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Secretary of the Interior Don Hodel told Congress today that longstanding problems plaguing federal efforts to serve Indian tribes will continue until the tribes, the Congress and the Administration make a unified effort to "find new ways to work together toward our common goal: to create a framework within which American Indians can improve the quality of their lives."

"The old ways of doing things are not leading to the accomplishment of this goal," Hodel said in testimony prepared for the Subcommittee on Interior and Related Agencies of the House Appropriations Committee.

"We believe with bold, creative approaches, perhaps we could develop proposals which work," Hodel said.

Hodel appeared at the hearing with Ross Swimmer, Assistant Secretary for Indian Affairs, who said that fundamental changes are needed to fulfill the proclaimed federal policy of self-determination for Indian tribes.

"It is time to give the tribes the responsibility they seek," Swimmer said. The Assistant Secretary said that inevitably the concept of a paternalistic federal agency will clash with the concept of self-determination and freedom -- one must give way in order for the other to survive. He said this is not an issue of reducing financial support.

"The BIA (Bureau of Indian Affairs) is expected to address almost every social and economic ill known to mankind through approximately 100 discrete programs," Swimmer noted. An already overwhelming task is further complicated by a lack of agreement among the tribes, Congress and the Administration as to priorities among the many responsibilities.

Swimmer pointed out that BIA currently has responsibilities for delivering some form of virtually every federal, state and local program. For example, the BIA has responsibility for schools, colleges, police departments, courts, social services, job training and employment programs; acts as a bank for deposits, payments, investments and credit programs; is a trustee of tribal and individual Indian assets; oversees forests and fisheries; employs agronomists and archaeologists, minerals and mining experts; operates irrigation and power systems; builds houses, dams, roads, schools and jails; and provides technical assistance.

The Assistant Secretary emphasized that he was not suggesting the Federal Government abandon programs or reduce funding where there is need among American Indians.

"We should specifically identify those federal programs which deal with the management of Indian trust resources such as lands, mineral resources and trust funds," as well as those managed by other federal agencies, Swimmer said. "It is a responsibility of the entire Federal Government to ensure that the best available services are provided in connection with the management of Indian lands, resources and trust funds."

Federal support for other than trust services should come through a new category of funding which could be included in the BIA budget for true self-determination grants, Swimmer said.

"With these self-determination funds the tribes would have complete autonomy in determining what programs would be provided," Swimmer explained. "Tribes not wishing to operate programs directly could contract with the BIA to operate the programs for them. Thus, rather than having programs which the tribe can contract from the BIA, the tribes could design their own programs and contract them to the BIA, or if they chose, to another federal or local agency."

Earlier this year, the Department recommended placing control of Indian education programs at the local level; combining a number of disparate programs to create a unified job-training/job-creating effort as an alternative to welfare; standardizing contract support payments, while including a subsidy to stabilize funding to small tribal governments; and, securing competent, professional private sector assistance to manage properly approximately $1.7 billion in Indian trust funds.

STATEMENT OF THE SECRETARY OF THE INTERIOR DONALD PAUL HODEL
before the Subcommittee on Interior and Related Agencies
Committee on Appropriations
United States House of Representatives
October 27, 1987

Mr. Chairman and Members of the Subcommittee: I am pleased to have the opportunity to appear before the Subcommittee today to discuss the relationship between American Indians and Alaskan Native people and the Federal Government. Establishing an appropriate relationship between Indian people and the Federal Government has been a serious dilemma for more than two centuries.

I would like to remind you, Mr. Chairman, that when I first appeared before you, we addressed three major problems in the Department of the Interior: One was the Minerals Management Service's royalty management program, on which we have made significant progress; the second was computers, on which there has also been significant progress; and the third was Indians, on which we had no consensus on how to solve the problems.

Over the years there have been conflicts in cultures, conflicts in goals, conflicts in approaches to solving problems. As many reports point out problems persist in education, health, law enforcement, and the delivery of services. The Federal Government over many Congresses and Administrations has tried innumerable ways to solve the problems. It has passed so many laws that the portion of United States Code related to Indian Affairs is about the same size as that related to labor law or laws governing the Congress. The Government has poured billions of dollars into Indian programs -- nearly three billion dollars appropriated annually in recent years, about: one-third of which is to the Department of the Interior.

Time and again the government has set up commissions to examine Indian problems and recommend solutions. Although proposed solutions are many and varied, two major themes recur: the need for economic development: on reservations and the desire of American Indians for self-government to decide their own goals and directions.

In 1983 President Reagan's Policy on American Indians reinforced the government-to-government relationship of Indian Tribes with the United States for purposes of self determination for Indian people and promoted both tribal self-government and the development of reservation economies.

