S. HRG. 107–29

# VIEWS OF THE SECRETARY OF THE INTERIOR ON INDIAN MATTERS

## HEARING

BEFORE THE

## COMMITTEE ON INDIAN AFFAIRS UNITED STATES SENATE

ONE HUNDRED SEVENTH CONGRESS

FIRST SESSION

ON

OVERSIGHT HEARING TO RECEIVE THE VIEWS OF THE RECENTLY CONFIRMED SECRETARY OF THE INTERIOR ON MATTERS PERTAINING TO INDIAN TRIBAL AFFAIRS

FEBRUARY 28, 2001
WASHINGTON, DC

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# VIEWS OF THE SECRETARY OF THE INTERIOR ON INDIAN MATTERS

**WEDNESDAY, FEBRUARY 28, 2001**

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

The committee met, pursuant to other business, at 9:08 a.m., in room 485, Russell Senate Office Building, Hon. Ben Nighthorse Campbell (chairman of the committee) presiding.

Present: Senators Campbell, Domenici, Thomas, McCain, and Inouye.

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

The CHAIRMAN. We will now turn to the oversight hearing.

Welcome Madame Secretary. Please come up here to the table. You are the only witness here today.

Today the Committee on Indian Affairs meets to receive the views of the recently-confirmed Secretary of the Interior on matters pertaining to Indian tribal affairs.

We are fortunate to welcome the Honorable Gale Norton to her first hearing before this committee and I believe the first congressional hearing since being confirmed, if I am not mistaken.

As the members know, Secretary Norton is no stranger to Indian issues. As an attorney general for the State of Colorado, Gale Norton had in-depth experience with both the Ute Mountain and the Southern Ute Indian Tribes on a variety of issues including gaming negotiations, oil and gas development, water settlements, State sales taxes, and environmental matters, to name just a few.

I had the opportunity to work with her for many years and I am delighted that she is here.

On Indian issues of national concern, then Attorney General Norton appeared before this committee in 1997 and again in 1998 testifying on legislation to reduce tobacco use among Native Americans, particularly Native American youngsters. I was a very proud sponsor and supporter of her candidacy to be the Interior Secretary and I believe that her background and experience will put the Department, Indian tribes, and our Nation in a good stead for the next 4 years.

The Department and the Bureau of Indian Affairs are the primary Federal agencies in carrying out the government-to-government relationship between the United States and Indian tribal gov-

ernments. Your job as trustee, Madame Secretary, will be difficult to say the least. The issues we need to address are fundamental: Improving educational opportunities for Indian youngsters; making sure native communities are safe from crime and liveable; resolving the national disgrace of the Indian trust fund mess; and bringing jobs and real hope to millions of Native Americans across the Nation. We have made progress on many of these issues, but certainly much more needs to be done.

Madame Secretary, you have inherited—if I can say so—kind of a hell of a mess as we go forward in this Congress, particularly as it deals with trust fund reform.

I want to describe a little bit about the trust fund reform and why it has been so frustrating to me and other members of this committee since I have become the chairman.

After many hours and many hearings and endless GAO briefings, various proposals were made to help the Department reform its management of Indian trust funds and assets. Senator Murkowski and I introduced a bill to liberalize investment opportunities for Indian assets. The former Administration not only opposed the bill, but in fact lobbied against it.

I also proposed giving more authority to the Special Trustee. The Administration opposed that.

I proposed establishing a temporary Indian Trust Resolution Corporation to do for Indian accounts what the Resolution Trust Corporation did for the failed Savings and Loans back in the 1980's. The Administration also opposed that.

But we may be seeing a light at the end of this tunnel. Last Friday, the Court of Appeals for the District of Columbia Circuit upheld Judge Lamberth's decision that the Federal Government has failed in fulfilling its obligations to Indians and that a full historical accounting is due to the Indian plaintiffs.

I want you to know, Madame Secretary, that you have an ally in me and I am sure in many of the members of this committee. Certainly, it is going to be difficult, but we will work with you to try to resolve the trust fund mess and bring this sad chapter to an end.

In conclusion, through close consultation with tribal leaders, this Administration, and Congress, I believe we can do what so badly needs to be done in native communities. I certainly pledge my support to you in accomplishing those goals.

With that, I would like to recognize the vice chairman, Senator Inouye.

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

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

I join you in welcoming the Secretary to our committee. Like you, I look forward to a relationship that is built upon the common goals we share in improving the quality of life in Indian country.

Madame Secretary, I am certain we all agree that we have many challenges in Indian country, but it is my firm belief that the best solutions for problems confronting Indian country can be found in tribal communities. So I was very heartened to read your state-

ment and learn that you plan to base your relations with Indian country on consultation, cooperation, and communication.

However, too often in the past, Madame Secretary, the word "consultation" has been given a very strange meaning by the Government. It has often meant that we tell Indian people that the Government intends to do something after the fact, after a decision has been reached and action is either about to be taken or already initiated. Most people in Indian country would tell us that that is not consultation, and I am certain you will agree with them.

So I hope when we use the word "consultation", we share a common understanding that consultation should begin well before any policy has been developed or any decision has been made.

Madame Secretary, there is much wisdom in Native America and I think we would do well to recognize that and call upon those who are experts in these matters because it is the Native people, not those of us in Washington, who will be directly affected by anything the Government does.

Madame Secretary, I think you are very fortunate to have the support of thousands upon thousands of Indian country citizens who want to work with you to assure that your Administration is a success and that your legacy will be a positive one for native America. I am confident that it can be and that working together with those of us in the Congress who have pledged our commitment to tribal communities across the land, I am certain we can make a significant difference.

Mr. Chairman, a few weeks ago, Senator Akaka and I, together with our House delegation members, had the great opportunity to meet with the Secretary on matters affecting native Hawaiians. After the meeting, we got together again. I must tell you, Madame Secretary, we were extremely pleased because it gave us great hope that we can work together and thus assuring that the indigenous native people of Hawaii can be afforded the same status under Federal law as other native people of the United States.

So needless to say, Madame Secretary, I look forward to working with you. Thank you very much.

The CHAIRMAN. With that welcome, Madame Secretary, if you would like to proceed with your testimony, please do so.

## STATEMENT OF HON. GALE NORTON, SECRETARY, DEPARTMENT OF THE INTERIOR, WASHINGTON, DC

Secretary NORTON. Thank you very much.

I am very pleased to have as my first testimony as Secretary of the Interior the opportunity to appear in front of this committee, and especially my good friend and fellow Coloradan, Ben Campbell.

I did have a great deal of concern when I testified in front of this committee in the past as attorney general about the use of tobacco by Indian young people and the fact that it was higher than the national average. That is one aspect of my concern about the use of Indian country. I believe that we can do great things to improve the situation that we find in Indian country and I look forward to working with you on issues across the board as they affect the future of young people.

It has been just 2 months since the President asked me to be his Secretary of the Interior. This has been a period of intense learning

about the many responsibilities and issues I am now facing as Secretary, including those related to American Indians and Alaska Natives.

A few days ago I told our Interior employees at our all-employees meeting that we should think of ourselves as navigating the four C's of consultation, cooperation, communication, and all in the service of conservation. I intend to use that same approach in dealing with Indian issues.

President Bush and I are both believers in the concept of Indian self-determination. We want to make advances in self-determination and self-governance. We believe that these can be fostered through consultation and our mutual goal of better government.

As attorney general of Colorado, I was very impressed with the opportunity to become acquainted with Colorado's two tribes and to have the opportunity to work with them and visit their reservations. I negotiated one of the country's first Indian gaming compacts. We worked with both the Southern Utes and Ute Mountain Ute Tribes. I believe that has been a very successful alliance.

I worked very closely with Senator Campbell on the Animas-LaPlata project and in trying to resolve the issues associated with that. The tribes very graciously shared impressive aspects of their reservations. I visited the Southern Ute Reservation and had the opportunity to see their wonderful tribal museum and their very sophisticated oil and gas operation. The Ute Mountain Utes showed me their tribal park, which has fantastic ancestral pueblan ruins that rival those of the nearby Mesa Verde.

I have learned a few things in my first weeks at Interior, building upon those experiences. The very day I took the oath of office, I found myself facing decisions on the fiscal year 2002 budget. Nearly one-quarter of Interior's funding is devoted to Indian nations, communities, and individuals. While this is a significant percentage, setting priorities for the Department in Indian country is a monumental task.

One of the priorities the President addressed during the campaign and during his speech last night was education, including Indian education and school facilities. I share his philosophy that no child should be left behind and it will be my responsibility to see that no Indian child is left behind. As you know, Indian school facilities are generally in poor condition. Some of the school buildings are a century old. The life expectancy of some of these buildings has been exceeded by decades.

President Bush and I will continue to work with Congress to eliminate the current backlog of school repairs by 2006, while replacing older and more dilapidated schools. Schools with the most urgent needs will be given priority in the budget process.

The schools have an enrollment of approximately 50,000 children and are spread through 23 States. It is important that we deal not just with the facilities, but also with improving education generally and as part of our Nation's overall push to improve education. I look forward to working closely with you to improve education for the children of Indian country.

I would like to comment on a matter of very high priority for myself and for the Department, and that is the matter of Indian trust reform. As the Trustee, I clearly recognize the important obliga-

tions of the Department to put in place those systems, procedures, and people to fulfill our obligation to the trust beneficiaries, both individual Indians and tribes. This is an enormous undertaking in correcting the errors and omissions of many decades.

Coming into this position, and so early in my tenure seeing a decision from the Court of Appeals in the *Cobell* litigation, I have to say that I have grave concerns about our existing management systems. It is a very high priority for me that the person who comes in as Assistant Secretary of Indian Affairs and the other people who fulfill leadership positions as to our Indian responsibilities are people with strong management backgrounds and abilities.

We have in the Bureau of Indian Affairs [BIA] what we have through many other parts of the Department. We have outstanding career employees who face many institutional obstacles that have built up over decades. We need to find ways of releasing them from those obstacles to good managements and encouraging them to exercise the high degree of responsibility that we need to fulfill.

There are many other Indian issues of interest to this committee, my Department, and tribal leaders. In my short time at Interior, I have heard concerns about Indian gaming, the Federal acknowledgement process, and Indian land and water settlements, just to name a few issues. We will meet these challenges openly and will seek your guidance in these important issues. It is my heartfelt desire that this committee and I begin and continue a process of consultation, cooperation, and communication that will strengthen tribal governments, help Indian people, and improve the education of America's Indian youth.

Thank you.

[Prepared statement of Ms. Norton appears in appendix.]

The CHAIRMAN. Thank you, Madame Secretary.

Before we start with some questions, if there is no objection, I want to introduce into the record an editorial that was in the Denver Post just the other day, February 23, 2001, dealing with trust funds.

Did you happen to see that editorial?

Secretary NORTON. I don't believe I did.

The CHAIRMAN. We will provide you a copy, but it is an interesting editorial and I will put that in the record.

[Referenced document follows:]

[Denver Post, February 19, 2001]

**"Making Good On A Promise"**

The Federal Government continues to behave outrageously in the Indian trust fund case. The Federal court overseeing the lawsuit should throw the book at wayward government employees. And the new secretaries of the U.S. Interior and Treasury departments, Gale Norton and Paul O'Neill, should make resolving the accounts a high priority.

A few years ago, the Boulder-based Native American Rights Fund sued the government for mismanaging billions of dollars in assets held in trust for the Indians, including mineral royalties, grazing leases and timber sales.

Despite repeated promises to correct the problems, the case hasn't been resolved. According to some Indian lawyers and elected officials, the feds even today are shortchanging Indians on payments they're owed.

The endless delays are maddening enough. But there also have been repeated, disturbing instances of government employees shredding, losing or discarding potentially important documents. The most recent to come to light: a 1999 episode involv-

ing the destruction of at least one box of documents stored at the Federal Reserve Bank in Denver.

A single episode of document destruction might be chalked up to incompetence or low-level workers not following instructions.

But the recurring problem seriously undercuts the government's claim that it wants to resolve the case in a fair and just manner. If the many lost documents can't be found, it will be far more difficult for the Indians to reconstruct the paper trail to learn how much they are owed and by whom.

Former U.S. Interior Secretary Bruce Babbitt, Bureau of Indian Affairs director Kevin Gover and Treasury chief Robert Rubin seemed vexed and baffled by their inability to keep their subordinates from ignoring or subverting instructions from the Federal court. While Interior and the BIA are directly in charge of Indian matters, Treasury is responsible for making correct trust fund payments.

The Bush administration didn't create the mess—in fact its roots reach back over a century. But it is now up to the Bush team to sort out the mess and make the bureaucracy obey both court orders and Federal statutes.

Norton and O'Neill might gain credibility with both U.S. District Judge Royce Lamberth, who is supervising the case, and with the Indian tribes, if they honestly said: We don't know exactly what has happened, or why, but we darn sure intend to find out.

And then they must make good on that promise.

The CHAIRMAN. I will do a round of questions and Senator Inouye will do a round of questions. Then I will come back to it since he has a conflict after a little while.

I am sure in your relationship with the tribes of Colorado, it must have been an education for you. I remember working with you in those times. I was very interested in your comments on education because, as you know, it has been a real priority for the members of this committee. Indian children are the only ones in America whose facilities are totally dependent on what the Federal Government gives them.

On reservations, as you know, there is no mill levy. If you want to raise money for a new school, or a new building, or more facilities, you can't just go to the tax base and ask the property owners to ante up with more taxes and build what you want. There is no option. The only option they have is going to the Federal Government.

So that means it is all the more important that we accept that responsibility and perform by making sure those facilities are okay.

I taught school for 10 years, and some of the other members of the committee have taught school, too. I can tell you that kids can't learn in drafty buildings with cracks in the windows and ice-cold and no hot lunches—things of that nature—but that's what Indian kids face. I was gratified that the President made a real commitment right from the beginning to tribal leaders that he would take on this problem of bad facilities and put more money into construction of new facilities.

