THE COMPACTS OF FREE ASSOCIATION AND LEGISLATIVE HEARING ON H.R. 2408, H.R. 3407 AND H.R. 4938

OVERSIGHT AND LEGISLATIVE HEARING

BEFORE THE

COMMITTEE ON RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED SEVENTH CONGRESS

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OVERSIGHT HEARING ON THE COMPACTS OF FREE ASSOCIATION AND LEGISLATIVE HEARING ON H.R. 2408, TO PROVIDE EQUITABLE COMPENSATION TO THE YANKTON SIOUX TRIBE OF SOUTH DAKOTA AND THE SANTEE SIOUX TRIBE OF NEBRASKA FOR THE LOSS OF VALUE OF CERTAIN LANDS. YANKTON SIOUX TRIBE AND SANTEE SIOUX TRIBE EQUITABLE COMPENSATION ACT; H.R. 3407, TO AMEND THE INDIAN FINANCING ACT OF 1974 TO IMPROVE THE EFFECTIVENESS OF THE INDIAN LOAN GUARANTEE AND INSURANCE PROGRAM. INDIAN FINANCING ACT REFORM AMENDMENT; AND H.R. 4938, TO DIRECT THE SECRETARY OF THE INTERIOR, THROUGH THE BUREAU OF RECLAMATION, TO CONDUCT A FEASIBILITY STUDY TO DETERMINE THE MOST FEASIBLE METHOD OF DEVELOPING A SAFE AND ADEQUATE MUNICIPAL, RURAL, AND INDUSTRIAL WATER SUPPLY FOR THE SANTEE SIOUX TRIBE OF NEBRASKA, AND FOR OTHER PURPOSES.

Wednesday, July 17, 2002

U.S. House of Representatives

Committee on Resources

Washington, DC

The committee met, pursuant to call, at 2:03 p.m., in room 1324, Longworth House Office Building, Hon. James V. Hansen (Chairman of the Committee) presiding.

STATEMENT OF THE HON. JAMES V. HANSEN, A MEMBER OF CONGRESS FROM THE STATE OF UTAH

The CHAIRMAN. Today we have a number of things going on and so members will be in and out throughout this hearing. We always have trouble with this room and our other room where we never have enough seats for everybody. Now, I am of the opinion, that there are not going to be members that are going to sit down there. So if you folks standing would like to take this bottom tier here, why don't you come up and take it. Now, if you would rather not, and if we are going to intimidate you and embarrass you, then stay where you are. But if you think you can handle it, come on up and take this lower tier here. We would be pleased.

Senator, good to see you again.

Today we are conducting an oversight hearing on the Compacts of Free Association and a legislative on hearing on three Native American bills. The Compact of Free Association outlines the United States relationship with the Federated States of Micronesia and the Republic of the Marshall Islands.

The first bill the Committee will hear testimony on is H.R. 3407, which Congresswoman Mary Bono introduced. This legislation seeks to amend the Indian Financing Act of 1974 to improve the effectiveness of the Indian loan guarantee and insurance program.

The second bill we will hear is H.R. 2408. This bill introduced by Congressman Tom Osborne seeks to provide equitable compensation to the Yankton Sioux tribe of South Dakota and the Santee Sioux tribe of Nebraska for the loss of value of certain lands resulting from the Pick-Sloan Missouri River Basin Program.

The last bill before the Committee is H.R. 4938, also introduced by Congressman Osborne. This legislation seeks to direct the Secretary of the Interior through the Bureau of Reclamation to conduct a feasibility study to determine the best method of developing a safe and adequate municipal rural and industrial water supply for the tribe.

We look forward to hearing from all witnesses today. I would like to express special thanks to the tribal leaders and Compact negotiators for traveling such a long way to be with us at this hearing.

[The prepared statement of Mr. Hansen follows:]

Statement of Hon. James V. Hansen, a Representative in Congress from the State of Utah

Today we are conducting an oversight hearing on the Compacts of Free Association and a legislative hearing on three Native American bills. The Compacts of Free Association outline the United States' relationship with the Federated States of Micronesia and the Republic of the Marshall Islands.

The first bill the Committee will hear testimony on is H.R. 3407, which Congresswoman Mary Bono introduced. This legislation seeks to amend the Indian Financing Act of 1974 to improve the effectiveness of the Indian loan guarantee and insurance program. The second bill we will hear is H.R. 2408. This bill, introduced by Congressman Tom Osborne seeks to provide equitable compensation to the Yankton Sioux Tribe of South Dakota and the Santee Sioux Tribe of Nebraska for the loss of value of certain lands resulting from the Pick–Sloan Missouri River Basin program. The last bill before the Committee is H.R. 4938, also introduced by Congressman Osborne. This legislation seeks to direct the Secretary of the Interior, through the Bureau of Reclamation, to conduct a feasability study to determine the best method of developing a safe and adequate municipal, rural, and industrial water supply for the Tribe.

We look forward to hearing from all the witnesses this morning. I would like to express special thanks to the tribal leaders and compact negotiators for traveling such a long way to be with us at this hearing.

The CHAIRMAN. The ranking gentleman on this is Mr. Underwood from Guam, and we will now turn to Mr. Underwood for any opening statement he may have.

STATEMENT OF THE HON. ROBERT A. UNDERWOOD, A DELEGATE TO CONGRESS FROM GUAM

Mr. UNDERWOOD. Thank you, Mr. Chairman. And thank you for holding these very important hearings on the bills that you have outlined as well as most especially the hearing today on the Compacts of Free Association with the Republic of the Marshall Islands and the FSM. Considering that the Senate held a hearing last December, I am pleased that the House is also moving forward on reviewing the ongoing compacts.

I would like to reiterate my strong statement, my strong support for the Compact Agreement. I believe it is in the national interest to ensure that we continue to strengthen our relationships with these two Freely Associated States by continuing U.S. financial assistance and by promoting economic self-sufficiency. I was pleased to help in hosting a briefing last Friday for Senate and House staff to hear firsthand from RMI and FSM officials on the importance of the Compact Agreement to their respective countries.

When the U.S. first entered into the Compacts of Free Association in 1986, many of our Congressional colleagues who were themselves World War II veterans or Peace Corps. Volunteers in the Pacific were familiar with the history of the former U.S. Trust Territory and their strategic importance to this country. Now, nearly 20 years later, one of the greatest challenges we face seems to be the lack of institutional memory on the RMI and FSM among Congressional members and staff. This is why today's hearings and staff briefings are crucial.

Given my home island's geographic proximity and economic and political interdependence with each of these two nations, I believe the Compacts have generally been beneficial to Guam, the region, and most especially U.S. national security in the Western Pacific. In the context of the ongoing negotiations, I know that there are issues of accountability, the nature of economic development, and the role of various Federal agencies and the implementation of the Compacts. However, we must always be mindful of the fundamental basis for the Compacts and the historical development in the region. We were and still are the primary force in the region's development; their economic difficulties or political setbacks, we have to examine our own historical record and influence.

We have a fundamental obligation to adequately fund the Compacts, to ensure political stability, and most importantly to foster economic development. The fruits of our efforts will be enjoyed by Micronesians and Americans alike in the region. And we must also recognize that the economies of Guam, the Northern Mariana Islands and Hawaii are also enhanced by the economic assistance of the Compacts.

Last, as we look at the issues of financial assistance and continuing Federal services, I want to say that the issue of migration should also be reviewed by Congress. It is frustrating sometimes for impacted jurisdictions like Guam to have to continually fight to secure Compact impact aid from the Office of Insular Affairs budget at the Interior Department since O I A's budget is very small to begin with. Any Compact agreement that leaves Congress must have a provision that would ensure that perhaps U.S. Department of Education, Health and Human Services be provided with the authority to provide Compact impact aid to affected U.S. jurisdictions. The U.S. Government should redouble its efforts to address the adverse impacts on the U.S. Areas of the Pacific.

I look forward to working with members of the House Resources Committee and the International Relations Committee on these important issues, and I would like to acknowledge, again, the presence of so many friends here today.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Underwood follows:]

Statement of Hon. Robert A. Underwood, a Delegate to Congress from Guam

Mr. Chairman, thank you for holding this important hearing today on the Compacts of Free Association with the Republic of the Marshall Islands and the Federated States of Micronesia. Considering that the Senate Energy and Natural Resources Committee held a hearing last December, I am pleased that the House is also moving forward on reviewing the ongoing Compact negotiations.

I would like to reiterate my strong support for the Compact agreements. I believe that it is in the national interest to ensure that we continue to strengthen our relationships with these two Freely Associated States by continuing U.S. financial assistance and promoting economic self-sufficiency. I was pleased to help in hosting a briefing last Friday for Senate and House staff to hear first hand from RMI and FSM officials on the importance of the Compact agreements to their respective countries. I understand that the State Department has provided similar briefings.

When the United States first entered into the Compact of Free Association in 1986, many of my Congressional colleagues who were World War II veterans or Peace Corps volunteers in the Pacific, were familiar with the history of the former U.S. trust territories and their strategic importance to our country. Now, nearly twenty year later, one of the greatest challenges we seem to face is the lack of institutional memory on the RMI and FSM among Congressional Members and staff. That is why today's hearings and staff briefings are crucial.

Given Guam's geographical proximity and economic and political interdependence with each of these two nations, I believe that the Compacts of Free Association has been beneficial to Guam, the region and to U.S. national security in the Western Pacific. In the context of the ongoing negotiations, I know that the issues of accountability, the nature of economic development, the role of various federal agencies in the implementation of the compacts. However, we must always be mindful of the fundamental basis for the compacts and the historical development of the region. We were and still are the primary force in the region's development. If there are economic difficulties or political setbacks, we have to examine our own historical record and influence. We have a fundamental obligation to adequately fund the compacts, to ensure political stability and, most importantly, to foster economic development. The fruits of our efforts will be enjoyed by Micronesians and Americans alike in the region. We must recognize that the economies of Guam, the Commonwealth of the Northern Mariana Islands, and even Hawaii are enhanced by the economic assistance of the compacts.

Lastly, as we look at the issues of financial assistance and continuing federal services for these nations, I simply want to say that the issue of migration should be reviewed by Congress. It is frustrating at times for impacted jurisdictions to have to fight to secure Compact Impact Aid from the Office of Insular Affair's budget at the Interior Department, particularly since OIA's budget is small to begin with. Any Compact agreement that leaves Congress must have a provision that would ensure that the Departments of Education and Health and Human Services, at a minimum, be provided with the authority to provide Compact Impact Aid to affected U.S. juris-

dictions. The U.S. government should redouble its efforts to address the adverse impact on the U.S. areas of the Pacific.

I look forward to working with the members of House Resources Committee and the International Relations Committee on these important issues.

The CHAIRMAN. I will thank the gentleman.

The gentleman from Nebraska, Mr. Osborne? Mr. Rehberg?

If not, we are grateful for having you here at this time. And our first panel is Mr. Peter T.R. Brookes, Deputy Assistant Secretary for Asian and Pacific Affairs, Department of Defense; Mr. David B. Cohen, Deputy Assistant Secretary of Insular Affairs, Department of Interior; Albert V. Short, Chief Compact Negotiator, Bureau of East Asian and Pacific Affairs, Department of State; and Susan S. Westin, Managing Director of International Affairs and Trade, General Accounting Office.

The CHAIRMAN. Now, folks, you see in front of you this little gizmo? It is just like a traffic light. The green means go, the yellow means wrap it up, and the red means stop. If you happen to go over a little bit, I normally would be happy to let you go a short time, but Mr. Osborne may gavel you down, I don't know. That is up to him. But we would appreciate it if you would kind of hold it in that time.

And there is going to be votes coming up. We have been waiting for a vote on a very interesting amendment right now and a lot of things, so it is the in-and-out game. And we apologize to you, but that is the way it is played around here.

With that, I will turn the gavel over to Mr. Osborne. And Mr. Brookes, we recognize you for 5 minutes.