In keeping with this policy, the President's choice for the Assistant Secretary for Indian Affairs in the Department of the Interior, was a person who would continue to stress the themes of economic development and self-determination. Ross Swimmer is the former Chief of the Cherokee Nation of Oklahoma, the second largest tribe in population in the country. He is the first Chairman of any tribe to lead Indian Affairs for the Department of the Interior. He continues to have the President's and my support.

Since Mr. Swimmer has been in office, the Administration has proposed some of the most exciting and promising initiatives on Indian Affairs in years. But we have not been able to generate broad-based support for these initiatives Examples of the initiatives are:

A self assistance program that would enable a welfare recipient to achieve sustained and meaningful work and skill development.

Major changes in the area of self determination including a new approach to equitably funding tribal indirect contracting costs and funding a new program targeted at enhancing small tribes' capabilities.

A new plan to improve for full financial trust services for the $1.7 billion held in trust for tribes and individual Indians by contracting with a qualified financial institution.

The transfer of the operation of the remaining Federal Indian schools to tribal or public schools through the use of contracting or cooperative agreements. Currently, the Federally and tribally operated schools account for only 10 percent of all Indian students nationwide and such a transfer would move the policy and decision making to the local level.

Because of the diversity and complexity of tribes, almost every proposal to change the status quo in Indian country is met with fear and resistance. To attain a consensus among 500 such groups has been impossible. To obtain congressional concurrence in major changes has been extraordinarily difficult.

Mr. Chairman, we view this as a new opportunity to focus attention on the need to get unified with the Congress and tribal leaders -- a chance to focus attention on the fundamental problem. The tribes, the Federal employees, the lobbyists and the political leaders in Congress and the Administration must find new ways to work together toward our common goal: to create a framework within which American Indians can improve the quality of their lives. The old ways of doing things are not leading to the accomplishment of this goal. We believe with bold, creative approaches, perhaps we could develop proposals which would work. It is in that spirit that I appear before you today - ready to work with you, American Indians, and Alaskan Natives to meet that goal.

Assistant Secretary Swimmer and the Department of Interior Solicitor Tarr are here with me to discuss improved relationships between Indian tribes and the Federal Government, new approaches to funding for the tribes, and to respond to the areas of concern that the Subcommittee may have. Mr. Swimmer has prepared a statement which he would like to summarize for you.

Statement
of the
Assistant Secretary - Indian Affairs
before the Subcommittee on Interior and Related Agencies
Committee on Appropriations
United States House of Representatives

October 27, 1987

Mr. Chairman and Members of the Committee, I appreciate the opportunity to appear before the subcommittee today to discuss current problems and future directions for the Bureau of Indian Affairs. I want to attempt to provide an overall perspective of the far-ranging responsibilities the Administration and the Congress have placed on the Bureau of Indian Affairs.

With the exceptions of national defense and health care, some form of virtually every other federal, state and local program is found in the Bureau of Indian Affairs: BIA operates schools and colleges, police departments, courts, social services, job training and employment programs. It acts as a bank for deposits, payments, investments and credit programs, and as a trustee of tribal and individual Indian assets. The Bureau oversees forests and fisheries, and irrigation and power systems. It employs experts in mining and minerals, and agriculture and archeology. The Bureau builds houses, dams, roads, schools, and jails. Bureau employees operate programs while preparing to work themselves out of a job by providing training and technical assistance to allow tribal contracting. The Bureau must meet federal trust responsibilities while encouraging tribal self-determination.

The Bureau of Indian Affairs is expected to address almost every social and economic ill known to mankind through approximately 100 discrete programs. The BIA provides services to almost 500 tribes and Alaska Native groups in 30 states from California to Maine. Rather than asking why there are problems in the operation of Indian programs, we should ask how anyone can realistically think that one Bureau could fulfill such expectations.

If a member of Congress requests funds to expedite cadastral surveys in his state, the Committee does not add the money to the Smithsonian budget -- it goes to the BLM because they have the expertise. Funds to increase reforestation efforts go to the Forest Service, not the Bureau of Mines. Yet, if these activities were proposed for Indian country, the money would not be added to the Bureau of Land Management or the Forest Service but to the budget of the Bureau of Indian Affairs -- not because we have the best surveyors or the best foresters, but simply and solely because it is an Indian project.

We are all responsible for this anomaly: the Administration, the Congress, and the Indian tribes. No one identifies a need in Indian country and then asks which Federal agency is most capable to do the job. If it's not health related, the responsibility is usually given to the Bureau.

