Trust Funds Management and Land Title and Records Management according to the most exacting fiduciary standards and moral obligations of the highest responsibility and trust.

2. That all the reforms identified in the Strategic Plan be approved, funded, staffed and implemented.

3. That all trust management duties, responsibilities, budgets and activities, including Trust Resources Management, Trust Funds Management and Land Title and Records Management, carried out by the Bureau of Indian Affairs and the Department of the Interior should be transferred to the AITDA as soon as practical and before full implementation of the Strategic Plan reforms.

Strategic Plan Requirements

Section 303 of the American Indian Trust Fund Management Reform Act of 1994 (Public Law 103-412) (Reform Act) requires a Comprehensive Strategic Plan:

(a) COMPREHENSIVE STRATEGIC PLAN.--

1. In General.--The Special Trustee shall prepare and, after consultation with Indian Tribes and appropriate Indian organizations, submit to the Secretary and the Committee on Natural Resources of the House of Representatives and the Committee on Indian Affairs of the Senate . . . a comprehensive strategic plan for all phases of the trust management business cycle that will ensure proper and efficient discharge of the Secretary's trust responsibilities to Indian Tribes and individual Indians in compliance with this Act.

2. Plan Requirements.--The plan prepared under paragraph (1) shall include the following:
    - Identification of all reforms to the policies, procedures, practices and systems of the Department, the Bureau, the Bureau of Land Management, and the Minerals Management

Service (MMS) necessary to ensure the proper and efficient discharge of the Secretary's trust responsibilities to Indian Tribes in compliance with this Act.

- Provisions for opportunities for Indian Tribes to assist in the management of their trust accounts and to identify for the Secretary options for the investment of their trust accounts, in a manner consistent with the trust responsibilities of the Secretary, in ways that will help promote economic development in their communities.

- A timetable for implementing the reforms identified in the plan, including a date for the proposed termination of the Office.

The Strategic Plan has been prepared by the Special Trustee of American Indians to meet the requirements of the Reform Act.

VISION FOR TRUST MANAGEMENT

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1. Reform Act Vision & Objectives

The American Indian Trust Fund Management Reform Act of 1994 at Section 101 sets forth the foundation and vision to be achieved by the Strategic Plan:

"(d) 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."

The Reform Act at Section 303 further requires that the Special Trustee shall ensure that the Bureau of Indian Affairs establishes appropriate policies and procedures, and develops necessary systems, that will allow it:

"(I) properly to account for and invest, as well as maximize, in a manner consistent with the statutory restrictions imposed on the Secretary's investment options, the return on the investment of all trust fund monies.

"(ii) to prepare accurate and timely reports to account holders (and others, as required) on a periodic basis regarding all collections, disbursements, investments, and return on investments related to their trust accounts.

"(C)...to maintain complete, accurate and timely data regarding the ownership and lease of Indian lands."

2. Prudent Investor Standard

The Strategic Plan proposes that the Federal trustee will be governed by the prudent investor standard

as adapted for the special circumstances of the trust relationship between the U.S. and Indian Tribes and individuals. Generally, under the standard the trustee shall exercise reasonable care, skill and caution to make and implement investment and management decisions as a prudent investor would for the entire portfolio, taking into account the purposes and terms and provisions of the governing instrument. The governing instrument would be the applicable treaties, statutes, regulations, judgments, or as negotiated with the trustor.

The prudent investor standard requires a trustee to pursue an overall investment strategy to enable the trustee to make appropriate present and future distributions to or for the benefit of the beneficiaries under the governing instrument, in accordance with risk and return objectives reasonably suited to the entire portfolio.

In addition, the trustee is required to consider, to the extent relevant to the decision or action:

- the size of the portfolio,
- the nature and estimated duration of the fiduciary relationship,
- the liquidity and distribution requirements of the governing instrument,
- general economic conditions,
- the possible effect of inflation or deflation,
- the expected tax consequences of investment decisions or strategies and of distributions of income and principal,
- the role that each investment or course of action plays within the overall portfolio,
- the expected total return of the portfolio (including both income and appreciation of capital),
- and the needs of beneficiaries (to the extent reasonably known to the trustee) for present and future distributions authorized or required by the governing instrument.

3. Additional Commercial Trust Standards

Consistent with the Reform Act accounting and fiduciary standards are the following commercial trust standards which should also form part of the foundation and vision for trust management for American Indian beneficiaries:

"A trustee is under a duty to the beneficiaries of the trust to keep clear and accurate accounts."

"If the trustee fails to keep proper accounts, all doubts will be resolved against him and not in his favor."

--A. Scott, Law of Trusts (3rd ed. 1967) Section 172

4. Decisions of the Supreme Court

Decisions of the Supreme Court reviewing the legality of administrative conduct in managing Indian property have held officials of the United States to "moral obligations of the highest responsibility and trust" and "the most exacting fiduciary standards," and "bound by every moral and equitable consideration to discharge its trust with good faith and fairness."

5. Vision Statement

Taking into account the fiduciary standards set forth by Congress, the prudent investor standard,

common law, Supreme Court Decisions and the best practices of the private sector trust industry, the vision or mission of the U.S. Government's administration of American Indian trust management should be to:

VISION STATEMENT

MANAGE THE U.S. GOVERNMENT'S TRUST RESPONSIBILITIES TO AMERICAN INDIANS AND AMERICAN INDIAN TRIBES FOR TRUST RESOURCE MANAGEMENT, TRUST FUNDS MANAGEMENT AND LAND TITLE AND RECORDS MANAGEMENT ACCORDING TO THE MOST EXACTING FIDUCIARY STANDARDS AND MORAL OBLIGATIONS OF THE HIGHEST RESPONSIBILITY AND TRUST

SPECIFIC ACTIONS REQUIRED - PHASE I OF THE STRATEGIC PLAN

The principal objectives of Phase I of the Strategic Plan are the acquisition and institutionalization of an organizational structure, information systems and management and organizational skills which will permit and ensure that the U.S. Government establishes appropriate policies and procedures, develops necessary systems and takes the affirmative actions required which will allow it to meet the requirements and objectives of the American Indian Trust Fund Management Reform Act of 1994, the fiduciary standards of the Reform Act and common law and moral obligations of the highest responsibility and trust.

Generally, the Strategic Plan proposes, directly and indirectly, that all policies, procedures, systems and practices for trust management activities meet at a minimum the general standards and best practices of national bank trust departments and companies. These standards have evolved over the past 60 years and are guided by, regulated, supervised and enforced by the OCC. Similarly, the trust powers and account administration flexibility for various types of investments are also modeled after the powers and fiduciary flexibility available to national bank trust departments. It is proposed that OCC regularly examine and supervise AITDA in much the same way OCC conducts examinations and supervision of national bank trust departments. In short, the American Indian trust beneficiaries will be receiving equivalent trust services to those trust services provided by national bank trust departments to their trust customers and AITDA will receive supervision and examination by OCC. These private sector standards are proven, efficient and effective. OCC's supervision has been effective as well: notably, no national bank since the 1930s has failed because of losses taken by bank trust departments and companies.

Phase I of the Strategic Plan also includes specific proposals and provisions for opportunities for American Indian Tribes and Individual American Indians to assist in the management of their trust accounts and to identify options for the investment of their trust accounts, in a manner consistent with the vision statement, in ways that will help promote economic development in their communities. These proposals will also be subject to and governed by private sector trust standards applicable to national bank trust departments. The Strategic Plan proposes that the Federal trustee will be governed by the prudent investor standard as adapted for thespecial circumstances of the trust relationship between the U.S. and Indian Tribes and individuals. Generally, under the standard the trustee shall exercise reasonable care, skill and caution to make and implement investment and management decisions as a prudent investor would for the entire portfolio, taking into account the purposes and terms and provisions of the governing instrument. The governing instrument would be the applicable treaties, statutes, regulations, judgments, or as negotiated with the beneficiary. Generally, the proposed investment options will open up a myriad of prudent economic development opportunities, almost all of which have been previously denied to American Indian trust beneficiaries.

To meet the Strategic Plan objectives and deal with the present and the future, organizational structure, senior management and trust management activities and programs of all types must be improved and brought up to the fiduciary and trust asset and accounting management standards prevalent in the private sector as soon as possible. Only this will permit an accurate and full accounting to American Indian beneficiaries and allow for the proper discharge of the U.S. Government's trust responsibilities to American Indian trust beneficiaries.

ORGANIZATIONAL STRUCTURE AND MANAGEMENT

The Strategic Plan proposes a single organization which will manage the U.S. Government's trust responsibilities to American Indians and American Indian Tribes for trust resource management, trust funds management and land title and records management (collectively, trust management activities).

This will involve consolidating trust management activities into a single, independent institution with its own management structure to assume the responsibility for the reforms identified in the Strategic Plan, to implement the reforms over a two year period and to provide for the ongoing management and administration of the U.S. Government's trust responsibilities to American Indians for trust management activities. The institutional unit should be organized by business line or function and should be dedicated exclusively to trust management activities. The institutional unit should be managed by a full time Chairman and Chief Executive Officer and a Board of Directors appointed by the President and confirmed by the Senate.

The unit's proposed organizational form is an independent GSE subject to Congressional oversight. The unit's generic name is referred to throughout the Strategic Plan as the AITDA.

As noted, three of the four primary causes of the longstanding trust management problems involve serious management and organizational structure weaknesses. Management has been principally responsible for the failure to address and resolve the longstanding trust management problems and for the permanent damage to the core trust management systems the government uses to manage the Indian lands and monies. These defective systems prevent the government from meeting the fiduciary, accounting and reporting standards required by the American Indian Trust Fund Management Reform Act of 1994 and standards of ordinary prudence applicable to all trustees, public or private.

So long as the organization and management of the trust management activities remain status quo and as long as the trust management activities are mingled with general trust functions and other government programs and activities, it is unlikely that any meaningful reforms will be implemented and unlikely that these activities will receive appropriate allocations of financial and managerial resources sufficient to allow them to be administered according to the high moral obligations and trust and exacting fiduciary standards the United States has undertaken and assumed. For these reasons, the Special Trustee believes that the Department of the Interior and the BIA do not have and will not have the financial and managerial resources to undertake and implement the reforms proposed by the Strategic Plan.

The Special Trustee, therefore, has proposed a new organizational and executive management structure to address and resolve the long standing trust management problems and to ensure that the Federal Government fulfills its trust responsibilities to American Indian trust beneficiaries. AITDA has distinct advantages over the current structure. The reorganization will:

1. Stop and reverse the steady erosion of the Federal Government's fulfillment of its trust responsibilities (de facto "termination") currently occurring because of lack of financial and managerial resources (capacity) and the unwillingness to address and resolve the longstanding trust problems.

2. Clearly establish accountability both to American Indians and the U.S. Congress and American people.

3. Establish an organization focusing and specializing exclusively on trust management activities.

4. Create an organization which will function with a greater degree of independence and at a higher level in government than BIA. As a GSE and consistent with the treatment of other GSEs, Congress is more likely to provide appropriate financial and managerial resources to ensure the success of the new organization than exists at present.

5. Establish a five person Board of Directors appointed by the President and confirmed by the Senate who will devote full time to the governance and management of the new organization. Three of the Board members will be American Indians proposed to the President by Indian Country. This will assure high level advocacy of issues important to Indian Country and accountability to Indian Country. Two of the Board members, including the Chief Executive Officer, will be experienced and skilled financial and trust asset and accounting managers. This will assure competent management at the most senior levels of the organization.

6. Attract, train and retain competent senior management, skilled and experienced in trust asset and accounting management and capable of managing a modern trust operation. This will be facilitated by making AITDA a GSE. AITDA, like other GSEs, will be exempt from government hiring rules and compensation ceilings and will therefore be able to compete with the private sector in attracting competent management.

7. Allow AITDA to assess, train, evaluate, compensate on a competitive basis with the private sector and replace, if necessary, those employees transferred from Department of the Interior (DOI) to AITDA.

8. Accelerate the process of self-governance by the Tribes. The proposal would not interfere with the Tribes' ability to contract or compact for trust functions since the Self-Determination Act and Self-Governance Act would still be applicable to these programs. Like a private trustee, the proposed administration of the trust activities would rely on a common set of laws, policies, practices, regulations and a common Trust Asset and Accounting Management System (TAAMS) and a means through annual audits and reviews and administrative oversight and supervision to assure performance by the Self-Governance Tribes. The Self-Governance Tribes would act as service bureaus under delegated authority from AITDA to provide trust management services for which they had expertise. Thus, increasingly in the future, service bureau management of nearly all of the trust management activities could and should be provided by qualified Tribes or American Indians, themselves, under appropriate compacts and contracts, subject to the rules, oversight and supervision of the Federal trustee.

The Board of Directors and executive management of AITDA will manage and administer, directly and indirectly, all trust asset and accounting functions, including trust resources management and trust funds management; trust financial and information services management; trust land title and records services; trust records and archiving; and risk management. The Trust Risk Management unit will report directly to the AITDA Board of Directors and will conduct operational, credit and compliance reviews and audits of AITDA units and outside servicers such as BIA, MMS, Bureau of Land Management (BLM), Self Governance & 638 Tribes and others. These service bureaus will contract with AITDA to provide specified services under delegated authority and will be subject to AITDA's oversight and supervision.

The organization chart for AITDA and the architecture and support system are as follows:

U.S. CONGRESS
AMERICAN INDIAN TRUST AND DEVELOPMENT ADMINISTRATION
BOARD OF DIRECTORS
- 3 American Indian Account Holders
- 2 Financial Experts (Includes CEO)
Chairman & CEO
Chief Operating Officer
Independent Service Bureau
Trust Asset Management & Accounting
Trust Support Services
Trust Resources Management Admin. And Oversight
Trust Funds Management
Trust Finance & Technological Services Management
Trust Archiving & Land Records Mgt.
Pre-lease & Lease Activities
Post Lease Activities
- Land & Natural Resources Activities
- Trust Funds & Investment Activities
- Admin. Accounting
- Land Title & Records Office
BIA, BLM, MMS & *SG Tribes
- Energy & Minerals
- Trust Operations
- Information Systems
- Archives & Records Office
BIA & SG Tribes
- Forestry
- Internal Controls
BIA & SG Tribes
- Real Estate Services
- Data Processing
BIA & SG Tribes
- Water & Land Resources
- Technical Services
BIA & SG Tribes
- Fish & Wildlife Resources
BIA & SG Tribes
- Rights Administration
Access to:
Trust Asset and Accounting Management System And Sub-systems
Land Records Info System (LRIS-2)
All other trust records and archives
*SG = Self Governance

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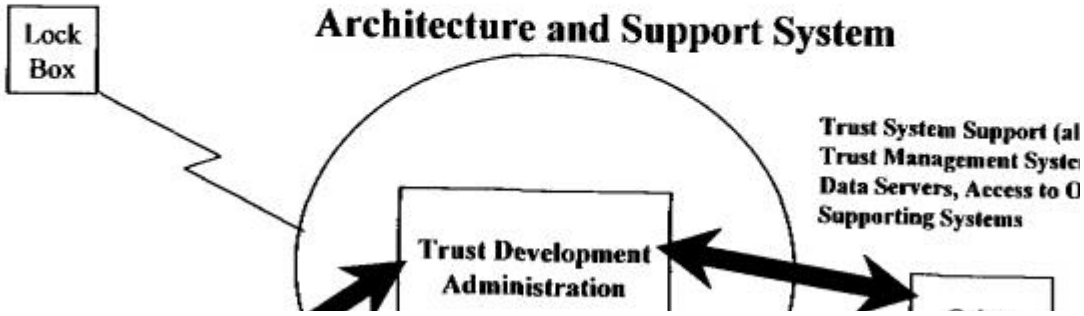
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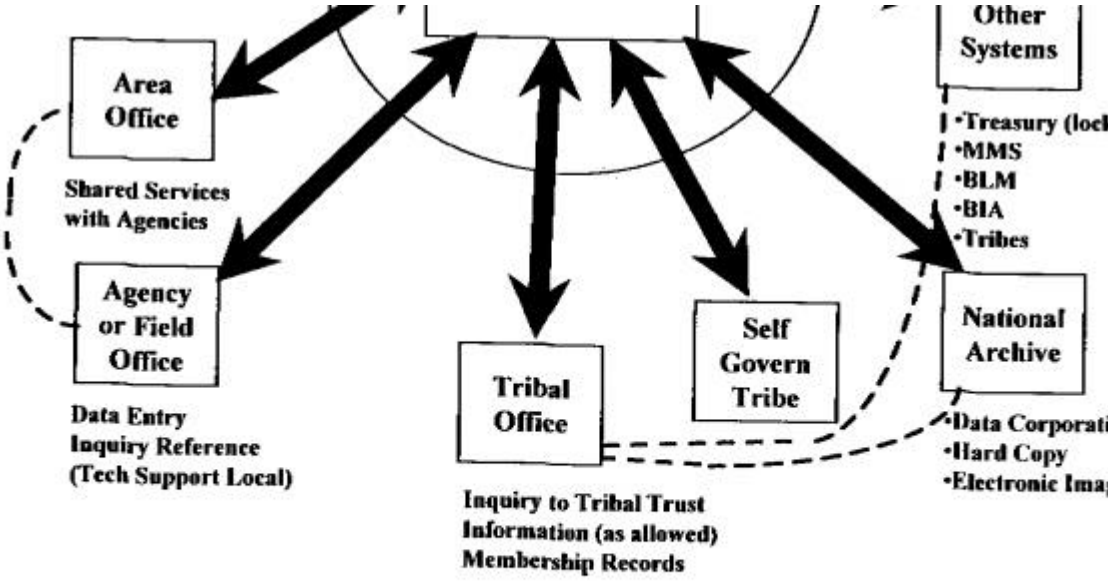
Architecture and Support System
Trust Development Administration
Trust System Support (al
Trust Management Syste
Data Servers, Access to O
Supporting Systems



TRANSFER OF TRUST AUTHORITY, BUDGETS AND CERTAIN STAFF FROM DOI TO AITDA

ROLE OF THE BUREAU OF INDIAN AFFAIRS, MINERALS MANAGEMENT SERVICE, THE BUREAU OF LAND MANAGEMENT, SELF-GOVERNANCE & 638 TRIBES AND OTHER SERVICERS IN FUTURE TRUST MANAGEMENT ACTIVITIES

At the inception of the American Indian Trust Development Administration, the duties, responsibilities, budgets and certain staff engaged on behalf of the U.S. Government as trustee in trust resources management, trust funds management and trust land and records management will be transferred to AITDA from the Department of the Interior. This will include all statutory authority, funding and staffing, except as noted below, including those that are in the Tribal Priority Allocation part of the President's Budget.

At inception all authority, budgets and staff of the Office of Trust Funds Management (OTFM) and the Land Title and Records Office along with staff engaged in the operation of the Land Records Information System and budgets will be transferred to AITDA. Employees transferred or hired will be assessed, trained and closely evaluated on their qualifications and performance and replaced as necessary.

Staff of the BIA, MMS, BLM and Self Governance Tribes engaged in the management of Indian land and natural resources, including all pre-lease and pre-contracting activities and lease and contract origination, will remain in place. AITDA will contract with these units and they will serve as service bureaus for the indicated trust services and activities.

BIA & Tribes (Self Governance & 638) and third parties	Land and natural resource management, except post leasing and post contracting activities and records and information system management, unless otherwise contracted.

BLM & Tribes (Self Governance & 638) and third parties	Production verification at lease site for oil, gas & coal. Environmental compliance from point of production through closure. Includes all current activities except records and information system management, unless otherwise contracted.
MMS & Tribes (Self Governance & 638) and third parties	Royalty and compliance management for oil and gas, including all current activities except records and information system management, unless otherwise contracted.

AITDA will delegate certain specified investment or management functions to BIA, BLM, MMS, Self Governance Tribes and other third parties only after exercising care, skill and caution in:

1. selecting a delegee suitable to exercise the delegated function, taking into account the nature and value of the assets subject to such delegation and the expertise of the delegee;

2. establishing the scope and terms of the delegation consistent with the purposes of the governing instrument;

3. periodically reviewing through operational and compliance audits and administrative oversight the delegee's exercise of the delegated function and compliance with the scope and terms of the delegation; and

4. controlling the overall cost and budget by reason of the delegation.

BIA, BLM, MMS, the Self Governance Tribes and other parties that operate as trust servicers and as delegees:

1. will have a duty to the trustee and to the trust to comply with the scope and terms of the delegation and to exercise the delegated function with reasonable care, skill and caution. An attempted exoneration of the delegee from liability for failure to meet such duty is contrary to public policy and null and void.

2. will, by accepting the delegation of a trustee's function from the trustee, submit to the jurisdiction of the Federal district courts or other appropriate jurisdiction and the delegee may be a party to any proceeding in such courts or jurisdiction that places in issue the decisions or actions of the delegee.

3. will operate under the regulations, standards, policies and procedures and the information, accounting and reporting systems issued, established and maintained by AITDA.

For land and natural resources management activities, existing staff of BIA, BLM and MMS and the Self Governance Tribes will remain in place at their current locations. Tribes will be assured the same opportunities and authority that currently exist. AITDA managers will sit down with the Tribes to prioritize programs within its's jurisdiction, thus assuring Tribal input and priorities are met on a local and area basis. Further, the current opportunities of 638 contracting and Self Governance Tribes will remain unchanged and fully available to the Tribes. By focusing the AITDA on the trust management

activities which have been transferred to AITDA, the BIA will be free to focus on other programs.

The Organizational Structure and Management Structure are more fully discussed in Appendix One.

DETAIL OF SPECIFIC ACTIONS REQUIRED - PHASE I OF THE STRATEGIC PLAN

I. Process and systems integration: optimizing systems and organization to maximize service delivery

BASIC INTERGRATED BUSINESS PROCESS AND SYSTEMS CONCEPT

The Strategic Plan proposes that the Federal Government align its trust management systems and organizational structure in order to allow it to better discharge its fiduciary obligations to American Indians and American Indian Tribes in a manner more consistent with the acceptable legal standards of modern trust practice. The new structure will optimize and promote the performance of business processes, the execution of its trust responsibility, and the delivery of services and products to American Indian trust beneficiaries. Because the execution of the trust activities and the delivery of services are primarily dependent upon the performance of its business processes (e.g., what it does as its business, and how it does its business), the most effective and efficient method to establish such an alignment would be to base its systems and its organizational structure on established policies and procedures long used in private sector trust management. The trust management business processes consist of three fundamental trust process groups involved in the delivery of Federal trust services to Indian Tribes and individuals: trust resources management, trust funds management and land title and records management.

The operational philosophy is that the policies, procedures and regulations applicable to national bank trust departments should be used as the guides in developing policies and procedures for AITDA and the fiduciary services performed by the U.S. Government for American Indian beneficiaries.

II. Rationale for a Private Sector-Based Strategic Approach

Background

The Special Trustee's assessment is that the present policies, procedures and systems do not allow the BIA as required by the Reform Act and generally accepted prudential standards applicable to all trustees to:

1. properly account for and invest as well as maximize the return on the investment on all Trust moneys of individual Indians and Indian Tribes; and

2. prepare accurate and timely reports to account holders regarding collections, disbursements, investments, and return on investments related to their accounts.

In order to accomplish the two major points described above, the Secretary of the Interior and those agencies that have been delegated responsibilities in this area must have a trust accounting and management system similar to a private sector trust department system (discussed below) in place to fully accomplish these goals or objectives. The essence of the trust accounting system that is needed is that all assets of an individual Indian or Tribe will be reflected on a single coordinated system that will enable a trust report or statement to be prepared for each individual account holder reflecting all the

assets owned, a value at cost and market, a projected income for the assets and an estimated yield or current return on the assets. A trust accounting system has at its core the ability to record financial and asset information, values, income and compute yields or rates of return. The core system can be complimented by assets specific systems or modules to account for special assets such as real property in its various forms including farm or grazing land, retail or commercial improved rental land or buildings, mineral leasing, oil and gas leasing, etc. The present systems and tools that are being utilized by the DOI, BIA, and OTFM are independent systems that do not operate on an integrated basis enabling information and data to pass between the systems, be verified, audited and ultimately produce the desired complete, accurate and timely reports to account holders regarding their assets and income.

Private Sector Trust Department

A typical trust accounting system would have as its central elements the recording of all assets for which the trustee has fiduciary responsibility. Assets come in broad categories, including cash and cash equivalent; financial assets (common stocks, preferred stocks, bonds, debentures, notes, etc.); real estate, mineral interest; intangible non financial assets, such as leases and partnerships (general and limited); tangible assets including jewelry, china, silver, furniture, precious metals such as gold and silver, coins, ingots, etc. Within the trust accounting system there will be various system subsets, or modules that will provide enhanced ability to record and manage the assets. These subsystems utilize assets specific information in providing financial transactions, trust statements, or consolidated statements for accounts or for the trust department as a whole. Included in such modules or subsets would be a securities module that would enable monthly, weekly or daily pricing of financial assets that are traded on a national exchange such as the New York Stock Exchange and the NASDAQ. Pricing services such as the Standard & Poors, Bloomburg, and Morningstar could be integrated into this securities subset or module. In a similar manner, systems pertaining to land and improvements on the land are also available and can be utilized where appropriate. An additional module frequently used by trust departments would be a common trust or pooled investment fund system to manage the investment, accounting and valuation for commingled investments.

At the heart of the trust system and organization is a trust accounting or operations unit or department. In order to enhance the integrity of the system, promote uniformity in recording and reporting of assets, and to establish an adequate audit trail, a centralized operations and financial recording activity is important. The trust operations area would include the following elements and activities:

1. All financial data input to the system, that is the initial description and recording of all assets including financial assets, land, and tangibles.

2. Data relating to the particular characteristics of an asset; e.g., common stocks have a specific description or security identification number, generally pay dividends on a quarterly basis that are uniform or may include special dividends; bonds generally pay interest on a semi-annual basis; land may produce rental income, leasehold payments, oil and gas revenues, royalties, etc.

3. Reporting within the trust department and to its beneficiaries; the systems and the operations group provides reports in a number of different forms within the department and to the beneficiaries. Within the department there would exist statements of conditions or balance sheets reflecting in summary form all assets such as the cash for which the department is responsible, all of the financial assets, all of the land, etc; and all the liabilities, essentially the

interest of all the beneficiaries (account holders) by the type of accounts, e.g., estates, trusts, agencies, corporate trusts, etc.

A report to an individual beneficiary or account holder would include a trust statement displaying cash equivalents, financial investments (bonds, debentures, and common stocks); land, tangible assets, miscellaneous assets. Wherever available, the statement would also include the cost basis of each asset, the current market value, projected income, and a market yield on the respective assets wherever appropriate. Complimenting the trust statement could be a report or data providing investment performance comparisons, that is the current income and total return for this particular account for a given period. This may be supplemented with comparison to standard indices including the Standard & Poors 500, a commercial bond total return index such as the Merrill Lynch Intermediate Bond Index or the Lehman Brothers Intermediate or Long term Bond Index, etc.

1. Administrative Data - A wide-range of administrative information relating to an account can also be produced by the system. This data frequently is produced in the form of administrative ticklers, i.e., notices or warnings that inform a trust administrator or management of events to come or action that is required to assist in the timely completion of such tasks. As an example, if an account is for a minor who will obtain majority and thus be entitled to a distribution of an account at a particular age, a 90-day notice ahead of that time can be provided by the system automatically. If the trust account is responsible for the payment of casualty insurance on improved real estate and the payment of real estate taxes, etc., these payments can be anticipated and advance notice provided so that these important tasks are completed on a timely basis without late penalty charges. In a similar manner, prospective termination of rental, grazing or leasing activities can be anticipated. Anticipated income reports can also be produced by the system to reflect the dividends, interest, rental, etc. payments due at a particular time to assist in ensuring that all payments are received.

2. Management Data - The typical trust system can provide a host of data and reports essential to the proper management and oversight of trust activities. These reports can include the workload or number of accounts assigned to an individual accounts administrator, can report on the receipt of new accounts and the termination of existing accounts, the existence of accounts in particular geographic or organizational locations.

3. Audit - The typical trust system will have an audit trail and the ability for an independent auditor to obtain reports, identify transactions, and the originator of the transactions. The auditors can determine whether there are controls and balances and verification processes in place that are consistent with operating policies and procedures and good trust management techniques.

III. Discussion of the Action Elements of the Strategic Plan

A. Purchase & Upgrades of Hardware and Software

Regarding the purchase and upgrade for end-user workstations, the outside contractor found the existing BIA facilities largely well equipped (or in the process of installation) with 486/586 technology. However, a significant number of new work stations will need to be purchased and present ones upgraded to bring the systems at both the Tribal and BIA levels up to modern standards.

The communications networking requirements are based on a new architecture which supports the Trust Asset and Accounting Management System in the style of a private sector trust operation. The

communications architecture is basically a point-to-point type service since most calls will be directed to the Central database in the form of data inquiry or deposit information from the agencies and Tribes. It has been structured to evolve into a client/server configuration at any location where the need becomes justifiable. Client/Server architecture, as it will be used in this proposed configuration, does not move any stored data or program responsibility down to the field server level. All files and processing will be the responsibility of the central office level software and hardware. Rationale for client/server facilities would be based on other areas of activity, but not for Trust Processing.

Preliminary analysis pegs the user workstation requirement for trust management and the trust-related functions of land management at over 1,900 PC workstations including all stated requirements at DOI, OST, BIA and Tribal staff in the field offices and locations, trust interfaces at the Tribal offices and the Land Title and Records Offices (LTRO) and realty user community.

B. Core Systems Development and Related Costs

The original points presented in the Conceptual Strategic Plan have been expanded into a complete, fully integrated Trust Management and Reporting System. Also, for Title Plant, the observations of the independent contractor have found that the existing Land Record Information System (LRIS) application presently is serving the user community adequately, where properly used. The inadequacies of this system are more related to training and data than to the functionality of the application itself. While not an immediate priority, the LRIS system will need upgrading in the near term and provisions have been made in the Strategic Plan for this upgrade (See the LRIS-2 discussion below).

The Strategic Plan proposes the acquisition of a commercially available TAAMS product adapted to fulfill all trust management activities, including investment, management and reporting requirements.

Commercial Trust Management Systems (CTMS) exist with modules that will integrate and perform the trust asset and accounting management and land lease management functions in a centralized location. This is an important enabler in achieving the Strategic Plan's objective of bringing the Trust Asset and Accounting Management System up to commercial standards. It also presents policies, procedures and systems that will allow the trustee to properly account for and invest all trust monies, and prepare accurate and timely reports to account holders.

The current Integrated Records Management System (IRMS) application is insufficient to create a trust management system at a level of commercial acceptability that would fulfill the U.S. Government's fiduciary responsibility without a major, expensive, lengthy reconfiguration. IRMS is an outmoded system and does not articulate easily with LRIS. Since several well-documented private sector trust management and accounting systems exist and are for sale, it is substantially more cost effective to buy rather than rewrite. Acquiring an existing commercially available trust management system will greatly reduce development costs and accelerate the implementation phase.

Given the requirement of trust management and the magnitude of the user community, the use of *"client server networks"* was not a recommendation of the outside contractor, is not a requirement and provides no real advantage. At some sites, such a facility is not practical. Instead, the Strategic Plan proposes that an effective communication network architecture support internodal linkages between the AITDA administration offices and field offices in Albuquerque, Agency Offices, Tribal facilities, a new national archive center, and other systems interfaces. Also, implementation of this architecture will accelerate the process of establishing a working network environment.

C. Other Core Elements

A number of other key elements are essential to meeting the Strategic Plan's goals. These elements include: a disaster recovery plan, daily backup capabilities, training at all levels, appropriate legal and legislative changes, IIM and Tribal file cleanup and probate and appraisal cleanup. These elements must also be performed or acquired if the Strategic Plan is to be effective.

D. End-User Administration; General Support and Maintenance

Under this configuration, end-user administration is kept to a minimum. The original Conceptual Strategic Plan allowed for OTFM Technical Staffing at all Area and Agency Offices. The final Strategic Plan eliminated the field requirement for that level of support and has instead funded a centralized Help Desk function. Local Technical Support now exists at the Area Offices and appears sufficient to cover true technical needs. A simple re-allocation of funds to permit travel allows the senior technical staff to support the field operations. Funds were also earmarked for training at all levels with the intent being to increase user performance and reduce end-user reliance upon the technical support staff, wherever possible.

E. Data Conversion and Imaging

Data conversion will be required to transfer to the new system information for processing. It was the outside contractor's judgment that this task has been understated in the Conceptual Strategic Plan from a budget point of view. Based upon the observations made during the field trips, a large number of manual files as well as a number of locally developed manual processes were observed; hence, there exists a major task in normalizing the data prior to loading it into any system. LRIS appears to provide the functions required. A significant data clean-up task appears necessary but conversion to a new application is not justified at this time.

The need for imaging is obvious and is requested at most locations. The primary need is to record maps, land deed documents, and any other documentation related to land ownership for electronic reference and safe storage of the original and paper documents related to land ownership. Lease and other financial documentation must be recorded from origination to final disbursement to owners.

The process of data clean-up and data imaging, when addressed as a common task, should provide a more synergistic effort to complete statement of work requirements.

F. Systems Integration and Implementation

The systems integration and implementation factors will be largely covered with the commercial trust system software to be acquired. A full integration will be a prerequisite in the selection of the software product. End-user training, which was also identified as a high priority, will be incorporated as a part of the related cost of core application acquisition.

G. Access by Tribes

The education and training to be given to the Tribal end-users will be extensive and will involve about 450 end-users. Monies will also be spent to integrate current hardware and software that the Tribes now use with the new system. Access to the information depository will be guaranteed so that the Tribes can extract data and manipulate and customize the data for their own general business

purposes.

H. National Archives Center and System

Internal studies and those of the outside contractor revealed the almost total lack of back-up and archiving procedures. Only one site of all those visited had addressed the archival issue. The equipment required was purchased with Tribal funds and installed in the Field Office. The staff was trained in the procedures related to imaging and verification, which was supplemented with the orientation required to use the services and functions of the system. This site could be the base for a model of what has to be done and one operational solution for consideration. A key lesson learned was the magnitude of set up time required. After one month of attempting to do the task with staff members, it was found to be more prudent to out source, saving both time and manpower.

The Strategic Plan budget contains the estimated costs for 1) equipment costs for imaging, 2) equipment costs for storing the data, 3) equipment costs for integrating this into the network for access by all concerned parties and 4) the out source expenses to avoid the labor intensive task and accelerate the process of imaging and creating document control.

I. Upgrades to General Ledger System

The CTMS, as defined above, includes the trust accounting functions and the changes required for the upgrade of the general ledger system.

J. Additional Budget Items

1) Personnel Training

Across all area, agency and Tribal sites a need for technology training, management training and organization development training exists at a significant level. These training needs create a major barrier to effective and efficient office operations having to do with the implementation of current fiduciary responsibility. It will be further compounded with implementation of a new integrated trust management system. Recent reductions in force have exacerbated these problems since field observations reveal that significant numbers of BIA and OTFM personnel are being required to perform a variety of different and new tasking functions. This has created significant confusion with regard to areas of responsibility, inadequate supervision, and negative feelings in both organizations. Without training and proper supervision, much of this additional duty is being accomplished with heavy doses of self-developed on the job training. In addition to these training needs, further work on process and procedure identification needs to occur. The field data supports the addition of significant increases in expenditures in training regarding the above. If this is approved and effected, there is a strong likelihood that the implementation of the trust system will occur without having to increase staff but rather through re-deployment and retraining. In short, a comprehensive skill mix transition plan is necessary coupled with an intense on-going training to provide the low-cost high performance trust operation which is the desired outcome of the strategic investment. Field data also support the Tribal long term interest in creating a system which allows for a larger role in managing their financial affairs. Therefore the ultimate system must have the flexibility to allow that transition and to provide the necessary training to accomplish the task.

2) Clean-Up Probate/Appraisal Backlog

This includes paralegal services and support services to reduce the probate backlog which averages about two years and is up to four years in some areas. This also includes certification of paralegal and appraisal resources.

IV. Review and Analysis of Data in Land and Lease Management System and Associated Training

LTRO provide a public record of the chain of title relating to real property allotted to and held in trust for individuals pursuant to various treaties with Indian Tribes and acts of Congress relating to individual Indians. The record keeping systems for LTRO include the LRIS and Property Index. LRIS is an electronic information system and the Property Index is manually maintained.

Inputs are based on documents submitted by various authorities outside of LTRO for the purpose of being recorded against a property or properties. Most documents submitted for recording originate from an Agency Office or, in the case of compact agreements, Tribes.

Outputs of an LTRO generally consist of a certified Title Status Report, a certified inventory of property held by a decedent, and uncertified indications of ownership by property or by individual.

While a given LTRO may only certify properties located within the boundaries of its Area Office, uncertified ownership information may be obtained across Area Office databases to provide an indication of ownership for an individual having trust property in multiple areas.

In comparison with public land record systems utilized under the jurisdiction of states, an LTRO combines the functions of a registrar of deeds and a title abstract company. However, the scope of an LTRO goes beyond these institutions in that an LTRO may give an opinion in the case of ownership disputes.

Ownership of land is also recorded by agencies on systems such as IRMS Ownership. A noted distinction of differences between the LTRO function and functions provided by systems such as IRMS Ownership is that the LTRO allows for public inspection of land title under certain circumstances while the IRMS Ownership information is subject to higher degrees of confidentiality.

A review of the Automated Land Management Records System (ALMRS) was performed by the Office of the Special Trustee and the outside contractor. Based on those reviews, it appears that the ALMRS is not a replacement for LRIS but, in fact, a complementary system and an effective source for official legal descriptions of the Indian properties and related data. ALMRS is still in the development stage. Specifics regarding an implementation schedule were not yet available. ALMRS provides no ownership information and therefore cannot be used as a substitute for LRIS, which, as stated above is a workable system for the present and near term. ALMRS has limited utility in replacing the basic IRMS system which is obsolete and must be replaced.

Gaps in the LTRO Function

A need for improved data flow between the LTRO and the mainframe in Albuquerque was articulated by interviewees of the outside contractor. Apparently the LRIS-2 project was to correct such deficiencies but was halted in the middle of the project.

Interviews indicated that guidelines for determination of whether a document should be recorded may not be applied uniformly.

Theoretically, LRIS and IRMS Ownership records should agree as to ownership, subject only to a timing difference in a document being recorded by LRIS and posted by the Agency. In one case, LRIS reflected that an individual had an interest in only one property (tract) when the IRMS Ownership reflected that the same individual had an interest in more than 30 properties (tracts). This difference was not due to timing since the most recent document date on either system was 1992.

Field data suggest that the LTRO function is adequately supported with the current LRIS application. What is missing is sufficient training, and appraisal and probate backlogs are creating barriers to effective performance of the system. The existing appraisal and probate backlogs are exacerbated by a significant lack of qualified personnel to perform the tasks on a timely basis at all levels in the process chain. If these issues were properly addressed with additional human resources allocations, the LTRO organization could provide the information necessary to enable LRIS application to be fully effective. Software improvements to the LRIS system, while needed to improve the interoperability at the end-user level, should be a second priority after the re-engineering of the Trust Asset and Accounting Management System. Nevertheless, while not an immediate priority, the LRIS system will need upgrading in the near term. This is because each time ownership changes, the LTRO staff must perform time-consuming manual determination and documentation of ownership interests. LRIS, as designed, is not capable of performing automated chain-of-title calculations and it does not store chain-of-title or calculated ownership information. LRIS system improvements have been delayed for the past two years due to reduction in force and budget cuts. Provision for the upgrade of LRIS to LRIS-2 has been provided in the Strategic Plan over the medium term.

LTRO staff universally want more training on information systems. Some personnel are not sufficiently familiar with computers and lack on-site systems support, especially at agency and Tribal locations. Some paralegal training would be helpful, especially related to probate functions. Other areas for training include real estate, accounting, property management, and appraisal, as well as a comprehensive overview of the trust process.

Calculation of Fractional Interests

A current system enhancement that would be beneficial would relate to the calculation of fractional interest for the heirs or beneficiaries of a deceased Indian. In the current environment, the LRIS system makes an automatic calculation of the new fractional share up to the 35 decimal places, if that is necessary. At the present time there is no such automatic calculation within the IRMS Ownership system. It is currently being done manually with some difficulty since most calculators will not go out that many decimal places. There is an impression that what staff members do is obtain the LRIS calculated fractional share and then enter that in the IRMS system. A system enhancement that would make the calculation process existing on LRIS available to the IRMS system would be desirable.

An additional suggestion was to consider the universal or global change order of interest in land and interest Indian property rights. In four current, separately-operated systems (IRMS Ownership, IIM, People and the Royalty Distribution Records System) the common identification of Indians is by their ID numbers throughout the system. The universal change order that would provide for the one-time systems input of an ID number, would go a long way in avoiding some of the problems that are currently being encountered. The current procedure and validation controls, for ID number assignment are either insufficient or need tighter management. This requires further research for clarification.

Other field comments supported the regulation on special requirements to pay owners directly for oil

and gas, and mineral interest, particularly 25 CFR 162.5 Section F. Others appear to favor some methodology and procedure that would require a proof of payment to the owner so as to avoid problems in determining whether owners have been receiving the correct amount of payment or payment at all. The rate of payment from the lessee is also an issue that arises in some of these problem areas. An additional concern is when an Indian actually uses land and he is a co-owner with other Indians or non-Indians. This may arise when property is inherited and four or five siblings have an undivided interest in the property represented by their fractional share. There are specific provisions in 25 CFR 162.2 as to the ability of a co-owner to use the land himself or herself. The problem arises when one of four or five siblings uses the land for grazing, farming, etc., but does not share the profits or rewards of such usage with the other siblings.

V. Review of Special Interest Areas

Gaps in Special Interest Areas

1) Oil and Gas

The basic element of information necessary for quality reporting of production information related to an individual trust account centers around property ownership. Ownership records at the trust account level are decentralized to the Agency level resulting in a variety of "trust accounting systems" as described above as IRMS, IBM System 36, "in house" PC-based and manual cards. Problems resulting from the lack of standard systems are manifest in centralized systems such as IIM and MMS.

Field issues were addressed regarding audit expectations relating to differences in bbls/mcf produced by a given well and bbls/mcf sold and reported to owners. Such concerns are not unique to DOI trust minerals; they permeate commercial trust management as well. The general rule governing the extent to which a commercial trust department audits the actual production at the well head level is dictated by the "prudent man rule," i.e., the degree of audit that a person with experience would use in the management of that persons own property. The resulting trust practice is guided by economic factors and the fact that collusion between the operator and a purchaser would normally be necessary to defraud the royalty owner. Consequently, field audits are normally conducted in cases where large amounts of production are involved.

A perception of substandard performance on the part of MMS was encountered. Interviews and direct observation were unable to produce supporting detail. It is possible that ownership and audit concerns previously discussed and their relationship to royalty distribution may be diverted to MMS, for the functions it is intended to perform, provides many audits and controls which are desirable. In addition, most funds are wired to MMS and deposited to Treasury, resulting in the generation of earnings for the trust beneficiary within a 24-hour time frame.

A requirement that 100 percent approval by owners of trust mineral interest on oil and gas leases was mentioned on multiple occasions as a source of problems and a hindrance of the opportunity to develop mineral interests. It was the opinion of those interviewed that the source of this requirement is judicial. An article written for the University of Tulsa Law Journal in the Fall of 1989 suggests that the judicial decision of a U.S. District Court in New Mexico was never published and that the case was later dismissed as moot. Thus, the Strategic Plan proposes that this problem be addressed by a policy change, rather than a legal change.

The basic element of information necessary for quality reporting of oil & gas production information

related to an individual trust account centers around property ownership, and this is where the system breaks down due to the problems of back-logs, deferred maintenance and training discussed above. Ownership records at the trust account level are decentralized to the agency level resulting in a variety of "trust accounting systems" such as IRMS, IBM System 36, "in-house" PC-based systems and manual cards. The CTMS integration with subsidiary support applications (e.g., LRIS) should eliminate the need for multi-systems.

System Architecture

A summary concept diagram of an integrated trust application and system architecture model would appear as represented in the diagram in Appendix One and is more fully described in Appendix 1, in the Macro International Report and in the Strategic Plan Budget.

VI. Risk management

This will entail obtaining a risk management and control system that will provide for adequate operational audits, credit and asset quality audits, compliance reviews, independent asset appraisals, supervision, enforcement and liaison with outside, independent auditors. It will include annual reviews and audits of all service bureaus providing trust services under delegated authority from AITDA.

VII. Integrated organizational structure

As noted, the Strategic Plan would create an organizational structure in a manner that optimizes and promotes the performance of the Federal Government's trust management business processes, the execution of its trust responsibility, and the delivery of its services and products to its clients and the American Indian trust beneficiaries. Because the execution of the trust responsibilities and the delivery of services are primarily dependent upon the performance of its business processes, the most effective and efficient method to establish such an alignment would be to base its organizational structure on its business processes.

There are three fundamental and distinct business groups: (1) Trust Funds Management (2) Land Title and Records Management and (3) Trust Resources Management. The most appropriate organization for these fundamental process groups would be a structure that establishes distinct but inter-related organizational entities under a single administration such as the American Indian Trust and Development Administration.

VIII. Specific action requirements

The Strategic Plan proposes a single organizational structure organized along business lines. Phase I of the Strategic Plan is designed to bring it about and to bring the trust management and trust management information systems up to commercial standards within two years. The specific initiatives are more fully discussed in Appendix One and, at a minimum, will involve acquiring, automating, updating, integrating, coordinating and consolidating to produce:

1. A Single Organization to Manage Trust Management Activities.

This will involve consolidating trust resource, trust funds and land ownership and records management processes into a single, independent institutional unit with its own management structure to accommodate the restructuring and reorganization contemplated by Phase I of the Strategic Plan. The

unit should be organized by function and dedicated exclusively to trust management. The unit should be managed by a full time Chairman and a Board of Directors appointed by the President and confirmed by the Senate. The unit's proposed organizational form is as an independent GSE subject to Congressional oversight.

2. A Trust Asset and Accounting Management System.

This will involve acquiring and implementing a Trust Asset and Accounting Management System which will:

A. Provide a new asset management information subsystem for land and natural resource management and a delivery system for asset leasing, contracting, lending, buying and selling, together with standardized and/or integrated asset management, credit and operating policies, procedures and practices. The system must be able to tie to and track from land and ownership records.

B. Provide an accounts receivable/master lease subsystem data, tickler and collection system that uses lease-contract and ownership information for trust income verification, reconciliation, billing, payments, collection, accounting, disbursement, audit, asset quality review and compliance purposes.

C. Provide an accurate and timely trust, depository, payments and delivery system for IIM accounts and Tribal accounts. This will entail purchasing a trust, depository, payments and other financial services accounting and statement system and a delivery system to more efficiently provide current financial services and to facilitate new and improved financial services to individual Indians and Tribes.

D. Provide a general ledger and general accounting system to accommodate all present and proposed TAAMS systems and other improvements.

E. Conform to the general systems architecture described in Appendix One and the Strategic Plan Budget.

3. A Land Records and Title Recordation and Certification System.

This will involve the acquisition of a new system which will:

A. Be capable of instantaneous linkage with the TAAMS and other systems used by the service bureaus providing trust services under delegated authority from AITDA in the near term.

B. Be brought up to private sector standards through LRIS-2 upgrades and implementation in the medium term.

C. Conform to the general systems architecture described in Appendix One and the Strategic Plan Budget.

4. A Dedicated Technology Services Center.

This will involve obtaining a centralized technology services center dedicated to trust resources, trust funds and land ownership and trust records management processes with appropriate provisions for disaster/recovery and back-up capability.

5. A National Archives and Record Center.

This will involve obtaining and centralizing a modern national archives and records center for trust asset and accounting management records and land title and records storage and retrieval along with appropriate disaster recovery protection. Implementation of modern imaging technology should be at the fore-front of the improvement initiatives.

6. A Risk Management and Control System.

This will entail obtaining a risk management and control system that will provide for adequate operational audits, credit and asset quality audits, compliance reviews, independent asset appraisals, supervision, enforcement and liaison with outside, independent auditors. It will include annual reviews and audits of all service bureaus providing trust services under delegated authority from AITDA.

7. Legislation on Fractionated Ownership of Indian Lands.

Legislation is needed which would consolidate the large number of existing fractionated interests and prevent further fractionation. This alone would remove a primary obstacle to the efficient administration of the trust management systems and provide a major catalyst for the timely resolution of most of the operational problems associated with trust management activities, including trust resource and realty management, probate, land titles and ownership records management, IIM accounting, collections, deposits, investments and disbursements, customer service and record keeping for all trust management activities.

8. Such systems and organizational improvements must be accompanied by significant legal changes, including adoption of the prudent investor rule.

9. A significant investment to clean-up:

Probate Backlog

IIM and Tribal Records

LTRO Title Defects

Appraisal Backlog

10. A significant training investment for all trust management activities, including Tribal users.

11. The acquisition and retention of competent management.

OPTIONS FOR INVESTMENT FOR ECONOMIC DEVELOPMENT

Section 303 of the American Indian Trust Fund Management Reform Act of 1994 requires, in part, that the Strategic Plan include the following:

(B) Provisions for opportunities for Indian Tribes to assist in the management of their trust accounts and to identify for the Secretary options for the investment of their trust accounts, in a manner consistent with the trust responsibilities of the Secretary, in ways that will help promote economic development in their communities.

The Strategic Plan identifies several options which would promote economic development in the American Indian communities:

New Trust Management Products Under Phase One of the Strategic Plan

At present the Federal fiduciary must manage investments in accordance with the limited investment opportunities accorded by the statutes, none of which permit economic development options of any kind. The Strategic Plan proposes that the Federal fiduciary's investment discretion be broadened so that the goals of the legislation can be achieved. Several options for making investment decisions are proposed, all of which would permit investments of Tribal trust funds in ways which would promote economic development in the American Indian communities and would include provisions for opportunities for Indian Tribes to assist in the management of their trust accounts.

The Strategic Plan proposes that the trustee will be governed by the prudent investor standard as adapted for the special circumstances of the trust relationship between the United States and Indian Tribes and individuals. The powers and responsibilities of the trustee will be more clearly defined by adopting a modified prudent investor rule. Generally, under the standard the trustee shall exercise reasonable care, skill and caution to make and implement investment and management decisions as a prudent investor would for the entire portfolio, taking into account the purposes and terms and provisions of the governing instrument. The governing instrument would be the applicable treaties, statutes, regulations, judgments, etc.

The prudent investor standard will allow the investment of trust funds in a wider variety of securities than are authorized under existing law and regulation in order to make these funds more productive for current and future beneficiaries. It will not impact the accepted traditional use of the land except to ensure that it is preserved for future generations. However, the standard will allow the investment of trust funds in higher yielding securities appropriate for the investment of funds held in trust including investment in Tribal infrastructure and development activities subject to prudential rules. Venture capital investments can also be made when appropriate to the objectives of the trust.

In addition to withdrawal of trust funds under 25 CFR 1200, the Tribes will have the right to participate with the trustee in developing an investment plan for their accounts. One of the responsibilities of the trustee will be to work with the beneficiaries to ascertain their needs and determine how reasonably to accommodate them, if possible.

Tribes could also elect to:

1. continue the trust funds management of their account under currently existing restrictions.
2. withdraw eligible trust funds from the Federal fiduciary as at present.

The terms of the instrument may set forth various types of unusual or restrictive investment provisions, such as:

- Prohibit the purchase or sale of a particular security or one in a particular industry.
- Require the fiduciary to purchase only certain authorized securities or limit investments in one asset or asset category to a specified amount to avoid a concentration.

Under each of the options, the Federal fiduciary could also make available to the beneficiary the benefit of its research services and act in an advisory capacity. The Federal fiduciary could also:

- Collect the principal of matured or called bonds.
- Collect and distribute income.
- Accept possession of securities for safekeeping.
- Notify customers of calls, subscription rights, defaults, etc.
- Provide periodic account statements.

Exercise of any one of the options would open up, on a par with the private sector, a whole range of investment opportunities to aid economic development, including:

1. Commercial, consumer, real estate and infrastructure investments and loans.
2. Fractionated Realty purchases, sales, loans to facilitate, dealing and management.
3. Development investments in infrastructure acquisition and development, project financing, venture capital to new businesses and capital for existing businesses.

Several new trust management products are proposed for implementation during Phase I of the Strategic Plan which would benefit both Tribal and IIM account holders and through prudential savings and investments promote economic development:

1. Demand and Savings Deposits exercised through a mutual fund type accounting system with checking account and payments services, including ATM access, cash management, accounting, statements and reporting, disbursements, wire transfer, official checks, money orders and access to discount brokerage.
2. Acceptance of voluntary deposits from all sources, including gaming revenue, with subsequent income free from Federal taxation.
3. Income from all trust accounts would be free of Federal taxation to encourage savings and economic development.
4. Acceptance of Retirement Accounts such as Keogh Accounts and IRAs.

Phase II Options for Economic Development

During Phase II of the Strategic Plan full service lifeline banking, trust and financial services exclusively for individual American Indians and Tribes will provide funding for economic development making such individuals and Tribes economically more independent over the next several decades. This will be facilitated by the creation of the American Indian Trust Development Bank (TDBank). It will include:

1. **A full service trust system.**

This requirement will be met by building a system to provide, directly and indirectly, full trust services to include managed, agency and custodial accounts, cash management accounts, comprehensive accounting and tax statements, discount brokerage, stock transfer, custody, pensions, collective investment funds, fixed income and equity research and advice, mutual funds and insurance sales and other trust services.

2. **A full service banking and depository system and delivery system.**

This requirement will be met by building a system to deliver, directly and indirectly, through multiple offices, full banking and depository services, to include demand and savings accounts, certificates of deposit, overdraft protection, money orders and official checks, escrow services, foreign exchange, capital market sales, discount brokerage, cash management services and other financial services.

3. **A full service asset management, lending and leasing system and delivery system.**

This requirement will be met by building a full service asset management, lending and leasing system to deliver, directly and indirectly, through multiple offices, commercial loans and leases, including corporate, small business, middle market and agriculture loans and leases; consumer loans and leases, including credit card, home equity, auto, mobile home, and personal loans and leases; real estate loans and leases including loans secured by single and multiple family housing and commercial real estate; and infrastructure and development loans and leases. Such systems will have origination as well as packaging, sales to the secondary market, servicing, loan participation and correspondent banking services capabilities.

4. **A fractionated realty holdings purchase and sales program.**

This requirement will be met by a full service asset management capability and program to purchase, sell, deal in, finance and service fractionated realty holdings. TDBank will be allowed to invest up to $300 million in purchases and loans for this purpose, subject to prudential terms at market rates. This program will ensure the consolidation of existing fractional interests and the prevention or substantial reduction of further fractionation.

5. **An investment capability for community development projects.**

This requirement will be met by developing an investment capability to provide equity capital, perpetual preferred stock and long term subordinated debt for economic development of the trust lands and the Tribes and individual Indians and their business ventures. Such total investment not to exceed 1% of the Bank's equity capital to any single enterprise or project and 25% of equity capital (initially $125 million) for the aggregate of all such investments. Such investments will include:

- Infrastructure acquisitions and development activities.
- Project financing.
- Venture Capital Businesses.
- Established Businesses.

6. A new management and institutional structure to accommodate restructuring & reorganization, to

include a new independent bank & trust structure with the following capital requirements:

Equity Capital	$500 million
Borrowing Capacity	10 times capital
Initial Borrowing from U.S.	$3 billion, 30 years, 30 year T rate

This new structure which will permit a singular focus on trust management responsibilities to American Indians and Tribes and more independence from the appropriations process; more self-determination; more economic independence; greater funding access to the capital markets; greater access to economic development and a management structure and salary and benefit scale similar to the Federal Reserve System, the Federal Home Loan Bank System, the Farm Credit System and the Federal financial regulators.

7. A headquarters building adjacent to national archives and records center.

The restructuring and reorganization will require a new headquarters building adjacent to the national archives and record center to accommodate the expanded products and services and the centralization of many of the systems.

The U.S. banking system has long been the engine for economic growth in the private sector. Government sponsored banks such as those in the Federal Home Loan Bank System (since the 1930s) and the Farm Credit System (since 1916) have been the engine of economic growth for American housing and American agriculture. The American Indian Trust Development Bank could be the engine of economic growth for American Indian trust beneficiaries in the next century.

DEPARTMENT OF THE INTERIOR POSITION ON BROADENING THE FEDERAL GOVERNMENT'S TRUST RESPONSIBILITIES

The Strategic Plan broadens the Federal Government's trust responsibilities in several ways which are consistent, in the view of the Special Trustee, with the Reform Act of 1994 requirements which, in part, requires the Strategic Plan to include:

(B) Provisions for opportunities for Indian Tribes to assist in the management of their trust accounts and to identify for the Secretary options for the investment of their trust accounts, in a manner consistent with the trust responsibilities of the Secretary, in ways that will help promote economic development in their communities.

The Strategic Plan proposes that Federal fiduciary discretion be broadened and new trust products offered to meet the goals of the legislation, all of which would provide "opportunities for Indian Tribes to assist in the management of their trust accounts" and "promote economic development in their communities" and which include as noted above:

1. Increasing investment discretion for the trustee and the Tribes through use of the prudent investor rule.
2. Allowing demand and savings deposits.
3. Accepting voluntary Tribal and IIM deposits from all sources, including gaming revenues.
4. Providing for income to be free of Federal taxation.
5. Accepting retirement accounts.

6. Providing full service trust and banking services in Phase II through the proposed Trust Development Bank.
7. Other as is indicated above in this section of the Strategic Plan.

The Department of the Interior has indicated that the Administration will evaluate the Special Trustee's final recommendations, considering the results of Tribal and individual account holder consultation, and submit its full views to the Congress as soon as practicable. The Department of the Interior has expressed some initial views on some of the Special Trustee's recommendations:

- The Department is opposed to expanding our investment responsibilities, and therefore would be opposed to (1) accepting voluntary deposits; and (2) increasing investment discretion. The Department does not support acceptance of voluntary deposits in IIM accounts. Most IIM accounts are 'flow through" accounts; funds are regularly disbursed to the account holders. In theory, funds are only maintained as deposits in a limited number of cases: minors, non-compos mentis, and pending identification of beneficiaries. However, this policy has not always been adhered to, as there is regulatory authority to accept voluntary deposits in case of hardship to the account holder. The OTFM has a significant IIM data clean-up effort underway, in part, to ensure the number of IIM accounts is kept to a minimum. OTFM is also developing formal policy and procedures on establishing IIM accounts which they expect to disseminate in 199

- The Department also does not support increasing our investment discretion. Currently, investments are limited to direct investments in U.S. Government securities (Treasury and other agency issues) and insured deposits or deposits collateralized by U.S. Government securities. Tribes desiring more risky investments can withdraw their funds from trust under the authority of Title II of the American Indian Trust Fund Management Reform Act of 1994. Final regulations on withdrawing funds from trust were published on December 26, 1996.

- The Department does not support the establishment of a new government entity to manage the Federal Government's trust responsibilities.

- Viewed in isolation, the proposals related to expanding the government's responsibilities are generally inconsistent with government downsizing and deficit reduction. However, the systems portion of the Special Trustee's plan in general would tend to be consistent with government downsizing and deficit reduction.

- Notwithstanding and with due respect to the Department's position which is a very narrow reading of the scope of current statutory authority (See 25 U.S.C. 2), the Special Trustee believes that the new trust products are essential to the economic growth and prosperity of the American Indians. As to the investment discretion of the trustee, the Special Trustee believes authorizing the trustee to invest Indian trust funds in securities in addition to "public debt securities" more effectively supports the trustee's fiduciary duty to serve the best interests of the beneficiaries, allow the Tribes to participate in the management of their funds held in trust in a practical and purposeful way and need not expose the trust funds to unacceptable investment risk. It is a settled principle of trusts that the trustee is under a duty to the beneficiaries to use reasonable care and skill to make the trust property productive. In making investments, however, a loss is always possible, since in any investment there is always some risk of loss even with "public debt securities."

- Under accepted and established principles of trust law, it is not the duty of the trustee, either

individual or corporate in the private sector, to invest only in the very safest and most conservative securities available. Such investments may not be in the best interests of the beneficiaries. Assuming, for example, United States Government bonds are the safest and most conservative securities available but that income yield thereon is lower than other securities, it is not necessarily the duty of the trustee to invest the whole trust property, or even any part of it in such bonds. The reason for this is that by the use of care, skill and caution, an investment can ordinarily be made which will yield a higher income and as to which there is no reason to anticipate a loss of principal.

LEGAL CHANGES REQUIRED

The upgrade of the trust services provided to the Indian Tribes and individuals will not only require a modernization of the systems but a review and updating of various laws and regulations to allow the trustee (U.S. Government) more flexibility to meet the needs of the beneficiaries. In addition, the changes should be such as to facilitate the active participation of the beneficiaries, if they so desire, in managing their assets consistent with sound fiduciary principles. Subsequent paragraphs will set forth some of the changes that the Special Trustee believes necessary to accomplish these objectives.

The trustee will be governed by the prudent investor standard as adapted for the special circumstances of the trust relationship between the U.S. and Indian Tribes and individuals, which will place particular emphasis on the cultural, religious, historic or environmental significance of Indian assets held in trust. The powers and responsibilities of the trustee will be more clearly defined by adopting a modified prudent investor rule. There is a large body of case law, interpretations, law review articles and other materials that can be referenced for guidance. Also, regulatory agencies such as the Office of the Comptroller of the Currency have extensive experience and materials concerning the oversight and supervision of fiduciary activities performed under the prudent investor rule.

Generally, under the standard the trustee shall exercise reasonable care, skill and caution to make and implement investment and management decisions as a prudent investor would for the entire portfolio, taking into account the purposes and terms and provisions of the governing instrument. The governing instrument would be the applicable treaties, statutes, regulations, judgments, etc.

The prudent investor standard requires a trustee to pursue an overall investment strategy to enable the trustee to make appropriate present and future distributions to or for the benefit of the beneficiaries under the governing instrument, in accordance with risk and return objectives reasonably suited to the entire portfolio. In addition, the trustee is required to consider, to the extent relevant to the decision or action, the size of the portfolio, the nature of the fiduciary relationship, the liquidity and distribution requirements of the governing instrument, general economic conditions, the possible effect of inflation or deflation, the expected tax consequences of investment decisions or strategies and of distributions of income and principal, the role that each investment or course of action plays within the overall portfolio, the expected total return of the portfolio (including both income and appreciation of capital), and the needs of beneficiaries (to the extent reasonably known to the trustee) for present and future distributions authorized or required by the governing instrument. The prudent investor standard will allow the investment of trust funds in a wider variety of securities than now authorized under currently applicable law and regulation in order to make these funds more productive for current and future beneficiaries. It will not impact the accepted traditional use of the land except to ensure that it is preserved for future generations. However, the standard will allow the investment of trust funds in higher yielding securities appropriate for the investment of funds held in trust including investment in Tribal infrastructure and development activities subject to prudential rules.

In addition to withdrawal of trust funds under 25 CFR 1200, the Tribes will have the right to participate with the trustee in developing an investment plan for their accounts. One of the responsibilities of the trustee will be to work with the beneficiaries to ascertain their needs and determine how reasonably to accommodate them, if possible. Of course, if the liability remains with the trustee so does the final decision. However, some flexibility can be legislated to consider an investment prudent when developed under certain procedures and safeguards. For example, venture

capital investments are generally considered speculative not prudent. Nevertheless, a Tribe may determine that it can afford to risk a certain portion of its funds in a venture capital fund to promote economic development. If the trustee concurs after considering all aspects of the proposal in relationship to the Tribe's total portfolio then this would be deemed a prudent investment.

While it is important to adopt new laws, regulations, rules, policies and procedures to modernize and upgrade the trust functions and services, it is equally necessary to review existing materials and practices to eliminate, amend or revise them to conform to present day trust practices. Many of the laws dealing with the trustee's responsibilities were passed a hundred or more years ago when communications were more difficult and support services less available. In present time perhaps the trustee should not be the entity to determine whether someone is an alcoholic and if so whether to withhold disbursement of funds due that individual. There are other practices and procedures that on their face appear to be offensive and unnecessary. In any case a general review of all existing laws, regulations, rules, policies and procedures will be undertaken to conform them to modern practice. This will apply not only to the Department of the Interior, but to other departments and agencies as well. An important goal of such a review will be to identify conflicts within the government that may adversely impact the trustee's fiduciary responsibility to the beneficiaries. For example, the Treasury Department has certain interpretations of laws concerning payment of interest that impact the trust funds deposits.

Other important legal issues include probate, fractionated interest and self-governance all of which affect the trust management reform efforts to a greater or lesser extent. Many of these matters are currently under study with changes being suggested.

Finally, it should be clearly understood that the updating of the legal parameters within which trust management is performed should not be a condition for the upgrading of the financial systems. The latter is critical and will be overdue no matter when it is completed. Many of the legal and policy reforms are underway or in the planning stage. Many of these reforms will require extensive consultation and outside input. Others may require only policy guidance. In a worst case basis, if no legal reforms occur, the trust function can be adequately performed if the systems are fixed, but if all the legal and policy reforms are implemented and the systems are not fixed the situation will be worse than it is now.

1. Investment of Tribal Funds Held in Trust

Section 201 of the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4021) authorizes the Secretary of the Interior to allow "Tribes an opportunity to manage tribal funds currently held in trust by the United States" in order to give Tribal governments greater control over the management of such funds or to demonstrate how the principles of self determination can work with respect to such trust funds, in a manner consistent with the trust responsibilities of the United States. At present 25 U.S.C. 161 a limits the investment of Indian Tribal funds held by the Secretary in trust to "public debt securities with maturities suitable to the needs of the funds involved." The statute restricts the type of investments that may be used and vests the selection of those investments exclusively in the hands of the Secretary. In order to accomplish the objectives of the Reform Act it will be necessary to amend 25 U.S.C. 161 a. The statute should be amended to allow the trustee to invest and reinvest funds held in trust by the United States for Indian Tribes in accordance with the prudent investor standard in any security or securities of any kind with the objective of producing a reasonable and regular return for the account consistent with the continuing needs of the beneficiaries. The trustee shall make such investments in consultation with the Indian Tribe for which the

investments are made provided the Tribe wishes to be consulted. Notwithstanding anything to the contrary, an Indian Tribe will continue to be able to withdraw some or all funds held in trust for such Tribe by the United States.

A new section of the statutes should be added which sets out the prudent investor standard applicable to the investment and management of property held in trust by the Government of the United States for both American Indians and or American Indian Tribes. That legislative language should read as follows:

PRUDENT INVESTOR ACT

(a) Prudent investor rule, purpose.
The Government of the United States, as trustee, has the duty to invest and manage property held by it in a fiduciary capacity for American Indians and American Indian Tribes in accordance with the prudent investor standard defined by this section, except as otherwise provided by the express terms and provisions of a governing instrument. This section shall apply to any investment made or held on or after January first, nineteen hundred _____ by the trustee.

(b) Prudent investor standard.
(1) The prudent investor rule requires a standard of conduct, not outcome or performance. Compliance with the prudent investor rule is determined in light of facts and circumstances prevailing at the time of the decision or action of the trustee. The trustee is not liable to a beneficiary to the extent that the trustee acted in substantial compliance with the prudent investor standard or in reasonable reliance on the express terms and provisions of the governing instrument.
(2) Trustee shall exercise reasonable care, skill and caution to make and implement investment and management decisions as a prudent investor would for the entire portfolio, taking into account the purposes and terms and provisions of the governing instrument.
(3) The prudent investor standard requires the trustee:
(A) to pursue an overall investment strategy to enable the trustee to make appropriate present and future distributions to or for the benefit of the beneficiaries under the governing instrument, in accordance with risk and return objectives reasonably suited to the entire portfolio;
(B) to consider, to the extent relevant to the decision or action, the size of the portfolio, the nature of the fiduciary relationship, the liquidity and distribution requirements of the governing instrument, general economic conditions, the possible effect of inflation or deflation, the expected tax consequences of investment decisions or strategies and of distributions of income and principal, the role that each investment or course of action plays within the overall portfolio, the expected total return of the portfolio (including both income and appreciation of capital), the cultural, religious, historic or environmental impact on Indian land and the needs of beneficiaries (to the extent reasonably known to the trustee) for present and future distributions authorized or required by the governing instrument;
(C) to diversify assets unless the trustee reasonably determines that it is in the interests of the beneficiaries not to diversify, taking into account the purposes and terms and provisions of the governing instrument; and
(D) within a reasonable time after the creation of the fiduciary relationship, to determine whether to retain or dispose of initial financial assets.
(4) The prudent investor standard authorizes the trustee:
(A) to invest in any type of investment consistent with the requirements of this paragraph, since no particular investment is inherently prudent or imprudent for purposes of the prudent investor standard;
(B) to consider related trusts, the income and resources of beneficiaries to the extent reasonably

known to the trustee, and also an asset's special relationship or value to some or all of the beneficiaries including cultural, religious, historic, environmental and similar concerns, if consistent with the trustee's duty of impartiality;
(C) to delegate investment and management functions if consistent with the duty to exercise skill, including special investment skills; and
(D) to incur costs only to the extent they are appropriate and reasonable in relation to the purposes of the governing instrument, the assets held by the trustee and the skills of the trustee.
(5) Special investment skills.
The exercise of skill contemplated by the prudent investor standard shall require the trustee to exercise such diligence in investing and managing assets as would customarily be exercised by prudent investors of discretion and intelligence having special investment skills.

(c) Delegation of investment or management functions.
(1) Delegation of an investment or management function requires the trustee to exercise care, skill and caution in:
(A) selecting a delegee suitable to exercise the delegated function, taking into account the nature and value of the assets subject to such delegation and the expertise of the delegee;
(B) establishing the scope and terms of the delegation consistent with the purposes of the governing instrument;
(C) periodically reviewing the delegee's exercise of the delegated function and compliance with the scope and terms of the delegation; and
(D) controlling the overall cost by reason of the delegation.
(2) The delegee has a duty to the trustee and to the trust to comply with the scope and terms of the delegation and to exercise the delegated function with reasonable care, skill and caution. An attempted exoneration of the delegee from liability for failure to meet such duty is contrary to public policy and void.
(3) By accepting the delegation of a trustee's function from the trustee, the delegee submits to the jurisdiction of the Federal district courts, and or any alternative dispute resolution procedure adopted by the trustee by regulation, even if a delegation agreement provides otherwise, and the delegee may be made a party to any proceeding in such courts that places in issue the decisions or actions of the delegee.

(d) Investment in securities of related investment companies.
The trustee may invest in securities of the United States Government or its agencies.

(e) As used in this section:
(1) the term "trustee"is the United States Government;
(2) the term "trust" includes any fiduciary entity with property owned by a trustee as defined in this section;
(3) the term "governing instrument" includes a court order, treaties, statutes, awards, regulations, executive orders and similar documents;
(4) the term "portfolio" includes all property of every kind and character held by a trustee as defined in this section.

Authorizing the trustee to invest Indian trust funds in securities in addition to "public debt securities" more effectively supports the trustee's fiduciary duty to serve the best interests of the beneficiaries, allow the Tribes to participate in the management of their funds held in trust in a practical and purposeful way and need not expose the trust funds to unacceptable investment risk. It is a settled principle of trusts that the trustee is under a duty to the beneficiaries to use reasonable care and skill to

make the trust property productive (See the Restatement, section 181). In making investments, however, a loss is always possible, since in any investment there is always some risk of loss even with "public debt securities." The question of the amount of risk is a question of degree.

Under accepted and established principles of trust law, it is not the duty of the trustee, either individual or corporate to invest only in the very safest and most conservative securities available. Such investments may not be in the best interests of the beneficiaries. Assuming, for example, United States government bonds are the safest and most conservative securities available but that income yield thereon is lower than other securities, it is not necessarily the duty of the trustee to invest the whole trust property, or even any part of it in such bonds. The reason for this is that by the use of care, skill and caution, an investment can ordinarily be made which will yield a higher income and as to which there is no reason to anticipate a loss of principal (See the Restatement section 227).

These theories have been tested in the market place and produced highly successful results. For example, as set out in its Annual Report for 1996, Washington Mutual Investors Fund, managed by The American Funds Group, has performed well over the forty three years since it was founded in 1952 by selecting investments suitable for trust funds. Its investment concept evolved from the experiences learned during the Depression years of the 1930's, when individuals and institutions turned away from speculative excess to re-embrace sound investment principals based on prudence, diligence and value. In 1937, the United States District Court for the District of Columbia established a "Legal List" of bonds suitable for trust funds. This List was composed of high quality issues selected by the use of a strict investment criteria which became known as "Rule 23". The court modified Rule 23 in 1947 to permit investment in an expanded Legal List which included high-grade common stocks.

With few exceptions, the investment standards established by the U.S. District Court serve as the basis for the Fund's investment choices. Some of those standards are:

- A security must be listed on the New York Stock Exchange, or be eligible and have applied for listing.
- Except for banks, a company must have:
    1. fully earned its dividends in at least four of the past five years.
    2. paid a dividend in at least nine of the past ten years.
- The ratio of current assets to current liabilities for most industrial companies must be at least 1.5 to 1, or their bonds must be rated no lower than A- or A3.
- Banks, insurance companies and other financial institutions must have capital funds of at least $100 million.
- Banks and savings and loans must have paid a dividend in four of the past five years and
- Companies must not derive the majority of their revenues from tobacco or alcohol products.

The Fund is committed to have at least 95% of its assets invested in equity securities that meet its Eligible List criteria. Not all such securities are purchased. It is reported that there are approximately 5,300,000 companies and partnerships in the U.S.; 13,000 of these are publicly held; 2,500 are listed on the New York Stock Exchange; 290 meet the standards of the Eligible List and 133 of these were held in the portfolio in 1996.

As of April 30, 1996, the Fund’s net asset value was over $20 billion. It is reported it has out paced the Standard and Poors 500 composite Index in 32 of 34 rolling ten year periods over the past 43 fiscal years on a reinvested basis, generated positive returns in 37 of the past 43 full fiscal years, including 19 of the past 20 and held up better than S & P 500 in every stock market decline of 15% or

more since the Fund was established. In contrast, over the past several years public debt securities have made a return of six to eight percent a year, far under performing other trust appropriate investments.

The market risk of expanding the trustee's investment authority for Tribal funds can therefore, be characterized as negligible, if such authority is executed in a professional and competent manner.

2. Investment of Tribal Funds and Funds Held for Individuals in Trust.

The trustee should be authorized to invest all or a portion of Tribal funds or funds held for individuals with other Indian funds held in trust, when it is in the best interest of the beneficiary for which the funds are held in trust, in a common trust fund or funds maintained by the trustee exclusively for the collective investment and re-investment of Indian monies. Each such common trust fund shall be established and maintained in accordance with a written plan which shall be approved by the trustee and each Tribe the funds of which are to be invested in it. The plan shall contain appropriate provisions not inconsistent with the rules and regulations of the Comptroller of the Currency, 12 CFR 9, Fiduciary Powers of National Banks and Collective Investment Funds, as to the manner in which the funds are to be operated, including provisions relating to the investment powers and a general statement of the investment policy and goals of the fund; the allocation of income, profits and loses; the terms and conditions governing the admission or withdrawal of participation in the fund; the auditing of accounts of the trustee with respect to the fund; the basis and method of valuing assets in the fund, setting forth specific criteria for each type of assets; the minimum frequency for valuation of asset of the fund; the period following each valuation date during which the valuation may be made, which period in usual circumstances should not exceed ten business days; the basis upon which the fund may be terminated; and such other matters as may be necessary to define clearly the rights of participants in the fund. Except as otherwise provided at 12 CFR 9.18 (G) (15), fund assets shall be valued at market value unless such value is not readily ascertainable, in which case a fair value determined in good faith by the trustee may be used. A copy of the Plan shall be available at designated offices of the trustee for inspection during all hours the office is open for business, and upon request a copy of the Plan shall be furnished to any person.

3. Other Investments

Generally, the prudent investor rule permits a wide variety of investments in most categories of commercial and infrastructure development enterprises, provided that proper care, skill and caution are exercised by the trustee. In addition, some flexibility can be legislated to consider an investment prudent when developed under certain procedures and safeguards. For example, venture capital investments are generally considered speculative not prudent. Nevertheless, a Tribe may determine that it can afford to risk a certain portion of its funds in a venture capital investments to promote economic development. If the trustee concurs after considering all aspects of the proposal in relationship to the Tribe's total portfolio then this would be deemed a prudent investment.

Phase II of the Strategic Plan - American Indian Trust and Development Bank

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Phase II Objective: To Form a single organization which will:

- manage the U.S. Government''s trust responsibilities to american indians and american indian tribes for trust resource management, trust funds management and land title and records management.
- Provide for Full Service Lifeline Banking, Trust and Financial Services to Individual american Indians and Indian Tribes and Provide Funding for Economic Development Aimed At Making the Individual American Indian and Indian Tribes economically viable over the next several decades.

Phase II Introduction

Phase II of the Strategic Plan will commence with the completion of Phase I--i.e., when the systems, accounting and organizational restructuring and re-engineering required by Phase I are complete. Systems, accounting and organizational changes made during Phase I of the Strategic Plan will be planned, designed and implemented in such a way that they will anticipate and be compatible with Phase II changes, programs and initiatives.

The basic difference between Phases I and II of the Strategic Plan is that full financial services and economic development funding will be provided in Phase II. The recommended organizational structure and delivery system will take the form of a bank and trust company similar to those found in the Farm Credit System.

Phase II General Requirements

Phase II requirements will include all Phase I requirements. Phase II will build on Phase I and will include acquiring, automating, updating, integrating, coordinating and consolidating in ways so as to produce:

. A full service trust system.

This requirement will be met by building a system to provide, directly and indirectly, full trust services to include managed, agency and custodial accounts, cash management accounts, comprehensive accounting and tax statements, discount brokerage, stock transfer, custody, pensions, collective investment funds, fixed income and equity research and advice, mutual funds and insurance sales and other trust services.

. A full service banking and depository system and delivery system.

This requirement will be met by building a system to deliver, directly and indirectly, through multiple offices, full banking and depository services, to include demand and savings accounts, certificates of deposit, overdraft protection, money orders and official checks, escrow services, foreign exchange, capital market sales, discount brokerage, cash management services and other financial services.

. A full service asset management, lending and leasing system and delivery system.

his requirement will be met by building a full service asset management, lending and leasing system to deliver, directly and indirectly, through multiple offices, commercial loans and leases, including corporate, small business, middle market and agriculture loans and leases; consumer loans and leases, including credit card, home equity, auto, mobile home, and personal loans and leases; real estate loans and leases including loans secured by single and multiple family housing and commercial real estate; and infrastructure and development loans and leases. Such systems would have origination as well as packaging, sales to the secondary market, servicing, loan participation and correspondent banking services capabilities.

. A fractionated realty holdings purchase and sales program.

This requirement will be met by a full service asset management capability and program to purchase, sell, deal in, finance and service fractionated realty holdings.

. An investment capability for community development projects.

his requirement will be met by developing an investment capability to provide equity capital, perpetual preferred stock and long term subordinated debt for economic development of the trust lands and the Tribes and individual Indians and their business ventures. Such total investment not to exceed 1% of the Bank''s equity capital to any single enterprise or project and 25% of equity capital for the aggregate of all such investments.

. A new management and institutional structure to accommodate restructuring & reorganization, to include a new independent bank & trust structure with the following capital requirements:

Equity Capital	$500 million
Borrowing Capacity	10 times capital
Initial Borrowing from U.S.	$3 billion, 30 years, 30 year T rate

This new structure which will permit a singular focus on trust management responsibilities to American Indians and Tribes and more independence from the appropriations process; more self-determination; more economic independence; greater funding access to the capital markets; and a management structure and salary and benefit scale similar to the Federal Reserve System, the Federal Home Loan Bank System, the Farm Credit System and the Federal financial regulators.

. A headquarters building adjacent to national archives and records center.

The restructuring and reorganization will require a new headquarters building adjacent to the national archives and records center to accommodate the expanded products and services and the centralization of

many of the systems.

. Systems and technology enhancements to facilitate Phase II restructuring and reorganization.

This will require building further integrated systems and technology enhancements to facilitate the Phase II requirements.

Phase II Specific Requirements

AMERICAN INDIAN TRUST AND DEVELOPMENT ADMINISTRATION
TRUST DEVELOPMENT BANK
(AITDA & TDBANK)

PURPOSE AND OVERVIEW

The strategic plan''s primary objective is to form a single organization which will:

- Manage the U.S. Government''s trust responsibilities to American Indians and American Indian tribes for trust resource management, trust funds management and land title and records management.
- Provide for Full Service Lifeline Banking, Trust and Financial Services to Individual American Indians and Indian Tribes and Provide Funding for Economic Development Aimed At Making the Individual American Indian and Indian Tribes economically viable over the next several decades.

The AITDA will be an independent GSE similar to the Farm Credit Administration with a Chairman and a Board of Directors appointed by the President and subject to Senate confirmation. The Board is structured in such a way so as to draw majority representation from American Indian trust beneficiaries, including both Tribal and Individual Indian Money account holders. The Chairman and one other Board member will be people who have practical experience in fiduciary trust fund, investment and financial management. The Board of Directors and Chairman of AITDA will devote full time to the job and will also serve as Board members and the Chairman of TDBank, which will be the development operating arm of the American Indian Trust & Development Administration.

While AITDA and TDBank will assume and manage the U.S. Government''s primary trust responsibilities to American Indians and American Indian Tribes in the important areas of trust resource management, trust funds management and trust land and ownership records management, there will be no diminishment of the Federal trust responsibility to American Indian beneficiaries. Essentially, the United States will retain its full trust responsibility but simply transfer administration from the Department of the Interior to AITDA and TDBank for the trust management activities. AITDA and TDBank will still be backed by the full faith and credit of the United States. In addition, the singular focus on trust management activities, independent and dependable funding and a skilled Board of Directors and management team should ensure that the U.S. Government will be able to improve its ability to fulfill its trust responsibilities to American Indian beneficiaries. The United States would remain liable for any breach of trust by AITDA and TDBank. With initial capital of $500 million and with the

U.S. Government''s agreement to maintain minimum capital of $500 million for TDBank, sufficient funds will be available to cover any operating losses or to pay claims for future possible breaches of trust.

TDBank will be a nationwide financial institution that lends to, invests in and provides financial services for American Indians and American Indian Tribes and their communities on prudential underwriting standards. These activities will provide the American Indian communities with a dependable source of credit and investment for economic development purposes and will provide a more stable and dependable structure for fulfilling part of the U.S. Government''s responsibilities to individual American Indians and American Indian Tribes.

AITDA and TDBank will be created and extensively governed by Federal statute and will be a GSE of the Federal Government intended to carry out and further governmental policy concerning the Federal Government''s trust obligations and responsibilities to American Indians and American Indian Tribes for trust management activities and the economic development of American Indians and their communities.

The TDBank will facilitate and implement efforts and initiatives to make individual American Indians and American Indian Tribes economically more viable and independent under established principles of self-determination and self-governance. TDBank will also provide at no cost or at a subsidized cost, lifeline financial services which are not being provided or cannot be provided by the private sector at an affordable cost to individual American Indians or American Indian Tribes.

TDBank will be a for-profit financial institution and will generally be required to cover its operating expenses from trust, lending, leasing and investment revenues. The Bank will therefore not generally be eligible for authorized and appropriated funds from the U.S. Government, except that the cost of lifeline financial services and the cost of certain other specified programs authorized by Congress will be reimbursed in whole or in part from authorized and appropriated funds.

BENEFITS TO AMERICAN INDIANS AND AMERICAN INDIAN TRIBES

TDBank will be a nationwide financial institution focused solely on providing a dependable source of:

- Lending to American Indians and Tribes and their communities, including access to commercial, real estate and consumer loans for all purposes.
- Investing in American Indian Enterprises for economic development purposes.
- Lifeline financial services to American Indians and Tribes.

The Bank''s lending, investment and lifeline financial services will be provided consistent with principles of self-determination, self-governance and economic viability and independence.

TDBANK GENERAL STRUCTURE AND RELATIONSHIP TO THE FEDERAL GOVERNMENT

TDBANK will:

- be an instrumentality of the Federal Government and will be backed by the full faith and credit of the United States.

- be governed by a Chairman and Board of Directors appointed by the President and confirmed by the Senate.
- have appropriate oversight from the Congress on an ongoing basis.
- be examined by an existing (OCC is proposed) or new agency of the Federal Government.
- have a corporate structure patterned after banks belonging to the Farm Credit System.
- not be commonly owned or controlled. Instead, the Bank will be cooperatively owned by the American Indian Tribes.
- have a budget that will be subject to the Federal Government''s authorization and oversight processes. But the Bank will be a for-profit financial institution and will generally be required to cover its operating expenses from trust, lending, leasing and investment revenues and other banking activities. The Bank will not generally be eligible for authorized and appropriated funds from the Federal Government except that the cost of lifeline financial services and the cost of other specific programs approved by the Congress may require a subsidy, in whole or in part, from appropriated funds of the Federal Government.
- be required to have an annual audit and report from an independent, qualified accounting firm.
- be exempt from all Federal and state taxes.

TDBANK CAPITAL STRUCTURE, FUNDING, OWNERSHIP AND DIVIDENDS

TDBank''s equity capital and funding will be provided by the Federal Government in the following amounts:

. $500 million in equity contributions from appropriated funds, judgment funds, or from funds provided by other Government Sponsored Enterprises such as the Farm Credit Banks or the Federal Home Loan Banks or FNMA and GNMA.

. $3 billion in direct, long term loans from the United States for 30 years at the U.S. Treasury interest rate paid on 30 year obligations.

. Future funding of up to ten times equity capital from the sale of bonds and notes in the nation''s capital markets, guaranteed by the full faith and credit of the United States. The initial limit of $5 billion shall include the $3 billion loan described under item two.

. The Federal Government will be required to maintain permanent equity capital equal to 5% of average risk-adjusted assets.

TDBank''s initial capital stock will be distributed to Federally recognized American Indian Tribes in proportion to the number of American Indians living on or near reservations as determined by the latest census information or by some other means determined by Congress with input from Indian Country. This permanent capital cannot

be sold, traded or withdrawn. Alternatively, or in combination, other Government Sponsored Enterprises such as the Farm Credit Banks, FNMA, GNMA and the Federal Home Loan Banks might be compelled to provide all or part of the initial investment capital of TDBank. While such funds could not be withdrawn, such investments would draw a dividend along with other shareholders.

Each borrower using TDBank''s loan facilities will generally be required to invest in capital stock or participation certificates of the Bank. The statutory minimum amount of capital investment required for borrowers should be two percent of the loan or one thousand dollars, whichever is less. This requirement will not apply to loans or leases to individual American Indians for consumer purposes such as housing, automobile loans and the like. Such payments of dividends and/or distribution of earnings are subject to regulations that establish minimum at-risk capital standards.

TDBANK BOARD OF DIRECTORS AND MANAGEMENT STRUCTURE

TDBank''s Board of Directors shall consist of at least five members appointed by the President and confirmed by the Senate.

. Three members shall be American Indians appointed by the President after being proposed by Indian Country in some organized way.

. Two members, including the Chairman and Chief Executive Officer, shall be people skilled in financial and trust management and may also be American Indians.

TDBank''s Board shall be identical with AITDA''s Board.

All Board Members of TDBank and AITDA will be appointed for a term of 12 years using a staggered system. Initially, two will be appointed for four years; two will be appointed for eight years; and the Chairman & CEO shall be appointed for 12 years. Vacancies which occur prior to the expiration of the term shall be filled with individuals to fill the remaining term of the particular vacancy.

TDBank''s Board shall organize itself through governing committee''s to oversee the primary operations of the Bank, including trust resource management; trust funds management; trust land and ownership records management; lending, leasing activities; investment activities; risk management and audit activities; and other banking and trust activities.

All Board members will be full time employees and will be compensated at the same rate paid FDIC Directors or as otherwise determined by Congress.

The Chairman & CEO and other executive management and employees will be qualified bank and trust officers and employees and shall be exempt from Federal Government employment requirements. Compensation and benefits will be determined by the Board of Directors after taking into account general compensation and benefits schedules of the Farm Credit System Banks.

TDBANK DELIVERY NETWORK

TDBANK will deliver financial services through:

- 50 to 75 branch offices located in or near major American Indian communities.
- A commercial grade telecommunications and electronic nation-wide delivery system.

TDBANK''S LENDING, LEASING, INVESTMENT AND FINANCIALLY RELATED SERVICES

The Bank will:

- be dedicated and restricted solely to making loans, leases, investment and financial services available to eligible and qualified individual American Indians and American Indian Tribes and their communities in all areas of the nation.
- follow prudential, safe and sound lending and investment polices, procedures and practices which will be enforced.
- facilitate and implement efforts and initiatives to make individual American Indians and American Indian Tribes economically more viable under principles of self-determination and self-governance.
- provide at no cost or at a subsidized cost, lifeline trust, depository, lending and other financial services which are not being provided or cannot be provided by the private sector at an affordable cost. Such lifeline financial services may be provided, indirectly, through private sector financial institutions if it is cost effective to do so.
- charge appropriate fees and interest rates for its financial services and products, sufficient to cover funding, operating and administrative expenses and sufficient to produce reasonably profitable operations. These fees and interest rates should generally be lower than those charged by private sector institutions because the Bank will have access to the nation''s capital markets for funding at rates commensurate with those paid by the Federal Government and agencies of the Federal Government and because the Bank will be exempt from all Federal and state taxes. Benefits from the lower funding costs and tax free status, in turn, will be passed on to American Indian borrowers in the form of favorable interest rates charged on the Bank''s loans.

Lending and Leasing Products:

TDBANK will make long term loans of up to 30 years for economic development of American Indian communities, usually secured by first mortgages on individual properties and Tribal real estate or enterprises. These long term loans will be made for a variety of purposes including: purchasing land, buildings, machinery, equipment and livestock; refinancing existing mortgages and paying other debts; constructing or repairing buildings; improving land; and financing agriculture, industrial or extraction industries. Loans will also be made for the purchase and construction of homes, for real estate needed for aquatic operations, for plants, for processing and marketing facilities, for Tribal government needs and for American Indian related businesses.

The Bank will also make short term loans to consumers, home owners, small businesses, farmers, ranchers,

Tribal governments and American Indian related entities on a secured or unsecured basis; finance eligible utilities, including electrical distribution, generation and transmission, telecommunications, and water and waste disposal systems; and provide equipment and other leasing services to eligible borrowers.

TDBANK INVESTMENT IN COMMUNITY DEVELOPMENT ACTIVITIES

The Bank will be authorized to invest up to 25% (initially, $125 million) of its permanent capital in eligible individual American Indian and American Indian Tribal business ventures and projects which will aid economic development of their communities. These investments will include common stock, preferred stock and long term subordinated debt investments in:

. Infrastructure acquisitions and development activities.

. Project Financing.

. Venture Capital Businesses.

. Established Businesses.

TDBANK INVESTMENT IN FRACTIONATED REALTY INVESTMENTS

The Bank will be allowed to invest up to $300 million for the purchase, holding, financing and sale of fractionated realty interests of American Indians on allotment lands. Such purchases and financing will be made on prudential terms at market rates to American Indian individuals and Tribes. Such activities will be regulated by rules set forth in legislation to resolve the fractionated heirship issues. The principal purposes of this program are:

. The consolidation of existing fractional interests.

. The prevention or substantial reduction of further fractionation.

TDBANK LIFELINE DEPOSITORY AND OTHER FINANCIAL SERVICES

The Bank will provide a full range of commercial banking services to its American Indian customers. These will include:

. Lifeline banking and financial products, including statement rendering, accounting, reporting, record keeping, tax planning, cash management, investment, collective investment funds, mutual funds, equity and fixed income funds, property management and others.

. Lifeline depository, payment and investment services, including demand and savings accounts, certificates of deposit, IRA & Keogh accounts, check and other disbursement vehicles, wire transfer, cash management,

money orders, official checks, discount brokerage, insurance and annuity sales, mutual funds sales and treasury sales and the like.

These financial services are intended to be lifeline in nature. Lifeline financial services are not intended to compete with private sector financial institutions providing those services. Rather, they will be provided by the Bank when such services are not or cannot be provided by the private sector at an affordable cost. The Bank will provide them at no cost or at a subsidized affordable cost in such circumstances. Such lifeline banking services may be provided by the Bank indirectly through private sector financial institutions when it is cost effective to do so.

TDBANK''S FEES AND CHARGES

Generally, TDBank will charge fees for services at rates commensurate with the private sector. While fees will be charged, the American Indian beneficiaries will still benefit by substantially increased access to credit and capital at subsidized rates made possible by the Bank''s access to U.S. Government guaranteed funding at low rates and by TDBank''s tax-free status.

TDBank''s Board of Directors will develop and publish a fee schedule for all financial and trust services provided by the Bank. The following principles will apply:

. The fees charged will not be more than comparable fees charged by private sector banks and trust companies for similar financial and trust services.

. Fees will not be charged for lifeline financial services except at an affordable cost.

. Affordability will be taken into account in the entire fee structure. Small account holders or Tribes unable to afford a full fee would not be charged at all or would be charged a fee commensurate with their ability and capacity to pay

. Those Tribes that choose to continue to receive the level of services they now get from OTFM (i.e., investment in government insured instruments) will not be charged a fee fora period of five years, after which the general fee schedule will apply.

. Tribes could convert their trust funds into an agency account, wherein the Tribe makes investment decisions and the Bank simply carries them out. All Tribes taking this option would be charged a fee except those unable to afford the fee under the principles described above.

. The Bank''s lending and leasing activities and investments in American Indian enterprises will be based on prudential principles. Appropriate fees will therefore be charged for all such activities.

TDBANK''S RELATION

In general, TDBank is not intended to compete with private sector financial institutions which are willing and able to supply comparable financial services at a reasonable cost to American Indians, Indian Tribes and their communities. TDBank is intended to augment, supplement or provide, directly and indirectly, financial services in circumstances where such is not the case.

TDBank''s expertise and experience in lending and investing in American Indian enterprises should attract more private sector lending and investing. TDBank will develop programs:

. To act as a upstream or downstream correspondent bank for private sector bank''s wishing to purchase loans from TDBank, sell loans to TDBank or co-lend or co-invest with TDBank.

. To contract with or out source certain financial services to private banks which may be able to provide lifeline banking services to American Indian beneficiaries at less cost than TDBank. TDBank would pay the full cost or partial cost of such services, which would be provided at no cost or at a low cost to American Indian beneficiaries.

. To be a banker''s bank to Indian owned banks.

TD BANK PROFROMA BALANCE SHEET
BANKING OPERATIONS

($Millions)

ASSETS			***LIABILITIES**		
Cash, Securities and Liquid Assets		$ 500.00	**Demand Deposits**		$ -
			Savings & CDS		$ -
			Official Checks		$ -
Loans:		$ 4,500.00			
	Commercial				
	Consumer				
	Real Estate				
	Infrastructure				
Fractionated Realty Holdings:		$ 300.00	**Long term Debt:**		$3,000.00
	Loans to Facilitate			Note to U.S. Treasury	

	Investment Holdings		30 yrs.; 30 yr. T Rate
Development Investments:	$ 125.00	**Other Debt:**	$ -
	Infrastructure Acquisition & Development Project Financing 2,000 Venture Capital to New Businesses Capital for Extablished Businesses		Limited to 10 x Equity Capital including long term debt.
Other	$ 75.00	**Equity Capital**	$ 500.00
Total Assets	**$ 5,500.00**	**Total Liabilities and Capital**	**$5,500.00**

* All deposits and liabilities guaranteed by the United States

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TD BANK SUMMARY OF FINANCIAL SERVICES

LOANS AND LEASES:

Commercial:	Corporate	Small Business	Agriculture
Consumer:	Credit Card	Home Equity	Auto
	Mobile Home	Personal	

	Real Estate:	Single Family	Multiple Family	Commercial
		Acquisition	Development	Construction
	Infrastructure:	Acquisition	Development	Project Financing
FRACTIONATED REALTY HOLDINGS:				
	Purchases	Sales	Investments	Loans to Facilitate:
			Individual & Tribal	
DEVELOPMENT INVESTMENTS:				
	Project Financing	Venture Capital	Capital to Existing	Infrastructure
		New Businesses	Businesses	Acquisition & Development
DEPOSITORY SERVICES:				
	Demand Deposits	Savings Deposits	Other Deposits	Certificates of Deposit
OTHER SERVICES:				
	ATM Access	Cash Management	Accounting	Statements & Reporting
	Payments	Disbursements	Wire Transfer	Money Orders
	Official Checks	Overdraft	Discount	Mutual Funds
		Protection	Brokerage	& Insurance Sales

U.S. DEPARTMENT OF THE INTEIOR BUREAU OF INDIAN AFFAIRS
TRIBAL, INDIVIDUAL INDIAN MONIES AND OTHER SPECIAL APPROPRIATION FUNDS
MANAGED BY THE OFFICE OF TRUST FUNDS MANAGEMENT

SUPPLEMENTARY COMBINING STATEMENT OF ASSETS AND TRUSTS FUND BALANCES
SEPTEMBER 30, 1995

		Tribal Trust	Individual Indian Monies	Other Special Appropriation Funds	Combined Total
ASSETS					
Non-Entity assets:					
Intra governmental assets:					
	Fund balances with Treasury:				
	Cash	$ 6,054,917.00	$ 3,929,010.00	$ 130,437.00	$ 10,114,364.00
	Investments:	$ 169,860,842.00	$ 3,906,061.00	$ 20,794,067.00	$ 194,561,000.00
	Overnight investment	$1,464,284,398.00	$363,873,825.00	$262,201,350.00	$2,090,359,573.00
	Government backed securities	$ 18,098,231.00	$ 4,341,646.00	$ 3,816,339.00	$ 26,256,216.00
	Accrued interest receivable				

Governmental assets:

Investments				
Certificates of deposit	$ 35,237,962.00	$ 5,892.00	$ 27,803,390.00	$ 63,047,244.00
Equity securities	$ 15,740,200.00	$ 20,000,000.00	$ -	$ 35,740,200.00
Mortgage backed securities	$ 139,984,032.00	$106,473,975.00	$ -	$ 246,458,007.00
Accrued interest receivable	$ 2,606,475.00	$ 859,412.00	$ 1,251,129.00	$ 4,717,016.00
Accrued dividends receivable	$ 97,500.00	$ 100,000.00	$ -	$ 197,500.00
Total Assets	**$1,851,964,587.00**	**$503,489,821.00**	**$315,996,712.00**	**$2,671,451,120.00**

ADDENDUM ONE: CONDITION OF THE U.S. GOVERNMENT'S TRUST MANAGEMENT SYSTEMS

--SPECIAL TRUSTEE'S ASSESSMENT

Special Trustee's Condition Assessment

After a year long review of the U.S. Government's trust management systems, the Special Trustee has concluded that the undeniably poor quality of the trust management systems and the condition of the historical records effectively preclude the Federal Government from providing an accurate and timely accounting to American Indian trust beneficiaries and prevents the trustee from discharging its fiduciary duty to the beneficiaries in a legally acceptable manner. This can be demonstrated quantitatively:

1. The Reconciliation Project in January 1996 disclosed $2.4 billion (32,319 transactions) for which source documentation could not be located. The point here is that these records should not be missing and would not be missing had the Federal Government followed conventional trust record keeping practices. Of particular concern is about $575 million in unreconciled disbursements. Another concern is some $4.1 billion of "reconciled" disbursements which did not have complete disbursement voucher packages. Notably over $2 billion in large disbursement vouchers to Tribes in care of third parties did not have both tribal and other governmental signed authorization.

2. The Reconciliation Project also confirmed what the GAO calls the lack of a known universe of transactions and leases. This stems from the Federal Government's lack of an ability accurately to trace a collection to a source lease or contract. This, in turn, results from the lack of a consolidated accounts receivable (billing) system and master lease system.

3. At the end of 1994 there was about a two year backlog in bringing key land ownership and records up to date. It was estimated to take 104 staff years to eliminate the back-log, but rather than address the backlog the BIA reduced its Realty staff by 29% (126 staff to 90 staff) during 1995 and 1996, continuing the backlog. Because of staff and budget cuts in the last two years, the probate backlog is up to four years in certain areas.

4. There are 45,624 IIM accounts with $27.7 million for individuals with no address or an incorrect address.

5. There are 27,519 IIM accounts with $21.7 million held for individuals who were formerly minors. The vast majority of these monies should have been disbursed when the age of majority was reached.

6. There are $42.2 million in Overdraft Interest Clearing Accounts resulting from interest mis-postings prior to 1993. These are non-earning assets which annually deprive current IIM account holders of over $2 million.

7. There are general ledger differences of over $28 million which should be cleared.

8. Continued maintenance of over 153,000 accounts (55% of total accounts) with balances less than $10 is required at a significant operating cost.

9. There are 128,393 missing social security numbers for account holders with over $175 million in their accounts.

10. Even with knowledge of the records management, storage and retrieval problems disclosed by the Reconciliation Project, the U.S. Government has taken no meaningful steps to improve records management, storage and retrieval. Worse, disaster recovery programs which backed up trust records processing were canceled in 1996, apparently due to lack of funding.

These conditions are unacceptable by any reasonable standards and continue to do significant harm and damage to American Indian trust beneficiaries. They are caused by inherent defects in the core trust management systems the government uses to manage the Indian lands and monies. These defective systems prevent the government from meeting the fiduciary, accounting and reporting standards required by the American Indian Trust Fund Management Reform Act of 1994 and standards of ordinary prudence applicable to all trustees, public or private.

The Special Trustee's Conceptual Strategic Plan addresses these issues and identifies several initiatives designed to rectify the problems and bring trust accounting and management systems up to commercial standards within three years. What is needed first is a complete overhaul of the four basic trust management systems. We must acquire a new:

1. trust asset and accounting management system.

2. accounts receivable data and billing system that uses lease-contract and land and ownership information.

3. trust, depository, payments and delivery system for IIM accounts.

4. land records and title recordation and certification system.

5. legislated solution to the problems caused by the fractionation of American Indian allo

Along with the overhaul of these core systems must come improvements to the general ledger system, record keeping and archiving, risk management, the technology center, disaster recovery and back-up assurance and organizational structure. Probate and appraisal backlogs must be eliminated and all trust records must be cleaned up prior to conversion. Finally, a significant investment must be made in the acquisition, retention and training of highly qualified trust management personnel.

In summary, the problems in the trust management systems are longstanding ones. Mismanagement and neglect have allowed the trust management systems, record keeping systems and risk management systems to deteriorate over a twenty to thirty year period and become obsolete and ineffective. For many of those years, including many years since 1990, the trust programs were seriously under staffed and under funded. The result was that the government increasingly was unable to keep pace with the rapid changes and improvements in technology, trust systems and prudential best practices taking place in the private sector trust industry. This gap continues today and will continue to increase until the reforms outlined in the strategic plan are funded and implemented. That is why they should be funded and implemented, immediately, regardless of if and when the Comprehensive Strategic Plan called for in the Reform Act of 1994 is approved. Each day the trust management systems remain status quo, the Federal Government's exposure to claims of mismanagement and liability will continue

to grow and is another day the Federal Government cannot meet its trust responsibilities to the American Indians.

Specific Problems In Need of Reform

The fundamental problem is that the U.S. Government, using present systems, was, is and will continue to be unable to furnish beneficiary American Indian Tribes and individual Indians with an accurate and full accounting of trust funds. The difficulty lies with the historical and current:

1. lack of an effective trust asset, leasing and resource system which can be audited to determine that trust assets are being managed prudently and consistently in the best interest of the beneficiaries. The system is deprived of standardized and integrated asset management, credit and operating policies, procedures and practices. The system should be able to tie to and track from land and ownership records but such is not always the case.

2. lack of master lease system and a consolidated accounts receivable (billing) system which precludes appropriate documentation of lease management terms and conditions and an audit and comparison of general ledger entries to the amounts due under the lease contracts. The system in use does not accurately use lease-contract and ownership information for trust income verification, reconciliation, billing, payments, collection, accounting, disbursement, audit, asset quality review and compliance purposes.

3. lack of an effective IIM accounting system for collections, deposits and disbursements which leads to uncertainty over whether the right beneficiary was credited with the correct amount. The system in use is incapable of accurate and timely accounting and reporting and is not compatible with more efficient private sector systems capable of providing such financial services and new and improved financial services to American Indians as well.

4. lack of an effective land records and ownership system which prevents timely credit of income to the appropriate individual Indian or tribal account and precludes audits to determine whether the trust assets are fully utilized and receiving the highest rate of return consistent with trust and prudential standards. The current system is not accurate and system break-downs seem to be more the rule, rather than the exception.

5. lack of an adequate archives and record keeping system which has resulted in a massive loss of lease and contract records and the consequent inability to do acceptable audits and reconcilements. The technology services center is not a dedicated unit to trust management activities. Appropriate disaster/recovery and back-up assurance is lacking.

6. lack of an effective risk management system which prevents prudential audits, compliance reviews and quality ratings and appraisals.

7. lack of an organizational structure organized by function and dedicated exclusively to trust management.

8. lack of a permanent solution to the fractionation of American Indian allotment ownership.

At the core of many of the accounting and reconciliation problems is the lack of source documentation to support the general ledger entries. There is not a complete way to estimate the number of missing

documents, leases and contracts, but the BASIC RECONCILIATION effort disclosed the types of problems which prevent a full accounting:

1. There were 32,319 unreconciled transactions which totaled $2.4 billion and which represented cash receipts, disbursement and internal transfer transactions posted to tribal accounts for which the supporting financial source documents were not located:

Unlocated Receipts:	$1.1 billion
Unlocated Disbursements:	$.8 billion
Unlocated Transfers:	$.5 billion
Total	$2.4 billion

2. Some offices of the Bureau of Indian Affairs have in the past sent trust and land leases and records to a federal records center where they are retained under federal records retention rules rather than under trust rules. The result was that many records were destroyed which should not have been destroyed. Some offices of the BIA followed federal retention rules for trust leases and contracts, which normally required retention of less than ten years after the leases or contracts expire. Thus, some records were destroyed which should not have been destroyed.

3. Some documents are missing for other reasons. For example, in one sampling, ten years of timber contracts were found to have been destroyed. Generally, the "Fill the Gap" part of the Reconciliation Effort was significantly curtailed because large numbers of leases and contracts could not be located.

4. There is not a complete system of redundant record keeping. Thus, no effective back-up exists if a record is destroyed or cannot be located for some other reason.

There are numerous problems and issues concerning IIM accounting which have been researched, reported on, and discussed in several internal and external reports. Some of these accounting and systems problems for the 387,631 IIM accounts with balances of approximately $450 million have resulted in the following:

1. 12 different non-integrated databases to manage. File structures are obsolete. Data records are outdated and/or inaccurate. Automated systems applications and routines are not consistent and various versions of similar applications are used.

2. 16,828 duplicate accounts. These accounts should be researched and closed under an appropriate set of policies and procedures.

3. 45,624 accounts with $27.7 million for individuals with no address or an incorrect address. Policies and procedures must be established on the steps to follow to locate missing persons and what to do if a person cannot be located. These accounts should be researched and placed in dormant status under appropriate policies and procedures if owners cannot be located within a reasonable period of time.

4. The Office of Trust Funds Management is responsible for accounting for monies held in trust for a minor judgment recipient until he/she reaches 18. There are 58,788 such accounts with $143,617,096 in aggregate balances. But 27,519 accounts and $21,735,681 are for individuals over 18 and one of the over 18 accounts contains $490,121. These accounts should be

researched and resolved under an appropriate set of policies and procedures.

5. Special Deposit Accounts aggregating $141,723,524 in 28,202 accounts are supposed to be a temporary repository for money until the ownership of the funds can be determined. Yet there are 6,119 accounts with $2,273,074 which have had no activity in the last 18 months. These accounts should be researched and resolved as well under appropriate policies and procedures.

6. The database contains 21,572 accounts with $37,543,163 for deceased individuals. There are 2,242 of these accounts which are coded as being closed estates. However, because of the probate backlog, there are $787,625 which have not been distributed to heirs. This problem should be addressed by bringing the backlog current.

7. There are 270 accounts for individuals in the database which have overdrafts in the amount of $314,042. No overdrafts are authorized. Overdraft prohibitions should be enforced.

8. As of September 30, 1996:

    1. 14,476 IIM Accounts had a balance of $0 with no activity for 13 months and not coded for deletion.
    2. 14,906 IIM accounts had a balance between $0 and $1 with no activity for 13 months.
    3. 28,114 IIM accounts had no activity for 18 months and not coded for deletion.
    4. 128,393 IIM accounts had no Social Security Number or Taxpayer ID.

    These accounts are expensive to administer and maintain. Policy and legal changes are required to eliminate them, escheat them or otherwise reduce them to levels that can be administered more efficiently and effectively.

9. Ownership of the land and its associated assets is critical to trust asset management and resulting trust income processes. The BIA systems and processes are currently not capable of establishing up-to-date and accurate land title records that are necessary for the lease management processes. In addition, significant backlogs in updating systems for land records revisions, additions and deletions exist. The time lags associated with probate (two-three year average) exacerbate the problem as well. Even if the records were up-to-date, the Bureau's current Land Records Information System (LRIS) does not interface with its Lease Management systems. Databases are separate even though they are inter-dependent and they contain redundant and conflicting information. There are also many instances reported that LRIS was often not available for trust asset management (e.g., leasing), due to hardware or communications problems.

10. Record retention and filing procedures at certain locations throughout the Bureau and for certain periods are not sufficient to document certain activities and account balances.

11. There is not an effective accounts receivable system in place to assure that all income due is collected and to assess late fees and interest when due. Field collections are not adequately controlled or deposited timely. Unwarranted delays exist between the receipt of money at Minerals Management Service and final distribution to the owners.

12. Poor internal controls and inconsistent policies and practices exist. The various audit reports that have been conducted on IIM related systems and activities have identified many cases of

inconsistent application of policies and procedures. Inconsistency prevents the accumulation and analysis of information within the BIA, making it difficult for the BIA to provide oversight and management, make management decisions, demonstrate accountability and develop confidence and credibility in the trust asset and trust funds management processes. Poor internal controls and inconsistent practices account for over 50% of the thirty consolidated problems identified in the IIM Related System Improvement Project Report of August 1995. According to that Report, this category of problems "pervades every function reviewed". Moreover the Report notes: "The Bureau has developed procedures and policies for a number of the problems and often, guidelines are in place. However, they are either unknown to the staff performing the function, not being followed, or not comprehensive enough to provide the requisite guidance."

13. Many of the BIA's leasing and other resource management actions result in an amount due from the lessee in payment of the benefit received from the leased resource, e.g., grazing fees. Unfortunately, the BIA's systems and processes do not create or record an amount due and they do not create and account for bills or notices. Except for revenues from minerals leases, the collection and follow-up on this trust asset income rests with the individual realty staff in the field. In some cases, BIA staff have developed P.C. software to perform leasing functions and as a by-product are able to issue bills for amounts due. Others have manual hard copy records that prompt action, but neither of these is generally practiced throughout the Bureau. The result is that it is possible that amounts due are not established, amounts due may be uncollected, or actions against lessees that may be necessary may not be taken. Further, with little opportunity to separate duties at the agency level, adequate internal control over the entire process becomes extremely difficult and costly and is often not possible.

14. The cash account at the U.S. Treasury is not verifiable due in part to inadequate Bureau procedures and also because the U.S. Treasury is not able to provide the Bureau with accurate information regarding cumulative balances.

15. The BIA's organizational alignment causes decision-making and management for IIM and tribal issues to be an intricate and complex coordination process and an ineffective one at times. Responsibilities fall within 16 separate organizations all reporting directly to one entity, which has direct line authority for every other Bureau organization and program. Further, the activities are carried out by over 100 field offices. The BIA's organizational structure prevents in many instances informed and expeditious decisions because of the number of entities involved and the number and complexity of the decisions their activities generate. The structure also results at times in trust management responsibilities of a higher order not receiving the attention and focus they deserve and/or being traded off against other Bureau priorities of a lower order. The BIA offices must expend significant resources to coordinate with managers, supervisors and staff across the Bureau to obtain cooperation. Coordination and cooperation often breaks down. Because the BIA is not organized and managed by function, all too often policies and procedures written for specific trust programs or functions are not universally followed because the staff that perform the activities take their direction from general managers in area or field offices, not the trust program offices.

Impact of Fractionated Ownership of Indian Lands on Trust Management Systems

Another fundamental problem is fractionation of American Indian Allotment interests. The vast majority of accounting, basic record keeping and other operating problems affecting trust resource management, trust funds management and trust land records and ownership management originate

from one source: the ever increasing fractionation of undivided realty interests owned by Individual American Indian Allottees.

Fractionation is a direct result of the Federal Government's policies and laws relating to lands owned by the American Indians dating back to 1887.

As originally envisioned, allotments were to be held in trust by the United States for their Indian owners no more than 25 years, after which the land would be conveyed in fee simple to its Indian owners. Many allottees died without wills during the 25 year trust period, and it also became evident that many allottees continued to need Federal protection. Consequently, 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. Nevertheless, Congress continued to extend the period of trust protection but did not amend the probate laws. Under the Indian probate laws, as individuals died, their property descended to their heirs as undivided fractional interests in the allotment. As the years passed, fractionation has expanded geometrically to the point where there are hundreds of thousands of tiny fractional interests. These fractional interests have nominal economic value but pose an enormous cost burden estimated to be about $33 million per year on the Federal Government's trust management activities.

Congress attempted to address the fractionation problem with the passage of the Indian Land Consolidation Act (ILCA) in 1984. The ILCA authorized the buying, selling and trading of fractional interests, but most importantly it provided for the escheat to Tribes of interests of less than two percent. 55,000 of the two percent-or-less fractional interests have escheated since 1984, but the fractionation problem continues to worsen. Moreover, the Youpee vs. Babbitt 1997 Supreme Court Decision brings into question the legality of the escheated property since 1994, further complicating an already bad situation. Maintaining the heirship and land records and administering the land is inordinately expensive, and the administration of the records pertaining to the moneys earned by each individual allottee is equally expensive and difficult. In addition, utilization and conveyance of the fractionated property by the numerous owners is difficult because of the need to secure the numerous consents required. Finally, the difficulty in dealing with the fractionated interests often effectively precludes the highest and best use of the land for economic development and the maximization of investment income, thus diminishing its economic value.

The fractionated ownership of Indian lands is taxing the ability of the government to administer and maintain records on Indian lands. 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, put together. Fractionated heirship also threatens the integrity and viability of the Department's trust management systems. The problem cannot be addressed by the Tribes; it cannot be fully addressed by the Department of the Interior; it requires a federal legislative solution.

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 far exceeds both their value plus any income derived therefrom.

Currently, calculation of fractionated lease ownerships may result in a fractional denominator that exceeds 26 digits. Depending upon the amount of lease income to be distributed, it is possible that

trust income may have to be collected for several years before sufficient income is collected to entitle an account holder to even one cent.

Some administrative complications that result from fractionated ownerships include the following:

- Detailed accounting records must be maintained for all transactions regardless of size, sometimes as little as $0.03 may be distributed among seven account holders, complicating the accounting.

- In most cases, OTFM policy does not permit funds to be disbursed to the account holders until balances reach $15, thus increasing the number of IIM accounts that require interest posting and other account maintenance activities.

- Funds sometimes remain in special deposit (suspense) accounts for long periods, according to OTFM, pending OTFM's receipt of ownership information from OTR's Land Title and Records program and realty staffs.

Currently, OTR maintains official federal Indian land title and beneficial (lease) ownership information. OTR's Land Title and Records program staff are responsible for determining ownership and encumbrance for each federal Indian tract of land and for certifying for the Federal Government that such ownership and encumbrance is accurate for all legal, title, and evidentiary purposes. However, due to continuing increases in fractionation, inadequate staffing, and inadequate systems, OTR has almost a 2-year (4 years in some areas) backlog in land title and lease ownership determinations and record keeping.

Each time ownership changes, OTR's Land Title and Records program staff must perform time-consuming manual determination and documentation of ownership interests. This is because OTR's LRIS, as designed, is not capable of performing automated chain-of-title calculations and it does not store chain-of-title or calculated ownership information. LRIS system improvements have been delayed for the past two years due to reductions-in-force and budget cuts. In addition, LRIS is not integrated with OTFM's trust fund accounting systems.

Because official ownership information may be significantly out-of-date, OTFM has relied on unofficial ownership data in BIA's Integrated Resources Management System (IRMS). IRMS ownership information is periodically updated by OTR realty staff located in BIA's Agency Offices based on preliminary information that they have developed for use in probate determinations. However, unlike LRIS information, it is not verified or certified. As a result, OTFM cannot ensure that income is distributed to the proper account holder.

Inactive IIM accounts, which are defined as accounts with no transactions for 18 months, also increase the administrative burden for IIM accounts. Accounts may become inactive because they are in suspense status or because probate decisions are pending. As of

September 30, 1996, OTFM reported that there were approximately 60,823 inactive IIM accounts. According to information provided by OTFM, these are generally low balance accounts. Administrative costs associated with inactive accounts include:

- the cost of computer processing time;

- the administrative cost and responsibility of safeguarding the accounts; and
- the cost of preparing, printing, and mailing quarterly account statements.

Legislation is therefore needed which would consolidate the large number of existing fractionated interests and prevent further fractionation. This alone would remove a primary obstacle to the efficient administration of the trust management systems and provide a major catalyst for the timely resolution of most of the operational problems associated with trust management activities, including trust resource and realty management, probate, land titles and ownership records management, IIM accounting, collections, deposits, investments and disbursements, customer service and record keeping for all trust management activities. An added benefit is the annual administrative cost savings estimated at the same $33 million mentioned above.

Confirming Views of Outside Public Accountants as to Trust Management Problems

The May 17, 1996, Report of Independent Public Accounts on Financial Statements for the Office of Trust Funds Management had the following observations on Trust Management activities, all of which precluded an unqualified audit opinion:

1. Cash and overnight investments are maintained by a related U.S. Governmental Agency (U.S. Treasury) and cannot be independently confirmed.

2. Cash balances reflected in the accompanying financial statement are materially greater than balances reported by the U.S. Treasury.

3. Major inadequacies in the Trust Fund accounting system, controls and records caused them to be unreliable.

4. Various Tribal organizations and classes of Individual Indians for whom the OTFM holds assets in trust do not agree with certain OTFM accountings and balances recorded by the OTFM; and certain of these parties have filed, or are expected to file, claims against the Federal Government. This may result in a potential liability to the Federal Government so large that it is not reasonably estimable.
   Because of these matters, it was not practicable for the outside public accountant to extend its auditing procedures to enable them to express an opinion regarding the basis on which cash and trust fund balances are stated. The public accountant went on to observe:

5. In some instances, the OTFM has researched and corrected the balances held in trust for specific Indian Tribe, individuals, and Other Special Appropriation funds. Many individual Tribal and IIM accounts still need to be reconciled and/or resolved through negotiation and settlement before reliance can be placed on the balances reflected in the trust fund accounts.

6. A portion of the Beneficiaries for whom the Bureau holds assets in trust do not receive adequate information to determine whether their account balances reflected in the Bureau's records are proper. A significant number of IIM accounts and balances are held for the benefit of minors and other individuals who have been determined by the Bureau to require assistance in managing their trust account activities and balances. It is the practice of the Bureau to not forward financial data to minors and other IIM account holders with supervised accounts.

Agency Superintendents typically act as custodians for these supervised accounts. In addition, some IIM account holders have not furnished the Bureau their addresses which would allow the Bureau to forward their account statements. Accordingly, certain account holders do not, or are unable to, agree with the balances reflected in their accounts.

7. IIM account holders who have been determined by the Bureau to require assistance in managing their financial affairs have had instances of payments made from their accounts that have not been adequately reviewed and approved in accordance with applicable regulations. At many Bureau locations procedures are inadequate to ensure that such expenditures are made in accordance with applicable regulations.

8. Cash balances converted from the prior general ledger to Omni were approximately $27 million higher than the balance per the U.S. Treasury. Cash reconciliation procedures only reconcile current activity from Omni to Treasury and do not address the unreconciled beginning balance. The composition of the difference is not known and no reliance has been obtained that either the OTFM balance or the Treasury balance is accurate. This results in an unconfirmed and unreconciled cash balance on OTFM's books.

9. The OMNI trust and investment system does not amortize premiums nor accrete discounts on investment purchases using the effective interest method as required by OMB 94-01, "Other Comprehensive Basis of Accounting." The amortization and accretion calculations must be computed separately and recorded as an adjustment at year end. This results in interim financial reporting which does not reflect the investment portfolios true yield.

10. The Budget Clearing Account with Treasury has a balance of about $11.7 million, of which only about $168,000 is reflected on OMNI. This is a shared account with the Division of Accounting Management and it cannot be determined at this time to whom the balances belong.

11. There is a difference between the general ledger summary account of IIM on OMNI and the total of the balances per the IIM subsidiary ledger detail. The difference was approximately $30 million at September 30, 1995, with the general ledger carrying the higher balance. There are also negative cash balances on the IIM subsidiary system aggregating approximately $46 million. The effect of the above items is to further substantiate the unreliability of the trust fund balances as reflected by OTFM.

12. A review of questionnaire responses from the Area and Agency Offices indicated that there is no consistency in the application of accounting processes and procedures. There were also inconsistencies reported in duties performed by certain key personnel at the Agency Offices, as well as inadequate segregation of duties. During the period under audit, staff in the Area and Agency Offices were supervised by the Bureau and did not report to the OTFM.

13. The accounting and internal control procedures used by the OTFM have suffered from a variety of system and procedural internal control weaknesses, and other problems, such as under staffed accounting operations at all levels, a lack of experienced accounting supervisors, a lack of minimum standards for key positions in the accounting process, inadequate training programs and inherent limitations in existing computerized accounting systems. In addition, current management is burdened with the ongoing impact of decades of accumulated errors in the accounting records. These factors place significant limitations on management's ability to effectively manage the trust funds entrusted to the OTFM.

14. The Bureau does not have an accounts receivable system in place. Currently, the Bureau has no assurance that all lease revenues are billed and subsequently collected. Such a system will provide reasonable assurance that earned revenues are billed, collected and posted to the appropriate beneficiary's account.

Tribal/Federal IIM Work Group: Confirmation of Problems and Priority of Issues to be Addressed

Over the course of several months during 1996 a combined Tribal/Federal Work Group, consisting of 19 tribal attendees and 12 Bureau of Indian Affairs' attendees, met to address IIM trust management problems and to prioritize categories for resolution. The Group met initially in New Mexico and concluded its work in January 1997 after regional hearings for IIM account holders were held in Tulsa, Phoenix, Portland, Oklahoma City, Bismarck and Albuquerque. After these consultation sessions, the top 5 priority categories were as follows:

Tribal/Federal IIM Work Group
Priority Categories
January 8, 1997

Tribal/Non-Federal	Federal	Combined
Accounting	Realty	Realty
Realty	Accounting	Accounting
Customer Service/Training	Records Management	Customer Service/Training
Policies & Procedure	Customer Service/Training	Records Management
Records Management	Policies & Procedures	Policies & Procedures

The work of the Tribal/Federal Work Group is another confirmation of the most serious problems and issues affecting trust management activities. The conclusions also demonstrate that any resolution of the trust management problems must start by addressing the realty issues, particularly fractionated ownership problems, accounting problems and records management. After that policies and procedures can be revised and extensive training conducted, ultimately to assure the customer service the American Indian trust beneficiaries deserve and to ensure the U.S. Government is meeting its trust obligations to the American Indians.

Confirming Views of Macro International Inc.

Macro International Inc. Executive Summary

The OST Needs Analysis project was conducted by Macro International Inc. (prime contractor) and its subcontractors, Larson Slade Associates, LLC., and Arrowhead Technologies, Inc. from December 19, 1996 to April 7, 1997.

The primary purpose of the project was to provide the Office of the Special Trustee with an analysis of the various components of the American Indian Trust system (i.e., trust accounting, asset

management and land title and recordation) based on the perspective of the end users in the field (OST employees, BIA employees, Tribes, and others). In addition, the project included specific reporting on the gaps that exist between the current Indian Trust system and trust departments in the commercial sector; the features needed in a new system which meets commercial standards; the training needs and requirements of staff; the key business events used in day-to-day trust business; an inventory of the equipment needs of end users; and, a recommendation on whether existing Government capabilities are adequate to satisfy the needs and requirements of a new trust system.

The project was modified three times to add further reporting elements to its scope, including: a validation of the Conceptual Strategic Plan including cost estimates; an increased analysis of oil and gas assets management; a review of commercially available land title and recordation applications and service bureau support; revisions of the Strategic Plan budget; and the development of roles and responsibilities of a systems integration and overseer for the integration, implementation and sustained management of a new trust management system.

The primary means by which the Macro project team gathered such information was through site visits to 50 Tribal locations, 35 BIA agency offices, 8 BIA area offices, one BIA field office and the OTFM headquarters office in Albuquerque, NM. Approximately 350 confidential interviews were conducted; however, since some of these were recorded as "joint interviews" (two or more people participating in a single interview on a specific subject or function), only 330 official responses were recorded. These responses were entered into a database and compiled into analysis segments with all personal or location identification removed. Additional data was gathered from interviews with OST officials and staff, service bureau providers, project resource firms (Riggs Bank, NationsBank, State Street Bank and Trust), Tribal representatives, and others.

Data analysis consisted of a systematic review of the database responses and a review of information gathered from additional resources, reports, and interviews.

Key Findings and Recommendations

Based on the field interviews and the project team’s review and analysis of trust-related data, four major findings were identified and recommendations developed. They include:

Fiduciary Responsibility

The trust fiduciary responsibility to manage trust assets and accurately report on their status to beneficiaries is not being met. The existing trust system does not account for each and every asset under its responsibility and there is no method for gauging the accuracy of information depicting the assets for which they do account. The trust system is unable to provide the individual Indian account holder with a statement of assets and transactions for nonfinancial assets. A major deficiency in the existing system is the lack of accounting and control of the most important trust asset to the beneficiary--the land. In addition, responsibility for the management of trust accounting, asset management and land records rests with two different organizations, the Office of the Special Trustee and the Bureau of Indian Affairs. Without systems capability or, control of the most essential trust asset (land), and without single-point management responsibility, the current trust system cannot be considered operating at a commercial standard.

Recommendations

A single trust organization with management control over both resource and financial assets utilizing standard commercial applications programs to process data for trust asset and financial accounting, for land title and recordation, and for carrying out fiduciary responsibilities and reporting to American Indian Trust account holders.

New and updated policies, practices and procedures for implementation and operation of the new information technologies infrastructure.

Acquisition of a dial-up communications (WAN/LAN) network to link trust locations (regional, field, Tribes, MMS, and BLM) with the single trust organization.

Acquisition and upgrade of workstations with required hardware and software to enable all trust system staff and the 300 Tribal sites direct access to account information through the dial-up network.

Trust Data and Information

Although a new commercial system will have the capability of processing current and historical land information, existing data relating to land ownership and valuation is not in suitable condition or is nonexistent. Land appraisals are out of date and, if they exist at all, are perceived by many owners to be inaccurate. There are major appraisal backlogs in most field locations.

American Indian properties are fractionated as a result of generation after generation of inheriting undivided lands. Some properties are fractionated to the 35th decimal and incomes are essentially zero or not accountable.

The filing, storage and retrieval process of hard copy documents is inefficient. There is an overabundance of documents (which are vulnerable to disaster) and a lack of facilities and trained personnel to safeguard and preserve them.

Recommendations

A reconciliation of historical land titles and the appraisal of Indian lands must be completed before any new system can provide accurate information to account holders regarding this critical trust asset.

Enact legislation to resolve fractionated ownership.

Establish a national archives to image, store and retrieve official and historical documents.

Acquire and/or upgrade hardware and software equipment to enable field offices to image, store and retrieve documents.

Update and complete file jackets, records, and accounts to provide the new commercial trust system with accurate information for processing.

Organizational Staffing, Training & Development

A new commercial trust system will have the capacity to process accounting, asset management and land information; the reconciliation of land titles and the appraisal of Indian lands will provide accurate

land records; a national archives will insure that official documents and historical trust records are maintained; a communications network will enable user access to trust information; and, hardware and software purchases and upgrades will enable the internal and external trust system users to image, store and retrieve documents. However, all of these important tasks will not, by themselves, improve the Indian Trust system unless an effective and efficient staff is able to carry out these tasks.

Field interviews indicated that recent reductions in staff have resulted in current employees being forced to handle tasks for which they have no formal training. On-the-job training is almost solely relied upon to prepare employees for their jobs. This has resulted in deficiencies in quality and timeliness of many work tasks. The concept of fiduciary trust responsibility is not readily apparent at OST and BIA field offices, although OST staff in Albuquerque are exceptions. While the effort of most employees is exemplary, many employees have responded to this difficult situation by either resigning themselves to never getting their jobs done correctly or becoming so achievement-oriented that they are nearing physical and mental exhaustion.

Recommendations

Provide a variety of trust activities training related to improving job functions, improving customer service, understanding trust services, dealing with stress, and handling the transition of the current trust system to a new commercial system.

Implement functional improvement training on an on-going basis.

Conduct training related to the commercial trust transition to coincide with the "rollout" of the new system in the FY 1998-FY 2000 time frame.

Make a commitment to bolster the capability of the field offices by acquiring more staff with trust banking experience to provide needed technical support to fellow employees.

Establish a "help-desk" system from regional and central offices as additional backup and support to current field staff.

Administrative

Two major administrative issues need to be resolved in order to improve the Indian Trust system. They are: resolve the probate backlog; and, resolve the relationship difficulties between OST and BIA field employees.

Probate Process

The probate process takes much too long to complete due to fractionated land ownership, incomplete files and records, under staffing, and too few Office of Hearings and Appeals (OHA) and administrative judges to adjudicate the case load.

Recommendations

Enact legislation to resolve fractionated land ownership.

Increase administrative staff levels to enable probate case information to be compiled in a more timely

manner.

Increase the number of administrative judges thereby increasing the number of probate cases that can be adjudicated annually.

OST/BIA Relationship

The relationship between OST and BIA field employees is strained and in need of immediate clarification. Agreements between these Organizations are required in such areas as staff roles, procedures, authority, and reporting relationships. This situation has resulted in employee frustration in both Organizations and a concern that preferential treatment is being received by one group or the other

Recommendations

Establish an agreement between the two Organizations to provide much-needed leadership and guidance to OST and BIA employees across the United States.

Establish a single organization with all trust activities under one manager.

See Appendix Two for the complete report of Macro International Inc.

Summary Comment by Special Trustee

Each of the trust management problems identified above and in this Condition Assessment is considered by the Special Trustee to be a material weakness and in need of reform as required by the American Indian Trust Fund Reform Act of 1994. Each is addressed generally and a reform solution is proposed in the general proposals contained in the Strategic Plan. The Appendix contains more specific proposals for each needed reform. Once the Strategic Plan is approved, a specific action plan will be written in the implementation phase to resolve each of the material weaknesses in the trust management systems identified in the Strategic Plan.

ADDENDUM TWO: STRATEGIC PLAN BUDGET AND TIMETABLE

Urgent Need to Fund and Staff Strategic Plan Reforms During Fiscal Years 1998 and 1999

The principal overall objective of Phase I of the Strategic Plan is and will be to address and resolve the root causes of the longstanding trust management problems as quickly as possible. The Special Trustee has concluded as to the trust management systems problems:

These conditions are unacceptable by any reasonable standards and continue to do significant harm and damage to American Indian trust beneficiaries. They are caused by inherent defects in the core trust management systems the government uses to manage the Indian lands and monies. These defective systems prevent the government from meeting the fiduciary, accounting and reporting standards required by the American Indian Trust Management Reform Act of 1994 and standards of ordinary prudence applicable to all trustees, public or private.

Mismanagement and neglect have allowed the trust management systems, record keeping systems and risk management systems to deteriorate over a twenty to thirty year period and become obsolete and ineffective. For many of those years, including many years since 1990, the trust programs were seriously under staffed and under funded. The result was that the government increasingly was unable to keep pace with the rapid changes and improvements in technology, trust systems and prudential best practices taking place in the private sector trust industry. This gap continues today and will continue to increase until the reforms outlined in the Strategic Plan are funded and implemented. That is why they should be funded and implemented, immediately, regardless of if and when the Comprehensive Strategic Plan called for in the Reform Act of 1994 is approved. Each day the trust management systems remain status quo, the Federal Government's exposure to claims of mismanagement and liability will continue to grow and is another day the Federal Government cannot meet its trust responsibilities to the American Indians.

The primary cause of the trust management problems both historically and currently can be attributed to the trade-offs of financial and managerial resources which take place at every level of government between trust management activities (trust resource management, trust funds management and land title and records management) and other activities and programs of the Bureau of Indian Affairs, the Department of the Interior, the Administration and the Congress. History has consistently shown these politically expedient government trade-offs of competing financial and managerial resources to be adverse and detrimental to the effective and proper administration and funding of the trust management activities.

These trade-offs have been made and are continuing to be made even in the face of a long history of court cases which have consistently held the trust relationship between the

United States and the American Indians to be a distinctive one. Decisions of the Supreme Court reviewing the legality of administrative conduct in managing Indian property have held officials of the United States to "moral obligations of the highest responsibility and trust" and "the most exacting fiduciary standards," and be "bound by every moral and equitable consideration to discharge its trust with good faith and fairness."

A trustee is not and should not be relieved of his duties, responsibilities and accountability to trust beneficiaries because the trustee lacks the financial and managerial resources to administer the trusts. To be so relieved for this reason is not acceptable for a private trustee. Yet, the most frequently cited reason and excuse for the Federal Government's historical and continued failure to address and resolve the longstanding trust management problems is the lack of funding and staffing for the American Indian trust management programs. While most certainly the lack of financial and managerial resources is the primary causal factor for the Federal Government's failure in this regard, under no circumstances should it also serve as an acceptable excuse for the continued neglect of the Federal Government's trust responsibilities to American Indian trust beneficiaries. Yet, this is exactly the case for the executive and legislative branches of the Federal Government. Lack of financial and managerial resources has become the standard and institutionally acceptable excuse for the Federal Government's continued failure to address and resolve the trust management problems. Because it is by now a well established standard and acceptable excuse, no one and no government management unit has been or is likely to be held accountable for this neglect at any level of the Federal Government. This is a policy of political and self-serving convenience and not one worthy of a Federal trustee who has charged itself with moral obligations of the highest responsibility and trust or one to be judged by the most exacting fiduciary standards. In addition, this policy of political and self-serving convenience not only facilitates and perpetuates the neglect of the American Indian trust management programs but continuously adds to it. This is because it is convenient, easy and politically desirable to make even more choices and trade-offs detrimental to the American Indian trust management activities in favor of other government programs which are politically more popular. All with the knowledge that the most the Federal Government or individuals making the choices and trade-offs will suffer from such behavior is some criticism from American Indians and their supporters. No real accountability will be exacted in the near or medium terms and if it is, it may be by the judicial branch of the Federal Government over the long term.

The lack of funding for trust management improvement initiatives is nowhere better illustrated than in the following table one which shows the history since inception in September 1996 of funding requests by the Office of the Special Trustee for such initiatives versus the amounts contained in the President's budgets for fiscal years 1996 through 1998.

As table one shows, reform requests have been consistently under-funded. For fiscal 1997, OST requested $47.7 million for trust management systems improvements, but only $14.6 million was approved; for fiscal 1998, OST requested $48.7 million, but only $17.7 million was approved.

Moreover, given the Administration's long term budget estimates, there is no reason to believe that the funding levels approved for fiscal years 1997 and 1998 will be significantly increased on an annual basis. Funding the reforms with installments of $15 million to $20 million per year simply will not work. This is because the Strategic Plan Budget (See enclosed full Strategic Plan Budget) estimates about $61 million will be needed in the first two years to purchase the trust asset and accounting management system, the land title and records management system and the information infrastructure technology. In the first two years of implementation, another $49 million will be needed for data conversion, reconciliation and backlog clean-up of probates, land title and records, IIM and Tribal records and appraisals. In the same period $52 million will be needed for imaging, training, policies and procedures and legal manuals, risk management, archives and records management and external professional services. In short, all these expenditures must be made over a year or two and the systems purchased must be kept current through annual maintenance and upgrades lest they become obsolete and ineffective.

What is proposed in Phase I of the Strategic Plan involves low risk and proven technology and operating and accounting systems which have long been readily available in the private sector and can be implemented very quickly once funding and staffing is made available. The core asset and accounting management systems, records and archiving systems and reporting and delivery systems in Phase I of the Strategic Plan must be installed over two years if they are to remain current and effective on an on-going basis. The systems will use latest available technology which changes rapidly. Alternatively, If the core systems are funded in installments of $15 to $20 million a year over 6 years or longer, they will already be obsolete when the implementation is finally completed and ineffective as well, necessitating another costly reform effort. Therefore, a two year implementation period is critical. In the private sector, the usual and customary period for implementation of such systems has been less than a year. However, an extra year has been built into the plan to allow for the processes of government. Consistent with the Strategic Plan objectives and the proposed two year timetable for implementation is the Strategic Plan Budget necessary to implement the Strategic Plan reforms. The complete Strategic Plan Budget is included below.

Finally, the Special Trustee notes that the American Indian Trust Fund Management Reform Act of 1994 (Public Law 103-412) requires the Special Trustee to certify in writing as to the adequacy of the Department of the Interior's consolidated trust management budgets to discharge, effectively and efficiently, the Secretary's trust responsibilities and to implement the Comprehensive Strategic Plan. A credible consolidated budget for trust management activities has not been prepared by the Department of the Interior. Therefore, the Strategic Plan Budget is prepared on the basis of what will be required to implement the Strategic Plan for all trust management activities. If a credible consolidated budget is not produced or if the budget for the implementation of the Strategic Plan reforms is reduced materially or delayed or if adequate staffing or funding is not provided, the Special Trustee or a successor organization will not be in a position to certify the consolidated trust management budgets when they are prepared for fiscal 1998.

Table One
President's Budget Shortfalls in Implementing Reforms
FY 1996, FY 1997 & FY 1998

	OST REQUEST FY 1996	PRES. BUDGET FY 1996	SHORT-FALL FY 1996	OST REQUEST FY 1997	PRES. BUDGET FY 1997	SHORT-FALL FY 1997	OST REQUEST FY 1998	PRES BUD FY 1
Strategic Plan Core Systems				45,682	13,561	32,121	30,317	14
Record Keeping Systems				-	-	-	11,200	
Land Records Systems	-		-	-	-		7,220	3
Requirements Analysis	1,000	0	1,000	1,000	11000		-	-
Outside Contractors	500	0	500	1,000	0	1,000	-	-
Sub-Total Rerorm Costs	11500	0	1,500	47,682	14,561	33,121	48,737	17
OST Immediate Office	1,600	450	1,150	1,600	1,229	372	1,221	1
Advisory Board	400	0	400	400	161	239	200	
Sub-Total	3,500	450	3,050	49,682	15,950	33,732	50,158	19
IIM Pool Shortage	-	-	-	-	-	-	42,200	
General Ledger Losses	-			-	-	-	28,300	
Sub-Total	3,500	450	3,050	49,682	15,950	33,732	120,658	19
*OTFM, Records Mgt & ITMA Budget							20,217	20
Total							140,875	39

** Transferred to OST 2/9/96*

Strategic Plan Budget Summary

		Implementation 1997-1999	Ongoing Per Annum
1	Standard Trust Asset and Accounting Management System,	34,662.8	18,122.7
	Land Title and Records Management System and General		
	Ledger System		
2	Information Technology Infrastructure for AITDA, BIA, MMS,	26,467.4	10,490.9
	BLM, Tribes and other End-Users		
	Sub-Total Systems Costs	**61,130.2**	**28,613.6**
3	Data Conversion, Reconciliation & Backlog Clean-up for probates	48,945.0	5,200.0
	IIM/Lease[Files, LRIS & LTRO Records, Imaging and Appraisals		
4	Implementation for Imaging, training, policies & procedures, risk.	52,104.3	18,223.4
	management, archives and records management and external		
	professional services		
5	Management: OST or AITDA	5,548.0	1,861.0
	TOTAL	**167,727.5**	**55,898.0**

Strategic Plan Budget
($ Thousands)

	Implementation Costs				Ongoing Costs	
	FY 97/98	FY 99	FY 97-99		FY 00	FY 01
1. Standard Trust	15,933.3	18,729.5	34,662.8		19,665.5	18,122.7

Asset and Accounting Management System and Land Title and Records Management System					
A. Trust Asset and Accounting Management System	8,237.3	9,870.5	18,107.8	12,970.5	12,970.5
B. Land Title & Records Management System	3,196.0	8,059.0	11,255.0	6,095.0	4,552.2
C. General Ledger System	2,000.0	300.0	2,300.0	300.0	300.0
D. Interf2ce Development	2,500.0	500.0	3,000.0	300.0	300.0
2. Information Technology Infrastructure	13,214.6	13,252.8	26,467.4	11,847.9	10,490.9
A. AITDA, BIA, MMS, BLM	10,457.9	11,928.4	22,386.3	9,928.8	9,354.5
B. Tribes, Including End-user Training	2,756.7	1,324.4	4,081.1	2,019.1	1,136.4
SUB-TOTAL SYSTEMS COSTS	**29,147.9**	**31,982.3**	**61,130.2**	**31,513.4**	**28,613.6**
3. Data Conversion, Reconciliation & Backlog Clean-up	27,535.0	21,410.0	48,945.0	8,625.0	7,200.0
1. Probate Related Backlog Cle2n-ups:					
Agency	600.0	540.0	1,140.0		
Hearings & Appeals/Admln. Law	1,400.0	1,030.0	2,430.0		
LTRO	4,000.0	4,000.0	8,000.0	1,425.0	
2. File Clean-up, Data/Document Check	4,400.0	3,000.0	7,400.0		
3. IIM/Lesse/ Subsystem Conversion/Reconcile.	1,375.0	840.0	2,215.0		
4. LRIS	2,600.0	2,000.0	4,600.0	2,000.0	2,000.0

Conversion/Ownership Reconciliation/Defective Title Clean-up					
5. Imaging Clean-up	3,160.0		3,160.0		
6. Appraisal Clesn-up	10,000.0	10,000.0	20,000.0	5,200.0	5,200.0
4. Implementation	31,572.9	20,531.4	52,104.3	19,417.2	18,223.4
A. Imaging	2,730.2	1,608.5	4,338.7	1,608.4	1,608.4
B. Training AITDA, BIA, MMS, BLM	6,416.7	3,609.4	10,026.1	2,495.3	2,301.5
C. Policy, Procedures, Legal Manuals	4,000.0	250.0	4,250.0	250.0	250.0
D. Risk Management	4,520.0	4,520.0	9,040.0	4,520.0	4,520.0
E. Archives and Records Management	10,406.0	8,043.5	18,449.5	8,043.5	8,043.5
F. External Professional Services	3,500.0	2,500.0	6,000.0	2,500.0	1,500.0
5. Management: OST or AITDA	3,687.0	1,861.0	5,548.0	1,861.0	1,861.0
TOTALS	**91,942.8**	**75,794.7**	**167,727.5**	**61,446.6**	**55,898.0**
Less: $13.350 million appropriated for FV97 improvement Initiatives.			**-13,350.0**		
COST TO IMPLEMENT STRATEGIC PLAN			***154,377.5***		

Strategic Plan Major Data Conversion, Reconciliation & Backlog Problems to be Addressed:

	Amount	Transactions
Tribal Reconciliation Project Disclosures		
Transactions without source documentation	$2.4	32,319

	billion	
Amount with incomplete disbursement voucher packages	$4.1 billion	
Amount without source documentation for unreconciled disbursements	$575 million	
Universe of leases and transactions		Unknown
Probate Related Backlogs		
Backlog of cases at Agencies		3,500
Backlog of cases at Administrative Law Judges		3,453
Number of TSRS, Recordation, Imaging & Mapping Documents for research at LTROs		212,381
Land Title and Records Offices		
Number of Defective Titles to research		4,300
Number of Defective Titles - Muskogee Area		4,942
Number of Pre-1966 Statutes of Limitations Cases to research		25,000
Leases to be imaged		60,000
Appraisals to be made		36,000
IIM Files Information		
Number of flies to be researched and given document check/reconciliation prior to conversion		749,000
"Whereabouts Unknown" riles with no address or incorrect address	$27.7 million	45,624
Former minors accounts with positive balances or "Whereabouts Unknown"	$21.7 million	27,519
Overdraft Interest Clearing Accounts mis-posted	$42.2 million	
General Ledger losses not cleared	$28 million	
Number with no tax identification or social security number		128,393
Duplicate Accounts		16,828

Special Deposit Accounts with no activity last eighteen months	$2.3 million	6,119
Number of accounts with $0 balance and no activity last thirteen months and not closed		14,476
Number of accounts with balance $0 to $1 with no activity for thirteen months		14,906
Number of accounts with no activity for eighteen months and not coded for deletion		28,114

Strategic Plan Data, Reconciliation & Backlog Clean-up Summary

		Clean-up Backlog Problem	FY1997-2001 ($ thousands)
1. Probate Related Backlog Clean-up			
Agency	3,500	Probates	1,140
Administrative Law Judges	3,453	Probates	2,430
LTRO	212,381	TSRS, Recordation, Imaging & Mapping Documents	9,425
2. File Clean-up, D2t2/Document Check	749,000	IIM Files Document Verification	7,400
3. IIM Lease Subsystem Conversion		File Conversion/TestingfReconcillation	2,215
4. LRIS Conversion/Ownership Reconciliation & Defective File Clean-up & Reconciliation*	4,300	Defective Titles. Must be researched and cleared	9,600
5. Imaging	60,000	Image 60% of high dollar leases	3,160

		in two years:	
		Image remaining leases in FY2000 and FY2001:	1,000
6. Appraisals	20,000	Appraisals of 20% of high dollar assets Yrs. 1&2:	16,000
	81000	5% Appraisal Sampling of other assets: Yrs. 1&2:	4,000
	4,000	Appraisals of renewing high dollar assets - Yrs. 4&5:	6,400
	4,000	5% Appraisal Sampling of other assets - Yrs. 4&5	4,000
TOTAL			**65,770**
TOTAL FOR FY 1997 THROUGH FY 1999			**48,945**

***** Does not include$13.3 million to research and clean-up 4,942 defective titles for Muskogee Area and $38.5 million to research and clean-up about 25,000 pre-1966 Statutes of Limitations cases allowed under the Indian Claims Act of 1982. These costs should be included in DOI's operating budgets.

DETAIL OF SPECIFIC ACTIONS REQUIRED - PHASE I OF THE STRATEGIC PLAN

INTRODUCTION AND SUMMARY

A1. Process and Systems Integration: Optimizing Systems And Organization to Maximize Service Delivery

I. Basic Integrated Business Processes and Systems Concept

The Strategic Plan proposes that the Federal Government align its trust management systems and organizational structure in order to allow it to better discharge its fiduciary obligations to American Indians and American Indian Tribes in a manner more consistent with the acceptable legal standards of modern trust practice. The new structure will optimize and promote the performance of business processes, the execution of its trust responsibility, and the delivery of services and products to American Indian trust beneficiaries. Because the execution of the trust activities and the delivery of services are primarily dependent upon the performance of its business processes (e.g., what it does as its business, and how it does its business), the most effective and efficient method to establish such an alignment would be to base its systems and its organizational structure on established policies and procedures long used in private sector trust management. The trust management business processes consist of three fundamental trust process groups involved in the delivery of federal trust services to Indian Tribes and individuals: trust resources management, trust funds management and land title and records management.

The operational philosophy is that the policies, procedures and regulations applicable to national bank trust departments should be used as the guides in developing policies and procedures for AITDA and the fiduciary services performed by the U.S. Government for American Indian beneficiaries.

II. Rationale for a Private Sector-Based Strategic Approach

Background

The Special Trustee's assessment is that the present policies, procedures and systems do not allow the BIA to:

1) properly account for and invest as well as maximize the return on the investment on all Trust moneys of individual Indians and Indian Tribes; and

2) prepare accurate and timely reports to account holders regarding collections, disbursements, investments, and return on investments related to their accounts.

In order to accomplish the two major points described above, the Secretary of the Interior and those agencies that have been delegated responsibilities in this area must have a trust accounting and management system similar to a private sector trust department system (discussed below) in place to fully accomplish these goals or objectives. The essence of the trust accounting system that is needed is that all assets of an individual Indian or Tribe will be reflected on a single coordinated system that will

enable a trust report or statement to be prepared for each individual account holder reflecting all the assets owned, a value at cost and market, a projected income for the assets and an estimated yield or current return on the assets. A trust accounting system has at its core the ability to record financial and asset information, values, income and compute yields or rates of return. The core system can be complimented by assets specific systems or modules to account for special assets such as real property in its various forms including farm or grazing land, retail or commercial improved rental land or buildings, mineral leasing, oil and gas leasing, etc. The present systems and tools that are being utilized by the Department of the Interior, Bureau of Indian Affairs, and Office of Trust Funds Management are independent systems that do not operate on an integrated basis enabling information and data to pass between the systems, be verified, audited and ultimately produce the desired complete, accurate and timely reports to account holders regarding their assets and income.

Private Sector Trust Department

A typical trust accounting system would have as its central elements the recording of all assets for which the trustee has fiduciary responsibility. Assets come in broad categories, including cash and cash equivalent; financial assets (common stocks, preferred stocks, bonds, debentures, notes, etc.); real estate, mineral interest; intangible non financial assets, such as leases and partnerships (general and limited); tangible assets including jewelry, china, silver, furniture, precious metals such as gold and silver, coins, ingots, etc. Within the trust accounting system there will be various system subsets, or modules that will provide enhanced ability to record and manage the assets. These subsystems utilize assets specific information in providing financial transactions, trust statements, or consolidated statements for accounts or for the trust department as a whole. Included in such modules or subsets would be a securities module that would enable monthly, weekly or daily pricing of financial assets that are traded on a national exchange such as the New York Stock Exchange and the NASDAQ. Pricing services such as the Standard & Poors, Bloomburg, and Morningstar could be integrated into this securities subset or module. In a similar manner, systems pertaining to land and improvements on the land are also available and can be utilized where appropriate. An additional module frequently used by trust departments would be a common trust or pooled investment fund system to manage the investment, accounting and valuation for commingled investments.

At the heart of the trust system and organization is a trust accounting or operations unit or department. In order to enhance the integrity of the system, promote uniformity in recording and reporting of assets, and to establish an adequate audit trail, a centralized operations and financial recording activity is important. The trust operations area would include the following elements and activities:

1. All financial data input to the system, that is the initial description and recording of all assets including financial assets, land, and tangibles.

2. Assets relating to the particular characteristics of an asset; e.g., common stocks have a specific description or security identification number, generally pay dividends on a quarterly basis that are uniform or may include special dividends; bonds generally pay interest on a semi-annual basis; land may produce rental income, leasehold payments, oil and gas revenues, royalties, etc.

3. Reporting within the trust department and to its beneficiaries; the systems and the operations group provides reports in a number of different forms within the department and to the beneficiaries. Within the department there would exist statements of conditions or balance sheets reflecting in summary form all assets such as the cash for which the department is responsible, all of the financial assets, all

of the land, etc; and all the liabilities, essentially the interest of all the beneficiaries (account holders) by the type of accounts, e.g., estates, trusts, agencies, corporate trusts, etc.

A report to an individual beneficiary or account holder would include a trust statement displaying cash equivalents, financial investments (bonds, debentures, and common stocks); land, tangible assets, miscellaneous assets. Wherever available, the statement would also include the cost basis of each asset, the current market value, projected income, and a market yield on the respective assets wherever appropriate. Complimenting the trust statement could be a report or data providing investment performance comparisons, that is the current income and total return for this particular account for a given period. This may be supplemented with comparison to standard indices including the Standard & Poors 500, a commercial bond total return index such as the Merrill Lynch Intermediate Bond Index or the Lehman Brothers Intermediate or Long term Bond Index, etc.

1. Administrative Data - A wide range of administrative information relating to an account can also be produced by the system. This data frequently is produced in the form of administrative ticklers, i.e., notices or warnings that inform a trust administrator or management of events to come or action that is required to assist in the timely completion of such tasks. As an example, if an account is for a minor who will obtain majority and thus be entitled to a distribution of an account at a particular age, a 90-day notice ahead of that time can be provided by the system automatically. If the trust account is responsible for the payment of casualty insurance on improved real estate and the payment of real estate taxes, etc., these payments can be anticipated and advance notice provided so that these important tasks are completed on a timely basis without late penalty charges. In a similar manner, prospective termination of rental, grazing or leasing activities can be anticipated. Anticipated income reports can also be produced by the system to reflect the dividends, interest, rental, etc. payments due at a particular time to assist in ensuring that all payments are received.

2. Management Data - The typical trust system can provide a host of data and reports essential to the proper management and oversight of trust activities. These reports can include the workload or number of accounts assigned to an individual accounts administrator, can report on the receipt of new accounts and the termination of existing accounts, the existence of accounts in particular geographic or organizational locations.

3. Audit - The typical trust system will have an audit trail and the ability for an independent auditor to obtain reports, identify transactions, and the originator of the transactions. The auditors can determine whether there are controls and balances and verification processes in place that are consistent with operating policies and procedures and good trust management techniques.

III. Discussion of the Action Elements of the Strategic Plan

A. Purchase & Upgrades of Hardware and Software

Regarding the purchase and upgrade for end-user workstations, the outside contractor found the existing BIA facilities largely well equipped (or in the process of installation) with 486/586 technology. However, a significant number of new work stations will need to be purchased and present ones upgraded to bring the systems at both the tribal and BIA levels up to modern standards.

The communications networking requirements are based on a new architecture which supports the Trust Management System in the style of a private sector trust operation. The communications architecture is basically a point-to-point type service since most calls will be directed to the Central

database in the form of data inquiry or deposit information from the agencies and Tribes. It has been structured to evolve into a client/server configuration at any location where the need becomes justifiable. Client/Server architecture, as it will be used in this proposed configuration, does not move any stored data or program responsibility down to the field server level. All files and processing will be the responsibility of the central office level software and hardware. Rationale for client/server facilities would be based on other areas of activity, but not for Trust Processing.

Preliminary analysis pegs the user workstation requirement for trust management and the trust-related functions of land management at over 1900 PC workstations including all stated requirements at DOI, OST, BIA and tribal staff in the field offices and locations, trust interfaces at the tribal offices and the LTRO and realty user community.

B. Core Systems Development and Related Costs

The original points presented in the Conceptual Strategic Plan and the Mathis Report have been expanded into a complete, fully integrated Trust Management and Reporting System. Also, for Title Plant, the observations of the independent contractor have found that the existing Land Record Information System (LRIS) application presently is serving the user community adequately, where properly used. The inadequacies of this system are more related to training and data than to the functionality of the application itself. While not an immediate priority, the LRIS system will need upgrading in the near term and provisions have been made in the Strategic Plan for this upgrade (See the LRIS-2 discussion below).

The Strategic Plan proposes the acquisition of a commercially available Trust Asset and Accounting Management System product adapted to fulfill all trust management activities, including investment, management and reporting requirements.

Commercial Trust Management Systems (CTMS) exist with modules that will integrate and perform the trust asset and accounting management and land lease management functions in a centralized location. This is an important enabler in achieving the Strategic Plan's objective of bringing the Trust Asset and Accounting Management System up to commercial standards. It also presents policies, procedures and systems that will allow the trustee to properly account for and invest all trust monies, and prepare accurate and timely reports to account holders.

The current Integrated Records Management System (IRMS) application is insufficient to create a trust management system at a level of commercial acceptability that would fulfill the U.S. Government’s fiduciary responsibility without a major, expensive, lengthy reconfiguration. IRMS is on an outmoded system and does not articulate easily with LRIS. Since several well-documented private sector trust management and accounting systems exist and are for sale, it is substantially more cost effective to buy rather than rewrite. Acquiring an existing commercially available trust management system will greatly reduce development costs and accelerate the implementation phase.

Given the requirement of trust management and the magnitude of the user community, the use *of "client server networks"* was not a recommendation of the outside contractor, is not a requirement and provides no real advantage. At some sites, such a facility is not practical. Instead, the Strategic Plan proposes that an effective communication network architecture support internodal linkages between the AITDA administration offices and field offices in Albuquerque, Agency Offices, tribal facilities, a new national archive center, and other systems interfaces. Also, implementation of this architecture will accelerate the process of establishing a working network environment.

C. Other Core Elements

A number of other key elements are essential to meeting the Strategic Plan's goals. These elements include: a disaster recovery plan, daily backup capabilities, training at all levels, appropriate legal and legislative changes, IIM and tribal file cleanup and probate and appraisal cleanup. These elements must also be performed or acquired if the Strategic Plan is to be effective.

D. End-User Administration; General Support and Maintenance

Under this configuration, end-user administration is kept to a minimum. The original Conceptual Strategic Plan allowed for OTFM Technical Staffing at all Area and Agency Offices. The final Strategic Plan eliminated the field requirement for that level of support and has instead funded a centralized Help Desk function. Local Technical Support now exists at the Area Offices and appears sufficient to cover true technical needs. A simple re-allocation of funds to permit travel allows the senior technical staff to support the field operations. Funds were also earmarked for training at all levels with the intent being to increase user performance and reduce end-user reliance upon the technical support staff, wherever possible.

E. Data Conversion and Imaging

Data conversion will be required to transfer to the new system information for processing. It was the outside contractor's judgment that this task has been understated in the Conceptual Strategic Plan from a budget point of view. Based upon the observations made during the field trips, a large number of manual files as well as a number of locally developed manual processes were observed- hence, there exists a major task in normalizing the data prior to loading it into any system. From the sites visited, LRIS appears to provide the functions required. A significant data clean-up task appears necessary but conversion to a new application is not justified at this time.

The need for imaging is obvious and is requested at most locations. The primary need is to record maps, land deed documents, and any other documentation related to land ownership for electronic reference and safe storage of the original and paper documents related to land ownership. Lease and other financial documentation must be recorded from origination to final disbursement to owners.

The process of data clean-up and data imaging, when addressed as a common task, should provide a more synergistic effort to complete statement of work requirements.

F. Systems Integration and Implementation

The systems integration and implementation factors will be largely covered with the commercial trust system software to be acquired. A full integration will be a prerequisite in the selection of the software product. End-user training, which was also identified as a high priority, will be incorporated as a part of the related cost of core application acquisition.

G. Access by Tribes

The education and training to be given to the tribal end-users will be extensive and will involve about 450 end-users. Monies will also be spent to integrate current hardware and software that the Tribes now use with the new system. Access to the information depository will be guaranteed so that the

Tribes can extract data and manipulate and customize the data for their own general business purposes.

H. National Archives Center and System

Internal studies and those of the outside contractor revealed the almost total lack of back-up and archiving procedures. One site of all those visited had addressed the archival issue. The equipment required was purchased with tribal funds and installed in the Field Office. The staff was trained in the procedures related to imaging and verification, which was supplemented with the orientation required to use the services and functions of the system. This site could be the base for a model of what has to be done and one operational solution for consideration. A key lesson learned was the magnitude of set up time required. After one month of attempting to do the task with staff members, it was found to be more prudent to out source, saving both time and manpower.

The Strategic Plan budget contains the estimated costs for 1) equipment costs for imaging, 2) equipment costs for storing the data, 3) equipment costs for integrating this into the network for access by all concerned parties and 4) the out source expenses to avoid the labor intensive task and accelerate the process of imaging and creating document control.

I. Upgrades to General Ledger System

The commercial trust management system, as defined above, includes the trust accounting functions and the changes required for the upgrade of the general ledge system.

J. Additional Budget Items

1) Personnel Training

Across all area, agency and tribal sites a need for technology training, management training and organization development training exists at a significant level. These training needs create a major barrier to effective and efficient office operations having to do with the implementation of current fiduciary responsibility. It will be further compounded with implementation of a new integrated trust management system. Recent reductions in force have exacerbated these problems since field observations reveal that significant numbers of BIA and OTFM personnel are being required to perform a variety of different and new tasking functions. This has created significant confusion with regard to areas of responsibility, inadequate supervision, and negative feelings in both organizations. Without training and proper supervision, much of this additional duty is being accomplished with heavy doses of self-developed on the job training. In addition to these training needs, further work on process and procedure identification needs to occur. The field data supports the addition of significant increases in expenditures in training regarding the above. If this is approved and effected, there is a strong likelihood that the implementation of the trust system will occur without having to increase staff but rather through re-deployment and retraining. In short, a comprehensive skill mix transition plan is necessary coupled with an intense on-going training to provide the low-cost high performance trust operation which is the desired outcome of the strategic investment. Field data also support the Tribal long term interest in creating a system which allows for a larger role in managing their financial affairs. Therefore the ultimate system must have the flexibility to allow that transition and to provide the necessary training to accomplish the task.

2) Clean-Up Probate/Appraisal Backlog

This includes paralegal services and support services to reduce the probate backlog which averages about two years and is up to four years in some areas. This also includes certification of paralegal and appraisal resources.

IV. Review and Analysis of Data in Land and Lease Management System and Associated Training

Land Title and Records Offices provide a public record of the chain of title relating to real property allotted to and held in trust for individuals pursuant to various treaties with Indian Tribes and acts of Congress relating to individual Indians. The record keeping systems for LTROs include the Land Record Information System (LRIS) and Property Index. LRIS is an electronic information system and the Property Index is manually maintained.

Inputs are based on documents submitted by various authorities outside of LTRO for the purpose of being recorded against a property or properties. Most documents submitted for recording originate from an Agency Office or, in the case of compact agreements, Tribes. The guidelines for the types of documents to be recorded against a property are contained in 54 BL4,M supplement 9.

Outputs of an LTRO generally consist of a certified Title Status Report (TSR), a certified inventory of property held by a decedent, and uncertified indications of ownership by property or by individual.

While a given LTRO may only certify properties located within the boundaries of its Area Office, uncertified ownership information may be obtained across Area Office databases to provide an indication of ownership for an individual having trust property in multiple areas.

In comparison with public land record systems utilized under the jurisdiction of states, an LTRO combines the functions of a registrar of deeds and a title abstract company. However, the scope of an LTRO goes beyond these institutions in that an LTRO may give an opinion in the case of ownership disputes.

Ownership of land is also recorded by agencies on systems such as IRMS Ownership. A noted distinction of differences between the LTRO function and functions provided by systems such as IRMS Ownership is that the LTRO allows for public inspection of land title under certain circumstances while the IRMS Ownership information is subject to higher degrees of confidentiality.

A review of the Automated Land Management Records System (ALMRS) was performed by the Office of the Special Trustee and the outside contractor. Based on those reviews, it appears that the ALMRS is not a replacement for LRIS but, in fact, a complementary system and an effective source for official legal descriptions of the Indian properties and related data. ALMRS is still in the development stage. Specifics regarding an implementation schedule were not yet available. ALMRS provides no ownership information and therefore cannot be used as a substitute for LRIS, which, as stated above is a workable system for the present and near term. ALMRS has limited utility in replacing the basic IRMS system which is obsolete and must be replaced.

Gaps in the LTRO Function

A need for improved data flow between the LTRO and the mainframe in Albuquerque was articulated by interviewees of the outside contractor. Apparently the LRIS-2 project was to correct such

deficiencies but was halted in the middle of the project.

Interviews indicated that guidelines for determination of whether a document should be recorded may not be applied uniformly. These guidelines are contained in a document referred to as "54 BIAM supplemental 9."

Theoretically, LRIS and IRMS Ownership records should agree as to ownership, subject only to a timing difference in a document being recorded by LRIS and posted by the Agency. In one case, LRIS reflected that an individual had an interest in only one property (tract) when the IRMS Ownership reflected that the same individual had an interest in more than 30 properties (tracts). This difference was not due to timing since the most recent document date on either system was 1992.

Field data suggest that the LTRO function is adequately supported with the current LRIS application. What is missing is sufficient training, and appraisal and probate backlogs are creating barriers to effective performance of the system. The existing appraisal and probate backlogs are exacerbated by a significant lack of qualified personnel to perform the tasks on a timely basis at all levels in the process chain. If these issues were properly addressed with additional human resources allocations, the LTRO organization could provide the information necessary to enable LRIS application to be fully effective. These findings are derived specifically from site visits to the Area Offices of Billings, Aberdeen and Anadarko. Software improvements to the LRIS system, while needed to improve the interoperability at the end-user level, should be a second priority after the re-engineering of the trust management system. Nevertheless, while not an immediate priority, the LRIS system will need upgrading in the near term. This is because each time ownership changes, the LTRO staff must perform time-consuming manual determination and documentation of ownership interests. LRIS, as designed, is not capable of performing automated chain-of-title calculations and it does not store chain-of-title or calculated ownership information. LRIS system improvements have been delayed for the past two years due to reduction in force and budget cuts. Provision for the upgrade of LRIS to LRIS-2 has been provided in the Strategic Plan over the medium term.

LTRO staff universally want more training on information systems. Some personnel are not sufficiently familiar with computers and lack on-site systems support, especially at agency and tribal locations. Some paralegal training would be helpful, especially related to probate functions. Other areas for training include real estate, accounting, property management, and appraisal, as well as a comprehensive overview of the trust process.

Calculation of Fractional Interests

A current system enhancement that would be beneficial would relate to the calculation of fractional interest for the heirs or beneficiaries of a deceased Indian. In the current environment, the LRIS system makes an automatic calculation of the new fractional share up to the 35 decimal places, if that is necessary. At the present time there is no such automatic calculation within the IRMS Ownership system. It is currently being done manually with some difficulty since most calculators will not go out that many decimal places. There is an impression that what staff members do is obtain the LRIS calculated fractional share and then enter that in the IRMS system. A system enhancement that would make the calculation process existing on LRIS available to the IRMS system would be desirable.

An additional suggestion was to consider the universal or global change order of interest in land and interest Indian property rights. In four current, separately-operated systems (IRMS Ownership, IIM, People and the Royalty Distribution Records System) the common identification of Indians is by their

ID numbers throughout the system. The universal change order that would provide for the one-time systems input of an ID number, would go a long way in avoiding some of the problems that are currently being encountered. The current procedure and validation controls, for ID number assignment are either insufficient or need tighter management. This requires further research for clarification.

Other field comments supported the regulation on special requirements to pay owners directly for oil and gas, and mineral interest, particularly 25 CFR 162.5 Section F. Others appear to favor some methodology and procedure that would require a proof of payment to the owner so as to avoid problems in determining whether owners have been receiving the correct amount of payment or payment at all. The rate of payment from the lessee is also an issue that arises in some of these problem areas. An additional concern is when an Indian actually uses land and he is a co-owner with other Indians or non-Indians. This may arise when property is inherited and four or five siblings have an undivided interest in the property represented by their fractional share. There are specific provisions in 25 CFR 162.2 as to the ability of a co-owner to use the land himself or herself. The problem arises when one of four or five siblings uses the land for grazing, farming, etc., but does not share the profits or rewards of such usage with the other siblings.

V. Review of Special Interest Areas

A. Oil and Gas

1) Ownership

For the purpose of this document, ownership refers to types of information and usage of information provided by systems such as MMS. Repositories for such information include IRMS, manual cards, IBM System 36 files, and PC data files which resemble IRMS file structures.

2) Appraisals

Appraisals for the purpose of conducting oil/gas leasing are conducted by BIA personnel with the support of the Bureau of Land Management and the U.S. Geological Survey.