STATEMENT OF PETER T.R. BROOKES, DEPUTY ASSISTANT SECRETARY, ASIAN AND PACIFIC AFFAIRS, DEPARTMENT OF DEFENSE

Mr. BROOKES. Thank you. Mr. Chairman and members of the Committee, thank you for the opportunity to present the Department of Defense's views on the Compact of Free Association and our security relationship with the Freely Associated States (FAS). The Department of Defense has a deep appreciation for the value of our relationship with the Freely Associated States. We cannot and should not forget the price paid by American servicemen in liberating these islands during World War II. During the cold war, these islands and the peoples also played a critical role in development of crucial U.S. defense programs. Even now, the FAS is playing an important role in development of U.S. Missile defenses, which will guard the U.S. and its allies and friends in the decades to come. Moreover, FAS citizens are also involved in the war of terrorism, serving alongside of American servicemen and women in the U.S. Armed Forces.

Mr. Chairman, as you know, the U.S. has unique defense responsibilities to these sovereign nations under the Compact of Free Association. The Compact and subsequent agreements commit the United States to provide for the security and defense of the Freely Associated States in perpetuity. We are committed to defend these nations and their peoples from attack or threat of attack as "the United States and citizens are defended." This is an obligation

greater than the United States has assumed under any of its other mutual defense treaties.

In return, the United States has the right for certain military uses and access, including Kwajalein Atoll, for missile testing and space operations, the right to deny access to the Freely Associated States to third countries, and the ability to block actions by the FAS governments that might be incompatible with U.S. defense authority and responsibilities. DoD believes that it is in our best interest to maintain the full range of military access, use, and security cooperation options that the Compact provides.

The primary goal of the Compact and the assistance provided thereunder is to maintain our special relationship with the Freely Associated States while helping them to become economically self-sufficient. Continued Compact assistance will help preserve key U.S. national security interests while denying potentially hostile forces access to the region, and supporting the Freely Associated States' efforts to work toward their international goals. This is a win-win situation for both the United States and the Freely Associated States.

In 1999, in preparation for the Compact of Free Association negotiations, the Department of Defense conducted a study to determine our defense and security-related interests in the Freely Associated States for the post 2001 era. The study looked at issues such as the need for continued access, current and future threats, and the roles that the Freely Associated States might play in future conflicts. The study found an important defense interest in continuing the use of the Kwajalein missile range and the facilities on Kwajalein Atoll. The requirements are missile defense, intercontinental ballistic missile, space operations and surveillance programs combined with the uniqueness of Kwajalein's location and infrastructure investment make renewal of the Compact in the best interests of the Department of Defense.

The study also concluded that the defense rights contained in the current Compact should be retained. This year, a DoD reassessment determined that the study was, in fact, still valid.

Mr. Chairman, it would be unwise to assume that the end of the cold war events or events since then have lessened the strategic importance of the Freely Associated States to U.S. national security interests. In fact, the 2001 Quadrennial Defense Review highlighted uncertainty as an important characteristic of the likely future security environment in Asia as well as the increasing importance of the region to our future.

Further, unrest and points of potential military conflict continue to populate the Asian Pacific region. For instance, North Korea retains the offensive capability of inflicting massive damage on South Korea and U.S. forces stationed there and in the region.

Regrettably, a peaceful resolution to Taiwan's future cannot be taken for granted. Territorial disputes in the South China Sea and Northeast Asia remain unresolved, and could serve as potential flashpoints. Indonesia's road toward democracy faces both opportunities and challenges. As we are all aware, terrorist groups are or have been present in many countries in Southeast Asia, including the Philippines, Malaysia and Singapore.

Mr. Chairman, in conclusion it is our judgment that the current threats and future uncertainty make it essential that we continue the Compacts of Free Association and our associated defense rights contained therein. Thank you very much.

Mr. OSBORNE. [presiding.] Thank you, Mr. Brookes.

[The prepared statement of Mr. Brookes follows:]

Statement of Peter T.R. Brookes, Deputy Assistant Secretary of Defense for Asian and Pacific Affairs, Office of the Assistant Secretary of Defense for International Security Affairs, Department of Defense

The Department of Defense has a deep appreciation of the value of our relationship with two of the Freely Associated States (FAS) the Republic of the Marshall Islands (RMI) and the Federated States of Micronesia (FSM). We cannot, and should not, forget the price paid by American servicemen in liberating these islands during World War II. During the Cold War, these islands and peoples also played a critical role in the development of crucial US defense programs. Even now, the FAS is playing an important role in the development of U.S. missile defenses that will guard the U.S. and its allies and friends in the decades to come. Moreover, FAS citizens are also involved in the war on terrorism, serving alongside American servicemen and women in the U.S. armed forces.

Defense relationship with the Freely Associated States (FAS)

The U.S. has unique defense responsibilities to these sovereign nations under the terms of the Compact of Free Association. The Compact and subsequent agreements commit the United States to provide for the security and defense of the Freely Associated States in perpetuity. We are committed to defend these nations and their peoples from attack or threat of attack "as the United States and its citizens are defended. This is an obligation greater than the United States has assumed under any of its mutual defense treaties. In return, the United States has the right to certain military uses and access, the right to deny access to third countries ("strategic denial") and the ability to block actions by the FAS governments that might be incompatible with U.S. defense interests (the "defense veto").

In the absence of the Compact, the Mutual Security Agreement (MSA) provides for U.S. defense obligations to the FAS, albeit at a slightly reduced level, and the denial of military access by third countries. The MSA is indefinite in duration and remains in force until terminated or amended. The rights of the defense veto and provisions for military access and use currently contained in the Compact, however, will terminate with the expiration of the Compact on 30 September 2003 unless the Compact is extended. DoD believes that it is in our best interest to maintain the full range of military access, use, and security cooperation options and rights that the Compact provides.

In addition, U.S. rights for access and use on Kwajalein Atoll were negotiated with the RMI under the Military Use and Operating Rights Agreement (MUORA) pursuant to, but separate from, the Compact. The MUORA had an original term of 15 years that was due to expire in 2001. Given the importance of the agreement to our operations on Kwajalein Atoll, the U.S. opted in 1999 to extend the MUORA for an additional term of 15 years to 2016. This extension allows continued U.S. access to, and use of, Kwajalein Atoll defense sites.

While the use of Kwajalein can be extended under the MUORA separate from Compact negotiations, the two are nevertheless inextricably linked. The daily routine at the Kwajalein Missile Range and the facilities on Kwajalein Atoll depend upon a positive working relationship with the people of the Marshall Islands. Provisions in the Compact help provide the basis for U.S. support to the Marshallese people who provide much of the labor force on Kwajalein Atoll. The Compact therefore helps to maintain a positive local attitude toward U.S. facilities and operations on Kwajalein.

The primary goal of the Compact and the assistance provided thereunder is to maintain our special relationship with the Freely Associated States while helping them to become economically self-sufficient. In addition, continued Compact assistance will help preserve key U.S. national security interests while denying potentially hostile forces access to the region and supporting the Freely Associated States" efforts to work toward their national goals.

DoD Study of Defense Interests in the FAS

In 1999, in preparation for the Compact of Free Association negotiations, the Department of Defense conducted a study to determine our defense and security-related interests in the Freely Associated States for the post–2001 era. The study looked at issues such as the need for continued access, current and future threats, and the roles that the Freely Associated States might play in future conflicts. The study found an important defense interest in continuing the use of the Kwajalein Missile Range and the facilities on Kwajalein Atoll. The requirements of our missile defense, intercontinental ballistic missile, and space operations and surveillance programs, combined with the uniqueness of Kwajalein's location, and infrastructure investment make renewal of the Compact in the best interest of the Department of Defense. The study also concluded that the defense rights contained in the current Compact should be retained.

This year DoD reviewed the 1999 study to ensure that its conclusions had not been affected by several key changes in the strategic environment since the study was completed. The DoD reassessment determined that the results of the study are, in fact, still valid.

The Quadrennial Defense Review

The October 2001 Department of Defense Quadrennial Defense Review (QDR) recognized that Americans must prepare for a wider array of threats to our security at home and abroad than before. As evidenced by the terrorist attacks of September 11th, the future security environment will be characterized by uncertainty. The QDR's assessment of the global security environment acknowledges uncertainty about the potential sources of military threats, the conduct of war in the future, and the form that threats and attacks against the U.S. and American interests will take. While contending with uncertainty is a key challenge for U.S. defense policy and planning, maintaining the Compact will support our efforts to confront these current and future challenges in the Asia–Pacific region.

The QDR identifies Asia as a region of tremendous importance that is gradually emerging as an area susceptible to large-scale military competition. It identifies an "arc of instability" stretching from the Middle East to Northeast Asia containing a volatile mix of rising and declining regional powers. Many of these states also field large militaries that possess or have the potential to develop or acquire weapons of mass destruction. The QDR also sees the possibility of the rise of a military competitor to the U.S. with a formidable resource base emerging in the region.

Distances in the Asian theater are vast, and the density of U.S. basing and en route infrastructure is lower than in other critical regions. Moreover, the U.S. has less assurance of access to facilities in the Asia–Pacific region than in some other regions. The QDR, therefore, identifies the necessity of securing additional access and infrastructure agreements and developing military systems capable of sustained operations at great distances with minimal theater-based support.

The QDR also calls for a reorientation of the U.S. military posture in Asia. The U.S. will continue to meet its defense and security commitments around the world by maintaining the ability to defeat aggression in two critical areas in overlapping timeframes. As this strategy and force planning approach is implemented, the U.S. will strengthen its forward deterrent posture. Over time, U.S. forces will be tailored to maintain favorable regional balances in concert with U.S. allies and friends with the aim of swiftly defeating attacks with only modest reinforcement.

To this end, the U.S. Navy will increase aircraft carrier battlegroup presence in the Western Pacific and will explore options for homeporting an additional three to four surface combatants and several guided cruise missile submarines (SSGNs) in the region. The U.S. Air Force will develop plans to increase contingency basing in the Pacific and Indian Oceans and ensure sufficient en route infrastructure for refueling and logistics to support operations in the Western Pacific area and beyond. The Marine Corps will explore the feasibility of conducting training for littoral warfare in the Western Pacific.

While it is too soon to say whether the FAS will be considered as candidates for increased U.S. access, basing, or operations, our rights under the Compact provide for sympathetic and prompt consideration by the FAS governments of any such request by the U.S. In this region of potential instability and conflict, the U.S. right of strategic denial and the defense veto under the Compact are significant. Strategic denial effectively creates a stable and secure zone across a broad swath of the Western Pacific in which we can deny military basing rights to any potentially hostile third country, as well as prevent other actions that might be incompatible with U.S. security interests.

Missile Defense

Another important change since the 1999 study is President Bush's strong commitment to missile defense. The President took this step as part of a broader change in our defense and security policy to reflect new threats that we and our allies and friends face. As a result of the withdrawal from the Anti–Ballistic Missile Treaty we are now free to develop, test, and deploy effective defenses against missile attack by rogue states like North Korea, Iraq, and Iran—states that are investing a large percentage of their resources to develop weapons of mass destruction and offensive ballistic missiles.

This growing threat to the U.S., our allies and friends is compounded by the fact that the states that are developing these terror weapons have close links to a variety of terrorist organizations. States or even non-state actors could launch missiles against the U.S. As the President said in this year's State of the Union address, we must not allow the world's most dangerous regimes to threaten us with the world's most dangerous weapons.

The U.S. missile defense program is now executing an aggressive research, development, test, and evaluation (RDT&E) program focusing on a single integrated ballistic defense missile system designed to defend against ballistic missiles of all ranges and in all phases of flight. Although we have not identified specific tests beyond 2008, we envision that testing will continue well beyond the expiration of the current use agreement for the U.S. Army Kwajalein Atoll test site in 2016. Therefore, we anticipate that Kwajalein Atoll will remain a significant resource for future missile defense testing.

Conclusion

It would be unwise to assume that the end of the Cold War or events since then have lessened the strategic importance of the FAS to U.S. national security interests, especially in light of the uncertainty that will characterize the future security environment in Asia. North Korea retains the offensive capability to inflict massive damage on South Korea and U.S. forces stationed there and elsewhere in the region. Regrettably, a peaceful resolution to Taiwan's future cannot be taken for granted. Territorial disputes in the South China Sea and Northeast Asia remain unresolved and could serve as potential flashpoints. Indonesia's road toward democracy faces both opportunities and challenges. Terrorist groups are, or have been, present in many countries in Southeast Asia including the Philippines, Malaysia and Singapore. These threats and uncertainties make it essential that we continue the Compact of Free Association and our associated defense rights.

Mr. OSBORNE. Mr. Cohen.