There are obvious reasons for this. We want to hold someone accountable; we want to be able to readily identify expenditures for Indian programs; and we want to ensure that within the competing demands for Federal services, the voice of the Indian people is heard. Title 25 of the Annotated Code is almost 1500 pages long and the regulations governing Indian programs cover more than 800 pages. Felix Cohen's Handbook of Federal Indian Law states: "The federal law governing Indians is a mass of statutes, treaties, and judicial and administrative rulings, that includes practically all the fields of law known to textbook writers -- the laws of real property, contracts, corporations, torts, domestic relations, procedure, criminal law, federal jurisdiction, constitutional law, conflict of laws, and international law. And in each of these fields the fact that Indians are involved gives the basic doctrines and concepts of the field a new quirk which sometimes carries unpredictable consequences." There are over 4,000 different treaties and statutes which have been approved. The Bureau is often criticized for not meeting all of its responsibilities but those responsibilities have become truly monumental, and in some cases, conflicting.

Even with all these duties, it might be possible for the Bureau to operate in a manner which meets with

the approval of the Administration, the Congress, and the tribes -- if everyone could agree on the priorities. What is the most important program of the Bureau -- where should we concentrate most resources and energies? What program is second on the list? And so on, until we can name the least important program of the Bureau of Indian Affairs. I would suggest that if you posed that question -- program specific -- to each tribe and each Member of Congress with an interest in Indian affairs, that you wouldn't get a dozen identical lists. There simply is no agreement on the priorities of the Bureau of Indian Affairs. No agreement among tribes, members of Congress, or even among employees of the Bureau. Without such basic consensus among those who pass the laws, those who are charged to carry out the laws, and those whom the laws are designed to serve, how much of the fault can really be laid on the management of the Bureau?

Let me give an example of what this multiplicity of programs means at the local level: one employee at an agency office in Oklahoma is responsible for certifying general assistance clients and applicants for child welfare assistance. This person also approves expenditures from individual trust accounts held for incapacitated adults and minor children. In addition, this employee oversees the scholarship, adult education, and adult vocational training programs. And for next year, the tribe has recommended that this individual also assume all clerical duties associated with the programs. Which portion of this job should the individual do first and spend the most time on? This is not necessarily an extreme example, because at the agency level, many individual programs have relatively few dollars and small workloads, thus, making it impossible to justify a full-time position for each.

We recognize that the Congress is sincere in its desire to help Indian people. Please believe that we at the Department of the Interior share this desire. I would agree that the administration of Indian programs has been and continues to be plagued with many problems, program deficiencies and shortcomings. I have tried, and will continue to try, to work with Congress and the Indian tribes to resolve these issues. Having served as a tribal chairman for years, when I came to Washington I had some ideas on changes that could be made to improve Bureau operations. A number of these ideas -- none of which was associated with a budget reduction -- met with approval of the Secretary and the Administration and were included in the Bureau's budget proposal for fiscal year 1988: placing control of education programs at the local level; combining a number of disparate programs to create a unified job training - job creation effort as an alternative to welfare; standardizing contract support payments, while including a subsidy to stabilize funding to small tribal governments; and, securing competent, professional, private sector assistance to properly manage one and one-half billion dollars in trust funds. Unfortunately, 'the Bureau apparently did not present a sufficiently compelling case for adoption of these recommendations, as most have met with strong opposition.

In your letter of October 16, 1987 requesting that we appear for this hearing, reference is made to the report of the American Indian Policy Review Commission which stated that present budgetary practices do not provide an equitable share of Federal appropriations for Indian services and that there was one Federal administrator for every 19· Indians. You asked that we be prepared to address ways of assuring a greater pass through of appropriations to tribes themselves rather than to layers of the BIA bureaucracy.

We are prepared to make two very basic recommendations which I believe will accomplish what you seek. Before addressing those, however, I would like to clarify the record regarding the so-called "bloated bureaucracy" of the BIA. Employment in the Bureau of Indian Affairs has decreased by 20 percent since 1976. That is remarkable enough, but when one considers that during this same period of time, the Indian population served by the Bureau has increased by over 30 percent, the difference is

even more striking.

With respect to the recommendations I am about to make, it is understood that working out the details will require time and effort, but it is an effort the Department is willing to make if the tribes and the Congress will do the same. I should also stress that the views set forth in my statement are solely those of the Department of the Interior and should be viewed as such. The development of specific recommendations will require coordination with other affected executive branch agencies prior to submission of an Administration proposal.

First, we should specifically identify those federal programs which deal with the management of Indian trust resources, i.e. lands, minerals resources, and trust funds. Trust programs need to be distinguished from other programs which may be necessary and important, and which may meet very real needs, but do not involve the management of trust assets. I would not argue against the need for other programs in addition to those necessary to fulfill trust responsibilities but "need" does not necessarily equate with "trust responsibilities."

We should then determine if there are other agencies of the Federal Government more capable to upgrade and carry out the various program functions involved in the management of trust assets. These programs should not reside solely within the Bureau of Indian Affairs -- it is a responsibility of the entire Federal Government to ensure that the best available services are provided in connection with the management of Indian lands, resources and trust funds.