3) Lease Procedures

Procedures for leasing trust property for oil/gas mining are documented by statutes and regulations. The more common leasing activity relates to property nominated for leasing by either a prospective lessee or by a beneficial owner of trust property. Leasing of such nominated property is conducted by public bid or auction.

A notable exception to the above procedure is the granting of concessions for the development of Osage minerals. The entity to whom the concession is granted becomes obligated to perform specific developmental activities in contrast to a normal lease which grants rights without obligations.

Procedures for leasing of "restricted fee" properties are governed by specific statutes and differ significantly from leasing of trust properties.

Administration of lease bonus and delay rental payments is handled at the Agency level.

a) Lease Administration

With the exception of Osage leases, lease administration is generally conducted at the agency level with the assistance of the Bureau of Land Management and in certain cases, the U.S. Geological Survey.

In the case of Osage leases, the Osage Agency staff includes skill levels, e.g. petroleum engineers, attributable to lease administration. Monthly lease production reports by operator are collected and reviewed by Agency staff. Historical production information is stored on an IBM System 36. Oil pricing is set by a prescribed formula.

b) Royalty Processing

Oil and gas royalty payments from leases for which the Secretary of the Interior has trust responsibility are processed through the Minerals Management Service and the Osage Agency. Royalty payments are deposited to Treasury when received with a deposit advice delivered to OTFM. Supporting data received from the purchaser is subsequently transmitted to the Royalty Distribution and Reporting System to be balanced and subsequently disbursed.

Payments from the Osage system are distributed through the Osage Annuity system.

c) Audit

MMS provides a series of validity checks against the purchaser report during initial processing. Additional reasonableness tests are made subsequent to initial processing with respect to price, volume and interest.

In addition to the collection of production reports by the Osage Agency, a field audit program is conducted in which BIA personnel gauge oil tanks on a routing basis.

B. Forestry/Timber and Ranching/Grazing

1) Ownership

Ownership refers to the land and the leases, contracts or permits depending on the asset under consideration identifies the appropriate ownership. Ownership is an impediment to good asset management only when there are multiple interests which require a consensus agreement for a lease, contract or permit to be let. Timber contracts typically span large acreages and hence encompass multiple owners. Sometimes this creates an impasse to good timber management; however, from the samples conducted by the Special Trustee and the outside contractor there were few occurrences of conflict.

2) Appraisals

Appraisals for appropriate fees to charge depends on the asset. For timber sales, the contract price appears to be based on open bidding. Grazing, on the other hand, is fixed at a less than market value, to cater to the Indian community. In some instances, grazing permits are only let to the Indian community and the "discounted rate" is by Bureau agreement.

3) Lease/Contract/Permit Procedure

The procedure for timber contracting as well as for grazing appears to be well defined and correctly followed. In the case of timber contracts, the process of obtaining a permit to sell is reasonably rigorous and must get Area approval before the contract is let. This approval requires that there has been a public notification, also, that clearance has been obtained by certain National agencies, i.e., National Historic Preservation and NEPA.

Also, once approval is granted, the buyer must advance funds to be held in escrow until the cuttings are certified (apparently, a monthly process or a periodicity relative to contract terms).

Grazing, on the other hand, is an agency approved process. The controls and compliance are performed by BIA personnel at the agency level.

4) Payment Processing

Timely and accurate payment processing is a major issue. Collections are performed by the local Agency BIA personnel and the checks which are received are then turned over to OTFM collection to process as per normal funds processing, but such payments are not always timely and are not necessarily traced back to an original lease to verify that the proper payment is being received or that delinquencies have been identified and dealt with. To the extent that collections process checks within the 24 hour window, funds then are applied to the trust accounts appropriately.

Gaps in Special Interest Areas

1) Oil and Gas

The basic element of information necessary for quality reporting of production information related to an individual trust account centers around property ownership. Ownership records at the trust account level are decentralized to the Agency level resulting in a variety of "trust accounting systems" as described above as IRMS, IBM System 36, "in house" PC-based and manual cards. Problems resulting from the lack of standard systems are manifest in centralized systems such as IIM and MMS.

Field issues were addressed regarding audit expectations relating to differences in bbls/mcf produced by a given well and bbls/mcf sold and reported to owners. Such concerns are not unique to DOI trust minerals; they permeate commercial trust management as well. The general rule governing the extent to which a commercial trust department audits the actual production at the well head level is dictated by the "prudent man rule," i.e., the degree of audit that a person with experience would use in the management of that persons own property. The resulting trust practice is guided by economic factors and the fact that collusion between the operator and a purchaser would normally be necessary to defraud the royalty owner. Consequently, field audits are normally conducted in cases where large amounts of production are involved.

A perception of substandard performance on the part of MMS was encountered. Interviews and direct observation were unable to produce supporting detail. It is possible that ownership and audit concerns previously discussed and their relationship to royalty distribution may be diverted to MMS, for the functions it is intended to perform, provides many audits and controls which are desirable. In addition, most funds are wired to MMS and deposited to Treasury, resulting in the generation of earnings for the trust beneficiary within a 24-hour time frame.

A requirement that 100 percent approval by owners of trust mineral interest on oil and gas leases was mentioned on multiple occasions as a source of problems and a hindrance of the opportunity to develop mineral interests. It was the opinion of those interviewed that the source of this requirement is judicial. An article written for the University of Tulsa Law Journal in the Fall of 1989 suggests that the judicial decision of a U.S. District Court in New Mexico was never published and that the case was later dismissed as moot. Thus, the Strategic Plan proposes that this problem be addressed by a policy change, rather than a legal change.

Formula pricing of Osage production has led to an interesting event. Rather than selling royalty interest pursuant to the formula, the Osage Tribal Council elects to "take in kind". In addition, it purchases the working interest share as a bonus above the formula and sells both the working and royalty production outside the formula at a price which produces an extra $400,000 annually to the Osage annuitants. This experience leads to policy questions regarding pricing which were not considered to be within the scope of this project.

The basic element of information necessary for quality reporting of oil & gas production information related to an individual trust account centers around property ownership, and this is where the system breaks down due to the problems of back-logs, deferred maintenance and training discussed above. Ownership records at the trust account level are decentralized to the agency level resulting in a variety of "trust accounting systems" such as IRMS, IBM System 36, "in-house" PC-based systems and manual cards. The CTMS integration with subsidiary support applications (e.g., LRIS) should eliminate the need for multi-systems.

System Architecture

A summary concept diagram of an integrated trust application and system architecture model would appear as represented in the diagram in Appendix One, in the Macro International Report and in the Strategic Plan Budget.

VI. RISK MANAGEMENT AND RISK MANAGEMENT OF SYSTEM ARCHITECTURE

Risk management activities are more fully described in this Appendix, Section A9, but will entail obtaining a risk management system that will provide for adequate operational audits, credit and asset quality audits, compliance reviews, independent asset appraisals, supervision, enforcement and liaison with outside, independent auditors. It will include annual reviews and audits of all service bureaus providing trust services under delegated authority from AITDA. Of special interest are the risks associated with point to point and client/server computing and the Board of Directors should encourage the development and implementation of sound policies, practices, or procedures and controls over client/server computing environments.

The traditional approach to data processing for banking functions has been to develop and use large mainframe or midrange systems which are expensive to acquire and maintain. These systems require special physical environments and lengthy application development processes. Application developers have not always kept up with development requests that would allow financial institutions to provide faster delivery of services and products. End-users, who need immediate solutions, have become frustrated with this traditional approach to data processing. New technology is now available, at a perceived cost savings, that could satisfy end-user demand for more timely management information system solutions. This new technology is being proposed by the Strategic Plan.

End-user needs have led to increasing acquisitions of computers and commercial off-the-shelf programs by departments, business units, and individuals to reduce their dependence on a centralized data processing environment. However, this strategy has its own limits. For example, stand-alone computers make it difficult to share information with other information systems. This problem is being solved by the development of high-speed data transmission and network file servers in client/server computing.

As a result, financial institutions are now processing mission-critical applications including funds transfer, branch automation, general ledger reporting, security portfolio accounting, and customer relationship management on point to point and client/server systems or hybrids, thereof. Additionally, independent service providers (service bureaus) are also utilizing this new technology by providing these systems as part of their servicing operations to financial institutions.

It is the responsibility of the Board of Directors of financial institutions to develop and adopt appropriate policies, practices, or procedures covering management's responsibilities and controls for all areas of point to point and client/server computing activities. Management must recognize that the implementation of controls is just as important in the computing environment as in the mainframe environment. The institution's strategic planning should clearly define the technological and control architecture. End-users and auditors must have a prominent role in the acquisition, development, and implementation of all computing environments.

The existence of policies, practices, or procedures and the management supervision of client/server activities should be evaluated by the Board during regular reviews.

Definition

Client/server computing is a method of allocating data processing resources in a network so that computing power is distributed among workstations in the network. This type of computing allows integrated applications (general ledger, demand deposit accounting, loans, leases, contracts, etc.) to share system and data resources using cooperative processing. Cooperative processing differs from traditional mainframe or distributed system processing in that each processing component is mutually dependent.

Point to Point architecture is a service architecture using a central database in taking data inquiry or deposit information from data originators or end-users. The Strategic Plan proposes such an architecture, customized to evolve into a client/server configuration at any location where the need is justified.

Concerns

The proliferation of new point to point and client/server technology introduces new risks as well as benefits. In today's competitive environment, new computing technology can be a strategic initiative of the organization, and therefore is not just a technological concern, it is also a business concern. Customer demand for flexible and timely management information has fostered its growth. Faster delivery of services, ability to leverage emerging technology, autonomy of end-users, and productivity gains from re-engineering the work flow are all potential benefits.

The new architecture has not evolved to the point where controls are inherent in the design,

maintenance, and operation of the system. Controls are more difficult to implement effectively due to the distributed, decentralized and complex nature of the new computing environment. The concerns that appear below illustrate some of the risks and controls that have been associated with the new technology.

This discussion also identifies components and characteristics of client/server computing.

Concerns to address

Security

1. Adequate physical security for critical hardware components may not be present due to the distributed nature of the environment and the slow security development of conscious cultures in the computing arena.

2. Inadvertent or intentional unauthorized end-user access to software and data presents greater risk of loss in computing environments due to a potential dependence on the end-user to implement some system functions.

Adequate steps should be taken to ensure protection from unauthorized access, use of, or changes to, systems or data.

Procedures should be implemented to ensure the privacy and confidentiality of information.

Computer Operation

1. Disaster recovery and business continuation plans may be incomplete or outdated due to more frequent changes to hardware and software resources.

2. Exposure to system failures may be increased due to easier software virus infiltration in distributed environment.

3. Incomplete hardware and software inventories could result in additional exposures in the form of unidentified network operations and/or the lack of adequate insurance coverage.

4. Management information systems that rely on untested systems could become incomplete or inadequate due to the lack of adequate operational controls.

5. The lack of or inadequate network configuration diagrams could result in ineffective management oversight.

Procedures should be adequate to ensure the timely, accurate, and complete processing of information. Management should ensure that critical systems and operations are recoverable in the event of a disruption in service.

Implementation and maintenance

1. Internal control considerations could be neglected due to the shortened time frames commonly found in the development of client/server and point to point systems.

2. System failures resulting in weaknesses not identified in pre-implementation testing are more likely to occur than in mainframe environments.

3. There are increased risks from unauthorized modification of application programs due to the distributed location of the client and its applications.

4. Application development costs may consistently be underestimated if a system development life cycle methodology is not used.

5. Failure to re-engineer the work flow in the design phase of the application may limit management's ability to optimize the benefits from this technology.

Appropriate procedures including a system development life cycle methodology should be included in new and existing client/server systems.

Systems software

1. In this heterogenous environment (i.e., consisting of multiple platforms), there is an increased vulnerability to incompatibilities in installed software versions. Thus modifications may cause inconsistent operating results.

Management should ensure that systems are properly tested and approved and that modifications are properly implemented.

Database Management Software

1. Database integrity may be corrupted by deficiencies in the quality of the implementation and the administration of database management systems.

2. Lack of database integrity is of greater concern due to concurrent updates of distributed databases which may not have properly established locking capabilities.

3. Unauthorized access to the data could occur as a result of inadequate database administration or improper data ownerships.

Management should ensure that controls are implemented to ensure the integrity of transactions and that systems are properly tested and approved and that modifications are properly implemented. Management should determine that adequate version control procedures are properly implemented and that the database management system has adequate recovery capabilities.

Middleware

1. System integrity may be adversely effected due to multiple operating environments attempting to interact concurrently.

2. Lack of proper software change procedures across multiple platforms could result in a loss of system integrity.

Management should ensure that controls are implemented to ensure the integrity of the point to point and client/server networks and that systems are properly tested and approved and that modifications are properly implemented. Adequate version control procedures should be properly implemented as well.

VII. Integrated Organizational Structure

As noted, the Strategic Plan would create an organizational structure in a manner that optimizes and promotes the performance of the Federal Government's trust management business processes, the execution of its trust responsibility, and the delivery of its services and products to its clients and the American Indian trust beneficiaries. Because the execution of the trust responsibilities and the delivery of services are primarily dependent upon the performance of its business processes, the most effective and efficient method to establish such an alignment would be to base its organizational structure on its business processes.

There are three fundamental and distinct business groups: (1) Trust Funds Management (2) Land Title and Records Management and (3) Trust Resources Management. The most appropriate organization for these fundamental process groups would be a structure that establishes distinct but inter-related organizational entities under a single administration such as the American Indian Trust and Development Administration.

VIII. Specific action requirements

The Strategic Plan proposes such an administration and Phase I of the Strategic Plan is designed to bring it about and to bring the trust management and trust management information systems up to commercial standards within 2 years. The specific initiatives are more fully discussed in this Appendix and, at a minimum, will involve acquiring, automating, updating, integrating, coordinating and consolidating to produce:

I. A Single Organization to Manage Trust Management Activities.

This will involve consolidating trust resource, trust funds and land ownership and records management processes into a single, independent institutional unit with its own management structure to accommodate the restructuring and reorganization contemplated by Phase I of the Strategic Plan. The unit should be organized by function and dedicated exclusively to trust management. The unit should be managed by a full-time Chairman and a Board of Directors appointed by the President and confirmed by the Senate. The unit's proposed organizational form is as an independent government sponsored enterprise subject to Congressional oversight.

II. A Trust Asset and Accounting Management System.

This will involve acquiring and implementing a Trust Asset and Accounting Management System which will:

A. Provide a new asset management information subsystem for land and natural resource management and a delivery system for asset leasing, contracting, lending, buying and selling, together with standardized and/or integrated asset management, credit and operating policies, procedures and practices. The system must be able to tie to and track from land and ownership records.

B. Provide an accounts receivable/master lease subsystem data, tickler and collection system that uses lease-contract and ownership information for trust income verification, reconciliation, billing, payments, collection, accounting, disbursement, audit, asset quality review and compliance purposes.

C. Provide an accurate and timely trust, depository, payments and delivery system for IIM accounts and tribal accounts. This will entail purchasing a trust, depository, payments and other financial services accounting and statement system and a delivery system to more efficiently provide current financial services and to facilitate new and improved financial services to individual Indians and Tribes.

D. Provide a general ledger and general accounting system to accommodate all present and proposed TAAMS systems and other improvements.

E. Be preceded by an initiative to clean-up IIM records and the appraisal back-log prior to conversion or after conversion as appropriate.

F. Conform to the general systems architecture described in this Appendix and the Strategic Plan Budget.

III. A Land Records and Title Recordation and Certification System.

This will involve the acquisition of a new system which will:

A. Be capable of instantaneous linkage with the TAAMS and other systems used by the service bureaus providing trust services under delegated authority from AITDA in the near term.

B. Be brought up to private sector standards through LRIS-2 upgrades and implementation in the medium term.

C. Be preceded by a clean-up of land and chain-of-title records and back-logs.

D. Conform to the general systems architecture described in this Appendix and the Strategic Plan Budget.

IV. A Probate Back-log clean-up which is more fully described in this Appendix and the Strategic Plan Budget.

V. A Dedicated Technology Services Center.

This will involve obtaining a centralized technology services center dedicated to trust resources, trust funds and land ownership and records trust management processes with appropriate provisions for disaster/recovery and back-up capability.

VI. A National Archives and Record Center.

This will involve obtaining and centralizing a modern national archives and records center for trust asset and accounting management records and land title and records storage and retrieval along with appropriate disaster recovery protection. Implementation of modern imaging technology should be at the fore-front of the improvement initiatives.

VII. A Risk Management and Control System.

This will entail obtaining a risk management and control system that will provide for adequate operational audits, credit and asset quality audits, compliance reviews, independent asset appraisals, supervision, enforcement and liaison with outside, independent auditors. It will include annual reviews and audits of all service bureaus providing trust services under delegated authority from AITDA.

VIII. Legislation on Fractionated Ownership of Indian Lands.

Legislation is needed which would consolidate the large number of existing fractionated interests and prevent further fractionation. This alone would remove a primary obstacle to the efficient administration of the trust management systems and provide a major catalyst for the timely resolution of most of the operational problems associated with trust management activities, including trust resource and realty management, probate, land titles and ownership records management, IIM accounting, collections, deposits, investments and disbursements, customer service and record keeping for all trust management activities.

IX. Finally, such systems and organizational improvements must be accompanied by significant legal changes, including adoption of the prudent investor rule.

X. A significant investment to clean-up:

Probate Backlog

IIM and Tribal Records

Appraisal Backlog

LTRO Title Defects

XI. A significant training investment for all trust management activities, including tribal users.

XII. The acquisition and retention of competent management.

These systems improvements and other initiatives will address and resolve the vast majority of the problems listed below:

Strategic Plan Major Data Conversion, Reconciliation & Backlog Problems to be Addressed:

	Amount	Transactions
Tribal Reconciliation Project Disclosures		
Transactions without source documentation	$2.4 billion	32,319
Amount with incomplete disbursement voucher packages	$4.1 billion	
Amount without source documentation for unreconciled disbursements	$575 million	

Universe of leases and transactions		Unknown
Probate Related Backlogs		
Backlog of cases at Agencies		3,500
Backlog of cases at Administrative Law Judges		3,453
Number of TSRS, Recordation, Imaging & Mapping Documents for research at LTROs		212,381
Land Title and Records Offices		
Number of Defective Titles to research		4,300
Number of Defective Titles - Muskogee Area		4,942
Number of Pre-1966 Statutes of Limitations Cases to research		25,000
Leases to be imaged		60,000
Appraisals to be made		36,000
IIM Files Information		
Number of flies to be researched and given document check/reconciliation prior to conversion		749,000
"Whereabouts Unknown" riles with no address or incorrect address	$27.7 million	45,624
Former minors accounts with positive balances or "Whereabouts Unknown"	$21.7 million	27,519
Overdraft Interest Clearing Accounts mis-posted	$42.2 million	
General Ledger losses not cleared	$28 million	
Number with no tax identification or social security number		128,393
Duplicate Accounts		16,828
Special Deposit Accounts with no activity last eighteen months	$2.3 million	6,119
Number of accounts with $0 balance and no activity last thirteen months and not closed		14,476
Number of accounts with balance $0 to $1 with no activity for thirteen months		14,906
Number of accounts with no activity for eighteen months and not coded for deletion		28,114

Strategic Plan Data, Reconciliation & Backlog Clean-up Summary

	Clean-up Backlog Problem	FY1997-2001 ($ thousands)

1. Probate Related Backlog Clean-up			
Agency	3,500	Probates	1,140
Administrative Law Judges	3,453	Probates	2,430
LTRO	212,381	TSRS, Recordation, Imaging & Mapping Documents	9,425
2. File Clean-up, D2t2/Document Check	749,000	IIM Files Document Verification	7,400
3. IIM Lease Subsystem Conversion		File Conversion/TestingfReconcillation	2,215
4. LRIS Conversion/Ownership Reconciliation & Defective File Clean-up & Reconciliation*	4,300	Defective Titles. Must be researched and cleared	9,600
5. Imaging	60,000	Image 60% of high dollar leases in two years:	3,160
		Image remaining leases in FY2000 and FY2001:	1,000
6. Appraisals	20,000	Appraisals of 20% of high dollar assets Yrs. 1&2:	16,000
	81000	5% Appraisal Sampling of other assets: Yrs. 1&2:	4,000
	4,000	Appraisals of renewing high dollar assets - Yrs. 4&5:	6,400
	4,000	5% Appraisal Sampling of other assets - Yrs. 4&5	4,000
TOTAL			**65,770**
TOTAL FOR FY 1997 THROUGH FY 1999			**48,945**

***** Does not include$13.3 million to research and clean-up 4,942 defective titles for Muskogee Area and $38.5 million to research and clean-up about 25,000 pre-1966 Statutes of Limitations cases allowed under the Indian Claims Act of 1982. These costs should be included in DOI's operating budgets.

ORGANIZATIONAL STRUCTURE AND MANAGEMENT FOR TRUST MANAGEMENT ACTIVITIES

The Strategic Plan proposes a single organization which will manage the U.S. Government's trust responsibilities to American Indians and American Indian Tribes for trust resource management, trust funds management and land title and records management (collectively, trust management activities).

This will involve consolidating trust management activities into a single, independent institution with its own management structure to assume the responsibility for the reforms identified in the Strategic Plan, to implement the reforms over a two year period and to provide for the ongoing management and administration of the U.S. Government's trust responsibilities to American Indians for trust management activities. The institutional unit should be organized by business line or function and should be dedicated exclusively to trust management activities. The institutional unit should be managed by a full time Chairman and Chief Executive Officer and a Board of Directors appointed by the President and confirmed by the Senate.

The unit's proposed organizational form is an independent Government Sponsored Enterprise subject to Congressional oversight. The unit's generic name is referred to throughout the Strategic Plan as the AITDA.

As noted, three of the four primary causes of the longstanding trust management problems involve serious management and organizational structure weaknesses. Management has been principally responsible for the failure to address and resolve the longstanding trust management problems and for the permanent damage to the core trust management systems the government uses to manage the Indian lands and monies. These defective systems prevent the government from meeting the fiduciary, accounting and reporting standards required by the American Indian Trust Fund Management Reform Act of 1994 and standards of ordinary prudence applicable to all trustees, public or private.

So long as the organization and management of the trust management activities remain status quo and as long as the trust management activities are mingled with general trust functions and other government programs and activities, it is unlikely that any meaningful reforms will be implemented and unlikely that these activities will receive appropriate allocations of financial and managerial resources sufficient to allow them to be administered according to the high moral obligations and trust and exacting fiduciary standards the United States has undertaken and assumed. For these reasons, the Special Trustee believes that the Department of the Interior and the BIA do not have and will not have the financial and managerial resources to undertake and implement the reforms proposed by the Strategic Plan.

The Special Trustee, therefore, has proposed a new organizational and executive management structure to address and resolve the long standing trust management problems and to ensure that the Federal Government fulfills its trust responsibilities to American Indian trust beneficiaries. AITDA has distinct advantages over the current structure. The reorganization will:

1. Stop and reverse the steady erosion of the Federal Government's fulfillment of its trust responsibilities (de facto "termination") currently occurring because of lack of financial and managerial resources (capacity) and the unwillingness to address and resolve the longstanding trust problems.

2. Clearly establish accountability both to American Indians and the U.S. Congress and American people.

3. Establish an organization focusing and specializing exclusively on trust management activities.

4. Create an organization which will function with a greater degree of independence and at a higher level in government than BIA. As a GSE and consistent with the treatment of other GSEs, Congress is more likely to provide appropriate financial and managerial resources to ensure the success of the new organization than exists at present.

5. Establish a five person Board of Directors appointed by the President and confirmed by the Senate who will devote full time to the governance and management of the new organization. Three of the Board members will be American Indians proposed to the President by Indian Country. This will assure high level advocacy of issues important to Indian Country and accountability to Indian Country. Two of the Board members, including the Chief Executive Officer, will be experienced and skilled financial and trust asset and accounting managers. This will assure competent management at the most senior levels of the organization.

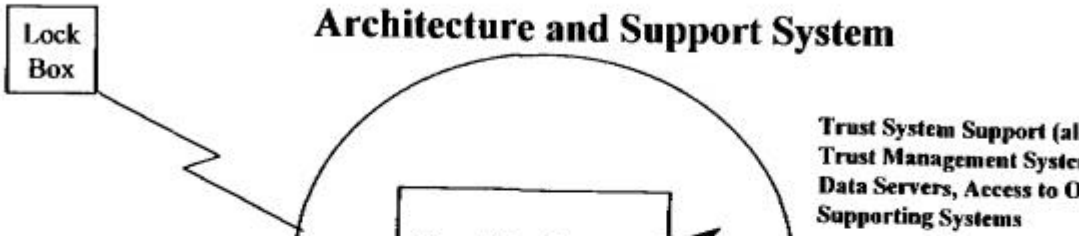
6. Attract, train and retain competent senior management, skilled and experienced in trust asset and accounting management and capable of managing a modern trust operation. This will be facilitated by making AITDA a government sponsored entity. AITDA, like other GSEs, will be exempt from government hiring rules and compensation ceilings and will therefore be able to compete with the private sector in attracting competent management.

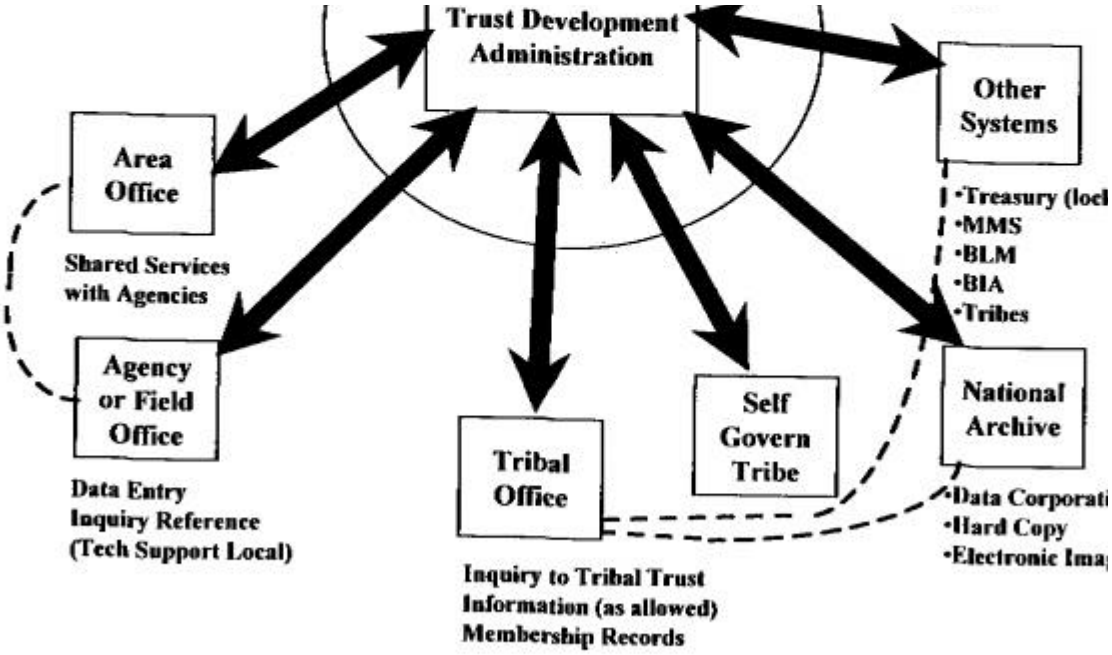
7. Allow AITDA to assess, train, evaluate, compensate on a competitive basis with the private sector and replace, if necessary, those employees transferred from DOI to AITDA.

8. Accelerate the process of self-governance by the Tribes. The proposal would not interfere with the Tribes' ability to contract or compact for trust functions since the Self-Determination Act and Self-Governance Act would still be applicable to these programs. Like a private trustee, the proposed administration of the trust activities would rely on a common set of laws, policies, practices, regulations and a common Trust Asset and Accounting Management System and a means through annual audits and reviews and administrative oversight and supervision to assure performance by the Self-Governance Tribes. The Self-Governance Tribes would act as service bureaus under delegated authority from AITDA to provide trust management services for which they had expertise. Thus, increasingly in the future, service bureau management of nearly all of the trust management activities could and should be provided by qualified Tribes or American Indians, themselves, under appropriate compacts and contracts, subject to the rules, oversight and supervision of the Federal Trustee.

The Board of Directors and executive management of AITDA will manage and administer, directly and indirectly, all trust asset and accounting functions, including trust resources management and trust funds management; trust financial and information services management; trust land title and records services; trust records and archiving; and risk management. The Trust Risk Management unit will report directly to the AITDA Board of Directors and will conduct operational, credit and compliance reviews and audits of AITDA units and outside servicers such as BIA, MMS, BLM, Self Governance & 638 Tribes and others. These service bureaus will contract with AITDA to provide specified services under delegated authority and will be subject to AITDA's oversight and supervision.

The organization chart for AITDA and the Systems Architecture are as follows:





TRANSFER OF TRUST AUTHORITY, BUDGETS AND CERTAIN STAFF FROM DOI TO AITDA

ROLE OF THE BUREAU OF INDIAN AFFAIRS, MINERALS MANAGEMENT SERVICE, THE BUREAU OF LAND MANAGEMENT, SELF-GOVERNANCE & 638 TRIBES AND OTHER SERVICERS IN FUTURE TRUST MANAGEMENT ACTIVITIES

At the inception of the American Indian Trust Development Administration, the trust responsibilities, duties, budgets and certain staff engaged in trust resources management, trust funds management and trust land and records management will be transferred to AITDA from the Department of the Interior. This will include all statutory authority, funding and staffing, except as noted below, including those that are in the Tribal Priority Allocation part of the President's Budget.

At inception all authority, budgets and staff of the Office of Trust Funds Management and the Land Title and Records Office along with staff engaged in the operation of the Land Records Information System and budgets will be transferred to AITDA. Employees transferred or hired will be assessed, trained and closely evaluated on their qualifications and performance and replaced as necessary.

Staff of the BIA, MMS, BLM and Self Governance Tribes engaged in the management of Indian land and natural resources, including all pre-lease and pre-contracting activities and lease and contract origination, will remain in place. AITDA will contract with these units and they will serve as service bureaus for the indicated trust services and activities.

BIA & Tribes (Self Governance & 638) and third parties	Land and natural resource management, except post leasing and post contracting activities and records and information system management, unless otherwise contracted.
BLM & Tribes (Self Governance & 638) and third parties	Production verification at lease site for oil, gas & coal. Environmental compliance from point of production through closure. Includes all current activities except records and information system management, unless otherwise contracted.
MMS & Tribes (Self Governance & 638) and third parties	Royalty and compliance management for oil and gas, including all current activities except records and information system management, unless otherwise contracted.

AITDA will delegate certain specified investment or management functions to BIA, BLM, MMS, Self Governance Tribes and other third parties only after exercising care, skill and caution in:

1. selecting a delegee suitable to exercise the delegated function, taking into account the nature and value of the assets subject to such delegation and the expertise of the delegee;

2. establishing the scope and terms of the delegation consistent with the purposes of the governing instrument;

3. periodically reviewing through operational and compliance audits and administrative oversight the delegee's exercise of the delegated function and compliance with the scope and terms of the delegation; and

4. controlling the overall cost and budget by reason of the delegation.

BIA, BLM, MMS, the Self Governance Tribes and other parties that operate as trust servicers and as delegees:

1. will have a duty to the trustee and to the trust to comply with the scope and terms of the delegation and to exercise the delegated function with reasonable care, skill and caution. An attempted exoneration of the delegee from liability for failure to meet such duty is contrary to public policy and null and void.

2. will, by accepting the delegation of a trustee's function from the trustee, submit to the jurisdiction of the Federal district courts or other appropriate jurisdiction and the delegee may be a party to any proceeding in such courts or jurisdiction that places in issue the decisions or actions of the delegee.

3. will operate under the regulations, standards, policies and procedures and the information, accounting and reporting systems issued, established and maintained by AITDA.

For land and natural resources management activities, existing staff of BIA, BLM and MMS and the Self Governance Tribes will remain in place at their current locations. Tribes will be assured the same

opportunities and authority that currently exist. AITDA managers will sit down with the Tribes to prioritize programs within its's jurisdiction, thus assuring Tribal input and priorities are met on a local and area basis. Further, the current opportunities of 638 contracting and Self Governance Tribes will remain unchanged and fully available to the Tribes. By focusing the AITDA on the trust management activities which have been transferred to AITDA, the BIA will be free to focus on other programs.

Name and Structure of Proposed Organization

The proposed name of the organization will be the American Indian Trust and Development Administration. This is a generic name. The actual name will be decided when the organization is formed by the Congress. AITDA will be an independent GSE similar to the Farm Credit Administration or the Federal Home Loan Bank System with a Chairman and a Board of Directors appointed by the President and subject to Senate confirmation. The Board should be structured in such a way so as to draw approximately equal representation from American Indian trust beneficiaries, including both tribal and Individual Indian Money account holders and from people who have practical experience in fiduciary trust fund, investment and financial management. The Board of Directors and Chairman of AITDA will devote full time to the job.

While AITDA will assume and manage the U.S. Government's primary trust responsibilities to American Indians and American Indian Tribes in the important areas of trust resource management, trust funds management and trust land and ownership records management, there will be no diminishment of the inherently federal trust responsibilities. Essentially, the United States will retain its full trust responsibility but simply transfers administration from the Department of the Interior to AITDA. AITDA will still be backed by the full faith and credit of the United States. In addition the singular focus on trust management activities, independent status, more dependable funding and a skilled Board of Directors and management team should ensure that the U.S. Government will be able to improve its ability to carry out its trust responsibilities to American Indian beneficiaries. The United States would remain liable for any breach of trust by AITDA.

AITDA will assume responsibility for and manage all current trust activities of the Bureau of Indian Affairs, Minerals Management Services and the Bureau of Land Management regarding American Indian trust resources management, trust funds management and land records and ownership management. As noted BIA, MMS, BLM and Self Governance & 638 Tribes will act as service bureaus under delegated authority from AITDA.

AITDA will be created and extensively governed by Federal statute and will be a GSE of the Federal Government intended to carry out and further governmental policy concerning the Federal Government's trust management activities concerning American Indians and American Indian Tribes and, under Phase II, the economic development of American Indians and their communities.

AITDA will facilitate and implement efforts and initiatives to make individual American Indians and American Indian Tribes economically more viable under established principles of self-determination.

AITDA BOARD OF DIRECTORS AND MANAGEMENT STRUCTURE

AITDA's Board of Directors shall consist of at least five members appointed by the President and confirmed by the Senate.

1. Three members shall be American Indians appointed by the President after being proposed by

Indian Country in some organized way.

2. Two members, including the Chairman and Chief Executive Officer, shall be people skilled in financial and trust management and may also be American Indians.

TDBank's Board under Phase II shall be identical with AITDA's Board.

All Board Members of TDBank and AITDA will be appointed for a term of 12 years using a staggered system. Initially, two will be appointed for four years; two will be appointed for eight years; and the Chairman & CEO shall be appointed for twelve years. Vacancies which occur prior to the expiration of the term shall be filled with individuals to fill the remaining term of the particular vacancy.

AITDA's Board shall organize itself through governing committee's to oversee the primary operations, including trust resource management; trust funds management; trust land and ownership records management; lending, leasing activities; investment activities; risk management and audit activities; and other banking and trust activities.

All Board members will be full time employees and will be compensated at the same rate paid FDIC Directors or as otherwise determined by Congress.

The Chairman & CEO and other executive management and employees will be qualified bank and trust officers and employees and shall be exempt from Federal Government employment requirements. Compensation and benefits will be determined by the Board of Directors after taking into account general compensation and benefits schedules of the Farm Credit System Banks.

Aitda General Structure and Relationship to Federal Government

AITDA will:

- be an instrumentality of the Federal Government and will be backed by the full faith and credit of the United States.
- be governed by a Chairman and Board of Directors appointed by the President and confirmed by the Senate.
- have appropriate oversight from the Congress on an ongoing basis.
- be examined and supervised by an existing (OCC is proposed) or new agency of the Federal Government.
- have a corporate structure patterned after the Farm Credit Administration System.
- have a budget that will be subject to the Federal Government's authorization, appropriations and oversight processes.
- be required to have an annual audit and report from an independent, qualified accounting firm.
- be exempt from all federal and state taxes.

Board of Directors Discharge of Duties and Responsibilities

Organizational Structure Considerations

The discharge of fiduciary duties and responsibilities by AITDA's directors should be effected through a plan designed to accommodate the volume and types of business handled, local circumstances, and the growth and development of the institution's fiduciary business. An effectively structured

organization is important, for although the board may elect to pass directly on all fiduciary matters, some person(s) and/or committee(s) usually is designated to handle administrative and operational matters.

As fiduciary activities expand into the delivery of new financial products and services, the traditional trust management must change correspondingly. New integrated delivery systems and other trust concepts will be introduced by the private sector trust industry in response to competitive pressures. Swift and dramatic organizational changes occur in fiduciary activities, which must meet the tests of sound fiduciary principles and practices. Activities conducted by virtue of possessing fiduciary powers must adhere to the changing standards as they evolve.

The organizational structure of fiduciary activities should be set forth clearly in the records of the institution, either in the bylaws, board resolutions, or written management plans adopted by the board. When the organization of fiduciary activities is complex, such records may designate and prescribe only the duties of the fiduciary activities manager and/or fiduciary committee(s). This arrangement suggests "in-house" assignments of fiduciary functions by the fiduciary department manager and/or committees. Such assignments should be prescribed in writing, and the Board should determine that the manager and/or committees have been assigned that authority by the board. If integrated financial products and services of a fiduciary nature are being marketed or are planned, the underlying requirements remain the same: the bylaws, board resolutions, or written management plans adopted by the board must clearly define organizational relationships, responsibilities, and policies.

The organizational structure should meet the following objectives:

* The organizational structure should be designed to promote an orderly flow of the daily work and be sufficiently flexible to accommodate peak work loads without sacrificing efficiency or accuracy.

* Fiduciary committees should be so structured as to constitute flexible, workable entities. Functions should be clearly defined and effectively executed.

* A plan of organization should include procedures for personnel recruitment, training, evaluation and salary administration. Equal opportunity should be available to all personnel in the administration of those procedures.

* Staff should be sufficient to handle the volume of work. Lines of authority, duties and responsibilities should be clearly defined and effectively communicated to all personnel to promote efficiency, productivity and the orderly execution of the department's functions.

* The organization plan should facilitate the implementation of an adequate program of internal controls and a system of checks and balances designed to ensure proper administration of the institution’s fiduciary business. Such controls should include a procedure for management review of actions taken by all personnel.

* The organization plan should include procedures for effective communication among all levels of management. Procedures should facilitate the dissemination of information necessary to:

- Inform all supervisory personnel of senior management's policies and directives.

- Apprise senior management of its subordinates' activities in implementing such policies and

directives.

- Effect the orderly execution of administrative details.

* Authority to make discretionary decisions and the matters in which independent judgment may be exercised should be defined expressly and communicated to supervisory personnel. Sufficient flexibility should be allowed to permit expedient action where it would be essential to the best interests of a fiduciary customer.

Recruitment of new personnel is an integral part of any management plan. In order to insure continuity in middle and senior management, it is necessary to have an inflow of new personnel at lower levels and adequate training procedures and advancement policies to keep the organization viable and dynamic.

Various types of training should be available. The Board should analyze the type and comprehensiveness of training offered and formulate an opinion about the quality of the program. Examples of training include:

* "In-house" development programs.

* On-the-job training.

* Correspondence courses.

* Banking and trust schools and seminars.

* Facilities of larger trust companies.

* Tuition aid programs.

Senior management should look at the variety of learning opportunities provided and the degree of participation by personnel. Personnel evaluation will reveal whether a program is developing staff properly and provides a sound basis for promotions and salary increases.

Management Appraisal

Commencing with the implementation of the Strategic Plan, an outside independent management appraisal of personnel transferred to AITDA from DOI and engaged in trust management activities should be performed for the Board of Directors of AITDA to assist the Board in selecting and placing trust managers in the new organization. The independent appraisal should generally take into account the following criteria. After the initial appraisal an annual appraisal of middle to executive managers should be performed by the Board.

Management appraisal involves the evaluation of the quality of supervision of fiduciary activities. The appraisal includes a review of the qualifications of:

* Personnel designated to manage fiduciary activities.

* Personnel serving on fiduciary policy committees.

* Executive officers having supervisory authority over the trust management activities.

* Non-officer personnel in key supervisory functions.

The appraisal of management covers the full range of functions and activities related to the operation of the Department's trust management activities. It requires astute judgment based upon observation and information, both objective and subjective, developed during the examination. It represents the collective assessment of management's effectiveness when measured against:

* The size and complexity of the fiduciary activities.

* The distinct character of fiduciary activities.

* The competitive environment.

* Government and private sector trust and fiduciary standards and best prudential practices.

* The capacity and willingness to implement the Strategic Plan reforms.

The effectiveness of management is the result of the complex interactions of many variables, including talent, motivation, resources, and opportunity.

Management of fiduciary activities should be judged on the basis of the ability to service its fiduciary accounts; both those presently under administration and those to which the institution plans to commit in the future.

Although both the directors and management have important roles in formulating policies and establishing programs for the execution of functions, internal control and audits, management alone must implement such policies and programs within the organizational framework instituted by the board of directors. The exercise of fiduciary powers should always conform to the highest standards of professionalism.

Although a major measure of management's ability is the condition of fiduciary activities and the quality of fiduciary services offered, the effect that management will have on future fiduciary activities is highly significant. The depth of planning and the forward looking attitude of executive officers are relevant in assessing that impact.

Two questions should be posed: Is management competent to administer the institution's fiduciary business? Is management's competence manifested in its performance? The measurement of human qualities is always an elusive task at best, and the board must constantly remain open and innovative in their approach to management appraisal.

In assessing competence, the qualifications of management should be evaluated relative to duties and responsibilities assigned. For example, a fiduciary manager may have limited knowledge of fiduciary matters yet possess the managerial skills necessary to guide the affairs of fiduciary activities effectively. In such a case, the should emphasize the need for fiduciary expertise in middle management levels. Managers generally must be well versed in all facets of fiduciary business engaged in by their institution.

The Board of Directors should consider the following factors in evaluating management personnel:

Education

What is the level of academic achievement and its relationship to the position held?

Training

What is the level of professional training? What schools or seminars has the person attended?

Experience

What is the nature of the person's fiduciary experience? Is such experience relevant to the person's duties and responsibilities?

Character

Is the person's personality, disposition, and reputation consonant with the requirements imposed by assigned duties and responsibilities? Are there any other factors which might cause the person's integrity, reliability or ethics to be suspect?

In appraising management, the board should also consider expertise derived from sources outside the institution. Management may compensate for "in-house" weaknesses, e.g., the administration of investments, taxes and accounting capabilities, by employing outside professional services. In those instances, the board should evaluate management's capacity to utilize the services effectively.

Management will always be somewhat of an art; the talent, experience, vision, courage, and character of managers will be major factors in their performance. On this broader scale, the board may gain additional insight in assessing the quality and effectiveness of management's performance by reviewing:

* Organization.

- Organizational effectiveness.
- Effectiveness of management's span of control
- Management succession and personnel development
- Effectiveness of committees as viewed from the perspective of purpose, need and composition.

* Supervision.

- The exercise of sound management practices.
- Leadership qualities.
- Management's active or reactive approach to the dynamics of the industry.
- Currentness of policies and procedures.
- Employee knowledge of and accountability for applicable policies and procedures.
- Monitoring investment performance of the fiduciary and compared to private sector trust departments and companies.
- Monitoring litigation, complaints, and charge offs; determining their probable cause and, where

deficiencies are found to exist, appropriate remedies.
- Responsiveness to the audit report and the institution's report of examination.

The reports and working papers will serve as the primary source for the board's evaluation of management's performance. It also should provide a basis for evaluating the propriety and soundness of management's decisions and their effect on the future of fiduciary activities.

Management Information Systems

For fiduciary activities to succeed in the rapidly evolving financial services industry, management must fully understand the implications of change. Emerging markets must be identified along with the increasing role of technology. An important tool in dealing successfully with those dramatic changes is an effective and responsive Management Information System (MIS).

The MIS should be as unique as the institution and/or fiduciary activities it serves. It should fit the philosophy of the institution and/or fiduciary department's long and short-term goals, internal structures, budgets, and existing communications networks. The board should be aware of certain of the following fundamentals common to a successful MIS.

* It addresses the kinds and frequency of decisions to be made, and by whom.

* It considers information needed and its availability. It then focuses on relevant information and eliminates that which is not useful.

* It evaluates how ideas are communicated within the organization.

* It considers how and where decisions are implemented. It then provides information for the decisions that need to be made.

* It is kept simple. Too often an MIS becomes an end unto itself and ceases to be cost-justified.

* It produces current, accurate and relevant information.

* Managers understand how the system works.

In evaluating the MIS, the board should answer the following questions:

* Does it have the actual support of senior management of the institution?

* Does it produce the information desired?

* Are human considerations weighed independently when making decisions based on the MIS?

* Is it flexible and can it allow for potential changes in growth, strategy, communications, and systems?

* Is it reviewed and evaluated annually by management?

Institutional Planning

The increasing competition in the delivery of fiduciary products and services and the dynamic nature of the financial services industry demands ongoing planning. The long-range plan for fiduciary activities is the joint responsibility of senior bank and fiduciary management and should be integrated with the long-range plan for the institution. Long-range planning is a continuous, systematic process of making risk-taking decisions that involve the future. The long-range plan should include the method for its execution and ways of measuring results against expectations. There are three common misconceptions of long-range planning: it is misunderstood to be a means of forecasting the future, dealing with future decisions, or eliminating risks. It is none of these. Instead, long-range planning is necessary merely because the future cannot be forecast; long-range planning consists of making current decisions involving the future. The taking of risks cannot be eliminated, but the risks taken must be the right ones.

The long-range plan provides the focus for fiduciary activities to function successfully. The plan includes its goals, directions, and expectations and alerts management to the decisions, commitments, and efforts of fiduciary personnel.

Much can be written about the merits of the "top down" versus the "bottom up" approach to long-range planning. In general, a balance between the two methods often results from the prevailing circumstances in the institution. Regardless of the predominance of one method over the other, the planning process should involve the participation of management at all levels. Through their participation, managers and supervisors can become more creative and gain a more comprehensive understanding of the challenges confronting fiduciaries.

Until recently, contingency planning was relatively uncommon in banking fiduciaries. However, the rapid and dramatic changes occurring in the financial services industry have made it imperative that the long-range plan allow for the occurrence of various contingencies. The contingency plan permits management to adjust quickly or exploit opportunities when possible events become reality.

The following should be considered when evaluating the fiduciary activities long-range planning process:

* Is long-range planning a continuous, ongoing process that improves responsiveness to internal and external changes?

* Is the long-range plan integrated and compatible with the long-range plan for other institutional activities?

* Does the long-range plan include programs for its implementation and are they directed effectively?

* Are there provisions in the long-range plan for contingencies?

* Is the long-range planning process cost effective?

* Does management monitor the long-range plan by reviewing feedback information to measure results?

* Has the long-range plan, or portions thereof, been disseminated to all managers and supervisors that have a need to know?

Financial Performance

A significant measure of management's effectiveness is the financial performance of fiduciary activities. This will be a new concept for the Federal Government's fiduciary activities, but fees for fiduciary services will be introduced by AITDA and cost control emphasized throughout the institution. The board should review that performance with management. The review should include the quality and trend of earnings, management and environmental factors, and the prospects for future earnings. Capital adequacy, asset quality and liquidity should be rated and reviewed as well. The performance of fiduciary activities, as perceived by management, should be weighed against the results of that review.

Developments in the fiduciary industry have emphasized the need to standardize approaches to trust profit accounting. "Measuring Trust Profitability," published by the ABA in October 1979, developed the following five guidelines for a trust profit accounting plan.

* Fiduciary income should be defined as though the department were an independent organization.

* Earnings credited on customer balances (where the relationship is fiduciary and the fee has not been reduced by the value of balances) should be categorized as nonoperating income.

* "Consumable expenses" are all the costs incurred, whether direct or indirect, in administering, operating and marketing the activities of the department.

* Allocated corporate overhead is considered nonoperating expense.

* Income and expense by service and product lines form the basis for analyzing profitability.

Regardless of how financial performance is accounted for, management must strive to operate on a safe and sound basis. The most useful management tool for directing fiduciary activities to sustained safety and soundness is an effective cost accounting system. A well designed system can provide much of the critical information required to make sound financial decisions. An effective cost accounting system permits management to consider the following alternatives:

* Determining cost by:

- Service and product lines.
- Type of transaction.
- Individual account.
- Individual administrator.
- Office, section, division.

* Assessing the potential profitability of accounts prior to their acceptance.

* Establishing a flexible and sound pricing policy that can be adapted to prevailing market circumstances and provide options based upon:

- Time required.
- Type and number of transactions.
- Level of skill, knowledge and responsibility required.

- Schedule of fees.

* Screening out unprofitable accounts.

* Changing the mix of products and services to be more profitable.

* Focusing on areas of low productivity.

* Utilizing an ongoing training program to counter declining productivity, employee turnover and shortages.

* Lowering production costs.

* Reducing staffing.

* Automating fundamental services and reducing the costs of delivery systems through economies of scale.

* Integrating services and product lines, where possible.

Management must be informed sufficiently about financial performance to be able to make appropriate decisions when dealing with adverse variances in operating results. Uncontrolled fiduciary activities will eventually lower the quality of services, which, in turn, will further aggravate financial performance and reflect adversely on the institution. Management can achieve safe and sound operations only by knowing the costs.

New Product Development

Expansion of the financial services industry presents new opportunities for all fiduciaries. With greater emphasis placed on customer service, the financial expertise found in fiduciary activities is being called upon. The deregulated environment in which private fiduciaries compete places considerable emphasis on the introduction of new financial products and services. The ability to react successfully to those markets can affect the institution's future significantly.

Product superiority can provide an advantage. AITDA must offer products which are the equivalent of those in the marketplace if its American Indian beneficiaries are to be well served. At the same time, AITDA must be able to respond rapidly to changes in regulations, competition, and consumer interests. Customers of financial products and services are becoming increasingly sophisticated and capable of making sound value judgments concerning such products and services. Often, the customer of financial products and services is influenced more by their quality and value than by institutional loyalty to their sponsors. As marketing philosophy shifts from a product orientation to a broad range of financial products and services, marketing efforts must become more entrepreneurial.

The initial requirement of any successful marketing approach is the full support of fiduciary activities management. AITDA will initially lack the financial means and geographic location to serve all potential markets. Because of these limitations, market research must identify consumer needs and determine which market segments are compatible with AITDA's capabilities. Caution must be exercised to work within the limits of managerial and financial resources as well as to assess advantages. Market segmenting involves identifying potentially large customer groups and deciding

where emphasis should be concentrated. In addition to determining key market segments, delivery systems must be established to serve them.

Meeting consumer needs involves providing current products and services to new customers or new services to existing customers. New products and services should be market-tested beforehand and a cost effective means of delivery determined. Pricing is usually a combination of three variables cost, customer's willingness to pay, and linkage to other products and services of the bank. When financial products and services are integrated with the bank through relationship banking, a cooperative marketing approach is essential.

TRUST ASSET ADMINISTRATION: POLICY AND PROCEDURES

The primary function of a fiduciary is the management of property for others. The potential investments for consideration by fiduciary institutions have expanded considerably in recent years. Asset administration and its component work programs focus on such complex issues as the selection, purchase, management and sale of assets to meet the needs of various classes of beneficiaries. This section addresses the administration of the different forms of assets that may be found in fiduciary accounts.

Fiduciary asset administration is regulated largely by prudent person standards, common law principles, state and Federal laws and regulations, and industry practices. However, a trustee is provided with considerable latitude to express an individualized investment style and develop investment alternatives.

One role of the trustee in asset administration is to identify assets which may be appropriate investment vehicles. The trustee must also administer those fiduciary assets for the exclusive benefit of the beneficiaries. In a true fiduciary relationship, the trustee has legal ownership of the trust property and is accountable to the beneficial owners for management of those assets. The trustee must be concerned with both the legality and prudence of each investment. Under common law, a trustee must use the same amount of care, skill and caution in making investments as a prudent person would to preserve the estate and the amount and regularity of income. However, under common law principles, a corporate fiduciary may generally be held to higher standards of care, skill and caution, than one trustee.

The ultimate responsibility for the proper exercise of fiduciary powers lies with AITDA's board of directors. The board may assign to officers or committees the authority to make and monitor investment decisions. The extent of such assignment will vary with the size, volume of activity, and complexity of the fiduciary and may include establishment of policies, approval of discretionary actions, and periodic review of accounts. Accurate records should be maintained of investment decisions and review procedures.

AITDA should have an investment policy approved by the board of directors which includes an overall statement of investment philosophy and details the responsibilities of committees and officers involved in the investment process. It should address, among other things, investment quality standards and procedures to evaluate asset portfolio guidelines, diversification requirements, risk assessment procedures, account reviews, use of common trust funds, broker/dealer selection, and safeguards against conflicts of interest and self-dealing. Specifically, policies, procedures, practices and systems should be adopted by the board of directors covering:

Fiduciary Asset Administration Policies & Practices

The establishment of a written asset management policy by the trustee provides the foundation for sound portfolio management. Throughout this Strategic Plan there is considerable emphasis on the establishment of formal written policies by the board of directors and on their being implemented, administered and amplified by management. That is perhaps most important in the asset management and administration function. The board of directors, in discharging its duty, must ensure that assets in the portfolios are made with the following three basic objectives in mind:

1. To invest profitably for the benefit of the trust beneficiaries.

2. To manage assets on a safe and sound basis.

3. To serve the legitimate needs of the community in which the Indian beneficiaries are located.

The asset management policy should contain a general outline of the scope and allocation of the institution's leasing and contract facilities and the manner in which assets such as leases and contracts are managed, serviced and collected. The policy should be broad in nature and not overly restrictive. The formulation and enforcement of inflexible rules, not only stifles initiative, but also may, in fact, hamper profitability and prevent the institution from serving the community's changing needs. A good policy will provide for the presentation, to the board or a committee thereof, of asset leases and contracts that officers believe are worthy of consideration but which are not within the purview of written guidelines. Flexibility must exist to allow for fast reaction and early adaptation to changing conditions.

In developing the asset administration policy, consideration must be given to the institution's available financialresources, personnel, facilities and future growth potential. Such guidelines, however, must be void of any discriminatory practices. A determination of who will receive a lease, a contract or a credit, and of what type and at what price, must be made. Other internal factors to be considered include who will grant the lease, the contract or the credit, in what amount, and what organizational structure will be used to ensure compliance with the institution's guidelines and procedures. As authority is spread throughout the organization, the institution must have efficient systems for monitoring adherence to established guidelines. That can best be accomplished by an internal review and reporting system which adequately informs the directorate and senior management of how policies are being carried out and provides them with information sufficient to evaluate the performance of lower echelon officers and the condition of the asset portfolios.

There are certain components which generally form the basis for a sound asset administration policy, but they are not necessarily applicable in every location. Generally, the policies, procedures, systems and practices should address the following general areas and be responsive to the questions listed.

Asset Pricing-Rates on various lease and contract types established by the policy must be sufficient to, among other things, cover the costs of servicing the lease, including general overhead and of probable losses while providing for a reasonable margin of profit for the beneficiary. Policy makers must know those costs before they establish the rates. Periodic review allows the rates to be adjusted to reflect changes in costs or competitive factors. Rate differentials may be deliberately maintained either to encourage some types of lessees to seek business elsewhere or to attract a specific type of lessee. Specific guidelines for other relevant factors such as fees on commitments, are also germane to pricing policy.

The policy should outline where the responsibility for appraisals lies and should define formal, standard appraisal procedures, including procedures for possible reappraisals in the case of renewals or extensions. Acceptable types of appraisals and limits on the dollar amount and type of real property that are authorized to appraise should be outlined. Circumstances requiring appraisals by qualified independent appraisers also should be described. Leasing/contract criteria vs. amount to appraised value, the method of valuation and the differences for various types of property should be detailed. The policy also should contain a schedule listing the down payment requirements, if applicable.

Extensions of leases, contracts and credit of other types on a safe and sound basis depends on complete and accurate information regarding every detail of the contract party's credit standing. Current and complete financial information is necessary not only at the inception of the lease, contract or credit, but also throughout the term. The policy should define the financial statement requirements for businesses and individuals at various leasing/contract/credit levels and should include requirements for audited, non-audited, fiscal, interim, operating, cash flow, and other statements. It should include external credit checks required at the time of periodic updates. The requirements should be defined in such a manner that any credit data exception in an examination or audit report should be a clear violation of the institution's policy.

The policy should strive to develop diversification within the portfolio and to obtain a balance between maximum yield and minimum risk. Concentrations of leases/contracts/credit depend heavily on a key factor and when weaknesses develop in that key factor, every individual asset making up the concentration is affected. The directorate should evaluate the additional risk involved in various concentrations and determine those which should be avoided or limited. The policy also should require that all concentrations be reviewed and reported on a frequent basis.

The policy should establish limits for all lease/contract/credit officers. If these policies are clearly established and enforced, individual officer limitations may be somewhat higher than would normally be expected, based on the officer's experience and tenure. Limits also should be set for group authority, allowing a combination of officers or a committee to approve larger leases/contracts/credits than the members would be permitted to approve individually. The reporting procedures and the frequency of committee meetings should be defined.

The asset administration policies should define delinquent obligations of all types and should dictate the appropriate reports to be submitted to the board. The reports should include sufficient detail to allow for the determination of the risk factor, loss potential and alternative courses of action. The policy should require a follow-up collection notice procedure which is systematic and progressively stronger. Guidelines should be established to ensure that all accounts are presented to and reviewed by the board for disposition at a stated period of delinquency.

Written policies and procedures approved and enforced in various departments should be referenced in the general administration policy of the organization.

Before an institution grants a lease, contract or credit, its objectives, policies and practices must be clearly established. Before an auditor examines an asset, those objectives, policies and practices should be reviewed to determine if they are reasonable and adequate to properly supervise the portfolio. If written guidelines do not exist, there is a major deficiency in the asset management area and the board of directors is not properly discharging its duties and responsibilities. If no exception is taken to the objectives, policies and practices, the various areas should be examined to determine compliance. That determination is one of the prime examination objectives of a director's examination.

Failure of the directors to establish a sound asset administration policies, of the management to establish adequate written procedures and of both to monitor and administer the asset management function within established guidelines has resulted in substantial problems for many institutions. Some problem areas are:

Self-Dealing. Self-dealing is involved in a significant number of serious problem situations.

Anxiety for Income. The asset portfolio is usually the most important revenue producing asset. The earnings factor, however, must never be permitted to outweigh that of safety and soundness so that credits that carry undue risks or unsatisfactory repayment terms are granted. Unsound leases and contracts usually cost far more than they produce in revenue.

Compromise of Credit Principles. Management, for various reasons, may grant leases and contracts carrying undue risks or unsatisfactory terms, with full knowledge of the violation of sound credit principles. The reasons for compromise of basic credit principles may include timidity in dealing with individuals having dominating personalities or influential connections, or there may be friendships or personal conflicts of interest involved. Self-dealing, anxiety for income, and competitive pressures also may lead to a compromise of credit principles.

Incomplete Credit Information. Character and capability may be determined by many means, but complete credit information is the only acceptable and reasonably accurate method for determining an obligor's financial capacity. The lack of supporting credit

information is an important cause of "problem" assets. Adequate and comparative financial statements, operating statements, and other pertinent statistical support should be available. Other essential information, such as the purpose of the lease, contract or credit and the intended plan and source of repayment, progress reports, inspections, and memoranda of outside information and conferences, should be contained in the credit files. Proper credit administration and accurate credit appraisal is not possible without such information.

Failure To Obtain or Enforce Repayment Agreements. This constitutes a very important cause of asset trouble. Leases, contracts or credits granted without a clear agreement governing repayment are, at the very least, in violation of a fundamental banking principle. Such assets are likely to become problems at some subsequent date. More common, and generally as bad, is the case where the fiduciary has an agreement with the obligor regarding the repayment or progressive liquidation of his lease, contract or credit, but fails to collect the principal payments promptly. It is a sound axiom that good leasing/lending and good borrowing both require consistent liquidation.

Complacency. The following items manifest complacency and should always be guarded against: Lack of adequate supervision of old and familiar customers; dependence on oral information furnished by obligors in lieu of reliable financial data; optimistic interpretation of known credit weaknesses based on past survival of recurrent hazards and distress.

Lack of Supervision. Many leases and contracts that are sound at their inception have developed into problems and losses because of lack of effective supervision. Ineffective supervision is almost invariably the result of a lack of knowledge of the obligor’s affairs over the lifetime of the obligation.

Technical Incompetence. The technical ability to analyze financial statements and to obtain and evaluate other credit information, thereby protecting the fiduciary in the placement and supervision of assets, is possessed by all able and experienced fiduciaries. When it is not, unwarranted losses are certain to develop. Credit incompetence of management should be discussed promptly with the board of directors.

Poor Selection of Risks. Lease and contract approval should be based on sound underwriting and risk-selection standards.

The institution’s internal controls, policies, practices and procedures for managing the asset portfolio should be documented in a complete and concise manner and should include, where appropriate, narrative descriptions, flowcharts, copies of forms used and other pertinent information. Generally, the written policies and procedures should be responsive to the following questions and criteria:

1. Has the board of directors, consistent with its duties and responsibilities, adopted written asset portfolio management policies and objectives that:

- Establish suggested guidelines for distribution of asset categories?
- Establish geographic limits for leases, contracts and credits?
- Establish suggested guidelines for aggregate outstanding asset types in relation to other balance sheet categories?
- Establish limit authority of committees and individual officers?
- Define acceptable types of leases, contracts and credits?
- Establish maximum maturities for various types of leases, contracts and credits?
- Establish pricing criteria?
- Establish appraisal policy?
- Establish minimum financial information required at inception of credit?
- Establish limits and guidelines for purchasing assets?
- Establish guidelines for leases to directors, officers and their related interests?
- Establish collection procedures?
- Define the duties and responsibilities of officers and committees?
- Outline portfolio management objectives that acknowledge:
    1. Concentrations of credit within specific industries.
    2. The need to employ staff with specialized knowledge and experience?
    3. Indian community service obligations?

2. Are asset portfolio management policies and objectives reviewed at least annually to determine if they are compatible with changing market conditions?

3. Are the following reported to the board of directors or its committees at their regular meetings (at least monthly):

1. Past due obligations?
2. Total outstanding lease commitments?
3. Assets requiring special attention?
4. New leases/contracts/renewals of significance and restructured leases and contracts.

4. Are reports submitted to the board or its committees rechecked by a designated individual for possible omissions?

5. Are written applications required for all leases, contracts and credits?

6. Does the institution maintain credit files for all obligors?

7. Does the institution require periodic submission of financial statements by all obligors?

8. Is a tickler file maintained to ensure that current financial information is requested and received?

9. Does the institution submission of audited financial statements based on the dollar amount of the commitment?

10. Does the institution perform a credit investigation on proposed or existing obligors for new applications?

11. Are all commitments in writing?

12. Are lines of credit reviewed and updated at least annually?

13. Are obligors' outstanding liabilities checked to appropriate lines of credit prior to granting additional credit?

14. Is there an internal review system which:

1. Rechecks interest, discount and maturity date computations?
2. Reexamines leases for proper execution, receipt of all required supporting papers and proper disclosure forms?
3. Determines that approvals are within the limits of the officers' authorities?
4. Determines that leases and contracts are being approved by the officers?
5. Ascertains that new leases and contracts are within the limitations set for the obligor by corporate resolution?
6. Rechecks liability ledger to determine that new leases have been posted accurately?
7. Rechecks the preparation of maturity and payment notices?
8. Examines entries to various general ledger asset controls?
9. Confirms collateral, leases, contracts and discounts with customers on a test basis?

There follows more specific discussion of the policies, procedures, systems and practices which are proposed by the Strategic Plan in the following areas of asset administration and management:

INVESTMENTS--MARKETABLE SECURITIES

INVESTMENTS--CLOSELY HELD COMPANIES

INVESTMENTS--REAL ESTATE LOANS

INVESTMENTS--REAL ESTATE

INVESTMENTS--MINERAL INTERESTS

INVESTMENTS--MISCELLANEOUS ASSETS

INVESTMENTS--COLLECTIVE INVESTMENT FUNDS

INVESTMENTS--PORTFOLIO MANAGEMENT

INVESTMENTS -- MARKETABLE SECURITIES

The term "marketable securities" refers generally to securities in active trading markets where they may be converted readily into cash. They include common stocks, preferred stocks, government securities, corporate bonds, municipal securities and money market instruments. The relative liquidity of those investments generally allows the trustee to convert them into cash more readily than other types of investments.

In general, over extended periods of time, common stock offers potential for both the greatest rewards and the greatest risks among the types of investment securities. Common stock is an ownership security. It guarantees the shareholder the right to share in the earnings of the company through future dividends and price appreciation.

Several advantages accrue to the institutional investor by using common stocks to achieve investment objectives. Needs of income beneficiaries may be met by income from dividend payments. Capital appreciation of stocks increases the value of the trust for the remainderman. Although the current dividend yield may be low, potential for capital gain may be great. Common stocks that are registered on an organized securities exchange also are traded in a more efficient market as opposed to some other forms of investment. Options may be written on some issues for additional income. By selling call options against a stock, the investor receives the premium income, which is added to the yield of the stock. The effect of writing the option is to increase the investor's yield without substantially increasing the risk of investment.

There are four attributes of preferred stock which make that form of ownership attractive to investors:

- The preference of the investor's dividends on the earnings of the company.
- The preference to a claim on assets over common stock in the unusual cases of liquidation, reorganization, refinancing, or adjustment of a company's capital account.
- The partial (85 percent) tax exemption of preferred dividends if owned by another corporation.
- Preferred stock may be convertible into common stock.

Some investors consider preferred stock a hybrid security, possessing all the disadvantages of debt securities and none of the advantages of common stock. However, high-grade preferred stocks have stability of income and security of principal. They do not share in the business or market risks to the extent of common stock. They do share in interest rate and inflation risks.

Debentures convertible to common stock are another investment alternative. Debentures are unsecured bonds protected only by the general credit of the borrowing corporation. The flexibility offered by a convertible debenture may be advantageous to a particular investment program. Normally, those securities combine the characteristics of debentures and common stocks. There also may be a yield sacrifice in comparison to nonconvertible debentures as a result of the conversion feature. Convertibles can limit interest rate risk, i.e., a rise in interest rates depresses the price of fixed income securities, and provides an opportunity to participate in potential capital stock appreciation through stock conversion privileges. If the conversion privilege is not exercised, the bond will pay par at maturity.

The convertible features of both preferred stock and debentures may be complex. If the trustee holds convertible securities, adequate provisions for monitoring call provisions and changes in conversion ratios should be in place. Investment services may be used to monitor those factors.

In making investment decisions regarding common and preferred stocks, and preferred stocks and debentures convertible into common stocks, the following factors should be considered:

- Quality and depth of management of the company.
- Financial condition and position of the company in its industry.
- Quality of earnings and historical growth of the company.
- Assessment of future prospects of the company in terms of sales and earnings, projected price/earnings and price/dividend ratios, existing and potential competition, etc., based on comparisons with peer companies in the same industry.
- Anticipated availability of raw materials to sustain future growth.
- Anticipated legislation, potential governmental intervention, and labor unrest.
- Trend of per capita use of the company's products.
- Demonstrated ability of the company to develop new products and/or upgrade existing ones.
- Marketing capabilities of the company.
- Ability of the market to absorb sales of securities, i.e., whether the security is traded in a "thin" market, as is the case with many insurance and bank stocks, and municipal bonds.
- Company accounting methods.
- Litigation pending against the company.

Most of those considerations are more easily researched for "seasoned" corporations than for new issues offered to the public.

Quality, overall market conditions, price performance of individual securities, industries and investment markets can be monitored by using fundamental and technical analyses. Fundamental analysis involves a review of current financial information, the use of specialized rating and analysis services, and a review of the overall status of the industry

and the economy. Technical analysis is the study of a security's price movements and volumes traded over periods of time.

Debt securities include U.S. Treasury bills, U.S. Treasury bonds, U.S. Government agency obligations, corporate notes and bonds, and commercial paper. They may be used in conjunction with stocks to achieve desired portfolio balance, diversification and income objectives.

U.S. Government and agency obligations offer several advantages to the investor:

- Quality and security.
- Stability of income and marketability.
- The elimination of market and business risk.
- A sophisticated financial manager can improve yields substantially by trading and playing the pattern of rates when possible.

Corporate bonds are senior in liquidation to preferred and common stocks and, as with their investment quality, debt securities generally are characterized by stability and regularity of income. They are issued for different time periods; usually broken down into short term (under five years), medium term (five to ten years), and long term (over ten years). The portfolios of individual trust accounts and income oriented common trust funds may use a mix of bond maturities to achieve investment goals.

Commercial paper of large business corporations provides shorter maturities and competitive alternatives to short term Treasury bills. They are issued for periods of 60 to 180 days and are useful when short term yields are high and significant uncertainty prevails in the stock market. Commercial paper is useful for investing temporary funds for the short term. Care should be taken to invest only in commercial paper issued by reputable creditworthy corporations.

When making investment decisions involving debt securities, the following factors should be considered:

- Ability of the borrower to repay.
- Ratings by financial services.
- Prevailing interest rates.
- Maturities.
- Yield to maturity.
- Earning power and income projections of the issuer.
- Earnings coverage of interest and fixed charges, such as lease obligations.
- Marketability of the issue.

When making investment decisions involving rated and non-rated corporate debt securities, the following additional factors should be considered:

- Quality and depth of management.

- Adequacy of capitalization.
- Capital expenditures and the cyclical nature of the industry.

When making investment decisions involving debt securities of public utilities, the following factors should also be taken into account:

- Probability that regulatory bodies will grant utilities rate increases.
- Probability of increased output as a result of factors affecting demand.
- Cyclical nature of dominant local industries and the resulting effect on consumption.
- Effect of increased fuel costs.

Some trust beneficiaries may require tax-free income. Income from state and municipal bonds to date has been exempt from Federal income taxes, so persons and corporations in high-income tax brackets have found those types of bonds attractive for investment. Even though the rates of interest and yields on state and municipal bonds have been lower than those of U.S. Government securities, they offer a much higher yield after taxes.

There are two basic types of state and municipal bonds: general obligation bonds and revenue bonds.

General obligation bonds are backed by the total taxing power of the issuer while revenue bonds are backed by specific revenues, usually those derived from facilities constructed with the proceeds of such bond issues. The quality of revenue bonds depends on the profitability of facilities whose revenues are pledged to support them.

When making investment decisions involving rated and non-rated general obligation municipal securities, the following factors should be considered:

- Power of the taxing authority to levy sufficient taxes to cover debt service.
- Sufficiency of tax revenues.
- Relationship of debt burden to property valuations.
- Reasonableness of per capita debt burden.
- Sinking fund provisions.
- Historical trend of debt.
- Assessed property valuations, including basis of assessment.
- Relationship of tax burden to property valuations.
- Requirement of balanced budget.
- Recent budget deficit or surplus trends.
- Cash flow requirements.
- Accuracy of estimates of revenues and expenses.
- Accounting practices.
- Projected growth of tax base.

When making investment decisions involving other types of rated and non-rated municipal securities, the following factors should be considered:

1. For special revenue issues:
    - Covenants by the issuing entity regarding debt service coverage.
    - Sufficiency of tax collections.
    - Restrictions on issuance of additional bonds.
    - Default remedies.
2. For securities issued pursuant to the Industrial Development Act:
    - Sufficiency of rental revenue.
    - Advice of counsel concerning the terms of leases.
    - Lessee's financial reputation and condition.
    - Convertibility of physical facilities to other uses.
    - Ratings of lessee's senior debt securities and equity.
    - Default remedies.

A trustee should establish procedures for reviewing securities and documenting decisions regarding purchase, sale or retention which are adequate to ensure effective implementation of established investment policy. The trustee may develop "approved" or "guidance" lists to facilitate daily investment activity. Such lists should be closely monitored by the fiduciary investment or other appropriate committee, with recommendations for changes in the lists brought before the committee for review and approval. Policies should specify the authority of investment personnel to deviate from such established lists between routinely scheduled committee meetings. Efforts should be made whenever possible to reduce small holdings of securities which are not actively followed by investment personnel.

Reviews of all securities must be prepared by appropriate personnel or committees. AITDA should be required to review all securities, by issuer, annually.

Such a review must include consideration of financial and other data relevant to the company's position within the industry. The industry itself must also be analyzed. Adequate documentation must be maintained evidencing reviews performed and conclusions reached.

Adequate information must be on file to support fiduciary investment decisions. The trustee must maintain investment files for each fiduciary account which are adequate to support and document investment decisions and monitor current investments held. The trustee must retain pertinent financial and research information for all major holdings, including industry and economic research and analysis. Relevant material from investment services used by the trustee should be included.

Generally, the procedures and internal controls, regarding the purchase, retention and sale of marketable securities should be responsive to the following criteria:

1. Are investment policies and practices approved by the board of directors?

2. Are investment decisions made for accounts where the fiduciary has investment responsibility based upon:

- Research and analysis, either performed in-house or acquired from external sources?
- Ratings by acceptable financial rating services, such as Moody's or Standard & Poor's, and the evaluation of relevant factors pertaining to the type of security under consideration?

3. In making investment decisions pertaining to marketable securities, are the fiduciary's considerations:

1. Adequate for those types of investments?
2. Sufficiently comprehensive and appropriately documented?

4. Does the institution purchase and retain securities that are suitable for accounts for which it has investment responsibilities?

5. Does the institution have a policy of establishing lists of securities approved for:

- Purchase?
- Retention?
- Sale or source of funds?

6. If the answer to any part of question five is "yes," complete the following:

- Is it policy that all recommendations for additions to or deletions from such lists be reviewed and approved by a committee or an authorized person?
- Are purchases and sales of securities monitored for compliance with the approved lists?
- Are periodic reviews made of the lists of securities approved for purchase, retention or sale (or conversion of convertible securities) to assess the current appropriateness of the investments listed?

7. Has the institution established policies and procedures to review annually securities by issuer?

8. Are investment decisions concerning holdings of securities held in a relatively small number of accounts, or holdings that are too small in value to be reviewed by investment analysts, made by a responsible party and approved by a committee or authorized person?

9. Is the foregoing information considered an adequate basis for evaluating the fiduciary's policies, procedures and internal controls in that there are no significant additional factors or other circumstances that impair any controls or mitigate any weaknesses indicated above?

INVESTMENTS -- CLOSELY HELD COMPANIES

A closely held company may be defined broadly as one in which there are only a few shareholders, whose shares are not publicly held and, therefore, not traded on any of the securities exchanges. A significant characteristic of closely held companies is that the owners and management often are the same persons. For purposes of the examination, the administration of closely held companies held in fiduciary accounts has been expanded to include sole proprietorships and partnerships.

There are a number of complex issues associated with the administration of closely held companies. The trustee must be guided by well-developed policies and procedures to ensure sound and prudent administration and to serve as a safeguard against exposure to potential liability. The trustee should have sufficient skills, either in-house or through the use of outside experts, to properly administer those assets. The bank, in its capacity as trustee, may be held liable for any losses suffered by beneficiaries resulting from the maladministration of a closely held company. The governing instrument for the trust should have specific language regarding the trustee's responsibilities and powers for the continued operation of the company.

The trustee must first acquire a complete understanding of the company. This may be achieved by conducting a comprehensive analysis of its financial and operating records, management, products and services, the industry in which it competes, its market position, and future prospects. The governing instrument often contains specific language regarding the disposition of the business. If the instrument is silent in this regard, the trustee must act in the best interest of the beneficiaries and determine whether to continue to operate the company or to dispose of it by sale or liquidation.

If the trustee is the sole or majority shareholder, management of the company may be readily controlled. However, if only a minority interest in the company is held, the trustee may be confronted with an array of problems. Aligning with other minority shareholders may enable the trustee to influence the management of the company in the best interest of the trust's beneficiaries.

Shared responsibilities with other co-fiduciaries also present problems to be considered by the trustee prior, if possible, to accepting the account. Co-fiduciaries who are cooperative and knowledgeable about the management and operation of the company can be of great assistance to the trustee. However, an unknowledgeable or hostile co-fiduciary may place additional burdens on the trustee or cause the administration of the closely held company to be impractical.

Closely held companies must be analyzed promptly to determine the trustee’s interests therein and the appropriate courses of action to be followed. The trustee should consider:

- Financial condition.
- Management.
- Earnings.
- Growth.
- Marketability.

- Product lines or services.
- Competition.

The trustee is exposed to potential liability when the trustee, as fiduciary, undertakes the administration of closely held companies. The trustee always must deal with closely held companies at arm's length to avoid any conflict of interest or self-dealing transactions. It must consider possible interlocks resulting from common directorates. AITDA's directors and officers should not acquire an interest in closely held companies under administration.

The best interests of the beneficiaries may be served by having an officer on the board of directors of a closely held company. In such cases, insurance should be obtained to protect against any liability resulting from the board's actions. Fees received by officers while acting as directors of closely held companies should be remitted to the account. The fee may be retained by the trustee if specifically authorized by the governing instrument, court order or written consent of the beneficiaries.

The institution's policies, procedures, and internal controls for the administration of closely-held companies should address the following criteria and be responsive to the following questions.

1. When making decisions about the retention, sale, redemption or liquidation of investments in closely held companies, does the fiduciary analyze financial data and background information for each company?

2. Do the policies provide for:

- Attending stockholders' meetings of companies, particularly of those having problems?
- Exercising control over the management of companies, in which it has sole or majority voting control?
- Ascertaining the ownership of other interests, if the fiduciary holds a minority interest, in an effort to effect joint control over management of the company for the best interests of beneficiaries?
- Considering the best interests of income beneficiaries and remaindermen when purchasing or retaining closely-held companies?
- Encouraging incorporation of general partnerships and proprietorships, where feasible?
- Attempting to sell the business as a going concern, when it is considered to be in the best interest of beneficiaries?

3. In the administration of closely-held companies, does the institution consider:

- Restricting to an arm's-length basis transactions between the bank or its affiliates and a closely held company?

- Interlocks or other relationships between the company, the fiduciary and its affiliates, and personnel?
- Adequacy of company insurance programs?

4. For defunct companies, does the fiduciary have a policy to obtain certification from the Secretary of State of the state of incorporation or the Tribe, if appropriate, that a company's charter has been surrendered or information from recognized publishing services pertaining to worthless securities?

5. Does the fiduciary retain and administer investments in closely-held companies pursuant to:

- Terms of governing instruments or in accordance with local law?
- Indemnification agreements with parties at interest?
- Appropriate court orders?

6. When fiduciary personnel represent the interests of beneficiaries and the fiduciary on the board of directors of a closely-held company, does the fiduciary consider the prudence of:

- Protecting them from liability for their actions as directors by maintaining appropriate insurance coverage?
- Barring them from receiving a directors' fee or other compensation from the company for their personal benefit?
- Prohibiting them from acquiring an interest, financial or otherwise, in the company other than representing the beneficiaries and the fiduciary?

7. Is the foregoing information considered an adequate basis for evaluating the policies, procedures and internal controls in that there are no significant additional factors or circumstances that impair any controls or mitigate any weaknesses indicated above?

INVESTMENTS--REAL ESTATE LOANS

Real estate loans discussed in this section include mortgages, purchase money mortgages, real estate notes secured by deeds of trust, and contracts of sale.

Some investment managers use real estate loans when their market rates are attractive to increase portfolio yields. Those investments are normally large commercial real estate projects or developments.

Real estate loans have both positive and negative investment characteristics. They generally have higher yields than short term debt securities. When properly made, they are considered relatively safe investments because of the collateral protection. However, individual real estate loans usually are not readily marketable. Generally, they require

large amounts of capital outlay in comparison to other investments, which may result in problems of asset concentration in smaller trust accounts.

When making investment decisions concerning real estate loans, the trustee should consider:

- Real estate values based on current appraisals by competent appraisers.
- Acceptable ratio of loan to current appraised value of the real property.
- Borrower's ability to pay.
- Documentation necessary to establish priority of lien and validity of loan.
- Adequacy of insurance on the underlying property and proper loss-payee clause.
- Adequacy of rates of interest charged.

The fiduciary department should have written policies and procedures that address the administration and supervision of delinquent real estate loans. Such policies and procedures should encompass:

- Approval process for partial releases of real estate security.
- Periodic reporting of delinquencies to appropriate committees.
- Inspections of property to forestall deterioration of the premises and preserve sale value and marketability if foreclosure appears necessary.
- Verification of adequate insurance coverage.
- Establishment of a foreclosure plan.

The fiduciary department may have a program for investing in participation mortgages. Those mortgages may be administered externally as in the case of GNMA mortgage-backed pass- throughs. Participation mortgage investments enable the trustee to maintain portfolio diversity and reduce administrative costs. The individual account and aggregate interest in those investments should be properly controlled. In the event of default, the trustee should determine that the participation agreements provide that each account bears only its pro rata share of loss.

Internal controls and a tickler system should be established to supervise real estate loans. Proper supervision requires detailed knowledge of the characteristics of each loan. Dates for periodic activities, i.e., loan payments, taxes, insurance premium payments, and other important events should be in the tickler system.

The fiduciary’s policies, procedures, and internal controls for the purchase, sale and administration of real estate loans should address the following criteria and be responsive to the questions:

1. When making investment decisions about real estate loans, does the bank consider:

- Real estate values based on appraisals by competent appraisers?
- Prudent ratio of loan to appraised value of real estate security?
- Borrower's ability to pay?

- Compliance with law and regulation?
- Documentation necessary to establish priority of lien, and legality and validity of loan?
- Appropriateness of types and amounts of insurance?
- Adequacy of interest rates charged?

2. Are real estate loans approved by the board of directors, a committee or a qualified and/or authorized individual?

3. Is it policy to require that current real estate appraisals be obtained upon extension of maturity or other modifications of such loans?

4. Do procedures require that the condition of the underlying real property securing delinquent loans be determined at least periodically?

5. Prior to granting a loan secured by real estate in another state, does the fiduciary determine that it, as fiduciary, can enforce foreclosure?

6. Is it policy to require that partial releases of real estate security receive the approval of the board of directors, a committee, or authorized person?

7. For participation mortgages, does the fiduciary:

- Keep records of the aggregate outstanding balance of loans held by all participants as well as the amount allocated to each participating account?
- Ascertain that participation agreements, entered into by the institution, provide that each account bears only its pro-rata share of loss, in the event of default?

8. If loan servicing agents are employed, does the institution ascertain that agency agreements include:

- Duties and responsibilities of the servicing agent?
- Procedures to be used for verification of assets and supporting loan documentation?
- Settlement dates for remittance by agent to the fiduciary?

9. Does the institution employ the following procedures for past due loans:

- A follow-up program for collection?
- Periodic reporting of delinquencies to the board of directors or a committee?
- Inspecting the property periodically to maintain its marketability and prevent its deterioration?
- Observing the statute of limitations to preserve collectability?

10. Do the procedures provide for monitoring the following by reference to checklists and ticklers:

- Compliance with covenants of loan agreements?
- Dates for the payment of loans, taxes and insurance premiums?

11. Is the foregoing information considered an adequate basis for evaluating the policies, procedures and internal controls in that there are no significant additional factors or circumstances that impair any controls or mitigate any weaknesses indicated above?

INVESTMENTS -- REAL ESTATE

Real estate represents a significant portion of the economic wealth American Indians and American Indian Tribes. The term includes real property of all kinds, including farms, timberland, mines, residences, factories, and commercial buildings. A trustee is responsible for the administration of every type of real property held in trust. The proper management of real estate demands the knowledge and skill to ensure that the property is an appropriate asset for purchase and/or retention and is, to the extent practical, productive of income.

Management should be familiar with all aspects of real property administration, including purchasing, leasing, improving, and repairing before undertaking the administration of significant holdings. Due to the variety and complexity of decisions relating to the administration of real estate, the trustee should have a separate committee to supervise real estate held in trust when significant parcels are held. A fiduciary real estate committee should establish policies and procedures appropriate for the proper administration of fiduciary real estate holdings.

The trustee should determine the condition of the title to all American Indian property under trust as soon as reasonably possible.

The trustee must have a program of appraisal and inspection of all real estate held in accounts where the trustee has investment responsibility. The appraisal program must require appraisals at least every five years for real properties held in personal trust accounts. In the case of real properties held in collective investment funds, appraisals should be performed at least annually. The inspection program must require the inspection of real properties at least as often.

The routine inspection provides the fiduciary with current knowledge of the condition of the real properties, so that informed investment decisions can be made regarding their retention and/or disposition. The inspection should be thorough enough to assure that the fiduciary is fully knowledgeable about the present condition and status of properties.

The trustee should exercise discretion in appraising and inspecting some properties. Fractional interests in real estate where the trustee has no effective control and homes or other properties occupied by beneficiaries may not often warrant appraisals and inspections.

Real estate should be retained only when appropriate for an account. When retention is determined to be the proper action, the trustee should consider the need to obtain necessary authorizations from appropriate parties. The sale of real estate should be considered when advantageous to the beneficiaries. Sales should be made only after current appraisals of properties have been performed by competent appraisers.

When making investment decisions about the purchase or management of real estate, the trustee should consider:

- Authority to purchase in the governing instrument.
- Types of accounts for which real estate may be suitable.
- Terms of leases and creditworthiness of tenants.
- Future marketability of properties.
- Assessment of risk factors, including environment liability.
- Current appraisals of properties by competent appraisers.
- Comparable sales analysis.
- Investment yields.
- Cash flow, potential for appreciation, and tax benefits.

There should be comprehensive procedures to assist management in the proper supervision of real estate holdings. The trustee must be able to monitor insurance, leases, rents, expenses, capital improvements and taxes effectively. Expenditures for routine maintenance are considered a normal operating expense. Authority to make capital improvements should reside in the governing instrument. If not, court approval and/or approval by all beneficiaries should be obtained. An effective procedure for monitoring and collecting delinquent rents should also exist.

If the fiduciary department uses real property managers, their qualifications and reputations should be reviewed closely. Property managers provide the day-to-day professional supervision of properties which are beyond the capacity of the trustee. The managing agent agreement should be reviewed by counsel if it has not been prepared by the trustee. The agreement should include provisions for the control and remittance of collected rents and the authority of the agent to incur property maintenance expenses. All property managers should be bonded.

Whenever possible, the trustee should rent property under lease agreements as opposed to monthly rentals. Lease arrangements will allow the trustee to project more reliably revenues and vacancies for a longer term.

AITDA should have separate divisions to supervise the operation and administration of agricultural and ranch properties. In such cases, if the required knowledge and skills are not available "in-house," the trustee may also consider engaging qualified outside professionals. All relationships of this nature should be entered into pursuant to carefully prepared agreements which are reviewed by counsel. Contracts with qualified tenant operators should be similarly prepared and reviewed.

Harvested crops often are stored in grain elevators or other storage warehouses until sold. The trustee should verify periodically the agricultural commodities stored in those facilities. Agricultural and ranch managers also use future and forward contracts in selling commodities. Those contracts are used to hedge the risk of selling an entire harvest at one time. The trustee should verify that proper authorization is present in the governing instrument for the use of such contracts.

Environmental Liability

With the enactment of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) and the Superfund Amendment and Reauthorization Act of 1986 (SARA), environmental liability has become a critical issue for fiduciaries. Institutions acting in their fiduciary capacities as trustees for personal trusts, estates, or as indentured trustees for bond issues may be held liable for the clean-up costs associated with contaminated property. This liability may result regardless of whether the fiduciary caused the contamination or knew of its existence at the time the account was accepted. Liability is not limited to the assets of the trust or estate. Trustee assets may be used to cover the clean-up costs if the trust account has inadequate funds.

Presently there is limited protection for fiduciaries against possible liability. However, there are a few recommended guidelines for managing trust property, which may limit the risk of liability. The following guidelines should be considered:

- Develop a policy for the management of property contaminated by hazardous waste.
- Identify potential problem real estate properties.
- Perform on-site inspections of existing property and possible new property.
- Examine the title history of the property.
- Examine regulatory agency files, i.e., EPA lists of hazardous waste sites.
- Perform an environmental audit, if concerns are noted.
- Obtain indemnification from the settlor or beneficiaries of the account.

The fiduciary's policies, procedures and internal controls regarding the purchase, management, retention, and sale of real estate should reflect the following criteria and be responsive to the questions.

1. When making investment decisions regarding real estate, are:

- Policies and procedures adequate for the types and amounts of real estate involved?
- Forms of documentation adequate to support investment decisions?

2. Before investing in commercial properties of substantial value, does the fiduciary, in addition to obtaining current appraisals, have the properties inspected by qualified engineers and other specialists for possible structural defects?

3. Does the institution ascertain from attorneys' opinions, owners' title guaranty policies or other forms of title searches, the condition of the title to real property under administration in accounts with investment responsibility, unless it is otherwise exempt from doing so by the terms of the governing instrument, local law or parties empowered to direct?

4. Does the fiduciary have a program for appraising real estate at least every five years for properties for which the trustee has investment responsibility?

5. Is retention of real estate predicated on such considerations as:

- Provisions of the governing instrument?
- Current yield of income producing properties?
- Ease of marketability at the time of anticipated termination of the account, expected distribution, or invasion of principal?
- Other factors relevant to the retention decision?

6. Does the institution have a policy for selling real estate when advantageous to an account?

7. Does the institution have a program for keeping informed about the condition of real estate and other related factors by annual inspections or other means where an inspection is not feasible?

8. Does the institution have guidelines for selling real estate which include:

- Current appraisals by competent appraisers?
- Comparable sales analysis?
- Use of multiple listings, when appropriate?

9. Does the institution have a policy of qualifying, where possible, to do business as a fiduciary in another state for purposes of holding title to real property in that state?

10. Does the institution have procedures that provide for:

- Maintaining adequate income and expense records?
- Obtaining hazard insurance commensurate with current appraised values for insurance purposes?
- Determining that appropriate forms of insurance are in force on real properties?
- Monitoring the payment of real estate taxes to assure timely payment?
- Monitoring expenditures for maintenance and repairs?
- Monitoring capital improvements?
- Monitoring leases and rents?
- Collecting delinquent rents on a timely basis?

11. If a management agent is employed, does the agency agreement establish the agent's duties and responsibilities, frequency of reporting, and commission charges?

12. Has the agency agreement been reviewed by legal counsel?

13. Does the institution have a policy of reviewing the qualifications of real estate management agents and appraisers before employing such parties, including assessing:

- Past performance of such parties?
- Fidelity insurance maintained by agents who handle funds?

14. Except in unusual circumstances, is it the fiduciary's practice to rent real estate on a lease basis only?

15. For the administration and operation of agricultural, ranch and other non-urban properties:

- Does the institution have a policy for using qualified personnel or independent agents to manage and/or administer the properties?
- If qualified managers have been engaged to manage properties, have the managing agreements been reviewed by counsel?
- If tenant operators are engaged to operate the properties, have operating tenant agreements been reviewed by counsel?

Primarily of an administrative nature, the institution should develop systems for loan servicing and asset management activities such as:

- Debt Collection
- File Maintenance
- Monitoring of Policies and Procedures Compliance
- Loan Workout and Collection (Development and Implementation of Strategies, etc.)
- Asset Value Preservation and Enhancement Analysis
- Asset Restructure and/or Resolution and Disposition
- The Organization's functional management should be as follows:

Asset Management

- Strategic Business Plan preparation for each asset
- Implementation of strategy for approved Business Plan
- Restructure and workout activities
- Monitoring values, conditions, and leases
- Monitoring obligor financial condition
- Managing legal or other advisors
- Continuing financial analysis
- Individual asset reporting/action requests

Asset Disposition

- Managing/monitoring receivers
- Value enhancement/protection
- Approving budgets
- Lowering operating costs. Negotiating property sales. Monitoring property leases.

Management Information Systems

- File organization
- Maintaining files/documentation
- Monitoring documenting ticklers
- Asset data base review, input, and maintenance
- Asset Pricing Model maintenance

Operations/Accounting

- Operations management
- Financial reporting
- Compliance monitoring
- Insurance monitoring
- Servicing Agreement compliance tracking
- Fee monitoring and billings
- Budgeting and control procedures
- Preparing financial statements or other reports required by clients

In order to provide quality service, the ability to produce accurate, timely management information is fundamental, for this will be used by the clients (external and internal) in determining, in conjunction with officers, the appropriate asset management strategy, thus maximizing income. This ability is provided through the use of well developed, computer-based accounting systems, a flexible and relevant portfolio data base and comprehensive control systems with policies and procedures to assure the accuracy of the information.

Asset Accounting & Management Information Systems

Modern financial accounting systems are often modular in form with product specific software used to support each category of product separately, while at the same time allowing for integration into a common reporting module. The institution will achieve this through the use of asset and lease accountancy software packages available from the many vendors in the financial markets.

To further enhance functionality and flexibility for the needs of non-institution clients, which may have different reporting or regulatory requirements, the institution will make use of additional PC based software (spreadsheet, database, word processing, desktop publishing, etc.) to provide a comprehensive information and reporting facility.

Reporting and system needs will evolve as legal requirement or client expectations/requirements change, and controls must therefore develop to reflect these changes. It is believed a system of PC-based software, combined with the quality of staff, will enable future requirements to be identified and met in a timely manner.

Detailed Business Plans will be developed for each asset to document the strategy for maximizing income for the beneficiary, consistent with safe and sound prudential principles. For special assets, these plans will also set forth proactive management steps by the account officer to achieve workout, disposition, or return to performing status within a reasonable time period. Each action plan will incorporate a grading system to be utilized in the portfolio planning/stratification process and will address the following:

- maturity date
- valuation data
- financial strengths
- key valuation ratios (LTV, DSC) future triggers for changes in risk ratings
- documentation deficiencies
- strategy, such as amortization principal paydowns
- significant property, obligor, or market events, trends, and trigger dates
- lease expires, break clauses, rent reviews
- ground lease expirations
- detailed comparable information for future valuations
- market research and comparable information to be investigated and utilized, where available.

A Pricing Model should be developed which will be a valuable financial tool for pricing/valuation and analysis of asset portfolios. The model utilizes detailed property, financings and investment assumptions to determine portfolio value on an asset by asset basis.

The Discounted Cash Flow Models should be used for certain properties to estimate their value. The DCF projects the cash flow of a property over a holding period (generally 10-12 years) and often includes a residual property value based upon an estimated sales price at the end of the holding period. The projected income stream over the holding period is then automatically discounted back to its present value at a discount rate reflecting the risks associated with the property.

INVESTMENTS-- MINERAL INTERESTS

Trustees must properly manage oil, gas, and mineral properties held in trust just as they administer all other types of fiduciary assets. In most cases, oil, gas, and mineral interests held in accounts would not have been purchased by the trustee, but rather are deposited in kind. Too often, such interests are not actively monitored by the trustee until problems develop that require attention. Management must be fully familiar with those interests to

be able to recognize when outside professional help is necessary. Greater activity in the administration of oil, gas and mineral interests, without a commensurate increase in expertise, exposes the fiduciary to increased liability. Establishing and following adequate policies and procedures for those assets will help to reduce exposure.

Due to the unique nature of mineral interests, the trustee may have problems properly monitoring such assets. Since valuations of the mineral interest for estate/inheritance tax and probate purposes can be difficult, the trustee may wish to employ outside consultants, such as qualified geologists, landmen engineers and tax accountants to determine the valuation and tax treatment of mineral interests held. Those considerations apply when determining the asset's ability to help meet established account objectives. Also, since mineral interests are considered illiquid and provide irregular income, it may be difficult to base income payments to beneficiaries on that type of asset.

A mineral interest may be defined as the sum of all rights to oil and gas or to solid minerals in place on a property. Owners of mineral interests have the right to enter upon the property to explore and drill for minerals. They also have the right to grant oil and gas leases and are entitled to any lease bonus, or delay rental, that may be payable in connection with the lease. Mineral interest owners also may assign all, a segregated portion, or an undivided fraction of their interest. When rights so assigned are limited in duration, they are called "term minerals," as contrasted to "perpetual minerals." The assignor of minerals can reserve to himself or herself, a portion of any lease bonus, or delay rental, arising from any future lease arrangement. This restriction to an assigned interest is described as a nonparticipating mineral.

A royalty interest may be defined as an interest in the underlying oil and gas reserves which is retained when an owner of land grants to another the right to determine the existence of commercial quantities of oil and/or gas and to develop the property and produce the mineral. For Federal income tax purposes, a royalty interest is a right to oil and gas or minerals in place that entitles the owner to a specified fraction, in kind or in value, of the total production from the property, free of the expense of development and operation. It is, therefore, a mineral interest which has been stripped of the rights and burdens of developing the property.

A working interest is a mineral interest minus the royalty interest. For Federal income tax purposes, a working interest is an interest in minerals in place that is burdened with the cost of development and operation of the property. The most generally accepted fraction of production designated to the working interest is 7/8 of the production. It might appear from the small fraction occurring to the royalty owner (i.e., 1/8), that he/she is not obtaining an equitable share of production from the property. However, it must be considered that the working interest owners bear all of the costs of developing, drilling, operating and producing the property. The costs of a dry hole are borne by the working interest owners.

A division order represents the breakdown of payments to be made once production begins. Division orders frequently contain a number of clauses that are adverse to the

royalty interest owner. For example, when a lease is negotiated with an oil company for mineral interests in estates and trusts, the provision for the royalty owner to pay any treating costs to make the oil marketable should be deleted. This is a working interest expense and every effort should be made to keep the royalty interest from being encumbered with this expense. Every division order contains language which requires the royalty interest to bear its pro rata share of treating and other expenses required to make the oil marketable. If the division order is approved without amending such language, the lease has, in effect, been amended to reflect the terms of the division order.

The fiduciary administering oil, gas and mineral interests should have written policies and procedures for their proper supervision and administration. Each oil, gas and mineral interest asset should be thoroughly documented. Important elements should be monitored closely to provide assurance that no event will occur without prior knowledge of the fiduciary. A refined monitoring system should include:

- Assets to which the interest applies.
- Type of interest.
- Decimal interest owned.
- Title records.
- Account to which rent is to be credited.
- Description of property leased.
- Terms of the lease.
- Name and address of lessee.
- Expiration date of the lease.
- Amount of delay rental.
- Date rent is due.
- Bonuses.

When, under the terms of the lease, a provision is not complied with, the fiduciary should request from the lessee a recordable release of the property.

Significant costs may be incurred by the trustee in the administration of active mineral interests. The bank should take additional costs into consideration when charging fees for their administration. Such additional charges should be disclosed in the trust fee schedule for fiduciary services.

It is generally desirable to retain nonproducing mineral interests as little or no cost is involved in their retention. Appropriate retention provisions should be contained in governing instruments for accounts holding mineral interests. By keeping informed of drilling activities in those areas where mineral properties are owned, the fiduciary may have the opportunity to negotiate leases and create interest in nonproducing properties.

Generally, the institution should adopt policies and procedures which cover the following criteria and are responsive to the questions.

1. When dealing with oil, gas and mineral interests, does the institution:

1. Review trust instruments for appropriate authority to retain and administer them?
2. Gather all available information relevant to their administration?
3. Ascertain validity of title by:
    - A deed, division order or assignment?
    - An attorney's opinion?
    - Title insurance?
4. Employ personnel or outside consultants who are knowledgeable in their administration?

2. If working interests are involved, does the institution:

1. Maintain a copy of the operating agreement?
2. Analyze and approve all authorizations for expenditures?
3. Review each working interest for profitability?
4. Obtain, where necessary, adequate property and liability insurance?

3. Does the institution have an adequate accounting system for oil, gas and other mineral interests?

4. Does the institution maintain proper information systems, including:

1. Ticklers for delay rentals on non-producing interests?
2. Ticklers covering important events?
3. A list of all unleased interests?
4. Lease and royalty payments?

5. What is the institution’s policy on late delay rental and royalty payments?

6. When leasing mineral interests, does the institution utilize:

1. A special lease form prepared by the institution and/or counsel?
2. A standard industry lease form?
3. A lease form prepared by the leasing company?

7. Are all mineral lease agreements reviewed by counsel and an appropriate committee before being executed?

8. Does the institution have guidelines to avoid leasing to insiders or their related interests?

9. Does the institution utilize a specific schedule of fees for special services involving mineral interests? If so, can fees be adjusted for a percentage of income or for any extraordinary situations?

10. Does the institution have guidelines for selling mineral interests, such as:

1. Ensuring authority to sell in the governing instrument?
2. Requiring appraisals by competent, independent appraisers?

11. Does the institution have a policy of qualifying to do business as a fiduciary in another state for purposes of holding title to mineral interests in that state?

12. Does the institution have a system for filing all oil, gas, and mineral interest papers and data necessary for the maintenance of a complete historical record?

INVESTMENTS -- MISCELLANEOUS ASSETS

The types of assets most commonly found in fiduciary accounts are those previously discussed above. However, they are not inclusive of all forms of assets which may be encountered. Other assets are addressed herein collectively as "miscellaneous assets" because of their less frequent use as fiduciary investment vehicles. They are often received in an account as a deposit in kind. In other instances, testators, grantors, beneficiaries or other parties having power to direct the trustee may have expressed their wishes to have such investments either acquired or retained by an account. As with other fiduciary holdings, the trustee must determine that those assets are appropriate for the account and in compliance with the terms of the governing instrument and applicable laws, rulings, and regulations. As a guide, generally the policies, procedures and regulations applicable to national bank trust departments should be used as guides in developing policies and procedures for AITDA.

Restricted Securities

Rule 144 of the Securities and Exchange Commission (SEC) defines "restricted securities" as those acquired directly or indirectly from the issuer of the securities, or from an affiliate of the issuer, in a transaction or series of transactions not involving a public offering. The sale or offering of such securities is not covered by a registration statement filed with the SEC. "Control securities" are securities held by an affiliate regardless of how the securities are acquired. An affiliate of an issuer is a person that directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such issuer. Control securities must be sold pursuant to Rule 144 of the SEC even if they were acquired through a public offering.

Rule 144 was adopted to provide a greater degree of certainty about the availability of the exemption from registration pursuant to Section 4(1) of the Securities Act of 1933 (1933 act) by establishing more objective standards for determining when a person may not be presumed to be an underwriter or not engaged in a distribution of securities. When adequate public financial information concerning an issuer of stock is available to the public, Rule 144 permits the public sale in ordinary trading transactions without registration under the 1933 act. Limited amounts of securities owned by persons who are controlling, controlled by or under common control with the issuer (control securities)

and by persons who have acquired restricted securities of the issuer (restricted securities) may be sold pursuant to Rule 144.

Rule 144 has requirements which must be met to sell either restricted or control securities. If those conditions are met, any affiliate or other person who sells such securities should be deemed neither to be engaged in a distribution nor to be an underwriter. At the time of sale, adequate current information about the issuer of the securities should be available to the public. If the securities are restricted, the person(s) from whose account the securities are sold must have been the beneficial owner(s) of such securities for a period of at least two years prior to sale. The holding period applies to restricted securities, but not to control securities. A trust or beneficiary thereof may use the owner's original acquisition date, but only if the trust received the stock as a deposit in kind. An estate or beneficiary thereof may use the decedent's original acquisition date. If neither the estate nor the selling beneficiary thereof is an affiliate of the issuer, no holding period is required.

The number of shares of restricted or control securities that may be sold in any three-month period is limited to the greater of one percent of the class of stock outstanding or the average weekly volume of trades on all national securities exchanges over the four weeks preceding the sale. In applying that limitation, securities sold by the trustee must be combined with those sold by the settlor for his own account. The securities must be sold under Rule 144 in broker's transactions as defined in Section 4(4) of the 1933 act and paragraph (g) of the rule, or in transactions directly with a market maker as defined in Section 3(a)(38) of the Securities Exchange Act of 1934. On the day the order is placed with a broker, three copies of SEC Form 144 must be filed with the SEC unless the amount of securities sold in any three-month period does not exceed 500 shares and the sale price does not exceed $10,000. Restricted and control securities should be properly earmarked to prevent their unauthorized sale.

Partnerships

Partnerships may be found in all types of fiduciary accounts administered by the trustee. Partnerships often are entered into with the possibility of high investment return partially through the benefit of tax sheltered income. A partnership is generally defined as the association of two or more persons to carry on a business, as co-owners for profit. Unlike a corporation, a partnership is not an artificial person having a distinct legal existence separate from its members. Since a partnership is not a separate legal entity, the debts of the partnership are the debts of the individual partners, and any one partner may be held liable for the partnership's entire indebtedness. A partnership is not required to pay a Federal income tax although it must file an informational return each year which sets forth the income realized, whether received or not, by the partners each of whom are required to report and to pay a tax thereon.

A limited partnership is a partnership composed of one or more general partners and one or more limited partners. It differs from a general partnership in two basic respects:

* Although it comes into existence by virtue of an agreement like other partnerships, it is specifically authorized by statute.

* The liability of the limited partners for partnership debts is limited to the extent of the capital which they have contributed.

A general partnership is one in which the individual partners are each general partners whose liability for partnership indebtedness is unlimited. General partners usually are active in the management and operation of the partnership.

As a general partner, the trustee's liability is not limited to the principal of the particular account. However, the Board of AITDA should object to a trustee investing in general partnerships, unless its liability is limited by local law. In the capacity of a limited partner, the trustee usually would have no say in the management of the assets. In the case of investment in limited partnerships, the Board should not object if such investment is authorized by the governing instrument, local law or by written consent of account beneficiaries. Of course, the limited partnership also must be a prudent investment and meet the investment objectives of the account.

Stock Options

Stock options are another investment vehicle that the fiduciary may use in meeting account and beneficiary needs. A stock option represents the right of an investor to buy or sell a certain number of shares of a specific stock within a stated period at a stipulated price. A call option is written by the trustee for a premium and grants the buyer the right to purchase a specified number of shares at a specified price for a given period of time. A put option is written by the trustee for a premium and allows the buyer to put (sell) the stock to the writer of the option for a specified period of time, at a specified price.

Covered call option writing is the most common strategy utilized by national bank trustees. It involves writing calls against a long position in an underlying common stock in a trust account's portfolio. The trustee is willing to forego possible appreciation in the underlying issue in return for the payment of the premium the account receives for writing the option. The amount of the premium received depends on the probabilities associated with changes in the price of the underlying stock during the period of the option.

AITDA should establish policies and procedures that should be followed by officers who engage in exchange-traded put and call option transactions for particular trust accounts.

Mutual Funds

Generally, a mutual fund is an open-end management company engaged in the business of continually issuing and offering for sale redeemable securities which represent an undivided interest in the fund's assets. In addition to a variety of shareholder services, mutual funds offer a number of advantages to the investor, whether a person or fiduciary.

Those include professional management, diversification, liquidity, and flexibility which allows investors to exchange investments among different types of funds to meet changing investment conditions.

Mutual funds may be categorized by their investment objectives: growth, income, balanced, money-market, municipal, options and various combinations thereof. In all cases when investing in mutual funds, the trust department should consider the reputation of the fund's management, the performance of the fund, and the composition of its portfolio.

Trust Banking Circular No. 4 (Revised) sets forth the OCC's position on investing in mutual funds and should be used as a guide by AITDA.

Tangibles -- Art, Coins, Bullion, Stamps, Antiques and Precious Stones

Tangible assets are usually found in estates and personal trust accounts. Generally, they are distributed to the beneficiaries at the close of the trust or estate or they may be sold to meet cash needs.

Those assets may appreciate in value at a rate greater than other investments, depending upon market conditions. Some disadvantages of investing in those assets are the lack of current income, storage and insurance costs, and the risk of purchasing counterfeit or fraudulent assets. Proper valuation of those assets is generally difficult and costly.

Private Placements

The Securities Act of 1933 requires that adequate and reliable information be made available about securities offered for sale to the public. The act requires registration of any security offered for sale with the SEC unless it is specifically exempted. Section 4(2) of the act exempts "transactions by an issuer not involving any public offering." This exemption has resulted in the issuance of securities through private placements to avoid registration costs and other requirements.

Securities placed privately have certain advantages for both the investor and issuer. Private placements may be used to increase portfolio yields. The investor and issuer may tailor the offering, through negotiation, to meet the needs of both parties. The issuer saves the cost of registration and obtains alternative financing. The transaction is completed without being subject to regulatory and public scrutiny.

Private placements generally are characterized by the lack of a secondary market. In the case of debt securities, the investor may be unable to liquidate the holding until maturity. Due to the small number of investors, there may be limitations on the amount of capital that may be raised by the issuer.

Non-Real-Estate Loans

The fiduciary may find it advantageous to make loans other than those secured by real estate. The following factors should be considered when making those loans:

- Acceptability and marketability of collateral.
- Collateral value to loan ratio.
- OCC registration of liens.
- Compliance with law, regulation and the terms of the governing instrument.
- Creditworthiness of the borrower and any endorsers or guarantors.
- Probability of loan collection without liquidation of collateral.
- Possibility of distributing the loan to a beneficiary if the loan is made to that party.

Repurchase Agreements

A repurchase agreement is the transfer of securities for a loan of funds with a simultaneous agreement to reacquire the securities at a later date. A reverse repurchase agreement is an acquisition of securities, or certain rights to securities, by an investor under a simultaneous agreement to resell the securities. Funds are conveyed to the original owner of the securities. A reverse repurchase agreement should be administered as if it were a secured loan.

A trustee must determine if the use of repurchase agreements is legally permissible before engaging in such transactions. The appropriateness of such agreements depends upon the language in the governing instrument and local law. If an employee benefit account is involved, ERISA requirements regarding prudence must be considered. In addition, the use of repurchase agreements or the strategy being implemented must be appropriate for the particular account, and the role of the proposed investment or strategy within the account's overall portfolio must be considered.

The following guidelines should be observed when using reverse repurchase agreements:

- The trust department should obtain an opinion of counsel concerning the legality of their use.
- Management must know the financial condition of parties with whom they are doing business.
- Concentrations with one firm should be avoided.
- Written agreements should be used that outline the duties and responsibilities of participants.

Additional recommended policies and procedures to be followed by trustees that purchase or sell securities subject to repurchase agreements or reverse repurchase agreements are contained in Trust Banking Circular No. 22 and should be used as a guide by AITDA.

Forward Contracts and Financial Futures

Before trustees engage in futures, forwards or standby contracts, it must be determined that the use of those contracts is legally permissible. The legality of those transactions depends upon the instrument establishing the fiduciary relationship and local law. In addition, the specific use of those contracts, or the specific strategy being implemented, must be appropriate for the particular account, with due consideration given to the role that the proposed investment or strategy, plays within the context of the overall portfolio.

Once it has been determined that the use of such contracts is legally permissible and appropriate for the particular account, the trustee must observe the following guidelines:

- The fiduciary should obtain an opinion of counsel concerning the legality of their use.
- The board of directors or its designee should make any decision to actually engage in such activities.
- Specific written policies and procedures should be established prior to commencing the activities.

Appropriate record keeping requirements and additional guidelines are contained in Trust Banking Circular No. 14 (Revised).

COLLECTIVE INVESTMENT FUNDS

Collective Investment Funds (CIFs) are designed to facilitate investment by combining fiduciary funds of various individual accounts into a single trust. Although a CIF runs counter to the accepted common law duty of the trustee not to commingle trust funds, legislation has been passed in every state authorizing trustees to establish and administer CIFs.

A CIF must be established and maintained in accordance with a written plan. The plan should be approved by a resolution of the board of directors. The board may assign authority for approving the establishment of a CIF to a designated committee.

12 CFR 9.18(b)(1) sets forth the required minimum content of the written plan establishing a CIF and should be used as a guideline by AITDA. A plan must include:

- Statement of investment powers.
- General statement of investment policy.
- Provisions for the allocation of income, profits, and losses.
- Terms and conditions governing admissions and withdrawals.
- Provisions for the auditing of bank accounts with respect to the fund.
- A basis and method for valuing assets, setting forth the specific criteria for each asset type.
- The minimum frequency for valuation of fund assets.

- The period following each valuation date during which the valuation may be made.
- The basis upon which the fund may be terminated.

A CIF is a separate entity with its own administrative requirements and tax identification number. The written plan establishing the fund is similar to a trust agreement in that it specifies the operational and administrative aspects of the fund. The accounts investing in the fund are called participants, and each participating account shares in the investment results of the fund. Exclusive management and control is in the trustee, and neither the fiduciary nor any beneficiary of a participating account has ownership of any particular asset or investment of the fund. The interests held in the fund by participating accounts are called units and represent a proportionate ownership interest in all assets held by the fund.

CIFs offer the advantage of investment diversification which is difficult, if not impossible, to achieve when investing small amounts of fiduciary funds individually. Because of the size of the transactions, it is easier for the trustee to make and supervise investments for CIFs with a resulting reduction in transaction costs and brokerage commissions.

12 CFR 9.18(a) authorizes the establishment of two basic types of CIFs, distinguished primarily by the tax status of the participating accounts. Funds maintained exclusively for investment of fiduciary funds held by the bank in its capacity as trustee, executor, administrator, guardian, and custodian under the Uniform Gift to Minors Act, are established pursuant to Section 9.18(a)(1). Funds established for profit sharing, pension, stock bonus, charitable, and other trusts which are exempt from Federal income taxation are Section 9.18(a)(2) funds.

For a CIF to maintain its tax exempt status (as distinguished from the tax status of participating accounts), it must be operated in conformity with 12 CFR 9.18 and regulations of the Internal Revenue Service. This authority derives from Section 584 of the Internal Revenue Code of 1954, which provides tax exempt status for CIFs operated by banks "exclusively for the collective investment and reinvestment of monies contributed thereto by the bank in its capacity as a trustee, executor, administrator or guardian ...." Collective funds established pursuant to either Section 9.18(a)(1) or (a)(2) may gain tax exemption from Section 584 if established in accordance with its provisions. Collective funds established pursuant to Section 9.18(a)(2) also may gain tax exempt status pursuant to the provisions of IRS Revenue Ruling 81-100. Those CIFs are called group or pooled funds. Whereas funds established under Section 584 are limited to the types of accounts specified above, the provisions of Revenue Ruling 81-100 allow the participation of agency accounts as well. The revenue ruling requires that each participating account adopt, by specific reference in its governing instrument, the terms of the CIF.

CIFs established for participation by qualified employee benefit plans are subject to ERISA. The Department of Labor has determined that investments of a CIF are also plan

assets. Therefore, a trustee mismanaging fund assets could result in prohibited transactions. For example, a trustee selling assets, from the trustee to a CIF would violate Section 406 of ERISA as well as 12 CFR 9.18(b)(8) and 12 CFR 9.12. The selling of a defaulted asset to the trustee is permitted by 12 CFR 9. However, the transaction would be prohibited by ERISA, necessitating a Department of Labor exemption from the prohibited transaction rules.

Specialized Funds

Several specialized types of investments are permitted under 12 CFR 9.18(c). Those investment media include:

- Bank fiduciary funds established pursuant to state law.
- Variable amount note arrangements.
- A single fixed amount obligation of a single issuer.
- A fund consisting of assets contributed by a company and its subsidiaries or closely related corporations.

Variable amount note arrangements provide participating accounts with a readily accessible medium for short term investment. Cash held for fiduciary accounts may be invested on a short term basis in a variable amount note of a single borrower of prime credit. The borrower delivers the note to evidence the amount of the loan outstanding from time to time. The note may be a demand obligation or have a fixed maturity. The interest rate of the note is usually adjusted monthly based upon commercial paper rates. If the note has a demand and fixed portion, the demand portion of the note is usually referred to as the A portion and the fixed portion is known as the B portion. The A portion is variable as to the amount outstanding. The B portion requires a notice of repayment and minimum total dollar amount which must be maintained to maturity. Examiners should criticize variable amount notes when the B portion exceeds 50 percent of the principal amount of the note since such an arrangement would tend to defeat the flexibility necessary for a short term vehicle.

Trustees also are authorized to create short term investment funds (STIFs) under 12 CFR 9.18(a). 12 CFR 9.18(b) (15) codifies the requirements for the establishment and operation of a STIF. STIFs may be operated on a cost rather than a market value basis for admissions and withdrawals if the plan of operation satisfies the following:

- Investments must be limited to bonds, notes or other evidences of indebtedness which are payable on demand (including variable amount notes) or which have a maturity date not exceeding 91 days from date of purchase. However, 20 percent of the value of the fund may be invested in longer term obligations.
- The difference between the cost and anticipated principal receipt on maturity must be accrued on a straight-line basis.
- Assets of a CIF must be held to maturity under usual circumstances.

- After effecting admissions and withdrawals, not less than 20 percent of the value of the remaining assets of the fund must be composed of cash, demand obligations and assets that will mature on the fund's next business day.

Registration Under Securities Acts

CIFs maintained by certain types of financial institutions (banks) generally are exempt from the requirements of the Securities Act of 1933 (1933 act) and the Investment Company Act of 1940. Section 3(a)(2) of the 1933 act exempts from the registration requirements and other provisions of the act any interest or participation in any common trust fund or other similar fund maintained by a bank for the collective investment and reinvestment of assets contributed by the bank in its capacity as trustee, executor, administrator, or guardian. Section 3(a)(2) also exempts any interest or participation in a single or collective trust fund maintained by a bank for stock bonus, pension, or profit sharing plans which meet the requirements for qualification under Section 401 of the Internal Revenue Code of 1954. The exemptive provisions of Section 3(a)(2) do not cover collective investment funds which allow participation by plans covering employees, some or all of whom are employees within the meaning of Section 401(c)(1) of the Internal Revenue Code, pertaining to HR-10 (Keogh) plans. In addition, funds permitting participation by IRAs would not be exempt under Section 3(a)(2) because IRAs qualify under Section 408 of the code. Because of those anomalies in statutory provisions, Keogh accounts are offered limited exemption from SEC registration when they are collectively invested and, under current SEC rulings, IRA accounts must be registered if they are invested collectively.

SEC Rule 180 provides an exemption from registration under the 1933 act for any interest or participation by Keogh plans in a collective fund maintained by a bank. The plans must cover only employees of a single employer or employees of interrelated partnerships. The employer must be a law firm, accounting firm, investment banking firm, pension consulting firm or investment advisory firm knowledgeable and experienced in financial and business matters. The employer should be able to represent adequately its interests and those of its employees.

Keogh funds also may be commingled with corporate plan funds without corporate participations having to register under the 1933 act. The Keogh participants would have to register unless exempted by Section 3(a)(11), the intrastate exemption. Section 3(a)(11) provides an exemption from the registration requirements for any security which is part of an issue offered and sold only to persons resident within a single state or territory, where the issuer of such security is a person resident and doing business within or, if a corporation, incorporated by and doing business within, such state or territory.

For the intrastate exemption to be available, all of the interests in the fund must be sold intrastate. The commingling of intrastate Keogh plans with interstate plan assets precludes the 3(a)(11) exemption.

Section 3(c)(3) of the Investment Company Act of 1940 provides that the requirements of the act do not apply to any common trust funds or similar fund maintained by a bank for the collective investment and reinvestment of monies contributed to them by the bank in its capacity as trustee, executor, administrator or guardian. Section 3(c)(11) of the act exempts from the definition of an investment company employee's stock bonus, pension or profit sharing trusts which meet the requirements for qualification under Section 401 of the Internal Revenue Code, and any collective investment funds maintained by the bank which consist solely of such trusts. The exclusion does not include IRAs, which qualify under Section 408 of the Internal Revenue Code.

Tax Treatment

The income, capital gains and losses of the CIF are shared by the participants in proportion to their investment. The Internal Revenue Code and appropriate regulations treat the fund as an entity for computing gains and losses. No gain or loss is realized by the fund upon the admission or withdrawal of a participant. The capital gains or losses realized from the sale of fund investments are allocated to participating accounts as short or long term capital gains based upon the length of time the investment has been held by the fund. When a participating account is withdrawn from the fund, a gain or loss is realized, which is treated as if the participation had been sold. The result is that upon withdrawal, a participating account realizes a taxable gain equal to the unrealized appreciation or sustains a loss equal to the unrealized depreciation which accrued in the fund since the date of the account's participation.

Section 6032 of the Internal Revenue Code requires that an informational return be filed for CIFs established under Section 584 of the Internal Revenue Code. Generally, a partnership return, Form 1065, will be filed. A schedule must be filed with the return indicating each trust that has participated in a CIF during the year, and short and long term capital gains or losses allocated to participating accounts for the year.

In conducting director’s examinations, the board should be guided by the following examination objectives and criteria:

Collective Investment Funds

Examination Objectives

1. To determine if policies, procedures and internal controls are adequate for the proper administration of CIFs and that records are sufficient to reflect properly the interests of all participating accounts and the acquisition and disposition of investments.

2. To determine compliance with 12 CFR 9.18 and Comptroller's Handbook for National Trust Examiners applicable Federal and local laws governing the operation of CIFS.

3. To initiate corrective action when policies, procedures and internal controls are deficient or when violations of laws, rulings or regulations have been noted.

Collective Investment Funds

Examination Procedures

1. Complete and update the Collective Investment Fund section of the Internal Control Questionnaire.

2. Determine the scope of the examination based on the evaluation of internal controls and the work performed by internal/external auditors.

· Review any deficiencies noted in the latest report of internal/external audit and determine if correction has been accomplished.

3. Test for compliance with policies, procedures and internal controls in conjunction with performing the following examination procedures.

4. Review documentation of CIFs established or amended since the preceding examination for compliance with requirements of 12 CFR 9.18.

5. Review the quality of assets held in CIFs and determine that such assets meet the investment policies of the CIFS.

6. Inspect participants' holdings of CIF units established pursuant to section 9.18(a)(1), and ascertain whether:

- Any participant held more than ten percent of the then market value of the CIF resulting from direct investment. Any such participation should have been reduced to ten percent or less at the next valuation date.
- Any participant held more than 15 percent of the market value of the CIF resulting from other than direct investment. Any such participation in excess of 15 percent should be reduced to ten percent or less within one year.

7. Inspect investments held in 9.18(a)(1) CIFs and determine weather:

- Holding of stocks, bonds or other obligations, not guaranteed by the U.S. Government, of any one entity exceed ten percent of the then market value of the CIF as a result of direct investment. Any such holding should be reduced to the ten percent limit not later than the next valuation date.
- Holding of stocks, bonds or other obligations, not guaranteed by the U.S. Government, of any one entity exceed ten percent of the then market value of the CIF as a result of other than direct investment. Any such holding should be reduced to the ten percent limit within one year.

8. For investments by CIFs in real estate loans, determine that the bank complies with the following requirements of 12 CFR 9:

- No more than reasonable expense may be charged against the income account of the CIF.
- No more than five percent of the net income derived from mortgages held by a CIF was transferred to a reserve account during a regular account period and no transfers were made which caused the reserve account to exceed one percent of the outstanding principal amount of all mortgages held by the CIF.
- A reserve account, if established, is deducted from the assets of the CIF in determining the unit value at valuation dates.
- Accrued interest in default from mortgages is charged at valuation dates against the reserve account to the extent available, and credited to income distributed to participants. If the amount so charged is recovered, then the reserve account is credited with the interest payments received.
- The value of mortgages is determined at valuation dates on the basis of fair value as determined in good faith and, in the case of FHA and VA mortgages, at quoted market values, where available.

9. Determine that the institution, in maintaining exclusive management of the CIF, keeps records relating to investment, administrative and operational decisions.

10. Inspect participating account files to ascertain that the institution does not issue any certificate or other document evidencing a direct or indirect interest in any CIF.

11. Determine that the annual financial report of a CIF contains:

1. A list of investments as of the fiscal year end showing cost and current market value of each investment.
2. For the period since the last report, a schedule of:
    - Purchases of investments with cost.
    - Sales of investments with profit or loss and any other investment charges.
    - Income and disbursements.
3. Annotation of any investment in default, including the nature of the default.

12. If the annual financial statement includes any comparative performance statistics, are such comparisons only with general market indices?

13. Inspect reports and ascertain that the availability of the annual report is publicized solely in connection with the promotion of the bank's fiduciary services and pursuant to 12 CFR 9.18(b)(5)(iv).

14. Ascertain that variable amount notes (VANS) are:

1. Approved as an investment vehicle by an authorized committee.
2. Issued by companies which are prime credit borrowers. A prime credit borrower is one which has Commercial paper or debt obligations outstanding which are rated in one of the two highest categories by at least two nationally recognized rating services (Moody, Standard and Poor's, Fetch).

3. Maintained by the trustee on its premises, unless another location is specifically approved by the OCC.
4. Supported by full information on the capital, debt structure and financial condition of the issuer.
5. Supported by quarterly certifications from the issuing company that notes are not subordinated to any other unsecured debt of the company, that there is no pending litigation affecting such notes, and that the issuer is not in default on the payment of principal or interest on any outstanding obligations.

15. In addition, ascertain that for variable amount notes:

1. Participation records are in balance with the amount outstanding on the note.
2. Debit and credit entries are immediately posted to the borrower's deposit account.
3. The institution or its affiliates do not participate in the loan for their own account.

16. Request management to justify the prudence of the following situations, if applicable:

1. When VANs or master notes total in the aggregate in excess of ten percent of the market value of assets held by the bank's trust department, as of the previous year end.
2. When VANs or master notes issued by a single company are in excess of five percent of the Section 508.3 market value of total trust assets as of the previous year end.
3. When VANs or master notes have "A" and "B" components and the "E3" portion is in excess of 50 percent of the principal amount of the note.

17. Ascertain that CIFs operated pursuant to 12 CFR 9.18(c)(3) are administered so that:

1. The total investment of the fund does not exceed $100,000.
2. The number of participating accounts is limited to 100.
3. No participating account has an interest in the fund over $10,000.
4. The purpose of the fund is not to avoid the provisions of section 9.18(b).

18. Ascertain that short term investment funds are operated in accordance with the following provisions of 12 CFR 9.18(b)(15):

1. At least 80 percent of the fund is invested in demand obligations or notes, bonds, or indebtedness maturing no longer than 91 days from date purchased.
2. Principal is valued at cost, and the difference between cost and anticipated receipt on maturity is accrued on a straight-line basis.
3. Assets are held until maturity under usual circumstances.
4. After effecting admissions and withdrawals, not less than 20 percent of the value of the fund is composed of cash, demand obligations, and assets maturing on the fund's next business day.

19. Discuss with management and prepare report comments on:

1. Policy deficiencies (if considered material).
2. Internal control weaknesses (if considered material).
3. Violations of laws, rulings and regulations and the potential for surcharge.

20. Reach a conclusion regarding the quality and effectiveness of trust department management in the area.

21. Prepare a memorandum and update work programs with any information that will facilitate future examinations.

In establishing a CIF the following questions and criteria apply:

1.

1. a. Reviewed by counsel and approved by the board of directors or by a committee designated by the board?
2. Consistent with the provisions of Section 9.18(b)(1) of Regulation 9?

2. Is the composition of investments in each fund consistent with the stated investment policy?

3. To administer each collective fund in compliance with 12 CFR 9.18, do the procedures provide that:

1. Governing instruments of participating accounts are screened to verify that they do not prohibit investments in CIFS?
2. All CIFs are valued in accordance with the minimum frequency prescribed in the documents establishing the fund, or as required by regulation?
3. All valuations are completed within prescribed time periods?
4. No participation is admitted to or withdrawn from a CIF, except on the basis of the valuation and as of the valuation date?
5. No participation is admitted to or withdrawn from a CIF unless a written request for or notice of intention of taking such action was entered, on or before the valuation date, in the fiduciary records, and approved as prescribed by the board of directors?
6. No request or notice for admission or withdrawal has been canceled or countermanded after the valuation date?
7. Distributions to withdrawing participants are made in cash or ratably in kind, or partly in cash and partly in kind, provided that distributions as of any one valuation date shall be made on the same basis?
8. Overdrafts, as permitted by the regulation, are temporary?
9. The fiduciary does not sell assets to, or purchase assets from, a CIF?
10. No assets of a CIF are invested in the fiduciary's stock or that of its affiliates, or in their obligations, including time deposits, unless the latter comprise funds awaiting investment or distribution?
11. No loans are made by the fiduciary on the security of a participation in a CIF?

12. No funds are borrowed from any source for any CIF?
13. No units of participation in any 9.18(a)(1) fund are held by an agency account?
14. All participations in 9.18(a)(2) funds by employee benefit accounts are authorized by governing instruments or directed by an empowered fiduciary other than the institution? (ERISA 408(b)(4)(B) and 29 CFR 2550.408b-4 of the Department of Labor.)
15. If the institution acquires an interest in a participation in a CIF, the participation was or will be withdrawn on the first date such withdrawal can be effected?
16. Participations in 9.18(a)(2) funds which obtain tax exemption under Section 584 of the Internal Revenue Code are limited to those accounts exempt from Federal income taxation, and trusteed by the subject institution?
17. Participations in 9.18(a)(2) funds which obtain tax exemption under Revenue Ruling 81 -1 00, as amended, are limited to qualified employee benefit accounts for which the bank acts as trustee or agent?

4. Do the fiduciary's procedures provide for the proper administration of CIFs through:

1. Properly diversifying participant holdings to avoid excess dependence on a single participating account?
2. Maintaining, in cash and readily marketable securities, such percentage of the assets of the fund as is necessary to provide for liquidity needs and to prevent inequities among withdrawing participants.

5. Does the institution have exclusive management of CIFS?

6. Does the institution refrain from issuing any certificate or other document evidencing a direct or indirect interest in any CIF?

7. Has the institution verified that the most recent audit of CIFs conforms to the requirements of section 9.18(b)(5) by determining that:

1. Such an audit has been made at least once every 12 months by auditors responsible only to the board of directors?
2. No charge is made to the CIF for such an audit, unless it is performed by independent public accountants?

8. Is a copy or notice of the availability of the financial report furnished to each person to whom a regular periodic accounting would ordinarily be rendered?

9. Does the institution file:

1. An informational tax return, as required by Section 6032 of the Internal Revenue Code?
2. A direct filing with the Department of Labor, which includes the following information: (29 CFR 2520.103-9 of the Department of Labor.)
    - Annual statement of assets and liabilities of the CIF?

- List of all plans participating in the CIF that identifies both plans and sponsors?
- The identification number(s) of the plans?

10. Do the fiduciary's practices for advertising comply with 12 CFR 9, to the extent that:

1. The availability of the annual report for funds administered pursuant to section 9.18(a)(1) is publicized solely in connection with the promotion of the fiduciary services of the fiduciary?
2. Advertisements of funds administered pursuant to Section 9.18(a)(2) do not contain any misleading statements or otherwise raise a question of violations of SEC antifraud rules?

11. Does the fiduciary comply with the requirements of Section 9.18 and applicable rulings for mortgage investments in CIFS?

12. If any investment of a CIF was segregated, do the fiduciary's procedures provide that the investment is being held solely for the ratable benefit of fund participants at the time of segregation?

13. If a defaulted fixed income obligation has been purchased by the fiduciary from a CIF for its own account, do the fiduciary's procedures provide for a determination that:

1. The cost of segregation would have been greater than the difference between its market value and its principal amount plus interest and penalty charges due?
2. The purchase was at market value or at the sum of cost, accrued unpaid interest and penalty charges, whichever was greater?

14. Does the fiduciary charge fees directly or indirectly to accounts participating in CIFs which are not in excess of the amount it would charge if the accounts were not participating?

15. When the fiduciary has established special CIFs for investments, such as covered call options, real estate, real estate mortgages, foreign securities or short term assets, do they comply with the OCC rulings and guidelines on:

1. Eligibility for participation?
2. Fund valuation?
3. Liquidity requirements?

16. When appropriate, do the procedures follow the provisions of Section 9.18(c) for investing collectively in:

1. Fiduciary funds organized and operated pursuant to local statutes authorizing the organization of such companies as in the State of New York?

2. A single real estate loan, a direct obligation of the U.S., an obligation fully guaranteed by the U.S. or in a single fixed amount security, obligation or other property, either real, personal or mixed, of a single issuer by two or more accounts?
3. A variable amount note of a borrower of prime credit on a temporary basis, participation in which is limited to accounts held by the institution as fiduciary in whatever capacity? (The fiduciary may not solicit or accept agency accounts which have been created for the sole purpose of investing in a variable amount note.)
4. A fund for investing cash balances which the institution considers individually to be too small to be invested separately to advantage?
5. Any investment specifically authorized by court order or by a governing instrument in the case of trusts created by a corporation, its subsidiaries and affiliates, or by several individual trustors who are closely related?
6. Any other manner approved by the OCC or applicable regulator?

PORTFOLIO MANAGEMENT

Portfolio management involves establishing and maintaining a portfolio that maximizes returns relative to an investor's ability to bear investment risk. It is an ongoing process by which an investor's objectives, constraints, and preferences are identified to develop explicit investment objectives. Market conditions, relative asset values, and the investor's circumstances are then monitored. Portfolio adjustments are made, as appropriate, in response to significant changes in any and all of the relevant variables.

The goal of the portfolio manager is to manage risk in pursuit of the determined investment objectives of individual accounts. Each account's circumstances and needs should be defined in terms of acceptable levels of risk and rate of return. The portfolio manager must try to meet the needs of the beneficiaries, considering the terms of the governing instrument, restraints of local and Federal law, and applicable rules and regulations.

In developing an investment program, the fiduciary must consider specific investment constraints as well as the overall investment objectives of an account. The following factors must be considered in determining overall portfolio strategies.

Investment Authority

The fiduciary must manage investments in accordance with the terms of the governing instrument, which is the primary determinant of a fiduciary's powers and duties. The fiduciary may have sole authority in making investment decisions or joint authority with another co-fiduciary. Where required by the governing instrument, an authorized party may have to approve an investment decision or the trustee may have to consult with other designated persons. If the instrument is silent as to authorized investments, the trustee is

guided by provisions of local law. The terms of the instrument may set forth various types of unusual or restrictive investment provisions, such as:

- Prohibit the purchase or sale of a particular security or one in a particular industry.
- Require the fiduciary to purchase only certain authorized securities or limit investments in one asset or asset category to a specified amount to avoid a concentration.

Whenever the corporate fiduciary's actions are contrary to provisions of the governing instrument, local law or applicable rules and regulations, it is exposed to potential liability through beneficiary litigation.

Exercise of Reasonable Care

The fiduciary must be able to demonstrate that it acted properly under the standard for fiduciary investments established by local law in its jurisdiction. Although standards for fiduciary investment vary from state to state (some state statutes specify "legal lists" of authorized fiduciary investments), the overwhelming majority of states have adopted some variation of the common law rule of prudence. The prudent person rule was originally stated in the Harvard College v. Amory decision and has been restated by various authoritative sources. Although language of individual state statutes vary, they follow the general theme of the prudency test as it has evolved under the common law.

Harvard College v. Amory stated the prudent man rule as follows:

All that can be required of a trustee to invest is that he shall conduct himself faithfully and exercise sound discretion. He is to observe how men of prudence, discretion and intelligence manage their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds considering the probable income as well as the probable safety of the capital to be invested. [Harvard College v. Amory, 9 Pick (26 Mass.), 446 (1830).]

The rule was stated later by Professor Austin Scott as follows:

The only general rule which can be laid down as to investments is that the trustee is under a duty to make such investment as a prudent man would make of his own property having primarily in view the preservation of the estate and the amount and regularity of the income to be derived. In various forms this rule has been stated in innumerable cases. It involved three elements, namely care, skill and caution. The trustee must exercise a reasonable degree of care in selecting investments. He must exercise a reasonable degree of skill in making the selection. He must, in addition, exercise the caution which a prudent man would exercise where the primary consideration is the preservation of the funds invested. (A. Scott, Law of Trusts, 3rd ed., 1967)

Employee benefit accounts are governed by the Employee Retirement Income Security Act of 1974 (ERISA). ERISA establishes a prudent person rule for employee benefit accounts, known as the Federal prudent person rule, which differs from the common law standard. The major distinguishing difference is that the prudence concept is applied to the total portfolio rather than to individual investments within the portfolio.

Beneficiary Needs

In structuring account portfolios, the trustee should consider carefully the personal circumstances of the beneficiaries. Once the needs of the beneficiaries are established, the trustee can establish specific portfolio objectives. The more important considerations in determining their needs are:

- Need for Income. A fiduciary must determine the amount of income that the beneficiaries need from the portfolio to maintain their desired standard of living. Often, this determination involves weighing the needs of income beneficiaries against the legitimate interest of the remainder beneficiaries in preserving and increasing the account assets. Strategy must then be formulated to produce a minimum level of income, even under adverse conditions. The fiduciary must be aware of beneficiaries' income and expenses from other sources and maintain ongoing communication with the beneficiaries.
- Need for Principal Distributions. The need or likelihood that principal distributions will be made in the future also must be considered by the portfolio manager.
- Tax Status of Beneficiaries. If the beneficiaries or the fiduciary account is in a high tax bracket, investment in tax-exempt securities, such as municipal bonds or other forms of tax-shelters, should be considered. Although tax consequences of retaining, purchasing and selling securities should not be the primary determinant for investment decisions, the ability to minimize taxes may have a significant effect on an account's total income.
- Loss of Purchasing Power. Due to inflation, the loss of purchasing power in recent years has varied from three percent to over ten percent annually. Unless a fiduciary account is established for a short period of time, the fiduciary must consider investments which will appreciate and preserve the purchasing power of fiduciary accounts.
- Human Dimension of Portfolio Management. A fiduciary must keep in mind the temperament of individual beneficiaries. Investment policy may be influenced by what individual beneficiaries want, fear and hope for. Investment objectives that the beneficiaries indicate they want to follow, may be quite different from those they are able to live with. The knowledge that the beneficiary will be disturbed by a loss in market value may be one reason for the fiduciary to minimize that risk. The extent to which investment policies should be modified by considerations relating to the temperament of the beneficiaries is a question of judgment.
- Estimated Termination Date of Account. The investment objectives established for fiduciary accounts must relate to the estimated length of time the fiduciary account will be in existence. Establishing long term investment goals for fiduciary

accounts which will terminate within a relatively short period would be inappropriate.

Risk Management

Over the past 30 years, the focus of fiduciary investment management has gradually shifted from a primary emphasis on individual asset selection to a more balanced emphasis on portfolio diversification and the interrelationship of individual securities, and their particular characteristics within the portfolio as a whole. Thus, the theory of structuring a portfolio has significantly altered the practice of investment management. A successful portfolio manager must structure investment portfolios which meet the investment objectives of the account while providing adequate protection against risk.

There are many different types of risks; however, for purposes of this discussion, they can be classified into three general areas: market, industry and issue.

Market risks are inherent and cannot be eliminated completely. However, they can be managed through appropriate portfolio diversification, such as multiple market portfolios. Cyclical movements in a particular market sector can be offset with investments in other markets experiencing dissimilar market fluctuations. This is an important reason behind diversifying internationally. The stock markets and currencies of different countries fluctuate, but at different times and for different reasons.

In a dynamic economy, certain industries may experience superior growth in both sales and profits while others sustain relative decline. Products of particular industries can become obsolete in the face of rapid technological development. Decisions to invest or retain investments in particular industries should be evaluated periodically in light of current industry developments and long term industry trends.

Despite the relative prosperity of a particular industry, individual companies within that industry may fail to meet anticipated investment performance. Earnings of individual companies may suffer because of internal corporate problems, such as a decline in management capabilities. In an attempt to limit the risk of a particular issue, investors may choose to concentrate on industry leaders to reduce the likelihood of serious earnings decline.

A fiduciary account should be managed continuously to achieve its established investment objectives. When individual accounts are reviewed, consideration must be given to whether securities should be retained, sold or purchased. Policies regarding portfolio composition also are influenced by the level of prices prevailing for different types of investments and the current structure of security yields. Changes in prices and yields often produce the need to change the asset mix. In a majority of portfolios, asset mix is one of the more important determinants of performance. Although many investment managers concentrate on stock selection, specific stocks held may not have nearly as much impact on total performance as will the overall level of equity commitment.

There are various investment strategies which may be used by a fiduciary. A conservative strategy is designed to minimize risk. It is intended to provide stability of income and principal, and afford as much opportunity for appreciation in principal as may be consistent with portfolio objectives. Aggressive strategies are designed primarily to provide large financial returns to the individual portfolio, either in terms of yield or in appreciation of principal. A greater degree of investment risk and wider tolerance for losses is required with that approach. Additional investment considerations which may affect the trustees selection of appropriate investment policies include:

- Safety of principal.
- Diversification.
- The generation of income.
- Capital appreciation.
- Marketability.
- Liquidity.
- Maturity in the case of debt investments.
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The trustee must have systematic procedures for identifying and meeting beneficiary needs. Beneficiaries desire the highest return possible on their portfolios. However, the pursuit for larger returns is limited by the inability of beneficiaries to tolerate the negative investment characteristics of some securities. This inability also constitutes a limit for establishing individual portfolio objectives. Portfolio policy is also a plan for the future. The analysis of investment requirements must consider probable future changes in the financial circumstances of the income beneficiaries and remaindermen.

Individual portfolio management is central to investment supervision. It is only in the context of a particular portfolio, and the realistic objectives of the particular account beneficiaries, that individual securities and specific investment decisions can be understood fully and correctly. It is in that context that fiduciaries have learned that their objective is not to manage rewards, but to control and manage risks.

Generally, the portfolio management policies should be responsive to the following questions and criteria:

1. Is it policy for management and/or senior investment personnel to review overall investment policy and potential investment problems at least annually?

2. Is it to communicate portfolio management policy to appropriate personnel by including it in committee minutes, directives, and memoranda?

3. Does the institution have an investment policy which is formulated to make the best use of quality investments in various types of accounts for which the fiduciary has investment responsibility?

4. Are the provisions of the governing instrument, local law, regulation, court order, rulings and sound fiduciary principles complied with as to:

1. Managing a portfolio?
2. Investments presently held?

5. Does the institution have a policy of diversifying investments according to:

1. Types of securities or other assets, such as common stocks, fixed income securities, real estate mortgages and real estate?
2. Types of securities according to characteristics, such as income, growth, and size of the company?
3. Types of securities according to industry and specific companies within industries?
4. Maturities of debt securities?
5. Geographic location of companies of issue, such as utilities?
6. Tax exemption of income?

6. Does the institution consider the liquidity needs of the account for anticipated distributions?

7. When deposited assets are considered unsuitable for an account, does the institution have a program of prudent and timely conversion of such assets?

8. Does the institution monitor:

1. The execution of investment decisions for purchases or sales for individual accounts?
2. The frequency of investment changes to avoid excessive trading practices?

9. Does the institution ascertain that the retention or purchase of concentrations in securities of a single entity are authorized by the terms of the governing instrument or by local law?

10. In accounts where a power holder other than the fiduciary has the authority to make investment decisions, does the institution:

1. Review the account to detect illegal, non-conforming, substandard or otherwise unsuitable investments?
2. Advise the power holder of any impropriety of an investment?
3. Inform parties-at-interest in the account if any improper investment is not disposed of and seek court relief, if necessary?
4. Resign from the account if corrective action is not taken concerning improper investments?

11. Does the institution have a policy against making improper investments for fiduciary accounts requested by a party not authorized by the terms of the governing instrument to manage or direct investments?

12. Does the institution prohibit making loans to participants in CIFs secured by units of those funds?

13. If funds are deposited in savings or time deposits at other institutions, does the institution:

1. Consider the legality and prudence of deposits which exceed deposit insurance limits?
2. Seek the highest interest rate available for such funds?

14. Does the institution review account assets in accordance with the provisions of 12 CFR 9.7:

1. Promptly upon the acceptance of each new account where the fiduciary has investment responsibility? (Promptness is determined by the nature of the assets and the time required to marshall them; however, it should not exceed 60 days, under normal circumstances.)
2. After the initial review, at least once each calendar year and within 15 months of the previous review?

15. Do minute books or other records:

1. Identify reviewed accounts?
2. Report written conclusions on the advisability of retaining or disposing of assets in the accounts?

16. Does the institution utilize account synopses and historical data in the review of account assets?

17. Does the account investment review information include:

1. Categories of investment, such as bonds and stocks?
2. Types of investments within each category, such as industry groups for stocks?
3. The amount and description of each investment?
4. Cost?
5. Market or appraised value at review date?
6. Annual income?
7. Yield at market?
8. Ratings of recognized financial service (if applicable)?

ACCOUNT ADMINISTRATION

Fiduciary departments perform a wide variety of fiduciary services for a diverse client market, which includes persons, corporations, charitable organizations, and state and local governments. Accounts administered by a trustee are classified broadly into two types: personal trust accounts and institutional accounts. Personal trust accounts, generally administered for persons, include:

- Estates.
- Guardianships.
- Testamentary trusts.
- Inter vivos trusts.
- Agencies.

The following discussion reviews the duties and responsibilities of the fiduciary in the administration of personal accounts.

Court Supervised Accounts

The administration of estates and guardianships is supervised by an appropriate court, which reviews and approves all acts of the fiduciary. Such judicial supervision is designed to protect the interests of the deceased, minors, incompetents, and unknowns.

In administering estates, the fiduciary is required to follow the instructions of the deceased's will. If the decedent did not have a will, he/she is considered to have died intestate. In that case, provisions of the probate code of the decedent's domicile govern the administration of the estate.

Letters of administration issued by the probate court are required for the trustee to commence administration of the estate. The executor acquires his/her powers, duties, and responsibilities by appointment of that court. Administration of the estate continues until a final accounting has been filed and approved, and the executor is discharged formally.

When appointed by the court, the executor assumes responsibility for safekeeping all assets of the estate. Therefore, the fiduciary must immediately identify and assume control of all assets to assure that they are adequately safeguarded and insured. In addition, the executor is required to file an inventory and appraisal with the appropriate court. The inventory and appraisal aid in establishing the value of estate assets for tax and distribution purposes.

Once the inventory and appraisal have been filed, the executor must pay all taxes, debts and administrative expenses and distribute the net estate in accordance with the terms of the will and/or local law. The executor has the power to sell assets to pay claims, taxes and administrative expenses. Depending upon local law and the terms of the will, the executor may invest assets during administration. The executor should pay all legitimate claims and expenses, as soon as they are presented for payment. Occasionally, an estate

may be insolvent; that is, the claims may exceed the value of the estate. In those instances, the state's probate law will specify the priority for paying claims, administrative expenses, and support to the family during administration. After all expenses chargeable to the estate have been paid, including appropriate Federal and state taxes, the executor can begin to close the estate.

The termination of the estate requires a final accounting to the court. After the court has approved the final accounting, it will issue an order, often called the Decree of Distribution, directing the executor to distribute the net estate to the beneficiaries. The executor is responsible for delivering the assets to the beneficiaries and for properly transferring ownership. When the distribution is complete, the executor will present receipts and a supplemental final accounting to the court requesting that the estate be closed and that the executor be discharged. When the probate court finds that the supplemental final accounting and receipts from all beneficiaries are in order, it will issue an Order of Discharge.

A guardian is appointed by the court to protect the estate of a person who is mentally or physically incapacitated or who is not of legal age. A guardian may be responsible for the care of the person and their property or the court may appoint a separate guardian for both the ward's person and his/her property. A national bank trustee should normally only be appointed guardian of the property.

Under a guardianship arrangement, the ward is the beneficial owner of the property, but the guardian has certain powers derived from the court for those assets. The guardian's two main objectives in managing the protected person's property are to meet the needs of the person and conserve the assets. As the guardianship is subject to court supervision, accountings must be filed in accordance with local law.

The guardianship terminates on the death of the ward, a minor reaching legal age, or when a ward is declared competent by a court.

Personal Trusts

A trust is a fiduciary relationship by which legal title to property is held by one person or corporation for the benefit of another. A trust separates the responsibility of ownership of specific property from the benefit of ownership. The person who has the responsibility of ownership is called the trustee and holds legal title to the specific property; the person who has the benefit of ownership is called the beneficiary and holds equitable title. The specific property which is the subject of this divided ownership is called the trust res or the trust property.

The two most common types of trusts administered by a financial institution are living (inter vivos) and testamentary trusts. The primary distinction between the two is the manner in which they are created. Living trusts are created by an agreement between a living person and a trustee. A testamentary trust is created by the provisions of a

decedent's will after appropriate court approval is received. A probate court usually has continuing jurisdiction over a testamentary trust.

Responsibilities of a trustee include:

- Preservation of the assets composing the trust.
- Management of assets to provide income.
- Distribution of income to designated beneficiaries.
- Accounting for all actions.
- Counseling the beneficiaries.

The fiduciary's powers should be stated clearly in the trust instrument. The absence of clearly defined powers may cause uncertainty and delay, impair investment performance, and prevent the trustee from taking actions in the best interests of the beneficiaries. Local law may give the trustee certain powers to administer the trust in the absence of clearly defined instructions in the governing instrument. Common provisions within the governing instrument include the power to purchase, retain and sell fiduciary assets. Specific powers should be included for the management of real estate and other miscellaneous assets.

The instrument should provide for:

- The use of nominee names.
- Safekeeping.
- Allocation of principal and income.
- Payment of fees.
- Power of the trustee to resign, if necessary.

An inter vivos trust may be revocable or irrevocable depending upon the terms of the governing instrument. A revocable trust is one in which the settlor reserves the right to terminate the trust at any time and have the trust property transferred to his/her possession. An irrevocable trust is one in which the settlor does not reserve the right to reclaim the property. Under common law, if the instrument is silent regarding revocation, the trust is assumed to be irrevocable.

A testamentary trust is, by its nature, irrevocable, as it is created by terms of a will upon the death of a person. However, provisions of a trust agreement may designate persons with the power to terminate the trust or to appoint alternate trustees.

Termination of a trust is governed by specific provisions of the governing instrument. Several states have adopted statutes which limit the duration of trusts. In addition to state statutes, the common law rule against perpetuities should be considered when establishing a trust. The rule against perpetuities relates to the time period within which a future interest must vest.

Agencies

Although an agency is a fiduciary relationship that may involve the management of property for others, there are two basic distinctions between it and a trust relationship:

- The agent ordinarily is not the owner of the property for the benefit of the principal and as such, does not hold title to the property. A trustee holds title to the property for the beneficiaries.
- An agency usually is revocable at the option of the principal and is revoked by the death of either party. A trust may be irrevocable and continue beyond the death of a settlor or beneficiary.

There are several different types of agency accounts:

- Managing agency -- Generally authorizes the bank to exercise full investment discretion.
- Directed agency -- The agent acts in an advisory capacity only and executes investment changes only upon the direction of the principal.
- Safekeeping and custody -- The agent maintains custody of assets, does not act in an advisory capacity and generally does not execute investment changes for the account.

Generally, duties of the agent may include:

- Collecting the principal of matured or called bonds.
- Collecting and distributing income.
- Accepting possession of securities for safekeeping.
- Notifying customers of calls, subscription rights, defaults, etc.
- Providing periodic account statements.

Generally, the fiduciary's policies should meet the following criteria and be responsive to the following questions:

1. For personal, estates and agency accounts, does the institution obtain original or authenticated copies of:

    1. Evidence of appointment, such as trust or agency agreements, wills, letters of office from the court, or similar documentation?
    2. Evidence, such as receipts, inventories and appraisals for court accounts, or schedules of assets delivered to the fiduciary or the institution's control for the custody and protection of which it is responsible?

2. Are fiduciary accounts accepted only:

    1. With the prior written approval of the board of directors or directors, officers or committees to whom the board has assigned that responsibility?
    2. After ascertaining that:

- The governing instrument presents no present or foreseeable problems of construction?
- The account can be administered to achieve the purpose for which it was established?
- Conflicts, real or potential are identified?
- The account will be profitable?

3. Does the institution have a policy against giving assurances in connection with fiduciary activities, such as guarantees of investment quality or return from investments?

4. Before accepting an appointment as a successor fiduciary, does the institution take proper action, which is appropriately documented, to prevent the assumption of liability for acts of the predecessor fiduciary?

5. To assist it in complying with the terms of governing instruments, the purpose of the account, law, regulation and sound fiduciary and business principles, does the institution establish:

1. Checklists of data required to establish accounts?
2. Synopses of governing instruments, including investment and retention powers, income remittance, dispositive provisions, corpus invasion and other important authorizations?
3. Record of names of parties-at-interest, cofiduciaries, and statistics pertaining to appropriate parties and other historical data?
4. Tickler files or their equivalent relating to the preparation for and timely execution of future duties, such as:
    - Income remittance?
    - Principal distributions?
    - Insurance expirations?
    - Taxes due?
    - Collection of fees?
    - Receipts of dividend, interest and other income?
    - Allocation of principal and income according to local law?
    - Closing of the account?
5. Adequate controls for the recording of account liabilities?
6. Adequate filing and record keeping systems?

6. Do checklists, synopses, ticklers and similar memoranda accurately represent the powers, dispositive provisions and other conditions contained in the governing document?

7. Do the above provide the data required to administer the account?

8. Does the institution observe local law and/or terms of the governing instruments in allocating cash to income or principal?

9. Does the institution receive proper and timely written authorizations from co-fiduciaries or others whose approval or direction may be required for important actions, such as:

1. Investment decisions?
2. Distributions of principal or income?
3. Choice of legal counsel?
4. Employment of outside agents for the management of assets?
5. Payment of major expenses, fee charges, or other disbursements?

10. If the institution acts as co-fiduciary with an individual, does it supervise the accounting and management of the account?

11. If assets of a co-fiduciary account are held in safekeeping separate from the institution's vault and control, do the procedures provide that the assets are subject to the joint custody of the institution and co-fiduciary?

12. If the institution acts as co-fiduciary with another institution, does the subject institution have a policy of maintaining adequate records to protect it from a possible charge of negligence in the discharge of its fiduciary duties?

13. Does the institution file timely accountings or other advice of investment transactions and holdings with the court or others entitled thereto, such as principals of agencies, settlors, trustees, beneficiaries and other investors?

14. Do procedures provide that account ledgers indicate where assets are held if they are deposited with other banks, agents or depositories or are used as collateral for a loan?

15. In estates held open for an unusual length of time, do the policies and procedures provide for distributing as much of the assets as possible?

16. When accounts, other than estates, are terminated in whole or part, does the institution:

1. Distribute assets on a timely basis?
2. Comply with local escheat laws, where applicable?

17. With respect to the voting of proxies for stocks held in accounts for which the fiduciary has investment responsibilities, does the institution:

1. Have a written policy which outlines its position on voting proxies and the handling of social issues and other controversial matters related to it?
2. Unless the proxy was passed on to an authorized party, maintain a record of the date it was voted or the reasons for not voting it?

Asset Quality Ratings

All assets of significance should be assigned a quality rating based on the institution's best judgment concerning the degree of risk in the asset. In determining what assets are to be criticized, the rater must utilize mature credit judgment. No formula covers all the various types of assets, leases, contracts or credits of or made by the fiduciary.

The longer the contractual right, the greater the risk of some adverse development. Term lease and contract repayment is anchored to past performance and projections of future operations. Failure to meet projections is a credit weakness but does not necessarily mean the asset should be classified. Failure to generate sufficient cash flow to service the obligation is a well defined weakness that jeopardizes the performance of the asset or debt and, in most cases, merits classification. The extent of shortfall in the operating figures, the support afforded by assigned collateral, and/or that provided by cosigners, endorsers or guarantors should influence the severity of the criticism.

Even a lease or contract or credit that is current and supported by underlying collateral or contingent obligors may be criticized. Significant departure from the intended source of liquidation may merit criticism because repayment terms may have originally been liberal and delinquency may have been technically cured by modifications, refinancing or additional advances. Conversely, not all delinquent obligations should be classified. The original source of repayment and the obligor's ability to utilize it should be a determining factor in criticizing an asset. Undue reliance on secondary sources should be questioned for specific leases and contracts and credits and the policy permitting such a practice should be investigated. Criticized assets are categorized into the four following classifications:

- *Other Assets Especially Mentioned (OAEM).* Assets in this category are currently protected but are potentially weak. Those assets constitute an undue and unwarranted credit risk but not to the point of justifying a classification of substandard. The credit risk may be relatively minor yet constitute an unwarranted risk in light of the circumstances surrounding a specific asset. An OAEM classification should not be used as a compromise between pass and substandard.

Other assets especially mentioned have potential weaknesses which may, if not checked or corrected, weaken the asset or inadequately protect the credit position at some future date. Assets which might be detailed in this category include leases or contracts that the officer may be unable to supervise properly because of a lack of expertise, an inadequate asset agreement, the condition of and control over collateral, failure to obtain proper documentation or any other deviations from prudent practices. Economic or market conditions which may, in the future, affect the obligor may warrant mention of the asset in the institution's rating system and in the credit examination report. An adverse trend in the obligor's operations or an imbalanced position in the balance sheet which has not reached a point where the payment stream is jeopardized, may best be handled by this classification. This category should not be used to list assets which bear risks usually associated with the particular type of financing. Any type of asset, regardless of collateral, financial stability and responsibility of the obligor involves certain risks. Each asset has a certain risk, but to criticize such an asset it must be evident that the risk is

increasing beyond that at which the lease or contract or credit originally would have been granted.

Substandard Assets. A Substandard asset is inadequately protected by the current sound worth and paying capacity of the obligor or of the collateral pledged, if any. Assets so classified must have a well-defined weakness or weaknesses that jeopardize the liquidation of the debt, lease or contract. They are characterized by the distinct possibility that the institution will sustain some loss if the deficiencies are not corrected. Loss potential, while existing in the aggregate amount of substandard assets, does not have to exist in individual assets classified substandard.

Doubtful Assets. An asset classified doubtful has all the weaknesses inherent in one classified substandard with the added characteristic that the weaknesses make collection or liquidation in full, on the basis of currently existing facts, conditions, and values, highly questionable and improbable. The possibility of loss is extremely high, but because of certain important and reasonably specific pending factors which may work to the advantage and strengthening of the asset, its classification as an estimated loss is deferred until its more exact status may be determined. Pending factors include proposed merger, acquisition, or liquidation procedures, capital injection, perfecting liens on additional collateral and refinancing plans.

Loss Assets. Assets classified loss are considered uncollectible and of such little value that their continuance as assets is not warranted. This classification does not mean that the asset has absolutely no recovery or salvage value, but rather it is not practical or desirable to defer writing off this basically worthless asset even though partial recovery may be effected in the future. Losses should be taken in the period in which they surface as uncollectible.

Generally, criticized asset write-ups are prepared to inform the Board of Directors of asset weaknesses within the institution. Write-ups should cite examples of liberal leasing and contract policies; out-of-area leases and contracts; poorly structured leases or contracts; and problem assets externally or internally identified by asset credit reviews.

When a write-up is required, the rater must present, in written form, pertinent and lucid comments relating to leases and contracts and contingent liabilities subject to criticism. A thorough understanding of all factors surrounding the asset is required, so that only those germane to the asset’s collectibility are included. Brevity must not be accomplished by failure to present adequate and pertinent information. The essential test is whether the comments support the classification.

When portions of the line of credit are assigned different classifications, or are not classified, the comments should clearly set forth the reason for such split treatment. Ineffective presentation of criticized assets weakens the value of a write-up and frequently casts doubt on the accuracy of the classification. The borrower's total outstanding liability, including contingent liability and those portions of leases or

contracts or other assets in which others participate, must be listed even though only certain portions are to be criticized.

Detailed Asset Comments

A standard format for detailed asset comments should be developed. The asset write-up should consist of four distinct parts, including a heading with identifying factual problems causing the criticism. The heading should contain:

- The outstanding balance.
- The type of asset.
- The name of obligor.
- The type of business.
- The amount(s) classified.

The first part of the narrative describes the credit and summarizes the collateral package and other support for the credit. The purpose of the credit, terms, restructuring, collateral (including valuation), and line history are included in the description. Guarantors are also discussed. Other pertinent details consist of delinquency and nonaccrual status. Financial information and its significance to the obligor's financial status are covered in the second part of the narrative. Comments pertaining to key financial information should highlight credit weaknesses and support the criticism

Financial data should be included in the write-up only to exemplify the weaknesses inherent in the credit. Financial statement details and historical comparisons add confusion and detract from the write-up. The writeup should include conclusions regarding the financial information rather than force the reader to interpret the significance of statement detail.

The cause of the credit problem and its effect on sound worth and paying capacity are covered in the final part of the narrative. Economic conditions, industry problems and other external factors are stated, if required, to support the classification. Actions taken to strengthen the credit or obtain repayment are included in this section. The final part contains the justification for criticism. Reasons for split classification and explanations for portions of the credit not criticized are also appropriate. Specifics, as opposed to vague generalizations, are preferred, and truisms should be avoided. The final section should always conclude with a sentence summarizing the criticism and the reason(s) for it.

The necessity for additional comments within the loan write-up will depend on the presentation of the criticized credit. If the rater has properly conveyed sufficient information to support the classification, additional verbiage will only detract. It should be mentioned again that raters must use ingenuity, technical ability, and common sense in commenting on credits. In the final analysis, however, the essential test to determine a properly presented criticized asset is that the comments justify the classification.

LAND RECORDS AND TITLE RECORDATION AND CERTIFICATION SYSTEM

Review and Analysis of Data in Land and Lease Management System and Associated Training

Land Title and Records Offices provide a public record of the chain of title relating to real property allotted to and held in trust for individuals pursuant to various treaties with Indian Tribes and acts of Congress relating to individual Indians. The record keeping systems for LTROs include the Land Record Information System and Property Index. LRIS is an electronic information system and the Property Index is manually maintained.

Inputs are based on documents submitted by various authorities outside of LTRO for the purpose of being recorded against a property or properties. Most documents submitted for recording originate from an Agency Office or, in the case of compact agreements, Tribes.

Outputs of an LTRO generally consist of a certified Title Status Report (TSR), a certified inventory of property held by a decedent, and uncertified indications of ownership by property or by individual.

While a given LTRO may only certify properties located within the boundaries of its Area Office, uncertified ownership information may be obtained across Area Office data bases to provide an indication of ownership for an individual having trust property in multiple areas.

In comparison with public land record systems utilized under the jurisdiction of states, an LTRO combines the functions of a registrar of deeds and a title abstract company. However, the scope of an LTRO goes beyond these institutions in that an LTRO may give an opinion in the case of ownership disputes.

Ownership of land is also recorded by agencies on systems such as IRMS Ownership. A noted distinction of differences between the LTRO function and functions provided by systems such as IRMS Ownership is that the LTRO allows for public inspection of land title under certain circumstances while the IRMS Ownership information is subject to higher degrees of confidentiality.

A review of the Automated Land Management Records System was performed by the Office of the Special Trustee and the outside contractor. Based on those reviews, it appears that the ALMRS is not a replacement for LRIS but, in fact, a complementary system and an effective source for official legal descriptions of the Indian properties and related data. ALMRS is still in the development stage. Specifics regarding an implementation schedule were not yet available. ALMRS provides no ownership information and therefore cannot be used as a substitute for LRIS, which, as stated above is a workable system for the present and near term. ALMRS has limited utility in replacing the basic IRMS system which is obsolete and must be replaced.

Gaps in the LTRO Function

A need for improved data flow between the LTRO and the mainframe in Albuquerque was articulated by interviewees of the outside contractor. Apparently the LRIS-2 project was to correct such deficiencies but was halted in the middle of the project.

Interviews indicated that guidelines for determination of whether a document should be recorded may not be applied uniformly.

Theoretically, LRIS and IRMS Ownership records should agree as to ownership, subject only to a timing difference in a document being recorded by LRIS and posted by the Agency. In one case, LRIS reflected that an individual had an interest in only one property (tract) when the IRMS Ownership reflected that the same individual had an interest in more than 30 properties (tracts). This difference was not due to timing since the most recent document date on either system was 1992.

Field data suggest that the LTRO function is adequately supported with the current LRIS application. What is missing is sufficient training, and appraisal and probate backlogs are creating barriers to effective performance of the system. The existing appraisal and probate backlogs are exacerbated by a significant lack of qualified personnel to perform the tasks on a timely basis at all levels in the process chain. If these issues were properly addressed with additional human resources allocations, the LTRO organization could provide the information necessary to enable LRIS application to be fully effective. These findings are derived specifically from site visits to the Area Offices of Billings, Aberdeen and Anadarko. Software improvements to the LRIS system, while needed to improve the interoperability at the end-user level, should be a second priority after the re-engineering of the trust management system. Nevertheless, while not an immediate priority, the LRIS system will need upgrading in the near term. This is because each time ownership changes, the LTRO staff must perform time-consuming manual determination and documentation of ownership interests. LRIS, as designed, is not capable of performing automated chain-of-title calculations and it does not store chain-of-title or calculated ownership information. LRIS system improvements have been delayed for the past two years due to reduction in force and budget cuts. Provision for the upgrade of LRIS to LRIS-2 has been provided in the Strategic Plan over the medium term.

LTRO staff universally want more training on information systems. Some personnel are not sufficiently familiar with computers and lack on-site systems support, especially at agency and tribal locations. Some paralegal training would be helpful, especially related to probate functions. Other areas for training include real estate, accounting, property management, and appraisal, as well as a comprehensive overview of the trust process.

Calculation of Fractional Interests

A current system enhancement that would be beneficial would relate to the calculation of fractional interest for the heirs or beneficiaries of a deceased Indian. In the current environment, the LRIS system makes an automatic calculation of the new fractional share up to the 35 decimal places, if that is necessary. At the present time there is no such automatic calculation within the IRMS Ownership system. It is currently being done manually with some difficulty since most calculators will not go out that many decimal places. There is an impression that what staff members do is obtain the LRIS calculated fractional share and then enter that in the IRMS system. A system enhancement that would make the calculation process existing on LEIS available to the IRAS system would be desirable.

An additional suggestion was to consider the universal or global change order of interest in land and interest Indian property rights. In four current, separately-operated systems (IRAS Ownership, I'M, People and the Royalty Distribution Records System) the common identification of Indians is by their ID numbers throughout the system. The universal change order that would provide for the one-time systems input of an ID number, would go a long way in avoiding some of the problems that are

currently being encountered. The current procedure and validation controls, for ID number assignment are either insufficient or need tighter management. This requires further research for clarification.

Other field comments supported the regulation on special requirements to pay owners directly for oil and gas, and mineral interest, particularly 25 CFR 162.5 Section F. Others appear to favor some methodology and procedure that would require a proof of payment to the owner so as to avoid problems in determining whether owners have been receiving the correct amount of payment or payment at all. The rate of payment from the lessee is also an issue that arises in some of these problem areas. An additional concern is when an Indian actually uses land and he is a co-owner with other Indians or non-Indians. This may arise when property is inherited and four or five siblings have an undivided interest in the property represented by their fractional share. There are specific provisions in 25 CFR 162.2 as to the ability of a co-owner to use the land himself or herself. The problem arises when one of four or five siblings uses the land for grazing, farming, etc., but does not share the profits or rewards of such usage with the other siblings.

Summary

Land Titles Records Office Status:

The priorities established by the Strategic Plan between the two major systems comprising Trust Asset and Accounting Management require that the highest priority be given to the Trust Asset and Accounting Management System. This is the logical outcome based on the findings and review of the Land Title and Records Office concluding that the present system is adequate for the near term. After that time the LTRO system will need to be upgraded and improved. However, several streamlining efforts must be undertaken in the near future in order that the LTRO is adequate for the short term.