You must have also learned that Indian country has some difficult ways of trying to fit what they believe into the Federal mandates and Federal parameters. Certainly tobacco is one. I applaud you in trying to make sure that Indian youngsters have a healthy life by not getting addicted to smoking. By the same token, you know that tobacco is what they call one of the sacred plants in Indian country and it has historically been very important to their ceremonial use. So we always have to balance that. What is the proper use of it, and what is an abuse or improper use?

The same goes for other things, like peyote, which I am sure you are familiar with. It is protected under the Indian Religious Free-

dom Act for use on reservations by Indian people in religious ceremonies, but it is not supposed to be meant as a recreational drug for people to pretend they are Indian and using that.

So we have a lot of things that we have to balance all the time with Indian country, as you know.

Let me ask you just a few questions.

The President recently unveiled his Interagency Working Group on Federalism. Are tribal governments included in that working group? If they are not, are there plans to create some kind of a similar working group with tribal governments?

Secretary NORTON. The Interagency Working Group, Senator Campbell, is at its very formative stages. My understanding is that there will be 13 cabinet officers who will be part of that group. It will include the Department of the Interior. It will cover a wide variety of different issues. I would certainly intend to raise tribal issues and tribal relations as one aspect of that.

The CHAIRMAN. So the Indian voice in that working group would really go through the Interior Department?

Secretary NORTON. That is my current understanding of that. I would be happy to explore that further.

The CHAIRMAN. Thank you.

You are as familiar as I am with the water project that will probably be the last of the great Federal water projects called the Animas-LaPlata and authorized in 1968 and again in 1988 and then just last year we got through another one in which its continuing downsize settles the litigation brought by the Ute Mountain Utes and the Southern Utes against the Federal Government to build a project to store water that they own under the old treaties.

A similar project was in the Dakotas called the Rocky Boys Settlement. Are you familiar with that?

Secretary NORTON. I have heard a little about that, but I am not familiar with the details of that.

The CHAIRMAN. I was going to ask—some proposals were made last year to take those settlements "off-budget." I don't suppose you have had time to review that, have you?

Secretary NORTON. At this point, I have not.

The CHAIRMAN. All right. That is fine.

I am hoping that we are going to get that thing built this year. I know 8 years ago when Secretary Babbitt came before this committee I made a point of asking for his leadership and his forceful hand in trying to make that get built. And of course, it wasn't. So I just have to ask you the same thing and hope that you will take that as a priority. I just don't think the tribes can backup anymore and give anymore in their negotiations. This is the third time around for them and they have every right, I think, to expect the Federal Government to fulfill its obligations to building that water project.

Clearly, there is some opposition to it. The environmental community is not supportive of it, as you know. But it is the right thing to do, so I hope you will proceed accordingly.

Secretary NORTON. Senator, there is money in the budget blueprint that the President is releasing this morning that is specifically available for Indian land and water settlements. I am not fa-

miliar with all the details as to what particular things are being included in that, but the Administration is committed to working to see that we do fulfill our responsibilities and to work with you to ensure that we are able to do that in the variety of different situations we face.

The CHAIRMAN. Thank you.

Let's move to Indian gaming.

For years now, Indian gaming has provided a lot of job opportunities and revenues enabling tribes to do many things they couldn't without this key source of money. They have provided services for their members, provided money to their seniors. They have done a number of things. They have been able to invest some of that capital they have earned from the gaming facilities into other things, into manufacturing and all kinds of things.

Do you have any general views on gaming concerning its strengths or weaknesses?

Secretary NORTON. Senator, I think highlighting both strengths and weaknesses is what we need to do when we talk about gaming. It can be very positive as a source of revenue and employment. It can also have very negative aspects because there are problems in any community—whether it is an Indian community or a non-Indian community—with the potential for both addiction to gaming itself as well as the social impacts that come from an influx of people on a daily basis that is always associated with the impact of large casinos. I hope that we can struggle through the issues to try to have positive aspects without having too many of the negative aspects.

But I understand the concern people have about gaming when it comes into their communities and why people can be cautious about that.

The CHAIRMAN. It has created some problems for this committee, as you might guess, because before gaming there wasn't such a rush to get through the recognition process to be reinstated or to become recognized as a tribe when they weren't originally. But the advent of literally hundreds of millions of dollars in potential revenue has made some interesting debates before this committee and certainly before the Administration and the Bureau. We don't have any real answers to it, but I know that new advent of money is going to complicate things.

And you are absolutely right. There are some benefits to it but some detrimental things, too.

In the wake of the Supreme Court's *Seminole* decision of 1996—I am sure you are aware of that—if a State raises its 11th amendment defense to a lawsuit brought by a tribe under the IGRA—the Indian Gaming Regulatory Act—to negotiate a compact, what remedy do tribes have if the States basically refuse to negotiate?

Secretary NORTON. That is a legal issue that we will certainly be taking a look at. There are some regulations that have been created by the prior Administration that would deal with that process. I would like to take a look at those to ensure that those are consistent with the law and the kind of process that would be appropriate.

The CHAIRMAN. Thank you.

Let me ask Senator Inouye if he has some questions and then I will get back to you in the second round.

Senator INOUYE. I thank you very much, sir.

Madame Secretary, in carrying out the trust responsibility of the United States to Indian tribes, your Department articulates legal positions that support tribal rights either in litigation or through the issuance of Solicitor's opinions. Obviously, all tribes are concerned that the Department's legal position in supporting Indian rights may be subject to change.

Can you assure this committee and Indian nations that you will consult with the affected tribes prior to arriving at or changing the Interior Department's legal position?

Secretary NORTON. I take very seriously our responsibility to comply with the law and to evaluate the actions of the Department to make sure they are in accordance with the law. We will need to examine issues as they arise. One problem that I see as an attorney—and what you have suggested—is that very often the legal interpretations arise in the context of litigation. So at times it is difficult to consult when you are in the process of litigation. But certainly within the restrictions that might arise from that type of situation, we would otherwise certainly hope to obtain input as we decide what legal positions are going to be.

I certainly found when I was attorney general of Colorado that it made sense to have the views of many different people as we formulated our legal opinions. Just as a court is assisted by hearing the positions of the various parties, so too an executive branch attorney is assisted by hearing the legal analysis from a number of different viewpoints.

I would hope that we would utilize that type of process as much as possible.

Senator INOUYE. I think that would be much reassuring.

Madame Secretary, for the past several years, the committee has held oversight hearings on the manner in which the Native American Graves Protection and Repatriation Act is being administered by the Department. I can assure you that there is widespread and very serious concern in Indian country that in addition to the inadequacy of funding and personnel to carry out the responsibilities, there is an inherent conflict of interest associated with the delegation of the Secretary's authority under the act to the National Park Service.

There is also concern that the 1992 amendments to the National Historic Preservation Act are not being implemented in a manner that follows the law in terms of the Department's recognition of and provision of funding for tribal historic preservation offices. Therefore, I join Indian country in seeking your assurance that we might work together to take a fresh look at how best we can address these matters because our oversight hearings have made one thing clear: that business as usual is not getting the job done in a manner that these two statutes require.

So I think we should get together. Do you not think so?

Secretary NORTON. Yes, Senator; I understand why serious concerns are there about the way in which we handle sacred and historic sites. I certainly would like to work with you in ensuring that those are being handled appropriately.

Senator INOUYE. Madame Secretary, I have several other questions. I would like to submit them to you, if I may.

Mr. Chairman, with your permission, I would like to submit this.

The CHAIRMAN. Without objection, it will appear in the record.

Senator INOUYE. This covers the whole spectrum of problems we have, everything from gaming on.

Before I leave, Madame Secretary, once again, thank you very much for meeting with the Hawaiian congressional delegation. We were most pleased and we hope that we can continue in our consultation and meeting with you.

Thank you.

Secretary NORTON. Thank you, Senator.

The CHAIRMAN. Before I ask some more, I would like to recognize the appearance of Senator Domenici, a valued member of this committee and the chairman of the full Budget Committee. He has been a great friend of Indian country over the years.

Senator Domenici, do you have an opening statement?

Senator DOMENICI. Are we going to go on to questions?

The CHAIRMAN. Yes.

## STATEMENT OF HON. PETE V. DOMENICI, U.S. SENATOR FROM NEW MEXICO

Senator DOMENICI. Let me just welcome the Secretary here.

Madame Secretary, we have a lot of problems that we have to solve for the Indian people or help them solve for Indian country. Some we can solve, and some they have to solve themselves. But clearly things are not going well in Indian country in terms of crime, drugs, in terms of unemployment in many of the major tribes. Those who have very significant gaming casinos seem to be doing better economically. There is no doubt about that. But we still have 50 to 60 percent unemployment in Navajo country.

I hope you will soon pick your Assistant Secretary and hope it will be a person who understands the problems that we have in Indian country.

The unemployment is not singularly a problem that the Federal Government can solve. But clearly if we have the right people working with the Indian leaders we can move them in the direction of understanding why the unemployment is there. The Federal Government is not going to hire all the people and give them jobs. Jobs have to come through the reservations and Indian people have to become better trained and skilled for those jobs, and that can be done.

But I will tell you, on that score, it has been a 25-year battle that I am aware of in terms of trying to get more done there. Obviously, many of us will work with you and your Department to the extent you are involved in that.

Then my last observation has to do with Indian education.

While it is very interesting that pay for Indian school teachers is pretty good, that is an accident of history. We are required to pay them as much as we pay those who teach in our overseas education for the military. Somebody was smart enough to tie them together. As a result, the pay is pretty good. But the facilities are not very good. I won't go beyond that other than to tell you that we were thrilled to have the President-elect as a candidate in New Mexico meeting with our Indian leaders. He made some pretty good commitments to us with reference to education.

I am only hopeful that before we are finished with this budget year we can see his commitment made there in New Mexico, that we can see that reach fulfillment. I am not sure we are on that track yet, but I think collectively we will get you on that track somehow. If people will help me, we will do that. I am sure you would not object.

I want to say to the chairman, maybe this could be a more exciting time in terms of leadership from this Secretary and whomever is appointed to run the BIA. The last Administration didn't do very well, in spite of great rhetoric, and I think everybody knows that. Even in Indian health, we had a couple of years when they did not fund it adequately, as you recall. That is not under this lady, but obviously Indian health remains a very, very significant high priority.

I guess I would say to you that even though Indian health is not under your jurisdiction that you and the person you appoint have to be concerned about diabetes among Indians. It is a very, very serious scourge. We put a lot more money in, it is doing some good, but we are a long way from getting it under control and it is very, very tough among the Indian people, in particular. Navajos and one other small tribe are off the map in terms of the percentage that have diabetes.

So those are serious problems and there are many others.

I believe you have the qualifications to oversee and to promote through the Administration the kinds of needs within the administration. I believe you can help the Indian people move ahead during the next 4 years. I hope you will agree that you will try to do that.

Thank you.

Secretary NORTON. Senator, thank you very much. I certainly will be trying to work on the issues that will improve the life of Native Americans. The health issues are ones, as you said, where I don't have direct jurisdiction, but I certainly want to see that the Government overall is doing what we ought to do to deal with those issues. I will be happy to work with the Department of Health and Human Services so that we can coordinate to provide the type of services we ought to be providing.

As to the education issues, we are working hard to be sure that we have a very strong program in place and a very well managed program in place to construct schools as well as to repair existing facilities. We will be utilizing the resources that are provided through the budget process to be able to fulfill the President's commitments.

Senator DOMENICI. Thank you, Mr. Chairman.

The CHAIRMAN. Just a note along the line of health care, you might be aware that last year Senator Domenici, Senator Hatch, and I tripled the amount of money that goes into diabetes funds for Indian people. It was long overdue and one of the biggest problems we have in Indian country, as you probably know. His comments on the President in Las Cruces—Senator Domenici and I were with Candidate Bush at that time when he made that commitment to the 13 tribal leaders. I remember very specifically, when he made the commitment to increase the funding for Indian school construction, he told the Indian tribe leaders, "These two

guys"—and he pointed to Senator Domenici and I—"will make sure I do." And we are here to remind him of that if we need to, but I am sure he is aware of that.

Secretary NORTON. The budget blueprint that is released today has $293 million for construction of schools. We are also looking within our budget that is part of the overall figure of that to see if there are additional funds that we can put into those efforts. We will be looking to see that out of that process we should be able to replace approximately six schools in the upcoming year, as well as the six schools that are currently in process hopefully for this fiscal year.

So that will be a very strong goal for us. We have a 5-year commitment to go forward with additional construction and repair so that we can eliminate entirely the backlog within Indian country in the schools.

The CHAIRMAN. Thank you.

Let me ask a couple of questions on the trust fund reform, since Senator Inouye brought that up.

In 1999, Judge Lamberth ruled that the Government is in breach of its trust responsibilities. You will remember, in fact, he described it as "governmental irresponsibility in its purest form." Last Friday, the Court of Appeals here in Washington, DC upheld that decision, as you are aware.

I know you have only been in office a few weeks and have much to learn about that mess. We have been dealing with it for quite some time. But do you have any ideas on the direction we ought to take to get out of that?

Secretary NORTON. Yes; obviously, the *Cobell* decision is one we are studying and analyzing. I know that lawyers from both Interior and Justice are studying it also. We take seriously our responsibilities under the *Cobell* decision, and as a result we are moving forward with statistical matters associated with the decision.

The CHAIRMAN. The Department has issued new regulations on trust policies and procedures—trust funds, leasing, grazing, probate, and a number of other things, too—and I understand that tribal leaders are not particularly happy about those new regulations and have requested that you re-propose the regulations for continued discussion with tribal leadership.

It is my understanding you have until March 23 to decide whether to postpone the effective date of those regulations. But it would certainly be helpful if your staff would meet with the committee staff to consider options in making decisions.

Secretary NORTON. We would be happy to work with you on that and to talk with you further about it.