STATEMENT OF DAVID B. COHEN, DEPUTY ASSISTANT SECRETARY, INSULAR AFFAIRS, DEPARTMENT OF INTERIOR

Mr. COHEN. Thank you. Mr. Chairman and members of the Committee, I am David Cohen, Deputy Assistant Secretary of the Interior for Insular Affairs. It is we pleasure that I make my first appearance before you today to discuss proposed amendments to provisions of the Compact of Free Association with the Republic of the Marshall Islands and the Federated states of Micronesia.

I will focus my comments on the fiscal and economic provisions found in Title 2 of the Compact. In particular, I will discuss how proposed amendments to these provisions are designed to address the very legitimate concerns that the General Accounting Office, the Department of the Interior, and others have raised with respect to the lack of accountability for Federal funds provided under the Compact.

Over the 17-year life of Compact funding, it is expected that the U.S. will ultimately have paid a total of $1.04 billion in direct grants to the RMI and 1.54 billion to the F SM. There have been few restrictions on these grants.

Over the last several years, the G A O has issued a number of reports that have raised valid concerns about the effectiveness of

the Federal assistance that has been provided under the Compact. We at the Department of the Interior have had similar concerns for quite some time.

The Department of the Interior, and particularly the staff at the Office of Insular Affairs, has been greatly frustrated with not having the tools to properly administer or track Federal assistance in a manner that could reasonably ensure that such assistance is having the intended effect. Most importantly, we have been hampered by the fact that the Compact provides for large, loosely defined grants with no enforcement mechanisms to ensure the efficient and effective expenditure of funds. I am pleased that the U.S. proposal in this round of Compact negotiations has been very focused on addressing the concerns raised by the GAO, by the Department of the Interior, and by others.

Specifically, the U.S. proposal is that direct financial assistance under the amended Compact and related agreements will be provided as follows:

First, U.S. assistance will be in the form of annual performance-based sector grants for each of the following purposes: Education, health, private sector development, capacity building in the public sector, environmental protection, and public infrastructure.

Second, the allocation of the sector grants for each state initially will be proposed by the applicable state but must be approved by a joint Committee of representatives of the U.S. and the applicable state. The majority of the members on each of these joint Committees will represent the U.S. Each joint Committee will be obligated to ensure that U.S. funds are allocated in a manner consistent with the goals and objectives of the Compact.

In addition to approving the allocation of the sector grants, the joint Committee would review macroeconomic progress against defined goals and objectives, coordinate programmatic assistance from other donor countries and organizations, address issues raised in audits, review sector grant performance outcomes, budgets, and terms and conditions and evaluate progress with an eye to increasing the effectiveness of U.S. assistance.

Third, the sector grants would be subject to terms and conditions similar to those applicable to grants provided to State and local governments in the U.S. These grants would include conditions and objective performance measures. Other special conditions or restrictions that may be imposed by the U.S. in appropriate circumstances include payment on a reimbursement basis, denial of authority to proceed to the next phase until there is acceptable performance, additional reporting, additional project monitoring, additional technical or management assistance, and additional prior approvals.

Fourth, U.S. assistance would be subject to appropriate remedies for non-compliance including the withholding of assistance and the right to recover funds spent improperly.

Fifth, the Department of the Interior has requested funding to hire eight additional full-time employees to ensure that such funds go to the prescribed sectors for approved purposes and according to express grant conditions.

Finally, Mr. Chairman, I would like to address the very important question of the effect that migration from the RMI and FSM

as authorized by the Compact has had on Hawaii, Guam, and the Northern Mariana Islands. Migrants have made important contributions to these states and territories, but have placed additional burdens on the local governments because of their utilization of services. The GAO reported significant outlays by Hawaii, Guam and the Northern Mariana Islands in aid of the migrants and their families. With this history in mind, we are working to address the impact of Compact migration. Primarily, we are looking at ways to provide compensation to the affected jurisdiction of Guam, Hawaii, and the Northern Mariana Islands to mitigate the impact of migration.

Mr. Chairman, the Department of the Interior believes that when the U.S. comes to full agreement with our negotiating partners, we will have the means to ensure that future U.S. financial assistance will be spent in a manner that gives us a chance to achieve meaningful results. The Compact has already achieved its purpose in the geopolitical sphere, with districts of the former trust territory having successfully transformed themselves into sovereign states. We now have to duplicate that success in the economic arena by helping these states create conditions to eventually achieve true economic empowerment and self-reliance.

Thank you, Mr. Chairman.

Mr. OSBORNE. Thank you, Mr. Cohen.

[The prepared statement of Mr. Cohen follows:]

Statement of David B. Cohen, Deputy Assistant Secretary for Insular Affairs, United States Department of the Interior

Mr. Chairman and members of the Committee on Resources, I am David B. Cohen, Deputy Assistant Secretary of the Interior for Insular Affairs. It is with pleasure that I make my first appearance before you today to discuss this nation s negotiations regarding proposed amendments to the funding, program assistance, and other provisions of the Compact of Free Association (Compact) with the Republic of the Marshall Islands (the RMI) and the Federated States of Micronesia (the FSM).

I will focus my comments on the fiscal and economic provisions found in Title Two of the Compact. In particular, I will discuss how proposed amendments to these provisions are designed to address the very legitimate concerns that the General Accounting Office (GAO), the Department of the Interior and others have raised with respect to the lack of accountability for federal funds provided under the Compact.

COMPACT DESCRIPTION

Under the direction of the Interagency Group on Micronesia, chaired by the Department of State, the President s Personal Representative for Micronesian Status Negotiations negotiated the original Compact with representatives of what would become the RMI and the FSM. As a result of the Compact, these nations are commonly referred to as the "freely associated states" (FAS). The Compact was implemented in 1986. Palau also became a freely associated state through a subsequent Compact of Free Association, but I will use the term FAS to refer only to the original freely associated states of the RMI and the FSM.

The documents that define the relationship between the United States and the FAS include: the Compact as negotiated; the numerous subsidiary agreements to the Compact; Public Law 99–239, through which the Congress approved the Compact; and other legislation subsequently enacted by the Congress.

The Compact sets forth the elements of the relationship between the United States and each of the FAS in four titles: Governmental Relations, Economic Relations, Security and Defense Relations and General Provisions. However, the Governmental Relations and Economic Relations titles were substantially altered by the Congress during and after the approval process. Title One of the negotiated Compact (Governmental Relations) did not originally envision recognition of the FAS as fully independent nations in the international community. Shortly after the Compact was implemented in 1986, the Administration, in office at the time, proposed

legislation, which Congress approved, upgrading diplomatic relations so that they conformed to the standards of the Geneva Convention.

The role of the Department of the Interior is focused on Title Two Economic Relations—because the Congress, in section 105(b) (2) of Public Law 99–239, provided that all appropriations under the Compact must be made to the Secretary of the Interior. Congress also assigned responsibility to the Secretary of the Interior to coordinate and monitor United States domestic programs in the FAS.

Title Two of the existing Compact deals with both financial assistance and program assistance.

First, I will briefly describe financial assistance. Over the seventeen-year life of Compact funding, it is expected that the United States will ultimately have paid a total of $1.04 billion to the RMI and $1.54 billion to the FSM in direct financial assistance. These amounts exclude federal program assistance. Most of this financial assistance has been guaranteed by the full faith and credit of the United States. There have been few restrictions on the ability of each FAS to use this direct financial assistance; this approach was thought at the time to be consistent with each FAS's newly acquired rights of national sovereignty. One restriction, however, was a provision in the Compact requiring forty percent of the direct financial assistance under section 211 to be spent on capital development. Even this restriction was of questionable use because the requirement was over the life of the Compact, not annual; it did not include inflation adjustments even though such adjustments were identified with specific Compact provisions; and the definition of acceptable capital uses was extremely broad.

Second, with respect to program assistance, under section 221(a), the United States agreed to provide the FAS with the services of the Weather Service, the Federal Emergency Management Agency, the Postal Service, the Federal Aviation Administration and the Civil Aeronautics Board (which was abolished prior to Compact implementation). While the costs of these services cannot be exactly determined until after they are rendered, the Department of the Interior has provided partial reimbursement to these agencies of nearly $100 million for their operations in the two countries.

Section 224 of the Compact currently provides that additional United States program assistance may be extended from time to time by the Congress. The Congress has utilized its authority extensively. Section 105(h)(1) of the legislation approving the Compact (P.L. 99–239) extended to the FAS the programs of the Legal Services Corporation, the Public Health Service and the Farmers Home Administration. The Compact legislation, in sections 102(a) and 103(a), extended law enforcement and illegal drug enforcement programs to the RMI and the FSM, and section 103 also extended agricultural and food programs and radiological health care to the RMI. Additionally, as partial compensation for the removal by Congress of tax and trade incentives that had been negotiated into the Compact, the Congress extended to the FAS, in section 111(a) of the Compact legislation, the programs of the Federal Deposit Insurance Corporation, the Small Business Administration, the Economic Development Administration, the Rural Electrification Administration, the Job Training Partnership Act, the Job Corps and the marine resource and tourism programs of the Department of Commerce. The Compact legislation in section 105(l) authorizes the following federal agencies to provide technical assistance (nonreimbursable) to the FAS: the Forest Service, the Soil Conservation Service, the Fish and Wildlife Service, the National Marine Fisheries Service, the United States Coast Guard and agencies providing assistance under the national Historic Preservation Act. Finally, all United States domestic programs originally scheduled for immediate termination upon implementation of the Compact were instead subject to a three-year phase-out under sections 105(c)(2) and 105(i)(2) of the Compact legislation.

This pattern of extending FAS eligibility for United States domestic programs and services under Compact section 224 has continued since the enactment of the legislation that originally approved the Compact. Under the terms of the Compact as originally negotiated, FAS citizens would have been eligible for Pell post-secondary education grants only for the first four years of the Compact; this four-year limitation was removed by Congress in legislation enacted in 1988. The FAS also were allowed to receive Department of Education programs through the Pacific Regional Education Laboratory.

It is important to note that the Compact, as originally negotiated, anticipated that all United States domestic assistance programs would be terminated and the few remaining services would be budgeted under Compact section 221(a) through the Department of the Interior. When the Congress extended additional domestic assistance programs to the FAS, however, it did not direct that they be budgeted and administered through this unified appropriation to the Department of the Interior. They were instead budgeted and administered by each United States federal agency.

These individual extensions by the Congress compromised the concept of a supervisory role for the Department of the Interior as stated in section 105(b)(3) of the legislation approving the Compact. This lack of budgeting through a unified appropriation for the FAS made it difficult to track such programs, and made it virtually impossible for the Department of the Interior to direct or even influence programatic decisions of other federal agencies. The GAO estimates that from 1987 through 2001, federal agencies have provided approximately $700 million in federal program benefits to the RMI and FSM.

GENERAL ACCOUNTING OFFICE ASSESSMENT

Over the last several years, the GAO has issued a number of reports that have raised valid concerns about the effectiveness of the federal assistance that has been provided to the FAS under the Compact. We at the Department of the Interior have had similar concerns for quite some time. The Department of the Interior, and particularly the staff at the Office of Insular Affairs, has been greatly frustrated with not having the tools to properly administer or track federal assistance in a manner that could reasonably ensure that such assistance is having the intended effect. Most importantly, we have been hampered by the fact that the Compact provides for large, loosely-defined grants to be provided to the FAS, backed by the full faith and credit of the United States, and with no enforcement mechanism to ensure the efficient and effective expenditure of funds. I'm pleased that the United States' proposal in this round of Compact negotiations has been very focused on addressing the concerns raised by the GAO, by the Department of the Interior and by others.

ADDRESSING CONCERNS

The Office of Insular Affairs has endured years of frustration with having been given an ill-defined mission with respect to the Compact and with not having the tools to do its job. Officials of the Office of Insular Affairs began insisting, prior to the current negotiations and before the issuance of the GAO reports, that the "no strings attached" grants of the original Compact be replaced by a program with clearly defined goals, clear and detailed terms and conditions, effective reporting and monitoring provisions and effective enforcement procedures, including the withholding of funds. The United States' proposal addresses these concerns.

Specifically, the United States' proposal is that direct financial assistance to the FAS under the amended Compact and related agreements will be provided as follows:

First, United States assistance will be in the form of annual, performance-based sector grants for each of the following purposes: education, health, private sector development, capacity building in the public sector, environment, and public infrastructure.