First, the recordations that are being preformed must be streamlined and reduced to those actions that specifically impact the title or ownership. Therefore, recordation of leases must be halted. The lease will be tracked through the Trust asset and accounting management system, not through the LTRO system. Second, priorities of importance must be established in supporting other activities and reports run to support those activities. For example, Title Status Reports in support of payments at the agency must have priority as well as inventory request in support of the probate activity must have priority. Third, the backlogs of recordation must be addressed and reduced along with the problem of staff turnover. Fourth, a clean-up of the LTRO data must be implemented to identify those tracts of land that are out of unity (ownership equals 1/1) and initiate a research effort to bring unity to the tract. This research may require going back to title record 01 (original allotment) and coming forward until unity is achieved. Fifth, the probate backlogs must be addressed and resolved. The above actions except for items one and two will need to be achieved through increased funding with outside assistance or through increased fte or both. Consolidation of the LTRO offices into one needs to be analyzed as such a consolidation would have the following benefits: (1) create a nation wide LTRO function allowing duplicate records to be identified and cleaned up; (2) through economy of scale provide more expertise and reduce the turnover rate; and (3) will level the workload that varies between the existing LTRO's.

LRIS-2 Redesign/Reimplementation:

The redesign of LRIS called LRIS-2 needs to begin immediately in order that the new system will be operational in the third out year. The system needs to be upgraded to a more modern version and must include the ability to provide historic listing of owners at any point in time. Additionally, it must

operate in the same systems architecture as the Trust Asset Management and Accounting System and of course interface with that system. Specifically, the Land Records History and Imaging System (LHIS) will be developed to automate the chain-of-title and determination process, the title document imaging and management process, and the land title status mapping process. The systems will distribute and maintain land, ownership and title document data at the agency-field office, the LTR program office, and the AITDA level. The systems would also receive and process transactions (i.e., final title document transactions for determination and certification) from the agency-field office.

The land records and title recordation and certification system will be revised and implemented according to the above concepts and will interface with all trust management systems. This will involve acquiring a new land records and title recordation and certification system, capable of instantaneous linkage with the Trust Asset and Accounting Management System.

System Architecture:

AITDA Data Comm Network

The AITDA network is a simple approach using the latest commercial capabilities where available. All users with access to the AITDA network will be equipped with encryption to establish data security between points. In the communications network all data will be encrypted regardless of data type when it is sent to the network All data received will automatically be decrypted upon receipt.

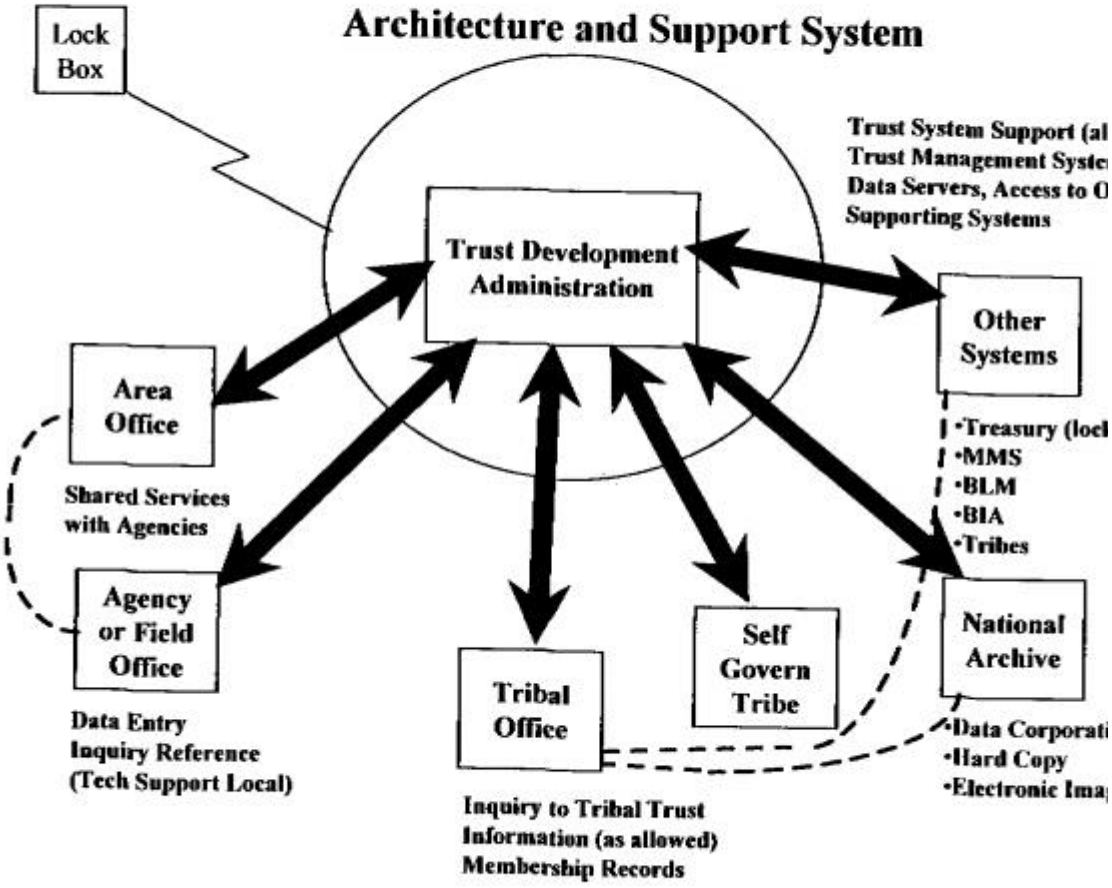
AITDA's data communication configuration should be viewed as a four part network. The first link is from the Tribes to the AITDA network switch and is a link with a capacity equivalent to a commercially available Internet link, except that the throughput will be much greater because competition for access time will be limited to AITDA users only. Simple 33.6 Kb data/fax modems are used at this level. Each Tribal location will have primary and secondary systems access numbers programmed into the Tribal PC communications control program.

The second part will provide service to the Field, Region, NIFRC, and AITDA-HQ users and will be the equivalent in its basic configuration to a capacity six times greater then that of the PC user at a Tribal access location. This link will have the capability of shrinking or swelling to a size like a satellite link to meet the needs of the moment. The communications capability has been raised at this level to higher capacity connections to support ETD’s volume switching capabilities. The line capabilities are provided by the communications vendor and do not affect AITDA's support budget. The alternate routing is also provided by the vendor, so that in the event of a disaster, natural or contrived, there are secondary and tertiary routes to communications nodes required.

In addition to the alternate routing, the AITDA HQ switching control center manages and routes all calls to their desired destinations. Access can be denied to unauthorized access inquiries. All calls will be documented and statistics kept as to the number of calls from and to each point, number of inquiry by type, number of responses by type, etc. The network utilization information and the access security features will provide information for management planning and performance measurement relative to the volumes of work being reported and performed.

The network's third part is the link or inter-face with other information systems and is somewhat dependent upon the installed base at BLM, MMS, and LTRO but is minimally equivalent to that of the PC lines installed at Tribal level. Like the second part, it will have the capacity to shrink and grow as operating needs dictate.

The fourth is a very high capacity link to a Commercial Service Bureau. This envisioned link will have a capacity equivalent to a commercial satellite link. All access to this information is through the AITDA-HQ switching services. The network design has mandated that all calls be monitored and controlled at that point to preserve data integrity, prevent erroneous access and manage the capability to an acceptable level of end-user service.



ASSUMPTIONS FOR THE LRIS CONVERSION/OWNERSHIP RECONCILIATION AND DEFECTIVE TITLE CLEAN-UP:

Land Titles and Records Clean-up Policy. Number of Estimated Title Defects in Land Titles and Records: 4300

1. The research, review and identification of defective titles within the Land Records Information

System(LRIS) will be contracted during the fiscal 1998. Land Titles and Records will send the defective titles to the Agency for corrective action.

2. The Agency will review, research documents and take whatever corrective action may be needed to bring the title into conformity. Depending upon the complexity of the defect, the corrective action may be accomplished quickly or take several years. After corrective action has been taken by the Agency, they will return the document to the Land Titles and Records Office for recordation.

3. The Land Titles Records Office will record the necessary changes. One recordation may be required or a number of recordations may be affected depending upon how many allotments are involved in the correction.

Strategic Plan Land Titles and Records Cost Estimates:	FY 97/98	FY 99	FY 00	FY 01	FY 97-01
LTRO will research, review and identify all tracts with title defects.	1,000.00				
LTRO will send defective titles to agency for corrective action. The first year the Agency will begin review and research of the top 25% of income producing titles, make corrective action and return to LTRO for recordation The residual 75% will be completed in FY 99, 00, 01.	1,600.00	2,000.00	2,000.00	2,000.00	
Total Costs	2,600.00	2,000.00	2,000.00	2,000.00	8,600.00

NOTE: This budget does not cover the costs of $13,343,400 to correct defective titles at the Muskogee Land Titles and Records Office. The Muskogee Area Office is the office of record and performs limited title functions for all Indian land of the Five Civilized Tribes. The Secretary of the Interior is vested with discretionary authority to represent Indians of the Five Civilized Tribes in the state courts of Oklahoma, in heirship matters involving restricted allotments of those Tribes, under the Acts of June 14, 1918, 40 Stat. 606, and August 4, 1947, 61 Stat. 731. The role of the Bureau of Indian Affairs is to provide information to the Solicitor's Office on inventory of trust and restricted property. Since 1947, the trial attorneys have regularly appeared to represent restricted members in trespass, quiet title, partition, guardianship, and probate actions in the state courts. This $13.3 million in clean-up cost should be allocated to the BIA's operating budget.

NOTE: This budget does not cover costs for Statutes of Limitations cases which is $38,500,000. This cost is to bring the cases to litigation, resolve them administratively, or reject them without merit. The Statute of Limitations cases are all claims "accruing" to any tribe, band o group of Indians on or before July 18, 1966, which have been identified by or submitted to the Secretary under the statute of Limitations Project. They are pre-1966 cases which were allowed under the Indian Claims Act of 1982, also known as 28 USC 2415 Claims. These cases are potential claims against third parties for money damages for questionable transfers and uses of Indian lands. Congress provided for a one time publication of pre-1966 claims in the Federal Register. Examples are trespass on land, recovery of damages for fire and flood, or conversion of property. This $38.5 million cost should be allocated to DOI's operating budget.

PROBATES

One of the objectives of the Strategic Plan is the improvement of trust management activities and programs. As discussed in Section A5, a major problem that must be overcome for the improvement and upgrade of the Land Titles and Records Offices (LTRO) and the certification process is the solving of the backlogs in probates. An integral function of probates is the determination of heirs and approval of wills of deceased Indians. Probate backlogs impede the distribution of income and any beneficial use of the land for the probable heirs.

Indian probates have increased over the years as a result of the General Allotment Act which allotted tribal lands to individual Indians in the late 1800's and early 1900's. Many of the Indians died intestate and their property descended to their heirs as undivided fractional interests in the allotment. As the years passed, fractionation has expanded to the point where there are hundreds of thousands of tiny fractional interests. This has caused a major problem in managing probates.

The three major components of the probate process are (1) at the agency where the probates are prepared, (2) the Administrative Law Judges who determine heirs and approve wills of deceased Indians, and (3) the Land Titles and Records Offices for recordation of the probates. The Land Titles and Records Offices are also tasked with providing title status reports for all title transfers and encumbrances.

First, the agency probate clerk, upon notice of death of decedent, assembles the probate data which consists of family histories, claims, wills, land inventories, provided by the Land Title and Records Office, and submits the probate package to the Administrative Law Judge. Second, once the Administrative Law Judge receives the probate package, notices for hearing are sent to all probable heirs and interested parties; a date for the hearing is set; the hearing is held and testimonies taken, and a final determination of heirs is issued. Third, upon adjudication by the Administrative Law Judge, the probate is sent to the Land Titles and Records Office for recordation. The Land Titles and Records Offices are the office of record of all original probate records. The final result, after approved claims are paid, is the transfer of land and distribution of any income in the account to the heirs.

The three major components of the probate process are currently backlogged at (1) the agency, (2) the Administrative Law Judges, and (3) the Land Titles and Records Offices. The agencies are backlogged with 3500 pending probate cases. As a result of the reductions in force in FY 1996, a large number of the realty staff was reduced. Another factor contributing to the backlog is the placement of individuals in real estate who had no previous realty experience. The implementation of a system for tracking Indian people is needed as efforts to locate missing probable heirs hinders the submission of probates to the Administrative Law Judges. More FTE and funding are needed to alleviate the loss of experienced real estate personnel.

The Administrative Law Judges are backlogged with 3453 pending cases. The Administrative Law Judges are responsible not only for probates but all Public Law 93-638 regulation appeals and public land hearings. Consequently, probates are not always the highest priority for the Office of Hearings and Appeals. A higher priority for probates must be dedicated to resolving the probate backlogs. The Office of Hearings and Appeals reduced the number of Administrative Law Judges from 12 to 8 in FY 1996. The FTE and funding needs of the Office of Hearings and Appeals need to be increased and more judges hired. In addition, the feasibility of contracting out probates needs to be explored. If FTE

and funding are provided to the Office of Hearings and Appeals, the focus of work must remain with Indian probates. The judges' current probate workload must remain the same and not be transferred to the additional personnel who will do only probates to eliminate the backlogs. The recent Supreme Court decision in Youpee vs. the Secretary of Interior will also have a tremendous impact on the Administrative Law Judges' workload.

The Land Titles and Records Offices have a backlog of 212,381 title documents to be recorded, requests for BIA Land Inventories for deceased Indians, requests for title status reports and title maps. The LTRO must prioritize and support (1) requests for title status reports for title transfers and land inventories for probates, and (2) streamline the recordation process of updating ownership in a more accurate and timely manner. Additional FTE and funding to centralize the LTRO processes are needed. Then the savings from centralization could be used to hire more people. The fractionated heirship problem will continue to drive these backlogs until this problem is addressed and resolved.

COSTS TO CLEAN-UP BACKLOGS:			
	FY97/98	FY99	FY97/2001
PROBATE CLERKS COST	$600,000.00	$540,000.00	$1,140,000.00
3500 probates @ 12 months = 292 probates a month			
Probate clerks do 10 probates a month x 12 = 120			
3500 probates - 120 = 30 people needed			
Salary: GS-7 Probate Clerk $32,944 + 4942 (EBC) = $38,000			
$38,000 X 30 people = $1,140,000			
ADMINISTRATIVE LAW JUDGES COST	$1,400,000.00	$1,030,000.00	$2,430,000.00
3453 pending probates			
ALJ does 25 probates a month x 12 = 300 probates a year			
3453 probates @ 300 yr = 12 more judges needed			
Salary: $1 10,000 + 16,500 (EBC) = $126,500			
126,500 X 12 judges = $1,518,000			

$38,000 x 12 paralegal at GS-7 = $456,000			
$38,000 x 12 secretaries at GS-7 = $456,000			
LAND TITLES AND RECORDS OFFICES COST*	$4,000,000.00	$4,000,000.00	$9,424,884.00**
TOTAL COSTS FOR BACKLOGS			$12,994,884

*** Source: Bureau of Indian Affairs**

ITEM	NDOCS	WORKLOAD	COST EST.
TSR's	18,335	70,131 hrs/33.7 manyears	$ 5,977,577.00
Recordation	87,718	61,402 hrs/29.5 manyears	$ 1,508,750.00
Imaging	79,701	7,890 hrs/3.8 manyears	$ 186,500.00
TS Mapping	26,627	142,454 hrs/68.6 manyears	$ 1,752,057.00
	212,381		$ 9,424,884.00

**** $1,424,884 is scheduled fo FY2000**

DEDICATED TECHNOLOGY SERVICES CENTER

SUMMARY

The Strategic Plan proposes a single organization which will assume and manage the U.S. Governments trust responsibilities to American Indians and American Indian Tribes for trust resource management, trust funds management and land title and records management (collectively, trust management activities).

There is a need for a centralized technical services center which is dedicated to trust resources, trust funds management, land ownership and records management processes. It must have the ability to provide connectivity and seamless integration between these various systems and the AITDA employee and asset owner.

NEED FOR A CENTRALIZED TECHNICAL SERVICES CENTER

Past problems related to the delivery of technical service to end users of the current systems are due in large part to the management structure under which the services are delivered. The 12 Areas within the Bureau have been serviced in a shotgun approach in the past. A portion of the services come from Department of the Interior through the Office of Information Resource Management, part through the BIA's Operations Service Center in Albuquerque, part from the 6 Area IMC's and some from the IRMS coordinator at the Agency level. This duty has often been a collateral duty and was assumed by someone who had a rudimentary understanding of computers but who had an interest in the technology and was willing to spend the time in ferreting out solutions to problems.

The most frequently cited reason and excuse for the Federal Government's historical and continued failure to address and resolve the long-standing trust management problems is the lack of funding and staffing for the American Indian trust management programs. While most certainly the lack of financial and managerial resources is the primary causal factor for the Federal Government's failure in this regard, under no circumstances should it also serve as an acceptable excuse for the continued neglect of the Federal Government's trust responsibilities to American Indian trust beneficiaries.

Compounding the problem was the lack of specific guidance to the field or failure to enforce standards which had been set in place. Each Area was left to develop work arounds to problems they saw as unique to their Area. The result was an uncoordinated group of ad hoc routines which changed on a regular basis adding to the confusion.

The structure also results at times in trust management responsibilities of a higher order not receiving the attention and focus they deserve and/or being traded off against other Bureau priorities of a lower order, although they are often perceived to be of a higher order. The BIA offices must expend significant resources to coordinate with managers, supervisors and staff across the Bureau to obtain cooperation. Coordination and cooperation often breaks down. Field offices often manage their operations autonomously with little discipline and control being exerted or enforced at either the local, area or Washington administrative levels. Further, because the BIA is not organized and managed by function, all too often policies and procedures written for specific trust programs or functions are not universally followed because the staff that perform the activities take their direction from general managers in area or field offices, not the trust program offices. Nor can discipline, control and

accountability be enforced by a good management assessment and audit system since standardized policies, procedures and practices are rare and insufficient financial and managerial resources are provided for audit and risk management of any type. For many of those years, including many years since 1990, the trust programs were seriously under staffed and under funded. The result was that the government increasingly was unable to keep pace with the rapid changes and improvements in technology, trust systems and prudential best practices taking place in the private sector trust industry. This gap continues today and will continue to increase until the reforms outlined in the Strategic Plan are funded and implemented.

The American Indian Trust Fund Reform Act of 1994 at Section 101 sets forth the foundation and vision to be achieved by the Strategic Plan:

" 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 reconciliation's 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."

It is clear from these outlined responsibilities, that a coordinated approach from a single centralized source is the only way to achieve the intended results of the legislation. Behind each of the eight points outlined lies a system of some sort which will be used to accomplish the task. The complexity of each system will vary and so will the outputs. However, what is common to all is the need for technical support from a staff which understands the inner workings of all of the systems and how they relate.

Frequently, we strive to meet our user's needs through creative application of information resources. However, some computer systems, applications, and networks have been in service for many years. These legacy systems were originally designed to support now outdated processes or to satisfy requirements of internal rather than external customers.

Our current environment is characterized by isolated islands of information, some elements of which are collected many times, large amounts of valuable information with primitive or nonexistent access, index, and directory methods that hamper users in using this information and inconsistent programs and data entry.

The primary system currently in use for the tracking of monies owed to over 300,000 accounts has evolved throughout the years and OSC has admitted that they cannot support beyond day-to-day operations. System inadequacies cause the U.S. Government to be in breach of its basic Fiduciary responsibilities. Any enhancements to mitigate the daily increase of liabilities must be contracted and the contractor must contend with a lack of standardization that has been allowed to evolve within the computing environment of the 12 Areas. This lack of standardization leads to greater costs for programming efforts.

Technology change is happening at a faster and faster speed. The productive life cycles of technologies are getting shorter. For an organization to compete in today's environment, whether it is private or government, it is necessary to gain an advantage over the competition by the best means available. People are the life blood of any organization. The effective use of all the people in an organization determines the success or failure of the organization. The focused distribution and diffusion of technology from one centralized source is one means of helping to ensure the success of an organization's workforce.

Increased productivity through the effective use of technology has played an important role in both government and private industry. The implementation of any new or existing technology can create many opportunities for increased productivity. To take full advantage of the opportunities it is necessary for the technology to be used and understood by the largest possible segment of a work force. The process of spreading the new technology through all practical facets of the organization is known as technology diffusion. It is the dispersion of new technology through an organization which is the key to effective implementation and the necessary antecedent to any expected increases in productivity through technology.

In the future it is seen that there will be several on-line, real time systems which will track the land ownership, collection, investment, and disbursement of funds to their owners. In most cases, these systems will be leased from commercial trust vendors and will be run and maintained by the vendor. The information which will be needed by the AIDTA employee to perform basic trust operations must be readily available. In order to service the Indian customer, they will have to be able to seamlessly access and provide information from all the systems in a consolidated and meaningful format to the trust owner. The ability to react to internal and external demands for specialized reporting and presentations and provide and coordinate the delivery of information to the end user is something that would be best done from a centralized technical service center which understands the information and is able to deliver it in focused manner.

To embrace the future, we must focus on how we handle information, and how our users can obtain information and services important to them. This new focus changes our perspective of government to enabling their success and achievement, individually and collectively, through providing appropriate access to information sources and services.

Economic and cultural diversity abounds across our client base, and our users simultaneously have individual and shared needs for services.

There is a need to establish an information resources infrastructure, standards, and methodologies, and improve information accessibility and usability.

We must empower our users through direct and easy access to the specific information and services

they need, allowing them to fulfill their needs and express their opinions directly, wherever they are, any time of day.

Convenient access to information and communications systems will challenge us to meet our user's needs in new ways. Interactive services and multimedia two-way communications will be available to every man, woman, and child through diverse systems installed in homes, offices, and public places. Our users of all educational levels, special needs, economic status, and ethnic groups will have access to these technologies and find them helpful and easy to use.

A well-defined set of security, data, and service interchange standards will ensure that anyone can access data or services provided electronically.

We must be able to use information technology in a way that complements commonly available user interface services such as the Internet, selectively provides required information and services directly to specific users, makes services and data available electronically in a uniform manner, while protecting the privacy of individuals and enterprises, and assuring the authenticity of information.

In order to better serve our users, it is proposed that the Division of Trust Fund Systems restructure along the following lines:

- A Branch of System Analysis and Special Projects which will include personnel to handle application development, future system's design, multi-media, and any system's analysis or special projects.

- A Branch of Application Support which will include a help desk, training/testing, trust operations systems support as well as PC based support.

- A Branch of Operations which will support telecommunications, security, LAN/WAN, and day-to-day printing requirements.

As applications of automation increase, the work of the technical services center grows more important. Complete security must be provided for all computer applications. A coordinated effort will be needed to ensure the proper controls are in place on all of the systems allowing AITDA employees and trust owners only access to what is needed to do their jobs or inquire about their individual holdings. This control is optimized from one point of delivery. Further, the point of delivery should be from a technology service center which is devoted to providing only service to the AITDA and not one which has multiple programs to support and must choose between trust related activities and non-trust related activities. A centralized technical service center will be able to expend all of its resources in the support of trust activities.

NATIONAL ARCHIVES & RECORD CENTER

SUMMARY

The Strategic Plan proposes the establishment of a single, centralized, state of the art archives and records management center (Center) as the official custodian of all fiduciary records created by the Department of the Interior offices and bureaus and other Federal entities such as the U.S. Treasury that support the execution of the United States' trustee responsibilities to American Indians.

As custodian the Center will perform all functions relating to the development and implementation of government-wide Indian fiduciary records management policy; identify and catalog all Indian fiduciary record types, origination points and processing paths; design, establish, maintain and provide oversight of interim and permanent physical storage facilities; package and receive the records into permanent storage; safeguard the records from loss, damage, destruction and unauthorized access at both interim and permanent storage facilities; design and implement appropriate disaster recovery protection; and provide records management training, guidance, interfaces and oversight of all offices, bureaus and organizational entities that create Indian fiduciary records in their normal course of business.

The Center will perform government-wide policy, planning, coordination, acquisition, implementation and control functions for Indian fiduciary records management systems relating to both resource management and revenue accountability. It will review the effectiveness of operations of fiduciary related records management systems; develop, in coordination with operating programs, solutions to weaknesses; and trains operating personnel in the proper use and management of the systems. The Center will develop policy for and ensure the establishment of a system of supervision, staffing, facilities and operational criteria at program offices to ensure proper identification, maintenance and protection of active program documents and the prompt and effective disposition of inactive documents from the program offices to the custodianship of the Center. The Center will ensure access to the fiduciary records by only authorized entities in an effective and efficient manner that ensures the physical protection of the records and the proprietorship of their contents. The Center will be the focal point, in regard to fiduciary records access and management, for research, audit and litigation functions and processes involving the government's fiduciary operations relating to Indian trust resources and revenues.

NEED FOR A SINGLE CENTRALIZED ARCHIVES AND RECORDS CENTER

The problem is the nonexistence of a government-wide records management plan, organization or single physical plant to safeguard trust records.

The core problem confronting the U.S. Government in executing its fiduciary responsibilities to American Indian Tribes and individuals is the lack of an adequate records management and safekeeping system for official records created in the normal daily business cycle of managing Indian trust resources, revenues and payments. Current management policy, procedures, information resources, automated systems and related practices do not recognize the existence nor the interrelationships of the multiple governmental entities engaged in the creation and maintenance of Indian fiduciary records. This void of a government-wide Indian fiduciary records management and safekeeping system has resulted in the government's inability to provide an accounting to Indian Tribes and individuals of their trust resources that meets the standards of the American Indian Trust

Fund Management Reform Act of 1994 and the standards of ordinary prudence applicable to all trustees, public or private.

The Reform Act of 1994 requires the establishment of appropriate policies and procedures and necessary systems that will allow the United States Government to: (1) properly account for and invest, as well as maximize the return on the investment of all trust fund monies; (2) prepare accurate and timely reports to account owners and others on a periodic basis regarding all collections, disbursements, investments and return on investments related to their trust accounts; and (3) maintain complete, accurate and timely data regarding the ownership and lease of Indian lands. One of the essential ingredients to the successful accomplishment of this legal decree is the retention and safekeeping of the records that support the actions taken by the trustee in the normal business cycle of trust resource management activities.

Yet, it is a proven fact from the numerous audit and reconciliation attempts by the government, using both internal professional expertise and that of public accounting firms, that the core of the accounting, auditing and reconciliation problems associated with Indian trust funds management is the missing source documentation at all action points of the normal business cycle. Consequently, the government cannot obtain an unqualified public accounting firm audit opinion nor provide convincing documentation in lawsuits brought by Indian Tribes and individuals to prove the adequacy of the government's execution of its fiduciary accountability. Thus, at this point in time, the government cannot meet the Reform Act requirements nor the standards of prudence.

The interrelationship of the creators of Indian fiduciary records, government-wide, is not accommodated by the current records management system.

The records that support the fiduciary activities of the government are created by several organizational entities both within and external to the Department of the Interior. The BIA is not the only organizational entity involved in creating Indian fiduciary records although a major portion of the day-to-day activity is performed by BIA entities due to the fact that Indian trust resources are under the BIA's management jurisdiction. Other entities such as the MMS, the BLM and the U.S. Treasury also create many documents essential to support trust management activities. Furthermore, with the advent of Tribal operated programs through the Indian Self-Determination Act (PL 93-638) contracts and compacts under the Self Governance Act, Indian Tribes themselves are now the creator of many essential trust support documents. Although the programs are under Tribal management the fiduciary responsibility remains with the Secretary of the Interior and therefore the records created under these contracts and compacts are essential to support the government's accountability. Presently, to the detriment of the execution of the Secretary's fiduciary responsibility, each of these entities operate under their own records management policy, procedures, storage practices and records retention schedules without recognition of their interrelationship to the single responsibility of the Secretary.

The symptoms of the problem are many.

In this current disassociated operational environment there is no way to estimate the number of missing source documents essential to execution of the fiduciary's responsibility. However, the Tribal Trust Funds Reconciliation Project; which was completed in December 1995 and covered the period of July 1, 1972 through September 30, 1992; disclosed numerous weaknesses and deficiencies in record keeping throughout the government. The consequences of the condition of the records was the prevention of a full reconciliation. First and foremost of these weaknesses is the fact that pertinent records exist at over 130 physical records storage sites nationwide. Compounding the effects of this

geographic dispersion is the lack of sound and enforced records management policy, procedures and practices.

1. Multiple Records Storage Sites: A national inventory of the trust financial and resource management source documents necessary to the execution of the Reconciliation Project agreed-upon procedures did not exist. Nor was the physical location of the documents known. This deficiency forced an extensive search effort which disclosed pertinent records located in over 130 locations nationwide under the jurisdiction of various governmental entities. This nationwide dispersion of trust records required extensive effort and cost to locate, inventory, ship and organize to ready them for the reconciliation process. Also, records pertaining to a number of Tribes were found to be located at multiple sites because of changes in the location of BIA service offices, Federal record centers and archive service centers. Trust records were found at the following locations throughout the United States:
   - 12 BIA Area Offices
   - 86 BIA Agency Offices
   - 13 Federal Records Centers
   - 15 Regional Archives
   - The Office of Trust Funds Management (Albuquerque)
   - The Division of Accounting Management (Albuquerque)
   - The GSA Indian Trust Accounting Division (Maryland)
   - The Minerals Management Service (Denver)
   - The U.S. Treasury

   It was also disclosed that the Bureau of Land Management, the U.S. Geological Survey, some Tribes and even some state historical societies and other organizations may be in the possession of trust resource management and financial records pertinent to providing a full accounting by the trustee to Indian Tribes and individuals of their trust assets.

2. Unsuitable Safekeeping Practices and Facilities: Reconciliation Project staff dispatched to record storage sites to perform inventory and shipping tasks encountered many records in jeopardy of loss or destruction due to the following:
   - Poor and inconsistent record keeping practices (Operations personnel lacking knowledge as to what records should be preserved.)
   - Unsuitable and unsafe storage facilities such as a horse barn, paint locker, sheds, attics, and garages that were rodent invested and/or toxic to human access because of hunta virus potential, asbestos, paint fumes, molds and fungus.
   - Damaged records caused by environmental conditions (floods, high humidity, extreme heat and cold, etc.)

- Unmarked and non-inventoried boxes of records.
- Forgotten storage locations and whereabouts of records (i.e., one BIA Area Office forgot the existence of one of their warehouses where records were subsequently located. Records unknown to exist pertaining to a split agency were located at the former agency.)

3. Records Management System: The Reconciliation Project surfaced a multitude of records management deficiencies throughout the government in the custodianship of Indian fiduciary records. The foremost deficiencies were the:
    - lack of a national records inventory
    - lake of a national storage facility inventory
    - lack of modern archival and retrieval systems
    - lack of an inventory of critical source document types, purposes and approval/validation criteria
    - lack of an inventory of data by form (hard copy vs electronic) and by time period
    - lack of minimum transaction documentation standards
    - lack of source document integrity
    - lack of operating personnel knowledge as to what constituted fiduciary records
    - lack of standard document work flow procedures
    - lack of uniform filing procedures
    - lack of uniform support document content
    - lack of transaction integrity
        - Co-mingling of multiple Tribes' data on a single document
        - Co-mingling Tribal and non-Tribal information on single source document
        - Co-mingling revenue from multiple sources (i.e. receipts for multiple leases summed to one amount without specifying amount received for each lease)

The adverse effects of the current condition of the government's record keeping management of Indian fiduciary records is significant.

Missing Documents: The impact of the government's record keeping practices on the Reconciliation Project was that there were 32,319 cash receipt, disbursement and internal transfer transactions; as itemized below; totaling $2.4 billion that were posted to Tribal trust fund accounts for which the supporting financial source documents were not located:

Unlocated Receipts:	$1.1 billion
Unlocated Disbursements	.8 billion
Unlocated Transfers	.5 billion
Total	$2.4 billion

Some offices of the Bureau of Indian Affairs sent trust land resource records to Federal records centers but did not identify them as trust records nor were they designated to be retained as permanent records. The result was that many trust records were destroyed. For example, in one sampling, ten years of timber contracts were found to have been destroyed. Generally, the "Fill the Gap" procedures of the Reconciliation Project was significantly curtailed because large numbers of leases, permits and contracts authorizing the use or extractions from Indian trust lands could not be located.

Another example of the condition of the government's record keeping of Indian fiduciary source documents is demonstrated by the fact that over $4 billion in disbursements from Tribal trust accounts were not fully documented.

Yet another example of the failure to recognize and deal with the interrelationship of the various government entities role in the United States Indian fiduciary responsibility is the custodianship of negotiated checks drawn against Indian trust fund accounts. The checks, which are under the custodianship of the U.S. Treasury, are not treated as permanent Indian records and therefore not segregated by the Treasury from checks issued against appropriated and other funds thus allowing their routine destruction by the Treasury under their records retention policies, procedures and practices. The unavailability of these records due to their destructions presents difficulties in the full and accurate reconciliation of individual Indian and Tribal accounts and consequently the discharge of the government's fiduciary responsibility to Indian Tribes and individuals. Copies of the negotiated checks, even before their retention period expires are not immediately available from Treasury for timely verification and reconciliation purposes by the Department of the Interior.

Last but not least there is not a system of redundant record keeping. Thus, no back-up exists if a record is destroyed or cannot be located for some other reason.

"None Available" is the conclusion of a search for other sources for trust records management.

BIA as the Records Manager: The BIA has a history of not being able to properly maintain its records as substantiated by the 20 year Reconciliation Project which encountered missing documents throughout the reconciliation period. Furthermore, the National Archives and Records Administration (NARA) conducted at least 3 technical evaluations of the BIA records management program. Each evaluation contained a litany of disclosures covering poor records maintenance procedures, unsuitable storage facilities and inadequate management involvement. Although there were recommendations made to correct these deficiencies, corrective actions on the part of BIA was never fully implemented.

The BIA lacks the institutional records management culture and norms to sustain an effective program. A recent example of this is the BIA Reduction In Force (RIF) effected in February 1996. In 1994, the BIA had 12 recently established area records officers and four positions at its headquarters in Washington, D.C., to operate the Bureau-wide records management program. Even at this staffing level, the BIA was unable to properly maintain its records and bring the program into compliance with

NARA technical requirements. BIA abolished all but four of the 16 records management positions in its RIF. Program needs and requirements were not considered when the positions were selected for abolishment. The four retained positions survived due to the availability of local funding or other criteria that had no relationship to records management need throughout the Bureau. The cultural deficiency is also demonstrated in the continued use by some BIA areas and agencies of the records disposition handbook published in 1977 although a new records disposition handbook was developed in 1989. More recently, a records control schedule was distributed by BIA to its operations offices but had to be withdrawn because it was developed without input from the Office of the Special Trustee for American Indians concerning fiduciary trust records. The Schedule contained temporary records retention periods for trust-related documents instead of specifying their "perpetuity" status.

Because a centralized records management facility does not exist, a coordinated effort to prevent records destruction is not possible. Proper record protection procedures are either unknown to BIA staff that create trust documents, not being followed, or not comprehensive enough to provide the requisite guidance. For example, a notice of intent to destroy trust land lease records was sent by NARA to a BIA agency. Obviously the records were not recognized as trust related when they were originally sent to NARA for storage or they would have been classified as permanent and no notice to destroy would have been required. Because the BIA agency staff was unfamiliar with the NARA form or they still did not recognize the records as fiduciary in nature, no response was provided by BIA regarding the final disposition of the records. As a result, the records were destroyed by NARA. This is a recurring situation, even today, in efforts to define and place a freeze on Indian fiduciary records.

The BIA stores records in various locations and facilities that are unsuitable and unsecured. Records are stored in areas that are not only damaging to the records but also hazardous to the health of staff because of possible disease from the dirt, water, mold, rodent excrement, asbestos and other hazards.

NARA as the Records Manager: Although the NARA has the technical expertise in records storage it does not have the specialization fiduciary mission knowledge required to meet the government’s fiduciary responsibility for Indian trust resources. NARA serves a generalist function in that it accepts records for archive (permanent retention) purposes primarily on what the originating agency identifies as the content and retention period. It processes a record for permanent retention or disposal on the basis of the originating agency’s designation as to the records historical, legal, financial and administrative value and the originating agency’s designated retention period. If the originating agency does not perform an adequate job of defining the records to NARA, as we know BIA has not done in the past nor currently, the records can receive a misclassification as temporary and upon expiration of the originating agency’s defined retention period, vital records to maintaining Tribal and individual Indian trust relationships are destroyed by NARA. It is imperative that all trust records be protected from destruction, especially in light of the current litigation environment. This job is not being accomplished.

Some other problems exist with NARA as the safe keeper of trust records.

NARA does not have the knowledge as to what constitutes a trust record. NARA staff maintains records according to series descriptions provided by the records originating agency and is, therefore, not familiar with the source documents contained in a case file. In other words, they take for face value the importance of a record as determined by the record originating agency. The Office of the Special Trustee for American Indians proposes to assemble a staff of professionals knowledgeable of the specific types of trust records that are generated from each program and with the dedication and know how for perpetual preservation of the records.

NARA does not have a single center for Indian trust records. The current decentralization of trust records in NARA facilities is inefficient and not cost effective. Indian trust records are stored in 13 Federal Records Centers (FRC) and 15 Regional Archives, which are at locations different from the users. This makes records retrieval difficult because records for the same Tribe or groups of individual Indians are sometimes stored at multiple locations requiring a search at all NARA sites to determine the universe of available records. Also, travel to the multiple NARA sites that may be involved in a given research task for lawsuits and audits becomes a major expense. The centralization and consolidation of records in one center will significantly reduce these costs.

Storage of records by NARA must be funded by agency appropriation for payment to NARA. Since specific records storage funding must now be obtained by each agency the funding process is in place to store the records in a single central location that is cost-effective and convenient for the government and Tribes.

Records management and storage training that is provided by NARA is not trust-specific. NARA does not know the trust program functions and/or its documents. Only experienced Indian trust fiduciary records management staff as proposed by this Strategic Plan can provide such training to the creators of the source document. Neither does NARA have knowledge of the interrelationship between originators of trust source documents. Trust records from agencies other than BIA are not addressed as part of NARA's records management processes and unless these other agencies designate the records as permanent, which they do not, then the records can and are destroyed. Also, because NARA does not know who creates Indian trust records they cannot assist effectively in locating all possible trust records in NARA's possession.

ACTIONS REQUIRED TO PRESERVE ALL INDIAN TRUST RECORDS

The establishment of a single records center for the management and safekeeping of Indian trust records would fill the many voids itemized above as so lacking in the current program. Most importantly, a single center would provide the following benefits:

- Places the possession and preservation responsibilities for all Indian trust-related records under the control of a single management entity that identifies and incorporates the interrelationship of the various Federal and Tribal organizations, nationwide, that create the trust records and ensures the nationwide enforcement of modern, sound and standard records management and safekeeping policy, procedures and practices.

- Physically places all inactive Indian fiduciary records, regardless of origin point, in one facility that will support both government and Indian client research, reconciliation, settlement, litigation and post-audit needs. The centralized approach recognizes that certain trust records must be retained at the origination site because they are active and needed for day-to-day operations. This universe of active documents include those that currently exist on site relating to active leases, contracts and agreements and those that will be created in the future in the daily execution of fiduciary management activities (active documents). The active documents, however, would be under the management and preservation control of the Center. All other documents on site that do not meet the definition of active are inactive and will be placed in the Center.

- Provide electronic imaging capability to meet day-to-day operational, preservation, disaster

recovery and research needs. The imaging of trust documents will be performed on site at the documents point of origin and at the Center depending on whether a document is active or inactive. The imaging of active documents will be performed on site to ensure the convenient availability of active documents to the fiduciary managers in carrying out their day-to-day management activities. Permanent on site imaging equipment and trained operating personnel will be available at each fiduciary management location to accommodate the imaging of the active documents. As necessary, external assistance will be provided at each location to ensure the timely elimination of active documentation imaging backlogs. Policy and procedures defining on site retention schedule of active documents and to ensure the authenticity of the related images will be implemented. The images will be housed at the Center as well as at a backup facility and will provide the needed disaster recovery and centralized research capability currently absent in the fiduciary management scheme. When records reach the conclusion of their prescribed on site retention (lease closed, contract complete, etc.) They will be become inactive and moved under strict control and preservation standards to the Center for permanent storage. Their permanent storage location within the Center will be linked to their electronic image for retrieval in legal proceedings or other uses where the imaged record is inadmissible or unacceptable. Inactive records currently on site at the fiduciary management locations and NARA record storage sites will be identified, assembled, inventoried and moved under strict control and preservation standards to the Center for cataloging, imaging and permanent physical storage. Imaging of inactive records will be performed on a priority as needed basis.

- Provide appropriate disaster recovery protection. To the extent of technological availability, records protection will begin at a document's point of origination through the use of a modern on site imaging system that will be integrated with the resource management and accounting applications. Separation of imaged record and original source documents storage sites will be standard operating procedure to protect against loss of both forms. National Archive physical preservation and disaster recovery standards will be adopted as minimum standards by the Center.

- Maintains complete, uniform and easily accessible files of source documents.

- Economize on costs by centralizing all trust related records. All permanent record keeping functions that are now being performed at some 130 sites will be consolidated in one unit at one location. This will reduce the costs associated with specialized human resources services, records shipment, copying, records storage, training, and travel.

- Provide for the implementation of an automated records management program that will consolidate and integrate a system of indexing and imaging. This will preserve the original documents and still make the needed information, in image form, available for daily use.

NAME AND STRUCTURE OF THE CENTER

The proposed name of the national archives and records center will be the "National Indian Fiduciary Records Center" (NIFRC). Albuquerque, New Mexico is the proposed location of the NIFRC since it is the location of the current storage facilities for trust fund records and is the location of the Office of Trust Funds Management. The location is convenient to all records origination points and is served by all modern modes of transportation and delivery.

The organizational structure of the NIFRC supports each of the functions necessary to fully execute

the United States' fiduciary records management responsibilities. The head of the NIFRC will be a fully qualified historian who will be supported by a staff of 55 fully qualified management and professional staff in the following units:

- Textual Records Division - Designs and implements inventory, storage and maintenance policy and procedures.
- Electronic Records - Designs and implements electronic records imaging methods and procedures.
- Accessions and Disposition - In charge of the physical aspects of the movement, storage and preservation of the records at the NIFRC and at functional operations levels nationwide. This included quality assurance functions and assistance to field locations.
- Special Media Laboratory - Performs restoration, conservation and maintenance of records in a deteriorated physical condition.
- Security Administration - Controls the public access to the NIFRC and prevents unauthorized entrance and removal of record materials.

The National Archives and Records Administration would be requested to provide periodic independent operational reviews of the NIFRC to ensure operational adequacy.

WHEN MUST ACTION OCCUR

Phase I of the Strategic Plan is designed to resolve substantially all of the trust management systems, records keeping, and accounting problems within two years or by the end of fiscal year 1999. Development and implementation of certain aspects of the overall plan will take several more years, but the objective will be for the Center to be fully operational by Fiscal Year 2000.

WHAT WILL THE NIFRC AND IMAGING COST

The start-up cost of the NIFRC is estimated at approximately $13.1 million which includes $2.7 million for imaging equipment and start-up costs at the NIFRC and at each fiduciary management location for on-going (steady-state) imaging and to eliminate the imaging backlog of active trust management records. The elimination of the backlog of active trust records will also require contract services of an additional $3.2 million. Ongoing costs are estimated at about $9.7 million annually.

Initial Costs:			
Establish NIFRC	$ 9,019,917.00		
Sip Records	$ 1,071,000.00		
Boxes	$ 315,000.00	$ 10,405,917.00	
Master Electronic Archiving	$ 418,217.00		
Backup Electronic Archiving	$ 909,260.00		

Image Equip. - Backlog	$ 1,357,050.00		
Image Equip. - Steady	$ 45,700.00	$ 2,730,227.00	$ 13,136,144.00
Ongoing Costs:			
NIFRC	$ 8,036,730.00		
Boxes & shipping	$ 6,750.00	$ 8,043,480.00	
MEA	$ 248,000.00		
BEA	$ 857,978.00		
Other on-site annual imaging costs	$ 502,500.00	$ 1,608,478.00	$ 9,651,958.00
Initial Imaging Backlog clean-up:			
20,000 (20% of total) high dlollar leases	$ 2,160,000.00		
40,000 (40% of total) additional leases by field staff	$ 1,000,000.00	$ 3,160,000.00	$ 3,160,000.00

FRACTIONATED OWNERSHIP OF INDIAN LANDS

Current Status

As ownership of Indian lands descends from one generation of persons to another, fractionation continues to worsen. The Department of the Interior may soon be unable to cope with the record keeping of land titles and accurate distribution of income. In addition, if the challenge to the constitutionality of the Indian Land Consolidation Act succeeds in either of the cases Youpee v. Babbitt or Klauser v. Babbitt, the courts may order the Department to compensate individuals for the interests in trust property that escheat to Tribes.

In October 1994, the Assistant Secretary - Indian Affairs opened consultations with Tribal leaders and individual landowners concerning a legislative proposal to address the problems of fractionated heirship. Since then more than 200 meetings, attended by more than 4000 persons, have been held on or near Indian reservations by the Bureau of Indian Affairs, and, in some cases, by Tribal governments, to discuss the proposal and to make additional recommendations and suggestions for alternatives.

TRIBAL IMPACT: Tribal governments will benefit by DOI's program. However, Tribal leaders appear hesitant to favor the Tribal government's interests over those of individual members who own allotted lands.

FUNDING IMPACT: $300 million

Draft legislation is presently being considered by the Department of the Interior to amend the "Indian Land Consolidation Act"

(25 U.S.C. 2201 et seg.) to address the Indian heirship problem. The legislative proposal package includes initiatives to consolidate highly fractionated interests (two percent or less of ownership) in allotted Indian land and a land acquisition program with provisions to transfer the properties to the Tribes, but retain the income from those properties until the purchase price paid by the Federal Government is repaid or 20 years, whichever occurs first. In order to prevent further fractionation, the legislative proposal limits inheritance in allotments to members of Federally recognized Tribes, and further limits inheritance by intestate succession to first and second degree relatives with provisions for life-estates for non-member spouses. Testate succession in trust is limited to one devisee who also must be a member of a Federally recognized Tribe; if the devise is to more than one person, joint tenancy with right of survivorship will be presumed.

DOI's legislative proposal differs significantly from two alternate proposals drafted by Indian land consolidation groups. The Indian groups take a different approach by providing individual allottees with an equal opportunity with the Tribes to participate in the acquisition program and by taking a different approach to the inheritance limitations. All legislative proposals, however, have shared the objectives of consolidation of fractional interests and the prevention of further fractionation.

BACKGROUND

"The Indian Service is compelled to be a real-estate agent in behalf of the living allottees; and in behalf

of the more numerous heirs of deceased allottees. As such real estate agent, selling and renting the hundreds of thousands of parcels of land and fragmented equities of parcels, and disbursing the rentals (sometimes to more than a hundred heirs of one parcel, and again to an individual heir with an equity in a hundred parcels), the Indian Service is forced to expend millions of dollars a year. The expenditure does not and cannot save the land, or conserve the capital accruing from the land sales or from rentals. . . . For the Indians the situation is necessarily one of frustration, of impotent discontent. They are forced into the status of a landlord class, yet it is impossible for them to control their own estates; and the estates are insufficient to yield a decent living, and the yield diminishes year by year and finally stops altogether. . . . The Indian Bureau's costs must rise, as the allotted lands pass to the heirship class. The multiplication of individual paternalistic actions by the Indian Service must grow. Such has been the record, and such it will be unless the government, in impatience or despair, shall summarily retreat from a hopeless situation, abandoning the victims of its allotment system. The alternative will be to apply a constructive remedy as proposed by the present Bill."

John Collier
Commissioner of Indian Affairs
February 19, 1934

OVERVIEW

The fractionated ownership of Indian lands is taxing the ability of the government to administer and maintain records on Indian lands. 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, put together. Fractionated heirship also threatens the integrity and viability of the Department's trust management systems. The problem cannot be addressed by the Tribes; it cannot be fully addressed by the Department of the Interior; it requires a Federal legislative solution.

In 1887 Congress enacted the, General Allotment Act. This Act directed the division of Tribal lands and "allotment" of them to individual Indians. The purpose was to accelerate 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 the General Allotment Act (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 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 the allottees were not assimilating and 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. Under the Indian probate laws 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 the years passed, fractionation has expanded geometrically to the point where there are 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 far exceeds both their value plus any income derived therefrom.

In 1984, Congress attempted to address the fractionation problem with passage of the Indian Land Consolidation Act. The ILCA authorized the buying, selling and trading of fractional interests but most importantly it provided for the escheat to the Tribes of interests of less than two percent. Although over 55,000 of the 2%-or-less fractional interests have escheated since passage of the ILCA in 1984, the problem of fractionation continues to worsen. The costs of maintaining heirship records and administering the land is inordinately expensive for the BIA. Approximately 50 - 75% ($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, social services, etc. 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.

Currently, calculation of fractionated lease ownerships may result in a fractional denominator that exceeds 26 digits. Depending upon the amount of lease income to be distributed, it is possible that trust income may have to be collected for several years before sufficient income is collected to entitle an account holder to even one cent.

Some administrative complications that result from fractionated ownerships include the following.

- Detailed accounting records must be maintained for all transactions regardless of size, sometimes as little as $0.03 may be distributed among seven account holders, complicating the accounting.

- In most cases, OTFM policy does not permit funds to be disbursed to the account holders until balances reach $15, thus increasing the number of IIM accounts that require interest posting and other account maintenance activities.

- Funds sometimes remain in special deposit (suspense) accounts for long periods, according to OTFM, pending OTFM's receipt of ownership information from OTR's Land Title and Records program staff and realty staff.

Currently, OTR maintains official Federal Indian land title and beneficial (lease) ownership information. OTR's Land Title and Records program staff are responsible for determining ownership and encumbrance for each Federal Indian tract of land and for certifying for the Federal Government that such ownership and encumbrance is accurate for all legal, title, and evidentiary purposes. However, due to continuing increases in fractionation, inadequate staffing, and inadequate systems, OTR has almost a two-year backlog in land title and lease ownership determinations and record keeping.

Each time ownership changes, OTR's Land Title and Records program staff must perform time-

consuming manual determination and documentation of ownership interests. This is because OTR's Land Records Information System, as designed, is not capable of performing automated chain-of-title calculations and it does not store chain-of-title or calculated ownership information. LRIS system improvements have been delayed for the past two years due to reductions-in-force and budget cuts. In addition, LRIS is not integrated with OTFM's trust fund accounting systems.

Because official ownership information may be significantly out-of-date, OTFM has relied on unofficial ownership data in BIA's Integrated Resources Management System. IRMS ownership information is periodically updated by OTR realty staff located in BIA's Agency Offices based on preliminary information that they have developed for use in probate determinations. However, unlike LRIS information, it is not verified or certified. As a result, OTFM cannot ensure that income is distributed to the proper account holder.

Inactive IIM accounts, which are defined as accounts with no transactions for 18 months, also increase the administrative burden for IIM accounts. Accounts may become inactive because they are in suspense status or because probate decisions are pending. As of

September 30, 1996, OTFM reported that there were approximately 60,823 inactive IIM accounts. According to information provided by OTFM, these are generally low balance accounts. Administrative costs associated with inactive accounts include:

- the cost of computer processing time;
- the administrative cost and responsibility of safeguarding the accounts; and
- the cost of preparing, printing, and mailing quarterly account statements.

More than 12, 000 persons, 90% of whom reported themselves as members of Federally recognized Tribes, responded in writing during 1995, included written comments explaining their disagreement with the proposal or making suggestions.

Sixty-five percent (65%) of the respondents in the survey of landowners agreed with the concepts of consolidating small fractional interests in the Tribes and preventing and slowing further fractionation. Fifty-one percent (51%) of the respondents would be willing to sell their small fractional interests. An additional group would be willing to sell if they could be assured of (1) fair market value for the sales of fractionated interests, (2) tribal acquisition of title immediately, or (3) an opportunity for financing co-owner purchase options.

PROPOSED SOLUTION

Any legislative proposal must have two elements: existing small fractions must be eliminated and further fractionation must be prevented or drastically slowed. The goals are to reverse the adverse effects of the GAA and promote Tribal self-determination. The existing escheat provisions of Section 207 of ILCA have been found to be unconstitutional in Youpee vs. Babbitt, 67F.3d 194 (9th Cir 1995). If the Supreme Court sustains the 9th Circuit Court of Appeals decision and Section 207 of ILCA is found unconstitutional during the pendency of the legislation, or thereafter, further amendments to the Act will be required. The essential elements of the legislation should include the following:

1. A land acquisition program that authorizes the Federal Government to purchase fractional interests from willing sellers. These interests could be transferred to individual Indians or to the Tribes without any out-of-pocket costs to the Tribes.

2. The creation of a priority for the acquisition of fractional interests of two percent-or-less.

3. Some mechanism whereby fractionated interests transferred to an Individual Indian or a Tribe will be subject to the requirement that all income derived from the interests will be paid to the Federal Government until the purchase price paid for the interests by the Federal Government has been recovered or 20 years (or a like time period), whichever occurs first.

4. Income generated from the acquired fractional interests should be put into a fund to be used for the acquisition of additional fractional interests.

5. The proposal should replace the subjective test in the ILCA used to determine whether two percent fractional interests will escheat, i.e., a rebuttable presumption of future income potential, with an objective test based on actual income produced by a fractional interest or on the appraised value of the interest.

6. In order to prevent further fractionation, inheritance of interests in allotments should be limited in some acceptable and equitable way. The proposal should authorize Tribes to change the limitations on inheritance established by the bill through enactment of Tribal probate codes, provided that the changes do not result in increased fractionation.

7. New inheritance limitations should not become effective for two years subsequent to enactment. Appropriate notice should be provided to alert owners of estate planning options.

In addition, the Special Trustee proposes that the legislation consider the following:

1. Individual American Indian co-owners and non-owners ought to have equal access with the Tribes to Federal funds used to acquire fractionated interests in realty. Purchase options should be granted to individual co-owners if authorized in a Tribal land consolidation plan. Federal loan programs to assist American Indian individuals in the purchase of fractionated interests in realty should be part of the program.

2. Indian Landowner Holding Companies should be authorized to hold fractionated interests in realty. Such companies can be used to combine fractionated shares into a single interest for ownership and administration purposes. The trustee would treat the holding company as a single owner. The holding company would administer interests, including ownership records, and distribute income based on these records.

3. Tribes should be eligible for Federal loans/funding for purposes of exercising Tribal purchase options,

4. The Tribes, rather than the Federal Government should administer as much of the program as practical, consistent with principles of self governance and self determination as well as self sufficiency.

5. The legislation should not deny certain property ownership rights to individuals by limiting their ability to purchase, sell and inherit fractionated interests. While certain restrictions may be necessary, the legislation should not substantially restrict the rights of individual American Indians.

Legislation is therefore needed which would consolidate the large number of existing fractionated interests and prevent further fractionation. This alone would remove a primary obstacle to the efficient administration of the trust management systems and provide a major catalyst for the timely resolution of most of the operational problems associated with trust management activities, including trust resource and realty management, probate, land titles and ownership records management, IIM accounting, collections, deposits, investments and disbursements, customer service and record keeping for all trust management activities.

An added benefit is the annual administrative cost savings estimated at the same $33 million mentioned above.

Executive Summary

The OST Needs Analysis project was conducted by Macro International Inc. (prime contractor) and its subcontractors, Larson Slade Associates, LLC., and Arrowhead Technologies, Inc. from December 19, 1996 to April 7, 1997.

The primary purpose of the project was to provide the Office of the Special Trustee for American Indians with an analysis of the various components of the American Indian Trust system (i.e., trust accounting, asset management and land title and recordation) based on the perspective of the end users in the field (OST employees, BIA employees, Tribes, and others). In addition, the project included specific reporting on the gaps that exist between the current Indian Trust system and trust departments in the commercial sector; the features needed in a new system which meets commercial standards; the training needs and requirements of staff; the key business events used in day-to-day trust business; an inventory of the equipment needs of end users; and, a recommendation on whether existing Government capabilities are adequate to satisfy the needs and requirements of a new trust system.

The project was modified three times to add further reporting elements to its scope, including: a validation of the Conceptual Strategic Plan including cost estimates; an increased analysis of oil and gas assets management; a review of commercially available land title and recordation applications and service bureau support; revisions of the Strategic Plan budget; and the development of roles and responsibilities of a systems integration and overseer for the integration, implementation and sustained management of a new trust management system.

The primary means by which the Macro project team gathered such information was through site visits to 50 Tribal locations, 35 BIA agency offices, 8 BIA area offices, one BIA field office and the OTFM headquarters office in Albuquerque, NM. Approximately 350 confidential interviews were conducted; however, since some of these were recorded as "joint interviews" (two or more people participating in a single interview on a specific subject or function), only 330 official responses were recorded. These responses were entered into a database and compiled into analysis segments with all personal or location identification removed. Additional data was gathered from interviews with OST officials and staff, service bureau providers, project resource firms (Riggs Bank, NationsBank, State Street Bank and Trust), Tribal representatives, and others.

Data analysis consisted of a systematic review of the database responses and a review of information gathered from additional resources, reports, and interviews.

Key Findings and Recommendations

Based on the field interviews and the project team’s review and analysis of trust-related data, four major findings were identified and recommendations developed. They include:

Fiduciary Responsibility

The trust fiduciary responsibility to manage trust assets and accurately report on their status to beneficiaries is not being met. The existing trust system does not account for each and every asset under its responsibility and there is no method for gauging the accuracy of information depicting the

assets for which they do account. The trust system is unable to provide the individual Indian account holder with a statement of assets and transactions for non-financial assets. A major deficiency in the existing system is the lack of accounting and control of the most important trust asset to the beneficiary—the land. In addition, responsibility for the management of trust accounting, asset management and land records rests with two different organizations, the Office of the Special Trustee and the Bureau of Indian Affairs. Without systems capability or, control of the most essential trust asset (land), and without single-point management responsibility, the current trust system cannot be considered operating at a commercial standard.

Recommendations

- A single trust organization with management control over both resource and financial assets utilizing standard commercial applications programs to process data for trust asset and financial accounting, for land title and recordation, and for carrying out fiduciary responsibilities and reporting to American Indian Trust account holders.
- New and updated policies, practices and procedures for implementation and operation of the new information technologies infrastructure.
- Acquisition of a dial-up communications (WAN/LAN) network to link trust locations (regional, field, Tribes, MMS, and BLM) with the single trust organization.
- Acquisition and upgrade of workstations with required hardware and software to enable all trust system staff and the 300 Tribal sites direct access to account information through the dial-up network.

Trust Data and Information

Although a new commercial system will have the capability of processing current and historical land information, existing data relating to land ownership and valuation is not in suitable condition or is nonexistent. Land appraisals are out of date and, if they exist at all, are perceived by many owners to be inaccurate. There are major appraisal backlogs in most field locations.

American Indian properties are fractionated as a result of generation after generation of inheriting undivided lands. Some properties are fractionated to the 35th decimal and incomes are essentially zero or not accountable.

The filing, storage and retrieval process of hard copy documents is inefficient. There is an overabundance of documents (which are vulnerable to disaster) and a lack of facilities and trained personnel to safeguard and preserve them.

Recommendations

- A reconciliation of historical land titles and the appraisal of Indian lands must be completed before any new system can provide accurate information to account holders regarding this critical trust asset.
- Enact legislation to resolve fractionated ownership.
- Establish a national archives to image, store and retrieve official and historical documents.
- Acquire and/or upgrade hardware and software equipment to enable field offices to image, store and retrieve documents.
- Update and complete file jackets, records, and accounts to provide the new commercial trust system with accurate information for processing.

Organizational Staffing, Training & Development

A new commercial trust system will have the capacity to process accounting, asset management and land information; the reconciliation of land titles and the appraisal of Indian lands will provide accurate land records; a national archives will insure that official documents and historical trust records are maintained; a communications network will enable user access to trust information; and, hardware and software purchases and upgrades will enable the internal and external trust system users to image, store and retrieve documents. However, all of these important tasks will not, by themselves, improve the Indian Trust system unless an effective and efficient staff is able to carry out these tasks.

Field interviews indicated that recent reductions in staff have resulted in current employees being forced to handle tasks for which they have no formal training. On-the-job training is almost solely relied upon to prepare employees for their jobs. This has resulted in deficiencies in quality and timeliness of many work tasks. The concept of fiduciary trust responsibility is not readily apparent at OST and BIA field offices, although OST staff in Albuquerque are exceptions. While the effort of most employees is exemplary, many employees have responded to this difficult situation by either resigning themselves to never getting their jobs done correctly or becoming so achievement-oriented that they are nearing physical and mental exhaustion.

Recommendations

- Provide a variety of trust activities training related to improving job functions, improving customer service, understanding trust services, dealing with stress, and handling the transition of the current trust system to a new commercial system.
- Implement functional improvement training on an on-going basis.
- Conduct training related to the commercial trust transition to coincide with the "roll-out" of the new system in the FY 1998-FY 2000 time frame.
- Make a commitment to bolster the capability of the field offices by acquiring more staff with trust banking experience to provide needed technical support to fellow employees.
- Establish a "help-desk" system from regional and central offices as additional backup and support to current field staff.

Administrative

Two major administrative issues need to be resolved in order to improve the Indian Trust system. They are: resolve the probate backlog; and, resolve the relationship difficulties between OST and BIA field employees.

Probate Process

The probate process takes much too long to complete due to fractionated land ownership, incomplete files and records, under staffing, and too few Office of Hearings and Appeals (OHA) administrative judges to adjudicate the case load.

Recommendations

- Enact legislation to resolve fractionated land ownership.
- Increase administrative staff levels to enable probate case information to be compiled in a more

timely manner.
- Increase the number of administrative judges thereby increasing the number of probate cases that can be adjudicated annually.

OST/BIA Relationship

The relationship between OST and BIA field employees is strained and in need of immediate clarification. Agreements between these organizations are required in such areas as staff roles, procedures, authority, and reporting relationships. This situation has resulted in employee frustration in both organizations and a concern that preferential treatment is being received by one group or the other.

Recommendations

- Establish an agreement between the two organizations to provide much-needed leadership and guidance to OST and BIA employees across the United States.
- Establish a single organization with all trust activities under one manager.

"The earth is full of minerals of all kinds. . .
The ground is covered with forests of pine -
If we give this up—
it is the last thing that
is valuable to us or the white people —"

White Ghost

Chapter 1 - Introduction

Overview

The awarding of the OST Needs Analysis project to Macro International Inc. (Macro) in December, 1996 began a 107-day effort to collect data from over 50 Tribes, and from 44 Bureau of Indian Affairs' area and agency offices in 19 states. Approximately 350 interviews were conducted. The information collected from the field was analyzed, and recommendations were formed and eventually fashioned into required reports.

Working with its two subcontractors, Larson Slade Associates, LLC., and Arrowhead Technologies, Inc., the Macro project team consisted of over 50 people. Training was provided to all data collection teams prior to their departure to insure a standardization in the data collection methods and, most importantly, to insure that cultural sensitivities were addressed.

Collected data was transmitted back to Macro's headquarters in Calverton, Maryland on a daily basis from teams of field data collectors. This data was compiled and later used as the key source of analysis since it represented the "voice from the field." Experts from the project team also added their own perspectives and recommendations to the field data.

Analysis was conducted at two different times over the course of the project. The first was in preparation for a progress report which provided OST officials with a preliminary review of the data collected from approximately one hundred interviews. The second analysis was completed following the completion of all field interviews.

Also, progress reports were provided every 20 days outlining progress to date, staffing changes (if required), anticipated tasks, and anticipated problems and proposed solutions.

Background

This project came about as a result of the establishment of the Office of the Special Trustee (OST) in October 1994 by an act of Congress. The Special Trustee oversees and coordinates reforms of practices relating to management of the Indian Trust and was charged with the responsibility of developing a strategic plan to execute the Secretary of Interior's responsibilities as delegated by The American Indian Trust Fund Management Reform Act in 1994.

In October 1995, the Special Trustee began an assessment of trust policies, practices and procedures as they apply to trusts held by individual Indians and by the Tribes themselves. The preliminary result of this assessment and plans for improvement were incorporated into the February 1996 Conceptual Strategic Plan.

The Office of the Special Trustee continued to assess the trust system. Additional reports, such as the "Mathis Report" in December 1995, the "Tiger Team Report," the Bureau of Indian Affairs' "Tribal Trust Funds Reconciliation Project," and other related documents all confirmed that the policies, procedures and systems of the trust system were inadequate to meet the requirements of The

American Indian Trust Fund Management Reform Act. The Special Trustee's Conceptual Strategic Plan states, "To meet these objectives and deal with the present and future (environment), accounting and management systems must be improved and brought up to commercial standards available in the private sector as soon as possible. Only this will permit an accurate and full accounting to American Indian beneficiaries and allow for the proper discharge of the Secretary's trust responsibilities."

The OST Needs Analysis project was developed to identify a number of specific gaps in the system, i.e., identification of business events, comparison of a commercial trust department to the current trust system, an updated equipment inventory, etc., and to validate costing. Most importantly, however, was the Special Trustee's need to ascertain the specific needs and requirements of the internal and external users of the trust system from their own perspectives. In fact, no comprehensive end user requirements analysis had ever been completed. This field perspective would enable the Special Trustee to complete a picture of the trust system of the future.

Case for Action/Purpose

Based on the findings from the field, there is a sense of urgency that key changes in the trust system need to be implemented as soon as possible. There are three driving reasons for this sense of urgency:

- **The current trust system is not providing account holders with the information about their trust assets of which they are entitled.** According to The Reform Act, Section 303, the Special Trustee is to insure that appropriate policies and procedures are established, and develop necessary systems "to prepare accurate and timely reports to account holders (and others, as required) on a periodic basis regarding all collections, disbursements, investments, and return on investments related to their trust accounts."

- **The Special Trustee's Draft Strategic Plan (February 1997) proposes to bring the trust accounting and management systems up to commercial standards within two years.** For many years, underfunding and understaffing have resulted in the U.S. Government being unable to keep up with needed technological changes and reforms in trust management policies, procedures and practices. This situation will grow worse each day until major reform is completed.

- **Legal proceedings brought against the U.S. Government by Indian Tribes to resolve trust-related grievances indicate that trust beneficiaries will no longer wait for a slow-moving bureaucracy to solve their trust problems.** According to the Special Trustee's Strategic Plan, Supreme Court findings on the management of Indian property have held officials of the U.S. to "moral obligations of the highest responsibility and trust" and "the most exacting fiduciary standards." The immediate restructuring of the trust system to meet commercial standards will resolve many of the problems which account holders now have with the system (e.g., reconciliations, reporting, land ownership). As increased service to account holders is provided by the trust system, the need for legal remedies to resolve problems will be reduced.

Scope

The OST Needs Analysis project was comprehensive in nature in several ways. Geographically, the 350 interviews were completed from a wide assortment of Tribes, Agencies and Area Offices in 19 states during the winter months of January and February (See Figure 1). Technically, the project also required a keen understanding of commercial trust systems and state-of-the-art information technology to conduct a thorough comparison between the current (or as-is) system and the future (or to-be) system.

Specifically, the project also required the Macro project team to:

- Identify various internal and external business events in the daily trust business
- Determine the needs of the internal and external users of the trust data
- Analyze skills necessary to fully use the data and identify training requirements
- Compare and contrast a commercial trust department's capabilities and features with those of the Department of Interior's current trust management system
- Recommend skills required by internal and external users
- Recommend training required by the internal and external users to make them ready to use a new "information infrastructure"
- Recommend both time and cost estimates in the delivery of the training
- Provide an inventory of all end user equipment and determine the viability of the equipment for use with a "new information infrastructure"
- Recommend whether or not existing Government resources can satisfy the needs and requirements of the new system
- Analyze the needs and requirements for and make recommendations on the features needed in a new system(s) to meet the needs and requirements of the eight elements outlined in the Strategic Plan:
    1. A trust resource/asset management system.
    2. An accounts receivable data and billing system that uses lease-contract and lease land ownership information.
    3. A trust, depository, payments and delivery system for Individual Indian Money (IIM) accounts.
    4. A land records and title recordation and certification system.
    5. A general ledger and general ledger accounting system.
    6. A technology services center dedicated to trust resources and fund management.
    7. A national archives and record center.
    8. A risk management and control system.

Contract Modification One

This contract was modified to add the following tasks to its scope:

- Submit the final deliverables by March 31, 1997

- Submit a progress report by February 7, 1997
- Allow more time and analysis to the areas of land ownership (Land Title Records Office) functions and those functions related to oil and gas responsibilities
- Provide the Special Trustee with a verification and validation of Phase One of the Strategic Plan for the American Indian Trust Fund Reform. This verification will take into consideration undetected issues, concerns and assumptions that may influence the implementation of the Strategic Plan or its budget
- Present preliminary findings to the Special Trustee in Albuquerque, NM on February 7, 1997
- Present preliminary findings to the Special Trustee's Advisory Board in Santa Fe, NM on February 11, 1997

Contract Modification Two

This contract was modified to include the following task:

- Attendance of selected Macro project team members to present preliminary findings at a meeting of Tribal leaders and OST officials on March 17, 1997 in Denver, Colorado

Contract Modification Three

This contract was modified to include the following:

- Extend the contract until April 7, 1997
- Amend the due date for the draft final report to March 31, 1997
- Examine commercially available software for applicability to Land Title Records
- Examine availability of service bureau systems of Land Title Records
- Develop a Land Asset Management budget for pre-leasing activities
- Develop a budget for the post-leasing process
- Develop a budget for ongoing appraisals, based on the average costs of commercial appraisals
- Develop a budget for appraisals based on the current appraisal backlog
- Examine and provide a rationale for the impact on American Indian Trust Development Administration (AITDA) staff, if training is not completed
- Examine and provide a rationale why more training funds are needed in Fiscal Year 1998
- Examine and provide a rationale for the impact on AITDA if the budget were to be implemented

over 5 years

- Develop the role and responsibilities of a system integrator and overseer for the integration, implementation and of sustained management of a new trust management system (e.g., Trust Asset and Accounting Management System (TAAMS), and Land Title Records (LTR))

Methodology

This project required a multi-talented team of experts from a number of technical fields to work cooperatively to plan, develop and execute a systematic approach for obtaining key data from internal and external trust system users at field locations throughout the U.S., and from OST staff in Albuquerque, NM.

Two types of data collection teams were utilized during the project. The first consisted of four, three-person teams who conducted a series of rapid interviews with approximately one hundred internal and external users (i.e., OST and BIA area and agency staff, OST Albuquerque staff, Tribes, BLM, MMS). Interview guidelines were developed for this team (See Appendix 1D) and data compiled in a database for analysis.

The second type of team consisted of 20 two-person data collection teams who conducted more thorough interviews with approximately 250 internal and external users. Interview guidelines were developed for this team (See Appendix 1E) and data was again compiled in a database for future analysis.

Due to the sensitive nature of this project and to protect the opinions expressed by interviewees throughout the trust system, it became apparent that any release of project information must be approved and channeled through the Contracting Officer. In order to insure that Macro project team members, especially data collectors, were provided with a standard response to external inquiries, "Confidential Information Agreement" forms (See Appendix IF) were signed by each project staff member. These forms directed project staff to refer external inquiries to the Contracting Officer and report such inquiries to the Project Manager.

Following the data collection activities of each team, analysis was conducted at Macro’s headquarters office in Maryland to examine the database information, to develop recommendations, and to finalize all reporting requirements.

A three-phased technical methodology was implemented to achieve project goals, namely:

I. Planning and Protocol Development

II. Data Collection

III. Analysis and Recommendations

However, with a required reduction of 30 project days and an enhanced scope of work, it became apparent that the original timetable would not meet the project’s requirements. An accelerated start-up and interview schedule was developed (See Appendix 1C).

Report Organization

This report is designed to provide the reader with two major perspectives: first, a review of the key components of the current trust system; and second, a series of recommendations for making the trust system more effective and efficient. Each chapter is supported by an Appendix, where appropriate.

Part One—Current, As Is:

The description of the current, or as is, state of the trust system begins with the views of the Tribes and U.S. Government employees in the field (Chapter 2). These internal and external user viewpoints, as collected from confidential interviews, provides a unique look at the system from those who work with it every day.

In order to gain a broader understanding of trust operations, the key business events and activities at the Area, Agency and OTFM headquarters' offices are described (Chapter 3). Flow charts of these key business events are provided to illustrate their complexity, the redundancy of many of their activities, and the need to make specific improvements in their work flows.

An enhanced view of the information technology that is currently used in the trust system is presented to demonstrate the need for upgrades and the acquisition of new technology (Chapter 4). Next, the contrasting and comparison of the current trust system with a commercial trust system depicts the similarities and differences between the characteristics of the existing system with the private sector standard (Chapter 5). Since the Special Trustee's mandate is to bring the existing trust system to a commercial level, this chapter introduces the reader to the key elements of each system.

The final chapter of Part One addresses the current state of training throughout the trust system. It describes the current training needs of specific user groups, based on their responses during the interviews (Chapter 6). This chapter also reviews existing training courses and resources utilized for functional, ongoing skills upgrades.

Part Two—Recommendations:

Recommendations for making the trust system more effective and efficient begins with a description of the features of a new trust system including a Land Title and Records Management System and a Trust Asset and Accounting Managment System (Chapter 7).

A number of supporting elements are recommended for the new system including a Technology Service Center, a National Indian Fiduciary Records Center, a communications network, and a Risk Management and Control System (Chapter 8). Also recommended is enhanced support in document imaging and the acquisition of additional end user workstations.

Recommendations are also provided for increasing the effectiveness and efficiencies of staff through training in the short-term and during the transition to the new trust system (Chapter 9). The case for enhanced employee training to improve current as well as future skills is made and a training plan is provided.

Next, the adequacy of existing Government services to meet the requirements of this new trust system,

is addressed (Chapter 10) and includes views on such organizations as the Office of Hearings and Appeals (OHA), the Minerals Management Service (MMS), and the National Archives and Records Administration (NARA).

The final recommendations (Chapter 11) call for the addition of a systems integration team to assist OST officials in planning and implementing the organization's transition to a new trust system. It also calls for a major emphasis in staff training during Fiscal Years 1998-2000 in order to coordinate the implementation of the new system with the ability of internal and external users to effectively use the system. The case is also made that a reduction or delay in this training will result in additional organizational costs due to rework and cost escalations.

Finally, it is recommended that current roles, processes and procedures between OST and BIA field staff become clarified to reduce the strained organizational climate that now exists.

User Needs Baseline

"We will never let our hold to this land go,
For it would be like throwing away...
(our)... mother... That gave us birth

Aitooweyah

2.0 Introduction

The Indian loves the land and this love was reflected in all the interviews that were conducted to determine user needs. Comments, though sometimes critical were never angry, they only reflected the Indian desire to protect the land which is so loved. This chapter reflects the findings from those interviews.

2.1 Purpose

This chapter explores the findings from the 350 interviews that were conducted at the OST staff in Albuquerque, Area, Agency, and Tribe level as illustrated in Chapter 1 figure 1. The interviews were aimed at discovering the needs of those who are performing the trust asset and accounting management responsibilities at their respective locations. Each individual finding is not presented, rather a series of conclusions are reached in section 2.5 which is intended to draw focus to the underlying needs that are represented by each of the individual findings. The focus of this chapter is the responses to the last three questions in the questionnaire which were ;

· State, from your individual perspective, the two main problems with the current trust fund management system,

· Identify what you need to do your job, and

· Identify missing features of the current trust asset and accounting management system.

Overview of User Needs

· Section 2.2 presents a quantitative summation of the findings and displays graphically the findings for each level of site visited.

· Section 2.3 identifies selected statements which are considered to be the most reflective of major findings.

· Section 2.4 provides a discussion of the major findings with an attempt to identify them to the proper context in which they were stated.

· Section 2.5 presents a summary of conclusions that can be reasonably reached as an outgrowth of the discussion in Section 2.4.

· Section 2.6 provides a general discussion on user comments and observations apart from the three questions noted earlier in Section 2.1. Although more extemporaneous in content there are some important insights in these comments.

A detailed list of edited responses are contained in Appendix A2. The list was edited to eliminate duplication and remove ambiguous responses. The responses are grouped by needed system features, skills and training, equipment, organization interface, staffing, and Tribal specific responses.

2.2 Quantitative Summation

The data gathered has been summarized as statistical findings from the field but **does not attempt to draw any firm conclusions exclusively from this summation.This data requires a further in depth understanding of the major statements made to interviewers during the field visits. This assessment is discussed in Section 2.4.**

Figure 2.2 shows responses for each participant arrayed by the organizational level visited. More than twice the number **of responses from OST people** were from the Agency level rather than the area, which is not surprising because the number of OST people located at the agencies is much higher than at the Area. The surprise is that the number of BIA Agency level people who are directly or indirectly involved in trust asset and accounting management is over three times the number of OST people at the Agency level, (note; for many of the BIA people trust asset and accounting management is a part time job where for others , as in leasing, it is most of their job). Of the 110 BIA people who were interviewed at the Agency level slightly over half, 56, were involved in either realty or asset management.

Participant Role/Job	HQ	AR	AG				
OST Trust Accounting	11	15	32				58
Area Directiors				2			2
Agency Superintendents					21		21
Administrative Ofcrs.				1	9		10
Realty (incl. Leasing)				7	41		48
LTRO				3			3
Resource/asset mgmt.				3	15		18
BIA Trust Accounting				1	9		10
Social Services				2	3		5
Tribal Services/Operations					8		8
Other	3			1	4		8
Tribal Officals						61	61
Total	**14**	**15**	**32**	**20**	**110**	**61**	**252**

Figure 2: Number of Responses by Participant Role and Organization (n = 252) (Note: Some interviews had multiple participants.)

OST	OST	OST	BIA AR	BIA AG	Tribe	Total

Figure 2.3 represents the distribution of responses to the topped ranked problems as perceived at the agencies. As is shown, process oriented problems were most numerous followed by organizational interface issues with system access to data coming in third, Training and staffing were almost equal and together represented over 30% of the responses. It is surprising that at the Agency level where there have been Reductions in Force (RIFs), with more rumored, that the majority of problems were not staffing related. The significant number of organizational interface problems may well be related to the recent split of OST and BIA which occurred without a clear definition of responsibilities. Usually the cry for equipment is heard loud and clear, but equipment problems represented only 1.0% of the problems. This may be caused by the focus on process related problems.

Exhibit2.3

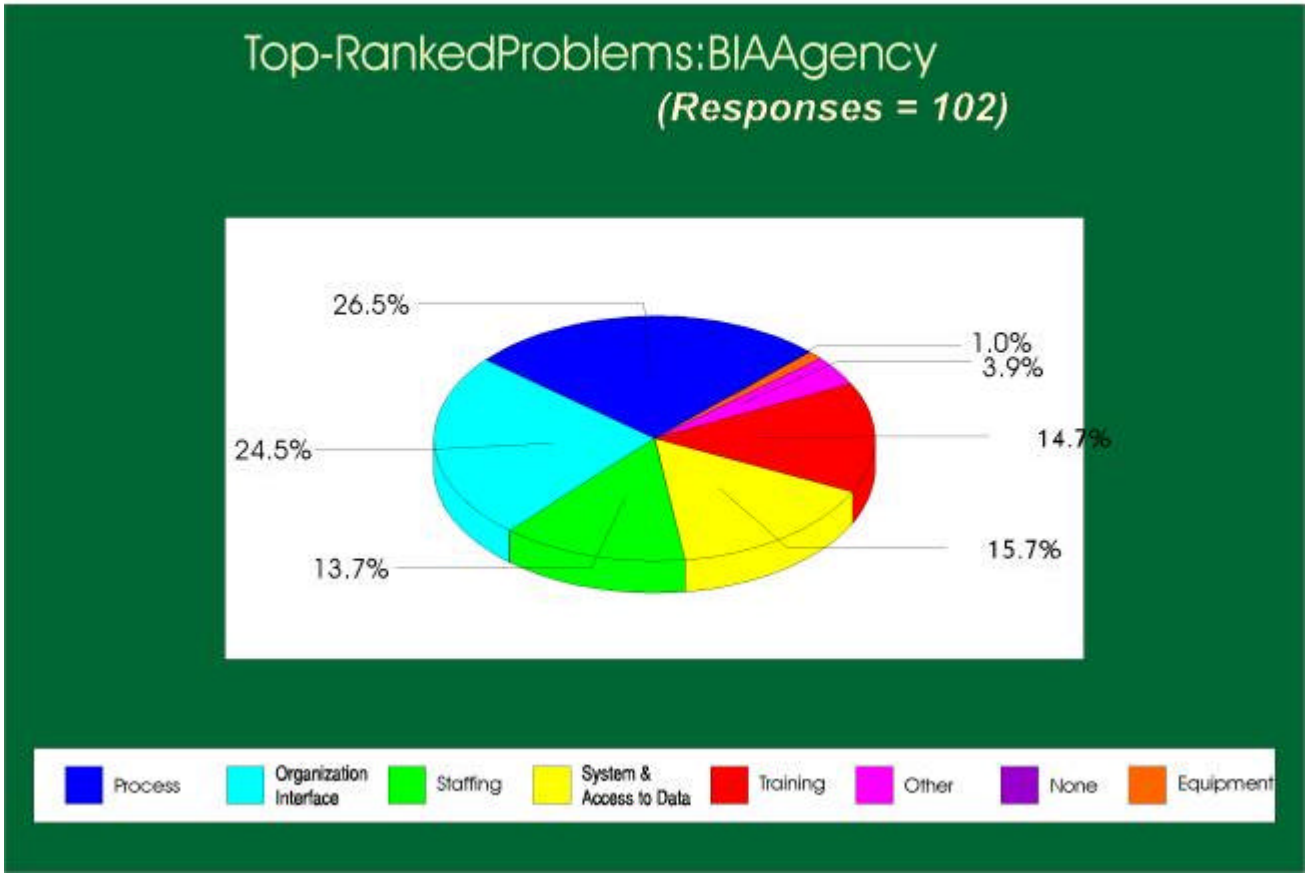


Figure 2.4 shows the distribution of the top ranked problems at the Area level. Equipment responses are five times the size they were at Agency level although many interviewers observed equipment still in boxes at the Area level. Staffing appears to be a much larger problem at the Area level as does systems and access to data. Process related problems remain high at the Area level. Organizational

interface is less than half the problem at the Area as compared to the Agency level responses.

Exhibit2.4

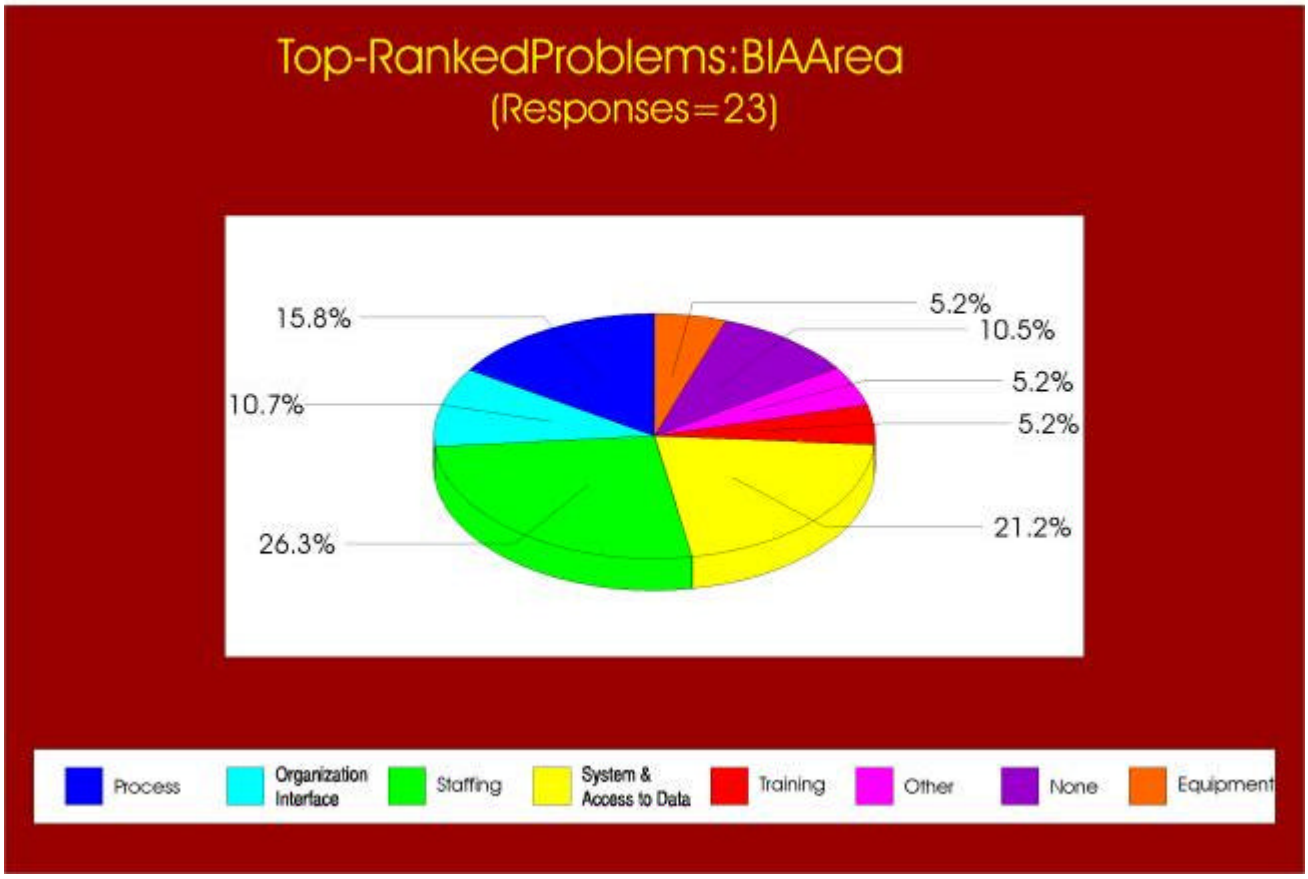
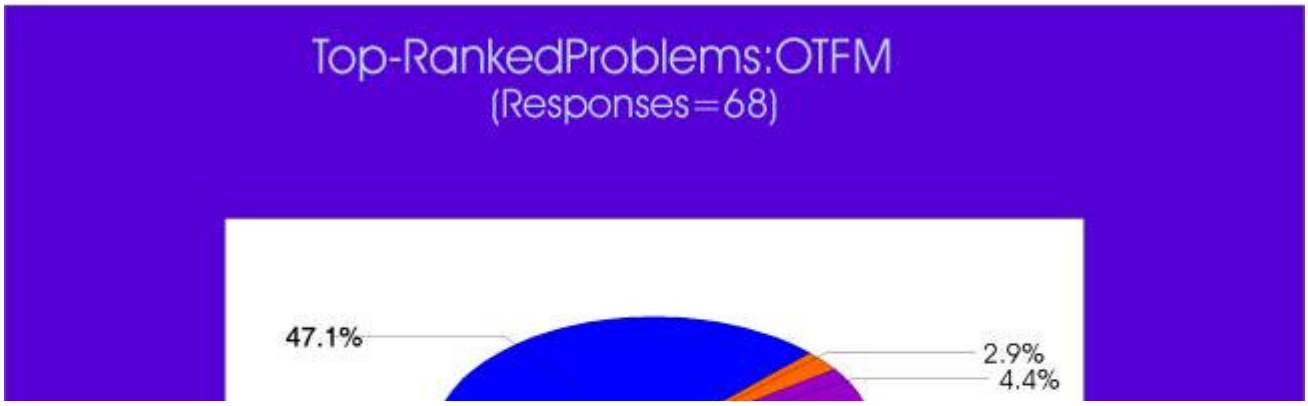
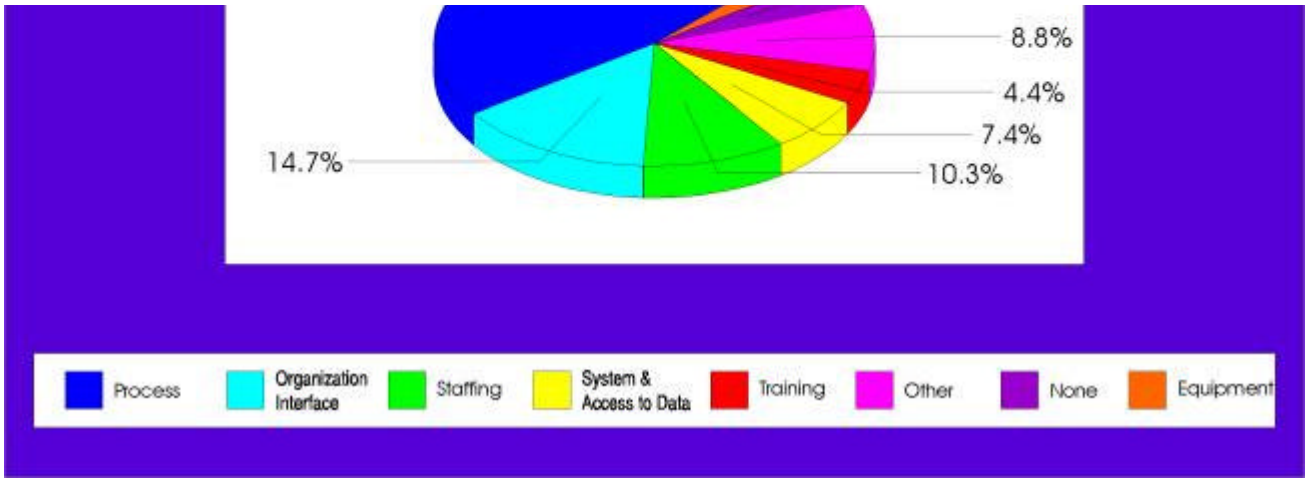


Figure 2.5 Shows the segregation of Albuquerque OST staff responses to the top ranked problems. The Albuquerque staff responses are based on a small sample with only 14 responses, but is reflective of some significant variances. At OST, where system interaction is a way of life, the process related problems are the largest of the top ranked problems, 47.1%. Organizational interface concerns, though larger than at the Area level are still significantly smaller than at the agencies, 14.7% to 24.5%. Staffing problems are the lowest at the Albuquerque office and system and access to data problems are extremely low for an organization having so many process related problems.

Exhibit2.5





2.3 Selected Findings

This section highlights some of the major findings stated to the interview teams. These selected findings are segregated similar to the major findings displayed in Section 2.2, process related, organizational interface, staffing, system and access to data, and training. These findings are not, in most cases, direct quotes but rather a restatement and summation of the problems.

2.3.1 Process Related Findings

- Lack of integration and interfacing across processes.
- Reconciliation process is too cumbersome, and is being performed at three levels.
- Lack of clear Probate policies and procedures.
- The collections, deposit, disbursement processes are slow and dependent on many manual processes.
- Interest calculations performed at multiple sites and guidance is apparently unclear.
- Information is not always readily available for account holder inquiries.
- Tribal drawdowns require too long a time to process and have too many levels of approval.
- Responsibility for approving disbursements is unclear, sometimes Superintendent approves and sometimes Area supervisor approves

2.3.2 Organizational Interface

- Lack of a clear understanding of responsibilities between OST and BIA.
- There are too many approval levels.
- Tribes have little confidence in BIA.

- Some Agency personnel bypass Area and deal direct with OST Albuquerque.

2.3.3 Staffing

- Both OST and BIA respondents complained of being under funded and understaffed.
- Both OST and BIA respondents see low grade levels as a critical staffing problem.
- There are specific positions that need to be filled.
- Tribes mentioned staffing problems far less frequently than OST or BIA personnel.
- Agency personnel are concerned about rumors of future RIFs.

2.3.4 Systems and Access to Data

- Integration/interfacing is required across systems.
- More automated features are needed.
- Systems need to remain operational/available more time each day.
- Data quality is poor.
- Improved search capability is needed.

2.4 Discussion of Major Findings

In this section, there is a discussion of major findings stated in Section 2.3 and those displayed and discussed in Section 2.2. This section follows the general outline of problems - process related, organizational interface, staffing, and system and data accessing.

2.4.1 Process Related

Although the number of process related problems is greater at OST Albuquerque and Agency level than at Area, it may well be that there are more process related actions taken at the OST Albuquerque and the impact of those actions are felt more intensely at the Agency level. In Section 2.3, there are several problems stated but they may well be associated with one of three problems which are: 1) lack of systems integration, 2) inadequate or outdated policies and procedures, or 3) too many levels of approval for actions that impact on either the Agency or the Tribes.

2.4.2 Organization Interface

Statistically, organization interface reflects a greater concern at the Agency level than that felt at either the Area or the OST Albuquerque. This is caused by the lack of a clear understanding of responsibilities and the fact that the impact on the Agency personnel is greater where the necessity of

making decisions that affect individual Indians resides. In Areas, like Tribal drawdowns which are delayed even when they are preceded by plans and budgets, a general lack of confidence in organizational effectiveness is likely to occur. This lack of confidence, coupled with a long-standing history of minimal trust between Tribes and BIA, tends to exacerbate an already tenuous situation. This condition is further supported by the findings that Tribal personnel sometimes bypass both Agency and Area levels and Agency personnel bypass Area levels to deal directly with OST Albuquerque.

2.4.3 Staffing

Based on statistics alone, it appears that Area personnel are more concerned about staffing issues: But in fact, the problem was stated quite vociferously at the Agency, as well. The numbers at the Agency level may not be as great, but the intensity of the concern is clearly at the Agency, as well as, the Area. In the era of federal cutbacks there is a prevalent feeling throughout the federal workforce of staffing problems. There are, however, some unique differences associated with these issues. Filling of critical positions is not necessarily constrained by Federal cutbacks and rumors of future RIFs can be addressed by management. Low personnel grades are often caused by a lack of requirement for certification for specific positions, when in fact, a certification requirement that included education as a qualifying factor could become the basis for justifying higher grades.

2.4.4 Systems and Access to Data

Based on quantitative analysis the problem of systems and access to data is greater at the Area and Agency levels. In part this is caused by the difference in time zones. OST Albuquerque systems are not up and running at times when Agency and Areas staffs are still working. But, in fact, the problem seems to be more basic. The systems in use are in need of modernization to support the requirements stated in the findings more automated features, better search capability, improved data quality, and across the board integration.

2.5 Conclusions

This section concludes the definition of needs based on statistical data, findings, and a discussion of the findings. It is also organized by process related, organization interface, staffing, and systems and access to data problems.

2.5.1 Process Related

Based on earlier discussions, it is safe to conclude that the primary sources of process related problems are lack of adequate, current procedures; lack of sufficient modern automated processes; and poorly designed manual processes.

2.5.2 Organizational Interface

The statistical evidence in Figure 2.1 leads to the conclusion that there are still too many functions which directly impact on trust asset and accounting management remaining in BIA. A clear definition of roles between OST and BIA is sorely needed. There are too many approval levels between the Indian seeking solution and the ultimate approving authority. There is a need to establish a dedicated staff to deal directly with Indian issues with sufficient authority to provide resolution to problems and

build the confidence at the Tribal level. Only time and supportive performance will change attitudes that have taken decades to develop.

2.5.3 Staffing

There is a clear need to establish a critical position hiring policy. There are indicators that a discussion needs to occur with OPM to determine ways in which higher personnel grades might be legitimately supported. There is conclusive evidence that an announcement denying the likelihood of another near term RIF would be welcome by all.

2.5.4 Systems and Access to Data

Modern automated systems are needed. Data cleanup is a high priority, as are relational data bases which will maintain data compatibility and synchronization. Across the board integration of or interfacing with both commercially acquired and internally developed systems is essential.

2.6 General Observations

During field visits there were comments made which did not directly relate to the questionnaire being used but were nonetheless a part of the collected data and were significant enough to warrant comment. There were also observations made by the project teams that are worthy of discussion. This section is a discussion of those unsolicited comments and field observations.

· Most observers saw hard working dedicated people at all levels.

· Fiduciary responsibilities are not being met due to the lack of complete, auditable and audited accounting systems.

· Two year backlogs in probate processing were observed.

· Real assets are not properly accounted for, nor are the records reflecting ownership and value complete and accurate.

· One interviewer observed that the RIF and ensuing shuffling of tasks amongst the remaining personnel resources has created three categories of deficiencies: 1) work overload, 2) a mismatch of skills and tasks, and 3) a major training requirement which is not being addressed but rather left to OJT/osmosis (regretfully few and in some cases no resident experts are available as mentors).

· The net effect is a field staff who, for the most part, would prefer to do a good job, but who seemingly accept and recognize that some work will and some will not get done.

· Jobs left undone, due dates missed, poor quality performance, results in an either "who cares" attitude or a hyper stressed worker.

· Boxed computers and related equipment were observed at several installations. When asked, OST employees stated that there were not technicians available to help in the setup, installation, and training for effective use of the equipment .

· Hard copy documents are not properly stored, nor is there a recording or tracking method which will account for all the documents.

· Some Tribes are not waiting for systems solutions to come forth from OST but are finding and funding solutions using Tribal funds. These Tribal funded solutions manifest themselves in various forms from computer backups and offsite storage to automation of data needed in local processing.

· Some Agency, Area, and OST Albuquerque personnel expressed a desire to have all files, policies, procedures, laws, etc. they use online and available at all times.

· Several Tribes requested availability of trust fund data on a more frequent basis, (no less frequently than weekly) for the use of their financial people, treasurers, comptrollers, etc. so they could monitor availability of funds for Tribal projects and for preparing reports on status of investments to Tribal councils. They also felt they needed the data for the possible management of their own funds.

· Most Tribes would prefer to have the U.S. Government manage their funds, as long as they enjoy the same freedom of investment choices available to any US citizen. The advantages are twofold, the U.S. Government pays for the fund administration and there is a significant tax break for the Indian.

· It was observed that most Tribes will require a training program to fully understand the new and emerging OST thrusts and how they will benefit from these thrusts.

Business Events Process Models

3.0 Introduction

This chapter addresses the business events used in the day-to-day trust business and describes the relationship among such events. Daily trust business includes trust financial assets management, trust real property management, and land records and ownership management. Specifically, this chapter and its associated appendix are designed to:

- Identify the users of processes and information systems so that their needs may be included in overall requirements and in subsequent detailed design specification efforts
- Show the complexity and relationships among processes, performers, and automated information systems
- Develop a baseline of current processes or business events performed, using process models in order to plan the migration path from the current business procedures for the individual events to a new, commercially acceptable procedure for conducting business. This baseline (or "inventory" of current processes) identifies those processes that must be performed in the new information infrastructure. The OST Albuquerque office process map had insufficient detail to identify every business event performed at this office.
- Illustrate the Business Events Process Maps for:
    - HQ-OTFM, Appendix 3A
    - Area Offices, Appendix 3B
    - Agency Office, Appendix 3C

3.1 How To Read the Process Models

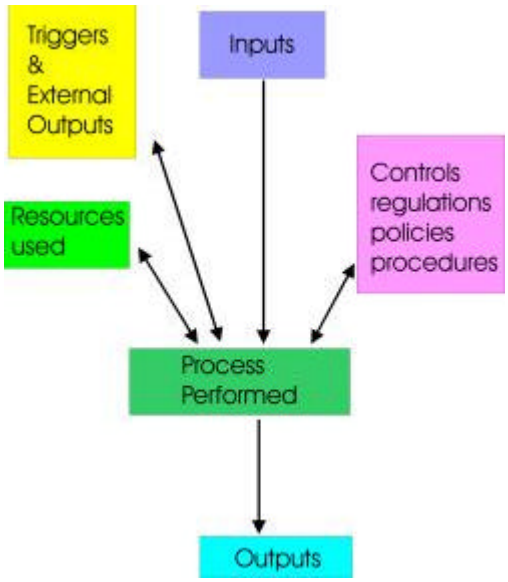
Process models comprised a process composition document and a process map. These components must be viewed in concert. Individually they represent unique views of the process; in combination they represent the process as it is currently performed. Process composition documents are complementary to the process maps.

Process Composition

The process composition is a definition and description of the work performed in the "as-is" trust financial assets management process in use. The composition provides an outline of each process, including the process name, definition, objective, performer(s), primary input(s) or "triggers," output (s), and the steps performed to complete the process. In addition, the composition lists the controls, e.g., policy, local practice, or regulations, that govern how the process is performed and the resources used, e.g., automated systems to perform the process. The composition also captures the differences noted between sites visited in performing the individual processes.

Process Map

The process map graphically depicts the flow and interdependencies of the trust financial assets management processes defined in the composition document. Processes are represented with boxes and include the process identification number, process name, and automated system used. Area and Agency numbers are constructed using the middle number to identify a functional/business area e.g., leasing is 5. The numbers *do not* imply sequence; rather, they are provided as a crosswalk between the map and the composition document, which provides detail about each of process on the map. Decision points in the process flow are stated within diamonds and include questions, decisions, conditions, or "if" statements. Inputs and outputs are shown on lines and are differentiated by arrows pointing either into or out of a box or a diamond.



Processes that are deemed "out of scope," yet play an integral role in the process, have been included to provide a more complete flow of all aspects of the trust asset and accounting management process. These processes are represented by dotted line boxes and only limited detail is provided in the composition of the document. For example, leaseholders play a key role in realty-related processes and are represented on the map for definition of flow or clarity, but the detail of surrounding leaseholder operations is not provided.

3.2 Approach

Two rules were developed to structure the development of the as-is process models:

Rule 1 - Process maps would reflect only that information that was collected in the field, without evaluation or validation.

Rule 2 - The process, as mapped, would represent what the majority of the respondents said.

Site-specific differences. Are captured in the composition document for the map in question.

Benefits of Process Modeled Analysis

The greatest value of process model analysis is the information provided by the people interviewed in the field. This data clearly states how they perceive the process is to be performed. From the input, which starts (triggers) a process, to the output(s) produced by the process and what the controls are used in the process. This process will allow management to review the procedures being followed and evaluate whether or not they are being followed properly, the right rules and regulations are referenced, the controls are working as planned.

Other Benefits Are the Ability To See Where

- Systems or procedural adjustments or reengineering are required
- Staff-to-function evaluations can be made to correct manning levels
- Verification that all necessary steps are performed and data, reports and documentation, are reaching the required destinations
- Site-specific differences can be identified and evaluated.

Disadvantages of Process-Modeled Analysis

The generic process maps do not graphically illustrate every variance identified during data collection. Since each individual Tribe, Agency and area site was not visited, every possible variation will not be represented. This incomplete representation leaves the possibility that personnel not visited will read a map and say, "That is not the way we do this task."

A second limitation is the simple fact that process mapping for analysis identifies and highlights problems and bottlenecks. It does not reflect solutions or alternatives.

Sources of Data

The breakout of interview information collected at the Tribal, OST Albuquerque, BIA Area, and Agency levels is as follows:

- Tribal Interviews -- 50 of the more than 300 tribes
- Agency Interviews -- 35 of the more than 80 offices
- Area Interviews -- 8 of the 12 offices.

The result was approximately 350 confidential interviews conducted, but since some of these were recorded as "joint interviews" (two or more people participating in a single interview on a specific subject or function), only 330 official responses were recorded. These responses were entered into a database and compiled into analysis segments with all personal or location identification removed.

3.3 Assumptions

Planning assumptions were made with which the as-is trust asset and accounting management process models were created. The assumptions developed for process model creation are

- The scope of the as-is process models is limited to trust financial assets management, real property management, and land title and record management. General administrative and personnel support activities, e.g., personnel transfers and supplies, are not represented in these models. This category includes the income from Irrigation Projects which does not affect trust accounts.
- The finished process models have not been validated by Field or Regional personnel.
- Process performers, e.g., Realty Office/Forestry Specialist, do not distinguish between BIA and Tribal employees (in the case of contracted activities).
- All identified processes 1) do not necessarily translate into processes that must be performed in the future, 2) should be considered for determination of value, and 3) should be reviewed to determine future process requirements.
- The process models represent generic processes, because of the lack of commonality found in the method of performance.
- Process model development is based upon data collected during the interview phase of the project. No attempt has been made to verify or validate that the processes have been defined in accordance with regulatory requirements.
- Distribution of income associated with Oil and Gas sales is represented in the Agency and Area-level process models.
- Not represented in the process models are the management functions performed by Bureau of Land Management (production tracking at the well head), Minerals Management Services (valuation and collection services), and in some instances, Tribal personnel, which are related to Oil and Gas resources. The interview process also did not yield any information on mineral mining activities.
- Tribal processes are represented on the Agency-level process map.

3.4 Process Flow Review

The business event process flow charts for Agency and Area illustrate some apparent inefficiencies. Inefficiencies in length or duplication of processes or missing processes were identified. The following are a representative sampling of the process inefficiencies.

- Excessively long process strings
- Multiple approvals in a process string

- Centralized Approval Authority
- Missing Processes
- Duplication of effort
- lack of Automated Processes

Excessively long process strings. To process a lease payment from the point of receipt at the Agency to the point of payment to the land owner requires nine processes, as follows:

Receive payment (agency action)

Prepare schedule of collections (agency action)

Create journal voucher (agency action)

Audit agency collections (area action)

Perform deposit activities (area action)

Post to IIM account (agency action)

Reconcile posted income (agency action)

Print check (area action)

Mail check (area action)

Multiple approvals in a process string A Tribal drawdown request is prepared by the Tribe and is forwarded to the Agency for approval; it is then reviewed by, the IIM technician and forwarded to the superintendent for approval. Upon approval, is forwarded to the Area for approval and finally forwarded to OTFM-HQ for approval.

Centralized approval authority. The following are approved by the Agency Superintendent:

Land use forestry plans

Tribe resolution/budget

Tribe approved, available land list

Tribe approved, lease

Tribe approved, land exchange

Tribe drawdown request

Leases

Requests for account hold

Since most of these requests for approval are reviewed elsewhere before presentation to the Superintendent, and some of them are reviewed and approved at higher levels, there may be a case for delegation of some of the Superintendent's authority.

Missing Processes. There were no processes mapped at the Agency or Area that showed either a manual or automated transaction logging step at the beginning of an action and at each step along the way. This step is essential for developing statistics that would be useful in trend analysis, e.g., time from account holder query to resolution, time from receipt of payment to deposit.

Duplication of effort. There are six processes at the Areas that are called reconcile, certify, approve, or audit. This indicates that to some degree area offices are in an action-monitoring role rather than in an action-taking role.

Lack of Automated Processes. It was clear during the development of the maps that there was a lack of automated processes at the Agencies and Areas. Most if not all of the business events mapped are manually performed. Staff may use an automated system to access or post data, but the processes themselves are manual.

Information Technologies

4.0 Introduction

This section addresses information technologies as they presently apply to trust management, i.e., the "as-is" situation. The "to-be" situation is covered in Chapter 8 and its appendices. The key technologies discussed herein are as follows:

- Communications system
- Archiving (or records) center
- Document imaging operations
- Inventory of hardware and software.

4.1 Communications

The Office of Special Trustee (OST) presently has no formal nor complete network or communications system of its own. Current network functions are performed on segments of existing BIANET and DOINET networks that have circuits to some locations having dumb terminals, and other circuits having direct connectivity to PC workstations. Some Tribal sites currently have no communications facilities at all. The use of dumb terminals, netted to the BIA Operations Services Center (OSC) in Albuquerque, causes problems that are counterproductive. For example, shutting down the dumb terminal network during the peak work hours of the day, sometimes without notice, causes the loss of all data entered from a terminal if the operator has not finalized and closed the data entry.

4.2 Archiving

Several of the key findings from interviews conducted in the field concerned problems relating to archiving. When asked about storing and retrieving documents and computer files, individuals in the field were quick to state their needs and desires:

- To store hard copy documents in a safe place (and to be able to retrieve those documents when required)
- To back up key computer files used in daily routines
- To access information they need to perform their functions through their individual PC workstations.

With few exceptions, when hard copy documents are being stored in the field, they are done so in

places that are not entirely safe: in the offices of the people who create or use the documents, in other rooms or sheds on the premises, or in rented mini warehouse units. Many of these storage sites are unprotected from temperature extremes, moisture, insects, and rodents. One of the extreme examples are boxes of records stored at one particular remote site. These boxes cannot be accessed because of the likelihood that the Hanta virus is present.

In the few cases when individuals in the field stated they were presently backing up their personal computer files, the method they indicated they are using is to store floppy disks or tapes in a rented bank vault. However, due to budget constraints, this is not being done as frequently or as widely as it should be. In the absence of being offered better methods, the initiative shown by these individuals is to be admired. They are doing the best they can with what they have in the way of resources and policy. A preferred method would be to back up files daily via an electronic archive accessed through the proposed network discussed earlier and to have this backup occur automatically, that is, without the user having to be involved.

Nearly all interviewees acknowledged that they would like to be able to store their hard copy material in a safe and secure location off their premises and would like to be able to routinely back up their computer files. When asked if they would be able to do their jobs more efficiently if all of the documents they use were on their workstations, the responses were all affirmative.

In summary, although there are presently no formal archiving policies, procedures, or facilities to properly accomplish archiving, it is universally acknowledged that there is a need to do so. This includes archiving of both hard copy and electronic documents, with the latter used for two purposes: to perform day-to-day operations more efficiently, and to routinely back up key computer files.

4.3 Document Imaging

This section addresses labor and services required to image trust-related hard copy documents at headquarters and field offices (but not at the Tribes): both backlog and steady-state operations.

Discussion

Definitions

- **Imaging** is defined as the process of scanning hard copy documents to convert them to electronic documents, or files.

- **Imaging backlog** is defined as an accumulation of hard copy documents that need to be imaged. With regard to trust documents, there are two types of backlog:
    - **Active** files are those backlog hard copy documents that are needed to conduct daily activities.
    - **Inactive** files are those backlog hard copy documents that are no longer required on a daily basis, although they need to be retained for contingencies—for example, litigations.

- **Steady-state imaging** is defined as the imaging of hard copy documents on an on-going basis, starting now and continuing into the future.

Scope

Magnitude. OST has provided the following estimates of the volume of hard copy documents to be imaged:

- Active Backlog: *6 million pages*, consisting of
  - Leases: 2.5 million pages
  - Appraisals: 2.3 million pages
  - Office of Trust Fund Management and Other: 1.2 million pages

- Inactive Backlog: *500 million pages;* the number of pages of inactive records to be imaged each year is 1 million pages. (Note: This estimate is based on 250,000 boxes of hard copy pages, with 2,000 pages to a box, of trust records government-wide that will come under OST management.) As boxes of these inactive records are shipped to the National Indian Fiduciary Records Center (NIFRC), staff members will assess the records to determine which are to be imaged on a priority or on an as-needed basis. During the assessment of a given document, a determination will be made regarding the physical condition of the document. If it is found that special handling is required, the time required to prepare and image the document may be considerably longer than for the normal document.

- Steady-State (Ongoing): *2 million pages*, consisting of the following
  - New leases (20,000 per year at 25 pages per lease): 500,000 pages
  - LTRO: 400,000 pages
  - Appraisals: 600,000 pages
  - OST: 400,000 pages
  - Other: 100,000 pages

The sites where imaging will be required were identified by OST. These are as follows:

- Sites (117)
  - Forestry offices (in 20 agencies)
  - Oil and gas offices (in 5 agencies)
  - Land Title Records Offices (in 6 agencies)
  - Other (in 86 agencies)
    - Area offices (12 sites)
    - OST (6 sites)

Thus, the total number of sites is 135.

4.4 Inventory of Hardware and Software

Interviews conducted with OST field staff and Bureau of Indian Affairs personnel involved in trust management unfortunately did not provide a clear picture of their computer-related equipment inventory; the reasons are:

- Except for a few field offices interviewed, there was no one person in charge of all equipment, and the inventory estimates provided by different staff members at the same location varied considerably.

- There was much confusion in the field about whether OST or BIA owned the equipment being used.

- Many of the offices visited had unopened boxes of computers, and staff members at the site had no idea who owned the computers nor how they were going to be distributed among the BIA and OST personnel.

Although the interviews did not provide a clear accounting of how many workstations were currently available, it was significant that in those offices where a reasonably accurate inventory was available, the majority of the workstations were 486s or Pentiums; there were few computers that should be replaced or could not be reasonably upgraded.

Interviews and discussions with OST personnel provided the best estimates of the equipment currently being used for trust management, as well as estimates of new requirements. Table 4-1 summarizes the information.

Table 4-1

Workstation User Information

Current Users	1,425
New OST Users Expected	160
Increased Tribal Users	200
Expected Other New Users	200
Total	1,985

- Based on this information, it was estimated that a total of 360 new user workstations were required near-term, distributed as follows: 200 for Tribal users and 160 for governmental users. Note that these workstations are for standard (day-to-day) operations. They do not include any workstations required for the imaging of backlogged documents. These additional requirements are discussed in Chapter 8.

- Information on existing printers was also lacking. Therefore, some assumptions, based in part by observations made during the interviews, were made:
    1. Government Users: Since workstations are to be networked, it is assumed that one laser printer will be required for every eight workstations. Thus, 20 new laser printers are required for the proposed 160 new workstations. Also, upgrades are required for existing laser printers.

    2. Tribal Users: It is estimated that 50 new laser printers will be required for Tribes that presently do not have laser printers, and that upgrades will be required for an estimated 300 existing laser printers.

Compare and Contrast

5.0 Introduction

This needs analysis review is designed to provide a road map and an elaboration of the elements that are needed to establish an Indian Trust Asset and Accounting Management operation equal in quality and performance to that found in commercial trust organizations, i.e., one that adheres to the same standards of operations considered the norm in the commercial banking world.

To develop that road map, it is first necessary to compare the two environments for similarities and differences and to understand those differences which are considered to be the significant gaps or constraints in preventing the Indian Trust operation from achieving the desired level of performance. Such a gap analysis requires: 1) an assessment of each of the components involved either directly or indirectly with the Indian Trust, 2) an analysis of those commercially accepted norms deemed appropriate for the Indian Trust, and 3) a determination of those areas of the Indian Trust (the gaps) needing improvement to achieve the stated objective of meeting the general regulatory standards and best practices of a commercial trust department.

It is recognized that the plan proposed by the Special Trustee has a scope extending beyond the typical commercial trust operation since it also encompasses the land title plant — a function not performed by a commercial trust department but by other independent agents including the county courthouse. To that end, title plant activities were reviewed to determine what opportunities might be possible, given the fact that both functions (the trust asset management and accounting and the land title plant) reside within the same jurisdictional boundary, namely, the Department of the Interior. This jurisdiction is of special interest when considering the requisite data exchange between the two activities and the benefits of timeliness, accuracy, and completeness that can be achieved through a managed electronic medium that facilitates communications or inquiry between the two systems.

Components identified for this comparative assessment include

- Trust Financial Assets Accounting
- Real Property Management
- Land Records
- Title Opinion
- Deed Abstract Preparation
- Real Property Tax Records

5.1 Trust Components and Description

5.1.1 American Indian Trust

Treaties and government statutes have set aside certain tracts of land and specific monetary settlements to be held in trust by the U.S. government for recognized American Indian tribes and specific Tribal member allottees. The designated trustee assigned the fiduciary responsibility for these assets and the settlement funds is the Secretary of the Interior or head of the Department of Interior

(DOI). Until recently, the branch of DOI charged with the responsibility for management and control of that Trust has been the Bureau of Indian Affairs (BIA). Currently, that responsibility is split with the financial asset management and control now assigned to the Office of Special Trustee (OST) and its day-to-day management organization in Albuquerque. Management of the Indian lands remains with the BIA (see Figure 5.1). A second responsibility of the BIA with regard to the Indian lands is that of maintaining the official record of title and chain of history, i.e., Title Plant for the American Indian Trust Lands. As keeper of this title plant, the DOI as trustee has within its jurisdiction both the task of trusteeship and land recordation.

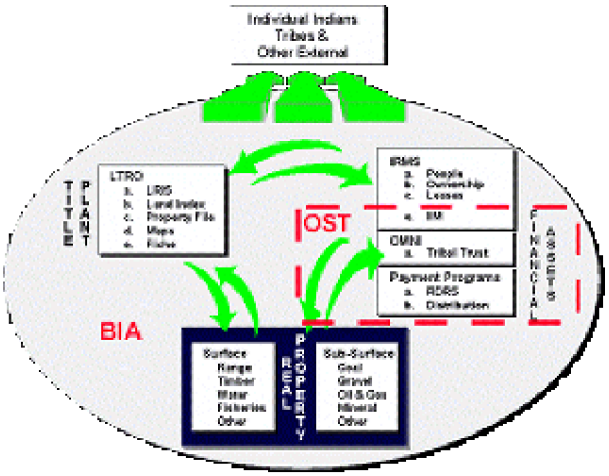


Figure 5.1 "As-Is" Trust Management

5.1.1.1 Trust Asset and Accounting Management

Trust Asset and Accounting Management for the Indian Trust utilizes two categories of systems that are not fully integrated --- the Financial Asset Management and Real Property Management shown in Figure 5.1.

Financial Asset Management

The first element of the Trust Asset and Accounting Management System encompasses the financial assets. There are two core systems within Financial Asset Management — Integrated Resource Management System (IRMS) and OMNI-TRUST. There are also two supporting payment programs — Royalty Distribution and Reporting System and Distribution.

Integrated Resource Management System (IRMS)

IRMS provides the information by which the individual Indian Trust Fund monies can be managed. This system has four modules (see below). The first three modules are managed by BIA. The Individual Indian Monies module is managed by OST.

- People --- a module designed to retain the names, identification numbers, addresses and other related data of all Indians which are recognized enrollees of a Tribe.

- Ownership --- a module that retains names and interests, including multi-decimal fractionated

interests, of each of the allotee land holdings.

- Leases --- a module designed to retain all current leases for the significant number of tracts of land relevant to the Indian Trust. Its contents include lease number, tract description, legal identification of the parcel, terms and conditions, and lessee information (including name and address, termination date, cancellation provisions, and adjustments).

- Individual Indian Monies (IIM) --- a module which identifies all individual Indian Trust account holders, including the cash balance outstanding in each of their accounts. IIM accounts are permanently reserved for minor children and *non compos mentis* adults. Distributions from these accounts can be made when a child reaches 18 years of age or when a third party payment is requested by guardians of IIM account holders.

Also included in the IIM accounts are adults with income-producing trust lands. In these instances, the income is allowed to accumulate up to a maximum of $15 ($5 for oil and gas) at which time a check is written and distributed to the respective owners.

Exceptions are made for voluntary accounts. Another exception is identified as Special Deposit Accounts for Tribes that are permitted as a temporary holding account.

Originally intended as a national system, actual use of the IRMS varies by area. Only the IIM module is consistently used in every area. Use of the remaining modules range from none to "when time permits" (which, for all intents and purposes is "no use" since the data in their current state are of minimal value). IIM has wide acceptance due to the fact that it accounts for the funds of all (approx. 300,000) of the individual Indian Trust account holders.

OMNI-TRUST

Trust financial asset accounting is performed using the OMNI-TRUST system. OMNI-TRUST is an accounting application that accounts for the cash and the financial investments made with that cash. OMNI-TRUST tracks the cash and cash equivalent assets and the various financial investments; specifically, CDs, U.S. government and agency bonds and notes that are held in separate trust accounts for the Tribes and the single IIM master account. Currently the Trust is restricted by Federal statute (25 U.S.C. 161a and 162c) to invest only in U.S. Treasury securities, selected Federal agency securities and CDs. Transactions are processed on the OMNI-TRUST system via nightly batches. Investment managers in Albuquerque are responsible for managing the investment portfolios within the overall Indian Trust fund. Each tribal or special-purpose account will be managed to provide income cash flow and investment maturities to meet the specific objectives of the respective accounts.

Assets in the OMNI-TRUST accounting system exclude land held in trust for individual Indians and Tribes and, hence, the system and its reports are significantly incomplete, since most of the Indian Trust assets are in the land. Statements currently available to the account holders from the OMNI-TRUST system are thus limited to non-land assets. These incomplete asset statements are viewed as major deficiencies in Tribal and individual Indian account holder reporting. For individual Indians, transaction statements are prepared from the IIM module. For Tribal account holders, the statements of assets and transactions come from OMNI-TRUST.

Income beneficiaries are the individual Indians, Tribes, and recipients of funds from Tribal special accounts, a category of Trust monies designated by the Tribes as funds to aid their Tribal members,

such as land requests, burial funds and education. Sources of funds in OMNI-TRUST come from rents, leases, interest from investments, sale of securities, monies appropriated by Congress as compensations for land taking, judgments (court settlements arising from survey errors, disputes on water rights or land infringements), funds arising from a treaty between an Indian Tribe and the Federal Government.

OMNI-TRUST access is made available to the Tribes for their accounts but Tribal site visits indicate a minimal or no use of the OMNI-TRUST system by the Tribes.

Individual Indians inquiring about their accounts are required to submit a request to their home agency representative. Tribes withdraw funds from the OMNI-TRUST for:

1. Per capita distributions. Per capita distributions result from lease monies, from public law or for court settlements. Distributions are based on data on the individual Indians within a specific tribe.

2. Tribal office operations. A direct distribution based on Tribal resolutions.

3. Drawdowns. Drawdown withdrawls are from special purpose accounts based on the rationale of the account when it was initially funded or set up.

Trust account investment of financial assets are centralized at the OST Albuquerque office. OMNI-TRUST is contracted with SunGard, a service bureau, who owns the program.

Payment Programs

The third category of applications under the financial assets section of Figure 5.1 is payment programs. Payments made to individual Indians are accomplished through two separate standalone applications — Royalty Distribution and Reporting System (RDRS) for cash received from oil and gas payments and a payment distribution program for all other cash payments to individuals.

Real Property Management

The second element of the Trust Asset and Accounting Management System is real property. Real property management consists of a series of land management procedures, some based on specific computer applications and others completely manual; some with locally developed software and, for oil and gas leases, the Oil & Gas lease system, which is owned and managed by Minerals Management Services, a separate DOI organization that collects revenues for oil and gas Indian leases.

The purpose of real property management is to develop and manage revenue producing activities for trust lands and minerals. Management of the Indian Trust lands is done at the Area and Agency levels by DOI personnel having experience in specific activities such as timber, oil and gas, etc. Responsibility for management and revenue production includes prudent use and conservation of the property.

Real property revenue producing activities are divided into surface and subsurface as described below.

SURFACE. Types of surface revenue producing activities include range grazing, timber, water, fisheries, developed real property (e.g., condominiums, single-family homes, golf courses, office

buildings, rights of way, and shopping centers).

SUBSURFACE. Types of subsurface revenue activities include - oil and gas, sand and gravel, coal, copper, other minerals. Minerals Management Service (MMS) provides services for oil and gas including the tasks collecting, billing for late payments, distributing, and reporting. MMS receives, accounts for, and disburses Indian oil and gas revenues for Indian leases. Revenues due for disbursement are paid through the Royalty Distribution and Reporting System (RDRS) to the individual owner accounts. RDRS is an application program running at the Albuquerque BIA data center.

Other leases (non-oil-&-gas) are developed, implemented and managed (including billing and collection) by agency realty offices unless the Tribe is a recognized self-governing tribe (Compact Tribe). In those instances, the Compact Tribe establishes and manages the lease subject to signature by both the Area Director and Agency Superintendent. In practice, all leases require both Superintendent and Area Director approval. Agency Realty bills and collects lease monies and designates distribution to accounts based on the ownership distribution designation detailed in the lease.

More detail information about the lease management process can be found in Chapter 3 of this report.

Real property activity interfaces include:

- BLM --- Well head production monitor and cadastral surveys (shows property boundaries, subdivision lines, buildings and other details)

  .
- ALMRS (Automated Land Management and Recording System) --- a project designed to develop a national system for all federal lands - repository for Global Positioning System (GPS) surveys and cadastral surveys. When completed, it will serve as a repository for all Indian land descriptions. The ALMRS project group has been attempting to sell the product to BIA to provide the leasing services of land. ALMRS may not be able to meet the totality of the BIA requirement; however, as a minimum, it should be able to provide accurate land descriptions.

- Office of Hearing and Appeals (OHA) --- In the event disputes arise from errors in surveys, inaccurate land records, or recordation of ownership, OHA is requested to be arbitrator and to effect a just and equitable resolution to the dispute.

- OHA (probate) --- On receipt of a notification of death of a Tribal member, the agency sends a request to the IIM Account Technician and to Land Title Records Office (LTRO) to flag the records of the deceased. Also, the Agency requests the LTRO to provide an "Inventory of Decedent Report", a listing of all parcels and fractions of land owned by the decedent. LTRO sends ownership data to Agency where the Realty Branch appraises property. OST Account Technician identifies the fund balance the decedent holds in IIM at date of death. Information is given to the probate clerk in the realty office at the agency who prepares the asset summary for a decedent and passes it to the administrative law judge (OHA). In due course (a process which can take some years) the probate process is completed and a probate order determining heirs is returned to the agency and to the Land Title Records Office regarding the distributions to be made in both the land title accounts and IRMS.

5.1.1.2 Title Plant Management

Title Plant Management for the American Indian Trust Lands is accomplished by the Land Title Recordation Office (LTRO) of the BIA. The LTRO acts as the national courthouse for the Indian lands. Its purpose is to maintain a current title record and the historical chain of title. It also records all encumbrances and easements on the title. Data is maintained in perpetuity. LTRO performs six basic functions: 1) record title or anything to do with title - any transaction impacting the tract/parcel of land, 2) provide title opinion - title status report, 3) provide inventory of holdings for estate settlements, 4) provide certified documentation as requested from any source authorized relative to a parcel of land or lands owned by an individual Indian or a Tribe, 5) provide on-demand research for court actions and, 6) provide on-demand maps of various plats.

- Recording. Title documents comes from agencies. Title documents may be in the form of a deed or a lease or any transaction affecting a parcel of land and must be notarized. A compliance officer checks all title documents for accuracy and compliance and, if all is in order (notarized, legal description correct, approved by supervisor), a document is time-stamped and assigned a number in the land index (a manual log of all transactions affecting the land). It is then microfilmed and encoded in the Land Recordation Information System (LRIS). Microfilm is sent to a development service where a microfiche is made of it. One microfiche is retained by the third-party office in a fire proof vault for off-site security; the second copy is returned to LTRO. LTRO makes a copy of the original title documentation and returns the original to the agency. A hard copy of the original documentation is put on file at the agency (one location prepares three original documents --- it keeps one, sends one to the LTRO office, and the other is given to the owner). Identification is by index code, land tract code, and owner identification (ID). No procedure is currently in place for the use of bar codes.
  NOTE: Updates to LRIS must await an over night run for validation to ensure that title information is correctly entered before further action is taken.

- Title Status Report. Certified title opinions are provided with the title status report. A log of all case numbers is maintained for all requests made. The examiner pulls data from LRIS in the form of an updated title status report which lists the holdings for the individual account under consideration. LRIS is updated to reflect the date title documents were reviewed. A title status report should include a chain of ownership but often does not because all the data are not in the LRIS.

- Estate Settlement. Death notices are scheduled the sixth of each month though this date is frequently not met. The log is updated and an inquiry made against the owner's account on LRIS. An individual Indian interest report is prepared for the decedent. An LTRO officer signs the report, then stamps and sends it back to the agency.

- Requests for Certified Documents. Requests for certified documents come from individual Indians' agencies, title companies, and/or to satisfy court requests. Fiche copy and hard copy are made, stamped and certified and returned to the originator of the request.

- Mapping. Maps of Indian lands are available on request for use by realty in agencies or Tribes or any other entity requesting a map (e.g., State or AAA). Maps show Indian lands for a particular area.

5.1.2 Commercial Bank Trust Department

In the commercial, private or non-government world, trusts are typically managed by a trust company or the trust department of a commercial bank. A typical commercial trust management system is depicted in Figure 5.2.

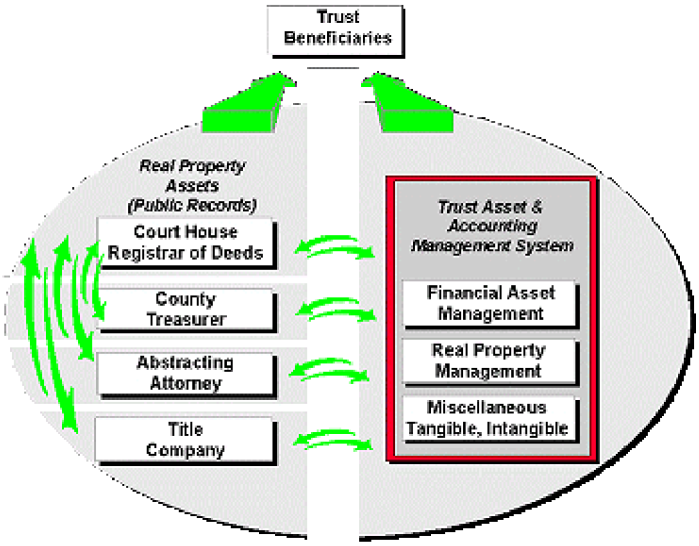


Figure 5.2 Commerical Trust Management

The trustee appointed in the commercial area is the company or bank in which the trust department resides. The company or bank and its board of directors has the ultimate fiduciary responsibility. The trust asset management and accounting responsibility is delegated to a board "trust committee" and to the head of the trust department.

The title plant or real estate records activity are not found in a commercial trust company or commercial bank trust department but rather reside at the county courthouse in the register of deeds' or clerks' office. Additionally, other commercial or county organizations are involved with real property assets. The county treasurer must confirm that all real estate taxes are paid to the date of sale and attaches applicable tax stamps to the deed of property. A title company, or attorney specializing in real estate transactions, must guarantee clear title before finalizing a deed abstract, which is needed to complete a title transfer. The third independent agency is the title insurance company which establishes and certifies chain of title and resolves areas of conflict in the historical chain or clouded title. The trust asset management and accounting functions and the title plant functions are separate and distinct entities with separate jurisdictions.

5.1.2.1 Trust Asset and Accounting Management

All assets for which a trustee is responsible must be reflected on the accounting records of the trustee, including financial assets, real property and tangible and intangible personal property. This is accomplished within a bank trust department on a trust accounting system with real property management accomplished either by the bank or by an independent property management firm.

Trust companies and bank trust departments are examined by the Federal Reserve Board (State Chartered Federal Reserve members), the Office of the Comptroller of the Currency (OCC) for national banks and the FDIC for non-Federal Reserve State Chartered banks. Therefore the trust

department's records and accounting system are, in part, set up to comply with the appropriate regulatory requirements. All banks must comply with Regulation 9 of the OCC for the operation of common trust funds regardless of which of the three regulators examine the bank.

Asset and Administrative Management

Asset administration and investment management is either accomplished within the trust department or provided by a subsidiary investment management firm. Real property management is either subcontracted to outside property management specialists or accomplished within the trust department by real property managers. In all cases, the trust department must maintain oversight and accounting responsibility for these assets and related activities. Other assets, such as personal effects or tangibles, e.g., jewelry, furniture, and paintings, are also accounted for by the trust department and are reflected in the trust accounting system.

Three broad kinds of assets are managed:

- Financial assets:
    1. Cash and cash-equivalents --- overnight investments, Treasury bills, etc.
    2. Other financial assets --- stocks, bonds, notes, certificates of deposit, mutual funds, common trust funds, etc.
- Real Property; Surface and Subsurface Assets
    1. Surface --- timber, irrigation, range, agriculture, commercial property, residential property
    2. Subsurface --- oil & gas, coal, sand, gravel, other minerals
- Miscellaneous
    1. Tangibles --- jewelry, furniture, silver, china, art.
    2. Intangibles --- insurance policies, stock options, annuities, limited partnerships, wills, powers of attorney.

The investment and management of trust assets is a continual process by account administration and investment personnel.

Investment and Management of Financial Assets

The Trustee is responsible for the investment and management of financial assets described above to accomplish account objectives such as producing a reasonable level of income or cash flow and reasonable growth over a sustained period of time. The commercial trust accounting systems have a number of features that assist in this responsibility.

- Cash and cash-equivalent management is accommodated by an automated cash management system. The system allows the account to maintain a zero uninvested cash balance by investing in an overnight fund or funds (taxable or non-taxable). Automated sales of the funds are made overnight to provide the necessary cash to make payments or distribution to beneficiaries the following day.
- The investment management of stocks and bonds is accommodated by automated security purchase and sales systems such as the automated trades or trade-entry-order features of a commercial trust system. These systems allow an account administrator or an investment officer to review an account and take action to reinvest upcoming maturity of bonds, or to sell all or part of a common stock position to maintain the proper asset allocation within the account.
- Mutual funds are a frequent investment vehicle but one that carries problems in recording

trading activities. These problems are reduced by automated trading systems within a trust accounting system that allows automated purchase or sales transactions either as cash amounts or units of a given mutual fund. The system will then compute the exact cash or mutual fund units once the sale or purchase price is determined.

- Most trust accounting systems also have an investment model with specific asset allocation guidelines for specific investment objectives. The advanced systems automatically create the necessary purchases and sales to reallocate the equity and fixed income assets for a given account based on its investment objective and the organization's current allocation standard.

Real Property or Land Assets

Real property or land includes a number of inherent revenue producing aspects. The two broad categories of revenue sources are surface rights and subsurface rights. There are systems or modules within a trust accounting system that facilitate the management of surface rights such as timber harvest, grazing, irrigation or the sale of water resources, etc. In a similar manner there are systems that facilitate the management of subsurface rights such as oil & gas , coal, etc. These asset-specific systems are either an integral part of the trust accounting system or can be contracted for through third party vendors for systems that are compatible with and will function within the basic trust accounting system.

In some situations the large commercial trust departments will have real property management specialists in specific areas such as commercial property rental, oil & gas, timber and the like. In other situations they will employ outside or independent specialists to manage the specific assets such as a property manager to provide on site management of a large commercial property or a large residential or apartment project. These independent property managers will provide detailed reports of income and expense items which are then entered into the basic trust accounting system in detail or as net revenue depending on trust management policy.

Miscellaneous Assets

This category includes both tangible and intangible assets. Tangible assets are frequently found in a commercial trust department with a significant estate administration or probate business. They include such items as jewelry, furniture, silver, china, and art. The management of these assets consists of providing safekeeping and accountability until such time as they can be distributed to the appropriate beneficiaries. Alternatively, there may be no designated beneficiary or too many beneficiaries making an in-kind distribution impractical and the assets then must be sold and the cash distributed.

Intangible assets include insurance policies, stock options, limited partnerships, etc. The management of these assets essentially requires a periodic review to see if any of the rights conferred in the documents should be exercised, modified, sold, etc. Another area of intangible assets includes providing safekeeping for wills, powers of attorney, and similar legal documents that are to be withdrawn from the vault and used as appropriate.

Trust Account Administration

In a commercial trust department, an individual account or groups of similar accounts are assigned to an account officer or trust administrator. This administrator's major responsibilities are to understand the account purpose from the underlying trust document or will, understand the beneficiary's situation and needs, and then respond to those needs within the authority granted by the trust documents. The

administrator is a focal point in the administrative management of the assets for the benefit of the beneficiary. This could entail simply distributing income for the benefit of the beneficiary, or if the person is not able or physically capable, actually paying bills and making principal distributions at appropriate times as authorized in the trust document. A final distribution will occur at some point and the trust will be terminated.

Trust Accounting

In the trust departments visited, the Trust Asset and Accounting Management System was accomplished through the use of services bureau (such as SEI and NCS - now SunGard, and additional information was obtained about the M&I data services system). The basic trust accounting system allows the trustee to record, for an account, the assets for which the trustee has responsibility (the cash, common stock, land, etc.) and to record the liabilities to the various categories of beneficiaries (e.g., estates, revocable and irrevocable trusts, guardianships, agencies and custodian accounts).

These accounting systems are highly complex and maintain asset and liability databases that link these principal responsibilities --- accounting for assets account by account, as well as, by asset and liabilities categories. This complex but necessary feature allows daily reconciliation for cash and security balances, as well as, overall reconciliation for each category of asset to be reconciled by account type to the liabilities to the beneficiaries. Both asset statements reflecting total positions at a given point in time, as well as transaction reports reflecting the receipts and disbursements for any given period are available on-line and in hard copy by using local or remote printers. Further, the investment management, as well as, reporting responsibilities of these systems are linked with security pricing services for the financial assets on the trust department accounting system providing current market value and projected income data.

Real Property and Land Records

The real property owned by a commercial bank trust department and the various incidents of ownership must be recorded in the trust accounting system. The underlying documentation to support the trust ownership is found recorded in the public records of the county in which the real property is physically located. The land records office is the repository for the current real property title or ownership documents as well as the historic chain of title. The land recordation activity is not a trust department function. The historic chain on the land record may include easements, leases, mortgage encumbrances and related documents deemed important enough for recordation. The trust department's record would reflect land ownership and the existence of leases or other documents relating to land it holds in trust that would produce a stream of income in the form of rents and royalty payments, etc.

5.1.2.2 Real Property Asset Recordation

County Court House

The county court house land records office or the clerks office will be the repository for an official recorded copy of the original title documents. The official record includes both current real property title documents and historical chains including easements and encumbrances deemed important to be recorded and the point in time when the obligation was or is to be satisfied. Commercial computer programs exist which are mechanize much of the duplicating and recording function - in some

situations providing both microfilm and digitized image records. The original title documents, such as a deed of conveyance, a mortgage deed of trust, or mortgage note, are not maintained by the county courthouse but rather once copied and recorded, they are returned to an appropriate party to the transaction. The newer commercial land computer systems permit third parties, such as title companies or real estate attorneys, to access the computer land records through interactive workstations. Alternatively, an interested party can research the current microfiche or digital image or the old photo copy of the land records.

Title Insurance Company

Title opinion reflecting an opinion on the status of title for a specific tract of land at a point in time is developed by title companies which are independent of the courthouse. Their function is to establish and certify title and chain of title and to resolve areas of conflict in the historical chain or clouded title. Until conflicts or areas of title clouds are resolved no transfer of title will generally take place.

Deed Abstracts

Deed abstracts are prepared by title companies or attorneys specializing in real estate transactions. They require a clear title usually guaranteed by the title company prior to finalizing a deed abstract. A deed abstract is needed to complete a title transfer. The abstract attorney is a third entity in the process of maintaining land records.

County Treasurer

Title transfer and recordation cannot occur until applicable tax stamps are attached to the deed of property. Additionally, there is a requirement to communicate with the county treasurers office to confirm that real estate taxes are paid in full to the date of sale.

5.2 Comparison and Contrast

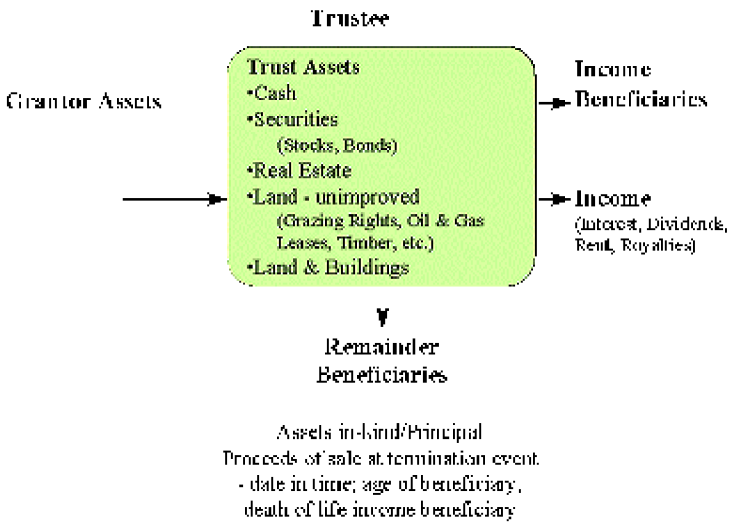
An important requirement of this project is the identification of the similarities and differences between the Indian Trust responsibilities/activities and those of a commercial bank trust department. As noted earlier in the statement of purpose, the objective is to design a road map for OST to evolve the Indian Trust management organization to a level of service and excellence which is equal in quality and performance to that found in trust organizations of commercial banks. The following reviews some of the key aspects of trust asset management and accounting within the two environments from a comparative assessment mode in order to more easily discern those areas where substantive differences exist providing critical gap visibility and, hence, to facilitate the process of identifying needs and prioritizing the steps to be incorporated into a future change plan. It should be noted that differences may be either positive or negative. This analysis focuses on the negative gaps; however, it notes that there is indeed an opportunity for a more electronic and closer interface between trust and land title which is not yet readily available in the non-Indian Trust world. Given an appropriate integration design with all the necessary audits and controls, such an electronic interface would provide a substantial improvement in productivity throughout the total process relating to land title activities.

In order to develop a comparative analysis between the Indian Trust Fund and a Trust Fund managed by the trust organization of a commercial bank, i.e., the measuring basis for the comparison, it is

important to understand the general characteristics of the activities or the business conducted by each of the entities. Figures 5.3 and 5.4 are graphic depictions of the basic business of the organizations.

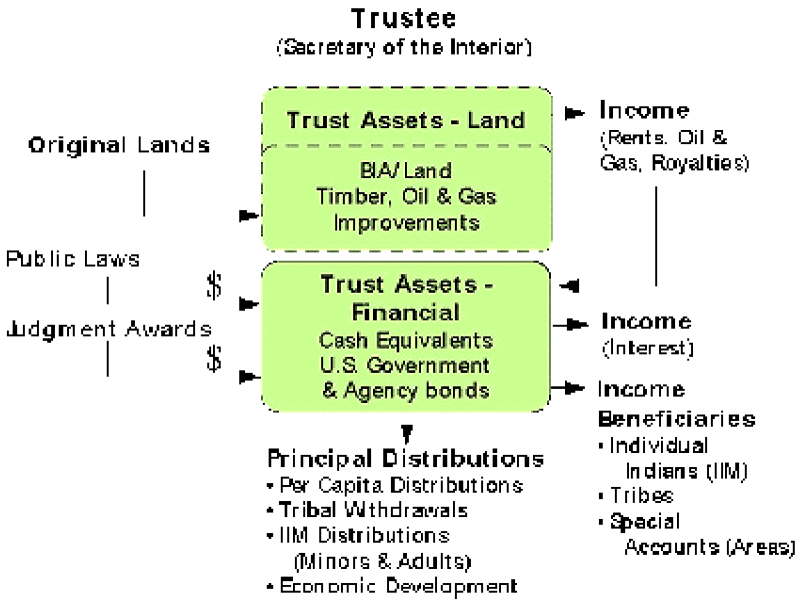
5.2.1 General Comparisons and Contrasts

Commercial Trust



The general characteristics of a commercial trust is depicted in Figure 5.3. The typical commercial or private trust fund is created by a grantor based on his specific personal and financial objectives for the beneficiaries. Such a trust usually has a defined or permissible users of income and principal and an ascertainable point in time at which the trust will cease to exist and assets are distributed. Exceptions to this are pension plans, employee benefit plans, charitable trusts, endowments, special interest trusts, etc. Also, the make up of the assets will consist of a wide variety of financial assets, real property and any number of miscellaneous personal assets, both tangible and intangible.

American Indian Trust



The general characteristics of the Indian Trust fund are depicted in Figure 5.4. The Indian Trust fund was established by the U.S. government when it granted lands in trust to Indian tribes and individual allottees. Revenues from that land as well as other cash resources, such as court awards and public laws, have added financial assets to the Indian Trust Fund. Regarding those financial assets, U.S. statutes govern the types of investments allowed for these financial assets and, to that end, there are fewer different types of financial investments in the Indian Trust than are found in commercial or private trusts managed by bank trust departments or commercial trust companies. This has been viewed by many as being a significant factor limiting the Indian Trust investment performance. An additional point for comparison is the fact that the Indian Trust does not have a specific or ascertained termination date. Its intent is to protect the land for the Indians in perpetuity.

Comparative Organizational Characteristics

Table 5.1 shows some of the organizational characteristics of the two trust activities. The Land Title Records Office (LTRO) is not included in the BIA/OST organizational characteristics since it exists only in the Indian Trust world. On the commercial side, the a multi-state organization for trust banking is hierarchically set up with **branches** to serve customers and beneficiaries. The **branches** typically report to **regions** all of which report to a **central office**. The commercial trust organization will have a number of centralized activities such as investment portfolio management, tax preparation, accounting, and reporting for customers and internal purposes. Likewise, in the Indian Trust world there is a similar structure, i.e., the **Agency** office parallels the branch, the **Area** parallels the region and all report up to the OST office in Albuquerque. Account administration in the commercial side is positioned close to the customer or beneficiary. Likewise we see a similar logic in the Indian Trust world. One important difference exists, however. Whereas the approach to administration is similar, i.e., both are near the customer, the structure of the organizations are quite different. On the commercial side, the entire organization involved with the administration of the trust is within the single bank trust entity. In the Indian Trust world, the responsibility of administration is divided between OST and BIA, two separate organizations within DOI. Accountability and control are at risk with such a division of responsibility and there is an overload of bureaucracy built into the process in the eyes of the customer, the Indian account holder. This was a concern voiced in several of the Tribal interviews.

Asset Management was reviewed for two broad categories; financial asset management and real property management. Regarding financial asset management, in both organizations this is a centralized function. The significant difference in this area was the types of investment instruments that are permitted under the regulations controlling the respective organizations. The commercial trust organization is governed by product investor standards; and in some states, by permissible investment statutes that provide safe harbor protection for the fiduciary. Indian Trust laws and regulations are more restrictive as to types of investments which are permitted. This was elaborated in section 5.1.1.1 under OMNI-TRUST.

Real property management, while having similar objectives, again, has a split organization responsibility between BIA and OST along with the potential dichotomy in priorities in the management process. A most significant difference, as noted in section 5.1.1.1 under OMNI-TRUST, is the fact that none of the land is included in the trust accounting for the Indian Trust. A second significant difference is in the identification and accountability of the lease activity on the Indian lands. In the commercial world, this management activity is performed by or with the oversight of a trust officer. Depending on the type of real property, the responsible trust officer may elect to contract a

specialized professional manager as a means of maximizing the revenue generation potential of the asset. Even with this option, the trust officer tracks the performance of the professional group and reports the results on a regular basis to trust management and the account owner or beneficiaries.

Trust operations, or the accounting function, are a central activity on a fully integrated system in the commercial bank trust world. The trust operations is substantially centralized for the Indian Trust world; however, the systems which support their activities are not as integrated and automated as in the commercial bank trust department. Also, in the Indian Trust there exists a plethora of local manual and PC based applications to support the various accounting and reporting functions making it difficult to manage, control, and report on a current position across the far-flung and diverse areas of activity.

The audit function is an important element in the effective functioning of the commercial bank trust organization and typically consists of three separate auditing or examination activities or groups: 1) an internal audit department reporting directly to the Board of Directors, 2) an independent third party CPA firm that oversees the internal audit program as well as does some on-site review and reporting and reports to the Board; and 3) a Federal and State regulatory compliance examiner who ensures that the trust organization is in full compliance with Federal and State laws regarding its fiduciary responsibility. When comparing this to the Indian Trust, there is a significant gap in audit coverage.

Whereas audits are conducted in the Indian Trust, the findings suggest:

1. Activities are focused on special requests with no comprehensive objectives and no regularly scheduled internal auditing activity being conducted
2. An externally conducted (third party) annual financial audit in compliance with a 1995Congressional mandate.

5.2.2 Specific Comparisons and Contrasts

Figures 5.3 and 5.4 and Table 5.1 provide a general comparison and contrast of the two trust worlds --- Commercial and American Indian. More specific comparisons and contrasts are provided in Appendix 5A. The categories and subjects for these comparisons and contrasts are:

General

1. Overall Purpose
2. Needs & Requirements
3. Fractionated Interest

Trust

1. Trust documents
2. Type of trusts
3. Account holders and Account ID
4. Trustee
5. Management
6. Oversight
7. Organization
8. Assets

9. Real Estate Activities
10. Real Property Appraisals
11. Reporting to Account Holder
12. Reporting to Management
13. Audit & Compliance
14. Probate
15. Payment for Services
16. Taxation

Land

1. Title plant
2. Taxation
3. Abstractor
4. Title opinion

5.2.3 Significant Gaps

While many of the subjects reviewed are distinctly different due to differing organizational objectives, many differences are not relevant in identifying areas for change that can bring the American Indian Trust operation to the level of performance and quality considered to be on a par with the commercial world. The subjects for which the differences are relevant are provided in Table 5.2 below

Table 5.2 Relevant Significant Gaps

Subject	Commercial Bank Trust	Indian Trust
A. GENERAL		
3. Fractionated Interest	• Generally not a problem in the commercial trust departments. Most states have a variation of the rule that will not permit a personal trust to continue beyond a life or lives in being and 21 years. This will therefore limit the number of potential future generations that may ultimately take a trust asset share at the termination of a trust and therefore the fractionated interest. The industry standard in those departments with significant oil and gas interests is to carry the fractionated interests to 7 decimal places. Individuals with this responsibility in trust departments have indicated that any further division is not	• There is an apparent lack of constraint on the fractionated interest resulting in a continuing division, generation after generation, of a property interest to the point that a significant number of interests have no real current income or economic value. Probate records for individual Indian decedents evidence the existence of multiple fractionated interests reflecting no income for 5 years and no value for the underlying property interest.

	economically necessary since any smaller interest will not produce an income stream or fractionated interest that has any meaningful value. In some states, there are some existing taxes that also have a limitation effect on small interests which tends to force the sale of small interests and an accumulation to a meaningful economic share.	
B. TRUST		
5. Organization	• Commercial trust responsibilities are generally conducted by a Trust Department within a commercial bank or by a subsidiary trust company established by a commercial bank or a registered bank holding company. In recent years, some states have allowed the formation of unaffiliated or stand alone trust companies sponsored by individual investors, as well as, those sponsored by brokerage firms. The Trust Department organization, generally, will be headed by a Manager and a deputy Manager, who will use officer committees to provide oversight and group judgment in the exercise of major fiduciary decisions and discretionary action. The Trust Department Manager is responsible for and has the authority to do all that is required to discharge the fiduciary responsibilities of the organization. Thus, all elements of the organization that have a part in the conduct of the trust activities report to the Trust manager for unity of purpose and accountability.	The task of managing the Indian Trust assets is currently split between two organizations, namely, the Bureau of Indian Affairs (BIA) with the responsibility for the social welfare activities relating to the Indians and for the prudent management of the Indian real property and OST with the responsibility for the financial assets. Adding to this division of Indian Trust responsibilities is the problem that real property is excluded from the trust accounting system. Thus, there is no comprehensive reporting of the Indian real property internally or to the holders of the trust accounts. This deficiency makes it difficult for either organization to ensure that all trust assets of the Indian Tribes and individuals are effectively managed. An OST office in Albuquerque is headed by a director who has various subordinates to carry out administrative, asset management, investment responsibilities, distribution and trust accounting and reporting responsibilities.

6. Management	• The board of directors of a bank will delegate trust oversight to a trust committee composed of board members and will designate a trust manager to carry out the day to day trust responsibilities. The trust manager will be given the responsibility for and authority over all activities and personnel directly involved in the discharge of the trust responsibilities of the organization. The trust department will be organized into operating departments to carry out administrative, asset management, investment responsibilities, and trust accounting and reporting responsibilities.	• The management of the Secretary's Trust responsibilities are dispersed among a number of DOI bureaus, departments and services, including the OST. There is not a single manager with responsibility for and authority over all activities and personnel involved in the Secretary's responsibilities for Indian Trust lands and their related assets. The Special Trustee has appointed a senior management committee and has delegated daily management to the OST office in Albuquerque. The Albuquerque office is headed by a director who has various subordinates to carry out responsibilities relating to Indian Trust financial assets.
11. Reporting to Account Holder	• Reporting to clients and beneficiaries includes: • A periodic statement of assets, made to the client establishing the account and the current income beneficiaries. The statement of assets is for a specific day or point in time reflecting market values and projected income amounts as of that date. These reports of assets are frequently accompanied by investment performance data comparing an account's total investment return to appropriate market indices, such as, equity and bond indices. • A periodic transaction report reflecting receipts, disbursements of income (interest, dividends and lease payments plus paid bills or distributions) and elements of principal receipts, such as, sales of stocks, bonds and real estate.	• Reporting to Indian Trust account holders includes: • Individual Indians are not currently receiving a statement of assets since the major asset is land that is not on a trust accounting system. • Individual Indians do receive a transaction report itemizing income, disbursements and distributions. • Tribal accounts are on the OMNI-TRUST system. Tribes receive statements that itemize the financial assets that are in trust for the tribe. The real estate holdings of the tribe are not on the OMNI-TRUST system and therefore are not a part of the statement of assets. The tribal account holders receive a statement of transactions for a given period that reflect the receipts of income and principal relating to the assets held in their accounts.

12. Reporting to Management	• A variety of financial reports are made to the trust department management and the trust committee. Reports include a balance sheet and statement of trust assets and liabilities. The assets held in trust and the liabilities to the various categories of trust accounts (e.g., estates, trusts, employee benefit, agency, and custodian accounts) are reflected in the reports. Trust management also receives reports on exceptions, such as, accounts not reviewed within the frequency established by policy; past due notes, bonds, and debentures; overdraft accounts, etc. Other reports include account workloads for individual administrators and units within the department; new and closed business data; investment performance data for groups or types of accounts, as well as, for common trust funds as compared to industry standards. Another category of reports relate to the departments financial results, e.g., income and expense comparing budget to actual performance and variances.	• Status reports are the responsibility of the OST Albuquerque office. Summary of status is given to the Albuquerque office Director on a periodic basis during staff meetings. • The Trust Services manager provides investment status reports to the Albuquerque office Director. • Regular reports are provided: • Customer Services Group (monthly) • OST Senior Management Committee (monthly - performance and compliance) • Overdraft payments (daily) • Trial balance sheet (monthly) • No recurring reports on real estate asset performance, however, there are annual reports for: • Leasing activity • Lease compliance providing the number of leases and the violations.
13. Audit and Compliance	• The board of directors receives annual reports from the internal audit department that is responsible only to the board of directors. In carrying out the internal audit function, the independent or outside CPA firm, also reporting to the board, will provide oversight and direction to the internal audit staff on the actual audit program or verification steps taken each year. • Additionally, the appropriate federal and state banking regulators will have trust	• Special audits of a specific activity occurs from time to time at the direction of the Albuquerque office Director. • There is an annual audit conducted by a third party (contractor) with the report provided to the Albuquerque office Director and to the Inspector General.

	examiners conduct a periodic examination of a trust department. The examination centers on the overall management of the department, the level of compliance with federal regulations, as well as, the stated policies and procedures of the bank and trust department. The regulatory report and resulting rating is a confidential report to the board of directors.	
15 Payment for Services	• Commercial trust services are provided to clients at a fee intended to cover all costs associated with providing the service and at a reasonable profit to the organization. In some types of services, competitive pressures may reduce profitability. • Commercial trust service fees are generally in the range of 1% of the assets actually managed with a higher percentage for estate administration and lower percentage for non-investment management services, such as custody services. There are also minimum annual fees for different types of services that can range from a low of $500 for custody type accounts to a high of $5,000 or more for full investment management services at banks catering to the high net worth clientele.	• Individual or tribal account holders are not charged fees. All costs associated with providing the necessary services are paid from appropriated funds.
16. Taxation	• Taxation is imposed at a multiple level: • The bank or trust company will pay federal, state and local taxes on its earnings, on the property, real and personal used in the delivering the services. • Estate and trust accounts may be required to pay federal, state and	• No taxes are paid on the Indian Trust assets, real or personal property. Income from Indian Trust property is generally not a taxable event for the individual Indians or Tribes. However, interest earned on income is taxable and reported on a 1099 or K-1a (Osage Indians) for

	local taxes on the income and capital gains generated within the account under certain circumstances. Generally, under federal income tax laws, a deduction is allowed for distributions to beneficiaries, • Individual account holders or beneficiaries will be required to report and may pay taxes on income and capital gains distributions received by them to federal and state and local governments.	individual Indians. Tribes are not taxed.
C. LAND		
1. Title Plant	• The title plant or land records office is not an activity performed by the bank trust organization. This is a county court house role; hence, any title clarification or recordation requirement initiates a request for information from the county.	• Referenced as the Land Title Records Office (LTRO), this function records title and any actionable documents affecting the title on the tracts of Indian Trust land. The LTRO is responsible for Tribal lands in fee status, if Tribes tell the LTRO that they have such lands. • The activity of LTRO consists of 1) recording title documents, 2) creating a certified title status report, 3) providing for probate an inventory of a decedents land holdings, 4) providing a certified document on individual Indian or Tribal land holdings on request (subject to appropriate authorization), 5) conduct on-demand research to satisfy court requests, and 6) provide maps of Indian lands as required.
2. Real Property Taxation	• Title transfer and recordation requires that tax stamps are attached to the deed. Tax stamps represent proof of payment for services rendered by the registrar of deeds. • When selling or transferring property, it is necessary to provide a statement of any	• Not an activity for Indian Trust properties.

	unpaid real estate taxes due on the property under consideration. Completion of sale requires that this unpaid tax obligation is satisfied as a part of sale closing.	
3. Abstractor	• A recognized abstract attorney is engaged to prepare a valid abstract of deed which in turn requires that a free and clear title exists. Proof of that is prepared by a title company.	• Preparation of the abstract of deed is a function performed by LTRO.
4. Title Opinion	• Title companies or title insurance companies are engaged to prepare a title opinion, certify title validity, and insure the title. Their services are obtained whenever there is a real estate sale.	• LTRO is responsible for preparing a Title Status Report (TSR), the equivalent of a title company's proof of valid free and clear title.

The features discussed in Chapter 7 address the process issues which effectively minimize these major gaps. The OST Strategic Plan addresses the organization and management issues. Fractionated property interests remain a burden and constraint. The trust system which would be put in place should be able to deal with an on-going existence of this issue, the self correcting constraint which exists in the commercial world, i.e., the costs of the trust services and minimum fees do not exist in the Indian Trust world, and, hence, the resolution of the gap apparently will require that a statute be put in place to establish an appropriate solution.

Training

6.0 Introduction

As a critical element of the needs analysis project, this chapter addresses the topic of training from the perspective of the internal and external users themselves. Based on information obtained during field interviews, internal and external users reported that training plays an important role in their ability to perform their jobs and may also be a solution for increasing interorganizational effectiveness.

This perspective includes:

1) The skills required by internal and external users

2) Recommendation on training required by the internal and external users to make them ready to use a new "information infrastructure."

Assumptions

· The training plan has been developed to train trust personnel to perform Function/Tasks in accordance with their job requirements to the extent permitted by the current trust organization. The organization includes The Office of the Special Trustee (OST), the Bureau of Indian Affairs (BIA), trust land asset management organization (Land Title Records Offices and other realty personnel), and Tribal representatives and members.

· The training plan is dependent on the development and implementation of policies and procedures that set mandatory performance standards and dictate the performance of trust tasks. Currently, there is a significant gap in the availability of trust policies and procedures. The personnel of the Branch of Policies and Procedures are working to resolve this.

6.1 How To Use This Chapter

The training chapters of this Draft Final Report can be used throughout the trust training development and delivery life cycle in two ways:

· Chapter 6 presents methodology, field data, and findings, for and about trust training.

· Chapter 9 is a collection of training tools that are meant to be used to establish, develop, deliver, and modify trust training over the next 5 fiscal years.

The members of the Indian Trust Fund world claimed the need for training as one of their most critical and urgent needs. It is extremely important that trust training be timely, thorough, efficient, and reflective of the unique Indian trust fund training audience and subjects. If used correctly, this approach will result in the training necessary to provide trust workers with the skills needed to perform their jobs in accordance with standards upheld in the commercial trust world. To ensure this important goal, it is essential that readers understand the importance of this guide to trust training development and delivery.

This chapter was fashioned using a logical building-block methodology; each section was developed directly as the result of the analysis performed and decisions reached in the section that preceded it. The analyses and decisions were comprehensive and determined to be in the best interest of the training audience. As trust training is developed and delivered in the coming months and years, there will surely be the need for changes in the basic design or information offered. Users of this chapter should record those changes in the appropriate sections, with the understanding that changes in one section affect many of the succeeding sections, **This approach will provide training designers and coordinators with the assurance they are providing excellent, targeted training to the trust training audience**

6.2 How To Use Each Section of the Chapter

The table below provides a guide on how each of the chapter sections should be used by readers, training developers, and training coordinators (those who schedule training and manage the training budget). Please note that some of the sections provide more than one type of information.

To read about the **methodology and design** of this chapter **Section 6.4**

To read a **summary of our findings**.**Section 6.5**

To read a detailed analysis and findings **Section 6.6**

To read a **summary of recommendations**.**Section-6.7**

To read about **GPRA and trust training Section 6.5**

To read about *and to revise information on* **available trust training systems**.**Appendix 9A**

To view *and to revise* the **lists of government and commercial trust labor** categories .**Appendix 9B**

To view the **gaps between government and commercial trust workforces Appendix 9B**

To view *and revise the* **Transitional Trust Functional Model** (which shows how Trust functions and tasks are grouped and implies where each labor category will be placed)

Appendix 9C

To view *and revise the* **proposed government trust job descriptions with critical**education and skills requirements and job tasks **Appendix 9D**

To view *and revise the* **required knowledge and skills sets for each proposed trust**labor category **Appendix 9E**

To view *and revise the* **study topics for each proposed trust labor category Appendix 9E**

To read about **trust courseware gap analysis Appendix 9F**

To read *and revise the* **list of missing trust courseware Appendix 9F**

To view *and revise the* **list of trust courseware that must be developed Appendix 9F**

To view *and revise the* **trust training development and delivery schedule Appendix 9G**

To view *and revise the* **costs associated with trust courseware development and**

training delivery **Appendix 9H**

To read about **performance objectives**, and to view a sample **Appendix 9I**

Table 6.1

6.3 When and Where to Make Changes in the Chapter

As discussed earlier, changes to any section of the chapter imply necessary changes elsewhere. Below is a guide to how to be sure the changes are made in all the relevant places.

If you...
...delete or add a course to the course catalogue in Appendix 9A, check to see if it meets a training need as identified in the skills and knowledge sets in Appendix 9E, and add the course to the training schedule and cost databases. ...delete or add a labor category in Appendix 9B, revise the job descriptions in Appendix 9D, revise the knowledge and skill sets, and add or delete training for that labor category in the training schedule and cost databases. ...revise the educational or performance requirements in the job descriptions in Appendix 9D, revise the skills and knowledge required for the corresponding labor category in Appendix 9E.

...reorganize the functions in Appendix 9C review whether labor force and location

changes affect the training schedule and costs in Appendix 9G and 9H.

...revise the skills and knowledge sets for any labor category in Appendix 9E revise the courses assigned to a labor category.

...discover existing courseware or create new courseware add it to the course catalogue in Appendix 9A and remove it from the list of missing courseware in Appendix 9F.

...require changes in training schedules revise the master schedule in Appendix 9G.

...discover changes in costs of courses revise the costs in the course catalogue in Appendix 9A and in the training delivery cost database in Appendix 9H.

Table 6-2

6.4 Methodology

A series of tasks and steps were performed that were necessary to the development of this chapter. The approach was based on three methodologies: Research and Data Collection; Content and Descriptive Analysis and Frequency Analysis; and the Instructional Systems Development (ISD) Analysis and Design. All the methodologies require the performance of sequential tasks and steps, each of which serves as a necessary prerequisite to the subsequent tasks and steps that follow it.

Each of the methodologies provides the following capabilities:

· Research and Data Collection: Field data collection and research of trust training systems

· Content, Descriptive, and Frequency Analysis: Identification of training needs and calculation of response frequencies

· ISD Analysis and Design: Identification and description of training audience, course concept and outlines, course delivery schedule, and cost.

This comprehensive, systematic approach was selected because it captures all crucial elements of a given training challenge at the beginning of a project, thereby eliminating surprises later. For example, if a training designer does not accurately and thoroughly identify and describe the training audience during the early training analysis phase, he or she can never be sure any newly designed training is truly relevant for the audience. At worst case, a participant will receive training, developed and delivered at considerable cost, that fails to meet training needs.

The following table describes the methodology steps for trust training analysis and design using the three methods described earlier (i.e., Research and Data Collection, Content, Descriptive and Frequency Analysis, and ISD Analysis).

Methodology Steps for Trust Training Analysis and Design		
Research and Data Collection	Content, Descriptive, and Frequency Analysis	ISD Analysis
• Field data collection • Identification of existing commercial standard-trust training systems	• Analysis of field data by labor category • Analysis of field data by site • Frequency analysis	• Identification and comparison of government trust task performance and commercial trust performance (by labor category) (includes identification and description of government and commercial-trust labor categories) • Skills gap analysis (government vs. commercial sector) • Identification of government trust organizational and functional model • Placement of trust personnel into the model • Development of improved and proposed government trust labor categories and job categories • Development of study topics necessary for each trust labor category • Identification, description and selection of

		existing courseware appropriate for meeting skill gaps • Identification of needed courseware for which there are no providers • Creation of plan for new training material development and training delivery, including costs and schedule

Table 6-3

Chapter 9 provides more detailed information on the performance of each of these steps.

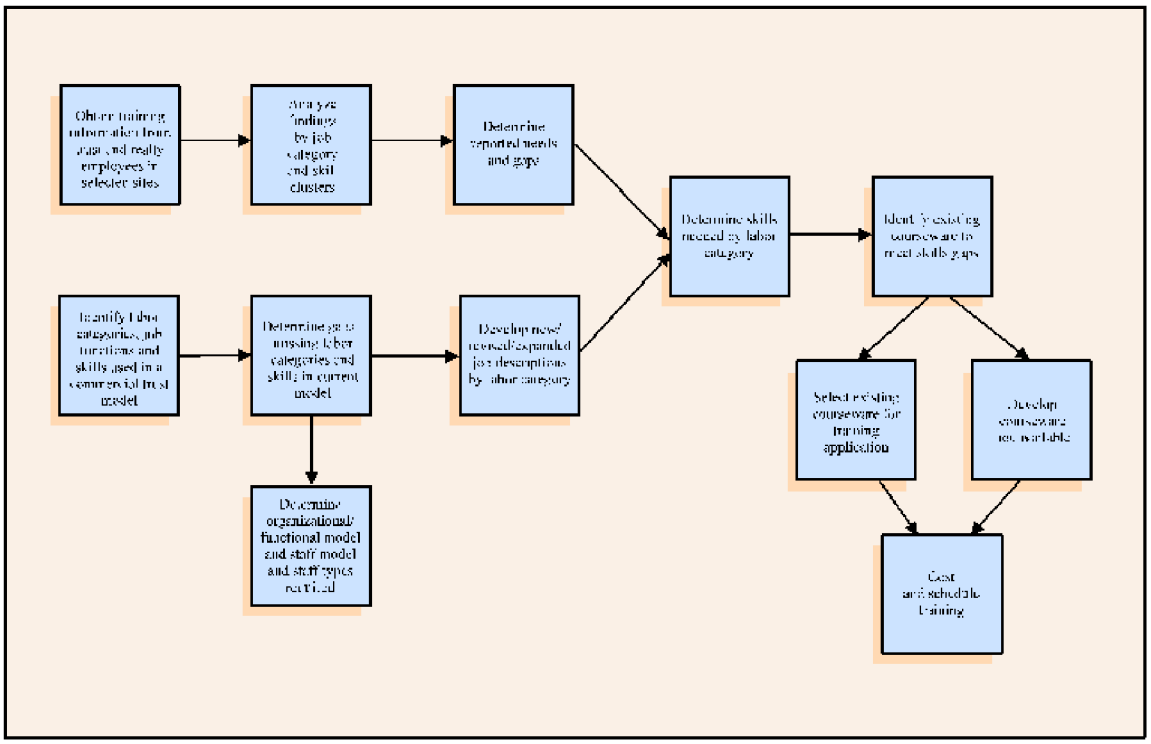


Table 6-4 Flow Diagram of the Training Plan Development Process

6.5 Skills and Training Analysis and Findings

For each of the steps listed in the flow diagram above, specific findings and observation as well as other information necessary to demonstrate how the training plan evolved are summarized in the sections below.