The CHAIRMAN. I appreciate that.

Let me turn a little bit to education, too, since it is something that is close to the hearts of everyone on the committee.

In the last Congress, I introduced legislation to require the BIA and tribally-controlled schools to attain certain standards. Do you have any particular views or remedies—or something you favor with BIA or tribally-controlled schools that repeatedly fail—to meet standards that can be developed?

Secretary NORTON. There was a meeting that occurred just recently of approximately 120 educators from around the country

who were dealing with Indian education issues. They attempted to define some goals for the education levels that Indian students should meet. I hope to build upon that process to ensure that we are trying to do that. As with any schools—this is part of the reform proposal that President Bush has been examining—there need to be ways to ensure that those goals are actually met. It doesn't do any good to define goals and then not have some sort of followup process to try to achieve those goals and correct problems that cause those goals not to be met.

I would be happy to work with you to try to figure out what sorts of mechanisms will make sense to ensure that we are really fulfilling the goals that we define.

The CHAIRMAN. One of the problems we face, obviously—if it is a non-Indian school and your youngster is not doing well and you believe it is because the school or the teachers have fallen down on the job, you can take your youngster out and put him in another school. But you can't do that on the reservation very easily. You are just stuck with it. So if a youngster is not performing because of the teachers, the administration, or some other reason, there is no alternative for the parents. They just have to leave that youngster in there.

There has to be some way to address that. You can't just say, "You're doing a bad job, so we're going to shut down that school," because then they would have no place to go to school. So it is a complicated and difficult question. I would appreciate it if you would keep that in mind as you deal with tribal education.

Secretary NORTON. And I hope that we can provide more of a role for parents in that process because I think that is critically important, having the parents really feel that they are involved in the education process.

The CHAIRMAN. No question about it. And also a problem exists on some of these real traditional reservations that sometimes what they learn at school is not what they are learning at home. They get caught in sort of a cultural crossfire where elders have traditional ways of teaching youngsters and they tell them certain things that the youngsters should learn and believe. If the teachers or the school are not very culturally aware of the differences, teachers can do a lot of damage by telling youngsters that have learned at home is not the real way they ought to be doing things.

I think that is one of the reasons, frankly, we have such a high alcoholism rate and suicide rate among our young teens, because of being caught in that crossfire.

In my view, I think you are on the right track. If we can get more interaction between the Indian parents and the Indian schools, we would all be better off.

With regard to school construction again, one thing that I support is authorizing tribes to issue bonds to raise the capital for school construction because we haven't been able to come up with the amount of money we should for school construction. Do you have any view on that concept?

Secretary NORTON. At this point, we have not had the chance to really analyze that and the legislative proposals you have made in the past on that. That is certainly something where we can have

further discussions about how that fits in with our Federal budget goals.

The CHAIRMAN. Thank you.

Senator if you have any questions, I would be happy to switch back and forth with you.

Senator DOMENICI. Thank you.

I had a statement besides the oral one. Could I have that included in the record?

The CHAIRMAN. Without objection, your prepared statement will appear in the record.

[Prepared statement of Senator Domenici appears in appendix.]

Senator DOMENICI. Madame Secretary, I think it is important that as soon as you can—and I know you have a huge inventory of serious American issues on your plate—but I think a visit to Indian schools would be a very good thing, those run by the Federal Government. I think just to go see what we don't have for the Indian young people would probably be very enlightening.

Please, don't let them choose for you one of our brand new schools. Go to one that is on the replacement list and see why we have been very worried and why we have pushed our President-elect so hard about this issue. Frankly, we will continue to push him very hard. There is no reason for the idea of having to put out bonds. That is an idea of desperation. The Federal Government should pay for these schools. They are ours. If we don't pay for them, nobody pays for them. They don't belong to the counties, they don't belong to the States, they don't belong to the cities, they belong to us.

It is not a very good sign to have our schools next to a county school and telling our Indian people, "You can go to our United States Government school," and they look around and see—"How come the other children who are going to the county-run schools have better schools and better classrooms?"

Anything other than building—we can argue about how effective education is, but we really don't get started in terms of our credibility if we have dilapidated, code-violating buildings that you would not permit to exist in the State of Colorado, where you came from. So that is really important.

I think also you should charge your new person with seriously looking at how we bring jobs—and that is a "we"—I believe the Indian leaders, some of them, still have to understand that it is not the Government that is bringing jobs. That is most probably privately-owned businesses. They can be owned by Indian people, but we have to get somewhat in the mainstream with reference to jobs. They know how many of us feel—the Indian leaders—and to some extent they have to give a little on some issues.

Jobs won't come to an atmosphere that is substantially different than the private sector gets right across the line in non-Indian country. If a treatment is significantly different, harsher, harder, and not as reliable, they won't come. You have to be in the forefront that this is really an important thing. If we can get this Administration committed to work on that in a really major way, I think we would all join and say that that and education would be the hallmarks of success.

I want to also suggest one other issue. The President has stated in a public statement that he is in favor of sovereignty for the Indian people. Indian leaders are leaders just like governors and just like mayors. They have some sovereignty that might even be different than county sovereignty and State sovereignty. It is Indian sovereignty.

I assume you will tell us here that you intend to carryout and insist that your Assistant Secretary will carryout this commitment that sovereignty will be recognized. Is that a fair assessment?

Secretary NORTON. Yes, Senator; we have a long tradition and long history of dealing with the tribes on a basis of recognition of their sovereignty. That is a complex issue. It is an issue that has a lot of nuance in what exactly that means. But I think the right approach is for us to recognize that the tribes have their own right to govern themselves and we work with them in recognition of that sovereignty.

Senator DOMENICI. Mr. Chairman, I thank you very much.

I am going to go to another hearing. Last, I want to thank you for calling this meeting and asking the Secretary to come. I think it's very important.

The CHAIRMAN. Thank you for coming.

We are all on half a dozen committees or more. In fact, I think I am on a dozen this year, so sometimes we have to split our time running from committee to committee.

I would like to also acknowledge Senator Thomas from Wyoming, who has many Indian constituents in his State.

We are trying to trade off on asking some questions, but did you have an opening statement?

Senator THOMAS. Not really, Mr. Chairman.

You mentioned the problem. I just came from the Agriculture Committee and I have to go back to Foreign Relations shortly.

I just wanted to express my interest in this committee, particularly in what we do with BIA. Maybe this is the issue, that the problems kind of continue along without much improvement in many cases. I am talking about the economy, I am talking about jobs, drug problems, education. We don't seem to be making as much headway as I had hoped we could.

I am anxious to work with you and with the chairman to see if we can give more opportunities on the reservations to tribal members.

Thank you.

The CHAIRMAN. Also, before I go on and ask some questions, we are very happy that Senator McCain has had some time to come by, too. Senator McCain is a former chairman of this committee—was for years and did a wonderful job as almost anybody in Indian country will tell you.

We are very happy to have you here, Senator McCain.

Did you have an opening statement before we proceed with questions?

Senator MCCAIN. No, thank you, Mr. Chairman. I would like to have my opening statement made a part of the record.

The CHAIRMAN. Without objection, your prepared statement will appear in the record.

[Prepared statement of Senator McCain appears in appendix.]

Senator MCCAIN. I welcome Secretary Norton. I would just like to say that she and I had a very good conversation when she came around to see me concerning, in my view, the previous Administration's lack of focus and attention on Native American issues. I am gratified by her commitment to give Native American issues a very high priority under her stewardship. I take her at her word.

And we will do everything in our power to keep you to that commitment.

Rather than elaborate, I know we are looking forward to hearing from her.

Thank you, Mr. Chairman.

The CHAIRMAN. Let me go on and ask a couple more questions.

One of the things this committee has done in the last couple of years is tried to focus some resources and some attention on the problem we are having on the reservations with the youngsters with the increase of juvenile gangs and drug use. We have noticed that going up, particularly on those reservations that are near metropolitan areas—certainly those in Senator McCain's State. In the reservations that are close to Phoenix, we have seen an increase in gangs. Crips, Bloods, Inca Boys, and all these names that you hear in the inner cities are now out on the reservations. Certainly, that is not beneficial to anybody, so we have tried to make that a constant focus in the committee.

I was somewhat alarmed to hear that the Department of Justice budget may be reduced in 2002. Do you think that will affect the Indian law enforcement initiatives?

Secretary NORTON. When I was attorney general of Colorado, I dealt a lot with issues of gangs, especially of juvenile violence. Those are difficult issues to resolve. They are partly law enforcement issues but they are also partly community issues. Often the programs that work the best are those that are created from within a local community and involve the people in the community and working closely with young people. Often it is that one-on-one bond between adults and a young person that is the way you really solve the crime problems.

We need to look at the resources that will be necessary from Federal law enforcement, from the tribal law enforcement, from my office working with the Department of Justice on training programs for tribal law enforcement. All those things are part of this package. At this point, I don't know the answers as to exactly how resources should be allocated and how funding should be allocated in order to accomplish that, but that is something that we will be examining as time goes on.

The CHAIRMAN. I might mention that we know that you do a lot of interaction—Interior does—with the Department of Justice in dealing with Indian issues. But I would recommend that you also do an equal amount of interaction with the Treasury Department because the ATF, the Drug Czar's office—a number of other things—the Technology Transfer Agency—those are under Treasury and they are all looking for ways to also help on Indian reservations. I don't think they have been as active as they could be. If you could take the initiative and open some channels of communication we might be able to find some new reservations they don't have now just under Justice.

Secretary NORTON. That is a good suggestion. Thank you.

The CHAIRMAN. Let me ask for your views on trust land acquisition. That has become a real problem. Part of it is because of the advent of so much money with the casinos. We are seeing more and more Indian reservations and Indian tribal governments that have money and they want to buy land and put it in trust. It has become such a problem that in the last Administration, we had a lot of dialog with then Under Secretary Gover about how we address new land acquisitions and in fact new enrollments of Indian peoples, too.

But there are millions of acres the tribes lost between 1887 and 1934, and that is a direct result of Federal policies, as you know. The Allotment Policy was one of them. The current process available to helping restore the lands provides you with the authority to take land into trust. You are aware of that.

Last month, the Department issued new regulations of taking land into trust. They have not yet been effective. Have you determined whether the Department will go forward and implement those new regulations?

Secretary NORTON. Senator, we have not yet made a final determination as to that. The effective date of the regulations has now been postponed until April 16 of this year. Before April 16, we will be examining those to determine what course of action we might follow in terms of either allowing those to become final or reopening some sort of process for reexamining those regulations.

The CHAIRMAN. You and I spoke about this before, about one of the difficulties. I certainly support tribes if they want to buy some of the land back and put it in trust if it is contiguous and it is to their benefit. I have no problem with that. But it does cause some problems if they buy land hundreds of miles away from their reservation in downtown Minneapolis or somewhere and then want to put that in trust because a number of things happen.

First of all, it takes that land off the tax base and you get some backlash from the local county commissioners or city council about the lost revenue. Second, they don't have to comply with any of the local ordinances, building regulations, and things of that nature, which also creates a real problem for the local community, too.

So I have not been a big supporter of taking land into trust, if it is non-contiguous, if it is just for the purpose of building a new casino. But a great deal of that will be in your jurisdiction. What we get here sometimes is people who want to do an end-run around the Bureau's regulations—sort of a short circuit by getting a legislative release—so they don't have to go through that whole process.

I have resisted that. It seems that we have pretty well defined regulations about how you take it into trust, and I have encouraged tribes to go through that normal process. If you short-circuit it through legislative efforts, it really flies in the face of those tribes that have gone through the process and gone through all the difficult maneuvers they have to do through the Interior Department.

Let me turn to the Federal recognition process. when the Federal Government recognizes an Indian tribe, it is a very important event, and one that certainly needs to be studied. This committee has had a lot of hearings over the years and heard from one Indian group whose petition has been pending since 1970. So the down-

side, of course, of making sure everything is funneled through the Bureau is that there seems to be a very archaic process—not just of taking land into trust—of recognizing tribes, some of whom were recognized years ago and lost that recognition in the 1950's.

I am sure you can appreciate my concerns in that process.

I am framing up now through staff some legislation to try to reform that system by taking the recognition process out of the Bureau and establishing a temporary and independent Commission on Recognition. In fact, last year, before the turnover of the Administration, Assistant Secretary Gover even came and asked us if we could put a moratorium on the recognition process until they got it streamlined a little bit because it is so difficult to get them through, some having waited 30 or more years for recognition.

I talked to Senator Inouye about it at that time and he was reluctant to do that. He felt that it ought to be done through the Bureau, as did I. So we didn't do anything along that line. But that is how difficult it has gotten to get some of these tribes through that really are legitimate and need to be recognized.

There seems to be a difficult criteria on determining which groups are tribes. What we have sometimes is some existing tribes oppose the recognition of new tribes. I have to tell you, in all honesty, sometimes I am not too sure about the new tribes, either. It seems that more and more of them seem to be driven by the opportunity to open up a casino than any real cultural strengths or cultural affiliation. We have gotten a number of letters. There have been articles and books written on it. The Pequots is one example. I am sure you are aware of that discussion.

Do you think the process of recognizing tribes can be reformed internally, without establishing a separate commission?

Secretary NORTON. I was briefed on this process the other day. I have to say that I was just shocked at how intensive a process this is and how complex a process it is. I didn't realize all the historical analysis That went into it and what a long time it takes to go through all of the analysis.

At this point, I don't know what the right approach is for trying to deal with that and what the various reform options might be as well as what the proper policy approach should be. But I certainly welcome the input to analyze our process and to analyze how we might be able to deal with that in the future.

The CHAIRMAN. As you know, Senator McCain has taken the leadership around here on campaign reform. One of the extenuating things that has happened is that in some cases it is alleged that there have been large contributions to different people—whether in the Administration or in Congress—to get recognition by different groups. I think that could really contaminate the process. It is really a dangerous direction to go because—whether true or not—we have heard that a number of times. In my view, that recognition process really needs to be streamlined and better defined about who should get recognition and who shouldn't.