Second, the allocation of the sector grants for each FAS initially will be proposed by the applicable FAS, but must be approved by a joint committee of representatives of the United States and the applicable FAS. The majority of the members on these joint committees will represent the United States. This joint committee will be obligated to ensure that United States funds are allocated in a manner consistent with the goals and objectives set forth in the Compact. In addition to approving the allocation of the sector grants, the joint committee would (1) review macroeconomic progress against FAS goals and objectives, (2) coordinate programatic assistance from other donor countries and organizations, (3) address issues raised in audits, (4) review sector grant performance outcomes, budgets, and terms and conditions and (5) evaluate progress with an eye to increasing the effectiveness of United States assistance.

Third, the sector grants provided under the Compact would be subject, at a minimum, to terms and conditions similar to those applicable to grants provided by the federal government to state and local governments in the United States. The grants would include conditions and objective performance measures. A subsidiary fiscal procedures agreement would memorialize these procedures. Generally, grant terms and conditions will include conformance with plans, strategies, budgets, project specifications, architectural and engineering specifications and performance standards. Moreover, the United States may add requirements needed to achieve sector grant goals. Other special conditions or restrictions that may be imposed by the United States in appropriate circumstances include: (1) payment on a reimbursement basis, (2) denial of authority to proceed to the next phase of the grant until there is evidence of acceptable performance on the prior phase, (3) additional reporting, (4) additional project monitoring, (5) additional technical or management assistance and (6) additional prior approvals.

Fourth, United States assistance would be subject to appropriate remedies for noncompliance with conditions and requirements, including the withholding of as-

sistance and the right to recover funds spent improperly. Thus, if an FAS government failed to cooperate on the prosecution of an individual responsible for improprieties with respect to Compact funds, the United States would have the right to withhold funds from either the specific sectoral grant involved, or, if serious enough, all of the funding for the country involved.

Fifth, United States assistance would be the subject of oversight by Department of the Interior officials. The Department has requested that the Congress appropriate funding to hire eight full-time employees who will analyze the spending of United States funds and ensure that such funds go to the prescribed sectors, for approved purposes, and according to express grant conditions.

It is not our intention to micromanage the affairs of the RMI or the FSM. Our highest duty, however, is to ensure that the hard-earned money of the American taxpayer is not wasted and that RMI and FSM become self-reliant. The United States proposed amended Compact would not undermine the sovereignty or policy choices of the governments of the RMI and FSM within the sector grant framework. To the extent, however, that either government chooses to accept United States financial assistance pursuant to the Compact, we intend to impose conditions that are reasonably designed to ensure that our taxpayer dollars will achieve the intended results.

On the related subject of federal program coordination, we are exploring within the Administration the establishment of a mechanism to clearly define the roles of federal agencies, including a requirement that those agencies providing program assistance report to the Departments of the Interior and State on relevant details of the programs they administer in the RMI and FSM.

Finally, Mr. Chairman, I would like to address the very important question of the impact of FAS migration on Hawaii and those United States territories that have experienced a heavy influx of people from the FAS. Since the Compact became effective in 1986, thousands of citizens of the RMI and FSM have migrated to Hawaii, Guam and the Northern Mariana Islands. This migration has brought us many hardworking tax paying individuals who have contributed significantly to these American economies. At the same time, however, these migrants have placed additional burdens on the state and territorial governments because of their utilization of education, health and law enforcement services. Hawaii, Guam, and the Northern Mariana Islands annually report on these impacts of the Compact. The General Accounting Office reported significant outlays by Hawaii, Guam, and the Northern Mariana Islands in aid of the migrants and their families.

With this history in mind, we are working to address the impact of FAS migration. We are considering three approaches to the issue. First, we are looking at ways to provide compensation to the affected jurisdictions of Guam, Hawaii, and the Northern Mariana Islands to mitigate the impact of migration. Second, we are working with the Compact negotiator to explore mechanisms to minimize the costs associated with migration, particularly including important Administration proposals for reform of the Compact to strengthen application of immigration laws. Third, the new financial assistance proposal is aimed at improving the health and education of potential migrants, which may reduce the volume and impact of migration.

Mr. Chairman, the Department of the Interior believes that, when the United States comes to full agreement with our negotiating partners, we will have the means to ensure that future United States financial assistance to the Marshall Islands and the Federated States of Micronesia will be spent in a manner that gives us a chance to achieve meaningful results. The Compact has already achieved its purpose in the geopolitical sphere, with components of the former Trust Territory having successfully transformed themselves into sovereign countries. We now have to duplicate that success in the economic arena, by helping these countries create conditions to achieve true economic empowerment and self-reliance.

The achievement of economic self-reliance will be not be easy for the isolated, resource-poor islands that make up these FAS. However, I am confident that the United States' proposal, with its creation of a trust fund, is adequate to meet our overall objective.

The CHAIRMAN. Mr. Short.

STATEMENT OF ALBERT V. SHORT, CHIEF COMPACT NEGOTIATOR, BUREAU OF EAST ASIAN AND PACIFIC AFFAIRS, DEPARTMENT OF STATE

Mr. SHORT. Mr. Chairman, members of the Committee, thank you for this opportunity to testify on the Administration's progress in Compact negotiations with the Federated States with Micronesia (FSM) and the Republic of the Marshall Islands (RMI).

Over the past 6 months, the U.S. has tabled language with both countries to amend the Compact of Free Association. The U.S. proposal reflects the following:

First, the U.S. and the two Freely Associated States have reaffirmed their commitment to the special relationship of free association.

Second, to end annual mandatory financial assistance from the United States after a period of 20 years and to replace these with trust fund arrangements.

The RMI and the FSM have affirmed their commitment to an economic development strategy based on public sector accountability and private sector expansion, and to maintain mutually acceptable comprehensive development plans.

Finally, the U.S., FSM, and RMI have agreed to continue their defense and security relationship. The U.S. Administration is now seeking final ad referendum agreement from the FSM and RMI on our financial and other Compact proposals in order to submit the amended Compact package with key subsidiary agreements to the Congress.

The U.S. financial proposal. The U.S. proposes to extend economic assistance annually to the FSM and the RMI for a period of 20 years, and will establish trust funds to foster prudent financial management and to replace the annual grant funding after year 2023.

These annual grants to the FSM and RMI will be targeted to sectors most in need of assistance, principally education, health, and infrastructure, and, in addition, the areas of capacity building the environment and private sector development.

It should be noted that U.S. assistance to the RMI and the FSM will cease unless the amended Compact is approved and implemented by the Congress prior to 1 October 2003. That is the beginning of FY'04.

With regard to the trust fund, we propose to establish trust funds for the FSM and RMI. These trust funds are designed to offset the loss of direct U.S. financial assistance after year 2023.

Management and oversight. To bolster accountability, transparency, and oversight of U.S. Compact funding, the administration has proposed a planning and review mechanism to ensure that our assistance goes to those areas of the economy where the greatest need exists and are used most effectively. Reporting procedures are being clearly defined in a subsidiary agreement.

The government of the United States, after consultation with the FSM and RMI, will attach grant terms and conditions to ensure that reasonable progress is being made toward established objective. The government of the United States may withhold funds for violation of grant terms and conditions, and both states will also be subject to the Single Audit Act.

Where are we going? The United States has been successful in fostering a political transition from a trust territory administration to stable self-governing democracies. We now confront a critical challenge affecting the economic transition toward increased budgetary self-reliance. We believe the U.S. proposal now on the table is adequate to meet the objectives of Title 2 of the Compact, quote, "to assist the RMI and FSM in their efforts to advance the economic self-sufficiency of their peoples."

Our goals in the Compact negotiations are, first of all, to maintain economic stability, to improve the education, health, and social conditions in the relative states, sustaining the political stability and close ties which we have developed, and last, assuring our strategic interests continue to be addressed. We recognize that too sharp a reduction in U.S. assistance at this time in their economic development could result in economic instability and other disruptions, and could encourage an increase in the level of migration to the United States. Thus, maintaining financial and other assistance will help to assure economic stability while the RMI and FSM continue to implement their development strategies.

The Congress has requested several reports from the GAO, which address U.S. assistance to the FSM and the RMI. These reports have raised questions about the effectiveness of current U.S. assistance. We are working to assure the Congress that the U.S. proposal addresses the GAO concerns.

Migration impact. The past 15 years has ushered in an era of increased impact on health, education, and welfare programs on the U.S. jurisdictions in the Pacific based on Micronesian migration. The Administration will address the need to reimburse U.S. jurisdictions for the added costs they bear in honoring our commitment on migration.

In the wake of the September 11th attacks, we have proposed to amend certain aspects of the immigration provisions of the Compact.

As I noted previously, the Administration hopes to complete these negotiations soon with the FSM and Marshals and to fund and to submit the necessary agreements to the Congress for their consideration, including key subsidiary agreements on fiscal procedures, the trust fund agreement, and the immigration provisions.

In conclusion, let me assure you that we welcome this and every opportunity to keep this Committee informed of these negotiations as they come to a close. Just as importantly, we look forward to submitting the amended Compact of Free Association to the Congress for review and enactment into law by the commencement of fiscal year 2004. Thank you.

[The prepared statement of Mr. Short follows:]

Statement of Albert V. Short, U.S. Negotiator for the Compact of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands

Mr. Chairman and Members of the Committee,

Thank you for this opportunity to testify on the Administration's progress in Compact negotiations with the Federated States of Micronesia (FSM) and the Republic of the Marshall Islands (RMI).

Over the past six months, the U.S. has tabled language with both countries to amend the Compact of Free Association. This effort began with Title Two (containing replacements for the expiring economic provisions of the Compact) followed

by the remaining titles: Title One where several provisions deal with immigration, Title Three defining our defense and security relationship (which remains essentially unchanged), and Title Four setting out administrative, termination, and survivability provisions.

The U.S. proposal reflects the basic approach laid out in previous testimony:

- The U.S. and the two freely associated states (FAS) have reaffirmed their commitment to the special relationship of free association, and to the end of annual mandatory financial assistance from the U.S. after a period of twenty years.
- The U.S. has affirmed its commitment to providing annual financial and program assistance (including contributions to a trust fund) to the FSM and RMI, for a period of twenty years, to support the efforts of these nations to promote economic advancement and budgetary self-reliance.
- The RMI and FSM have affirmed their commitment to an economic development strategy based on public sector accountability and private sector expansion, and to maintaining mutually acceptable comprehensive national development plans.
- The U.S., FSM and RMI have agreed to continue their defense and security relationship unchanged.

The U.S. Administration is now seeking final ad referendum agreement from the FSM and RMI on our financial and other Compact proposals in order to submit the amended Compact package with key subsidiary agreements to Congress by the end of August.

U.S. Financial Proposal

The U.S. Administration proposes to extend Title Two economic assistance annually to the FSM and RMI for a period of twenty years, commencing with $76 million for the FSM and $35.8 million for the RMI in U.S. FY–2004 (beginning on October 1, 2003) and providing declining annual assistance from these amounts through FY–2023, as described in Tab 1 to this statement. The annual decrements to annual assistance will be paid into the trust funds described below to foster prudent financial management and to safeguard the viability of the trust funds.

The annual grants to the FSM and RMI will be targeted to sectors most in need of assistance: (a) education, (b) health, and (c) infrastructure. Other areas of special need include capacity building, the environment, and private sector development. The U.S. also proposes to provide an additional $4.1 million per year to the RMI for the special needs of Ebeye (the main island community housing the U.S. defense sites' Marshallese work force) and other Kwajalein atoll communities.

The U.S. proposed to extend specific Federal services and programs to the FSM and RMI, with certain modifications, through fiscal year 2023. It should be noted that this assistance, currently totaling approximately $35 million per annum, may be discontinued or amended at the discretion of the U.S. Congress.

RMI assistance includes certain funds already agreed to under the U.S. Military Use and Operating Rights Agreement in connection with U.S. Defense Department use of defense sites at Kwajalein Atoll through FY–2016. We are discussing with the RMI a possible extension to the Military Use and Operating Rights Agreement.

It should be noted that U.S. assistance to the RMI and FSM will cease unless the amended Compact is approved and implemented by Congress prior to October 1, 2003, the beginning of FY–2004.

Trust Fund

We propose to establish general trust funds for the FSM and RMI. The trust fund is designed partially to offset the loss of direct U.S. financial assistance after FY–2023.