Field Data Collection

Data was collected during hundreds of interviews with Tribal representatives and government trust

personnel. Interviewees were asked what training they had received, as well as what training they needed. Other training-related data was collected including information about training delivery systems, training timeliness, and training materials accuracy.

Analysis of Field Data by Site, Labor Category, and Frequency

Field data was examined by site, labor category, and frequency for discrete comments. Section 6.61

contains extensive and systematic documentation of this analysis step, whose findings served as the foundation for all the training analysis and development steps that followed. Findings from this analysis are summarized below.

Training Needs Findings by Frequency of Data

· The training received and the training needed or requested by staff were similar. For example, computer training was mentioned as the most frequent type of training received, yet it consistently ranked within the top five types of training needed across all types of staff. In addition, trust training and accounting training were mentioned as two types of training frequently received by staff, yet these topics were also mentioned as needed across staff types.

· For OST staff, various types of computer training and trust training were received most frequently, while computer training was the most frequently requested type of training needed.

· In terms of other types of training needed by staff, the second most frequently requested or needed type of training was for clarification of roles and responsibilities, specifically the roles of BIA and OST.

· Many staff also requested communication skills training, trust management, and investment training.

· Few staff felt they would not benefit from additional training.

Findings About Current Training Systems and Approaches

· A large portion of training took place on the job; a supervisor or other experienced person provides quick instruction to the learner on an as-needed basis.

· Some staff could not recall any recent training experiences other than learning by doing.

· Current management systems do not effectively track job performance and therefore cannot effectively evaluate training needs.

· There are no consistent, standardized training courses, with a few exceptions such as OMNI-TRUST training, that are systematically provided to each labor category.

· Formal courseware has been delivered by groups within and by approximately eight organizations: OST, BIA, Office of Personnel Management (OPM), Bureau of Land Management (BLM), U.S. Department of Agriculture (USDA), community educators, software vendors, and corporate trust educators.

· The lack of consistent training support and performance evaluation has resulted in uneven and varied performance within each labor category, and has severely hampered or actually prevented the ability of trust personnel to perform their jobs in accordance with the standards required for a fiduciary role.

Findings About the Training Audience and the Training Environment

· A significant number of trust personnel live and work in isolated communities, making it difficult for them to travel to training sites or for trainers to reach them.

· Some personnel would prefer training at their worksite rather than having to travel.

· The training audiences are very diverse in age, culture, level of knowledge, language and geographical location. Length of time performing job tasks varies from a few months to many years.

· Training is needed at every staff level.

· Most personnel do not understand the "big picture" of how the trust system works, nor do they understand interorganizational relationships.

· Finding the time to attend training is difficult for most trust personnel, primarily because time away from the job results in a severe backlog, as backup staff are not available.

· Most people were unable to identify any criteria or standards for their job; many wanted guidance in this area.

· There are situations where training has been delivered but the new skills are not being used.

· People have a high degree of responsibility relative to their grade levels, many of which are quite low; this is particularly acute for OST personnel.

· Many tasks do have *de facto* policies and guidelines in place, but there are no official policies and processes.

· Some tasks are still completed manually because people are uncomfortable using new technology

· Personnel have new equipment or software but do not know how to use it; many offices were upgrading equipment and software the day of our visit.

A Note About Federal Government Requirements for Improved Performance and Accountability

Recently enacted legislation requires improvements in government accountability and a move by the Federal government to systems, functions, and reporting comparable to that of the private sector:

· The Government Performance and Results Act of 1993 (GPRA)

· The Chief Financial Officers Act of 1990

· The Government Management and Reform Act of 1994

· The Information Technology Management Reform Act of 1996

The thrust of this legislation dovetails with the current effort underway by OST to improve processes, upgrade systems, and develop an organizational structure that will support a trust model more closely aligned with the commercial world.

As OST embarks on these changes and challenges within the next several months, an ideal and unique opportunity avails itself to OST staff to weave performance measure tools and standards in with anticipated organizational changes and staff job modifications and upgrades.

The training plan provided in this report, including job descriptions, required skills and knowledge by labor category, incorporates the concepts of performance measurement, strategic planning, and accountability. Specifically, it is envisioned that division directors and branch chiefs will lead general efforts in this direction. In addition, staff skills at the regional and field office level will be tied to designated performance objectives, thereby improving performance and providing the structure for job tasks that staff indicated they wanted.

Performance measures should include measures of organizational and staff performance. The organizational measures will enable OST to determine if the organization is meeting its charge or mission, and staff will know if they are performing their assigned duties to meet individual and organizational standards.

To illustrate, one possible standard for OST is:

Each individual Indian or Tribal account holder can obtain account information about his or her trust fund balances, recent postings of income to the account, and disbursements within five minutes of requesting the information in person or on the telephone.

This sample standard sounds the theme of customer service and provides direction for staff on daily priorities and efficiency. To meet this organizational standard, OST would develop procedures, and automated systems, and train staff to handle such requests. At the staff level, the standard would be broken down into discrete task objectives. From this standard, staff performance objectives and tasks could be derived which could then be used as benchmarks for measurement of organizational and staff effectiveness.

Appendix 9I contains a sample performance objective and standards statement for a customer service representative. Each staff member would require an overall job performance objective and supporting task performance objectives.

6.6 Detailed Analysis and Findings

The following discussion provides a detailed analysis presented by staff types grouped by organizational affiliation: Tribal, BIA, and OST.

A. Tribal Council Member Staff and Training

KEY FINDINGS

- *Tribal staff turnover is high-many Tribal staff were in acting positions, needing skills and lacking a permanent position*
- *Tribal leaders and staff received the following training: OMNI-TRUST system, accounting, BIA-offered, and computer*
- *Tribal leaders and staff most frequently requested training that would enable them to understand trust, investments, and that would enhance their communication skills. They also felt this training would be useful for Tribal members in general. Information about OST was also requested.*

Tribal Respondents

Approximately 89 individuals were included as part of the Tribal interviews (both phases of data collection). Of these, 8 percent were in acting positions (treasurer or controller) or were formerly in a position.

The most frequently interviewed categories of staff included controllers (16 percent), financial officers (13 percent), treasurers (11 percent), and Tribal council members (10 percent). Other categories of Tribal staff interviewed included administrative staff (Tribal operations and program compliance), accounting staff, managers, and others.

Tribal Access to Accounts

Only a few respondents (less than 10) had comments related to account access. The turnover of Tribal staff and difficulty reading Trust Fund statements were mentioned most frequently as problems in terms of access. A few Tribal members commented on access to IIM accounts, indicating they were receiving queries from IIM account holders.

Tribal Training Received

Responses were not detailed, however, respondents indicated they had received the following types of training:

· OMNI-TRUST training

· On-the-job training

· Accounting training (course work or degree)

· BIA training (on various topics)

· Computer training.

Other topics mentioned included finance and investments.

For controllers, OMNI-TRUST training and on-the-job training were mentioned most frequently. Only one controller stated he/she had received a bachelor's degree in accounting. Respondents also mentioned they had received no training.

For financial officers, no training, OMNI-TRUST training, and previous employment were mentioned the most frequently in terms of the training they had received for their current position. Accounting courses and credit and financial seminars were also mentioned.

Treasurers indicated that OMNI-TRUST was the most frequent type of training received. They also listed training related to trust activities, accounting classes, and investments seminars.

Other staff had on-the-job training, BIA-sponsored training (courses not specified), accounting training, finance training, and OMNI-TRUST training.

Training Tribal Staff and Council Members Would Find Helpful

The most frequently mentioned response by respondents was that they needed training related to trust activities. This includes such topics as trust fund processes, how the trust works, how interest is determined, and trust functions. The next most frequently listed response was for OMNI-TRUST training. Many had been trained, but because of staff turnover or infrequent use of the system, respondents still indicated they needed additional (and ongoing) training support.

Investment training was another area in which respondents indicated they wanted training. They did not describe what investment training would include; however, a few respondents mentioned topics such as "What is an overnighter" and "what types of investments generate the best return?"

Training related to communication skills was also frequently mentioned. This training includes conflict resolution and use and delivery of trust fund information (how to effectively deliver information to Tribal councils).

Other topics also mentioned by multiple respondents included training on OST operations, computer training, accounting training, and training to help them better read the OST reports.

The controllers, treasurers, and finance officers the most frequently requested training was on trust activities, followed by training on OMNI-TRUST, investments, computers, and use and delivery of trust fund information. Controllers wanted training on OMNI-TRUST, trust fund activities, and training for council members. Finance officers wanted training on OST procedures, computers, OMNI-TRUST, investments, and trust fund management and functions while treasurers expressed a need for training on trust funds, processes, and systems. Other staff interviewed at Tribes also wanted these types of training, however, they also expressed a need for accounting training.

Other Tribal Training Needs

The Tribal questionnaires contained multiple questions that gave respondents an opportunity to express other training needs. The data was reviewed to extrapolate training needs cited as part of the responses to these questions; however, we made an effort not to include information that was repeated verbatim from earlier training questions or was captured as part of the specific training questions. We only abstracted those training responses that were not stated previously.

Tribal respondents were specifically queried as to what other training needs Tribal members needed. Respondents indicated that training related to investments; trust systems, processes, and accounts; reading trust fund reports; and computer training were needed. They also listed clarification of OST roles and responsibilities and trust fund databases as training needs.

Tribal staff and council members expressed opinion about their general needs related to the trust fund process. Two topics in this area received the most number of mentions. They were training (or information) specific to OST, such as its structure, contact persons, need for meetings with Tribes, policies and procedures, understanding the process, and learning their services. Respondents also expressed a general need for training overall (without specifying exact content or topics). Other topics of interest to respondents included investments (including yield of assets and investment benchmarks) and general trust information, including asset use planning.

Suggested Formats for Tribal Training

Respondents suggested several ideas or formats for the training. One respondent suggested newsletters or brochures. This could be used to follow up a hands-on training, reiterating the concepts learned in the training. One respondent stressed the importance of face-to-face meetings. Better communication was also suggested. Respondents stated they felt they were not in the loop and did not know about proposed changes. One respondent suggested that software be designed that enabled him/her to learn processes, while another wanted benchmarks for performance established. The use of graphics to make things clear was recommended, as was using paper (hard copy) for some materials so that everything was not computer based. Training multiple individuals at the Tribal level was also suggested, as turnover among positions (elected and appointed) occurred often.

B. Bureau of Indian Affairs Staff Training

Land Title Records Office (LTRO) Respondents

A total of six LTRO employees whose daily jobs were performing tasks directly associated with title plant or land title records, were interviewed. This analysis excludes individuals involved at the Agency level performing probate functions.

Job titles for these individuals include LTRO manager, manager–land titles and records and realty and LTRO officer. Not all job titles were reported. LTRO staff are all located at area offices.

LTRO Staff Training Received and Requested

Only one respondent provided information in terms of the training received. In this instance, the LTRO manager received Windows 95 and WordPerfect training (through the local vocational technical school), and had taken accounting and finance courses at college.

Suggestions for future training included the following:

· Make system upgrades and improvements more user friendly and efficient

· Provide opportunities for LTRO staff to have grade and career advancements

· Provide training on legal issues associated with probates

· Provide incentives as part of the performance evaluation system to track productivity.

Respondents listed turnover as a problem and the need to continually train new staff.

Land Operations/Natural Resources Respondents

KEY FINDINGS

- The most frequently received types of training by land operations/natural resource staff included basic computer operations, IRMS training, customer service training, written communications, stress reduction skills, supervisory skills, and financial training.

- An orientation to OST was the most frequently requested type of training by staff.

The data collection team completed a total of 30 interviews (i.e., data files) with land operations/natural resource staff during the two data collection phases. The majority of interviewees worked at the Agency level; however, interviews were conducted with some Area Office staff and some Tribal members who performed these functions. Half of the interviewees had titles associated with forestry. The next largest group included staff with titles related to natural resources (most of the Tribal staff were in this group). Range staff were the next largest group of interviewees, while land management staff were the smallest group. Staff titles are shown below in Table 6-5.

Land Operations/Natural Resources Respondents

Forestry	Natural Resources	Land Management	Range
Forestry Supervisor	Natural Resource Officer	Land Management Specialist	Range Land Management Specialist
Acting Forestry Supervisor	Natural Resource Specialist	Acting Branch, Head Land	Range Management
Forester	Director, Natural Resources	Use	Specialist
Forest Manager			Range Officer
Assistant Forestry Manager	Director, Water & Natural		Range Technician
Forestry Technician	Resources		
	Manager, Branch of		

Forestry Forestry Officer Supervisory Forestry Assistant Trust Forester	Forestry Resources Resource Development Officer		

Table 6-5

Land Operations/Natural Resource Staff Training Received

Although multiple types of training courses were given, few were duplicated across respondents. Eight types of training were mentioned by more than one respondent. These included the following:

· Basic computer operations

· On-the-job training

· IRMS training

· Customer service training

· Written communication

· Stress reduction skills

· Supervisory

· Financial

One respondent indicated that the supervisory training was "mandatory" by the agency. Other types of training received by respondents included appraisal training, dBASE training courses, range management, fire suppression, total quality management (TQM), disaster training, LAN training, telecommunications, Internet, Geographical Information System (GIS), word processing, trust-related functions, oral communication, typing, accounting, forestry asset management, and stumpage.

Training providers included the employee assistance program (stress management); local college, vocational technical school, or Tribal computer training center for computer courses; Office of Personnel Management (OPM) for dBASE software course; and the BIA and OPM for supervisory training. One respondent indicated that a private company (Fred Pryor and Associates) conducted training in customer service.

Land Operations/Natural Resource Staff Training Needed

There were fewer responses in terms of training needed for land asset managers and specialists. Only one topic received more than one mention—an orientation to OTFM systems and jobs. Other

suggested training topics were computer-related. These topics included dBASE, Lotus, WordPerfect, LAN, telecommunications, Internet, GIS, and IRMS. One respondent suggested that training on specific regulations, such as trespass income, be provided.

Land Operations/Natural Resource Staff Training Issues

Land asset staff made general training recommendations. One respondent stated that generally, personnel were poorly trained. Another indicated that staff needed training in banking functions because they were performing banking functions with no training. With respect to computers, one individual concluded that computer staff with an expertise in LANs were needed at the Agency level, while WAN expertise was needed at the Area Office level. Finally, one respondent said that the Trust responsibilities needed to be defined (in terms of what they were and were not).

Area Office Director Respondents

KEY FINDINGS

- There were no consistent training requests by area office directors

Only two Area Directors were interviewed. Both saw the need for training. One specifically mentioned the need to train staff and Tribes to provide skills that would assist in the transition to self-governance. The other director felt that staff needed tools and resources to do the work required. One made strong observations that OST must work together with BIA to accomplish a successful trust system.

Superintendent Respondents

KEY FINDINGS

- *Training that details BIA and OST responsibilities was cited by one third of the superintendents interviewed.*

- *Superintendents also felt that computer training, accounting, and real estate/realty training was needed by Agency staff.*

A total of 22 superintendents were interviewed during the course of the project; all but three were interviewed during Phase 2 of data collection. Of the 22 superintendents, one was acting and one was a field office director.

Few superintendents provided information about training they had received or needed. Most of their comments related to staff training needs or issues associated with training.

Superintendent Training Received

One superintendent indicated he/she received computer training (source was not mentioned). Two stated they needed additional training related to technology; one specifically mentioned the need to be trained on Word, Excel, PowerPoint, and Windows 95. The other superintendent wanted to attend meetings that would provide information about technological advances; in other words, he/she wanted to know what was available.

Training Needed for Superintendents and for Agency Staff

Fully one third of the superintendents expressed a need for training that detailed BIA and OST responsibilities. The next most frequently mentioned staff/general training need was related to computers, with training on the "new system" mentioned, as well as general computer training, software packages, and Windows 95. Another superintendent expressed a need to train staff so they could "appreciate the electronic age." Two other training topics received multiple mentions. They were training-specific to accounting skills and real estate/realty training. Appraisal skills and general training were also mentioned more than once.

The superintendents also listed the following topics as possible training modules for their staff:

· Property management

· Paralegal skills

· Entrepreneurial skills

· Relationship with Tribes

· Self-determination

· Social services

· Credit

· Forestry

· Backup functions (i.e., cross-training of staff)

· Two percent escheat to Tribes

· IIM accounting

· Interpersonal communication

· Customer service.

Superintendent Comments on Training

The superintendents also made several general comments related to training. One superintendent suggested that the number of required government training courses should be reduced, particularly when courses were not relevant.

Two superintendents commented that communications from headquarters need to better. In a related comment, another superintendent suggested that superintendents be mailed "courtesy" copies of materials mailed to Tribes, as the Tribes often call the Agency superintendent when they have questions. When the superintendent does not have the information, he/she cannot provide any

assistance to the Tribe.

One superintendent suggested that a menu of computer and professional training opportunities be made available, to include OPM, BIA, and private courses.

Another wanted some type of management tool that would measure success (performance) and enable the Agency to determine how well it was faring compared with other agencies.

One superintendent suggested that continuous training was needed at headquarters because of the high staff turnover. Headquarters staff do not always understand issues in "the field."

Finally, one superintendent indicated he/she only recruited staff with 3 years of college and from the private sector, as individuals had better skills than those from the Government.

Administrative Officer Respondents

KEY FINDINGS

- There were no consistent training findings for administrative officers

A total of 11 administrative officers were interviewed. Of these, all but one were interviewed during the second phase of data collection. Two were in acting positions (one at an Area Office). Eight had the title of administrative officer; three had titles of administrative manager.

Only two respondents requested training for themselves. The two training topics requested were on how to use the Local-Area Network and training on policies related to the split between BIA and OST and respective roles and responsibilities, particularly as they related to Tribal Trust drawdowns.

Administrative officers had a few comments related to general training issues. One mentioned that systems upgrades were needed on a regular basis, and when they did occur, they should be accompanied by training. One administrative officer believed that OST Albuquerque staff headquarters staff required training on Tribes and Tribal issues. Related to this comment, another administrative officer commented that OST policies should take Tribal strategic plans and governance issues into account. The final training comment made by an administrative officer was that Tribes needed investment planning.

Social Services Respondents

KEY FINDINGS

- The most frequently mentioned training need for social service staff was computer training.

A total of 12 individuals (10 recorded interview files) were represented in the database. Of the social service representatives we interviewed, 50 percent were at the Agency level, 42 percent at the Area level, and 8 percent at the Tribal level.

Social service titles included supervisory social worker, social worker, social services representative, and director of social services (Tribal).

Few social service staff mentioned training they had received; on-the-job training was mentioned once, as was computer training given by BIA.

Social workers/social service representatives indicated they would like training on computers trust related functions, new regulations and procedures, OST roles and responsibilities, IIM, stress management, State social service programs, and grants/special programs. Computer training received two mentions (two respondents); all other topics only received one mention.

Social service staff made two general suggestions related to training. They were—to provide interactive training in a network environment and to train concurrently, not serially.

Tribal Operations Respondents

KEY FINDINGS

- Tribal operations staff most frequently received OMNI-TRUST training, typing, and computer training.
- Tribal operations staff felt that Tribes needed training in various topic areas.

A total of 12 staff performing a Tribal operations function at the agency level were retrieved. One of these individuals was located at a Tribe.

One third of the staff had the title of Tribal operations officer, while one sixth had the title of Tribal operations specialist and one sixth the title of self-determination specialist. Other titles in this category of staff included Tribal government services officer, Indian services officer, Tribal operations program director, and Tribal services clerk.

Training Received by Tribal Operations Staff

Tribal operations staff listed only three types of training they had received. The most frequently mentioned training was OMNI-TRUST (25 percent), followed by typing and computers. OMNI-TRUST training was provided by Albuquerque, typing was provided by high school, and computer training was given on the job and by the Agency. Other types of training that received one mention included customer service (on-the-job training), IRMS, investment training, oral communication (technical college), written communication (technical college), stress management (agency workshop), accounting (technical college), supervision (Agency), and Tribal Trust (various sources, but not specified).

Tribal Operations Staff Training Needs

There were only four mentions of any training needed by Tribal operations staff. The four items mentioned included trust management training, procedures, measures for accountability, and coordination among Tribes, agencies, and areas. These training topics were not specifically mentioned as a training need, but were implied during discussions.

Training Needed by Tribes

Tribal operations staff also made suggestions as to the type of training that would be beneficial for Tribes. The type of training they suggested included leadership training (should be widespread because of turnover of councils), investments, ethics, understanding Tribal constitutions, program management, BIA organizational structure, and the OMNI-TRUST system.

Computer Systems Respondents

KEY FINDINGS

- Computer systems staff received local-area network training the most frequently.
- Computer systems staff provide extensive support to computer users in their offices.
- Area directors and superintendents used outside computer consultants to assist them.

There were a total of 10 interviews included in the database. Most computer staff were located at the Area Office level; Tribes and agencies also had computer staff, but less frequently, and in one instance, the computer staff person at the Agency had another primary job responsibility.

Job titles included computer specialist (most frequently mentioned position title), computer assistant, acting IMC manager, computer systems analyst, systems manager, computer systems manager, and ADP coordinator.

Training Received and Provided by Computer Systems Staff

Four of the respondents received LAN training. Of these, three received intensive 36- to 40-hour training, (two indicated they had a CNE designation). Other types of training mentioned included software training (word processing, WordPerfect, Lotus), A17 training, computer science course work, and Area Office computer training. One respondent specifically mentioned he/she was self-taught and had not received any training. One respondent stated that there has not been any training because of budget restrictions. Two respondents indicated that BIA will pay for training courses.

Computer systems staff provide training to users within their offices. Three provided software training to users, two provided technical support to users, and one trained staff to perform computer repairs.

In terms of the extent to which computer staff support users, we obtained information that indicated between 20 percent to 100 percent of a computer system's staff time is spent on assisting users. Only one respondent indicated this time was "minimal—as needed." Based on these responses, computer support staff spend an average of 64 percent of their time supporting system users.

Training Needed by Computer Support Staff and Others

Only three respondents indicated they needed additional training to help them with their jobs. The three topics they suggested were how to install wiring, LAN training, and general training (topics not specified).

In terms of training needed by office staff, one respondent indicated that software training specific to Word, Access, and Excel was needed.

Other Training Issues Presented by Computer Systems Staff

Sources of training included local and community colleges, other training providers (private companies and the like), Novell (for LAN training), Area Office staff, and Headquarters (Albuquerque) staff. One individual interviewed indicated that at his/her office, a training room/classroom equipped with 14 workstations was available for training purposes.

Also examined were the types of consultants or outside staff that agencies used. Area directors and superintendents indicated they used consultants to perform computer maintenance, computer technician tasks (not specified), and to develop a database. These Agency directors did not have staff expertise in-house to perform these activities, or staff were stretched too thin.

Realty Staff Respondents

KEY FINDINGS

- Realty staff mentioned computer training as the type of training they received most frequently (second to on-the-job training). They also mentioned various types of realty training.
- Realty staff indicated they needed computer and related software training.
- Respondents felt that organizational relationships-such as the relationships between BIA and OST-as well as those with BLM and MMS should be enhanced.
- Staff may be performing functions for which they have no training or experience.
- Some Area Office Realty staff reported they provide training to Agency Realty staff.
- Superintendents and Area Office directors used realty staff as consultants, citing that staff were stretched too thin.

During the two phases of data collection, approximately 74 individuals were interviewed who had positions associated with performing realty processes, including probate, leasing, and rights of way.

The largest group of interviewees was realty specialists, representing 39 percent of all realty respondents. The next largest group of realty staff interviewed was realty officers, at both Area and Agency offices. All eight Area Offices included in the study sample were represented by a realty officer interview. Twenty-two interviews were with Agency realty officers. Other position titles included as part of the realty interviews were realty assistants and clerks, leasing specialists, and supervisory realty specialists.

Training Received by Realty Staff

The most frequently mentioned (16 percent) type and source of training for realty staff was on-the-job training. Training in various types of software, such as Lotus, dBASE, Windows 95, and WordPerfect, was mentioned the next most frequently across all respondents. Realty training, including acquisitions and disposal of land, rights of way, oil and gas, and leasing principles, was also mentioned by multiple respondents. Other types of training received by realty staff that were noted by more than one

respondent included Area Office meetings, supervision, leasing regulations, IRMS, probate, and personal computer operations. Additional training listed by respondents included leasing and rights-of-way courses, oil and gas seminars, customer service, commercial vendor training, Federal Financial System (FFS) training, trust management law, paralegal training, team building, stress management, IIM and operations, asset management, appraisals, title, and BLM certification.

Sources of training included BIA (most frequently mentioned), followed by the Area Office, Agency Office, community college and vocational technical schools, and the Colorado School of Mines (for minerals). Other sources of training included administrative law judges, private contractors and firms (Martin and Sable for computers, Falmouth Institute), associations, and headquarters staff.

Training Needed by Realty Staff

Respondents mentioned computer and related software training the most frequently when queried about the type of training they needed. Included in these responses were specific requests for training on Windows, Corel, WordPerfect, dBASE, and Lotus, as well as skills that would enable users to "fix" software problems, particularly for database applications that agencies have developed and are using to improve work efficiency. Other types of training that received more than one mention included training on oil and gas statutes and regulations, roles and responsibilities (particularly between OST and BIA), joint IIM and realty training, and legal (knowledge of laws) training. One respondent indicated that roles, relationships, and authority for OST, BIA, BLM, and MMS needed to be a topic of training. Other topics suggested by respondents included audit functions; processes for payment transfers; management training, including strategic planning and organizational evaluation; accounting skills; surface leasing; State laws affecting probates; locating missing people; real estate; stress management; use of a deed plotter; business leases; rules and regulations; use of the lockbox system; and leasing.

Training Issues Presented by Realty Staff

During discussions with realty respondents, several issues were raised that affect training plans. These included the lack of training emphasis by BIA, interorganizational and cross-organizational relationships, and constraints to receiving training.

Respondents indicated that training was not emphasized, citing few if any funds for training. They felt that training was needed whenever policies or the system changed. One respondent cited the importance of training during the implementation process, as training assists in the "buy-in" process. Several respondents referred to the need for the various players—Area Offices, Agencies, Tribes, BIA, OST, MMS, and BLM—to work together and to have a working knowledge of each entity's respective functions and responsibilities. Federal coordination was required. Some respondents indicated a lack of understanding from headquarters and Area Offices about the procedures performed by Agency staff. Following this, a few respondents indicated that because of staff responsibilities and assignments, attending training automatically creates a backlog. Further, they stated that staff had "no time" to attend training. One respondent indicated that cross-training staff to perform as backup was needed.

Respondents also indicated that because of reductions in force and other situations, staff were performing jobs for which they had no training or experience. Other concerns voiced by realty respondents included a decision to forgo implementing a new computerized system because of the training demands placed on staff (and no time for the training), hands-on training at the Agency was

preferable to traveling to training at a remote site, and opportunities to share ideas across Agencies/Areas was needed.

A few realty respondents at Area Offices reported they provided training to Agency staff. One Area Office reported bringing in outside experts to train Agency staff on a periodic basis.

Realty staff commented that the public (trust fund account holders) should be trained on realty, trust processes, and trust history. They also felt that Tribes should be trained to perform distributions and manage land assets.

Realty Staff Needs Suggested by Superintendents and Area Directors

When Agency superintendents and Area directors were queried about their use of outside resources to perform trust-related activities, a few indicated that, when they used outside consultants, they were for realty functions. Oil and gas assignment work, appraisals, and probate were performed at some Agencies/Areas on a contract basis. Supporting this, multiple realty respondents indicated that staff were stretched too thin and additional staff were needed.

C. Office of the Special Trustee (OST) Staff Training

Accounting Technician/Trust Accountant Respondents

KEY FINDINGS

- A third of trust accountants/accounting technicians had received some type of computer training. This also included training on a Federal system, such as OMNI-TRUST or FFS.
- Many received trust training. Accounting training and investment training were also mentioned by several staff.
- Computer training was the most frequently requested type of training needed. Accounting training, training to delineate roles and responsibilities (such as between OST, MMS, and other organizations), and communication skills were also mentioned often as a training need.
- Staff also would like training in investments, stress management, trust operations, systems software, and budgeting.
- Trust accountants/accounting technicians indicated that better communication within Agencies and across offices was needed.
- Staff felt overworked and did not have backup.

During the course of the field discussions, we interviewed all but one Area trust accountant in our sample of eight Area Offices, 46 accounting technicians, as well as other staff (such as clerks, accountants, and tellers). A total of 57 individuals provided information to study team members.

The analysis provided in this section does not include any OST Albuquerque staff; their training comments are reflected elsewhere.

Training Received by Trust Accountants/Accounting Technicians

OST trust accounting employees most frequently mentioned that they received six types of training. These included computer-training courses, Federal systems training, on-the-job training, trust training, accounting, and investment training. A third of all respondents had received some type of general computer training. The most frequently mentioned types of computer training included general computer training, MS DOS, and WordPerfect training. One fourth of all trust accounting respondents received training on a Federal system, such as OMNI-TRUST, FFS, A17 or the Lotus interest template, with OMNI-TRUST being the type of training mentioned most frequently. Nineteen percent of all respondents received on-the-job training, while 18 percent received some type of trust training, primarily the courses taught by BIA and OST. Accounting courses obtained through local colleges were cited the next most frequently, followed by investment training. Other types of training received by more than one respondent included supervision, EEO, financial, oral communication skills, written communication skills, and customer service. Additional training mentioned by one respondent each included working with difficult people, typing, ethics in government, probate and wills, time management, legal skills, labor management relations, and budgets.

Local colleges, including vocational technical schools, were cited as the source for most outside training. Internal training was primarily provided by BIA/OST staff, either at headquarters or area offices. Only one respondent mentioned the Cannon Finance Institute as a source of trust training. Two respondents mentioned the Office of Personnel Management (OPM) as a training source.

Training Needed by Accounting Technicians/Trust Accountants

Respondents listed a wide variety of training needs. Four broad topics received the most mention—computer training, accounting training, training to delineate roles and responsibilities, and communication skills. Fully one third of all trust accounting respondents mentioned the need for computer training, including training on Lotus, word processing, spreadsheets, Windows, QuatroPro, dBASE, and learning simple programming commands so that reports could be generated at the Agency and not requested of other OST staff. Approximately 23 percent of trust accounting staff mentioned the need for accounting training. They also requested that training be provided to describe the roles and responsibilities of staff and agencies (19 percent). Topics related to roles and responsibilities include interfacing with MMS, the structure of OTFM and its relationship to the OST, an overview of the OST, an overview of the entire system, and job expectations and performance standards. Seventeen percent of respondents indicated they needed communication skills. By this they meant oral communication skills (speech and oral presentations), written communication skills (letter writing, business writing, and selling an idea), and assertiveness training.

Other topics that received multiple mentions (in order of ascendency) included investments, stress management, trust operations, OMNI-TRUST/IRMS training, and budgeting. Other less frequently mentioned training topics included customer service skills (including dealing with difficult people), interpreting financial reports, interest computation, supervision, lease management process, probate, and personnel issues.

A few staff indicated they were "scheduled" for training in the immediate future, or that planned training had been postponed.

Training Issues Raised by Trust Accountants/Accounting Technicians

One theme that appeared frequently in conversations with trust accounting staff was the need for better communication, within Agencies and across offices at all levels—Area Offices, Headquarters, Agencies, and Tribes. A more open policy was stressed, and tools such as conference calls and meetings were suggested. In addition, a few staff had the perception that others at the next level up, were able to receive more training. One respondent stated that "we need to have more instruction, supervision, and support from OTFM."

Staff also mentioned they were overworked, there were no staff available to back them up in the event of an absence, and that there were no funds available for training.

More than one respondent suggested that a list of available training be provided to OST staff. Another respondent suggested that training in systems and processes needed to occur at all levels.

Trust accounting respondents also suggested that ongoing training, in the areas of finance and investments, be provided to Tribes. Turnover at the Tribal level requires a continuous training process.

Other Staff Training Needs

KEY FINDINGS

- Respondents had received OMNI-TRUST training and trust training.
- Staff cited computer training as their greatest training need.
- OST Albuquerque and collections staff indicated they also needed typing, oral communication, customer service, and financial skills.

Also examined were the training needs of other OST staff and staff who worked closely with OST trust accounting staff but who were BIA staff. Primarily, these staff perform collections functions worked at a headquarters level.

Training Received

On-the-job training was mentioned most frequently by respondents. The two other types of training mentioned frequently were OMNI-TRUST training and Cannon trust training. One individual indicated he/she was planning to take the Cannon trust training in the near future. Other training received by interviewees included OPM supervisory training, trust operations (general and Tribal), training performed by private entities, auditing, collections process, accounting (at a local college), IRMS training, and stress management.

Training Needed

The training mentioned most frequently by respondents was computer training. The next most frequently listed skills needed were typing, oral communication, customer service, and financial skills. Other training topics specified as needed included written communication, accounting, stress management, supervisory, trust systems, training on any new regulations, and the collections process.

6.7 Recommendations

As a result of training research, data collection, analysis and findings, the following features and consideration for the Trust training effort are recommended:

PRIMARY TRAINING DIRECTIVE:

The training effort must provide trust system personnel with the necessary skills to support the fulfillment of the Secretary's Trust fiduciary role. Failure to provide the necessary training, as well as failure to monitor trust personnel performance, will directly result in the Secretary's inability to fulfill his fiduciary responsibilities.

Also:

- The government requires the establishment of an entire Trust training mechanism in order to respond to the finding that there is no formal training mechanism to the Indian Trust Fund community.
- The new training audience must include all users and beneficiaries of the Indian Trust Fund community: trust operations; trust reporting; trust investment; trust assets management; Tribal government leaders; Tribal trust employees; and Tribal members.
- The training must include an emphasis on skills development in customer service, accuracy in accounting, sound financial and investments decisions and activities, accurate and timely reporting, and protection, use, and management of the Trust's assets.
- The training mechanism must reflect the federal government's and the Tribes' legislative, regulatory, judicial, and other requirements for management of the Trust.
- The training must be developed and delivered as quickly as possible.
- Trust personnel must perform in accordance with official policies and procedures which must be made available to them.
- Trust personnel must perform in accordance with stated, measurable, demonstratable performance objectives. Personnel which fail to meet these performance objectives must be provided remedial training and, if they continually fail to meet performance objectives, must be replaced by qualified personnel.
- The development of job descriptions (also known as personnel descriptions) to state the educational requirements, prerequisite knowledge and skills, and performance tasks necessary for each labor category is recommended.
- Government assessments of trust personnel in meeting performance objectives should be conducted.
- There is existing, relevant trust-related courseware, provided primarily by commercial vendors, which should be used to meet training gaps, where appropriate.

- New courseware must be developed to meet other training gaps, including the need for knowledge about the Indian Trust Fund, trust account holders and their needs, interfaces between current Indian Trust Fund databases and new service bureau systems, policies and procedures, and tasks specific to catch of the trust labor categories.

- Steps should be taken to resolve the confusion and fear expressed by interviewed trust workers and Tribal representatives. Specifically, the publication of a "news report" on this needs analysis project is recommended. Continuing organizational-change reports and dissemination of other information which would be appreciated by the trust community is also recommended.

- Several crucial training needs were identified which need timely response. The following training efforts should be developed within the first year:
    - investments training for Tribal leaders and trust personnel
    - IIM Accounting Technician tasks (to support those IIM technicians placed in the field in the past year)
    - customer service skills training for the majority of trust workers
    - account holder profile training for the majority of trust workers and Tribes

- The development of various training delivery systems, each of which are suitable to a particular training audience, environment, location, and timeliness of need is recommended. Training coordinators should select the appropriate media as the need arises and costs permit.

-

Based on these recommendations, a training approach has been developed which includes these recommendations and factors, and which also includes a schedule and costs. That approach is in provided in Appendix 9.

Trust Management System

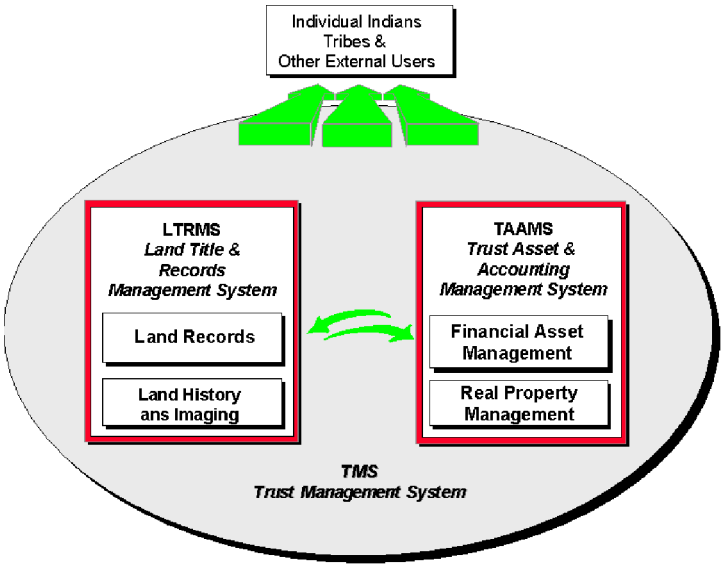
7.0 Introduction

This chapter recommends a new Trust Management System (see Figure 7.1) for trust asset management and land title and records management (collectively, trust management activities). This Trust Management System (TMS) is the heart of the new information infrastructure for the American Indian Trust and Development Administration (AITDA). The TMS is required to carry out the trust fiduciary responsibilities of the U.S. Government to American Indians and American Indian Tribes. The TMS consists of two systems with standard, commercially adapted computerized applications.

The two automated systems are:

- Trust Asset and Accounting Management System (TAAMS)
  - Financial Asset Management
  - Real Property Management

- Land Title and Records Management System (LTRMS)
  - Land Records
  - Land History and Imaging



Two other key aspects of the new Trust Management System described in this chapter are the Risk Management and Control System and the staff required to administrate the TMS.

The needs and requirements and key features of each system are provided in this chapter.

Needs and Requirements --- Trust Management System

A Trust Management System is needed to fulfill the Trustee's fiduciary responsibilities and to allow the roughly 300 American Indian Tribes participating in the Indian Trust to manage their Tribal funds and to give each Tribal government greater control.

The TMS consists of application programs (computer based) required to:

1. Have electronic linkages with each other without the user having to reenter data
2. Be readily accessible to all approved users
3. Be capable of importing to, or exporting from, standard applications such as Excel spreadsheet software

4. Enable users to print reports on standard laser jet or ink jet printers that are connected to their workstations/LANs
5. Be capable of holding inputs in memory until the user has the opportunity to complete all inputs (as opposed to the user losing inputs entered in the event the user and/or the terminal is interrupted)
6. Be compatible with Windows software used on individual workstations
7. Be available when needed (no scheduled down times during prime work time or batch update time)
8. Be reliable
9. Incorporate an automatic and frequent "save" feature as inputs are being entered
10. Provide an automatic backup (at least daily) of key files at an off-site facility (for disaster recovery purposes)
11. Be supported with a 12 hour-per day (24 hours-per-day during peak workload times) Help Desk to assist users (cover prime work time and batch update time)
12. Be Year 2000 qualified
13. Enable the user to archive specified files
14. Be structured to accommodate transition to proven formats as technology changes, allowing the product to remain flexible and not become stagnant or archaic.

Additionally, an administrative staff is required to conduct Trust Management System operations and a Risk Management and Control System is needed to provide adequate audits, conduct compliance reviews, and make independent asset appraisals.

Features --- Trust Management System

- Treats trust holdings in accordance with governing documents
- Provides for prudent management of holdings
- Includes safeguards against conflicts of interest, abuse, or self dealing
- Segregates assets
- Provides recordation of transactions including income, principal, and taxes
- Provides on-line accessibility through LAN/WAN networks
- Preserves documents relating to financial transactions and property management
- Allows periodic reporting to provide asset listings and transactions.

7.1. Trust Asset and Accounting Management System

A Trust Asset and Accounting Management System (TAAMS) is needed to provide:

1. Management and accounting services for all Indian trust assets and to all account holders
2. Management and administration of over 100,000 active or pending surface and mineral rentals and/or leases each year
3. Financial services to individual Indians and Tribes.

The TAAMS consists of 1) an automated trust accounting system and 2) an automated real property management system made up of one or more surface and mineral property management modules.

7.1.1 Trust Accounting System

Potential application programs can be purchased for in-house use or trust accounting can be provided by a service bureau. Available vendors include: M&I, SEI and SunGard. All three have electronic interface capability with, a property management and operations accounting applications (e.g., Petro Data). Federated (*Trust Connect*) and Fidelity have application systems which automate all aspects of buying and selling securities. Both have an electronic interface with M&I. Riggs Bank uses *First Data* which has an automated brokerage system for mutual funds.

Needs and Requirements --- Trust Accounting

An automated trust accounting system is needed to provide financial services to individual Indians and Tribes and to provide:

1. Periodic statements and transaction reports - annual balance of all trust assets and quarterly reports
2. Daily balances
3. On-line access to account balances by the individual Indian and Tribes
4. Standardized trust accounting
5. Integrated interface with LTRMS and other applications within TAAMS.

The trust accounting application program must have the capability to:

1. Collect and deposit trust income
2. Account for trust income and funds
3. Price equities daily
4. Invest trust income and funds
5. Disburse trust income and funds to Tribal and individual Indian account holders
6. Provide both on-line reports and hard copy reports - at a minimum account statements and transaction reports.

The trust accounting application program must be able to handle:

1. Individual Indian accounts - over 350,000
2. Tribal accounts - over 1500
3. Transactions - over 5,000,000 per year
4. Hard copy disbursements - at least 330,000
5. Fractionated interests - up to 35 decimal points.

Features --- Trust Accounting

- Outsourcing the trust accounting data processing to a service bureau
- Electronic linkage with LTRMS and other applications within TAAMS
- Daily sweeps with daily valuation (mutual fund type system)
- Capability to do automated clearing house/electronic funds transfer (ACH/EFT)
- Capability for user to call into an automated system to check on balance
- Capability to use automatic teller machines (ATMs) for withdrawal and check on balance (NOTE: The ATM feature must be transacted through a bank. A checking account is set up. The draft is against the checking account as an overdraft. M&I has the capability to fund the checking account from the trust fund electronically on an overnight reconciliation)

- Capability to amortize/accrete in compliance with Financial Accounting Standard Board 91 (FASB91)
- Relational or object oriented database
- Performance measurement for full spectrum of trust fund activities
- Capability to customize report formats
- Windows open-system architecture
- On-line help
- Point and click controls
- Automated validity checks
- Pull-down menus
- Compatible with trust organization communication wide area network (WAN)
- Access by PC through password control.

7.1.2 Real Property Management System

Prudent real property (resources and assets) management requires two essential capabilities: 1) pre-lease information management and 2) lease operations management.

Pre-Lease Information Management

One of the keys to preparing and executing a valid lease is to have knowledge of what has gone on before in terms of fair and equitable bonus, terms of lease, royalty, and/or rental payments from like or similar properties in the same locality or area.

For American Indian properties, a new database of past lease activities is required. Some information such as on oil and gas leases is available from services such as Dewights Energy Data which has activity and production data automated and available on-line by location.

Other surface and mineral lease/rent information will have to be collected, recorded, and maintained in a dedicated database managed by the trust organization utilizing lease management software in a service bureau environment.

Needs and Requirements --- Pre-Lease Information Management System

An automated database is needed to enable access to information required to establish, maintain and execute title documents and to provide and/or maintain:

1. Capability to draft and execute new title documents
2. On-line information capability within the trust organization and with other designated organizations responsible for managing extensive holdings of surface and mineral rights
3. A front-end application (computer program) to the Land Title and Records Management System
4. Inventory of surface and mineral rights ownership
5. History of parcel acquisition and dispositions pending and resulting from treaties, judgments, laws, grants, purchases, patents and exchanges
6. Mineral lease information to include parcels up for bid, notices of lease auction and lease contracts
7. Current data and status of oil and gas wells permitted and/or drilled on Indian lands
8. Royalty and net mineral interest information on all producing properties in which the trustee

manages a royalty interest
9. Surface lease information to include land uses, lease interest, productivity and rental rates
10. Information on improvements of each lease and each leased property
11. Information on rights-of-way and other types of easements over or across Indian lands that place an encumbrance on the propertyRecords of all revenues received from rentals, bonus payments, royalties, fees, penalties and interest.

Features --- Pre-Lease Information Management System

- Electronic linkage with LTRMS, MMS, BLM and other applications within the TAAMS, such as, surface and mineral management subsystems (e.g., Petro Data, M&I) and the trust fund accounting system (e.g., M&I, SEI, SunGard)
- Windows open-system architecture
- Imaging and Geographic Information System (GIS) applications
- Relational or object oriented database
- On-line help
- Point and click controls
- Automated validity checks
- Pull-down menus
- Compatible with trust organization communication network
- Access by PC through password control.

Lease Operations Management

The property management and operations accounting functions of lease operations management can be provided by: 1) commercially available application programs purchased for in-house use; 2) service bureau; or 3) outsourcing to a property management vendor. Potential vendors for such services include:

- M&I (improved land --- commercial, residential, retail and recreational real estate)
- National Computer Systems (improved land --- commercial and residential real estate)
- Petro Data (full range for surface and mineral leases including improved and unimproved land) --- subsidiaries: Blue Star (software) and PDS Services (service bureau).

Petro Data has built-in interfaces with M&I, SEI, and SunGard trust accounting software packages. M&I has an electronic interface with SEI. SEI also has an optional *Strata System* (Windows-based) module for real estate property management and operations accounting.

Needs and Requirements --- Lease Operations Management

An automated consolidated master lease system is needed to provide an accounts receivable, billing and collection data system that uses lease-contract and ownership information from the pre-lease database for trust income verification, reconciliation, billing, payments, collection, accounting, disbursement, audit asset quality review and compliance purposes. Surface and mineral management system/systems are needed to provide a front-end application to the trust fund accounting application and to:

1. Perform billing and collection of rental and lease payments, bonuses, royalties and associated incomes

2. Provide a tickler system in an accounts receivable and billing system that uses lease-contract and lease land ownership information
3. Allocate net trust income according to ownership in tract or resource
4. Transfer electronically over-night income reports by ownership allocation to the trust fund accounting application
5. Reconcile trust income paid versus amount owed.

A surface and mineral management subsystem must be able to handle the appropriate number of annual leases (based on over 100,000 leases per year on approximately 172,000 tracts recorded) pertaining to the subsystem:

- Oil and gas
- Other minerals and timber
- Improved property
- Unimproved property (e.g., agricultural, grazing).

NOTE: The options for execution of the surface and mineral management subsystem(s) include:

1. The trust organization provides total property management of the lands and minerals using vendor supported software applications
2. The organization provides the property management of lands and minerals and outsources the accounting system function to a service bureau
3. Outsourcing the total property management system of Indian lands and minerals to a vendor
4. Any combination of the above for specific surface or mineral resources by American Indian lands, region, field, or Tribe.

Features --- Lease Operations Management

- Electronic linkage with MMS, BLM and with other applications within TAAMS
- Windows open-system architecture
- On-line help
- Point and click controls
- Pull-down menus
- Operable in a PC/server environment with password control
- Compatible with trust organization wide area network (WAN).

7.2 Land Title and Records Management System

A Land Title and Records Management System (LTRMS) is needed to provide management, administration, and recordation for over 170,000 tracts (53 million acres) of land and all title documents affecting these tracts. The automated system stores and manages ownership data for each American Indian property, and references that data to the property's location.

The Land Title and Records Management System consists of two systems: 1) Land Records System (LRS) and 2) Land Records History and Imaging System (LRHIS).

7.2.1 Land Records System

Commercial Land Records Systems (LRS) exist in court houses across America. These are custom database applications designed in compliance with state laws. IBM has developed several of these systems and also has custom systems installed in various locations and countries, among them, Russia and Canada. EDS is working with one of the IBM clients, a Canadian company, Teranet Land Information Services. Teranet, EDS and IBM have developed a system to provide for electronic registration of land for the government of Ontario, Canada. This system is due to come on-line in mid-1997.

The LRS system must electronically interface with the LRHIS and TAAMS.

Needs and Requirements --- Land Records

An automated Land Records System is needed to enhance the American Indian land registration system and to:

1. Provide title document management
2. Provide land title status mapping
3. Perform land or lease recordation transactions on-line
4. Receive and process final title document transactions for determination and certification
5. Verify all information submitted and confirm or reject the transaction
6. Take custody, record, and maintain title documents
7. Assign and maintain unique land index number cross-referenced to ownership identifiers and tax numbers (where applicable)
8. Distribute land, ownership and title document data
9. Provide current ownership for a given tract of land, description of the tract, owner information, and any encumbrances
10. Provide process control to include alert messages, backups (disaster control), passwords, and usage statistics.

The Land Records System must ensure the integrity of the land registration record.

Features --- Land Records System

- Electronic linkage with LRHIS and TAAMS via WAN
- Windows open-system architecture
- Imaging and Geographic Information System (GIS) applications
- On-line help
- Point and click controls
- Automated validity checks
- Pull-down menus
- Compatible with trust organization WAN
- Access by PC through password control
- Potential service bureau environment.

7.2.2 Land Records History and Imaging System

On-line land title historical information is required for access and for reporting chain of title for each tract of land in the Indian Trust. Imaging capability which adheres to legal archiving standards and

requirements and which link to the Land Records System is also a part of the LTRMS specification. Equipment, software and specialty organizations in the commercial sector can provide several options to satisfy the requirements of LTRMS activities.

Needs and Requirements --- Lands Record History and Imaging System

An automated Land Records History and Imaging System (LRHIS) is needed to provide:

1. Chain-of-title and determination process
2. Digital title files
3. Property mapping and document imaging
4. Historic records of all documents which affect a tract of land since its original allotment (chain-of-title), including transaction details and the location and legal description of the tract(s) involved.

NOTES:

1. The pre-lease information management segment of 7.1.2 could be included as part of the Land Records History and Imaging System. This provides the front end to the LTRMS and also information for lease activities and lease and tract information for trust fund accounting. The records that are normally in the Land Records History and Imaging System should not be maintained in duplicate databases. Information should be cross-referenced and obtained electronically, or combined into one database.
2. Imaging accomplished for archiving and recordation should be sufficient to serve the purposes of the Land Records History and Imaging System thus eliminating duplication (except where appropriate for disaster control), also reducing the need for imaging equipment.

Features --- Lands Record History and Imaging System

- Electronic linkage with LRS and TAAMS via WAN
- Windows open-system architecture
- Imaging and Geographic Information System (GIS) applications
- On-line help
- Point and click controls
- Automated validity checks
- Pull-down menus
- Compatible with trust organization WAN
- Access by PC through password control
- Potential service bureau environment.

7.3 Risk Management and Control System

Essential to an effective Trust Management System is a quality Risk Management and Control System. 12 CFR 9.9 requires that a committee of directors of a national bank audit fiduciary activities or cause suitable audits to be made by auditors responsible only to the board of directors. This requirement is also proposed for the American Indian Trust Development Administration.

The functions required to be accomplished by the Risk Management and Control System include: 1)

providing adequate operational audits and credit and asset quality audits; 2) conducting compliance reviews; 3) making independent asset appraisals; 4) liaison with outside, independent auditors for an external audit; and 5) conducting internal audits. The internal audits will determine compliance with the policies and procedures used for the administration of accounts, and the processing and recording of transactions. The audits will appraise the soundness and adequacy of accounting, operating, and administrative controls. The audits will also review, where appropriate, the formulation and revision of policies and procedures.

Needs and Requirements--- Risk Management and Control System

A Risk Management and Control System is needed to identify the effectiveness of the Trust Management System and specifically to:

1. Monitor operational risk
2. Monitor and measure credit risk in leases, loans, and other credit exposure
3. Identify and monitor emerging credit risk areas
4. Review the effectiveness and prudence of the credit process
5. Evaluate the adequacy of trust management activities
6. Monitor and report risk associated with the trust organization's compliance with laws and regulations
7. Identify and monitor market risk as it affects asset value
8. Maintain open lines of communication with primary regulators
9. Monitor private sector trust best practices
10. Monitor compliance with administrative actions.

Features --- Risk Management and Control System

The Risk Management and Control System will provide the trust organization’s management an independent assessment of the organization’s accounting, reporting, and internal control practices, and specifically will:

- Evaluate the organization’s system of internal control to determine that controls are appropriately designed, functioning as planned, and updated as necessary to meet changes in operating conditions
- Provide management with reasonable assurance that control problems have been identified and corrected
- Assist management in the effective administration of the organization
- Evaluate and correct any weakness in the system of controls stemming from fraudulent activities
- Monitor compliance with regulatory requirements
- Provide an effective and independent asset review function to analyze the level of credit risk in assets and other exposure, accurately rate risk and report asset quality, evaluate the effectiveness and prudence of the credit/lease process, and provide a well supported opinion of the adequacy of trust resource management
- Ensure that trust beneficiaries are protected and served in a responsible and sound manner in accordance with the trust organization's fiduciary responsibilities and safe and sound trust banking practices
- Absorb the current responsibilities of the Office of American Indian Trust (OAIT) to ensure that the Federal Government's obligation under the Federal Indian Trust responsibilities are performed in accordance with the standards required by US laws and policies

- Conduct annual reviews of Tribal performance of trust fund functions assumed under the Self-Governance Act of 1994 25 USC 458cc(d) and prepare and monitor Federal trust protection standards and guidelines
- Review significant decisions affecting Indian trust resources, including treaty rights, and provide policy review and other technical services to other trust management units, including training, liaison, and information services to assist in matters relating to the Indian trust management responsibilities
- Provide the trust organization with an independent, unbiased assessment of real property values and market trends as they affect trust management decisions in lease origination, portfolio management, and monitoring
- Ensure high quality appraisal services from qualified external contractors and ensure appraisal services are performed on a timely basis and at a competitive price
- Monitor market trends and inform management as to the possible impact of these trends on portfolio management practices and establish internal appraisal policies and procedures and valuation techniques to be used by account officers in their asset management role
- Monitor compliance with private sector requirements affecting the appraisal process

Additional features of the Risk Management and Control System include:

- Full support of trust organization's management
- Compliance with audit fiduciary activities and other bank trust audits as called for in CFR 9.9 (for national banks) and private sector requirements affecting appraisals, regulatory requirements, and Indian trust responsibilities
- Audit personnel independent of the functions they evaluate
- Competent and qualified audit personnel
- Competent and qualified appraisal personnel
- Auditor authority to have access to all records deemed necessary for the proper conduct of the audit assigned
- Documented records of the work performed
- Audit procedures and frequency based on the degree of risk
- Utilization of external independent appraisers, where possible
- An effective in-house appraisal capability.

7.4 Administrative Staff

A proposed organizational structure to implement and manage the Trust Management System activities, based on prudent commercial best practices and adapted to the American Indian trust responsibilities is provided in Appendix 9C. This proposed structure is consistent with the planned AITDA organizational structure. Related job descriptions are in Appendix 9D.

Other administrative considerations are discussed in Chapter 8 --- Technology Services Center.

Trust Management System Support

8.0 Introduction

In addition to the Trust Management System (TMS) recommended in Chapter 7, the new information infrastructure of Part II requires a support infrastructure to enable the TMS to accomplish its trust management activities. The support infrastructure consists of:

1) Technology Service Center
2) General Ledger System
3) Communications Network
4) National Indian Fiduciary Records Center
5) Document Imaging
6) End User Workstations

The needs and requirements and key features of these support infrastructure elements are provided in this chapter.

8.1 Technology Services Center

The Technology Service Center is used in the broadest sense as the center of expertise for the totality of trust fund management; i.e., it includes expertise in strategy, research, tactics and operations from the points of view of long term trust fund goals to systems integration infrastructure. In summary, this center is the management hub for the trust management activities related to the new Trust Management System recommended in Chapter 7 (see Figure 7.1).

Needs and Requirements—Technology Services Center

A Technology Services Center is needed to provide administration and management of trust resources, trust funds, and land ownership and records processes. The functions required to be accomplished by this center include:

- Trust real property management
- Trust financial assets management
- Land title and records management
- Trust archiving and records management.

The Technology Services Center will be responsible for:

1. Implementing the trust operation functions
2. Managing the automated Trust Management Systems
3. Managing the electronic interfaces between and among TMS elements
4. Managing service bureaus
5. On-line Help Desk operations
6. Application software development activities

7. Application interface software development activities
8. User and user support training
9. Maintenance and installation of computer equipment at user sites
10. Maintenance of the WAN.

Features—Technology Service Center

- Centrally located
- Investment management
- Account management
- Portfolio management
- Trust asset and accounting management operations
- Compliance management
- Investment research
- On-line Help Desk
- Network support specialists
- Application software specialists
- Technical support staff
- Training specialists

8.2 General Ledger System

The General Ledger System is intended to provide the necessary financial accounting and control of the American Indian Trust Development Administration (AITDA) operations funded by appropriated monies.

Needs and Requirements—General Ledger System

A General Ledger System is needed to provide a consolidated accounting picture of the operations of the AITDA. This system provides an accounting of appropriated funds utilized for administration and management of the independent trust organization.

This automated system must electronically interface with the Trust Asset and Accounting Management System (TAAMS) in order to be able to capture electronically any fee incomes allocated to AITDA.

Features—General Ledger System

- Electronic linkage with TAAMS via the wide area network (WAN)
- Relational or object oriented database management system
- Efficient sharing of data, reduction of redundancy, and flexibility for ad hoc reporting
- Multiple levels of security to protect information
- Capability to restrict access to an application or to transaction or field values
- User control over editing and error handling functions
- User defined auditing capabilities
- An integrated set of query and reporting tools
- Capability to post prior period or retroactive journals
- Centralized on-line access to summarized and detailed accounting information

- Flexibility to create accounts and sub-accounts
- Windows open-system architecture
- On-line help
- Point and click controls
- Pull-down menus compatible with trust organization WAN
- Access by PC through password control.

8.3 Communications Networks

OST presently has no formal, nor complete, network or communications backbone of its own. Current network functions are performed on segments of the DOINet and BIANet networks, which have circuits to some locations where OST has dumb terminals, and other circuits having direct access to PC workstations. Some Tribal sites have no network communications at all. The DOINet has no redundancy at any of its nodes, although it does have alternate routing capabilities. Data transmitted over the DOINet are unsecured since firewalls are lacking and workstations do not have encryption cards.

Needs and Requirements—Communications Network

A new AITDA network is needed to provide the required communications for the new information infrastructure. Figure 8.1 illustrates the basic communication flows required and the types of data or services provided by various nodes.

there is a need for:

1) Leased direct dial-up network to accomplish the daily workflow required (see Figure 8.2).

2) Encryption hardware at each remote location and the OST-Albuquerque facility to allow the utilization of public communications facilities.

3) Firewall software at each remote location and the OST-Albuquerque facility to allow the utilization of public communications facilities.

4) Vendors responsible for maintenance and upgrade, reducing OST personnel support and operational costs.

5) Capability to "switch" a call to the proper location (data base or file storage center) to submit or retrieve the information as required by procedures and specifications.

Features—Communications Network

- With all the data entry and inquiries in a switch mode and with all the switching being done at OST-Albuquerque, an inquiry sent from a field location can be received, logged and transferred to the designated data source

- Creates an audit trail and performance reporting tool for management, since the logs will show the volume of requests for each information source and the volume of requests by field location.

The transaction logs will show the data entry done from each field site (number of transactions by type, frequency, exceptions, and corrections)

- Enables operating costs to be more controllable and predictable as historic data is accumulated for forecasting
- Establishes a data (digital) communications link among all of the Tribes, field offices, and regional offices and OST-Albuquerque (presently, some Tribal sites have tremendous difficulties communicating with other entities because of their remote locations)
- Permits use of microwave technology in coordination with the new network
- Utilizes proven standard network technologies including frame-relay technology
- Permits a migration to an ATM (asynchronous transmission mode) capability when it is made available to the entire network.

Note: Funding was not included in the budget for the microwave technology. It is recommended that it be considered, however.

One of the major advantages of the direct dial-up type communications is the ability to "extract data" from related data bases and enter the extracted date into a master data base that would reside at OST-Albuquerque. This means that the OST data base can be updated by the system automatically (or programmatically) by calling up data bases from the field and retrieving their daily transaction files. By doing this, OST-Albuquerque would be helping offices in the field with file backup for disaster recovery purposes.

The proposed network will allow the network to be a logical (virtual) network that offers all the current proven technology, such as video teleconferencing, without being bound to physical, hard-wired defined situation. Once the network has been established, workstations and servers can be moved to new locations without any major change in the control software.

A simple low cost digital camera can be installed at the workstation level; with dial-up capability provided by the network, a circuit can be established, i.e., logically linked, to another workstation which has an installed camera. The two parties can then hold a conference, as if they were in the same room. This approach allows headquarters staff to have teleconferencing discussions with employees in the field to resolve situations which might otherwise have necessitated a trip to the remote location. This capability should reduce the need to travel, while at the same time boost productivity.

The statistical information captured will assist in the evaluation of the actual on-going needs requirements from a verifiable statistical source. Using this information, the actual network can be managed, adjusted and maintained with confidence.

8.4 National Archives and Records Center

There are potentially two alternatives to fulfill the requirements for archiving American Indian records. The first is a center that would have the capacity to accomplish both deep storage (long term) and quick retrieval of records. This archiving center, proposed by OST as the National Indian Fiduciary

Records Center, would be located in Albuquerque, and consist of a hard copy archive and an electronic archive. The electronic archive would consist of a Master Electronic Archive (MEA), situated in the NIFRC, and a Backup Electronic Archive (BEA), located well away from the MEA for disaster recovery purposes.

The second alternative would consist of two separate archiving activities. One handling the long term storage would utilize capacities of one of the National Archives and Record Administration (NARA) existing Records Center. Convenient Centers exist at Denver and Fort Worth, as well as other regional areas. In conjunction with this Center, a separate quick-retrieval record center would be maintained by AITDA at Albuquerque.

For the purposes of this report, the attributes, needs and requirements, and features of the National Indian Fiduciary Records Center (NIFRC) are provided below (See Figure 8.3). In the event that the second alternative proves to be more realizable, these attributes, needs and requirements, and features can be allocated to the respective long storage and quick retrieval Centers.

One of the underlying assumptions of the NIFRC is that imaged (digitized) documents are acceptable in a court of law. NARA officials claim that the courts vary in their views on this issue. If NARA is correct, some or all of the hard copy documents may have to be microfilmed to preserve the contents of fragile hard copy documents.

Attributes of the NIFRC

Users would consist of all government employees involved in the trust fund management function, situated in headquarters, regional offices, and field offices, and to the Tribes.

Records to be archived may be in the form of paper, film, disk, or other physical type or form; and the method of recording may be manual, mechanical, photographic, electronic, or any other combination of these or other technologies.

Records would be housed in a large facility and equipped with modern archiving equipment, such as bar code labeling equipment for labeling boxes, and the folders that are contained within, that would permit quick retrieval and cross-referencing to documents in electronic format.

The MEA would store all documents required by the user in performing trust management-related functions. These documents would include not only the usual documents that one associates with trusts, such as leases, etc., but reference documents, such as 25 CFR and other items to make the users work more efficient. The MEA would be programmed to determine which users would be approved to access each document. In addition, the MEA would routinely back up users' computer files for sake of disaster recovery.

The BEA would mirror the capabilities of the MEA. If the MEA had momentary problems, such as fluctuations in power, the BEA would automatically take over, with the change being transparent to the user. In the event of a disaster involving the MEA, the BEA would continue operations, again transparent to the user.

The NIFRC staff would provide expertise to assist field personnel with their data imaging and other technologies, and would provide spare equipment whenever breakdowns occurred in the field.

For the estimated 500 million pages of inactive files, these pages would be shipped to the NIFRC, where the pages would be assessed by the NIFRC staff to determine whether each document needs to be retained (stored) and how, i.e.,only in the hard copy archive or both the hard copy and electronic archives. If the latter, then the document would be imaged by the NIFRC staff on a priority basis.

For steady-state operations, the proposed plan is for government employees to conduct imaging as documents are created. A designated government employee at the site would be the person responsible for the steady-state operations, and would encourage other employees to transmit documents created on their computers to the NIFRC to the maximum extent possible, to avoid having to image the documents after the fact.

Needs and Requirements—National Indians Fiduciary Records Center

A National Indians Fiduciary Records Center is needed to:

1. Permanently, electronically archive trust resource, asset, and funds records that the trust organization needs to protect, control, and access, and store the hard copies of those records.

2. Provide storage and retrieval of trust resource, asset, and funds records along with appropriate disaster recovery protection

3. Provide the trust organization and other government agencies with remote access to documents traditionally generated and maintained at BIA Agency and/or Area offices.

The NIFRC must manage documentation that qualifies as Federal record under NARA records management regulations and specifically 36 CFR Part 1228.188 for transfer of machine readable records.

The functions required to be accomplished by this Center include:

- Capture and storage of American Indian land title documents

- Capture and storage of administration, management, and operations records of the Trust Management System to include financial source documents required by policy and procedure, all supporting lease and lease production documentation, and reference documents (e.g., 25 CFR) and government forms.

- Indexing of all documents and records that will be stored

- Provide imaging services for land title documents and maps and all other documents deemed a requirement for imaging

- Provide disaster recovery protection for all archived documents

- Provide retrieval services of land title documents and other Trust Management System historical records to the trust organization, to the American Indian Tribes, to other government agencies and institutions, and to academic and research institutions.

Features—National Indian Fiduciary Records Center

- Central repository
- Leased building sized to house full-time and temporary employees, support equipment, and records storage
- Hard copy and electronic storage for 500 million pages of records
- Documents include, but not limited to, those listed in 16 BIAM and BIA Records Control Schedule 96
- Digital imaging and computer output to laser disk
- Digital storage of other TMS records
- Hard copy storage of land title documents and other TMS records
- Seamless integration of digital and hard copy storage documents
- Scanning of title documents and other records at point of origin and transmittal digitally to central repository
- Document indexing utilizing an unique identifier with all related documents and records having the same unique identifier
- Control measures to ensure that all documents captured have the proper related document images
- Multi-level security and control
- Open architecture to be able to integrate with other TMS applications
- Repository for the TAMAS and LTRMS databases
- On-line access from any approved location via the independent trust organization WAN
- Disaster recovery database storage at a separate facility sufficiently distant to assure a common disaster will not destroy both sites
- Sharing of scanning and imaging equipment with the Technology Services Center for LTRMS recordation and imaging activities

Distributed scanning equipment at field and/or region offices where lease transactions occur (unique document index identified entered on document or record prior to scanning and transmitting to NIFRC.

Appendices 8A and 8B provide additional details.

8.5 Document Imaging

Document imaging is the fifth element of the Trust Management System support infrastructure. Document imaging means to scan hardcopy documents, converting them to electronic files.

Needs and Requirements—Document Imaging

Document imaging operations are needed for:

1. Clean-up of the current backlog, estimated at 6 million pages of active documents and 500 million pages of inactive documents. Hard copies of the active documents need to be imaged, then retained at their point of origin so long as they are needed for day-to-day operations. The remaining 500 million pages categorized as inactive (not needed for day-to-day operations, although extremely important and required to be retained in the NIFRC for purposes of litigation and other possible uses) are to be shipped to the NIFRC for assessment, followed by imaging on a priority basis (estimated 1 million pages per year).

2. Steady state operations of title document and leasing recordation. OST estimates about 2 million pages of trust documents to be generated each year, which equates to about 8 pages per day per site.

There are a total of 135 sites requiring the capacity for imaging. They are distributed as follows:

Agencies:

- Forestry offices (in 20 agencies)
- Oil and gas offices (in 5 agencies)
- LTROs (in 6 agencies)
- Other (in 86 agencies)

Area Offices (12)

Headquarters (6)

Features—Document Imaging

- Backlog at sites:
  - *Active* documents imaged by contractor onsite; hard copies retained at site so long as they remain in active status
  - *Inactive* documents shipped to the NIFRC for assessment and imaging on a priority basis.

- Steady-state imaging at sites by government employees assigned to the sites, with assistance from experts in the NIFRC as needed.

Appendices 8A and 8B provide details.

8.6 End User Workstations

The last element of the Trust Management System support infrastructure, required to allow end-users to utilize the new information infrastructure, is the end user workstations.

Needs and Requirements—End-User Workstations

The existing inventory of hardware and software, though of better quality, and in greater numbers, than anticipated, still require that new hardware and software be purchased, and old hardware and software be updated, for the users to be efficient and capable of performing their work.

Features—End-User Workstations

- New workstations to replace outdated workstations
- New workstations to fill gaps, particularly at the Tribes, and to account for future growth
- Encryption technology in the workstations to ensure security of data transmissions over the network
- Surge protector and universal power supply (UPS) devices to physically protect the workstations from electric power fluctuations, surges, etc.
- New Office Pro software for word processing, spreadsheets, data bases, and e-mail
- New software for indexing electronic documents and transmitting them to the MEA in Albuquerque
- Three-year warranties to eliminate maintenance costs for the first 3 years.

Appendices 8A and 8B provide details.

Training

9.0 Introduction

This Chapter and its Appendices provides the internal and external user training recommendations for the Indian Trust migration to a commercial-class trust system within the new OST information infrastructure. Detailed training recommendations based on both user needs and anticipated system needs are provided. Time and cost estimates for the delivery of training are also detailed.

The Chapter is divided into two parts: (1) Function/Task Training and (2) System Implementation Training. Field findings (see Chapter 6) clearly indicate a need to retrain virtually everyone in a new AITDA organization with baseline functional skills and knowledge relevant to their new job. This baseline function/task training is a necessary first step in the formation of the new organization.

The function/task training establishes the new patterns of working relationships, reporting structures, business processes, policies, and procedures. It clearly establishes job descriptions and tasking relationships based on the functional needs of the AITDA organization and its account holders. Performance standards and the achievement of "commercial-class" fiduciary results become a clear expectation.

However, the ongoing function/task training is not sufficient to create the change in AITDA and Tribal personnel necessary to implement a commercial-class trust system. AITDA implementation training needs to be provided at two levels. First, there must be training related to the implementation of the new "information system infrastructure"(IS) to enable end users, IS support staff, help desk staff, and application developers to use and support the system. Second, a comprehensive Trust System Training program needs to be provided enabling the development of a cohesive organization focused on account holder needs and requirements and totally committed to the achievement of Indian Trust fiduciary control.

9.1 Function/Task Training

Identification of Commercial Standard Trust Training Systems and Courseware

Appendix 9A contains a course catalog of training systems that may be available to OST to fulfill training needs. The catalog includes courseware provided by commercial vendors, OPM, universities and other educational institutions, professional organizations, and BIA and OST. This catalogue fills some of the training gaps revealed during the training analysis. The use of appropriate courseware will enable OST to respond to training needs relatively quickly.

Identification and Comparison of Government Trust Task Performance and Commercial Trust Performance

The project team was asked to develop a training plan that would help OST bring personnel job performance up to commercial trust standards. Since training is designed for and delivered to labor categories, we used those categories as our unit of analysis and measurement.

The next step was examining the trust organizational and labor category structure in the government trust organization and in several commercial trust organizations. We also examined trust job descriptions provided to us by one commercial organization. (Several others refused to share that information, declaring it proprietary.) We developed a table that listed the government trust labor categories in the project database, after which we attempted to link them to related commercial categories. That table is found in Appendix 9B, Trust Labor Category Identification and Gap Analysis.

Trust Labor Category Identification and Gap Analysis Skills Gap Analysis (Government vs. Commercial Sector)

During the performance of these tasks, several key findings were revealed. There is no unified organization with day-to-day control over management of the Indian Trust Fund and its assets. Instead, the Indian Trust Fund is served by at least four organizations that are split along the lines of land asset management vs. monitoring productivity vs. financial assets management and trust accounting. The four organizations have separate lines of authority, budgets, planning, quality control, and other administrative functions.

This organizational fractionation makes it essentially impossible to design and deliver meaningful, coordinated, standardized training to the collective trust personnel force.

Commercial trust organizations perform trust accounting and asset (including real estate) management within one clearly defined and governed organization. The lines of authority and the operation of budgets, quality control, strategic planning, and other critical administrative functions track back to one executive-level structure.

There are many labor categories in the BIA realty organization, and they are not consistently used. It is difficult to evaluate how the basic land asset management functions and tasks are performed because of the number of labor categories and how inconsistently they are used across the many Agency and Area Offices. That is, a single labor category (e.g., realty specialist) is used in various ways. Another unusual and confusing fact is that some land-resource-based labor functions are elevated to their own category (e.g., forester) while others are not (e.g., there is no equivalent oil and gas specialist).

In the commercial world, certain asset management tasks are gathered within one labor category and are fairly centralized. For example, the real estate assets–commercial manager performs or coordinates all land asset management functions (consults the real estate advisor; selects property managers and leasing agents; budgets; reports provides leasing plans; records lease delinquencies; initiates improvements; makes appraisals, valuations and acquisitions; and reviews legal documents) for a given area or account. In BIA, these management tasks for an equivalent region or account are spread among many personnel in a decentralized organizational model.

These tasks, which are considered significant in the commercial world, may not be performed or performed well in the government organization:

- Thorough, accurate monitoring of productivity levels for every Indian asset and the accompanying productivity reports to Indian owners

- Preparation and follow-through of a strategic plan or plans for Indian asset use for purposes of income generation

- Asset enhancement and improvement
- Planning for use of assets that are idle and not generating income
- Timely availability of asset profile reports for Indian owners.

Significant control is held by many BIA superintendents and social workers for IIM accounts placed in trust for minor children and disabled adults. The superintendents and social workers request and approve disbursements and also cause holds to be placed on these accounts. In the commercial world, this role is considered basic to assuring fiduciary control and quality and is performed by a trust administrator within the control of the trust operations organization.

None of the Indian Trust Funds management personnel are systematically employing personnel or organization performance measurement practices that are required by GPRA and that are essential to identifying training needs.

Identification of Government Trust Organizational and Functional Model Placement of Trust Personnel into the Model

An organizational and functional model, populated by the personnel who support it, is crucial for a training plan that serves so many organizations and functions. We developed a *proposed* trust organizational and functional model. **It is not meant to be a validated model, but rather a starting point for training plan purposes.** Our model reflects an internal, proposed, future OST model; the existing BIA model (to the best of our knowledge); and other trust-related organizations. It also reflects some preliminary suggestions based on our analysis of the commercial trust world.

Development of Improved and Proposed Government Trust Job Descriptions

After examining trust labor categories from several commercial trust organizations, including one that serves oil and gas interests, and performing a skill gap analysis, we created proposed government trust labor categories that reflected the commercial standards. We attempted to validate whether or not each change was truly *appropriate to the Federal government Indian Trust Fund environment.* These job descriptions are found in Appendix 9D.

Development of Required Knowledge and Skills for Each Trust Labor Category

Using the job descriptions, we identified sets of knowledge and skills necessary for personnel in each labor category to fulfill their jobs in accordance with commercial trust standards. They are found in Appendix 9E.

Identification, Description, and Selection of Existing Courseware Appropriate for Meeting Skills Gaps

We researched the list of trust courseware to determine whether or not any of that courseware would meet the training needs as indicated by the knowledge and skills sets. In other words, for every knowledge and skill set, we searched for classes that could provide students with that knowledge and those skills.

We used written research and analysis tools for this task, but they were too numerous to include in any practical way in this report. The results, however, are reflected in the overall training plan in which we schedule personnel for training using these existing courses.

Identification of Needed Courseware for Which There Are No Providers

This is a very important step because it identifies the fact that there are no adequate training resources available to deliver the skills needed for Government Trust personnel to perform their jobs in accordance with commercial standards. The list of needed-but-missing courseware is located in Appendix 9F. This list may also be viewed as the courseware *that must be developed*.

We also have suggested a task that is not truly a training task, but which will facilitate the training effort and foster improved communications among the government Trust personnel and Tribes. We propose the development of a news report that will inform the government Trust audience and Tribes about this project, its results, and the next steps. Many of the people we interviewed requested that followup information be sent to them when this project is completed, and this report would be an efficient, appropriate way to provide that information. The concept for the report is at the end of Appendix 9F.

Creation of Plan for New Training Material Development and for Training Delivery, Including Costs and Schedule

Appendix 9G and 9H contains two databases (Lotus) that present recommendations for training courseware development and training delivery and costs. We used a database so that OST managers would be able to alter the plan in the coming months. One database is for training delivery, the second is for courseware design, and the third estimates training vendor costs for existing courseware.

9.2 AITDA Implementation Training

The function/task training described in detail above responds to field findings that clearly indicate a need to retrain virtually everyone in the emergent AITDA organization with baseline functional skills and knowledge relevant to their new job descriptions. This level of in-depth training and education is a necessary first step in the formulation of the new–members of the existing OST, BIA-OTR, and LTRO will populate the new organization. The function/task training changes the old pattern of working relationships, reporting structures, business processes, policies, and procedures. It establishes clear job descriptions and business process relationships, based on the functional needs of the AITDA organization and its account holders. New performance criteria and standards are established and achievement of "commercial-class" fiduciary results becomes an expectation.

However, ongoing function/task training is not sufficient to create the change in AITDA personnel necessary to effectively implement a commercial-class trust system. Research in the area of complex systems change and project field data strongly supports the need to provide the following additional trainings and/or developmental activities:

- End-User Training for Tribes, AITDA Staff, and Others (MMS, BLM, BIA)
- End-User Support Staff Training and AITDA Help Desk Staff Training
- Application Developer Support Training

- Trust System Training.

These trainings and/or developmental activities are not only a required part of the new system roll-out during the period, FY 1998 to FY 2000 but also are necessary on an ongoing basis during later years to keep the AITDA operating at a commercial-class level of efficiency and effectiveness. Users' expectations and requirements will change, AITDA staff will turn over, and computer application software will be improved.

End-User Training for Tribes, AITDA Staff, and Others

End-user training for Tribes is recommended in two phases: a comprehensive training for new systems roll out, and ongoing maintenance training. The new systems training provides a thorough hands-on grounding for approximately 450 Tribal users in the operation of the new trust management applications software and its use. This grounding is coupled with an in-depth discussion of trust system options so that each Tribe can develop its own approach to funds management, investments, and developmental uses. IIM account holders are also trained to access computer-based information and to understand information concerning their own accounts.

End-user training for AITDA staff and others (MMS, BLM, and BIA) is also in two parts: the new system roll-out, and ongoing maintenance training. Approximately 1,535 system users will experience hands-on new system software training that is germane to their areas of responsibility. This training is coupled with a review of system documentation and the policies/procedures that establish performance requirements in their area of work. In addition, end users will understand how their part of the system interacts with the system as a whole to achieve commercial-class fiduciary results. This training will occur during FY 1998 to FY 1999 as selected sites come online at various geographic locations. Ongoing maintenance training follows in subsequent years.

It is anticipated that much of the end-user roll-out training will be vendor provided as it relates to software applications systems. However, AITDA system policies and procedures and ongoing software applications maintenance training will be provided by AITDA trainers or consultants.

End-User Support Staff and Help Desk Training

A need exists to extensively train 3 AITDA support staff at each of 12 regional sites and 8 help desk staff at a central help desk site to ensure the flawless performance of the new software and network hardware systems that underpin the new AITDA organization. Also, because of the technical nature of this training and the fact that the technology is in constant change, an ongoing update training is required several times each year.

Application Developer Support Training

It is projected that the AITDA system will need 10 software application developers on staff to be trained starting in FY 1998. Since these developers must first understand the AITDA system and all its software applications and then keep the system up to date, in repair, and well documented, it will be necessary to provide intensive training for each staff member during system roll-out and in all later years.

Trust Systems Training

A critically important dimension of the training requirement is the need for the AITDA management and field leadership structure to be fused into a cohesive, cross-functional organization. An organization focused on account holder needs and requirements and one totally committed to the achievement of American Indian Trust fiduciary control should be the expected standard.

The proposed organizational structure for the American Indian Trust and Development Administration is represented in Figure 9.2. This structure, proposed by the Special Trustee, is headed by a board of trustees, a chairman and chief executive officer, a chief operating officer, and seven directors who head functional departments. The departments are focused on trust resources management, trust funds management, trust finance and technological services management, trust archiving and records management, and trust risk management. This structure provides a useful framework upon which to build an organization committed to fiduciary control. Without cross-functional departmental communication and collaboration, the new organization will never achieve its full potential or the account holder partnership that is clearly articulated in the Special Trustee's 1997 Strategic Plan and supported by the project field research.

Recent applied research by J. Martin, E. Seashore, P. Senge and J. Womack agrees that in the engineering of a new complex system like AITDA, it is essential that all management team members, key field staff, and system partners participate in ongoing training and developmental activities. These trainings and activities help create a shared organizational vision, commonly held values, clear performance standards, results measurement criteria, and a system of rewards. The trainings also enhance cross-functional communication and foster the development of a cohesive process-focused organization—an organization that reaches out to include Tribes as partners in the new AITDA enterprise.

Initial roll out of these trainings and developmental activities assumes the need to train 300 to 320 individuals (AITDA and Tribal) at organizational startup, followed by continuing training during the second year. In addition, an ongoing cross-functional, trust systems training beyond the 2 year roll-out phase will involve 1,000 to 1,200 people across AITDA and the Tribes in order to keep the various elements of the organization aligned and functioning with a high level of collaboration and effectiveness. Costs related to this training will be recovered in time through the reduction of field failures and litigation losses.

AITDA's primary goals are to provide flawless trust management services to account holders and to fulfill its fiduciary mandate. If it is to achieve these goals, AITDA must reduce or eliminate errors in a variety of areas: records management, asset management, and funds management. If one graphs failure costs as a function of error detection versus AITDA implementation training costs, some interesting results are shown. As errors are reduced or eliminated before they affect account holders, the overall cost and potential litigation loss risk to the system is reduced. As overall implementation training costs rise, potential error costs to the system are reduced. Therefore, comprehensive AITDA implementation training is a cost-reducing investment in the long run.

In his book *The Great Transition*, James Martin discusses "enterprise engineering" as an approach to align strategy, technology, and people in the creation of fast, flexible, learning organizations that function flawlessly. It is clear that as AITDA moves forward into the implementation phase of enterprise engineering, the risks related to total system failure will be greatly reduced with the inclusion of trainings and developmental activities discussed above.

Government Services Capability

10.0 Introduction

Adequacy of Existing Services

Existing Government resources cannot currently meet the needs and requirements of internal and external trust system users and cannot now provide account holders with accurate and timely information. A single organization needs to be formed that controls the trust system and has sufficient funding to provide for staffing, training, data clean up, and for the acquisition of a commercial trust software system (See Appendix 10A).

10.1 Office of the Special Trustee (OST)/Bureau of Indian Affairs (BIA)

Based on field interviews, it was made clear that many sites are underfunded and understaffed. Downsizing has occurred and budgets have been reduced in recent years (9 percent in FY 1996) although workloads have increased. In fact, some Tribal representatives have predicted that user needs and requirements will grow as trust system services improve and become more publicized. The Supreme Court's ruling on fractionated land ownership has also resulted in increased work by field staff, especially those who work on probate cases.

Current staff (both OST and BIA) have not been provided enough training in trust-related activities (See Chapter 6) to operate effectively on a daily basis. There appears to be far too many referrals to OST staff in Albuquerque to resolve trust issues that should be completed routinely in the field (e.g., customer service inquiries and verification of distributions). Without comprehensive training soon, field staff may continue to handle their burgeoning workloads by increasing their referrals to OST Albuquerque and/or delaying service to account holders. Neither of these responses are acceptable.

Currently, there are few field staff with trust banking experience. Employee position descriptions are not being used effectively, if at all, to provide guidance on even the most routine office tasks. A workforce with less than adequate trust system training now faces account holders who are becoming more and more sophisticated about their trust asset requirements.

Field staff must have the background, experience, and capability to address the growing needs of account holders. Strategic hiring of key staff with prerequisite trust banking credentials is of critical importance.

In addition to the hiring of key staff with trust banking experience, it is apparent that understaffing is also a major problem. Rather than focusing on building up a large new staff (who would also require training, equipment and supplies), a "service bureau" approach to support key trust systems (i.e., trust accounting, asset management and land title recordation) appears to be a most effective strategy. This approach will insure that data processing services are provided to the trust system in an efficient and effective manner within current staffing levels plus add more control and flexibility than exists in the current environment. A service bureau provides off-site data processing services. Inputs and analyses will continue to be performed by OST staff.

Two other key Government agencies, the Office of Hearings and Appeals (OHA) and the Minerals and Management Service (MMS), currently provide the trust system with services. An additional agency, the National Archives and Records Administration (NARA) may be utilized in the near future to address long-term archiving of Indian Trust documents.

10.2 Office of Hearings and Appeals (OHA)

The Department of Interior's OHA provides administrative judges to the trust system for adjudicating probate cases. As mentioned earlier in this report (See Executive Summary), the twelve administrative law judges and their supporting staffs (i.e., 1 paralegal and 1 secretary), are each currently able to complete only 20-30 probate cases per year. This is primarily due to their other duties which include public land cases, and appeals, which reportedly hold higher priorities than Indian probate cases. It is recommended that OST acquire the services of other Government branches (e.g., Justice Department) to reduce the estimated 3,000 - 4,000 backlogged Indian probate cases.

10.3 Minerals and Management Service (MMS)

The Department of Interior's Minerals and Management Service (MMS) located in Lakewood, CO processes the trust system's oil and gas royalty payments from leases from which the Secretary of the Interior has trust responsibility. Most payments are wired to MMS and deposited to Treasury, however overnight transmission of batches to Albuquerque's Royalty Distribution and Reporting System (RDRS) for distribution, delays the accrual of interest. This loss of interest has resulted in the perception by many account holders of substandard performance on the part of MMS. In addition, account holders believe that they are not getting the full value from their wells since neither production volumes nor product valuation is checked with sufficient frequency. A site visit to MMS in January 1997 revealed that their functions and processes appeared to be in control, as did their audit function related to validity checks of purchaser reports. It is anticipated that the trust system will continue to utilize MMS as a "service bureau" provider for processing oil and gas royalty payments. It is recommended that, since MMS will be tested as a service bureau, OST provide specific requirements for the automatic transferring of payments to RDRS. If these requirements cannot be met, OST should explore opportunities for contracting this service out to the private sector.

10.4 National Archives and Records Administration (NARA)

The National Archives and Records Administration (NARA) provides Federal agencies with guidance on the management of their records. NARA also includes Federal records centers located throughout the United States for archiving Federal documents.

A national archives is required by the trustee with a capacity for deep storage (long-term) and quick retrieval of records. It is noted here that one of the NARA Records Centers (e.g., Denver, CO, or Ft. Worth, TX) could be used to house the Indian Trust's deep storage records, however, quick retrieval services appear inadequate.

The ideal scenario includes the management of the trust asset system by a single organization;

acquisition of a new commercial system supported by data processing from service bureaus; the hiring of key staff with trust banking experience; the training of all staff in trust-related activities and in the transition to a new trust system; the establishment of a national archives for records storage; the clean up of all records; and the clearing of backlogged probate cases. Implementation of this scenario would meet the Secretary's fiduciary responsibilities, provide account holders with the information to which they are entitled, and would increase the effectiveness and efficiency of overall services to trust beneficiaries.

Next Steps

11.0 Introduction

The recommendations provided in Chapter 11 are intended to accomplish four crucial tasks:

1. To provide account holders with accurate and timely account information
2. To enable the current trust system to meet commercial standards
3. To "clean up" and store trust records
4. To enhance the capability and efficiency of trust system staffs by providing trust-related training to all staff tailored to meet their specific needs; by implementing a new information technologies infrastructure including communications (wide-area and local-area networks), document imaging operations, electronic (and hard copy) archiving, and end user infrastructure (workstations and printers); and, by hiring key staff with academic backgrounds and experience in trust banking.

While each of these tasks may be addressed separately to achieve short- and long-term improvement goals, an integrated implementation approach is preferable for attaining maximum leverage in the adoption of enhanced business polices, practices and procedures.

11.1 Systems Integration Team

In the 5-year Strategic Plan it is recommended that twelve new trust administrative regions (including regional and field offices and the Tribes they serve) be converted to the new commercial trust system within two years (FY 1998 - FY 2000). In order to complete this bold plan within the timeframe allotted, a rapid start up is necessary beginning in late FY 1997. Key conversion tasks over the 2 years include:

FY 97	FY 98	FY 99	FY 2000
Start UP	Planning	Planning	12 Regions
Planning	Region #1	Regions 7-12	Single system
Management	Management	Management	
Vendor Selection	Backbone	Backbone	
Site Selection	Training	Training	
Staffing	Hardware	Hardware	
Training	Software	Software	
Hardware	Regions 2-6	Logistics	
Software	Dual System	Dual System	

It is estimated that each regional office, on the average, will be supported by nine field offices providing services to 25 Tribes. This translates into an average of 125 Tribal accounts per region and 29,167 individual Indian accounts.

Over the 2 years that this conversion is to take place, current practices and procedures will continue in parallel. Current OST staff, already extended to the maximum by daily operations, will be unable to manage the conversion process on a daily basis with the attention that is required to insure success. They will be unable to manage the interface with service bureau providers and the many technical decisions that must be made to insure that the information technology will meet the demands of the new system. They will be unable to manage the transition process for such a mammoth undertaking that will entail the preparation and training of the current staff at each site (i.e., 120 offices and 300 Tribes) for the changes in policies, procedures and practices required to implement the new system. Finally, current staff will be unable to manage the implementation of the new system at the converted sites while continuing to manage the existing system.

Role of Systems Integration Team

A systems integration group is required to manage the three major phases of the conversion process:

Planning Phase
Transition Phase
Implementation Phase

Planning Phase

The procurement of commercially available trust systems (trust accounting and asset management system; and, land title and recordation system) and the acquisition of an information communication system (backbone) are prerequisites for implementing the conversion of the existing system to the new trust system. Based on their knowledge and understanding of system requirements, the systems integration team can assist OST management with the selection of service bureau providers and work with the awardees to develop the new trust system to meet organizational requirements. Establishing the new system in Albuquerque, NM would be one of their first steps.

The systems integration team would develop a draft design of the overall conversion process for the 12 regional offices, the 108 field offices and 300 Tribes. This written plan would include a detailed outline of all transition and implementation tasks and activities for the entire conversion, including training, configuration management, staffing, data clean up, records management, vendor interface, and cost estimates.

Plans would also be developed for each selected conversion site and would include most of the elements mentioned above, although they would be tailored for individual sites. It is anticipated that each individual site plan would be flexible and unique within the trust system.

The draft plan will be reviewed and approved by OST officials prior to the start of the next phase. It is recommended that an OST "shadow" management team be formed during this phase to work with the systems integration team as counterparts throughout the project.

Major Tasks

The major planning tasks of the systems integration team during the Planning Phase will include, but not be limited, to the following:

- Planning the conversion (global and individual sites)
- Coordinating planning efforts with OST officials
- Assisting with the selection of service bureau vendors
- Designing conversion plans with OST staff at selected sites
- Developing logistics plans for each office and Tribal location
- Developing a training plan for staff at each selected site
- Developing a comprehensive budget for each site with fiscal controls and reporting procedures
- Developing a Site Conversion Plan for each selected site
- Establishing the new system in Albuquerque, NM
- Revising policies, procedures and practices with OST officials

Transition Phase

Without a doubt, the transition period for each conversion site will be a difficult one. Besides maintaining their current operations and providing normal account holder services, staff will be undergoing training on new policies, procedures and practices; learning to use new equipment and systems; and reviewing new approaches for providing improved account holder service.

Maintaining a dual system will result in considerable stress upon an already-stressed organization. As systems are installed at one site, training will be underway at another. As records are identified and files updated at one site, new employees will be learning about customer service at another. The systems integration team will need to pay particular attention to the rate at which change is accepted at each individual site, and by the systems users at that site. A critical task during this phase will be the organizational development and team building work that must be done to insure a successful transition to the new trust system.

During this phase (and all other phases) it will be important for the systems integration team to communicate progress with OST management continually to insure a smooth transition for managing the new system. Team members may also interface with OST and other government organizations (e.g., Minerals Management Service, Bureau of Land Management, and Bureau of Indian Affairs). Their goal will be to insure that the OST management function is involved in the transition on a continuing basis. This involvement will also insure that OST managers will be prepared to guide the new system when the implementation phase is completed.

Major Tasks

The major tasks of the systems integration team during the Transition Phase include, but are not limited, to the following:

- Coordinating data clean up efforts to align with implementation phase
- Conducting and/or subcontracting for the training of data-clean-up staff
- Assisting in the identification, imaging and storing of files, leases and records
- Conducting training task analyses for staff
- Designing training programs for staff in trust-related activities
- Conducting and/or subcontracting for training in trust-related activities

- Monitoring service bureau providers
- Advising service bureaus in the configuration of the trust system to meet the special needs of regional/field offices and Tribes (e.g., assets, judgments, treaties, and training)
- Reporting to OST officials
- Working with the OST "shadow" management team
- Reviewing policies, procedures and practices changes; a continuing process throughout the transition phase to ensure all required corrections, revisions, and additions are valid and adopted.

Implementation Phase

According to the Strategic Plan's timetable, the conversion of each region will be completed by FY 2000. However, as individual regions complete their transitions and begin to implement the new trust system, the role of the systems integration team will be to provide managerial assistance to each implementing region and to the OST "shadow" management team. Inevitably there will be problems with the implementation of various elements of any new system. The systems integration team will provide direct management responses and/or support OST managers in responding to implementation problems.

This phase will also include followup training activities for each individual site. This training will insure that progress made during the transition phase will not be lost because of neglect or lack of practice (See "Two-Year Training Emphasis" below).

By FY 2000 all 12 regions will be operating with the new trust system. The role of the systems integration team will continue to be one of providing specific management assistance to individual sites; however, a key shift will be in the support of the OST shadow management team, which will fuse with the OST management team in FY 2000. The systems integration team will increase the amount of time they spend with the OST management team in such areas as customer service, continuous improvement, organizational development, configuration management, maintenance and operations oversight, and staff development. This time spent will insure that OST managers are fully prepared to assume the full-time duties of managing the new trust system.

Major Tasks

The major tasks of the systems integration team during the Implementation Phase include, but are not limited to:

- Providing management assistance to OST managers (formerly the shadow management team)
- Providing managerial assistance to each of the OST offices in the implementing region
- Serving as a technical resource to OST in such areas as organizational development, team building, continuous improvement, training, maintenance and operations, and management consulting
- Conducting a final review of poliies, procedures and practices; training all OST personnel in methodology used and continue to assist in the analysis of all areas to capture ongoing changes and additions.
- Reporting to OST officials

The planning, transition and implementation phases can be designed with enough flexibility to effectively manage any adjustments and modifications in the conversion process. For example, if

funding were only available for one region to be converted to the new trust system (at least one Tribe has expressed an interest in participating), most, if not all, of the activities described above would still be required by a systems integration team. In this example, the 2-year conversion goal for all 12 regions would, of course, be modified.

11.2 Role of Overseer

While the systems integration team provides direct assistance to OST through the three phases of the conversion process to insure a successful roll out of the new trust system, it is recommended that the oversight function be performed by the U.S. Government.

The contracting of services is anticipated for the role of the systems integration team since the expected level of effort to provide conversion management and the comprehensive number of tasks over the FY 1998 - FY 2000 timeframe is enormous and far exceeds the capability of current OST staffing levels. However, the oversight functions should ideally be performed by a group with vested interest in the trust system, that is, a group who is impacted by the implementation of the new trust system. The oversight group should also have an "arms length" association with OST management to assure objectivity.

It is recommended that the Special Trustee’s Advisory Council perform the oversight function for the three phases of the conversion process. They represent trust beneficiaries and the private sector, thus maintaining objectivity while being vested in the outcome. Throughout the process, the Advisory Council may call upon specialists (e.g., representatives of the Inspector General’s office and/or General Services Administration) to provide them with specific information pertinent to a particular technical aspect of the roll out.

11.3 Two-Year Training Emphasis

The conversion of 12 regional offices, 108 field offices and 300 Tribes within 2 years (FY 1998 to FY 1999) will not be successful unless an emphasis is placed on the training of current and new staff in trust-related activities.

This report identifies critical training activities that have been either suggested by current users of the system and/or have been recommended by the project team based on the data and field observations of our training experts (See Chapter 9). Both short- and long-term productivity improvements and sustained quality improvements can be gained by embarking on a proactive and bold training effort within the trust system.

For example, many of the skill-building activities that have been suggested by users can be accommodated through the implementation of short-term training programs (e.g., computers, communication, problem solving) at regional locations. However, this training will not adequately handle those trust employees and Tribal users who cannot leave their sites. Distance learning methods (e.g., videos, computer diskettes, and Internet) may be more cost effective in those cases.

The conversion of multisites to the new trust system presents unique challenges in the field of training. While short-term productivity should be considered important, the long-term effectiveness of staff

working within an efficient trust system, may be of even greater consequence to the organization.

The training that is required to operate the various elements of the new system must be provided in order for employees and users to understand and use the system effectively. For example, there were many stories in the field related to the introduction of new computer programs that worked quite well when the installer set them up and demonstrated how to use them before he left. Many of these programs were rarely or never used again because employees did not have sufficient training and reinforcement to use the equipment effectively. In order to avoid this situation with the new trust system, a major training emphasis must be provided with followup programs scheduled several times within the first 2 years. This effort corresponds to the overall conversion of all 12 regions.

In order to provide staff with the skills necessary to successfully meet their daily work requirements for the new system, training funds are needed at the beginning of the conversion phase (FY 98) to begin immediate preparation of OST staff and Tribal users.

Impact of Delays or Cancellation of Training

Any delay or cancellation in the implementation of skills training will result in unacceptable lag time in the effective implementation of the new trust system. This lag time will result in AITDA not achieving the four crucial tasks outlined at the beginning of this chapter. Even a 5-year roll out will not provide the training needed in time to prepare staff for the conversion to the new trust system according to the Special Trustee's 2-year plan.

The impact of delays or cancellation of training on AITDA staff may include, but are not limited, to the following:

- Not meeting the 2-year timeframe for system conversion
- Not providing required services to account holders
- Continued reliance on outdated methods (e.g., manual acccounts and paper records)
- The continued risk of losing records and files to disasters
- Continued reliance on a staff with less than acceptable skills in trust-related activities

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11.4 Costs of Poor Quality Due To Inadequate Training

Over the past seven years, a great many research and industry studies have documented the costs of poor quality in the government and private sectors. Much of this work has centered on white collar productivity. As far back as 1989, the American standard for quality failure costs was a minimum of 20% of sales. Chief Executive Officers from companies such as Xerox, Motorola, General Motors, AT&T have consistently validated this standard. There is a general impression that the standard of white collar quality failure costs may be as high as 30% of sales.

White collar costs of poor quality are directly tied to delays, cost escalations, and rework due to a wide range of failures. Examples of these failures include: too few qualified staff; lack of role, responsibility and accountability clarity; equipment down-time; inadequate data back up and recovery procedures; and poor supervision. The absence of effective training is a common thread throughout these conditions. According to TRAINING Magazine's *Industry Report*

1996, US corporations budgeted $58.9 billion for training last year, 25% of which was spent on

information technology training. In addition, electronic performance support systems (EPS) are growing rapidly among organizations who want to leverage training expenditures.

Training needs to focus not just on the technical competencies in running a system, but also the productivity and work ethic of the managers and employees throughout the system. The highly regarded Yankolovich group has consistently documented the connection between high productivity and the commitment of workers. They estimates that 61% of white collar workers have a high degree of discretion in terms of how they use their time when on the job. The lack of commitment on the part of workers to use their time most effectively can produce enormous drops in productivity. When polled on what kind of work environment would produce more commitment, white collar workers consistently identified such characteristics as opportunities for improved abilities, good chances for advancement, a challenging job, and recognition of good work. It is clear that an effective system is not only dependent upon a basic core of technical skills, but also upon a work environment which facilitates a maximum utilization and recognition of these skills. Training managers to create this environment appears to be almost as important as improving the technical skills of the workers.

When the present system is upgraded, and effective and efficient operation become standards of service, training will play an even more important role. The return on investment in the proposed new software tools, equipment, and technology will be dramatically reduced if a corresponding adequate investment is not made in training the users and managers of the new system. Consequently, the training line item in the proposed budget (see appendix 10A) is extremely important to insure that the total overall investment is realized to its fullest potential. Neglect of this line item could result in a delayed or uneven implementation of the entire system. In the worst case, a lack of adequate and effective training could result in a failure to field the new system.

11.5 Role Agreement Between OST and BIA

Based on the data collected in the field, the relationship between the Office of the Special Trustee and the Bureau of Indian Affairs field employees is strained and in need of immediate attention.

There is much confusion and lack of understanding in the field regarding the roles of OST and BIA in the trust management process. This has caused much discontent among field staff from both organizations. In spite of this atmosphere, it is both satisfying and gratifying that the majority of the personnel interviewed, both OST and BIA, appeared to be dedicated to their jobs and willing to make the most of what they consider to be a difficult situation.

The implementation of a new trust system will require the cooperation of field staff of both organizations. Although the trust system may ultimately be operated separately, the organizations are inexorably linked because they serve the same clients—individual Indians and Tribes—and they are staffed by the same type of employees—individual Indians who live and work together in the same communities.

A completed agreement between the two organizations will provide much-needed leadership and guidance to trust and BIA employees across the United States. Instead of the misunderstandings, jealousies and frustrations so typical of their working relationships today, performance guidelines will aid employees in focusing on their primary responsibilities—providing service to account holders.

Glossary

A B C D E F G H I J K L M N O P Q R S T U V W X Y Z

A

Account Holder	Trust beneficiaries including Individual Indians and Tribes
ACH	Automatic Clearing House
Active Files	Hard copy documents that are currently needed to conduct daily activities
AITDA	American Indian Trust and Development Administration
AITDA-NET	Communications network for AITDA
Allottee	Individual Indian who receives a disbursement of an allotment
ALMRS	Automated Land Management and Recording System
ATM	Automated Teller Machine
ATM	Asynchronous transmission mode

B

BEA	Backup Electronic Archive
BIA	Bureau of Indian Affairs
BIAM	BIA Manual
BIANET	Bureau of Indian Affairs Communication Network
BLM	Bureau of Land Management
byte	Common unit of computer storage comprising 8 bits. (Bit is a binary digit)

C

CD-ROM	Compact Disk—Read Only Media (Standard computer equipment product)
Communications "Backbone"	Fundamental structure for routing communication
Compact Tribe	Self-governing Tribe recognized by the U.S. Government
CNE	Certified Network Engineer

D

Direct Dial Link	Refers to ability to use communication lines to access account information
Document	Recorded information regardless of physical form or characteristics
Document Imaging	The electronic capture of a document
DOI	Department of the Interior
DOINET	Department of Interior Communication Network
DOPs	Desk Operating Procedures

E

EFT	Electronic Funds Transfer
EIDE	Enhanced Integrated Drive Electronics (a hardware interface)
End User	Internal or external customer of the trust system (i.e., OST, Tribal, BIA or other)
Enrollee	Individual officially recognized as Tribal member

F

FASB	Financial Accounting Standard Board
FAX	Facsimile Transmission
FDD	Floppy Disk Drive
FDIC	Federal Deposit Insurance Corporation
FFS	Federal Financial System
Firewall	Security hardware/software which prevents unauthorized access to a computer or network
Fractional Interests; Fractionated Ownership	Refers to undivided land inherited generation after generation

G

GB	Gigabyte (A computing size measurement, one billion bytes)
GFR	Government furnished equipment
GIS	Geographic Information System
GPRA	The Government Performance and Results Act of 1993
GPS	Global Positioning System
GLS	General Ledger System

H

HDD	Hard Disk Drive

I

Imaging	Process of scanning hard copy documents to convert them to electronic documents or files
Imaging Backlog	An accumulation of hard copy documents to be imaged
Inactive Files	Hard copy documents that are no longer required on a daily basis
IIM	Individual Indian Monies
Intangible Property	Refers to insurance policies, stock options, annuities, limited partnerships, wills, powers of attorney
IRMS	Integrated Resource Management System

J

JukeBox	A large disk storage device

K

KB	kilobyte (one thousand bytes)

L

LAN	Local Area Network
LRIS	Land Records Information System
LRHIS	Land Records History and Imaging System
LRS	Land Records System
LTRMS	Land Title and Records Management System
LTRO	Land Title Recordation Office

M

MB	megabyte (one million bytes)
MEA	Master Electronic Archive
MMS	Minerals Management Service (located in Lakewood, CO)
MS	Microsoft (brand name)

N

NARA	National Archives and Records Administration
NIC	Network Interface Card
NIFRC	National Indian Fiduciary Records Center
Nodes	A communications access point
Non Compos Mentis	Adults deemed to be incompetent for managing their own accounts

O

OAIT	Office of American Indian Trust
OHA	Office of Hearing and Appeals
OMNI-TRUST	Accounting system which tracks cash and various financial investments
OPM	Office of Personnel Management
OSC	BIA's Operations Services Center
OST	Office of the Special Trustee for American Indians
Overnighter	Refers to the sweeping (deposit) of investment funds into a short-term, interest-bearing account
OTFM	Office of Trust Funds Management

P

PC	Personal Computer
Probate	Estate administration following the death of an Individual Indian

R

RAM	Random Access Memory
Resource Firms	Banking institutions providing additional project support (i.e., NationsBank, Riggs Bank, State Street Bank and Trust)
Risk Management and Control System	May provide an independent assessment of the trust system's accounting, reporting, and internal-control practices.
RDRS	Royalty Distribution Resource System

S

SCSI	Vendors providing data processing services to the trust system (e.g., MRI, Petro Data, SunGard, SEI, Blue Star, PDS Services, etc.)
Service Bureaus	Vendors providing data processing services to the trust system (e.g., MRI, Petro Data, SunGard, SEI, Blue Star, PDS Services, etc.)
Steady State Imaging	Imaging of hard copy documents starting now and continuing on.
Subsurface	Refers to revenue-producing activities including oil and gas, sand and gravel, coal, copper, and other minerals
Surface	Refers to revenue-producing activities including range grazing, timber, water, fisheries and developed real property

T

Tangible Property	Refers to jewelry, furniture, silver, china, art, etc.
TAAMS	Trust Asset and Accounting Management System
TB	terrabyte (one trillion bytes)
Technology Services Center	Repository of trust fund management expertise
Title Plant	Refers to maintaining a current and historical chain of title on a tract of land
Trust System	Refers generally to all elements of the trust system (i.e., financial assets, real property, tangibles and intangibles, records, archives, and all management activities)
TMS	Trust Management System (Consists of TAAMS and LTRMS)
Trust Beneficiaries	Account holders
Trustee of Indian Trust	The entity with ultimate fiduciary responsibility

U

UPS	Universal Power Supply
USDA	U.S. Department of Agriculture

W

WAN

OFFICE OF THE SPECIAL TRUSTEE

RESPONSES TO GENERAL ISSUES, CONCERNS AND QUESTIONS ARISING FROM AMERICAN INDIAN CONSULTATION HEARINGS AND SUBMISSIONS ON THE STRATEGIC PLAN

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1. Your Strategic Plan calls for the creation of a new American Indian Trust and Development Administration (AITDA). What would it cost to create this new entity and transfer trust asset management responsibilities to it?

The proposed budget is set out in the Strategic Plan. See Addendum Two of the Strategic Plan.

2. Would the AITDA retain the employees of the BIA and Office of the Special Trustee who now handle trust management issues?

It is our recommendation that all employees of the Office of Trust Funds Management and those BIA employees currently involved in trust records management and Land Title and Records management be given the opportunity to transfer to the AITDA. Each person who transfers will be evaluated and given appropriate training if necessary.

BIA personnel engaged in trust resources management will remain in place. AITDA will contract with BIA and delegate to BIA responsibility for trust resources management. BIA and these employees will thus act as a service bureau to AITDA as will MMS and BLM for the delivery of certain trust services to American Indian beneficiaries. Requirements for high quality performance by the service bureaus will be spelled out in contracts with them.

3. Overall, how many employees would be needed for the AITDA? How does this number compare with the number of employees now handling trust management issues?

The objective and recommendation of the strategic Plan is to establish a standard of management and performance for the Federal Government as trustee that reflects the most exacting fiduciary standards applicable to all other trustees. The number of staff members needed for the AITDA will be determined not only with high quality performance in mind but also efficiency of operation. (See Addendum Two)

4. Would the AITDA have its own legal staff, Congressional relations staff, procurement staff and Inspector General's office? Do you include those in your estimates of the number of employees needed, and your estimates of the costs of the entity?

As a single separate institution with its own management structure AITDA will have sufficient staff to accomplish its legislated tasks. It is planned that it will have a small legal staff. It will have a procurement staff and an independent internal audit staff that will perform the duties of an Inspector

General's office. Congressional relations will be the responsibility of AITDA's chairman and chief executive officer. These positions and others will be included in the operating budget for AITDA.

5. Have you had any preliminary reaction from members of Congress regarding the portion of your plan dealing with the creation of a Trust Development Bank? In particular, do you have a sense of whether Congress is likely to provide the capital necessary for the Development bank?

Preliminary reaction from Congressional staff could be characterized as interested and open minded, but they reserve judgment until the Strategic Plan and whatever other proposal the Department or the Administration may put forward are delivered to Congress.

6. If the Trust Development Bank is created, would the AITDA continue to operate, or would its functions be taken over by the Trust Development Bank?

The AITDA has been designed so that it can be a parent organization to the Trust Development Bank when and if the Bank comes into existence. The governing board of AITDA would become the governing board of the Bank and all other functions would be assumed and performed by the Bank, acting as a subsidiary of AITDA.

7. If the Trust Development Bank is not created by Congress, could the AITDA function independently, on a long term basis?

Yes. AITDA will have ongoing responsibility in perpetuity for trust management activities, regardless of whether the Trust Development Bank is created.

8. Under the plan, in the long run, who would be responsible for covering the administrative and operating costs associated with managing the trust resources?

The responsibility for covering the administrative and operating costs associated with managing the trust resources is an obligation of the trustee, the United States government, and that responsibility will remain with the Federal Government. Phase II of the Strategic Plan recommends the creation of a Trust Development Bank for American Indians. It is designed to be a government sponsored institution similar to the Federal Reserve Banks, Federal Home Loan Banks and banks operated under the Farm Credit System. The history of each of those bank systems indicates that the Trust Development Bank for American Indians can, in time, be a self supporting institution able to cover the administrative and operating costs associated with the management of development activities. Regardless of the source from which such monies are obtained, the responsibility for the proper administration of its trust obligations remains with the trustee, the United States. The United States is and will remain the trustee. The AITDA, and the Development Bank if it is created, will merely be the government entities through which those obligations will be performed.

9. Many Tribal members are concerned that in creating new centralized institutions under your Strategic Plan, the ability to access their trust funds locally would be impaired. How would your plan provide improved local Indian access to trust accounts, both under the AITDA, and under the Trust Development Bank?

Access to their trust funds by tribal members, including telephone access, will be improved by providing them with an accurate and integrated system of records that reflects what assets are held in trust, how they are invested and managed, as well as a daily record of to whom the proceeds belong.

This is something any mid size trust company can do currently, but which the BIA cannot do.

The Strategic Plan describes the computer architecture which provides local access to tribal members. The proposed computer system is designed to allow any tribe or individual having an interest in the assets held in trust to access the system, subject to appropriate safeguards, at any location where there is a terminal connected to the system. Information on particular assets will be immediately available. It is recommended that AITDA supply the computer hardware and training to use it at any location necessary. Timely access to accurate and current information assures timely access to available funds for both tribes

and individuals. Monthly reports will also be issued to all beneficiaries.

In addition, the Trust Development Bank (Phase II of the Strategic Plan) will provide full banking and trust services, including ATM machines, at substantially all of the current locations.

10. Your initial mandate was to examine questions relating to the management of trust money. Why did you view it as necessary to include broad changes in the management of trust natural resources, and not just trust money, in your plan?

The American Indian Trust Reform Act of 1994, which is codified at 25 U.S.C. 4001 et seq directs the Special Trustee at section 4043 (a) (1) to prepare "a comprehensive strategic plan for all phases of the trust management business cycle" in order to ensure the proper and efficient discharge of the government's trust responsibilities to American Indians. This includes trust resources management, trust funds management and land title and records management, the three functions which are addressed by the Strategic Plan. Authority and budget for these trust management activities will be transferred to AITDA along with staff engaged in the latter two activities.

Proper trust management will be accomplished pursuant to uniform policies and procedures developed by the AITDA to ensure the government fulfills its trust responsibility to protect, conserve and provide for the appropriate utilization and management of Indian lands and natural resources. It is intended that the day to day physical activities to carry out these duties will remain in the hands of those bureaus, agencies and employees of the Department of the Interior and the Self Governance and 638 tribes who now perform them, subject to the oversight of the trustee through AITDA.

11. Are the principles of private sector bank trust departments in your view the best source of standards for managing trust natural resources? Aren't other factors - such as tribal cultural interests in the resources - at least as significant as bank trust principles?

A trust is a device, unique to the Anglo-American system of law, whereby one person or entity is enabled to deal with property of any sort for the benefit of another. There is a separation of interests in the property held in trust, the beneficiary having an equitable ownership interest in the property, which is the paramount interest, and the trustee having legal title to the property. The principles of trust law, essentially that the best interests of the beneficiaries are to be served, apply to all trustees, whether an individual person, a corporation, a bank or a trust company. These are the principles that the courts have applied to the government as trustee for American Indians.

It is common for private trusts not only to serve the financial needs of beneficiaries but also to conserve and protect the cultural, historic, religious or environmental significance of the property held in trust because they are part of the beneficiaries' interest in the property. In the same way, tribal,

cultural, religious, historical and other interests will be taken into account in the proposed trust system. Decisions

impacting those interests will only be made with the close consultation and advice of the appropriate tribe, tribal council and individual owners.

12. Under the plan, when management of the trust accounts is transferred to the new institution, who is responsible for assuring that the proper trust account balance is known? What happens if the proper balance is not certain on the date the transfer of management takes place?

The United States, as trustee, remains responsible for the performance of its fiduciary obligations with respect to all property, resources and accounts held in trust for the benefit of American Indians. The assumption by the AITDA or the Trust Bank of the ministerial functions to carry out those fiduciary obligations does not in any way affect the trustee's legal responsibility for any failure to execute that responsibility properly. The records of the accounts, along with the duty to maintain them in an accurate and auditable form, will be transferred to AITDA. A process will be undertaken to resolve any disputed claims. The transfer from one governmental organization to another of the responsibility to maintain and invest the accounts will in no way resolve any outstanding claims against the trustee or diminish its legal liability. Adjustments will be made to the balances as claims are settled in the future.

13. How, under your plan, would tribes and Indians be assured that the trust mismanagement claims which are now in litigation - are not impaired after trust management responsibilities are transferred to the American Indian Trust and Development Administration?

See the answer to 12. In addition there is some possibility that the establishment and funding of AITDA or the Trust Development Bank might become part of a global settlement of outstanding Indian claims against the government as trustee.

14. What would be the remedies for mismanagement should that occur under the American Indian Trust and Development Administration, or the Trust Development Bank? Who could be sued, and in what court? And, how would any judgment be paid without harming Indian interests in these institutions?

No change is contemplated in the manner in which the government as trustee can be sued for mismanagement of its trust responsibilities to American Indian tribes and individuals. AITDA or the Development Bank would be named as a party to the suit if that was appropriate at the time of the suit. AITDA would oppose any plan of payment to settle a suit against the trustee which would in any manner harm Indian interests in the institutions.

15. What is your proposal to resolve the problems arising from the fractionated ownership of trust lands? Do you have specific legislation in mind?

16. Would your plan permit any fractional interest in lands to be purchased and to go out of trust ownership? If so, under what circumstances could that happen?

Most of the trust record keeping problems and the other problems associated with the accuracy of the records are a direct result of or are related to what is known as fractionated heirship. Draft legislation is presently being considered by the Department of the Interior (DOI) to amend the Indian Land

Consolidation Act (25 U.S.C. 2201 et seq) to address the problem. That proposal will go to Congress this summer.

DOI's draft proposal differs significantly from two alternate proposals drafted by Indian land consolidation groups, proposals which the Special Trustee supports. The Indian groups take a different approach than the DOI proposal by providing individuals allottees with an equal opportunity with the tribes to participate in the acquisition program and by taking a different approach to limitations on inheritance.

It is our opinion that any legislative proposal must have two elements: existing small fractions must be eliminated and further fractionation must be prevented or drastically slowed. The goals are to reverse the adverse effects of the General Allotment Act and promote tribal self-determination. The existing escheat provisions of Section 207 of ILCA have been found to be unconstitutional in Youpee vs. Babbitt, thus necessitating further amendments to the Act. The essential elements of the legislation should include the following:

1. A land acquisition program that authorizes the Federal Government to purchase fractional interests from willing sellers. These interests could be transferred to individual Indians or to the Tribes without any out-of-pocket costs to the tribes.
2. The creation of a priority for the acquisition of fractional interests of 2 percent-or-less.
3. Some mechanism whereby fractionated interests transferred to an Individual Indian or a Tribe will be subject to the requirement that all income derived from the interests will be paid to the Federal Government until the purchase price paid for the interests by the Federal Government has been recovered or twenty years (or a like time period), whichever occurs first.
4. Income generated from the acquired fractional interests should be put into a fund to be used for the acquisition of additional fractional interests.
5. The proposal should replace the subjective test in the ILCA used to determine whether 2 percent fractional interests will escheat, i.e. a rebuttable presumption of future income potential, with an objective test based on the appraised value of the interest.
6. In order to prevent further fractionation, inheritance of interests in allotments should be limited in some acceptable and equitable way. The proposal should authorize tribes to change the limitations on inheritance established by the bill through enactment of tribal probate codes, provided that the changes do not result in increased fractionation.
7. New inheritance limitations should not become effective for 2 years subsequent to enactment. Appropriate notice should be provided to alert owners of estate planning options.

In addition, the Special Trustee proposes that the legislation consider the following:

1. Individual American Indian co-owners and non-owners ought to have equal access with the tribes to federal funds used to acquire fractionated interests in realty. Purchase options should be granted to individual co-owners if authorized in a tribal land consolidation plan. Federal loan programs to assist American Indian individuals in the purchase of fractionated interests in realty should be part of the program.
2. Indian Landowner Holding Companies should be authorized to hold fractionated interests in realty. Such companies can be used to combine fractionated shares into a single interest for ownership and administration purposes. The trustee would treat the holding company as a single owner. The holding company would administer interests, including ownership records, and distribute income based on these records.
3. Tribes should be eligible for federal loans/funding for purposes of exercising tribal purchase

options,

4. The tribes, rather than the Federal Government should administer as much of the program as practical, consistent with principles of self governance and self determination.
5. The legislation should not deny certain property ownership rights to individuals by limiting their ability to purchase, sell and inherit fractionated interests. While certain restrictions may be necessary, the legislation should not substantially restrict the rights of individual American Indians.

Legislation is therefore needed which would consolidate the large number of existing fractionated

interests and prevent further fractionation. This alone will remove a primary obstacle to the efficient administration of the trust management systems and provide a major catalyst for the timely resolution of most of the operational problems associated with trust management activities, including trust resource and realty management, probate, land titles and ownership records management, IIM accounting, collections, deposits, investments and disbursements, customer service and record keeping for all trust management activities. These proposals do not change in any manner current law with respect to the continued retention of Indian lands in trust.

17. How would the transfer of management of trust funds and trust resources out of the BIA affect advocacy on behalf of Indian interests within the Interior Department and within the Administration generally?

The transfer of the management of trust funds and trust resources out of BIA is intended to focus and strengthen the attention given to these functions by the trustee. At present these functions are only one of many activities performed by the BIA. As such they must compete for always scarce resources, money and staff, within BIA. Because the trust management systems have seldom if ever commanded the immediate and undivided attention of the most senior staff they have been consistently underfunded and understaffed. It was precisely because of this state of affairs that the Office of the Special Trustee was established.

Competition for resources and staff to support Indian programs also occurs within the Department of Interior, within the Administration and within Congress. At each level Indian programs are traded off against other interests of more immediate need, greater popular support and political reward. They, therefore, tend to sink in importance among the many demands placed on BIA, DOI and the Administration.

Placing those functions in the AITDA, which will be directly answerable to the committees of Congress most interested in Indian matters, will raise the profile of those interests, ensure that they are heard at the highest level of government and insulate them from several levels of internal Administration competition for funding.

18. Would you expect your plan to impact the amount of money appropriated for trust management activities? If so, what would the impact be?

Giving trust interests their own strong voice should improve funding. A more professional management team trained and experienced in trust operations and investments should also protect the trustee from future losses from litigation claiming mismanagement and breach of trust. This will save the government money over the long term. See also the response to Question 8.

19. Would the AITDA, or the Trust Development Bank participate in decision-making about bringing federal litigation on behalf of Indian rights? For example, if Indian water rights or mineral rights are being interfered with, would these entities be responsible for bringing litigation to protect those trust assets?

The AITDA, or the Trust Development Bank would participate in the decision making process about bringing federal litigation on behalf of Indian tribes and people especially where the particular fact situation would or could impact or affect Indian property held in trust. For example, as trustee, the government has legitimate interests in protecting the land and other resources and rights which will benefit future Indian beneficiaries. Where appropriate the AITDA or the Trust Development Bank could initiate such litigation or participate in it where it has been initiated by others.

20. Nature of the trust obligation , need for separate records?

One of the most frequently asked questions at the tribal consultations concerned the nature of the trust relationship. The courts have said "It is clear from past opinions of [the courts] and of the Supreme Court, and from the actions of both Congress and the Executive Branch, that funds appropriated to Indians to satisfy judgements...as well as funds produced by tribal activities, are, when kept [and managed by the government], held in trust for the Indians..." The courts have held that the United States as trustee has undertaken an "obligation of the highest responsibility and trust...an obligation doubly strict when [the trustee] by retaining Indian moneys in the Treasury (or investing those moneys in its own securities) in effect borrows those funds." (See Cheyenne-Arapaho Tribes of Oklahoma v US (1975) 512 F 2d 1390 at 1392.) Therefore, both tribal and individual Indian assets held and managed by the government are held in trust for those beneficiaries. It is to these assets that the mandate to the Special Trustee is directed.

The first and most important obligation of a trustee is to establish and maintain separate and accurate records of what assets are held in trust, how those assets are invested and managed and to whom the proceeds of those assets belong. Without such records a trustee cannot properly execute its fiduciary responsibility. Scott on Trusts (Section 172) says that if a trustee "fails to keep proper accounts, all doubts will be resolved against him and not in his favor". The trustee alone is in a position to know all the facts concerning the administration of the trust.

The courts have also held that the government as trustee of these assets must "recognize the impact of certain equitable considerations and the effect of the fiduciary duty of the Government" owed to American Indians. The Supreme Court "has recognized the distinctive obligation of trust incumbent upon the Government in its dealings with these dependent and sometimes exploited people...In carrying out its treaty obligations with the Indian tribes, the Government is something more than a mere contracting party. Under a humane and self imposed policy... it has charged itself with moral obligations of the highest responsibility and trust. Its conduct... should therefore be judged by the most exacting fiduciary standards." (See Seminole Nation v. US (1942) 316 US 256 at 295-297)

Under accepted standards of fiduciary practice, once a trustee has accepted the trust, he may not resign or terminate the relationship without the permission of the appropriate court or the consent of all beneficiaries. The court will not permit a trust to fail for lack of a trustee. For that reason, it is the view of the Special Trustee that these fiduciary obligations of the United States to American Indians are perpetual in nature and will last as long as there are Indian assets held in trust and there are discernible beneficiaries of that trust relationship. Therefore, the permanent integrity of the trust

records is obvious and essential to the continued viability of the trust relationship between the government and American Indians.

21. Future of the Bureau of Indians Affairs?

The most frequently asked questions at the recently concluded tribal consultations concerned the future of the Bureau of Indian Affairs (BIA). The questions are prompted by the assumption on the part of many Indian people that if the management of Indian assets and funds held in trust by the federal government, which is a financial fiduciary activity, is removed from the BIA it will jeopardize the continued provision of the other many and varied nonfinancial services provided to the tribes by the BIA. Such services, many of which are provided by the government pursuant to treaty, agreements, federal law, regulation or tradition are social or cultural in nature. These services are extremely important to Indian tribes and Indian people and they fear their loss.

The federal legislation that created the Office of Special Trustee requires it to provide a comprehensive strategic plan for "all phases of the trust management business cycle" to the Congress and the Secretary of the Interior. The Strategic Plan is thus exclusively concerned with the "financial management of Indian trust funds" which the Office of Management and Budget has consistently characterized, since 1980, as a high risk liability to the United States. (See Legislative History, House Report No. 103-778, Pub. L. 103-412, 1994 US Code Congress and Adm News P 3467 at 3469). This legislation and the views of OMB recognize that the fiduciary responsibility for the appropriate management of these Indian assets resides with the Federal Government. The United States is the trustee of these assets and the creation of the Office of Special Trustee is a serious attempt by the United States to rectify past mismanagement. See also Question 10.

Because the Reform Act and its charge to the Special Trustee focus on the "financial management of Indian trust funds" as a discreet activity of the Department of the Interior performed on behalf of the trustee, the other responsibilities and activities of BIA, whether of a fiduciary or merely legislative nature, are beyond the scope of the legislation and its warrant to the Special Trustee. Those activities are supported by appropriated monies and it is our assumption and recommendation that they will continue as in the past.

In addition, the Strategic Plan recommends that the financial management of Indian assets and funds be undertaken by the proposed American Indian Trust and Development Administration. It is intended that the day to day physical management of Indian lands and natural resources will remain with the BIA, the Self Governance tribes and the other appropriate agencies of the Department. The American Indian Trust Development Administration will work closely with the BIA, DOI and the Self Governance tribes to assure that the government's trust responsibility to protect, conserve and provide for the utilization and management of those assets is discharged in a lawful and responsible manner.

22. Why can't the Strategic Plan Reforms be carried out by the BIA and DOI instead of the proposed new agency called AITDA?

One of the primary causes for the longstanding trust management problems is lack of competent managerial resources to manage effectively and efficiently the trust management responsibilities to the American Indians. Managers and staff of the BIA have virtually no effective knowledge or practical experience with the type of trust management policies, procedures, systems and best practices which are so effective, efficient and prevalent in private sector trust departments and companies. The BIA area and field office managers do not have the background, the training, the experience, and the

financial and trust qualifications and skills, necessary to manage the Federal Government's trust management activities according to the exacting fiduciary standards required in today's modern trust environment. Thus, and through no fault of their own, and even assuming adequate financial resources were made available, they are not capable of managing effectively and efficiently the Federal Government's trust management activities on a par with that provided by private sector institutions to their trust customers.

The lack of trust managerial competence and the lack of financial trust orientation and focus throughout the BIA and the Department of the Interior have been institutionalized over many years and are now inherent in the BIA organizational culture. It is the reason in large part:

A. Why the BIA has never originated meaningful reforms of the trust management processes in the last 25 years.

B. Why the BIA has resisted and ultimately failed to implement nearly all of the meaningful reform efforts attempted in the last 25 years.

C. Why a new organizational structure such as AITDA, new management and massive re- training are necessary for the future management of the Federal Government's trust

responsibilities to American Indians and the management of the implementation of the reforms identified in the Strategic Plan.

23. What is the Department of the Interior's position on broadening the Federal Government's Trust Responsibilities along the lines proposed by the Strategic Plan?

The Strategic Plan broadens the Federal Government's trust responsibilities in several ways which are consistent, in the view of the Special Trustee, with the Reform Act of 1994 requirements which, in part, requires the Strategic Plan to include:

(B) Provisions for opportunities for Indian Tribes to assist in the management of their trust accounts and to identify for the Secretary options for the investment of their trust accounts, in a manner consistent with the trust responsibilities of the Secretary, in ways that will help promote economic development in their communities.

The Strategic Plan proposes that federal fiduciary discretion be broadened and new trust products offered to meet the goals of the legislation, all of which would provide "opportunities for Indian Tribes to assist in the management of their trust accounts" and "promote economic development in their communities" and which include:

1. Increasing investment discretion for the Trustee and the Tribes through use of the prudent investor standard.
2. Allowing demand and savings deposits.
3. Accepting voluntary tribal and IIM deposits from all sources, including gaming revenues.
4. Providing for income to be free of federal taxation.
5. Accepting retirement accounts.
6. Providing full service trust and banking services in Phase II through the proposed Trust Development Bank.
7. Others as are set forth in the Strategic Plan.

The Department of the Interior has indicated that the Administration will evaluate the Special Trustee's final recommendations, considering the results of tribal and individual account holder consultation, and submit its full views to the Congress as soon as practicable. The Department of the Interior has expressed some initial views on some of the Special Trustee's recommendations:

The Department is opposed to expanding our investment responsibilities, and therefore would be opposed to (1) accepting voluntary deposits; and (2) increasing investment discretion. The Department does not support acceptance of voluntary deposits in IIM accounts. Most IIM accounts are ?flow through" accounts; funds are regularly disbursed to the account holders. In theory, funds are only maintained as deposits in a limited number of cases: minors, non-compos mentis, and pending identification of beneficiaries. However, this policy has not always been adhered to, as there is regulatory authority to accept voluntary deposits in case of hardship to the account holder. The OTFM has a significant IIM data clean up effort underway, in part, to ensure the number of IIM accounts is kept to a minimum. OTFM is also developing formal policy and procedures on establishing IIM accounts which they expect to disseminate in 1997.

The Department also does not support increasing our investment discretion. Currently, investments are limited to direct investments in U.S. Government securities (Treasury and other agency issues) and insured deposits or deposits collateralized by U.S. Government securities. Tribes desiring more risky investments can withdraw their funds from trust under the authority of Title II of the American Indian Trust Fund Management Reform Act of 1994. Final regulations on withdrawing funds from trust were published on December 26, 1996.

The Department does not support the establishment of a new government entity to manage the federal governments trust responsibilities.

Viewed in isolation, the proposals related to expanding the government's responsibilities are generally inconsistent with government downsizing and deficit reduction. However, the systems portion of the Special Trustee's plan in general would tend to be consistent with government downsizing and deficit reduction.

Notwithstanding and with due respect to the Department's position which is a very narrow reading of the scope of current statutory authority (see 25 U.S.C. 2), the Special Trustee believes that the new trust products are essential to the economic growth and prosperity of the American Indians. As to the investment discretion of the Trustee, the Special Trustee believes authorizing the Trustee to invest Indian trust funds in securities in addition to "public debt securities" more effectively supports the trustee's fiduciary duty to serve the best interests of the beneficiaries, allow the Tribes to participate in the management of their funds held in trust in a practical and purposeful way and need not expose the trust funds to unacceptable investment risk. It is a settled principle of trusts that the trustee is under a duty to the beneficiaries to use reasonable care and skill to make the trust property productive. In making investments, however, a loss is always possible, since in any investment there is always some risk of loss even with "public debt securities".

Under accepted and established principles of trust law, it is not the duty of the trustee, either individual or corporate in the private sector, to invest only in the very safest and most conservative securities available. Such investments may not be in the best interests of the beneficiaries. Assuming, for example, United States Government bonds are the safest and most conservative securities available but that income yield thereon is lower than other securities, it is not necessarily the duty of the trustee

to invest the whole trust property, or even any part of it in such bonds. The reason for this is that by the use of care, skill and caution, an investment can ordinarily be made which will yield a higher income and as to which there is no reason to anticipate a loss of principal.

24. Just what are the Strategic Plan Phase I minimum requirements for trust management systems improvements?

The Strategic Plan proposes a single organizational structure organized along business lines. Phase I of the Strategic Plan is designed to bring it about and to bring the trust management and trust management information systems up to commercial standards within 2 years. The specific initiatives are more fully discussed in Appendix 1of the Strategic Plan and, at a minimum, will involve acquiring, automating, updating, integrating, coordinating and consolidating to produce:

I. A Single Organization to Manage Trust Management Activities.

This will involve consolidating trust resource, trust funds and land ownership and records management processes into a single, independent institutional unit with its own management structure to accommodate the restructuring and reorganization contemplated by Phase I of the Strategic Plan. The

unit should be organized by function and dedicated exclusively to trust management. The unit should be managed by a full time Chairman and a Board of Directors appointed by the President and confirmed by the Senate. The unit's proposed organizational form is as an independent GSE subject to Congressional oversight.

II. A Trust Asset and Accounting Management System.

This will involve acquiring and implementing a Trust Asset and Accounting Management System which will:

A. Provide a new asset management information subsystem for land and natural resource management and a delivery system for asset leasing, contracting, lending, buying and selling, together with standardized and/or integrated asset management, credit and operating policies, procedures and practices. The system must be able to tie to and track from land and ownership records.

B. Provide an accounts receivable/master lease subsystem data, tickler and collection system that uses lease-contract and ownership information for trust income verification, reconciliation, billing, payments, collection, accounting, disbursement, audit, asset quality review and compliance purposes.

C. Provide an accurate and timely trust, depository, payments and delivery system for IIM accounts and tribal accounts. This will entail purchasing a trust, depository, payments and other financial services accounting and statement system and a delivery system to more efficiently provide current financial services and to facilitate new and improved financial services to individual Indians and Tribes.

D. Provide a general ledger and general accounting system to accommodate all present and proposed TAAMS systems and other improvements.

E. Be preceded by an initiative to clean up IIM records and the appraisal back-log prior to conversion or after conversion as appropriate.

F. Conform to the general systems architecture described in Appendix 1 and the Strategic Plan Budget.

III. A Land Records and Title Recordation and Certification System.

This will involve the acquisition of a new system which will:

A. Be capable of instantaneous linkage with the TAAMS and other systems used by the service bureaus providing trust services under delegated authority from AITDA in the near term.

B. Be brought up to private sector standards through LRIS-2 upgrades and implementation in the medium term.

C. Be preceded by a clean up of land and chain-of-title records and back-logs.

D. Conform to the general systems architecture described in Appendix 1 and the Strategic Plan Budget.

IV. A Probate Back-log clean up which is more fully described in Appendix 1 and the Strategic Plan Budget.

V. A Dedicated Technology Services Center.

This will involve obtaining a centralized technology services center dedicated to trust resources, trust funds and land ownership and records trust management processes with appropriate provisions for disaster/recovery and back-up capability.

VI. A National Archives and Record Center.

This will involve obtaining and centralizing a modern national archives and records center for trust asset and accounting management records and land title and records storage and retrieval along with appropriate disaster recovery protection. Implementation of modern imaging technology should be at the fore-front of the improvement initiatives.

VII. A Risk Management and Control System.

This will entail obtaining a risk management and control system that will provide for adequate operational audits, credit and asset quality audits, compliance reviews, independent asset appraisals, supervision, enforcement and liaison with outside, independent auditors. It will include annual reviews and audits of all service bureaus providing trust services under delegated authority from AITDA.

Legislation is needed which would consolidate the large number of existing fractionated interests and prevent further fractionation. This alone would remove a primary obstacle to the efficient administration of the trust management systems and provide a major catalyst for the timely resolution of most of the operational problems associated with trust management activities, including trust resource and realty management, probate, land titles and ownership records management, IIM accounting, collections, deposits, investments and disbursements, customer service and record keeping for all trust management activities.

Finally, such systems and organizational improvements must be accompanied by:

1. Significant legal changes, including adoption of the prudent investor rule.
2. A significant investment to clean up:

IIM and Tribal Records

Probate Back-log

Appraisal Back-log

3. An investment in disaster/recovery and back-up assurance.

4. A significant training investment for all trust management activities, including tribal users.

5. The acquisition and retention of competent management.

25. What will be the role of the BIA, MMS, BLM, Self-Governance and 638 Tribes as Service Bureaus and how will this be administered by AITDA?

At the inception of the American Indian Trust Development Administration, the duties, responsibilities, budgets and certain staff engaged on behalf of the U.S. Government as trustee in trust resources management, trust funds management and trust land and records management will be transferred to AITDA from the Department of the Interior. This will include all statutory authority, funding and staffing, except as noted below, including those that are in the Tribal Priority Allocation part of the President's Budget.

At inception all authority, budgets and staff of the Office of Trust Funds Management (OTFM) and the Land Title and Records Office along with staff engaged in the operation of the Land Records Information System and budgets will be transferred to AITDA. Employees transferred or hired will be assessed, trained and closely evaluated on their qualifications and performance and replaced as necessary.

Staff of the BIA, MMS, BLM and Self Governance Tribes engaged in the management of Indian land and natural resources, including all pre-lease and pre-contracting activities and lease and contract origination, will remain in place. AITDA will contract with these units and they will serve as service bureaus for the indicated trust services and activities.

BIA & Tribes (Self Governance & 638)Land and natural resource management, except post leasing and post contracting activities and records and information system management, unless otherwise contracted.

BLM & Tribes (Self Governance & 638)Production verification at lease site for oil, gas & coal. Environmental and compliance from point of production through closure. Includes all current activities except records and information system management, unless otherwise contracted.

MMS & Tribes (Self Governance & 638)Royalty and compliance management for oil and gas, including all current activities except records and information system management, unless otherwise

contracted.

AITDA will delegate certain specified investment or management functions to BIA, BLM, MMS, Self Governance Tribes and other third parties only after exercising care, skill and caution in:

1. selecting a delegee suitable to exercise the delegated function, taking into account the nature and value of the assets subject to such delegation and the expertise of the delegee;
2. establishing the scope and terms of the delegation consistent with the purposes of the governing instrument;
3. periodically reviewing through operational and compliance audits and administrative oversight the delegee's exercise of the delegated function and compliance with the scope and terms of the delegation; and
4. controlling the overall cost and budget by reason of the delegation.

BIA, BLM, MMS, the Self Governance Tribes and other parties that operate as trust servicers and as delegees:

1. will have a duty to the trustee and to the trust to comply with the scope and terms of the delegation and to exercise the delegated function with reasonable care, skill and caution. An attempted exoneration of the delegee from liability for failure to meet such duty is contrary to public policy and null and void.
2. will, by accepting the delegation of a trustee's function from the trustee, submit to the jurisdiction of the federal district courts or other appropriate jurisdiction and the delegee may be a party to any proceeding in such courts or jurisdiction that places in issue the decisions or actions of the delegee.
3. will operate under the regulations, standards, policies and procedures and the information, accounting and reporting systems issued, established and maintained by AITDA.

For land and natural resources management activities, existing staff of BIA, BLM and MMS and the Self Governance Tribes will remain in place at their current locations. Tribes will be assured the same opportunities and authority that currently exist. AITDA managers will sit down with the Tribes to prioritize programs within its's jurisdiction, thus assuring tribal input and priorities are met on a local and area basis. Further, the current opportunities of 638 contracting and Self Governance Tribes will remain unchanged and fully available to the Tribes.

26. Are the issues so complex that trust fund management should remain as it is today?

The opinion was expressed at each of the consultations that the issues related to the management of Indian trust assets are so complex that they may defy resolution.

The successful management of large sums of money and other assets having cultural, religious, historic or environmental significance is achieved every day by both individual and corporate trustees. For example, endowment funds held in trust play a large role in the support of museums, libraries, schools,

colleges, universities, churches and other endeavors pursuing a wide variety of societal goals. When performed by people who are trained and experienced in the professional management of assets held in trust the complexities of the relationship between beneficiaries, both current and future, and the trustee need not defeat the purposes of the trust and are resolved for the benefit of the beneficiaries.

The legislative history of the Reform Act demonstrates a Congressional frustration with the performance of the trust management activities extending back many years. It cites a report issued by the House of Representatives' Committee on Indian Affairs which characterized the administration of Indian Affairs as being "expensive, inefficient and irresponsible" That report was issued in 1834. Those deficiencies continue to exist today and threaten the viability of the trust relationship. It is a simple matter to cure them. The legal principles and operating systems already exist. They only have to be employed.

27. Will additional formal consultation meetings be held on Strategic Plan Reforms?

At each of the consultations the Special Trustee has been requested to provide more opportunities for consultation. Many people are of the opinion that the Strategic Plan has a very broad sweep but that the consultation process has been too short.

The Office of the Special Trustee was created by the American Indian Trust Fund Management Reform Act of 1994. The Special Trustee was appointed and took office in September 1995. Under the terms of the Act, he was to submit his Strategic Plan to the Secretary of the Interior and the Congress within one year of his appointment, that is September 1996. His Office was not adequately funded until October 1996 for fiscal year 1997. Therefore, he informally committed to the Congress that he would submit the comprehensive strategic plan by mid-April 1997.

During the first year in office, the Special Trustee drafted a conceptional strategic plan which was issued in February 1996 after being approved by the Special Trustee's Advisory Board. That document is the foundation for the current Strategic Plan and contains most of the assessments found in the Strategic Plan. It was sent to 300 tribes and was the subject of Congressional hearings last summer. Those hearings where well attended. The conceptional plan has also been the subject of approximately twenty presentations the Special Trustee has made before American Indian groups.

The Trust Development Bank, which is proposed as Phase II of the strategic plan, was originally a product of the Special Trustee's Advisory Board and was proposed for consideration as part of settlement legislation. It was aired publicly in December 1996 and was considered during settlement consultation hearings held in January 1997.

Thus, much informal consultation on the strategic plan took place prior to the formal consultations which were announced in January 1997 and held in February and March of 1997. While no further consultations are planned at this time, the submission of the Strategic Plan to Congress and the Secretary represents only the conclusion of the initial steps in the process to reform the government's administration of Indian trust funds. The Department of the Interior may submit its own alternative plan and other plans may be proposed from Indian Country or originate in the Congress. Whatever action Congress takes will be preceded by extensive hearings in both the House and Senate. Those hearings will be designed to give anyone who has an interest in the subject more than ample opportunity to express his or her views on the proper course to follow. It is expected that the legislative part of the process could take the best part of a year.

27. What is the legal status of the American Indian Trust Development Administration and the Trust Development Bank assuming that the Bank is established?

The American Indian Trust Development Administration will be a government sponsored entity (GSE)

backed by the full faith and credit of the trustee, the United States. AITDA will be that part of the Federal Government that performs the administrative functions necessary to the successful discharge of the trustee's fiduciary obligations with respect to Indian assets held by the United States in trust. As a corporate body established by Congress it will have the same type of independence as that enjoyed by, for example, the Federal Reserve System, the Federal Deposit Insurance Corporation and the Farm Credit System. Its Board of Directors will be appointed by the President for a term of years with the advice and consent of the Congress.

The Development Bank will be a separate corporate subsidiary of AITDA. Its Board of Directors will be the same as that of AITDA. Its function will be to provide banking services to Indian people in those places where they are under served. The Development Bank will sell stock to investors. It, like AITDA, will be a creature of the United States government and backed by the full faith and credit of the United States. The creation of either or both of these entities will not alter in any manner the fiduciary responsibility of the United States as trustee of Indian assets to perform those functions in a legally correct and prudent manner. See also Question 8.

28. Will adoption of the recommendations made in the Strategic Plan alter the government to government relationship that currently exists between the United States and Indian tribes. This question was raised at each of the consultations.

The United States and its courts recognize Indian tribes to be sovereign and self governing entities within the United States. And while Indian tribes are not states, they have a status higher or different from a state. See Native American Church v. Navajo Tribal Council, 272 F 2d 131 (10th Cir. 1959). Indeed, as recently a February 25, 1996, the Board of Governors of the Federal Reserve System, in its approval of the application of Mille Lacs Bancorporation, Inc. to become a bank holding company, considered the Mille Lacs Band of Ojibwe Indians, a federally recognized Native American tribe, to be a sovereign government and therefore outside the Bank Holding Company Act's definition of a "company".

Nothing in the recommendations made in the Strategic Plan would or could alter the government to government relationship, or its application, that currently exists between the government of the United States and the governments of the respective Indian tribes.

The transfer of the trust management activities to AITDA is intended to focus and strengthen the attention given to these functions. See Question 17. They are functions that can be performed at any level of the Federal Government. We suggest they be raised to a higher level so that they get more attention. We do not suggest, nor will we suggest, that the trustee transfer its trust responsibilities to a nongovernment entity. See Question 12 and 13.

29. Termination?

Many of the comments received at the Tribal Consultation expressed the fear that the changes in the way the Federal Government manages the assets and funds belonging to Indian tribes and people held in trust by it represents or will lead to the termination of the trust relationship that exists between the government of the United States and the various Indian tribes and Indian people. The Special Trustee believes that quite the contrary is true.

The legislative history of the American Indian Trust Fund Management Reform Act of 1994 states in pertinent part that:

"Funds have been held in trust for American Indians by the Federal Government since 1820. The Bureau of Indian Affairs (BIA) has had authority to invest Indian Trust Funds since 1918, however, it was not until 1966 that the BIA exercised its full range of investment authority....Trust Fund accounts are comprised mainly of money received through the sale or lease of trust lands and include timber stumpage, oil and gas royalties, and agriculture fees. Accounts containing judgement awarded to tribes are also maintained....60% of all trust funds held by the BIA are in the form of judgement funds...Volumes have been written about improper management of funds within the Bureau of Indian Affairs since its inception... A 1992 report released by the House Committee on Government Operations entitled ?Misplaced Trust: The Bureau of Indian Affairs' Mismanagement of the Indian Trust Fund' details multiple problems with the management of these funds.... Among the problems outlined in the report which persist are: the inability to give proper accounting of balances to each of the account holders;

lack of uniform written policies to govern how accounts are to be managed and under what circumstances funds can be withdrawn; insufficient training of personnel needed to carry out the

duties required; inadequate automated and record keeping systems."

The first and most important obligation of a trustee is to establish and maintain separate and accurate trust records of what assets are held in trust, how those assets are invested and managed and to whom the proceeds of those assets belong. The legislative history of the Reform Act recites the fact that some attempts have been made to address some of the problems. In reference to the reconciliation of tribal accounts by the Arthur Andersen Company it was said much needed documentation was missing, "making reconciliation", which is less than an audit, "of the accounts extremely difficult" and impossible in many instances. The Special Trustee, therefore, is of the view that to the extent that trust assets and or the interest of a particular beneficiary in those assets cannot be accurately identified the participating interest of that beneficiary in the trust has been impaired, reduced or terminated.

In addition, because a trustee is under a duty to the beneficiaries to use reasonable care and skill to preserve the trust property (Restatement §176) and to make it productive (Restatement §181) not only for current beneficiaries but also for future beneficiaries (Restatement §232), the Strategic Plan recommends that the government adopt the prudent investor standard for the investment of trust funds. Limiting investments to public debt securities, as now required by federal statute, even though they are the very safest and most conservative securities available but not totally devoid of risk, has reduced and will, over the long term, reduce the value of the trust funds due to inflation. In the view of the Special Trustee that is also a form of termination. Accepted principals of trust law hold that a trustee is not limited to the most conservative investments available when by the use of care, skill and caution an investment can be made which will yield a higher income and as to which there is no reason to anticipate a loss of principal (Restatement §227e).

The transfer of the management of trust funds and trust resources out of BIA is intended to focus and strengthen the attention given to these functions by the trustee. At present these functions are only one of many activities performed by the BIA. As such they must compete for always scarce resources, money and staff, within BIA. Because the trust management systems have seldom if ever commanded the immediate and undivided attention of the most senior staff they have been consistently underfunded and understaffed. This is another form of termination. It was precisely because of this state of affairs that the Office of the Special Trustee was established.

Competition for resources and staff to support Indian programs also occurs within the Department of Interior, within the Administration and within Congress. At each level Indian programs are traded off against other interests of more immediate need, greater popular support and political reward. They, therefore, tend to sink in importance among the many demands placed on BIA, DOI, the Administration and Congress. This is still another form of termination.

Placing those functions in the AITDA, which will be directly answerable to the committees of Congress most interested in Indian matters, will raise the profile of those interests, ensure that they are heard at the highest level of government and insulate them from several levels of internal Administration competition for funding and staffing. Adoption of the recommendations put forward in the Strategic Plan will focus the government's attention on its responsibilities as a trustee. The administrative duties associated with those trust responsibilities will be executed by a competent, well trained staff experienced in the administration of trusts. The recommended reforms will strengthen the trust relationship and require the trustee to become accountable to the beneficiaries.

On the other hand, continuation of the status quo is not acceptable. There are serious issues of mismanagement and neglect which are not resolved and which amount to a serious breach of trust in the opinion of the Special Trustee. The breach of trust cannot be repaired by the BIA and DOI because they lack the managerial capacity and competence to do so. Continuation of this situation is termination. Continued mismanagement of the assets by the BIA is termination. Continued neglect of the beneficiaries' interests in those assets is termination. The status quo is termination.

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OFFICE OF THE SPECIAL TRUSTEE FOR AMERICAN INDIANS

OFFICE OF TRUST FUNDS MANAGEMENT

TRIBAL CONSULTATION ON THE DRAFT STRATEGIC PLAN

Tuesday, February 25, 1997
9:00 a.m.

Radisson Hotel Seattle Airport
17001 Pacific Highway South
Seattle, Washington

REPORTED BY: ELIZABETH HURST-WAITZ, RMR, NM CCR #99
500 Oak Street, N.E., Suite 102
Albuquerque, New Mexico 87106-4738

A P P E A R A N C E S

PAUL HOMAN
Special Trustee for American Indians
Department of the Interior
Washington, D.C.

JOE C. CHRISTIE
Special Assistant to the Special Trustee for American Indians
Department of the Interior
Office of Trust Funds Management

DONNA ERWIN - Director
Office of Trust Funds Management
Albuquerque, New Mexico

ELOUISE COBELL - Chairperson
Advisory Board to the Office of the Special Trustee
Blackfeet Tribe - Browning, Montana

ELIZABETH HURST-WAITZ, RMR, NM CSR #99
Court Reporter
Albuquerque, New Mexico

* * * * * * * *

A T T E N D E E S

NELSON WALLULATUM - Chief
Warm Springs Reservation - Warm Springs, Oregon

HARVEY MOSES, JR.
Secretary, Colville Business Council
Colville Confederated Tribes - Nespelem, WA

STANLEY SPEAKS - Area Director
Portland Area Office

JEANNE A. JERRED - Tribal Councilwoman
Colville Confederated Tribe
Nespelem, Washington

FRANCIS SOUDAY - Executive Officer
Grand Ronde Tribe
Grand Ronde, Oregon

A T T E N D E E S (Continued)

VERN L. CLAIRMONT - Executive Treasurer
Confederated Salish & Kootenai Tribes
Pablo, Montana

A.J. (RUSTY) KUNTZE II
Swinomish Tribe
Laconner, Washington

JOE FLETT - Forest Manager
Spokane Tribe of Indians
Wellpinit, Washington

J. DAVID TOVEY, JR. - Treasurer
Affiliated Tribes of Northwest Indians
Pendleton, Oregon

DELANO SALUSKIA - Tribal Director
Yakama Nation
Toppenish, Washington

JERRY MENINICK - Vice Chairman, Tribal Council
Yakama Indian Nation
Toppenish, Washington

KEITH R. HUNT - Tribal Controller
Agua Caliente Band of Cahvilla Indians
Palm Springs, California

WILLIAM L. WORTHINGTON - Trust Fund Administrator
Snohomish Tribe of Indians
Quileute, Washington

WILLIAM E. MATHESON - Tribal Chairman
Snohomish Tribe of Indians
Port Hadlock, Washington

DAN DUAME - General Counsel
A/PIA - Aleute/Pribilof Islands Association
Anchorage, Alaska

JOE PAKOOTAS - Chairman
Colville Confederated Tribe
Nespelem, Washington

LOUELLA ANDERSON - Councilwoman
Colville Confederated Tribe
Nespelem, Washington

A T T E N D E E S (Continued)

VERNON HENRY - Tribal Chairman
Warm Springs, Oregon

PEARL CAPOEMEN-BAILEY - President
Quinault Nation
Taholah, Washington

DORIS MILLER - Tribal Council Secretary/ASC Supervisor
Confederated Tribes of Warm Springs
Warm Springs, Oregon

MARCUS J. PETE - Secretary
Agua Caliente Band of Cahvilla Indians
Palm Springs, California

CAROL EVANS - Acting Executive Director
Spokane Tribe of Indians
Wellpinit, Washington

DEBRA L. ROSENBAUM - Executive Director
Colville Confederated Tribe
Nespelem, Washington

DON HATCH - Vice Chairman
Tulalip Tribes
Marysville, Washington

HERBERT M. WHITISH - Chairman
Shoalwater Bay Indian Tribe
Tokeland, Washington

GREG ARCHULETA - Administrative Officer
Grand Ronde Tribe
Grand Ronde, Oregon

PAMELA NORRIS - Senior Tribal Planner
Tokeland, Washington

HUBERT MARKISHTUM - Chairman
Makah Tribe
Neah Bay, Washington

NORMA GOURNEAU - Vice President
Northern Cheyenne Tribe
Lame Deer, Montana

A T T E N D E E S (Continued)

DAVID McDOWELL - Controller
Coeur d'Alene Tribe
Plummer, Idaho

ORIN KIRK - Executive Committee
Klamath Tribe
Chiloguin, Oregon

JACOB FRANK - Tribal Councilman
Confederated Tribes of Warm Springs
Warm Springs, Oregon

DAVID WYNECOOP - Tribal Council Secretary
Spokane Tribe of Indians
Wellpinit, Washington

JOHN MILLER - Self-Governance Officer
Lower Elwha Klallam Tribe
Port Angeles, Washington

RICHARD STILT - Self-Governance Coordinator
Central Council Tlingit & Haida Indians of Alaska
Juneau, Alaska

RICK GAY - Grant/Contracts Officer
Umatilla Tribes
Pendleton, Oregon

DAVE KOENIGS - Executive Director
Strettaguamish Dalse
Arlington, Washington

KATHLEEN HUMPHREY - Self-Governance Coordinator
Nisqually Indian Tribe
Olympia, Washington

LEIGH FRAZIER - Controller
Nisqually Indian Tribe
Olympia, Washington

BARBARA FAWCETT - Treasurer
Metlakatla Indian Commission
Metlakatla, Alaska

LAURA WELLINGTON - Contracts
Metlakatla Indian Commission
Metlakatla, Alaska

A T T E N D E E S (Continued)

LAWRENCE W. LaPOINTE - Council
Puyallup Tribe of Indians
East Tacoma, Washington

JANELLE GELLEIN - Chief Financial Officer
Quileute Tribe
LaPush, Washington

NELSON M. WITT - CEO
Confederated Tribes of Siletz
Siletz, Oregon

MATT KALLAPA - Self-Governance Specialist
OSG - NWFV
Vancouver, Washington

JOYCE (JONNI) A. TRETTEVICLE
Administrative Officer - Makah Tribe
Neah Bay, Washington

ALFRED M. PEOUGE - Spokane Tribal Council
Spokane Tribe of Indians
Wellpinit, Washington

THOMAS M. RICKMAN - Assistant Finance Manager
Nez Perce Tribe
Lapwai, Idaho

GALE LONGSHIRE - Tribal Council Secretary
Skokomish Indian Tribe
Shelton, Washington

ZANE JACKSON - Tribal Council Member
Confederated Tribes of Warm Springs
Warm Springs, Oregon

DALLAS I. DeGUIRE - AD
Port Gamble S'klallam Tribe
Kingston, Washington

W. RON ALLEN - President, NCAI
Sequim, Washington

JIM SIZEMORE - Consultant
Confederated Tribes of Warm Springs
Portland, Oregon

A T T E N D E E S (Continued)

MARY LEIKA - Executive Director
Hoh Tribe - Washington

JOHN HOLLOWED - Director, Habitat Services
Northwest Indian Fisheries Commission
Olympia, Washington

JAMES D. NOTEBOOM - Tribal Attorney
Confederated Tribes of Warm Springs
Bend, Oregon

BRETT KENNEY - Staff Attorney
Confederated Tribes of Siletz
Siletz, Oregon

ERIC D. EBERHARD - Attorney
Dorsey & Whitney
Seattle, Washington

TOM SHIRILLA - Compact Negotiator
Office of Self-Governance
Vancouver, Washington

RICHARD GUEST - Tribal Attorney
Skokomish Indian Tribe
Shelton, Washington

VELMA JOHNSON - DA
Bellinfor, Washington

KAROLE OVERBERG - Northwest Field Manager
Office of Self-Governance
Vancouver, Washington

GENE NICHOLSON
BIA - Superintendent, Colville Agency
Nespelem, Washington

RAY MALDONADO - Superintendent
Olympic Agency
Hoaquim, Washington

JOE WELLER - Liaison Officer
OST-OTFM
Albuquerque, New Mexico

A T T E N D E E S (Continued)

FRED WELLER - Computer Specialist
OST-OTFM
Albuquerque, New Mexico

SHELLY FARMER - Staff Assistant
OST-OTFM
Albuquerque, New Mexico

PATSY ANTONIO - Secretary
OST-OTFM
Albuquerque, New Mexico

DICK FITZGERALD - Trust Policy Officer
Office of the Special Trustee
Washington, D.C.

MIKE ARCHBOLD - Reporter
South County Journal
Kent, Washington

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MR. HOMAN: Welcome, ladies and gentlemen. My name is Paul Homan. I'm the Special Trustee for American Indians, and we're here today in recorded session to go over the Strategic Plan, which my staff and I will be presenting to you, after which we will take your questions and any testimony you may have on the plan itself.

Before I start, we'd like to open the session with a prayer, and Mr. Nelson Wallulatum of the Warm Springs Council has honored us with the prayer.

Nelson, would you do the prayer?

CHIEF WALLULATUM: Greetings, my friends and people of this earth. As the sun comes up, the sun is with us all day until it goes to the bed, so we are people "Far From Where The Sun Goes To Bed."

I am going to pray, and I am going to sing a little welcoming song before we start, which is the traditional way.

(The invocation was offered by Chief Wallulatum.)

MR. HOMAN: Thank you, Nelson.

I'd like to also acknowledge some tribal leaders that are in the audience: Pearl Capoemen-Bailey from Quinault. Welcome. William Matheson, Tribal Chairman of the Snohomish Tribe. Joe Pakootas from the

Colville Tribe. And Don Hatch, who is the Vice President and Chair of the Tulalip Tribe. Welcome, and we hope to be hearing from you.

Also, Stan Speaks, the Area Director from Portland, is in the audience. Stan, welcome.

As I indicated earlier, we will be giving a presentation on the Strategic Plan. The presentation materials are on the outside, and you're welcome to a full packet.

But before we begin, I would like to introduce Elouise Cobell, who is the chairman -- chairperson, I should say -- of our Advisory Board, who has reviewed this plan and was instrumental in bringing about the Reform Act in 1994, which created the Office of the Special Trustee and the charge that Congress gave us to produce a strategic plan to reform the trust management systems of the Bureau of Indian Affairs, Resource Management Services, and the Bureau of Land Management.

Elouise, do you want to say a few introductory remarks?

MS. COBELL: Thank you, Paul, and welcome, everyone. I am so happy that we have such a good attendance, because what we're going to be discussing today is of grave importance to all of us.

I started working on the reform of trust

1 funds when I was a very young girl, listening to my
2 parents and my grandparents talk about the mismanagement
3 of their trust assets and their trust funds. They could
4 never understand their land holdings. They could never
5 understand the money that they got.
6 So I started at a very young age and have
7 continued to work on the reform of trust funds.
8 Our Advisory Board met two weeks ago and
9 reviewed the Strategic Plan that Mr. Homan had put forth.
10 We approved the Strategic Plan to go forth to the tribal
11 members and the tribal people for their review.
12 As Paul mentioned, the Trust Funds Reform
13 Act of 1994 called for that a Special Trustee be appointed
14 in charge of the trust funds. It also called that a
15 Strategic Plan be developed and submitted to Congress and
16 the Secretary at the same time, and that tribal
17 consultation happen with the Strategic Plan.
18 I know that the strategic plan that we
19 reviewed within the last two or three weeks, as we
20 received it, has major reform. But when you have gross
21 mismanagement, we have to look at major reform.
22 I am a very outspoken person, and I, for
23 one, think that 150 years is long enough for a bureau to
24 do something, and if they don't act, then it's up to us.
25 And we owe it to ourselves, to our ancestors, and to our

1 children to reform our trust assets and our trust funds,
2 how they are going to be managed.
3 I want to request that everybody, as we go
4 through the materials, have an open mind. This is the
5 first consultation meeting. And for a person that has
6 always sat on the other side as a tribal person and had
7 things shoved at me from the department, the government,
8 we were always leery of what information or what that
9 reform was going to do. And so I hope that all of your
10 comments will be very helpful.
11 We need to scrub this plan. We need to find
12 out what we like, what we don't like about it, and really
13 have some open discussion.
14 I do want to talk a little bit and tell you
15 about the Advisory Board. We, also, were part of the
16 Trust Funds Reform Act, that a nine-member Advisory Board
17 be appointed to monitor and to have input to the Special
18 Trustee. That Advisory Board is made up of five tribal
19 people, and I just want to mention the tribal people that
20 serve on that:
21 Ivan Makil from Salt River. Ed Thomas from
22 the Central Council of Tlingit & Haida. Gregg Bourland
23 from the Cheyenne River Sioux. Dale Risling from the
24 Hoopa Tribe. Lionel Bordeaux from the Sincte Glieska
25 University of South Dakota.

We also have three financial experts that serve on the board.

But welcome again, and I hope that we have some really good discussions. I know a lot of you came here with some questions in your mind, and I hope that we can answer them and make sure that you give all the input. Like I said, we need to scrub this and decide what we like and what we don't like. And welcome, and thanks a lot.

MR. HOMAN: Thank you, Elouise.

Before we begin, I also draw your attention to a statement issued by the Office of the Secretary, which I will repeat and which I want to assure you, I was going to point out: That until the recommendations submitted by my plan go to the Secretary and to the Congress, they do not represent the views of the Department of the Interior. So these are solely my plan, my view, and you're to treat them as such.

Also, there is a paragraph on fractionated heirship and what the Secretary intends to do about the fractionated heirship recommendations. You'll see in my plan that I have generally adopted the suggestions made by the land consolidation groups last year in terms of how to deal with fractionated heirship legislation.

The Secretary and OMB are presently considering legislation, and what this says is that they

1 will go forward with that, regardless of how long it takes
2 to consider the Strategic Plan. So I urge you to read
3 that.
4 Fred, do you want to put up the Vision
5 Statement which follows? Can we dim the lights a bit?
6 You can follow this along with this cover
7 handout, which is a picture of all these slides. So if
8 you want to take notes as you go along, it's a lot better
9 than reading through the heavy documents that we produced.
10 But any Strategic Plan must start with a
11 Vision Statement, or what we used to call a mission
12 statement. And this one indicates and reaffirms what the
13 Supreme Court has said our charge is as a U.S. Government
14 trustee, and that is to manage the U.S. Government's trust
15 responsibilities according to the most exacting fiduciary
16 standards and moral obligations of the highest
17 responsibility and trust.
18 Again, these are the Supreme Court rulings
19 of the past, not my words. But as you know, we have
20 seldom lived up to fulfill those responsibilities.
21 My plan identifies generally four major
22 issues, and I think they were confirmed with the IIM
23 improvement hearings we had over the summer; and IIM and
24 tribal groups worked on how we could improve the trust
25 accounting systems as they applied to the IIM system,

which constitute most of our trust accounting problems.

The first thing they identified, and I identified, was that trade-offs of competing financial and managerial resources in the past, at all levels of government, have been detrimental to the trust management program.

Lack of funding and lack of staffing have become the standard excuse in government for failure to do their job. That is not something that a private trustee could get away with, and we're proposing that that end.

The second major problem, in the business sense, is the way the BIA is organized. It is organized not by business function, as almost every governmental unit is today, but in the traditional way. And this prevents it from communicating, coordinating, integrating many of the policies and procedures and laws that exist. And these findings have been found in nearly every GAO study, or last year's IIM improvement team study.

Third: The BIA lacks the managerial resources to bring the trust management systems up to a modern standard. There are very few trained people there, and you'll see that most of our money goes to core systems development and training, not only for bureau personnel, but for the tribes themselves, in bringing their access to modern trust banking up to the standard that every U.S.

citizen in a trust company enjoys.

And finally, as I mentioned earlier, the fractionation of the allotment interests causes an inordinate number of problems in the trust accounting system. And Joe Christie will be discussing that at length a little later.

These are the five major categories that the Tribal Work Group came up with in terms of problems that needed to be addressed. As Elouise indicated, I sent out my Strategic Plan to some 300 tribes last February. So conceptually, this plan has been out in the field for some time.

I have given as many as 20 different speeches to different groups all over the country, outlining the plan. And then finally, we had the series of hearings to identify the five or so major things that needed to be addressed by any plan, whether it's mine, or any one that the Bureau or the Secretary may come up with.

And the top two there are almost interchangeable: How we handle our accounting transactions, and the realty issues.

And lest we forget why we're here, let me just recite some of the problems that we have encountered and that Donna will be discussing in more detail.

We still have -- this is current numbers.

1 We still there 45,000-odd accounts and $27 million in
2 accounts where our IIM holders are Whereabouts Unknown.
3 We can't find these people.
4 We have 28,000 accounts -- $21 million -- in
5 minor accounts, where we know that the minors have now
6 reached the age of majority, but we have not accounted for
7 them.
8 We have 16,000 duplicate accounts throughout
9 the country. We have 21,000 deceased accounts, and a
10 probate system which is two years behind in the probate
11 process, in some areas of the country.
12 We have 28,000 special deposit accounts with
13 no activity in the last 18 months, which should be closed
14 and sent to the original purpose.
15 We have 128,000 accounts with no Social
16 Security number, which now is a violation of law, without
17 a Social Security number.
18 Those are just statistics that apply to the
19 300,000-odd IIM accounts that we have under the trust
20 management system. That is a deplorable record by
21 anyone's standards.
22 Second, the numbers that came out of the
23 Arthur Andersen reconciliation project are very familiar
24 to you, but let me just recite them once again.
25 $2.4 billion -- 32,000 transactions -- in tribal accounts

for which we could not find source documentation.

$575 million in unreconciled disbursements -- missing checks, if you will.

$4.1 billion in incomplete disbursement packages.

We have a lack of what the GAO calls a universal lease. We don't know how many leases we actually have. Therefore, we cannot account or audit fully on a consolidated basis.

And finally, we have no consolidated accounts receivable or billing system.

And finally, we have some $42 million on our books in overdraft clearing accounts -- interest accounts -- which date back to the '70s and '80s, which act as a debit or a deduction against the IIM pool and deprive current pool holders of some $2 million in annual income.

And finally, $28 million in general ledger differences.

Again, for a relatively small unit, those numbers attach to $500 million in IIM accounts and a little over $2 billion in tribal accounts.