But from that standpoint, I don't think I have any further questions.

Senator McCain, did you have any?

Senator MCCAIN. Thank you, Mr. Chairman.

Secretary Norton, can you briefly tell us any reductions in funding that are being proposed in this budget as far as Native Americans are concerned?

Secretary NORTON. The President's budget blueprint is being released today that talks about the initiatives that President Bush has proposed. They arise out of his campaign commitments and the analysis that has been done by his Administration so far to deal with those.

Certainly, from my own perspective, I came in one morning and by the afternoon I took office I was plowing through the budget and trying to learn about it so that we could make some intelligent decisions about the process. It was so compressed in time that we have tried to maintain flexibility so that the incoming Department officials have as much opportunity to become familiar with our departments as possible before we lock everything into a final budget proposal.

So we are still in the process internally of analyzing how the Department would hope to allocate money within the overall numbers from the budget. We are still looking at how we will ensure that we are doing the best things that are possible in our budget process.

At this point, what I can say is that we do have a very strong commitment to Indian education and to enhancing the construction of Indian schools so that we can have facilities, as well as trying to improve the substance of the education. Beyond that——

Senator MCCAIN. I appreciate this filibuster, but you are not answering my question. [Laughter.]

So you don't know yet what the specific reductions are?

Secretary NORTON. The short answer is, I don't know.

Senator MCCAIN. As you know, the really landmark decision, the *Cobell* case, was just affirmed by a higher court. We are talking now about possibly billions of dollars. First, I applaud the decision of the courts. Second, we are going to have to find out where to get that money. And third, as far as I can tell—maybe the chairman has better information—we still haven't solved the problem of how to handle these funds that come into the Department of the Interior that are held in trust by the Federal Government.

I hope that you will—this is in the form of a comment, rather than a question—I hope you will give it a very high priority. You are talking about billions of dollars and an unresolved situation in which the courts have now decided the Federal Government has been guilty of the grossest kind of mismanagement. Advice is a cheap commodity around here. If I were you, I would convene a task force of some kind to address handling this problem.

Obviously, these payments are not going to come out of your budget. Otherwise, it would consume your entire budget. I strongly urge you, now that the courts have affirmed a lower court decision, that you try to get a handle on this really disgraceful chapter in the history of American Government, in my view.

I think it was 10 years ago—wasn't it, Mr. Chairman—when we first started having hearings on this issue when it became well known that these funds simply could not be accounted for in the most disgraceful fashion.

Finally, I think we all know that there are problems within Indian governments. I often cite the example, as I did to my Navajo friends, that in Flagstaff, AZ, it takes approximately 2 days to start a business. In Window Rock, AZ, it takes approximately 2 years to start a business. We have to encourage tribal governments to adopt rules and regulations along with the BIA to allow people to establish businesses and better themselves and their families' lives through economic means.

The most successful area that I have seen, aside from that, where tribes have performed most successfully, is in the area of self-governance. I think that self-governance, to a large degree, has sort of ground to a halt after a very auspicious beginning about 10 or 15 years ago. I hope that, working with Congress, we can reinvigorate this whole concept of tribal self-governance, allowing these tribes to exercise their own sovereignty and to divorce themselves as much as possible from the very heavy hand of the BIA and the Federal Government.

I hope that you would reexamine the successes—especially the early successes—we enjoyed in the area of tribal self-governance.

I thank you and wish you every success. I appreciate the fact that you were willing to come here very early in your tenure to talk about these very important issues.

Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator McCain is absolutely right. We have two problems. One is getting the money to the people we owe, and the other is setting up a better system of accountability. Otherwise, 30 years from now the Congress will be revisiting this same problem.

The CHAIRMAN. Senator Thomas, did you have some questions?

Senator THOMAS. Yes; thank you, Mr. Chairman.

Welcome, Madame Secretary. We are glad you are here.

BIA hasn't necessarily been thought of as the most efficient agency in the Federal Government. How do you plan to address it to identify and change—I am talking about operations, strategy, output—in that agency? How are you going to go about making some changes in the agency?

Secretary NORTON. Senator, my first priority is to get management in that agency who are truly strong managers. I think there is talent available. We are looking at many different individuals and we have received input from a lot of people as to those who would be good managers for the agency. I think that is the first challenge, just getting a handle on what is being done.

When you have a Department, as I do, that has been in existence for 150 years, we have undoubtedly a lot of programs and processes that have built up that are now counterproductive and long obsolete. So we need to look at the things that really need to be changed.

It is always difficult to make changes in a Federal agency. So we hope to work with you to be able—when we do identify the changes that need to take place—to implement those changes.

Senator THOMAS. I agree. And it is very difficult. But I do think that is an obligation of a new Administration or a new leadership, as you are bringing to the Department, to evaluate and have some input.

At times, the responsibilities between the tribes and the BIA and others has not been very clearly defined and some of those kinds of things.

We talk about economics. In Wyoming, I think one of the difficulties has been the leasing of minerals on the reservations. It is more difficult for the tribes to do that than it is anyone else. They have to go through several agencies. The fact is that they haven't benefitted from mineral production as much as others. I hope we can take a look at that and see what can happen.

You hear a lot about schools. Again, impacted dollars are BIA dollars, in our State there are State dollars—so who is going to be responsible for the accountability of the things that you indicate on page three you would like to accomplish in schools?

Secretary NORTON. Those programs will be through the BIA and I know they have an existing Office of Education. It is my understanding that ordinarily it would fall within that process. So at this point, I don't see a real change in the organizational structure for implementing schools. But I do want to be sure that we are taking a good look at the fiscal process we are using so that we have a cost-effective approach to it.

Senator THOMAS. But it is more than taking a look at it. Is anybody measuring progress? Are we making progress? Have we made progress over the last 10 years? It is one thing to put things down—and you are just starting—but I am concerned that we state these things, yet there is no measurement of progress. If there is and the progress isn't what we had hoped, what is the problem? I get frustrated sometimes in that we don't seem to measure—maybe we don't have a vision in the first place exactly where we want to be.

I admire what you are saying here, I just suggest to you that there is going to have to be some kind of accountability to measurement. If we are not achieving what is reasonably expected, some changes will be needed to cause that to happen. I sense that isn't traditionally the case.

Secretary NORTON. I have had some discussion with Secretary of Education, Rod Paige, about working with him to implement in the Indian schools many of the same kinds of proposals that are being discussed nationally. I do intend to work closely with him to draw on some of their expertise and their ideas.

As I said previously, I think involving parents is always something that is very important. So that is certainly something I want to do.

Senator THOMAS. Thank you, Mr. Chairman.

The CHAIRMAN. I would draw your attention to some legislation that I introduced last year that was signed into law, called the Regulatory Reform in Business Development Task Force.

But it really is an effort to do what I think Senator McCain is interested in, and that is create some jobs in some tribal business. Basically, it involved the Department of the Interior and Department of Commerce and tribal leaders and the private sector to find a way to try to create more business that is tribally initiated and tribally controlled. But you might be interested in looking at that Public Law—we will get the number for you—and seeing where the Department of the Interior can fit in.

Are there any further questions?

[No response.]

The CHAIRMAN. Apparently not.

If there are no further questions, then we will hold the record open for 30 days, which is a little longer than we normally do—but since it is the first hearing and I am sure there might be some comments that have yet to come in, we will hold the record open for 30 days.

We do have some questions that were submitted by other members of the committee that couldn't be here this morning. Those questions I will get to you and if you could return those in writing to the committee, I would certainly appreciate it.

[Questions with responses appear in appendix.]

The CHAIRMAN. Thank you for your appearance here. Good luck on your new tenure.

Secretary NORTON. Thank you.

The CHAIRMAN. The committee is adjourned.

[Whereupon, at 10:30 a.m., the committee was adjourned, to reconvene at the call of the chair.]

# APPENDIX

## ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

### PREPARED STATEMENT OF HON. PETE V. DOMENICI, U.S. SENATOR FROM NEW MEXICO

Madam Secretary, at your confirmation hearing, I raised the matter of Indian school construction. At that time, you expressed your interest in keeping President Bush's campaign promise of significantly accelerating the repair and replacement of Indian schools run by the Federal Government in your department.

You and I used the figure of $1 billion. President Bush, then Governor Bush, committed to a figure of $928 million in his first budget.

As you state in your opening testimony, the Congress settled on a commitment last year of $292 million, up by $159 million from the previous year. Of the $292 million total for replacement and repairs at BIA schools, $136 million was committed to new construction of seven BIA schools. The balance is used for BIA school repairs and renovations.

In your opening statement, you say, "President Bush and I will continue to work with Congress to eliminate the current backlog of school repairs by 2006, while replacing older and more dilapidated schools." This issue can be a bit confusing. The repair list and the replacement list are two distinct lists in the BIA School Construction Office. The backlog of school repairs now totals about $1.2 billion; not the $802 million reported by the GAO in their December 1997 report.

School replacement costs were estimated at $928 million as of October 2000. Combined repairs and replacement estimates exceed $2.1 billion.

The entire backlog of repairs and replacements for BIA schools across America refers to about 185 elementary and secondary schools. As the Bush Indian campaign matured, I also remember a further promise to extend assistance to Indian Head Start schools and tribal colleges.

While the U.S. Department of the Interior does not traditionally fund Indian Head Start schools [The Department of Health and Human Services is their main source of funding], tribal colleges have nowhere else to turn, but to Interior.

With this huge and growing Indian education backlog of almost $3 billion, counting tribal college needs, my colleagues on this committee and I would like to know where you plan to focus the Interior Department Indian school construction program.

For BIA elementary and secondary schools, the new replacement priority list shows the Santa Fe Indian School as priority No. 3. It will be a two phase project, totaling about $39 million.

There are 4 Navajo schools on the remaining 13 schools on the national priority. They are all in Arizona: The Holbrook Dormitory; Kayenta Boarding School; Wide Ruins Community School, and Low Mountain Boarding School.

The Mescalero Apache School is number 12 on the remaining list of 13 top priority schools. It is estimated to cost about $24 million.

In New Mexico alone, there are 13 more replacement schools that are not yet ranked. Six are on the Navajo Nation, six are Pueblo schools, and the Jicarilla

Apache Tribe has a dormitory slated for replacement. Nationally, there are over 45 additional schools anticipated for replacement construction.

None of these schools will be built until they make the official national priority list.

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PREPARED STATEMENT OF HON. TIM JOHNSON, U.S. SENATOR FROM SOUTH DAKOTA

Chairman Campbell, Vice Chairman Inouye and other members of the committee, I would like to begin by congratulating Secretary Norton on her appointment as head of the Department of the Interior. Secretary Norton, I would also like to thank you for taking the time to meet with me prior to your confirmation hearing. My State of South Dakota is home to a large Native American population. There are nine tribes in South Dakota, which are large, land based, treaty tribes.

It is my hope that you will become more familiar with the issues effecting these direct service tribes which have separate sets of issues then the smaller tribes throughout most of the United States, including your home State of Colorado. I would like to extend an invitation for you to come and visit South Dakota and view, first hand, the unique set of issues effecting the tribes in South Dakota.

Additionally, I would encourage you to meet with all tribes throughout the Nation to form relationships with this unique segment of the United States population. As you know, there exists a government-to-government relationship between the Federal Government and the tribes. It is my hope that this relationship will endure and continue to improve throughout your tenure in the Department of the Interior.

As you may be aware, I have been a longtime supporter of Indian education as a way of tribal members to empower themselves, and afford themselves more opportunities—both on and off of the reservation. Earlier this year, I introduced bipartisan legislation to increase the construction of Indian schools. As you are aware, tribal schools continue to be of the most underfunded schools throughout the Nation. It is a tragedy that these schools are crumbling and suffer from an estimated $1-2 billion backlog in construction needs. It is my hope that you will continue to work with members of this committee, as well as, members of the Appropriations Committee—on which I now sit—to ensure that our Federal trust responsibility is upheld to our Native American students.

I thank you for appearing before the committee this morning, and I look forward to hearing your testimony. Thank you Mr. Chairman and Mr. Vice Chairman.

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PREPARED STATEMENT OF HON. JOHN MCCAIN, U.S. SENATOR FROM ARIZONA

Mr. Chairman and Vice Chairman, I thank you for scheduling this important and timely hearing today to engage in a dialog on Native American policy with the newly confirmed Gale Norton as Secretary of the Department of the Interior.

I have had the pleasure of working with Secretary Norton in her previous role as attorney general for Colorado on the tobacco bill, and I very much appreciate her knowledge of natural resources policy and Native American issues. Her willingness to appear before this committee today is a good signal of her expressed commitment to approach her responsibility toward Indian tribes with a new vigor and vision.

Secretary Norton, as you are learning, the responsibilities within the Interior Department are vast and complicated. However, I believe as my colleagues do, that the responsibility toward Indian people should be among the highest.

For too long, the Indian communities have been ignored and mistreated at the Federal Government's hands. Their participation in our system of government continues to be marginalized. Only with gaming revenues have others come to recognize their position and growing political power. While I have no qualms with Indian gaming as an economic force, I believe it is the Federal Government's failing to leave the tribes with no other viable economic or social tools to sustain their communities. Every year, we hear more and more how Indian communities are among the most depressed in our Nation, with the highest unemployment levels to the highest incidence of diabetes to the highest rates of alcoholism. We must turn this tide of past failures.

I'm pleased to hear that the Administration has prioritized Indian education as part of its agenda as well as improving public safety and supporting tribal self-determination. I look forward to working with you to evaluate the effectiveness of the BIA and other Interior programs to ensure that we are helping tribes truly achieve self-sufficiency and honoring our treaty obligations to the Indian people.

We look forward to working with you on these important matters.