The trust fund will receive a U.S. contribution of $16 million for the FSM and $7 million for the RMI in FY–2004 and increasing U.S. annual contributions from this amount as described in Tab 1 through FY–2023. The U.S. offer on trust funding is conditioned on contributions of at least $30 million from each FAS. In addition, additional FAS and third-party contributions to the funds are anticipated.

Management and Oversight

To bolster accountability, transparency, and oversight of U.S. Compact funding, the U.S. Administration has proposed a mechanism to review the use of Compact funds, including the trust funds, to ensure that they go to those areas of the economy where the greatest need exists and are used most effectively. Payment and reporting procedures are being clearly defined in a subsidiary agreement to be submitted to the U.S. Congress with the amended Compact language. To the extent applicable, these procedures will be based on the U.S. Federal Grants Management Common Rule.

The U.S. Administration has proposed to create joint management committees for the FSM and RMI, each consisting of three U.S. members, including the Chair, and

two FAS members. The Committees will assess the performance of the FSM and RMI governments using mutually agreed macroeconomic performance standards. The Committees will meet, as needed, each year to:

- review the single audits and annual report;
- evaluate progress made for each grant;
- discuss the coming fiscal year's grant;
- discuss any management problems associated with each grant; and
- discuss ways to respond to these problems and otherwise to increase the effectiveness of future U.S. assistance.

The Government of the United States, after consultations with the FSM and RMI, will attach grant terms and conditions to ensure that reasonable progress is being made toward established objectives. The Government of the United States may withhold funds for violation of grant terms and conditions. Both FAS will also be subject to the Single Audit Act.

In addition to periodic reporting, the FSM and RMI will submit annual reports on the use of U.S. financial assistance during the previous fiscal year and on the proposed use of U.S. financial assistance for the coming fiscal year. The report will include additional information needed to assess the performance of the economy and the effectiveness of U.S. assistance.

Additional Amendments to Title Two

The U.S. Administration proposes to amend section 236 (the full faith and credit provision) of the Compact. The amendment will ensure a multi-year mandatory appropriation for Compact funding but not extend the ability to pledge or assign future Compact funding as a source for repaying debt, without specific prior approval of the U.S. Government.

We also propose to extend the inflation indexation adjustment adopted in the previous Compact period (capped at 5 percent per annum) to the annual payments for the base grant and trust funds in the new twenty-year period. This indexation strikes the right balance to promote prudent financial management by the FSM and RMI while facilitating the transition to the termination of mandatory U.S. financial assistance in FY–2024.

Subsidiary Agreements

The U.S. Government has tabled subsidiary agreements on specific services and programs involving:

- U.S. Postal Service (USPS)
- U.S. Federal Aviation Administration (FAA)
- Department of Transportation (DOT)
- Department of Defense Humanitarian Assistance Projects (CHAP)
- Telecommunications Services
- Federal Deposit Insurance Corporation (FSM only)
- Foreign Disaster Assistance
- Trust Fund

In addition, the U.S. Government is considering amending the subsidiary agreements involving:

- National Weather Service
- Mutual Assistance in Law Enforcement Matters
- Status of Forces Agreement
- Fiscal Procedures Agreement

Where are we going?

The U.S. has been successful in fostering a political transition from Trust Territory Administration to stable, self-governing democracies in the FSM and RMI. The Compact has also been successful in transforming the relationship between the United States and these island nations from one of trust territory administration to two of our closest bilateral relationships and staunchest friends in the United Nations. These achievements are solid and lasting, and one the American, FSM, and RMI peoples can be proud of.

We now confront a critical challenge effecting the economic transition toward increased budgetary self-reliance. I believe the U.S. proposal is adequate to meet the objective of Title Two of the Compact: "to assist the RMI and FSM in their efforts to advance the economic self-sufficiency of their peoples."

Goals of Compact Assistance

The United States has strong interests in these countries that justify continued economic assistance. These interests include:

- Maintaining economic stability. In this regard, we believe the United States should continue its commitment to the economic strategies that the RMI and

FSM have developed with the support of the United States, the Asian Development Bank (ADB), the International Monetary Fund, and our partners in the ADB Consultative Group, including Japan and Australia;

- Improving the health and social conditions of the people of the RMI and FSM.
- Sustaining the political stability and close ties which we have developed with these two emerging democracies; and
- Assuring that our strategic interests continue to be addressed.

We recognize that too sharp a reduction in U.S. assistance at this stage of economic development of the RMI and the FSM could result in economic instability and other disruptions, and could encourage an increase in the level of migration to the United States by citizens of those countries. We continue to believe that maintaining substantial financial and other assistance will help to assure economic stability while the RMI and FSM continue to implement economic development and reform strategies.

Migration Impact

The past fifteen years have ushered in an era of increased impact on the health, education, and welfare programs of U.S. jurisdictions in the Pacific because some migrants from the FSM and RMI have come with low work skills, poor health, and dependent children. The Administration will address the need to reimburse U.S. jurisdictions for the added costs they bear in honoring our commitment on migration to the FSM and RMI peoples. Every new arrival in our country imposes costs on our communities by drawing on social services. But, most arrivals also add to our economy and pay taxes that support those public services. Many FSM and RMI arrivals to the U.S. come with job skills, work hard like any American, spend money here, and pay U.S. taxes. Their contribution should not be ignored or forgotten in reaching an understanding of the impact of migration on U.S. jurisdictions.

Just as importantly, these migratory flows follow established trade and business routes. U.S. business looms large in the trade and commerce of the FSM and RMI, earns money for many U.S. companies, and reinforces our special relationship.

Section 104(e) of the Compact Act requires the President to report annually to Congress on the impact of the Compact. The annual reports and a recent GAO study document the substantial impact of FSM and RMI migration to the State of Hawaii, Guam, and the Commonwealth of the Northern Mariana Islands (CNMI). Of particular concern are migrants who have communicable diseases, criminal records, or are likely to become a public charge as a result of chronic health or other problems. These conditions are currently all grounds for inadmissibility to the United States under the Immigration and Nationality Act.

One way to address the issue of Compact impact on Hawaii, Guam, and the CNMI is to increase the compensation to those jurisdictions for the negative impacts of migration, as authorized by section 104 of the Compact Act. This solution, while helpful, would not decrease the adverse impact of migration from the FSM and RMI. It would, instead, shift the cost burden to the U.S. Government.

Compact impact can also be addressed, in part, through our plan to commit a substantial portion of future U.S. assistance through sector assistance to improve the general health and education of citizens of the FSM and the RMI. We believe that over time, improving the quality of life in the FSM and the RMI will reduce the incentives for citizens of those countries to migrate to the United States. Further, it would ensure that those persons who do migrate would be healthier and better educated, and therefore in a better position to contribute to the communities where they choose to live within the United States.

In the wake of the September 11th attacks, we have proposed an amended section 141 of the Compact. This section provides that citizens of the RMI and FSM "may enter into, lawfully engage in occupations, and establish residence as a nonimmigrant in the United States." We intend to establish that Micronesian entrants to the U.S. will have a FSM or RMI passport in an effort to halt the entry of inadmissible people who might seek to exploit this route of entry into the U.S. This and other immigration-related issues are the subject of ongoing talks with the FAS representatives.

In conclusion, we are considering three new responses to the migration issue.

- First, we are looking at ways to provide compensation to Hawaii, Guam, and the CNMI for the negative impacts of migration, as authorized by section 104 of the Compact Act.
- Second, we have proposed various mechanisms for improving our ability to ensure on a timely basis that RMI and FSM migrants to the United States are eligible for admission.

- Third, we are committing a substantial portion of U.S. assistance during the second Compact term to improve the health and education of potential migrants from the FSM and RMI in order to reduce significantly Compact impact.

As I noted at the beginning of my statement, the U.S. Administration hopes to complete its negotiations soon with the FSM and the RMI negotiating teams on the Compact language and appropriate funding levels. We also hope to wrap up, subject to final approval, several key subsidiary agreements including the trust fund agreement. In general, talks with both FAS are progressing well. We have had five negotiating sessions with the FSM, and three with the RMI. Upcoming rounds to conclude Compact funding and language issues should occur this August.

Conclusion

Thank you for this opportunity to present the Administration's views on Compact negotiations. The U.S. proposal is the product of over two years of discussions with, and contains input from, U.S. officials representing dozens of agencies, members of Congress and their staffs, representatives of international financial institutions, as well as potential bilateral donors. In developing our proposal, we have also carefully considered the input of the FSM and RMI.

In addition, Congress has requested several reports from the General Accounting Office (GAO) on U.S. assistance to the FSM and RMI. These reports have raised questions about the effectiveness of current U.S. assistance. We are working to assure the Congress that the U.S. proposal addresses the planning and management problems identified by the GAO.

Let me assure you that we continue to welcome any and every opportunity to keep the Committee informed as these negotiations come to a close. Just as importantly, we look forward to submitting the amended Compact of Free Association to the Congress for review and enactment into law.

Thank you.

Tab 1A - Table on Amended Compact Funding
Republic of Marshall Islands
(in millions, see attached Notes)

FY	*Grant*	*Kwajalein Impact*	*Trust*	*Sub-total*	*Kwajalein Payments*	*Total*
Notes	*(1,3&5)*	*(3,7)*	*(2,3,4&5)*		*(3&6)*	*(3)*
2004	29.8	4.1/1.9	7	42.8	11.3	54.1
2005	29.3	4.1/1.9	7.5	42.8	11.3	54.1
2006	28.8	4.1/1.9	8	42.8	11.3	54.1
2007	28.3	4.1/1.9	8.5	42.8	11.3	54.1
2008	27.8	4.1/1.9	9	42.8	11.3	54.1
2009	27.3	4.1/1.9	9.5	42.8	11.3	54.1
2010	26.8	4.1/1.9	10	42.8	11.3	54.1
2011	26.3	4.1/1.9	10.5	42.8	11.3	54.1
2012	25.8	4.1/1.9	11	42.8	11.3	54.1
2013	25.3	4.1/1.9	11.5	42.8	11.3	54.1
2014	24.8	4.1/1.9	12	42.8	11.3	54.1
2015	24.3	4.1/1.9	12.5	42.8	11.3	54.1
2016	23.8	4.1/1.9	13(+1.5/3)	42.8	11.3	54.1
2017	23.3	0	13.5(+1.5/3)	36.8	0	36.8
2018	22.8	0	14(+1.5/3)	36.8	0	36.8
2019	22.3	0	14.5(+1.5/3)	36.8	0	36.8
2020	21.8	0	15(+1.5/3)	36.8	0	36.8
2021	21.3	0	15.5(+1.5/3)	36.8	0	36.8
2022	20.8	0	16	36.8	0	36.8
2023	20.3	0	16.5	36.8	0	36.8

Notes to Tab 1A:

Grant funds are decremented by $.5 million per year, with the decremented funds going to the trust fund.

Trust funds are increased by $.5 million per year, with these incremented funds coming from the grant account.

An inflation adjustment will be applied similar to that in section 217 of the current Compact to all except the Kwajalein impact assistance of $1.9 million per year.

RMI to contribute funds, at least $35 million in addition to the U.S. contribution to the trust fund by FY–06.

Grant and trust amounts do not account for other RMI or third party contributions. In FY–2016 through FY–2021, the RMI may contribute $3 million per year to be matched by $1.5 million by the U.S. government, as stated within parentheses.

Under Article X(4)(a) of the Military Use and Operating Rights Agreement (MUORA)—$7.1 million with inflation adjustment.

Compact section 213 and Article X(4)(b) of the MUORA provides $1.9 million per year not inflated.

Tab 1B - Table on Amended Compact Funding
Federated States of Micronesia
(in millions, see attached Notes)

Fiscal Year	*Grant (N/1,3&5)*	*Trust Fund (N/2,3,4&5)*	*Total*
2004	76	16	92
2005	76	16	92
2006	76	16	92
2007	75.2	16.8	92
2008	74.4	17.6	92
2009	73.6	18.4	92
2010	72.8	19.2	92
2011	72	20	92
2012	71.2	20.8	92
2013	70.4	21.6	92
2014	69.6	22.4	92
2015	68.8	23.2	92
2016	68	24	92
2017	67.2	24.8	92
2018	66.4	25.6	92
2019	65.8	26.4	92
2020	64.8	27.2	92
2021	64	28	92
2022	63.2	28.8	92
2023	62.4	29.6	92

Notes to Tab 1B:1. Commencing in FY–2007, grant funds are decremented by $.8 million per year, with the decremented funds going to the trust fund.2. Commencing in FY–2007, trust funds are increased by $.8 million per year, with these incremented funds coming from the grant account.3. An inflation adjustment will be per the proposed section 217 of the draft Title II language.4. FSM to contribute funds (at least $30 million) in addition to the U.S. contribution to the trust fund in FY–

04.5. Grant and trust fund amounts do not account for other FSM or third party contributions.

Mr. OSBORNE. Thank you, Mr. Short.