I have looked at this for 18 months. Better people than me have looked at this in the past. And my conclusions are essentially no different than those

1 conclusions of auditors, if you will -- GAO findings -- of
2 the past.
3 But I think that the principal causes of the
4 trust management problems have resulted in conditions
5 which are unacceptable by any reasonable standards and
6 continue to do significant harm and damage to the American
7 Indian trust beneficiaries. Of this, there is no doubt in
8 my mind. And that these conditions also cause permanent
9 damage to the core trust management systems the government
10 uses to manage the Indian lands and monies -- permanent
11 damage.
12 That means they must be resurrected in some
13 other form. They prevent the government from meeting the
14 fiduciary accounting and reporting standards that are now
15 required by the American Indian Trust Management Reform
16 Act of 1994, and standards of ordinary prudence applicable
17 to all trustees, public or private.
18 These system expose the beneficiaries -- you
19 all -- to significant losses, and the trustee to potential
20 significant liability.
21 To resolve these problems, I recommend as
22 follows:
23 That a single administration or unit be
24 formed to assume and manage the U.S. Government's trust
25 responsibilities to American Indians for trust resource

1 management, trust funds management, and land title and
2 records management -- those three business functions which
3 are all intertwined. And only those three, which we
4 collectively call "trust management activities" throughout
5 our presentation.
6 And that all the management duties,
7 responsibilities and activities carried out by the Bureau
8 of Indian Affairs and the Department of the Interior, and
9 the staff associated with those, be transferred to this
10 new administration called the American Indian Trust and
11 Development Administration.
12 This administration takes the form of what
13 is commonly known as a government-sponsored enterprise.
14 And typical government-sponsored enterprises are the
15 Federal Home Loan Banks, the Farm Credit Banks, the
16 Federal Reserve Bank; and others that are associated with
17 housing, like Freddie Mac and Fannie Mae and Ginnie Mae.
18 And then finally, I recommend that all
19 reforms identified in the Strategic Plan be implemented.
20 This will involve consolidating a number of
21 trust management activities, again, into a single
22 independent unit that will be responsible and accountable
23 for the reforms; that will implement the reforms over a
24 two-year period; that will provide for the ongoing
25 management of the U.S. Government's trust

1 responsibilities; that will organize itself by business
2 line and be managed, importantly, by a board of
3 directors -- we're suggesting five, consisting of three
4 American Indians and two financial experts, which can also
5 be American Indians -- appointed by the President and
6 confirmed by the Senate; and taking the form of an
7 independent government-sponsored enterprise called the
8 American Indian Trust and Development Administration.
9 The proposal represents a major improvement
10 in the way we manage our trust responsibilities. It
11 concentrates the resources -- financial and managerial --
12 on the trust management activities. It improves and
13 increases trust services and responsiveness to tribes and
14 individual Indians, which has been on the decline
15 historically.
16 It clearly differentiates trust management
17 activities -- the three that I mentioned -- from other
18 activities under the general trust responsibility, such as
19 education, housing, and similar programs.
20 It reaffirms and ensures that the
21 U.S. Government's trust responsibilities to Indians are
22 managed according to the most exacting fiduciary
23 standards -- again, the Supreme Court standards.
24 And it, finally, transfers BIA staff intact,
25 in these activities, at those locations, to the new

1 organization, where they will be receiving new training.

2 We don't plan any locational changes. No

3 staff changes. But they will be trained in the modern

4 trust practices.

5 And as far as the Indians, as beneficiaries,

6 are concerned, they will be receiving the same type or,

7 hopefully, an improved level of service as at present.

8 There are several advantages, we think, it

9 will have over the current organization. It will prevent

10 the further erosion -- and I think that erosion is taking

11 place -- of the U.S. Government's fulfillment of trust

12 responsibilities.

13 It clearly establishes accountability. It

14 provides protection against termination.

15 Number 4: An independent GSE directly

16 reporting to Congress, we think, will eliminate the

17 detrimental trade-offs -- which have been the practice of

18 the past -- of financial and managerial resources which

19 currently take place between these trust management

20 activities and every other program of the Bureau of Indian

21 Affairs, the Department of the Interior, and the executive

22 branch of government.

23 And it will stop and reverse the steady

24 erosion of the fulfillment of the U.S. Government's trust

25 responsibilities.

1 This is de facto termination, by any other
2 name, and it occurs because the current lack of funding
3 and staffing is a slow bleeding termination by any other
4 name.
5 Because the new organization functions at a
6 higher level of government, Congress will be able to focus
7 on the proper funding and staffing of the trust management
8 activities, and this will provide the capacity to carry
9 out those trust activities.
10 As I indicated, a board of directors
11 consisting of three American Indians and two financial
12 experts will run the new organization. It will be
13 appointed by the President and be confirmed by the Senate.
14 They will devote full-time, all five of them, to trust
15 management activities, versus the one or two that now
16 devote full-time to those activities.
17 It will provide a measure of political
18 independence, which is common to the Federal Reserve and
19 all other GSEs. It will permit better specialization, to
20 keep up with the trends in industry; a full-time focus on
21 trust management activities; and the hiring and retention
22 of competent managers. It will provide the capacity and
23 willingness to meet the need for reforms and effectively
24 manage trust management activities.
25 As I indicated earlier, it will be organized

1 along business functions, as every other company in the
2 United States is organized, and as most government is now
3 organized.
4 Numbers 8 and 9 are important: Improved
5 trust services, including a cleanup of some of the
6 problems that I just recounted, and which will be
7 recounted later by Donna, on IIM related account problems,
8 land title and records backlog problems. We're a full
9 staff year behind on bringing our land records up to date.
10 And the Bureau formerly had about 126 people
11 devoted to this task in Realty, as recently as 1994; and
12 have cut back, in the face of that year-long period, to
13 90. So this would restore that staff and concentrate them
14 on cleaning up the backlog.
15 The probate backlog is two years in some
16 areas, and growing -- again, because of lack of staff and
17 funding.
18 It will provide accurate trust accounting
19 and reporting, which is now required by law, by the Reform
20 Act of 1994, which we are not now meeting. And also
21 provide a coordinated, integrated, and consistent asset
22 administration of land, natural resources, and
23 investments.
24 Appropriate audits, internal controls, and
25 consistent good policies.

1 Importantly, there are new trust services,
2 and I'll talk a little bit about the Prudent Investor
3 Rule. But the law itself requires me to come up with
4 options for American Indians to assist in the management
5 of their trust accounts, first; and then provide options
6 for the investment of their trust accounts in ways that
7 will promote economic development in your American Indian
8 communities -- all of which is designed, as well, to
9 achieve a level of trust services and products that are
10 equivalent to those provided by private sector trust banks
11 and departments to the American public.
12 These new products include, unlike now:
13 Managed, co-managed, and agency trust investment accounts
14 where the American Indians themselves can direct their own
15 funds to own their own economic development purposes,
16 subject only to the Prudent Investor Rule.
17 That will allow you to invest your trust
18 funds in commercial, consumer real estate, and
19 infrastructure investments and loans; fractionated realty
20 purchases, sales, loans to facilitate those sales, dealing
21 and management of the fractionated interests; development
22 investments in new and existing projects and businesses;
23 demand and savings deposits; checking; acceptance of
24 voluntary deposits and IIM deposits; tax-free treatment of
25 those deposits; and finally, acceptance of retirement

1 accounts -- all of which are not now provided.

2 Finally, you'll hear from me later about the

3 Development Bank, which is Phase II of the plan, but if

4 that ever occurs, it will bring some $500 million in

5 equity and some $5 million in loans and investments that

6 can be directed to the economic development of the

7 American Indian communities.

8 The organizational structure will be as

9 follows: The two left-hand columns there merely pick up

10 the two business lines -- Trust Resource Management and

11 Trust Funds Management. The Land Records and Title goes

12 over to the Trust Archiving and Land Records Management.

13 And the support units that are typical of

14 any bureau of government or any trust bank.

15 Finally, over on the right-hand side are

16 Audit and Compliance. Notably, there the MMS and BLM will

17 continue to do some of the Indian activities, but will be

18 under the direct scrutiny and control of the Audit and

19 Compliance Division.

20 We spend something like $13 million a year

21 in audited compliance of the Indian programs on natural

22 gas, based on $40 million in revenue. So that comes in

23 under this particular plan.

24 The management units will report, as I

25 indicated earlier, to a chairman and CEO appointed by the

President, and will be run by a board of directors consisting of three American Indian directors and two financial experts.

The businesses will be aligned as I indicated. And policies and procedures will be revised to meet the general regulatory standards and best practices of national bank trust departments and companies; and provide the trust powers and account administration flexibility for various types of investment.

Now, this is the common standard applicable to trust companies everywhere, and we believe that the American Indians should have the same general privilege.

As I indicated earlier, the Act requires that I come up with provisions for opportunities to assist in the management of the trust accounts and options for investment.

And importantly, this comes under the Prudent Investor Rule, which merely states that the trustee shall exercise reasonable care, skill, and caution to make and implement investment management decisions as a prudent investor would for the entire portfolio.

This is the common trust standard used in almost all of the states. It has come down through common law practice from the year 1000, when it was adopted in England, and is the standard that all private trustees use

in managing funds and investments for their beneficiaries.

Importantly, it requires the trustee to pursue an overall investment strategy to enable the trustee to make appropriate present and future distributions for the benefit of the beneficiary -- for the benefit of the beneficiaries.

And finally, it has as its focus the requirements of the beneficiary.

The present standard, I would argue, protects the trustee, but does very little for the beneficiary itself.

As you know, we can only invest the present funds in U.S. Government securities. That protects the trustee.

We would open it up for almost any type of economic development permitted to a private trustee. That is the major difference.

Under the Prudent Investor Standard, the trustee is required to consider, to the extent relevant to the decision, the same considerations applicable to a private trustee, including the criteria listed on the screen.

Several options exist for each trust holder. And essentially, the first one there is to retain the sole authority. As at present, you could give your sole

1 authority to the federal trustee, and the federal trustee
2 could continue to make the investment decision, subject
3 only to the rules of prudence and other applicable
4 fiduciary principles.
5 That means that they could invest in
6 economic development projects of the type I listed
7 earlier; whereas, now the federal trustee is limited
8 strictly to U.S. Government obligations, for all practical
9 purposes.
10 Or, alternatively, second: You could
11 appoint someone as a co-manager with the federal trustee.
12 Or finally, you could have complete control
13 over your funds. Keep them with the government, and
14 direct the government, through what we call an Agency
15 Account, to spend the money as the Tribal Council and your
16 advisors see fit.
17 So all three exist. All three exist in the
18 private sector. And those are the universe of options
19 available.
20 I've covered these new trust services, so
21 we'll go on to the next slide, which are the final eight
22 items here, which are going to be discussed next by Donna
23 and Joe.
24 These were in my original plan. As you can
25 see, all of these are in the nature of accounting or core

1 systems development:

2 An asset management delivery system and

3 accounts receivable system;

4 A trust, depository, payments system for not

5 only IIM accounts, but tribal accounts, as well;

6 Land records and ownership;

7 The general ledger and support mechanisms

8 that go with that;

9 A technology service center dedicated to the

10 trust management activities;

11 A national archives and records center;

12 And Risk Management.

13 Those are going to be discussed next.

14 The final points here, I've discussed -- the

15 significant legal changes, the independent institutional

16 structure. The fractionated heirship legislation, Joe

17 will touch on.

18 And then finally, the cleanup efforts,

19 training, disaster recovery, and probate backlog that

20 needs to take place. We will have an action plan for each

21 of these at depth.

22 The architecture and support system -- if

23 you can draw such a thing -- I think Joe drew this

24 initially. But essentially, the computer system will be

25 what they call a star system, which will have two-way

1 communication between a centralized computer -- which can
2 be located almost anywhere -- and other systems, being the
3 Treasury, MMS, BLM, the National Archives -- which is the
4 records center -- and self-governance tribes.
5 We're going to be providing desk stations to
6 over 300 tribes, and we will give you the training to
7 interact with this system, and you'll find it useful for
8 your own accounting activities.
9 There will be two-way communication with the
10 tribal offices, Area/Agency offices. And finally,
11 although it's not on there, there will be an audit
12 function which will assure compliance.
13 So we're working on this through a major
14 contractor called Macro International, who will giving us
15 a report in late March as to the costs. But this is the
16 type of architecture and support system they have
17 recommended, and the one that we are tentatively using.
18 Finally, the law requires a sunset date for
19 the Office of the Special Trustee. I was to form a plan
20 and oversee the implementation of it, and then sunset.
21 I have suggested instead that after
22 completion of the Strategic Plan, that a new
23 administration and person -- CEO -- be appointed to
24 implement the plan, and then I intend to return to the
25 private sector.

My staff in the Office of Trust Funds Management, which presently reports to me, will be transferred to this new person 30 days after the appointment.

That concludes my part of this, except for the Development Bank, which will come last. And I'd like to turn the podium over to Donna, who will talk about the IIM and trust accounting system.

MS. ERWIN: I'm real curious: If I walk out here, can everyone hear me? So I can interact a little more? Can anyone not hear me?

Let's see. We want to talk about are the systems, so that everyone understands what we're saying and what some of the rumors are.

If you find something that is a rumor, you say, "I understand this is happening" -- let me know. And let's sort of talk through this.

This side is LTRO, and this is what we keep hearing. We need to split this accounting and the resource management between the Land Records and Title and Ownership and the Trust Asset Management. Okay?

Joe will reiterate these top two, and then I'll go down this side.

LTRO is land centric. That means the title plants -- everything that you're doing with your titles

and your records. It means that you want to know: Where has that land been? Whose hands has it been in? So you're concentrating on that parcel of land that you're talking about.

And those are normally public records, because you have land subject to lease claims, and you need access to those, and it's the historic chain of title. And Joe will go down the rest of those, and he'll probably reiterate the same thing when he talks.

The trust asset management: This is typically what you see in private sector. These things are being done outside of the trust area -- the trust asset management.

The trust asset management people centric. It wants to know: What do you own? What is your concern with your individual account here?

Those records are confidential. The tribes' records are confidential. The IIM account holders' records are confidential information.

You need to -- we need to -- keep those confidential. And you're the one that is entitled to know about that and share it with who you want to share it with.

It is a snapshot in time -- not, like we said on the LTRO side, an historic chain of title. This

is a snapshot in time that says, "This is what I own today. I get a statement at the end of the month. I get a statement at the end of the quarter. I get a statement annually."

It tells you what you own then. Normally, the annual statement will give you all the annual transactions.

It's financial-oriented. You lease land; you're leasing it for money. You're leasing it for dollars. If you're investing, if you're collecting, it's all financial. You want to know what is going on financially with your property.

Then we have the statement of assets and transactions. You go to private sector and you receive a statement; you see all of your transactions that happened, attached to list of all of your assets.

Right now, as we know, the Office of Trust Funds Management gives you the financial information on your investments -- your investment assets that have been made. But you don't see, also: "Here is all the land I own. The percentage I own." You don't see all the oil and gas that you own.

You should be able to see that on one system. Not meaning that OTFM is doing all that. But it should be all comprised -- whether it's being done in the

1 field, wherever it is being done -- all of those should
2 roll up into one statement that you see at the end of the
3 month, or quarterly, or annually.
4 Or it should be able to be pulled for you,
5 at request. It should be on-line, all that information
6 updated. And if you want to know what you own today, you
7 walk in, that should be available to you.
8 The collection and disbursements, we need to
9 get much better. A lot of you have been out at our IIM
10 meetings, where we discuss in IIM that we want to be able
11 to tell you -- you want to send the money to a lockbox --
12 and we'll get into that in second.
13 And we need asset ticklers. We sort of
14 confuse those words: "asset ticklers" and "accounts
15 receivable." And we'll get into that in a little more
16 detail here in a second.
17 And investments; it needs to report all of
18 your investments. Your investments include your land.
19 Your land is part of your investment portfolio.
20 Our IRMS application is insufficient. We
21 keep hearing this over and over and over -- whether it's
22 GAO, whether it's OIG, or whether it's Congress. And
23 we're hearing the same thing coming out of the Macro
24 study, which you'll be hearing about. We cannot meet the
25 commercial standards. We cannot give you all that

information that you need from one central point -- from any point.

I mean, you should be able to walk into your Agency and get all that information. You should be able to walk into an Area and get all the information -- or Regional office, or wherever anyone happens to be. Anyplace, you should be able to walk in and acquire that information.

The technology is out there. All of you have been engaged with people or you've seen people who have what they call "beehive terminals," "dumb terminals," where you can input, you can retrieve. It's not like a PC. Those would be very unusual if you walk into a bank.

I always get on my soapbox: We as Indians are entitled to the same kind of technology that we see in the private sector trust departments.

The redesign is expensive and it's cumbersome; we keep hearing that. It does not integrate with LRIS. In other words, we've had Macro, and we've been out and we've said, "Show me what you own," and we'll see one or two assets.

We'll go to the other systems: "Show me what you own," and you have 37 or 40 assets.

And that's a true case of what we're seeing. And it does not fulfill the Secretary's trust

1 responsibilities.

2 So we need to get commercial trust asset

3 management systems that are available and that are more

4 cost effective. We don't need to reinvent the wheel.

5 There is approximately ten trillion dollars of assets

6 within the United States being managed by trust companies

7 off of systems that have already been invented for this

8 very purpose. And they are not unique. We'll talk about

9 where the uniqueness comes in, in just a second.

10 Okay, comprehensive system: Trust asset

11 management, trust resource management, and leasing. That

12 means -- and this is where we get some confusion. Where

13 are we going to be doing this? Are you going to

14 centralize?

15 No, no. We're saying that everyone needs to

16 be utilizing a system -- if it's at the Agency, if it's at

17 the self-governance tribe.

18 You lease something, you sit down and format

19 that screen, you input the terms of the lease, where the

20 property is, who owns it, at that point.

21 Then everyone sees it immediately, whether

22 we're sitting in Albuquerque, whether Elouise is sitting

23 in Browning, Montana. Everyone has access, if it's your

24 account, to see what's been leased right now and what are

25 the terms of it and when is it due.

So the leasing can be done anywhere, but it needs to be done all within one system. This needs to be moving -- not a system over here that's for leasing, and we're hoping it's matching all the other systems.

So when we lease, if we do that formatted screen -- and we'll talk about that a little while later -- it immediately creates a tickler system -- what we've been referring to as "accounts receivable," and we're trying to change that term a little.

And let me explain why. We're trying to change that term, because in trust industry, you have a tickler system. Immediately you will get a report that says, "These are the things that are due." You will get a past due report if they're not paid.

When you say "accounts receivable," for the accountants out there, you all know that you're looking for a dual-entry general ledger system.

In trust, what you have when you talk about balance sheets and general ledger -- and you can refer to some of the Comptroller of the Currency, which is the bank examiners for trust -- what they consider a general ledger is that you list all of your assets that you own. And they should balance down here. Your liabilities are all the accounts that own those, and those should also balance.

So it's a little bit different when you talk about fiduciary responsibility. You talk about ticklers to make sure that you're getting things done.

Past due reports: We talk about billing. We don't think we should be billing. We sign that lease, we put it up on a formatted screen -- and you can go to all the trust departments, you'll see this. They put all that information in. A coupon book goes out. If you have not paid that, we will be automatically sending out letters and on the phone to you.

So we're saving the money for the people who are paying on time, and dedicating it to making sure those payments are coming in like they should.

Collections, we've talked about before. Most of you have heard about the lock box system. When you pay your house payment, you pay a credit card payment, you pay your oil company -- Phillips Petroleum, or whoever you have for a credit card -- it goes to a P.O. box.

That P.O. box is not the oil company. That P.O. box is not at the mortgage company -- unless the bank is your mortgage company -- but it's not even that unit.

It goes to a group of people that do nothing except slice envelopes open, actually image that information -- the checks and the billing information -- and they can electronically send it over to the oil

1 company or to the mortgage company, saying, "Here is who
2 has paid."
3 So if someone is on vacation, if you're not
4 sure who the money belongs to, it's still starting to earn
5 interest, on that evening. So that's what we need to get
6 to.
7 And then the accounting: We need to have
8 all the accounting much more updated.
9 The investments: We need to, as Paul
10 discussed, go to the Prudent Investor Rule. I have to
11 distinguish that from the old "Prudent Man Rule." It's a
12 little more liberal in what you can invest in.
13 And disbursements: We need to be able to
14 get you your disbursements timely. If you have a checking
15 account, you need to be either ACH -- which we'll talk
16 about in a moment -- or EFT; wiring it, getting that money
17 to you the quickest way we can.
18 We also, in addition to the standard trust
19 systems we're talking about, we need to be able to link
20 between LTRO and the Trust Asset Management System. In
21 other words, we know that we put this asset up when we
22 leased it, and this is who owns it.
23 We need to be bumping -- either daily,
24 weekly, or whatever is determined to be needed -- up
25 against that land ownership system that is separate.

It's like an audit. You're checking to make sure that we don't have any of those situations where there is one asset here and there is two assets here and there is 30 or 40 over here.

We need to make sure that every week, or whatever the determined time is, depending on what the asset is, that you're bumping them up against each other and then you're working the exceptions.

This system says you have this much. This system says it doesn't match. And then you have someone doing nothing except working those exceptions to see why these systems are out of sync.

So it needs to be done very much on a cycle, so we know what we're getting.

We need all assets listed on the statements. I'm repeating some of this, but I want everyone to understand.

When you get a statement, you need to know, "Oh, I got an oil payment from lease so-and-so." You can flip to the asset statements and say, "Oh, that came from Conoco, and here is the reason," or "This came from so-and-so, and here is the description of my land."

It should be on the transaction. You should see the assets so you know where you're getting the money from.

We need to include the decimal ownership in the system. You say, "Okay, this is how much I own of that land."

When we were out this summer, we heard over and over: "I'm not sure what my decimal interests are. I don't always see them. I need to go into the Agency and get this listing here, but you're reporting it over on the IIM statement."

In standard trust, it automatically goes together, and you know where you're getting the money from, and it's much more reader-friendly.

It includes mutual fund capabilities. That means that you have -- right now in the IIM, we talk about all your capital gains. Some of that might not be real equitable in the way that money is spread, because of the way the system is set up. They don't always match.

We will fund money out to the field. Once it's funded to the accounts, they might not match. We're making that, now, one of those things that they must do, that is very manual.

Some of these are -- we're going to run through this real quickly. I want you guys to look at yours, take them home. Read them. These are not all-encompassing. These are just giving you a few, so you get the idea.

You can customize statements. Now, that doesn't mean we're going to customize 300,000 statements. That means that we'll get with everyone and we'll talk about what kind of statement is most user-friendly, and try to design different groups, so that different people who need different things on their statements can see them.

We'll give you several options of: How do you want your statements? Do you want to see every transaction? Do you want your oil and gas summarized? Some of those basic things that you can look at. We'll give you a choice. We'll work with you for: What is it you want to see on these statements?

This is a normal trust transaction system. It says that I had a treasury note dated 6/30/93, received interest. This looks much more like you see the OMNI statements now.

You have a mobile home. Socorro Electric Cooperative; you paid an electric bill. Payment on account to Chevron Gas Company. Treasury notes mature. All of those should be together.

Now, these others are going to get pretty small, but I want you to take them and look at them. This one, you're not going to be able to see on the screen, but if you look at yours, this is a summary: Here are all my

1 dividends. Here is all my oil and gas. Here is all my
2 cash that happened. My maturities.
3 You need to look at those and understand.
4 You can have all that information. It should all be
5 contained in one system.
6 Here is an assets statement. This one is
7 real small. We've condensed it, so not everything is on
8 here. This is like the short-term. When we start looking
9 at, instead of having one big pool, you'll have some money
10 that is sitting there. If you have an IIM account, tribal
11 already knows that they have a short-term fund.
12 But you'll have some money sitting there, so
13 that you can invest your money in the longer-term
14 securities, make better interest, and have some liquidity
15 there, so if you walk in and need money, you can get
16 access to it.
17 So this is telling you: Here is fixed
18 income, treasury notes, equities -- which, if we go to the
19 Prudent Investor Rule, we'll be able to look at investing
20 in some equities, and everyone knows what the growth has
21 been in stocks.
22 Real estate: You'll see your real estate.
23 You also can get this with your actual
24 decimal interest on it, and mineral interests that you
25 might own. These are just various examples, and I just

want these up here so you know that they're available.

The same thing is available on real estate.

Here is money, that you can have an expense and income report that says, "This is how much I spent and this is how much I received." Here are all the expenses associated with that real estate. You're entitled to know all of those.

This is a production receipts register for oil and gas. It will just tell you the postings: Here is your September payment, your October payment, your November payment. The lease volume, gross receipts, production taxes.

Anything that you need to know should be available to you on there.

The same thing: You can go to one purchaser and say, "I don't think Conoco paid me for everything they were supposed to, this month" or "this year. Let's go back and see exactly what they paid me for this particular property."

Production, revenue, and expenses.

Like I say, you can look at these. But I'm trying to tell you: Once you have all that information in one place, you can have unlimited reports of what you would like to see.

And these are very standard. These are

property reports that tell you that this is an oil and gas lease, and this is what type of interest it is; the last day it was purchased, the last price, the last amounts.

And we have sort of boxed some of these up, so they're not going to tie into everything. But what we want you to know is if you have the information, we can get it back out to you.

Here is the same slide that you saw in Paul's presentation, which you'll see in Joe's presentation. This talks about a Trust Development Administration. All it's saying is we're not going to go to distributive processing, probably.

What we're going to look at is say we can tie all these systems in. If you're at the Area Office, the minute something is leased, you can see that it's been leased and for how much, and have all the information pertaining to that lease.

If we post something at OTFM on your treasury notes or something such as that, you can see it immediately.

Agency and field still can continue to post, just like you're posting now. Post at any point out there.

The tribe is a self-governance tribe? They're tied in the same identical way.

Everyone knows what is going on, across the country, in their account, if there is something happening at any point.

Tribal office? If you're not a self-governance tribe, but you have an inquiry, you can look and say: Was that supposed to post today? Did they do my disbursement today? Did I get the money on those MMS payments I was expecting?

You can do that. Everyone is tied together, so you can get all this information right off one system -- the Treasury with the lockbox, MMS, BLM. So everyone can look at the pertinent accounts.

Now, remember, there are controls and securities that say that you can look at things that are pertinent to you or your tribe.

And that's another question we're going to get into before we start to talk about self-governance. If any of you went to the IIM meetings, we had slides showing how mobile people are. They're being serviced out of this Agency, but where the people actually live that are being serviced, they're all over the United States.

So we're talking about: How can you get better access to that? How can you walk into some other office and look at a jacket file that is already there, by imaging, and having it all consolidated on the same

system?

Here is the same situation we discussed. You'll have an input, a formatted screen. It includes the asset description, ownership decimal, lease terms, and it will immediately create a tickler. That is, the minute it's leased, you'll know what is going on.

You will be sent out a coupon book. When the funds are received, they're sent to lockboxes at the bank. The data is sent electronically back to the input. It's verified and posts right back to the same account.

If it's a partial payment, they know this. They'll split it to the decimals, automatically. No one is intervening.

This is "Any System Must Have." You've heard these. You've seen these. I want you to know where we took this particular slide from. I took this out of the actual OCC, which is the bank examiners for trust -- fiduciary bank examiners -- their actual handbook.

It says, "This is what systems should have":

Accurate, reliable accounting data.

Timely management and account information.

High levels of operating efficiency.

Cost effectiveness. We all know our budgets are shrinking.

Full compliance with laws, regulations and

policies should be built into these systems.

Accommodations for new financial products and services, and future growth.

If you're an oil and gas tribe, coal seam gas didn't exist eight or nine years ago.

Collateralized mortgage obligations, which a lot of you are investing in now -- CMO is the common term -- they didn't exist several years ago.

There is no need for us to go out and reinvent it, when every person in the world who is investing is utilizing these same things. The systems already exist out there. There is a users' group, and you would become the users' group, also.

You would say, "Hey, we have this new product." Obviously, everyone in the country, whether Indian or non-Indian, still needs the same accounting or the same procedures for being able to deal with this. What do we all do, and how do we share the costs?

The IIM system must also feature -- and we said "IIM system" up here, but really, I think our system that we have for the tribes, for the joint system, must also have ACT disbursements -- automated clearinghouse.

If you're a federal employee, that's how you get paid. Social Security recipients, that is how the money is paid to your bank. It's something called

1 automatic clearinghouse.

2 Same-day transfers, EFTs. You need the

3 money the same day. It's like a wire transfer, directly

4 to your bank. We're using a lot of these.

5 We have discovered that, due to a lot of

6 weather problems, we've had Alaska, we've had Minneapolis

7 saying, "We're having a real problem here. We have a snow

8 day, things go down. We're not posted over on IIM, or

9 OFSHA, or an account here. We can't get our money out.

10 We can't get our transactions out to you."

11 So they're saying, "What do we do?" So they

12 have started asking us to consolidate some of these back

13 in Albuquerque -- print these out of Albuquerque.

14 What we've discovered -- we do tests before

15 we do that. We mail envelopes that same day from

16 Albuquerque, and from wherever the computer is that has

17 been printing the checks -- the IMCs out there in the

18 little data centers.

19 We have discovered that we have never -- the

20 only person we've had a problem with is in Alaska. But

21 everyone else was getting them at least the same day, or

22 one to two days earlier, than they were getting them from

23 being mailed close-by -- because of the communication

24 problems, transmission problems, weather problems.

25 What we discovered -- and we're doing these

manually for now, because the system won't accommodate it. What we discovered, in Alaska we were meeting the same time frame, but they seemed long to everyone. So we visited with them and said, "How can we do this?"

What we're doing is sending same-day transfers up to people's checking accounts, and they really enjoy having their money, knowing it's going to be there the same day. As I said, we're doing that manually. But the new system will accommodate it.

Mutual fund accounting, which means that the IIM is much more equitable in the way we spread that interest that comes across, and the accounting for that interest.

You will have, also, checking, savings, and ATM access. Now, I got caught on this one time. People said, "Everyone is going to have ATM access?"

No. If you're a flow-through account, when the money comes in, you'll have that capability. If you're a controlled account because of being a minor, you still will have that control over there.

We can release certain amounts of money, though, if you have a budget, and if it's a controlled, supervised account. If it's a minor, you can release so much money out of there, or if you're a supervised account, we can say: "Here is your money that you can

1 access through an ATM card."

2 And then telephone access: We're working on

3 putting in some additional 800 numbers. Because we

4 realize, as we said, as mobile as our society is, you're

5 going to be calling long-distance to find out about your

6 accounts. So we're working right now on getting some

7 additional 800 numbers out in the field. You can be able

8 to call, always push a zero, and talk to a person.

9 But if just want to know: What is my

10 balance? What is my last payment that has been received

11 into my account? You will be able to dial it, push the

12 buttons, put in your code, and be able to access that

13 information, at any time.

14 That doesn't mean you always have to talk to

15 a machine. You can push a zero, and someone will be right

16 on to talk to you.

17 Most of you know that we -- somewhere, we

18 dropped. This is an IIM/tribal/federal work team was

19 formed. I think, as we were trying to consolidate our

20 slides, sometimes we try to consolidate a little too much.

21 But this group is made up of IIM; some of

22 the user groups; the allottee associations; the tribal

23 participation was from large tribes which had large IIM

24 allottees in their groups, in their tribes; and from some

25 federal work team, which includes superintendents,

Assistant Area Directors, Realty people.

So we pulled a group together, mainly made up of tribal. They had more votes than federal did, to be able to participate in this team. And it was for med in January.

We talked about this out in the IIM. The team addressed ways to solve outstanding IIM problems. What were they hearing? What were they having a problem with?

We did a big list of those in January. It was tough. We all worked through it. Talked about where the problems were, what we all agreed or didn't agree with.

But then we went out and did five tribal IIM consultation meetings during the summer, last summer. We were in Portland, up here. And we have our overheads down here, because if anyone was here during the Portland meeting, you will remember that the electricity went out in the middle of the night and we were all running around, with no makeup and straight hair and no showers.

But we had a good time. We had a great time. Met with people, learned things, took all our comments back. And then we gave these back, in January '97, to the IIM/tribal/federal work group.

This was the way they were prioritized:

1 Tribal/nonfederal was accounting -- we were laughing that
2 they all came out a little bit different. But
3 tribal/nonfederal, accounting was the most important
4 thing. They want proper accounting. They want to know
5 what they have, what they own. They want to see it all on
6 a statement.
7 Realty problems: "I want to know that I'm
8 getting a fair price. I want to know that I have the
9 right amount. I want the appraisals speeded up" --
10 anything that to do with Realty. Very high on the
11 priority list.
12 This is customer service and training. Need
13 training out there. Do not want my customer service taken
14 away.
15 I mean, that is not a consideration. What
16 we have considered is, for some of those back-room
17 collections, is lockboxes, things like that, that we can
18 do so that when you walk in as an account holder, you
19 don't have someone saying, "Excuse me, but I can't talk to
20 you right now. I need to go make my deposit. I need to
21 get my entries in. You're going to have to sit and wait."
22 We want those people out in the field being
23 dedicated to customer service, so we have got to get that
24 as our top priority.
25 We have some places where we have more than

enough people; some places where we have less. So we're trying to balance that, talk with you, and say: What do we really need out there to service your community?

Because it's going to be different in different places.

Policies and procedures need to be in place and updated. And records management.

Now, when we went to the federal -- you'll see all three of them were the same five top items. They just changed in order a little bit. But it's very important that we get these things done. You've heard this over and over.

We're going to go into audit findings. These are our audit findings from the 1995 audit. Our 1996 is ready this week, we hope. It's over at OIG. The Inspector General will actually release that report. It takes him several months.

But from the '95 -- and we'll see a lot of this on the '96; a lot of this is system-oriented -- cash out of balance. You've heard about the general ledger versus the IIM: Still out of balance. Not out of balance going forward, since we have taken this over. But the prior period -- prior to 1992 -- we still have some out-of-balances going back to the '80s and '70s, that we have to get cleared up.

Treasury versus general ledger. That's normally a reporting problem. But the same thing: old problems. The new one, we have some controls in place, so we don't see this happening.

Improper amortization of premiums and accretion of discounts. Part of our problem is -- and this is for our financial statements. We're required to report under the federal -- not fiduciary standards, but put in a new system to accommodate this.

These should be done under the fiduciary standards and then sent to the tribe, and then if the tribe needs to amortize them for their general ledger or whatever, you can do that. So we're working on that one.

Budget clearing house: Inaccurate. We have brought those up to date. We haven't had a problem since '92. Prior to that, we still have some old things that are hanging out there.

Inconsistent use of the policies and procedures. We go out to the field, and we are now having quarterly calls with all of our field staff, monthly calls with the Area Accountants to be passed along.

A monthly newsletter. Questions from the field -- "What is going on with this?" -- that we answer in a monthly newsletter.

But we've got to be using those DOPs -- Desk

Operating Procedures. We've got to get consistent wherever we are.

Codes: Not using the same codes. And we'll get into that here in a moment.

Overdrafts: We cannot allow overdrafts. These are all old overdrafts. We have a few that are occurring, but as they are, we're immediately on top of those, and we're on line. We actually have a system with Treasury to look and to know what is coming in. So we've tried to take care of those overdrafts, but there are still some old ones out there, prior to '92, that need to be researched.

IIM investment earnings: Not equitable. Interest not properly credited. We've already discussed that. It's got to be a top priority for the system, so that we are not funding out to the Area, the Agency, and then they're posting something different from what we see. So we need to get a system control on that. Now we're doing it manually.

IIM Special Deposit Accounts are outdated. We'll talk about some of those in a moment; we'll see the figures across the country. Some of those are legitimate, but not at the number we have.

Lack of comprehensive policies and procedures. We need to make sure that we're using

1 policies and procedures, and that everyone is using them
2 the same, and that we have them for absolutely everything
3 that we're doing, and that we have some money in the
4 improvement budget to get those things brought up to date
5 this year.
6 And then inadequate BIA controls:
7 Disaster recovery: There is not an adequate
8 disaster recovery. It was canceled last year. They now
9 have one in place, but not an adequate one, if something
10 happens at the OSC.
11 The password controls are not adequate.
12 They're changing, but people are leaving and they're not
13 keeping up with that. And BIA is still doing all of our
14 data. They're running the data center for us.
15 And application changes. New programs are
16 not consistent and are not being tested, so we find bugs
17 in them, once they're out there, that cause some serious
18 errors.
19 Here are some historical and persistent
20 problems:
21 Life insurance policies were purchased at
22 one Agency for minor accounts -- 230 policies from seven
23 companies. The majority of them was from one company.
24 The company was bought. Some of the premiums were paid up
25 front. They were in a file cabinet. Some of the premiums

1 were paid annually.

2 And when the company was bought by another

3 company, they quit paying the premiums. They weren't

4 billed; they didn't pay. They weren't on the books to be

5 looked for. So as a result, they actually lapsed.

6 So we have some losses that we're trying to

7 determine, and we have people out at that Agency from our

8 audit staff, who were out two weeks ago, and they're back

9 out this week, trying to determine what is going on there.

10 Lack of vital statistics documentation:

11 We have to know birth certificates. Someone

12 said to me, "Can we use CIVs or tribal enrollment

13 records?"

14 You can use tribal enrollment records. My

15 child is six weeks younger on his CIV than he is in actual

16 life. So, we need to see the birth certificate. We need

17 to know that.

18 This is an interesting one. I have one

19 Agency that, as we're going through -- and everybody has

20 heard these stories of "OTFM is coming out and looking at

21 all our jacket files." Yes, we are. There is a major

22 project. We need to know these vital statistics.

23 Like, the people back in Albuquerque were

24 feeling real badly, because they saw this account, and

25 they said, "Oh, my, this child died the day after he

turned 18. I mean, that is just tragic."

And they were all feeling so badly. Well, then we discovered: That whole Agency, all their minors died the day after they turned 18. That's how they were closing the accounts.

No, that's not the way we close the accounts. You have to code them and have good information in there.

Inconsistent use of management codes: Superintendents' holds should be temporary or should have a good explanation.

We always hear two things in OTFM and all the field staff, and they hear it over and over: "Customer service" and "Paper your files."

If we're using an inconsistent use of management codes, that means that what we're doing is that, "We don't know where this person is, so we say it's a superintendent hold." We're not looking for them, because we don't know if they're really a lost account holder out there.

So if we have a superintendent hold, we still should be sending statements to the guardian. If it's a foster family, we should be sending it over to Social Services. If it is a minor, like I said, we should be sending it to the parent. If it's an estate, is there

a guardian or executor? If so, that's where we should be sending these statements.

So we need to be using these management codes for what they mean. When I give you information and statistics, they're as good as whoever coded them.

Number of statements going to the superintendent: As we said, same thing. Management codes and these go together.

I mean, if I know that this is a minor's account, I need to see a minor code. If we have a superintendent hold, there had better be something in the file that tells me why we are holding that.

We are compacting. We are going into self-governance. We are out inventorying files, to turn them over. And what we're discovering is that we have 16,000 files and probably somewhere around 3200, I think it's going to boil down to, accounts. We have 16,000 closed files out there. We need to ship those out. We need to store those things, so that we can find them and have access to them.

One of the things we're finding is that you might have four people with the same name. We're saying, "Do not file your files alphabetically. You pull the wrong one, send a check, get the wrong account number."

We want them filed numerically. So, you

find the name, have the number, then you go pull, numerically, that account. It's just a better audit check. We're working on this.

Loan programs: We find that there are loan programs out there where a tribe makes a loan, and then what happens is all the income is going to the tribe until the loan is paid off.

Well, now, if you only owe $5,000 on that loan and $10,000 comes in, the $10,000 was going out to the tribe. And supposedly, it was going on to the minor. But we need to be controlling those type of loan programs.

Voluntary deposits: As you've heard, and as Paul's plan says, he's very much in favor of voluntary deposits, but we have to get the laws changed. Right now the Secretary's policy is, "We do not accept gaming money for minors. We do not accept gaming deposits."

We have a controversy on that. We have it in the Solicitor's Office, because if you read the actual statutes and the regs, it says that trust money is any tribal activity on tribal land. So -- but we have to watch voluntary deposits.

We do not take them to hide them from IRS. We do not take them to hide them from the courts for things like liens that are on the tribal accounts. We sort of stuck those over in "special deposits." Special

1 deposits and voluntary deposits need to be very much
2 something that everyone is looking at.
3 We have lack of controls; same thing. We
4 have got a lot of special deposits that have been there
5 for a long time that are being used for things that they
6 should not be used for. In fact, we make several check
7 copies of telephone payments, electric payments, that are
8 made out of the special deposit accounts.
9 Closed accounts and addresses unknown: Lots
10 of those not properly coded. If the account is closed, we
11 need to close it so it will eventually be dropped off the
12 system.
13 The OIG has looked at compliance with the
14 public laws concerning the use and distribution plans of
15 two accounts. Remember that the reconciliation did not
16 consider compliance except for the five tribes -- is that
17 correct? They have found -- now, this was pretty bad, and
18 we're just starting to look at these. These are two
19 accounts we looked at, and of the two, neither one was in
20 compliance. So it doesn't sound like a good record right
21 now.
22 One of the things that OTFM keeps saying is,
23 "We need to have a use and distribution plan and a public
24 law." Because when those disbursements come through,
25 we're the last audit check on those, the last monitoring,

to make sure we're in compliance.

We need to make sure -- we have one where the principal was not to be invaded. It's been invaded to the tune of $4 million. It states in the public law, "Not to be invaded. Leave that principal alone."

Fifty percent of the income in another account was to be retained, but it's been distributed.

So everyone needs to know. They need to have a synopsis. It should be imaged up on the computer. You can just pop it up, and it says, "Here is what this is to be used for. Does this comply?"

One Area -- here is our superintendent holds. We talked about the superintendent holds and the problems that are out there with statements. The law says that we will send quarterly statements to everyone, and if they're zero, you're going to get them for four times. Make sure that you agree with that, and then they should go away.

But they have to be coded "closed" before they'll go away. One Area has only 933 IIM accounts, and of those, 372 were being addressed to the Superintendents:

X86 - closed accounts: 251.

Now, we admit, that's a big bulk of those. One of the reasons we are in litigation, we're working on how to move those off the system and make sure that

everybody is happy with the way we're storing them.

But, N71 - estates: 33. We need to know: How long has that been an estate? That's what we're doing in every Area, every Agency. And is there an executor or administrator of this account? And why are we not sending that statement to them?

Superintendent holds: Why? We've got to know why. And we'll be at every Agency and every Area, looking at these.

N63 - minors' accounts that have a superintendent hold on them. There is a code for minors' accounts, but you should be addressing these out to the minors' parents, unless there is a reason not to. It might be going to Social Services.

But we have to make sure that we're getting the information to people. If you're a superintendent hold and you've got it on hold because they're elderly and not taking care of their finances, they're still entitled to know.

We have to draw that line of "Where are we impeding on the civil rights of people and where do we really have the right to be there?"

These are the ones we're working on right now: Aberdeen, Billings, and Phoenix. And these are just some of the codes, so you can see what is going on out

there and how many we have to look at.

And these are the same numbers that you heard from Paul a while ago: 16,828 duplicate accounts throughout the 12 databases. That's the same account number -- not the same person. We have that problem, too. If we go to one system, we've got to get rid of 16,000, almost 17,000, duplicate account numbers.

45,624 accounts coded as Whereabouts Unknown. This figure is going up, because as we start making people code things correctly, we discovered that they had the wrong code on there; it was a Superintendent Hold, and it should be Whereabouts Unknown, and no one is out looking for those people.

Here are the J accounts, judgment accounts; should be minor judgment accounts. We're using these all differently all across the country.

27,000 older-than-18 accounts. This is the 27,000 that are older than 18, as indicated in the date of birth. That doesn't mean they are, but that's the way they're coded. They either do not have a birth date in there, or they have one and it's indicating that they're over 18. There are a few of those, we agree, that could be held to 21, but that is still an enormous amount, and most of it coded as minors -- not accurate.

One of these accounts contains almost a half

1 a million dollars for an individual, while another is
2 coded this way, but it's labeled as an escrow account.
3 Our statistics are only as good as the
4 coding going on.
5 And then these are the special deposits
6 accounts, which have $141 million. Of those, 6,000 have
7 had no activity during the last 18 months and contain over
8 $2 million. We've got to look at those. We have to know
9 why.
10 We have Areas that do not -- in those, we
11 have Areas that do not post interest to those accounts,
12 and they're not compounding the interest. As a result,
13 though, when they come in to pay the person, they
14 compound.
15 So we have some accounting problems, that
16 we're trying to get past those. We've sent out a new
17 program on how to close those and how to calculate
18 interest.
19 These are deceased individuals. These are
20 individuals which are in overdraft.
21 Yes, Paul quoted you this $40 million
22 figure, which a lot of that is in those unposted interest
23 accounts, where they've been overdrafting and giving the
24 wrong amount of interest.
25 And these are just more than zero, less than

a dollar, with no activity for 13 months.

No activity for at least 18 months, and not coded for deletion.

Number of individuals with no Social Security numbers.

As you can see -- you wonder why we're asking for so much money. This is unbelievable. I've sent people who have come back with frozen hands, who have been in warehouses trying to find jacket files. It's an incredible situation.

We always say it looks like we have a sweat shop up on our ninth floor. We have shipped records in. We have inventoried what's in the jacket files, sorting them back out, sending them back out to the Agencies.

It's a horrendous thing to try and go through. You've seen some of the problems. And every day -- I mean, I am hearing the ones last week, that aren't even up here, about here is a child who was adopted when she was three years old. Every per capita, half of it is to go into the minor's account. Half of it is to go to the parent.

She was adopted when she was three. She turns 18 and says, "Where is the other half of my money?"

It's been going to her birth mother.

We can't have that. We've got to get

control of these accounts.

I tell everyone: If you give money to a minor when they turn 18, they are entitled to know where every cent of that money went. If you take over an elderly person's account and they pass away, their beneficiaries are entitled to know where every bit of that money goes.

Where did you spend it? If you don't have a receipt and you say they bought clothes -- I have one that just came back last week, that said, "Well, we've been spending $600 about every three or four months to a furniture store for bedroom furniture for this one child."

There's a problem. So we have got to get the controls. These are the magnitude of the historical and persistent problems. They are still going on, until we can get everything cleared up and get those policies and procedures and systems in place. So a significant investment needs to be dedicated to these cleanup problems.

We're all entitled to -- everyone who is an IIM account holder or a tribal account holder -- to having answers as to: Where has my money gone? And how has it been invested? And have I gotten all my money?

Thank you.

MR. CHRISTIE: What we're going to talk

about over the next few minutes are three main items. We're going to talk about Land Title and Records Office, we're going to talk about a National Archive System, and we're going to talk about fractionated heirship problems.

As Donna stated at the start of her presentation, we need to separate and differentiate between the Land Title and Records function and the Trust Asset Management function.

The LTRO is land centric. That means it centers on the land -- the description of that land, who owns that land, and the percentage, down to the decimal, of that ownership.

It is a public document. Just like if you walk into any office in the county or the state and need to know who owns what, you can get that information.

It is to provide a historic chain of title. Who owned it in 1906? Who owned it in 1994? Who owned it in 1995? And who owns it today?

It is nonfinancial in nature. There is no financial information on this information. It doesn't tell you how much it's worth. It doesn't tell you how much lease is coming off of it. It is totally nonfinancial.

It provides an abstract of that title. You should be able to get a title opinion based off of that.

And the current LTRO system does that.

And it should be able to provide a mapping source, to map out what is on that title and where is it located on that piece of land.

The present LTRO system provides both the abstract and the title opinion, but in essence, if you go to the public sector, these two are provided separately apart and from the land title office.

And the reason is that this is basically a conflict of interest, for the office that is tracking the land to also be the office that provides an abstract -- the background of that piece of land -- and to issue a title opinion as to whether or not they did their job correctly, and is the information that is related on that correct?

So this is an area that we need to look at when we go into a new Land Titles and Records Office system.

Now, as we stated, you have to separate the land titles from the trust asset management system. So what we're looking at over the next several years is: Which of these systems needs to be looked at first? Which needs to be upgraded first? Which ones need to come on line first, in order to bring the total system up to a fiduciary standard?

The present LTRO system is adequate over the short term, over the next three years; so it is not the first priority.

The Trust Asset Management side is the first priority. Does this mean that we won't upgrade the LTRO? No. We have to upgrade LTRO. But it's not the first priority.

But one of the first things that we have to do to the present system is that we have to streamline it and get it back to doing what it's supposed to be doing, which is the land titles and records function.

The first priority is to take the leases that are currently being put onto the land title system and stop that, and put the leases over into the Trust Asset Management side.

We now have a huge backlog in the LTRO system because we're putting leases on there; and because we're putting leases on there and have a backlog, we can't get a title status report out to an Agency or to a tribe or to an individual in a timely manner.

So there are some immediate things that we have to do. But the present system is not the first priority. The Trust Asset Management system is.

Secondly, we have to take a look at the probate backlogs, and we must get them cleaned up. We

1 cannot distribute estates out there until the probate
2 backlog -- to the ALJs, to the Agencies, to the
3 administrative law judges -- and that information gets
4 back to us and we update the title to reflect the probate,
5 so that then the money in that estate can be disbursed and
6 utilized by the appropriate owners of that land.
7 The ownership must also be accurate and up
8 to date and timely. And as I said, because of the leases
9 that are being put on there, we're not able to provide
10 this ownership and make it accurate, up to date, and
11 timely.
12 You can't make a distribution over on the
13 Trust Asset Management side unless you've got the correct
14 ownership, which then tells you the decimal distribution
15 that you have to use to distribute the funds. So we must
16 have this as accurate and up to date and timely.
17 And as I was just stating, it must be
18 integrated with the new trust management system, so that
19 it provides that information over quickly, timely; and as
20 Ms. Erwin said, we have to bounce those two systems
21 against each other to make sure that we are auditing those
22 systems together so that they are reflecting the same
23 ownership, the same decimals, so that when you get a
24 distribution of the funds coming in through the Trust
25 Asset Management system, that we're assured that it is

1 integrated with and reflects the ownership in the LTRO
2 side.
3 The next thing that we're going to talk
4 about is the National Indian Fiduciary Records Center.
5 The goals of the National Archives Center are:
6 To provide full documentation for the trust
7 transactions from the encumbrance of an asset through the
8 distribution of the funds to the owners.
9 It is to provide secure storage of original
10 trust records into perpetuity -- not for five years, not
11 for seven years, not for 20 years. But into perpetuity.
12 And if you look at the display out here by
13 the table where you signed in, these are pictures that
14 were taken of records in the Fed Sim report, that we found
15 in a drawer in D.C. They were never made a part of the
16 record, to show the actual condition of the records out
17 there.
18 And so we found those. We've made pictures
19 of them, and we're going to be providing those pictures to
20 everybody, so that you can see them and see the condition
21 of the records out there.
22 And a goal is to provide electronic images
23 of all documentation for audit and research purposes. If
24 you pass away and your children or your children's
25 children come in and they want to know what land you owned

and where it was at, what kind of income you received from it, and they want to check out that rumor that they had always heard that you never got the amount of money that you were supposed to have gotten for your trust land, we ought to be able to go back into those records, whether they're electronic or whether hard source, and that individual ought to be able to come in, do the research on that, and satisfy themselves.

You can't do that today. You can't do that for land that you currently own. And we showed in the reconciliation that we can't go back 20 years, much less go back 50 years or 100 years.

The objective of a National Archives is to provide a consolidated facility for the trust records management function. When we did the reconciliation, we had to go to 15 different records centers. Some of those records centers had been closed down by the National Archives, and those records disseminated to various other centers.

We also found that the Archives had been destroying information; that they would sent little notices to the Agency and say, "Hey, unless you tell us differently, we're going to destroy this." And they were destroying trust records.

The objective is to move to a paperless

1 trust system, including the records management system.
2 Which means that by the time we get into the next
3 millenium, that rather than producing paper out there and
4 having to store paper, we need to be moving into the
5 information age where we image that information and then
6 we electronically store that information, so that you can
7 have access to it into perpetuity.
8 The proposal is to establish one center to
9 house all records that support the receipt, distribution,
10 investment, and disbursement of Indian trust funds.
11 Does that mean that you have to come to this
12 one center to see that information? No. And we'll get
13 into that a little bit later. But if you want to come to
14 that center and see the hard source copy of that
15 information, you may do so.
16 The records that we're talking about are
17 authorizations for the use and/or extraction of natural
18 resources from Indian Trust Lands; production
19 documentation related to those lands; the income
20 collection documentation; the income distribution
21 documentation; and the investment documentation, all
22 related to those trust lands; and any disbursement
23 documentation.
24 The current possessor of the records is the
25 Bureau of Indian Affairs, the Office of Special Trustee,

Indian Tribes, Minerals Management Service, Bureau of Land Management, USGS, U.S. Treasury, Federal Records Centers, National Archives, and General Services Administration (ITAD).

As you can see, they're all over the place. They're all over the place. It's very hard for you to be able to go out and find the specific information that you want, because it's all over the place.

Now, let's look at the importance of the records. Again, this is to prove the basis for and the accuracy of the Federal Government's management of the trust resource and income belonging to Indian tribes and individuals.

This is your rights, your basis for your own judgments. And it is an essential element on which an audit is based. If you don't have the records, you can't audit. If you can't audit, you can't prove if the federal government did or did not live up to its trust responsibility.

Now, let me take a quick look at what we found in the reconciliation project or what we didn't find in the reconciliation project. The reconciliation project did disclose that records were missing, that they were destroyed, that they were unorganized, that they were at multiple locations, that the importance of those records

1 was not defined, that the labeling of those records was
2 not standardized, and that there was an unfocused
3 management function on records.
4 We've had several GAO audits, National
5 Archives audits, audits by the Bureau's Records Management
6 function. In the early '90s, there was a concerted effort
7 by the BIA to ask for money and to bring records
8 management people on board. Those people were brought on
9 board. They were not fully trained.
10 But in February of 1996, when the RIF hit,
11 those people were RIF'd out of the government. There are
12 no records management people in Washington, D.C., to
13 oversee the overall structure of records management. And
14 eight out of the twelve records officers that had been
15 hired out in the field were RIF'd out of federal service.
16 Now, here are the originators of the
17 records: The Bureau of Indian Affairs, the Office of the
18 Special Trustee, Indian Tribes, U.S. Treasury, Minerals
19 Management Service, Bureau of Land Management, and
20 U.S. Geological Survey.
21 Now, that's a little bit different than the
22 people who are the possessors of the records. To possess
23 means "This is where the records are stored," and here are
24 the people who are originating those records.
25 Now, what do we need to do? We need to

1 create a formal system for records management. We need to
2 identify records in high jeopardy and secure those
3 records. We need to consolidate all nonoperational trust
4 records into the National Indian Fiduciary Records Center.
5 And we need to ensure the security of operational trust
6 records.
7 Now, let me talk just briefly about the
8 difference between an operational record and a
9 nonoperational record. You've got a lease out there.
10 That lease is for five years, and you're in the first year
11 of that lease. That is an operational record. It ought
12 to stay at that location and it ought to be used by the
13 people at that location.
14 But when that lease expires and a new lease
15 comes on board for that piece of land, this expired lease
16 is a nonoperational record. It does you no good to keep
17 it at that location. It ought to be shipped in for
18 storage and for imaging, and then the new record ought to
19 stay right there at the Agency.
20 That way, the Agency -- the operations
21 person at that location, whether it's the Agency, the
22 tribe, the Area Office, whatever, or field office --
23 they've got that record that they need to have their hands
24 on every day.
25 But when it expires, they don't need to have

a room full of expired leases. Those ought to be shipped in to a central location.

Now, let's talk a little bit about an image archival system, because this is where the technology is moving to.

Our objective in this is to electronically image trust documents at the point of origin. Now, the example I just gave you, when you take the Trust Asset Management system that she was talking about, you've got this formatted screen. You put that information in. It immediately creates an accounts receivable tickler system, and it produces you a lease, so that you can have the superintendent sign, or whoever has got the authority to sign that lease.

Now you've got a hard copy of it. Should you have to pull out that hard copy every time that you want to verify what is supposed to be occurring on that land? The answer is no.

What we ought to be able to do is take that document, image it, take that operational hard source document, put it into a file, and every time we need to know something about that lease, we ought to be able, at the computer, to pull that image right up.

It doesn't matter where it's stored, but you ought to be able to pull it up and look at it every time

1 that that probate person, that realty person, that
2 superintendent, the individual who owns a portion of that,
3 or the tribe that owns a portion of that -- should be able
4 to pull that up and take a look at it.
5 And on a good imaging system, if several
6 people want a copy of that lease, who are co-owners or
7 co-beneficiaries, we ought to be able to push a button and
8 print that lease out and hand it to them while the
9 original source document is still sitting right there in
10 our files.
11 The trustee needs a system that will capture
12 documents at the point of origin. It needs to create an
13 index for future retrieval. It needs to store documents
14 and all related supporting documentation in a central
15 repository. And it needs to support access to any
16 approved user.
17 Now, let me briefly try to describe this
18 right here. You've got the lease. We've got it imaged.
19 Then your one payment comes into the lockbox. It's
20 received at the bank. It starts drawing interest.
21 That gets imaged, and it gets brought back
22 and linked to that lease. So now, when you pull that
23 lease up, you see the lease, and you see the income that
24 has been received for that, and its image attachment to
25 it.

And then you can come in and make a disbursement to the person who owns all or owns a portion of that. That disbursement check and that document creating the disbursement get brought over electronically and linked, also.

So at any point in time when you come in and look at the electronic image of that lease, you will see all of the other supporting documentation that has come in and is linked to that lease.

So you should be able to see the lease, the payments made on that lease, the disbursements made on that lease, and what year -- what month, exactly -- on all of that. And it would all be kept for the life of that lease. So that, at any time, you could come in and see that.

And then the hard source documentation -- the lease -- is right there at the Agency, and all the other hard source documentation is in the appropriate file. But it links them together so that you can actually see the whole process, and a live process, of that lease.

Now, let's look at the imaging archival system requirements. It needs to be an integrated imaging and computer output to laser disk. It needs to have point-to-point input and retrieval of documents. We'll get into that in just a second.

1 It needs to be able to handle high-volume
2 centralized archiving of images, and it ought to be
3 automated document indexing -- just what I was talking
4 about. And there needs to be multi-level security and
5 control of the images. And it needs to be an integration
6 with other applications.
7 Now, if we go back to the architecture that
8 we have talked about that has been recommended by Macro,
9 here is the point that you would image the lease -- at the
10 point of origin.
11 Your realty staff at the Agency would still
12 be doing the lease. It would still be doing the imaging
13 of the lease. Your Area office, that is related to this,
14 would be able to pull that image up and see that and all
15 of the documents related to that, on a need-to-know basis.
16 Once they image that, it would come into the
17 Trust Development Administration, and an image of that
18 would come over to the National Archives, and they would
19 then archive that image. So that in real time, every time
20 that this is imaged here, it comes in and gets added to.
21 So that we are constantly keeping an update of the process
22 of that lease.
23 At the same time, if you have a
24 self-governance tribe, it would be imaging at the same
25 time, coming through the same system, and they're able to

use the image to do that.

Once that operational record becomes a nonoperational record, the shipment of that hard source document would come over here to the National Archive and be stored at the National Archive. National Archive would have, then, both the imaged process of that lease, along with the lease itself, plus all of the supporting documentation that would be housed here.

If, in the future -- 20 years from now -- your children come in and they want to know, "Hey, I want to see that lease that my dad or my mother had 20 years ago on such-and-such a piece of land," based on a need-to-know, they would be able to go into the system here, come through. We would be able to put that lease up in the electronic image portion, and they would be able to download that right there.

They don't have to go to Albuquerque or wherever the National Archive is located. But if they're not satisfied with the image, then they can come to Albuquerque and go in and do the research that they want to do. But we have it housed and we have it accounted for.

What are the key benefits? It allows the trustee to track Trust Asset Management actions -- the lease, the sale, and the process. It ties all documents

1 related to those actions together.

2 And it allows the trustee to capture

3 electronic images of all trust documents required to

4 operate a Trust Asset Management system. And it supports

5 the audit process. It allows a timely and accurate audit

6 to occur on that process.

7 Now, let's turn to the third item that we're

8 to discuss, which is the fractionated heirship problem.

9 As you know -- and most of you probably are owners of

10 fractionated land -- "fractionated" means it's undivided

11 interest. It's tenancy in common, each and every acre,

12 each and every teaspoon.

13 If you have got 459 owners of a 40-acre

14 tract and you go out there and you pick up a teaspoon of

15 that soil, you still have 459 owners of that teaspoon of

16 tract, because it's undivided.

17 This issue started in the General Allotment

18 Act of 1887, which was a division of tribal lands into

19 individual allotments. And from 1887 to 1934, there was a

20 loss of over 100 million acres of Indian land that moved

21 from Indian ownership to non-Indian ownership.

22 The Indian Reorganization Act of 1934 halted

23 allotments -- was supposed to halt allotments and extend

24 the trust period on the existing allotments into the

25 future.

In 1934, John Collier, who was the Commissioner of Indian Affairs in 1934, said: "The Indian Bureau's costs must rise" -- talking about fractionated ownership -- "The Indian Bureau's costs must rise, as the allotted lands pass to the heirship class. The multiplication of individual paternalistic actions by the Indian Service must grow. Such has been the record, and such it will be unless the government, in impatience or despair, shall summarily retreat from a hopeless situation, abandoning the victims of its allotment system. The alternative will be to apply a constructive remedy as proposed by the present bill."

This was 1934, and we know that although allotments were halted in 1934, the fractionation of allotted land did not stop in 1934.

The next big action on fractionated heirship occurred in the Indian Land Consolidation Act of 1983. And Section 207 of that Act called for an escheat of interest two percent or less of the tract, and income of $100 or less of the preceding year, to escheat to the tribe, to stop the fractionated heirship problem.

In a court case called Hodel v. Irving, it was deemed that that was a taking of property and there was no payment of compensation, so it was deemed as unconstitutional.

1 But before we got Hodel v. Irving, Congress
2 said, "Oh, I think we made a mistake. Let's go back in
3 and amend Section 207."
4 So they amended Section 207 prior to the
5 Hodel v. Irving, and they said, "Instead of looking back
6 one year, let's look back five years on income. Let's
7 allow the devise to people who already co-own the interest
8 in the same parcel," and it authorizes tribes to develop
9 tribal codes to govern the disposition of fractional
10 interest.
11 They were essentially saying, "Since we
12 can't solve the problem, let's make it a tribal government
13 problem and let them do it."
14 This was also court-challenged. A court
15 challenge was filed by Youpee. The Babbitt v. Youpee
16 decision came out January 21 of this year, and it said,
17 basically, 207 still trains on the income generated from
18 the land, not on the value of the parcel.
19 You can't tell the value of a parcel of land
20 by looking at how much income it generates. You've got to
21 look at the land itself to determine what its value it.
22 207, they said, severely restricts the right
23 of an individual to direct descent of this property by
24 shrinking the possible successors. What they said, if
25 you're a co-owner, then you can -- upon death, you can

1 assume ownership.

2 But how many people's kids are already

3 co-owners in a piece of land? So it didn't do anything

4 for a person who was deceased and who had wanted to let

5 their children have access to that property.

6 Because unless their children were already

7 co-owners, there was no way that you could pass that on,

8 devise it on. And that's what the Court said: It's

9 unlikely to contain any of the lineal descendants.

10 And then thirdly, Youpee said the tribal

11 codes have not been developed.

12 So Youpee continued to say it's

13 unconstitutional. That's the bottom line.

14 So we now have 50,000 escheatable -- or

15 parcels that were escheated under the Indian Land

16 Consolidation Act. Youpee now has declared all of those

17 unconstitutional.

18 The BIA, the Department of Interior, now

19 must come up with a way to readdress those 50,000

20 escheated properties -- knowing that we already have a

21 backlog in probates, knowing that the leases are creating

22 backlog, now in addition, we're going to have 50,000

23 pieces of chain of title that we've got to go back and

24 change.

25 And as Mr. Homan pointed out, the LTROs used

to have an FTE level of about 126. After the RIF in '96, it's down to like 95, 94 people, which is already creating a backlog of its own.

So it's imperative that we assign new resources to the LTRO function and streamline it to doing only those things that it needs to be doing.

Now, what are some of the problems that fractionated lands create? First of all, it inhibits the owner's highest and best use of the land, because of the fractionation.

It delays funds getting to the owner, because you have to have an up-to-date ownership record, down to 26 or 36 decimal places, in order to determine what your percentage of the ownership is, and then use that decimal to make the distribution.

And it increases the cost of operations for the Trust Management System and for the Land Titles and Records Program. It must become more costly because of the number of people now who have to be taken into consideration.

Solutions: In the Strategic Plan and in line with what the Department of the Interior has proposed or has talked about, we think that there needs to be a purchase of land from willing sellers at appraised value -- which would mean that we solve the Youpee

1 problem, because instead of looking at the income coming
2 in, we actually look at the price of the land.
3 And if the individual wants to sell, then
4 they can sell. If they don't want to sell, they don't
5 have to sell. But it ought to be a willing buyer -- a
6 willing seller to a willing buyer at the appraised value.
7 And we propose to put together a
8 $300 million loan program, a revolving loan program, so
9 that those purchases of those fractionated interests can
10 occur.
11 Their priorities should be on the two
12 percent or less holdings, and a revolving fund income to
13 repay purchase to buy more land.
14 In other words, we purchase that land. We
15 take the income to repay the loan, and then when the loan
16 is repaid, the title goes to the tribe, and we take the
17 money and we buy more land. But it's always from a
18 willing seller to a willing buyer.
19 We need to assist the tribes in developing
20 land codes in line with the Indian Land Consolidation Act.
21 And there needs to be appropriate owner notice of any
22 changes, so that they can take that into consideration as
23 they do their individual estate planning.
24 Now, here is where we differentiate a little
25 bit from what the Department has put forward. We believe

that individual co-owners should have the right to purchase into the allotted land, also -- not just tribes.

Indian landowners should be able to create holding companies, so that they then can take those interests, but instead of the Agency or the lease person having to deal with 15 or 20 different individuals, that they would deal with one entity. So that they could create holding companies for that, and that way you're dealing with one entity.

Tribes should be eligible for federal loans and funding for purposes of exercising tribal purchase options. It goes without saying they ought to be eligible for the $300 million, and they also ought to be eligible for other loans associated with this issue.

The tribes, rather than the federal government, should administer as much of the program as practical, consistent with the principles of self-governance and self-determination.

The tribes should be able to operate this program as well as the federal government, and probably better, and they're closer to the issue and closer to the problem than the federal government is.

Legislation should not deny certain property ownership rights to individuals by limiting their ability to purchase, sell, or inherit fractionated interests.

1 While certain restrictions may be necessary, the
2 legislation should not substantially restrict the rights
3 of individual American Indians.
4 These are the recommendations that are
5 contained in the Strategic Plan to address and hopefully
6 solve the fractionated heirship problem.
7 Thank you.
8 MR. HOMAN: Than k you, Joe and Donna. And
9 that completes Phase I of the Strategic Plan. Any element
10 in this plan can go forward to the Congress, and as the
11 Secretary indicated in his release outside, the Department
12 of the Interior intends to send some sort of legislation
13 very soon to the Congress for action.
14 So some of these initiatives that you've
15 heard are being undertaken, in various aspects, by the
16 Office of Trust Funds Management, by the Bureau of Indian
17 Affairs, and now by the Secretary. And that will continue
18 all summer as various other elements of this plan get
19 debated.
20 I just want to touch briefly on Phase II of
21 the plan. Phase II is an option. And it essentially
22 involves the second bullet here, which is to provide a
23 full-service lifeline banking, trust and finan cial
24 services institution to individual Indians, and provide
25 funding for economic development aimed at making the

1 individual American Indian and Indian tribes economically
2 more viable over the next three decades.
3 This takes the form of a bank, a Development
4 Bank, which can be viewed under the general superstructure
5 of the administration I described during Phase I.
6 Essentially, it involves several different
7 elements, and there are going to be details in your
8 handout that I am not going to go into.
9 But first of all, it involves a full-service
10 trust system and all of its entities, including what we
11 call lifeline trust services; and that is:
12 Services and banking services to individuals
13 and to tribes that can't afford to get them in the private
14 sector;
15 A full-service banking and depository system
16 and delivery system. This would be a banking-wide branch
17 system, all 90-odd locations that the Bureau presently
18 uses, to distribute its delivery system;
19 A full-service asset management, lending and
20 leasing system, and more about that later;
21 And finally, as Joe indicated, a
22 fractionated realty holdings purchase and sales program
23 that makes some sense.
24 Now, let me just talk about the fractionated
25 interests, which you have just seen. As Joe indicated, it

1 would require about $300 million to purchase out the small
2 undivided holdings. And it can be done on a revolving
3 basis.
4 This was proposed in similar legislation to
5 the American Indians about two years ago. We received
6 your comment, but when we forwarded it last year to OMB
7 and Congress for action, it sat there and lacked a
8 sponsor, principally because it costs $300 million.
9 But we had proposed starting with about
10 $25 million, and that was rejected, as well.
11 So the key element here is how to fund the
12 fractionated heirship difficulties. We've proposed that
13 it could be through appropriations in the Phase I. But if
14 this Development Bank happens, literally, the bank could
15 borrow money in the market and fund it to the tune of
16 $300 million immediately.
17 And that is how a bank would do it. That is
18 how similar government-sponsored entities, such as the
19 Federal Home Loan Bank and Farm Credit System, operate
20 their systems.
21 So one of the best features of the
22 Development Bank would be that it could devote at least
23 $300 million of its resources to solving this fractionated
24 heirship problem -- by lending to individuals and tribes,
25 to enable them to immediately take over that land and put

it into a higher and better use than it is now being put to.

The fifth is investment capability. We have developed -- and you will see a balance sheet in the back of your books, on the bank -- about $125 million that could be used by this bank to directly invest in tribal businesses and in individual Indian businesses, both of the existing type and also of the venture capital type.

Much like small business investment corporations do for banks today. Much like small business investment corporations do for agricultural enterprises under the general sponsorship of the Farm Credit System. So a direct investment capability, which again provides capital to the American Indian enterprises, which can be leveraged and managed by the American Indians themselves.

The money comes from, generally, $500 million worth of equity capital. That could come from appropriations, although it's very doubtful that the Congress or the administration would sponsor that much money in terms of appropriations.

Another place that it could come from is in a general settlement, and we are looking at general settlement criteria in a separate initiative by the department to settle some of the problems of the past, and notably the Arthur Andersen study of the 20-year audit.

1 So that is one other source of capital -- from the
2 judgment funds of the U.S. Government, so to speak.
3 A third way, and probably a more practical
4 way, is that Congress could tap into existing
5 government-sponsored entities' capital -- for example, the
6 Farm Credit System, which has served credit to our
7 American agricultural environment since the 1930s. It
8 presently has over $11 billion worth of capital and over
9 $80 billion worth of loans to American agriculture, all at
10 a time when government subsidy to agriculture is going
11 down.
12 So they have immensely succeeded in bringing
13 American agriculture up to a self-sustaining and
14 economically viable enterprise.
15 Some of that money, a small amount of that
16 money, could be used to capitalize this institution, and
17 we could also reallocate some of the borrowing capacity
18 Martin's -- the $5 billion borrowing capacity that we have
19 suggested be used with the unconditional backing of the
20 federal government. So there is that aspect.
21 We think we can also possibly interest
22 Congress in tapping into the Federal Home Loan System,
23 which has even bigger numbers in terms of capital and a
24 borrowing capacity, or other GSEs, such as Fannie Mae,
25 Ginnie Mae, all of which are very successful and

1 profitable American federal agencies.

2 So there is a possibility that some of that

3 money which has been used for housing, for agriculture,

4 could be diverted to satisfy the funding requirements of

5 American Indian economic development over the next 20 or

6 30 years.

7 So it's possible, and it should be talked

8 up. And that was the suggestion, by the way, of some of

9 our Advisory Board members who are now working for banks,

10 such as CoBank here or in Denver.

11 The borrowing capacity, I had indicated.

12 This enables a bank, any bank, to borrow ten times or so

13 its capital, under prudential banking standards, and lend

14 it out on the other side.

15 And on the other side is the asset. And it

16 would sponsor up to three or four billion in loans to

17 tribes, to individuals, to enterprises, to individuals,

18 just like an American commercial bank.

19 So this is where the money comes from for

20 the bank.

21 Finally, a headquarters building. This

22 enterprise or bank could be located anywhere. It is our

23 suggestion, although it's not indicated in your book, that

24 it be located not in Washington, D.C., but somewhere west

25 of the Mississippi, close to Indian Country. So Denver is

1 a possibility, or other sites have been suggested.

2 It will be owned by the American Indians.

3 Now, I don't have a good suggestion as to how that

4 distribution takes place. This is permanent capital, so

5 it can't be withdrawn, but it would give the Indians

6 benefits for dividends off that capital, should a profit

7 be achieved.

8 Secondly, it does not require full

9 appropriations. The $500 million will enable the bank to

10 operate profitably and pay for a good part of its

11 operating expenses on a stand-alone basis, just like the

12 current government-sponsored enterprises do.

13 All of them are profitable. None of them

14 take appropriations for banking purposes from the federal

15 government. That gives them a measure of independence

16 from annual budgets that the Congress normally subjects

17 all the rest of us to.

18 Finally, a headquarters building, again,

19 that would house the Archives Center and Records Center

20 that Joe mentioned earlier.

21 And then, systems and technology

22 enhancements to facilitate the full banking services.

23 We're being very careful in recommending commercial-grade

24 accounting and trust systems that could be put into a

25 larger and more sophisticated enterprise such as the

1 Phase II Development Bank.

2 The trust administration would be an

3 independent government-sponsored enterprise, as I

4 indicated. We model it after the Farm Credit System,

5 which has successfully served, as you know, the farm

6 credit areas for 60 years.

7 It will have, as I indicated earlier, five

8 members of its board of directors, including a chairman,

9 which are appointed by the President and confirmed by the

10 Senate. Three of those are American Indians, and the

11 other two can be American Indians, as well. The board is

12 full-time, and it will devote full-time to management and

13 administration of the bank.

14 The AITDA and TDBank will assume and manage

15 the U.S. Government's primary trust responsibilities to

16 American Indians in the important areas of resource

17 management, trust funds management, and trust lands and

18 ownership records management; so, it will not be engaged

19 in other aspects that the Bureau of Indian Affairs now

20 engages in and will continue to engage in.

21 There will be no diminishment in the federal

22 trust responsibility. The additions we're adding will

23 enable new services, as I've indicated; so the trust

24 responsibilities will, in effect, be increasing, rather

25 than decreasing.

The United States will retain its full trust responsibility, but simply transfer the administration from the Department of the Interior to AITDA and the bank.

The singular focus on trust management activities, independent and dependable funding, and a skilled board of directors and management team should ensure that the U.S. Government will be able in the future to fulfill its trust responsibilities to the American Indians.

Importantly, the United States will remain liable for any breach of trust by either the administration or the bank, with initial capital of $500 million coming from the federal government, and in addition, an agreement to maintain that capital at $500 million. That will put substantial financial resources behind that trust guarantee for the first time.

The bank will be a nationwide financial institution. As I indicated earlier, it will provide American Indian communities with a dependable source of credit and investment for economic development purposes. It will provide a more stable and dependable source for fulfilling part of the government trust responsibilities, and it will facilitate and implement efforts and initiatives to make individual American Indians and American Indian tribes economically more viable. And it

1 will provide, at no cost or at subsidized cost, as I
2 indicated earlier, those lifeline financial services.
3 As I indicated, it will be a for-profit
4 financial institution, and it will be required to cover
5 its operating expenses from trust lending, leasing and
6 investment revenues.
7 This is not a give-away or a grant program.
8 The loans will be made on what we call in banking
9 "prudential terms," meaning they will have to be paid
10 back. But the Indians benefit by having access to capital
11 loans at a low-cost, tax-free basis.
12 The Trust Development Bank will be a
13 nationwide financial institution focused solely on
14 providing a dependable source of accurate, timely, and
15 enhanced trust resource management, trust funds
16 management, and land resources and records management;
17 lending to American Indians, investing in their
18 enterprises, and providing the lifeline services.
19 Now, in your packet is a full-blown
20 description of these services, which I won't go into
21 today, but I would urge you to look at them at your
22 leisure -- a full-blown balance sheet, which contemplates
23 a $5.5 billion banking enterprise after a five-year
24 implementation program, and the organizational structure
25 to go with it.

1 So this, again, is optional. It will
2 probably not be recommended by the Department or the
3 Congress unless it can be in satisfaction of a settlement
4 for litigation or a settlement for past inability to
5 fulfill trust responsibilities, or if it can be funded by
6 one of these various alternative sources that I indicated.
7 So don't count on this. But you can, I
8 think, count in general on various aspects of Phase I
9 being put through the Congress.
10 We already have some -- i.e., the IIM
11 accounting aspects -- underway here, and we should be
12 completing them for fiscal 1998. In the President's
13 budget, we've already been allocated some $15 million for
14 next year to address such needed things as accounts
15 receivable, to start an imaging system, and the like.
16 But I'm here to say that my biggest quarrel
17 with both the Congress and the administration has been the
18 pace of reform.
19 We think that it will require about
20 $80 million over the next two years to implement these
21 reforms. As you heard, most of them are in the nature of
22 cleanup -- i.e., hiring staff to clean up the considerable
23 backlog and cleaning up the problems of the past. The
24 rest goes to training, core systems development, purchase
25 of modern accounting programs, assistance in architecture,

and the like.

I've been through five restructurings of commercial banks in my life. We have done every one in less than a year, of this same type.

I added another year, because the government is the government, and things work slowly in the government. But if this is to be done, as I think the Congress and the administration are planning to do, over a long period of time -- five or six years -- on an installment plan of 14 or 15 million dollars a year, it's the equivalent of buying a monitor the first year, a computer the second year, a printer the third year, a scanner the fourth year, and then plugging it all in and providing it to everybody in the fifth year.

You all are as technically proficient as I am, probably, on a computer, but you all know that the pace of technology changes so fast, that if this is done on an installment plan, we will have an obsolete system when it gets implemented.

So again, the urgency here is to do it in as quick a time period as possible. We think it will be a more efficient system than presently exists.

Our current estimates are that it will take somewhere between 20 and 25 million dollars a year to maintain. We know that the Bureau spends $33 million just

to keep track of these fractionated interests alone. So that is the type of cost savings we're looking at.

And I would urge your support of the plan. We definitely want to hear from all of you.

It is almost 11:30. Let me suggest that we adjourn for lunch and come back at 1:00 o'clock, and the floor will be yours. We'll be glad to hear from you directly or to respond to any of your questions.

Thank you.

(Whereupon the meeting recessed at 11:20 a.m. and resumed at 1:00 p.m., as follows:)

* * * * * * * *

MR. CHRISTIE: At this point in time, we will start the consultation. I need to make a couple of announcements. In your Draft Strategic Plan, under Tab 4, it should actually start with Page 19 instead of Page 15.

When we were putting it together at the printer's, there was a problem there. So Tab 4 should start with Page 19 instead of Page 15.

Also, Addendum 2, the Strategic Plan Budget, is not included, as listed on the table of contents. That is an element that will be brought into it at the end, after we've got the budget numbers from Macro.

Appendix 1 is not included, as listed on the table of contents.

In the Executive Summary, which is the blue-covered one, Addendum 1 and 2 and Appendix 1 are not included, as listed on the table of contents.

The session is being recorded for the record as a formal consultation. When you ask your questions, please come to the mike. Please state your name and organization and tribal affiliation, and speak directly and clearly into the microphone, please.

If you have a question that you want clarification or something, please address it to either myself or Mr. Homan or Mrs. Erwin, and we'll try to answer that question as succinctly as possible.

But the purpose of this is to receive your comments and your concerns and your reaction and your proposals as part of this, so we don't want to interrupt you while you're giving your comments. If you have a specific question, then address it to someone specific and we will try to answer it, and then you can go on with your comments.

At this point in time, we have opened it up for comments for your consultation. Thank you.

MR. HOMAN: Does somebody want to start?

MS. ERWIN: Once you start it, we know we're going to hear a lot.

MS. PEARL CAPOEMEN-BAILEY: I'll always start, because I want to get mine over with.

Good afternoon. My name is Pearl Capoemen-Bailey. I'm president of the Quinault Indian Nation.

I would like to submit for the record a letter to Mr. Homan. First of all, I would like to say: I don't envy your position here today or what you're trying to accomplish, Mr. Homan, so I hope that you do not take any of our comments or concerns personally, because I think that the Tribal Leaders that are here today are speaking on behalf of their tribal membership, and it's their treaty rights and trust responsibilities and all the

1 issues involved that concern the Tribal Leaders that are
2 here today.
3 So for the record, I would like to read my
4 letter to you. "Dear Mr. Homan: The Quinault Indian
5 Nation submits the following in response to your request
6 for comments on the Draft Comprehensive Strategic Plan for
7 the management of tribal and individual Indian trust
8 funds.
9 "The Quinault Indian Nation strongly opposes
10 the Draft Strategic Plan. First, we do not believe that
11 it has been well or even thoroughly thought out. Second,
12 it will not serve the long-term interests of the Nation
13 and its individual citizens. Most disturbingly, the plan
14 raises far more questions than it settles.
15 "The issues surrounding the federal trust
16 function are too complex and clouded as it is -- we do not
17 need more uncertainty. The unanswered questions include:
18 "If the plan were to go forward and become a
19 reality, exactly what functions, responsibilities,
20 programs, and services would be retained by the BIA?
21 "Why does the plan fail to contain an
22 explicit reaffirmation of the federal trust
23 responsibility?
24 "What is the possible justification for the
25 proposal to charge account holders a fee of some unknown

amount for 'services'?

"Why isn't there a budget to show how much the plan will cost and where the funding for it will come from?

"Will the Trust Fund Development Authority and the proposed Development Bank comply with Indian preference in employment?

"How do tribes and individual Indians who do not have trust funds participate in the Authority and the Bank?

"Why doesn't the plan contain any provision for financial and technical assistance for tribal account holders to assume the direct responsibility for the administration and management of their own trust funds?

"Who will own the Trust Fund Development Authority and the Development Bank?

"Finally, I must register our objection to the fact that a plan of this complexity is being presented in a manner which allows little time for a thorough review and even less time for true consultation.

"The essence of self-governance is the right to be fully informed and to make independent decisions based on that information. The essence of consultation is a process which allows all interested parties an equal opportunity to shape the final outcomes.

"Unfortunately, the Draft Strategic Plan and the 'consultation' process now underway does not comport with self-governance or meaningful consultation.

"We would welcome the chance to work with you at any time that the department might choose to provide for true government-to-government consultation on this important issue.

"Respectfully submitted, Pearl Capoemen-Bailey."

I think that the process that you went through this morning clarifies some more of the issues in a certain degree, but also in a certain respect, it clouded some, because it is so complex.

And just even dealing with the fractionated land interests, dealing with the Youpee decision -- I come from a reservation that is over 200,000 acres. It's an allotment reservation. It's a nightmare to manage that reservation, because of fractionated lands.

We could go on and on about the probates and all the other issues that came up throughout the day. Those are all critical concerns and issues. In fact, I have five pages of issues and concerns and comments that I will be submitting for the record.

I think it's important that you continue to consult with tribes, but I think we need to also be very

clear on what type of response will be coming back to the tribe when they have submitted all of these issues, questions, and concerns.

When will you be getting back to the tribes on these issues?

MR. HOMAN: Well, I think some of those issues are set forth with a little more certainty in the plan itself, but I appreciate your comments.

On the budget questions, the budget was originally estimated in my plan, last year, at about $147 million over a five-year period. And we have not had a better number since then.

We have tried to get consolidated numbers from the Bureau itself, but were unsuccessful in doing that, so we're going to have to rely on an outside contractor, who is presently working on this issue and will give us their final report in March.

In terms of what happens after these four consultation hearings -- and I would remind you that this plan has been out there for over a year. I have given as many as 20 personal representations before groups like this over that year. So part of the plan, to date, is a compilation of the feedback we have already received in that informal consultation and in the four formal hearings we've had over the last six months.

I will submit the full comments, as I intend to take the transcripts from these hearings -- your comments, others' -- and attach them to the report I give to the Secretary and the Congress, so your feedback will be heard directly, not interpreted through me.

Who will own the bank? In some of the other aspects, if you'll put up the screen -- there is a couple of issues. This is a balance sheet.

Page 105. This is how that Development Bank will work. It's owned by $500 million which will be distributed to the American Indians. Frankly, I don't know how that distribution will be made, and that's one of the things we're seeking consultation on.

This will benefit, obviously, all tribes and all individuals that manage to borrow from it. But I don't have a good way to distribute that money. The government will probably not give that money individually -- to individuals.

So the beneficiaries will receive interest or a dividend on the stock, but will not be able to withdraw the stock below $500 million. So it will be a permanent capital.

What that capital does is enable the bank to borrow three to five billion dollars in the capital markets on the full faith and credit of the United States,

which is a subsidized rate.

If you were to borrow as a tribe or an individual today, the bank would add its cost to its cost of funds, add a profit, and charge you probably three or four hundred basis points, or three or four points more interest, than you will be getting from this bank. So that's the chief benefit of the bank.

Where is the money spent? It's loans.

Where does the money come from for fractionated realty? It's $300 million of that $500 million is re-loaned.

And where does the money come for development? $125 million of it is re-loaned. That's how any major Farm Credit System Bank works. And that's what we're proposing here.

Now, the ownership questions, it will work somewhat like the Farm Credit System. Those borrowing, by definition, have to buy what they call a patronage interest, or one percent, which can come out of the loan proceeds, to give that tribe a further equity interest in this organization, and a further incentive to repay the loan.

So I think in terms of your questions on how this will be set up, it's set up exactly like a Farm Credit System Bank.

As I've tried to say, again on some of the other issues you addressed, the trust responsibilities here do not change at all. They are merely transferred to this organization from the Bureau, but only in the sense that they are associated with Trust Funds Management, Trust Resource Management, and Land Records and Ownership.

All other Bureau activities, all other trust functions, remain the same. It will be appropriated the same.

I'm not making any changes or suggestions. That was not my charge to do. I was to come up with the Strategic Plan to reform only the trust management activities. And that's why some of the questions belonging to the Bureau of Indian Affairs cannot be answered by me, but must be answered by the Secretary and by the administration as they consider this plan.

Now, on the fractionated heirship issues, I have not tried to do anything there other than repeat what the Land Consolidation Groups had said to me last year. And I hasten to add that I'm the only department official that endorsed the Indian Land Consolidation initiatives.

My plan differs only in the respect that it includes individuals, which the Department's plan does not. It includes this REIP idea, where a family, a corporation, or a tribe can set up an individual

1 corporation to manage some of this land and not convey it
2 to the tribe itself.
3 So this $300 million not only goes to a
4 tribe, but also gives to individuals. It gives them an
5 equal opportunity to borrow money to buy that land and
6 finance it over a long period of time. That is not
7 something that you will see proposed by the Department of
8 Interior.
9 I will answer any letters sent to me, as I
10 normally do. But I think I have answered, generally, some
11 of the problems that you have addressed. But I very much
12 appreciate your comments.
13 These are complex and intricate issues.
14 We've tried to reduce them to the three basic inherently
15 federal functions, and the other issues will be dealt with
16 in the course of time by others -- certainly, the Congress
17 and yourselves and the administration.
18 I don't have the answers to all the problems
19 that confront the Department of the Interior in these
20 important areas.
21 MR. JOE PAKOOTAS: I will use this mike.
22 It's a little bit taller for me. That one up there is for
23 the shorter people, I guess.
24 My name is Joe Pakootas. I'm the Chairman
25 of the Colville Confederated Tribes. As I came in

earlier, I heard my name being pronounced, and it wasn't quite right, but I've heard it pronounced a lot worse at times.

I don't really have anything prepared for this hearing or this consultation meeting, so to speak, but I guess that we do have some questions that need to be answered. Also, I kind of wanted to attend this, to see exactly what's going on before we prepare any kind of comments -- you know, I guess, intelligent-type comments, to answer some of our concerns.

But I guess, in looking back at history and how the BIA has operated and the federal government and things, it's been stated to me a couple times that this looks like another form of termination, so to speak. And we kind of wonder about the underlying motives of certain people that are presenting this, or how and where did this proposal come about.

It was pretty exciting to see the IIM or the Trust Funds Management being reviewed and possibly looked at and corrected. And I think -- I know our tribe is kind of excited about that, because of some of the mismanagement and the unaccountability that was going on in the past.

But to see the Trust Resources Management, the title plants -- and I don't know what else you guys

1 have included in here -- trust resource management; land,
2 title and records management -- that gets to be a little
3 bit more of a concern to us at that point.
4 You know, like I say, we're wondering about
5 the underlying motives of some people and why this is
6 presented this way. As has been said earlier, this is
7 kind of the Republican version of the BIA, how it's been
8 presented.
9 But I guess some of my concern is the smell
10 of the termination in this point. If you look at history
11 and review history and how things have been happening in
12 the past, and what's being presented here today, how that
13 looks, you know, BIA has been a good whipping child for
14 Indian tribes in the past, and we've always wanted
15 accountability. And I think the accountability can be
16 there.
17 A lot of this program here, if you just
18 implement it within the BIA structure that it is now, and
19 not have to develop or come up with another separate board
20 that Congress is going to oversee directly.
21 Some of the questions that we have as a
22 tribe are just kind of one-liners, so to speak. You know,
23 where are the provisions for tribal input in the ongoing
24 implementation of the plan? What will be the ability of
25 tribes to have access to the process -- ongoing, from now

on, I guess?

How will resource decisions be made? Where will these trust decisions be made?

What about forestry? We're a big forestry tribe, and our reservation is 1.4 million acres, and approximately 800 thousand acres of that is forested acres that we harvest timber off of. What will be the role of the BIA Agency at the point that this -- I guess when Phase II kicks in, if it does kick in, in fact?

How will funds now allocated to the Agency for resource matters be affected by the plan?

What has been the input of the tribes in the development of the drafts that we see here today -- Draft I and Phase I and Phase II? And how will the proposal affect existing funding mechanisms for non-self-governing tribes that have worked out local control arrangements with the Bureau of Indian Affairs on natural resource management?

We're one tribe that came up with a cooperative agreement. I understand there might be one or two more tribes within the nation that have a cooperative agreement for resource management. In doing that, we had the Bureau of Indian Affairs Forestry Management Program, plus we had our own Forestry Management Program, and they had to go out on separate regs and do their own thing.

1 And when you looked at it, they were doing
2 the exact same thing. So we came up with a cooperative
3 agreement, where they can go off the same regs and do the
4 same job and supervise each other in that type of
5 situation.
6 But those are concerns of our tribe. And I
7 imagine there are some other tribes that have similar
8 concerns as that.
9 But, like, if you go back looking at history
10 and see how termination has been forced upon us, a matter
11 of a number of years -- And I guess it started when
12 Columbus came about back then, in 1492. And then it goes
13 forward.
14 And you talked about the Allotment Act, how
15 that was dropped on us. And they had the assimilation
16 era, where the black robes came into our country and tried
17 to assimilate us, and actually beat our culture and our
18 language out of us, in some areas.
19 Then they had the relocation era, where they
20 tried to diminish the population of the Indian
21 reservations by sending our people out to get trained --
22 either trained or educated, and hopefully they wouldn't
23 want to come back to the reservations, where there was
24 high unemployment rates and poverty.
25 And then just a couple years ago, another

1 question that we were wondering about is the
2 reorganization plan that the tribes and the Bureau of
3 Indian Affairs were working on for the last few years.
4 Where is that, and how does that fit into this situation?
5 I look at it, I guess, as the federal
6 government sneaking up on the Indians now. They were
7 working on this BIA reorganization plan, and in the
8 meantime this was going on, also.
9 The consultation, you know, hasn't been --
10 you did say that you have met a few times and presented
11 this draft here. In the meetings that I was at, it was
12 just the draft of the trust management funds, the IIM
13 accounts, and how that was going to filter out and how the
14 auditing and the accounting and everything else can be
15 handled that way.
16 I don't remember being invited or seeing any
17 meetings on this topic. I have received the information,
18 without any kind of explanation as to the purpose for it
19 or who is presenting this.
20 So we do have some big concerns about this,
21 and we hope that, from now on, that we do have
22 consultation meetings; that we are able to get together,
23 and the Indian tribes do have input into any plans that do
24 affect us.
25 Because when you start talking about trust

1 management of resources and lands and monies, it just
2 scares the heck out of me. I know Slade Gordon has been
3 working on his means testing, and this kind of has the
4 smell of that.
5 Congress is going to have access to every
6 single penny that these tribes -- resource tribes -- come
7 up with. It's a big concern for us, the Colville Tribes.
8 Thank you.
9 MR. HOMAN: Thank you. Let me just respond
10 to some of the new questions. I recognize that
11 termination is an important issue, and certainly with the
12 history here -- I'm no historian, and you don't need me to
13 tell you your history. You know, I have heard it on every
14 reservation that I have visited.
15 But what has been happening over the last
16 10, 15, 20 years -- and you know better than me -- and
17 what is proposed in the next six or seven, in the
18 President's budget and others', is less and less and less
19 and less funding and staffing -- which, by anybody's
20 account, is the fundamental problem here.
21 And what my plan hopes to do is to reverse
22 that, not to contribute to it. In fact, if you put it a
23 different way, the persistent lack of financial and
24 managerial resources that the Congress and the
25 administration devote to this in the ever decreasing

1 amounts is de facto termination. And my purpose is to
2 address it.
3 You can look at the motives of the people.
4 You're looking at the people here. I'm a staff of one for
5 a full year. I have no ax to grind with anybody. And I
6 intend to go back to the private sector very soon, as soon
7 as this is turned over to someone that is capable of
8 implementing it.
9 I have told you and I have told the Congress
10 and I have told the Secretary that I don't believe this
11 plan can be implemented in an oversight way -- and that's
12 the only power I have. It needs someone to either come up
13 with this plan or an alternative plan.
14 Certain elements of this plan will not be
15 adopted, I'm confident. Others may. But it's going to
16 take a commitment from the administration and Congress and
17 the American Indians to come up with a solution they can
18 all agree to.
19 That has been lacking for 25 years, and in
20 the meantime, the arguments go on as to how to resolve
21 some of these problems, and they never get resolved. So
22 in fact, you are being terminated, in my view, and I would
23 hope to reverse that trend.
24 The IIM part of this is overlong. Most of
25 the operational problems that we have are strictly having

1 to do with the IIM problems -- all of the Whereabouts
2 Unknown problems, the allottee problems.
3 If this were strictly a tribal issue -- we
4 have something like 300 tribal accounts; we have a new
5 OMNI system -- none of us would be here today.
6 But we must address and resolve how it is we
7 deal with those 300,000 individual Indians, which are
8 being -- we're not giving them a fair and honest
9 accounting at the present time, for all the reasons you've
10 seen.
11 And I'm enough of a commercial banker to
12 know that I can fix the accounting part of this very
13 quickly. That has nothing to do with who does it --
14 whether it's the Bureau of Indian Affairs or the tribes
15 themselves.
16 The second, in terms of what a commercial
17 trust system does, they do not manage the land in the
18 commercial trust environment. They hire others to do
19 that. That can be a tribe.
20 But the trustee, as long as we have a
21 federal trustee, is compelled to account to the
22 beneficiary for how well that land gets managed, whether
23 the income coming off the land gets properly disbursed,
24 and the like. And that's all we're trying to install.
25 So there are going to be no centralization

or land managers located in Denver or Washington, and that will continue pretty much as is.

My hope is that the tribes eventually will run all of their own land management activities and land records activities, and only report to the trustee the accounting records, so that we can properly keep track of it to see that you're doing your job. And that is also the responsibility of the trustee.

I'm not sure -- I'm not a Republican, and I'm not sure whether this is Republican version of the plan or not. I tried to come up with an honest answer to some very complex questions, and I'm willing to stand by them.

Again, your input is going to be necessary at every step of the way. This will go through probably a year's worth of Congressional hearings before it reaches any sort of resolution, and you'll have ample opportunity to consult with the Congress, with me, and with the Secretary, who will come up with an alternative plan himself, if he does not like mine.

I don't know what the status of the reorganization of the Bureau of Indian Affairs is. It's been going on ever since I've been there, and I've never seen anything get an approval. So your guess is as good as mine as to where that stands.

In terms of ongoing access, this is a star system, as Joe indicated it would be. Your input, in terms of lease documentation, managerial resources, and any other aspect, starts in the field level. It's imaged at the field level. You keep the documents. You manage your own funds and report essentially to the administration, so that we can keep track of it. And that is, hopefully, an improved version of what now happens.

And I think I have covered, fairly much, all of what I wanted to say here, that I haven't covered before.

Certainly, I recognize there are concerns. I am concerned, as well, about a number of things. But the simple fact is that we have a terrible system as it now exists.

And it's one thing to be a critic. It's another to propose a solution. And we need a solution to this -- whether it's my solution or someone else's. You need to get behind a solution you all can agree to, or it won't get done and we'll just have a continuance of what I call de facto termination, which is a continued underfunding of these programs.

Yes, sir?

MR. HERBERT M. WHITISH: Good afternoon. My name is Herb Whitish. I'm the Chairman of the Shoalwater

1 Bay Indian Tribe, and I'm here to submit some comments on
2 behalf of the tribe. And rather than try to remember all
3 of them, I'll just read them off the page here, and I'll
4 give this to you.
5 "As the Chairman of the Shoalwater Bay
6 Indian Tribe, a recent self-governance tribe with the BIA,
7 I have many questions and concerns about how the Office of
8 Special Trustee has developed the Phase II implementation
9 plan. It appears to create more questions than it does
10 answers, when the purpose of the OST was to analyze the
11 trust functions within the BIA and make simple
12 recommendations.
13 "Overall, I view this plan as potentially
14 opening up the federal-tribal trust relationship for its
15 imminent destruction, especially given the lack of details
16 tribes have been given so far.
17 "For example, to whom will the board of this
18 new administration answer? How much funding will be given
19 to this new administration to carry out the trust
20 responsibility? Is this just a ruse by which the BIA will
21 be destroyed?
22 "Other, more categorically organized
23 questions that my Tribe raises with this plan are: If the
24 OST is an independent organization, the tribes could use a
25 clearer definition of what is intended by the word

'independent.' Independent of the federal government? Independent of the trust responsibility owed to the tribes? Or is it independent of the tribal governments itself?

"The plan states that its implementation will in no way affect the federal-tribal trust responsibility. So an important question is: How does the OST define 'trust responsibility'? How do treaty obligations, statutory requirements, inherently federal functions, and BIA residual functions all relate to the OST? How does the plan specifically ensure that all these factors are taken into consideration and will not be diminished?

"It has been a serious concern within Indian Country that there has not been a wide dissemination of detailed descriptions of these proposals (Phase I and Phase II) for tribal consideration. Tribes need to know how they will be involved in the decision-making process associated with these plans.

"More specifically, tribes need to know: Has a specific legislative or administrative agenda been set for the implementation of the OST's recommendations? After the consultation meetings, will there be a meaningful opportunity for tribal input? What, if any, steps has OST already taken to implement Phase I of this

plan?

"The spirit of the Indian Self-Determination Act has traditionally been to allow tribes to transfer the performance of federal programs, functions, services and activities to the tribal level, along with the necessary funding to carry these out. The OST has stated that the implementation of this plan will positively supplement the Indian Self-Determination Act.

"However, tribes will be required to pay for the services carried out in Phase II of this plan. At the same time, discussion has begun in Congress of developing offsets in tribes' budgets, wherein tribal shares might be reduced by such things as gaming revenues and other forms of revenue.

"Will the implementation of this plan leave tribes in the position of having to pay for receiving what are currently their tribal shares and the performance of federal trust activities?

"Will the implementation of this plan inevitably pit wealthier tribes that can afford to pay for these services against the poorer tribes that would continue to rely upon federal support for service delivery?

"Is it the intent of this plan to create a tribally funded BIA that has no other federal involvement

other than the appointment of a governing board?

"Will tribes be required to be a part of this Intertribal Development Bank, or will tribes have the option of assuming the functions that this bank purports to perform?

"How does the plan specifica lly ensure that there will be sufficient operating revenues so that Phase II implementation will not bankrupt tribes in the creation of this bank? Or conversely, bankrupt this bank due to insufficient tribal resources?

"What will be the impact on tribal natural resources if there is insufficient funding to implement this plan so that these natural resources, reserved by the tribes in treaties, will be properly protected under the federal trust possibility?

"After the implementation of this plan, what will be left of the Bureau of Indian Affairs?

". . . The objective of this plan is to make all the tribes economically self-sufficient over the next three decades. How will this happen? Have more specific details been developed?

"Why have the tribes and the federal government gone to the trouble of defining tribal shares and residual, and reorganizing the Bureau of Indian Affairs, only to result in this proposal, which would s eem

to open up the possibility of making tribes pay for residual, and the complete dismantling of the BIA?

"Will the inherent federal and trust activities that are carried out by this 'independent government-sponsored organization' be characterized as being within a government-to-government relationship?

"How can a government-to-government relationship continue within the proposed structure? Will it become a relationship between the governments? Or will it become a relationship between a government and a financial institution?

"I hope that more consultation opportunities will be offered to the tribes, and I hereby specifically request that the OST provide written answers to each of these questions. Without such response, my Tribe will consider this consultation a meaningless avenue for tribal involvement."

I only have a couple other things I'd like to say. And basically, I see what you're talking about, in that the Bureau has not done a very good job of managing our resources.

But what I'm scared of is that you have painted such a broad canvas here, that the Congress and many of the other types that the gentleman that preceded me was talking about, allows people like Slade Gordon and

some of these other Senators to do more harm to the tribe and to get in here and start trifling in our day-to-day activities; to get in and start getting involved in the revenues that the tribes have worked so hard to build up, and build up their reservations. And it just opens us up to more, I guess what you call, termination activities by the Congress.

This is not a friendly time for the tribes in the Congress. And anything that is not more specifically outlined before it goes to Congress is very, very scary to me.

And I understand what you said before, that you have no motives or anything else like that. You may not. But there are others out there that do. And every time we turn around, it seems that we're under attack for one more thing.

They're trying to take our resources. They're trying to govern us out of existence. They're tying to keep us out of gaming and all these other things that we are trying to use to build ourselves up.

So I am not in favor of opening it up to Congress to determine what they want to see out of it. It should really be a tribally-driven initiative, and it can't be unless there is more direct involvement from the tribes.

Thank you.

MR. HOMAN: Thank you. And we will provide written answers to these questions. Next.

MR. HARVEY MOSES, JR.: My name is Harvey Moses, Jr. I'm currently the Secretary of the Colville Business Council.

I, too, mirror Joe's starting-off statement: That we'll have a bunch of written comments forthcoming. But just sitting here, I have a few questions.

First of all, the very first lady that started off your presentation said that she was highly pleased that she was on the other side of the situation; that that process wouldn't be being crammed down her throat. Well, I think she's on the other side and we're still on this side, and this process is being rushed into.

I went to Portland last summer, I think it was. And there was no mention made of any trust, other than the IIM problem. And that was monumental in itself. You guys didn't talk about land management, other asset management. And now you are.

That's real scary, especially when there isn't any insulation between the Tribes and the Congress. Like everybody said so far, Congress isn't friendly to the Indians nowadays, and they haven't been for quite a while. We are being terminated.

How are you going to be more successful in getting funding for your purposes over the Bureau of Indian Affairs? They've been in existence for some years. I've never fought a BIA fire, but their ineptness, I think, is lot more kosher than the steamroller that you guys are apparently on.

I don't see the funding being made available to you any more than it was for the Bureau. If you guys are given more funding than the BIA was given, is that going to diminish the tribes' shares of those federal responsibilities to us -- our health, education, and welfare? I believe it will.

What will happen to the BIA once you guys are entrenched in the system? Will the BIA all of a sudden become OTFM? Or will they be ousted into another agency?

It's real difficult to sit here and look at all these -- I'm an accountant by trade. I've been that for quite a while. But to say that you guys are going to resolve 20 or 30 years' of problems in two or three years, you know, is unrealistic. The only way you can resolve it is to come up with some type of a settlement, which isn't going to be fair to Native Americans by any stretch of the imagination.

You're going to pay us off and say, "This is

it." You guys are no longer responsible. We are no longer a problem for Slade Gordon and all his other cronies.

The Colville Tribes have taken giant steps to educate our Bureau people, to make them more able to do what they're supposed to do. I think we'll have to start all over with your office, if this comes to fruition. We'll have to start all over again. And that was a struggle.

I was involved in the BIA reorganization process. What's happening to that? Or is that all just an exercise in futility, like these hearings are?

This whole process is not consultation, in my mind. It's, "This is it. Here, take this. This is the way it's going to be." And that's not consultation.

I shot my wad. I guess that's it -- for now.

MR. HOMAN: I appreciate it. Let me just comment generally on a couple of things that you said that are new on the issues here.

I'm not able to determine, you know, what funding will be available. I have consistently said that, last year and the previous year, when it came to funding the reform effort, that they should proceed without having to go through all the elements of the Strategic Plan. I

1 think you will find my hearing testimony is true to that.
2 I have also said that any funds used to
3 reform the trust accounting area should not come from
4 other Indian programs.
5 Now, all I can do is recommend and propose
6 in that respect. I have no ability to make the trade-offs
7 in that respect, that the Secretary and others can make.
8 But I have been consistent in saying that.
9 Third, the 638 funding, or the block grant
10 type funding which you have all become accustomed to,
11 should not be affected by this. But again, I don't know
12 what the full implications of this will be when the
13 Congress takes it up. Again, it will be my recommendation
14 that that not change -- that the Bureau's activities not
15 change; that the other programs of the Bureau not change.
16 I have no confidence, however, that the
17 Bureau can bring these accounting systems up to snuff. To
18 say that we can't do this, I'm not standing here before
19 you and saying, "I can solve the problems of the last 20
20 years or 30 years or 100 years." I can solve the
21 accounting problem here. I've done it in banks and
22 institutions bigger than the one you see there.
23 We, the government, resurrected the entire
24 S&L industry, which accommodated about $500 trillion in
25 assets. New accounting systems of this nature had to be

1 started from scratch. I personally managed and bought
2 eight of those institutions, so I know I can get this
3 accounting up to standard in one year -- given the money.
4 We're asking for no more money than would
5 ordinarily be spent by your local bank next door, which
6 manages to do that and still make a profit.
7 So, the back-room activities here, or the
8 accounting activities, the system activities, are not real
9 issues. The Bureau should be doing that now. They have
10 not done it. They have not done it. They have not
11 allocated their resources to do it. And I don't have any
12 confidence that they will.
13 And by the way, you know, as I'm not a
14 Republican, but I do talk to the Hill, and I understand,
15 as you do, that the Congress is not friendly these days.
16 But the average Hill staffer will say that the Bureau has
17 no credibility; that that's their excuse for not giving
18 money to the Bureau to reform itself.
19 So I've struck a method to do that. There
20 are other ways of doing that, and I appreciate your
21 comments on that.
22 Yes, sir.
23 MR. JERRY MENINICK: Thank you. Good
24 afternoon, Mr. Homan and the rest of the panel. My name
25 is Jerry Meninick. I'm the Vice Chairman of the Yakama

Indian Nation.

I, too, have a letter that was signed by our Chairman, Mr. Sockzehigh, to you, Mr. Homan, and to your staff and your organization in regards to the Strategic Plan.

I'd like to extend my appreciation for the effort in regards to this Strategic Plan. But through the course of the years, I have recognized, from the efforts of the federal government, that indeed we have tried in vain many different offerings to try to resolve the Indian problem. What I see here is another effort in that administrative process.

But I believe, going back in history, in the aftermath of the treaties with the Indian Tribes, we have to remember that the agreements that were made with the treaties offered us a common ground as far as deliberations, discussions; and that was the treaty.

Since that time, a number of things have occurred. Legislation has been put in place on behalf of tribes, that has been turned around in the field to be regulations against tribes.

One such thing is the General Allotment Act. The General Allotment Act, in its effort to domesticate the indigenous people of this country, offered an economic development at that time to convert our people to farmers.

At that time, also, they did not have the funds to put into their system, the government's system, to train our people.

History has it documented that the move to train our people was then to allow the non-Indian onto our reservation and to teach us how to farm. That particular offering failed because those that were allowed saw the financial benefits on a personal basis that could be gained.

So in 1934 the Reorganization Act was an effort to again resolve that particular issue. Then the offering out in the field, that, too, was turned around, and testimony from that day on has been that the regulations that are currently in place are the problems.

We could have the best administrative process in the world put in place -- the accounting system, the paper shuffled, the bureaucracy that the government offers us as a means to better serve our people. But the fact of the matter is, if those regulations are not changed, then the problem stays there.

And I'll give you one prime example. In the CFRs and the USCs, in regards to conversion of those properties, those lands -- original allotments that have been bought and converted to deed -- the process to convert/reconvert those properties from deed to trust on a

1 fractionated heirship or in development, where the
2 properties are platted, the regulations stipulate that you
3 must have ownership of the total allotment, original
4 allotment, before you can convert it back to trust.
5 Now, I heard this morning that one of the
6 things that this proposal is offering our nations is the
7 opportunity to purchase lands. But I did not hear any
8 discussion on how we would respond to such things as the
9 Article VI of the General Allotment Act, which is the tax
10 section.
11 I believe, going beyond the administrative
12 offering here, Mr. Homan, you would be doing not only the
13 Northwest Tribes that are assembled here today -- of three
14 different categories, I might add. Not everybody in this
15 room, as Tribes, are general allotment tribes. Some of
16 them are self-determination tribes, IRA tribes, and some
17 are state-recognized tribes, or state-sentient tribes. So
18 immediately, we have three different processes that we
19 would have to answer to in regards to land purchase, and
20 three different authorities that we would have to receive
21 authorization from.
22 Perhaps a better offering, Mr. Homan, would
23 be suggestions on how we could amend those acts and those
24 regulations that are currently in CFR, to eliminate those
25 problems that we are currently undergoing in regards to

natural resource management, to land purchases, to economic development.

And I believe such things as the examples in gaming are a prime example as to what has been interpreted to be an economic benefit by our people, has been in turn interpreted by the federal government to be a headache, simply because of the fact that there are regulations in place that will not allow that.

So I see this opportunity in a far different perspective. I see you, Mr. Homan, as a link that could perhaps offer us a voice to those in authority.

I also see the opportunity here for the tribes, into the future, to perhaps have some control on their destiny. There have been other such offerings by the federal government, and I want to remind the tribes that are here today: The bottom line here is when the federal government opens their door for us, we have to respond accordingly.

We have told the world that we are ready for self-determination. We have hired the experts. But when it comes time for us to put out, we can't.

I believe the opportunity lies -- some of this plan could be of great benefit to our nations. I believe, looking at it from a positive note, if there are negatives in the plan, perhaps utilizing the positives, we

can correct those negatives and use it to our advantage, and help Mr. Homan and others that will offer such plans to indeed get to the source of the problem and make a better future.

A lot of us are policy people here, who have sworn an oath to uphold the integrity of the agreements that were made in the 1800s for our future generations. The federal government was the other party in that agreement. We all know that.

In the way that business is conducted in this world, that it has not benefited that which needs it the most. It has benefited those that have the most, and that's where it stays.

So with that, I want to thank you for your kind attention, and I will submit this letter, Mr. Homan, on behalf of the Yakama Nation. And as we go down to questions here, a lot of the previous speakers have touched on the same things. So just a little bit of consistency, if you will. So, thank you.

MR. HOMAN: Thank you, sir. Generally, I agree with everything you've said. Let me just clarify a couple of things about the regulations that are going to be changed.

You mentioned that -- my bottom line is to take your trust funds and put them in your hands, so that

1 you can invest them in any way you please, subject to what
2 is commonly known as the Prudent Investor Standard. The
3 Prudent Investor Standard is a common-law standard
4 applicable to all trust companies.
5 And so we would eliminate all regulations
6 that impede that. And that is stated in the fine print of
7 the Strategic Plan.
8 So, for example, you could take your trust
9 funds, leave it with the government, but direct the
10 government to invest it as you please in enterprises of
11 the tribe and the like. We're not trying to impede that
12 at all.
13 You could withdraw the funds, as you can now
14 withdraw the funds, and still invest them as you see fit,
15 under principles of self-determination. I don't have any
16 problem with that. And we want to do everything in our
17 power to clarify that in our plan -- and I will, to make
18 sure that that's clear.
19 On such activities as gaming, while the
20 current policy of the federal government is not to accept
21 voluntary gaming deposits, even for minor children, that
22 is something I oppose. And I have written letters to the
23 Secretary stating my opposition.
24 So, in our scheme, you would be able to make
25 voluntary deposits for any tribal enterprise -- gaming

included -- and they would be tax-free, and that would be stated up front; again, with the intention of identifying, as Congress told us to do, options for further economic development of the American Indian.

So those are very real and positive benefits. One, you can invest it in what you want to invest it in; and Number 2, it's tax-free. And I will do everything I can to clarify that.

In terms of the reversion of land to trust status without having 100 percent ownership, I would certainly endorse that. That's not a part of my responsibilities. But questions like that will hopefully be addressed by the administration and by Congress in this upcoming fractionated legislation, which will go forward this year -- probably even in the next couple of months, before my plan gets by.

So I would alert you to watch for that legislation, up front, at the Congress when it gets taken up.

Next.

MR. JOHN MILLER: My name is John Miller. I'm the Self-Governance Officer of the Lower Elwha Klallam Tribe. The Tribal Chairwoman, Frances Charles, was unable to be here today because of a family commitment, and she asked me to extend her regrets, and also to read her

1 testimony, if I may:

2 "I have come here today to provide comments

3 on the proposal of the Special Trustee for American

4 Indians to take over trust responsibilities, in addition

5 to the Trust Fund Management that he has had for the last

6 two years.

7 "By all indications, the management of the

8 trust funds has been satisfactory. But we have been

9 invited to consult on a much more important matter: the

10 takeover of management of our trust resources by the

11 Special Trustee.

12 "Trust Resource Management is actually land

13 and natural resource management -- services and activities

14 also known as Trust Services and Resource Management. In

15 the plan, there is almost no discussion, explanation,

16 analysis, or justification for the inclusion of these

17 natural resource programs under the authority of the

18 Office of Special Trustee, and later, the American Indian

19 Trust and Development Administration, after 1999.

20 "It is not clear how management of these

21 resources will be improved under board of directors

22 management practices. We want our trustee, the Secretary

23 of Interior, to be seated at the President's cabinet

24 table.

25 "When Tribal Leaders in the Northwest speak

of natural resources matters, we are speaking of treaty-protected rights -- fisheries and the water and forests which support the entire life cycle of the salmon, and hunting and gathering rights. We don't put a dollar value on them. It is disturbing to see water and land resources included under the Special Trustee's category of 'assets.' These are more than mere assets -- much more.

"Tribes gave up land and resources for reservations and promises from the United States in our treaties -- treaty obligations which have never been fully met. The plan now says, 'self-sufficiency in 30 years.' More promises? Or is this another round of termination?

"Now, under a Strategic Plan for Trust Reform, tribes are being told trust assets will be used to offset the cost of managing Trust Resources, Trust Fund Management, and Land Records and Titles.

"The Strategic Plan appears to be more of a prospectus on how the federal government can use our assets to offset the costs of treaty obligations and trust responsibilities. It is a sales pitch which does not explain how trust obligations to individual Indians and tribal governments will be provided or improved.

"What are the risks to our lands, resources, and our people?

"As I said earlier, the Office of Special

Trustee has apparently done well with IIM and trust funds management. Please stay focused on an effort to improve record keeping.

"Tribes are making progress in the management of our trust resources, and we will have to live with the results. It is our lives, resources, lands, and our treaty rights which the plan threatens."

And if I could just add one thing off the cuff: The Lower Elwha Tribe is engaged in a very complex effort to restore the river on which its reservation sits at the mouth of. And there are two aging dams on the river, 70 and 80 years old.

But it's a very complex project. It's going to require the involvement of the National Park Service, U.S. Geological Survey Group, Reclamation, Fish and Wildlife Service. And the Tribe feels that the Secretary of the Interior will best be able to ultimately broker a deal, and it does not want to see trust resources broken off under the Special Trustee and then later, the administration.

And on behalf of Chairwoman Charles, I'd like to thank Mr. Homan and the rest of his staff for the opportunity to provide these comments.

MR. HOMAN: Thank you, and thank the Chairwoman for us.

1 Just one comment on some of the points that
2 you made. First of all, I think there is a misconception
3 that these trust responsibilities are going to be
4 transferred to the Office of the Special Trustee. The
5 Office of the Special Trustee consists of myself and three
6 people, and it is far from anything I've ever dreamed to
7 manage all of the things that do appear on the board.
8 So what I have suggested is it be
9 transferred -- not to me or to my office, which, in fact,
10 sunsets 30 days after it is transferred to this
11 administration.
12 This administration is set up with five
13 members of the board of directors and a management team
14 that will focus strictly on those three trust management
15 efforts.
16 Right now, we have no one -- no one -- that
17 focuses on those three activities. Yes, the Secretary
18 gets involved at times. But he has an immense
19 responsibility having to do with all the other Department
20 of the Interior duties. Even Ada Deer and Hilda Manuel
21 cannot devote full-time to these activities. They have
22 other trust programs.
23 So the idea here is to focus on these
24 essential federal, inherent responsibilities in one
25 unit -- not the Office of the Special Trustee -- and I

1 specifically recommended that it not be there. So, just
2 to clear up that confusion.
3 Second, the charging of fees, which you'll
4 see in the back, is not my idea. It is the idea of the
5 Solicitor's Office, and it will be implemented regardless
6 of whether my plan gets done or not.
7 I have, in fact, exempted certain things --
8 what I call lifeline activities -- from those fees. And
9 the lifeline activities are those present trust funds and
10 future trust services that are not affordable by many of
11 the tribes that we deal with.
12 So that's not my idea. It's something that
13 I have tried to except out. But you will see that coming,
14 I think, in the next few months, either from a
15 Congressional action or directive. The Solicitor has
16 already given the Secretary an opinion that he can charge
17 a fee for all of these trust services.
18 Yes, sir?
19 MR. J. DAVID TOVEY, JR.: Good afternoon,
20 Mr. Homan, Ms. Cobell, and other members of the panel and
21 your team. I am appearing here today in my capacity as
22 Treasurer of Affiliated Tribes of Northwest Indians, and
23 you might know that I am also the Director of Economic
24 Development of the Umatilla Tribes in Pendleton, and I was
25 also the past chair and founding member of the Indian Land

Working Group.

I have got here a letter that we would like to submit from ATNI, to be read into the record and submitted for our testimony. And just for your edification -- the other tribal leaders here -- this letter has been reviewed by the entire executive committee of ATNI, various Tribal Leaders, as well as Raynell Diehl, our banking finance coordinator for ATNI.

The week before last, we were honored to have Elouise Cobell speak at our winter conference at ATNI in Portland. And we were also pleased to start getting some of the comments back from Tribal Leaders, which we have also attempted to incorporate into this letter.

By the way, we appreciate Elouise's involvement and leadership on the Advisory Committee, along with the leadership and participation of the other Tribal Leaders that helped guide this plan.

Our letter is addressed to you, Mr. Homan. "On behalf of the Affiliated Tribes of Northwest Indians (ATNI), we are pleased to submit these comments to you regarding the Draft Strategic Plan on trust management. We greatly appreciate your willingness to personally conduct these important hearings, and we stand ready to assist you in any way we can to gain complete input from the Northwest Tribes.

"There are a number of issues we would like to raise with you. Without doubt, this proposal represents one of the most far-reaching efforts to reinvent the Bureau of Indian Affairs' responsibilities. The private sector perspectives you have brought to bear on the BIA's charge have been compelling, but we must ask for greater detail on the methods and process. Likewise, we do not believe that the Federal Government's trust responsibility to Indian Nations can be privatized -- private sector standards, yes. But our federal relationship cannot be so simply severed.

"While we applaud your conduct of this hearing, we have the sense that many Tribes have not been made aware of the scope of the Strategic Plan. Consequently, we urge that further extensive consultation opportunities be planned and conducted, to provide every possible tribal issue to be heard and addressed.

"We Tribes in the Pacific Northwest consider 'consultation' a process that creates a better collective solution. It is not holding a simple hearing where testimony is submitted and potentially disregarded.

"In terms of the Draft Strategic Plan, we would suggest that it is too far-reaching, and we would need to see more definition on its details. An immediate concern is the inclusion of other Trust Resource

Management areas, such as land, timber, and mining. These functions go beyond the primary issue at hand, which is trust fund management. This would serve to effectively eliminate nearly all BIA functions, but there is little detail of how such a transfer of responsibilities would occur.

"As you may know, this organization" -- that is, ATNI -- "spent a great deal of time and resources working with Tribal Leaders and the BIA on an extensive reorganization plan" -- over a series of years.

"Your Strategic Plan doesn't appear to acknowledge these recommendations or tribal input. Inclusion of the balance of the BIA's trust responsibilities would make this Strategic Plan come under extreme scrutiny by both Tribes and Congress. The concern we would have is that the plan itself may be politically 'dead on arrival' with these inclusions" -- both to the Tribes and to Congress.

"Over the course of the past several Congressional sessions, Tribes have been made starkly aware of the overall tone of deficit reduction. Consequently, we would like to know how this Strategic Plan is being considered by Congress.

"The only acceptable alternative at this stage will be new appropriations" -- as dismal as that may

1 seem -- "as opposed to shifting dollars from other
2 existing programs. Tribes are very concerned about recent
3 discussions of 'means testing' and taxation to balance the
4 nation's budget.
5 "Any perceived notion of affluence by Indian
6 Tribes is not justification to walk away from the blatant
7 mismanagement of trust funds. The obligations of the
8 Federal Government as the trustee for Indians will not be
9 disregarded, and in our view, it is at least as important
10 as the failure and settlement of the savings and loan
11 system.
12 "In terms of the Development Bank, we are
13 enthusiastic about the possibility of any new financial
14 intermediary to serve Indians and Indian Tribes. I have
15 personally greatly enjoyed meeting with you and hearing
16 your perspectives on this proposal. We believe that when
17 we achieve localized Indian-controlled capital formation,
18 we will have set the foundation for sustainable long-term
19 Indian economic development.
20 "However, we feel that we need much more
21 input on the structure and ownership of the proposed bank.
22 Likewise, the proposal must contemplate methods to achieve
23 localized control and delivery systems with a great deal
24 more detail. And finally, we believe that provisions for
25 the contracting of services and functions be extended to

1 local and regional organizations.

2 "In closing, we are pleased to be

3 participating in what we believe to be the start of an

4 extensive consultation process to address these trust fund

5 management issues. Our ATNI technical support work group

6 has prepared more detailed questions and concerns" -- and

7 I believe the Shoalwater Chairman pretty much detailed

8 those, and they're attached to this letter for the

9 testimony.

10 "We would be pleased to answer any questions

11 you may have regarding this. And again, we would like to

12 assist your office in disseminating further information on

13 the matter."

14 Like I said, I'd like to submit this for the

15 record and for testimony.

16 I think, in general and just to summarize,

17 it's a concept, but at this point, ATNI is not in a

18 position to endorse it, nor reject it. So that leaves it

19 open to more discussion, I think, at this point, from

20 ATNI's official position.

21 Personally, I appreciate the inclusion of

22 the Indian Land Working Group recommendations, and

23 particularly as they relate to individual Indians and

24 trying to create for individuals the sense of asset. I

25 think that's a primary hallmark of that effort.

A couple questions specifically, if I could pose them real quickly. And especially as it relates to small IIM account holders. I guess I'm talking about the real small IIM account holders.

The incremental costs to administer those small accounts, especially if they're charged a fee, would probably outstrip whatever return it might otherwise be expected to receive, even under this mutual fund method. And if I could pose that one question.

The other question: Listening to some Tribal Leaders in the hall, you know, if this proposal went through intact as it is, what BIA functions would remain? What is not considered a trust function?

And I guess some of the ones that were being brought up and asked about were roads, police, fire protection, Social Services. Is that all of them? You know, how much more? How much less?

I'd like to invite -- I know some of the questions were read into the record by the Shoalwater Chairman. But I see Rick Gay, and I know Jim Sizemore and some of the other folks of the Technical Support Working Group are still around, and I invite them to pose some other more specific questions that they might have. And again, ATNI appreciates their work.

And I think in closing, regardless of the

1 future of this proposal and the BIA itself, I feel that
2 the examinations of the Special Trustee will and should
3 improve the system we currently have.
4 By my very nature, I tend to try new things
5 as opposed to perish by indecisiveness, but I think you've
6 pretty much heard the tenor of Tribal Leaders in the
7 Northwest, too: That there are some concerns, and they're
8 legitimate concerns about consultation and the complexity
9 and the lack of detail. And I think that in the best
10 interests of this effort moving forward successfully, that
11 these should be addressed as quickly as possible within
12 the process.
13 Thank you, Mr. Homan.
14 MR. HOMAN: Good, thank you. And we'll try
15 to live up to that.
16 On a couple of specific questions: On,
17 first of all, what happens to the small IIM account
18 holders, let me just recite the numbers. On our last
19 count, we had about half of our 300,000 accounts at $10 or
20 less. Is that about right? I think it's 150,000-odd
21 accounts.
22 As near as we can calculate, the Bureau
23 probably spends -- like a bank would -- $40 to $50 in
24 administrative costs for those accounts, a year. It's
25 that that the Solicitor's Office is concerned about,

1 because that's not your money. That's taxpayers' money
2 that pays for that.
3 I can't believe, and neither can anyone
4 else, that $10 is that important to anyone. And no wonder
5 people do not send in their change-of-address forms or
6 change-of-name forms when they get married and the like.
7 And it creates operating problems for us.
8 Our 40,000 accounts that Donna mentioned
9 that we can't find, most of those are these small
10 accounts. I think the Solicitor's Office, to avoid a
11 Constitutional taking question, wants to start charging
12 away some of those accounts.
13 So, for example, if it takes the $40 or $50
14 in annual administrative costs, we would just tap that
15 against the account and close them -- much as a bank
16 would. Every state in the United States does this for
17 these small accounts, and we would not depart from what
18 the State of California or New York or any other state
19 would do in that respect.
20 These have been governed by national banking
21 laws and state banking laws for as long as I can remember,
22 and I've been in the banking industry for 30 years. There
23 is a way to escheat those accounts.
24 Now, Elouise Cobell, among others, has an
25 important threshold question. And the question is: Even

1 though I may stand up here and say there are that many
2 accounts with under $10, I don't know -- nobody knows --
3 whether that $10 should be $100, because we haven't been
4 able to account for all of the income, all of the
5 principal, in the past.
6 That's what worries me about rushing into a
7 fee structure until we have an accounting system that has
8 integrity. And so I won't do that.
9 And I have specifically exempted some of
10 those things in my plan. I don't know that I'm going to
11 be persuasive. But I think, regardless of whether my plan
12 goes through, you'll see the department doing something
13 about those small accounts here in the next year.
14 The second thing about the BIA functions:
15 Again, the three functions that will be transferred to
16 this new administration are Trust Resource Management,
17 Trust Funds Management -- i.e., the current OTFM -- and
18 Land Titles and Records.
19 All other activities -- police, fire
20 protection, education -- will remain with the Bureau.
21 Anything having to do with their current trust
22 responsibilities will remain. I have no input into that.
23 I have not recommended any changes.
24 And to repeat something I said earlier, this
25 is an incremental budget that I am asking for, so it will

be through appropriations. I have recommended that it not be taken from any other Indian programs. But again, I have no control beyond my ability to recommend.

And it is a legitimate concern as to where this money will come from. I will have my say with the Congress. I will have my say with the Secretary, and so will you, on those issues -- regardless of whether this plan goes through.

Because some of this stuff has to happen, because we are in a massive breach of trust. And if we're not forced by the Congress to do something about it, then the Courts may force us to do something about it very quickly.

Yes, sir.

MR. JAMES D. NOTEBOOM: My name is Jim Noteboom. I'm an attorney for the Confederated Tribes of the Warm Springs Reservation of Oregon. And I am, of course, not a tribal leader. I am here, I think, more to elicit information so that the Tribal Council can discuss this and prepare its position for the group. And only the Tribal Council, of course, speaks for the Tribe.

There is no question, in my view, that you've got some very good ideas, that people are very well-intentioned. But Tribes are understandably quite concerned now, that people who aren't so well-intentioned

1 will use this as a vehicle against tribal interests, and
2 that's something that we have to weigh with every
3 legislative initiative at this point.
4 My understanding of this effort before had
5 been that it had to do with trust funds. And I think that
6 everyone would agree that the IIM situation is a bad
7 problem, and it has defied solution for a long time. So
8 it's very encouraging to see some of these proposals come
9 up.
10 And I personally am not convinced that,
11 given the proper funding, the Bureau couldn't do this,
12 couldn't straighten it out.
13 I am also probably of the understanding that
14 Congress, who would have to appropriate that funding,
15 would not share that view, in all likelihood.
16 But there is another alternative, and I'm
17 wondering if it has been considered. And that is: What
18 about a separate office under the Secretary of the
19 Interior, still within the Department of the Interior, but
20 outside the Bureau? Has that been given any
21 consideration?
22 MR. HOMAN: Yes, it has. The Secretary
23 himself submitted a plan which was, as I understand it,
24 rejected by the Congress in 1994, which would set up these
25 three functions in a separate office, reporting at that

1 time to the Assistant Secretary for Indian Affairs, but
2 outside of the regular Bureau mechanisms.
3 Then there was some consideration given to
4 making it a separate report to the Secretary, or
5 elsewhere. I think at the time, it was considered: Why
6 not report to the State Department or to the Treasury
7 Department or some other cabinet-level person?
8 So there have been a number of these things.
9 I have looked at all that. I think that one of the basic
10 problems I've heard from the Indians themselves is that
11 once it gets out of the Bureau, then the money, because of
12 the cap system, gets traded off against the National
13 Parks, the Fish and Wildlife, the Geological Survey -- all
14 other activities, which are, frankly, politically more
15 popular than American Indian programs and have larger
16 political constituents.
17 So whether it's the Secretary voting or the
18 Congress voting, you end up getting traded off in that
19 respect.
20 So that's why I suggested that it be taken
21 out of the Department. And while you give up a
22 cabinet-level trustee, you have the benefit of them
23 reporting directly to the funding source, which is the
24 U.S. Congress, which has always -- and never failed --
25 never failed in 60 years to fund any of the

1 government-sponsored enterprises. And there has never
2 been a failure of any of those systems.
3 So they have always gotten what they needed
4 from the Congress, either through general operating funds
5 or directly through appropriations.
6 So that's essentially -- I have familiarity;
7 I worked for the U.S. Treasury, OCC, which is a
8 semi-independent entity, for many, many years. And I know
9 how it feels to be off in the appropriations process.
10 MR. NOTEBOOM: Thank you. That helps. The
11 second thing is that I would like to talk about the trust
12 resources issue and what exactly the scope of this is and
13 how it might work.
14 And I'd like to put that in the context of
15 the situation at Warm Springs, which is similar to that of
16 many other Northwest Tribes. First, we do have a large
17 forestland base. We're in the process of developing a
18 cooperative agreement with the Bureau for co-management,
19 somewhat like the Colvilles. And that forest provides
20 about half of the Tribe's revenue.
21 How -- what would happen to the BIA forestry
22 employees? What would happen to the tribal forestry
23 employees? How would they interrelate? How would that
24 work? Would this office be responsible for the forestry
25 program?

1 MR. HOMAN: This office, or the trustee,
2 would be responsible for the forestry program, but no
3 differently than the Bureau of Indian Affairs currently
4 conducts its activities.
5 The basic premise of the commercial trust
6 system is that it sets a common set of policies,
7 procedures, and accounting that is indifferent as to who
8 manages it. So, for example, the trustee that handles
9 trillions of dollars -- and I am saying trillions of
10 dollars of land in the United States -- land management is
11 a local enterprise, as all of us here know.
12 So that trustee would go to your
13 self-determination tribes, or the Bureau, if they manage
14 the land, and under the same circumstances, let them
15 manage the land -- but under a common set of law,
16 policies, and procedures and consistency in terms of
17 reporting. That's all. So, no change. I don't
18 contemplate any change in how that land is managed today.
19 And to back up, there is some confusion
20 about what the charge of the Special Trustee is. The law
21 says I am to look at the trust management activities, the
22 trust responsibilities -- which includes Trust Funds
23 Management, Trust Resource Management, and Land Title and
24 Records across the Bureau of Indian Affairs, MMS, and BLM.
25 So it is all-inclusive. It was in the

1 Reform Act of 1994, and that's why I had to include it in
2 my study. I was not just to study the Office of Trust
3 Funds Management, which is really only one of three
4 things.
5 It's a deposit function. It invests, and it
6 disburses. But I think all of these audit reports will
7 tell you: I can now account for every nickel that comes
8 into Albuquerque under this lady's leadership, and we can
9 invest that nickel, or you get a report on that, and I can
10 disburse it. But I don't know whether that nickel should
11 be a dime, because I can't check the lease.
12 And when we went to look for the leases,
13 there were horrendous numbers of current leases missing.
14 And I don't know, when I disburse the nickel, whether it's
15 going to the right person, because there is a backlog of
16 two years on some of these probate issues and land records
17 and ownership.
18 Our outside contractor, last week, told our
19 Advisory Board that they had in one Area -- in Billings,
20 Montana -- a list of a property owned by a single person.
21 One system said he owned one property. The other said he
22 owned 37 different properties. And this wasn't just
23 entries that weren't made. The last entry on either
24 system was 1992. 1992.
25 So which was it? They didn't know. They

1 couldn't tell whether it was one or 37 or some number in
2 between. I mean, that's the status of some of our land
3 records systems.
4 And as a trustee, you know, I'm to divorce
5 myself from not worrying about that? And yes, I could
6 just handle the nickel that she collects in Albuquerque
7 and go home and sleep nights -- but you'd better not.
8 MR. NOTEBOOM: We talked about a second
9 trust resource that -- and I want to come back to forestry
10 for a second. As with many of the Northwest Tribes, one
11 of the most important -- many would say the most
12 important -- trust resource that they have is fish and the
13 right to take fish. And that's both on and off the
14 reservation.
15 And it's on federal lands other than
16 reservations, and there is an enormous system built up to
17 manage that, consisting of hundreds of biologists and
18 others. Much of it is done in litigation; the U.S. v.
19 Oregon has been going on for 30 years. Is this entity
20 going to take over fisheries management?
21 MR. HOMAN: No. Again, as I said earlier,
22 it will act no different than the present BIA -- all of
23 the other agencies in government. And as you know, this
24 transcends the Department of the Interior in many
25 respects, as well.

MR. NOTEBOOM: Okay. But the fish resource is a trust resource. Is this one of the trust resources over which this new entity will have some responsibility?

MR. HOMAN: If there is a trust responsibility there, yes. Yes -- only in an administrative capacity, to make sure that it's being properly reported. We're not going to manage that. The local tribe will manage it, or the local Bureau office will manage it.

MR. NOTEBOOM: The problem I have is that most of what you've talked about in terms of trust management has to do with what we, off the reservation, would think of as prudent financial management and resources.

The fish resource is an important trust resource. It has nothing to do with finance. It has everything to do with culture, with subsistence, with all this else. And it doesn't really lend itself very well to traditional principles of trust management that I think you're talking about. So how are you going to reconcile those?

MR. HOMAN: Whether this entity does it or a trustee does it, it will get done by either the Bureau or this administration, in the same way that a trust department would.

MR. NOTEBOOM: So would you be directing fisheries biologists or Department of Justice employees in the litigation as to what they should or should not do with regard to this trust resource?

MR. HOMAN: No different than a commercial bank would involve everyone that had an applicable say under the law -- as you know as a private lawyer.

MR. NOTEBOOM: Well, I don't think a commercial bank would ever manage anything like this.

MR. HOMAN: Oh, they certainly do. They certainly do. They manage trillions of acres of land in the United States.

MR. NOTEBOOM: But they manage it on very different --

MR. HOMAN: They have water. There is water rights, fishing rights. You name it. You've probably been involved in it.

But I think we need to raise the question level a little higher.

MS. ERWIN: And you need to comment on that. You truly do. You need to say, "Here are our concerns on that, and how does this fit in?" I mean, that is what we need to hear from you.

MR. NOTEBOOM: Okay. Because this is really quite new in terms of what we've been hearing in the last

ten years.

MS. ERWIN: Say, "These are our concerns." It will be addressed. Because this is what we're here for. Tell us what is missing, what you need, what's not there. You know, that's what we're here for.

MR. CHRISTIE: When you look at the trust responsibility, it not only extends out to where you get financial remuneration, but it also extends out to how that resource has been prudently managed and has it been managed correctly. And tribes now have the right to sue the federal trustee for mismanagement of that resource.

Like Mount Apache, for example: Our general plan said, "You can only take 95 million board feet a year." The tribe came in and said, "No, we need more money. We want to do 100 million board feet."

The Bureau said, "Fine, do it." They're now in court, and the White Mountains have now sued the federal government, because they overcut, and the trustee let them overcut. Even though they requested it, it was a nonprudent use of the resource.

So irrespective of whether you're getting income from that resource, the federal trustee is still responsible for the prudent management and can be sued and is liable for mismanagement of that resource.

MR. NOTEBOOM: Let me close with one further

statement here. With regard to the IIM funds and some of the other trust funds, everybody agreed the system was broken. I think it's far from clear whether the tribes are dissatisfied fundamentally with the management of the fisheries resource, with the management of the forestry resource -- that they think the Bureau is doing a bad job.

I don't think that is agreed to at all. In fact, the opposite is true. Warm Springs, they're quite satisfied, for the most part, with how the Bureau operates in those things.

And so, to kind of lump that issue together with this other issue -- that we, I think, all agree is a problem -- seems to me to be potentially weighing down the good things in your proposal with some things that are going to be extraordinarily controversial.

MR. CHRISTIE: We hear you. The other thing that you have to remember is that 99.99 percent of all forestry money is run through the IIM system. So if the IIM system is broken, then 99 percent of that forestry money stands to have a potential liability, because it runs through that IIM system at all locations.

MR. HOMAN: So that makes it difficult to divorce it.

MR. ALFRED M. PEOUGE: Yes, I'm Al Peouge, Tribal Council with the Spokane Tribe. Some of the

1 comments I heard this morning were real good, and some of
2 the presentation that you gave us was informative, so the
3 paper I got here is only going to give you half the
4 information we would want to give you. We're going to go
5 back and do a full detailed report and send it to you
6 later on next week.
7 But from what I have here, in my view, the
8 Special Trustee of American Indians' Draft Strategic Plan
9 is to implement the reform required by the American Indian
10 Trust Fund Management Reform Act of 1994. There are
11 several problems which exist in the draft and plan itself.
12 Number 1, there is no mention of Public Law 93-638. The
13 effect on all tribes should be considered or mentioned.
14 Contract, grants, MORs, MOUs.
15 There is no mention of the Bureau of Indian
16 Affairs. Some of these have been gone over there. What
17 happens to the BIA's trust responsibility to the tribes?
18 Do they lose their trustee? This sounds like the start of
19 termination, as another Tribe has said before me.
20 Why is it going to take 20 to 25 million
21 dollars annually to maintain a new system? Why not put
22 the funds into the present system? The cost would be a
23 lot less.
24 This proposal is a major change in the way
25 the U.S. Government would manage its trust responsibility

to American Indians, be it managed by a full-time chairman, the executive officer, a board of directors appointed by the President and confirmed by the Senate; it is unacceptable. With the change in elections, it will be a drastic change to Indian Country.

If something is wrong, you fix it. You don't implement another organization to take its place, that may cost some $30 million or more to get it started. Where is the funding going to come from? Are they just going to pull the funding out of the hat? Could this happen without jeopardizing other programs?

I firmly believe that the BIA should be held accountable and remain as the trustee. I have some unperceived feelings when they start talking about changing tribes' trustee.

MR. HOMAN: Thank you very much, and we'll look forward to the full comments.

MS. GALE LONGSHORE: Hello. My name is Gale Longshore. I'm the Secretary of the Skokomish Tribal Council. I've listened to a lot of comments and questions, and many of them are the same as I feel. And I would like to request that, following the conclusion of this meeting today, since there are three other ones scheduled, that the tribes in the nation can get a copy of the comments made, and the answers, so that each of us can

have a view of what other tribes are feeling regarding this plan.

And I also feel, from what I'm hearing today, that tribes want to be involved in this process and in this plan, because it's important that the administration, Congress, and tribes all be involved on it, or it isn't going to work. Or if it does go in place, it's already in place already, and this is just a public hearing and you're just doing what you have to do.

And these are our resources. We want them protected for our future and for the present day that we have. And knowing the experience that I have, there is always a cost and a payoff. And I believe tribes want to know what the cost is going to be to them and what the payoff is going to be. That's basically what I needed to say, because the other tribes have brought up many of my other concerns.

But I think all the tribes in the nation, which is 554 presently right now, need to know what each other is feeling. So that maybe another consultation meeting, or several, can take place with yourself and the other people involved, so that this plan is in agreement by all parties.

MR. HOMAN: I can respond to that. We are going to make all of these transcripts public as soon as

we can compile the list of the concerns and questions. And if you submitted statements, they will be submitted intact, so that others can have the benefit of your thoughts.

I agree that, and we're trying to involve as many tribes as we can, as we go forward in the consultation process. And usually before hearings, we're having meetings with some of the leadership groups, and then they'll know about the series of Congressional hearings, where all of the input will be digested once again.

And on the costs again, I have put forth, in the incremental budget, that we have estimated it will cost, at the present time, $147 million over a five-year period, with one hundred million coming close to, in the next two years.

And we think, with having had one progress report from our outside contractor, that the cost would probably be much less.

But to respond to one of the numbers from one of the previous speakers, the $20 to $25 million in annual maintenance is fairly small compared to what we expend on these systems. And for example, the Bureau itself says it spends $33 million alone on the fractionated heirship minority interests, which doesn't

amount to anything.

So we think that $20 to $25 million is a reasonable estimate, and by all accounts, we should be able to eliminate much of that $33 million with a new, modern system.

MR. CHRISTIE: We anticipate that the comments for all of the consultations will be done by the end of March. They will be put up on the OST home page and will be available, and they will also be available to any tribe that would like a copy, by just writing to the Office of Trust Funds Management in Albuquerque, New Mexico.

And the home page can be found at http://www.ost.doi.gov. And also, the Strategic Plan will be up on the home page, and you can download that, also.

MR. VERN L. CLAIRMONT: Good afternoon. My name is Vern Clairmont. I'm the Executive Treasurer for the Confederated Salish & Kootenai Tribes in Montana. I want to thank you for the opportunity to discuss this most important issue. I appreciate the meeting here today and the information that's been passed about.

An issue that involves each and every tribe and every individual tribal Native American across the country: the issue of federal fiduciary trust responsibility.

1 Although it is easy to find, in a very
2 cursory review of this proposed Strategic Plan, good ideas
3 of theoretical improvements, such a limited time for
4 review of this document simply raises so many questions
5 and concerns that, at this present time, we are unable to
6 support its recommendations.
7 Changes so drastic as these require a very
8 deep trust between all concerned parties. For the past
9 year, I have been told, as many in this room have been
10 told, that the Special Trustee did not intend to pull the
11 complete management of all natural resources into the
12 plan, but would only be dealing with the collection of
13 funds, accounting, and investment and record keeping of
14 those funds.
15 The proposal that we have in front of us
16 does something different than what we've been told in the
17 last year, I believe. A new federal agency is recommended
18 to be developed to take over all of the trust
19 responsibilities to American Indians. This independent
20 government-sponsored entity will be run by a full-time
21 chairman and a chief executive officer, a board of
22 directors appointed by the President and confirmed by the
23 Senate. It further proposes that the board of directors
24 be nine members. Today, I understand that that's been
25 changed to five.

In the proposal that I was reviewing a couple weeks ago in regard to the nine members, only three of those members were going to be Native American. Three of them were going to be individuals from the general public, which we didn't understand what that meant, whether that was Native American or who that was.

MR. HOMAN: Vern, you're correct. The Advisory Board, when it reviewed the plan, decided that five would be a better number. We eliminated the three public-at-large members to give the Indian contingent -- three -- a majority of the board.

MR. CLAIRMONT: Thank you. That was one of our concerns, because it appeared that if we were going to become under a new federal agency or a new entity of the federal government, that we were once again a minority in the say of what it was that was going to be done with our natural resources -- in essence, starting all over again from the beginning.

The proposal documents a major problem of the current system as a lack of funding and a lack of adequate upper management provided to the Bureau of Indian Affairs for more than the past 20 years. It does not address how adequate funding and management will be guaranteed to this new agency, any more than it has been to the BIA.

1 Another fundamental problem of the current
2 system is fractionation of American Indian allotment
3 interests. The proposed Strategic Plan does not explain
4 how this problem is going to be addressed. Are we to
5 simply trust that our best interests will be taken to
6 heart?
7 Perhaps we have not yet documented or
8 determined that the current systems need to be completely
9 thrown away, instead of worked on, to provide a more
10 cost-effective solution to the problems.
11 Caution must always be taken to ensure that
12 the proposed fix to all of our problems does not end up
13 harming us more than the current systems.
14 The proposed plan states that all OTFM and
15 OST employees would be transferred to the new entity. And
16 the proposal that I see this morning, now it has included
17 all the BIA staff. If this comes to pass, and other new
18 management positions are filled with employees who know
19 nothing of past relationships between tribe, tribal
20 nations, tribal individuals, and the federal government,
21 we all shall have a very difficult future.
22 In closing, we simply have too many
23 unanswered concerns to support such a plan, that we have
24 not had the opportunity to sit and address our concerns
25 with those who propose it to fix all that is wrong with

the current systems.

We will be providing additional comments in the future, and we would again thank you for the opportunity to get the information today, and we look forward to the additional information that may come about in the next group of meetings. Thank you.

MS. ERWIN: Can I say one thing? I think we're starting to confuse, and I think probably it's because I'm here in both sessions, and I want to make sure that it's real clear that we were transferred to the OST/Office of Trust Funds Management.

We went out during the summer and spoke about the IIM problems. We came out and asked people, "Tell us where the problems are. Tell us where your concerns are." We brought out computers.

And so we wanted to make sure that we're not getting those two meetings confused. At that meeting, the question was asked -- and Paul had responded, in his notes that he presented and that we have presented, that said he did not want anyone else being transferred to him.

OST is not there to -- he's there for the reform effort. He's there to make recommendations on BIA improvements, MMS, BLM, OTFM. But that's a comprehensive look. He would be coming out with that plan.

When we were out saying, "This is what we're

here to talk about, is the IIM efforts and reforms," that was the concentration during the summer for those five meetings that we had, as we said at this morning's presentation. So I just didn't want to confuse the two. Thank you.

MR. HOMAN: Vern, I think I have responded to some of your general questions.

One further point on the fractionation. It lacks detail, but it is very much more specific and picks up all of the major recommendations of both the Secretary and the Land Consolidation Groups, as you saw this morning in very general terms.

Now, I didn't attempt to write heirship rules, and I don't have the competence to do that. So we have a generic suggestion that individual rights be protected; whereas, I didn't think they were protected in the original Department of the Interior proposal.

Now, that proposal is being worked on today by the OMB -- a team consisting of OMB and the Department of Interior -- and I believe they intend to put that up before the Congress, hopefully, before the summer is out, when you will see, as I will at that time, the specifics.

I've asked them to consider just generically the major points that the Land Consolidation Groups gave me, and also tried to meld it with the original proposal

by the Bureau.

So it's not going to get any more specific, and I can't make it any more specific, until the Congress has had an opportunity to look at it.

Yes?

MS. NORMA GOURNEAU: My name is Norma Gourneau, and I'm the Vice President for the Northern Cheyenne Tribe. Our Tribal Chairman, William Walks Along, had previously submitted comments regarding the IIM part of it. And we will be submitting formal comments on the whole plan.

I just received the book last week, and so I went through it, and I have some questions on it, too. Our Tribal Chairman is in the process of submitting his comments, so those will be forthcoming.

I just have a few questions that I would like to throw out for your consideration. I used to work with the Bureau, and so I'm having a hard time conceptualizing how all this is going to work and how these functions are going to be carried out by the BIA staff.

One of the questions I have is: What assurances do you have that our TPA will remain intact? That no funds from the money that serves the local agencies and the contracting programs will not be

1 transferred over to this other Agency, so that our funding
2 amounts are cut?
3 I have a hard time visualizing how technical
4 assistance and support services are going to be offered to
5 the tribes for those programs that they do have contracted
6 and for programs that they are planning to further
7 contract.
8 I have a question on the supervision of
9 these programs and individuals. Right now, we have one
10 IIM clerk at the Northern Cheyenne Agency who handles all
11 of the Trust Funds Management. And she reports to an
12 individual that is located like 100 miles away, and so
13 there are some logistical problems with that. You know, I
14 just need some further clarification on that.
15 In your plan, you talk about settlement of
16 the fractionated interests, and I think that's a very
17 ambitious project, and I want to offer any help that we
18 can. It is a nightmare, especially at our Agency.
19 You have said that you will retain the same
20 personnel at those Agencies. Well, I have a problem with
21 that, too, because at our Agency, we have some of the most
22 incompetent people handling our Land Resources Programs.
23 There are some things -- good things -- that
24 have happened because of the focus on the IIM and the
25 Trust Funds Management report. At our Agency, we received

training on the OMNI system, and so when I went to work for the Tribe, we now have access to all our trust fund recording on a daily basis, and we can access that information, so there are some good things that have come out of that.

We can now withdraw our own money, and we are developing a plan to where we can develop an investment program for our water settlement plans, and so we're looking forward to that process.

We had a referendum vote by our tribal membership that would allow the tribe to develop some plans and to hold our money in trust for what we call a permanent fund. And so we've had those opportunities, and so there are some good things that have come out of this whole thing.

The other question I have is: What happens to those functions at the local Agency and at the Area Office where the BIA has responsibility over these trust fund programs now? Who then has supervision over those? What kind of assistance will the tribes be offered? And what kind of technical assistance and so forth will still be available to the tribe, if any at all?

Those are the main questions I had, and we will be submitting a formal statement.

MS. ERWIN: Thanks.

MR. HOMAN: Okay, Donna.

MS. ERWIN: Supervision of the IIM, you're right. And no, the personnel that's there, we've had a big reform across the nation, as you've seen, and some people say that there is chaos out there. Well, sometimes chaos is good for all of us. It makes us all step back and look at how we're doing business.

We've had people calling in and saying to us, "Excuse me, I hear the OTFM staff is coming out and looking at these jacket files and documentation." Yes, we are.

So even though the supervision is far away, we are trying to structure that whole thing right now so that we have backup.

Now, I have had some long conversations with the field staff in the last few weeks, saying, "You will keep those superintendents informed. Those superintendents are your customer base. You will get along. Everyone has got to be respectful of each other out there."

We have not kept all the personnel across the country. We've had quite a shake-up across the country. We have dismissed some employees.

Someone says, "Does that mean you sent them home for the day?" No. Permanently, we've sent them

home.

We've had some problems out there. We did inherit some problem employees, and we are taking care of those. So people that we look at, we actually are looking at performance: These are the things that need to happen, these are the target dates they need to happen, these are the cleanup targets for your files.

So we will address that one. The supervision will still be probably more of a regionalized or of an Area situation.

We are working -- like we said, everyone has to develop a plan by the middle of next month to tell us: How do you deal with sicknesses that come up there? Who is there and who is to replace? Is that something you're going to work with BIA on? Do you have somebody driving a distance to go over there?

We are detailing people to help out. So you're going to see a lot of people out there concentrating on these efforts.

And I appreciate the things that you said about being able to learn about these, and we do have that OMNI process out there available to every tribe right now. If you need people out there to talk about investments, talk about OMNI training, let us know, and we'll get you someone out there. So please keep that in mind.

1 Technical assistance: I want to touch on
2 that, because I don't think we hit on that in the plan.
3 We talked about training, but I don't know that it's
4 outlined as "technical assistance," and I think it's a
5 real good idea as something that we do need to go back and
6 concentrate much more on. So we will go back, and we'll
7 look at that and be talking about: What do you need?
8 And we heard some tribal members telling us
9 about what they needed from IIM during the summer, because
10 we did have tribal participation there, also. But we do
11 need to hear from you. This is what I need more of, that
12 I'm not seeing.
13 MR. HOMAN: We have buried, in our training
14 budget, enough money -- a good $20 million or so of this
15 budget is for training, and it not only goes to training
16 our Bureau staff or the trust staff that will be involved
17 here. But the 300 tribes, it goes to training them on the
18 new system. It goes to convert your present systems, too,
19 so that they're compatible and integrated; and all of that
20 under the general rubric of training and technical
21 assistance.
22 So we will be providing the money to buy the
23 equipment, the money to convert it, the money to do the
24 file scrubs; and finally, the money to train the tribes --
25 self-governance and others -- onto this new system. So,

that part of it is included.

MR. CHRISTIE: The other comment that the lady made was concerning the TPA budget. Mr. Sizemore was here this morning, and I'm sure each of you know the tremendous effort that Mr. Sizemore made on Indian reorganization of the Task Force to recreate and reformalize the tribal budget. Merrit Youngdeer and myself were co-champions, with Mr. Sizemore, on that effort. And we are as committed to maintaining that budgeting system into the new structure as the BIA is committed to keeping it in the current system.

So that budgeting system would remain in place. Those employees that are brought over would continue to have Indian Preference. But they will be held to accountable results, as any employees should be held to accountable results. But that budgeting system would remain in place, but under the new entity.

MS. MARY LEIKA: My name is Mary Leika. I'm from the Hoh Tribe. I'm the Executive Director, but I held my position in Council since 1975. This is my choice to be on administration.

But one of the things that really bothers me is that, you know, about the smaller tribes, even though we hold a lot of share in allotments and a lot of resources through our fisheries and our timber, it's very

important, what I'm going to go back and tell the Tribal Council, because they directed me to come here to find out what is going on, what is happening. They're a new, young Council. They're not informed about what is happening today.

When I go back, I'm going to tell them to be very careful with what their decision is going to be, as to today, when I'm going to give them all this information. Because there is a lot of things that is dealing with their own individual rights and the tribal treaty rights, as far as we're concerned.

So something that they're making a decision on, like this, is going to be very important, because that's something I'm going to stress to them.

One of the things that really concerns me is that, you know, when Congress is going to have a say on something as important as our treaty rights and our trust management, how much more further is it going to go?

Because just like the Bureau of Land Management: When I went to a conference last year concerning our basket weaver gathering, our traditional basket weavers in Washington State, one of the things that was brought out two years ago was that -- the Bureau of Land Management, Department of Fish and Wildlife, the Bureau of Indian Affairs, everybody else was there. And

then at that time, they said, "You're going to take and get a permit, according to regulations."

See, that's what's coming into effect right now. How much are we going to look at these regulations and how is it going to impact our treaty rights? And that's what really scares me. Because I don't think that I really want to agree to say that someone is going to have control over our fishing resources, which is the most important to us, even though we fish one day out of the week, and that's not even enough to keep our tribe going.

But those are the things that we're going to have to continue to fight for -- our rights to the allocation and the fisheries, so, sometime in the future, that we'll be looking back into the fishing seven days a week.

But our timber lands are still there. What right do we have to say that to our individuals, individual members, that, "We want to purchase this land that's been within your family for many generations"?

Why can't we sit down with them to say to each individual family: "Sit down together. Exchange lands with one another, so you can build, and still you're going to be able to keep things that was given to you from your ancestors."

And that's what I had told my family: "Get

together and sit down with one another to do this."

But is the Bureau of Indian Affairs willing to go along with something like this? Because it is our property. It is our land. Why must we be told, "Yes, you cannot," or "No, you cannot"? I think that's something that they should consider, for the families that want to keep all of their lands that belonged to their ancestors.

So these are things that I'm going to go back to talk to the Council about. It's really important for us to understand. I can see something like this is really great. But why can't we combine together what is already there?

We have another structure: The Bureau of Indian Affairs. Yes, everybody can agree that there has been problems. Everybody can agree that there has been mismanagement. But are we building another structure again? And then we're going to go look back again, maybe 90 years from now and say, "Well, we had a problem with that one, so let's build another one"?

And cost-effective? I just don't see where it is going to be, if we can't build together for the trust responsibilities combined, to keep it in trust responsibilities between the Bureau and still have this happening together.

That's all I want to say, and I know that

the Tribe will be submitting their own comments after I go back and talk to them and explain to them all of these things that's been brought out today. Thank you.

MR. HOMAN: Thank you.

MS. JOYCE A. TRETTEVICLE: Good afternoon. I'm Jonni Trettevicle with the Makah Tribe. Our Chairman, Hubert Markishtum, had to leave after this morning's session, and he asked that I read into the record comments from the Tribe.

This is a statement of the Makah Indian Tribe on the Draft Strategic Plan of the Special Trustee for American Indians:

"The Makah Indian Tribe opposes the Draft Strategic Plan's proposed transfer of tribal natural resources trust management out of the Interior Department to the Special Trustee's proposed American Indian Trust and Development Administration. The Tribe opposes such a transfer on the grounds of what it considers to be inadequate efforts:

"Number 1: To disseminate the proposal widely to tribes;

"And Number 2: To provide timely notice of these hearings to assure participation of as many tribes as possible. We understand that the plan was mailed out on February 5th, but we were only notified of this hearing

and received a copy of the proposal on February 20th.

"The Makah Tribe also opposes the proposed transfer for the following reasons:

"Number 1: The plan does not include what Section 303(a) of the American Indian Trust Fund Reform Act required: 'identification of all reforms to policies, procedures, practices and systems of the Department necessary to ensure proper and efficient discharge of the Secretary's trust responsibilities in compliance with the act.'

"We are concerned that there is no analysis of trust resources management in the plan. There are no inventories of the extent, identity, and locations of trust resources. There is no assessment of how these resources are being managed, whether by the BIA or by tribes or whether by contracts, cooperative agreements, or compacts. There is no assessment of the consequences of the proposed transfer on the structure each tribe has chosen for the management of its trust resources.

"Number 2: The plan does not address the serious problem of inadequate funding of trust resources management programs. There is no analysis of past or current costs of managing these resources or of the costs for the proposed transfer. Significantly, the plan contains no assessment by the tribes themselves of what

Departmental policies, procedures, practices, and systems need to be reformed, if any.

"Over the past two decades, tribes have participated in the development of legislation to remedy many of the structural problems in the management of trust resources to enable each tribe to achieve its resources management goals. The fact is that such programs remain seriously underfunded and understaffed. Funding for planning, research, technical assistance, and training is minimal.

"The 1993 Assessment of Indian Forests and Forest Management identifies such underfunding to be one of its major findings and includes the following recommendation: Increase baseline funding and investment for Indian forest management to levels comparable to those of the National Forests. The list of underfunded trust programs is extensive: Fisheries management, hatcheries operation and management, real estate services, surveys, appraisals, probates, environmental services, range management, and minerals management.

"Number 3: The plan seems to assume that the answer to the problems of both trust funds management and trust resources management is in more and better computers. It does not follow that transfer of the programs from Interior to a financial institution is

necessary.

"Number 4: The plan, in failing to analyze policies, procedures, practices, and systems of the Department, fails to address the future rights of tribes under the Self-Determination Act in management of trust resources programs. The plan contains no discussion about the future delivery of services in the field.

"In summary, we do not disagree that improvements in oversight and management of trust programs are needed. The institutions, organizations, and the policies and laws for improving those systems seem to us to be in place, and most of the major problems have been identified.

"The findings of these studies seem to have been completely ignored in the plan. We strongly disagree that the management of the trust programs should be transferred to a financial institution with no plan or concept of the needs of the tribes. We would not expect a foreign country to agree to conduct its relations with the United States through a bank rather than through the State Department.

"Respectfully submitted, Hubert Markishtum, Chairman, Makah Tribal Council."

We don't ask for a response at this time, since our Chairman has left for the day. However, we

1 certainly look forward to receiving the written comments
2 and the written report from this meeting and the three
3 subsequent meetings to be held. Thank you.
4 MR. HOMAN: Thank you.
5 MR. DELANO SALUSKIA: Good afternoon. My
6 name is Delano Saluskia. I'm the Tribal Representative
7 representing the Yakama Indian Nation.
8 The first question that comes to my mind
9 with regard to this plan is: Has there been much
10 discussion with the Bureau of Indian Affairs regarding
11 some of the problems that you're trying to address and
12 resolve, in order to seek the best solution to resolving
13 these problems and issues?
14 Personally, I don't think that you have had
15 much discussion with the Bureau of Indian Affairs, based
16 upon our discussion with our superintendent. And I think
17 that that is a big mistake, to try to present this plan
18 when those sorts of discussions have not taken place.
19 Because there may be better alternatives.
20 And one of the things that we're going to do is to have a
21 joint session with our BIA staff to go through this plan,
22 to find out whether or not there are other alternatives, I
23 guess, other than what you're proposing. And we'll
24 present those to you guys, and comment, too, then.
25 I guess, you know, one of the other

1 questions that came up was: What is the trust
2 responsibility of the other federal agencies, if the
3 Bureau of Indian Affairs trust responsibility is
4 transferred to this new office here?
5 And, I guess: What is that relationship,
6 then, with tribes and the other federal agencies that are
7 involved with many of the issues and problems that the
8 Bureau of Indian Affairs and tribes are involved with
9 today?
10 I guess, then, the last question I have is:
11 How do tribes go to the OTFM and seek our tribal shares as
12 we do from the Area Office, Central Office, and other
13 offices? That is just the kind of question that comes to
14 mind as we begin to proceed with this.
15 You know, maybe we might feel that we could
16 do it better, as our Vice Chairman said. We are
17 developing the capability. We are developing the
18 expertise. And I think, again, the question has been
19 asked: How does the Indian self-determination fit into
20 this whole process? And in that process, then, we might
21 choose to go after our tribal shares from OTFM. So thank
22 you.
23 MR. HOMAN: Well, on the last question, on
24 which of the tribal shares can you withdraw out of your
25 tribal funds, you have that opportunity now. But we have

had, I think, three applications to withdraw those funds.

MS. ERWIN: You know, there are two ways to withdraw money -- well, three ways. There is the 638, your self-governance, or the Reform Act. And I think you're referring to the self-governance tribal shares? 638? Compacting? Okay.

We've got Joe Weller here just for that. Do you want to talk about where we are in that process?

MR. JOE WELLER: Yes. We have just begun a process within OTFM to address the tribal shares issue. We've asked for some assistance from the Office of Self-Governance. Karole Overberg, who is sitting here, is working with us to try to outline what we need to do to address this.

Under the law, what the situation is, with the Trust Reform Act and everything with the Strategic Plan, all things taken into consideration, we had our first meeting just about two weeks ago. We have two other meetings that will be planned, so that we can develop the structure for how it needs to be looked at, at this point in time. And we hope to have something in place that we can send out for review and comment by May 1.

And so that is our timetable internally for how we're addressing this, at this point in time. We also understand that the Bureau of Indian Affairs has been

1 working on this at the Central Office level for quite a
2 few years, and it hasn't been settled there.
3 So we hope you guys will give us some
4 consideration, that we're just now getting into it. We're
5 trying to get up to speed with where a lot of the
6 self-governance tribes are already, and that's how Karole
7 and some of the other self-governance folks are going to
8 be a great deal of help to us.
9 But it's one of my priorities within the
10 office. If you want to know at any time how it's coming,
11 you can give me a call in Albuquerque. And we will be
12 working on it.
13 We only have, right now, two tribes that
14 have compacted for the IIM services. We have another
15 tribe that has a very active request for '97. We're deep
16 in negotiations and are, we hope, coming to the end of
17 this right now.
18 And tribal shares has been an issue in these
19 negotiations, because we have not, at this point in time,
20 developed a formula for tribal shares. But right now,
21 those are the three tribes that look like they're
22 interested at this point in time.
23 MS. ERWIN: One of the things, Joe, we might
24 want to mention is, we sort of got left behind the curve.
25 We're trying to catch up here. Originally, when all the

1 tribal shares negotiations came out, we were not involved.
2 We were never involved in that.
3 And so, until we had a request, we were
4 suddenly like, "Whoa, here we are. What do we do?" So we
5 are trying to play catch-up here, and we are getting
6 something in the next couple of months that we should be
7 able to send out to everyone.
8 And Joe has been working hard on this with
9 the group, and trying to make sure that we've got all this
10 underway. So we will be sending it out, saying, "Now,
11 tell us: Where else? What else? Talk to us." So you'll
12 be seeing something coming out.
13 MR. HOMAN: The other way you can have more
14 responsibility over your own trust funds now is by
15 withdrawing them from the federal government. And
16 that's -- we've had a mechanism in place now for about a
17 year to do that; the regulations are just a month or two
18 old.
19 We've had three tribes apply. We've
20 approved all three. So if you submit a plan under the
21 law, we'll be glad to approve that. We have not denied
22 any.
23 Yes, sir?
24 MR. JERRY MENINICK: Yes. Chairman
25 Meninick, Yakama Nation. I have a question to Mrs. Erwin.

She seems to be the expert here on the IIM. But going back several years prior to automatic disbursement, there was a process in the local Agencies whereby minor accounts were held in trust. That seemed simple enough. But my question is in regards to the investment of those particular monies and the places that they were invested -- interest-bearing accounts.

Now, it's not a mystery to the tribes that are present here, that I believe every one of us receive a tax statement of what is being withheld or is being proposed to be withheld from those accounts.

Now, I wonder: Should this particular plan come into place, I do know of several people in the past that, by virtue of inheritance or probate, have inherited large amounts of money, but are minors, and so could not draw the money until they were 18 years old. Some of these children were like five years old at the time. So, for 13 years, this large amount of money laid in the estate drawing interest that was being taxed.

I'm wondering, then: To what extent would the revamped IIM office offer its services? Would it have the opportunity to reconcile, going back several years, to see if indeed there was a tax assessment placed on minor accounts without the minors having the opportunity to file for reimbursement?

1 If we took that particular understanding and
2 placed it clear across the United States, I'm sure that of
3 the 540 tribes, there must have been a number -- a vast
4 number -- of those types of situations. And that could
5 have led to -- that should have led to perhaps millions
6 and millions of dollars in these minors' accounts.
7 I'm wondering, then: In this Strategic Plan
8 and what is being proposed by the IIM, are we going to
9 have, at the local Agency, the availability of those tax
10 consultants for our people? It's fine and dandy that you
11 might have one in Washington, D.C., for the benefit of
12 your process.
13 MS. ERWIN: I wish I did.
14 MR. JERRY MENINICK: But I know that we've
15 heard many, many offerings, but the fact of the matter
16 here is we're experiencing in our Agency right now an
17 assignment of only one individual into the IIM program.
18 And we have -- I don't know if Stan could
19 answer that -- I don't know how many different processes
20 occur through lease, lease income. It must be a pretty
21 substantial number.
22 But that might be all right as far as
23 issuing the checks or processing or posting the accounts.
24 But during our general Council sessions, the question
25 always comes up: Why are we receiving these tax notices

on our IIM account?

Because they don't have anybody in the IIM program to ask that; nor they do not understand that, because of the Office of Trust Funds Management, the authority of that particular department has been wrestled away from the local superintendent. So it continues to come to the Tribal Council, or to Gale's office.

That was a long question.

And the other thing: For the benefit of those of us here from the region, from the Area, and also to put a little consistency to the discussion here, I would like to also hear from Mr. Stan Speaks, the Portland Area Director, perhaps as a response to what is being presented. And we would like to hear both sides of the coin.