PREPARED STATEMENT OF HON. FRANK H. MURKOWSKI, U.S. SENATOR FROM ALASKA

Mr. Chairman, it is a pleasure to have Gail Norton come before the committee today. As you know, Gail easily won approval to be confirmed for Interior Secretary in my committee and despite efforts by some groups to distort her record, she was overwhelmingly confirmed by the full Senate just a few weeks ago.

I know that Gail will make an outstanding Secretary of the Interior and is especially sensitive to the issues that confront Native Americans and Alaska Natives.

As you know, Alaska is home to 227 of America's 560 federally recognized tribes. However, unlike the tribes in the lower 48 States who live mostly on reservations, Alaska Natives live within all of our communities in Alaska. Many natives subsist in communities that are not connected by roads. In fact, they are spread over an area that is one-fifth the size of the continental United States. And many of these isolated communities have very high unemployment rates with few prospects for economic development.

As a result of this geographical isolation, combined with Alaska's many unique environmental features, Indian roads, housing, healthcare, and other basic necessities are more costly, on average, than the same services for tribes located in the lower 48 States.

I look forward to working with you on improving the effectiveness and efficiency of services important to America's native population as well as making the necessary adjustments to current formulas to better account for the unique needs of Alaska's Native population.

Thank you.

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PREPARED STATEMENT OF GALE NORTON, SECRETARY, DEPARTMENT OF THE INTERIOR, WASHINGTON, DC

Mr. Chairman, Mr. Vice Chairman, members of the committee, This is my first appearance before Congress since my confirmation hearing and I am very pleased it is before the Committee on Indian Affairs and its distinguished chairman, my friend and fellow Coloradan, Senator Ben Nighthorse Campbell. As you may know, I have twice appeared before this committee, once in October 1997, and again in February 1998. I was here then to explain my position and firm belief in taking measures to reduce tobacco use among Indian children.

It has been just 2 months since the President asked me to be his Secretary of the Interior. This has been a period of intense learning about the many responsibilities and issues I am now facing as Secretary, including those related to American Indians and Alaska Natives.

The mission of the Bureau of Indian Affairs [BIA] is to enhance the quality of life of American Indians and Alaska Natives, to promote economic opportunity, and to protect and improve the management of trust assets of Indian tribes, individual Indians, and Alaskan Natives.

In responding to this mission, I told Interior employees at our all employees meeting that we should think of ourselves as navigating the four C's: Consultation, cooperation, communication—all in the service of conservation. I propose to employ consultation, cooperation, and communication in my working with tribal governments as well.

President Bush and I are both believers in the concept of Indian Self-Determination. We want to make advances in Self-Determination and Self-Governance during our tenure which we believe can be fostered through consultation and our mutual goal of better government.

I take very seriously my responsibility as the Trustee for Indian lands, trust moneys, and Federal obligations to the tribes under treaties and laws. In furtherance of that responsibility, we need to be certain that the requisite management skills are in place, including project management skills, for the critical work we are doing to reform Indian trust fund management. This ranges from the leasing of trust land to the collection and investment of income, and its disbursement and accounting to trust beneficiaries, be they tribes or individual Indians. I intend to advocate for Indians and tribal governments throughout this Administration.

I have had positive experiences in Colorado. As attorney general from 1991–99, I handled a number of important issues involving Native Americans. I had the privilege to negotiate personally two of the first Indian gaming compacts—between the Southern Ute and Ute Mountain Ute Tribes and the State of Colorado.

My office played a large role in the ongoing negotiations over the scope and funding of the Animas-LaPlata project in Colorado. This project helped me to understand better the needs of the tribes, State, and Federal authorities and to assist in resolving economic, environmental, and political issues.

I also handled issues relating to oil and gas development on and near Colorado's Indian reservations, and understand the challenges associated with both conservation and development on trust lands. I hope this experience will serve both the tribes and the Nation well as we work to resolve energy problems facing this country.

I have learned a few things in my first weeks at Interior. The very day I took the oath of office, I found myself facing decisions on the fiscal year 2002 budget. Nearly one-quarter of Interior's funding is devoted to Indian nations, communities, and individuals. While this is a significant percentage, setting priorities for the Department in Indian country is a monumental task. Which programs will best serve our Indian constituency, understanding that all programs require our attention and support?

One of the priorities that the President addressed during the campaign was education, including Indian education and school facilities. I share his philosophy that no child be left behind, and it will be my responsibility to help see that no Indian child is left behind. As you know, Indian school facilities are generally in poor condition. Some of the school buildings are a century old. The life expectancy of some of these buildings has been exceeded by decades.

The Congress appropriated $292 million or an additional $159 million, to make a significant start in addressing this problem in fiscal year 2001. We will immediately provide $136 million to replace seven schools. However, we have much more to do.

President Bush and I will continue to work with Congress to eliminate the current backlog of school repairs by 2006, while replacing older and more dilapidated schools. Schools with the most urgent needs will be given priority in the budget requests.

In addition, the BIA will work with the National Trust for Historic Preservation and tribal governments to make needed capital improvements while preserving the historic character of many of the Indian schools.

The BIA is responsible for 185 Indian elementary and secondary schools. About one-third of these schools are operated directly by the BIA while the other two-thirds are operated under contract or grants to Indian tribal entities. These schools have an enrollment of approximately 50,000 children and are spread throughout 23 States.

Over 120 participants—including educators from BIA-funded schools, outside Indian education organizations, and staff members from the BIA Office of Indian Education Programs—recently met and agreed on five goals: No. 1, all children will read independently by the third grade; No. 2, 70 percent of the Indian student population will be proficient/advanced in reading and math; No. 3, individual student attendance rates will be 90 percent or better; No. 4, students will demonstrate knowledge of their tribal language and culture; and No. 5, there will be increased enrollment, retention, placement, and graduation rates at the post-secondary level.

I want to assure the committee that I am committed to the goal of improving the quality of life in Indian communities and providing direct service in assisting tribes to strengthen public safety. A safe community with a sufficient number of law enforcement officers who are properly trained and equipped is the basic foundation for the overall effectiveness of tribal governments. To that end, I will work with tribal governments in their continuing law enforcement efforts and further pledge my full cooperation and assistance in this matter.

Finally, I would like to comment on a matter of very high priority for me and for my Department, and that is the matter of Indian trust reform and the importance of providing needed services to Indian trust beneficiaries.

As the Trustee, I clearly recognize the important obligations of the Department to put in place those systems, procedures, and people to fulfill our obligation to the trust beneficiaries, both individual Indians and tribes. This is an enormous undertaking in correcting the errors and omissions of many decades.

Much progress has been made, including the new Trust Financial Accounting system [TFAS] which became fully operational early last year. A majority of other identified milestones have been reached; however, much remains to be done, including several very critical elements.

These include completing the BIA Trust Asset and Accounting Management System [TAAMS]. This is a much needed automated system that will track the land ownership and trust management of 55 million acres held in trust or restricted status by tens of thousands of Indian landowners and hundreds of tribes. The implementation of this system is prefaced upon the cleanup of trust historical data dating back over 100 years, and the reduction of the probate backlog that has occurred with the increasing fractionation of trust allotments. The amendments to the Indian Land Consolidation Act enacted by the 106th Congress, which address the issue of

fractionated heirships, will permit greater efficiency in leasing these lands. These particular projects present huge challenges, but there is no doubt that they can be concluded satisfactorily.

There are many other Indian issues of interest to this committee, my Department, and tribal leaders. In my short time at Interior I have heard concerns about Indian gaming, the Federal acknowledgment process, and Indian land and water settlements, to name but a few. We will meet these challenges openly and will seek your guidance in these important issues. It is my heartfelt desire that this committee and I begin and continue a process of consultation, cooperation, and communication that will strengthen tribal governments, help Indian people, and improve the education of America's Indian youth.

# United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

JUN - 5 2001

Honorable Ben Nighthorse Campbell
Chairman
United States Senate
Washington, D.C. 20510

Dear Senator Campbell:

Enclosed are responses to questions submitted following the February 28, 2001 hearing before the Indian Affairs Committee.

Thank you for the opportunity to provide this material to the Committee.

Sincerely,

Jane Lyder

Jane M. Lyder
Legislative Counsel
Office of Congressional and
Legislative Affairs

cc: Honorable Daniel K. Inouye
Vice Chairman

**Follow-up Questions and Answers**
From the February 28, 2001 Hearing

***(CAMPBELL) Federal Indian Policy and The Legal Philosophy of the Secretary***

**Question 1: As Attorney General how did your views of fundamental concepts like Indian Tribal sovereignty and the Federal-Tribal relationship color your views in dealing with the Colorado tribes?**

**Answer:** I worked with the Southern Utes and Ute Mountain Utes as one of the negotiators of Colorado's gaming compacts with the tribes. Later I dealt with them on issues of water, mineral development, taxation, and so forth. The state and the tribes did not always agree, but we developed a relationship of mutual respect and candor. This relationship ensured that even when we disagreed on some particular application of state or federal law, those disagreements were balanced by bonds of personal regard and our mutual interest in the tribes' self-governance.

Through working with the tribes, I came to understand their desire to control their own destiny. I also saw, primarily through the frustrating history of the Animas-La Plata water settlement, what a huge impact the federal government can have on the future of tribes.

**Question 2: The President recently unveiled his "Inter-Agency Working Group on Federalism". Are Tribal governments included in that Working Group or are their plans to create a similar working Group for Indian Tribal governments?**

**Answer:** My understanding is that the Working Group on Federalism is composed only of representatives of the federal and state governments. The Working Group is to identify as between the federal and state governments those endeavors that the federal government is now performing that may more appropriately be performed by state authorities or subdivisions of the states; identify areas of flexibility and accountability in regulatory and funding matters as between the federal and state governments; improve federal responsiveness to state concerns; and enforce measures which advance the concept of federalism. Although I initially thought this might be a good forum for discussion of the tribal issues, I now think a more focused forum would provide better attention to tribal concerns.

I plan to consult with other members of the President's Cabinet about what process would make sense for coordinating with tribes. Based upon a suggestion from the National Congress of American Indians, one possibility may be discussions involving representatives of all three groups of sovereigns: federal, state, and tribal. One purpose of such a group could be to consider and reach cooperative agreements involving those complex problems of establishing lines of state, federal and tribal authority in a great variety of issues. Other discussions should be bilateral, focusing on federal programs affecting tribes.

should be bilateral, focusing on federal programs affecting tribes.

**Question 3:** **Earlier this week along with the Speaker and the Majority Leader I sent a letter to the President urging that he meet with Indian Tribal leaders in the weeks ahead to begin working on education, job creation, health care and other key issues. Would you join me in working to make this meeting a success?**

**Answer:** Certainly, if such a meeting is held. In addition, I would be happy to meet with tribal leaders at anytime.

***Indian Land and Water Settlements // Animas - La Plata***

**Question 4:** **As you know from your "hands-on" experience with ALP Project, Federal participation is vital to the settlement of Indian land and water rights claims. Do you think that the U.S. should focus its efforts on negotiations rather than litigation?**

**Answer:** There can be no doubt that the benefits of negotiated settlements far outweigh the uncertainties of litigation. Unfulfilled land and water rights pit Native Americans against their non-Indian neighbors. Negotiating a resolution of these claims, however, requires these groups to actively engage with each other, understand each other's viewpoint, and ultimately develop a local-based solution which addresses tribal needs and avoids litigation. While this sounds like a monumental task, there have been almost two dozen such settlements over the past 15 years. Federal participation in working with the parties is critical to the success of these negotiations. I am committed to continuing an appropriate federal role in enlisting local support and assisting to resolve these issues through negotiation rather than litigation.

**Question 5:** **Of the many water settlements that this Committee approved in the last 4 years including ALP and the Rocky Boys Settlement, an issue has been financing them. A proposal was made in 1999 to take these settlements "Off Budget". Would you approve such a proposal?**

**Answer:** The Administration is committed to seeking discretionary funding for settlements once they are enacted. While I am not familiar with the details of the 1999 proposal, I understand that the Department has had discussions in the past with the Senate Budget Committee regarding proposals to move funding for settlements off Interior's discretionary budget. I believe that OMB and the Congressional Budget Office would need to be brought into any such discussions because of the broad policy and budget implications of such a proposal.

***Indian Tribal Gaming***

**Question 6:** **For years now, Indian gaming has provided job opportunities and revenues enabling Tribes to provide services to their members. What are your views of Indian gaming generally and what do you see as its major strengths and major weaknesses?**

**Answer:** The Indian gaming industry today consists of 309 tribal gaming operations, which are owned, operated, or licensed by 195 tribal governments in 28 states, and generating revenues of about $10 billion. Indian gaming has been a successful economic development venture for some tribes. Increased tourism has increased the general awareness of Indian cultures. The general economic activity of gaming positively impacts other Indian and non-Indian businesses in the vicinity of Indian casinos. Tribes have used gaming revenues for government operations, health facilities, schools, scholarships, programs for seniors, and road and housing developments. Distributions to tribal members under Revenue Allocation Plans have improved the lives of individual tribal members and their families and contributed to collateral economic gains in surrounding communities.

Gaming revenues have been used to improve local infrastructure both to accommodate the gaming facility and for general community projects. The millions of dollars spent in constructing Indian gaming facilities has contributed greatly to construction industry employment. Tribes have donated hundreds of thousands of dollars of gaming revenues to community charities.

As for the weaknesses that may arise in Indian gaming enterprises, I am aware of the differing opinions on the merits of gaming as a sound economic development program for tribes. There are issues of gambling addiction, the increased alcohol-related mishaps that occur with casino operations, and the morality of gambling itself. Frankly, I feel that it would be presumptuous of me to render an opinion - one way or another - about how a tribe and its government should run its affairs. If there is any weakness in Indian gaming, it might be in the misinformation that this activity generates. As I have reiterated, there are many positive aspects in Indian gaming – this has been a boon to tribal economies and to the betterment of both Indian and local community social welfare. This message should be better conveyed – this is probably the responsibility of the tribes involved. As for whether or not gaming is a sound economic foundation, that is for the tribes to determine. My position is to assist wherever and whenever possible to make tribal economic development programs work.