The Bureau of Indian Affairs and the Indian Health Service are subject to "Indian preference" in hiring and promotion of employees. I fully subscribe to the intent of Indian preference, and feel that the fact that 83 percent of BIA employees are Indians is proof of our sincere attempts at compliance, but it should be examined in context of changed conditions. Less than one-half of one percent of the population of the United States meets the requirements to be extended Indian preference in Federal hiring. I have been told that of the working-age population, only 47,000 Indians have completed college. The BIA, IHS, national Indian organizations, some Committees of Congress, and hundreds of tribal governments are all competing to obtain the best of a very small workforce. And, of course, not all Indians are interested in working for either the Federal government or tribal governments. Congress has allowed tribal contractors operating programs with Federal funds to waive Indian preference. At a minimum, I think we need to review the categories of employment where we currently have, or are projecting, a shortage and be granted waiver authority at the Federal level.

The following recommendation concerns the operation of all other programs which have not been specifically identified through the foregoing process. Our recommendation is that there be only one other category in the Bureau's budget -- true self-determination grants. We currently have a situation where self-determination is limited to allowing tribes to contract for programs which the Bureau has operated in the past. And, the tribes are supposed to run the programs in much the same way as the Bureau had, being held to the same requirements and regulations. If, for instance, a tribe spends education funds on a social services program, that cost would most likely be disallowed under an audit and the Bureau would be directed to recoup those funds from the tribe. It doesn't matter that the need is real and the funds were put to good use. It only matters that the expenditure was outside the scope of the contract. This occurs because of the large number of separate programs the Bureau is required to operate, since notwithstanding the rhetoric of self-determination, both the Administration and the Congress want to know exactly how much we are spending on every conceivable activity in Indian country.

A formula should be established as the basis for the distribution of these self-determination funds. Since the Bureau's budget is based largely on historical spending, including tribal-specific increases over a number of years, there is currently a great disparity in funds available to similarly situated tribes. In establishing the formula, we would suggest that it be based primarily on a per capita distribution, with some adjustment for small tribes, and perhaps, an adjustment for tribes which have no economic or natural resource base. The per capita distribution should address the expansion of many tribes' membership criteria.

With these self-determination funds the tribes would have complete autonomy in determining what programs would be provided. Tribes not wishing to operate the programs directly could contract with the Bureau to operate the programs for them. Thus, rather than having programs which the tribe can contract from the Bureau, the tribes could design their own programs and contract them to the Bureau, or if they chose, to another Federal or local agency. This would also address the question of the size of the BIA labor force. Once the statutory responsibilities were defined and staff resources identified to meet these responsibilities the size of the BIA workforce would be a result of specific tribal requests for services. It would be necessary to establish some broad parameters in that the use of the funds would have to be legal; that it comport with certain minimum standards with respect to protection of individual rights and public safety; that programs contracted to the Bureau not include requirements which civil servants are not otherwise allowed to perform; and that sufficient advance notice be given for any new program to be contracted to the Bureau so that appropriate staff could be made available.

While these recommendations sound fairly straightforward, I do not underestimate the time and effort that would be involved in reaching a consensus with the tribes and the Congress in identifying those specific activities required to meet the statutory responsibility, or in devising a fair way to distribute the remaining federal resources. Such an undertaking could, however profoundly affect the way the Bureau of Indian Affairs currently operates and would better enable the Department and the Bureau to carry out their responsibilities once we have all agreed on exactly what those programs should be.

It would also provide much needed changes by making self-determination truly meaningful. Responsibility would properly be placed at the tribal level for the design and oversight of programs that respond to local needs. Such action would be consistent with President Reagan's 1983 statement on American Indian policy, which reinforced the policy developed during the Nixon Administration endorsing self-determination and government-to-government relationship with Indian tribes. A policy statement without a concomitant change in structure and direction to implement the policy, has hampered the ability of the Federal government to meet the raised expectations of the Indian people.

True self-determination cannot be limited to programs designed 50 years ago -- or even those designed 15 years ago. Those programs and delivery systems represent Washington's view of what is needed or what will work on reservations; and, being Bureau-wide programs, they also operate on the assumption that what works on the Navajo reservation should work on the Mississippi Choctaw reservation.

True self-determination must mean more, and it is time to revisit the concepts of self-determination and self-government -- not merely to tinker with the law which maintains a contractual relationship between the Bureau and the tribes within. The limitations imposed by pre-established funding levels for specific programs. It is time to give the tribes the responsibility they seek. That concludes my opening statement, Mr. Chairman. We are prepared to discuss the issues raised in the news articles, as well as other matters the Committee may wish to address. While we would have written the news articles differently, at least what was written gives us the opportunity to respond to these concerns.