MS. ERWIN: Okay.

MR. JERRY MENINICK: Thank you.

MS. ERWIN: Thank you. I think if anyone went to the IIM sessions during the summer, any of you that were there, you would have seen the actual statistics on those things that we put up on the board as far as Addresses Unknown or uncoded or statements going to the superintendent. And I can supply those, just particularly for your tribe, so we can get a feel where you are. We can work with you on this.

The investment; what we need to talk about is the investment. You know, the investment -- the money that comes in is considered principal into those IIM accounts.

Now, I'm not going to purport to be a tax expert in every tribe. I come from the Five Civilized Tribes. I talk from the Creeks, because I know that, because we're involved, familywise, in it. But when we talk about all the different states and all the different tribes, you know, we need to address those individually.

But generally -- I'll give you a general, and then we'll talk about what we've done. Generally, a 1099 is issued. Money that comes in off of your lease, or whatever its coming in from, principal is not taxable. But the interest it earns will be taxable. That is a general rule.

If you're receiving a 1099, that needs to be reported on your taxes.

One of my big concerns is we have no tax assessments coming in. We have not withheld tax on any of the accounts, that I'm aware of. If you're aware of those, let us know, because we want to go out and look at those and make sure someone is out there to audit them.

We're not withholding taxes. We're telling you, "This is what is taxable to you, even if you're a

minor."

We have just hired, in Albuquerque, two experts, who will be out in the field. They're ex-IRS people, so they have to be used to traveling. They have to go out, and we need to examine all of the laws. Who should we be sending 1099s to? How do we need to be addressing those tax questions?

We are the fiduciary. In the private sector, we would be the people responsible for making sure those taxes are filed. So we have just hired two people. That's probably going to get expanded quickly.

But we do need to see: What are the taxes? What is going on out there with our minors and our individuals?

So yes, it's a big question. And we do need to get that cleared up. Because no one understands. Like I said, I don't believe you're seeing any taxes withheld in that account. If I'm wrong, if someone knows of one, please, please, bring it to our attention.

So, the same thing with inheriting large amounts of monies. You asked me about -- it is: It gets very confusing to people. "How do I handle that?"

We're going to get to you. As we said, you're one of the Agencies, and I think we're going to be out to visit you guys in just a couple of months to talk

about some of the problems you're having.

More people, the activity that is out there, and you're one of the tribes that is targeted for us to be out and see, what do you need? Do you need more help? So we'll be out. I think it's scheduled in April.

MR. HARVEY MOSES, JR.: A couple more questions. While sitting there, you keep asking for a chance, and that goes back to my very first question, when I first got up and made the comment: What is the rush? This problem took years and years and years to be created. And now you guys are going to resolve it -- without knowing trust responsibilities and so forth -- overnight? I don't think so.

Also, it looks as though you're trying to privatize IIM, or you're out to do that. Is this the same thing that Ross Swimmer tried a few years back?

MS. ERWIN: Go ahead, and then I'll answer. Go ahead and ask all of them, then I'll respond.

MR. MOSES: Okay. And if this is so, where will these Area banks or OTFM offices be located? Will they all be in D.C., like that thing Ross Swimmer was trying to start or create?

MR. CHRISTIE: Let me try to answer that first part. Or let me say this about your question: One of the things that came out with reconciliation, and one

of the strong problems, aside from not being able to find records, was the fact that we could not tell how much money was supposed to be collected versus how much money was actually collected and disseminated.

That is not a historical problem. That is a problem of today. Nobody in the Bureau of Indian Affairs, nor in our office, nor in government, can say with any definition how much land is under lease today at this moment, how much is supposed to be collected today, and how much -- we can tell you how much is collected and what happened to it.

The urgency of this is that we have a continuing problem in the systems that are currently being used. We don't know how much money you're currently losing, because we don't know how much money you're currently supposed to get. And until those systems are replaced, you may be losing thousands, hundreds of thousands, millions of dollars a year. We don't know.

And nobody can quantify that, and nobody can tell you definitively, until we put in place a trust management system that accounts for every lease, every timber sale, every encumbrance of that asset out there, and then can give you a statement that says, "Here is how much it's leased for. Here is how much you're supposed to be collecting, and here is how much we collected."

1 Then and only then can we tell you with any
2 definitiveness that, "Yes, what you're supposed to get is
3 what you're getting."
4 So if it's of no importance -- which I don't
5 believe that. I think it's extremely important to you and
6 to your families and to the tribes to know how much you're
7 supposed to be getting.
8 So that's the urgency to really move forward
9 on this trust management asset system.
10 MR. MOSES: Okay, but you should include
11 Indian tribes at the outset. You know, this is our
12 problem: We weren't included. And all of a sudden, you
13 bring this plan to us and say, "This is it." Kind of an
14 eleventh-hour situation.
15 Like I said before, I went to the meeting in
16 Portland, and nothing was said, nothing was talked about
17 timber resources, mineral resources, or anything else. It
18 was just IIM.
19 MS. ERWIN: That's all that that meeting was
20 designed for, and that's all that we were there to
21 discuss, was IIM.
22 MR. MOSES: But now you're saying that
23 you're going to do everything else that the BIA is doing.
24 MS. ERWIN: We're not. I'm OTFM over here.
25 I came out during the summer, and I got a lot of good

feedback from everyone on that. I came out during the summer to say, "Tell me where the IIM problems are. We're going to start looking at IIM. This is the year of IIM. We're trying to correct these problems. Please come talk to me. Tribes are welcome, but, as well, IIM account holders. Tell me what your problems are, what you need."

"More customer service. Meetings for the IIM account holders in the evening. Better statements" -- which we talked about today.

"I want to know my assets on my statements. I want to know why I'm getting that money. I want to be able to call in. I want 800 numbers out in the field" -- which, as we discussed this morning, we're working on as we speak. Those are being ordered.

So we listened to those questions, and we took them back. And we have transcripts. We have compiled those, and we are out there correcting those problems. That was OTFM, this group.

Paul joined in on those to be able to talk to you about where his plans were going at the time, where he was. So there is a difference there.

Privatizing? No, we're not looking to privatize IIM. What we're looking for is to get you an accounting system where, no matter where you are, that person at that office, that IIM person can look at an

account and tell you what you have, what you own, what's the status of that.

Located? I think Mr. Homan will discuss that in just a second.

The other thing, Stan, is they were talking about how many IIM accounts there are in Portland and maybe some of your views on the plan, and we'd be interested to hear what you may be doing, where the plans are, on the lost account holders or statements going to superintendents. But let Paul finish.

MR. HOMAN: On the privatization question, that question was specifically asked of me this summer in the Senate and House hearings.

And it was attempted, as you suggest, in the late '80s, with Mellon Bank, I believe, and also with Security Pacific. We couldn't provide them with sufficient records in terms of historical documents.

It was again suggested by this Congress. And I don't believe it's possible. No bank could run this 90-office operation without it costing an exorbitant amount of money.

So instead, we have to go at this from an in-house system, which really upgrades the system already in place at the Office of Trust Funds Management. We've successfully done that with the tribal accounts, and what

we're attempting to do is do the same thing with the IIM accounts, in an accounting sense.

And what is being proposed is nothing more different than the average mutual fund accounting system, which gives daily records of your transactions. You can render a daily statement. You can indicate the income coming in. The expenses going out. The disbursements. So that's it.

And privatization and the delivery system are not on the question in terms of changing the present status quo. So there will be 90 offices pretty much where they are now, again providing the same IIM services. We've said that over again and again, I think consistently, for two years.

Question? Yes? Stan?

MR. STANLEY SPEAKS: I am Stan Speaks, the Area Director in the Northwest for the Bureau of Indian Affairs.

I'm not really privy to making a statement, because I had to ask to get permission to come to this hearing. And I certainly would not want to take the place of the Deputy Commissioner or the Assistant Secretary in commenting on this plan.

However, there is probably a couple of things that I will say to Mr. Homan here: That I think

what would have been very helpful in this whole situation would have been if you would have taken a little bit more time; had not been in a rush here and had gotten the material out to the tribes so they could have had the time in which to analyze the documents.

These people work with tribal governments. They are very busy people. As a matter of fact, you probably couldn't have picked a better week for this conference, because of the budget hearings and other meetings that are going on.

And it takes time; it takes funds to get to these meetings.

And I also will tell you that there were a few of the tribes, for some reason, that did not receive their letters, did not receive the documents. I don't know for what reason. They called our office, and we asked the Intertribal Timber Council Office, that had a copy of the letter, to fax it to some of those tribes. Now, I'm not sure how many there were. But I think you can understand.

The other issue is, four particular consultation meetings? For the number of tribes that you people will be impacting, I would think that you would have at least eight, maybe ten meetings. It's probably needed.

I think, for your own good and everybody else, I think you would have done a lot better. I think you would have gotten a lot better comments if you had given a little more time, a little more patience in the situation, rather than rushing into it.

Hopefully, it will turn out in the end for the better. We want to make improvements, too. And the operations of the individual Indian money accounts, how we've managed natural resources -- we know there's been problems for years.

I've said before, and it's no excuses: Congress has been right in the middle of this with us, forever. They have never funded our programs appropriately -- realty, forestry, land services, agriculture, you name it. We have not had the funds to really, truly manage those programs properly and operate them properly for the benefit of the people that we serve. We have not.

And I told Mr. Homan down in Portland last February, I wished him well in trying to come up with the funds to be able to provide the budget for these programs that we should have. And I still will say that. And I think that's extremely important.

One of the things that you'll find in the Northwest -- maybe different from the other areas that

you're going to be going to the next three consultation meetings that you have -- is we do have a number of self-governance tribes. We have tribes that are heavy into contracting, compacting their programs here. They're fully involved in their natural resource programs, in their treaty programs, treaty rights, fisheries. And they don't like for people to come and tinker into their treaty issues at all.

You may want to keep that in mind. It's important to them. Their land is their livelihood. It's their way of life. Their natural resources are the same.

If I can help you in any way -- if I can help you in any way to communicate to the tribes what your objectives, what your goals, and what your intent is, what your plan is, I'd be more than happy to help you.

But, People, we have not been involved with you -- for whatever reason. We have not had an opportunity. Thank you.

MR. HOMAN: Well, I appreciate those remarks, Stan. As far as the timing is concerned, I really have no choice in the timing. The law originally said that I was to complete my Strategic Plan within one year of the appointment. I was appointed in September 1995. So I'm already overdue on that plan.

I did -- Congress gave me an extension,

because they didn't fund my office until October 1, 1997. They asked me, during the hearings and in private conversations, how soon I could have the plan, earliest, and I said March 31. So everything backs up to that date.

I did send out my Strategic Plan last year. I discussed it with the Secretary of the Interior in 1995. I sent it to 300 tribes in February of 1996.

I have asked consistently, all the way through, with the Assistant Secretary of Indian Affairs and Hilda Manuel, to give me their comments and to disperse it in any ways they felt appropriate.

I have no control over you, Stan, or anyone else in the Bureau of Indian Affairs. I have to deal with the top of the House, which I do deal with. They've had my plan for a long time. I welcome their comments. They have never chosen to give me any, or to give me any distribution among their employees.

We asked for a consolidated budget. We have nothing from them. So all I'm saying is, that's the level of cooperation I've received from the Bureau. And I'm sorry I couldn't be more communicative in that.

In these hearings which we conducted last year on IIM issues -- which, as Joe said, really account for about 90 percent or more of the operating problems -- we had Bureau employees, who were very welcome to speak

1 out on how they felt the problems were, what the solutions
2 were. And we took note of their interest and included
3 many of those proposals in the plan.
4 So I don't have any apologies to make about
5 the timing. It's unfortunate that something this complex
6 has to be, quote, rushed through.
7 But I want to make one issue: This is just
8 the start of this process. Nothing says that the Congress
9 is going to implement this immediately. The Secretary
10 will evaluate it, himself. That will take probably the
11 balance of this year. And the Congress will evaluate it.
12 It will go through a series of changes. Not all of the
13 functions that we proposed will be transferred, if any.
14 But one thing is absolutely true: That the
15 budget has to address how you improve these systems.
16 Whether the Bureau does it -- and it's not done it in the
17 past -- or whether this new organization does it, someone
18 is going to have to fix this record-keeping system.
19 Or, we're going to have to abandon the
20 effort. And I think that is the risk of termination. The
21 Congress may just throw up its hands, as they did in 1934,
22 and not address it again for another 50 years.
23 And there is a quote from John Collier, in
24 1934, as to what would happen on this fractionated
25 heirship problem if they allowed it to continue. They

1 rejected his solution in 1934, and now we've got what
2 we've got.
3 So, you know, I'm going to have to go
4 forward the best way I can. I am going to promise you
5 that I will take into consideration all of the things
6 you've said today. And we will publish that, not only
7 publicly, but to the Congress, and I will be prepared to
8 defend my planning to them, whatever the final plan turns
9 out to be.
10 Yes, sir?
11 MR. DAN DUAME: Thank you. My name is Dan
12 Duame. I am general counsel and self-governance
13 coordinator for the Aleute/Pribilof Islands Association in
14 Alaska. We have a consortium of 11 tribes up there. And
15 I just want to make a couple of comments, and then a
16 request, I think, more than a question.
17 And my comments, first of all: I guess I
18 just want to reiterate my concern and, I guess, a little
19 bit of frustration as to the issue of notice. I think
20 Mr. Speaks pretty much said it about as well as it could
21 be said; and I don't want to belabor the issue, but to my
22 knowledge, myself and one other individual, who was here
23 earlier -- I don't see him here anymore -- were the only
24 two here from Alaska.
25 And you may or may not know that there are

some 225, 226 tribes in Alaska, of the 500-plus. There are no consultation meetings scheduled, as far as I can see, for Alaska.

I will certainly take some of the blame for not being as up to speed, I guess, as maybe I could be or should be on this. However, we haven't received, I don't think, these materials -- or at least most of them -- prior to this meeting.

I know there are others up there who weren't really aware of what was going on. And people are gearing up, I think, to try to attend one or more of the other consultations that are supposed to take place. But, you know, I think the fact that I'm the only one here from up there -- generally, Alaska is pretty efficient and effective at representing itself on these kinds of major, significant, sweeping types of changes.

And if you really believe in your heart of hearts that what you're doing here is the right thing to do and is a viable plan to resolve and to deal with some of these longstanding problems, then -- I mean, it's one thing to say that you're under the gun and Congress has put these time frames on you and so forth.

But that simply is not, with all due respect, an acceptable excuse. I mean, there has to be better communications with the Bureau. There has to be

1 better communications with the tribes, or it simply will
2 not work. It cannot work. And it won't be done until
3 people are educated on this.
4 So -- and as to that point, I guess -- you
5 know, I'm still trying to scramble through here, read
6 through some of this, and get a handle on what all is
7 involved here.
8 But I think from our perspective, so far,
9 and from what I've heard here, one of the major concerns
10 has to do with the trust resource management component of
11 what you're proposing to transfer here. And I guess my
12 request -- to follow up on something that was mentioned
13 here -- I think it was the Councilperson from Makah, who
14 raised in her comments the issue about not enough
15 analysis, perhaps, here.
16 I mean, I've done some planning over the
17 years, myself, and this is a very -- you know, from a
18 planner's perspective, I guess this is a very
19 well-structured, pretty stock, standard planning document.
20 And that's not meant to be a criticism or a critique,
21 really -- positive or negative.
22 However, I don't really see here, myself,
23 any real analysis as to why that particular component or
24 those functions need to be swept into this plan. I know I
25 heard you mention earlier that this stuff -- you know,

that these could not be divorced. And there were a few general comments, and they've been dispersed throughout here. You know, it's been touched on.

But I guess my request would be -- and correct me if I just haven't gotten to the materials; if, in one of the books, it's clearly there, in depth, in detail, to the extent that we need to really make a decision on what this really means.

I mean, there was another person here who said they had worked for the Bureau, and they were trying to conceptualize how this would really work. And I haven't worked for the Bureau, but I've been working with the Bureau for a number of years, and I'm having a very hard time, myself, conceptualizing how this would really work.

And so I guess my request is: That you prepare and distribute a thorough, clear, concise analysis of why this component should be there; what it really means; what really is going to be transferred; how those functions will continue to be carried out; how you are going to communicate with the Bureau once those functions are transferred.

And I guess I could go on with a number of other more detailed questions, but I think you get the general idea.

1 MR. HOMAN: Let me address. You're thumbing
2 through our slide show, which is what was shown to you
3 today. I didn't dwell on a lot of the problems, or it
4 would have taken us all day.
5 In the full document here, which has been
6 the same since February 1996, is my original assessment of
7 the trust management systems -- both trust funds, trust
8 asset management. Not only that, but it incorporates
9 comments by the IIM Improvement Team, which went into the
10 Trust Asset Management; the Arthur Andersen results; the
11 audit results of last year; and finally, this tribal
12 working group. It's under Tab 8, and I would urge you to
13 read that.
14 Secondly, this assessment went through
15 Congressional hearings last June, after I sent it to all
16 300 tribes. We had, under the auspices of Congressman
17 Young from Alaska, a field hearing in Alaska, to which
18 that particular plan and assessment was attached, and
19 which was fairly well attended, I believe, by most of, or
20 a good many of, the Alaskan tribes. And that was held
21 last August -- August 10.
22 So -- and we had a number of those field
23 hearings elsewhere. So this isn't a new assessment.
24 The problems, I have discussed with the
25 Bureau, with the Congress, and they have been discussed

ad nauseam for 20 years by better than me. And my focus was on solutions, which we have put forth today.

But if you'll look back in those hearing documents -- of which this is only a small part -- I think you'll find that assessment. And you'll find that, in our business analysis, you cannot separate asset management from trust funds management from land records management, because, as Joe indicated, most of the flow off the lands comes through the IIM system.

We have trouble allocating the actual income. We can't trace back to a lease -- which is asset management. We don't have a photograph of it. We have 12 different systems. There are as many different systems as we have agencies to run it.

And while one system or agency here, there, or another place, may be working well, you can't audit it.

We have no master lease system -- which is, again, a basic tenet of asset management and resource management. If you don't know how many leases there are on a land, how can you know whether you're managing it correctly?

So those three systems, however you have to combine them, are combined in every single business trust company in the United States. And I don't see any reason why it should be different for the federal government's

1 responsibility, particularly since the system presently in
2 existence hasn't worked for 20 years, and is getting
3 worse.
4 So, you know, my objective -- and if there
5 is a better solution to this problem, then please give me
6 it. But I get the criticism, but I don't get any
7 alternative solutions.
8 And, if it's "Continue to do the status
9 quo," then I can continue to guarantee that there will be
10 continued Whereabouts Unknown in unfathomable amounts, and
11 we will continue to be able to not account for your money.
12 You know, we can't account for your money.
13 And that's the simple fact. So something has to change.
14 And we're here, I'm listening to you, and
15 I'm going to suggest -- I may suggest some modifications
16 to the Congress. But it will be up to Congress to decide,
17 with you, how this eventually gets done.
18 If you do not support this or an alternative
19 solution, then I can guarantee you, nothing will happen.
20 No funds will be there. And we will continue the status
21 quo.
22 MR. DUAME: I guess, to be a little more
23 specific, what I'm looking for -- and again, it may be in
24 here, but I'm not so sure that it is -- a very clearly
25 articulated reason why -- I mean, we know about all the

problems, and I think that's what the hearing record and the Young hearings and whatnot that you're referring to are going to be dealing with: What are the problems? Where are they?

I don't think they focus so much on the solution. And that's a fair criticism from your side. What is the solution here?

But what I'm looking for is a clearly articulated argument from you as to why -- why does this have to be divorced off and placed in a separate, new administration as the solution? What is the argument for that? As opposed -- you know, besides, "Well, what we've done for 20 years hasn't worked."

You know, there are systems for integrating --

MR. HOMAN: We have attempted to reform the land record system in the last 20 years -- the record-keeping system, the accounts receivable system. And the Bureau simply hasn't done it, and there is no reason for me to believe that it will ever do it, and it doesn't have the capacity to do it.

It doesn't know -- and again, this is no fault of the management of the Bureau. But they have been schooled in a system that is 40 years old, that is completely divorced from what a modern trust company does.

1 And I don't think they have the skills -- even if they had
2 the money, I don't think they have the skills or the
3 capacity to do that.
4 MR. DUAME: But you're saying you're going
5 to take all of the people and move them over to this new
6 administration.
7 MR. HOMAN: Yes. Yes, we are and we're
8 going to supplement them with other competent people.
9 They will have to go through a requalification test, and
10 as one of the gentlemen observed, we're not going to hire
11 incompetent people. So there will be a screening device
12 to do that.
13 MS. ERWIN: One of the things that might
14 help you is you might want to elaborate on the Macro study
15 that will be incorporated, when you talk about independent
16 analysis.
17 MR. HOMAN: Right. The Macro study, the
18 independent contractor is going to take a look at some of
19 the management issues -- and this is a management issue.
20 Any problem, in any institution, starts with management.
21 And the record is the record.
22 And I don't intend to be a historian in this
23 effect. But you'll see in that appendix, if you want to
24 read those, those are all public documents, which would
25 stack up this high. And if you read those public

1 documents and you're still not convinced, then we'll sit
2 down and have a conversation. But I think you will be.
3 MR. CHRISTIE: I would also note that the
4 locations and meeting times for the consultation were
5 published in the Federal Register in January. It came out
6 January 21. It listed all of those. And we were
7 following the lead of the Bureau of Indian Affairs when it
8 held meetings over December, January, and culminating with
9 a meeting the same day as or the day after the
10 inauguration. And those consisted of four consultations,
11 government-wide, on the Department of Interior's proposal
12 for settlement of the Indian Trust Funds reconciliation
13 issues.
14 We agree that if we had more time to do more
15 than four, we would do more than four.
16 We also mailed these out by Federal Express,
17 and if anybody hasn't received theirs, we have a listing
18 of every tribe that we Federal Expressed them to, when we
19 Federal Expressed it out, and who signed for it at the
20 tribal level.
21 We have, additionally, sent it also out to
22 all the Areas and Agencies. That was an oversight when we
23 first mailed out. But we have instructed our shipping
24 staff to send those to the Areas and Agencies.
25 And we did talk with your budget officer,

Stan. He brought that to our attention that some tribes hadn't received that. So we got the names of those tribes, and we checked our mailing list, and they had, in fact, been sent out. So I was glad that your man called us on that. But we had sent those out to the tribes.

MS. COBELL: Paul, I want to make a comment. I think there is a lot of confusion on the field operations versus the trust resource management. So I'm hoping that we can get some clarification.

MR. HOMAN: Okay.

MR. DUAME: That's exactly my point. I feel like when I was a junior and I had to take my cousin to the junior prom -- I can just about get my arms around her now, but not quite. And I think it relates to that very point.

I think a lot of people aren't really sure -- and, again, it's the interface of the BIA. And if I understand, your interest is just to manage the paper, manage the leases, manage the accounts. But you don't aspire to be foresters, fish biologists, or anything else. Those functions would still remain with the Bureau.

And I think a lot of people are crossing those up, and when it's all included there, I know that was a lot of the concern: "Well, wait a minute. We have a whole system here of things have been contracted to

tribes who are managing on different levels, and how do you propose to take those over?" So maybe that's a differentiation you can make real quickly.

MR. HOMAN: Well, right now there is a mixed bag. If you have a ranch or if you have a building or anything else, there is a mixed bag as to who is involved in the management of that. Sometimes the Bureau does it 100 percent. Others, under self-governance and other initiatives, it's a shared responsibility, or the responsibility is with the tribe itself.

And I don't intend to alter that mechanism. And the simplest way I can describe it is how a trust company in, say, Washington, D.C., would handle a ranch in Montana -- whether it's a lease for grazing or the surface rights or subsurface rights.

And it would hire somebody from Montana to manage that property. It would do it under the law of the State of Montana. In this case, it would be the federal laws. It would do it under a common set of policies and procedures issued by the bank as to what constitutes a proper lease. It would do it under -- it would then ask the local manager to make the lease, to collect the money, to send the money to the appropriate beneficiary.

And all it would ask in terms of the trust administration would be that it be auditable; that you

1 send in a report, so that the trustee can send a report to
2 the beneficiary saying, "Here is your land. It's leased
3 to X. It's leased at this rate. We've checked the rate
4 and found out that it's comparable to the ranch next door.
5 So it's not a sweetheart deal. And we've collected each
6 of the payments due off of the lease and can prove we did
7 it."
8 Now, that is how every single trust
9 department works. And as I said before, it's indifferent
10 as to who manages it.
11 I'm not proposing that, when the Bureau
12 manages the land today -- or the resource, the financial
13 resource -- that it change, or that the people change.
14 But over the course of time, as you know, it's been going
15 to the tribes.
16 The tribes, when they're able to initiate a
17 self-governance compact, more and more, have an input into
18 how that land gets managed; and secondly, how their funds
19 get invested. And that's the second part of the
20 transaction.
21 And I'm saying: The tribe can do this. All
22 it has to do is send me a report -- "me" being the
23 trustee. So I can prove I'm doing my duty.
24 Now, if you want -- and I can tell you: The
25 Congress, the Secretary, if you said to them, "We want to

do it all ourselves," they would say, "Fine. Here it is. You have the liability. Don't come back again." And that is termination.

So all I'm saying is I'm protecting what I think is the trust responsibility and making us live up to a modern accounting standard that is no different than what the average American citizen gets that deals with a trust company. No different, no more, but no less.

And you don't have anywhere near the options available to the ordinary trust company, or the accounting mechanism. You know, I have had an account with the bank for all my life. I have never, ever, ever, had a problem with a check being missing. And when I thought I made a mistake, the bank always was able to prove to me, "Here is your check. Here it is, endorsed."

We can't do that. And a good accounting system protects the employee. I know that the Bureau of Indian Affairs people do a pretty good job, in most of the reservations that I visited -- better than I could do in their system, and I've told them that.

But they can't prove that they're doing a good job, because they don't have the records, themselves, to do it. So they're subjected to ad hoc stories, which we all know about -- you know, perceived wrongs or real wrongs. And they're unable to prove to anybody that they

are doing their job. And any trustee accounting system should be able to do that.

So I hope that clarifies it a bit.

The other example I use is if you had an apartment building in Browning, Montana, under trust, and I was the trustee in Albuquerque or Denver, I would hire an apartment manager. He would lease out the property. He would collect the rents. He would send them to the beneficiary, and he would give me a report. Because if he didn't, the beneficiary would be knocking on my door, not his.

Anyone else care to comment?

MR. VERN L. CLAIRMONT: My name is Vern Clairmont, Treasurer for the Confederated Salish & Kootenai Tribes. I think in the last hour I've become more confused than I was when I started this process this morning.

In the last hour, I've heard several times that things are different than the way I perceived in reviewing this document: that the trust management of natural resources is not going to be done differently than it has been in the past. That there is not a major change there.

But if I read from Tab 1 of your proposal, on Page 1, it says: "The proposal would represent a major

1 change in the way the U.S. Government manages its trust
2 responsibilities to the American Indians. It would for
3 the first time clearly differentiate trust management
4 activities that arise from the trust management of
5 American Indian tribal and individual lands and natural
6 resources such as lease approvals and monitoring, timber
7 sales, managing land, oil, gas, timber, and other trust
8 assets; collecting, depositing, investing and disbursing
9 funds derived from the Indian lands and Indian economic
10 activities; and managing the land title and ownership
11 records from those other activities that fall under what
12 the courts have called the general trust responsibility,
13 such as education, housing, welfare programs of all types,
14 law enforcement, and other American Indian services
15 provided by the Federal Government."
16 Later in the document, it says you're going
17 to move all of the employees that are doing those services
18 under this new federal Agency. And then I hear that, no,
19 those are going to stay over here and they're going to
20 continue to be done the way it's currently done.
21 MR. HOMAN: I think the difference there is
22 on the word, "differently." Yes, it will be managed
23 differently in terms of administrating, or conducting the
24 administration differently. If we don't manage it
25 differently, we're going to end up with the same result,

Vern.

So what I mean by "managing differently" is that we manage under a common set of law, policies, procedures, and accounting standards, that we do not now have. And it will be segregated. Those three business lines will be segregated into one unit, so that the managers of that unit can focus on Trust Land and Resource Management, Trust Funds Management, and Land Title and Records. And not be focused, as the Bureau presently is, on those three items, plus education, plus fire protection, plus roads, plus every other service. And it goes on and on in a horizontal line, reporting to one person.

I am saying, you can do a better job, in the age of specialization and organization by business function -- you can do a better job by taking those three basic things and putting them into a separate unit.

MS. ERWIN: Performing them at the locations.

MR. HOMAN: Yes. The locations don't change. The land is not going to go anywhere. And it will be generally administered, as I described earlier, like a trust department.

MR. CLAIRMONT: I just bring this up to help point out, I think, where part of my confusion, and maybe

some other confusion in the room, is coming from. Unless we sit down and have these discussions so that we understand what it is this document is attempting to say, we're going to form our own opinions of what this document says, and we're going to fight this document, and it ain't going anywhere.

MR. HOMAN: Yes, I understand that. Your point is good.

MR. CLAIRMONT: I think it's going to take a lot more than three more meetings to get through what you hope to accomplish. There are a lot of things in this document, in this proposal, that are very good ideas, and that we want to see happen.

We don't want to continue on the way we've been doing. Everybody in this room knows that there is a lot of improvement that needs to be done. This addresses a lot of those issues.

We just want to be clear that we understand, on the same ground level that you're coming from, what this document says, so that we'll know whether we should be going forward to support it or whether we should be doing something else and coming up with a different plan.

MR. HOMAN: Right. Well, again, I hope you'll have that opportunity in the next few months. But also, that's the beginning of the process, as I view it.

1 Because the next step is for the Secretary to come up and
2 react to the plan.
3 I'm sure he will do that. He said so in his
4 statement, with consultations, particularly on the
5 fractionated heirship and the other issues. That's
6 proceeding separately.
7 And finally, the Congress has told me, at
8 least, that it will have a series of hearings, not only on
9 my plan, but on a lot of these improvement initiatives.
10 Not in an omnibus way, where it's an all-or-none
11 proposition; but as I said, there are a lot of mixed ideas
12 here.
13 The Development Bank is good if you can find
14 a way to fund it. But the funding, if it has to come from
15 appropriations or other Indian programs, I would be the
16 first to say, "Don't do it."
17 But there are other alternatives which have
18 to wind their way through Indian Country, and also the
19 Congress, before we can coalesce around a single plan.
20 MS. COBELL: I want to pick up on what Vern
21 said, because I think it's important. You know, the
22 Congress is driving the time line, and they have said
23 that, "You have to have this draft plan to them by X
24 time." I mean, and that's all this is, is a draft plan.
25 And that's the purpose of these

consultations. I mean, that's why the Advisory Board said, "Get it out to the tribes. Let them look at it. Let them see what it's all about."

I mean, I don't see why the Tribes cannot request to have an extension on this to say, "We want 80 more consultation meetings" -- or whatever -- "to make sure it's thoroughly scrubbed."

And I think that's one of the things that I contend, as the Advisory Board, saying that tribes need to scrub this. They're going to have to live with it. Like somebody said: Are we creating another BIA? Or what is going to happen?

So I certainly think that maybe what ought to come out of these consultation meetings is the fact that an extension be made. Before this is submitted to Congress, that there has to be much more thorough scrubbing and input from the tribes in consultation.

I guess I want to make one point: That what you didn't talk about is that the Advisory Board had requested that the intertribal groups get together and review it, also.

MR. HOMAN: Yes.

MS. COBELL: Because there is a lot of work -- like the Land Working Group, what they've done. And you have been able to incorporate some of that into

this plan. But I know that the Intertribal Timber Council and all the intertribal groups have done a lot of work that would be very helpful, too.

MR. HOMAN: We're organizing that, I think, for March 17 and 18, or in that time period. And it's being organized jointly by the Council of Energy-Producing Tribes and also ITMA. So your leadership will have an opportunity.

We'll do the same presentation. Hopefully, by that time, we'll have some of these transcripts available for them to go through. And we'll have to address each of their concerns.

MR. DAN DUAME: If I could just follow up on my comment, and on the last one made -- to me, I'm confused, too. At times, it's been more clear than others.

But I still think -- and I sense that you're not inclined to do this. But, you know, I want to request again. I guess I didn't really get -- and maybe I didn't ask for a direct response, as to whether or not you are willing to do it.

But I think if you were to pull out from these documents and create a new, single, concise, consolidated position paper or something -- I mean, on this issue of the trust management component itself, and

1 why that needs to be included in there; what your vision
2 of that particular piece of it really is, and have that in
3 some sort of a separate document, that we can deal with,
4 all in one place -- you know, to me, that would be
5 helpful.
6 I mean, I am just trying to understand this.
7 I'm not criticizing what's there. But I think you can
8 sense that there is a lot of concern about that component.
9 MR. HOMAN: Sure.
10 MR. DUAME: And for us to understand. We're
11 having difficulty figuring out what really it is that
12 you're proposing here. And so it seems fair that we would
13 be presented with something to respond to, on that issue,
14 on that component, that we can deal with, and that the
15 tribes in Alaska can deal with.
16 And I would encourage you to communicate
17 more effectively, maybe with the Area Office up there or
18 somebody, as to how to communicate with the tribes up
19 there. I mean, I think, again, the fact that I'm the only
20 one here speaks for itself.
21 Despite all of your efforts of sending it
22 out or whatever you have done, nobody is here. And so I
23 think we would like to work with you on this. There is a
24 lot of good stuff in there. But it needs to be
25 communicated.

MR. HOMAN: All right. I appreciate those comments, and I'll certainly consider writing that piece in a more clarified way.

We'll take the general questions and try to respond to them as best we can, pointing out all the documents, of which we've only brought a couple along. So those are good suggestions, and I'll work toward making them into a very clear statement.

MR. CHRISTIE: I would remind you that if you have written material to submit, give it to the gentleman that is sitting at the table in the middle there, Fred Weller. So that we make sure it gets included into all of the responses and into the total package.

Yes, sir?

MR. HERBERT M. WHITISH: Herb Whitish, Shoalwater Bay Indian Tribe. I just had one question, and something I needed you to think about when you're making your deliberations on how you deal with fractionated interests and that kind of thing.

I find myself -- and there is probably five other tribes that have ownership on a very large reservation, where the original reservation was set up for that tribe, and then as a result of the Allotment Act, it increased the size of the reservation about tenfold, for those five other tribes.

1 Okay. Now, up until now, every time you
2 talk about escheatment, it talks about escheatment to that
3 tribe, and it gives no mention or no never-mind to the
4 other five tribes within that process.
5 What happens when you have two of my tribal
6 members who own a piece of property, and two of the other
7 tribes' tribal members, and that person dies? Why
8 wouldn't that escheat to the tribe of which he is a
9 member, and not necessarily the tribe which makes a claim
10 on the reservation? -- which I don't believe is valid.
11 And I could get more specific about the
12 other tribe I'm talking about, but I think you probably
13 know what I'm talking about.
14 MR. HOMAN: Yes, I do. Helen Sanders talks
15 to me about that all the time.
16 MR. HERBERT M. WHITISH: Then you've heard
17 it all, and probably a lot better.
18 MR. HOMAN: Well, you know, I've heard it
19 all. I don't know that I have a good solution to that. I
20 have suggested that -- you know, the current DOI proposal
21 would not deal with it in any other way but escheating to
22 the tribe -- however described. And that's one of the
23 unfortunate parts about it.
24 It does say, though, that it leaves to the
25 tribes the opportunity to revise their codes and how they

1 devise portions of the fractionated interest. And most of
2 the tribes, as Joe indicated, have not done that, even
3 though they have the opportunity to do it under the 1984
4 Act.
5 So I think the government's point of view on
6 that -- and again, this I share with the government -- is
7 that that should be argued out by the tribes themselves
8 under a general set of rules.
9 Now, I have also said, and I think Helen
10 agrees with me on this, that the individuals there --
11 different tribes, different individuals -- ought to have a
12 say in how that property gets escheated. And ought to
13 have an equal opportunity, with the tribe, of buying that
14 property, or of having a grant or loan made to facilitate
15 the sale of that property to the individual or the tribe.
16 And it's in that that I differ significantly
17 with the administration. And their idea is that it should
18 go back -- the public policy since 1934 is that it should
19 go back to the tribe.
20 But they haven't addressed questions like
21 the one you just asked. And I think we're going to need
22 to address that on this next round with the Congress. But
23 you'll have my support on that, for what it's worth.
24 MR. WHITISH: There is another situation,
25 too, where a person owns an entire 80-acre allotment and

can't get anything done to their allotment because of the tribe standing in the way, and that the Bureau will not challenge the tribe in order to make sure that my rights are being looked out for; and that when I ask for information pertaining to my property, they send me to the Quinault Tribe.

Well, the Quinault Tribe doesn't have the right to decide what trust responsibility the Bureau or the Department of the Interior or anyone else has to me. And I should be able to utilize my property to the best of my advantage.

And you couple that with the fact that they get the right to meet the high bid, so nobody else comes in and bids anymore, because they bid $1 more than that. So we're hamstrung about what we can do with our resources.

That was never intended; nor was the land of the other five fishing tribes of the Pacific Coast, that was never intended to put us under the control of the Quinault Tribe, and it indeed does exactly that.

So you're right when you say this is an issue that is going to have to be dealt with, especially if this plan goes through. Because otherwise, you're probably going to see lawsuits to try to stop it, in order to get those kinds of decisions remedied.

1 Then you throw in self-governance on top of
2 that, where they can do anything they want without
3 disclosure, and we can't find out anything that goes on
4 with the property. And you know, the funny thing is that
5 right now, if they were to inadvertently start a fire to
6 burn down my allotment, there is nothing I can do.
7 MR. HOMAN: Well, you have my support there.
8 And that's how we differ from the administration. We have
9 essentially taken the property rights of most of the
10 states, which give an individual equal rights with a
11 company -- or, in this case, a tribe or a governmental
12 entity. So you've got to start equally.
13 MS. MARY LEIKA: I think that one of the
14 things that Herb is talking about is really important.
15 But the other thing that they have to remember is that
16 during the Allotment Act, when that came into effect,
17 right inside the Act it states that all five, or all the
18 tribes that have holdings inside of the allotment, within
19 the treaty area, must meet together before they can make a
20 change in that allotment decision, in the Allotment Act.
21 So how that two percent came up, that was
22 wrongfully dealt with only by one large tribe. That
23 shouldn't even have come into effect. And that's the
24 reason why I'm saying that: that according to the
25 Allotment Act, all of the tribes that have holdings in

there should have been the ones to sit down and say, "Yes, we can totally agree with this."

And I can see where the things are wrong in there, because I have quite a few allotments down there, also. But I can't build there. I can't put a business there. I can't do anything on there. So is that really mine? Or who does it belong to?

So, according to that Allotment Act, that's the way it should be reverted to, is that it belongs to the individual tribes. And I think that's something that the tribes are going to have to end up really putting their foot down and saying that the two percent, which caused escheatment, needs to be resolved and out of there. Because it was not done properly in the first place.

MR. CHRISTIE: That's why it was declared unconstitutional.

MR. HOMAN: And the Supreme Court agreed with you.

MR. CHRISTIE: And the Supreme Court agreed that it's unconstitutional.

MR. HOMAN: That's why they're having to address it again.

MR. CHRISTIE: Your issue, if I'm understanding correctly, deals with five tribes on one reservation, and if you pass away, which tribes gets that?

1 What we have to also look at, nationally, is
2 that, in South Dakota, North Dakota, Oklahoma, places like
3 that, you'll have a person that -- like, my wife has
4 hundreds of thousands of acres that she is a part owner
5 to, but they're on more than one reservation. So if she's
6 a member of the Crow Tribe and she owns land over in Pine
7 Ridge, no way in the world that Pine Ridge is going to
8 stand for escheating to the tribe that she's a member of.
9 So there's a lot of big problems with it, and it does need
10 to be resolved.
11 MR. HOMAN: And it's the devise. Who do you
12 leave it to, if you're married to a non-Indian, or if
13 you're married to a person from a different tribe? Or to
14 your children. It's a lot of complex questions.
15 MR. HERBERT M. WHITISH: Just to make one
16 other statement, too: We have tried to resolve this thing
17 intertribally, and it has gone nowhere. And the Bureau
18 and the other tribe don't seem to want to recognize the
19 fact that what was intended there was a government
20 representative of all five tribes -- not one.
21 And it has been due to government
22 interference from the very beginning, backing up bad
23 precedent set back in the 1920s, that has culminated in a
24 very bad situation now, where you have a bunch of people
25 that are being deprived of their Fifth Amendment.

And basically, that's what I testified in front of the Senate, and all I got was threatened by Bill Richardson, and he told me to keep my nose out of it. But basically, you know, it's a bad situation, that something like this could only make worse.

Because I think that if this goes through and the intent goes through, then we would have no alternative but to fight tooth and nail in order to stop whatever goes on.

So you've got a lot of little side issues, and I think that's where the complexity of this issue comes in, is because you're looking at it from -- I don't want to say "a simplistic view," but you're not thinking about it in a tribe-to-tribe view of some of the historical feelings and relationships and all those things that accompany what you're talking about.

And you're talking about a whole paradigm shift away from a system that we've depended on for 40 years. And it's broken. I don't think anybody will tell you it's not. But it's also a lot of safety in staying with the old and accustomed, and that when you start talking about sending us to the sharks in the Senate and the Congress and that kind of thing, you know, the old and accustomed sounds a lot better than taking our chances on the Hill right now.

And I think that's probably a lot of why there is a lot of animosity towards this plan. I think the plan -- you know, when I was reading it, I thought there was a lot of parts in there that were darn good. And really, the good thing about this, if it goes nowhere else, is the fact that it's brought to light a lot of the issues that are going to have to be dealt with.

And I think the tribes are going to have to become a lot more vociferous about the way in which they approach this thing, because it's coming down to fighting for existence now. It's not a matter of sitting back and letting them get away with anything.

Each and every step we give up means we're this much closer to termination. And whether they do it the way you're talking about doing it, or whether they do it some other way, it's coming, and we have to entrench ourselves.

MR. HOMAN: Well, those are good comments. Certainly, I disagree with you on the termination part. I think this avoids it. It reverses that trend.

And on the fractionation issue, I have only added that in the last month or so. And only because we had an adverse -- the Government had an adverse opinion on the part of the Supreme Court, so I know it has to be addressed.

1 And in fact, the fractionation issue alone
2 causes better than 50 percent of all of the operating
3 problems we have. If we did not have that problem, we
4 would not be here today discussing what to do about
5 cleaning up the IIM problems and the like. So it's that
6 important.
7 And my solution is right out of the Indian
8 Land Consolidation text in terms of what they proposed a
9 year or so ago. So at least I come down on the side of
10 the angels there.
11 But the reason -- whether it's in my plan or
12 not, it will go to the Congress. Because it has to go to
13 the Congress, now that we've lost the Youpee decision. So
14 they'll have to deal with it, and you'll have to deal with
15 it very soon, whether you like it or not.
16 And I don't like it, either. It's being
17 rushed into without a lot of thought. As a matter of
18 fact, we're meeting every other week on my staff, and some
19 of the others. I have a very small role to play.
20 But watch for that, because it will be the
21 first thing that goes up to the Congress -- maybe even
22 before the summer. And you'll have an ample opportunity,
23 hopefully, to testify and to give your views on what is
24 being proposed.
25 And I don't know; I can't tell you what it

is they're going to propose. I can only tell you what I'm going to propose is in there.

MR. CHRISTIE: And Bill Richardson is not over there anymore. He's over at the UN now.

MR. HOMAN: Bill is the UN representative.

MR. CHRISTIE: Any other comments?

MR. HOMAN: Well, if not, I want to thank you -- all of you -- for your participation. This has been very instructive to me. I'm sorry for the rush, in many respects, and I will listen. I am a listener.

And as we go through these hearings processes and in the Congressional testimony, I will support -- my only objective here is to try to improve the trust accounting systems. If there are better ways to do it, then I will be the first to endorse those ways. So thank you for coming, and I hope to see you in the future.

(Applause.)

(The Meeting concluded at 4:30 p.m.)

* * * * * * * *

C E R T I F I C A T E

I, Elizabeth Hurst-Waitz, Registered Merit Reporter and New Mexico Certified Court Reporter #099, do hereby certify that the above-entitled Proceedings were reported by me stenographically on Tuesday, February 25, 1997, and that the within transcript is a true and accurate transcription of my shorthand notes.

I further certify that I am neither an attorney nor counsel for, nor related to or employed by any of the parties to the action, and that I am not a relative or employee of any attorney or counsel employed by the parties hereto, or financially interested in the action.

_____
Elizabeth Hurst-Waitz
New Mexico CCR #099, RMR

OFFICE OF THE SPECIAL TRUSTEE FOR AMERICAN INDIANS

OFFICE OF TRUST FUNDS MANAGEMENT

TRIBAL CONSULTATION ON THE DRAFT STRATEGIC PLAN

Thursday, February 27, 1997
8:58 a.m.

Adam's Mark Hotel
1550 Court Place
Denver, Colorado

REPORTED BY: YVONNE C. GONZALES, NM CCR #62
500 Oak Street, N.E., Suite 102
Albuquerque, New Mexico 87106

A P P E A R A N C E S

PAUL HOMAN
Special Trustee for American Indians
Department of the Interior
Washington, D.C.

JOE C. CHRISTIE
Special Assistant to the Special Trustee for American Indians
Department of the Interior
Office of Trust Funds Management

DONNA ERWIN - Director
Office of Trust Funds Management
Albuquerque, New Mexico

YVONNE C. GONZALES, NM CSR #62
Court Reporter
Albuquerque, New Mexico

* * * * * * * *

A T T E N D E E S

DARRELL E. DRAPEAU - Tribal Chairman
Yankton Sioux Tribe
Marty, South Dakota 57361

VERNON J. SCHMIDT - Vice-President
Rosebud Sioux Tribe
Rosebud, South Dakota

RUSSEL "BUD" MASON, SR. - Chairman
Three Affiliated Tribes
Fort Berthold Indian Reservation
New Town, North Dakota

RICHARD BRANNAN - Chairman
Fort Washakie, Wyoming

OLIVER RED CLOUD - Chief
Oglala Sioux Tribe
Pine Ridge, South Dakota

JOHN YELLOW BIRD STEELE - President
Oglala Sioux Tribe
Pine Ridge, South Dakota

A T T E N D E E S (Continued)

HENRY M. CAGEY - Chairman
Lummi Nation
Bellingham, Washington

DORENE R. BRUCE - Administrative Assistant
Turtle Mountain Band of Chippewa
Belcourt, North Dakota

NELSON P. WHITE, SR. - Council Member
Fort Washakie, Wyoming

JOHN WADDA - Business Council Member
Shoshone Tribe
Fort Washakie, Wyoming

ANTHONY A. ADDISON, SR.
Northern Arapaho Tribe
Fort Washakie, Wyoming
Palm Springs, California

PHILIP UNDER BAGGAGE - Administrator
Oglala Sioux Tribe
Pine Ridge, South Dakota

MARK N. FOX - Council Member
Three Affiliated Tribes
Fort Berthold Indian Reservation
New Town, North Dakota

DAVID A. BRENDSEL - Financial Advisor
Three Affiliated Tribes
Fort Berthold Indian Reservation
New Town, North Dakota

ROY ASHENFELTER - LMS Director
Kawerak
Nome, Alaska

LONNIE POINTS
CPA
Omaha, Nebraska

JERRY M. BLAND
Bland & Associates, P.C.
Omaha, Nebraska

A T T E N D E E S (Continued)

TRACEY LeBEAU - Council of Energy Resource Tribes
Denver, Colorado

DAVID C. HARRISON
Natural Resource, Environmental
Communications Consultants
Albuquerque, New Mexico

MELODY McCOY - Staff Attorney
Native American Rights Fund
Boulder, Colorado

WILLIAM D. SNYDER - Executive VP and CFO
OST Advisory Board
Co Bank
Englewood, Colorado

URBAN BEAR DON'T WALK - Managing Partner
First Nations Holding Company
Denver, Colorado

DENISE L. DANIELL - National Bank Examiner
Comptroller of the Currency
Administrator of National Banks
Western District
Denver, Colorado 80202

DON AUBERTIN - Branch Chief - BIA
Denver, Colorado

KIM SNYDER - Liaison Officer - BIA
Denver, Colorado

LISA CONNELL - Program Analyst - BIA
Denver, Colorado

CORA L. JONES - Deputy Area Director
AAO - BIA
Aberdeen, South Dakota

ROBERT W. DEMERY - Land Operations Officer
Standing Rock Agency
Fort Yates, North Dakota

JEYDEE SENDEES - BIA
Anadarko, Oklahoma

A T T E N D E E S (Continued)

RICHARD WILSON - Division Chief
Energy & Minerals - BIA
Lakewood, Colorado

JOE WELLER - Liaison Officer
OST-OTFM
Albuquerque, New Mexico

FRED WELLER - Computer Specialist
OST-OTFM
Albuquerque, New Mexico

SHELLY FARMER - Staff Assistant
OST-OTFM
Albuquerque, New Mexico

PATSY ANTONIO - Secretary
OST-OTFM
Albuquerque, New Mexico

DICK FITZGERALD - Trust Policy Officer
Office of the Special Trustee
Washington, D.C.

BERNITA JOYCE
Office of the Special Trustee
Washington, D.C.

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MR. HOMAN: Good morning. I'm Paul Homan. I'm the Special Trustee for the American Indians. Today, we have the second in a series of formal consultation sessions on the Special Trustee's Strategic Plan.

Before we begin our session, I think we should start with a prayer. And Chief Oliver Red Cloud has graciously consented to lead us in an opening prayer.

Chief, if you would.

(Invocation)

MR. HOMAN: Thank you, Chief Red Cloud. Also, in our audience is Chairman Bud Mason of the Three Affiliated Tribes; Vern Schmidt, the vice-president of the Rosebud Sioux; Darrell Drapeau of the Yankton Sioux; and Roy Ashenfelter from -- I'm going to miss this one -- Kawerak, Alaska.

And I want to introduce Bill Snyder, who is one of our advisory board chairmen. He's the chief financial officer of Co Bank, which is the Farm Credit bank here in Denver. So, welcome, Bill. We also have John Wadda of the Council of the Shoshone. Again, welcome, everyone.

My staff and I are going to present to you this morning a Draft Strategic Plan. I emphasize the word "draft." We will change it or alter it depending on the input we receive from these consultation sessions. We

very much welcome your comments and suggestions for change.

We will give you the mike in a formal way after our presentation, which hopefully, will take no longer than an hour or so -- after which, we'll break and come back. The sessions, for the record, are being recorded by a court reporter -- for the record.

So, in the formal hearing, you must state your name, organization and/or tribal affiliation. We would appreciate that. And use a microphone so that the court reporter can pick up your comments, concerns and questions.

Concerning the Draft Strategic Plan, which we have handed out -- we have not completed the appendix which is indicated in your table of contents. So, there is no Addendum 2 or Appendix 1. Although the content of those appendices will just be more detail on the Summary Strategic Plan. Also, concerning the Executive Summary, as listed on the table of contents, there is no Addendum 1, 2 or Appendix 1. We will be producing that when we produce the final plan.

By way of background, the Special Trustee's Office came about due to an initiative by American Indians to take a look at all phases of the Trust Management Systems conducted by not only the Bureau of Indian

1 Affairs, but also by Minerals Management Services and by
2 the Bureau of Land Management.
3 I was to be given one year from the date of
4 appointment to produce a Strategic Plan reforming, again,
5 all phases of the trust management process. Since
6 September 19, 1995, when I was appointed, I have been at
7 that task. Obviously, I've gone over a year. But for the
8 first several months, I was not funded and had no staff.
9 I still only have a staff of four in Washington.
10 So, the Congress and the Secretary have
11 generously agreed with me that I could submit my report on
12 March 31 or soon thereafter. At present, we have issued a
13 Draft Conceptual Strategic Plan, which I sent to all trust
14 tribes last February; and it contains the basic document
15 and changes that are being proposed today with more
16 detail.
17 So, that was the start of the consultation
18 process last February. Since then, I have given at least
19 twenty speeches in two various Indian organizations and
20 groups. We published our new plan, revised in January;
21 and we intend to have hearings which started Tuesday in
22 Seattle, today in Denver, one next week in Atlanta and one
23 the following week in Albuquerque; which are to be
24 followed by a leadership meeting of various Indian
25 organizations back here in Denver on March 17 or 18th.

After that, we will receive a report from an outside contractor who is presently interviewing Bureau people, tribal leaders, tribal people that are engaged in self-governance and will be providing a checkup on certain aspects of the report; and more importantly, give us a general idea as to what the budget implications of this plan are.

My original budget implications were about $100 million, which was to be spent principally for core systems development, training for not only the Bureau of Indian Affairs employees, MMS employees, but more importantly, for some 300 tribes that will have direct on-line access to our information system. And we will pay for that -- with the tribes -- we'll pay for the training or the technical assistance to enable you to come on to a modern trust system, which is our core objective.

So, with that very brief beginning, let me start with what every Strategic Plan must start with and that is a mission statement. These are not my words, but these are the words out of several Supreme Court decisions over the course of time. And that is, that the U.S. Government must -- and I emphasize the word "must" -- manage the U.S. Government's trust responsibilities to American Indians using the most exacting fiduciary standards and moral obligations of the highest

1 responsibility and trust.

2 As you all now, we're not living up to that

3 standard today. My plan is designed to develop the core

4 systems, accounting systems, if you will, that will enable

5 us to do that over a two-year period.

6 There are four primary causes of the trust

7 problems, in my view. And I'll be speaking to some of the

8 statistics a little later. But essentially, the first one

9 is continuous and long-term trade-offs of competing

10 financial and managerial resources at all levels of

11 government, starting with the trade-offs within the Bureau

12 of Indian Affairs itself; secondly, the trade-offs on more

13 popular programs in the Department of Interior, such as

14 the National Park systems, fisheries and the like. And

15 the fact that these trade-offs also occur with

16 congressional initiatives and at our levels of the

17 administration.

18 Second, the BIA is organized not by business

19 functions, as most trust companies are today and most

20 government entities are today. We hope to change that by

21 combining the three basic trust functions into one entity.

22 It also lacks the managerial resources to

23 manage a modern trust department, through no fault of its

24 own. The Bureau of Indian Affairs departed, sometime

25 after World War II, into a manual-driven trust management

technique. And it's never kept pace with the technology improvements that have taken place in the private sector to date.

Finally, as you all know, one of the major contributors to the operating problems we all have is the fractionation of allotment interest that has occurred over many, many years -- the great numbers of small accounts that have only been compounded by the recent Youpee decision, which may force us to go back on 55,000 small accounts that we have escheated since 1984, and recalculate the pennies that are due those recipients, creating even larger operational problems than you'll now hear about.

Over the course of the last year, we had five regional hearings on how we could improve the IIM accounts, and essentially, starting with Resource Management all the way through the trust cycle to Land Title and Records. Joe would say maybe over 90 percent. I would say at least 80 percent of our operating problems are from fractionated interest.

The tribal working group, which consisted of about 19 tribal representatives, identified these five major problems that needed to be addressed in this order, in their view: accounting, realty, customer service/training, policies and procedures and records

1 management. And I told them that I would put those at the
2 top of the list in my Strategic Plan. And our plan is
3 designed to address each and every one of those major
4 issues.
5 Let me just give you a little flavor -- and
6 you'll see in your report a little later the actual
7 numbers, but the reason we're here is as follows: We have
8 something like 45,624 accounts; $27 million in Indian IIM
9 accounts, whereabouts unknown. We can't find those
10 people. We are depriving those individuals of the
11 interest on those monies and also the principal.
12 We have minor accounts -- 27,000 minor
13 accounts which we know have reached the age of majority;
14 but there is $22 million in those accounts that we can't
15 find. So, we are depriving some of our former minors of
16 the interest and principal on those accounts as well.
17 We have 16,000 duplicate accounts. We have
18 21,000 deceased accounts with over a two-year probate
19 backlog, which has never been cleaned up and which is
20 getting worse because the Bureau has taken some 30 people
21 out of that cleanup effort in the last couple of years.
22 We have 128,000 out of 300,000 accounts with
23 no tax ID number or Social Security number, which is now
24 required by law. I won't go into it very deeply, but you
25 all know the general results of the Arthur Anderson study:

1 2.4 billion out of that 20-year study that couldn't be
2 located -- our source documentation, I should say,
3 couldn't be located to support the journal ledger
4 entries -- 575 million in unreconciled disbursements,
5 which means we have incomplete or no source documentation
6 to prove that those payments were made; 4.1 billion in
7 incomplete disbursement voucher packages, which means we
8 have incomplete documentation on those disbursements.
9 A lack of what the GAO calls a "known
10 universe" of leases. We can't add up all the leases the
11 Bureau manages. So, we don't know what the universe is.
12 If you don't know what the universe is, you can't possibly
13 audit to see whether or not the American Indian tribes, or
14 any individuals, are getting the right amount of money
15 from those leases.
16 And finally, no consolidated or coordinated
17 accounts receivable system, which is prevalent in every
18 major business today. And even a mom and pop store that
19 extends credit or collects money has an accounts
20 receivable system. So, those are numbers which have been
21 out for some time.
22 This amounts to the principal causes of the
23 problem, which, in a nutshell, amount to a serious breach
24 of trust, and an inability of the federal government to
25 meet the standards of the American Indian Reform Act,

1 which has exacting standards in terms of accurate
2 accounting and reporting or standards of ordinary
3 prudence, which are applicable to every trustee, public or
4 private. For the American Indian, this means exposure to
5 further losses.
6 This is not a historical problem. It is a
7 real problem today. So, you're still being exposed to
8 losses so long as these systems -- these management
9 systems -- remain unfixed. For the federal government --
10 it exposes the federal government to continued claims of
11 mismanagement, fraud claims, and exposure to a future
12 liability, when and if the courts get around to addressing
13 the losses of the past.
14 So, it's a very serious consideration. The
15 debate goes on. My plan does not address the past. I was
16 not charged to do that. But it seems to me that before
17 you're able to settle on any past losses, you must cure
18 the current breach of trust. And the plan is designed to
19 do that over a two-year period.
20 In our view, the three major trust
21 functions -- Trust Resource, or Asset and Natural Resource
22 Management, Trust Funds Management, and Land, Title and
23 Records Management -- ought to be transferred out of the
24 Bureau of Indian Affairs into a separate entity. I
25 suggested that this take the form of what is commonly

1 known in government as a government-sponsored enterprise,
2 reporting directly to Congress.
3 However, that's only my suggestion. I don't
4 think that will meet with the approval of the Secretary of
5 the Interior. He's already said that. So, some other
6 form of organization will likely occur. And the debate
7 will take place. You may have your own views on that. We
8 welcome them.
9 But from my point of view, the way to
10 resolve this quickest and fastest, is to do it in the way
11 I've described. The Bureau staff associated with those
12 activities would be transferred, in tact, to the new
13 organization.
14 One of the problems, though, in issue in
15 this whole scheme is management and competency of
16 management. We have very few Bureau employees that are
17 skilled in modern trust management techniques. So,
18 substantial retraining will have to take place. And we
19 intend to engage an outside, independent firm to assess
20 the quality of the management, to give us advice as to
21 what training needs to take place. And obviously, some
22 people will need to be replaced altogether.
23 We think that consolidating the trust
24 management activities will have the following
25 implications: it will form an independent administration

1 which will be responsible and accountable for all reforms;
2 implement the reforms, again, over a two-year period;
3 provide for the ongoing management of U.S. Government
4 trust responsibilities in those three areas; organize
5 itself by business line or function -- which, as I said
6 earlier, is the way of almost any private sector
7 enterprise today -- be managed by a separate board of
8 directors and a chairman, including three Indian
9 representatives appointed by the President and confirmed
10 by the Senate; and, as I indicated earlier, an
11 organizational forum which we call the American Indian
12 Trust Development Administration, for lack of a better
13 name.
14 The proposal represents a major improvement,
15 we believe, in the way the U.S. Government manages its
16 trust responsibilities. It concentrates the U.S.
17 Government resources on trust management activities --
18 gives it a focus. It improves and increases trust
19 services; and I'll go through these improvements later.
20 It clearly differentiates the activities which are now
21 very deep in the Bureau of Indian Affairs. It reaffirms
22 and insures -- importantly for you -- the U.S.
23 Government's commitment to its trust responsibilities.
24 As I indicated, it transfers the staff to
25 the new organization. But more importantly, as any

1 private sector trustee would do, we're going to make no
2 changes in the delivery of services at the current
3 locations or the people there, at least at the outset.
4 So, you, as owners and customers of these
5 trust services, will be looking at the same people in the
6 same locations. And the difference will be that there
7 will be more coordination and cooperation. It will be
8 under a common set of law, policies, procedures and an
9 architectural economic system and computer system, which
10 we'll describe in a few minutes.
11 We think this organizational structure will
12 further prevent erosion of the U.S. Government's inability
13 to fulfill its trust responsibilities. It clearly
14 establishes accountability, which has been lacking in the
15 past. I believe it provides protection against
16 termination, which I know is a concern of all the tribes.
17 I will give you some indication on my view
18 there. It provides a GSE, or a government-sponsored
19 enterprise, which should eliminate some of the detrimental
20 trade-offs of financial and managerial resources that
21 presently take place. As you know, the political
22 influence of the American Indian is very small, in a
23 national case.
24 Even though you start out in a budget
25 process with funding and staffing to resolve some of these

many issues, they first get traded off against other Bureau of Indian Affairs activities which are deemed more important.

Next, they get traded off in a world of capped budget considerations against what one of our advisory board members said -- you know, rocks, fish, wildlife of all sorts, national parks. They get traded off against other more important activities of the administration. And finally, the Congress has its cut, too.

Now, this organization will report directly to the Congress, much like the Farm Credit System reports to the Congress, much like the Federal Reserve System reports to the Congress and much like the Federal Home Loan Bank System reports to the Congress. These have all been GSEs, or government sponsored enterprises, since the 1930s.

They have all been very successful in helping to develop the economic enterprises for American agriculture, for housing, and for the American Banking System. So, my idea, as you'll see in Phase II, with the Development Bank, is to create such an enterprise for the American Indians.

We think this will stop and reverse the steady erosion of the fulfillment of the U.S. government's

1 trust responsibilities. In my view, the lack of funding
2 and staffing over the last 10 to 20 years is, in fact, de
3 facto "termination." I know that is some tribes' greatest
4 fear. But I think it's going on now. It's become an
5 accepted excuse in government, to excuse everything in the
6 nature of, "We have no staff. We have no money to accept
7 this." That would not -- definitely not -- be a privilege
8 of a private trustee.
9 I was a bank examiner and supervisor for 20
10 years. We would, as a member of the Office of the
11 Controller of the Currency -- if the state of affairs was
12 as it exists in the Bureau, we would have revoked their
13 charter or compelled performance long, long ago.
14 But the federal government has found a way
15 to excuse itself in terms of providing appropriate funding
16 and staffing for these trust responsibilities. And the
17 record is evident there.
18 We even have a new name for this, in terms
19 of IG -- where to address a problem. All you have to do
20 is create a plan to fix the problem. It's called
21 "resolved, but not implemented." And then the pressure
22 goes away, in terms of applying money and staff to the
23 resolution of these problems. So, hopefully, we'll be
24 able to reverse that trend.
25 Because the new organization functions at a

1 higher level of government, it should receive more
2 attention from you, as the major beneficiaries, and from
3 the Congress, in terms of the funding necessary, on an
4 annual basis.
5 The board of directors, as I indicated, will
6 consist of five trustees who will devote exclusive time to
7 the management of these affairs. Again, three American
8 Indians and two financial people will comprise the board,
9 much like the Federal Home Loan Bank System is set up,
10 much like the Farm Credit System is set up, much like the
11 Federal Deposit Insurance System is set up.
12 As I indicated, it will be organized along
13 business lines. The last two here are very important. It
14 will improve trust services, current trust services. We
15 have a backlog in IIM related account problems, which I
16 just recited, probate and land title and record problems.
17 We will devote considerable monies to clean
18 those up before we move to a new system. We must clean up
19 the data in the old system before you can move on to a new
20 accounting system. It will require accurate trust
21 accounting -- which is now required by law -- coordinated,
22 integrated and consistent asset administration,
23 appropriate audit and the like.
24 The new trust products -- and the second
25 part of the Strategic Plan asks the Special Trustee to

1 identify new options as to how the tribes can manage and
2 input their own accounts first, and then second, invest
3 them for the economic development of the tribes
4 themselves.
5 So, we would provide these products to
6 assist the trust accounts and achieve a level of trust
7 services and products that are equivalent to what a
8 national trust bank department provides the American
9 people in their trust endeavors.
10 The first is a great departure from the
11 past. Right now we can only invest your funds in U.S.
12 Government obligations or the equivalent. This would
13 enable you to direct us to invest those funds -- or you
14 can invest them yourself, either through a
15 manager/comanager and agency trust -- just like you can in
16 a national bank trust department.
17 This is made possible by a major change in
18 the rule. We would eliminate the laws that restrict the
19 investments and go under what is called a prudent
20 investment standard, which is applicable to all private
21 trustees across the 50 states. It's an Anglo-American
22 common law standard that has been in existence for over
23 1,000 years.
24 It is very well understood by the U.S.
25 Courts and the legal profession and the banking

1 profession. And we see no reason why the prudential
2 investor standard can't be applied to Indian trust
3 accounts.
4 So, not only will you able to invest in
5 enterprises of your choosing -- so long as they're
6 prudential -- and there are rules for that -- but you will
7 be able to either manage them yourselves, comanage them
8 with the federal government or direct the federal
9 government in its management of those funds.
10 The rest there are important services which
11 you should take a look at. We will be accepting, for the
12 first time, voluntary deposits to encourage economic
13 development. We will keep the interest on those tax free,
14 which is different from your current environment. We'll
15 allow such items as demand and savings accounts, which are
16 not allowed now, and retirement accounts for individuals,
17 which are not allowed now.
18 Phase II -- which I will discuss after the
19 next speakers -- will involve a full service banking and
20 trust product service. Importantly, we have suggested 500
21 million in new equity. I'll indicate where that comes
22 from. That will leverage the bank -- and "leverage" is a
23 banking term, I guess, or a company term. Most people
24 understand leverage. If you have 500 million of equity,
25 it will enable you to borrow up to 5 billion in the

markets. That will serve a variety of purposes, about which I will touch on later.

The organizational structure will look something like this. It will have the three major trust functions beginning with Trust Resources Management there on the left. Trust Funds Management. The middle section is Support Services, but includes importantly, a Trust Archiving and Land Title and Records Management, which Joe will touch on later.

And the right-hand column there is Audit and Compliance which exists sporadically in the Bureau today; and because of a lack of a good accounting system, is almost ineffective. Because without records, it's hard to do a good audit.

MMS, BLM will continue to collect the oil and gas revenues and be involved as they are now. We think they can improve. Their audit techniques, for example, we think, are not up to commercial standards either. They do a good job in checking production, in some cases, but they have no means of checking production against dollars. If you can't do that, you don't have much of an audit. So, we'll be taking a look at improving their techniques as well.

I'm going to skip these next couple of charts because I've already covered the general subject

1 matter. And would you move to Page 23. These are the
2 first eight action elements which were contained in my
3 Strategic Plan last February.
4 As you can see, they're all in the nature of
5 core systems: accounting, record keeping, general ledger ,
6 data processing and alike. No surprise there. These
7 types of systems are all commercially available. And
8 Donna and Joe will be talking about our plans for those
9 indicators in the presentation to follow.
10 I've already talked about the organizational
11 structure. Joe will be talking more about the impact of
12 fractionated legislation -- which has recently been
13 impacted by the Supreme Court decision in January -- and a
14 little bit about the Department of the Interior's
15 proposal, which should be going to Congress very soon. We
16 don't have the outline of that yet. We have suggested
17 some input, based upon the land consolidation group
18 recommendations that they gave me last year.
19 The rest involves legal changes, which I've
20 discussed, data cleanup, disaster recovery -- all of which
21 will have specific plans; all of which support the type of
22 cleanup efforts and data processing initiatives and
23 telecommunication investments that we hope to make.
24 So, with that, I will quit and turn the --
25 actually, I've got two more things to do. Turn it back

one -- or two. Page 24. The next page.

This is a picture of our architecture. I'm not going to describe this, except to say that this is the star-type computer system, trust management accounting system, data system. Both Joe and Donna will go through the specific aspects of this system.

The last subject I want to talk about is the sunset, which is on the next page, of the Office of the Special Trustee. The Office of the Special Trustee was set up to be temporary. I endorsed that from the beginning. I still endorse it.

I believe, as an oversight agency, that I cannot effectively oversee the implementation of my plan or any other variation it may take. I have no confidence it will go through intact. It will depend upon your input and the Secretary's input.

So, whatever plan emerges, I think, should be put under a single entity in direct control of the implementation. I don't believe that's possible to do in a secretarial oversight role. So, I suggested that I terminate 30 days after that decision is made. That my staff -- all four of them -- get transferred to the new entity to help oversee the implementation of the plan. And that all other staff which reports to me -- notably the Office Trust Funds Management -- be transferred to the

new entity that is put in charge of implementing the plan.

So, I cease to exist and will go back to the private sector very quickly if this plan is approved. Donna.

MS. ERWIN: Okay. I want to move into the side of this. What I'm going to be discussing is this side: Trust Assets Management. What you'll also be seeing -- Joe will be discussing the difference between the LTRO -- which is land title records and ownership.

Two things that I want to discuss is the -- and Joe, like I said, will reiterate this -- LTRO -- that's actually the keeping of the titles, the ownership. This is land centric. This means that you care about: what has that land done; what's the history of the land versus Trust Assets Management, which is people centric; who actually owns this; what are the ownerships.

Public -- this is something that normally landmen, people that can go in and say, "Tell me the history of that land." Trust Assets Management is confidential. It's a snapshot in time -- what is going on with your account. It is financially oriented.

There's a statement of assets and transactions. When we say assets -- right now, what you guys see is that you're getting a list that says, "Here's where my financial transactions happen." What we're

suggesting is that you should also be, right behind that, able to see your land or your oil and gas or your grazing leases or whatever, in one comprehensive statement.

Now, where everybody gets confused when they start reading this -- that does not mean that you're going to have to talk just to one person. That still means that the people in the field will be performing the lease management just as always, but -- and the oil and gas, as we said, is at MMS -- but you're going to get one common statement, so you can see everything that happening in all your assets at once.

Collections and disbursements is included in the Trust Assets Management. As you heard us say in some of the IIM meetings this summer, when we were out talking about the IIM accounts -- we were talking about lock boxes. Why do we need lock boxes? We need lock boxes very much like you pay your house payment, if you have a gasoline credit card, whatever you have. It goes to a P.O. box.

That's at a bank. That bank immediately starts getting that money, deposits it immediately. It starts earning interest. That's what we need. We need to immediately start earning interest.

It doesn't matter if we don't know the ownership of that land. It doesn't matter if our realty

clerk or IIM clerk -- whoever is across the country -- is on vacation or ill. That has to be happening. If it goes directly to the bank -- that's how your mortgage payments and all of those happen. They go directly to your bank, they're opened and the information is electronically transmitted to the company.

So, you see everything you would see. You see the check. You see the coupon. You see whatever you had there, just like you would if it was coming directly to the Area or the Agency. But it would immediately -- the check would go one place and the copy of the check and the information will all be transmitted into the Area/Agency or to whoever is doing that work.

Asset ticklers. We keep hearing, "We do not have an accounts receivable. We do not have an accounts receivable." That is true. There are various types of systems out there. One happens to be -- you'll see a manual. It will do a four-part form. They'll send it out, a bill. The collection comes in. They'll pull that. It works pretty well in a lot of our Areas, but it's manual. It's dependent on that paper that's there.

What we need is some electronic form of asset ticklers so that -- and ticklers versus accounts receivable. Fiduciarily, when you say tickler system, accounts receivable -- when you look at the accountants

1 out there, they're going to say, "Accounts receivable
2 means a dual entry in the general ledger." In fiduciary
3 accounting, what you see is that -- we have an OCC
4 fiduciary trust examiner with us today, who's based here
5 in Denver.
6 What you traditionally will see in a general
7 ledger is: Here are all the assets. Then, here are all
8 the people that own the assets and those balances. That's
9 your general ledger. So, you're based on a tickler
10 system, normally, in fiduciary accounting. This group
11 also does the investments.
12 The IRMS application right now is
13 insufficient. We've heard that from GAO. We have 83 OIG
14 reports. We've heard this over and over and over since
15 1983, when I first got here, telling us these same things:
16 cannot meet the commercial standards; technology is
17 outdated.
18 We do not effectively distribute interest
19 the way we should be versus calculating what are these
20 assets worth monthly. And the big pool of money you
21 have -- we allow people to go in and out of it today.
22 There are lots of problems with that system. It's not all
23 encompassing. But the redesign is expensive and
24 cumbersome.
25 If we try to redesign it -- there are

systems out there that do this for $10 trillion worth of assets just in the United States, on a daily basis. So, there are systems that exist, that will do this for us. It does not integrate with LRIS. In other words, you do not know the entries.

We have Macro, which you've heard of, which is a contractor Mr. Homan referred to -- that's going out there and talking to people about how are things working. They've gone to Areas. They've pulled up what's the ownership versus what are the assets being held over here. They're getting like one on one side and 40 on the other. They have to balance up against each other, continually, to make sure that you're in balance. We have to be able to look at the leases on there.

This does not fulfill the Secretary's trust responsibilities. As we mentioned, there are commercial trust assets management systems that are out there. They're available. They're much more cost effective.

What is a trust comprehensive system? It has the trust resource management. It has leasing information in it. It does not mean that one person is going to do this. It's telling you that all your information is in one place, not on three or four systems. All your information is going to be located in one system.

It doesn't matter if there's someone out in

the field. It doesn't matter if they're across the country or they're in Alaska. They're still going to be inputting into one central system, so everyone can look at it and know what's going on -- everyone that has security.

This will be a security-oriented system. So, everyone that has a code for their account -- it's at the tribe -- you can look it up and say "Look, they signed this lease today. Here are the terms of it." You know that immediately. You know when the money came in and what lease it came in against.

It will have tickler systems, as we discussed. It will have collections. It will have accounting, investments and disbursement capability. All encompassed, so that you can see it all together -- not going to four or five different areas or places or offices to find this information.

Now, the other thing we need here -- as we said -- is a link between the LTRO. The LTRO should be a separate function. You'll see that if you go anywhere. This needs to be a stand-alone function over here.

Then, once it starts to be leased, it comes under the lease management. But you need to be bumping those systems up against each other constantly, to make sure that they're in balance. And it's the same thing that the lease ownership is telling you you have, is what

is on your comprehensive system.

We need all assets listed on statements. I keep reiterating that. You need to be able to pull one statement to know every land, every lease, oil and gas properties. You need to be able to see that. That doesn't mean every time you see a statement, you have that option. Do I want that or do I not want that?

We need it to include the decimal ownerships. You should know the decimal ownerships on that statement, if it's a quarterly statement the individuals are seeing; a monthly statement the tribes are receiving. You should be able to look at that, so when you see oil and gas or a lease payment coming in, it will calculate against that. You can say, "Yeah, here's the total amount that we received for that lease -- every one received. This is what the lease is for. Here's my decimal interest. Yeah, that is what I should have received."

It should include mutual fund capabilities that will increase IIMs. We said there's a real inequity in how interest is calculated, depending on when you're in the account or not. So, it needs to include that type of capability, to be able to value those securities every day and know what your assets are worth every day. If you are an IIM account holder -- to know that pool that you're

1 invested in and how much it's worth every day.

2 What I'm going to give you here -- and I'm

3 not going into detail on these. I want you to look at

4 them. Some of them will not come out up here, because

5 they're very detailed transactions.

6 In this system, you're going to have the

7 ability to go out -- and we, working with the tribes and

8 individuals, designed a dozen statements. They said,

9 "This is the type that I want to see. I don't want all

10 the detail. I do want all the detail." But you'll have

11 options as to what you want to see.

12 This is will be transactions. You'll see

13 it's very similar to what you're seeing on the OMNI. But

14 this will also be from the IIM accounts. You'll be able

15 to see your cash transactions.

16 This one, you're not going to be able to

17 read up here, but this is a summary of transactions. I

18 thought it was real important to have it in your handout.

19 Because if you want to know, what did I receive from oil

20 and gas this month, what did I receive from securities,

21 what did I receive from stock, you can just go to the back

22 of the entire transaction summary and be able to look at

23 this and see what you have.

24 This is an asset. As we said, every account

25 should have this, when you see a statement. It should

say, "What are my total cash equivalents?" If you're a tribe, that means the U.S. overnighter you're seeing right now. What do I have in securities. If we go to equities -- as we discussed the prudent investor rule -- you would have equities. It would give you all the information about it. What is it worth.

If you have real estate, it will tell you what's the last appraisal on it, what is it worth. If you have mineral interests, it will list your mineral interests. As I said, you have the option. " I want to see all of these once a year. I want to see these every month." What you want to look at.

These, I'm not really going to go through. This is just telling you that -- rather, it's leased. You want to look at the payer. You want to know all the expenses and income for that one lease you have. You can see it. You can see it right at your terminal, if you're a tribe, or whether your an Area and an Agency.

If it's oil and gas, you can look at it -- tell you when you received the payments. What's it for. It will give you all that information, so that you wil l be able to retrieve it right where you are.

This is the same thing. You're going to see more of these. I just wanted to give you an idea of the variety that you can receive. Thi s is the same thing.

1 These are just going into property reports.

2 Now we get to the Architecture and Support

3 System. This is the Trust Development Administration. Or

4 this is somewhere where that central system is going to

5 be. Everyone is going to have access, feeding in and out

6 every day.

7 You hear about distributed processing.

8 We've read some recent OCC bank examiners' discussions on

9 the pros and cons going to distributed processing. There

10 are some expenses that are associated with it. This is

11 not looking like that. This is looking more like this

12 star -- I never remember exactly -- post-to-post system,

13 which means that you're --

14 MR. CHRISTIE: Point to point.

15 MS. ERWIN: Point to point. That's it. So

16 what you're going to be able to do is, if you're an Area

17 Office -- this is the lock box -- feeding in, telling you

18 this is what we've received overnight, sending that back

19 out to whoever needs that information, whether it's a

20 self-governance tribe -- a self-governance tribe can run

21 this, just like being in this system; be able to use the

22 lock box facilities, whether you need to inquire about

23 national archives; if you need -- whatever you need to

24 look at. No matter where you are, you're feeding back and

25 forth.

Everyone that needs to have retrieval and monitoring over this can look at it. You can look at anything that applies to your tribe, even to the point of an IIM account holder. They can be on-line. You hear a lot of Internet stories going on now. It's those capabilities.

This just gives you an idea -- when we say "input," it can be at the Agency; it can be at the tribe, if it's a self-governance tribe; it can be at the Area, wherever they're leasing. It's normally at the Agency or the tribe. They will lease this. They will go to a formatted screen sitting right there. They will type in all the terms of the leases. This is when it expires. Everything you need to know about the land. This is who owns it. It will bounce up, and you'll know who owns it.

All of that will immediately go into everyone's account. It's there. You can see it. If you own part of it, you can see it. You can see how much you own. It creates a tickler. It also creates a coupon book.

We keep hearing, bill, bill, bill. Leases should be -- this is your responsibility. You give this to me. Here's your coupon book. I'm going to talk to you if it's not paid and tell you what your late charges are. Somebody is going to be following up constantly on the

collection process.

So, this creates a tickler right here. Everything you need to know. And everyone can look at it the minute it's put in. Joe will talk some more about how do we image those and store those records.

Once the funds come in, they're sent to the lock box -- sent electronically to whichever input point it needs to go. That might be a tribe. That might be an Agency. That might be a central or regional -- you know, we have to work through those with everyone. How do we get this in the best and most efficient way, to get that money working? So you know about it immediately. Then, it will bounce right back up to that original screen.

Once it bounces up to that original screen, it will split to everybody right then. No holding you in suspense. No going out there looking, trying to figure out who it belongs to. Because your records are right to start off with.

Any system must feature -- now, we have a bank examiner who going to say, "This looks familiar." It came out of the Comptroller of the Currency's handbook -- accurate and reliable accounting data; timely management and account information; high level of operating efficiency. We have to be efficient. Not have four systems trying to be fractionated and figure out who's

doing what.

We need cost effectiveness, full compliance with laws, regulations -- has to be able to monitor those -- accommodations for new financial products, service and future growth. I always bring up oil and gas. It wasn't in existence a few years ago. Collateralized mortgage obligations, CMOs, that everyone is investing -- most of the tribes -- they weren't out there a few years ago.

We need to be utilizing a system where you, as a user's group, can say, "Here's what I need," whether you're a tribe or whoever -- if you're going to make the determinations of how do we upgrade this. But you have all these users across this country also using the same thing. They can share in the cost of every time a new product comes out, that we can look at and enhance it.

An IIM system also must feature -- but this also is a tribal system -- ACH disbursements. Same way all the government employees are paid -- Social Security is paid -- direct to your bank. You send them the day before they're due. So, it's a one-day delay in getting that. We send them -- whoever is "we" -- we send them the day before. So they're there for that time.

IIM System must feature same-day transfers, EFTs, wire services. We're doing a lot of this in Alaska.

1 We started consolidating some of the printing of checks
2 because we find out, across the country, there's weather
3 problems. People have to go home earlier.
4 They've been saying, "Can you do it from
5 Albuquerque? You guys are rarely shut down." So, we
6 started doing that. Prior to doing that, we test them.
7 We test them to make sure that we're not slowing down.
8 What we found about Alaska is that we
9 weren't slowing them from where they were, but there was a
10 quicker way to do it. We could wire it. But we don't
11 have that capability. We're doing it manually right now.
12 We'll wire the funds directly to their accounts, and they
13 will have them the same day. So, we need to have the
14 capability to do this automatically.
15 Another feature is mutual fund accounting,
16 including -- we talked about mutual funds for IIM account
17 holders -- checking, savings and ATM access. ATM access
18 only for the people who do not have restricted accounts.
19 Telephone access to account information. You can call in,
20 find the balance; find out if your check went out. You
21 can also push a "0" and talk to a real person immediately.
22 We do have an IIM improvement team. Most of
23 you have heard about it. It was organized in January of
24 '96. It is an IIM, tribal/federal. The team addressed
25 ways to solve IIM problems. They went out and talked to

1 people about what kind of IIM problems they were having.
2 We had five IIM consultation meetings during
3 the summer, and recommendations were reviewed in January
4 by the tribal/federal IIM. There are IIM allottee
5 associations in that, realty officers, superintendents,
6 assistant area directors. So, there are Bureau people in
7 there. But the majority of them are all tribal or IIM
8 account holders.
9 These are the categories -- and this is what
10 Paul was referring to -- that they came up with. This is
11 customer service and training. But these five came out
12 always, no matter who we were talking to. These are the
13 five main areas we need to concentrate on.
14 I want to talk a little bit about some of
15 our recent audit findings: cash-out balance, the GL vs.
16 IIM, Treasury vs. GL. These are old, outstanding problems
17 that need to be resolved. We are working on those. But
18 that is an audit cash-out balance. This system will help
19 monitor that.
20 The new OMNI system is -- I actually helped
21 monitor that also. If you do it in IIM, it automatically
22 feeds into your OMNI system. As we said, there was
23 improper amortization of premiums and accretion of
24 discounts. Amortization and accretion was not happening
25 correctly.

1 One of the reasons for that is, we have a
2 government accounting versus fiduciary accounting. We're
3 trying to resolve that. We're working with OMB and with
4 the policy management and budget group in the department.
5 MR. BRENDSEL: Say that again.
6 MS. ERWIN: Improper amortization. What is
7 happening right now is, that it is doing straight-line
8 amortization on the investments. That is a government, or
9 maybe in your general ledger -- fiduciarily, that is more
10 of a correct way to be amortizing those.
11 So, we're having a little conflict between
12 being in government and not being in government. So,
13 we're trying to correct all of those problems.
14 Budget clearing accounts are inaccurate.
15 Since 1992 -- these are old problems. We have not had
16 this problem since 1992. They're completely balanced.
17 These are old problems that need to be cleared.
18 An inconsistent use of policies and
19 procedures out in the field. We have monthly calls with
20 the trust area accountants. Quarterly calls with our
21 staff out there. We are really working to bring those
22 things in a much more consistent manner across the
23 country.
24 Overdrafts. We've heard about the many
25 overdrafts that are out there. There are a lot out there.

1 We're trying to resolve those. Those are not allowed
2 anymore.
3 As we said, the system will correct a lot of
4 these things that you're seeing: the IIM investment
5 earnings that are not equitable, not properly crediting,
6 not calculating it correctly.
7 There are special deposit accounts that are
8 outdated. We know that. We need to be making sure that
9 those things are posted accurately; that we're monitoring
10 and getting the money out of there as quickly as possible.
11 We're not hiding any money in them.
12 As we said, we lack not only in the
13 inconsistent use of policies, but we need to get -- do we
14 have money this year to get contractors out -- getting
15 those policies across the country?
16 Inadequate BIA controls over -- and this is
17 because BIA is doing the data center right now. They're
18 having some problems with disaster recovery and the way
19 they keep their passwords updated and testing of
20 application changes. A lot of that is due to the
21 downsizing and lack of funding.
22 So, we're not saying, "Hey, you're doing all
23 this." There are problems that have occurred out there
24 because of lack of funding and lack of people to conduct
25 these activities. We're not going to go into all of

1 these. You can read those.

2 You're going to find that there are all

3 kinds of things out there that are going on, as far as

4 vital statistics -- not having birth dates, not having

5 death certificates -- sending statements, buying insurance

6 policies, and paying premiums and policies lapsing. These

7 are things that we have found when we were out there.

8 We do have an improvement team that's

9 actually going out to our IIM sites, shifting in old

10 folders, going through the new folders, making sure that

11 we have documentation that says, "If I'm to turn 18, I can

12 tell you where every cent of my money went."

13 We've heard the horror stories of people who

14 have -- per capita. Half of it was to go to the parent.

15 Half of it was to go to the IIM account. The child is

16 adopted at three. When the girl turned 18, she said,

17 "Where is my money?" It had been going to her birth

18 mother.

19 We've got to get control of some of those

20 type of things. Like I said, this is not pointing

21 fingers. This is saying we've got to concentrate, get the

22 money and make sure that we're cleaning these up in a

23 consistent manner. We're doing it consistently with all

24 accounts, no matter where you're located.

25 Those just go on and on. You have all

these. You can read those. This is another concern, is statements going to the superintendent. If there's a guardian, they should be going to the guardian. If there's an executor of the estate or an administrator of the estate, they should be going to that person. So they see them. So, we need to make sure that we're not just sending statements to the superintendent.

We're working on this Area, which was the Alaskan Area. This is Aberdeen, Billings and Phoenix. The superintendent holds estates, large number of estates. We all have those problems. So, we need to work on making sure that we get all those statements where they should be going.

Paul has already gone over those figures. That's a reiteration of those. This is the same thing. Obviously, due to the magnitude of these historical and persistent problems that you've read through there -- we need investments made to correct these.

We need the people and staff to go out. It has to be more of a SWAT team approach at this point. We've been behind so many years. We need to have the capability of going out there, getting them cleaned up and then working toward moving forward. Thank you.

MR. BRENDSEL: Excuse me, Donna.

MS. ERWIN: Yes.

MR. BRENDSEL: What does IRMS stand for?

MS. ERWIN: I'm sorry. Integrated Resource Management System. That is the large system that has the people, ownership, the IIM. IIM is part of that large system.

MR. BRENDSEL: Okay.

MS. ERWIN: At least it's described as sort of a stepchild of that. So, it's the large system that's for the assets management right now. IIM is a part of it. They're not consistent.

I mean, you find that -- I had one Area say, "We're working on our people system, and we have brought it up to date to 1952." We're like "Whoa." So, we need to get real consistent in those. It's been an overwhelming task for everybody. So, we need to get going. Okay.

MR. BRENDSEL: Thank you, Donna.

MR. HOMAN: Dave, I would just like to add to that. The outside contractor that looked at this suggested that we separate out the Land Title and Record System from that system. They felt that the Land Title and Record System was adequate, at least for the first three years -- that Joe will say.

They gave us a recent example in your area of the country -- I believe it was in Montana -- where

they asked for a printout of the properties for a single person. They had one property owned on one of the systems and 37 properties on the other system. It wasn't a matter of current integration. The last entry to either system was in 1992.

So, they couldn't verify which was correct at the time they were there. Not that they were auditing, but that was just one example of the type of system inconsistencies we have in the land records and lease records. Yes, sir.

MR. ASHENFELTER: Your mike is not on.

MS. ERWIN: I think we turned it off.

MR. HOMAN: We'll put it on when I come back.

MR. CHRISTIE: The IRMS was developed in Billings, Montana, starting in 1972 and distributed out through the Billings Area Office. In 1988 there was very little change in the technology. It was determined that it should be integrated throughout all of the Bureau of Indian Affairs. That effort was undertaken, but it was never fully integrated. And each Area Was allowed to make its own changes and create its own systemic definitions. As a result, you have no standards throughout the IRMS system.

What we're going to talk about now is the

land records and title office, national archive system and fractionated heirship. As Donna discussed earlier, the LTRO is land centric where the Trust Assets Management System is people centric.

It's very clear that we need to separate the land records function from the trust asset management function. We need to make sure that the land record function only handles those functions that are directly related to the land title and records function.

As she said, it's a public function. It creates a historic chain of title. It is nonfinancial. No financial data should be located in this system.

Our LTRO does two things that normal LTROs do not do. If you were going down to find who owns this hotel or the land that this hotel is on, that would be public information. If you, then, asked that same office, "Well, give my an abstract of the background of this piece of land and, by the way, give me a title opinion as to whether that's a clear title," you would not get these two here, because those are conflicts of interest.

You're asking them to render an opinion on the work that they've already done. But in the Bureau of Indian Affairs, this not only keeps track of the land and updates the land, it also provides the abstract; and it also provides a title opinion on its own work. It will

also provide a mapping source.

As Mr. Homan said, when we come in with Macro to look at what systems need to be the number one priority, the Macro verified what we had already come to a conclusion -- or had been leading into, also -- is that the number one priority to fix is not the Land Title and Record System; it is an adequate system for the next two to three years.

What we want to do is put our primary assets into developing a Trust Assets Management System, which will then provide a fiduciary accounting of what should be coming in versus what is coming in, plus tracking all the investments.

However, even though, while it's adequate over the next three years, it is a system that is in dire need of an upgrade. Once we get past this three-year window, we will have to investment money. We will have to buy either a new system or upgrade the present system.

In any event, it needs to be streamlined back to doing the work that it was designed to do, which means that all the probate backlogs must be cleaned up and brought up to date. That is primarily a land title function.

One of the things that the land title offices are doing today -- that it should not be doing --

is that it is taking leases and putting leases on to the land title. Now, if those leases were one year or three years or five years, then what it has done is created a huge backlog in the land title function. So that you can't get an up-to-date title status report.

I'll give you a quick example. Yesterday, we called back to D.C., and we said, "We need to know how much land in the United States is tribally owned and individually owned?" Okay. Simple question. Any LTRO ought to be able to tell us.

We got our answer this morning. "Forty-three million is tribally owned. Ten million is individually owned. And by the way, the date of this information is, as of 1985." 1985? This is 1997. So, yes, it is in need of upgrading.

The ownership must be accurate and it must be updated and it must be timely. It must be timely, not only to people like us who are asking for information, but timely to that superintendent out there who has got to make a distribution of funds -- so that when that distribution of funds occurs, it occurs to the right people and the right decimal amount, so that that amount of money that gets to them is correct.

It must be integrated with a new Trust Management System. We're going to have two systems.

We're going to have an LTRO, and we're going to have a Trust Assets Management System. But they must be bumping up against each other on a daily basis, on a weekly basis and on a monthly basis. So, when a Trust Assets Management System is ready to make a payment, we're making it to the correct owners at the correct decimal amounts.

The next issue that I want to talk about is the National Indian Fiduciary Records Center. The goals of the center are to provide full documentation for trust transactions from the encumbrance of assets through the disbursement of the funds to the owners.

It must provide a secure storage of the original trust records into perpetuity -- not for five years, not for seven years, but forever. Thirdly, it must provide an electronic image of all documents for audit and research purposes. It doesn't matter if your descendants come in 20 years from now or 50 years from now, and they want to know, "Did my father, Don Aubertin, who had a lease back in 1998 -- did he get the right amount? And by the way, was that lease the highest and best use of the land?"

Unless you've got all the documentation, they're not going to be able to come back in 10 years or 15 years or 20 years, to determine whether or not that was, in fact, true.

The objective of the National Indian Fiduciary Records Center is to provide a consolidated facility for trust records management function. One of the things I would encourage you to do is, during a break or during lunch, to go over here to the display and look at the pictures that are on display over here of how the Bureau of Indian Affairs has kept track of records.

These are actual pictures taken on-site by the Fed Sim Study in 1992, to look at the records management and how they kept records. Those records are the only proof that the Bureau did what it was supposed to do.

Any trust fiduciary system must keep track of the records to be able to prove into perpetuity that it did what it was supposed to do.

We also need to be thinking about moving to a paperless trust system, including the records management systems that we currently operate -- moving into a paperless system. The proposal would establish one center to house all the records that support the receipt, distribution, investments and disbursement of Indian trust funds.

Let me say a quick thing here. There is a difference between operational records and storageable records. If you've got a lease out there and you just

obligated that lease -- let's say it's a five-year lease. That lease ought to stay at that location. It should not be sent into a National Federal Record Center. It should stay there.

But on the sixth year, when that lease expires, then that lease is no longer an operational record. It needs to be boxed up and sent in so that the National Record Center can store that record, account for that record and then store it into perpetuity.

But operational records that you need every day out there to manage the trust resources need to stay at that location. This is not saying to take that active lease and bring it in. That stays out there.

Now, the type of records that we need are: records for authorization or extraction of natural resources; the production documentation; income collection documentation; income distribution documentation; investment documentation and disbursement documentation.

One of the things that the IRMS system does is that it is supposed to take -- and like a lease at Fort Berthold, for instance, on grazing. When that comes in, it takes a look at all of the leases and who owns that. It creates a distribution work sheet. And then that distribution work sheet is the only tie between who the owners are of that, what the income was, and how it got

1 distributed.

2 When we went out to look for those records

3 to verify those, we couldn't find any of those income

4 distribution work sheets. Those should have been kept

5 into perpetuity, but they were lost.

6 The current people who are in possession of

7 the records are these -- as you can see, it's strung

8 between ten different entities -- each of them having

9 records; each of them storing records or passing records

10 off to other people.

11 Now, the importance of the records, again,

12 is to prove the basis for and accuracy of the federal

13 government's management of the trust resource and income

14 belonging to Indian tribes and individuals.

15 Let me call your attention. There are two

16 issues here. We're not just talking about the income

17 belonging to Indian tribes, but we're also talking about

18 the federal government's management of the trust resource.

19 We not only have to show how the money came

20 in, how it got distributed, who was it distributed to, but

21 on the other hand, we have to show that we have accurate

22 documentation to show that when we manage a trust

23 resource, that it's being managed correctly. That it's

24 not being abused. That it's not being overgrazed. That

25 it's not being overcut, in the case of timber. That we're

not allowing oil to be extracted at a rate that would deplete or harm the resource for future use.

Another importance is that it is an essential element on which an audit is based. You can't do an audit if you don't have the records. I might add this, too: if the federal government does not keep its records, no tribe can come in and sue the federal government for mismanagement of the resource, because your suit has to depend upon records to prove your case.

So, is it in the Government's best interest to keep those records? I would submit to you, that's a daggume good question. Because if the federal government loses its own records, you lose your capability of suit and proving that they mismanaged the asset.

MR. MASON: Joe, are you pretty sure of that?

MR. CHRISTIE: Yes. You can go in and do a forensic accounting on all of those. But unless you have absolutely got the records, your ability to really take them into court and to prove things is severely hampered.

MR. HOMAN: You'll see that is a direct assertion in the current DOI settlement proposal for the past. That the burden of proof is on the American Indian -- to prove just what Joe said.

So, without records, how can you do that?

1 That's the assertion of the Justice Department and also of
2 the Department of the Interior's Solicitor's Office.
3 MR. MASON: That's opinion, but it's never
4 been tried?
5 MR. HOMAN: That's right. It is being tried
6 now.
7 MR. CHRISTIE: So what we need to do is, in
8 the future, we need to make sure that the federal
9 government's records are kept, are there, so that you can
10 be assured that the federal government is carrying out its
11 trust fiduciary responsibility; and the federal government
12 is assured that it's carrying out the fiduciary
13 responsibility.
14 Now, here is what the reconciliation project
15 disclosed about records. There were missing records.
16 There were records that were destroyed. There were
17 unorganized records, as you will see out there on the
18 picture display. They're kept at multiple locations. The
19 importance of the records we're not defined. There was no
20 priority of keeping trust records over nontrust records.
21 The labeling was not standardized. There's unfocused
22 management function related to records management.
23 Now, in the 1980s an effort was made to
24 upgrade the records management function at the Bureau of
25 Indian Affairs. They asked for $2 million. They came in.

1 They hired additional people to be records managers out of
2 the Area Offices. They created some jobs in the central
3 office.
4 And in 1996, when they went through the RIF,
5 they wiped out all of the records people in D.C. They
6 RIF'ed out all but four of the records people out in the
7 Area Offices. So, the situation hasn't gotten better. I
8 would submit to you, based upon that reality, the
9 situation has gotten worse.
10 MS. JONES: Joe.
11 MR. CHRISTIE: Yes.
12 MS. JONES: We think originally we had asked
13 for like $20 million to clean up those records. And we
14 were cut back to $2 million. We had a heck of a time just
15 being able to get ahold of those records in certain
16 places.
17 MR. CHRISTIE: When we sent the money out to
18 the Area Offices, the money was diverted for other uses.
19 MS. JONES: In some instances.
20 MR. CHRISTIE: In some instances, which,
21 again, is a lack of focused managed implementation of the
22 records function.
23 We have asked for the National Archive
24 Center to bring all those records in so that tribal
25 people, tribal researchers, have access to those records

without having to go through 13 different federal record centers, 15 different archives, the ITA, 86 different Agencies and 12 different Area Offices to try and find those records.

We have not gotten confirmation from the Department that they want to do that. As a matter of fact, they prefer the distributed, diffused system that we currently have. That's their stance. We don't agree with it. That's their stance.

Here are the originators of the records: Bureau of Indian Affairs, Office of the Special Trustee, Indian tribes, U.S. Treasury Department, MMS, Bureau of Land Management, U.S. Geological Survey. All of them are developing and originating records related to Indian land.

What do we need to do to improve? We need to create a formal system for records management. We need to identify the records that are in high jeopardy and secure them. If you look at those records out there, you can see those records are in high jeopardy of being thrown away, destroyed, hurt with wind, water, ice, whatever, mold. We need to find those, and we need to secure them.

We need to consolidate all the nonoperational trust records into the National Indian Fiduciary Record Center. Again, nonoperational records. Then we go and make sure that those operational records

are secured. And when they became nonoperational records, that they get moved to the NIFRC. We need to insure the security of operational trust records.

Now, there is something else that needs to be -- yes, sir.

MR. RED CLOUD: I'd like to ask a question here about what you're talking about: keeping a record. I'm talking about a state: South Dakota. I wonder, do they keep records on Docket 74B, all the records?

MR. CHRISTIE: Of which documents? Of their documents?

MR. RED CLOUD: Yes, Black Hills. That's all the records. All that money -- whatever you talk about. It's in that Docket 74B and A. What you're talking about? '89? That comment makes my mind go here. It keeps records of what you're talking about. See, that's records: Docket 74B.

MR. CHRISTIE: That's right. The Black Hills document.

MR. RED CLOUD: Yes. All that money. They keep record of all that for the Lakota Indian people?

MR. CHRISTIE: Yes.

MR. RED CLOUD: Who? The State or the Bureau?

MR. CHRISTIE: The Bureau, the federal

government. The State would have access to that record, but it is to be kept by the federal government. By the way, we do have copies of that docket down in Albuquerque. If you ever need a copy of it, just let us know and we will make a Xerox copy of it and send it to you. We got not only that docket, but we've got the related dockets also. Okay.

The next thing that we need to talk about is, what can we do in the immediate future that can start us moving toward a more documented flow of trust asset management? What we want to do in the Strategic Plan is immediately begin an archival image program.

This would electronically image trust documents at the point of origin. It would provide a permanent image of trust records and assure availability and access of the records.

Now, what we're talking about is when Donna's Trust Assets Management System comes up and they encode that information and it produces a lease, we would take that lease and we would image that lease. And that image, then, would come in. The lease itself would stay at the Agency, but now we have an image of that lease, who signed it, what date it was signed -- bump it against the LTRO. Who are the owners of that lease.

Now, as payment is made and it comes into

1 the lock box, we would image that deposit ticket, link it
2 up with the lease so that you will be able to see
3 everything associated with that lease in process.
4 You could pull that lease up at the Agency.
5 You can pull it up at the tribe. You can pull it up at
6 the Area Office. You can pull it up at the central office
7 and see if payments have been made. For the life of that
8 lease, all of those tie-in payments would be there. Then,
9 when that lease becomes nonoperational, the image gets
10 stored and the hard source document gets stored.
11 The trustee needs a system which will
12 capture the documents at the point of origin -- at the
13 Agency or tribe or Area Office -- create an index for
14 future retrieval -- tie all the documents related to that
15 lease together on that image so that you have tied-in
16 images -- store those documents and all related,
17 supporting documentation in a central repository; and
18 support access to any approved user to seeing, pulling up
19 and even copying that information. But the original stays
20 at the Agency. Okay.
21 The imaging archival system requires an
22 integrated imaging and computer output to laser disk. You
23 also need point-to-point retrieval of documents. I'll
24 talk about that in just a second. It requires the high
25 volume, centralized archiving of the images. You need

1 automated document indexing. So when that payment comes
2 into that lock box, that payment references that lease and
3 it automatically gets linked to that lease as part of the
4 image.
5 And it must have multi-level security so
6 those people who have a right to know and see that image
7 can see that image. Those people who don't have a right
8 to see, don't see it. It must integrate with all the
9 other applications.
10 Now, again, here's what we're talking about.
11 Here, the Agency or the self-governance tribe or the
12 tribal office, approves that lease. The lease gets
13 imaged. The image comes in here and gets stored here at
14 the National Archive. The image can be pulled up at any
15 time. If a payment comes in, then it gets linked to that
16 image. The image can be pulled up at the appropriate
17 Agency, Area or tribal office or self-governance tribe.
18 At the point in time that that lease becomes
19 a nonoperational lease, the hard source copy of that gets
20 transmitted over here to the National Archive. The image
21 portion of it gets stored on laser disk. So anybody that
22 wants to come in and do their research in the future -- 5,
23 10, 15, 20 years from now -- they can pull up and see the
24 electronic image. And then if they need to see the hard
25 copy, that will be indexed so they can go to the stacks

and pull up that related document.

Here are the key benefits. It allows the trustee to track trust asset management actions: the sale, the lease, whatever. It ties all of the documents related to those actions together. One of the things that people didn't understand in the reconciliation is the way that the federal government does its records. It takes all of the CVs and put them in one box. It pulls all the schedule of collections in another box. It puts all the deposit tickets in another box.

So, when we came in to do the reconciliation, we had to go to the general ledger to get the transaction, go and find the deposit ticket that created that and then find the schedule of collection documents in this box and bring that over; and then go to the different boxes and find each of the collection vouchers and bring that back together in order to verify that these collection vouchers total to this collection schedule and total to that deposit ticket.

Because it disaggregates all of the records into like records. It doesn't keep the process. When you go in to audit, you need to see the process. And so, what this does is by the indexing; it keeps the process together without the disaggregation. It supports the audit process, which is exactly what I was just talking

about. It supports the audit process.

Now, let's talk a little bit about fractionated heirship: big issue; big problem. This problem did not just start with Babbitt versus Youpee. In actuality, as you all know, fractionated is undivided interest. It's called "tenancy in common." Each and every acre of land. Each and every teaspoon.

So, if you have a 40-acre tract of land that is owned by 459 owners -- you walk out into that field and you reach down with a teaspoon and you pick up a teaspoon of that soil, you still have 459 owners of that teaspoon full of soil, along with them having the same ownership in the whole tract.

This was started by the General Allotment Act in 1887. It was a division of tribal lands into individual allotments. From 1887 to 1934 the Indian people lost over 100 million acres of land that moved out of trust into nontrust status. The Indian Reorganization Act of 1934 was designed to halt the allotments.

This is a statement made by John Collier who was a Commissioner of Indian Affairs in 1934, who was in support of the Indian Reorganization Act. I'd like for you to you read this. I'm going to read from this point on. It talks about the problems that they were already encountering with the allotment system and with the

allottees.

It says, "Such has been the record, and such it will be unless the government, in impatience or despair, shall summarily retreat from a hopeless situation, abandoning the victims of its allotment system. The alternative will be to apply a constructive remedy as proposed by the present Bill." He was talking about the Indian Reorganization Act of 1934.

Fractionated heirship was already a major problem in 1934, which the Indian Reorganization Act was there to address. It passed. It did not solve the problem.

The next time that the Bureau of Indian Affairs, the federal government, tried to comprehensively settle the Indian land fractionation problem was in 1983 when they passed the Indian Land Consolidation Act. Section 207 escheats the interest of 2 percent or less in the tract and the income of less than $100 based on the preceding year. Escheats it to the tribe.

Now, before this could be fully challenged by the Supreme Court -- which eventually, it was challenged and resulted in the Hodel versus Irving. Before the ruling came out, the Congress amended Section 207 and said, "We're going to look back five years instead of one year. We're also going to allow it to be devised

1 to people who already co-own an interest in the same
2 parcel. It will authorize the tribes to develop tribal
3 codes to govern the disposition of fractionated interest."
4 This section was then court challenged by
5 Youpee. Now, the first one resulted in Hodel versus
6 Irving. And the Supreme Court said it was an illegal,
7 unconstitutional taking. There was not fair compensation.
8 In the Babbitt versus Youpee decision --
9 January 21 of this year -- they said 207 still trains on
10 income generated from the land, not on the value of the
11 land. 207 severely restricts the right of an individual
12 to direct descendant of this property by shrinking the
13 possible successors.
14 Now, that refers to that section where it
15 said you can devise it to somebody who is already a
16 co-owner. But my kids are not already co-owners on the
17 land that my wife owns. So, under Youpee -- under this
18 section, she couldn't pass it on to them unless they were
19 already co-owners. So, that's what the Supreme Court
20 said.
21 It's unlikely to change any lineal
22 descendants. You might give it to somebody else that's
23 there. Who wants to give it to somebody else when they
24 want to give it to their kids?
25 Tribal codes have not been developed. The

1 Supreme Court recognized that the Congress tried to throw
2 this problem over to the lap of the tribes. The tribes
3 have not taken the ball and run with it.
4 What are the problems from the fractionated
5 land? Inhibits owner's highest and best use of the land;
6 delays funds; increases cost of operations for the Trust
7 Management System and for the land title and records
8 program. It's estimated that $33 million a year in the
9 Bureau's realty program is spent trying to catch up to the
10 fractionated heirship problem.
11 This is only going to be compounded now, as
12 Mr. Homan stated. In 1996, when the RIF came through, the
13 LTROs had, I think, 126 FTE. They got RIF'ed down to like
14 94, 90 to 94 FTE. So they already had a two-year backlog.
15 Now, they got less people to do the ongoing operations,
16 much less to address the backlog.
17 Now, with Babbitt versus Youpee, 55,000
18 escheats that have taken place between '84 and the present
19 now are going to have to be brought back out and added to
20 that backlog. So, now you got an incomprehensible backlog
21 that they've got to address.
22 Now, you begin to understand why we're
23 saying you got to get the LTRO out of all its other
24 functions, and it's got to get back to streamlining and
25 working strictly on those items related to the LTRO. Even

by doing that, you still got the current backlogs. Wipe out all of those leases. Those don't need to be there. They need to be over on the Trust Assets Management System. They'll be tracked there.

But now we also got to address the escheat problem. Then, in addition to that, we have probate backlogs that have got to be updated so that we can devise that land to the correct owners.

What are some of the solutions? Well, the land records -- the Department of Interior says that we ought to purchase land, create a $300 million loan program. But now, based upon Youpee, that purchase program is going to have to be from willing sellers at an appraised value. We need to be able to go to a person and say, "Are you willing to sell your 2 percent? If you are willing, we're willing to buy it. And here's the money to buy it."

Then, the priority would be on the 2 percent or less holdings. It would be a revolving income fund, so that the leases and everything that come off of that land would go back to pay for that. So that then, more land could be purchased.

Again, it's got to be a willing seller and a willing purchaser at the appraised value of the parcel, not training on the income generated. We need to assist

the tribes in developing land codes if they choose to move in that direction.

Thirdly, there must be appropriate owner notice so that they can go in and do their estate planning. We don't want to drop this thing on them and then have them scrambling around. There needs to be appropriate owner notice so they can do the estate thing.

In addition to this, the Department of Interior's recommendation focuses on tribes -- tribes buying into the 2 percent; tribes buying into the allotted land. It does not speak to the rights of the individual Indians, Indian owners.

The OST recommendations believe that the individual co-owner's rights to purchase should be upheld. If they want to enter into this loan program and to buy up other co-owners -- and there are willing sellers and willing buyers -- then that ought to occur. That stops fractionation. Not just the tribe can stop fractionation, co-owners can stop fractionation. The landowners should be able to move into holding companies.

Something similar, Cora, to what's already been done up there at Rosebud -- the TLE, where they can create their own holding companies. They keep track of their percentage of ownership, but the person leasing the land only has to deal with one entity -- the holding

company. So, individual landowners should be able to move into those types of co-ops.

Tribes should be eligible for federal loans and funding for the purposes of exercising tribal purchase options. Not just the $300 million, but any other funds that are out there and available.

Tribes, rather than the federal government, should administer as much of the program as practical, consistent with the principles of self-governance and self-determination. The tribes can do just as good a job as the government, or just as good a job as OST or just as good a job as anybody else.

Legislation should not deny certain property ownership rights to individuals by limiting their ability to purchase, sell and inherit fractionated interests. While certain restrictions may be necessary, the legislation should not substantially restrict the rights of these individual American Indians.

These are the recommendations that Mr. Homan sent forward in his Draft Strategic Plan. That concludes my presentation. Mr. Homan will cover Phase II.

MR. HOMAN: I think we'll take a 15-minute break before we come back. But before we do, let me just make two comments here. One, on one of Cora's remarks. Her memory is very good, or at least, it's the same

number.

We suggested in fiscal 1988 that to establish a National Archive Center and to do the type of things that Joe said needed to be done on archiving, it would require about $11 and about $8 million per annum, which is very close to your $20 million to maintain.

The President's budget contains no money for that. So, they denied it all. They want to continue with the present system which generates the type of record inadequacies that Joe illustrated.

Second, on these fractionated interest, the Department in 1995 issued legislation, or proposed legislation, I should say, for common and consultation with the American Indians. There was considerable input from Indian country at the time. It got forwarded to OMB in 1996, without further consultation, because of lack of money, even to fund the initial $25 million.

It never got to the Congress last year. Because of the Youpee decision, however, and the urgent need to address the fractionated interest, the Secretary has put this as one of his high priorities. There's a statement outside as to what the Department of Interior hopes to do with this.

So, regardless of the Strategic Plan and many of these other initiatives, this will go forward

sometime during this year -- probably not in the form that we have suggested. The Department has disagreed with my recommendations, which are essentially the recommendations of the various Indian groups that looked at this in 1995 and 1996.

Where we depart is strictly the role of the individual Indian in all of this -- whether the individual Indian should have a right to purchase, finance those fractionated interests, just like a tribe. Also, how it should be escheated, and whether the individual property rights of the individuals needed to be accounted for. We depart on those major issues.

The important thing is that it get to Congress for resolution. You will all have an opportunity to weigh in heavily on the final proposed legislation, hopefully, this summer. And hopefully, this will get resolved in this next year.

Now, after our break, I suggest we come back at about ten to 11:00. I will give a very brief, 10-minute presentation on the Development Bank, which is Phase II. Then we'll turn it over to you for your comments, suggestions and input.

So, let's try to be back about ten until 11:00 or in about 15 minutes.

(A recess was taken from 10:36 a.m. to 10:55 a.m.)

MR. HOMAN: Let me begin the second session here. I'm going to be very brief with what we're calling Phase II of the plan. Phase I you just heard. It involves investments in core systems: Accounting, Trust Management System, Trust Asset Management Systems, Record Keeping Systems. That needs to be done urgently.

This is a second and more optional phase which goes to the other charge of the Reform Act, which is how the American Indians can develop their communications over the long term.

The format that I have chosen here is a government-sponsored entity similar to the Farm Credit System, which has financed American agriculture since the 1930s and presently has about $11 billion worth of equity capital owned by the American farmers. More importantly, about $70 billion worth of loans that are presently outstanding to American agriculture enterprises.

Those enterprises, by the way, can include American Indians. But American Indians seem not to have taken advantage of that.

The purpose here is to create a bank with some $500 million worth of equity, which is a lot of money, and which I have no hope of getting from the

1 Congress in terms of suggested appropriations. But there
2 are other ways whereby the federal government might
3 provide that money. One is through settlement of a past
4 wrong -- what is called a global settlement procedure.
5 There is a proposal out for comment now by
6 the Department of Interior, containing the proposal, in
7 which the Congress might fund that. A court might order
8 the same in recompense for global wrongs and for liability
9 of the government, where the government realizes it owes
10 the American Indian community, but is unable to precisely
11 determine which Indians. I have little hope for that as
12 well.
13 What is a hope and possible is that the Farm
14 Credit System and the Federal Home Loan Bank System, which
15 has even bigger equity and borrowing numbers, is reaching
16 a maturity. The market has taken over the financing of
17 American agriculture. The private sector does that very
18 well. For example, the subsidy programs for American
19 farmers are decreasing right along.
20 In the '30s the people on rural lands were
21 over 50 percent. Now there about two million people,
22 about the same amount of people as our American Indians
23 nationwide. So, the thought here is that Congress might
24 appropriate some of this money out of banks, like the Farm
25 Credit System or the Federal Home Loan Bank System or

1 entities such as Fannie Mae and Freddie Mac and Jennie Mae
2 which handle student loans and housing finance, and
3 allocate it into a subsidiary system like this.
4 Also, the borrowing authority, which in my
5 case is $500 million, would enable the bank to leverage
6 that amount in the markets with the full faith and credit
7 of the U.S. government behind it.
8 The benefits for American Indians are, first
9 of all, access to capital that you do not always have now
10 at a subsidized low cost. Although I hasten to add that
11 these are on prudential terms; i.e., they're not grants.
12 You must qualify for the loans. And they need to be paid
13 back if the government is to be successful.
14 These types of banks have been used in the
15 United States since the 1930s to develop specific sectors
16 of our economy: housing, agriculture and the like. The
17 same model is true for the world bank -- U.S. aid banks
18 operating in developing countries.
19 You can see the liability side where the
20 money comes from. Again, we're proposing $500 million in
21 equity capital, $500 billion worth of borrowing capacity,
22 which would take an act of Congress, obviously, to
23 provide.
24 The organizational structure is the same as
25 under Phase I. It would be governed by a board of

1 directors consisting of three Indian representatives --
2 appointed by the President and confirmed by the Senate --
3 and two operating people, including a chairman and a CEO,
4 who would be a financially astute person. It could be an
5 American Indian as well.
6 The programs of development are on the
7 left-hand side or the asset side of the balance sheet.
8 Banks, in general, have historically been the engines of
9 economic growth in western culture and -- particularly in
10 the United States -- very successful.
11 So, this bank would be able to lend, not
12 only to tribes, but to individual Indians -- loans for
13 real estate purposes, commercial purposes, infrastructure
14 development of roads, schools, etc., and for normal
15 consumer purposes, auto loans, etc., that all of us have
16 to have from to time to time as individuals.
17 Importantly, about $4 billion worth of loans
18 could be dedicated to that purpose, phased in over the
19 next five to ten years -- again, depending on merit.
20 These are not big numbers. They're big to Indian country,
21 but a $5 billion bank is well down the list anymore, in
22 terms of importance in any state.
23 We have super banks like Citibank, which has
24 over $300 billion worth of assets. Chase Manhattan Bank
25 is the same. These national institutions are very, very

large.

As I said, even the Farm Credit System -- the chief financial officer was here this morning. Bill Snyder's bank is -- Co Bank is the largest Farm Credit System bank. And it has capital of over $3 billion. It has assets of over $16 billion. So, it is the largest of the system banks. It is a single bank. It is located here in Denver. It acts as a wholesale lender to other farm credit banks.

This bank could also act as a co-lender to Indian banks, to other private sector banks not willing to take a risk themselves in Indian country, but which get comfort from co-lending with a major government bank, much like our American banks lend to developing countries under the guarantees or on a co-lending basis with the big U.S. and international development banks.

Importantly, fractionated realty holdings. That has failed in the past -- every proposal -- for a lack of money. This would have an opportunity to fund it all in one place, where the bank itself could make a market in fractionated holdings, lend to facilitate purchases to individuals and to tribes and to aid in getting that problem behind us.

So, $300 million could be allocated to that particular problem, which is the total estimate of what it

1 would take to buy out the minority fractionated interest
2 in the United States.
3 Finally, another aspect of these banks --
4 Co Bank and other farm credit banks devote part of their
5 capital to direct equity capital investments in business
6 enterprises. Theirs is focused on the agriculture sector.
7 But national banks, for example, invest in small business
8 investment corporations across the United States which
9 literally can take an equity position, normally a minority
10 one -- in other words, a 49 percent interest, with an
11 Indian ownership having to take a 51 percent interest --
12 in business enterprises, which can be tribal or individual
13 Indians. Normally, that's limited as a percentage of
14 capital. In this case, we would start with something like
15 $125 million for that purpose.
16 So, the difference between Phase I and Phase
17 II is this full service Development Bank which, over the
18 long term, will develop the Indian communities, and the
19 long term being 30 to 60 years, which has been the life of
20 the government-sponsored enterprises devoted to
21 agriculture, housing and the like.
22 Now, to create a model that is not different
23 from the U.S. Congress -- to what the U.S. Congress is
24 used to -- we developed it exactly like the federal credit
25 banks are set up. They report to Congress. They have a

board that's appointed by the President and confirmed by the Senate.

They have a management structure, which is off the federal compensation rules. So, they can pay market rates for competent staff and management. They operate largely without appropriations. The $500 million equity interest allows the bank to operate with at least $30 million to $40 million worth of operating income, which can be used to cover operating expenses.

So they're semi-independent. They don't have to go to Congress for yearly appropriations. Some of them do get appropriations from the Congress for special purpose enterprises. This bank would be what we call a "lifeline" to tribes and individuals who can't afford to get these same type of trust and banking services from a private sector institution.

This institution is not designed to compete with private sector institutions. But many of our account holders -- and we have about 300 of them, 300 tribes -- only about 50 tribes have monies in their accounts exceeding $1 million.

If you were to take those same accounts to a private sector institution, they would charge you an ungodly amount. I was a private sector banker. They don't want accounts under $1 million. It's not worth it

to them.

Therefore, their upfront fee normally would exceed the yield off of the securities on any account under $1 million, which makes it uneconomic for most of the tribes that deal with us.

We also provide safekeeping services, custodial services of all sorts and some limited research capability to the tribes. This would be a full service trust company, giving the tribes advice on how to invest their money. Importantly, not telling you how to invest your money, but giving you advice on how to invest your money, and leaving the decision to you, at a reasonable cost.

So, this is a longer term proposition. The urgency in terms of economic development is there. But that's why we divided it between Phase I and II. Because I think this will be considered over the next several years. We would like the initiatives on Phase I considered next year or immediately.

Now, let me just close by saying that this is a draft plan. It is my plan. It is not the plan of the Department of the Interior, who's indicated that they may come up with a plan of their own. So, it has no endorsement.

My only purpose here is to present the

problems; present what I think are solutions. If I can only raise the level of debate high enough in the government so that these problems will be addressed, then I will be the first to compromise in terms of how they get addressed and who does the actual implementation.

So with that in mind, I would very much like to hear your suggestions, your alternatives, if you will, as to how we can address these problems and how we can, together, devise solutions to them.

Bud, would you like to start?

MR. MASON: Yes. Thank you, Paul. I'm Bud Mason, Chairman of the Three Affiliated Tribes. And also from the Three Affiliated Tribes, we have Councilman Mark Fox, who you know and who worked with you for a couple of years on the trust. And also, we have with us Mr. Dave Brendsel, who is a retired, former vice-president of First International Bank. He's not on a retainer with the tribe, but he's a full-time staff member with the Three Affiliated Tribes administration.

I was outside visiting with some of my friends out there. One of them was Darrell Drapeau. We were looking at those boxes -- those pictures on there. One of them had a name on there. It says, "Please hold for Joe Christie." Date was 1970. It kind of behooved me to hear him talk about all these boxes out there.

You better go collect your boxes, Joe.

MR. HOMAN: I didn't see that one.

MR. MASON: You better look pretty hard.

MR. HOMAN: It's probably still there, too.

MR. MASON: Paul, I want to thank you. I think your plan has some merit. There's a lot that needs to be discussed. I have some concerns, though. I think with all of us in tribal leadership, tribal council -- and the word is "trust."

And also, our constitutional responsibilities -- I can't speak for other tribes. Our responsibility is to protect those resources of our tribes, no matter if we're there for one term or whatever. Those are our responsibilities.

We have to make the best judgment we can during our term in office, to protect that until the end. And I'm talking about the end for all of us. We're still concerned about the trust office right now. We still feel that there hasn't been the reconciliation that we feel -- the million dollars that is owed to the Three Affiliated Tribes.

I don't think I need to remind you that the Three Affiliated Tribes is one of the largest depositors in the trust. We have the resources. We have the minerals. We have oil. We have coal. We have lands,

both range lands, good farmland. We have everything. So, we have a lot at stake.

One of the things that -- I think there's going to have to be something done better logistically, Paul. I'm not here for this meeting, because Mr. Fox is here and Dave can handle this. They worked with this for a number of years with you people.

I'm working with HUD on the new legislation for Indian housing. It's taking the 638 process. It's kind of sad to say this, but there are more tribal leaders over there participating in that meeting than there are here. Because one of the things that -- their participation is a direct participation in putting together the rules for housing, which the tribe will control.

The other thing in my review of this is that -- and my review was brief. I didn't go through the volumes of what was there -- is the tribes have proven that if they are given the responsibility, they can do a better job in management. And this has been proven by self-governance and 638 tribes. Better than the way the things have been managed by the Bureau or Indian Health Services.

There are a lot of tribal leaders that I talked to over at the other meeting, which is about three

1 blocks from here. They have a feeling that this is on the
2 fast track. It's very easy to not knock the BIA. I mean,
3 our tribe put their licks in. The budget hearings were
4 held yesterday -- the budget request of the Bureau and
5 IHS. And the Three Affiliated Tribes had submitted their
6 questions that were asked of the two. That's very easy to
7 do.
8 There needs to be a wider opening to all
9 alternatives to this plan. And seriously, I feel the
10 tribes are very sensitive to relinquishing, or at least
11 the fears of relinquishing, that trust responsibility.
12 When you have a plan that bypasses the Secretary and goes
13 directly to the Congress, there's going to be some
14 hesitancy on our part, as well as other tribes' parts, to
15 jump right into that, because right now the trustee is the
16 Secretary.
17 And also, to have a nine member board -- and
18 the composition of that board, you know, is in question.
19 I'm going to tell you right now what people look at.
20 Right now, to be able to say, "Congress, you have that
21 responsibility" is that -- we know that we did not have a
22 105th Congress that was very friendly -- I mean a 104th
23 Congress. And in the 105th Congress, those people are
24 still there. And their thoughts about Indians, their
25 thoughts of termination, their thoughts of doing away with

1 our sovereignty is still there. So, there's going to
2 really be some reluctance of, I think, a lot of tribes to
3 get on board.
4 Also, there has to be some way, as HUD has
5 been forced to do, by legislation, to bring tribes in to
6 be a partner in this. And especially, those tribes who
7 have such a large investment; and an investment that
8 they've already lost and may lose more.
9 So, I'm just making some suggestions. I
10 think it's a good starting point. I think we have to do
11 that. We have to do things better. You know, Joe got up
12 there and talked about -- I don't have to be sold on
13 management information systems. I mean, that should be
14 done already. We shouldn't have to talk about what we're
15 going to do with -- I mean that's a state of the art in
16 management.
17 So, I don't have to sit here for half an
18 hour listening to how you're going to set up your
19 computers and how this is going to -- that's state of the
20 art today. We need to do that.
21 The problem I have in setting up management
22 information systems that the Bureau is guilty of, IHS, all
23 of these agencies, is not transferring that technology to
24 the tribal level and giving assistance at that level.
25 Mark and I were elected at the same time.

Believe me, in our tribal office there were still manual typewriters when we went in there. I think he and I were the only two tribal officials that immediately got our own computers set up, because we are familiar with computers. I got on the Net. He has E-mail. I have E-mail in my office.

We have to think about the transference of technology to the tribes. Because once you keep that from the tribes, then the tribes are still in hostage. And the dependence is going to still be there on whatever organization that's going to be.

You know you have to be able to transfer that ownership to the tribes, but also the checks and balances of tribes so that there is no abuse. There is no fraud that would take place at that level. Keep those checks in there, because we've experienced that with our tribe. We're still dealing with that.

So, I think this has to be well thought out. I think you're going to have not a one-day meeting. I think you're going to have to have a work session with tribal leadership -- to come out and sit down and give them as much time to participate and have them be partners in this process.

Because, you know, tribal leaders, any more -- what I found out -- they find it very difficult to --

it reminds me of a meeting that I was at in Washington when the Secretary of Agriculture jokingly said, "People or friends, I'm from the federal government, and I'm here to help you," you know. I mean, we've heard that.

Those of us in North Dakota -- we had a severe winter. We had eight major storms, six major blizzards. We had 20 percent stock loss up there. Severe. We had to expend some of our own tribal monies. After the storms were there and the sun came out, FEMA came and said, "We're here to help you." After we already took our action.

So, we need to -- there needs to be some process. I don't have the answer. But I know what's going on three blocks up here where, actually, the tribes said, "Okay. We're going to do this. HUD, all of your people and lawyers, go out. We're going to take over this meeting. We're going to come up and identify our rules committees. We're going to address every one of these titles."

I think in your -- you're going to require some legislation. The tribe has already introduced legislation on -- we're setting up -- we're making a deal right now. We're in a partnership with an oil company to do some oil exploration and production on the reservation. But we have some legislation that has to do with

fractionated shares.

We got with our congressional delegation, and legislation is introduced. We're only going to get -- if that's passed, that's only 50 percent sign-off requirement on heirship rights. So, that, we can get through.

I would just want to, again, suggest -- I think it's a good start. Don't get me wrong. Something has to be done better than what was going on. But I think we need to have some process where the tribes are -- or tribal leadership or council members or whoever they designate, can be partners in this process.

With that, I want to thank you. Joe, go find your box out there.

MR. HOMAN: I very much appreciate those comments. I'm not going to try to respond to every one. But they are consistent with some of the comments we heard yesterday. As I said earlier, my greatest thought is to raise these issues to the point of debate. That way someone will finally resolve it. I realize they must be resolved with the consent of the American Indian.

So, I will do everything that I can to meet with the leadership in this process. I has ten to say that this plan is just a proposal. It will go to the Congress. The Congress will then spend, probably, a year with this,

as will the Department. My office will be involved. But at that point, we can iron out some of the details that we haven't been able to iron out today, once we get a general, conceptual view as to where people want to go.

MR. MASON: Paul.

MR. HOMAN: Yes.

MR. MASON: My friend, John Steele, is here. One of the things that HUD did, which I think was good, was that they designated -- what is it? -- 48 -- there were 48 participants in this work group. President Steele was one of the people that they selected -- myself -- and they actually selected these people. "Okay. We're going to bring you in. You'll be part of the work group."

The composition of that work group was 48 tribal people and ten HUD people. Then our alternates. So that was already an immediate -- you know, a declaration of ownership by the tribes of the process.

MR. HOMAN: I will certainly take that into consideration and try to get that input, either in the preliminary plan or as it gets to the Congress.

On the management information system, you described it better than we did, in terms of our trust support system or the architecture that we described. That is all it is. It's an administrative management information system -- the actual management of the land.

The natural resources can be done by a self-governance tribe.

While we didn't mention it -- but I have in the past -- part of this plan will be to establish at least one -- for the larger tribes, more than one -- yours is a larger tribe in terms of trust deposits -- desk station which has this modern PC telecommunications system in it. Some tribes have none, as you correctly point out.

We'll train you on that system. If you're doing the managing, the federal trustee has to have access to accounting information, record keeping -- to make sure that you're doing your job or we're doing our job. That is essentially how a private trust company operates.

It's indifferent as to who actually makes the lease, collects the money, invests the money or the land. So, we're going to try to do that. Not only that, but we will provide training, technical assistance. We will take what systems you have and try to give you a compatible system.

This point-to-point system also has the ability for you to go in what they call the back door, pull out the information on your particular tribe and resources, and manipulate the data on your local area networks and PCs. So it does have that capacity.

Your concerns about the board are

1 appropriate, but in our view -- we've changed it, based
2 upon Indian input -- particularly our advisory board --
3 from the nine members, which had public members on it, to
4 just five, with three coming from the American Indian
5 tribal leadership, with trust accounts and two being other
6 financial experts which could also be American Indian.
7 So, it would be an Indian-oriented
8 institution -- five trustees essentially devoting full
9 time to management, whereas only one does now. I mean,
10 the Secretary does not spend full time on this. Neither
11 does the Assistant Secretary or the other senior people in
12 Washington. They have programs all over the place. And a
13 general responsibility.
14 So, we thought the focus would be better.
15 You do take a risk. I recognize this in reporting to the
16 Congress, of having the Congress becoming mischievous.
17 There is some protection on a cabinet level appointee.
18 If you look at the history of the other
19 government-sponsored enterprises, you'll find that's not
20 the case. They tend to be very independent. Congress
21 does have oversight. But they are at a level in
22 government where the courts have recognized that
23 independence and do not allow the issues to be buried as
24 they now are -- deep in the organization -- where you
25 can't distinguish, you know, the management of the lands

1 and the natural resources, which are the basic obligations
2 from every other program in the federal government.
3 They're all treated the same, and therefore
4 some of them get neglected. These have been neglected
5 over a 30-year period. So, I think it's a better
6 organization, although I recognize that there may be
7 alternative structures that are just as effective.
8 The point is, as you made it, we need to
9 address these problems. The mechanisms to address them
10 are few. You have to spend the money. They're
11 commercially available. So, who does it is not as
12 important to me as whether it gets done.
13 Finally, you made a very good point on
14 reconciliation on past accounts. I've been your single
15 advocate, I think, at the Department of Interior. I think
16 I can say that in fairness -- in trying to get more
17 reconciliation, more technical assistance, a better
18 accounting for the past -- I have gotten nowhere.
19 The Department has rejected my advice as to
20 how some of those settlements for past wrongs should be
21 heeded. You can look at what that advice was. But I
22 don't think you can expect any further initiatives from
23 the federal government on past reconciliation.
24 There is a court case, class action suit --
25 a large one -- for IIM shareholders, which I won't talk

about the merits of, but it, in effect, forces some of these initiatives to be done. That's the prayer. Fix it first, and then let's talk about what the losses of the past will be.

So, I urge you to follow that as it goes through the Congress on a separate path this year. Next?

MR. BRENDSEL: Mr. Homan, my name is Dave Brendsel, financial advisor for the Three Affiliated Tribes. I have a series of questions. Mr. Homan, what is the final date that the tribes can submit their written remarks in this process?

MR. HOMAN: It's March 31.

MR. BRENDSEL: That's the final date that we can --

MR. HOMAN: Yes. I have agreed with the Secretary and with the Congress to a March 31 cutoff date. Then I will be -- I will spend a couple of weeks digesting all the comments. You can send them in at any time. We will be considering them right along. We will attach those comments in an appendix to our submission to the Congress. Then, I have to have this in by April, mid-April or so.

MR. BRENDSEL: My next question is, will this process in any way hinder the tribe's settlement for what they feel is the shortage of funds to date?

1 MR. HOMAN: No. Although there's a risk
2 there. The one risk that was pointed out by several
3 tribes yesterday -- that do not have as big an interest in
4 the trust situation as others -- is that any money spent
5 for improving these programs might be taken out of other
6 Indian programs.
7 Now, I have suggested that that not take
8 place. I believe the Secretary is consistent there, but
9 that doesn't mean that we will ultimately prevail. So,
10 there is some risk in doing anything here, making any
11 changes; that other programs might be tapped in a
12 budget-conscious Congress, to pay for it.
13 MR. BRENDSEL: So if I understand you right,
14 then, the settlement amounts that the tribes are wanting
15 to negotiate with the Bureau for --
16 MR. HOMAN: No. There will be no direct
17 relationship.
18 MR. BRENDSEL: That's what I'm saying.
19 MR. HOMAN: As I understand it, they're
20 going to come out with their final proposal, again, by
21 March 31. That proceeds on a separate path. They have to
22 go to Congress to pay anything, because the Department
23 does not have any money to settle those past errors.
24 The Congress will appropriate that money or
25 not, or it could be forced by the courts. So, we're

not -- I don't think the revenues are going to be nixed, one way or the other there.

MR. BRENDSEL: Next one. This Strategic Plan that you proposed -- is this a plan that can be implemented within the Bureau of Indian Affairs itself or not?

MR. HOMAN: Conceivably, yes, it could. I've suggested that it not be, but I do -- the Secretary suggested a plan in 1994 that would combine these three functions, take them out of the present Bureau circumstance, appoint a chief operating officer, so to speak, that would report directly to the Assistant Secretary for the Bureau. That was rejected by the Congress.

So, this plan is designed, on my recommendation, to come out of the Bureau. It could stay in it. It could go to a separate bureau within the Department; or as I suggested, it could go out and report to some other Department.

And various people have wanted it to report to the State Department, for example; the Treasury, for example; or independently to the Congress, as I have suggested. So, there are those alternatives. I'm sure they'll receive a healthy debate.

MR. BRENDSEL: The key people that are

involved right now with the Trust Funds Management -- would they come over to the new administration?

MR. HOMAN: Yes.

MR. BRENDSEL: That's definite?

MR. HOMAN: Everyone, yes. Anyone involved in the three basic business functions would be transferred into this new organization. That's Trust Resource Management, Trust Funds Management and Land Title and Records Management.

MR. BRENDSEL: Would those individuals be evaluated, then, in their abilities?

MR. HOMAN: Yes. They would all have to be reevaluated and be requalified for their jobs.

MR. BRENDSEL: Okay. Another question: The Phase II part of the plan. Will the trust funds of the tribe be a part of the loan pool in this trust and Development Bank?

MR. HOMAN: No. The loan pool will come strictly from the borrowings in the market. But in Phase I of the plan, we've opened it up through the prudential trust rule, so that a tribe could determine that -- it could have the federal government invest their investment funds in local enterprises, under a prudential standard, which is the common standard used by banks and trust companies, as you know.

MR. BRENDSEL: My last question: How will this new administration, AITDA, be funded? I mean, the operating costs of the AITDA group be funded.

MR. HOMAN: In Phase I, because it has no capital, it will be funded as it is now, by appropriated funds. In Phase II, because it has capital and an ability to earn money off that capital in its spread lending facilities, it will operate fairly independently from appropriated funds, except for those lifeline services and other special appropriations that Congress may wish the bank to subsidize -- Indian programs of all types.

So, semi-independent in terms of appropriations and what the bank, naturally, will make off its capital and lending facilities.

MR. BRENDSEL: But in the Phase I area, would appropriated funds from the existing budget of the Bureau be transferred to this AITDA group?

MR. HOMAN: Yes. The administration part of this -- the board, the management -- is redundant with current Bureau employees. We think, because of the focus, we could do it with an automated system at a better cost. Those administrative costs would be transferred into this new AITDA, under appropriated funds. It will be just a line item transfer in the federal budget.

MR. BRENDSEL: Thank you, Mr. Homan.

MR. HOMAN: Thank you, David. I appreciate all the help he gave us on the Development Bank. He's attended several meetings with us on that. His input was very valuable.

MR. ASHENFELTER: Thank you. I'm Roy Ashenfelter. I'm a Upick Eskimo from Nome, Alaska. I work for Kawerak in the Land Management Services Department. My role and function at Kawerak is to manage 1,100 native allotments, 276 restricted town-set lots, approximately 80,000 acres. Kawerak is a nonprofit corporation. We have a consortium of 20 tribes that participate.

I need to apologize, because some of the questions I have and concerns I have, are based on reviewing this plan and strategy that we received last Friday, the 21st. So, you know, the concern we have here is, one, how will this plan affect us up in Alaska. Obviously, we're tribal members. There's 200 tribes in the state of Alaska.

The current plan I see does not include any meetings in Alaska. We provide trust services and are affected by all trust problems that occur in the lower 48. They also occur in Alaska.

What I'd like to do now is read some of my comments. And obviously, the comments I have are based on

a very short opportunity review of the plan and strategy.

I've worked in the LMS department at Kawerak since we have contracted from BIA all realty services in 1988. Kawerak in 1992 or 1993 choose to compact all trust services. Most of these opportunities were available to Kawerak under the '93 638 law, the Indian Self-Determination Act and the Self-Governance Act.

Self-governance has provided us Eskimo tribes the opportunity to determine our own management of affairs for all services we choose to administer. Some functions and services are still maintained by BIA.

In short, for four years Kawerak has operated under the self-governance law. We have enjoyed the opportunity to manage all services, plus develop a better relationship with BIA in Juneau, Alaska. It is our right to seek to administer all trust services at the tribal level.

We, at Kawerak, just received a copy of the two documents last Friday, February 21, 1997. We have not had the time to administer the Strategic Plan for the executive summary in relationship to how these documents will affect us at Kawerak.

With all due respect to the Office of the Special Trustee, there needs to be at least a meeting in Alaska. This plan will affect 200-plus tribes that are in

Alaska. Right now our economy system is audited on an annual basis by an independent professional auditor.

I have various concerns about implementing a plan without knowing or developing an understanding of how this change will be better than what currently exists. This plan glosses over how it will help us, without giving us the opportunity to review and realize some of the problems that will occur.

The majority of the information I've heard today and currently -- is it currently available for us to develop under the self-governance law? Remember, we at Kawerak have had a very short and successful opportunity to determine our own distribution that we feel, as a tribal -- to determine our own distribution that we feel, as a tribal organization, most benefits us. Those are some of the comments that I've developed.

I do have some questions that come up here. Will this plan -- if it's implemented, will it require some tribal member participation? All tribal member participation? Half the tribes? How will Alaska be a part of this process? You know, you're mentioning a three board membership. Will a tribal member from Alaska be a participant in this -- be available to be a participant on this board?

Those are some of the questions that I can

field right now. I hope I have an opportunity to come up to the mike again to express some of our other concerns, that maybe some of the fellow tribal members here have, about this plan. I thank you for the opportunity to be here. Thank you.

MR. HOMAN: Thank you for those comments. Just to start with your last comment, in terms of access to this organization, it will be very little different from what currently exists. All self-governance tribes and compacts will be honored. In fact, this should accelerate that process.

In terms of the Alaskan notice, I believe we sent this plan last February to each tribe in Alaska, as we did nationwide. We had a hearing on it in Alaska last August by your representative Don Young, at which time we presented the outline of the plan, which is more detailed today.

I think it was fairly well attended by a lot of the Alaska tribes. Essentially, we presented the condition of the Trust Management Systems, as we presented it today, and also the solutions. So it's had a great deal of input already.

Don Young, who is from Alaska, is the chairman of the Resource Committee. He's had a series of regional hearings on this across the United States as to

1 how we can improve trust management. One was held in
2 Phoenix last year. Two were held in Washington, at which
3 I appeared. One in Alaska. And one in Bismarck, South
4 Dakota -- North Dakota.
5 Joe, do you want to address some of the
6 interaction questions with tribes in Alaska?
7 MR. CHRISTIE: Sure. The Special Trustee
8 Office fully recognizes the government-to-government
9 relationship that's established with the tribes in the
10 Alaskan villages. It supports that relationship fully and
11 believes that the plan will more fully carry out the
12 government's trust relationship with you.
13 In relation to 638 and self-governance --
14 put up the architecture slide. We've made sure, under
15 this architecture plan, that the self-governance tribes
16 will have direct access into the system.
17 As you can see, we provide the
18 self-governance tribe with the ability to utilize the
19 system, have full access to the system. We would provide
20 the computer access and provide the computer system,
21 provide all the training that you would need as if the
22 Bureau was operating it.
23 So, it fully supports self-governance. In
24 addition to self-governance -- if a tribe is being
25 provided programs from the Agency, it still provides a

tie-in by the tribe to that same information -- with the computers and computer access provided to the tribe and all the training related to that.

So, whether you're a self-governance tribe, which it fully supports, or whether you're a 638 tribe, where it's partially being done by the Bureau and partially by the tribe, you will have full access, with full recognition of your trust relationship.

In Alaska, we do fully support the Assistant Secretary's charge up there with the Alaskan native villages. In your specific case, you're a consortium. When we sent out the Strategic Plan, we sent them out directly to the tribes. That's probably why you only received it last week, was because it had to go to the specific tribal organization, because that's where the government has its relationship. And then they probably sent that material over to you.

If you can provide us with your address and everything, we'll put you on our direct mailing list, as we did send out some directly to tribal organizations.

You had another question about whether or not we would have future meetings in Alaska. That's still yet to be determined. I would think, if it boils down that we feel that we necessarily have to go up there, then I don't think we would have a problem with that. But

that's still yet to be determined.

We were following, basically, the same guidelines that the Bureau of Indian Affairs was following when they went out to talk about the Department of Interior's settlement proposal. They went to Portland, to Denver, to Phoenix and back to D.C. Our only change is that we wanted to have a meeting on the east coast for the tribes. So, instead of D.C, we went to Atlanta. Instead of going to Phoenix, we went to Albuquerque. But we're committed to that.

Did you have another question?

MR. ASHENFELTER: Yes. Thank you. I asked this at the front desk, but I do need to put it in the transcript here. We would like a copy of the transcript of all the meetings, you know, for us to see; one, how many tribes have attended your meetings and what type of questions and concerns they have.

Obviously, we're all -- it seems to me like there's quite a few tribes now participating, but I don't know what their reasons are. I also heard that there's going to be a tribal advisory group meeting. I don't know if that's true or not. But I did call up to Alaska to find out who from Alaska attended that meeting in Seattle. The gentleman didn't get there until late.

So, I need to ask the question: If there's

1 going to be a tribal advisory group meeting, then, again,
2 will we have a choice in participating in this plan and
3 strategy? If we don't do it -- you know, one of the
4 things that we were able to do under the '93 638 law and
5 under the self-governance law is put our opportunity to a
6 test, to see whether or not we wanted to provide these
7 services.
8 If we weren't able to manage these services,
9 under the '93 638 or under the compact system, one of the
10 things -- one of the fallbacks we can do is go back to the
11 BIA. So that there's a system there where you're
12 committed to a certain point. But if things don't work
13 out, you still don't lose all those services. You still
14 don't lose all those programs. But you still have
15 someplace in there that will help you administer some of
16 these programs.
17 Obviously, under the compact system we have
18 chosen to manage all services that we can under the trust
19 program. We feel like we've done a very good job in doing
20 it. We have no reason to go back to BIA, or at least the
21 auditing and the yearly trust reviews that are done on
22 programs up there, seeing that we have been successful in
23 doing -- providing our own management of all trust
24 functions.
25 So, I was hoping that maybe as a plan -- or

a suggestion here is to maybe kind of implement this in a process that would allow tribes to test it, to see if whether or not this would be a good plan for us. If we choose not to, then -- or, you know, there's some things that we're working on with BIA in terms of fractionation.

In Alaska, it's not a major problem yet. But we do know that we are -- our native allottees, obviously, like all of us, will certainly die and leave family members. We do not have a major fractionation problem yet up in Alaska. But we definitely can take the processes that have existed here and have been created and try and prevent some of the situations from occurring in Alaska.

So, I'm very interested in understanding and learning what's going on. We hope to be a participant in developing and working with you. If this will help benefit us, meaning that we need to be a participant, we need to be a partner in managing our affairs -- simply because we could see the self-governance do it -- gave us the opportunity. We would like this opportunity again. Thank you.

MR. CHRISTIE: You will have that full opportunity in terms of the fallback that's allowed in 638, self-governance. Those fallback positions are still there. They would fall back to the office that was

operating that Trust Asset Management System.

There were Alaskan representatives in Seattle. During the break, you may want to talk with Shelly Farmer. Shelly, would you stand up, please. She still has the listing of who was at the Seattle meetings. We did have several commenters from Alaska. They had very good comments.

As far as the total transcript, the total transcript will be ready toward the end of March. If you will give Shelly your name and your address and tell her that you want a copy of the transcript, we'll be glad to send them to you and provide those to you. Verbatim.

Yes, ma'am.

MR. DRAPEAU: I want to thank you for the opportunity to say a few words here. I'm Darrell Drapeau. I'm chairman of the Yankton Sioux Tribe in South Dakota. I don't really have any questions. I just have some comments.

I don't agree with transferring these three functions to another entity. I'm opposed to that. I do think, though, that we should keep these functions within the present Bureau of Indian Affairs.

I'm not exceptionally high on the Bureau, but I do think they have tried their best. It does say here, "reform." So, let's reform the present system.

Let's not create another system that we don't know if it will work or not.

I guess I do have one question. The functions -- are they too much -- are they so complex that American Indians within the Bureau of Indian Affairs cannot learn them, cannot understand them and cannot administer them, or do we need a whole new separate entity to carry out those functions? Thank you.

MR. HOMAN: Well, certainly those comments are appreciated. On the form that this organization takes, it may well be that they will end up staying in the Bureau. That's not my personal view. The reason is that the Bureau has been operating an obsolete system for over 50 years. It is complex and sophisticated. And it takes a great deal of training to organize a modern trust system.

I believe that most of the managers in the Bureau are capable of that retraining. There has not been a program in the Bureau in the last 20 years to assure that. I have no confidence that if it stays there, that that will happen. So, that's the principal reason why we think those functions will not overly complicate it in a modern world. They are complicated for people that are not used to modern technology.

So, the idea here would be to retain almost

all of the Bureau employees. Retain them -- retrain them, I should say. Make them requalify for their jobs. Some are not competent. There are issues -- serious issues of mismanagement, exposure to fraud -- which have been ignored too long and can't be masked over.

So, for that reason, we have suggested that it be moved into a new entity. Yes, sir.

MR. UNDER BAGGAGE: Thank you, Mr. Homan. My name is Philip Under Baggage. I'm with the Oglala Sioux Tribe in Pine Ridge, South Dakota. I'd like to place emphasis on that name: Under Baggage. Once you hear it, you'll never forget it. And hopefully, what I have to say here today, you will not forget -- my comments.

My comments will be directed at you, Mr. Homan. When this came about a couple, three years ago, Public Law 103-412, the Oglala Sioux -- we looked at it, we reviewed it and we found out that it had a number of flaws in it. The tribal council asked for an extension, which we were not afforded, for our comments.

A number of things in the plan -- the section about the judgment award -- I know that the Sioux tribes that are here will agree with me on that. Because on the judgment funds -- we would like to suggest that special legislation for an amendment be inserted in that

because we have a system in place that addresses judgment funds. This is especially relating to the Black Hills claim and the Docket 74A and B.

A number of years ago, this was attempted by Congress. And in Article 12 of the '68 treaty, there's a system or a procedure in place how this was to be addressed. No one has bothered to follow that procedure.

Now, if this continues on, Mr. Homan, you know that we are prepared to go to court. I am sure my brothers -- our brothers, the Sioux tribes -- will agree with what we're presenting.

The public law and what you're delegated to do with is fine. But it is flawed in many areas. For one thing, we really never had an input in these things. Now, if you recall, some of the people that made comments to you -- it seems like there's a lot of people that don't know about this law. They're just now beginning to understand it.

I agree with Mr. Drapeau. BIA is not the best organization, but we cannot pass the Secretary of Interior by and deal directly with Congress. The Secretary of Interior is delegated with that trust responsibility. We will hold the Secretary of Interior to that responsibility.

In the area of fractionation of land -- I

gave Dr. Joyce a copy of a plan that was developed by the people affected. Not me. I'm just a worker. But the people, the landowners, people that have shares, are the ones that came up with this plan of how they thought it would benefit them.

Dr. Joyce has that. I think she'll agree that the people had some -- using common sense. Through the years, it just became worse and worse, to where we're at today. One hundred sixty acres with over a thousand heirs to it.

The plan calls for the Bureau of Indian Affairs to relax their rules and regulations. They are literally swamped, smothered with regulations, policies, procedures. And it becomes ineffective. They can't even move.

But by using the common sense approach with this legislation -- special legislation -- some of these can be waived to accommodate the people and the problems that they have with their fractionation. There's things that came up, like eliminate the second marriage, as far as the estate. That's where the biggest problem came about.

One spouse dies, the other remarries and he dies. And so that brings another group of people into the picture. One is to do estate planning. A mandatory will

for what the family wants. And the family plan that they talked about.

But the way the system is now, that if I wanted to buy my brother's or my sister's share , it would take me five years to accomplish that. We need to relax that and be flexible in these laws so this can be accommodated by a gift deed that would take 30 days. And then the land starts coming back together.

So, there's many things that they talked about in that plan. But I wanted to call your attention to the law itself. Now, Mr. Christie had stated that there was a great deal of input by the people affected by this law. I really don't think that's right. You have these people asking questions. You have people that are unaware -- that are in the dark -- about what is taking place.

Now, this 14.1 billion, or whatever, is a very high profile case among the people. I mean, just the ordinary people there on the street or -- the taxpayers. With public opinion the way it is, I only ask that you listen to us. Listen to the people that are affected. And use their guidance to right the wrongs that have been done. Thank you, Mr. Homan.

MR. HOMAN: Thank you. I hope we can live up to those expectations and goals. Let me just touch on

1 a couple of things you said. On the fractionation issue,
2 Bernita has been good enough to give me all input she
3 receives on her trips to your area of the country. I
4 believe it's consistent with the common sense approach
5 that was suggested by a non-affiliated Indian land
6 consolidation group last year, and which I endorsed to the
7 Secretary of the Interior.
8 I was the only senior policy official in the
9 Department of the Interior to endorse the Indian proposal.
10 They chose a different route. I think you'll see that the
11 proposal that the administration will send to Congress in
12 the next couple of months does not address some of the
13 things that you mention.
14 It does not address estate planning for
15 individuals. It does not address participation by
16 individuals in these fractionated interests. That was
17 over my objection. If I get an opportunity to support the
18 Indian groups at the Congress, I can guarantee you -- I
19 haven't changed my mind as to the approach you suggested.
20 On the judgment award, this plan cannot and
21 does not give me the authority to recommend how that
22 special judgment gets rendered. We're only administers of
23 that trust.
24 As you know, it's the largest one we have --
25 well over $400 million spread between the various Sioux

Tribes. Gregg Bourland, who is on my advisory board and who you know as chairman of the Cheyenne River Sioux, keeps us informed on that. I know that Senator Bradley, in years past, has suggested legislation to resolve that issue.

Gregg keeps me informed. I've always agreed with Gregg in terms of how that gets resolved. If it ever gets to the Congress, you'll also have my support in that respect.

Yes, sir.

MR. SCHMIDT: My name is Vernon Schmidt, vice-president of the Rosebud Sioux Tribe. I'm kind of here tag-teaming for Chairman William Kendel. He's out in D.C., beating the halls of Congress, as I speak, on other issues. I came out -- first of all, I'd like to thank Paul, Donna and Joe for giving me a good update on what's taken place with the strategic planning.

I feel encouraged that a lot of bases are being covered -- or will be covered, if eventually Congress takes this seriously and actually gets something going in this area. I've never been an advocate of the BIA. As a matter of fact, I participated in the takeover of the BIA back in the '70s as a young college student from Haskell University.

But, you know, there has to be a place for

the Secretary of Interior's signature, because that's one function -- you know, we as tribes cannot contract. So, we realize that -- you know, if some of these trust responsibilities are going to transfer to this new trust department of the government, then I guess -- you know, ever since the treaties have been enacted with our tribes, there's been acts of Congress. There's been executive orders. There's been Supreme Court rulings that have directly affected, you know, those treaties.

To this day, I still can't understand how the Allotment Act was allowed to come along, you know. We had these treaties in place. Then all of a sudden, allotment comes along and we lose over 100 million acres of land, you know. Why didn't those treaties stand up back then?

As a younger person -- this is my eighth year as the vice-president of the Rosebud Sioux Tribe. There's a lot of things I still don't understand -- historical events. I do know that those treaties hold as much significance as the Constitution of the United States. And that Congress pretty much interprets those treaties.

The Rosebud Sioux Tribe has been experiencing some successes since IRA 1934 Act came into play. We were probably one of the only tribes in the

country that put together a land bartering system where we were able to buy fractionated interest lands.

We've been experiencing some tremendous successes in stopping our lands from going out of trust and going out of the hands of tribal members. We shared that plan with a lot of tribes. But I haven't really seen any tribe, to date, come up with a system to buy fractionated interest. I'm encouraged that that's being covered in this strategic planning -- deal with fractionated interest.

The last opportunity that we've had to purchase this type of land was in the early '70s when some monies were freed up, where we could borrow money to buy land. Then, a lot of tribes still owe a lot of that money back to the federal government at different interest rates.

We're hoping that in the exercise of this strategic planning, maybe some of those loan dollars could be relaxed for a period of time, to allow us to put our resources into -- you know, buying more of these fractionated interest plans.

There's a lot of tribal members that are interested in selling, knowing that those lands are coming back to the tribe, and held in common by all of us. So, one thing that I wanted to emphasize is, if you're going

to do this, those lands -- those tribes that are buying fractionated interest lands -- I hope that you also appropriate enough dollars for the appraisals. Because those become costly. They're only good for like, I think, 13 months. Then you have to start that process over again.

We would have hoped that this consultation could have been closer to the Dakotas. Maybe it was planned that way, to keep some of our radical rabble-rousers away or something. Because, you know, a lot of the accounts that the government is administering come from the Aberdeen area, as well as the Billings area.

But I understand there was a meeting in Bismarck. When it comes down to consultation and where the tribes have their opportunity for input -- you know that's an important part of the process, you know. After acts of Congress come out and before the CFRs are put into place, we're given opportunities for public comments.

That's why I appreciate the opportunity to be down here on behalf of the Rosebud Sioux Tribe. Just to be here and take back a little bit of what I have learned here. We're talking about a -- there's so many reforms going on right now in Indian country. We got this big welfare reform, like it's been mentioned before: housing is becoming a big reform. And the area of health

care with all the downsizing that's going on.

The tribes need technical assistance to put their infrastructures together. Before I got back on this term as vice-president of the Rosebud Sioux Tribe, I managed tribal land enterprises for two years. I learned quite a bit about land transactions, trust funds.

It seems like the individual trust funds at times hold more credence with the federal government than the tribal trust funds. It shouldn't be that way, because at the local level we had to assist the Bureau in developing databases, so that we could adequately have this information at our grasp.

Thanks to your GIS and other stuff, we're starting to better use this technology. Over ten years ago, the Billings area had land status information computerized. We're just getting that now in the Aberdeen area.

I can't understand why it has taken so long in the Aberdeen area, for us to have access to ownership, you know, through the computerized system. But we're finally getting that now. We're appreciative. It's a good management tool for us, and just managing our resources, you know.

There was times when these dollars would go into a special account and they weren't paid out because

they didn't have a proper system in place to make these payouts. In a sense, it might have been good, because it was kind of a windfall at Rosebud. Because there were a lot of dollars in those accounts that we finally got paid to us.

So, we've experienced a lot of frustrations. All I'm saying is, I'm not advocating for the Bureau to continue on. You know, this whole 638 amendment that started the self-governance was because of a leak about all of the mismanagement that has taken place, and just recently, with all the mismanagement of these trust funds.

So, I realize something has to be done. We have the eyes of Congress behind us now. I only hope that with this planning going on, that we can convince Congress to adequately appropriate the dollars needed for this endeavor.

We were trying to get dollars in the past for tribes to buy fractionated lands. We couldn't get anywhere with it. But maybe now with this Youpee court case and these other things that are taking place -- with the public outcry -- that something is going to get done.

I'm encouraged so far on the strategic planning that's been taking place. And just this morning, it enlightened me. I take care of more of the social service functions back home. I don't get a chance to be

1 involved with a lot of this activity. I appreciate it,
2 and I encourage the success of what's going on. Thank
3 you.
4 MR. HOMAN: Thank you for those comments.
5 Just one other word on the fractionated heirship. I agree
6 with everything you say there. It is our number one
7 problem in terms of what causes these operating problems.
8 The problem in the past has always been
9 money. How do you get the 300 million -- even the 25
10 million that we asked for last year to start the program
11 was rejected by, not only the Congress, but the
12 administration as well.
13 As you see, my plan creates a Development
14 Bank. It could be an endowment fund to fund that type of
15 lending and investment program that you suggest.
16 MR. STEELE: Thank you very much. Good
17 morning, Mr. Homan, Dr. Bernita Joyce, Joe Christie.
18 Ladies and gentlemen, tribal presidents, tribal delegates.
19 My name is John Yellow Bird Steele. I'm the president of
20 the Oglala Sioux Tribe on the Pine Ridge Indian
21 Reservation in South Dakota.
22 The Oglala Sioux Tribe -- I have 37,000
23 enrolled tribal members, about 16,000 nonenrollees still
24 -- their applications are pending. A lot of them also are
25 in this fractionated interest. I've got 3 million acres

of land. And the fractionated land problem is the greatest in our area.

I blame the U.S. government for this problem with the Allotment Act. Once again, they passed legislation trying to affect the Indian communities' economic development and growth. They caused a problem. They didn't have our input. I've lost a lot of land because of the Allotment Act -- tribal member sales to nontribal members.

So, this problem, as my fifth member, Mr. Under Baggage stated, is of very great concern to us. But right now, I'd like to take the opportunity to thank you, Mr. Homan, and Dr. Bernita Joyce -- and I'd like to mention that Dr. Joyce is an adopted member of the Oglala Sioux Tribe -- for your interest in and taking the measures that you have in trying to address the biggest problem in Indian country -- the reconciliation of the IIM and the trust funds and fractionated land base and setting up a Development Bank, whereby we can access monies for our infrastructure and business development. I'd like to thank you for that.

Also, your solution addresses the elevating of this trust responsibility to a government-to-government level. That assures me that our children will receive their trust services as required by -- to the greatest

extent of any trust service -- and required by the U.S. Constitution. I can appreciate this to the fullest extent.

But I do have a number of concerns that the Oglala Sioux elderly have communicated to me. First of all, the Oglala Sioux tribe has entered into treaties with the United States of America. Treaties are considered the supreme law of the land. And these were solemnly ratified by the U.S. Senate.

Yet, to date, the United States of America has failed to honor their treaty obligations to the Oglala Sioux Tribe. I'm hesitant to support what I see as part o a complete dismantling of the Bureau of Indian Affairs. Education in the past -- the BIA tried to privatize that. Then they tried to put it under the Department of Education. Right now, they're talking about law enforcement being put under the U.S. Justice Department.

We have opposed these moves by the federal government because we're wary of the United States Government's ulterior motives. We ask, what will happen to our treaty obligations and the trust responsibility for our children, our future?

No other nationality has a Bureau to deal directly with them. The Bureau of Indian Affairs is the main contact entity between all other federal agencies and

the Oglala Sioux Tribe. Other than the Bureau of Indian Affairs and the Indian Health Service, no other federal department has a permanent, physical presence on the reservation.

We view the Bureau of Indian Affairs and the Indian Health Service as our primary providers of treaty obligations, and protectors of our jurisdiction, our sovereignty and our future.

We realize the incompetence and the inefficiency of the Bureau of Indian Affairs. So, we have to bite our tongues and protect the Bureau of Indian Affairs from being dismantled. We are fearful of termination of the government's responsibility to us.

The state of South Dakota is and has always been our land, our culture, our political status and our future. As an example, I can tell you that the state of South Dakota demanded payment from a trust account for owed child support -- from the Rosebud Reservation.

The IIM bank staff was going to pay this demand for child support payments from a trust account. This was after the supervision was taken into your office and away from the Bureau of Indian Affairs.

We were just lucky that the BIA superintendent stepped in and stopped it. He was unsure of his authority to do that and whether or not he was

1 overstepping his bounds. But that physical presence
2 provided us -- that individual Indian -- protection from
3 the state of South Dakota in that instance.
4 Despite the good intentions of the Strategic
5 Plan, my elderly continue to remind me of House Concurrent
6 Resolution 108, adopted in 1953, which supported the end
7 of federal supervision of Indian people as rapidly as
8 possible, which culminated in several reservations being
9 terminated; along with Public Law 280, in which states
10 took advantage, without tribal input, over jurisdiction
11 over reservations.
12 I don't know whether these were well
13 intended for the benefit of the Indians back then by
14 Congress or not. But it happened, to our detriment.
15 Other United States of America actions, such
16 as compacting for self-governance and the concerted effort
17 to force tribal shares upon us in the name of
18 self-determination, are to terminate our reservations.
19 Secretary of the Interior, Honorable Bruce
20 Babbitt, during a speech to the leaders of Indian country
21 at Prescott, Arizona during the national BIA budgeting
22 meeting in the summer of 1996, characterized the tribal
23 shares initiative as being fraught with extreme dangers,
24 as being the termination crusade of the 1950s again. This
25 corroborated our view of termination in progress.

All tribes in the Aberdeen area, with the exception of Three Affiliated Tribes of Fort Berthold, are not contemplating the self-governance or the tribal shares initiatives. With our very large land bases and populations, with the lack of adequate infrastructure, with the state of South Dakota after our treaty rights and our jurisdictions, with our poverty and the joblessness, we must stand on our treaties and demand that the United States of America hear our voices.

The United States of America has adopted many different pieces of legislation for the benefit of our tribes, but sometimes fails to see things from our perspective and our view, which is different from the smaller tribes -- the more assimilated tribes -- those tribes that are near urban areas. Our view of what is happening and how it affects us is quite different.

Our fears and the many different infringements on our jurisdictions and our concerns are hard to put into words that will be understood. Our past dealings with the Bureau of Land Management and the Mineral Management Service makes us wonder what their participation will be like.

If they, being ignorant to our views, fears and treaties and culture -- will they take action adverse to our treaties or will they side with the states against

us and their participation in your strategic plan?

Will the American Indian Trust and Development administration advocate treaty obligations and trust responsibility to the fullest extent in all areas? We define trust responsibility for individual Indians and tribal government to extend to areas not yet contemplated, that will be tried by the state, to infringe upon them. And we need an entity to address us and help us with them.

The United States of America is to be our protector until such time as we can be completely independent. The Strategic Plan has good words, such as "stop and reverse erosion of the fulfillment of the United States Government's trust responsibilities (de facto 'termination') currently occurring."

Then, another part says, "Clearly differentiating trust management activities from general trust responsibility." We know that trust management activities are very basic trust activities. But to us, all trust is sacred.

It seems like these words make the trust areas in education, health -- all the other areas -- less important than the areas in the trust funds and the realty areas. We need, somehow, to upgrade those also, to the fullest extent of their trust responsibilities.

Also, in 1980, the Supreme Court of the

United States of America made a decision that the Sioux Nation take back the Black Hills, which were taken by the United States of America. In the U.S. Supreme Court words, it was the most land and range case in the history of the United States. The U.S. Court of Claims in Docket 74B made an award of monies that all of the Sioux Tribes of the Sioux Nation rejected.

Will the American Indian Trust and Development Administration award monies -- awarded in Docket 74 -- back to the United States Treasury, saying that the Sioux Nation rejected their offer, or will the new administrative unit hold these funds, making the tribes all fearful of a distribution of these funds, which we are, presently?

Will the new administrative unit protect treaty rights and infringements upon the tribes' jurisdiction and other areas, to the fullest extent? Will the other departments who are included to provide services be held to protecting the same? Is this a part of a plan to totally dismantle the Bureau of Indian Affairs?

I can see where the United States of America's trust responsibility -- same as trust for anyone else in the United States -- can continue even after the termination of our treaties and reservations. What guarantee do we have that this is not the real plan

unbeknownst to yourself? Because I know Congress has a big hand in doing this.

I really do appreciate your excellent efforts. Our fears do get in the way of progress sometimes. But I think our concerns can be taken care of with written words from the Congress of the United States as to their trust obligations, their treaty rights and the ceasing of termination of reservations. We are truly concerned about our people's future.

Thank you for the opportunity to address you.

MR. HOMAN: Thank you, Mr. Steele. I realize those are not only your concerns, but the concerns of many tribes, in terms of what's going to happen to the trust responsibilities of the future.

As I indicated earlier, my intent is not to diminish, but to give the financial and managerial resources to a government entity that can fulfill those trust responsibilities; not only the trust responsibilities in the management of the land and natural resources, but also in Trust Funds Management, land records and all of the other programs.

I have not proposed at all to diminish whatsoever the Bureau's involvement in any of the other programs. I recognize there's always a risk in a change

1 of this magnitude -- that the Congress may choose a
2 different alternative. And certainly, your concerns there
3 are valid. But I judge people -- and politicians
4 particularly -- more by their actions than by their words.
5 You'll see a 20-year history of underfunding
6 and understaffing of the Bureau of Indian Affairs' trust
7 management programs. I think that's deliberate. I see no
8 change in that. That's not partisan. It's a deliberate
9 decision made by the government, so to speak. It's
10 happened. As you know, it's happened.
11 If you look at the President's budget going
12 forward for the next seven years or any of the
13 Congressional budget office numbers, there is no money in
14 those budgets, except in a piecemeal basis, to implement
15 anything like I've suggested.
16 So, I submit to you, sir, that you're going
17 through what you quoted in my statement, "de facto
18 termination." This is an attempt to reverse -- stop that
19 first. Stop it and reverse that trend. It is well
20 intentioned. I may or may not succeed.
21 People are going to take this plan, and like
22 it or not, they will compromise in various aspects. I'm
23 hopeful, though, that with the visibility and with the
24 primary mission being to hold the Bureau -- or whatever
25 entity ends up with this responsibility -- to the exacting

1 fiduciary standards and high moral responsibility that the
2 Supreme Court has always said we need to be governed by --
3 and has chastised the Congress and the administration when
4 they have come short of that.
5 So, your best friend may not be me, but it
6 may be the courts in the end. Yes, sir.
7 MR. RED CLOUD: Thank you. I just want to
8 say a few words here. Talking about our right, our
9 freedom here this morning -- like Mr. Under Baggage and
10 Mr. Steele -- they have an education. I'm here on behalf
11 of eight reservations. I'm the chief.
12 My great-great-grandfather made a treaty
13 with the United States government. We have made 17
14 treaties under that treaty. And today -- that's what
15 we're talking about today. I'm not just talking about one
16 tribe.
17 A treaty -- that's what we're on today.
18 What we're talking about. We talk about a plan up here.
19 On each reservation we have a contract. That contract
20 under 638 is really giving us a problem.
21 But again, today, you're talking about a
22 plan here. It looks like a bill. A bill to try to
23 contract our rights here. That's the way -- I'm kind of
24 looking into it. What you're talking about.
25 But Lakota people -- we're the biggest

Indian nation in South Dakota. This is our right -- what you're talking about. That's us. That's me.