**Question 7:** **In the wake of the Supreme Court's *Seminole* decision in 1996, if a State raises its 11th Amendment defense to a lawsuit brought by a Tribe under the IGRA to negotiate a compact, what remedy do Tribes have?**

**Answer:** In the wake of the *Seminole* decision, the Department promulgated regulations (25 C.F.R. Part 291 - - Class III Gaming Procedures) to allow the Secretary to unilaterally determine the procedures that govern Indian casino gaming when a State and Tribe have failed to negotiate a compact and the State raises its 11th Amendment defense in response to a suit by the Tribe. Under the regulations the State and the Tribe have had the opportunity to create a record to assist the Secretary in formulating and issuing gaming procedures. Currently the Department is involved in the development of gaming procedures in Washington, Nebraska, and Florida. A lawsuit has been filed challenging the authority of the Secretary to promulgate the procedures regulations.

***Consultation with Indian Tribes // Making Policy***

**Question 8: I have reviewed the recently-issued "BIA Policy on Government-to-Government Consultation" and it seems like a good start because it focuses on early communication and consultation. Have you had a chance to look at that policy, and may I ask for your thoughts about how its goals can be made a reality.**

**Answer:** I support the Government-to-Government consultation. I will wait, however, until we have our Assistant Secretaries on board so that I can receive recommendations from them on how the BIA policy can be implemented and translated into the Departmental Manual. The manual provisions for the consultation policy should be similar to those now in place for the protection of trust resources and the accommodation of sacred sites.

**Question 9: Since President Nixon's "Special Message to Congress on Indian Affairs" in 1970 Federal Indian policy has been grounded in Self Determination and Self Sufficiency. Are you committed to working with Tribes to achieve these goals?**

**Answer:** Yes.

**Question 10: Earlier this week along with the Speaker and the Majority leader I sent a letter to the President urging that he meet with Indian Tribal leaders in the weeks ahead to begin working on education, job creation, health care and other key issues. Would you join me in working to make this meeting a success.**

**Answer:** Yes, if such a meeting is held. In addition, I would be happy to meet with tribal leaders at anytime.

*Indian Education and Education Reform*

**Question 11:** Facilities: **during the campaign, the President laid out his plan to eliminate the backlog in Indian School Facilities by creating a "Tribal School Capital Improvement fund" of some $930 million dollars. With the President's budget released this morning, are we "on track" to seeing the backlog eliminated in FY2002?**

**Answer:** In keeping with the President's plan, the Department's FY 2002 budget request for BIA school construction is $292.5 million, which includes funding to replace facilities at six schools, and provide repairs to a number of other schools. This funding will enable the Department to fulfill the President's goal to eliminate the current backlog in replacement, repair and maintenance of Indians schools by FY 2006.

**Question 12: Facilities: we are always looking for innovative ways to build facilities in Indian country and one I support is by authorizing Indian Tribes to issue bonds to raise capital for school construction. Do you support the concept included in this proposal?**

**Answer:** The Department and the BIA continue to support the concept of tribes issuing bonds to raise capital to modernize schools. Legislation would be needed to authorize tribes to issue bonds to provide funding for school construction and rehabilitation, as well as the advance planning and design for proposed improvements. If bonding legislation were to be enacted during this Congressional session, it could provide an incentive and an opportunity for tribes to expedite prioritized projects, increase the number of projects under construction and decrease the backlog of needs.

**Question 13: Standards and Accreditation: I introduced legislation to require BIA and Tribally-controlled schools to attain certain standards. What remedies do you favor if a BIA or Tribal school repeatedly fails to meet the standards that are developed?**

**Answer:** Our first course of action would be to work closely with the school to provide staff development, administrative training and administrative support. Technical assistance to both professional and paraprofessional staff would be provided by the Division of School Improvement, within the BIA's Office of Indian Education Programs (OIEP).

We should also work with the Department of Education to see what approaches work in other schools. The Comprehensive Regional Assistance Centers and Regional Education Labs funded by the Department of Education should work with the affected school(s) and provide on-site support to staff to the extent their

resources provide. The use of teaching models that work would be used to address academic deficiencies.

The OIEP should also work with the affected tribe and school board to involve them in the improvement of the school and to solicit their support to involve the community and parents. One way to involve and empower parents would be to utilize the Independence Institute Parent Information Center which provides parents with a report card on schools. We also will consider doing intensive reviews of failing schools to identify problems and then put together plans to fix them.

Some schools may not be able to meet current accreditation or other school standards due to facilities problems while others may not be able to hire adequate staff such as librarians and counselors due to their remote locations. The Office of Facilities Management would provide technical assistance and support concerning the school standards due to facilities problems, and the OIEP's personnel office would provide the assistance to these remote locations in recruiting qualified staff.

**Follow-up: Is it realistic to "close down" a BIA or Tribal school if it is the only school on a reservation?**

**Answer:** We will never leave Indian children with no education options, but substandard schools should not be able to use their sole source status to continue failing. We would need to use approaches like reconstituting the management and staff of the school. In all of these situations, the remediation of problems would be accomplished in concert with the parents and appropriate tribal officials.

***Indian Tribal Law Enforcement and Public Safety***

**Question 14: Since 1997, one of the consistent focuses of the Administration, this Committee and Appropriators has been on increasing support to Federal and Tribal law enforcement officers, investigators, prosecutors, and courts. I am alarmed when I hear that the Department of Justice budget may be reduced in FY2002. Do you share my support for the "Indian Law Enforcement Initiative?"**

**Answer:** In 1997, the Department, BIA and the Department of Justice (DOJ) initiated a focused effort to reduce crime in Indian Country. The Executive Committee for Indian Country Law Enforcement Improvement, comprised of officials from DOJ and the Department, law enforcement administrators, and tribal leaders, issued a report in October 1997 outlining some of the problems facing Indian country law enforcement. Subsequently, BIA's annual funding increased from $77 million in

FY 1998 to $153 million in FY 2001 to expand law enforcement operations and modernize equipment. Over the same period, DOJ's annual funding increased from $79 million to $146 million, primarily for grants to tribes for hiring additional police officers and for constructing new detention facilities. The BIA and tribes, combined, have added 477 police officers, criminal investigators, police dispatchers, and detention officers since FY 1999.

While DOJ and BIA have worked diligently to address these problems with some success, many still remain. Tribal and BIA law enforcement officers face a difficult and dangerous job with worn out equipment and insufficient personnel. These problems did not appear over night and they cannot be corrected in just a few years. Nevertheless, we need to document the impacts of the joint law enforcement initiative to date, and identify steps needed to improve program performance.

Our goal at the Department is to improve law enforcement and we will study how best to achieve that goal. A safe and secure community is something that everyone should enjoy, no matter where they live.

**Question 15: Legislation I was proud to have sponsored in the last Congress was enacted into law and will help Tribal Courts and Justice Systems access the resources of the Department of Justice. In my mind the Interior Department still has an obligation to assist in the development of Tribal Justice Systems. Do you have any views on that score?**

**Answer:** The BIA has a continuing presence in nearly all of the federally recognized Indian reservations which can be helpful for implementation of Departmental or presidential initiatives relating to tribal judicial system development or enhancement. Provisions of the 1993 Indian Tribal Justice Act (recently reauthorized) by its plain terms require the Secretary to work toward the development and enhancement of tribal judicial systems. We will also coordinate with the Department of Justice on this issue.

**Question 16: Law Enforcement around the nation is benefitting from advances in technology. Will you work with this Committee, the DOJ and the Tribes in bringing state-of-the-art technology to Tribal police departments and law enforcement personnel?**

**Answer:** Technology has allowed the law enforcement community to perform its duty more effectively and efficiently. Technology can free a police officer from the drudgery of paperwork, thus permitting the officer to spend more time in the community with the people they serve. Technology is used to solve more crimes than ever before and has been used to exonerate the innocent.

On the other hand, Hi-tech equipment needs expensive maintenance and can be

harmful if misused (e.g., DNA evidence). Our goal is effective law enforcement, and technology is only one of the necessary ingredients. Training is even more important.

As I noted before, BIA and tribal law enforcement programs are still struggling with basic information reporting and analysis at this point.

***Indian Tribal Trust Funds and Management Reform***

**Question 17: In 1999, U.S. District Judge Lamberth ruled that the Government is in breach of its Trust responsibilities to Native Americans saying that the current Trust management system is "governmental irresponsibility in its purest form." Last Friday, the Court of Appeals here in D.C. upheld the Lamberth decision.**

**Even though you have been in office for several weeks, my colleagues and I would like to hear what your ideas are for a way out of this morass and bringing this lawsuit to an equitable conclusion.**

**Answer:** There are two avenues to a conclusion of this litigation and, more broadly, our trust reform effort to assure that the Government fulfills its trust responsibility.

To achieve our trust reform objectives, we are focused on the major systems and data cleanup projects as part of the High Level Implementation Plan and strengthening our project management, all with the oversight of the Special Trustee. Also, we are working to develop a plan for providing a historical accounting of Individual Indian Money accounts.

At the same time, we are discussing with the Plaintiffs' attorneys the possibility of an equitable solution to the historical accounting issue with respect to individual Indians. It is not possible at this time to predict what such a solution will involve.

**Question 18: The Court of Appeals was also clear in saying that what is owed to the Indian Plaintiffs is a "Full Historical Accounting"**

**As I recently wrote to you, the continued destruction of documents is one example of incidents that call the government's good faith into question in this litigation. Are you willing to meet with the leadership in the Department of Justice and work with Congress to consider options to bring down the temperature over this case on issues like the controversial "statistical sampling" proposal and the decision on whether to appeal the Court of Appeal's decision?**

**Answer:** We are not appealing the Court of Appeals' decision. Furthermore, we are currently exploring how we can fulfill the court's directive to provide a historical accounting. I look forward to working with and communicating with you and your staff on this important issue.

**Question 19:** **Trust Procedures and New Regulations: The Department has issued new regulations on Trust Policies and Procedures, Trust funds, leasing, Grazing and Probate. I understand that Tribal Leaders are not happy with these regulations and have requested that you re-propose the regulations for continued discussion with tribal leadership.**

**Follow-up:** **You have until March 23 to decide whether to postpone the effective date of these and it would be very helpful if you would agree to have your staff meet with committee staff to consider your options before you make that decision.**

**Answer:** The Trust Management Reform final rule concerning 25 CFR Part 25, 115, 162, and 166, Leasing/Permitting, Grazing, Probate and Funds Held in Trust became effective on March 23, 2001. We appreciated the opportunity to meet with your staff and with representatives of the National Congress of American Indians prior to these rules going into effect. Because of litigation concerns, we felt it was necessary to press forward with these regulations, However, we would be willing to consider amendments to address points of particular concern.

***Fee-to-Trust Land Acquisition***

**Question 20:** **Much of the millions of acres Tribes lost from 1887 to 1934 were the direct result of Federal policies, such as the "Allotment Policy". The current process available for helping restore the Tribal land base provides you with the authority to take land into trust.**

**As you know, last month the Department issued new regulations on taking land into trust. Those regulations are not yet effective.**

**A. Have you determined whether the Department will go forward and implement those new regulations?**

**Answer:** The Department has reopened the comment period on the new taking land into trust regulations for an additional 60 days. This extended comment period will end on June 15, 2001. An additional 60 days will be taken to review and analyze comments received. The 120 day comment period and analysis will allow the administration additional time to hear concerns regarding the new regulations.

**B. The regulations provide tighter requirements for off-reservation acquisitions and lesser for on-reservation acquisitions. Do you favor this approach generally?**

**Answer:** When an Indian tribe proposes to acquire land that is located off its reservation, it raises complex and sensitive issues regarding the potential impact that such an acquisition might have on the non-Indian communities such as jurisdictional, economic, and land use concerns. In order to fully and objectively evaluate the appropriate regulatory regime, I have acted to preserve my prerogative to review the new input received by the Department as a result of the reopening of the comment period.

**C. What is the effect of the "Card Memorandum" on the issuance of these regulations?**

**Answer:** The effect of the "Card Memorandum" on the land acquisition regulation extended the effective date of the regulation. The original effective date of the regulation was February 15, 2001, however, the "Card Memorandum" extended the effective date of the regulation for an additional 60 days to allow the new Administration an opportunity to review it. Therefore, the effective date of the regulation was to be April 16, 2001, but has now been extended for further comment through June 15, 2001.

***Indian Tribal Federal Recognition***

**Question 21: When the Federal government "recognizes" an Indian Tribe it is an important event and one that should be carefully studied before it happens.**

**This Committee has held many hearings over the years and has heard of some Indian groups whose petition has been pending since 1970! As an attorney I'm sure you can appreciate my concerns with this process.**

**Answer:** The BIA has the primary responsibility for Federal acknowledgment issues. From my recent briefing experience on the process, I must agree that requests for Federal acknowledgment should be carefully studied and they should be reviewed by a neutral body of experts.

The Federal acknowledgment regulations were first adopted in 1978. Therefore, the only petitions awaiting action by the BIA are dated 1978 and after. It is my understanding that there are a number of petitioners who have provided a letter with intent to petition, and have failed to provide the required material to complete their petition for processing. As of February 6, 2001, there are 23 petitions documented as complete and ready for formal review. Of those 23

petitions, 12 are under active review, leaving 11 waiting for active consideration.

We share your concerns with this backlog in processing petitions. We too, would like to see the system speed up and the process changed in a manner that won't compromise the integrity of the decisions. We look forward to working with Congress on ways to improve this issue.

**Question 22: In the coming days I intend to introduce legislation to reform this system by taking it out of the BIA and establishing a "Commission on Recognition" while retaining the current criteria that should be considered in determining whether a group is indeed a "Tribe"**

**A. In you short time there, do you think the recognition process can be reformed internally in the Department?**

**Answer:** While we believe that the Federal acknowledgment process can be improved within the Department, legislation would facilitate improvements to the process.