At this time, I would like to call on Congresswoman Bono. If you would care to appear before the Committee. I ask unanimous consent that following their testimony, the gentlewoman from California, Ms. Bono, be allowed to sit on the dais and participate in the hearing. Is there objection? Hearing none, so ordered. OK. Thank you, Mr. Short.

At this time, we will have testimony from Ms. Westin.

STATEMENT OF SUSAN S. WESTIN, MANAGING DIRECTOR, INTERNATIONAL AFFAIRS AND TRADE, GENERAL ACCOUNTING OFFICE

Ms. WESTIN. Mr. Chairman, members of the Committee, thank you for inviting me to testify on the Compact of Free Association between the United States and the FSM and the RMI. Today, I will discuss our review of the current U.S. proposals to extend economic assistance to these countries. Specifically, I will discuss three topics: One, the potential cost of assistance to the U.S. government; two, the amount per capita assistance for the FSM and the RMI; and, three, the accountability measures that are in the proposals, and whether these proposed measures address past GAO recommendations.

I must emphasize that all of the above issues are still under negotiation, and therefore, final Compact assistance levels and accountability measures could differ from those I will discuss today.

Turning first to the potential cost of assistance. And I refer you to our chart. Under the most recent U.S. proposals to the FSM and the RMI, new Congressional authorizations of approximately $3.4 billion would be required for U.S. assistance over a period of 20 years beginning in fiscal year 2004. The share of new authorizations to the FSM would be about 2.2 billion, while the RMI would receive about 1.1 billion.

This new assistance would be provided to each country in the form of annual grant funds, extended Federal services, including weather, aviation, and postal services, and contributions to a trust fund for each country.

For the RMI, the U.S. proposal also includes funding to extend U.S. access to Kwajalein Atoll for U.S. military use from 2017 through 2023.

In addition to new authorized funding, the U.S. Government will provide continuing program assistance amounting to an estimated $1.1 billion to the two countries over 20 years, and payments previously authorized of about 189 million for U.S. access to Kwajalein through 2016. If new and previous authorizations are combined, the total U.S. cost for all Compact-related assistance under the current U.S. proposals would amount to about $4.7 billion over 20 years, not including costs for administration and oversight that are currently unknown.

Under the U.S. proposals, annual grant amounts to each country would be reduced over time, while annual U.S. contributions to the trust funds would increase by the grant reduction amount. The

U.S. proposals are designed to build trust funds that earn a rate of return such that trust fund yields can replace grant funding in fiscal year 2024 once annual grant assistance expires.

Second, on the issue of per capita grant assistance to the two countries, the decrease in grant funding combined with estimated FSM and RMI population growth would also result in falling per capita grant assistance over the funding period, particularly for the RMI. The real value of grants per capita to the FSM would decrease from $684 to $396 over 20 years. And these are estimated amounts. In the RMI, per capita grant assistance would fall from $623 to $242. In addition to grants, however, both countries would receive Federal programs and services, and the RMI would receive funding related to U.S. access to Kwajalein. So, what we have here is just talking about the grant assistance alone.

As I previously mentioned, the U.S. proposals are designed to build trust funds that earn a rate of return such that trust fund yields can replace grant funding. We analyze the trust fund proposals to determine if the trust fund yields would replace grant funding as intended, assuming a 6 percent rate of return.

According to our analysis, the U.S. proposal to the RMI would meet its goal while the U.S. proposal to the FSM would not. Moreover, at 6 percent, the U.S. proposal to the RMI would cover the estimated value of expiring Federal services while the U.S. proposal to the FSM clearly would not. At a 6 percent rate of return, neither proposed trust fund would generate surplus funds to serve as a buffer against years with low or negative trust fund yields.

Turning to the third topic, the accountability measures and our past recommendations. The strengthened accountability measures in the current U.S. proposals have addressed many of our recommendations regarding future Compact assistance. To give one example, the proposals require that grants with typical grant conditions would be targeted to priority areas such as health, education, and infrastructure. Furthermore, the United States could withhold funds for violations of grant terms and conditions as we have recommended.

However, not all of our recommendations have been addressed. For example, U.S. proposals for future assistance do not address our recommendation that consideration should be given to targeting future health and education funds in ways that effectively address specific adverse migration impact problems, such as communicable diseases identified by Guam, Hawaii, and the CNMI.

As a final observation, I would note that specific details on how some key accountability provisions would be carried out are contained in separate agreements that remain in draft form or have not yet been released.

Mr. Chairman, members, this competes my prepared statement. I would be happy to answer any questions.

Mr. OSBORNE. Thank you very much, Ms. Westin.

[The prepared statement of Ms. Westin follows:]

Statement of Susan S. Westin, Managing Director, International Affairs and Trade, U.S. General Accounting Office

Mr. Chairman and Members of the Committee:

I am pleased to be here today to testify on the Compact of Free Association between the United States and the Pacific Island nations of the Federated States of

Micronesia, or FSM, and the Republic of the Marshall Islands, or RMI.[1] In 1986, the United States entered into this Compact with the two countries after almost 40 years of administering the islands under the United Nations (U.N.) Trust Territory of the Pacific Islands. The Compact, which consists of separate international agreements with each country, has provided U.S. assistance to the FSM and the RMI in the form of direct funding as well as federal services and programs for more than 15 years. Further, the Compact allows for migration from both countries to the United States and establishes U.S. defense rights and obligations in the region. Provisions of the Compact that deal with economic assistance were scheduled to expire in 2001; however, they will remain in effect for up to 2 additional years while the United States and each nation renegotiate the affected provisions.[2]

Today I will discuss our review of the current U.S. proposals to extend economic assistance to the FSM and the RMI. Specifically, I will discuss the potential cost of assistance to the U.S. government, the amount of per capita assistance for the FSM and the RMI, and the projected earnings of proposed trust funds. Further, I will identify accountability measures that are in the proposals and discuss whether the proposals address past GAO recommendations in this area. It is worth emphasizing that all of the above issues are still under negotiation, and therefore final Compact assistance levels and accountability measures could differ from those I will discuss today.

Summary

Current U.S. proposals to the FSM and the RMI to renew expiring assistance would require the Congress to approve about $3.4 billion in new authorizations.[3] The proposals would provide decreasing levels of annual grant assistance over a 20-year term (2004 through 2023). Simultaneously, the proposals would require building up a trust fund for each country with earnings that would replace grants once those grants expire. Per capita grant assistance would fall during the term of Compact assistance, particularly for the RMI. At the Department of State's assumed trust fund rate of return (6 percent), the RMI trust fund would cover expiring assistance at the 2023 level, while the FSM trust fund would not achieve this goal. Further, at this rate of return, neither trust fund would build up buffer funds that could be used during years of low or negative trust fund earnings.

The U.S. proposals include strengthened accountability measures, though details of some key measures remain unknown. The proposals have addressed many, but not all, recommendations that we have made in our past reports regarding assistance accountability. For example, proposals call for grant terms and conditions and eliminate a pledge of "full faith and credit" for funds. Proposals also allow for the withholding of funds and give the United States control over the annual consultation process and trust fund management. The details of grant and trust fund management will be addressed in separate agreements that remain in draft form or have not yet been released. Some of our recommendations, such as those calling for a review of program assistance and ways to specifically target health and education grants to address the adverse impact of migration, have not been addressed at this point.

Background

In 1986, the United States and the FSM and the RMI entered into the Compact of Free Association.[4] This Compact represented a new phase of the unique and special relationship that has existed between the United States and these island areas since World War II. It also represented a continuation of U.S. rights and obligations first embodied in a U.N. trusteeship agreement that made the United States the Administering Authority of the Trust Territory of the Pacific Islands.[5] The Compact

[1] The FSM had a population of about 107,000 in 2000, while the RMI had a population of 50,840 in 1999, according to each country's most recent census.

[2] Other Compact provisions are also due to expire in 2003 if not renegotiated and approved. These include (1) certain defense provisions, such as the requirement that the FSM and the RMI refrain from actions that the United States determines are incompatible with U.S. defense obligations (defense veto); and (2) federal services listed in the Compact.

[3] Our analysis is based on U.S. proposals submitted to the FSM and the RMI governments in May 2002.

[4] At the time that the Compact was negotiated, the United States was concerned about the use of the islands of the FSM and the RMI as "springboards for aggression" against the United States, as they had been used in World War II, and the Cold War incarnation of this threat—the Soviet Union. In addition, the economic viability of both nations was uncertain at the time the Compact was negotiated.

[5] From 1947 to 1986, the United States administered this region under a trusteeship agreement that obligated it to foster the development of political institutions and move the Trust Ter-

Continued

provided a framework for the United States to work toward achieving its three main goals (1) to secure self-government for the FSM and the RMI, (2) to assure certain national security rights for all the parties, and (3) to assist the FSM and the RMI in their efforts to advance economic development and self-sufficiency. The first two goals have been met through the Compact and its related agreements. The third goal, advancing economic development and self-sufficiency, was to be accomplished primarily through U.S. direct financial payments (to be disbursed and monitored by the U.S. Department of the Interior) to the FSM and the RMI. However, economic self-sufficiency has not been achieved. Although total U.S. assistance (Compact direct funding as well as U.S. programs and services) as a percentage of total government revenue has fallen in both countries (particularly in the FSM), the two nations remain highly dependent on U.S. assistance. In 1998, U.S. funding accounted for 54 percent and 68 percent of FSM and RMI total government revenues, respectively, according to our analysis. This assistance has maintained standards of living that are artificially higher than could be achieved in the absence of U.S. support.[6]

Another aspect of the special relationship between the FSM and the RMI and the United States involves the unique immigration rights that the Compact grants. Through the Compact, citizens of both nations are allowed to live and work in the United States as "nonimmigrants" and can stay for long periods of time, with few restrictions.[7] Further, the Compact exempts FSM and RMI migrating citizens from meeting U.S. passport, visa, and labor certification requirements. Unlike economic assistance provisions, the Compact's migration provisions are not scheduled to expire in 2003. In recognition of the potential adverse impacts that Hawaii and nearby U.S. commonwealths and territories could face as a result of an influx in migrants, the Congress authorized Compact impact payments to address the financial impact of migrants on Guam, Hawaii, and the CNMI.

Finally, the Compact served as the vehicle to reach a full settlement of all compensation claims related to U.S. nuclear tests conducted on Marshallese atolls between 1946 and 1958. In a Compact-related agreement, the U.S. government agreed to provide $150 million to create a trust fund. While the Compact and its related agreements represented the full settlement of all nuclear claims, it provided the RMI the right to submit a petition of "changed circumstance" to the U.S. Congress requesting additional compensation. The RMI government submitted such a petition in September 2000.

Current U.S. Compact Proposals Would Cost Billions and Create Trust Funds

Under the most recent (May 2002) U.S. proposals to the FSM and the RMI, new congressional authorizations of approximately $3.4 billion would be required for U.S. assistance over a period of 20 years (fiscal years 2004 through 2023). The share of new authorizations to the FSM would be about $2.3 billion, while the RMI would receive about $1.1 billion (see table 1). This new assistance would be provided to each country in the form of annual grant funds, extended federal services (that have been provided under the original Compact but are due to expire in 2003), and contributions to a trust fund for each country. (Trust fund earnings would become available to the FSM and the RMI in fiscal year 2024 to replace expiring annual grants.) For the RMI, the U.S. proposal also includes funding to extend U.S. access to Kwajalein Atoll for U.S. military use from 2017 through 2023. In addition to new authorized funding, the U.S. government will provide (1) continuing program assistance amounting to an estimated $1.1 billion to the two countries over 20 years and (2) payments previously authorized of about $189 million for U.S. access to Kwajalein Atoll in the RMI through 2016.[8] If new and previous authorizations are combined, the total U.S. cost for all Compact-related assistance under the current U.S.