I listen to hear you talk. You try to explain. John and Philip explain. That's where we're at. I'm here on behalf of the Lakota people, right now at home. They waiting for me to go back and tell them what's going on. I'm a traditional government. Back in the days when grandpa made all his treaties.

Today, our people -- this country try to change our ways, our treaty. Try to change our treaty. But we still -- we are the people in the United States here. We're the first American, like you say.

So, why don't Congress or the state want to recognize our treaty? They look into our treaty. They still try to make plans like that. That's why earlier I ask a question here. You know, Docket 74B -- I was talking about.

You keep track of everything. I hope you keep track of that. Because the state of South Dakota owed us $3 billion. That was seven years ago. That's how much they owe -- not from the government, but from the state. $3 billion.

We do a lot of research. We do a lot of research. We come out with a lot of things. It hurt us. And today, whenever we try to make them good, Congress or

whoever -- they try to take over our rights. Lakota people. That's why I'm here.

I don't think we want a contract or yet another plan to work on our treaties. Because we got an Indian Bureau. That's one of the 638 treaties. We got an Article 12. But Lakota people have to be together, go to Congress. That's Congress' rules. We made that treaty.

So, once one tribe say no, that's it. It happened, because I took a -- I killed a bill in there. I still stand. That's the way it worked.

So, we have to go back and sit down with our tribe. We have some government -- Janklow, Daschle, Larry -- have to come to our reservation. Like one man say over here, "I can't even find this place here. I have a hard time." We should have meeting at home, talk about our problems here.

This is real important. Real important. Last week we have water right. That's a bill that -- they try to put that on the Lakota people.

There's a lot of things that are involved in our -- we kind of stop it a little bit. We have to sit down, talk. That's the same way with this one here. So, like John, Philip say -- there was another man that was sitting here. I think they're right. The way these things go. So, we can't contract to another people on our

rights, our Bureau.

So that's all I want to say. I'm going to go home. I hope I got everything here to tell my people that. Not just Pine Ridge -- reservationwide. Thank you.

MR. HOMAN: Thank you, sir. I do respect your rights as an individual, as a treaty. And in Senator Daschle and other Congressmen from South Dakota -- you have one of the strongest delegations. You should use that opportunity to get your cause heard. Because it's too often not heard outside of the Midwest.

I'm a Midwestern by background. I probably grew up on land that your fathers owned at one time. I grew up in a little town of 500 people in Cedar Rapids, Nebraska. My father was a lifelong farmer. I think I understand, somewhat, the land. That's my origin.

We don't intend to go beyond lunch. So we would like to wrap this up, hopefully, in the next hour. So, anyone who has not spoken and wishes an opportunity, please proceed. What is your name? I'm sorry.

MR. CAGEY: Henry Cagey, Chairman of the Lummi Nation. We're down here for another meeting. What we would like to do is -- we do have a written response on the consultation meetings that are taking place. We would like to submit that, for the record, to you. If you're going to adjourn very soon, then we would like an

opportunity to submit our written concerns.

MR. HOMAN: Of course. We'll put that in the transcript.

MR. CAGEY: Okay. Thank you.

MR. HOMAN: Anyone else wish to present your views or ask questions? If not, I'd like to thank you all for attending this hearing. It's been very enlighting to me. I will take your comments. I've taken notes here extensively, but the transcript will be available.

My staff and I will analyze those. We'll make whatever modifications we think appropriate. We'll try to take your genuine concerns into account. I may not change my plan to accommodate each and every one of those concerns, but know that I do consider them valid. There are various ways and alternatives one can approach each of these problems.

My greatest hope, again, is that it will raise the level of debate high enough for the Congress and the administration to, once and for all, address these problems and do something about them.

So, thank you very much for coming. I will attempt to get around as I have in the past, to regional meetings. I hope to see you very soon in the future. Thanks, again.

(The Proceeding concluded at 12:38 p.m.)

C E R T I F I C A T E

I, Yvonne C. Gonzales, a Certified Court Reporter, do hereby certify that the Proceedings of the above-entitled cause were reported by me stenographically on February 27, 1997, and that the within transcript is a true and accurate transcription of my shorthand notes.

I further certify that I am neither an attorney nor counsel for, nor related to or employed by any of the parties to the action, and that I am not a relative or employee of any attorney or counsel employed by the parties hereto, or financially interested in the action.

_____
Yvonne C. Gonzales, CCR
Notary Public

My Commission expires:
3-20-97

OFFICE OF THE SPECIAL TRUSTEE FOR AMERICAN INDIANS

OFFICE OF TRUST FUNDS MANAGEMENT

TRIBAL CONSULTATION ON THE DRAFT STRATEGIC PLAN

Thursday, March 6, 1997
9:00 a.m.

Holiday Inn Hotel - Atlanta Airport North
1380 Virginia Avenue
Atlanta, Georgia

REPORTED BY: MARY K. LOUGHRAN, RPR, NM CCR #65
500 Oak Street, N.E.
Suite 102
Albuquerque, New Mexico 87106-4738

1
A P P E A R A N C E S
2

3 PAUL HOMAN
Special Trustee for American Indians
4 Department of the Interior
Washington, D.C.
5
JOE C. CHRISTIE
6 Special Assistant to the Special Trustee for
American Indians
7 Department of the Interior
Office of Trust Funds Management
8
DONNA ERWIN - Director
9 Office of Trust Funds Management
Albuquerque, New Mexico
10
MARY K. LOUGHRAN, RPR, NM CSR #65
11 Court Reporter
Albuquerque, New Mexico
12

13 * * * * * * * *

14

15 A T T E N D E E S

16 FRANK KEEL - Director
BIA - Eastern Area Office
17 Arlington, Virginia

18 SHIRLEY LaCOURSE
Staff Assistant to the Deputy Commissioner
19 Bureau of Indian Affairs - Washington, D.C.

20 DIANE MAYBEE
Tribal Shares Program Officer
21 Bureau of Indian Affairs - Washington, D.C.

22 DAN NELSON - Comptroller
Penobscot Nation - Old Town, Maine
23
CLIFF SAUNDERS - Administrative Assistant
24 Mississippi Band of Choctaw - Philadelphia, MS

25

A T T E N D E E S (Continued)

ANNA SORRELL - Program Analyst
Confederated Salish & Kootenai - Pablo, Montana

BRENDA COMMANDER - Finance Officer
Houlton Band of Maliseet Indians - Houlton, Maine

DANA JOHNSON - Comptroller
Muscogee (Creek) Nation - Okmulgee, Oklahoma

M. SKIP CURLEY - Contract Officer
Navajo Nation - Window Rock, Arizona

CLAIR H. SABATTIS - Tribal Chief
Houlton Band of Maliseet Indians - Houlton, Maine

JAMES T. MARTIN - Executive Director
United South & Eastern Tribes - Nashville, TN

L. JOHN LUFKINS - Tribal Administrator
Bay Mills Indian Community - Brimley, Michigan

ED MOUSS - Citizen
Okfuskee Creek - Oklahoma

WILLIAM GARDNER - Director, Department of Justice
Ho-Chunk Nation - Black River Falls, Wisconsin

STEVE GLEASON - Assistant to the Chief
Mississippi Band of Choctaw - Philadelphia, MS

JOHN LOWNDES - Attorney
HDSW - Washington, D.C.

KAREN MEYER - Self-Governance Coordinator
Johnson, Hamilton & Quigly, PLC
St. Paul, Minnesota

JOE WELLER - Liaison Officer
OST-OTFM
Albuquerque, New Mexico

FRED WELLER - Computer Specialist
OST-OTFM
Albuquerque, New Mexico

A T T E N D E E S (Continued)

SHELLY FARMER - Staff Assistant
OST-OTFM
Albuquerque, New Mexico

PATSY ANTONIO - Secretary
OST-OTFM
Albuquerque, New Mexico

JAY HUNDLEY - Consultant
Office of the Special Trustee
Albuquerque, New Mexico

DICK FITZGERALD - Trust Policy Officer
Office of the Special Trustee
Washington, D.C.

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MR. HOMAN: Welcome, ladies and gentlemen. My name is Paul Homan. I'm the Special Trustee for American Indians, and this is the third in a series of formal consultation hearings on the Strategic Plan of the Office of the Comptroller, or the Special Trustee.

We have been in Seattle, Denver last week, and the plan is to complete the Eastern tribes this week, and then we will be meeting in Albuquerque for the final session next week.

This is a formal hearing. For the record, when you speak, please state your name, tribal affiliation, or organization. Speak directly into the microphone, and we will be glad to record your results. The transcripts of these hearings will be attached to the Strategic Plan after we formally consider them.

By law, I was to produce the Strategic Plan within one year of my appointment. I was appointed in September of 1995, and obviously, we are beyond that point, but mainly due to lack of funding and staffing during the first year. So I have agreed with the Secretary of the Interior, and with the appropriate Congressional committees, to provide them this Strategic Plan by mid April.

So we will be wrapping up the comments, suggestions, and also, an outside contractor study is

presently being performed across the country, with many tribes and other Bureau employees interviewed, and they will complete their report at the end of March.

Again, we will digest that report, and it will be included in our final record to the Congress and the Secretary in April.

Joe Christie and Donna Erwin will assist me in the presentation. I will give a brief overview, and then they will talk about some of the specifics of what we have in mind for Land Titles and Records, and Archiving, and the trust accounting systems.

To begin with, any plan must have a mission, and ours is directly out of the Supreme Court rulings. And if you can't read the slides here, we have a slide show cover, or memorandum, that you can follow on.

But this one is fairly clear, as to what the trust responsibilities of the federal government are. And they literally say that the U.S. Government must manage U.S. Government's trust responsibilities to American Indians according to the most exacting fiduciary standards, and moral obligations of the highest responsibility and trust.

Those are Supreme Court sayings, and as you will see in a few minutes, we have seldom lived up to those high objectives. But we intend to.

The primary causes, in my view, of the trust management problems are really four-fold. The continuous trade-offs of completing financial and managerial resources at all levels of the federal government have been detrimental to the trust programs.

And by that I mean, the trade-off of financial and managerial resources, beginning at the level of the Bureau of Indian Affairs, at the Department of the Interior, traded off against other activities, at the Administration, itself, and finally, at the Congress, itself.

This type of neglect has been accepted as a standard in the government, and the lack of staffing and funding is the standard excuse for failure to live up and wholly fulfill these trust responsibilities. That is not an option available to a private trustee, and shouldn't be an option available to the federal government.

But we even have coined a term for this, in terms of the ideas; to come up with a plan solving a problem, and it is considered resolved, but not implemented. And that, ladies and gentlemen, is not a standard that we should ascribe to.

The way the BIA is organized and managed is an issue. Management is an issue, and it's an issue in terms of some 20 years of neglect and mismanagement, in

parts. It exposes the federal government to liability, and more importantly, it exposes, and continually exposes, the American Indians to considerable loss. And until the basic accounting and core systems are solved, that will continue to be the case.

And finally, as you all know that have allotment programs, or allottees, the fractionization of the American allotment interest causes an inordinate number of trust accounting problems, and problems of a general nature, and Joe will discuss these in some length.

It's been complicated further by a Supreme Court decision, Youpee vs. Babbitt, which was adverse to the United States, in January of this year.

The priority categories for resolution were set for us, at my insistence, by a tribal working group which met over the summer twice, and took into account some five regional hearings that we had, on how we could improve the Trust Resources, Trust Funds Management, and Land Titles and Records systems, all of which have a dramatic impact on IIM accounts, which, by all accounts, is our worst group.

They came up with the top five here, and while the federal group that we are working in a different order, essentially, the same five came up on everybody's list that looked at this.

That we must improve accounting; the way we handle our realty operations; the customer service and training; policies and procedure; and importantly, records management. And as Joe will say, without records, you can't account, and you can't fulfill anybody's definition of trust responsibilities.

Let me just give you a few statistics as to why we are here, and these statistics sometimes get lost. But there are something like 45,624 accounts, and $28 million, whereabouts unknown. We can't find those people.

For those tribes that are concerned about termination, those 40,000 people have been effectively terminated by the Bureau of Indian Affairs.

We have another 28,000 people, or $21.7 million, in accounts with minors older than 18. We tried to find these minors, and we can't. So, those people are effectively terminated.

Now, these aren't yesterday's problems, or last month's problems, or last year's problems. These go back 20, 30 years. And the prospects of our finding these people now, with our antiquated systems, are fairly diminutus.

There are over -- as you can see on the board, one of those junior, or "J" accounts, accounts for $490,000, to an individual, who has been deprived of that

money for who knows how long.

I'm not going to dwell on statistics, but the federal government is also compelled to produce tax ID numbers, as is any bank. Out of our 300,000 audited individual accounts, we lack Social Security numbers for 128,000 people, or a tax identification number. This, of course, creates inordinate problems for us in terms of operating difficulties.

The other statistics that I want to touch on have to do with the Arthur Anderson tribal study of a few years ago. We had something like $2.4 billion, as you all have read, in missing documentation, where the source documentations could not be found to support general ledger entries. Some 32,000 transactions.

Of note, is some $575 million in unreconciled disbursements, in an accounting sense. Lack of a check; proof of payment, if you will. And just as important to me as the next auditor and bank examiner, some $4.1 billion in incomplete disbursement packages, where we may have some proof of payment, but not a complete package.

There is also a lack of a known number of leases, which affects Trust Resources Management. We don't know the number of leases that we have, and the Bureau manages some 54 million acres, 10 million of which,

or about 18 percent, is for the individual allotments, and the rest for the tribes.

The latest available numbers that we could get on the breakdown was dated in 1985. So, with information systems like this, it raises a serious question as to how well managed those acres are.

Finally, we have some general ledger entries, some $42 million worth in overdrafts, on the books in our Albuquerque office, which represents payments to individual Indians of years ago. And while that's not a large concern to them, because they got their money, it does act, because it has never been appropriated, it does act as a deduction against the IIM pool.

So the current IIM pool holders receive approximately $2 million of the annual income off of that $42 million -- or they do not receive that, I should say.

These are serious problems. They are serious difficulties that we are asking our American Indian account holders to take, and the IIM portion of this is the most serious part to me, because these people are utterly defenseless, in terms of the government fulfilling its responsibilities.

And the tribes, arguably, have governments. They advocate very well. And while they are not always successful, at least they state their opinions to the

Congress, to the Department, to me, anybody that has anything to do with this.

But these 300,000 individuals, where we have the worst problem, are virtually unrepresented. And so, we think that we should address these difficulties with a new organization.

These conditions, in my overall opinion, have resulted in conditions that are unacceptable by any reasonable standards, and do significant harm and damage to American Indian trust beneficiaries. I don't have to tell the Indians in the group that.

But they have also caused permanent damage to the core management systems the government uses to manage the Indian lands and money. These systems are sometimes 40 or 50 years old, and manually driven. They are obsolete. They can't be customized to come up to a modern trust end.

So, essentially, everyone who has looked at this, and I am only the last one in a long line of professional people that have looked at this, has said that you have to start over with a modern system that is commercially available, and has been in use by the bank and the trust industry for at least ten years.

They also prevent the government from meeting the fiduciary, accounting and reporting standards

of the American Indian Management Reform Act of 1994, or standards of ordinary prudence applicable to all trustees.

The Reform Act of 1994, which created the Office of the Special Trustee, set forth eight very exactly accounting standards, reporting standards, which the government has never been able to meet. Arguably, those should have been met earlier than 1994, but certainly, after 1994.

There is no excuse as to what the standards are, and we simply can't meet them with our current funding and staffing and resource levels. Again, these deficiencies expose the American Indians to substantial loss.

So, how to solve this? We have a lot of technical problems, but I believe that it first needs to be set into a new organization to handle the three basic trust problems: Trust management responsibilities to the Indians for Trust Resources Management, Trust Funds Management, and Land Titles and Records Management.

And we would hope to transfer most of these activities into a new organization called the American Indian Trust and Development Administration, as soon as possible.

We may have to phase-in parts of that. That's been some suggestion made in the previous hearings,

and particularly with resource management. And we will give that serious consideration. And essentially, then, all the reforms that you're going to hear about be funded, staffed, and implemented.

The specific actions required by the plan, we feel this organization should be responsible and accountable for the reforms, implement the reforms over a two-year period -- and the reason for the two-year period is that most of these are core systems. They are in the nature of computer equipment, hardware and software, and the like.

If they are going to be brought up to a commercial standard, they must be done within a short period of time, versus an installment plan, which I think the government would prefer because of the money involved, over a five to longer year period.

If you do it that way, you're going to end up with an obsolete system. It's the equivalent of buying a computer one year, the printer the second, the scanner the third, and a local area network, or a wide area network, the fourth and the fifth. You will end up with an obsolete system, worse than the present system.

The business would be managed by a board of directors and a chairman appointed by the President, and confirmed by the Senate, and reporting directly to the

1 Congress. It would come out of the Bureau, come out of
2 the Department of the Interior, and this new entity would
3 report directly to the Congress, as most government
4 sponsored enterprises are called that do that very same
5 thing.
6 Some of those that we have modeled ourselves
7 after are the Farm Credit System, the Home Loan Bank
8 System, the Fannie Mae, Freddie Mac, Jennie Mae, which are
9 all housing and student loan authorities, and the like.
10 So there is ample precedent for these
11 development type institutions that have served American
12 agriculture, served education, and served the housing
13 sector for over 60 years.
14 We think this will improve the way the
15 government carries out its trust responsibilities by
16 concentrating the resources of trust management
17 activities, and improving the increasing trust services --
18 and we will talk about that a little bit later -- by
19 clearly differentiating trust management activities that
20 arise from American Indian tribal and individual land, and
21 resources from all other activities of the Bureau of
22 Indian Affairs, and others, and by reaffirming and
23 ensuring the U.S. Government's trust responsibilities to
24 the Indians are managed according to the most exacting
25 fiduciary standards.

1 This is an umbrella organization, so we
2 would continue to use present locations of the Bureau. We
3 would transfer the Bureau staff engaged in those three
4 activities to the new administration, although, because
5 management is an issue, we would ask that the senior
6 Bureau employees requalify for their jobs.
7 There are several advantages over the
8 current structure, and we think substantial advantages.
9 There is an argument there on certain of these, and
10 certainly your concerns will be heard.
11 It will prevent further erosion of the U.S.
12 Government's fulfillment of its trust responsibilities,
13 clearly establish accountability, which we believe is
14 lacking now, provides protection against termination of
15 trust management activities, and this independent
16 sponsored enterprise, reporting directly to Congress, we
17 think will eliminate many of the detrimental trade-offs
18 that I mentioned earlier, in terms of financial and
19 managerial resources.
20 Importantly, it will also stop, and
21 hopefully reverse, the steady erosion of the fulfillment
22 of the trust responsibilities.
23 What you see on the board, in terms of
24 statistical analysis, is a continued lack of funding and
25 staffing, not only by this Congress, or the last one, but

over the last ten years, and the Administrations.

The lack of financial and managerial resources is de facto termination, and it is not a slow bleeding process. It is a fast bleeding process, and you have not only to look back, but also forward, in terms of what the Department of the Interior and the Administration and the Congress are planning for the next seven years. You won't see much money attached to the funding levels to improve trust management systems.

For example, I asked for something like $50 million to get these basic programs working this year, within the structure of the Bureau of Indian Affairs, and received $15 million, which is about a million more than we received last year, to start a badly needed IIM accounting system.

If you stretch that $15 million over five or six years, it comes close to implementing this plan, which we believe will require, in the first few years, about $80 to $100 million dollars.

And as I said earlier, if you do it on the installment plan, it will never get done. And whether it is done by the Bureau of Indian Affairs, or someone else, it will never get done in the right way.

So, Congress and the Administration are simply going to have to face up to the fact that they need

to fund these systems, or they will continue to collapse.

If the American Indians vote for the status quo, then I will tell you, in my view, at least, you will get less and less as time goes on.

Every single field visit that I've had says one thing, from the staff and from the members, that if reform is to take place, it has to take place outside of the Bureau, and that's a reality. They won't trust the Bureau of Indians Affairs to reform itself, and otherwise, divert these funds. So that's a reality of your tribal chairman and others who have visited Washington, and I don't have to tell you that.

So, if you vote for the status quo, which is your option, I believe that lack of funding and staffing will continue, as far as the horizon can be seen. And you have only to look to the seven year plans of either the President or the Congress to know that.

Because the new organization functions at a higher level of Congress, or in a higher level, it should receive appropriate funding from the Congress.

There has been a concern expressed in the first two hearings that by moving it out of the Department of the Interior, and right under an unfriendly Congress, all sorts of mischief could happen, and certainly that's a risk at all times.

The Congress would say, as they said to me earlier this week, and the staff, "We can do that any time." So whether it is Paul Homan's plan, or the Special Trustee's plan, or anybody else's plan, Congress always has that option.

My view is by making it more of a creature of Congress, it will have the visibility, so that at least the financial and managerial resources won't get traded off against National Parks, and other activities of the Department of the Interior, or other community programs of the Bureau of Indian Affairs.

The activities here will be in a new organizational structure, and as I indicated earlier, it will have five trustees, devoting full time to these three trust management activities.

Right now, we have, essentially, the secretary devoting a very little time to it. Hilda Manuel, and Ada Deer, devote full-time to it. These are three of their units.

If you look out in a horizontal structure, in which the Bureau is organized, virtually every single program in the office reports to them. So, I think there is a basic business -- most businesses are organized vertically, because of that problem, and we seem to be organized horizontally, and the simple fact is, no matter

how competent people are, that is a lot of responsibility to handle on a day-to-day basis. You'd have to be a master of all jobs and specializations.

So we think a devoted management team and a board of directors, or trustees, if you will. The trustees will have three American Indian tribal representatives, or a majority of the board, and two people that are financially skilled, who can also be members of the American Indian community.

The organization will be aligned by business function, as most companies and trust companies are organized today, and then the last two here are improved, and then new, trust opportunities.

The second part of the Reform Act required me, as Special Trustee, to identify options whereby the tribes could participate and manage in their own distribution of their trust funds, in ways that were different from now. And secondly, to identify options for investment of those funds, for development of the Indian communities.

Right now, as you all know, if your funds are within the federal government, we have a limited opportunity to invest them, mostly in U.S. Government guaranteed obligations.

So, we will talk a little bit about the new

areas, but these are old areas. We want to clean up, first, the IIM related problems. We have not been able to do that with the money allocated today. You saw the numbers earlier.

We have a Land Titles and Records backlog which, again, affects the ownership records, which goes back, we think at least two years. I know, because the vice-chairman of the Rosebud told me at an earlier hearing this week, that in their particular case, it goes back four years. And we simply must secure these backlogs before the Bureau, or anyone else, is able to move to a new system.

We think that with the new systems, it will create an accurate trust accounting and reporting system, a coordinated, integrated, and consistent asset administration, apply for audits, which are not now possible, and result in consistent policies, practices, systems, which the law requires us to perform.

New trust products: These are the options that I mentioned a few minutes ago. But if you'll move to the next one, the most important of the changes here is the abandonment of the current laws having to do with trust fund investment, in favor of the prudential investor, or the prudent investor rule, which is a common law standard that has grown out of the ordinary prudence

rules, which have been in common law in Anglo-Saxon history for over a thousand years. And this is the standard that is used by every single state in the United States, as it applies its laws to trust companies.

It virtually says that you can invest in anything, as long as it is prudent, and there are certain criteria for that.

There is a lot of case law, which gives guidance as to how the prudent investments are calculated, but importantly, for the Indians, it opens up the use of their own funds, which they can direct under the new scheme, to invest in local infrastructure developments, for example, on the reservation, businesses, under certain circumstances, development activities of all kinds, or to just enhance yield.

Invest in some of the other safe and sound prudential investments that mutual funds use, that common investment funds use, and that investment managers everywhere use.

They do have that opportunity now, if you're a tribe. You don't as an individual. If you're a tribe, you can withdraw your funds from the federal government, and use those funds in any way you like, subject to a plan, and subject to these same prudential rules.

Not very many Indians have withdrawn those

funds, probably for a reason. Overwhelmingly, the number of accounts that we use are small accounts. For example, out of 300 or so trust tribes, about 50 have accounts over $1 million. If you were to take the other accounts to an outside investment advisor, the fees would be prohibitive.

In the meantime, the federal government can continue to provide accounting, if we can get our accounting systems up to speed, safekeeping, investment research, and all of the activities that you would be charged for by a private institution. But right now, we can't do that, except invest your funds in U.S. Government obligations. This would change that.

It would also change the way these funds are administered. Right now, the Federal Trustee makes those decisions. You do have input into that, but this creates several different types of accounts where you could continue that with the federal government, if you felt you wanted to.

You could appoint a financial advisor, that would be the equivalent of an advisor to the federal government, to help make decisions; or finally, you could just leave the money there, take it out in legal form, and direct, through an agency arrangement, how the federal government spends your money. So, that allows most of the other things to happen.

1 You can actually, now, under this Rule, you
2 would be able to invest those funds in commercial consumer
3 real estate and infrastructure investments and loans.
4 Fractionated realty purposes.
5 This can be used when the law changes -- and
6 Joe will talk about that -- to help finance those
7 purchases for individuals and tribes. It can be used for
8 development investment. Demand in savings deposits, on a
9 voluntary basis. Checking and payment services.
10 And again, I want to emphasize, again, the
11 acceptance of voluntary tribal deposits. Right now, we
12 can't do that for individuals. We can't even accept the
13 gambling money that goes to minor accounts. And this is a
14 policy, not a law.
15 But that's a legitimate, in my view, at
16 least, a legitimate activity of the American Indians, and
17 we ought to be able to accept voluntary deposits in that
18 respect from all Indian activities. And we would, in
19 partial recompense from past laws, allow these savings to
20 be tax fee. So, a voluntary account could be tax free,
21 whether it comes from the tribe or the individual. And
22 finally, acceptance of retirement accounts, which we do
23 not now have.
24 These are just some of the new products that
25 would come under Phase I of the Plan. Phase II of the

Plan is a more remote prospect, and I will come back and talk about that a little bit later.

But under Phase II, a full banking service unit is possible. It brings in $500 million in equity capital, and we will talk about how that gets there, and up to $5 billion in other loans to American Indians and their communities.

To finish up very quickly here, the organizational structure, which you can't read, is really an organizational structure to handle the three business lines that I mentioned earlier: Trust Resources Management, Trust Funds Management, and the Land Titles and Records system, plus Archiving.

The other two units there you see on the board, one is for technical support, which is the technology center, essentially, and controls, and the other is an audit and compliance function. We intend to continue the activities of the BLM and the MMS under an outsourcing arrangement, which would come under the audit and compliance section of this new organization.

In my view, and in the view of the outside contractor who has looked at this, while there are some operational difficulties, and some audit difficulties, MMS seems to be spending enough time and resources to check those resources.

1 What we normally have there is not the
2 difficulties attributed to MMS, but an ownership problem,
3 in terms of distributing that income, and those are where
4 most of our operational difficulties are coming from. So
5 they would continue much as is, at least for the near
6 term.
7 We are going to skip here, I think, to the
8 next -- I'm going to close here with my original Strategic
9 Plan, which was this.
10 And these are still the eight activities
11 that were contained in my conceptual Strategic Plan,
12 which has been in this country since February of 1996,
13 and which has been the subject of at least twenty speeches
14 at various hearings over the course of the summer.
15 These are the technical system requirements
16 that are going to be needed, regardless of whether other
17 aspects of the Strategic Plan go forward.
18 And they are, the Trust Resource Asset
19 Management Delivery System, some of these are combined
20 into what is called a Trust Management System; Accounts
21 Receivable, which we do not now have on a consolidated
22 basis; a Payments system, particularly IIM and tribal
23 accounting; and Land Titles and Records recordation, a new
24 certification system; General Ledger; Technical Services;
25 the National Archives, importantly, to keep track of our

records, and to me, that's the key; and then finally, a Risk Management, or audit system.

The organizational structure that I have recommended was in the original Plan, as well. I have now made it more specific. And if you back up a little, Fred, the other items there, fractionated interests, the clean up efforts will be discussed, or have been discussed.

And then finally, the architecture that will support all this, which is the next slide, will be discussed in much more detail, in terms of the system's architecture and how this computer system will work, by Donna and Joe.

And finally, the Strategic Plan required me, as Special Trustee, to set a sunset date for my office, and I don't -- my office is set up with an oversight responsibility. I have said up front that I don't believe that I, or anyone else, can implement this Plan in an oversight role.

So, I would intend to personally leave the office 30 days after this is turned over to a manager, despite the organization, who will be in charge of implementing it in a direct way. And my staff, which is four, two of which are here, will be transferred to the new organization temporarily, to help in the implementation of the Plan.

The other unit that reports to me, Office of Trust Funds Management, is my only direct authority, and that will be transferred to the new structure, as well.

So, my office sunsets 30 days after the Congress deals with this, one way or the other, or at least that's my recommendation.

And that concludes my first overview. I will come back and talk about the development bank after the conclusion of Donna's presentation and Joe's presentation. So, Donna, would you like to --

MS. ERWIN: I'm trying to get wired here. There is not a lot of room under my clothes to stuff anything extra. I've got plenty of pounds under there.

Good morning. I'm really glad everyone is here, and I want you to understand, we really want your feedback, comments, on all of this that's going on.

My part of this is really concentrating on the accounting, the auditing, the rumors of why we are causing chaos out in the field, and I think after you hear this, maybe you'll have a better understanding.

But as we said, questions are really welcomed, so let's get started here. We lost our pointer through all of these, somewhere, but basically, we have two functions.

We have heard this, that the contractor we

have out, Macro, who many of you have spoken with, are coming back with the same conclusions as the auditors that we have had for two years. We had our balance sheet out last year, and our financial audit, compliance audit this year, and they are all coming back with the same things we are hearing over and over.

Basically, what we are hearing is that Land Titles, Records and Ownership -- LTRO -- that group has to do with things that are land centric; concerning the land, itself. Who owns it, the historic chain of title on it, and that's good information. Joe is going to get into this side of this, here in a little while.

But what I want to concentrate on is the trust asset management, and why do we say, move all of trust asset management over. And hopefully, you will start to see how this takes shape.

And this does not mean I want to -- we have heard, we have read the newspaper articles, after we have been out, saying, "Well, 107 jobs are going to be lost in Albuquerque, they are all moving to Denver, people across the country are moving." That's not what Paul has said in his Plan.

What he is stressing is that what we need is the people out there in the field, performing. That's the only people that knows land. Knows the lease. You've got

to be out there to understand that.

My background is trust. We hear a lot of comments, like, "You all are making us into a bank, you don't care what we are doing, you all don't understand, this is a business." It is both.

And I think if any of you haven't visited a private sector trust department, it's really a good idea to just stop in and say, "Show me what you're doing out there."

Because I came to the private sector trust, and we did a lot of -- I mean, you cared about your customers. You became very close to your customers. You had to know about their background, their history, and everything about them. You managed buildings, and you went out and put on your hard hat, and you went out and operated and managed oil and gas wells, and the next day, you were out interviewing nursing homes, where people needed to be, and following up on how they were doing, and balancing checkbooks.

So there is a lot involved in trust and fiduciary activities. You have to care. I am Creek Indian. I come from Oklahoma. When I go home, I very much care about what's going on with the people, and that's what we have to do. We have got to merge all this together.

We have to care that the individuals, and the tribes, are getting what they need, but we also have to care that the accounting and the auditing is happening. So, that's sort of where this process comes in.

Trust Asset Management is people centric, and that's what we just discussed. We care about the people and the individuals and the tribes. The account holders that are out there.

It is confidential information. This is not information that you can walk into the courthouse or anywhere else and see. It is very confidential. You start merging the two, and you can see where you start to get a problem.

Some things are public, for leasing purposes, but some things are very confidential, and the asset management side, those assets are very important to all of us. Whether they are land, whether it is grazing, whether you're out there leasing, who you're leasing to, are you leasing property, the accounts receivable, we will show you how that's very intertwined here.

It is a snapshot in time. When you're looking at the asset management, you want to know what's going on, what do you own right at that time. You want to know who has owned it previously, and as we said, we will go back over to the other side, which Joe will discuss.

And it is financial. That side of it deals with money. It deals with financial, and even if you have a nonleased piece of property, financially you need to know, business practicewise, am I leasing that for the best price? I don't want to be depleting those assets quicker than I should have, and am I getting a fair price for them?

You should be able to see a statement of assets and your transactions. What's happening right now, and I come from private sector trust, and what's happening right now, if you want know, what do I own in oil and gas, you have to go one place. If you want to know what you own in financial assets, you go somewhere else. And land, somewhere else. You cannot get that all in one statement.

What you deserve out there is to be able to see, here are my financial transactions, here's the lease, and the money I received this month, or this quarter, however you want to see it, what did I receive it from, and right back of that, it shows you all your list of assets, and how much income you're receiving on it. That needs to be not only for the tribes, but the individuals.

And then we need to worry about collecting and disbursing quickly, and we will talk about lock boxes here in a minute. But we need to be collecting quicker, and putting that money to work.

It doesn't matter if someone is ill, it doesn't matter if someone is on vacation, that money needs to be working for you the minute it is due to be received, not being shuffled around, trying to figure out whose desk it belongs on.

And then asset ticklers. That's the offset to accounts receivable, when you talk in terms -- you'll hear "accounts receivable." It's a big term. We do not have an accounts receivable. That is true.

Now, fiduciary and trust, those are called asset ticklers, and there's sort of a financial differentiation there, because when you talk about an accounts receivable, you're thinking about a dual entry general ledger. And that's really not what you normally see in trust departments, when you see fiduciary work.

What you're seeing in fiduciary work is the assets are all the investments you own, and your liabilities are the people that you owe them to. And then those should always balance. So, as a result, you don't have that standard dual entry general ledger.

So, we are talking about ticklers reminding us to do things. Following up when they are past due. And then the investment side, and I think we will get into that, too; what needs to be more equitable in the way we are investing.

Paul touched on the prudent investor rule. I grew up in trust, always saying, "Prudent man rule," but now, it's really a prudent investor, because it expands what you can do. Not just what would you do, the prudent man says, "What would you do with your own money."

A prudent investor rule, you have to think more about this as ongoing, as we said. If something is not leased -- maybe it is property that is not leased -- are you getting the best value? So, you have to take all of that into consideration.

If you're buying a bond, or a treasury note, you have to know, what is going to be the total return? You can't buy it and hope it gets called on this date, you have to make sure, what is going to be your total yield and your total return, once you receive the money for that asset?

And this is sort of -- we say, "IIM trust asset management system." An IIM application, right now, is the system we have out there that is taking care of your holdings, your leases, everything that we are putting up out there, and part of that system is the IIM system, part of it is a people and an ownership.

We have areas where we have been out, auditing, looking at, where the people system, I was told, we are trying to get it updated, and we are up to 1952.

We can't go at that pace. We have got to accelerate how we are going to bring these things up to date.

So, right now, it does not meet commercial standards. The technology is far outdated. We are always saying, when we are out here, that's not pointing fingers at BIA and saying, "You're doing a horrible job." It's saying, the funding has not been there, the resources, the personnel, the technology, has just not been there, and it has not been there for so long, you have got to have a plan to bring it up to date, and bring it up to date now, and move forward.

Redesign is expensive and cumbersome. If we try to redesign that existing system -- and that's the reason we are going to talk about that big chart you saw of Paul's just a moment ago -- it does not integrate with LRIS.

We cannot -- and we have proven this with our audits going out, and also, with Macros out there, our contractor, they will go pull something from one system and say, "This is from the Land Titles and Records, this is the leaseholdings," and we will have one, on one system, and 30 or 40 on another. And we have examples, over and over, of those.

We have got to be able to reconcile those things to each other. It does not -- none of these

systems out there, they do not fulfill the Secretary's trust responsibility.

And there are commercial trust asset management systems that are available, and more cost effective, and we will explain those in a minute, that are comprehensive systems.

A comprehensive system means you have Trust Resources Management, a leasing and tickler system. That does not mean you pull it into one central, focal point.

If you are out in the field and you lease something, you should be able to lease it right there. You should be able to image it right on the spot, so everyone can see what's going on.

It goes onto the system. It very easily goes onto the system in a formatted screen, so that that person who leases actually fills in the terms of the lease, so immediately, everyone knows it is there. That creates the accounts receivable, or the tickler, so that you know, now, when it is due, and so you start looking for that money.

The collections, accounting and investment disbursements, when we talk about collections, if you pay a mortgage payment today, if you pay your gasoline credit card, your MasterCard, your American Express, you send those to a P.O. box that's a bank.

1 That bank has a section that does nothing
2 except lock boxes. And you say, "What does that mean?"
3 It means a post office box, all the checks coming into
4 this one place, they actually open them, deposit them,
5 right there on the spot, and then they electronically
6 transmit the information.
7 So, you know the money is there. If your
8 realty person is out, your collection person is out, it
9 doesn't sit there overnight. You are sure it is going to
10 be moved into a deposit.
11 We are working with Anna, right now, with
12 lock boxes. They are looking at setting up lock boxes at
13 Flathead. So, these things, what we found throughout the
14 country, is there are three or four out there, but what
15 happens to the three or four out there, they are being
16 handled differently.
17 One of them says, "If you don't know where
18 this check goes, send it to us." Well, that's not the
19 purpose. The purpose is to get it into the bank and make
20 it start earning interest for you right then.
21 So, we are just trying to speed up that
22 process, so the customer service people are not there
23 saying, "Excuse me, I have to leave, I have to go make a
24 deposit. Excuse me, I have to get all these accounting
25 entries in, I can't handle what you need, and I can't get

you the check right now."

We want those people to be customer service oriented. Information at their fingertips, no matter where they are, and be able to help the customer. And that's the big important push here.

We need a link, as we said. We put that lease in, everyone sees it, no matter where you are. I don't care if you're a forester, I don't care if you're an IIM, if you're a tribe, you can see your tribe's leases, you can see the lease, itself, on an image system, and also, you can know when it is due. So, you can know all that information.

So we need to know that all of the records, and all those ticklers and those leases we are accounting for, there is not one here, and 40 over here. We need to know that they bump up against each other on a periodic basis, and make sure they are in sync with each other; reconciled.

As we mentioned earlier, all the assets, whether you are an individual or a tribe, you need to see your oil, your gas, your mineral, your land holdings, your financial investments, your Treasuries. Whatever you have, you need to be able to see it, every month, or every time you get a statement.

And that includes the decimal ownership. If

you own this much of that entire lease, you need to make sure that that's what you're getting. So you'll see, this is what came in on this lease, this is my percentage, so you can literally calculate it, if you want to sit down and do that.

Same thing with MMS. We have got to bump their files up to our files. And we are bumping our files to LTRO files. So everyone is in sync all the time, and we are not having that, "Who owns what?" if you ask one person, you know, one thing, and you get another answer somewhere else.

It includes mutual fund capabilities. You have heard some criticism on IIM, how do you calculate interest? You only calculate it once a month, but people are able to put their money in and out every day. We need a mutual fund type system, so we can calculate, what is your account worth every day. Daily, you need to know what your account is worth.

These are some sample statements. You are going to have to look at them more carefully in there, because they are going to get real small up here. I'm not going to go into detail, but I just wanted you to know, these things are available out there. These are standard.

And you can customize them. We can set out 12, or 20, and you can say, "This is the type of statement

I want. I want to see this type monthly, and this type annually." There are all kinds of combinations.

But I always quote, there is $10 trillion worth of land, assets, in trust, acros s the country, that the trust accountants handle. And as I told you, they are doing everything from paying electric bills, to checking out nursing homes.

And personally, when I was a trust administrator, I literally had people that didn't have a way to the doctor, and we would arrange it, even if we had to go out and drive them there.

So, you need to be very co nscious of your customer, but at the same time, we have got to be accountable. We have got to be able to tell them where their money is.

This would be a sample. This would actually tell you all of your accounts -- or I mean, all your transactions for the month, the quarter, however often you wanted them.

This is -- and you're going to have to look in your page. Like I say, we debated, do we put this up here? And I said, I want it up here, because I want it in the handout for you to see. This is a summary that tells you how much you received on each.

You would be able to get all of your assets,

and as we said, it doesn't matter if it is real estate, or a mineral interest, or an equity, a common stock, if you go to a prudent investor. Fixed income, it doesn't matter. These are reports.

These are oil and gas reports. You can get these on real estate. You can say, "Tell me one property," and you can look and see everyone that owns it. You can say, "Give me one property, one lease, one purchaser, one person who is leasing," however you want, and you can see everything that is concerned about that. And you can get an income and expense report. What's the expenses going out against my assets? What's the income? So you know, is this actual asset-making money.

On through here, you're just going to see additional things. Like if you wanted to just say, "Tell me all my Conoco payments," they would be able to tell you for what month, and it gives you everything. Taxes, deductions. What's the gross amount you received, and here is your share of that.

Other things, or same thing. You're just going to see more payments. What I'm trying to do here is just give you an idea of the types of reports you can get. This is just a sample, and this is a real small sample.

Here is what I want to talk about. How do we get to this? This is the Trust Development

Administration, or whatever it becomes. It is one central point out there. This point, as we said, someone comes in and they lease, and it does not matter if they are doing this at the Area, if they are doing it at the Agency, if they are doing it at the self-governance tribe.

No matter where that's happening, someone in the tribal office can also see it, and everyone else can also see what's going on in that account, if you have the authorization. Now, remember, it's security and password driven, but you can see all of this.

This is feeding back and forth to each of these, and as we said, you lease it -- let's say you're leasing it to a self-governance tribe. You lease that, it goes through, everyone knows that it is out there, whoever is going to be collecting knows it is out there.

We are not in favor of billing. Billing is sort of a very old-fashioned type way, very costly. You're printing, you're mailing.

What we are in favor of is, you do the lease, you create a coupon book, you send it out to that person, they come in, and if it doesn't come into the lock box, you know what didn't happen, because electronically, they are going to feed you out and say, "This person is ten days past due, this person is thirty days past due." You have people doing nothing but working those past dues

on a continual basis.

So it is going to come into the lock box, you're going to balance that against the same record, that record that was put in once, back with the lease. And so you're going to have the same thing. You're going to be able to deal with Treasury, MMS, BLM. You're going to be able to get all of this same information bouncing back and forth, and everyone sees it.

But it doesn't matter where you're doing it. If you're doing it at the tribe, the Agency, the field location, you can do this anywhere. But it is all the same information. Not three or four systems we are trying to reconcile.

Fair standard trust systems. Same thing as we just went through. There's an input point, includes the date of description, the ownership, the lease terms, creates the tickler right then, goes to the bank, the bank electronically sends it to the input point, and it goes right back to that same record that was created, no matter if it was created ten years ago, or yesterday.

These are things -- just pop through those -- these are things that come right out of the Office of the Comptroller of the Currency's handbook for fiduciaries. That is the trust bank examiners. Every private sector bank will go to these things, and this is

what they say every system must feature.

And this one is real important on the bottom, because if you happen to be an oil and gas tribe, or you have oil and gas interests, you'll know that coal steam gas is a pretty recent situation. So we did not have -- you do not want to go out and say, "How do I account for this?" Because everyone else is accounting for the same thing.

Same thing if you have CMOs. A lot of you in the tribes, you have those collateralized mortgage obligations, and those weren't investment interests for very many years. You shouldn't have to go out and create, "How do we account for those?"

You should be able to just -- this system, and everybody else, is going to share in the cost of bringing those systems up to date, that's utilizing those systems. And you become the users, saying, "Here is what I need."

In addition to this, the IIM system, and really, the tribal system, also, feature an automated clearing house, which means the way government employees get their checks, straight to the bank, same way Social Security, or people on Social Security actually receive theirs, recipients, and then you can transfer the same day.

We are doing a lot of this in Alaska, now, because it takes so long. And they are absolutely loving it. We are having to do a lot of it manually, but they are saying, it is such a difference in being able to get that money to their bank. So, we are doing a lot of that. It should be an automatic thing that happens.

We talked about mutual fund accounting, which would include checking, savings, voluntary deposits, and ATM access, if you are not a controlled or supervised account, which means minor accounts, or non compos mentis.

And then telephone access to your account information. You can call in, punch the buttons, and get the information without talking to someone. Or immediately press a zero, and talk to a person.

Paul touched on the IIM, and it is a tribal/federal IIM allottee association group. We had a lot of people involved in that, including Realty personnel, superintendents, a lot of tribal leaders, and IIM allottee association participation.

And this team addressed ways to solve mostly the IIM, but as we learned, a lot of it overlaps. Concerned about not knowing what I own, as far as land, and as far as mineral interests. A lot of things that will just go hand-in-hand. You have to do, if you're going to do IIM, you will need to be improving both of

these.

And we have already been through the tribal meetings, and the recommendations were reviewed in January by this same group, and they prioritized them, as Paul mentioned, tribal, nonfederal, and IIM account holders. As you see, the same thing happened in every one. They had the same five concerns; they were just in a little bit different order.

These are audit findings that we have had for years and years. Cash out of balance. The general ledger posted to one system, didn't post to the other system. Now, that's a forced issue, but we still have lots of problems to clear up from the past.

We cleared a lot of these up. We now have line authority over the IIM checks, and we have cleared a lot of those up during that time period. They really have been working hard, working some overtime. We pulled in help for them, trying to get all of these types of things cleared up.

Improper amortization of premiums, and accretional discounts that have been out there for a long time. We have cleared most of those up on the tribal side. We are still trying to get those cleared up this year for the IIM pool.

Budget clearing accounts, which means sort

of, like, expense accounts. Money went into Treasury, it wasn't posted into the correct account, and it was posted into this clearing account. Those monies are still out there.

Inconsistent use of policies and procedures. Overdrafts being allowed. Paul mentioned the $42 million that we now have in overdrafts. So, we talked about why we are improving the IIM system and going to mutual funds.

Special deposit accounts. Outdated. We see money that goes into the special deposit accounts, and they go directly out, never flowing through anybody's account, to a third party. No authorization. No documentation. Money sitting in those accounts for long periods of time. Huge balances in those that we need to deal with.

And then, lack of the comprehensive policies and procedures. That's one thing that we are working on this year, that we have some funding for.

And then BIA controls. The reason you are seeing these is because the BIA is performing, right now, our data function, and in the audit, both last year and this year, we got the disaster recovery. Didn't have the proper disaster recovery. Passwords were not changed when people left, still had access to the systems, and when they update systems, they are not testing for those that

have been on them. So, that's been an ongoing problem.

I'm not going to go through all of these; you can read them. These are the problems. As we said, when we put in a new tribal system, we are now having to go out, clean up accounts.

Anna, we have been working with their accounts, their jacket files. Found there's about four times as many files as there are accounts. A lot of accounts have not been closed. A lot of accounts that have superintendent holds, with no documentation.

People that are past 18, but did not receive their money. Policies that were purchased for minors' accounts, using minors' funds, and some of them lapsed because the company was sold. They didn't get a bill, they didn't pay them, and they lapsed.

Some of them were for 65 years, 100 years. Not a prudent investment. We found them in file drawers out at one of the Agencies.

As we said, when you look at a file -- when you turn 18, or when this minor turns 18, he is entitled to know, he or she, where that money went. I don't care if you spent it on clothes, you need receipts. If you spent it on doctors, dentists, eyeglasses, prom dresses, that person -- and the same thing for non compos mentis. Those people are entitled to know where every cent of

1 their money went.
2 There's not receipts documenting why we are
3 holding the accounts, why we declared people incompetent,
4 when we have reviewed them. So, these inconsistent
5 management codes -- the stats we give you are as good as
6 the management codes, and they are all used differently
7 across the Bureau. And we have a big, huge table that
8 tells us what Agency uses them how.
9 As we said, a number of statements going to
10 the superintendent. Auditwise, you never want a statement
11 going to someone who has control of the money. If
12 something is going on out there, and the money is going
13 somewhere else, and he is getting the statement, there is
14 no cross-check there. So, you don't want those statements
15 going to superintendents.
16 Loan programs, for once the loan is paid
17 off, the money is still going to the tribe, and then the
18 tribe was forwarding it, we hope. There was no
19 documentation.
20 As we said, closed accounts, addresses
21 unknown. Not properly coded, so we could not even find --
22 we didn't even know these people were lost, to be looking
23 for them. So, these things go on and on. We have lists
24 and lists of these.
25 Look at the tribal side. OIG has examined

1 two accounts. Compliance was not covered in the past
2 reconciliation, except for five pilot tribes. So, if you
3 have a use and distribution plan, or if you have a public
4 law that says you may not invade principal -- we have one
5 account that was invaded $4 million. You could only use
6 50 percent of the income. The other was to be retained.
7 But it was still spent, over and above what
8 it should. So they just started their review, the
9 compliance review. We have got to do a compliance review,
10 to see how many more of these accounts we have out there,
11 that are not being properly handled.
12 We have one account where the per capita
13 payment, 50 percent was to go to the parent, 50 percent to
14 the IIM account, and what happened was when the person
15 turned 18, they walked in and said, "Where's the other 50
16 percent of my mother" -- I mean, "my money?" Well,
17 basically, that's what happened. The other 50 percent was
18 going to the birth mother, and she was adopted at age
19 three.
20 These are the things we are finding in
21 auditing, and that's the reason we are so insistent that
22 we see all the papers when we're doing disbursements, now.
23 Same thing. This talks about how many
24 accounts are going to the superintendent directly, and
25 why. We don't know. We don't know why there are holds on

them. Not proper documentation. Why we are not sending things on probates to executors or administrators, or minors to guardians. Same thing.

These are the areas we are working on. The first one you saw was Juneau, Aberdeen, Billings, Phoenix. Right now are in process.

And Paul quoted these figures. You will see them again. Same things. That's the reason we are saying, the magnitude of this problem, when you see 300,000 active accounts, and it is several Agencies, we are seeing three to four times that in jacket files out there, that aren't stored properly, or haven't been shipped, or they are just mingled in, commingled in with everything else, you can imagine how many accounts and jacket folders need to be gone through, and made sure that the proper documentation is there. You can't just put a hold on someone's account without justifying, to someone, why.

We suggested a committee for supervised accounts that would, say, at least have tribal representation, BIA representation, social service, OTFM, so that you have a committee that says, "Yes, we see why you want to have this person's account on hold, but you can only have it on hold for six months, and then it needs to be reviewed, or you need to start some legal

proceedings."

Same situation is that, you know, you can't -- we have a lot of accounts. Thousands and thousands, and we are talking 40,000 or 50,000 accounts where there was a debt that needed to be repaid.

Well, they put them on hold, but no one goes back to review them, to see, when it is paid, and when can I take it off of hold.

Right now, we are going through that process, trying to clear up all of those types of things that are out there.

So, this is the reason the investment, the huge investment needs to be made, so you can start at square one, with good records, and move forward.

Okay. Thank you.

MR. CHRISTIE: What I'm going to cover -- and by the way, good morning. What I'm going to cover is, the Land Titles and Records Office, National Archive System, and fractionated heirship, and I'm going to try to move through this as expeditiously as possible.

As Donna said, the LTRO is land centric. It is centered around the land. It is public information. It provides a historic chain of title. It is nonfinancial in nature. And peculiar to the federal government's LTRO, it provides an abstract title opinion, and is also a

mapping source.

And I say peculiar to the federal government's, because if you go out on a public land titles situation, you'll get the historic chain of the title, but you'll get an abstract from somewhere else, because you don't normally issue abstracts based upon your own information, and you don't go in and issue a title opinion on your own information. Those are inherently conflicts of interest.

As we look at what needs to be done and brought up to commercial standards of all the system, the LTRO system is not our first priority. The Trust Asset Management System is our first priority, because there's where most of the problems and the errors are, and it needs to be immediately fixed in order to stop the bleeding of Indian trust assets.

We believe that based upon the review that we have done, that the Land Titles and Records Office is adequate; that Land Titles and Records is, per function, adequate over the short-term, over the next two to three years, and that we can go ahead and move along with the same system we have got. That gives us time, then, to address the Trust Asset Management System, and get that into place. This system does need to be overhauled, but we can use it for up to three years.

The second thing that we must, in the short term, also focus on is trying to reduce the probate backlogs. They must be cleaned up. You can't change the title on the land, and distribute it to the correct owners, until the probates have been done, and the new owners have been logged into and put on the system. The ownership system must be accurate and up-to-date, and it must be timely.

When we ran, or the contractor ran a comparison test between the LTRO and the IRMS system, for one individual up in the Billings area, the LTRO said that that person had ownership in one tract of land.

The IRMS system said that that same person had ownership in over 30 pieces of land. Which one was right? We don't know, because the last entry on both systems was 1992. So, we must get the ownership up, and it must be accurate, and it must be timely.

Next, it must be integrated with the new Trust Asset Management System, which means that, as Donna was saying, you've got to take the LTRO, and you've got to take the Trust Asset Management System, and you've got to bump them together on a weekly, daily, monthly basis, and continually audit the two systems, to make sure that they reflect the accurate information.

Now, let's turn our attention to the

National Indian Fiduciary Records Center. The goal of this is to provide full documentation for trust transactions, from the encumbrance of the asset to the disbursement of the funds to the owners.

This essentially says, from the moment you've got that asset, you've got it under lease, that all of the records associated with that lease need to be kept all the way through to the point that you've actually disbursed the funds.

That Treasury check, or that EFT confirmation, needs to be kept, so that at any point in time, somebody that wants to come in, some owner, or some person that has a part of that ownership, can come in and see all of the documentation associated with that lease, and the work flow process through the life of that lease. And that they can come in 20 years later, and audit the same process, and come up with the same conclusions.

Secondly is to provide a secure storage of the original trust records into perpetuity. One of the things that we found out in the tribal reconciliation is that leases were being destroyed at the Federal Records Center. You would think that this would be a permanent and secure storage, but based upon their own methodologies and their own regulations, they were taking leases and destroying them. There is no way, then, that you can go

1 back and recreate that lease, or post-audit that lease.
2 Thirdly is to provide electronic images for
3 all documentation and research purposes, and what we are
4 saying here is, we need to get into the new world of
5 information. Not only do we have to keep the hard source
6 copy of that lease, but we need to be imaging that lease,
7 and then tracking that lease through the imaging process,
8 so you can come in, pull it up on a computer, see it,
9 review it, print it out, and be able to audit that lease
10 based upon the electronic images.
11 The objective of the Plan is to provide
12 consolidated facilities for trust records management
13 function. This means that we would separate the
14 difference between an operational record, and a storagable
15 record.
16 If you've got a lease, and it is currently
17 an active lease, that lease needs to reside at the
18 location where that lease was created, whether that's an
19 Agency, tribe, or Area office. And it needs to stay there
20 as long as that is an active lease.
21 But the moment that lease becomes inactive,
22 the term has expired, then that lease, then, needs to be
23 transferred to a storage facility, so it can be indexed
24 and logged in, and properly stored, so that in the future,
25 when somebody wants to come in and do research, that it's

there available for the research to be performed.

We also need to move to a paperless trust system, including the records management system. The proposal is to establish one center to house all records that support the receipt, distribution, investment, and disbursement of Indian trust funds.

What does a record look like? These are the authorizations for the use and/or extraction of the natural resources from Indian trust lands. It is production documentation. It is income collection documentation. It is income distribution documentation. And it is investment documentation, and disbursement documentation.

All of the documents related to these functions must be kept in a secured facility, and must be kept in perpetuity.

Now, let's look at who currently possesses these records, and you'll see that they are strung, as my daddy used to say back in Oklahoma, they are strung across all of hell and half of Georgia.

Bureau of Indian Affairs has them, the Office of the Special Trustee, Indian tribes, MMS, BLM, U.S. Geological Survey, Treasury, Federal Records Center, Archives, General Services Administration. These are the current people who are in possession of the records. If

you want to track down a record, you may have to go to any or all of these.

Now, what are the importance of the records? The records prove the basis for, and the accuracy of the federal government's management of the trust resource and income belonging to Indian tribes and individuals. These records are extremely important.

And these records are also the essential element on which an audit is based. You can't do an audit if you don't have the records. You can't prove that you did what you were supposed to do, if you don't have the records; and more important, you can't prove that the federal government didn't do what they were supposed to do, if you don't have the records. So, the records cut both ways.

So, I would submit to you that if the federal government is not in a position, or does not want to carry out its trust responsibility to Indian tribes, there is no way that you can prove that it didn't, if the records don't exist.

The problem: The reconciliation project disclosed records were missing. $2.4 billion worth of records we couldn't find or locate. That records were destroyed. That they were unorganized, they were in multiple locations. The importance was not defined to the

1 people who were actually trying to keep the records.
2 Labeling was not standardized. And there was an unfocused
3 management function in terms of records management.
4 Here are the people who originate the
5 records. As you can see, they are originated by seven
6 different groups.
7 Now, here's what we think needs to be done.
8 We need to create a formal system for records management.
9 That means that we need to hire records people, we need to
10 train them, we need to audit them, we need to monitor
11 them, we need to make sure that they know what and how
12 they are to perform their job.
13 And the reason we bring this up is, there
14 have been several audits done by Fed Sim and by NARA, of
15 the Bureau's records management system, and they said it
16 is archaic, it is deficient, it does not meet the
17 standards.
18 The Bureau undertook a records management
19 improvement project, and they estimated in the late 1980s,
20 that they would need about $20 million. The Bureau came
21 up with $2 million.
22 So they hired records people at the Area
23 offices, and at the central office, and when the RIF was
24 done in 1996, everyone in the central office was RIF'd
25 out, and all but four of the records officers out in the

1 Area offices were RIF'd out. So, their management
2 function, now, is in greater shambles than it was in the
3 late 1980s.
4 We need to identify records that are in high
5 jeopardy, and secure them. If you look at the stand out
6 there, that we have got outside, the display, what you'll
7 see is typical record management practices out in the
8 Areas and Agencies.
9 Now, those records were part of the Fed Sim
10 review, the pictures out there. These are not pictures
11 that I came up with. These were pictures that were taken
12 of the Fed Sim review that went out to the Areas and to
13 the Agencies, saw the problems that the Bureau was having,
14 took pictures of them, bought them back, and gave them to
15 the people in Washington, D.C.
16 We found them in a desk. They were not made
17 part of the official record. They were not made part of
18 the Fed Sim report. We sent them out, and had them done,
19 and we are displaying them.
20 Thirdly, we need to consolidate all
21 nonoperational trust records into the NIFRC. Again, the
22 storagable records, they need to be moved to a central
23 location, index stored, so that they are there for
24 research purposes.
25 And we need to ensure the security of the

operational trust records -- these are the records that are still out there at the Agency, still out there at the Area -- and make sure those records are being kept properly, that they are being cared for, and that they are not in jeopardy from immediate danger of water, mildew, rats, etc.

Now, let's turn our attention, briefly, to what we talked about as the paperless society. And what we are talking about here is an electronic archival system. What we propose is to electronically image trust documents at the point of origin to support the operation of the Trust Asset Management System, which would give us a permanent image of the trust record and ensure us availability and access to the records.

Here is what I'm talking about. At the point in time that a lease is issued and signed off on, that lease would be electronically imaged. We now take that lease and we put it into the file. All future action that's done on that lease will be done electronically.

When the payment comes into the lock box, and that payment comes in and hits, a copy of that payment is imaged and electronically linked to that lease.

If a payment is a partial payment, and we have to, through the tickler system, send out a notice of nonpayment, that notice would be electronically imaged and

attached to that lease.

So that over the course of the life of that lease, when you came in, in year one, year two, year five, or year ten, you would be able to call up that lease and see all of the actions that have occurred in relation to that lease, because the lease would be indexed so that all of the actions occurring would be electronically linked.

The Trustee needs a system that will capture documents at the point of origin; at the Agency, at the tribe, at the Area office. It will create an index for future retrieval, and that's what I was talking about. All of the subsequent work flow processes would be linked to that lease, and attached to that lease.

It would store documents, and all related supporting documentation, in a central repository. Again, this is at the point of the record, the permanent record, becoming a storagable record. The operational document would still stay at the Area or the Agency or the tribe, until that lease becomes a storagable lease.

It would support access to any approved user, so that if you've got an Agency that's operating the Trust Asset Management System, and you've got the tribe sitting over here, and the tribe wants to be able to look at their leases, all they have got to do is go to their terminal, pull those leases up, and see everything that's

occurred to them, because they would have access to their own leases.

The imaging archival system requirements: You need an integrated imaging and computer output to laser disc system. You would need point-to-point input and retrieval of documents. You would need high volume centralized archiving of images. You would need an automated document indexing system. And you'd need multi-level security and control, and it needs to be integrated with other applications.

Again, here is what our architecture would look like. You would input the lease at any of these locations, the lease would be imaged, and the hard copy would stay at the point of imaging. The image would then be sent through the Trust Development Administration, and a copy of it, on laser disc, kept over here at the National Archive System. Again, this is the image. The original stays at the location of input.

If the tribe needs to have access to its images, it goes through this system and pulls them up. If it wants to print them out, it can print them out. It can see the whole work flow process associated with that lease. And you do that through the multi-level security process.

And so, at any point in time, those that

have the right to see those documents, have access to those documents, along with that office that is inputting and operating that document. And the original source document, the active lease, stays at the point that it was inputted, and put into the system.

The key benefits: This allows the trustee to track Trust Asset Management actions; the lease, the sale, and any subsequent actions that impact that lease. It ties all the documents related to those actions together. It allows the trustee to capture electronic images of all the trust documents, required to operate a Trust Asset Management System, and it supports the audit process.

Now, let's talk a little bit about "the problem." Most of the problems that we have, in terms of trust asset management, investments, distribution, IIM, are related to what is known as fractionated heirship. Fractionated heirship is not a major problem along the East Coast; it is a major problem to those tribes who were impacted by the General Allotment Act.

Fractionated interest essentially is, tenancy in common, which means that it is an undivided interest. So, if you've got 459 owners of a 40-acre tract, and you walk out there and you take a teaspoon, and you pick a teaspoon of that dirt up, you, in essence, have

459 owners of that teaspoon of dirt that you've got, because it is undivided interest.

This was started by the General Allotment Act of 1887. It was a division of tribal lands into individual allotments, and from 1887 to 1934, there was a loss of over 100 million acres of Indian land, because it went from trust into fee, and lost to Indian people and to Indian tribes.

The Indian Reorganization Act of 1934 halted the allotment process, and pushed the trust extension over those allotments into the future.

This is a statement by John Collier, who was commissioner in 1934, when he was pushing for the passage of the Indian Reorganization Act. He said, "The Indian Bureau's costs must rise as the allotted lands pass to the heirship class. The multiplication of the individual paternalistic actions by the Indian Service must grow. Such has been the record, and such will be unless the government, in impatience or despair, shall summarily retreat from a hopeless situation, abandoning the victims of its allotment system. The alternative will be to apply a constructive remedy, as proposed by this present bill."

What we found is even though he found this would be a solution to the allotment problem, it, in essence, was not a solution to the allotment problem. The

multiplication of owners continued to occur as Indians tend to die intestate, and have large families. The numerator/denominator is now up to 26 digits, and growing.

The next time that the federal government tried to address the fractionated heirship problem from 1934, was all the way up to 1983, with the passage of the Indian Land Consolidation Act.

Section 207 of that Act said they could escheat any interest that is two percent, or less, of a tract, and had an income of less than $100 the preceeding year, and that upon the death of that owner, it would escheat to the Tribe.

That was challenged in court, but before the challenge, which was finally in the Supreme Court -- it was Hodel vs. Irving -- before that challenge could be ruled upon by the Supreme Court, the Congress came back in and amended it.

What they did is they amended Section 207 in 1984, and it says, instead of looking back one year, let's look back five years on the income. It allows the devise to people who were already co-owners in the same parcel. So if you were one of the 459 owners of that 40-acre tract, the person could devise that to you. They could convey it, or they could sell it, or whatever. But you would already be a co-owner.

Now, I've got land, myself, but my kids are not part of the co-owners, because I haven't passed away yet. They are not co-owners, so in this case here, my kids wouldn't be able to take -- wouldn't be able to be devised into my ownership. But if my third cousin, who was a co-owner with me, if I wanted to give it to him, instead of my kids, then I could do that.

It also authorized tribes to develop tribal codes to govern the disposition of fractional interest. In essence, what the Congress said was, "This is really a major problem, let's throw it over and let the tribes handle it, instead of the federal government." And this court, this one, this amendment, was challenged by Youpee.

Well, we found out that Hodel vs. Irving said, "Hey, this is an illegal taking," and they ruled it unconstitutional. We just recently got the ruling from Babbitt vs. Youpee, and it says, basically, this: 207 still trades on the income generated from the land, not on the value of the parcel. It's been ruled as an unconstitutional taking.

You can't look at how much income is generated, or how little income is generated. You have to look at the real value of the land, not what the income is.

It says 207 severely restricts the right of

an individual to direct descent of property, which means that unless my kids were already a co-owner, I couldn't pass it on to my kids, and it is highly unlikely that your kids would already be a co-owner of something that you already own.

And then, thirdly, that the tribal codes, as called for in the Amendment, have not yet been developed by tribes. So, again, this was ruled as an unconstitutional taking.

Now, let's look at some of the problems for fractionated lands. Let me back up just a second. Yes, it was ruled unconstitutional, but between the time that it was challenged, and the time that we got the ruling, there have been over 50,000 -- somewhere around 50,000, 55,000, pieces of escheated land that has gone through the system.

Now, with the declaration that this is unconstitutional, not only does the current workload in Realty and the LTRO offices have to continue with the current probate backlogs of almost two years, but now they are going to have to go back and take these 50,000 interests, 50,000 to 55,000 interests, and redo those in line with the Supreme Court ruling.

So, as you can see, it is going to create a horrendous backlog possibility there, and really needs to

be looked at.

Now, let's look at the problems that come from fractionated lands. First of all, it inhibits the owner's highest and best usage of the land. When you have 459 owners of a 40-acre tract, none of those people are going to be able to utilize that piece of land to its highest and best use.

It delays funds getting to the owners, because as you go through having to calculate the differences in each of the ownerships, you're then having to distribute that, and it delays the funds getting through. It increases the costs of operations for the Trust Asset Management System, and the Land Titles and Records program.

Solutions: Well, one of the things that has been proposed, to solve this problem, is that we could set up a loan program of approximately $300 million, to go out and buy the land.

In order to do that, though, and stay in line with the Youpee decision, and the Hodel vs. Irving decision, you would have to purchase lands from willing sellers at the appraised value of the parcel. Not at how much income it generated, but at the appraised value of the parcel. We think you need to still give two percent interest to the holding to stop that.

And thirdly, it needs to be a revolving funds income to rebuy that land. In other words, as we buy out the two percent holds, we take back the interest generated from that, and utilize the buyback of the loan for more purchases, so that you can have a revolving funds that would eventually buy up all of this escheatable land.

And fourthly, you need to assist the tribes in developing land codes. If they want to go in and address this problem, and some tribes do, then they need to be assisted in developing these tribal codes.

And then fifthly, you need an appropriate notice for estate planning purposes. The owners of these lands need to be kept informed, so that they can go into the Realty office and make appropriate estate planning plans on what they want to do with their lands, and how they want it used.

Further, OST's recommendation is that individual co-owners should have a right to purchase this fractionated land, not just the tribes; that Indian land owners could create holding companies, so that they can work together to consolidate their ownership into a holding company, so that when you lease, you're only dealing with a holding company, not with 50 or 60 or 70 individuals.

Tribes should be eligible for federal loans,

for purposes of exercising purchases of tribal lands. These are all recommendations that we think need to be carried out.

Further, we believe that the tribes, rather than the federal government, should administer as much of the program as practicable, consistent with the principles of self-governance and self-determination. We believe that the tribes can do just as good a job in this area as the federal government.

And lastly, we believe that the legislation should not deny certain property ownership rights to individuals by limiting these individuals to purchase, sell and inherit fractionated interests. While certain restrictions may be necessary, the legislation should not substantially restrict the rights of individual American Indians.

This needs to be in the context that the American Indian individual should have the right to exercise their free rights of property ownership in a manner that they feel is necessary, and that they should have participation in the solving of the fractionated heirship problem.

Thank you.

MR. HOMAN: Fred, would you flip to the last chart? 105? Now 87? Yes. Thank you, Joe.

Just one little note on the fractionated heirship. The proposal you see there is a variation of what the Department of the Interior is considering at the present time, and it has its origin in a proposal that went out by the Bureau about two years ago, which received extensive consultation and input from the tribes, and the independent land consolidation groups.

My proposal differs -- well, first of all, that never got to the Congress. And the thing that has defeated any attempt to address the fractionated interests in the past has always been, like most other things, the money.

Joe indicated that it would cost about $300 million to purchase, at a fair market value, or appraised value, these land parcels. The Department submitted a proposal that involved only a $25 million fund to start the process, and even that was too much for the Administration's budget. So, it has never gotten to the Congress.

When the Youpee decision came down in January of this year, and the government, essentially, lost the Supreme Court case, a high priority got put on this, because obviously, we have to deal with the 5,000 or so cases that have been escheated since 1984, and we have come up with a new solution to this very old problem.

Now, I don't have the answer to that, and I looked at it last year, or the year before last. And what Joe has just indicated differs from what I think the Administration will propose, in a couple of important respects, and you should look into these. But essentially, I was the only individual in the government to adopt and recommend what the Indian Land Consolidation group will recommend.

The differences are twofold. One, this fractionation program, the escheat, if you will, takes land from an individual and gives it to a tribe. Not all individuals want that to happen.

Second, it allows this money -- loan money, investment money -- to go only to the Tribe to purchase this land back into trust. It gives no equal opportunity to an individual rancher, or Indian, that wants to expand his own property.

So the Indians, themselves, have suggested, and I endorse, and this plan endorses, that if monies are going to be allocated to this program, the grant program, they be allocated to individuals, individual allotment programs, or companies, not only corporations, in the same way, and give them an equal opportunity to buy.

The other major difference is the individual rights in terms of inheritance, and there are some

restrictive rules in terms of whether or not you can leave these parcels to your children, at all, or to a nonIndian, or to an Indian, a spouse who may be involved in another tribe, or a member of another tribe. The government would say, that's just a life interest, so it really prohibits individual Indian rights.

That is not something that was endorsed by the vast majority of the Indians in our first proposal, something I endorsed, and you'll see these issues going forward with or without my Plan this summer, because I think the Administration, now, with the Supreme Court decision, is compelled to come up with some proposed legal solution.

So, it takes the form you've just seen, or some other form. It will be up this summer, and the Congress will have its run at it, as well. And that concludes what is Phase I of the Strategic Plan, which is to fix the present system.

You may recall -- I'll harp back to the other mandate that was given to me by the law, which is to come up with a way to use the Indian trust monies, or government monies, to develop the Indian communities. And I'm only going to spend about five minutes with this, and I prefer that you read the rest.

But this is what's being called a

development structure, and it is being modeled after the Farm Credit system, which has served the American agriculture system since the 1930s.

That system presently has $11 billion in backing by the government, in capital, and another $80 billion worth of line, and it has been very successful in developing American agriculture over the last sixty years.

It is also modeled after the Federal Home Loan Bank system, which has similar numbers, and maybe even the same number.

So, looking at this balance sheet, at the organization, to say, how can you leverage the government's money up to something like five and a half billion dollars, it's this model over a ten year period.

It first starts on the right-hand side, with equity capital, and what we are proposing is that the government somehow provide $500 million in equity capital to start this process. If you get equity capital, then all banks, like the Farm Credit Bank, can leverage that capital by borrowing in the market up to, normally, ten times that amount. So, it would have that long-term benefit.

And other market instruments are backed by the full faith and credit of the United States, on the liability side, to the tune of $5.5 billion.

So, one of the big issues of this plan is -- and I admit this -- that if $500 million has to come from appropriated money, it is not going to happen. I don't think the Congress is going to do that. I don't think the Indian groups would risk putting $500 million here, and run the risk of it then being taken out of another Indian program.

So, that is an important issue, and I'm not naive, as some people have accused me of, of that particular error.

The other way, though -- there are two other ways, which are a little more practical. Number one, my advisory board, which consists of six tribal leaders and three financial people, has suggested that this might be used in settlement of some of the past transgressions coming out of the Arthur Anderson report.

The government has proposed legislation, and we will be finalizing that at the end of March, to pay for known errors coming out of the Arthur Anderson report.

What they haven't addressed, but we have, is how do you begin to pay for the global side, where we may have losses and liabilities to Indians, but we may not know which Indians because of our record system. And one way to do that is to make a generic -- a global settlement, for lack of a better word, to Indians as a

whole.

Now, this has been done in the past. After world War II, when we tried to compensate the Aleutian Island natives that had been relocated in World War II, and when we tried to compensate the Japanese-Americans who were incarcerated in the United States during World War II.

It includes a general settlement with the Native Americans in the Marshall Islands, when we used their islands for nuclear experiments and caused all sorts of human problems, in terms of cancer and other radioactive diseases. So it has precedent.

It might be used as part of a global settlement to develop, again, the Indian communities over a long period of time. Also, by putting it into a bank, you use some of it indirectly.

The Congress has always tended to develop things on an indirect basis through borrowing capacity. If I did this directly, you'd have to come up with $5.5 billion of appropriated funds, and again, that will not happen. But by starting small, and this is small by development bank standards, you can somehow leverage it up.

Now, the third thing, and I think the most practical way that you might get this money, is by taking

it out of other government sponsored enterprises that have matured and are successful.

Now, again the Farm Credit system is the example of that. As I said earlier, they have about $11 billion, $30 million of which has developed the American agriculture over the years.

But what has happened to the American agriculture, in terms of large corporate farming, is like all other companies. They are matured, and they are now able to market directly, in terms of fund-raising activities. They don't need a development bank. They don't need the commercial bank system, either. So they market directly to Wall Street, in terms of equity and those issues.

But the symbol of that, last year, the farm subsidies, they finally passed a law to phase those out over the next seven years.

So there will be less future use for banks, because they could direct that they invest "X" amount of money, $500 million, or whatever they determine is the appropriate amount in this thing. Or alternatively, they could just take that capital and relocate it into this thing.

The other aspect of it is that the federal Farm Credit system, and the other government sponsored

1 enterprises, also come in, in an indirect way, in the
2 federal government, through their U.S. Government
3 guarantees. So, indirect does have a budget impact.
4 But, again, you can take part of their
5 borrowing authority, and transfer to a bank , like this,
6 which would have as its central purpose the development of
7 the Indian reservations over the next 30 to 60 years. So,
8 there is that possibility.
9 I think that is somewhat realistic,
10 particularly if it is used in combination with a
11 settlement of some type. And if the court orders this,
12 then the government will have no choice.
13 And the fourth way that you get money like
14 this is through the judgment funds. The problem with the
15 court ordering it is, they would just order it, and then
16 the Secretary, or whoever is in charge of the allocation,
17 would take it out of another program. So, it may not be a
18 way any of us would like a court order done.
19 Now, if you're successful in organizing a
20 bank like this, as I said, this would be a successor to
21 Phase II. It doesn't need to happen. It is independent
22 from Phase I.
23 But it could be put under this same
24 administration, and essentially, the board of directors
25 here, like the other administration, would be run by a

1 five-man board, and a chief financial officer, and a chief
2 executive officer, reporting to the Congress.
3 The five-man, or -person board, would
4 consist of, as I said earlier, three Indians appointed by
5 the President, confirmed by the Senate, and two financial
6 types who would also be appointed by the President and
7 confirmed by the Senate.
8 That creates, on the asset side, several
9 different possibilities. Generally, it could be a full
10 service bank system that would accept both interest
11 deposits, as we do now, but also loan money. Not only to
12 the tribes themselves, but to individual Indians, for
13 consumer real estate and infrastructure purposes, as well
14 as commercial investments. And you could easily get to
15 four and a half billion dollars in that respect.
16 We had a visit the other day from a group
17 that was trying to come up with a bonding authority for
18 $800 million, to repair the Indian schools. A bank like
19 this could act as the underwriter for this bond,
20 indirectly back it with the full faith and credit of the
21 United States, and participate in the lending. And the
22 money would be a borrowing in anticipation of future
23 appropriations. If that didn't happen, it could come out
24 of the proceeds of a bank like this, as Congress so
25 directed.

So there are all sorts of economic and other opportunities available that development banks have used. And I only use the United States as precedent, but all other development banks in developing countries, which the United States essentially runs and supports, have as their basic premises these types of subsidized loans.

Now, why does this differ from a private sector bank? First of all, it is not intended to compete with the private sector. But as you know, some tribes have no access, in some areas of the country, to private sector banks.

Now, I was a private banker for 14 years, and I lived on or near a lot of reservations in the West, running those banks, and we would not lend to an Indian reservation unless we could be assured that we could realize on our collateral, and very few tribes would give us that opportunity.

We might, as we thought it appropriate, we might do it if a federal bank was the lead lender and could act as a buffer against those loans, take the long-term risk, which is the risk that private sector banking has.

Project loans sometimes take 30 to 50 years. No private bank is going to lend money over that period of time and take the political, socio-economic risks that are

attendant for the Indian communities, any more than they will to a developing country, anywhere else in the world. But they will take the short-term, if a government bank or anyone else comes in and takes the long-term risk. This is known as a key lending opportunity.

Now, as Joe indicated, the second part of this is to somehow deal with the fractionated realty holdings, and I've said earlier, you don't need a bank to do that, Congress could appropriate $300 million. They won't appropriate $25 million, nor will the Administration appropriate $25 million to deal with this issue, so that's stopped. That's as recently as last year.

So you can't solve the fractionated interest program, unless you expect the individual allottees to give their land away, which they could now, if they wanted to really give it to the tribe. They could do it right now.

But if you are going to, somehow, buy this stuff and solve this problem, you need money. This bank could do it indirectly by having -- it could buy it, and then re-sell it to the tribes. It could facilitate what we call -- it could facilitate the tribes by making self-defeating loans to the tribes, or the individual, to buy this land, and pay it off over a long-term real estate contract.

It could make a market in it. It could hold it for a while, until the market caught up, and then re-sell it. And it couldn't sell -- I mean, there would be restrictions on here, so if the bank got it, or if the bank had to foreclose, it would have to hold that property and re-sell it to an Indian, either an allottee or a member of the tribe. So, this is a way to fund programs like that.

Now, if you fund it in an individual program, and again, you take an allotment that is not likely to be there, if you're going to fund $500 million, you're not going to fund $25 million.

And finally, all of these banks give loans for direct investment. You have tribes with individuals in venture capital businesses, and existing businesses, and usually it is limited. In this case, it would be about $15 million out of the $500 million. But it could be used to invest, as I said earlier, in venture capital, in infrastructure, and project financing.

So, that's Phase II. And, again, I don't think -- there's very little prospect for that, unless somehow it is tied to the settlement of the past issues.

But I'm going to urge Congress, in April, to at least pass Phase I, whether it is under my plan or not, or whether it is organizationally structured. Like I

suggest, the basic premise here is that you must fix the system, and I believe the best way to get Congress to do that is to put it into a separate organization that will be responsible for implementing those programs.

I recognize there are all sorts of concerns, and alternatives to that, and they will certainly get their hearing in Congress, and with the BIA.

With that, I'm going to conclude our presentation, and we will take a short break. We want to hear from you. Given the number in the audience, we would like to get some of you back to your afternoon sessions here, so we will skip lunch and we will go through to about 1:00, and that should accommodate anyone who wishes to speak.

Give us a statement, for the record. And as I said earlier, this is a formal hearing. We have a court reporter here, and we intend to take the testimony. We will review the transcripts and make any adjustments to our plan that we feel necessary.

And then, along with the Plan, when it goes to the Secretary and the Congress in April, will be this whole transcript, for anyone who cares to comment.

So, why don't we plan -- it is 11:00, by my watch. Why don't we plan to be back at 11:15, and we will resume the session.

(Whereupon a recess was held from 11:00 A.M. until 11:15 A.M.)

MR. HOMAN: This part of the session is a public session, and it is open for any comments that anyone in the room cares to make.

If you wish to make a comment, please step to the microphone, give us your organization and tribe, if appropriate, and we will record your comments, suggestions, opinions, for the record. And as I indicated earlier, it will be available in a transcript that we are doing for all the hearings, which will be publicly released when we get them all compiled. Probably in early or mid April.

So, with that, I'll sit down, and who would like to go first? Sir.

MR. GLEASON: I'm Steve Gleason with the Mississippi Choctaws. I have a somewhat checkered past, which Joe Christie can comment to, as far as being with the Department of the Interior in a prior life, before going with the Tribe, and a number of my questions come from my background of working with the Department of the Interior.

First of all, I'd like to commend you, Mr. Homan, as well as your entire agency, as far as

presenting the issues, and presenting what a sad situation it really is, with regard to Trust Funds Management. Overall, I think this is a most comprehensive picture of the problems and the issues, and a potential solution.

From a technical standpoint, I don't have anything to say that is critical of the technical solutions. My questions revolve around more of a context for it, and some other specific questions.

First of all, the Strategic Plan that you present basically represents a trust obligation that is, what you might call, the full service trust obligation, right down to the point where the beneficiary of that trust can conduct, literally, banking business.

When I was with the Department of the Interior, there was a serious question within the Department as to how far the federal trust obligation went with regard to that particular type of operation.

My question is, this precept, or this concept you have of a full-service trust solution, is that, and has that been -- in some way, is the Secretary of the Interior agreeing with that particular approach, and has he come forward publicly?

To my knowledge, he has not. I have not seen that, as yet. And as I say, when I was there, that was certainly a question.

If he has not come forward with that, then obviously that means you're going to have a problem with the funding of this, and that obviously means, then, what portions of this total pie that you presented do you start cutting out and saying, "This is priority one, and this is priority two." Because that, of course, impacts all of the tribes, and what role they are going to have in doing that. That, of course, is question one.

MR. HOMAN: Let me respond in general. I think your point is a good one. When I speak of full service trust, in the Phase II part, the bank, by that I mean, a full service trust department of a commercial bank equivalent. It is not the full trust services provided by the federal government.

So, let me back up to the real question here, which is, my plan addresses three trust funds, and they are the ones that have always been treated differently by the Supreme Court, and others, better definers than I, from what is known as the general trust services, or social services, other services that the Bureau of Indian Affairs has, over the course of time, performed.

We are struggling in the federal government to define what is inherently federal, what is not, and those questions have been posed to our solicitor's office,

and others, and everyone has a different point of view.

I approached it from just a business point of view on the three things that I thought needed fixing, that could be fixed through the upgrade of commercial deposit payments, investments, accounts receivable systems.

Beyond that, there are other proposals outstanding by the Department, and I have had no part in them. So, I don't have an opinion on them.

As to the Secretary's view, I think in my conversations with him, over the last year and a half, he generally believes that we should do the first eight things. I think -- and these are all in the nature of establishing upgraded core deposit and accounting systems.

He recognizes that there's very little money. Sometimes he says, no money for that. And in his own budget, he has requested, last year, $13,350,000, and this year, only $14 million for these improvements which, by anybody's account, will take about $80 million to $100 million in the next few years. So, he has not endorsed that part of the Plan.

He has not endorsed it, and has said, publicly, that he will come up with a plan of his own. I think there, it is an organizational question. Do you do it within the Bureau of Indian Affairs? Do you do it

outside the Bureau of Indians Affairs? And I think there, we depart significantly.

And I don't know. He has not indicated, nor has his staff, what the alternative plan will be. But he will react to it. My job is to get him a plan to address these issues. I'm to give it to the Congress at the same time. That's what the law says.

And then both will react, and they will either come up with a compromise solution of their own, or one or the other, which is not likely to be 100 percent of what we have presented here, and maybe not even 50 percent. I have no way to govern that.

So I think that's -- you know, I don't know what the allocations are. The Congress tells me, and they have already, in the last year, they approved what the Secretary has sent them. If the President's budget this year holds, we will get about $14 million, which will be spent to complete the IIM accounting system, which I believe is the worst part of this. But it will give nothing to the tribes, nothing to the Bureau, in terms of a new upgraded electronic system, which is sorely needed in the field.

MR. GLEASON: You've already touched on the second part of my question, which is the hard number aspect of it.

I recognize, from having read before, that your solution would probably be $80 to $90 million, in terms of its implementation costs, and that the current budget was $12 or $13 million, which reflects my next question for the tribes over here, which would be this:

What was the initial request -- or I should say, what was the initial OMB mark for your office, as a reflection of, let's say, the Administration's commitment to this trust problem, or issue?

And then secondly, did the Secretary of the Interior go back and go after more, or object, or did he simply accept it and say, "This is what we are going to put it under"? I would have a substantial interest in knowing the answer to that question.

MR. HOMAN: Well, I think I know the answer, but I'm not going to disclose it.

MR. GLEASON: That's fine. As I say, this comes from me being an old bureaucrat.

MR. HOMAN: Let me just tell you what I did. When I first came in here, before organizational questions got even into the picture, these were basic problems that had been identified for 15 years, and no one, not in administration, not the previous one, or the previous Congresses, really dealt with it, at all. At all. And it always died for lack of funding and staffing, and each

side had a different reason, sometimes the same reason, for not doing this.

I have testified, before both Senate and House authorization committees, and the appropriations committees, that the resolution of the basic accounting problem should proceed regardless of my Strategic Plan. And I, in the first year I was here, 1996, asked for $50 million to start the first half of that project. It went through up to OMB, and then came back zero.

The second year I was there, for 1997, I asked for the same $50 million, and it came back $13,350,000, which is what finally went up in the President's budget, and which was what was finally appropriated by the House and Senate.

So, essentially, I've gotten $13,350,000 more than in history, but as I said, I don't believe, as a banker or an accountant, or any systems person will tell you -- it doesn't have to be an expert -- that you don't buy a $100 million accounting system, and then pay for it on the installment plan. It becomes obsolete.

It requires -- the initial outcome, or output, is about $80 to $100 million, and then it requires about $20 to $25 million, we figure, in annual upgrades.

Now, I compare that annual upgrade to what the Bureau says it now spends for the two percent, or

less, allocations alone. $33 million they say they spend annually, just to keep track of fractionated interests.

And while this new accounting system won't solve the inheritance problems, and the other problems associated with fractionated interests, you know, with a good, solid computer system, the Bureau will be able to keep better track than it now is, and bring up those probates, and clean up the system, to an extent.

It is not going to get all the way there until Congress changes the legislation, and we find a way to deal with it equitably, and that, again, takes money.

So, you know, I have pushed this forward, regardless of my Strategic Plan, and it has gone nowhere. So, you can judge for yourself. And I have no better way to judge what the Congress will do with the Plan this year, but the issues are getting higher.

It is also the subject, as many of you know, of a court case, whose main prayer, on this $300,000 action prayer, is to fix the IIM system, which is to fix the system you just saw on the board.

MR. GLEASON: I appreciate the numbers, and I think that's critical, before we even talk of a Strategic Plan that addresses it, because given the lack of funding that is currently being demonstrated by both the Administration and the Department, I would be hard

pressed to see what part of that you could address first, or how you could do it in a piecemeal fashion. I just don't see it as possible.

MR. HOMAN: What I have said to the Secretary, or anyone else at the Congress that I have had the privilege of talking to, in open-ended testimony, is whatever happens here should not come out of some other Indian program. You should not trade off treating these accounting problems by taking it out of some other equally worthy program.

But that's my recommendation. That doesn't mean, in a world of capped budgets, that that won't happen, and that is a legitimate concern on the part of many of the tribes that don't have quite the interests in the trust problems that others do.

Some of them have no allotment problems in their tribe, as you know, so they are not as interested in the fractionated heirship difficulties that we have.

And frankly, some of them are poor and don't have the accounts with us, or anybody else, and therefore, they are not interested in fixing the accounting system that will benefit more the 50 or so largest accounts we have.

MR. GLEASON: I have two other questions, and then I will stop monopolizing the floor here.

Question Number 2: While I was with Interior, I did battle several times with MMS with regard to the way that they calculated the production from certain mineral leases. I also butted heads with the Treasury Department.

I found that, as the Department of Interior, as the BIA, we got nowhere with either one. When you talked to MMS and complained that the way they calculated their rates, it was not meeting the trust obligations to the tribes, the answer we got was, "Our solicitor says it is fine." That's because MMS's perspective is different, and they don't necessarily agree with the way the BIA interprets the trust.

The only way that we got any movement out of the issue was by going to the Secretary of the Interior, because we were both within the Secretary of the Interior, and we both had a shot at convincing him that this was the way we needed to go on it, and you got movement.

As a separate agency, knowing that you have seven different departments of the federal government and agencies involved, at least when you're within the Department of the Interior, you have two things:

You have, number one, the ability to influence the Secretary to come down on both GS and MMS, to change their ways, when you can't address them directly

and convince them directly of it; and number two, even though you lost when you did this, we were at least able to get in to talk to the Secretary of the Treasury directly, with regard to how they manage their business on the trust account side.

How do you propose that an independent agency, with the rank of only an administrator, and consequently, really no reason for them to even talk to you, let alone consider your concerns, how do you politically address that issue, which I found to be a rather important one, if you are not going to have complete ownership of all those different parts from those difference areas?

MR. HOMAN: Those are important questions. In terms of solving the problems, the Secretary has had, for lo these many years, the ability to put those kinds of pressures on, and yet, a good source of these problems is MMS, and a good source of these problems are out of the Treasury.

We have an out of balance cash situation with Treasury that exceeds $50 million, and despite that pressure, political heat, it has not been effective in solving the problem. So that's the fact.

Now, the way we treat it in the future, under this agency, is first on MMS; MMS, if you look at

it, is responsible for the royalty management, as you know, and the compliance. The number I have is that they spend $13 million of the taxpayers' money to collect $40 million.

Now, you know, that is an equation that is extraordinary, and people like you, or others, have said, they don't do it well.

And where I have put it is under our compliance section. I would treat them as an outsourced unit, and then if they continue to do the job, fine, they can continue to do it.

If not, like a trust department anywhere, you would find somebody else to do it. And there are plenty of private sector people that could perform that collection service, as good as, or better than the government does.

MR. GLEASON: Provided you can get the funding to do it.

MR. HOMAN: Yes. And secondly, the US Treasury is not any longer a necessary provider of financial services for this area. There are many huge banks that can provide the same types of services they provide.

So, again, if we cannot come to an accommodation with the Treasury Department, in terms of

how you manage some of these things, we can move it out. There have been proposals to do that in the past, so I would say, perform, or we will get somebody else to do it. There are plenty of private sector vendors that are willing to do those same two functions. Arguably, some of the Bureau units could do them, as well, or better.

MR. GLEASON: We old bureaucrats refer to two different sections of the BIA. One was "Bob," the Balance of the Bureau, and the other was "Ed"; Education.

Education was taken out of the Bureau for almost precisely the same reasons, as far as inefficiency and inability to do the job, as is this current proposal to take trust funds out.

Why take it all the way out? Why not create "Tom," Trust Funds Operations Maintenance, where it is taken out of the Bureau, where it cannot be done effectively, but still under the umbrella of the Assistant Secretary, or the Secretary of the Interior. That way, you would have "Bob," "Ed" and "Tom."

MR. HOMAN: You're faster with acronyms than I am. A couple of reasons. One is a practical one. As I mentioned earlier, while these three functions are in the Bureau, I don't believe the Congress will fund anything toward reform. They have told me that directly over the last year. They have told the Secretary that. They have

1 told almost anyone that. So, if that is to be the case, I
2 don't think they will allocate anything for reform.
3 Second, and this is, you know, my opinion,
4 through no fault of its own, the Bureau is running an
5 obsolete system that is, arguably, 40 years old, and as
6 such, I don't think there is a single senior person in the
7 Bureau that could run a modern trust company, any more
8 than a pilot, after World War II, on a prop job, could
9 somehow run, or fly a modern jet today.
10 I think it has to be supplemented with
11 outside people coming in, that know what they are doing,
12 and that doesn't create a great number of people, and then
13 I think the Bureau has to go through a massive retraining
14 process, and re-qualifying for their jobs to be able to do
15 it. I personally believe that, at least the people I have
16 talked to in the Congress, are right about this.
17 I would not recommend, nor have I
18 recommended, that any of this money go to the Bureau for
19 reform. It has in the past, and they have not done the
20 job, and there is no reason to believe that they would do
21 the job if you somehow gave them more money tomorrow, or
22 the next year. So, that's my view, and I'll stand by it.
23 MR. GLEASON: My last question is more
24 hypothetical, and also, directly related to the Choctaws.
25 The Mississippi Choctaws are a big contracting tribe under

638, and as a result, our Realty office, while we do all the work, it is funded through the Bureau.

If the Realty aspect of this whole thing was switched over to your Plan, does that mean that the dollars from the Bureau will come with it, as well, if we are a 638 tribe, rather than a self-governance tribe?

MR. HOMAN: Yes. In general, I think that's true. Let me back up, because this is always a question that I'm not always able to articulate very well to people that are not familiar with basic trust, as it exists in the national banking system, and that's been my background.

The way a national trust company works, whether it is a bank or any other trust company, is in an umbrella administration. The bank doesn't attempt to manage properties locally, and I certainly, you know, ascribe to that. And I've run several major banks, much bigger than the trust implications here.

But it runs under a set of common laws, a common set of policies and procedures, a common set of accounting and reporting standards, so that if I hire a tribe, or if a tribe is presently running Realty, or presently managing the land, or presently managing IIM, then I am for that, and I will provide money for that.

Part of our telecommunications systems is to

provide at least 300 desk stations to the tribes, so that they can, at once, communicate on the point to point system which was described in our architecture, and also, to integrate whatever customized services they have for their own particular use.

So, as I said, the administrator here, whether it is the Secretary, or another trustee, has to be able to prove to the beneficiary that whoever is managing that land, is managing that particular property, and leasing it on comparable terms.

We can't prove that, right now. That is collecting all the revenues on those leases. We can't even tell you the numbers of leases, much less trace the payments.

So, all I'm saying is, that if a tribe would do a better job of that than the Bureau, or some other third-party manager, then I would be the first to say, "Here," and we will pay for it under our current budget schemes.

But as long as the federal government is the trustee, you cannot delegate the accountability and the responsibility completely. You can delegate the administering to anyone. But if that manager, whoever it is, whether it's a tribe, a Bureau, or someone else, mismanages the trust, then the federal government is still

liable.

So, as a trustee, unless you're willing to accept full responsibility, and what the Secretary calls liability, it's not going to be delegated. And so, I have an umbrella system which I call indifferent. It is indifferent as to who manages it.

And I'm the first to say that real estate is local. The reservations are local. You can't manage that from Atlanta, Georgia, or Washington, D.C., or Albuquerque, New Mexico, or anywhere but on the ground.

And like a national trust company -- I ran one at Riggs which was $5 billion. I ran one at Forbes which was $5 billion. Riggs had the largest REIT mutual company in the United States that it managed.

But our properties were mostly west of the Mississippi. We didn't have a single office west of the Mississippi, but we hired local Realtors, we hired local land managers, we hired local bankers, and in this case, you could do that through the tribes, or through the present Bureau managers.

Now, how that is funded, we are going to provide funding, at least for the telecommunications and accounting part, and that's guaranteed. And as a part of that, we are going to provide funding for the training, not only to the Bureau people that manage this, but also

for the tribes, themselves.

And then, as far as I know, and Joe will talk to this in more detail, we are not going to change the way the budgeting comes in through self-governance tribes, or the like.

Now, we are all subject to some modifications in the future, and Congress may change this, and we'll just have to go with the flow, just like the Bureau does now.

So, Joe, do you want to speak a little more specifically there?

MR. CHRISTIE: The Tribal Priority Allocation System would remain the same. The trust resource officers that are located at the Agency would sit down with the Tribe and develop the budget in the same manner, prioritizing within that TPA allocation. The Area people would sit down with the Tribes and go through the Area budget allocations.

We are firmly committed to maintaining the same government-to-government relationship, and priority setting in the budget, that currently exists in the Bureau of Indian Affairs.

So, that essentially would stay in place. There would be no movement of TPA money to somewhere else. It stays with the tribes.

MR. GLEASON: I have just, as a final shot, I would ask that you change your philosophy a little bit about, if you find that MMS is not performing well at $13 million, rather than shopping and having to pick up the tab for it, I would recommend that the $13 million be transferred out of MMS's budget directly into yours, and if there was a way that you could calculate that across the board, with these other agencies, that's the only way, ultimately, that you'll have any ability to get them to pay attention to you. Thank you.

MR. HOMAN: Thank you for your comments. Next? Anyone else want to make a statement, or ask a question?

MS. SORRELL: I have written comments that I will provide. My name is Anna Sorrell, and I have a written document here from our chairwoman, in the position of the tribal council of the Confederated Salish and Kootenai Tribes in Northwestern Montana. So, I will read this, and then you can respond if there is a part that you'd like to.

"Dear Mr. Homan: The Confederated Salish and Kootenai Tribes are in receipt of the Special Trustee's draft comprehensive Strategic Plan required by the American Indian Trust Fund Reform Act of 1994.

"The Act requires the Special Trustee to

prepare, and after consultation with Indian tribes and appropriate Indian organizations, submit to the Secretary of the Interior and the Congress a comprehensive strategic plan for all phases of the trust-management-business cycle that will ensure proper and efficient discharge of the Secretary's trust responsibilities to Indian tribes and individual Indians.

"Notice for tribal comment on the Plan was published in the Federal Register Tuesday, January 21, 1997. Our Tribes did not receive copies of the draft plan until the week of February 10, 1997.

"Your cover letter dated February 5, 1997, to tribal leaders states, 'The Plan would fundamentally change the way American Indian trust activities are managed by the federal government.'

"This draft Plan recommends the transfer of all trust management duties, including Land Titles and Records, Trust Resources Management (i.e. energy and minerals management, real estate management, forestry management, water and land management, credit administration, and resources operation) and Trust Funds Management to a new government sponsored agency named the American Indian Trust and Development Administration. The Agency would be placed outside of the Department of Interior and the Secretary's direction.

"Based on this far-reaching proposal alone, our Tribes contend your draft far exceeds the direction given by Congress to you under the Reform Act of 1994. The Plan needs to be reconsidered and brought in line with authorizing legislation.

"Furthermore, the Tribes have not had sufficient time to review and analyze the documents describing the proposed Plan. This is particularly true where, as acknowledged by your Office, the Plan will bring a dramatic change to the 100 plus year old government-to-government relationship between Indian tribes and the Federal Government of the United States.

"In our cursory review of the documents provided, and the limited information we have been able to receive from the Seattle, Washington, tribal consultation on February 25, 1997, we oppose this Plan for the following reasons:

"1: There has not been sufficient time to review and analyze the Plan.

"2: Information regarding the transfer of functions, other than Trust Funds Management, are not adequately described in your draft Plan.

"3: Questions asked by tribes at the Seattle consultation have not been adequately answered, especially in the area of increasing funding to adequately

support the realignment.

"4: Concern over what roles tribes will have in determining the use and management of tribal trust assets, including land management and natural resources.

"5: It appears that the Plan effectively repeals Public Law 93-638, as amended, with respect to the management of tribal lands and tribal trust resources by tribes themselves. No details have been given to dispel this appearance.

"6: In a conference call to the Indian press on February 26, 1997, you stated that the current BIA staff would be transferred to this new entity and be given training on the new systems of the new entity. You cited your experience with the transfer of Individual Indian Monies Program staff as an example of how this could occur.

"This example is not very convincing based on the reality we have experienced with our IIM programs. The Flathead IIM program is certainly not in better condition since OTFM assumed operational control over the program. In fact, conditions have deteriorated where attempts were made to operate the program without local supervision or direction.

"If OTFM staff have misled you in believing things have improved at the local level, then we challenge

you to investigate the program's operation yourself, before you make such statements to the press and identify it as a strategy for improving services to Indian people.

"Until our questions are answered, and the Plan re-drafted to meet the present concerns, and those which will no doubt arise after we've thoroughly reviewed the draft Strategic Plan, the Confederated Salish and Kootenai Tribes must oppose the Plan.

"You must schedule additional consultations with tribes and provide written assurance that the comments presented will be incorporated into the plan submitted.

"Additionally, we urge you to not attempt to implement this Plan until thorough consultation takes place and all items of opposition are resolved. To implement without such consultation and resolution will invite disaster to Indian Country, and a complete breakdown of the Government's trust responsibility to Tribes."

MR. HOMAN: Thank you. I think your representative, Mr. Clairmont, went over those same points in Seattle. I did answer them for the public record, but let me just repeat on a couple of the points.

First of all, on consultation; as I started this session this morning, I indicated that I'm under a

time pressure imposed by law, in getting this strategic plan done. I was supposed to produce it in one year, as you indicated after consultation with the American Indians.

Because I did not receive any funding, other than for myself and my secretary, during the first year, I produced, instead, a conceptual Strategic Plan, which had all of the elements that were in the final one, and that was published and sent out to all of the tribes, including the Salish and Kootenai, in February of 1997.

In fact, I met with your council earlier than that, and went over the general views at that time, and the basic elements of the Plan did not change. So, it's been out there.

I have given, probably -- I've been out of town probably every other week on one or two speaking engagements, all through 1996, to every conceivable Indian group that asks me to speak, always on the Strategic Plan.

I went through two public hearings this summer, with the authorizing committees, and then we had three regional hearings with the J.D. Hayworth group out of the House, which went into solutions.

Again, my Plan, my opinions, were stated for the record at that time. That was well attended by a good many Indian groups, who asked to testify at those same

hearings. So this is the end of the process, not the beginning.

Now, the formal consultation hearings, as you noted, were published in January, and I, essentially, got money to fund the program on October 1, the beginning of the fiscal year.

We produced the Plan in three months, something that the Congress gave me to do, and I have an agreement with the Congressional committees, and with the Secretary, to complete the Plan, hopefully by March 31. That's the consultation agreement that we have. And then I'm to submit it in April.

And I have had four regional hearings already. We are going to meet with the trade groups, and other representatives of the NCI, ITMA, etc., in Denver in a couple of weeks, and that will be the final input. The Bureau is going to give me comments, according to the manual, after that.

So, I will have that input, but again, the mere fact that it is going to go to the Congress, as the law requires me to do, in April, is also the beginning of the legislative process. All this will require legislation. The authorizing committees have told me they plan to hold a series of hearings. They are going to invite the tribes to input.

The Secretary will produce what he likes about this Plan, what he doesn't like about this Plan, and submit one of his own. And there may be other groups, including Indian groups, that submit alternative plans.

So this is a process that's going to be forward. Obviously nothing will get done until Congress acts. Congress has to act in two ways. There are considerable laws to be changed, if this thing is going to be implemented, on the one hand, and secondly, the money question.

There is no money allocated to this, other than the $14 million or $15 million that I mentioned earlier, and that will be used to complete the accounting system for the IIM, and start on an accounts receivable system, and some of the other internal systems that we need to start on first.

But, again, as I said, there is no money to open up desk stations, computers, and purchase the basic hardware and software necessary for this system. And all that will have to wait for input from the tribes and everyone else. But that is on the time and the consultation process.

One other aspect on some of my public comments. First of all, if you read the law, it says that I'm to look at all phases, all phases of the trust

management cycle. That not only includes Trust Funds Management, it includes Trust Resources Management, and it includes the Land Titles and Records. You can't separate; nor did Congress. All phases of the trust management cycle.

So I looked at those three things, and I catered my plan, customized my plan to address the issues there.

Now, the solution, also goes to management and organization questions. If management is an issue, you must come up with a solution for management. If the organization is an issue, and I believe it is -- and I recognize that there is a contrary argument -- you must address that. And I have. I have said I think it would be better off in a separate entity, for all the reasons I suggested earlier.

Finally, in terms of management by the tribes, I think I discussed that in answer to the previous gentleman's question, but Joe, do you want to say something about the public laws that are involved here, in terms of how we are going to approach those?

And as far as the IIM deterioration, which is the last question, if you look, we've had a series of five regional hearings. We traced down every single complaint made about the IIM.

Now, IIM is a generic term. In terms of the control that the Special Trustee, or this lady here, who runs the Office of Trust Funds Management has, it is the deposit, disbursement, and investment function.

Now, I can guarantee you that, right now, we account for every nickel that comes into Albuquerque. We invest it that day, and we disburse it.

What I can't account to you for, which is the vast majority of the complaints, is not with the Office of Trust Funds Management, it's with the Bureau of Indian Affairs.

When that nickel comes in, I don't know whether it should be a dime, because I can't trace it back to a lease. I don't know if the Bureau is collecting that money. I don't know if it has leased the land.

And when you get right underneath 80 percent of the complaints we have had, from your tribe included, they have been traced back to a Bureau problem on the origin. How that lease is made, and to whom. It starts with ownership. You've seen some of the ownership problems.

Now, I'm not the middle part. When I disburse that money, I know I'm disbursing the right money, and the interest on the money, but I don't know if I'm disbursing it to the right person.

She has no control over that. I don't have any control over that. But the Bureau of Indian Affairs does have control over that. And they are responsible for the 40,000 accounts that we can't find. They are responsible for the four-year backlog in probate. And so, when I disburse this nickel, you're taking a chance that it goes to the right person.

The Bureau overrides those laws when they shouldn't, and I can understand why they override their laws. If a family comes in and needs feeding, and just because their father, mother, brother, died intestate, they aren't going to wait four years to determine how the Will gets sorted out. You have to make a decision.

That complicates the problem, and all we are trying to do is come up with -- now, if you say, "Mr. Homan, or the Office of the Special Trustee is responsible," then, you know, you give me the problem, and I'll trace it down. And if one of my staff is responsible for that problem, then I will fix it.

But I don't think that's going to be the case 80 percent of time, and we have got documentation to prove that.

MS. ERWIN: And I think there are two things we need to bring out in this.

One, at the same time, or two weeks before,

or not even a week before, the RIF occurred in BIA, which did affect a lot of the IIM clerks out there, there were a lot of troubled employees, problem employees, that we hear had gotten rid of more than we want to discuss here. We have had to document, and actually release employees.

I think you know, as well as Joe Welle r, because he has had lots of discussions with you on the self-governance, that you do have an employee out there that is a problem, and we are working with you to resolve that.

The problem is that we went out and found 16,000 holders across the country, and we figure we have 300,000 account holders, and over a million jacket files out there that need to be segregated, we need to put things into numeric order, and we need to inventory what's in there.

Due to the compacting, you became prioritized to the top of the list. In one year, we cannot accomplish -- we cannot even find enough temporary employees, enough term employees, authorize enough, even with authorizing some of the BIA. They said, "Can the BI A help us? Will we reimburse them for overtime?"

We are going through these files, inventorying them, making sure the documentation is there. In your case, you know we found 16,000 folders, 4,000

active accounts, which now have come down by about 600 accounts, that were inactive accounts, that should have been closed.

The employee, as you know, had had a terminally ill mother, and other problems that we don't want to get into in an open forum. But those problems exist everywhere. Three, four years of filing that hasn't happened, and we cannot correct it in one year. We cannot correct all the documentation that's missing, and, you know, it's really, really tough.

I mean, but we are trying to get a handle on all of these. Management codes, all of this type of situation. And we are trying to get employees out where they need to be, and make sure that all their files are up to date, so that they can -- or you can administer these files.

And I know it is tough, and we have been through a lot, you and I and Joe, and all of our people, you know, going back and forth in the negotiations for the self-governance. But there is a lot to be cleaned up out there.

MS. SORRELL: I would like to make just two responses. First of all, our Tribes have participated very extensively in probably every meeting that IIM has. We have been to Flathead, and we have discussed the

1 reconciliation for our particular tribes.
2 We have repeatedly asked for further
3 explanation of what was in your first draft plan, of
4 Number 8. It was that section that talked about the
5 transfer of the resource management to your Office of
6 Special Trustee, at that particular time.
7 We were told that that would not happen, and
8 we have been told that. Vern has said that he has heard
9 it directly. At the self-governance conference in
10 Seattle, we raised that question, as well.
11 That had not been addressed adequately with
12 the Tribes until your document came out, and we received
13 it on February 10.
14 Second of all, our issue in bringing up the
15 problem with the IIM clerk, or our IIM program,
16 specifically at the Flathead agency, is the assumption
17 that BIA employees will transfer to this new system and
18 receive extensive training to implement the new system.
19 To our information, our IIM clerk has not
20 received a day's training since it has been taken over by
21 OTFM. If she is a troubled employee, and since we are not
22 supervising her, I can't say one way or another, we do
23 know that there hasn't been the extensive training.
24 And if you're going to take over the system,
25 where you're going to be over all of the trust functions,

and talk about intensive re-training, and for a year and a half, or however long ago it was, a year, and the training hasn't occurred, it was a particular concern with us, especially if it is being reported in the press.

MR. HOMAN: Well, again, when we received the transfer of authority this last February, it was with a set budget. It didn't ask for any training, it didn't have any training, and I could not convince anybody to get supplementals for training. So, again, a good part of the $80 million I'm asking for is for Bureau training.

But I have no authority, in any direct capacity, to make that happen, unless Congress and the Secretary support it. That's how it has to happen, the training.

We have to deal with the current situation as best we can, but, you know, I appreciate your comments. And as I told Vern in Seattle, we will get back to you.

Vern was a member of the IIM improvement project. He heard and went through that process. He heard what we are planning to do. I think he was at the first meeting and the last meeting, and he was invited to all of the other hearings that we had.

So we will give a specific response to each of those questions, and any other questions that we hear, through the transcripts.

MS. SORRELL: One question we would like to address, that hasn't been brought up prior to Atlanta, is, what will happen if it is not funded adequately?

It appears to me what I'm hearing is that the transfer of the Trust Funds Management cannot be completed because of the lack of funding, or delayed funding. We could be in the same situation if the Strategic Plan is adopted, but funding doesn't occur.

And when you're talking about major amounts of Trust Resources that you will now assume, we could be in the same kind of dire straits, in terms of funding and total chaos, as people are moved from one agency to another and don't have the training, or the proper management skills.

MR. HOMAN: Just to answer that question, if the Plan is adopted in the form it is, and Congress does not provide the adequate funding, then I would recommend that no transfers be made.

MS. SORRELL: That wasn't the question.

MR. HOMAN: The current situation is the same.

MS. SORRELL: That wasn't my question. The question is, if Congress does adopt the Plan, but doesn't adequately fund it, what will happen to the Plan at that point?

1 MR. HOMAN: I will recommend that it not be
2 done. Congress can do anything it wants, I suppose --
3 MS. SORRELL: Absolutely.
4 MR. HOMAN: -- but you cannot adopt a plan
5 and not fund it, when most of the funding is going to be
6 to buy a core system: So, if I can't buy the
7 telecommunications, it condition be done.
8 MS. SORRELL: But isn't the experience with
9 the transfer of IIM to OTFM, that it hasn't been
10 adequately funded?
11 MR. HOMAN: Only in that respect. As I
12 said, I managed to get $13 million more than the Bureau
13 had in the last ten years for some of these issues, so we
14 are using money for that. We managed to get $4 million to
15 clean up IIM. And while it may not appear to you that
16 there is progress being made, we have cleared up a lot of
17 those suspensions over the course of this year.
18 And we have a regular progress report that
19 we do it. And I'm sorry, but I thought I heard you
20 saying, just in the previous question or two, that part of
21 the problem was the inadequate funding.
22 MS. ERWIN: For training.
23 MR. HOMAN: We don't have the money for
24 training, and we don't have the money, for example, in the
25 OMNI system for accounting. We want the tribes to have

input into that. We haven't had that money to send people to the field, to school, to tribes, and teach them how to run the system.

Now, internally we can do that, but externally, in terms of the customer service we provided the tribes, we have progressed. But still, we are under some financial and managerial constraints, as well.

MS. ERWIN: And one other thing that I want to make sure, and I think you're aware of this, is we are sending -- we have brought in files, we have separated files, we have inventoried files at Flathead, and we are now sending, I believe, two people out to bring the files back, and explain the filing system and what's there. And I believe that's next Wednesday.

We will start with three people being detailed to the tribe for 30 days, three of our experienced IIM people from across the country, and they will be able to bring whoever is going to be doing the position up to speed on whatever is going to be going on.

MS. SORRELL: We were notified of that. I just called Vern during the break, and we have been notified of some plan.

There was a conversation, evidently, yesterday with Joe, on the phone, about that plan. I had not heard that when I had left Friday.

MS. ERWIN: Now, Anna, the agreement was that when they went out to look at the files and inventory, you and Vern were the ones that said, "How are we going to get these back, and how are we going to understand it?" and at that time, we said, "We will at least detail one person." And since then, we have said we will bring three people out to do that with you.

MS. SORRELL: We also discussed certain times frames that have long since passed, and I don't think we need to get into that.

MS. ERWIN: I agree. We said it would be three weeks, we said that it would take them, and it will be a week and a half overdue, with the way the files are, with what type of shambles the files are in. So, we are working towards it, but it takes a long time when you have to go through that many.

MR. MARTIN: James T. Martin, Executive Director of the United South and Eastern Tribes, Intertribal Council 23, federally recognized tribes from Maine to Florida to Texas.

My question is, is it your intention that the meeting will close at 1:00?

MR. HOMAN: We go as long as you like.

MR. MARTIN: Well, I made a different schedule during my time right now, so how long will you be

taking public comment? You have a consultation meeting, I think, next week. Will you be taking written comment after that, and to what date? And where should those written comments be sent to? I have one question on those.

The other question is, do you have in writing anywhere, that I can go and hang my hat on, that says what you believe your philosophy, or your definition of trust responsibility is?

Likewise, what is your philosophy, and your definition, or guiding principles, of a government-to-government relationship?

To follow up on the last question, because I don't think you adequately answered it, one, is you said as you go forward with this proposal, and if it is accepted by Congress -- by God, Congress passes unfunded mandates every day. Does your proposal, if you ask for $200 million, and they give you $50 million, is your proposal built where it can be built into phases? I didn't see that appear in here. So, therefore, I think it is weak in that point.

Also, in looking at this here, you've done an excellent presentation on banking, but trust responsibility is not just banking. I certainly believe that you're getting into areas far past what the mandate

of your authorizing legislation was. That is the concern of our Tribes.

A perfect example is, who is going to be the signature authority, as this comes about, of taking land into trust? I mean, you know, you're talking about, well, you're not going to fool the TPA, but then how is this separate corporation set up? How is it going to intermesh and work with whatever is left in those areas of trust responsibility? Because trust responsibility, in my opinion, far exceeds what you're talking about.

You do not go into any type of definable way so that I can conclude on how that will continue to work.

MR. HOMAN: Those are excellent questions, and I'm not sure I have all the answers here, either.

First of all, as to written comments, we will accept written comments on any of the hearings, or from any of the tribes, up through March 31, and that's my cut-off date. I have to collate the results, and bundle them, answer the questions, take the comments into account, and as I indicated earlier, I have agreed with the Secretary and with the Congress to provide a report mid April. So, those comments can be sent to Shelley --

MR. CHRISTIE: We'll take comments here, your written comments, and put them immediately into the

record.

You can send them directly by mail, if you want to, to our Albuquerque office, and we will give you that address. We also have an Internet address, and you can send them via the Internet.

MR. MARTIN: If you can have them, the written addresses, on a printed piece of paper, that people can take back --

MR. CHRISTIE: We have that outside.

MR. HOMAN: As to written definitions of trust responsibility, and my mandate, again, as I said earlier, the law requires me to look at all phases of the trust management business cycle, and it is those three areas. It is not to look at the other social services, which, as you know, are vastly exceeded, and I have no expertise in that area.

And I am not here to say that I have a written comment on what that trust responsibility is. That's the Secretary's responsibility. It is the Solicitor's Office's responsibility.

I do have written opinions as to what the trust responsibilities are with respect to those three functions, in terms of resource management, and they would be the standard Solicitor's opinions that go back in history.

1 MR. MARTIN: I didn't find it in here.
2 MR. HOMAN: So I didn't try to re-define
3 those trust responsibilities, because they are in history,
4 I think. That's a summary statement.
5 I did, however, pick out in my mission
6 statement the responsibility to conduct the trust
7 operations with "the most exacting fiduciary standards,"
8 and "the highest responsibilities of trust," which is a
9 Supreme Court rule.
10 So I combined what the Solicitor's office
11 gave me, with what the Supreme Court has always said about
12 these particular trust functions, and they are defined in
13 there.
14 In terms of a phased-in approach, as I said,
15 most of the $80 million is spent for training and core
16 systems purchases, and I've said, this needs to be done in
17 a two-year period.
18 I have gone through five large
19 restructurings of the same type in the private sector, and
20 asset management systems, asset trust accounting systems,
21 are available commercially. This is strictly payments,
22 processing, and disbursement, in that respect, from the
23 accounts receivable part to the disbursement part. It is
24 no different than what exists out there for every other
25 person in the United States.

These things can be installed, have been installed, in $500 billion worth of trust restructures in less than a year, and the government forced that for the private purchasers of those institutions.

I personally agree to those conversions. I know it can be done. I know it can be done in less than a year. I gave it two years because of the government processes and the necessary approvals to go through it.

The Congress, the Secretary, perhaps some of you, would prefer that this get phased in over time. I don't know how you phase in a point-to-point telecommunications system, and if you need 1500 desk stations spread between the Tribes, the Bureau, and everybody else that inputs here, I don't know how you phase it in for 100 here, 200 there.

And as I said earlier, how do you buy the necessary computers one year, the monitors the next, the wide area networks the third? If you took this to an outside contractor that provides data processing services, they would say, "You're crazy." So, that's why it can't be phased in.

Either you do it, or you don't, and the Bureau has chosen, for too many years, not to do it. And it is a threshold question. That number gets bigger and bigger and bigger every year, because of the obsolescence

factor, and it is 30 years old. So, that's why it can't be done.

And that's why, if the vote by the Tribes and by the Congress, and by the Secretary, is to continue with the status quo, then it won't get done. It's as simple as that. I have only one voice here.

In terms of your last question on the responsibilities of the AITDA, again, this agency will have more visibility, and a higher level in government, than the Bureau of Indian Affairs does now, and will have the same trust responsibilities that they do. No diminution.

In fact, the Plan, with the new products and services, is designed to reverse and stop the erosion of those unable to fulfill the trust responsibility, which I don't know if you were here at the beginning, but it's both the Administrations of the past, this one, the Congresses of the past, have all found ways not to deal with problems, using the lack of staffing and funding as a common excuse.

It's even gotten into the lexicon of OIG, which says, that in response to problems like this, as long as you have a plan to fix it, it's "resolved, but not implemented," which gives everybody an excuse not to do anything.

Nor can anybody be held accountable, except for those producing a plan. Well, you're welcome to produce your own plan, but I can say it is resolved, but not implemented.

If you needed a heart transplant, and you went to your surgeon, and he said, "I can't give you a heart transplant, because none are available, but I have a plan to do that, so therefore, let's consider this resolved but not implemented," I ask you, would you be happy? Next?

MS. MEYER: My name is Karen Meyer, and I'm from the Minnesota Chippewa tribe. First, I need a clarification, and then after I get that, then I'll have a question.

The new office, or administration that you're suggesting, will be the American Indian Trust and Development Administration, and it will consist of three components. One of which you already have, the IIM, and the other you said, Trust Resources Management, and the third is Land Records and Improvement.

I need a clarification of what is included in that Trust Resources Management, because the way I understand it, according to how BIA defines it, it consists of twelve different programs, one of which is the Land Records program.

But just to list those things out, my understanding is these twelve areas will then be transferring over to this. They are, Natural Resources, All Other Rights Protection, Agriculture, Forestry, Water Resources, Wildlife and Parks, Energy and Minerals, Endangered Species, Trust Services General, Environmental Quality and Waste Management, Real Estate, and then Land Records and Improvement.

So, I understand all those areas, and all the functions therein, are going to be transferred into this office. Is that correct?

MR. HOMAN: Yes, that is correct, on the transfer of the authority. On the transfer of the staff, they will have to requalify for their job. If a tribe is performing all, or some of those functions, or in the future can do so under this general administration, that is one of the objectives.

The only exception there would be the Office of Land, LTRO. As we, and as our outside contractor believes, that ought to be segregated out and be dealt separately as a unit, or as a business. Because the Bureau has tried to integrate that at times, and that hasn't worked.

So we would continue with the present system on LTRO, clean it up, and then have, as Joe indicated on

the point-to-point system, it would integrate with whatever the trust accounting and management system was in place for Trust Resources Management, and they would interact.

Right now, they are integrating them, and there are plenty of examples. The one that was given to our board last week, was the example of the Billings property, where one person in Montana was shown, on the LTRO system, to have owned one piece of property, and on the IRMS, 37 pieces of property.

And it wasn't a timing difference, because the last entry was 1992. Therefore, one or both were wrong, and we opted to go with the one that was the least broken, and clean it up.

And then the other one clearly was obsolete. The IRMS is obsolete. All our outside vendors have looked at this and said, "It can't be integrated, can't be brought up to speed," and there are plenty of commercially available accounting systems that do the same thing accurately, and have been tested over the course of time.

So we would buy that system, clean up the files, refer them to the system, and retrain the Bureau people, or whoever is involved in this, to run it.

MS. MEYER: I received a clarification, and now I would like to preface, I guess, my question.

A work group that I am on right now, and one of the other reasons we are here in Georgia, is we are assigned the task to look at all the functions that the Bureau performs, and sort all those functions into the different categories.

One of those would be functions that only a federal official could perform, and the other one would be functions that the Tribe could perform.

And so, we are going through this large analysis, which is resulting in this huge book, which is here in the chair to my right.

But with that, I'd like to pick out one of the functions that we have identified that only a federal official could do, and under the assumption that it is going to be turned over to this AITD Administration, and see if this is what you're expecting to assume.

One of the functions, as listed, says it's something that only a federal official could do. "Coordinate with the Solicitor's office and the Department of Justice in preparing for court cases involving Indian off-reservation hunting, fishing and gathering rights; assist intertribal fish and wildlife commissions; establish to implement rulings reaffirming such rights, such as Northwest Indian Fisheries Commission, Columbia River Intertribal Fish Commission, Great Lakes Fish and

1 Wildlife Commission, Chippewa-Ottawa Treaty, Management
2 Authority, and 1854 Authority; and their dealings with
3 member tribes, other resource management jurisdictions,
4 and nonIndian interest groups."
5 And that would be a new function under this.
6 Is that something that you'd be expecting --
7 MR. HOMAN: That is a present function,
8 obviously, performed by the Solicitor's office.
9 MS. MEYER: Right.
10 MR. HOMAN: Like any federal government
11 sponsored enterprise, they would have their own
12 Solicitor's office, and like any federal enterprise, the
13 overall umbrella agency that deals with issues of that
14 nature, in a legal sense, is the Department of Justice.
15 So, it has to be that same type of coordination.
16 We didn't separately address it. It would
17 just be a transfer out of, and into this organization, but
18 in terms of the legal input there, it would be pretty much
19 the same.
20 On your general question, it is not clear to
21 me -- and I asked the Solicitor's office, what is an
22 inherently federal trust responsibility, so I have no
23 better definition than you do.
24 What they did tell me was that, clearly, the
25 three functions that I've dealt with are inherently

1 federal responsibilities. It may get murky from there on.
2 Again, that is not my charge.
3 And I don't envy you your task, in trying to
4 find out, you know, what is inherently federal, versus
5 what is not. And I know it is important, in terms of what
6 the tribes do under self-governance.
7 But the three functions that immediately
8 come to mind, and I didn't go beyond them, the three
9 functions, if we are going to continue to be a federal
10 trustee over the land and natural resources, then we have
11 to have, as a trustee, a way into whoever manages that, to
12 make sure that whoever manages that land is managing it
13 properly, in terms of conserving the property, or the
14 natural resource.
15 Secondly, that if it is leased, it is leased
16 upon comparable marketable terms. We don't have a
17 mechanism for doing that. And third, that it produces the
18 proper accounting and reporting.
19 These are administerial things. But if they
20 are not done very well, in terms of keeping records, which
21 can be imaged, electronically driven, and kept in
22 perpetuity, as they are in every major trust company in
23 the United States -- and I am not talking about the
24 gigantic institutions around the world. I am talking
25 about any bank in the state.

I was a banker for 20 years, so I do know this. Any bank in the United States, small or large, has a much, much better system. They have to be able to provide you -- they can give you your actual check back, now, or you can get an electronic image.

And they like to say, "Well, let's go to electronic transfers," but if you walk into any bank, they will have to be able to prove that they paid you, and provide an image of it.

We can't do that. We can't do it, because among other things, the Treasury who handles that destroys the checks after seven years. They microfiche them, but they microfiche them at the Federal Reserve Bank, along with every other check that's written by the federal government that passes through that day.

"Microfiche" is an old term. It's a technology where you take a picture and you put it on a roll. If you ever want to look up a transaction on a microfiche, you will spend the rest of your life doing that.

That's a long-winded answer to your question, but essentially, the legal aspects of this won't change. As any trustee, you have your own lawyers. Tribal lawyers get involved. If there are environmental issues, they involve federal laws that are completely

outside, sometimes, the Department, and you have to have the expertise to rely on those environmental issues, to sort out the legal questions.

And I don't propose to know how to do that myself, and I don't propose that any successor trustee know how to do it, except to hire the people to do it. Either among your internal staff, like the Bureau does now, or the Solicitor's office. So, we are not proposing anything radical.

MS. MEYER: Just one more thing. I don't envy our task, either, of determining what's an inherently federal function, or what can be contracted or compacted.

But I was using that one specifically as an example of one thing that will be determined, as what is an inherently federal function, and all those things will be turned over to this new AITDA, and I don't see a whole lot of description within the current Plan of how that whole list of new responsibilities will be transferred over, and I guess that was my biggest concern, of the three components of this new AITDA.

MR. HOMAN: We will try to be clearer on that. We didn't attempt to define everything that's going to come up, because, first of all, it is not well defined by the Bureau, and therefore, those sorts of things are going to have to be sorted out.

If the Bureau could give me, or the Solicitor's office, for that matter, a crisp definition of what they consider to be inherently federal, it would make all of our jobs a little bit easier.

Or if you could somehow take the eight or nine functions of Resource Management and crisply define them, they are not things that are exclusive, at all. They are like this. They are bound up with one another. And so, there are some things easier to transfer crisply, than others, and that will have to be sorted out in a transitional way. That part will be defined.

And secondly, the actual transfer of Resource Management will be changed and will be transferred later on.

So the accounting comes first, the accounts receivable comes next, the Land Titles and Records system, which, arguably, has 90 people devoted to that, comes third, and then finally, some of these other things will be transferred over time.

MS. MEYER: For exactly that reason, of not being clear, that's why I would recommend, for that portion, that third component, that that not be transferred over.

MR. HOMAN: It will be phased in, or it may never be phased in, depending on how the vote comes out.

Thank you for your comments. Anyone else?

MR. LOWNDES: Good afternoon. My name is John Lowndes. I'm an attorney with the law firm of Hobbs, Straus, Dean & Walker in Washington, D.C. It's a firm that represents Indian tribes across the country. Particularly, we represent a lot of tribes that are into self-determination contracting and self-governance compacting.

My question relates to the relation of your plan to the Clause 93-638 and the self-governance act. You touched upon it very briefly with these gentlemen's comments over here, and Anna brought it up, also, the Confederated Salish and Kootenai's concern that your plan may actually repeal 638.

As I understand the 638 law, it's been an evolution of maximizing tribal control over tribal resources, and delivering services, which you're obviously not dealing with, to the point where there are tribes, now, who would like to just turn in a trustee evaluation checklist of one page every year, and deal with the rest, themselves.

It seems to me that your plan is very much a business-oriented type plan, which is top down, which would have tribes, more or less, carrying out the standards and policies of the office, instead of

maximizing their own control, and creating their own standards, and dealing with their own resources in the way that they feel is more appropriate. The contention is between tribal control and top down control.

I wonder if you could speak to that issue in a little more detail, and spell out that potential.

MR. HOMAN: Let me give you a general overview, and then I will ask Joe Christie to give something more specific.

First of all, as I indicated, I have no objection -- in fact, if you read between the lines here, and I've said publicly, this should enhance the ability of a tribe to do self-governance in almost every aspect of what I call the trust management activities, and the three general areas.

But the one point of departure that I would take with you, that like a trust department anywhere, that it is not enough to hand you one piece of paper on an annual basis and say, "We have done a good job." If I had an outside auditor saying you did a good job, maybe that one piece of paper would be enough.

But the trouble is that as long as the Federal Trustee is in existence -- and you know, through your practice -- a trustee cannot delegate the liability.

We would like to do that, as the federal

government, and that's why the Secretary put in last year's plans the withdrawal of trust funds. If you withdraw them, you are welcome to do it, you can use them whatever way you want, but you have the liability, not the federal government.

So as long as the Trustee is involved, we get involved with -- and I don't have to tell you this -- the term limits of tribal governments change, if they are in full charge of some of these activities, and change, all too often, the new government comes in, blames the old government for the problems, and sticks the federal government with the bill. Well, you have to have a mechanism of handling those kinds of activities.

So, as long as your performance on a tribe can be audited, just like any other land manager, fine with me. You have to have certain reporting criteria, certain accounting criteria, so that the trustee can make an accounting to the beneficiary. Sometimes that's the same beneficiary. The manager, the tribe, also is the beneficiary.

But, remember, there are 300,000 allottees, and many of the tribes not only manage the property for the Tribe, itself, but for the allottees. That's a different set of individual property rights, and the like, that the trustee is bound to have an obligation to.

So we want a system that will accommodate that, to make sure that it is a common system, so that what's being done in Nevada, Montana, is the same thing that gets done in general, under general policies and procedures, laws, practices, which the law, also, speaks to in an accurate and timely way.

Now, Joe, I have not gotten into the detail, and I confess my ignorance here as to some of the nuances, which you are all familiar with, in terms of how some of the tribal allocations work. But we have looked at this, and Joe will give you a specific response.

MR. CHRISTIE: This is Frank Keel, who is the Area Director, now, in the Eastern Area. Congratulations.

MR. KEEL: Thank you.

MR. CHRISTIE: You're correct, in that there is a dynamic tension between taking over the total operation, versus having the fiduciary responsibilities, as Mr. Homan said.

We not only have to look at that liability from the point that we encumber a lease, to the point that we distribute the funds, and be able to account for that work flow and the liability associated to that, but as you're probably well aware, there are a number of law cases that have come up, {} Quite Num Apache, for

instance, where the operation and the management of the trust asset was taken into court on the Bureau's allowing an overcutting there, even though the Tribe agreed to the overcutting. Later they came back and sued the federal government for allowing the overcutting, as well they should have, and they won that case.

So we have to look at the liability that accrues from the way that the resource is managed, and the liability that is accrued for accounting for the funds and the income and the production off of the asset.

The concept is put forward in the Strategic Plan. I have a difficult time understanding why someone would say to us, "This negates 638," when, in essence, what it does is it affirms 638, and it affirms self-governance.

What he is saying is, is that, yes, the Tribe can manage that asset. Yes, the Tribe can manage that asset, and can operate that asset, just as if the Bureau was operating or managing it, or if some other, heaven forbid, some other third-party was managing or operating it.

What we are saying, though, is because the federal government retains that liability, that there has to be an accounting to prove to subsequent Indian members of that tribe, that, in fact, it was carried out, and that

that protects the members of the federal tribes. At the same time, it's protecting the federal government from being sued.

One of the issues that has just recently come up is the fact that NARA, the National Archives and Records Administration, has a solicitor's opinion that says tribal records, under a 638 compact, or under self-governance, is no longer a federal record, and they won't hold those.

Well, it puts you into a position where if the tribe is operating it, and I don't think any tribe would do this, but it is a hypothetical situation, that if a tribe operated it, and took the records and destroyed them, they could come back five, ten years later, and sue the federal government for mismanagement of the resource, and we would have, the federal government would have no ability to defend itself.

So 638 is actually sustained here, because we believe, and the Strategic Plan says, that the Tribe can operate that, and we would adhere to 638. We would adhere to all the existing contracts, and enter into new contracts for those programs, for the management of the resource, and for those things that are not "inherently federal."

At the same time, self-governance, we

support self-governance, we think it is the right direction to go, but we do believe that the management system, the accounting system, needs to be the same for all tribes, so that you can achieve economies of scale. But, in fact, this Strategic Plan does support the self-governance program.

There may be, as I said earlier, as I started off, there is a dynamic tension there. There is nobody in government today who can tell you where the bright line is in these programs, and as a result, it takes constant communications, constant discussions, to determine where that bright line is.

That's an ongoing product. It is like the lady said from the Minnesota Chippewas, and I think what she was quoting there was the rights protection part of the Bureau's current Office of Trust Resources budget; there is a very hard line as to when a resource becomes a fixed asset, and therefore manageable, versus the actions taken to create that right, that maybe they are under treaty, maybe they are under statute, but until it is a fixed asset right adjudicated by the court, or by Congress, you can't, then, move over and use that to manage that fixed asset.

And that's one of those ever moving lines. Rights protection is not -- I was Deputy Director of Trust

Resources, and Frank came in right after me in that program.

One of the problems with the rights protection program is that it is not really a trust program, as much as it is a program to go out there and find where those rights are not being vested and utilized by the tribe, and then taking those, getting the records together, taking that to court, and proving up that right, just like you did with the Ottawa treatise up in Wisconsin.

So, yes, it's a dynamic situation. It's one that we want to reinforce self-governance, reinforce 638. We believe in those laws, we support those laws, and we will, into the future, with the Strategic Plan. Any questions?

MR. LOWNDES: Thank you.

MR. HOMAN: Next? If there are no further questions, then -- yes, sir.

MR. MOUSS: I guess we are going to hold the best for the last. I have a number of questions that I probably will present to you in writing, because like the others that's been stated in this meeting here, a lot of us didn't get this information. Directly or indirectly, we had to scrape some of this stuff up. But --

MR. WELLER: Sir, please identify yourself.

MR. MOUSS: Well, I'm afraid to, because I'm the chairman of this inherently federal function that's gone on under this tribal work group. We are still sequestered, right now, and we are refusing to speak to anyone about tribal shares.

So, that's why -- I'll identify myself. My name is Ed Mouss. I'm speaking today as a Creek citizen, in role with the Oklahoma government. Also an employee of the Okfuskee Creek tribal government.

There is a big gap that I've noticed in the fractionated interests aspect, and I'll focus on one particular point here, and that is the intent of, I guess, the Plan here -- I'm not totally sure; I can't find it in what I went through -- on how you are going to address the tribal records in some 40 counties in Eastern Oklahoma that contain records.

I see nods from the front end of the table, so you are aware of something that's going on there. But I think this brings into focus one of the biggest --

MR. HOMAN: We are aware of what's not going on there.

MR. MOUSS: This should bring into focus some of the biggest land grabs that took place under the guardianships that took place after the allotments of the Five Tribes.

And in this respect, I stand before you as an heir, a landowner, that fortunately does not hold fractionated interests, because we took care of that using the laws that are on the books.

And I guess the question that I have for you, because you're probably aware of the case that changed some of the direction of the Bureau, and it was attention given to people like myself, in that particular class, because it raises, now, how are you going to deal with resources that we have at our fingertips?

How are you going to address, and I heard the term used, you are going to employ local bankers, local real estate people, soil conservationists, who can go out and measure my walnut tree -- and this is an inside joke to our group here, but that walnut tree to me is a symbol, because presently, it's not recognized as a resource, yet it is a target of the commercial timber industry in our part of the country. It's a very valuable resource. It's not been matured, and I ask you how you're going to nurture this sort of approach, because resources change.

In the 1970s, and part of the 1980s, there was an oil boom there, where you could go out and lease your 40 acre tract of land for a bonus, and get a bonus that was higher than, probably, any future oil production

on some of those places, because those tracts have been depleted from oil production and oil flooding and water flooding, and that sort of stuff.

So, I guess my basic question to you is, how are you going to approach this thing? Because I hear you want to take on this vast responsibility, and I think each of us in this room here realizes there are problems. I don't think there's too many people in here today that are satisfied with the Bureau's performance.

Yet the Bureau is a symbol to many Indians. And I think that's the point that I understand today, that the IIM people have moved out of Muskogee and they are headed someplace west. And this has caused some consternation among people, now, because they can't access the same people that they could access before.

So, as I wander all over the place in my statement today, I think that if we are going to get anywhere with this, we have got to look at this operations component as a real, live situation.

How are you going to fund an organization that's going to deal with fence lines? Surveys? Some stream rights that feed and water cattle? Pecan groves? Oil leases? All these things that mean things to people who are living out there.

I guess that's where I come from in this

whole approach, is that once we get a standard of living defined, that I can earn from my own natural resources here -- and right now, understand, there is no standard out there -- there is no basic return that I can get from my own natural resources that is comparable to something. It could be compared to the rancher and the farmer next door, but, unfortunately, I'm locked into an allotment system that we didn't perpetuate.

And I don't feel responsible for taking, you know, taking responsibility for perpetuating that. But I understand, now, that we are re-investing the allotment system by forcing, or enticing people to buy from each other.

I think the theory is that some of these people may be hanging on to this land because they don't want it future divided. This is a real, live issue that we have discussed in our family, that that particular allotment should hang with us forever. It shouldn't be put up to being divided. Maybe we shouldn't have to address that issue.

The other issue that I think you're going to have to address here is a contracting compactability relationship. What are those functions that you're going to really get down to addressing as your inherent federal function, and what is the cost?

I see before us here a telecommunications dependent agency, and with Congress, now, backing off of appropriating funds for large systems, I'm not too sure how this is going to work without it. Because in our part of the world, if we want to do the imaging with the county court clerk, then we are going to have to persuade that other government out there how it is going to interface.

So, I think the problems are a little bit larger than the Plan, and I'll present my future comments before the deadline. Thank you.

MR. HOMAN: Let me address some of those questions, and then I'd like Joe to talk particularly about the fractionated interest, and some of the recordkeeping problems that preface that.

Again, on contracting and natural resource management, I have said, over and over again, that that is a local phenomenon. So, I'm not going to hire a bunch of bankers to do that. The intent is to use the competent people that are already doing that, and I emphasize the word "competent."

What we have proposed is an information system, a telecommunications information system. If you want an idea as to how it would work without it, then you only have to look at the history of what's going on right now, and you'll get this type of thing that you see on the

board.

You'll get 40,000 accounts where you can't even find the name of the person involved. You'll get 20,000 minor accounts that you can't account for. That's the type of thing that is generated by the current information system, which is not PC driven. It should be.

Some of the Areas, Agencies and offices have a couple of PCs devoted to very complex payment systems which, even in your area of the country, any area of the country, any national bank has to produce a daily account, a daily account, of all of the deposits, payments, and disbursements it makes. And it also has to produce a daily accounting as to who owns that property, and what its customers are.

There are 200 million people in the United States, almost all of which have accounts in banks, and they give a daily account.

Imaging is not a mystery. It is done in every remote location in the United States. It is easy. Your local bank can do that for you, it can do that for a tribe, it can do that for the Bureau, it can do that for the government.

But the government has never elected to do it, or pay for it, and I'm just saying, that makes for efficiency, in a businesslike way.

The other part of the law requires me to do this efficiently and effectively, in a businesslike way, because we have the other responsibility here to the American taxpayer, in terms of what is spent on the Indian programs, and these aspects.

So, I'm not asking for a Cadillac, or new technology that is state-of-the-art, I'm just asking for midgrade, commercially available accounting and information systems that are available to every trust customer in the United States, in real-time.

So, you know, I have difficulty getting that point across, but the other point I make is that I can hire the best group of bankers that I know, and I couldn't operate the Bureau's systems any better than they are now operating. They are that obsolete.

So I'm not begrudging the Bureau employees. I couldn't operate their system any better. But they are using a 40-year-old system that needs to be upgraded, and that's the primary point.

Your interest on the fractionated interests is great, and I'd like Joe to talk about the details, but I'll just repeat something I said earlier. I'm the only senior official in the Department of the Interior that championed last year the Indian land group.

There was two of them that sent in counter

proposals to ours, and they involved individual rights, as opposed to tribal rights, and the preservation of same, and the Indians overwhelmingly won.

If you are an allottee, it should be your choice whether or not you give that to the tribe, which you've always had the opportunity to do, or whether or not you want to leave it to your children. And you should not have the federal government, Congress, the Department, dictating to you what it is you can do with your property. And I have been the only one saying that.

Now, Joe will tell you about some of the particular details, only some of which you've seen on the board. If you can't find 40,000 people, then how in the world -- those are payments coming in off of the Indian lands, being managed by the people that manage the natural resources, and while they would say, "We are not responsible for the ownership part of this," that's also run by the Bureau. They make the leases. If they are not making them to the right party, then how in the world can you collect those monies and make sure it gets to the right parties?

And as I said, my responsibility is the middle part of that, you know. I will make sure that every deposit we receive is deposited that day, invested that day, and disbursed that day. But I can't account for

the missing dimes, as long as they are under the present system.

So it ain't going to get better unless it changes. So that's what would happen if this plan, or a successor plan, does not succeed. Joe?

MR. CHRISTIE: First of all, I can understand why they are out there after your walnut trees. We ran an operation in Winnebago, Nebraska, and in Iowa, with walnut trees, and we had walnut trees that were selling for $10,000 apiece.

And when they go out to harvest that walnut tree, they don't harvest at the top of the ground, they dig down to where the root system starts, and then they cut it, because they can pick up an extra five, six, seven feet of that walnut tree, and it is extremely expensive. And every furniture company out there is trying to get ahold of walnut, and it is an expensive tree.

First of all, let me say a little about LTRO. First of all, there are two areas that have been drastically underserved by that system; the Eastern area has been historically and drastically underserved, and the Muskogee area has been underserved.

And the Muskogee area program, as you very well know, and I'm from Eastern Oklahoma -- Broken Bow -- is tied up in the '48 Act, which allows the probates to be

adjudicated to the county court system, which is unlike anywhere else in the nation.

So, yes, we do have to put more resources into the LTRO system to account for those Eastern Oklahoma/Muskogee area allotments, and we also are going to have to invest more money into the cadastral survey portion, and get down there and do more cadastral surveys in Eastern Oklahoma. And then, of course, you've got the Arkansas River bed adjudication that's been ongoing, and it seems like that will be ongoing forever.

So, what happens is, you have a trust management focus with this Strategic Plan. This Strategic Plan is not going to trade off the Arkansas River bed, or the cadastral surveys in Eastern Oklahoma, or the beefing up of the Eastern Area Office LTRO against welfare, or against law enforcement, because this focus is going to be on trust asset management.

The problem that you have, and Mr. Homan touched upon this earlier, and I'm going to beat this dead horse again, is that when we go in, or when the Bureau goes in to set up its budget, and prioritize its budget on a year by year basis, it has to set down inside the Bureau and it has to trade off trust asset management LTRO needs for the Eastern Area, and LTRO needs for Muskogee, against law enforcement, against welfare, against the courts, and

they have that trade-off.

There are magnificent deficits, and needs for all of those programs, and as a result, we don't get the money for trust asset management that you need to upgrade the system, and to make it fully operational.

And then whatever money you do get, then once you leave the Bureau's prioritization, you go up to the Department and the Department trades National Parks Services and Biological Services, which is the current Secretary's baby, against MMS, against BLM.

And so, you lose another war in trade-offs, and it is as the principal chief at Cheyenne River, Gregg Bourland says, it is land and animals, against Indians, and many times the Indians receive the lower priority.

And then on top of that, you've got to go from the Department of the Interior over to OMB, and OMB, now, is trading off the needs of the Department of the Interior against the needs of Energy, so O'Leary and them can go out to foreign countries and take big trips, and against Environmental Protection and all the other Cabinet levels.

So as a result, your priorities -- and then when it gets to Congress, you've got the trade-offs there in the appropriations committees.

What the GSD does is, it takes the trust

1 asset management program out of the Bureau, out of the
2 trade-offs within the Bureau, out of the trade-offs within
3 the Department of the Interior, out of the trade-offs over
4 there with OMB, and sets it up there so that it deals
5 directly with Congress.
6 Now, if we can sustain -- and we will be
7 able to sustain -- that base funding, plus increase, those
8 increases will roll directly to the trust asset management
9 function, and thereby be able to sustain the increase and
10 the improvements, capitalization improvements.
11 Yes, there is a major problem with
12 fractionization along Eastern Oklahoma, and Indian people
13 do have a specific cultural and physical tie to the land,
14 and they don't want to let that go. And they shouldn't
15 have to let that go.
16 But fractionization in Eastern Oklahoma is
17 not even a tenth of the problem of the fractionization out
18 at Ogallala Sioux, or Pine Ridge, or Fort Berthold, or
19 further west up along the West Coast is, because of the
20 number of years that it has been involved in the
21 fractionization problem.
22 And there will be a future fractionization
23 problem in Alaska. Alaska says, "It is not a problem
24 today," but if we don't change the methodologies that are
25 driving the fractionization, even those allotments that

are still being issued today in Alaska to individuals will eventually run into the fractionization problem.

So, yes, it is a problem. We are aware of the problems in Eastern Oklahoma, we are aware of the underfunding for the LTROs, and that will be corrected.

MR. HOMAN: Any other comments? If not, then I'd like to adjourn -- well, I'd like to thank you all for coming. We will, as I indicated earlier --

MR. CHRISTIE: Why don't you ask if Frank has any comments he would like to make. He is the Area Director for the Eastern Area.

MR. HOMAN: Frank, you are welcome to make some comments, if you'd like.

MR. KEEL: Two questions do come to mind. If you're going to be dealing directly with Congress, you would have no guarantees of any increasing for funding of these current programs, do you?

MR. CHRISTIE: No.

MR. HOMAN: No, but as Joe said, it takes -- it raises it out of the Bureau level of trade-offs, the Department level of trade-offs, the Administration level of trade-offs, and I have only -- there are no guarantees when you get to Congress on anything. I'll be the first to say that.

But the history of the GSE, and the other

ones, is that Congress has always funded them well, and first. So if you look at what they have done with the Home Loan Bank system, it is a fully funded system, and always has been.

The Farm Credit system, after which we have modeled our administration, is a fully funded system, and always has been, even to the tune of providing $11 billion worth of independent capital and borrowing capacity, which enables them, with prudential investments, to cover a large part of their operating expenses, which is one of my proposals.

So all I'm saying is, GSEs have fared much better, much better, with the Congress in almost every respect, than agencies buried deep under major Cabinet officials. And that's my view. I think a reasonable, or objective view of the GA would support that.

But, are there guarantees? No. But I asked the Congressional staff last week, who I briefed on this Plan and other matters, and they said, regardless of whether -- I mean, they didn't endorse my Plan, and I don't want to imply that they are even going to come close to that.

But they said -- I said, that is an issue with Indian country, you know, that the Department of the Interior, the Bureau, has always been a preserver and a

1 defender. But it has not been able to overcome this lack
2 of staffing and funding deficiency for 20 years, and
3 that's not a current problem. It goes back, and it is
4 getting worse.
5 And I said earlier, if you look forward,
6 there are no plans to increase, and you only have to look
7 at the budgets of the Department of the Interior in the
8 last three or four years, and you will see the Bureau of
9 Indians Affairs going like this, and you'll see other
10 programs going like this, and you'll see other programs
11 going like this.
12 But I think the Bureau has taken the biggest
13 and the deepest cuts. And if I were to guess -- your
14 guess is as good as mine -- but in the Congress, anybody
15 that you can go up and talk to, it's going to continue
16 that way, and this is an attempt to reverse that. Is it
17 guaranteed? No.
18 MR. KEEL: The other question I have is, as
19 I recall, in the statute that created your office, there
20 was a requirement that you examine the funding from Indian
21 Affairs, and each year, certify as to whether or not there
22 was sufficient funding. Is your office currently doing
23 that?
24 MR. HOMAN: No, it is not. The second part
25 of this, as you correctly stated, is the Office of the

Special Trustee continues after the Plan is approved by Congress, and it will be accompanied by a consolidated budget, covering all phases of the business cycle. The Solicitor's office gave me an opinion on this, and the operative word is "after."

So if the Plan is approved, then, and if a consolidated budget is approved, then if the Bureau implements it, it has to come to the Special Trustee for certification. So it doesn't become operatable until the Plan is approved and the budget is approved for the Plan.

Now, we are going to give our outside contractor -- Macro International is preparing, with our staff, an incremental budget. Not a Bureau budget, but what it would take to incrementally implement this Plan. And as I said, our initial numbers were published last February, and they are in the neighborhood of $100 million for the first two years, mostly for training and mostly for the core systems I talked about.

And it now looks as if we can use a good part of the inventory, in terms of current PCs and systems available in the Bureau, so that number will probably come down closer to $80 million, rather than $100 million.

But when that number is firmed up by the Congress, if ever, then the certification process will take place.

MR. CHRISTIE: There is a comprehensive certified budget working its way through, based upon what information we were able to get from MMS, BLM, BIA, this year. So, it is the first draft of that, that is moving its way through the 1998 budget.

MR. KEEL: Thank you.

MR. HOMAN: Are there any other questions? Yes, sir.

MR. LOWNDES: It just occurred to me, in moving the Trust Fund's responsibility out of the Bureau and up to a higher level, what if you were to take the general trust responsibilities, also? Do you think that would help with the funding levels, if you were to elevate the entire Bureau of Indian Affairs out?

MR. HOMAN: I'm not going to touch that question. I think that raising it to a different level in government, whether it is with this particular organization or others, is bound to help. It just gives it more focus and visibility, and you have trustees, five of them, in this case -- there could be others -- that do other things.

I think the real problem here, in the current budget environment, is the one we say over and over again, and maybe is not well understood, and some of our advisory boards give better speeches about this than

we do, that beyond the Bureau of Indian Affairs, in a capped budget, you get trade-offs against National Parks, against Fisheries.

And while Joe didn't say this, the other aspects of the environment that the Department of the Interior is involved in, are immensely more important and immensely more politically popular, with not only political appointees but with the Congress, than are Indian programs.

One of the sad points here is that Indian country is not able to effect national elections. So when the final pie gets carved up by the Congress, or by the Administration, the Indians suffer and are adversely affected by these other trade-offs, which their constituents want. And who doesn't want a nice national park enhanced? Or who doesn't want some other aspect of the Department of the Interior's environmental initiatives enhanced? And who doesn't want fisheries enhanced?

I mean, these are immensely popular programs, and it's very easy for politicians to say yes to those, and try to avoid dealing with a basic recordkeeping problem in a small agency and for a people -- trust responsibilities aside -- for a people that don't have much political clout in the United States.

That's my view, and I think that's the

reality.

MR. MARTIN: As I understand it, you do not answer to the board, now. Is there an advisory board, or who do you answer to now?

MR. HOMAN: I directly report to the Secretary of the Interior. So, I am an Executive Level II appointee.

MR. MARTIN: So there is no advisory board?

MR. HOMAN: There is an advisory board which I account to. We have had meetings, consisting of six tribal leaders. Among those are Gregg Bourland.

MR. MARTIN: My question is, is that in writing, so we can have that?

MR. HOMAN: What?

MR. MARTIN: The advisory board people.

MR. HOMAN: Yes, sure. It's public record. And they have endorsed this Plan.

MR. MARTIN: They have?

MR. HOMAN: Yes.

MR. MARTIN: Could we have that, please? Is that in writing?

MR. HOMAN: Sure. It's a public record. We can give you the names, and the tribes, and the individuals involved.

MR. CHRISTIE: In answer to your question,

if you go back to the {} Aberesk Committee, when they did the report --

MR. HOMAN: If you want to access it through the Internet, it is on the home page.

MR. CHRISTIE: -- of the Bureau of Indian Affairs and the government's relationship to Indians, one of things that that Senate committee came out with was a recommendation to elevate the Bureau up to a Cabinet level, because of the inherent problems of being so far down in the Department of the Interior.

So we are not here to address the general trust responsibilities, but the Aberesk committee did that, and I think that was their recommendation.

MR. HOMAN: It sounds like some of you in the room are doing that this week. So, good luck. Yes, sir.

MR. SAUNDERS: I just have a comment. Getting back to the Tribes' political status, you mentioned Farm Credit, Fannie Mae, Jennie Mae, that they have some political clout. How is this going to be different, in nature, than what we have now, having to go through the administrative process? Still have to deal with Congress and their trade-offs.

MR. HOMAN: I think there are two comments there that are appropriate. First of all, the Board,

1 itself, will consist of three tribal leaders, and they
2 will be elected, and I don't have a good scheme for
3 this -- there's been several suggestions made to me --
4 that the different areas of the country, different tribes
5 of the country, have an electoral process to appoint those
6 people to work full-time.
7 So you, then, will have that, and they will
8 obviously be presented to the President for consideration,
9 and the President, as he does with all political
10 appointees, makes the final decision there.
11 Plus two professionals, that are
12 professional trust managers. They can be Indians, as
13 well.
14 So you have direct representation in
15 political appointees. Right now, you have only two, or
16 three, if you want to count the Secretary, who spends, you
17 know, some time on this. But he has got a diverse number
18 of other responsibilities.
19 You have the Assistant Secretary, and the
20 Deputy Commissioner, and those are the only three --
21 actually, the only two political appointees that have
22 anything to do with these trust responsibilities, other
23 than the staff, which is massive, as you know, and others.
24 But it is difficult for you, me, or anybody
25 else to say, who is accountable for some of these

problems? Is it a diffused Secretary of the Interior? Is it an Assistant Secretary, who not only has these three functions, but every other function you're looking at this week, who is responsible? Is it the Congress who has failed to fund and staff this? Or the Secretary who has failed to fund and staff this? Or the Assistant Secretary who has failed to fund and staff this, in favor of some other program? Who is it?

If you have a five person board reporting directly to Congress, it seems clear to me that you have five political appointees you can go to, whether you're a beneficiary, an Indian beneficiary, or whether you're the Congress of the United States.

I mean, if they don't do their job, and that's their only job, then it seems to me that their customers, their beneficiaries, can criticize them, and the Congress can criticize them.

Now, right now, you can go accuse the Secretary, or anyone else, of neglect, but he will say, "Well, we have all these other programs, and we are doing our best, the Bureau is doing its best, and we are sorry about the underfunding and understaffing situation, but we live in a world where that's the reality, and how can you hold us accountable for that?"

As I said, you should. It's a trust

1 responsibility. And it wouldn't be -- underfunding and
2 understaffing, as I said earlier, is not an excuse for a
3 private trustee not to perform his duties.
4 MR. MOUSS: Are you proposing that all of
5 these -- the board -- have personal liability attached to
6 them, so they can be fully accountable? Or are we still
7 faced with fighting the federal government?
8 MR. HOMAN: It's still the federal
9 government. It's backed by -- the trustee is a substitute
10 trustee. It is backed by the full faith of the federal
11 government. They don't have personal liability.
12 But I think they have a personal
13 accountability, and it's not a diffused one. So, I think
14 it is an improved system. It may not be an ideal system.
15 MR. MOUSS: Would you explain that, and how
16 you would differentiate that, the accountability
17 component?
18 MR. HOMAN: Well, again, they would have
19 three clearly defined trust responsibilities to
20 administer. The Congress could see whether they did a
21 good job, and no one else. They wouldn't have other
22 activities to administer, as the Department of the
23 Interior now does, and you could see whether they did a
24 good job.
25 And I think the second reason is, that these

1 GSEs have always attracted funding from the Congress, as
2 opposed to agencies buried deep in any agency of
3 government.
4 So, I think they have both the ability to
5 have more accountability, in terms of staff and
6 management, and more resources, in terms of financial and
7 managerial resources.
8 MR. MOUSS: There was one other comment I
9 was going to make, and touch on, and that's the
10 enforcement aspect.
11 How does this Plan address the enforcement
12 of laws that are already on the books?
13 MR. HOMAN: Well, right now, most of the
14 laws are not being enforced, as you know. I mean, who
15 enforces it? And as I said earlier, the standard excuse
16 that the trustee -- in this case, the U.S. Government --
17 ascribes to itself is, the lack of funding and staffing
18 excuses the enforcement.
19 You can't very well go to an Agency office,
20 an Area Officer, the Bureau of Indian Affairs, itself, and
21 say, "You're accountable, you're fired, because you didn't
22 have the staff or the funding to do that." And as I said,
23 it even goes beyond that, in terms of how the Inspector
24 Generals and accountants of the world deal with this.
25 If you have a plan to resolve a problem,

it's treated the same as resolving the problem. The word is -- and this is not my word -- but the latest political double-speak, you know, "resolved, but not implemented."

And so, how do you enforce this? I think you would enforce it in the same way you do other derelictions of government, and that is, if it is visible and accountable, you can point to those agencies.

If the Federal Home Loan Bank system screws up, they are called up before the Congress. They have a singular purpose. If the Farm Credit screws up, it is called before the Congress, and they get scolded.

The Bureau of Indian Affairs gets plenty of scolding from everybody, but it is buried so deep that it is not considered a very important political function beyond, you know, the particular constituencies, which as I say, are very small.

So this gives it more visibility, and with more visibility, you should have more accountability and enforceability.

Now, in self-governance, what is lacking there, and what the Trustee has to be able to do, is find some mechanism to enforce the people that are managing the trust, if they mess up. And right now, we don't have a good mechanism for that.

So, on the one hand, you have the federal

government reluctant to give out further responsibility, because it has no way to enforce it, short of what we call embanking the death knell approach.

I mean, there are all sorts of enforcement mechanisms to make commercial banks and trust companies enforce the law, short of jerking their charter, which is, you know, you don't take away deposit insurance, although that's a privilege of the federal government. You don't take away their charter in this case, which is the ability to do anything, if they mess up. It's got to be something in between.

The way that is handled privately is cease and desist orders are issued, and privileges are taken away, and ultimately, all the power comes back if whoever is managing that land, or resource, under the trust, is not able to do it. So I would suggest that there be some mechanisms there, although that's a subject for another time.

But you have to have the ability to enforce those things. That is clear noncompliance, and you shouldn't have as the only remedy taking us to court, when it might take you five, ten, fifteen years, twenty years, or more, to get the Trustee to do his job. So there has to be some other mechanism there, and I don't know quite what it is.

I can give parallels as to what the government, itself, does, as far as performance on companies that don't comply. But my plan does not encompass that. Any other questions? If not, I do want to thank -- yes, sir?

MR. GLEASON: Just one other comment. I still tend to disagree with the viability of moving that out, because the GSEs you've used as examples are very narrowly focused, primarily financial.

But as we just discussed here, what you are planning to assume with the eight, perhaps, different land related functions, there are a lot of crossover and conflicts with surrounding properties and surrounding interests; and it's problematic how much latitude you would have as an independent agency, without being able to do the in-fighting sometimes it takes with MMS and other interests, if you are standing outside the door while everybody else is inside.

And I'm not sure, if you were to very narrowly focus on the technical aspect of the accounting function, or a loan function, you might have some success, but if, indeed, it is as broad as is mentioned here, with regard to all these other functions on trust land, you're going to have great difficulty convincing Congress to fund that agency, and they will find that it is a constant burr

1 under their saddle.
2 MR. HOMAN: That's a very good point. I
3 only point out that I'm very familiar with the current
4 GSEs and their scope, and when you're involved in a major
5 economic sector, like Housing, like American agriculture,
6 they dwarf what the Bureau of Indian Affairs does.
7 And I venture to say that if you took any
8 objective observer, lawyer, people that are skilled in
9 government, and said, who has more clout, the Bureau of
10 Indian Affairs, or for that matter, the Department of the
11 Interior, in terms of how it manages the Bureau of Indian
12 Affairs, and the Farm Credit Administration, t he Home Loan
13 Bank system, the Fannie Mae, Jennie Mae, these are
14 powerful, powerful enterprises, and they are not simple
15 enterprises. They go across all the laws that the Bureau
16 would be involved in, in terms of natural resource
17 management.
18 Farm Credit -- I mean, that is a natural
19 resource management for American agriculture. It manages
20 acreages that would be worth anything that the Bureau of
21 Indian Affairs manages, in all its aspects. Mineral
22 rights, surface rights, they run into the same exact
23 issues. They are lending money.
24 MR. GLEASON: They have a far broader
25 constituency.

MR. HOMAN: Yes. Well, I'm just saying, their clout is considerable, and they have $100 billion at stake. We run $149 million through the Department each year, and that is pretty small by modern day standards.

I don't know how many trillion -- the payment system in the United States runs trillions of dollars through the New York clearing houses and these accounting systems, per day, and we are talking about $149 million per year.

There is no comparison on how these systems are managed, and I don't want to diminish, at all, the complications of dealing with natural resources, particularly public resources, but you have so many different things involved that you must rely on somebody other than your own resources.

When I came to the Department of the Interior, I asked for a single lawyer that was skilled in trust financial management, and there is none.

Now, I can get as many environmental lawyers as there are lawyers, to help me, but that doesn't help me in terms of how a trustee can carry out his functions of reporting, deposit, payment, investment, criteria.

Not one knows how an investment portfolio, run by every mutual fund in the United States, works, under the prudential investor group; and I am here to say

that the trustee has deliberately, in my view, set up the rules and regulations to diminish the U.S. Government's liability.

So if you allow Indian trust funds, under trust, to be invested under the prudential investment rule, that involves a judgment, a judgment of common sense, prudential judgment.

I will only say, you can invest them in U.S. Government securities, while safe, anybody can do that. And, therefore, you get your standard rate of what the market calls a risk-free rate, which is the U.S. Government rate.

That's not for the benefit of the trustee -- or excuse me, for the beneficiary, it is for the benefit of the trustee. He doesn't have to make a decision. How can you be held liable, if that's all you will do to invest it?

Now, the Indians would say, "Well, why aren't we getting a prudential rate of return?" Well, there are, and we have example after example after example of widow and orphan type pension funds that are under the most strict criteria, and the biggest one is in Washington, D.C., called Washington Mutual, and it has been around since the 1930s.

Its rate of return on investments, last

year, under these very restrictive rules, was better than 10 percent. it was like 13 -- no, 20 percent last year. The average over the last ten years is under 10 percent.

Under the prudent investor rule, applicable to all the private trustees, none of these have ever failed, and I can tell you that with some degree of confidence, because at least in my lifetime, and I started with the Comptroller of Currency 30 years ago, and we used to keep track of things like that. No national trust department has failed.

So there are ways to deal with this , other than the archaic prudent investor rule, which as I say, overall is benefitting the trustee, not the beneficiary.

Any other comments? Well, thank you very much. I will give you the pledge of taking your comments into consideration, and we will include them for the record, and that will be a public record.

And if you'll give our office in Albuquerque your name, and that you wish to receive a transcript of today's hearing, we'll be glad to send one to you, when we get it back from the reporter. Thank you very much.

(Whereupon the Hearing concluded at 1:25 P.M.)

OFFICE OF THE SPECIAL TRUSTEE FOR AMERICAN INDIANS
OFFICE OF TRUST FUNDS MANAGEMENT

TRIBAL CONSULTATION ON THE DRAFT STRATEGIC PLAN

C E R T I F I C A T E

I, Mary K. Loughran, a Certified Court Reporter, do hereby certify that the Proceedings of the above-entitled cause were reported by me stenographically on Thursday, March 6, 1997, and that the within transcript, numbered Page 1 through 177, is a true and accurate transcription of my shorthand notes.

I further certify that I am neither an attorney nor counsel for, nor related to or employed by any of the parties to the action, and that I am not a relative or employee of any attorney or counsel employed by the parties hereto, or financially interested in the action.

Mary K. Loughran, CCR, RPR

OFFICE OF THE SPECIAL TRUSTEE FOR AMERICAN INDIANS

OFFICE OF TRUST FUNDS MANAGEMENT

TRIBAL CONSULTATION ON THE DRAFT STRATEGIC PLAN

Wednesday, March 12, 1997
9:01 a.m.

Sheraton Uptown Hotel
2600 Louisiana, N.E.
Albuquerque, New Mexico

REPORTED BY: YVONNE C. GONZALES, NM CCR #62
500 Oak Street, N.E., Suite 102
Albuquerque, New Mexico 87106

A P P E A R A N C E S

PAUL HOMAN
Special Trustee for American Indians
Department of the Interior
Washington, D.C.

JAY HUNDLEY - Consultant
Office of the Special Trustee
Washington, D.C.

DICK FITZGERALD - Trust Policy Officer
Office of the Special Trustee
Washington, D.C.

TOM THOMPSON
Office of the Special Trustee
Washington, D.C.