**B. Is this an issue of throwing more resources and staff hours in order to solve the problem as some have suggested?**

**Answer:** The proposed staffing level and resources to be provided to the Commission would clearly assist in the timely review of the petitions. The current workload of the BIA's Branch of Acknowledgment and Research (BAR), including the number of petitions, decisions, appeals, and FOIA requests, has escalated in the past 10 years, cancelling out the improved efficiency of the process resulting from the revised 1994 regulations and internal changes.

The lack of resources may affect the speed of evaluations and the quality of the research. Currently, the BAR has six researchers out of a staff of eight, performing this function. Three additional professional staffs will be hired within the coming months. We will examine this issue after staff expansions are completed.

**C. Do you have any thoughts on the Commission idea?**

**Answer:** I would like to have adequate time to review the General Accounting Office (GAO) report on the Federal acknowledgment process which should be available by October 2001. For now, the Department will work with the Committee to identify certain concepts within your bill that could be applied to the current regulations, which could enhance the process as it currently exists.

***(JOHNSON) Assistant Secretary Appointment***

**The Assistant Secretary for the Bureau of Indian Affairs is the single most important position you will appoint concerning Indian country. The Bureau of Indian Affairs needs to have leadership to begin working on the many critical issues facing Indian tribes. It is troubling that it appears this appointment is still a long way for happening, especially if you consider the fact the nominee still has to be confirmed by the U.S. Senate. It is my strong belief that you need to take the necessary steps to appoint a person to this position in the most expeditious manner. Additionally, it is also my belief that your Administration needs to appoint more Native Americans to positions in government that are not just related to Indian issues.**

**Question 23: What is your time frame on filling the position of Assistant Secretary for the Bureau of Indian Affairs?**

**Answer:** On April 17, 2001, the President announced his intent to nominate Neal McCaleb, Chickasaw from Oklahoma, to be the new Assistant Secretary for Indian Affairs.

***Trust Funds***

**You touched on the Trust fund situation. As you know, the Department was very active in attempting to reform the management of the Native American Trust funds. Throughout my service in the United States Congress, I have been intimately involved in this issue for over 12 years. We have seen much attention given to this issue recently, and have seen some progress.**

**Question 24: In light of the recent court decision to uphold Judge Lamberth's decision, what is your strategy on stepping up efforts to repair and monitor the mismanagement of the Tribal Trust accounts held by the federal government?**

**Answer:** Consistent with the Court of Appeals decision, the Department of the Interior will work diligently to develop a plan for providing a historical accounting of Individual Indian Money accounts. Achieving the goals and milestones within the High Level Implementation Plan (HLIP), revised February 29, 2000, is a continuing focus of the Department as is ensuring the Court that reform is moving forward.

***Education***

**In your written testimony you state that the Bush Administration will request $136 million in Indian school construction funding. You additionally mentioned that this is lower than the FY 2001 enacted amount of $292 million for Indian school construction. While**

**President Bush — while he was in New Mexico before the election — stated that he would designate $928 million in Indian School Construction funding. As I am sure you are aware, I have joined seven of my colleagues, including vice-chairman Inouye, Senators Dorgan, and Conrad of this Committee, in requesting that the Bush Administration follow through with the promise to our Native American children.**

**Question 25: First, why has the Department decided on a lower figure then President Bush stated?**

**Answer:** The President is following through on his commitment to Indian school children by proposing a FY 2002 Budget of $292,503,000, which is $162,000 above the FY 2001 enacted level. The Administration has every intention of reducing the backlog of code and standard deficiencies, at BIA schools, through continued responsive funding of these needs in subsequent fiscal years.

During the campaign, President Bush promised to work with the Congress to eliminate the entire backlog of school repairs, which is currently estimated at $928 million. The Bureau of Indian Affairs does not have the capacity currently to effectively and efficiently spend $900 million in a single year on education construction, and thus the budget proposes to phase funding for school repair and replacement. Although there has been some confusion, campaign documents clarify that the campaign promise was to begin immediately and to complete elimination of the backlog by 2006.

**Secondly, why has the Department agreed to request an amount which is significantly lower then the FY 2001 enacted level of $292 million for school construction?**

**Answer:** The Department's FY 2002 request for BIA school construction is $292.5 million, an increase of $162,000 over the FY 2001 enacted level, which will substantially reduce the school repair and maintenance backlog and fund the replacement of dilapidated buildings at six schools. The goal of the Administration is to eliminate the current repair and maintenance backlog by 2006.

The figure of $136 million in the written testimony refers to funding appropriated in FY 2001 that "[w]e will immediately provide...to replace seven schools." Construction has already begun at one school, contracts have been awarded at others, and negotiations on contracts are underway at the remaining schools.

**As you may be aware, I have introduced the Indian School Construction Act, along with bipartisan co-sponsorship. This bill (S. 243) will allow tribes to issue bonds to attract private investment. Private investors will be granted tax credits in lieu of interest on their investment. This legislation enjoyed bipartisan support, as well as, support from the Administration last Congress.**

**Question 26: I am wondering if you had a chance to review this legislation, and if you would support this innovative proposal?**

**Answer:** The Department has performed a preliminary review of S. 243. In general, we would support the concept of tribes issuing bonds for school construction. Other details of the bill, such as the proposed tax credits for bond holders and federal appropriations to defease the principal of such bonds, require further assessment.

*(SENATOR PETE DOMENICI)*

**Madam Secretary, at your confirmation hearing, I raised the matter of Indian school construction. At that time, you expressed you interest in keeping President Bush's campaign promise of significantly accelerating the repair and replacement of Indian schools run by the federal government in your Department.**

**You and I used the figure of one billion dollars. President Bush, then Governor Bush, committed to a figure of $928 million in his first budget.**

**As you state in your opening testimony, the Congress settled on a commitment last year of $292 million total for replacement and repairs at BIA schools, $136 million was committed to new construction seven BIA schools. The balance is used for BIA school repairs and renovations.**

**In your opening statement, you say, "President Bush and I will continue to work with congress to eliminate the current backlog of school repairs by 2006, while replacing older and more dilapidated schools."**

**This issue can be a bit confusing. The repair list and the replacement list are two distinct lists in the BIA School Construction Office. The backlog of school repairs now totals about $1.2 billion; not the $802 million reported by the GAO in their December 1997 report.**

**School replacement costs were estimated at $928 million as of October, 2000. Combined repairs and replacement estimates exceed $2.1 billion.**

**The entire backlog of repairs and replacements for BIA schools across America refers to about 185 elementary and secondary schools. As the Bush Indian campaign matured, I also remember a further promise to extend assistance to Indian Head Start schools and Tribal colleges.**

**While the U.S. Department of Interior does not traditionally fund Indian Head Start schools (The Dept of health and Human Services is their main source of funding), tribal colleges have nowhere else to turn, but to Interior.**

**Question 27: With this huge and growing Indian education backlog of almost $3 billion, counting tribal college needs, my colleagues on this committee and I would**

**like to know where you plan to focus the Interior Department Indian school construction program.**

**Answer:** A priority list for dealing with the backlog has already been established. For years, the Department/BIA have emphasized and received concurrence from Congress that our first priority regarding facilities is to address the needs of the elementary and secondary Indian school students. Thus, this Administration will continue to prioritize the needs of these students for now and until the backlog is brought to a manageable level.

*(SENATOR HATCH)* Paiute Indian Tribe of Utah

**Madam Secretary: One of the issues which this committee has struggled with over the years is the apparent mismanagement of the programs administered by the Bureau of Indian Affairs (BIA). As you well know, the BIA's reputation has been poor and I would certainly hope as you take office, that you will focus your attention on making this agency more responsive to the needs of native Americans.**

**In this regard, I would like to bring to your attention a matter involving the Paiute Indian Tribe of Utah. Representatives of the tribe have informed me of the considerable difficulties they have experienced in obtaining responses from the BIA on fee-to-trust acquisition applications submitted by the tribe.**

**Specifically, the tribe has tried for several years to get BIA personnel at the Southern Paiute Field Station and the Phoenix Regional Office to process fee-for-trust acquisition applications. The tribe's efforts have produced very few results, or even responses, from these offices.**

**The tribe has sent me documentation (attached) regarding their correspondence with the BIA. I would greatly appreciate you looking into this matter on my behalf and providing me with a written report on the status of the tribe's applications and what efforts the department intends to do to resolve this matter in a timely fashion.**
**I appreciate your looking into this for me.**

**Answer:** We apologize if the Tribe feels we have been unresponsive to their application. However, as you know, the processing of fee-to-trust acquisition applications is very lengthy and time consuming. The process requires the careful review of a large volume of information and documentation.

To this particular issue, I can say that by letter dated March 19, 2001, the Deputy Commissioner of Indian Affairs instructed the Regional Director, Western Regional Office, Bureau of Indian Affairs, to provide the Paiute Indian Tribe of Utah with a response on the status of their application. The BIA's Western Regional Office responded to the Tribe on May 18, 2001.

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
WESTERN REGIONAL OFFICE
P.O. BOX 10
PHOENIX, ARIZONA 85001

Branch of Real Estate Services
602-379-6781

MAY 1 8 2001

Honorable Geneal Anderson
Chairwoman, Paiute Indian Tribe of Utah
440 North Paiute Drive
Cedar City, Utah 84720

Dear Chairwoman Anderson:

This is reference to your letter of April 2, 2001, to Deputy Commissioner of Indian Affairs Sharon Blackwell requesting a copy of her letter of March 19, 2001, which directed this office to respond directly to your letter of February 16, 2001, regarding the pending fee-to-trust applications of the Paiute Indian Tribe of Utah. As instructed, by letter of April 16, 2001, this office provided you with a direct response and also provided a copy to Deputy Commissioner Blackwell's office.

In accordance with your request, enclosed is Deputy Commissioner Blackwell's letter of March 19, 2001, as well as our response of April 16, 2001. If we can be of further assistance, please contact me at (602) 379-6600 or our Branch of Real Estate Services at the above referred telephone number.

Sincerely,

WAYNE C. NORDWALL

Regional Director

Enclosures

cc: Deputy Commissioner of Indian Affairs, with copy of WRO's letter of April 16, 2001
Director, Office of Trust Responsibilities, with copy of WRO's letter of April 16, 2001
Field Representative, Southern Paiute Field Office, with copy of incoming

Control No. A03290163

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
WESTERN REGIONAL OFFICE
P.O. BOX 10
PHOENIX, ARIZONA 85001

TAKE PRIDE IN AMERICA

IN REPLY
REFER TO:
Real Estate Services
(602) 379-6781

APR 16 2001

Honorable Geneal Anderson
Tribal Chairwoman
Paiute Indian Tribe of Utah
440 North Paiute Utah
Cedar City, Utah 84720

Dear Chairwoman Anderson:

This is in reference to your letter of February 16, 2001, to Deputy Commissioner of Indian Affairs, Sharon Blackwell, requesting her assistance in processing pending fee-to-trust acquisition applications for the Paiute Indian Tribe of Utah. By letter dated March 19, 2001, Deputy Commissioner Sharon Blackwell referred your letter to this office for a direct reply.

In response to your letter of October 30, 1998: our letter dated November 20, 1998, acknowledged that there were thirteen trust applications for the Paiute Indian Tribe of Utah (Tribe) and its five constituent Bands (Shivwits, Indian Peaks, Cedar City, Koosharem, Kanosh) that had been pending at our Southern Paiute Field Station (SPFS) for some time.

Upon review of these applications, we discovered that the former Southern Paiute Field Station (SPFS) Realty Specialist had ignored Bureau of Indian Affairs' (BIA) policy directives on the procedures for processing fee-to-trust acquisitions and, thus, improperly directed the Tribe or Bands to execute deeds placing the lands in trust status, record the deeds in the respective county recorder's office, and then start the trust process. Although the deeds purported to have conveyed lands in trust on behalf of the Tribe or Band, we advised that the lands were not in trust status because the United States had not yet approved the deeds accepting the lands in trust. We further advised that the United States may not acquire legal title until and unless it acknowledges acceptance in writing, preferably on the face of the deed, and then only when the acquisition package is in compliance with applicable policy directives and meets all requirements of the following: land acquisition regulations, Title 25, Code of Federal Regulations (CFR), Part 151; the National Environmental Policy Act (NEPA); and, the Department of the Interior Land Acquisition Policy 602 DM 2 (Land Acquisition - Hazardous Substance Determinations).

With the departure of the former SPFS Field Representative and Realty Specialist, we advised that this office would work closely with the newly hired staff and the Tribe in processing the trust applications.

We also advised that the trust application for each property will be evaluated on its own merit with full consideration being given to the location of the property to be acquired, the purpose for which property will be used, and the extent to which state and local concerns have been addressed through consultation and negotiations. Certainly, as you have stated, these applications can be a "simple matter" provided that: the Tribe or Bands have sufficient justification for trust status of the property; the acquisition package is in compliance with applicable policy directives and meets all requirements with the 151 land acquisition regulations, including the NEPA, 602 DM 2, and the U.S. Department of Justice's Standards for the Preparation of Title Evidence in Land Acquisition by the United States; and, if there are no concerns or objections raised by local or state governments having jurisdiction over the land to be acquired in trust.

You have advised that some of these proposed trust acquisition will not be opposed by the state and local governments. This is true in two applications that this office is currently processing, which are further addressed herein below. However, the Attorney General for the State of Utah has gone on record that the State will oppose four trust applications because the intended use by the Tribe or Bands will be for billboard purposes. (As you are aware, we are currently in litigation with the City of St. George and the State of Utah regarding the trust acquisition of land on behalf of the Shivwits Band in which the land is currently being leased for billboard purposes. Shivwits Band of Paiute Indians; Kunz & Company v. State of Utah, State Department of Transportation, and St. George City, Civil No. 2:95CV1025C.) In such cases, it is imperative that the Tribe or Bands respond to those concerns or objections to mitigate or negotiate resolutions of such issues which will reflect, for the record, that the Tribe or Bands have made a serious effort to resolve any good faith objections.