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ritory toward self-government and promote economic, social, and education advancement. In addition, the agreement allowed the United States to establish military bases and station forces in the Trust Territory and close off areas for security reasons as part of its rights.

[6] The economic growth potential of these countries and their ability to generate revenue to replace U.S. assistance was limited by factors such as geographic isolation, limited natural resources, and the large and costly government structure that the United States established. Major donors (such as Australia) to Pacific Island nations expect that most of these countries will need assistance for the foreseeable future in order to achieve improvements in development. In addition, achieving economic self-sustainability is seen as a difficult challenge for many of these island nations and an unrealistic goal for others. See U.S. General Accounting Office, Foreign Assistance: Lessons Learned From Donors' Experiences in the Pacific Region, GAO–01–808 (Washington, D.C.: Aug. 17, 2001).

[7] Typically, nonimmigrants include those individuals who are in the United States temporarily as visitors, students, and workers.

[8] See U.S. General Accounting Office, Foreign Relations: Kwajalein Atoll Is the Key U.S. Defense Interest in Two Micronesian Nations, GAO–02–119 (Washington, D.C.: Jan. 22, 2002).

proposals would amount to about $4.7 billion over 20 years, not including costs for administration and oversight that are currently unknown.

Table 1: Estimated New U.S. Authorization and Total U.S. Contribution to the FSM and RMI under the Current U.S. Proposals (in millions of U.S. dollars)

	FSM	RMI	Total
Grants	$1,637	$643	**$2,280**
Trust fund contributions	532	284	**816**
Compact-authorized federal services[a]	174	39	**213**
Option for extension of MUORA[b]	Not applicable	101	**101**
New U.S. authorization	**$2,343**	**$1,066**	**$3,409**
Federal programs authorized separately	760	385	**1,145**
MUORA payments previously authorized	Not applicable	189	**189**
Total U.S. contribution	**$3,103**	**$1,640**	**$4,743**

Note: Numbers may not add due to rounding.

[a]Federal services authorized in the Compact include weather, aviation, and postal services. Services associated with the Federal Emergency Management Agency have been excluded.

[b]The 1986 Military Use and Operating Rights Agreement (MUORA) grants the United States access to certain portions of Kwajalain Atoll in the RMI and provides funding for Kwajalein Atoll that is used for payments to landowners and economic development through 2016. The current U.S. proposal includes an option to extend MUORA for the years 2017 through 2023, with an additional 20-year optional lease at that point.

Source: GAO estimate based on current U.S. proposals adjusted for expected inflation.

Under the U.S. proposals, annual grant amounts to each country would be reduced over time, while annual U.S. contributions to the trust funds would increase by the grant reduction amount. Annual grant assistance to the FSM would fall from a real value of $76 million in fiscal year 2004 to a real value of $53.2 million in fiscal year 2023.[9] Annual grant assistance to the RMI would fall from a real value of $33.9 million to a real value of $17.3 million over the same period. This decrease in grant funding, combined with FSM and RMI population growth, would also result in falling per capita grant assistance over the funding period—particularly for the RMI (see fig. 1). The real value of grants per capita to the FSM would decrease from an estimated $684 in fiscal year 2004 to an estimated $396 in fiscal year 2023.[10] The real value of grants per capita to the RMI would fall from an estimated $623 in fiscal year 2004 to an estimated $242 in fiscal year 2023.[11] In addition to grants, however, both countries would receive federal programs and services,[12] and the RMI would receive funding related to U.S. access to Kwajalein Atoll.[13]

[9]While new authorization figures are provided in current dollars so that total costs to the U.S. government can be identified, grant assistance is provided in fiscal year 2004 constant dollars for comparative purposes. In addition to the reduction in grants, the real value of grants would be eroded over time by a partial, rather than full, inflation adjustment.

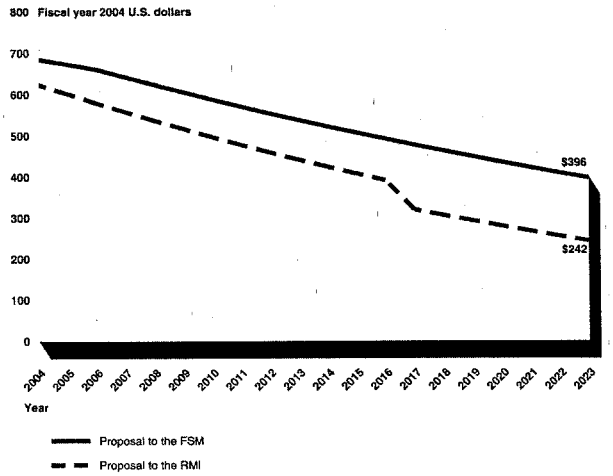
[10]Our per capita calculations assume FSM and RMI migration and population growth rates that are at the same level as in recent years.

[11]The U.S. proposal to the RMI allocates $4.1 million of grant assistance in fiscal year 2004 to the island of Ebeye in Kwajalein Atoll. As such, grants per capita to residents of Ebeye would be higher than grants per capita to the rest of the RMI population.

[12]For fiscal year 2004, federal programs and services, excluding federal emergency management assistance, are estimated to be worth $36.4 million for the FSM and $16.5 million for the RMI.

[13]For fiscal year 2004, Kwajalein landowners would receive $16 million, and the Kwajalein Atoll Development Authority would receive $1.9 million.

Figure 1: Per Capita Grant Assistance Under Current U.S. Proposals (fiscal year 2004 U.S. dollars)



Note: This analysis excludes trust fund contributions, federal programs and services, and MUORA related payments to the RMI.

Source: GAO analysis of current U.S. proposals.

The U.S. proposals are designed to build trust funds that earn a rate of return such that trust fund yields can replace grant funding in fiscal year 2024 once annual grant assistance expires. The current U.S. proposals do not address whether trust fund earnings should be sufficient to cover expiring federal services or create a surplus to act as a buffer against years with low or negative trust fund returns. At a 6 percent rate of return (the Department of State's assumed rate) the U.S. proposal to the RMI would meet its goal of creating a trust fund that yields earnings sufficient to replace expiring annual grants, while the U.S. proposal to the FSM would not cover expiring annual grant funding, according to our analysis. Moreover, at 6 percent, the U.S. proposal to the RMI would cover the estimated value of expiring federal services, while the U.S. proposal to the FSM clearly would not. At a 6 percent return, neither proposed trust fund would generate buffer funds. If an 8.2 percent average rate of return were realized, then the RMI trust fund would yield earnings sufficient to create a buffer, while the FSM trust fund would yield earnings sufficient to replace grants and expiring federal services. [14]

Current U.S. Proposals Contain Stronger Accountability Measures and Address GAO Recommendations, Some Key Details Remain Unknown

I now turn my attention to provisions in the current U.S. proposals designed to provide improved accountability over, and effectiveness of, U.S. assistance. This is an area where we have offered several recommendations in the past 2 years. As I discuss key proposed accountability measures, I will note whether our past recommendations have been addressed where relevant. In sum, many of our recommendations regarding future Compact assistance have been addressed with the introduction of strengthened accountability measures in the current U.S. proposals. However, specific details regarding how some key accountability provisions would be carried out will be contained in separate agreements that remain in draft form or have not yet been released.

The following summary describes key accountability measures included in the U.S. proposals that address past GAO recommendations:

[14] An 8.2 percent average rate of return is the expected rate of return for a fund with a mix of equities and fixed-income securities based on historical earnings in the stock market and projected government bond rates.

- The proposals require that grants would be targeted to priority areas such as health, education, and infrastructure. Further, grant conditions normally applicable to U.S. state and local governments would apply to each grant.[15] Such conditions could address areas such as procurement and financial management standards. U.S. proposals also state that the United States may withhold funds for violation of grant terms and conditions. We recommended in a 2000 report that the U.S. government negotiate provisions that would provide future Compact funding through specific grants with grant requirements attached and allow funds to be withheld for noncompliance with spending and oversight requirements.[16] However, identification of specific grant terms and conditions, as well as procedures for implementing and monitoring grants and grant requirements and withholding funds, will be addressed in a separate agreement that has not yet been released.
- The U.S. proposals to the FSM and the RMI list numerous items for discussion at the annual consultations between the United States and the two countries. Specifically, the proposals require that consultations address single audits and annual reports; evaluate progress made for each grant; discuss the coming fiscal year's grant; discuss any management problems associated with each grant; and discuss ways to respond to problems and otherwise increase the effectiveness of future U.S. assistance. In the previously cited report, we recommended that the U.S. government negotiate an expanded agenda for future annual consultations. Further, the proposals give the United States control over the annual review process: The United States would appoint three members to the economic review board, including the chairman, while the FSM or the RMI would appoint two members.
- Recommendations from our 2000 report are being addressed regarding other issues. The U.S. proposals require U.S. approval before either country can pledge or issue future Compact funds as a source for repaying debt. The proposals also exclude a "full faith and credit" pledge that made it impracticable to withhold funds under the original Compact. In addition, the U.S. proposals provide specific uses for infrastructure projects and require that some funds be used for capital project maintenance.

We also recommended that Interior ensure that appropriate resources are dedicated to monitoring future assistance. While the U.S. proposals to the two countries do not address this issue, an official from the Department of the Interior's Office of Insular Affairs has informed us that his office has tentative plans to post five staff in a new Honolulu office. Further, Interior plans to bring two new staff on board in Washington, D.C., to handle Compact issues, and to post one person to work in the RMI (one staff is already resident in the FSM). A Department of State official stated that the department intends to increase its Washington, D.C., staff and overseas contractor staff but does not have specific plans at this point.

Trust fund management is an area where we have made no recommendations, but we have reported that well-designed trust funds can provide a sustainable source of assistance and reduce long-term aid dependence.[17] The U.S. proposals would grant the U.S. government control over trust fund management: The United States would appoint three trustees, including the chairman, to a board of trustees, while the FSM or the RMI would appoint two trustees. The U.S. Compact Negotiator has stated that U.S. control would continue even after grants have expired and trust fund earnings become available to the two countries; in his view, "the only thing that changes in 20 years is the bank," and U.S. control should continue. He has also noted that it may be possible for the FSM and the RMI to assume control over trust fund management at some as yet undetermined point in the future.

Finally, while the departments of State and the Interior have addressed many of our recommendations, they have not implemented our accountability and effectiveness recommendations in some areas. For example, our recommendation that annual consultations include a discussion of the role of U.S. program assistance in economic development is not included in the U.S. proposals. Further, the departments of State and the Interior, in consultation with the relevant government agencies, have not reported on what program assistance should be continued and how the ef-

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[15] Grant conditions will be based, in large part, on the U.S. Federal Grants Management Common Rule, as set forth in revised Office of Management and Budget Circular A–102 (Washington, D.C.: Aug. 29, 1997).

[16] See U.S. General Accounting Office, Foreign Assistance: U.S. Funds to Two Micronesian Nations Had Little Impact on Economic Development, GAO/NSIAD–00–216 (Washington, D.C.: Sept. 22, 2000) for a review of the first 12 years of direct Compact assistance.

[17] See GAO–01–808.

fectiveness and accountability of such assistance could be improved.[18] Finally, U.S. proposals for future assistance do not address our recommendation that consideration should be given to targeting future health and education funds in ways that effectively address specific adverse migration impact problems, such as communicable diseases, identified by Guam, Hawaii, and the CNMI.[19]

Current U.S. Proposals Also Amend Nonexpiring Immigration Provisions

I would also like to take just a moment to cite proposed U.S. changes to the Compact's immigration provisions. These provisions are not expiring but have been targeted by the Department of State as requiring changes. I believe it is worth noting these proposed changes because, to the extent that they could decrease migration rates (a shift whose likelihood is unclear at this point), our current per capita grant assistance figures are overstated. This is because our calculations assume migration rates that are similar to past history and so use lower population estimates than would be the case if migration slowed.