JOE C. CHRISTIE
Special Assistant to the Special Trustee for American Indians
Department of the Interior
Office of Trust Funds Management

DONNA ERWIN - Director
DOUG LORDS - Deputy Director
Office of Trust Funds Management
Albuquerque, New Mexico

JOE WELLER - Liaison Officer
OST-OTFM
Albuquerque, New Mexico

JEAN TUGGLE - Supervisory Accountant
DON GRAY - Accountant
OST-OTFM
Albuquerque, New Mexico

FRED WELLER - Computer Specialist
OST-OTFM
Albuquerque, New Mexico

SHELLY FARMER - Staff Assistant
OST-OTFM
Albuquerque, New Mexico

PATSY ANTONIO - Secretary
OST-OTFM
Albuquerque, New Mexico

BIRD FORD
PAT GERARD
MARGARET WILLIAMS
ROBERT UPTON
ROBERT McKENNA
JED L. HARRISON
GLORIA WILSON
DEBBIE WILLOUGHBY

YVONNE C. GONZALES, NM CSR #62
Court Reporter
Albuquerque, New Mexico

VERN VALLIE - Superintendent
Northern Pueblos Agency
Mountain View, New Mexico

DELBERT BREWER - Area Director
Aberdeen Area
Aberdeen, South Dakota

OMAR BRADLEY
Natural Resource Program Admin.
SPA
Albuquerque, New Mexico

ERMA VIGIL - Realty Specialist
SPA
Albuquerque, New Mexico

ELSA J. CURLEY - Realty Specialist
BIA, NAO, Real Estate Services
Gallup, New Mexico

ROB BARRACKER - Area Director
Albuquerque Area
Albuquerque, New Mexico

GARY ROGERS - Chief, Division of Field Operations
Caddo/OST/OTFM
Ft. Gibson, Oklahoma

KAREN B. FOSTER - Area Tribal Operations Officer
Albuquerque Area Office
Albuquerque, New Mexico

FLORINE GUTIERREZ - Superintendent
BIA-SPA
Albuquerque, New Mexico

ARLENE BEGAY - Trust Accountant
OST-OTFM-AAO
Albuquerque, New Mexico

YAMIE LEEDS - Superintendent
Laguna Agency
Laguna, New Mexico

RON JAEGER - Area Director
Sacramento Area
Sacramento, California

DAN BRUINGER - Superintendent
Southern Ute Agency
Ignacio, Colorado

IRIS ANN DREW - Tribal Government Specialist
Albuquerque Area Office
Albuquerque, New Mexico

LORRAINE LUCERO - Realty Specialist
BIA-SPA
Albuquerque, New Mexico

LORENE A. DIEGUEZ - Admin. Officer
NPA
Santa Fe, New Mexico

MICHAEL HACKETT - Superintendent
Zuni Agency
Zuni, New Mexico

BILL TITCHYWY - Realty Specialist
BIA - Phoenix Area Office
Phoenix, Arizona

STEVEN D. DAVIS - Natural Resource Manager
BIA - Zuni Agency
Zuni, New Mexico

JIM FIELDS - Area Director
BIA - Muskogee Area Office
Muskogee, Oklahoma

1 ROGER JENSEN - Forest Manager
BIA - Zuni Agency
2 Zuni, New Mexico

3 DON WHITENER - Assistant Area Director
BIA-AAO
4 Albuquerque, New Mexico

5 LEE MAYTUBBY - Area Realty Office
BIA-AAO
6 Albuquerque, New Mexico

7 JOHN C. WILLIAMSON - Chief
Irrigation & Power
8 Central Office West
Albuquerque, New Mexico
9
ARTHUR BLAZER - Acting Superintendent
10 Mescalero Apache
Mescalero, New Mexico
11
WILSON BARBER, JR. - Area Director
12 Navajo Area Office
Gallup, New Mexico
13
KAY HAYES - LES, Security Specialist
14 Lakota Sioux
Albuquerque, New Mexico
15
GENNI DENETSONE - Area Realty office
16 U.S., DOI, BIA
Gallup, New Mexico
17
* * * * * * * *
18
A T T E N D E E S
19

20 RAYMOND M. CLINE - Vice Chair Trust Board
Delaware Tribe
21 Bartlesville, Oklahoma

22 LORETTA V. METOXEN - Member
Oneida Trust Commission
23 Oneida, Wisconsin

24 RAPHAEL MENDEZ - Councilman
Mescalero Apache Tribe
25 Mescalero, New Mexico

A T T E N D E E S (Continued)

BEN MAGANTE, SR. - Chairman
San Luis Rey Indian Water Authority
Pauma Valley, California

NELSON CORDOVA
Taos Pueblo
Taos, New Mexico

PAM ARVISO - Business Manager
Pala Band of Mission Indians
Pala, California

TERRIE K. TERRIO - Treasurer
Stockbridge Munsee Band of Mohicans
Bowler, Wisconsin

ELMER L. MILFORD - Council Delegate
Navajo Nation - Resource Committee
Fort Defiance, Arizona

EARL OLD PERSON - Chairman
Blackfeet Tribe
Browning, Montana

RICK NOVITSKY - Natural Resources Director
Grand Portage Chippewa Nation
Grand Portage, Minnesota

ROBERT NYGOORD - Office of Planning & Development
Sault Ste Marie Tribe of Chippewa
Sault Ste Marie, Michigan

MICHAEL PAGE - Assistant Chief
Delaware Tribe of Indians
Bartlesville, Oklahoma

JACK FERGUSON - Treasurer
Choctaw Nation of Oklahoma
Durant, Oklahoma

MARY BLACKWATER - Comptroller
Gila River Indian Community
Sacaton, Arizona

LEHMAN COYOTE - Tax Commission
Cheyenne - Arapaho Tribes
Concho, Oklahoma

A T T E N D E E S (Continued)

WILFRED MADRID - Executive Director
Ute Mountain Ute
Towaoc, Colorado

JAMES PEDRO - Business Committee Rep.
Cheyenne - Arapaho Tribes
Concho, Oklahoma

CHARLES O. TILLMAN, JR. - Principal Chief
Osage
Pawhuska, Oklahoma

JONATHAN HICKS - Chairman
Walker River Paite Tribe
Schurz, Nevada

RAY NATURND - Chairman
San Pasqual Indian Reservation
Valley Center, California

BENNIE W. CHAPO
Navajo Nation Council
Canoncito, New Mexico

DAVID TOAHTY - Acting Comptroller
Sac & Fox Nation
Stroud, Oklahoma

ALPHONSE F. HALFMOON - Vice Chair
Confederated Tribes of the Umatilla Res.
Pendleton, Oregon

ALBERT R. APODACA - Comptroller
San Felipe Pueblo
San Felipe, New Mexico

ANTHONY SILVA - Secretary
Pueblo of Laguna
Laguna, New Mexico

NATHAN LEVI ESQUERRA - Chairman
Chemehuevi
Havasu Lake, California

MAJEL RUSSELL - Tribal Attorney
Crow Tribe of Indians
Crow Agency, Montana

A T T E N D E E S (Continued)

MIKEY PERRY - Assistant Governor
Chickasaw Nation
Ada, Oklahoma

JERRY HANEY - Chief
Seminole Nation
Wewoka, Oklahoma

ROLAND JOHNSON - Governor
Pueblo of Laguna
Laguna, New Mexico

WIL HERRERA - Treasurer
Pueblo of Laguna
Laguna, New Mexico

CLIFFORD WOLFE, JR. - Council
Omaha Tribe of Nebraska
Macy, Nebraska

MICHAEL BEGAYE - Administrative Service Officer
Navajo Nation - Navajo Area School Board Assn.
Window Rock, Arizona

GREGORY E. PYLE - Assistant Chief
Choctaw Nation of Oklahoma
Durant, Oklahoma

JOE TRUMBLY - Council Member
Osage Tribe
Pawhuska, Oklahoma

BILL ANOATUBBY - Governor
Chickasaw Nation
Ada, Oklahoma

SYLVESTER H. CHEE - Council Delegate
Resources Committee
Navajo Nation
Rock Point, Arizona

JAMES FACTOR - Assistant Chief
Seminole Nation of Oklahoma
Wewoka, Oklahoma

A T T E N D E E S (Continued)

JOSEPH A. SALVADOR - Tribal Interpreter
Pueblo of Acoma
Acoma, New Mexico

VIVIAN D. MORRIS - Land Claims Coordinator
Omaha Tribe of Nebraska
Macy, Nebraska

DORAN L. MORRIS, SR. - Council Member
Omaha Tribe of Nebraska
Macy, Nebraska

DANIEL HONAHNI - Tribal Operations Officer
Hopi Tribe
Kykotsmovi, Arizona

SANDY HANSEN - Deputy General Counsel
Ute Indian Tribe
Ft. Duchensne, Utah

EDWARD T. BEGAY - Council Delegate
Navajo Nation Council
Window Rock, Arizona

CHARLES TALLCHIEF - Council Member
Osage Tribe
Pawhuska, Oklahoma

LILLIE K. ROANHORSE - Staff Assistant
Navajo Nation
Window Rock, Arizona

A. PAUL ORTEGA - Tribal Council
Mescalero Apache Tribe
Mescalero, New Mexico

THOMAS KUNKEL - General Manager
San Luis Rey Indian Water Authority
Pauma Valley, California

JON MATHEWS - Finance Director
Columbia River Inter-Tribal Fish Commission
Portland, Oregon

THOMAS R. NATAH - Council Delegate
Navajo Nation
St. Michaels, Arizona

A T T E N D E E S (Continued)

EDWARD T. ARVISO - Rincon Tribal Chairman
San Luis Rey Indian Water Authority
Pauma Valley, California

FLORENCE LOFTON - Director
San Luis Rey Indian Water Authority
Pauma Band of Mission Indians
Escondidu, California

ROBERT LOFTON
San Luis Rey Indian Water Authority
La Jolla Band of Mission Indians
Escondidu, California

WALTER I. HARE, JR.
Administrative Services Director
Kaw Nation
Kaw City, Oklahoma

TERRY SHAUL - Accounting Tech
Sac & Fox Nation
Stroud, Oklahoma

HENRY N. RODRIGUEZ - Vice President
San Luis Rey Indian Water Authority
Pauma Valley, California

MARVIN L. STEWART - Tribal Secretary
Crow Tribe
Crow Agency, Montana

LEO D. CALAC - Treasurer
San Luis Rey Indian Water Authority
Pauma Valley, California

SANDRA WOLFE - Land Management
Omaha Tribe of Nebraska
Macy, Nebraska

ALFRED M. PEOUS - Councilman
Wellpinit, Washington

DUANE PORTER - Land Trust Administrator
Grand Portage RTC
Grand Portage, Minnesota

A T T E N D E E S (Continued)

DIANA MARTINEZ - Secretary
San Luis Rey Indian Water Authority
Valley Center, California

TONY ZAMORA - Secretary
Taos Pueblo
Taos, New Mexico

ROBERT P. TABOR - Treasurer
Cheyenne - Arapaho Tribes of Oklahoma
Concho, Oklahoma

LUCILLE C. ENCINAS - Legislative Council Member
Tohono O'Odham Nation
Sells, Arizona

FREDERICK LUJAN, SR. - Warchief
Taos Pueblo
Taos, New Mexico

MARTHA GARCIA - President
Ramah Navajo Tribe
Ramah, New Mexico

RONALD R. JULIAN - Council Member
Jicarilla Apache
Dulce, New Mexico

DIAUS S. LONE TREE - Legislation - Dist. V
Ho-Chunk Nation
Black River Falls, Wisconsin

MARY ANN ANTONE - Council Member
Tohono O'Odham Nation
Sells, Arizona

REBECCA TORRES - Chief
Alabama/Quassaite Tribes of Oklahoma
Tahlequah, Oklahoma

GILBERT L. NARANJO - Sheriff
Santa Clara Pueblo
Espanola, New Mexico

A T T E N D E E S (Continued)

JIM BURNS - General Manager
San Carlos Apache Tribe
San Carlos, Arizona

BERNIE TEBA - Executive Director
Eight Northern Indian Pueblo Council
San Juan, New Mexico

WILLIS H. PETERSON - Council Delegate
Navajo Tribe
Window Rock, Arizona

GEORGE ARTHUR - Council
Navajo Nation
Window Rock, Arizona

FREDDIE HOWARD - Council
Navajo Nation
Window Rock, Arizona

WALTER DASHOE - Governor
Santa Clara Pueblo
Espanola, New Mexico

JOHN VALE - Tribal Auditor
Osage Tribe
Albuquerque, New Mexico

LOREN (Rusty) FARMER
Retired - BIA
Blackfeet Tribe
Albuquerque, New Mexico

RICHARD L. EVANS - Consultant
Mescalero
Ramah, New Mexico

DAN LEWIS - Director
Bank of America
Phoenix, Arizona

RICHARD BAD MOCCASIN - Executive Director
MNI Sose Inter-Tribal Water Coalition
Rapid City, South Dakota

A T T E N D E E S (Continued)

GENE R. POWERS - Tribal Consultant
Santa Fe, New Mexico

EDDIE OVERFIELD - Systems Analyst
EIPC
San Juan Pueblo, New Mexico

JERRY RYBURN - Principal Consultant
October Hill Financial Affiliates
Albuquerque, New Mexico

CAROLYN E. PASTERNAK
Nordhaus, Halton, Taylor, Tarahdash & Frye
Albuquerque, New Mexico

DAVID C. HARRISON
Natural Resource, Environmental, Communications
Consultant
Albuquerque, New Mexico

FORREST GERARD - Retired
Blackfeet Tribe
Albuquerque, New Mexico

SID MILLS - Retired
Oglala Lakota
Albuquerque, New Mexico

JIM PARRIS
SPA - KRUG
Albuquerque, New Mexico

BEN BINDER - President
Digital Design Group, Inc.
Denver, Colorado

GREG BRESHEARS

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MR. HOMAN: Good morning, ladies and gentlemen. My name is Paul Homan. I'm the Special Trustee for the American Indians. We're here today on our fourth hearing to present the Strategic Plan of the Office of the Special Trustee, and to hear your comments and suggestions.

This is going to be a recorded session. When you come to the microphone, just please state your name, tribe and/or organization and then you're welcome to comment. You're welcome to enter statements for the record.

A transcript will be made, as I indicated, and it will be published along with the Strategic Plan. It will be made publicly available toward the end of March and will be provided to anyone who wishes a copy of the full transcript.

Before we start, I have asked Earl Old Person, the chief of the Blackfeet Tribe in Montana, to lead us in a prayer. Earl.

(Invocation.)

MR. HOMAN: Thank you, Earl. Donna Erwin, Joe Christie and I are going to spend about an hour and a half with our slide presentation, after which we will take a break and then we'll come back and reopen the part of the session that we'll begin with.

As you know, the Office of the Special

1 Trustee was charged with coming up with a reform plan.
2 This is our vision statement. It starts out as any
3 mission statement does. And we didn't try to reinvent the
4 wheel here.
5 These words are out of Supreme Court
6 decisions, and demand that the U.S. Government manage the
7 Indian trust activities according to the most exacting
8 fiduciary standards and moral obligations of the highest
9 responsibility and trust -- something, as you will find
10 out, we seldom do. But we've designed a plan to give the
11 organization, the U.S. Government, the opportunity to
12 finally meet these objectives, which they have not met for
13 a good many years.
14 The primary causes of the problems, as I see
15 them -- and they are set forth in part -- a detail of the
16 condition of the trust systems -- in the back of the full
17 Strategic Plan, and are set forth, ad nauseam, in GAO
18 reports and other reports, which have been issued by the
19 Department of the Interior and others, including outside
20 auditors in the past few years.
21 They are the following: I believe that the
22 trade-offs of competing financial and managerial resources
23 within the government -- not only at the Department of
24 the Interior, but within the Bureau of Indian Affairs as
25 well -- have been adverse to the American Indians over the

1 past 20 to 30 years. The way the BIA is organized is
2 another problem. It is organized as a horizontal entity
3 with most programs reporting to one group of people.
4 Most modern government units and almost all
5 private sector companies are organized along business
6 lines. And that is the way we have set up our
7 suggestions. Also, because the BIA has operated with an
8 obsolete system for well over 20 years, its people tend to
9 be not skilled in modern trust accounting and
10 administration skills.
11 Finally, as you all know, or at least those
12 of you who have great amounts of allotment, the
13 fractionization of the American Indian allotment interest
14 is the primary cause of a good many -- we think a vast
15 majority -- of the operating difficulties that we will
16 outline to you.
17 These are the priority categories for
18 resolution which were set by a tribal work group which met
19 twice over the last year -- consisted of 19 tribes. And
20 also, we tested some of their suggestions and got direct
21 input from five regional hearings from IIM account holders
22 and tribal account holders.
23 The five categories here, in the order that
24 they prioritized and need to be addressed, were:
25 accounting, realty, customer service, policies and

procedures and record management. Interestingly, those five showed up on the federal list as well in a little different order. But those are essentially the major problems. While we're not going to go into a statistical analysis here, you'll see that stated in my condition statement in the back.

But let me remind you as to why we're here, why I'm here. There are still, today, 45,000 IIM accounts, with $28 million in them, "whereabouts unknown." We can't find those people. For those of you who are concerned about this plan or some other plan amounting to a form of termination, those people have been effectively terminated. We haven't been able to find them for well over ten years, in most cases.

There is another 27,000 individuals who were formerly minors, that now, we know, have reached the age of majority, with 22 million in their accounts. One account has over 400,000 in it. These people have been effectively terminated by the Bureau of Indian Affairs. We can't find them either.

There are 16,000 duplicate accountants. There are 21,000 accounts for deceased individuals with over 37 million, which are subject to a two-year backlog, on an national average. In some areas, notably the Rosebud Sioux, the backlog is four years old.

So, when we disburse funds, we don't always know whether the recipient of those funds is the right party. There are 28,000 special interest accounts which are supposed to be temporary accounts, which have had no activity in the past 18 months.

The federal government, as any financial institution, is also required to give tax ID numbers, Social Security numbers or other tax ID numbers to the federal government. It's against the law for us not to get it. Out of some 300,000 individual accounts, we have over 128,000 accounts with no Social Security number.

In addition, we have some $42 million worth of overdraft interest clearing accounts. These are interest payments that have been made in the past ten years, all prior to 1992, which continue on our books as a debit or a negative against the IIM pool.

In practical terms, the current IIM pool holders receive about $2 million less in income on that IIM pool than they otherwise would. Now, a good many of these problems are the subject, as you know, of a class action lawsuit, which I'm not going to talk about. But the point we want to make here is that this is continuing under the current Bureau systems and shows no sign of abating.

These principal causes have resulted in

conditions which I believe are unacceptable by any reasonable standard and continue to do significant harm and damage to the American Indian trust beneficiaries. They have caused permanent damage to the core trust system. If the status quo continues, they will continue to cause that damage.

They have prevented the government from meeting the fiduciary accounting and reporting standards of the Reform Act of 1994. There are eight very specific reporting, accounting and investment criteria set forth in the law which we have failed to meet since 1994; and obviously, have failed to meet prior to 1994.

These defective systems also expose the beneficiary. You are the beneficiary -- those of you in Indian country -- to significant losses. They are continuing.

There's ample evidence of mismanagement. The status quo exposes the federal government to continuous claims of mismanagement, exposure to fraud and the like. It also exposes the federal government to increased liability. That's a taxpayer exposure.

We think that a solution along these lines is appropriate -- that a single administration be formed to manage the U.S. Government's trust management responsibilities to American Indian and American Indian

tribes for three things: the Trust Resource Management area, the Trust Funds Management area and the Land Title and Records Management area.

These three management business functions comprise what we call trust management activities. We believe that all these activities -- the authority, etc. -- should be transferred from the Bureau of Indian Affairs and the Department of the Interior to a new organization called, for want of a better name, the American Indian Trust and Development Administration, as soon as practical and before full implementation of the reform begins.

We also have suggested that all other reforms identified -- and we'll touch on those as we go through the plan -- be approved, funded, staffed and implemented. The staff of the land title and record offices will be transferred as well. We're proposing that all other staff remain in place, except for those engaged in record keeping activities.

We have also suggested that the Bureau of Indian Affairs and the MMS and BLM continue to administer the functions that they are currently engaged in under a compact or a contract with the AITDA and under a delegated authority.

AITDA, as the substitute federal trustee,

1 would then delegate that authority and also conduct
2 reviews and audit for compliance to the principals of the
3 contract and the like; and subject any issues in terms of
4 management performance or institutional performance to the
5 federal courts for compelling performance.
6 This will involve, we think, consolidating
7 the following trust management activities into a single
8 administrative unit. This will be, as I indicated,
9 responsible and accountable for the reforms identified in
10 the plan. The plan implementation period is two years.
11 It will provide for the ongoing management
12 of the U.S. Government's trust responsibilities in the
13 three areas I mentioned. It will organize the institution
14 by business line or function, dedicated exclusively to
15 trust management activities.
16 And fortunately, it will be managed by a
17 board of directors which will consist of five appointees
18 by the President, confirmed by the Senate. Three of those
19 will be American Indians with trust accounts. The other
20 two will be financially skilled individuals, who can also
21 be American Indians. And that the organizational form be
22 that of a governed-sponsored enterprise.
23 We have modeled the form of the new
24 organization after government-sponsored enterprises which
25 are prevalent in the federal scene; notably, the Farm

1 Credit Administration, which is an administration of banks
2 that deal and lend to the agricultural sector, with assets
3 of over 70 billion and which have been around since the
4 1930s.
5 The Federal Home Loan Bank System is another
6 example of a very successful GSE, as are Freddie Mac,
7 Fannie Mae, Farmer Mac and others that deal in housing and
8 agricultural commodities.
9 We think that the proposal represents a
10 major improvement in the way the government manages its
11 trust responsibilities. It will concentrate resources,
12 improve and increase trust services, clearly differentiate
13 trust management activities -- the three that I mentioned
14 to you -- from other general Indian programs and trust
15 activities.
16 It will reaffirm and reassure, we believe,
17 the U.S. Government's trust responsibilities to American
18 Indians. And finally, it will transfer the BIA's staff
19 performing trust management functions, intact, to a new
20 organization at existing locations. As I said, most of
21 them will not move at all; that they will be reemployed by
22 the Bureau and will serve as contractors.
23 There are principal advantages of the new
24 organizational structure. And I'll touch on several. We
25 believe that it will prevent the erosion of the U.S.

Government's fulfillment of its trust responsibilities, which has been taking place consistently over the last 20 years. Underfunding and understaffing, ladies and gentlemen, I submit, is the erosion of the U.S. Government's trust responsibilities.

If you don't fund and staff these programs, you are effectively entering into what we call "de facto" termination. It clearly establishes accountability for these programs, which has not been present in the past. It provides protection against termination, for the reason I just suggested. It eliminates detrimental trade-offs at our levels of the administration, starting with the Bureau of Indian Affairs, as I mentioned earlier.

Your financial and managerial resources are traded off against these programs; first at the Bureau level, second at the Department of the Interior level -- in a capped budget world, against the activities of the department, including national parks, fish and wildlife and other politically more popular principals.

That has been the case, not only in this administration, but in the administrations of the past 20 to 30 years. By raising this institution above that level to a GSE, or government-sponsored enterprise -- reporting directly to the Congress -- the Congress has never failed to fund -- the Farm Credit System, for example, the

1 Federal Home Loan Bank System -- any of the other agencies
2 that I've mentioned: the Federal Reserve System, the
3 Federal Deposit Insurance Corporation, etc. These are
4 creatures of Congress, in one respect.
5 There's a fear, I know, on the part of some
6 tribes dealing directly with the Congress. But they tend
7 to focus on accountability, people taking interest.
8 You'll have five devotees here, five directors, to hold
9 them to the Indian constituencies, making that
10 representation to the Congress every year. We think
11 that's a superior form to the present scheme.
12 The board of directors, as I indicated, will
13 be giving full time to their trust responsibilities.
14 Right now we have two political appointees that give part
15 time: the Secretary himself and the Assistant Secretary
16 for Indian Affairs, to these three activities. The
17 Assistant Secretary, obviously, spends time with a good
18 many of the other agencies as well.
19 There will be five political appointees,
20 again three Indians, reporting directly to the Congress.
21 So, we think they will be more accountable and more
22 interested in promoting these trust activities to the
23 Congress and elsewhere.
24 Importantly, there will be improved trust
25 services, including a clean up in IIM related accounting

problems -- the once that I just mentioned earlier. We've been working on this diligently. We spent about $4 million on it in the 1996/1997 budget. For example, we received estimates that it will take $9 million to $12 million alone to clean up the probate backlog, without which you can't determine appropriate owners.

The land title and records backlog and condition will be discussed by Joe Christie later. But it is atrocious. You must do that before you can even achieve an accurate trust accounting and reporting system, about which we'll talk in a few minutes.

It will also provide for appropriate audit, internal controls and risk management systems. We do not not have a master lease system in the Bureau of Indian Affairs; therefore, you can't determine how many leases are outstanding. Because of the huge backlogs in Areas -- for example, in answer to a question in Seattle, we asked the Bureau to provide us with their latest distribution between allocated tribal lands and individual lands. And the last updated number they gave was from 1985. They can never really catch up so long as these backlogs exist. And 1985 is a long time ago.

Importantly, there will be new trust products designed to provide the American Indians with the opportunity to assist in the management of their trust

accounts. While this was not very well advertised, this was the second part of the Reform Act -- to come up with a new way for the Indians to invest their trust funds over and above the one way we have now, which is to invest it in U.S. Government obligations.

Also, these new products and services will provide options for the investment of those trust funds in economic development of the American Indian communities. We believe that we have achieved that.

These new products and services are made possible by a movement from the current legal arrangement to something that is known as the "prudent investor rule." The prudent investor rule is a common law, ordinary prudence rule evolution, which has been an Anglo-Saxon commercial trust practice for over 1,000 years.

The prudent investor rule is the latest iteration of that. It is the rule that is followed by every single trust company in the United States, except for the federal government. It allows for a myriad of prudential -- and I emphasize the word "prudential" -- activities, including economic investment of all sorts: equities -- that could include tribal business ventures under certain conditions. It can include infrastructure development and the like versus the current scheme, which only allows that investment in U.S. Government securities.

The second part of this enables the tribes to either direct those funds to an agency arrangement and keep those funds with the federal government, where you receive free accounting, reporting, safety activities, but are able to -- through an investment plan -- direct the trustee to invest those funds as you wish, so long as it's prudential.

The liability under those circumstances still remains with the federal government, who will have the final say on those activities. Nevertheless, it opens up a good many investment opportunities. The tribes right now have the opportunity to withdraw funds from the federal trust and invest them in any way that they wish. Only three tribes have elected to do that.

We think part of the reason is that the trust product services here are inordinately expensive for some of the smaller accounts and tribes. We would extend these into the future as what we call lifeline banking activities and trust activities, so that the smaller tribes could direct those investments in the same way that the larger tribes can withdraw the funds.

The other areas of new products that are made possible -- as I indicated, commercial consumer real estate and infrastructure investments and loans are possible. It could be that an endowment fund or a

development bank -- about which I will discuss later -- could be set up for fractionated realty purposes.

The tribes could use their own funds, for example, to buy the fractionated realty interest, sell them, market them, make loans to facilitate the sales, deal in them and otherwise manage them, which they cannot do except under certain restrictive conditions.

These will be able to develop investments in new and existing projects in businesses. We're also allowing voluntary deposits, demand and savings accounts, checking and payment services and tax-free treatment of those voluntary deposits, along with the acceptance of retirement accounts, which have not been possible for individuals in the past.

The objective here was to give the IIM holders and tribes the equivalent services that every single commercial bank and trust company offers to the American public, with a couple of exceptions, notably the tax-free treatment.

Under Phase II -- which I'll talk about after Joe and Donna give their presentations -- a full service banking and trust is proposed, including 500 million in equity capital and up to 5 billion in loans.

This is the organizational structure. It's hard to read from your books there. Essentially, it sets

1 up the three businesses under a single administration --
2 the businesses being the Trust Resource Management
3 Administration, which will handle the land and natural
4 resources, but notably, for energy and minerals, forestry,
5 real estate services, water and land, fish and wildlife --
6 those activities in management will continue with BIA,
7 with MMS and with BLM, as appropriate. They will also
8 continue with the self-governance tribes that engage in
9 those activities under the current arrangements.
10 Again, they will act as service bureaus.
11 They will be recontracted. While the budget and the
12 authority will be with the central administration, it will
13 be reallocated as the Bureau now reallocates its budget
14 and authority to self-governing tribes and other outside
15 services.
16 The caveat here is that the federal trustee,
17 as federal trustee, must be able to satisfy itself that
18 the delegee in any of these service bureaus is performing
19 according to the trustee's policies and procedures
20 systems, practices and standards. So, we will be
21 purchasing a new Asset Management Information System for
22 use in the prelease stage, that can be used for land
23 conservation, land management, compliance with
24 environmental laws -- produce the lease.
25 Then we'll have a separate trust accounting

system -- which Donna will talk about in a minute -- which will take it from the lease all the way through the chain of financial transaction: the lease, the collection of the accounts receivable part of it, the deposit, investment, and disbursement part; and finally, more importantly, the land title and records systems, which will be a separate management information system.

As I indicated, all these business practices will be along business lines. And finally, we come back to my original Conceptual Strategic Plan, or at least, the first eight items. I published this plan in 1996 -- in February -- sent it to all the tribes. This has been the bare bones of the Conceptual Strategic Plan.

The one you have in your hands is a filler in. We've added some new activities. These eight activities are really a trust accounting system and a national record center, along with the land records and title recordation and certification system that exist currently -- that will be put into a new trust accounting system.

The organizational structure, which is the next one on the next page -- I talk about fractionated interest legislation. It's at hand and it will proceed separately. We'll talk a bit about that. The Department of the Interior is working on that right now. Joe will

talk about that in a minute.

Then, the other areas here: the legal changes -- I've talked about -- the data clean up, disaster recovery, and the investment in the appraisal and probate backlog -- we've touched upon.

This is the system architecture. It is called a star or point-to-point system, which is really an information system, accounting, telecommunication systems. Virtually, we think it will take something like 80 to 100 million to implement this system. Interestingly, it will provide over 1,500 work stations to the Bureau -- modern work stations. It will provide about 450 work stations to individual tribes.

We will set it up. We will ask the tribes to conform to the information system. We will customize the desk stations to their current systems and provide training for the implementation. Joe and Donna will talk about the details.

Finally, the Office of the Special Trustee is a temporary office. It is set up to produce this plan. My plan, through the Congress mandate, was for me to produce the plan in one year. However, I didn't get funding in the first year. I've been around since September of 1995. I agreed with the Secretary and the Congressional committees to -- when I got funding, which

was on October 1 -- to produce the plan by March 31.

So, I will be handing it to the Congress after the conclusion of these consultation meetings, as soon as possible -- in April -- after we get the outside contractor's report, which is due March 31. Then, I would propose that the office, including me, sunset, or leave, you know, when Congress deals with this plan. Hopefully, they will deal with it in this congressional session.

I don't believe, personally, that the Special Trustee should be involved in the implementation of the plan, or anyone in an oversight capacity. I don't believe that's workable.

So, whoever implements this plan, or whatever variation comes out of the Congress and the Secretary, should be the person in charge and not me. So, I would propose to leave 30 days after Congress and the Secretary make that decision.

That concludes my initial overview. I will be back to discuss briefly the Development Bank, which is Phase II. It may never happen. But before we do that, I'd like Donna and Joe to discuss the other elements, in detail, of Phase I of the Strategic Plan. Donna.

MS. ERWIN: Let's see if we can do this without the microphone. If you can't hear me, raise your hand. If we have people coming in in the back, there are

some empty chairs up front.

What we want to talk about -- and my side of this is -- I'm the director of the Office of Trust Funds Management. Okay. Currently, we report directly to Mr. Homan, to the Office of the Special Trustee.

We're going to discuss some of the things that we've heard, some of the things that are going on and the ideas that you'll see in Mr. Homan's plan. One of the things that we've heard, personally heard -- we hear this from our auditors. We hear this from the third-party contractors we have. A lot of people have been out there speaking to the third-party contractor.

Contractors are out there to find out what is currently going on, how are we handling things and what do we need to be doing. So, as we go along here -- as Mr. Homan said, this is his Draft Strategic Plan. That's what he was charged with, is how we can correct this.

We're very open here. How do you think it will work better? What are your concerns? What are your comments? That's the reason we're all here, is to try to work through this. What I'm going to describe is the difference.

Like I said, you hear this from the auditors. You hear this from the contractors. The difference between LTRO -- everyone says, "Well, if you're

in the Bureau or you're working with the land records, you know that's the land title records and the ownership." What's the difference between that part of what we do and the Trust Asset Management System?

The land title and records -- the LTRO -- is land centric -- it worries about the land, who owns the land, the history of the land -- versus the Trust Asset Management which is people centric. In other words, we worry about that person who is owning that land -- who is that person and what do you own of that land.

Over here, the LTRO is public. The Trust Asset Management -- what you own is a very confidential matter, what you individually own. The LTRO is the history and chain of title. And the Trust Asset Management is a snapshot in time. Okay.

So, what we want to do -- I'm going to speak about the Trust Asset Management and why this act combined with the resource side, and where are we getting the concerns that we hear across the country, saying, "Wait, you're trying to change the way we're doing business." Well, that's true only so that we're accountable. We'll explain why that is.

Joe will be discussing this part. I will go into more detail about the Trust Asset Management, which is financial -- has a statement of assets and

transactions -- it involves collection and disbursement, accounts receivable and investments.

Currently, we all know -- we have an IRMS application, which includes the people, the ownership. It has a lot of subsystems out there. We discovered that it's insufficient and cannot meet the commercial standards. The technology is outdated.

We've heard people say, "Let's just fix it." Well, if we fix it, it's going to be so costly and we're still not going to have a state-of-the-art project. So, what we're going to do is look at what can we do -- that's out there and available -- that can help everyone sitting in this room. It is not integrated LRIS.

Now, remember, the LRIS system that's out there is that land, records title. You have to be able to know that this is what we're saying, that this is who owns the land. But it has to match when we come over and say these are the individuals that own that land. Those two things need to match.

Right now, you'll hear us repeat over and over -- we're seeing -- and the contractor that's going out will pull up something off the land title and records system, and they'll say, "This is the land and this is who owns it." When we go over and say, "How many pieces of property does this person own," they do not match. We see

them off as much as 30 or 40 properties.

We've got one instance where they pulled one property here and went over here. And this person owned 40 properties. So, we've got to match those every day. We have to know that we are incomplete. We've got to be right in sync every day, so we're sure that we're paying the correct people, that those -- that we know who owns the property, that both systems are in sync.

As a result, we know that this does not fulfill the Secretary's trust responsibility. As we said, there are commercial systems available.

We need a comprehensive system. Now, when we say that, all we're talking about is systems here. Let's take out the people factor and who's performing this, per se. Trust Asset Management is the Trust Resource Management. That includes leasing. That includes the tickler system, the collections. Okay.

If you're leasing something, what we're saying is, it should be on the same system. We come in; we lease a piece of property; we immediately put it into a system that everyone sees. We'll talk about that in detail.

In other words, we're not leasing on this system and trying to account for it on this system. All we're talking about is, we have one system that everybody

is utilizing, no matter where you're located. You still ought to be able to perform leasing wherever. You'd be out there where the land is.

So, those people are still going to be right out there, even maybe more so than what we're seeing right now. So, we're not changing who or where or how we're leasing. We're just improving the policies and procedures and the accounting for it.

Tickler systems. We hear over and over, "We do not have an accounts receivable system." Now, we're going to deviate just a little here and try and get a new set of terminology. Accounts receivable -- normally, you think of a general ledger with accounts receivable on there -- a dual entry on the general ledger, when we say "accounts receivable."

Normally, when you talk about fiduciary activities, you're talking about a tickler system. Something that says, "This is what is due." You're not out billing people. What you're doing is, you're coming after -- you can get a coupon book, just like you got a mortgage and you say, "Here's my coupon book. I'm going to pay." If you do not pay, we'll be back, looking to say, "Now you're past due."

There's people dedicated to doing nothing except sitting there and looking at the people that are

past due -- calling and talking to them, following up. What we're hearing now is that we have little bits and pieces out there.

There are some manual accounts receivable systems or tickler systems. There's various things out there. But they're not as comprehensive. As Paul mentioned, we cannot go out and find all the leases and the complete comprehensive databases.

Collections -- same thing. If you went to the IIM meetings during the summer, what was said is -- we're not saying that the collections aren't important. They're one of the most important things out there. Once you have the land leased, you want to make sure that the money is coming in; the right amount is coming in, and that you know if anything is past due.

Right now, functions are done at the Agencies, Areas, at the Office of Trust Funds Management. We're saying that that shouldn't be happening. The people that are out in the field should be dedicated to taking care of what you're wanting to know.

If they're over there doing collections and they should be doing customer service, it's not -- we don't want them out there saying, "Oh, excuse me, I have to make my deposits. I have to go make this accounting entry, because it's past the deadline. The deadline is

coming up."

We want them dedicated to being a customer service-oriented person out there. So, that collection should be done at a lock box. That term means that it goes directly to a bank. It's like a post office box. It goes to a bank. If you make a house payment -- now, you make it to P.O. box, not directly to the mortgage company.

It's collected at the bank, and the bank immediately puts the money to work. And all the information -- if it's a coupon, if it's a copy of the check -- it's electronically transmitted to your mortgage company. That's the same thing we're asking for.

So, if somebody is out, you're not having to say, "This check is sitting on someone's desk. Someone is out today. Someone is ill. Someone is on vacation. We had other things that we had to get done." That money is going to work for you. That's what we're looking for in the lock box.

The investments -- and Paul touched on the investments. We want to go to the prudent investor rule, so that you can take advantage of economic development not only on the reservation, but you can also look at equities, common stocks, other growth stocks. We just want to expand that for you.

Disbursements -- we want to be able to get

money to you much quicker. In the Juneau area, we have started -- and we had to do a lot of this manually. But we're sending a lot of the checks by ACH, automated clearing house. That's how the government employees are paid; Social Security payments are paid. We're sending money directly up to their checking account, so they're not waiting for a check. It's there that day.

If it's due tomorrow, we send it out -- we notify the bank and we send the account out the next day. So you're not looking for a check, having to find someplace to cash the check.

One thing we need is -- we discussed -- a link between the ownership records and between what we're actually accounting for up here. Every day or every week, whatever is determined -- depending on the activity, we bounce those against each other, to make sure that everybody is in agreement. It's just an accounting, an audit, a reconciliation -- to make sure we're paying the correct people and there wasn't an error in the system.

We need all assets listed on the statements. When we went out there during the summer we heard, over and over, "I get a statement. And if it's only a tribal statement, I see all my investments. I see that I had this in a treasury note or this in an overnighter, or this in a Ginnie Mae. What I don't see is whether I own any

real estate; whether I own any oil and gas. I'd like to see all of those listed together. I want to know."

Same thing as an individual. "I want to know if I got this lease payment. This is the land that it came off of. I want a description of that land." That is something that's very common. That's what you get in the private sector, and all trust customers receive.

You're entitled to know what you own, what sections. That should be on every one of your statements that you receive. It should include how much of that parcel do you own. If it's an oil and gas lease, if it's a grazing lease, if it's land, you should know. Is it producing. Is it nonproducing. Is it leased. Is it nonleased. You should know that on your statement, and how much of the decimal ownership you have.

If you received income, you should see how much everyone received. It would go against that decimal. And you can multiple that out and say, Yes, I see that's the correct amount. It should include Mutual Fund capabilities. This is not only for IIM. This also should include the smaller account holders on the tribal side. And this is just a more equitable way to receive your income.

These -- and I'm not going to go through all these in detail. They're in your packet. But I want you

to know these are just samples of the types of statements you can receive off of any private sector trust system out there. All this is -- it's not comparing new private sectors. It's staying in here, tribally -- that same quality and that same information to be incorporated with the information you're receiving.

You should be able to see what you're receiving. These are just transactions. You could get them monthly, quarterly, annually; ask for it at any time. The person right there -- your customer service person -- we hear a lot that, "Well, you're going to take my customer service people away. You're all moving to Denver." None of that is true.

We are saying that some of the areas, in fact, currently, are centralized at the Area. We believe the customer service people should be back out at the Agency, and, in fact, in some instances, be traveling. A traveling, roaming person with a little -- we're into modern technology. It's not Star Wars technology. This happens everywhere across the country. Sit down with a laptop and it'll tell you this is what you own.

We can go out to chapter houses. We can go out to tribal headquarters. We can travel around. What we need to know -- and what we've been out hearing during the summer is, "We need people out there to answer these

questions."

You're not going to be able to see it here. This is a summary. It will tell you that this is the oil and gas you received. This is all of the CV income you received -- whatever you received -- that information. This is the only statement you can receive. This is telling you -- these are just a few of the many varieties that are available.

You should be able to say, "Well, I need to see this. I want to see this type of information." That's what you see when you tell us how you want to see it. We're just going to flip through these.

These are real estate, oil and gas, how much income did you receive, any expenses associated with it -- by the purchaser, by the lessor -- any of that information. How much did I receive as income each month. Like I said, I'm not going to go into all of these. You can see them in your packet.

Here's what we want to talk about. This is what we're saying. We're not saying right now. Mr. Homan's suggestion is that it's a separate entity. But wherever it is, we need a system, a main system -- right here. This is holding all the information.

We've talked about distributed processing. We have gone through the pros and cons with that. The

contractor we have out currently has looked at how many entries, how many transactions; who needs what type of information. They suggested much more of the star, point-to-point type of networking.

What we're doing is tying everything in so that it doesn't matter if you're a self-governance tribe, an Area office, an Agency or field office, tribal, National Archive -- it doesn't matter where you are. All this information is coming in. And everyone that needs to see it -- okay. Here's what we want -- it will be secured by passwords. At what level? Do you want to see everything regarding your account? You can see that.

You can see immediately when it's leased. You can see immediately if the income is coming in, the same day. Joe will get into talking about that in a little more detail when he gets into the archive.

What we're saying is that at the infant point -- Agency, tribe, Area, wherever you're leasing -- you might be out in the field and you might have a laptop. You say, "I lease these" -- you're sitting here with Fred right now. He has this little thing right here. All he has to do is take a lease and run that through there, and it's stored electronically. Everyone will be able to see it.

You input the information that says these

are the terms of the lease; this is who owns the lease, and this is when it's due. That same record is going to be looked at over and over and over -- never inputted again. Okay. One time. It goes back to that main system.

Once we get the funds, they're going to the bank to start working immediately for you. That information is electronically sent to the infant point, verification point, and bumped right back up against this and spread to everyone. That's the way the systems work out there.

We do not have different systems that are out of sync. It's simple. It's got $10 trillion worth of trust assets -- just in the United States -- that are running off a system just like it. There's no reason we, as Indians, should not have this.

Any system must feature -- and these are things that came out of the Office of the Comptroller of the Currency, which is the bank examiners for all national banks, for fiduciary activities, trust activities. They're saying every system should have this. We should have this also.

In addition -- immediately, this slide was -- when we were talking IIM and what we're doing to the IIM system -- but also both systems. We're going to

have one that's the same system, do the same thing.

ACH disbursements. We talked about that. That's automatically going into someone's account. Same day transfers. We have a large amount of money. The only difference in the two is, one, you prepare the information the day before. It's a little less costly in the banking arena. You're out there saying, "I just found out I need this money today. Can you get it to me?" And "yes, you can."

Mutual Fund accounting with checking, savings and ATM access. If you want to go in and know what's going on in your account, see how much is in there, where -- if you're an owner of the account and you have to pull that money out, you should be able to do that.

Telephone access. You should be able to call in, push all those magic buttons that sometimes drive us crazy. But find out if this has come in. If you don't understand, you get lost, you press a "0" and there's a person to talk to and walk you through it.

Those should be something -- you're not going to call long distance to find the information. What we discovered during the summer -- if any of you went to the IIM presentations, we had these little overlay maps. Where we service people at the Agency and where these people live are vastly different, now that we are such a

mobile society. You'll find people that are all over the United States.

You might have an Agency office across the street from you, but you cannot conduct business in your IIM account at that office. You have to go back to your home Agency. So, that's one of the things that we're trying to eliminate. We need people out.

You need to be able to walk in to absolutely any agency or any person that services IIM and be able to see the information. You can go up and say, "Well, I didn't authorize that." We can pull up -- no matter where you are in the country -- that image we just talked about. You'll see that image right there in the office.

We're just going to touch on this. There was an IIM improvement team that included allottees and allottee associations, tribal and federal people. It's a team that was made up of realty specialists. We had some superintendents. We had assistant Area directors. As I said, we had more tribal participation and allottees than we did government.

This just sort of walks through what we did during that. In January we reviewed those five meetings from the summer. This is how those things were rated. As Paul said, it's interesting, no matter how you did this, you still came up with the same information. It was just

the same five things: customer service and training, realty, accounting, policies and procedures and records management.

These are some audit findings. As I say, we're just going to flip through these. Why do we need this? If we can't go out to a third-party CPA to audit our books, there's something wrong. You are entitled -- now please look there -- that says these are auditable. I know the money that came in. And the money I deserve to receive is what I was receiving.

These go on and go and on. IIM investment earnings are not equitable; special deposit accounts, outdated. We have many, many things out there -- talking about putting money in IRS accounts -- to hide from the IRS. Money that's been out there for over three or four years. They've had no activity. The money is sitting in special deposits.

Inadequate controls. The reason it says "BIA controls" is that they are currently performing all of the data processing for us. The controls are disaster recovery, passwords, application changes. There's a lack of comprehensive policies. Things are being conducted in different ways across the country.

The information statistics we give you are as good as the way things are coded, we have corrected.

We have an improvement team. We have an improvement team out there that has been created. They're going across the country looking at all the jacket binders.

We're compacting with a tribe. They have 4,000 accounts. They should have -- at 4,400. They should have about 3,600. Some of these accounts are zero. They should be closed. They had 16,000 jacket binders out there. Old information. It needed to be sorted out and gotten out of the way.

We find all kinds of problems. These are the types of things we're talking about. Lack of vital statistics. We have to know when someone is born, if it's a minor's account. When they turn 18, they're entitled to know every cent that's been spent from their account. I don't care if you bought a prom dress or they were sent to the dentist, they're entitled to know.

You have to be able to say, "Yes, this is where I spent that money." They're entitled to know that. Same thing: If we have someone who we're saying is not competent, non compos mentis, taking care of their affairs -- still they're entitled to it. When they die, their heirs are going to want to know: "How did you spend that money? Show me the documentation where you sent them to the doctor or you paid their hospital bill."

If we are holding accounts -- we have people

that have hold on accounts or hold for the superintendent's reason -- that's not bad if it is equitable and you have papers in your file saying this is a realistic reason. But we're finding that there's all kinds of holes. There's nothing out there.

We have loan programs where the monies are being -- once they're paid back, they're still having holds on the accounts. We have loan programs where we're sending the money to the tribes. They've already been to the tribes. Then we come to find out that it's paid off, and the tribe is now remitting the money on to that person.

We have accounts where they're third-party payees out of the special deposit account. We're paying the money without going through the customer accounts. We've got to control those and be very consistent with those.

Addressees unknown, as we know -- the thing that is really a problem is when the thing becomes addressee unknown, but there are disbursements coming out of it. We don't know where they are and why are they disbursing. This type of thing is just running rampant. We're trying very systematically -- and we'll also be contracting to correct these problems.

These are some tribal type accounts. Why do

we worry about looking at -- we've heard a lot of concerns with us looking at compliance with public laws on the use and distribution of two plans. OIG has two accounts. They just started.

One of them, the principal had been invaded for $4 million. That was not to be invaded. Another, 50 percent of the income was to be retained. It was not. You need to remember that in the reconciliation project, the tribal accounts did not include compliance, except for the five pilot drops. Those are the only ones that looked at compliance, to make sure that you were in compliance. So that what action was stated in the public law or use and distribution was what we were actually -- how we were utilizing the funds.

These are things that we're talking about -- statements. We now have to send statements to the tribe in accordance with the Reform Act. Quarterly statements. Everyone should be seeing their accounts.

We have one Area -- and this is Juneau. They only had 933 individual accounts. We have estates that -- there are 33 of those; 72 superintendent holds. What we found out is that some of those were lost people, but we were showing as superintendent holds. So, no one is looking for those lost people. We don't have them identified correctly. But the other thing is, we have

accounts that are holding for various reasons, with no documentation in the files.

The next group we're looking at is Aberdeen, Billings and Phoenix. You see some of the things that we need to look at out there. They have some minors accounts that are on hold or are held by the superintendent.

One of the things that, really, the audit has pointed out to us: If you have the ability to get into that account and conduct business; if you can put -- if you can disburse funds out of that account, you should not have access to that statement before it goes to the customer.

Same thing: these are the things that we've talked about. Paul had this information. This is the reason. This is the magnitude of what -- some people have told us, "Well, I don't think" -- you know, these horror stories you hear -- you have a few of them. We don't have a few of them. We invite anyone to come by and look at this. We have stacks and stacks and stacks of such -- problems that happened and are still happening.

We just had a problem occur, currently, that just came up. One of the things that I didn't discuss is the insurance policies. We have over 200 insurance policies in the 1970s and '80s that we found in a file cabinet -- not in the books anywhere.

These insurance policies were for minors. They were paid for, out of minors accounts. Some were paid-up insurance policies. Some, they were doing monthly premiums on. They were to be paid. Some of it was 65, 75, 100 years. There are 200 of these policies.

One company had gone out of business, quit billing them and they all lapsed. One other instance -- and then I want to go on with this -- recently, this last week, we discovered that this child was adopted. They were receiving per capita payments. One half of the per capita payment was to go to their IIM account. The other half was to be going to the parent for support and such, which was happening.

This child turned 18 and said, "Where is the rest of my money?" We were told, "Well, it's been going to your mother," which was true, except it was her birth mother. She was adopted at age three. So, these are the things that we're concerned about.

We're saying is -- this is an audit. We still want people out in the field. We're not moving people. If anything, we think there's a need for more people to be out there being customer oriented, helping people. We need to get the leasing and have adequate people out there, programs caught up.

All we're saying is, we have to come into

the twentieth century. It's not Star Wars technology. But we need to put the money and the emphasis on making sure that every individual is getting the money they need. Thank you.

MR. CHRISTIE: What we will talk about next is the land title and records office. We'll talk about the national archive system, and then we'll talk a little bit about the fractionated heirship problem.

As Donna said, what we have is two separate systems. What's being recommended is two separate systems. One is the system for land title and records, which is land centric, and a new Trust Asset Management System, which is people centric.

Of the two systems, the most important system to bring on board and get up-to-date and to modernize is the Trust Asset Management System. That's the one that's the most broke at this point in time. That's the one that will receive the highest priority and the most focus over the next three years.

The LTRO system is adequate over the next two to three years. It needs to be streamlined. And we'll talk about that. But this is a second priority in terms of the two major systems.

The LTRO is public information. It's a historic chain of title. It is nonfinancial. The one for

the Bureau of Indian Affairs produces an abstract, a title opinion and has some mapping source.

Now, if you were going down to a local county courthouse, you would not be able to get an abstract or a title opinion, as these are normally produced by a third party that is independent. So that the people who are putting the information in do not give an opinion on their own work. But in the Bureau of Indian Affairs that does occur.

As I was saying, the land title and records system being the second priority, we believe after review that the present system is adequate over the short term -- the next two to three years. There are some things that must be cleaned up and streamlined. For instance, the probate backlogs must be cleaned up.

In some cases, those probate backlogs are two years or more behind. The ownership must be accurate and up to date and timely. The information must be integrated with the new Trust Asset Management System. It must be bumped with each other on a daily, weekly, monthly basis, so that you have the most accurate information being transferred into the Trust Asset Management System.

Now, let's turn our attention to the National Indian Fiduciary Records Center. The goal of the NIFRC is to provide full documentation for trust

transactions from encumbrance of the asset through the disbursement of the funds to the owners. It's to provide secure storage of the original trust records into perpetuity. It's to provide electronic images of all documentation for audit and research purposes.

The objective is to provide a consolidated facility for the trust records management function and to move to a paperless trust system, including the records management, into the next millennium. Therefore, the proposal is to create one center to house all records that support the receipt, distribution, investment and disbursement of Indian trust funds.

Now, let's take a look at these records. These are records for the authorization, use and/or extraction of natural resources from Indian trust lands. It's production documentation, income collection documentation, income distribution documentation, investment documentation and disbursement documentation -- all of the records that's needed to fully track and account for the income that is accruing from trust lands.

Here are the offices that currently possess the records. As you can see, they're strung through various offices and tribes throughout the federal government.

Now, what is the importance of these

records? Why do we need to hold on to them? Well, these records prove the basis for and the accuracy of the federal government's management of the trust resource and income belonging to the Indian tribes and individuals.

Now, this doesn't just protect the government, but it also is the same record that you would need to use in order to prove that the government wasn't fulfilling its trust responsibility. So, if the records are missing, the government can say, "Well, you can't prove that we're not doing our job, because we don't have the records. But if we had the records, we could show you that we were doing the job right." That's essentially what's coming out of the reconciliation.

Secondly, it's an essential element on which any audit is based. Audits are based upon records. Now, here's what the reconciliation project disclosed: that records were missing; that they were destroyed; that they were unorganized; they were located in multiple locations; the importance of the records were not defined; the labeling was not standardized; and there was an unfocused management function on records; i.e., we found the records in a relatively great state of disarray.

Here are the offices that originate the records. As you can see, there again, they're scattered across the various parts of the government, including the

tribes.

Now, what we want to do to improve the records is this: one, create a formal system for records management; identify the records in high jeopardy and secure them; we want to consolidate all nonoperational trust records into the NIFRC; and we want to ensure the security of the operational records.

Let me talk just briefly to the difference between an operational record and a storageable record. I'm going to give you a simple example like a lease. When a lease is created -- it's at the Agency. That lease may be anywhere from one year to five years to ten years, to twenty years, depending upon the type and condition of the lease.

As long as that lease is operational -- that is an operational lease as long as it's an active lease. So, if that lease is in the form of a pasture lease for five years and it's originated at the Agency, that lease should stay at the Agency. Because it may be needed to make verifications by the Agency of income or who's got the lease, etc. That lease would stay there.

But at the end of the time when that lease expires, it becomes a storageable record and should be transferred to the NIFRC for permanent storage. So, if any person who was owning that land five years or ten

years or twenty years later wants to come in and verify whether or not that land was under lease, how much of the income should have been collected and then how much income was actually collected, they would come there to do the research and be able to find that lease and the attached documentation to it.

Now, we need to move into the new information age. Not only should we have a hard copy of the lease out there, but we ought to be thinking ahead and moving into an archival system -- an electronic archival system -- that allows us to capture the images of those lease.

Currently, images are not fully recognized by the federal courts. So, we would still need to have a hard source document. But you don't have to have a hard source document to do your checks and your verifications every day, especially if an Agency has a large number of leases and has a record storage problem at the Agency.

Instead of having to get up and find that lease every time in the file -- every time they need to check on something -- it would be a lot easier if that lease was electronically imaged so that they can pull it up on the computer screen and check on it in quick order.

So, the objective of the image archival system is to electronically image trust documents at the

point of origin and to support the operation of the Trust Asset Management System with a permanent image of the trust record and to assure availability and access of the record.

The trustee needs a system which will capture documents at the point of origin. That means imaging that document at the Agency, if it's originated at the Agency. If it's originated at the tribe, capturing it at the tribe. If it's originated in the Area Office, capturing it at the Area Office, not sending it off to Albuquerque or sending it somewhere else and having it imaged, and then sending it back. Because what you've done is you've created a situation where that original lease could be lost in transit. So, you put it in jeopardy rather than securing it.

Also, we need to create an index for future retrieval. Let me talk just briefly to that. We take the original lease. We image it. We bring it up on the system. We create an index to that lease.

Now, as Donna talked about, we're looking at lock boxes. So, the person having that lease makes a payment to a lock box. That gets to the lock box. It gets put in. It has the lease number on there. That gets imaged and attached to the lease image.

So now, when you pull up that lease -- you

pull up the lease, you see all the background of the lease and you see the payment was made on such and such a day. You're able to pull up an image of that payment.

Then when you go through and you make a distribution of that payment, that distribution gets attached. When the check is issued, a copy of the check gets attached, so that when you pull that lease up, you're able to see all of the different processes that have occurred in relation to that lease.

Currently, you couldn't do that. You would have the hard copy at the Agency. And if the payment came through the Agency, there would be a 1034, but it would be stored somewhere else with the 1034s. So, you would have to go find the lease in the file. Then you would have to go through all of your 1034s and find that.

But if it was a lock box payment, you may or may not have the hard copy of that; or if you did, you would have a hard copy of it, but it would be over in the deposit ticket file, to see if that was there.

In an electronic image, you pull up a lease and everything that's occurred -- an image of everything that's occurred is attached to that lease. We will store documents and all related supporting documentation in a central repository.

This would not be on the hard drive at the

Agency. It will be on the hard drive in the archive, which is an electronic image linked to you, so that you would be able to pull it up and look at it. It would support access by any approved user. It's a tribal lease. It's at the agency. The tribe, through their system, can pull up the same lease and check on all the payments, too.

We think that the imaging archival system requirements will need an integrated imaging and computer output to laser disk. It will require a point-to-point input and retrieval of documents. It will require a high volume, centralized archiving of images, automated document indexing -- is what we were talking about -- multi-level security and control, because the agency should have access to it. The tribe, if they own part of the land that's in that lease, needs access to it; and individuals that come into the Agency who want to check on it will be able to have access, if they have an ownership in that lease.

And it would need to be integrated with other applications; i.e., the LTRO function will need to be integrated with any other system that you have out there. As we said, it will require point-to-point input and retrieval, inputted at the Agency -- and image it. It would come through the system and go into storage here -- electronic storage.

Once it's here -- through this system here -- it could be pulled up at the tribal office. It can be pulled up at the self-governance tribe. It can be pulled up the Area office, if they have a need to know. It can be, of course, pulled up at the Agency or field office and utilized and looked at.

The key benefits. It allows the trustee to track the Trust Asset Management actions; i.e. the lease, the sale and any subsequent actions associated to that. It ties all the documents related to those actions together, for you to look at and see and to print off, if you want a copy of it.

It allows the trustee to capture electronic images of all trust documents required to operate a Trust Asset Management System. And it supports the audit process. The auditor, unlike the federal court, does not necessarily have to have the original source document in order to do the audit.

Now, let's talk about the last issue that I've got to present, which is fractionated heirship. Most of us in the room are aware of fractionated heirship and what it comprises of. The fractionated heirship, undivided interest, is commonly called tenancy in common, which means that if you have a tract of land that is highly fractionated, and it's undivided -- there was a

track of land in Winnebago, Nebraska. A 40-acre tract of land. It had 459 separate owners.

But the key thing is, if you walked out into the middle of that field and stuck a teaspoon into that ground, that teaspoon of soil had 459 different owners, because it was each and every acre, each and every teaspoon.

This problem was fostered on us by the General Allotment Act of 1887. It was a division of tribal lands into individual allotments. And from 1887 to 1934, the Indians lost over 100,000 acres of land that moved from trust. I'm sorry. 100 million. What did I say? 100,000? 100 million acres of land. That's quite a magnitude of loss.

The Indian Reorganization Act of 1934 halted the allotment. We have a quote from John Collier when he was trying to pass the IRA. He said that, "The Indian Bureau's cost" -- talking about fractionated heirship and the problems that fractionated heirship was causing in 1934 -- "the Indian Bureau's costs must rise, as the allotted lands pass to the heirship class. The multiplication of individual paternalistic actions by the Indian Service must grow. Such has been the record, and such it will be unless the government, in impatience or despair, shall summarily retreat from a hopeless

1 situation, abandoning the victims of its allotment system.
2 The alternative will be to apply a constructive remedy as
3 proposed by the present Bill."
4 This was 1934. As we all know, the IRA
5 passed. The government did not get around to trying to
6 take further action on fractionated heirship,
7 legislatively, until the Indian Land Consolidation Act of
8 1983.
9 However, Section 207 of that act calls for
10 an escheatment of interest of any interest that was 2
11 percent or less and the income was $100 or less the
12 preceding year. The ultimate outcome of that was a
13 lawsuit that went all the way to the Supreme Court which
14 resulted in Hodel versus Irving.
15 However, before it got to the Supreme Court,
16 Congress came back in and amended Section 207, prior to it
17 getting to the Supreme Court. It said, "Let's go back in
18 and look back five years instead of one. Let's allow the
19 buys to people who already own an interest in the same
20 parcel. Let's authorize the tribes to develop tribal
21 codes." That still ended up in a court challenge by
22 Youpee.
23 Now, as you saw in a previous slide, Hodel
24 versus Irving declares the first section, 207, as
25 unconstitutional, and therefore it was voided. Youpee,

1 which was decided in January 21 of this year, also
2 resulted in a Supreme Court decision saying that it was,
3 again, unconstitutional. It was a taking that was
4 determined as unconstitutional.
5 The problems, the Court said, is that 207
6 still trains on the income generated from the land, not on
7 the value of the parcel; that 207 severely restricts the
8 right of an individual to direct descent of this property
9 by shrinking the possible successors.
10 What they mean there is, that 207 said that
11 you could devise it to somebody who was already a co-owner
12 of the parcel. Well, how many people's kids are already
13 co-owners on a parcel that you ultimately want to give to
14 your kids? Not hardly any.
15 So, it severely restricts who you could give
16 it to. You could give it to your cousin or your brother
17 or you aunt or your uncle who was already a co-owner. But
18 you couldn't give it to your kids because you haven't --
19 they're not already a co-owner.
20 It said that the tribal codes have not been
21 developed. Now, the fact that both of them have been
22 declared as an unconstitutional taking, the problems --
23 let's look at the problems that fractionated heirship
24 continues to foster. First of all, it inhibits the
25 owner's highest and best use of the land.

You got 459 owners and one parcel of land, no matter how large it is. It severely inhibits that owner's use -- highest and best use of that land. It delays funds getting to the owner, because we have to go in and we have to account for decimal places that go out to the 26th denominator. It also increases the cost of operation of your Trust Asset Management System and your land title and records program for the government.

Now, what are some of the solutions? Well, as put forth in the Strategic Plan, and as has been recommended by other working groups throughout the United States, we believe that the purchase of land from a willing seller at the appraised value -- in other words, focusing on the true value of the land, not on income being generated -- is the proper way to go, as is stated in the Strategic Plan.

And it proposes to set up $300 million loan program to assist tribes or individuals to buy up these portions. But the priority for this loan program will be 2 percent or less holdings; that the income generated from that parcel would go back in to pay off the loans, thereby freeing up more money to buy additional land.

That there should be some assistance to those tribes who want to develop land codes; assistance to them to develop those land codes in line with the Indian

Land Consolidation Act; and that appropriate owner notice for stated bank purposes should be given through the realty program.

In addition to that -- and those were the basic recommendations that I just went over -- basic recommendations that the federal government and land groups have come forward with. In addition to those recommendations, the Office of Special Trustee believes that individual co-owners should have a right to purchase, whereas the other recommendations were centered on tribes.

The Special Trustee believes that the individual co-owners should have a right to purchase also. That Indian landowners should be able to create holding companies, similar to the holding company that is created up at the Rosebud, the TLE. Something like that could be done so that different Indian landowners could come together, create a holding company. And then when you lease that land, you only have to deal with the holding company, not with each and every individual.

That tribes should be eligible for federal loans/funding for purposes of exercising tribal purchase options. In addition to that, the OST believes that the tribes, rather than the federal government, should be operating this program consistent with the principles of self-governance and self-determination; and that

1 legislation should not deny certain property ownership
2 rights to individuals by limiting their ability to
3 purchase, sale or inherit the fractionated heirship.
4 While we understand that certain
5 restrictions will have to apply, the legislation should
6 not substantially restrict the rights of the individual
7 American Indian. Thank you.
8 MR. HOMAN: Before we leave fractionated
9 interest, the suggestions and proposals by the Special
10 Trustee really parallel the Indian land group proposals of
11 last year. And the history of the fractionated heirship
12 legislation that is being proposed, we proposed in draft
13 form in 1995 and went through considerable consultations
14 and hearings, as well as comments by the tribes. And then
15 it died last year and did not go beyond OMB, mainly
16 because of a lack of money.
17 It's not the 300 million that is proposed in
18 our plan. But it died for lack of 25 million to start the
19 program. So, in a budget-conscious Congress, this has
20 been allowed to slip.
21 The Youpee decision did at least one thing.
22 There were something like 55,000 escheated parcels between
23 1985 and the present. And essentially, there's an issue
24 with the Court as to whether we now have to go back and
25 reestablish those accounts, pay off the intrinsic value,

plus calculate the pennies that have been accruing on those accounts over these many years.

That has forced both the administration and the Congress to come up with new proposed legislation. It's now being considered by the administration, with a task force between the Department of the Interior and also the OMB. I believe you can look for that to go up to Congress sometime this summer.

It will proceed separately from the Strategic Plan. It will probably look different, although the tribes will have a strong opportunity to weigh it with the Congress. It differs in two important respects. The original Department of Interior plan was tribal only. In other words, tribes alone could purchase those fractionated interests and cut out, essentially, the right of an individual allotment owner to purchase out the minority interest in his property.

We have sided with the Indian groups on that and have allowed that too. The other -- I'm no expert on this -- is the inheritance rights. It severely limited the ability of the individuals to devise to their heirs these properties. The individual rights need to be taken into account in the same way that the Supreme Court did when it exercised Youpee.

The last part of the Strategic Plan is

this -- and I will just cover this very briefly. This is essentially the Development Bank or Phase II. The reason it's going to be quick is that the equity capital here requires something like $500 million in appropriations. We feel that will probably not be forthcoming under any circumstance, in a budget-conscious Congress.

However, this is worth pursuing, we think, because it solves a number of issues. You'll see on the asset side of the banks some 300 million, where this bank could, over a three-year period, buy, sell and otherwise make loans to facilitate these asset purchases and reduce the fractionated realty holdings outstanding. It will only be done with tribes and individuals.

Second, it provides a source of document investments and infrastructure acquisition in a development project, financing. This is a similar enterprise for all Farm Credit Banks. They do these things. They have, for example, sponsored rural telephone initiatives and infrastructure projects of all sorts for American agriculture over the last 60 years.

We think a bank like this could do the same things for tribes, in their infrastructure development. On the lending facility side, it provides commercial, consumer loan stated infrastructure loans to, not only tribes, but to individuals.

So, essentially, this is a full-service bank, and a long-term development bank which would take a longer term risk that the current private sector banks aren't willing to take, as you know, for many of the Indian enterprises. Often the right-hand side of the balance sheet is the problem.

How do you get money for this? It's from appropriations. As I indicated, I'm not naive. I believe the Congress would not authorize 500 million, but there are two other ways this can be gotten. With the course of events being what they are, in the next three or four years, one of them may be possible.

The first is in settlement of past reconciliation problems. The Congress might -- or be forced to, by the courts, to come up with a global settlement for those errors and omissions losses, if you will, that we can't ascribe to individual Indians.

It's been done before in recompense for certain indigent groups that were relocated by the government. The Aleutian Island native groups come to mind, in World War II. The Japanese-Americans that were relocated in World War II. The Marshall Island people that were -- you know, that got cancer and other forms of radioactive diseases after we used their islands for atomic bomb testing and the like.

These were all handled through general payments and endowment funds, which were both specific to tribes and individuals affected, and also a general fund, education and other activities. So, we think it's a possibility that in the next four or five years in response to either a general settlement by Congress or a court-imposed one, that something like this might be possible.

You'll see this as a proposal by the advisory board -- my advisory board -- in the reconciliation proposal that is going to go to the Congress, I believe, on March 31. That's a separate issue.

The other way and maybe a more practical way that money could be gotten is out of the current GSE systems. For example, the Farm Credit System, after which this is modeled, is a mature GSE. It was formed in the '30s. It has over $12 billion worth of capital owned by the American farmers. It has over $70 billion worth of loans and borrowing capacity. Because the farm sector has matured, the government last year decided to phase out many of the farm subsidies.

A good many of the corporate, large farmers were able to finance directly with the market. They don't even use commercial banks. They don't need the Farm

Credit System to the extent that they have in the past.

Congress could easily -- maybe not so easily -- but Congress could allocate a portion of their $11 billion worth of capital to a bank like this, or it could force the GSE to invest in a bank like this. But also the borrowing capacity, which in this case is ten times the capital, or $5 billion, would enable the funds to fund the asset side of the balance sheet at U.S. Government guaranteed rates.

So, a subsidized rate would be available. That borrowing authority is also controlled by Congress and might be allocated out of the Farm Credit System to this endeavor.

The Federal Home Loan Bank System is even larger. Again, it is a mature system that used to handle thrift loans to enable the housing sector to develop -- a realtor sector of the housing -- to develop in the United States. Again, most of the housing finance today is done directly through such devices as collateralized mortgage obligations that bypass these GSEs.

A lot of the Federal Home Loan Bank System's funding has been taken up by entities such as Fannie Mae, Ginnie Mae, Freddie Mac, that do the same origination and packaging and selling of the loans directly into the market. So, those entities, also, could be tapped by the

Congress who do, essentially, for Indian country what those GSEs have done for agriculture and housing over the last 60 years. So, that is the other possibility.

I think, in our travels, we have not heard any dissent on the Development Bank except for one. That is one that I endorse. That if money is going to be put into this and the price is that it would come out of other Indian programs, then I would suggest we not do it at all. But that is the only dissent we heard. While this is a longshot, it might be something you would want to consider in the future.

So, with that -- that is Phase II. It won't happen. We think we will recommend Phase I to the Congress, as I said, in April. It is the most critical. These trust systems -- however organizationally inputted -- need to get done separate and apart from the Strategic Plan.

I testified to that last June at both the House and Senate. We testified in regional hearings to that effect throughout last year -- that these programs are so critical they need to go forward regardless of who does it. So, that is my charge to you.

If we can, why don't we take about a 15-minute break and come back about ten to 11:00. Then the floor is yours.

(A recess was taken from 10:36 a.m. to 10:56 a.m.)

MR. HOMAN: This will commence the formal part of the hearing session. A couple of administrative items. First, we will take written comments either today or up until March 31. If you want to submit written comments today, they're to go to Fred Weller. Fred, raise your hand in front of the room here.

Second, if you want to send them in to us, or further comments to us, please direct it to Joe Christie, Office of Trust Funds Management, 505 Marquette, Northwest, Suite 1000, Albuquerque, New Mexico 87102.

Several people have asked me: "Will a transcript be available?" It will. We will collate, not only this meeting, but the ones we had in Seattle, Denver and Atlanta. Sometime in early April, we will have that completed and the document will be made public.

If you'll write to OTFM or leave your name, we will be glad to send you a copy of that and also a copy of the Strategic Plan -- the final one that I will submit to Congress sometime in April. April, after we take into consideration your comments.

I'll repeat. This presentation is being recorded. When you come to the microphone, please speak clearly and directly into the microphone. State your

name, tribe and/or organization. And because this is a consultation hearing with tribes, I would ask that they go first and their representatives go first in their presentation, comments or questions. After which, the general public or others in attendance. We'll entertain your questions. So, if we can now start. Who would like to first? Yes, sir.

MR. BAD MOCCASIN: Thank you, Mr. Homan. First of all, on behalf of the board of directors of the MNI Sose Intertribal Water Rights Coalition, I want to thank you for addressing the board of directors last October in Rapid City regarding the establishment of the trustee office, as well as sharing your findings up to that date. And also sharing the initial draft of the Strategic Plan.

On behalf of the board of directors of the MNI Sose Intertribal Water Rights Coalition, I thank the Office of the Special Trustee, Trust Funds Management, for the opportunity to provide comments on the Special Trustee's Strategic Plan as required by the American Indian Trust Fund Management Reform Act of 1994.

The MNI Sose Intertribal Water Rights Coalition is comprised of 24 of the Missouri River Basin tribes. It was founded to protect, promote and develop Indian water rights and resources. The member tribes

established the Coalition's goals as the development, assertion, enhancement and protection of their water rights as recognized under the Winters Doctrine, to promote the health, education and welfare of the member tribes, bands, nations and/or communities through the development, assertion, enhancement and protection of their water rights and resources.

In keeping with these tribal goals, the Coalition provides the following comments on the proposed Strategic Plan. I have a provided a copy of the written statement. The Coalition agrees, in principle, with the vision of the Special Trustee, that the United States Government holds trust responsibilities to American Indians and American Indian tribes for Trust Resource Management, Trust Fund Management and Land Title and Records Management that must be administered in accordance with the most exacting fiduciary standards and moral obligations of highest responsibility and trust.

The tribes recognize this federal obligation and request that alternative methods of meeting these goals be considered before scarce human/financial resources are committed to implementing another system to assume these responsibilities.

Traditionally, the Bureau of Indian Affairs has been charged with these responsibilities, and energies

may be better put to use in enhancing the Bureau's expertise and management skills in trust areas.

The Coalition also agrees with the Special Trustee's assessment of problems that trust management activities are underfunded and understaffed. These deficiencies have resulted in other problem areas, such as a 30-year management system deterioration, the necessity to upgrade office and accounting technology and incorporate best management practices. This assessment should also include the lack of understanding of the relationship between the federal government and the American Indian tribes by participating administrative and legislative bodies.

It is imperative that further consideration of the Strategic Plan consider the nature of Indian tribes and the federal government. The plan does not take into account the legal relationship between Indian tribes and the United States, and the history and evolution of that relationship.

Indian tribes do not exist to make a profit. Indian tribes are governments, exercising inherent sovereign powers which predate the existence of the United States. Tribal members are not shareholders, or stakeholders or stockholders. They are citizens of their tribes, and expect from their tribal governments the same

kind of protection and benefits that nonIndians expect from their governments.

Indian tribes began their relationship with the United States as equal sovereigns, each governing the affairs of their citizens. Through a series of wars, treaties, statutes and court decisions, the governing powers of Indian tribes were restricted by the United States, giving rise to a unique political relationship between it and the Indian tribes. And I refer to the case of Cherokee versus Georgia.

This unique relationship, encompassing the rights and obligations arising from it, is a government-to-government relationship between two political entities. The tribes, in their treaties, agreed to place themselves under the protection of the United States. This relationship, whether it is called a trust relationship, a fiduciary relationship, a guardian-ward relationship or a government-to-government relationship, imposes a duty upon the United States to protect Indian tribes.

This duty does not extend only to the natural or fiscal resources of a tribe, but to the whole entity and interests of the tribe, including its members or citizens. It is not a duty which can be fragmented or compartmentalized. The trust responsibility of the United

1 States to protect the natural and monetary resources of
2 Indian tribes and individuals is only an integral part of
3 that larger duty.
4 The trust lands of Indian tribes and
5 individuals, within their reservations, are not merely
6 business assets to be administered in a manner to achieve
7 the highest economic return, although that clearly is a
8 goal. Indian natural resources and tribal homelands
9 constitute the future of the tribe and its people, and as
10 such, should not be bought and sold and mortgaged as part
11 of an ordinary banking trust business. It is for this
12 very reason that the tribes agreed to place themselves
13 under the protection of the United States.
14 The same is true with respect to tribal
15 trust funds. These funds, whether they are the result of
16 land claims awards or revenue from a tribe's natural
17 resources, in many cases also represent the future of the
18 tribe and its members. While it would be wrong for the
19 United States, as trustee, to let such funds lie idle
20 without earning a reasonable return, it would be equally
21 wrong for the trustee to invest such funds in risky or
22 speculative investments or enterprises. The loss of such
23 funds would represent a loss of a part of the future of
24 the tribe.
25 As described above, it should be understood

that the interest of a tribe and its members in trust resource and assets and trust funds cannot be separated from the tribe's interest in the health and education of its members and in their social, economic, and cultural well-being.

It would also hold true that an agency or department of the federal government cannot transfer its trust responsibility to another agency or department. The government-to-government Executive Order of April 1994 was issued to direct all federal agencies and departments to build a trust relationship with Indian tribes. The tribes hold that all federal agencies and departments maintain trust responsibilities, and as such, must strengthen and enhance their commitment to this responsibility to Indian tribes.

In conclusion, the MNI Sose Intertribal Water Rights Coalition member tribes recognize that the Special Trustee has identified that Indian Trust Management System and operations have been underfunded and understaffed for a period of 30 years. It is proposed that proposed funding for this Strategic Plan be directed to the Bureau of Indian Affairs to upgrade management systems and employ competent personnel to improve the current system.

It is also proposed that the Strategic Plan

be reviewed to develop a plan to upgrade BIA systems and to staff the Bureau of Indian Affairs with necessary, competent, personnel to implement the trust responsibility program. Thank you, sir.

MR. HOMAN: Thank you for those comments. Those are concerns, all of which have been expressed in previous hearings. Let me just touch on a couple of the principal ones. One, on the transfer of the authority from the BIA to the new entity. In my mind, at least -- and there's argument there, certainly -- that represents an increase rather than a decreased recognition of the trust responsibility.

For the past 30 to 40 years, this underfunding, understaffing situation transcends the -- or it is the fault of the government, not the Bureau of Indian Affairs. But it shows no signs of abating.

A vote for the status quo, which I just heard, would mean that, in my mind at least, that the present circumstance will continue, if only to look back through this administration, through the last administration and before that, to see how much these programs have been underfunded and understaffed. There is no plan at the Bureau of Indian Affairs, at the Department of the Interior, to address the issues that we presented.

And I could tell you that in the seven year

1 plan which was submitted by the President, there is no
2 plan to fix these. So, unless it is ordered by the
3 Congress or some kind of rise of the level of interest
4 much higher than it is now, I don't believe that the
5 funding or the staffing will take place within the Bureau
6 of Indian Affairs, unless it is transferred out.
7 I can also tell you -- and those of you who
8 visit Congress -- you only ask them -- that the
9 credibility of the Bureau of Indian Affairs, in terms of
10 reform efforts that they have undertaken in the last 20
11 years, have no credibility. Therefore, they do not trust
12 the Bureau of Indian Affairs to reform itself.
13 Every single program -- whether it's record
14 keeping that was started in the early 1990s -- has been
15 cut, trashed and otherwise cut to the bone. It continues
16 to cause the type of operational problems that you saw on
17 the board. Those are growing, not decreasing.
18 And so, I'm afraid that if this is not done
19 outside of the Bureau of Indian Affairs, I don't think
20 Congress is going to allocate any more than the
21 administration to the resolution of these problems.
22 So, with that respect -- I recognize there's
23 a professional difference of opinion there. The other
24 part is capacity. There's not only the capacity, or in my
25 view the willingness, of the Department of the Interior or

the Bureau to fix these problems, through no fault of their own. Most of the employees of the Bureau have been running an obsolete system that, in modern financial terms, would be something akin to how a trust company or private sector ran just after World War II or the 1950s.

At that time, it was all right. We, banks and trust companies, did have large exceptions. But let me tell you, our most recent reconciliation project lost $2.4 billion with no source documentation. That's an 86 percent hit rate just for the general ledger. Fourteen percent unaccounted is just not acceptable in a world whose banking systems are able to keep track of deposits and payments, which these were, to the tune of less than one-half of 1 percent.

That one-half of 1 percent has to be cleared up within a normal accounting period, normally 90 days, or the institution, the bank, if you will, takes the loss. And the loss is forced by the federal government through its regulatory schemes, of which I spent 20 years doing it. So, I know a little bit of what I speak.

MS. TERRIO: Good morning. My name is Terrie Terrio. I'm the tribal treasurer for the Stockbridge Munsee Band of Mohicans Indians. We're locate in Wisconsin. We're planning on critiquing and furnishing our opinions in writing to the report before the March 31

deadline, but there's a few areas that I wanted to touch on today.

There are three major problem areas of the draft. Number 1, removal of trust functions from the Department of the Interior; Number 2, the trust functions proposed for removal include natural resources and trust management; and 3 -- and this perhaps is the most critical point and potentially detrimental to the tribes -- is the self-finance for the proposed independent agency that will take over the trust responsibility being removed from the Department of the Interior.

Mr. Homan, the remedies you are suggesting might be appropriate for a corporation, but not for tribal nations. The Stockbridge Munsee Band of Mohicans Indians believe you failed to fully consider the ongoing trust responsibility the federal government has to the interests, assets and resources of the tribal nation.

And in closing, I just want to add that our tribe views this as institutionalized termination. Thank you.

MR. HOMAN: Let me touch on two of the issues, which are new. First of all, as to natural resource management -- I think there's a misunderstanding of what is contemplated here.

First of all, what we have set forth is an

automated information system only that will be applied to a multitude of users. Not only those in the new organization I have suggested, but more importantly, we intend to treat the present Bureau, the present MMS and the present BLM to the extent that they're involved, in management of the Indian lands or natural resources as outside service bureaus, much as MMS and BLM are treated by the Department of the Interior today.

We will enter into separate compacts with them as the Department of the Interior has. In their case, MMS and BLM in the oil and gas part of collection and compliance. By the same token, we intend to -- we will recompact with the Bureau of Indian Affairs to handle natural resources, much as they do now, but with one important difference. They will be subject to annual audits -- as every third-party in-servicer should be -- and compliance. And there be will a mechanism to enforce the compliance.

So, in terms of the actual delivery of the services, there's no contemplation of much change there. Secondly, the other issue, the self-financially nature of the bank is, indeed, a corporate structure. That is not, however, contemplated with the Phase I.

As I indicated earlier, I don't have much belief that Phase II will ever happen, except under

extraordinary circumstances, which I think I indicated before could be a source of funds in settlement of an overall larger problem, or alternatively, funds coming out of some of the other GSEs.

As far as Phase I goes, this entity will receive appropriated monies just like the Bureau does today, but it will not -- and this is an advantage to me -- it will not undergo the trade-offs with other Bureau programs that presently take place with the Department of the Interior -- other activities which presently take place with OMB, which presently take place.

It will report directly to Congress as a government to government. The U.S. trust responsibility will not change at all. But like other GSEs, the Congress has never failed to fund these GSEs, in our history. In fact, they have bailed them out a couple of times. For example, the Farm Credit System got into trouble in the early '80s.

So, the Congress treats these with more attention than it does agencies that are, arguably like the Bureau, buried deep in a larger cabinet structure. Yes, sir.

MR. TEBA: Yes. I don't know how long my voice is going to hold, but I will present written testimony. In addition, we are in the process of

conducting an analysis of your Strategic Plan.

My name is Bernie Teba. I'm the executive director for the Eight Northern Indian Pueblos Council in New Mexico. We represent the pueblos of Taos, Picuris, San Juan, Santa Clara, San IIdefonso, Nambe, Pojoaque and Tesuque.

In June of last year, I asked you a question at the Tulsa meeting -- the mid-year convention of the National Conference of American Indians -- if there was a movement underway to consolidate BIA trust funds as part of your plan. At that meeting you indicated that there was not, that the major task was to reconcile trust accounts and get on with the business of correcting the problems in Trust Funds Management.

Today, we're being faced with a plan that does include consolidation of trust functions within the BIA. My question -- and I have more questions -- at this point -- I don't expect you to answer all of them, but my major question is: Why not fix the BIA, rather than creating another entity to try to deal with the issue?

Someone once said at a meeting that, you know, the BIA is an SOB, but at least they're our SOB. We have an unique government-to-government relationship with that one entity in the federal government.

What you're proposing in your plan is more

of a business relationship. There's no mention of this government-to-government relationship, plus there's a whole body of law that deals with our trust relationship, our sovereign relationship with the government. That's not mentioned in the law.

Relatively speaking, the pueblo tribes in New Mexico have an insignificant amount of money in Trust Funds Management. Are we going to be penalized because of the movement of these functions over to this Office of Special Trustee?

We are in the process -- at least in the Northern Pueblos -- are in the process of reorganizing. Part of our plan is to decentralize these functions and move those resources down to the tribe/agency level. Our functions that you're planning to move, are they going to be contractable? There's no mention of contractability of some of these functions.

There's other institutions in the private sector that can probably do a better job at managing trust funds. Merrill Lynch, for example -- their goal by the year 2000 is to have assets under management of $1 trillion. Smith Barney is another group. They currently have assets of $600 billion.

There's no mention of tribes working with these entities, but continuing this dependency with

another agency of government that we have no relationship with. You talk of correcting systems and addressing systems.

Being involved in systems management, systems development, systems implementation, one of the figures, things that you do, is you do pilot tests and you debug those systems. A lot of times it may not require reorganization or restructuring, but just a retooling of these systems. That hasn't been addressed.

The whole issue of natural resources. If you move natural resources under this new organization -- tribes depend on this revenue source as a vital revenue base for operations. How will that be addressed? To create the technology, to try to put tribes in contact with this system?

We don't know if the infrastructure is in place in the rural areas to allow point-to-point contact. How is that going to be developed, and what's the cost to do that? And how will tribes be trained, and how will agencies be trained to deal with that?

The whole issue of consolidating records management -- is that going to be contractable? Is it going to be centralized? And if it is, where? If the concept is to do that in Albuquerque -- the public law tribes own a major piece of property in the middle part of

Albuquerque.

Why not contract with a tribe or a group of tribes to provide that facility, rather than moving that facility -- or constructing that facility in a metropolitan area? Technology is in place right now to do that anywhere in the country.

Finally, the issue of addressing fractionated ownership. Again, the pueblos have a minor stake in that. Most of the lands that are under the jurisdiction of pueblo governments are assigned lands and are owned by the tribes. So, we're minimally impacted.

But are we going to realize the consequence of losing funds for you to address that problem? Plus the whole issue of probating these claims. That's not addressed under your Strategic Plan. How is that going to be dealt with? That needs to be dealt with first before you can deal with the other issues.

Finally, the issue of costs of creating this $500 million loan fund. It was admitted earlier that Congress probably will not provide appropriations for that. And so it really brings into question key parts of the plan.

I guess, in closing, I'd just like to say that we will provide additional comment once the plan is introduced in Congress. And we are going to oppose the

plan without more specific detail on how this government-to-government relationship is going to continue, and how the current resources are going to be divided up among -- to make this plan possible?

We will oppose the taking of any existing resources to fund this plan, because that's resources that you're taking away from us. We have a relatively small stake in this. We would oppose any attempts to do that. Thank you.

MR. HOMAN: Well, on the last point, I agree. I have told the Congress and the Secretary already that if it means taking money out of other Indian programs to fund this, then I will be the first to say, "Don't do it."

On a couple of items that you talked about, that I think were covered here in the Strategic Plan or in our presentation, on probate cleanup -- we recognize that's a serious problem. It's two years behind. It was two years behind two years ago.

The realty part and others have spent a good amount of time trying to clean that up. But as I understand it, the realty part of the BIA got cut from 126 people in 1994 down to 90. So, they're spending no time on the backlog. We have addressed that.

As I said, it's a two-year average backlog.

One of the biggest tribes -- the Rosebud Sioux in South Dakota is one of the largest tribes for an allottee program. Their backlog is four years. It is getting unbearable. So, while it may not be a problem to New Mexico tribes, it is a problem in South Dakota.

We estimate that it will be take $9 to $12 million to fix the probate problem alone. We also estimated that it will take about $8 million to get the records systems in place and the national archives in place, no matter who does it. It doesn't make any difference whether the Bureau does it or this new organization. Those are the types of numbers we are talking about.

I can tell you what the Bureau's number and the Department's approved number is for next year for both of those indications: none. None. I was the only one that asked for that money, and it got cut.

Again, the Bureau is not going to be given the money for that. If I go to Congress, they will say, "If the Department of the Interior and the President do not ask for money, why should you expect us to put money up for that?"

Now, in terms of tribal participation here: the $80 million that I estimate it will take to put these management information systems in place are just that,

they're management information systems, modern technology, computers. You have to do that -- not on the installment plan. You can't buy a computer one year and the monitor the next, and a wider area network the third or the fourth, and the printer the fifth, and expect it to work.

So, it must be spent upfront. Then another $20 to $25 million must be spent in annual appropriations. Those are over and above what you get in the tribes and the Bureau today.

Now, if I had been successful at nothing else, at least I got the Congress last year to produce $13 million and another $14 or $15 million this year for the resolution of the IIM accounting problems. The Bureau was never successful in doing that in the past.

So, again, you risk going along with the status quo at a loss or are a continuance of the present situation, which no one can fix. Now, one other aspect. I'm just the latest in a long line of people to look at this problem: the Indian themselves, who are responsible for the Reform Act of 1994, over the objection, by the way, of the Secretary of the Interior.

It was based on audit reports, internal and external, going back as far as you could look. GAO reports, a record keeping report, which was in the 1980s. I'd like Joe to talk about the record keeping status here.

But none of these things have been addressed for over 10 years.

The IIM Improvement Project, which was an internal group that looked at this in 1995, came up with 30 more exceptions than I did in terms of the policies, procedures, systems and changes that needed to be made.

They had an outside group look at this, consisting of systems experts. They all agreed, as I do with them, that you can't take the Bureau's present system. They're so obsolete. You can't customize them and make them run like new. You're better off taking commercially available systems.

And commercially available systems have been used by the American banking industry and trust industry. They provide exactly the same kind of accounting, reporting and other administerial exercise that is needed here. They're proven. They're proven.

Secondly, the investment criteria opening up. These are prudential investment criteria. No bank operating under these in the last 50 years has failed, in their trust department. So, they are proven mechanisms. They open up equities and other investment opportunities.

I think it's too short and too quick an assessment to say that these are risky for American Indians.

Joe, would you speak to the record keeping?

MR. CHRISTIE: GAO, Fed Sim and NORA, which is the National Archive Records Administration, has issued several reports citing the inefficiencies and deficiencies of the Bureau's record system.

The Bureau needed $20 million, as determined in 1988-89, to begin to correct these deficiencies. In 1992 it received $2 million to begin to correct that. However, in 1996 when the RIF went through, they wiped out all the records management staff in D.C. and RIF'ed all but four of twelve records officers throughout the Bureau. So, that's the condition that the records are in right now.

MR. MAGANTE: Are you ready for me now, Mr. Homan?

MR. HOMAN: Yes, sir. Please proceed.

MR. MAGANTE: I would suggest that after all of us did our talk, that maybe you guys would kind of hold off your remarks until after we got through. That way we wouldn't have to stand here so long.

MR. HOMAN: All right. If that's better for the tribes. We would certainly want to do that. Thank you.

MR. MAGANTE: My name is Benjamin Magante. I'm president of the San Luis Rey Indian Water Authority,

an intertribal governmental agency that represents La Jolla, Rincon, San Pasqual, Pauma, and Pala Bands of Mission Indians of San Diego County, California.

The authority's responsibilities include overseeing investments of $50 million in San Luis Rey Tribal Development Fund, which is currently managed by the Office of Trust Funds Management. My comments are directed at the Draft Strategic Plan, in general, and to the Trust Funds Management, in particular.

After carefully reviewing the Draft Strategic Plan that the Special Trustee has prepared, La Jolla, Rincon, San Pasqual, Pauma and Pala Bands are unanimously and adamantly opposed to the creation of the American Indian Trust and Development Administration or any similarly-structured entity.

We believe that the Draft Strategic Plan is a covert attempt by political reactionaries in Congress to effectively terminate the Bureau of Indian Affairs by stripping away key functions so that only a shell remains. A more apt title would be the "Draft Strategic Plan for the Dismantlement of the BIA." The Draft Strategic Plan, as such, is a radical, ill-conceived departure from the intent of the American Indian Trust Reform Management Act of 1994.

We also believe that the Draft Strategic

Plan would promote the systematic destruction of American Indian tribal culture and would undermine the ability of democratically elected tribal governments to develop and administer tribal resources independently. The implementation of the Draft Strategic Plan would set a precedent that could pave the way for the eventual termination of all Indian tribes throughout the United States. This plan is a Trojan horse.

We find it rather curious that the Indian tribes received the highly complex, 128-page Draft Strategic Plan one week before these hearings began. This is somewhat reminiscent of the techniques used in the Stalinist "show trials" of the 1930s.

The basic premise of the Draft Strategic Plan is fatally flawed because the Indian tribes should be treated as if they were a business enterprise that exists to make a profit. The Draft Strategic Plan, for instance, seeks to pacify tribes with the opiate of maximizing profits on trust lands. It also implies that the trust responsibility of the United States to Indian tribes is equivalent to that of a bank trust department to its customers.

Indian tribes, however, are governments that exercise an inherent sovereign power which predates the existence of the United States. The legal relationship

between Indian tribes and the United States is that of a government-to-government relationship between the two political entities. The Draft Strategic Plan represents a downgrading of this relationship to a purely commercial basis. Tribal governments would no longer interact with a federal government agency on Trust Asset Management issues, but with an independent, government-sponsored organization that is outside the U.S. Department of Interior.

The trust responsibilities of the United States to the Indian tribes are comprehensive and cannot be fragmented. Furthermore, tribal leaders are not interested in maximizing profits as much as they are in maximizing the overall welfare of their people. The interests of the tribe and its members in trust assets cannot be separated from the tribe's interest in the health, education, social, economics and cultural development of its members. This unity is the cornerstone of the American Indian tribal culture. Yet the Draft Strategic Plan cites the destruction of this unity as one of its unique features. This is cultural imperialism at its worst.

We also suspect, while there is a proposal to incorporate a token number of Indian employees into the AITDA from the OTFM, the ethnic composition of AITDA's

overall staff would resemble that of the BIA of the 1920s, prior to the adoption of Indian preference.

In other words, AITDA would be an agency staffed and managed predominantly by nonIndians who would control natural resources, financial assets and economic development of American Indians. This is politically unacceptable.

We also believe that the creation of a for-profit Trust Development Bank would perpetuate government control and exploitation of tribal economies, which is perhaps the hidden agenda of the Draft Strategic Plan. This bank would make a profit off the tribes and their impoverished membership, and could ultimately control vast tracts of tribal lands and tribal enterprises through loan foreclosures. It could also strangle tribal self-sufficiency initiatives, which are a key aspect of self-determination.

In conclusion, unquestionably, trust funds management needs reform. Trust funds reporting is inadequate; portfolio management is understaffed; a comprehensive investment strategy is missing, and a confusing web of relationships between OTFM, Area Office, Agency Office and the tribe. We believe that the solution is to reform the BIA, not to create a new government bureaucracy at taxpayer's expense, particularly one that

1 would undoubtedly have quite an appetite for power -- at
2 tribal expense. Thank you.
3 MR. HOMAN: Thank you.
4 MR. ANOATUBBY: My name is Bill Anoatubby.
5 I'm governor of the Chickasaw Nation in Oklahoma. I'd
6 like to bring greetings from the Chickasaw Nation.
7 First, I compliment the trustee on analyzing
8 and giving his professional opinion on the myriad of
9 problems that exist within the Trust Funds Management, as
10 well as the Trust Resource Management of tribal resources.
11 I think you presented some very logical solutions to the
12 myriad of problems. I thank you for that work.
13 However, as the other speakers have, we have
14 some concerns. First one is that we believe that the
15 original charge of the Special Trustee has not been
16 completed. And that is the analysis of the trust funds
17 problems that we had and have. More so, other tribes.
18 We have had a good working relationship with
19 our Bureau Agency and our Area Office. We simply don't
20 have some of the problems that other tribes may have. We
21 believe that responsibility has yet to be fulfilled.
22 The Chickasaw Nation does also oppose the
23 movement of trust functions -- the transfer of those
24 functions -- to another proposed agency. We're not yet
25 convinced that is the methodology that should be used.

Presently, we prefer that the Bureau be properly staffed and properly funded and given appropriate technology to do the job that they've been charged with. We, obviously, have some other concerns about the plan. These are the major concerns presently. We will present those concerns in writing. In fact, I have a presentation for you today. But I would reserve the right to amend that and add to that.

There is one other matter that I'm concerned about. Something that I heard this morning in your presentation. You indicated that you will be presenting your plan to Congress. I believe that was what the -- by the end of this month; is that correct?

MR. HOMAN: The law requires me to -- and I have agreed to give it to the Secretary and the Congress by mid-April.

MR. ANOATUBBY: I believe that little can be done to address our concerns in that length of time. I believe that there should be an extension of time requested. And we would urge that the Congress grant that time -- if they're the ones that control this -- so that all the comments that are taken in these hearings can be taken into consideration. Maybe a local plan that we can all agree to. That's what we're here for. So that we can consult one with the other. Who knows. You may be able

to convince us that this is what we need to do. So far, as you can probably note, that hasn't been done.

I recognize your background in the field, your expertise and the professional approach that you take in analyzing these problems. I think the solution is what we're concerned about -- or what I'm concerned about.

I would ask that you seek some additional time and not present this plan as written, but to take these things that we're talking about today -- and probably you've heard across the country.

My guess is that you've heard some of the same comments across the country. These are our funds. These are our resources. Take these things into consideration. Thank you.

MR. HOMAN: Thank you, Governor.

MR. PEDRO: My name is James Pedro from the Cheyenne-Arapaho Tribes of Oklahoma. I'm going to introduce my tribal tax revenue administrator.

First, I would like to thank you. I bring greetings from the Cheyenne-Arapaho Tribes of Oklahoma, to you and to the tribes assembled here. I'm asking my tax person to read a statement, which I was just handed recently. He wants to make some further statements in reference to what we're talking about. Thank you.

MR. HOMAN: You're welcome. Thank you.

MR. PEDRO: Excuse me. Mr. Lehman Coyote, our tax person from the Cheyenne-Araphaho Tribes.

MR. COYOTE: I'll read from a prepared statement. It is evident from news releases being circulated in Indian country that, as before, Indian tribes are being asked to form immediate opinions and comments on a subject plan that has been kept under close guard.

"These scheduled hearings are supposed to be the forum for tribes to discuss pros and cons of a plan, that only a select few have seen. The Washington Post has reported that a few tribes support the plan -- these tribes being represented on the six member advisory committee regarding the Trust Fund Management. The Post also reported the Clinton administration's and the Bureau of Indian Affairs' dislike, or at least cool reception, to the plan.

"These so-called consultation hearings defeat the purposes and the intent. We, tribal representatives, show up and are overwhelmed by the presentations. There has been no time to study the parts of the plan and certainly no time to assess the probable impact and outcomes.

"If we choose not to comment on such a short notice time frame, then our silence is translated into

acceptance or approval. If we ask questions, the standard reply is that the answers are contained in the plan. The forum itself is conducted by the advocates for the plan. It is not likely that the shortcomings, the negative aspects, and the potential flaws of the plan will be pointed out.

"These aspects -- the tribes will have to discover or question themselves. These consultation hearings need to be conducted in two parts: the first hearing to introduce the subject or the plan; and the second hearing to be held for those who do their homework and have opinions that they want to voice on the subject matter.

"Mr. Homan is an acknowledged newcomer to the bureaucracy. The scope of the problem is more complex than just the accounting of trust funds. The trust responsibility of the Bureau of Indian Affairs has been negligible in other areas related to the resources of the tribes.

"Without addressing the other problems which also constitute mismanagement and which affect trust funds' revenue, any plan would be incomplete. In the case of our tribes, the Cheyenne-Arapaho of Oklahoma, our own audits of tribal wells reveal underpayments, leases that were backdated, drilling and production from unauthorized

zones, just to name some of the investigative findings.

"The Past Reconciliation Project did not address loss of revenue based on the examples I just gave. Until the federal government has adequately compensated for the past misdeeds of the Bureau of Indian Affairs, it would be foolhardy to embrace a plan that eliminates the Bureau and the Interior, thus absolving them of all past errors.

"This statement is not meant to disregard the Strategic Plan. It is, however, intended to caution against lightly disregarding the fiduciary responsibility of the Bureau of Indian Affairs by endorsing a plan that is structured outside that jurisdiction."

In your response to the lady from Wisconsin, you indicated that no contemplated change in delivery of service from BLM or MMS will be made. That's, basically, what concerns us.

We have oil and gas as our common area source of revenue. In our previous admission in Tulsa, we indicated a lease that has an additional $40,000 worth of revenue due. Nothing has been initiated by the Bureau of Indian Affairs or the Minerals Management Service to recover that.

We just completed a volume-by-volume comparison on our allottees. This is not an audit. There

is a volume-by-volume comparison between the state records and records of the Bureau of Indian Affairs. The MMS documents showed that a joint lease was conducted by MMS and the oil company.

Our volume-by-volume comparison shows an additional $30,000 due on gas, an additional $20,000 due on oil. The records also indicate that oil royalties were not paid to the allottees until December of '89. The wells were in production prior to July of 1987.

In our record keeping relations, we requested royalty payments from the MMS office in Oklahoma City and the MMS office in Denver, supposedly coming from the same royalties. A comparison of these records shows completely different royalty payments for the same sales month.

It's problems like these that need to be addressed before we can embrace a plan that manages our money after it comes in the door. We want to make sure that the money coming into the door is correct before we can look at any other plans. Thank you.

MR. HOMAN: Thank you. The gentleman in the red.

MR. MENDEZ: I'm Ray Mendez, Mescalero Apache Tribe. Comments on Special Trustee's Draft Strategic Plan.

"For many years, the Mescalero Apache Tribe has gone on record stating that administrative and trust authority be vested in the Agency Superintendent. In the early part of this decade, the Mescalero Apache Tribe was heavily involved in a reorganization effort to decentralize the Bureau of Indian Affairs by doing away with Area Offices and again vesting all our authority in the Agency Superintendent, who reported directly to the Assistant Secretary of Indian Affairs.

"We see nothing in the Special Trustee's Strategic Plan to change our opinion -- invest total authority in the Agency Superintendent.

"The Strategic Plan is a complex document filled with many technical ideas that seem to mask its true intent. As summarized by Ducheneaux, Taylor and Associates, Phase I proposes that legislation be introduced and enacted into law which would create a new, independent federal agency to be known as the American Indian Trust and Development Administration, AITDA.

"This new agency will be governed by a nine-member board, full-time board of directors to be appointed by the President, with the advice and consent of the Senate. Three of the members would be from the Indian community, three from the banking and trust community, and three from the general public. Under the board would be a

full-time chairman and a chief executive officer.

"It provides that all of the Indian trust functions, including Trust Resources Management, Trust Funds Management and Land Title and Records Management of the Bureau of Indian Affairs and other agencies of the Department of the Interior, including the Bureau of Land Management and Minerals Management Services, would be transferred to the new administration.

"Phase II of the Draft Plan envisions the creation of an American Indian Trust Development Bank. As stated in the plan, the TDBank will take the form of a bank and trust company similar to those found in the Farm Credit System or the Federal Home Loan Bank System. The board of directors and the chairman of the AITDA would also serve as the board of directors and chairman of the TD Bank.

"Under Phase II, the AITDA would continue to manage the federal trust responsibility for Indians and Indian tribes for Trust Resource Management, Trust Fund Management and Title and Record Management. The TDBank would provide full-service banking, trust and financial services to Indians and Indian tribes, and would provide funding for economic development.

"The full-service banking services to be provided are called 'lifeline services,' meaning that they

would only be available in those cases where such services could not be obtained from private banking entities at competitive rates.

"We feel that the Draft Strategic Plan is far too radical and completely beyond the scope and intent of Congress as outlined in the American Indian Trust Funds Management Reform Act of 1994.

"We feel tribes would be better served by the establishment of regional Trust Funds Management offices that serve fewer tribes, thus promoting better management of funds, greater lending power for tribes and enhanced stimulation of local economies.

"We declare our opposition to the Draft Strategic Plan as being ill-conceived and dangerous. We further declare our opposition to any fragmentation of the Bureau of Indian Affairs that could then make it an easy target for termination.

"We affirm our stance that all authority, both administrative and trust, be vested in the Agency Superintendent.

"Ray Mendez, Secretary of Mescalero Apache Tribe."

MR. HOMAN: Thank you.

MR. PYLE: Paul Homan, Joe Christie, Donna Erwin -- I appreciate you being here today. We do

feel like it's the 11 1/2 hour, as the report is probably already totally written. We hope that you will take into consideration what we say today to be serious.

I served four years on our task force that was set up by Congress. Congress said to the Secretary at the time, "Pick 36 leaders, tribal, pick a dozen from the government. Find out what's wrong with the Bureau of Indian Affairs. We want recommendations."

Many of the recommendations were accepted. In this field alone, we spent two years finding out the problems and about another year putting together solutions.

Unfortunately, when the solutions from that committee were given over to the BIA, basically, it said it like this: We will take from 12 to 20 CPAs, give them enough money that you can hire experts; hopefully they're Indian, if not, get the best you can. Staff them with approximately 80 people. Fund this office with approximately $20 million. Whether the administration, through the BIA -- for whatever reason, they rejected it totally.

We asked them, "Okay. You've rejected it. Until you tell us what you will do for us, the Indian people -- these 300,000 accounts are out there. You know, they're bad. All the tribal millions of dollars. Nothing

being done about it. We know the problems now. Tell us what you will do if you reject our ideas."

Unfortunately, they said, "Well, let the Bureau handle it."

"How will you handle it?"

"Let the Bureau handle it." That was the final answer. I believe today that's why your Special Trustee was committed.

Unfortunately, the Bureau, under Eddie Brown, was -- he was one of the probably sharper people, and he studied the issue. A conversation I had, after three years that he was there, basically went like this: "I know the problems. I have tried to fix it. You have two major problems. You have USC codes, hundreds of them. You have 32,000 pages of Bureau of Indian Affairs manuals. My hands are totally tied. I do not have the flexibility nor do I have the federal resources to come in and fix it."

It was very apparent to us that some third-party had to come in. Now, when third parties have come into Indian country, it's meant very much destruction for the Indian people. Today we're here because we have a tremendous fear of the unknown.

Bernie Teba sat on that committee. He said, "Maybe the BIA is SOBs, but they're our SOBs." At least

we know where they're coming from. In the past, they, many of the Bureau -- the old Bureau, as the Bureau themselves, were SOBs. Okay. We'll take that.

Many now at the Bureau -- our director, we asked him to be here, because we told him we supported him. He's Indian. He's from Indian country. He knows what needs to be done.

But now because we have gone out to the newspapers, maybe -- and the newspapers have come in for sensationalism and have used, many times, the Indian people to get them "riled up." Then we go to Washington. And we present our problems.

Then Congress -- the only way Congress knows -- they're much like a lawyer in a lawsuit. The only way they know to punish some agency is to cut their funds -- the opposite of what we wanted.

We wanted additional funds to come to the right place. And then they cut them. You know the system has been cut and cut and cut. We do appreciate the $13 million. As you know, each Secretary is given a limit. "Your limit is this, Mr. Secretary. You will not get one cent above this. Do not ask for one cent above it." So, what the Secretary had to do now is take that $13 million out of somewhere else.

If you see the priority listing, too often

the BIA has been and still is, the very bottom of the lowest -- you know, parks and recreation. It's protecting anybody else above us. We're fortunate, because we at Indian country had gone to Congress. They have slapped BIA's hand so hard that you better not ask for any more money.

I think the Indian country, at least in the Choctaw Nation of Oklahoma -- we're going to have to change our attitude a little bit. We started working with the Area Director. We see it as taking resources away from Indian country, because the Bureau now is about 95 percent Indian. And the new bureau would like to work with us. But they have been slapped so hard, the good people in the Bureau do not have resources, as you explained very nicely, up here.

We would like to know if your job, one, is going to stop? And you're an independent. Because you're not a federal official, you're allowed to say anything you want to say. And I'm not saying this is wrong. I'm just saying you have that luxury.

Federal officials do not have a luxury. They can only say what "the White House" wants you to say. You say anything else, you may not be there tomorrow. "We'll send you off somewhere, because we're going to teach you a lesson, you government employee. You're not

to say anything, but just what we want you to say."

Fortunately, you have that luxury of being able to come into Indian country and voice your total concerns. I agree with what you put on here. We have a tremendous fear that every time the government comes in, we come in second place. I think that's what many of the people here have a fear of. When we have not been consulted all along with this plan, we have a fear of it.

We have many -- many times have a week or two weeks to consult on major, major issues. We would like to know more about the plan. How is the Bureau -- is it going to go away? If that goes away, then -- as Bernie said, we don't have anything that says "Bureau of Indian Affairs." There's only two agencies: Indian Health Service, Bureau of Indian Affairs. Everything else is USDA. That's not Indian. These two agencies control all the funds coming down through the infrastructure of the tribes.

With that, I appreciate your being here. Hopefully, you'll see our concerns and our fears. Hopefully, you can go back to the Congress and let them -- I guess lobby them, whatever you have to do, to show them not to cut us any more.

As Mr. Christie said awhile ago, "We had 120 there. We probably needed 250." What did the Congress

do? They slapped him down to 90. That's ludicrous. We hope you can go back to Washington in the wonderful world we've created up and go back and make some good sense. Thank you. I appreciate it.

MR. HOMAN: Unfortunately, I do have to go back to Washington. That may not be my preference. Yes, sir.

MR. TOAHTY: Thank you, Mr. Homan. My name is David Toahty, from the Sac and Fox Nation. I have a letter here in response to this plan. I would like to present it to you for the record. The letter is written from the Acting Principal Chief, Merle Boyd. I've been asked to read it.

It says: "Dear Mr. Homan: The Department of Interior is preparing to implement a strategic plan in response to the American Indian Trust Funds Management Reform Act of 1994. The Sac and Fox Nation does not deny that reform to the Bureau of Indian Affairs' past and current accounting deficiencies merits special attention.

However, we strongly oppose the majority of the remaining provisions of the Special Trustee's Plan. Although there has been limited consultation with a Native American Task Force, such drastic changes to the fiduciary responsibilities of the federal government require full consultation with all 557 tribes.

The Secretary of the Interior has specific, as well as broad, trust responsibilities to Indian tribes. The Bureau of Indian Affairs, charged with the direct oversight of the responsibility on an ongoing basis, must remain as such and continue to be held accountable for the federal government's obligations.

Specifically, we have concerns about the creation of an independent organization, outside the Department of Interior, which would assume all trust asset management functions.

Sufficient justification for the relocation of these responsibilities to yet another entity has not been convincing to the Sac and Fox Nation. The creation of another bureaucracy for Indian affairs, in addition to existing bureaus and agencies, is not warranted. We question why the long-term problems which have existed, but have been ignored over these past decades, cannot be addressed within the existing structure.

In other words, we believe it is incumbent upon Congress, the President, the Special Trustee and the Secretary of the Interior to ensure that the Bureau of Indian Affairs is provided with the necessary financial, physical and human resources necessary to correct the problem, not create another causal entity.

If the Bureau of Indian Affairs is to no

longer oversee vital trust responsibilities for individual Indian monies accounts and natural resources, what is their purpose?

If the intent of the parties involved in the proposed plan is to eliminate the Bureau of Indian Affairs and the Department of the Interior's oversight role, then the removal of these critical trust responsibilities will certainly advance such an agenda.

Until full and appropriate consultation is conducted with all tribes affected by this proposed plan, the Sac and Fox Nation strongly objects to any further consideration of its potential merit. Furthermore, we believe that any strategies effected to this end places the U.S. Government's trust responsibilities in imminent jeopardy.

It is our opinion that these issues are too important to tribal governments to warrant issuance of these policies without adequate time for tribal consultation.

Therefore, we request that you honor the official position of the Sac and Fox Nation to extend the deadline for responding -- to provide the necessary time to conduct a new tribal review and provide comments -- to facilitate development of our tribal position on these proposed policies.

We want to extend our wishes for a cooperative, productive and progressive new year and appreciate your continued support. Sincerely, Merle W. Boyd, Acting Principal Chief." Thank you.

MR. HOMAN: Thank you. Yes, sir.

MR. HANEY: Thank you, Mr. Homan. I'm Jerry Haney, the principal chief of the Seminole Nation of Oklahoma. My comments will be brief. Everybody has said some of the things that I had in mind.

I guess the biggest one is that this issue is very complex. The decision we as tribal leaders make is going to be long lasting. I think that Mr. Pyle, assistant chief of the Choctaws, hit the nail on the head when he said -- mentioned the "bureau of the unknown." Listening to the other comments, I think this has a great deal to do with it.

Now, there's a lot of things in my mind here that I'm concerned with. Particularly, the attitude of Congress at this time. I look at them as anti-Indian. And I think that anything we do, we have to be very careful in what we're doing.

I think the tribes are skeptical of change, drastic change. I also believe that we need more time to look at this issue. I agree with governor Anoatubby on that.

We had one of our tribal leaders in Oklahoma, chief of the Muskogee Nation, one time make a comment which, I thought, covered the whole thing. He said -- this happened when we were looking at reorganizing the Bureau of Indian Affairs. And he said, "it was like rotating four bald tires. Anyway, you do it, you had the same thing."

So, I think that may be what we're looking at here. So, I think we want to take a good look at it. Thank you.

MR. HOMAN: That was hard to top , but you're welcome to try.

MR. PAGE: No. I can't beat that one. However, I do want to say -- my name is Michael Page. I'm the assistant chief of the Delaware Tribe of Oklahoma. I have a representative to speak for us. I will introduce her in a moment.

I do want to say, I'm happy to be here today in order to speak on behalf of my tribe. I'm very happy to be here. I was next to Governor Anoatubby. He forgot to mention that they are the undefeated Chickasaw Nation.

MR. ANOATUBBY: Unconquered.

MR. PAGE: That's right. Unconquered. When I was thinking about it -- I was reminded of a time several years ago when I was invited to the Treaty of

Greenville, the 200th anniversary of that, which my great-great-greatgrandfather signed. One of the questions that they asked us: What has changed in that 200 years?

When I thought about that, I said, "nothing has changed." Today, we still fight every day for who we are and what we represent and the tribal members that we work for, to honor that legacy that was given to us by our grandfathers.

In that sense, today we don't fight with weapons anymore. We fight with lawyers. We fight in the courts. Those are our warriors now. The person who carries the biggest and most books wins, normally.

And so I do want to say that -- considering the Reconciliation Act, in cooperation with four other tribes, because we share a common problem -- namely, the Delaware Tribes, the Jicarilla Apache, the Laguna Tribe here and the Red Lake Chippewa -- we have a common problem which was not resolved from the Reconciliation Act in the accounting of all of our accounts.

We believe that, you know, we're going to have to act on that to make sure that we do have a full accounting. We have -- several records that we have not been able to have yet. So, we can't even make a full accounting of our own problems.

With these other tribes -- I know there are

many that have the same problem. But I do realize your problem, too, in that not every tribe is going to be able to reconcile all of those records. It's just not possible. A lot of those things are missing.

But in this particular mix of tribes that we have, we believe that those things do exist. We do have the records. We just have not been able to have those records, to make a full accounting. That's something that we want to get resolved.

If we have to go to court, we have to go to court. But we want to try to get those issues resolved, because I realize we're not asking anything that any other tribe wouldn't ask for. They want to have a full accounting of these trust funds and what has happened to them.

It's a substantial amount of money, in our case. I'm sure it is with the other tribes, too. We don't want to have to settle for 24 cents on the dollar on those things. So, we want to make sure that that goes through and that we are able to get a full accounting and have access to our accounts, which we have not had a chance to do yet.

I would like to say that we will be offering this as a written document. We will also provide a written document at a later date. But at this time, I

would like to introduce Carolyn Pasternak. She may be of slight built, but she carries an awful lot of big books to throw at people.

She really has been a great representative for the four tribes: Laguna, Chippewas, Red Lake Chippewa, and the Jicarilla Apache. She is going to offer a lot of the recommendations that we hold together. We will offer this to you as a recommendation in the future.

We do want to say, once again, that we're appreciative of your actions here. We think it's the right thing to do. We know that it's an unmanageable problem.

We do agree with your statement that you began with, that -- we think that the vision is correct. But to get to that point and to be able to actually complete that vision is one that's going to be extremely difficult for you to do.

We hope -- with the help of all of us here and with the help of Congress -- we can solve those problems to resolve that. Because that's what we all want for ourselves. So, at this time, I would like to introduce Carolyn Pasternak.

MR. HOMAN: Thank you.

MS. PASTERNAK: I'm with the Nordhaus law firm. As Mr. Page has indicated, we represent four tribes

in all matters concerning mismanagement of their trust resource and trust funds. Those tribes are the Delaware Tribe, the Pueblo of Laguna, the Jicarilla Apache Tribe and the Red Lake Band of Chippewa.

I would like to state, Mr. Homan, first, that we appreciate the depth of analysis that you have obviously put into your draft plan. I believe that you have very correctly and thoroughly -- and much more beyond the superficial gloss that is usually given -- identified the root source of the problems.

We also believe that you have identified a correct envisioning of where the situation needs to arrive to fulfill the full fiduciary duty owed by the government to the tribes and to the individual Indian for proper management of their trust monies and their trust resources.

The views that I want to express are the views that my firm has, as counsel for these four tribes, and which is what we would recommend that they adopt as their views. I'm sure that they also have additional views and perspectives that fill that out and reflect a lot of the statements that have been expressed today; namely, the fear or the skepticism that tribes generally have about this plan being able to reach the proper place of proper fiduciary management.

The main difficulty that we identify with the plan is this: as far as we know, never in the course of American history has the federal government been able to engage in nongovernment activities, such as management of trust resources, or in any way other nongovernment activities -- business activities.

The federal government does not do that well, period. The only place that we know of where the federal government has ever done that successfully is in the space program: NASA. When you look closely at the space program, the federal government really there has not either engaged in the actual business activity. Instead, they contracted out to private industry. And the federal government successfully and properly managed the contracting to ensure that the private industry fulfilled the goals of the space program.

So, when we look at what you have proposed, we have a basic question: Why do you propose setting up yet another government entity, when there's no track record of a federal government being able to properly manage trust resources or any other nongovernment activity, except, arguably, the space program?

Furthermore, you have -- I've listened very carefully this morning, and both you and the director of OTFM -- throughout, you identify over and over that the

plan that you have come up with is modeled on the successful model that exists out in the real world. In other words, private banking and commercial trust entities that are successful have a proven track record of being able to manage trust assets.

If such an alternative exists, why create a new government entity? Why not contract with private industry to do the day-to-day management of the trust resources and the trust monies?

Now, that does not remove the trust responsibility of the federal government, as you well know. Because as you've also identified, it is absolutely crucial that whoever tries to get from here where we are, to there, where we need to get to -- whether it's a new government entity or whether it's private entities that have a proven track record -- the government still has a full trust responsibility to assure that that progress is made -- getting from here to there.

I think you've also properly identified the way the government does that: is that they set up proper procedures and policies and controls to ensure that.

MR. HOMAN: I think we're competing with the Rotary Club next door. If you don't mind, would you come back at 1:30. I think we're going to have this for an hour. I can go on. But we were planning to break at

12:30. Why don't we do that -- come back at 1:30, if you don't mind; or you can finish, as you're welcome to.

MS. PASTERNAK: It's up to this --

MR. HOMAN: I think you're going to be competing with them. Why don't we be back here at 1:30. Hopefully, the Rotary Club -- usually they take about an hour. It will be over.

(The Consultation Meeting was recessed at 12:17 p.m. and resumed at 1:32 p.m. as follows:)

MR. HOMAN: Ladies and gentlemen, we're about to resume the session. So, if you would please take your seats. Our speaker that I had to interrupt is not back yet. We will allow her to finish her statement, but if someone else would like to talk in the interim, please come forward.

MR. HALFMOON: My name is Alphonse Halfmoon. I've handed a written statement to the person there. I want to go on the record with the government people here.

"The member tribes of the Columbia River Inter-Tribal Fish Commission, the Confederated Tribes of the Umatilla Indian Reservation, the Confederated Tribes of Warm Springs Indian Reservation, the Confederated Tribes and Bands of the Yakama Indian Reservation and the Nez Perce Tribe, have asked me to provide you with the following testimony:

"The Columbia River Inter-Tribal Fish Commission has received the comprehensive strategic plan developed under authority of the American Indian Trust Funds Reform Act of 1994. After preliminary review, the CRITIC cannot support the Special Trustee's recommendation that all trust management duties, responsibilities and activities, carried out by the Department of the Interior, the BIA, be transferred to the American Indian Trust and Development Administration as soon as practical, due to

the following reasons:

"1) The trust responsibility and relationship that exists between the tribes and the federal government is based upon the United States Constitution, treaties and case law. Numerous and serious questions arise as to whether and how the American Indian Trust and Development Administration will affect the federal government's trust responsibility.

"2) The plan does not address the role of the tribes in the management of their own trust resources, especially issues surrounding current self-determination contracts and the self-governance compacts. Concerns arise about tribal input and the extinguishment of the current policies and agreements.

"3) Section 303 of the American Indian Trust Fund Management Reform Act of 1994 (Public Law 103-412) requires the Special Trustee to 'prepare and after consultation with Indian tribes and appropriate Indian organizations, submit ... a comprehensive strategic plan for all phases of trust management business cycle....' Recognizing that the proposal represents a major change in the way the U.S. Government manages its trust responsibilities to American Indians, a more thorough review of the strategic plan needs to occur. Other alternatives may need to be developed or addressed.

"In the spirit of self-determination, the tribes need to have extensive input into the organization, policies and procedures, that will affect the management of the trust resources of future generations of tribal members. For instance, questions arise as to the future role of the BIA with the establishment of the AITDA, and whether the relationship between the federal government and the tribes will end after 30 years.

"4) When Congress enacted the American Trust Fund Management Reform Act and established the Office of the Special Trustee, it was believed that the OST would deal with only trust funds, tribal and individual monies, not necessarily all trust resources; i.e., land, water, timber, minerals. The strategic plan goes far beyond addressing only trust funds by taking over management of all resources, and placing them under the direction of the proposed American Indian Trust and Development Administration.

"There are many complex issues surrounding management of the natural resources, including those relating to treaties, ceded lands, water rights, etc., which require a thorough understanding of tribal policy and culture. Different policies and methodology are needed to guide the management of investments; i.e, trust funds, in contrast to the management of natural resources.

"Land, water, minerals or timber resources are beyond the scope of the act. Management in accordance with the prudent investor banking standard, as set forth in the strategic plan, does not take into account cultural aspects and principles of caring for the land in a way that will benefit generations to come.

"5) The plan repeatedly states the goal of making the individual American Indian and Indian tribes self-sufficient over the next three decades. At the end of this period, the relationship between the tribes and the federal government is not defined. Questions arise about whether the trust responsibility will continue to exist after that time, or whether the relationship between the federal government and tribes will terminate by nonappropriation.

"6) The relationship between Congress and the proposed American Indian Trust and Development Administration is not addressed. Questions arise as to the process by which tribes can seek redress from AITDA's policies which are contrary to long standing federal policies regarding trust responsibilities, interpretation of treaties, case law, etc.

"Also, methods used to measure accountability and reporting requirements to Congress are not fully set forth. Another concern are the impacts on

tribal programs if insufficient funding is available to ensure the protection of tribal programs on the strategic plan.

"7) The Trust Development Bank will operate for profit and will not be eligible for appropriated funds from the federal government and will recover its operating expenses from trust, lending and leasing. The effects of recovering operating expenses from tribal funds is not delineated, nor has a feasibility study or business plan been developed which would address the profitability of such an operation.

"As an example, concerns arise as to whether the AITDA would charge an overhead expense which would be deducted before a tribe's or tribal organization's annual funding would be disbursed. Further, if the AITDA has to recover its operating expenses from tribal programs, questions arise as to how this will affect the tribes with a large funding base in contrast to tribes with smaller funding bases.

"8) Questions arise as to the future role of the BIA if AITDA is created. In essence, it seems questionable whether the BIA will continue to exist, how functions and responsibilities will be transferred and managed by the AITDA, what policies will be used in the management of the resources, etc.

"The foregoing are only a few of the concerns presented by the Columbia River Inter-Tribal Fish Commission. It is expected that after more extensive review, the CRITIC will formulate additional questions, concerns and recommendations.

The CRITIC also strongly believes that alternative recommendations need to be evaluated and presented for review before any further action is undertaken to implement the strategic plan." Thank you.

MR. HOMAN: Thank you. Who would like to go next?

MS. METOXEN: Good afternoon. I'm Loretta Metoxen. I'm a member of the Oneida Nation in Wisconsin. I want to thank you for this opportunity to speak this afternoon. I'm here as a member of a trust committee of the Oneida Nation.

We have, some years back, pulled all of our trust funds out from the Bureau of Indian Affairs after a prolonged attempt to do this, and perhaps ten years and three resolutions before we could get it loose. So, we did. And I am sitting on the board, one of nine who manage our own trust funds internally.

I do not have an overall prepared statement. But I do have some general comments and maybe some specific questions. I wanted to know, under the systems

proposed, whether or not you had taken into account the acquisition of additional properties or expansions of lands?

If Indian nations have lost 100 million acres as a result of the impacts of the Allotment Act, then perhaps we have a desire to reacquire 100 million acres, and how will we handle that?

I submit to you that under your list of originators of documents, Indian persons or tribes are not in that list, if I recall. I know that there are thousands, perhaps, not legally required, documents for your purposes or for the purposes of the law. But then I know there are thousands of written documents by Indian persons spelling out their individual problems or requests -- many of which have never been responded to.

Also, a comment on -- my comment would be that the systems are extremely important. And there are systems all over the United States that are functioning very well. One of them is in the patent office, where they have document management systems. And they can whip those documents through in multi -- or miniseconds, or some such thing as that. And they come up. They're housed in the system. I've been there to see that system.

But equally as important is the substance. For instance, under leases, royalties, sales, etc., and

1 the receipts there from -- what about the fair and
2 equitable value of those? I mean, nobody has addressed
3 that either in the document or here or any place else.
4 I've heard a discussion.
5 It's one thing to manage the income and the
6 disbursement from it, but it's certainly another thing to
7 get the equitable and fair value for any of these
8 transactions.
9 No matter where -- I believe I heard 300
10 million for a loan program to purchase fractionations. Is
11 that correct? 300 million. Well, no matter where that is
12 housed, that is much, much too low. That will not nearly
13 come to the need.
14 What about the reconciliation question?
15 I've heard some people allude to that here. But it seems
16 to me -- what I heard this morning is that Congress may
17 come up with a settlement, perhaps a global settlement,
18 generally to tribes with specific individuals. It seems
19 to me that Congress needs to address that immediately.
20 It also seems to me that Indian people are
21 the only persons that are required to pay for everything
22 that is of service to them. I point out to you that
23 agents, houses and all of the amenities that were provided
24 for them -- and a lot of other services that were
25 delivered to Indians -- were paid for out of their own

proceeds, either from judgment funds or some such -- or their own resources, such as timber. And all of those records are there, such as they are. But they can be found.

The specific question I have is in relationship to the Oneida Nation. We are a self-governance tribe. We manage our own land records. They are up to date, on a daily basis. We also certify our own enrollments.

I heard that there were 450 work stations. My question would be: Would they be compatible with our system, or would we have to have a system that would be compatible with the Bureau of Indian Affairs in order to transfer the information?

Our agency cannot keep up with us. Even though we provide them the up-to-date information, they cannot transfer it to their system at the Bureau. That is all I have for today. Thank you very much.

MR. HOMAN: Thank you very much. Carolyn is still not back. Oh, she is back. Carolyn, if you're ready to resume your testimony, you're certainly welcome to come forward.

MS. PASTERNAK: Thank you. I'd like to just summarize where I started, which is that we believe that the federal government has a consistent record that, it

fails whenever it engages in nongovernment activities.

This is true not just in Indian assets management, but it's also true in nonIndian assets management. For instance, if you look at MMS, which manages both Indian natural gas and oil -- it also manages federal natural gas and oil wells. It is known that hundreds of millions of dollars of revenue are lost every year from the management by MMS of the offshore federal wells.

In other words, the public's money is lost in the same manner as Indian tribal money or Indian allottee money is lost. The government just simply does not have a track record for doing this correctly.

Similarly, you have certainly made it clear -- and I believe that the director of OTFM has made it clear -- that you acknowledge, you recognize, and you, in fact, are of the solid opinion that the consistent history of the Bureau is of mismanagement of tribal assets. And if you look at past attempts to correct that, it doesn't work.

One thing that I noticed this morning when Mr. Christie was describing the goal of setting up a new electronic record keeping and record retrieval system and how this will, theoretically, solve the problems of record keeping, it brought back to mind a situation that happened

in the early 1980s. And at that point, the number of tribes -- the oil and gas producing tribes -- they became very vocal about the fact that they knew they were not receiving the full value of natural gas that was being extracted from the reservation lands.

There was a point in time in the mid-80s when there were several members of Congress who -- they became very interested in this. And they questioned MMS very strongly. Why are you not achieving the full value? And MMS beat around the bush for quite a while, not really answering the question, until finally they did.

They said, "We don't have the right equipment. We have a digital FAS computer system. In order to be able to realize the full value of the natural gas, we have to be able to have record keeping of what's called the BTU content of the gas. Our digital FAS system cannot do that. So, therefore, we can't keep accurate records. So, therefore, we can't ensure that we're getting full value of tribal natural gas that's extracted from the reservations."

Congress, basically, wrote them a blank check at that point. They said, "You get the right system. You get what you need. You ensure that you're going to realize the full value of tribal gas that's extracted."

MMS spent over $100 million installing the IBM mainframe system in the mid-1980s. Today, it still doesn't work right. For example, last June and August, the reports that were issued to the Jicarilla Apache Tribe -- they showed line items. They will be in one column -- the revenue that's received on the extraction from a certain well. And across the line, they will show the BTU content of that gas.

There were several lines in both of those reports that showed hundreds of thousands of revenue received and it showed a BTU content of zero. Well, zero BTU content is air. It's not even natural gas. So, the tribe went back to MMS and said, "Can you explain this? This report doesn't make sense." They cannot explain it.

So, the point I'm making is, not that what you are recommending is incorrect -- because I believe that what you are recommending is correct in terms of: it is modeled after real world success. But the government doing it -- there is no history of the government having success in that business activity.

And so, therefore, I feel that we need to hear what your justification is for proposing that the government can do this. The government has never been able to do it. The Bureau has never been able to do it. What is the basis for saying now that the government can

do it?

And it seems to us that setting up yet another government structure, given that history, is just an invitation to the kind of historical failures that have always occurred.

It also seems to us that the reason for it almost being guaranteed to fail is actually quite clear. And that is, because the government, the Bureau, is not driven by the real world needs of the tribe, to solve their real world problems. It's driven by institutional mandates.

You don't -- in other words, when there's a problem, you don't find the precise solution that will solve that problem of a particular tribe's trust mismanagement. You put somebody on the night shift to deal with that problem, because that's what's financially expedient, or because it's driven by politics.

Alternatively, if you look at the situation in terms of it being a real world problem, are there real solutions that exist? The answer to that also is yes. You have identified it.

Both you and the director of OTFM have said, over and over, that the model you are creating in this plan is based on success out in the real world. So, why not go to the real world?

If we're at Point A, which is mismanagement of tribal assets and tribal resources, and the goal is to get to Point B, which is management of tribal assets and tribal resources to the level that nonIndian citizens get, nonIndian entities get -- that's the goal you stated and that's a proper goal -- then how do we get from A to B?

Well, this is putting it very simplistically. It's as if you're saying, "Okay, to get from Point A, mismanagement, to Point B, proper management, we acknowledge that the Bureau has always given you a cart to drive from A and B. Now we're proposing a plan where we're going to give you an automobile. We're going to build the automobile. It's going to be modeled after cars that are built by GM. It's going to have four wheels just like the proper car should have. It's going to have two doors. It's going to have a windshield. It's going to be just like they do out in the real world."

Will the Department of the Interior do that? No. They would go to Detroit and buy a car. They wouldn't build a car. Why not go out and get the entities, the commercial entities, that do have a history of success to do this, rather than constructing a government entity, when the government does not have a history of success in business management?

I think that there's a fair question that needs to be asked. And that is, that the day that the Special Trustee, that the director of OTFM, that the Secretary of the Interior, the Congressmen, the nonIndian federal employees, are willing to put their money, their paychecks into this plan -- the day they're willing to put federal pension plans, federal retirement plans, into this plan, then that will be the day that I would recommend to my clients, "Okay, you can put your money into this plan, too."

Why? Because then everybody is under an equal basis. That's what tribes are asking for. They're not asking for somebody more. They're asking for exactly what everybody else gets. Out in the real world, other people do get that.

As you said, when banks mismanage and they cause losses, the federal government, by regulation, makes them eat the losses. The federal government will not make this new federal government entity eat the losses, just as they aren't making the Bureau eat the losses.

So, basically, I would just like to hear, at some point, what is the justification for offering this structure rather than just going to the real world, going to commercial entities that have this success rate?

And I would like to make one last point. If

it is proposed, "Well, this is what the Bureau proposed back in the 1980s -- to go out to contract, to have the trust services managed by banks" -- I don't believe what you're proposing is the same thing.

Number one, I think at that point the Bureau was trying to push its responsibilities off on somebody else. Number two, they did not have the trust responsibility that you have, of meeting a threshold of fiduciary responsibility. And Number three -- and this is most important -- no matter who manages the trust assets, whether it continues to be the Bureau, whether it is a new federal entity, such as you're proposing, or it's contracted to the successful private sector -- the government, the Bureau, the Department of the Interior, still has a full trust responsibility to make sure that that entity fulfills those day-to-day management activities.

That's, I believe, what you proposed. And what needs to happen is the government must set up the proper policies, procedures and controls to ensure that. So, if in New Mexico the government contracts with a successful commercial trust company -- you manage all the Indian wells down there; you make sure that the production of what is produced by the lessor -- that the tribes receive the full revenue that reflects the full value and

the full volume of what was extracted from the reservation, that's fine. The government has to set up a procedure to make sure that happens.

You have to set up the procedure. We will audit that company. We will make sure that they audit the wells once a year. Every single Indian well. We're going to set up a procedure to check, to make sure that they do that. That's what's different. That was not proposed in 1988. You know that has to happen, no matter who manages these assets.

MR. HOMAN: Thank you. Has everyone had an opportunity to speak? I think there are probably some more people that -- Roland.

MR. JOHNSON: Mr. Homan, I'm Roland Johnson, the governor of the Pueblo of Laguna. I just want to take the opportunity -- for the record -- indicate that the presentation made by Carolyn Pasternak certainly reflects the concerns and the reaction of the Pueblo, to what has been proposed. We also will take advantage of the opportunity to make written comments within the prescribed time lines.

I want you to know, Paul, that we do continue to appreciate your personal efforts at trying to bring about meaningful reforms and changes to a very serious situation which exists within the Department and

the Bureau as well.

This is in spite of the adverse situation created for the Pueblo by the $21 million reconciliation fiasco. We do appreciate your efforts.

Many of the problems which were identified during the course of the presentation this morning are problems that do need to be addressed. I think that we don't necessarily have to wait for the adoption of the plan that has been proposed today.

I think there was opportunity for the Bureau to take necessary steps to begin to address a lot of the situations or conditions which exist within that organization, which would then result in better means of managing, accounting for, those resources that tribes have entrusted to the care of the United States government. Thank you.

MR. HOMAN: Thank you, Roland. Please proceed.

MS. RUSSELL: Thank you. My name is Majel Russell. I am a member of the Crow Tribe. I'm also lead legal counsel for the Crow Tribe in Montana.

On behalf of the Crow Tribe -- we missed the other two consultations, so we're kind of down here, out of our area. But we have a prepared statement that we will be forwarding.

One of the main concerns that the Crow Tribe has, is that the consultation process -- the four hearings that you've held -- we don't feel is meaningful enough in terms of our individual needs. The Crow Tribe, as you well know -- I think you visited the Crow Tribe -- has an incredible dependency on the Bureau of Indian Affairs.

The Crow Agency, Bureau of Indian Affairs Office, runs one of the largest leasing conglomerates in the United States of America. I did some research a couple of weeks ago and found out that the average lease administered by the Bureau of Indian Affairs is probably one-half of the -- less than the one-half of the market value of the land per acre.

So, our management is incredibly poor. Our people are impoverished and continue to be oppressed by that management system. We recognize those problems. We're causing those problems. But on the other hand, we see just an enormous burden in trying to replace that system that we do have.

The other issues that Crow have include -- we do have trust funds that are managed by the Office of Trust Funds Management, OTFM. We have more trust funds coming into their management.

We have a lot of problems in dealing with agencies, like we need Bureau approval on certain things.

We're not clear whether the Bureau needs to oversee some of our spending or whether we have to go to OTFM. There is a lot of confusion in that area. So, that's another area that we are concerned about.

And when you talk of fractionated interests, the Crow reservation is probably the epitome of where that problem is best seen. Fractionated interests is an amazing and horrendous problem for the Crow people.

In the planning that you've gone over today, you talked about just sort of purchasing out fractionated interest as being a possible resolution. When really, I think we need to back up and maybe look at estate planning, looking at maybe some ways to promote tribal co-developments, so the tribes can manage some of their own probate issues. So, I think that there's more thought that needs to go into that. That's a major, major problem for the Crow people.

As a person from Oneida mentioned, $300 million probably wouldn't even cover half of what we have at Crow alone. So, that's something that I think needs more thought and more Indian consultation.

One of the things that I have not seen in this whole process of your Strategic Plan development is a legal analysis to ensure that the trust responsibilities, the government-to-government relationship, will not be

eroded by the creation of a new department.

I think that a lot of the sentiment expressed this morning and this afternoon has been fear that this new agency will erode what Indian law has established as a government-to-government relationship between the tribes and what we have had to work with -- and that's the Bureau of Indian Affairs.

I would like to see some legal analysis, that that relationship actually would not be eroded. I'm kind of assuming, but -- I'm guessing that our government-to-government relationship is with Congress and not with BIA. I would like to see some analysis in that area, and see if we can, you know, maybe appease some of that concern in that one area.

I guess I have to say that I personally commend the work of the Office of Special Trustee. I think that as Indian people, we hang on to what we're comfortable with. We haven't know anything different than the Bureau, than the BIA.

I know a lot of the elders at home have expressed great concern about policies such as Indian preference, you know, keeping our people employed. Because our Agency Bureau employs a lot of Crow people. They're concerned about that. They're also concerned with doing away with the relationship that they've become so

dependent on. So, I have to understand a lot of that sentiment from a lot of our elder people.

But on the other hand, as an attorney, I know that the Bureau of Indian Affairs has never practiced a fiduciary responsibility like they have been charged to do. Even in decisions from the IBIA, where I've had to take cases, apparently the IBIA has rarely found that some of the practices, where they have mismanaged lands or mismanaged natural resources or mismanaged accounts, have ever risen to a breach of trust responsibility.

So, I think that this whole process of looking at making the federal government adhere to a fiduciary responsibility and rethinking that process is commendable. I also understand that, out in the real world -- we talk about the real world like we're not in the real world, but out in the real world, you know -- when we talk about fiduciary responsibility, we are talking about that banking relationship. We are talking about that trustee relationship being based on trust law. So, I do understand that.

I'll wrap up my comments with that. But I think that a lot of the points that were made today on the plan actually have merit. I think that the new vision of trust responsibility and making that have some teeth are commendable.

I guess my complaint and my tribe's complaint is that we are also individual -- that we need a lot more time to have a meaningful consultation. You know, consultation shouldn't be where you get up and present your points and then we stand here and present ours back.

We should have an opportunity for the tribes to have an individual dialogue process, because each of us has such individual concerns. There's been talk about MMS issues. The Crow Tribe has a coal mine. We're planning to open another coal mine. We have immense MMS issues.

We're now trying the 638 with the BLM, to do some of that oversight ourselves. That's been an incredible process. Not to just focus on our individual issues, but I believe that it would just behoove everybody if we could slow that process down and make consultation a really meaningful process. Thank you.

MR. HOMAN: Thank you. Next.

MS. TORRES: Good afternoon. My name is Rebecca Torres. I'm chief of the Alabama/Quassaite of Oklahoma. As leader of my tribe, I would like to say I am opposed to this due to the fact that several of our members have allotments. I don't believe the Office of Special Trustee can efficiently carry out the trust responsibility.

The Bureau of Indian Affairs is too complex for the Office of Special Trustee. There are so many underlying issues that haven't been touched on. General allotments. How are you going to operate in the fields? Purchase or funding for field support? Especially for the tribes that contract these programs. We need pasture management personnel, agriculturists. We need full-time geologists. How are you going to approach this?

I feel the issues are being glossed over here. There's too much emphasis on the centralized, mainframe architectural plans of the information system. This is going to be really expensive. Is there assurance that the Congress will fund this? And that the funds won't be diverted from Indian Health Services, education or other service programs?

I'd like to know if the central mainframe will be interfacing with state and local governments. Because in Oklahoma, when land is transferred, it is recorded in the county and state records.

Then, there's the complexity of the tribal governments themselves. How is the Office of Special Trustee going to operate more efficiently than the present system? Is it due to more funding? Because if more funding is -- with monies going to be flowing, I don't know why we can't channel it into the Bureau of Indian

Affairs for improvements and not start with a brand-new, expensive office.

I think we need to support the Bureau of Indian Affairs and not dismantle it. The complexity of the interior needs to be addressed: forestry, water and land and other natural resources. Other complexities are the people themselves and our lands. Money, law enforcement, environmental concerns, environmental impacts, environmental waste, roads -- that's a department all by itself -- transportation of the agency, housing -- there's a big department just of housing in the Bureau -- endangered species.

I believe you need to stay within the boundaries of the original intent of cleaning up what you've got and make it run well. The financial investing aspect in cleaning up was the intent and purpose of the Special Trustee.

This all boils down to money. Actually, a lack of money. A lack of getting funding. The Bureau of Indian Affairs has been underfunded and downsized for a number of years and suffered budget cuts. If funding is available, why is it not integrated -- why don't we integrate these measurements into the Bureau?

All these concepts could become a part of the Bureau. I believe this is a smoke screen for the

dismantling of the Bureau of Indian Affairs, under the guise of their trust by the federal government.

The BIA is being faulted for a backlog of probates, but there's so much downsizing of the government itself, that the administrative law judges are being cut. And this has caused a backlog.

The Bureau of Indian Affairs isn't as strong as it should be. But adequately funded and supported, the agency could rebound. This is not a simple, single issue agency, such as IHS and Fannie Mae. There are numerous complex issues and departments they have to deal with: timber, oil leasing -- you name it.

But if the federal government is truly concerned with the welfare of Indians, then raise the level of Indian Affairs to a cabinet level instead of making us compete with the Department of the Interior at other federal agencies. Then we will truly be treated on a government-to-government relationship. The Indian Affairs Secretary will have direct contact with the President.

We also need to push to have passage of laws such as a National Indian Funding Act. Because we have had cuts every year in our law enforcement at the tribal agency. Law enforcement -- crime still rises, but funding is cut. We have cutting in IHS. We still have more

people. Our people are not getting the new technology and the new medication. It's not being afforded to them.

I believe that we need to -- not work as an abandoning approach, but instead we need to start working with what we have and building on that. We don't need a new office OST, Office of Special Trustee. I believe that the Bureau needs more funding and support.

The original scope of the Office of Special Trustee has been expanded way beyond the original intent of financial investment and cleaning up of the records system.

I will be forwarding a written response. I'm not supporting this campaign. I'd like to know -- and the Federal Registry is not clear -- if the tribes have sufficient time to submit written comments by March 31, 1997.

MR. HOMAN: Thank you. Next.

MR. MORRIS: My name is Doran Morris, Omaha Tribe of Nebraska. This afternoon I'd like to comment -- you've got some good suggestions as to how to do the trust management for the tribes.

I would like to agree with the executive director from the Northern Pueblo Tribes that spoke this morning about the trust aspect, today. It's suggested that we -- or you or someone -- fix the trust wagon or

wheels first before you want to take on another agency to dismantle the BIA.

I agreed with him, because a few years back -- I know that Joe Christie knows of this. We went through the Roger Bynum litigation for like 16, 18 years. When I say the trust responsibility is not complete, is that we went to court and we found the Department of Justice sitting on the outside of the tribe, acting as adversaries.

Now, I heard a lot of people that talked about trust here this morning and this afternoon. It's not complete, as the executive director said this morning. We need to fix that. We got the BIA today setting up teams, negotiating water rights with tribes in the Southwest. I said to myself, how do you negotiate something that's yours? I know the Southwest tribes are really hurting for water. But we got the BIA out there doing that.

I learned that the country of Germany terminated six million Jews. I always learned that -- or heard, that the Nazis, Hitler himself, pulled that off. But they didn't really get after the real story where the people themselves, the whole of Germany, caused that, along with the leaders, Nazi groups, the SS troops -- they didn't do that by themselves. They did that with the

whole country -- the exterminating of people.

I don't liken that to what I'm talking about this afternoon, trust responsibility, but that's what's happened to us. We came full circle with that trust responsibility. I've seen that. You got thrown in jail for that. Because we're missing that one link -- that trust responsibility. Where the Justice Department does go to these trials. And I know that.

With the IIM account -- I just got a check last week. They sent me $8. That was from my mother's estate. That was probated five years ago this coming May. You said there was a problem with that. I just got that check last week.

They told me to come to the Agency -- the local Agency -- to pick it up. I said, "Why do I have to do that?" I've got a mailbox. I've lived in my community for 40 years. They know my box number.

Let's fix the financial part of it first. Then we'll talk about something -- you know, that you were talking about this morning, this afternoon -- where we can take it back to Washington. Let's fix that part first.

But before I came down, I said that I'm going to be telling people that -- about breaking up and dismantling the BIA. We're diminishing the sovereignty. All the tribes. That's what we're looking at. I think I

heard somebody say that we're looking at termination. Thank you.

MR. HOMAN: Thank you.

MR. NYGOORD: Good afternoon, Mr. Homan. My name is Bob Nygoord, Sault Ste Marie Tribe of Chippewa Indians in Michigan. The comment I have in regard to the plan is that -- one of the points that I could make is the plan lacks self-determination and self-governance provisions that would allow tribes like our tribe, which is a self-governance tribe, to manage land claims mining. Land claims mining -- like the Oneidas over here, we've actively been trying to keep the mining out. We would like to participate in the active management of it.

Likewise, when the system you mentioned on your chart here for self-governance econ -- you know, how would that interrelate with the systems that we presently have? You know, which again, the technology -- by the time the federal government puts it on line, the tribes are way out of the game. Systems are incompatible.

That's one of the concerns I have. The other thing I would like to mention is the ability to manage the funds in regard to the bank. I believe the bank is a good idea. I believe that the bank could be funded by the tribes as shareholders. That would be an alternative way to finance that. Thank you.

MR. HOMAN: Thank you.

MR. NOVITSKY: My name is Rick Novitsky. I'm here representing the Grand Portage Chippewa from Northern Minnesota. A lot of concern has been expressed this morning and this afternoon about the need for a more lengthy and personal tribal consultation.

I agree with those comments, but I think it's only fair to ask you this question -- and hopefully, I get a good response to it. My question is this: What is your plan for incorporating all of the comments that you've heard today and at the previous three meetings in the very brief time that you have remaining before you present this to the Congress?

MR. HOMAN: Thank you. Next. I'll give anyone that wants to speak another opportunity.

Let me just, for the record, go over a couple of the general issues. I think I responded to why I believe that the new entity should be taken out of the Department of the Interior and entrusted with the responsibility to incorporate these plans. I'm not going to elaborate there. I recognize there are vast differences of opinion as to who does some of these things.

But backing up, first of all, on the consultation issue -- I was appointed in September 1995.

I produced a Conceptual Strategic Plan, which had every single one of these elements in it. I sent it to all the tribes in February of 1996.

Since that time, I have appeared in as many as 20 different national forums and regional forums, hearings, etc., presenting both my views of the problems and the overall eight or nine different specific actions that I thought needed to be made.

I attended two hearings last summer: one before the Senate Authorization Committee, one before the House Resources Committee, which set forth my plan and also identified the problems. Following that, the House Resources Committee had three hearings: one in Bismarck, North Dakota; one in Alaska; one in Phoenix and -- I should say four -- and one in Washington, D.C., which was followed up by a fifth hearing in Washington, D.C., in the fall.

At all those hearings, I presented my plan and also my view of the conditions in the system. Now, the original Congressional mandated law was that I would submit the plan to both the Secretary and the Congress in one year. They gave me another six months, i.e., to March 31, because they failed to fund my staff in the first year I was there.

So, essentially, I've had since February 1

to really put the meat and the potatoes, if you will, to this plan. We have sent it out, as I indicated, in March. As I do it -- even though it will go to the Congress in mid-April, it will have all your comments attached to it. I will take those into consideration.

We are going to make some changes based upon those comments, and then a series of next consultation hearings will take place. I know the Congress would intend to have hearings on my plan and an alternative plan, which is being presented by the Secretary of the Interior, and also, I presume, with the appropriate consultation from American Indians.

So, during the course of this year, my solutions will be debated along with yours, along with those presented to Congress by your representatives or you yourself personally, and then finally, by the OMB and the Secretary, who will take what they consider to be the positives of my plan and present those as well.

Now, another misconception or misinformation is -- there are a couple of issues here that are beyond the scope of my plan. The first is in reference to the reconciliation effort of the last 20 years, which was produced last year -- as Roland mentioned was, in the view of some, including me, a fiasco and a waste of $21 million worth of the government's money. Because it produced

nothing except the numbers of missing records that Joe indicated to you. And that is a separate initiative in terms of how we're going to settle individually with tribes or globally.

The Department issued its proposals after consulting with me. That's all they had to do. I gave them my view. It was attached to their proposal in December. They then had four national consultation hearings on December 16 and had four consultation hearings in January. And they tell me that they're going to present that proposed legislation on March 31.

So, again, that's another issue, instead of settlement issues that are beyond the scope of my plan, that you'll be reading about, regardless of how it proceeds to the Congress.

Third, I have, through congressional testimony and public statements, said to the Congress and to the Secretary last year, that these improvements, these core systems -- accounting, reporting and trust management -- improvements be made regardless of my Strategic Plan. That they're urgently needed. They amount to a serious breach of trust, and that they ought to be addressed by the Secretary of the Department, the Bureau of Indian Affairs and the Congress immediately.

I said, "Regardless of how my Strategic Plan

occurs." I can tell you the response: nothing. And that was last year. So, you can decide for yourselves -- we haven't debated here at all as to whether any of these things need to be done. I think most people recognize the problem. Something has to be done about them.

We haven't debated. I recognize there was a wide variety of opinion on this, as to who actually does it. Does the Bureau do it? Does this new entity do it? Do the self-governance tribes do it? Or do private sector third-parties do it? And my answer is that, if I manage to raise the level of debate to the point where one of those entities does it, then I will have served my purpose.

I don't have any personal interest in this in terms of how it proceeds from here, other than I'd like to see something genuinely get done about these longstanding trust management problems. As I said before, I professionally and personally believe that if it's to be done in the Bureau of Indian Affairs, it won't get done. It won't get funded. It won't get done. That's unfortunate. But that seems to be what the federal government is saying to you today.

So, with that aside, then, let me address the other major issue here. That is, again, separate and apart from my Strategic Plan. We have discussed the

fractionation of interest and the problems that it is causing our probate system and across the board in terms of our operational systems -- that will proceed separately, too, as I said earlier.

The Department had issued a proposed fractionation legislation in 1995. They've had, they say -- and that was before I was here -- extensive consultation hearings with the American Indians. They've modified that plan this year in consideration of the Youpee decision, which was adverse to the government, and will be proposing that plan, they tell me, just after March 31.

So, I don't know myself what is in that plan. I've not been a member of that task force, but if you look back at what the Department issued a couple of years ago in the way of a proposal, I presume that will be the basic bones of that proposal. I think it will lack individual rights, as I indicated earlier.

I was the only senior official in the Department of the Interior to recommend the Indian approach to that problem. It went on without me. So, again, I urged both the Congress and the Secretary to deal with that issue, regardless of how this Strategic Plan occurs.

Lastly, Carolyn, I'd like to address just

one issue as to why this can't be done in the private sector. I agree with almost everything you said in terms of how a private trust is developed. And also in the nature of trust responsibility -- let me just say this: I don't know what the ramifications of the trust responsibility are or the complete definition. And that's not for one to bask in.

When I came in, I asked the Solicitor of the Department of the Interior what the trust responsibility to the American Indian encompassed. I got an answer that said the -- at least it encompasses the three things that Congress has asked you to deal with; and that is, the phases of the trust management cycle that deal with Trust Land and Resource Management, Trust Funds Management and Trust Land and Title Records Management.

Those three things are clearly the federal responsibility. I got no further than any of you got with our Solicitor's Office, as to what other manifestations there are in the overall trust responsibility. The courts, as you know, have treated almost all of the other Indian programs as something called the general trust responsibility, without getting too specific.

But my mandate was only for the phase of the trust cycle that had to do with those three activities. There are those in this room and others that have accused

me of exceeding that mandate. Well, I didn't. The Congress defined what it was that I was to do, and that was to look at the phases of the trust management cycle, including natural resources management, that start this process and have caused all of the difficulties in the past.

The trust funds' part of this is a small part. And ladies and gentlemen, I can tell you that that part has been fixed. That part has been fixed both for the tribes and for the IIM account holders by Donna Erwin here. We have installed new accounting systems.

So, when those nickels come down here from whatever source -- from MMS, from the BIA or from the Indians and lessees themselves -- we know that we can account for that nickel. We can invest it that day, and we can disburse it. But I have no idea whether that nickel should be a dime. That is still under the control of the Bureau of Indian Affairs.

I can't trace a single payment back to a master link. Ladies and gentlemen, 86 percent recovery isn't good. On some of the leases we looked for, we couldn't find half of them. If you go up to the Salsih and Kootenai, we couldn't find ten years of timber records. Well, I can't tell. And there's example after example after example. And Roland can probably give you

his own tribe's example. We can't trace that money.

Missing records -- when the burden of proof is on you -- is to the advantage of the government. Because that's the only way you can prove that we have messed up your accounts. So, I can't trace that back. That is natural resources management.

You can be the best water manager in the world, or land manager in the world, but if you don't write down what you're doing and if you can't prove that you have leased that out at all -- we can't tell whether all the properties are properly leased. We can't tell what's in the pipeline.

Now, certain individuals in Areas keep different records on that. But there's no way it can be audited. There's no way for us to respond to a complaint. So, I don't know where that nickel goes. When it leaves our department, I don't know whether it is being properly disbursed.

That is also the responsibility of the Bureau of Indian Affairs -- the land title and records systems which is four years behind and which is, by all accounts, out of balance with any other information system.

A true story: our private contractor, that's going around the country interviewing many of you,

a couple of weeks ago addressed my advisory board. They said they found a random sample in the Billings area -- a piece of property that was supposedly owned by an individual -- where the individual on one set of records, the LTRO records, said one piece of property. On the integrated, management information system, it showed 37 pieces of property.

It wasn't a matter of something in the pipeline. Neither of the systems had an entry in it after 1992. So, which one is correct? And the answer is, neither one. Nobody can prove -- they still haven't proved which one of those was correct.

Now, to your question, Carolyn: Why can't this be turned over to a real world private sector environment? We tried that, apparently, in the 1980s, as you correctly indicated. We went to Melon, which is a large national trust company. We went to Security Pacific. They turned us down, based upon the fact that we couldn't give an accounting for the past.

In order to turn this over to a private sector employer, you would have to have a beginning balance. They wouldn't be responsible for the litigation results. And the federal government refused to give them indemnity on those accounts. No private sector institution is going to accept responsibility on those

bases.

So, regardless of whether this eventually is turned over to a third-party, private sector individual, to manage, it has to be accompanied first by a cleanup of all the things that you saw on the board. So, we're reasonably confident that when we ask them to run an IIM accounting system -- when we ask them to run a Trust Management System or a Natural Resource System -- that they will have a historical and accurate accounting.

Now, in my plan, I have said over and over, that it is an umbrella administrative plan. Like a private trustee, it is indifferent as to who actually manages the land, the trust, the deposit, the investment or the disbursement, to begin with. As I indicated, we will recontract with the Bureau that is engaged in those activities.

If they do not perform, then we will go into a federal court and compel performance, or turn it over to some other trustee that can, some other delegee that can perform.

The same is true of a self-governance tribe. If you want to handle this and you have the expertise to handle it, then I can guarantee you that you won't have any problem, from this administration, in handling it. You will be subject -- like every delegated institution in

the United States that works for a trustee, you will be subject to review, audit and sanctions if you fail to live up to the contract.

So, I have no objection, if that's the case. If someone can do this better than is presently being done -- in terms of a self-governance tribe, in terms of others -- then, fine. The preference will be, though -- the preference will be to allow it to be in the Bureau. If the Bureau improves performance, it can keep it; or a self-governance tribe, if they can manage their own affairs -- I believe they can. Real estate is local, as all of you know. I recognize that -- then they should be the ones managing.

The cultural aspects of this can be taken into account, will be taken into account. In my view, it will enhance the opportunity for us to fulfill, as part of the federal government, our trust responsibilities, rather than decrease them.

Now, there's points of argument, as I recognize, on all of this. Some of the comments made today were new. Others paralleled what we've been hearing right along from the other tribes.

Our final hearing will be with several of the national associations next week. After I get through with that, then we'll all sit down as a staff and go

through the hearing record, take your comments in effect, give them out publicly to the Congress, so that they may know your views. Then we'll come up with the final plan which, as I indicated, must, by law, go to the Secretary and the Congress by mid-April.

Then as I indicated, that will be the start of a long consultation process. And how Congress deals with this, how the Secretary deals with this, will probably take several years. It will probably involve somewhat of a piecemeal approach rather than the whole thing. So, I don't know the outcome of that.

My job was to present a structured plan, which I've done. I will, again, take your comments into consideration and change where I believe it is appropriate. And then it's up to you, to see that your views get aired with the Congress and the Secretary. And with them, I can only propose; I cannot dispose. But that's part of our government system.

So, would anyone else like to say anything further? Yes, sir.

MR. BEGAY: Thank you for the opportunity to express some concerns and elaborate a bit on what was presented here. My name is Ed T. Begay. I'm a member of the Navajo Nation Council. I'm here as a representative from the council's task force -- what we call the Federal

Service Restructuring Task Force, dealing with all the federal government's programs that come to Navajo Nation.

First of all, I would like to thank the Special Trustee Homan for approving the request that we made for releasing the trust funds that you released to us. It's already working for us and making great returns -- rather than waiting for a Bureau's system that we had. We suffered so long in terms of revenue return on investments.

Additional positions of the Navajo Nation Council will be forthcoming. And like so many other people have expressed, we didn't get our materials -- at least I didn't get it until this morning. So, I quickly read through and then, of course, listened to you making a presentation.

I think the effort under your appointment for disposition is commendable -- letting the United States government give you a free reign to save us, based on your experience in the financial world.

But as you know, the tribes' elected officials have expressed some concerns. Maybe you are ill-advised from the beginning when it comes to the terms of our consultation. I, for one, always accuse the Bureau of Indian Affairs or Indian Health Service or other government entities that -- they did bring a document to

the council chambers. And they say -- when they handed it out -- when you reached for it, they classified it as a consultation.

I hope you don't treat this assignment in that fashion. Because there was some very constructive criticism or concerns that were expressed here. I think that needs to be put into a formulation on your recommendation. Otherwise, these people that expressed concerns will be sitting before appropriate committees of the United States Congress.

I, for one, don't feel you should be -- put yourself in that position, because sometimes it gets to be embarrassing. So, I hope that you could take all the criticism that -- whether it was constructive or to the point -- I think they could be modified or adjusted so that the concerns are addressed.

I think that's the way to address the American Indian governments, as they function. Because all these people -- elected officials -- that expressed concerns, whether they are under the Indian Reorganization Act or other governments -- we recognize, as elected officials, that we are sovereign nations.

From one sovereign to the other, I think that it's going to affect us, our lives and our children. They should be definitely -- the recommendations should

definitely be a part of the plan that you have. I think only then, the Indian nations and governments will be supportive.

I know, from listening to you, you're sincere in helping the government to properly undo or try to catch up with what wrongs have been done for accounting, for record keeping -- and I think -- I, for one, am a very suspicious individual. I'm sure when it comes to the value of land and water and anything the Indian people treasure, they always -- the nonIndian always bargain. What can't I get a discount price on these things? That goes on. There's a continuous fight about the sale of products from our lands.

I'd just like to react to that 100 million acres, as per the record, that was lost. We must remind ourselves, remind you, that -- I feel that Indian people lost from coast to coast. You might come back and say, "Yeah, you got paid for it." You just made a down payment. You didn't do anything. You're supporting the government, as I say.

I think those are all put in perspective, I think. It will go a long ways. Yes, the government, for some reason or another, does not support their entity -- Bureau of Indian Affairs. I believe that, for one, taking this trust responsibility to another department or another

area -- maybe it will work for a little while. But you must trace the history, too.

When it started out, I'm told, it was under the War Department. I guess when the war was over -- so they went to somewhere else. Now we're going to take it out of the Department of the Interior proposal.

So, I think with that kind of a track record, there should be some definite adjustments where an Indian government should be part of the proposal that you have constructed -- from the beginning -- not when it's finalized.

When it's finalized, it's just like -- like you see on television. When the New York Knicks and the Chicago Bulls are playing. When the Chicago Bulls are behind and there's just 1.2 seconds left on the clock, they call a time out and see who's going to go for it -- the three-point shots -- to get the winning score.

I think you're just right there. You're going to outmaneuver us. You're going to slam-dunk us. That's not very pleasant. So, I think -- what I'm saying is, I think you -- I think, timewise, we're pressured. We're pressured. And Indian people are very patient people.

So, I think we'll suggest that maybe you should ask for additional time. It goes on all the time.

1 You know as well as I do, as you're a banker, when you
2 loan somebody mortgage money and for some reason the sales
3 don't come through, they come to you on the day that that
4 note is due -- and you'd give them that, too, that ten
5 days' grace period. I think you should treat us in the
6 same way timewise. I think it's just good, everyday
7 politics.
8 One question I'd like for you to cover is on
9 that one issue: contemplating on contracting most of the
10 BIA programs under the 638 provision. When you have the
11 latitude or authority to contract some of the trust
12 responsibilities -- that it's workable and that it's
13 feasible, and whether it's in the areas that you outlined
14 in your proposal -- and maybe you can clarify that for us.
15 In addition, I would just like to say that
16 I'm not the only one that's here. There's some members of
17 our council here. Elmer Milford was here and Freddie
18 Howard, Sylvester Chee, George Arthur, Willis Peterson and
19 Thomas Natah. They were here. I guess they're doing some
20 other things, too. They're on a tight schedule.
21 We were a bit hesitant as to -- maybe we
22 should get on record or not. But someone said, if you
23 don't say anything, then you're perceived that you're very
24 supportive. It's just like being in the stadium. They
25 classify you -- you're rising up and clapping for the guy

that made a touchdown-type of thing.

So, I'd just like to express that. And I do appreciate -- I know it took a lot of work. One other thing: you, as a banker -- I was hoping that you would give us performa as to what your projection would be on what you outlined for us. Say that this might be a way to do it. That is to say, "In two years this is how much profit you're going to make" or "Don't expect any dividend on this, such and such."

I didn't hear -- I kept listening, but I didn't hear it. So, I think -- you know as well as I do that if one of us goes to the bank and says, "What is your business? What are your projections" -- that's what I'm asking you, under this assignment that you have, in terms of -- to make it real or is it worth the effort?

I hope that you don't turn -- if you don't get a congressional appropriation, I hope you don't say to the Indian Nation or the Navajo Nation -- and say, "Now let me use your money. Do I have a deal for you." Thank you.

MR. HOMAN: Well, thank you. I lived in Chicago, and I think I would try to get Michael Jordan to take that three-point shot, not me. Let me just comment on a couple of your issues.

On the projections for the bank -- we do

have very detailed projections. In the interest of time, I didn't present those today. But there is a five-year phase-in for the 5 billion in loans that go to Indian country.

And as far as banker profit or not, those go to Indian country. So, the principal is and should generate economic development through loans, through the fractionated interest program investments and through the $125 million to be allocated for investments in business and other enterprises.

The $500 million equity that the government is being asked to put in should generate, if it's invested in nothing but government bonds -- which it will initially be invested in -- amount to $30 to $40 million in income, which is about enough to cover, with profit -- like any other bank -- the operating expenses germane to that particular bank. So, it is self-sustaining in that respect without the involvement of the appropriated funds.

Second, it will make a slight profit through the spread arrangements by being able to borrow at government-guaranteed rates in the capital markets, and lending it out as credit just like any other bank.

So, all of that should renew the ability to make loans in the future, like they have for the Farm Credit Banks. And if it's successful, it will build up to

an organization like those Farm Credit Banks. We started with virtually nothing in the 1930s.

As I indicated earlier, the Farm Credit System now has capital, which is owned by the American farmer, of about $11 billion and loans outstanding of over $70 billion. So, that's a long-term goal for this bank, on a self-sustaining basis. Now, if that doesn't benefit Indian country, then I'll welcome any other proposed solution. But it should.

In terms of the consultation, I hear you, but it's been out there for a good many years. I'd like to do more on personal consultation. I have not been home since Christmas, except for a couple of days each week. I can't possibly get around to over 500 tribes, but we're doing our best to do it in a different way.

I'll remind you: this is the first consultation in department history, I believe, where the consultation is being done before the proposal, not after. So, it does differ in that respect. After it gets to the Congress, you again will have a new opportunity to weigh in with me, with the Congress, with the Secretary and with the others involved, notably OMB.

Anyone else? Yes. Carolyn.

MS. PASTERNAK: I don't know if it's just my copy, but there is no Tab 9 in the Strategic Plan. Was

that one covered?

MR. HOMAN: The Tab 8 is Addendum 1 which is the list of the condition of the U.S. Government's trust management system. That is all that was handed out.

What is missing is another addendum. We're going to have a detailed plan after these consultations which will go over each of the 14 or 15 action points. They would just be an expansion of the type of system. And then another addendum -- which we're waiting for the outside contractor to produce -- will be a budget for this.

MS. PASTERNAK: What about the appendix? Does that come --

MR. HOMAN: Right. There be an addendum for another appendix attached to the final result. The final result will also include the outside contractor's report, which is being done by Macro International. They have verified certain of the system requirements that we have presented on the board. Some of this is their technical schematic which will be used for an RFP if the systems are approved.

So, that full report will be given to the public and to the Congress, along with my report. It's due on March 31. Again, we will incorporate it by reference in an appendix.

Finally, just to say once again, all of the transcripts of these four hearings -- all of the written comments received by March 31 will be put in a separate addendum. We will answer those concerns or reference the part of the Strategic Plan that addresses those concerns and tell you why or why not we agree or disagree with your very helpful suggestions today.

So, all of that will be included. We ll, it's March -- early March -- we're going to be very busy. We'll probably end up with a document that thick before it's over. Any other comments? Yes.

MR. TOAHTY: Mr. Homan, yo u had many of the tribes here express concern about the time constraints that we had. Now, I've heard a lot from various tribes here. We, ourselves, didn't ever receive our plan until last week. Apparently, it's been floating around somewhere. But it hasn't been at the tribes, obviously.

MR. HOMAN: I think we got a receipt for all of those. If you'll check with Joe afterwards with that. We sent it to your tribe.

Secondly, we sent it out in February of last year to all the trust tribes as well. They have been distributed at every hearing we had this year. So, it's been -- it's had a wide degree of distribution on it.

MR. TOAHTY: Many of the tribes have

expressed a concern about the time extension. Are you in favor of the time extension to this or are you not?

MR. HOMAN: I asked for an extension after the original year went by. I was supposed to have this done by September of 1996, one year from my appointment date. The Congress did give me an extension. I agreed with the Secretary at the same time, the OMB at the same time, that it would be in as quickly as possible or March 31. That's the agreement I intend to keep.

Again, there will be plenty of time over the course of the year. The Secretary will go out with -- as he is going to be compelled to do -- with consultation hearings on his alternatives, which will discuss mine. The Congress may or may not take up my particular plan or may present one of their own.

There are various Indian groups that have come up with alternatives. There hasn't been a comprehensive solution to these things. So, we've heard a lot of criticisms, but very little in the way of alternative solutions. So, you might want to consider -- what you consider an appropriate solution to these problems. Yes.

MR. HOWARD: There was a question raised earlier in regards to how your program will be able to -- or what the relationship will be between the tribes that

want a 638, and how will that work with your program?

MR. HOMAN: It should enhance that program. We anticipate no changes. The authority, the budgets will change, but we'll sit down and do like the Bureau does. And to the extent that you want to allocate those, we'll consider that as part of your self-governance.

So, I don't anticipate any changes. I've been a longtime advocate of more self-governance. As I told Carolyn and others, the Secretary, that if the tribes are ready to undertake these responsibilities, I will be the first to give it to them.

One question I did address -- and that was compatibility with computer systems in the tribes. This plan involves some 450 new desk stations for the tribes -- new computers, if you will, new telecommunications equipment and a new wide area network link-ups, and assets management systems, which is a generic one used by the commercial trust companies; and asset -- or Trust Management Systems which takes it from the lease on forward. Those are general.

We will provide training to, not only Bureau personnel involved in that, OTFM involved in that, but the tribes as well. We'll also pay for the conversion of some of your units to this, so it's compatible information. The trustee must have the information system against which

to audit and review your work, whether it's the federal trustee or any trustee -- that's going to be a requirement.

So, if you operate within the policies and procedures, laws and management information system, the system is indifferent as to who manages it. It can be a tribe. It can be the Bureau. It can be a third-party. It's indifferent. That's the way the private business is run in the trust sector. It's very successful.

It's an obligation of any trustee -- if your trust responsibility -- you are not unique as to how you lease contracts and run the deposit payments and disbursements. Those are things that are done in the trillions every day by the U.S. Banking System.

You are unique in other areas of trust responsibility. I recognize that. This shouldn't interfere with that. I have not treaded on that, or we've done our best not to tread on those general trust responsibilities.

Any other questions? If not, I want to thank all of you for coming. We do take your comments seriously. You voiced concerns that we've heard before. I will take them very seriously into account in the submission of my final report.

I hope to hear from you very soon. So,

thank you very much for coming.

(The Proceeding concluded at 3:04 p.m.)

C E R T I F I C A T E

I, Yvonne C. Gonzales, a Certified Court Reporter, do hereby certify that the Proceedings of the above-entitled cause were reported by me stenographically on March 12, 1997, and that the within transcript is a true and accurate transcription of my shorthand notes.

I further certify that I am neither an attorney nor counsel for, nor related to or employed by any of the parties to the action, and that I am not a relative or employee of any attorney or counsel employed by the parties hereto, or financially interested in the action.

_____
Yvonne C. Gonzales, CCR
Notary Public

My Commission expires:
3-20-97