In regard to the status of the thirteen pending applications, this office is currently working on processing the applications for the proposed acquisition of .50 acres and .94 acres on behalf of the Tribe and 80 acres on behalf of the Tribe, Kanosh Band. In these three cases, there were no objections. We are at the point in the acquisition process of the .50 and .94 acres, where the SPFS has published on March 11, 2001, in accordance with §151.12(b), the public notice in The Spectrum newspaper, which serves the City of Cedar City where the two parcels are located, of the BIA's decision to take into trust status the two properties on behalf of the Tribe. After reviewing and evaluating the 80-acre Kanosh Band application, we have determined the acquisition to be in best interest of the Tribe. Therefore, by memorandum dated March 30, 2001, we preliminarily approved the trust acquisition and have requested, by memorandum dated April 1, 2001, the Phoenix Field Solicitor to render a preliminary title opinion.

As to the balance of the pending applications, we have been advised by the SPFS that it has, by separate letters (for each property) dated April 2, 2001, returned the application packages back to your office because they were deemed to be incomplete. You were advised by Deputy Commissioner, Sharon Blackwell, that the Tribe or Bands have the right to appeal the SPFS Representative's decision if they feel that all appropriate documents were submitted and had not received a timely response pursuant to 25 C.F.R., Part 2.8. She further advised that once an application is appealed, the BIA will take no further action on the application until the administrative appeal process is exhausted.

If the Tribe or Bands need any assistance in completing the acquisition's package, this office and SPFS are ready to provide guidance and technical assistance. However, as you were advised in our letter of April 8, 1999, the BIA has no land acquisition program. Congress has never appropriated funds for a generic land acquisition program, such as in these cases, and there are no funds for such a program in the current budget. Thus, the burden of the cost of placing land into trust is on the applicant, whether it is a tribe or an individual Indian. In other words, the Tribe or Bands must utilize its own tribal resources in acquiring the necessary documents in order to satisfy all requirements of the 151 land acquisitions' regulations, i.e., Environmental Assessment (NEPA), hazardous substance site assessments (602 DM 2), title evidence (U.S. Justice Department Standards), etc.

As soon as the requested documents are received, the SPFS will commence with the trust acquisition process. In our letter of September 15, 2000, you were advised there may be delays in processing the Tribe's and Bands' application (as well as other applications of other tribes under our jurisdiction) because the BIA is having to concentrate on certain trust functions (i.e., probate, appraisals, Trust Asset and Accounting Management System [TAAMS], regulations, etc.) that have been identified as the Department of the Interior's trust management deficiencies. The Secretary of the Interior has placed a high management priority under the High Level Implementation Plan (HLIP) and its corresponding Trust Management Improvement Project (TMIP) to eliminate such deficiencies. This has resulted in dedicating certain Western Regional Realty staff to that project, which has in some instances prevented the staff in addressing all trust applications, as well as other realty activities, in a timely fashion.

We apologize for being remiss in acknowledging your previous letters. Hopefully, this letter will have answered your questions. As you were advised by Deputy Commissioner Blackwell, trust acquisitions can be a time-consuming process because of strict requirements. If you wish to further discuss these applications, please contact me at (602) 379-6600 or our Branch of Real Estate Services at the above referred telephone number.

Sincerely,

WAYNE C. NORDWALL

Regional Director

cc: Deputy Commissioner of Indian Affairs
Director, Office of Trust Responsibilities
Field Representative, Southern Paiute Field Office, with copy of incoming

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
WESTERN REGIONAL OFFICE
P.O. BOX 10
PHOENIX, ARIZONA 85001

Branch of Real Estate Services
602-379-6781

APR 2 4 2001

Honorable Orrin G. Hatch
United States Senate
Washington, D.C. 20510-4402

Dear Senator Hatch:

This is reference to your letter of February 27, 2001, transmitting a letter dated February 1, 2001, from Ms. Geneal Anderson, Chairperson for the Paiute Indian Tribe of Utah, requesting your assistance in processing pending fee-to-trust acquisition applications for the Paiute Indian Tribe of Utah and its five constituent Bands.

In response to Chairperson Anderson's letter of October 30, 1998, by letter of November 20, 1998, we acknowledged that there were thirteen trust applications of the Paiute Indian Tribe of Utah (Tribe) and its five constituent Bands, Shivwits, Indian Peaks, Cedar City, Koosharem, and Kanosh, that had been pending at our Southern Paiute Field Office (SPFO). The SPFO has administrative jurisdiction over trust lands of the Tribe and its five Bands and, thus, is responsible in handling trust applications of the Tribe or Bands. Upon review of these applications, we discovered that the former SPFO realty specialist had ignored Bureau of Indian Affairs' (BIA) policy directives on the procedures for processing fee-to-trust acquisitions and, thus, improperly directed the Tribe or Bands to execute deeds placing the lands in trust status, record the deeds in the respective county recorder's office, and then start the trust process. Although the deeds purported to have conveyed lands in trust on behalf of the Tribe or Band, we advised that the lands were not in trust status because the United States had not yet approved the deeds accepting the lands in trust. We further advised that the United States may not acquire legal title until and unless it acknowledges acceptance in writing, preferably on the face of the deed, and then only when the acquisition package is in compliance with applicable policy directives, and meets all requirements under the land acquisition regulations, Title 25, Code of Federal Regulations (CFR), Part 151, the National Environmental Policy Act (NEPA) and the Department of the Interior Land Acquisition Policy 602 DM 2 (Land Acquisition - Hazardous Substance Determinations). With the departure of the former SPFO Representative and realty specialist, we advised that this office would work closely with the newly hired Representative and realty specialist and the Tribe in processing the Tribe's and Bands' trust application.

We also advised that the trust application for each property will be evaluated on its own merit with full consideration being given to the location of the property to be acquired, the purpose for which the property will be used, and the extent to which state and local concerns have been addressed

through consultation and negotiations. In response to Chairperson Anderson's statement in her recent letter of February 16, 2001, to Deputy Commissioner of Indian Affairs, Sharon Blackwell, that these applications can be a "simple matter," we advised that it can be, provided that the Tribe or Bands have sufficient justification for trust status of the property; the acquisition package is in compliance with applicable policy directives and meets all requirements with the 151 land acquisition regulations, including the NEPA, 602 DM 2, and the U.S. Department of Justice's Standards for the Preparation of Title Evidence in Land Acquisition by the United States; and if there are no concerns or objections raised by local or state governments having jurisdiction over the land to be acquired in trust. Chairperson Anderson indicated that some of these proposed trust acquisitions will not be opposed by the state and local governments. This is true in two applications that this office is currently processing, which are further addressed herein below. However, the Attorney General for the State of Utah has gone on record that the State will oppose the four trust applications because the intended use by the Tribe or Bands will be for billboard purposes. (We are currently in litigation with the city of St. George and the State of Utah regarding the trust acquisition of land on behalf of the Shivwits Band in which the land is currently being leased for billboard purposes. Shivwits Band of Paiute Indians; Kunz & Company v. State of Utah, State Department of Transportation, and St. George City, Civil No. 2:95CV1025C.) In such cases, we have advised that it is imperative that the Tribe or Bands respond to those concerns or objections to mitigate or negotiate resolutions of such issues which will reflect, for the record, that the Tribe or Bands have made a serious effort to resolve any good faith objections.

In regard to the status of the thirteen pending applications, this office is currently working on processing the applications for the proposed acquisition of .50 acres and .94 acres on behalf of the Tribe and 80 acres on behalf of the Tribe, Kanosh Band. In these three cases, there were no objections. We are at the point in the acquisition process of the .50 and .94 acres where the SPFO has published on March 11, 2001, in accordance with §151.12(b), the public notice in The Spectrum newspaper, which serves the city of Cedar City where the two parcels are located, of the BIA's decision to take into trust status the two properties on behalf of the Tribe. In regard to the 80 acres, after our review and evaluation of the application and acquisition package, we have determined the acquisition to be in best interest of the Tribe, Kanosh Band. Therefore, by memorandum dated March 30, 2001, we preliminarily approved the trust acquisition and have requested, by memorandum dated April 1, 2001, the Phoenix Field Solicitor to render a preliminary title opinion. As to the balance of the pending applications, we have been advised by the SPFO that it has, by separate letters (for each property) dated April 2, 2001, returned the application packages back to Chairperson Anderson's office because they were deemed to be incomplete. In her letter of March 19, 2001, Deputy Commissioner Blackwell advised that if the Tribe or Bands feels that all appropriate documents were submitted and had not received a timely response, they may appeal the inaction pursuant to 25 C.F.R., Part 2.8. She further advised that once an application is appealed, the BIA will take no further action on the application until the administrative appeal process is exhausted.

(3)

We have advised Chairperson Anderson that if the Tribe or Bands need any assistance in completing the acquisitions package, this office and the SPFO will provide guidance and technical assistance. However, as the Tribe was advised in our letter of April 8, 1999, the BIA has no land acquisition program. Congress has never appropriated funds for a generic land acquisition program, such as in these cases, and there are no funds for such programs in the current budget. Thus, the burden of the cost of placing land into trust is on the applicant, whether it is a tribe or an individual Indian. In other words, the Tribe or Bands must utilize its own tribal resources in acquiring the necessary documents in order to satisfy all requirements of the 151 land acquisitions regulations, i.e., an Environmental Assessment (NEPA), hazardous substance site assessments (602 DM 2), title evidence (U.S. Justice Department Standards), etc.

In regard to the trust applications that were returned back to the Tribe, as soon as the requested documents are received, the SPFO will commence with the trust acquisition process. Trust acquisitions can be a time-consuming process because of strict requirements.

We acknowledge that we have been remiss in responding to the Tribe's previous letters. We trust the information provided will be of assistance to you. If you wish to further discuss these applications, please contact me at 602-379-6600 or our Branch of Real Estate Services at the above referred telephone number.

Sincerely,

WAYNE [illegible]

Regional Director

cc: Deputy Commissioner of Indian Affairs
Director, Office of Trust Responsibilities
Field Representative, Southern Paiute Field Office

WP:Hatch, Control No. A04100164

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Washington, D.C. 20240

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IN REPLY REFER TO:
Real Estates Services
BCCO 01752

APR 24 2001

Honorable Geneal Anderson
Chairwoman, Paiute Indian Tribe
of Utah
440 North Paiute Drive
Cedar City, Utah 84720

Dear Chairwoman Anderson:

This is in response to your letter of April 2, 2001, requesting a copy of the letter to the Western Region office. By copy of our letter to you on March 19, 2001, we requested the Regional Director of the Western Region to process pending fee-to-trust applications for the Paiute Indian Tribe of Utah and to provide you with a prompt and direct response on the status of the applications and an expected date for issuance of a decision.

Please be assured that we understand your frustration with getting a decision on your pending fee-to-trust applications. The acquisition of land into trust by Indian tribes is a highly contentious and controversial process. We have and will continue to encourage Bureau of Indian Affairs (BIA) staff to conduct detailed and in-depth analyses of these applications to ensure that decisions are fully justified and the administrative decision-making record is defensible in the event of a legal challenge. These applications require a great deal of documentation which must be reviewed and analyzed for thoroughness with ample time required to ensure that all of the statutory and regulatory requirements are fully satisfied. We strive to provide efficient and timely services within the resource restraints but are fully aware that we sometimes miss the mark.

We do agree that the BIA has the responsibility to acknowledge and timely respond to inquiries. You state that the BIA has not been responsive to your inquiries on the status of the requests. While we do not have all of the facts surrounding your statement, we apologize for any inconvenience to the Tribe. As explained in our letter of March 19, 2001, we requested that the Regional Director, Western Region, respond directly to you since the issues are under his administrative jurisdiction.

It is our concern that we provide quality service. Please do not hesitate to contact us again if you have further questions.

Sincerely,

/s/ Sharon Blackwell

Deputy Commissioner of Indian Affairs

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BIA/PAO
REAL ESTATE SERVICES

cc: Field Representative, Southern Paiute Field Station
Regional Director, Western Region w/ incoming for direct reply and cc to this office

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Washington, D.C. 20240

IN REPLY REFER TO:
Real Estate Services
BCCO 01627

MAR 19 2001

Honorable Geneal Anderson
Tribal Chairwoman
Paiute Indian Tribe of Utah
440 North Paiute Drive
Cedar City, Utah 84720

Dear Chairwoman Anderson:

This is in response to your letter dated February 16, 2001, requesting assistance in processing pending fee-to-trust acquisition applications for the Paiute Indian Tribe of Utah. Attached to your letter are copies of previous letters dated November 2, 2000, through January 17, 2001, sent to the Western Regional Office and the Southern Paiute Field Station regarding these applications.

Since the Paiute Indian Tribe of Utah is under the jurisdiction of the Western Regional Office, we are referring your letter to the Regional Director, Western Region, Bureau of Indian Affairs, P.O. Box 10, Phoenix, Arizona 85001, with a request that subject applications be processed. Further, we are requesting the Regional Director to provide a prompt and direct response to you on the status of the applications and an expected date for issuance of a decision.

Trust acquisitions take a considerable amount of time to process. If you feel that the Tribe has submitted all of the appropriate documentation and have not received a timely response, the Tribe may appeal the inaction of an official pursuant to, 25 Code of Federal Regulations, Part 2.8. Please note that once an application is appealed, we will take no further action on the application until the administrative appeal process is exhausted.

Please do not hesitate to contact us again if you have further questions.

Sincerely,

/S/M Sharon Blackwell

Deputy Commissioner of Indian Affairs

cc: Field Representative, Southern Paiute Field Station
Regional Director, Western Region w/ incoming for direct reply and cc to this office

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