Proposed U.S. language on immigration stresses that travel to the United States by FSM or RMI citizens is intended to be temporary; the Compact is not intended to provide a stepping-stone for permanent residence or citizenship in the United States. Proposed U.S. changes to the Compact immigration provisions include

- a new requirement for FSM and RMI visitors to carry a machine-readable passport;
- a new requirement that FSM and RMI citizens visiting the United States have a specific purpose for their term of stay—such as employment, school, or tourism - that is listed in the provisions (under the original Compact, a specific purpose is not required for FSM or RMI citizens to enter or remain in the United States);
- a statement that FSM or RMI children entering the United States for adoption purposes are not eligible to do so under the Compact, as they are intending immigrants;
- a restriction that naturalized FSM and RMI citizens are not eligible for entry into the United States unless they are an eligible spouse or dependent of an admissible Compact migrant (under the original Compact, naturalized citizens are allowed into the United States 5 years after they are naturalized so long as they are a resident in the FSM or the RMI during that time); and
- a new ability for the U.S. Attorney General to promulgate regulations that could limit the ability of FSM and RMI visitors in the United States to stay in the country beyond 6 months.[20]

Mr. Chairman and Members of the Committee, this completes my prepared statement. I would be happy to respond to any questions you or other Members of the Committee may have at this time.

Mr. OSBORNE. We have a vote coming up. I would suggest that possibly we entertain questions here for about 5 minutes, then we will adjourn and come back. So, I think Mr. Underwood is an expert in this area. I will ask a couple questions and then defer to him.

First of all, for Mr. Brookes, how long will the United States require access to Kwajalein Atoll, and are there alternatives to the Atoll?

Mr. BROOKES. Mr. Chairman, as you know, under the existing military use and operating rights agreement with the RMI, DoD

[18] See U.S. General Accounting Office, Foreign Assistance: Effectiveness and Accountability Problems Common in U.S. Programs to Assist Two Micronesian Nations, GAO–02–70 (Washington, D.C.: Jan. 22, 2002) for an evaluation of 13 U.S. domestic programs, including the largest programs that the United States provides to the FSM and the RMI.

[19] See U.S. General Accounting Office, Foreign Relations: Migration From Micronesian Nations Has Had Significant Impact on Guam, Hawaii, and the Commonwealth of the Northern Mariana Islands, GAO–02–40 (Washington, D.C.: Oct. 5, 2001).

[20] Such regulations could take into account the ability of FSM or RMI citizens to support themselves and their immediate relatives. The option to reduce the ability of FSM and RMI visitors to stay in Guam and other U.S. territories was provided for in the original Compact. In 2000, regulations were put in place that required Compact migrants to be self-supporting after 1 year on Guam or be subject to removal. When we met with Immigration and Naturalization Service officials, they informed us that enforcing this regulation would prove difficult, since they did not have the necessary enforcement resources.

access and use of Kwajalein is guaranteed through the year 2016. This was extended for 15 years in 1999 for the period 2001 to 2016. As it is an important element of our missile defense program and our intercontinental ballistic missile program, it is reasonable to expect that DoD access and use will be required beyond that time, beyond the year 2016.

However, at this time, it is not possible to foresee with any accuracy exactly how long DoD use will be required beyond then. We have proposed a 7-year extension to the existing use agreement in response to a RMI government proposal for a longer term agreement. There are alternatives to Kwajalein Atoll, but it is a question of time and money. The capital investment on Kwajalein would be hard and expensive to replicate elsewhere, but it is not impossible. The capabilities could be dispersed to other locations such as potentially Wake Island or the Pacific missile test range, but at an unspecified cost to the U.S. taxpayer. Withdrawal from the ABM treaty gives us greater flexibility in developing missile defense since we are now no longer restricted to testing only at Kwajalein, which we were under the ABM treaty.

In sum, Kwajalein is an important national asset that would be costly and difficult to replace but not impossible.

Mr. OSBORNE. Thank you very much, Mr. Brookes.

I think in the interest of time and maybe level of involvement, I will defer at this point to Mr. Underwood for his questions.

Mr. UNDERWOOD. Thank you very much, Mr. Chairman. And thank you very much for your testimonies these afternoon. I once asked General Shinseki if Kwajalein was absolutely vital, and he said it was irreplaceable. And I am just wondering whether today, as we speak, whether the Department of Defense has somewhat shifted in that point of view over time, or—because, in my estimation, I think it is still pretty much irreplaceable, particularly in terms of national missile defense.

Mr. BROOKES. Yes, sir. I am not familiar with the General's testimony or when that was. I think that the differentiation here that I would try to make is that replacing it in one place in itself would be extremely difficult, if not impossible. But we do have other test ranges. There is a western test range, we have an eastern test range. There is Barking Sands. That, potentially, with the changes in technology, that over time we could disperse the capabilities that are currently located in one place on Kwajalein Island elsewhere. That is my understanding. I wouldn't say that I am the absolute expert on it, but that is my understanding.

Mr. UNDERWOOD. Thank you very much for that. And you know, as—obviously, as someone who has been involved in trying to understand our defense posture in the Pacific, it occurs to me that we really need to hone in on the value of the Marshall Islands as well as the Federated states of Micronesia. We don't want to go over all of this territory, 5 years or 10 years hence, in the way, for example, that we are now rethinking our relationship with the Philippines and understanding what the value of the Philippines is to this country. And I am certainly hopeful that we continue to keep that in mind.

Mr. Cohen and Mr. Short, you know, your testimonies were obviously music to my ears, especially as you concluded talking about

how we are going to finally include in here some kind of a funding stream or how we are going to take care of Guam. I also heard the CNMI in Hawaii, but I heard Guam more. So I just wanted to know, how do you envision that happening?

Mr. COHEN. Congressman, I am actually going to defer to the negotiator; given the stage that we are at in process, I think that would be appropriate.

Mr. SHORT. Sir, the first issue is that we will consult with the Congress in that regard. We intend to include in the package that is submitted to the Congress, the Compact amendment package a provision to address impact. We will be consulting further with you and other interested Members of the Congress on how best to structure that.

Mr. UNDERWOOD. Well, I certainly have my own view of how we can best take care of that. So, at this point in time there is not a precise proposal for this, other than a commitment to ensure that it is addressed as we proceed with the finalization of these negotiations.

Mr. SHORT. Yes, sir. That is correct.

Mr. COHEN. Congressman, what we can tell you at this time, obviously the details of any sort of compensation package, you know, will follow and are being worked on. But what we can tell you is that we view this as a three-prong strategy. And, of course, strategy No. 1 is to improve conditions in the RMI and the FSM to decrease the incentive to migrate. Also, improving conditions will hopefully ensure that those citizens of the RMI and the FSM that do choose to migrate are less likely to be as burdensome to the local services as have been the previous migrants.

And also, you know, we are looking at tightening up the migration—well, you know, the right to migrate of course, you know, is absolute inviolate. But as you know, they have taken a look at making sure that everyone who chooses to migrate actually has the right to do so, to make sure that we don't have problems in that regard as well.

So, the financial component is perhaps the most important component, and the details of that will follow, but there are other prongs to this strategy as well.

Mr. UNDERWOOD. Well, and certainly I appreciate that. You know, it is important to understand that the economic viability of these countries will actually benefit surrounding U.S. jurisdictions. So it is not just an issue of dealing with migration. Although, I would like to add that all Pacific peoples migrate and have been migrating, as my personal experience and your own, Mr. Cohen, have indicated; that we are all kind of, just by the nature of being Pacific peoples, we all migrate.

In that context, I want to make sure that we understand each other fully. You know, the right to migrate is part of the Compacts. And I know that the two countries that we are talking about want to be mutually engaged in trying to ensure that whatever kind of new arrangements, or even, in my estimation, there is some old arrangements that haven't been fully enforced, either. Whatever arrangements that we seek to pursue, you know, involve some level of consultation with them.

It is important to note that the economic viability of these countries is absolutely essential to a healthier stream of migration, and that the economies of all the islands, particularly in Micronesia, are very much interrelated and all of the things that are here are mutually beneficial for all involved.

Mr. OSBORNE. I think probably I should interject here, Mr. Underwood.

Mr. UNDERWOOD. Sure.

Mr. OSBORNE. At this time we will go vote. Hold that thought, and you will have plenty of time to prepare for the answer. We will be back in probably 20 minutes. We have a 15-minute vote, two 5-minute votes. And so we will be back in shortly.

[Recess]

Mr. OSBORNE. The Committee will come to order.

Mr. Underwood had a question. You can answer it, and then we will move on.

Mr. UNDERWOOD. Thank you, Mr. Chairman.

I was asking a question about where we are at with discussion on immigration and any proposed changes. Mr. Short.

Mr. SHORT. With regard to the immigration provisions of the Compact—and there is a further explanation in the long statement that was submitted for the record, first of all the Compact of Free Association provides for visa-free entry for Micronesian citizens to enter the United States for work and study and other purposes. There is no attempt to abridge that basic right. However, in light of 9/11 and just the passage of 15 years experience, we feel it is useful to review certain aspects of the immigration provisions. Part of that concerns the use of passports and current technology with passports.

I should note that the respective governments have agreed to many of these provisions. We will be holding discussions commencing on Friday this week with the senior representatives of the Federated States and the Marshall Islands delegation to address this issue.

So there are some specific aspects of the immigration provision we want to look at. These will be incorporated into the document in a manner that is still to be determined that will preserve the basic rights of the Micronesian citizens to enter the United States for the purposes stated in the Compact but basically fine tune and regularize some of the implementing aspects of that.

Mr. OSBORNE. Thank you. I believe the gentleman's time has expired. Mr. Otter.

Mr. OTTER. Thank you, Mr. Chairman.

Mr. Chairman, are the mikes on? There we go.

Mr. Brookes, could you summarize very briefly the Department of Defense's interest in the locations we are talking about here?

Mr. BROOKES. Yes, sir. I think I would say that the Department of Defense interests are as follows: One is the continued rights of strategic denial and defense veto, strategic denial being denying the basing access and use of a third country in the Freely Associated States, the defense veto being the right to veto policies, FAS policies, that are incompatible with U.S. security and defense role in the Freely Associated States.

Following that, I think the Kwajalein Atoll missile range is where DoD has a very strong interest in continued, unimpeded operations there. As I mentioned, we do ICBM testing and missile defense testing as well as space operations and surveillance. Beyond that, I would say access by U.S. military forces for transit of overflight, occasional emergency use as well as possible contingency use of land areas, air fields and harbors.

I think it is also important that the FAS support U.S. security policies in international fora such as the United Nations. I also think that the Freely Associated States' proximity to important certain sea lanes and air lanes are important to the United States.

Finally, I would say their proximity to Southeast Asia as well as the U.S. military facilities in Guam are important and basic to defense interests.

Mr. OTTER. It is pretty obvious from that list it is a very strategic, very important effort that we are involved in right now; and it is probably worth every dime that we just talked about, Ms. Westin from the GAO and Mr. Short, that we are paying for it, right?

Mr. BROOKES. Yes, sir, we support the ongoing negotiations.

Mr. OTTER. You support the money that is going to be paid in favor of these services for these important aspects that you just outlined.

Mr. BROOKES. Yes, sir. I would ask Mr. Short to probably, you know, address this. But I think that we are—you know, we do have important strategic interests there and that we are paying fairly for the uses and rights that we have.

Mr. OTTER. So that brings me to my next question. We just came from the floor and voting on an absolute dismal effort by our own government, the Department of Interior specifically, in trying to overcome hundreds and maybe even longer than that, but a long time, the abuse of a trust. That was with the native Americans, and we find that we have no idea what it is going to cost us.

So, given that history, given that performance or lack of performance, I would ask Mr. Short, I would also ask the GAO, why in Heaven's name—why don't we just pay the money that we owe and don't try to tell them how to set up an education system, where it seems like we have our own problems, set up the housing like we have our own problems? If these people are smart enough and if they are intelligent enough to negotiate a good treaty with us, why in Heaven's name aren't they smart enough to be the architects of their own destiny?

Mr. Short.

Mr. SHORT. Yes, sir. Well, they are; and they are the architects of their own destiny. We are dealing with sovereign states that develop their own budgets, have their own internal structure. We provide assistance to keep that structure afloat, and we are putting in place a regime that will provide oversight and accountability for those funds, much like the relationship that between a Federal and a State relationship. There will be accountability of where the funds are expended and the purposes for which they go, but the structure, the purposes, the goals will all be determined by the sovereign states.

Mr. OTTER. Mr. Short, one of the things that I was confused about is, Mr. Brookes calls it rent, you are calling it grants and in five or six cases here in your testimony I read where the grant can be denied, the grant can be withheld if certain performances aren't met. Yes, Ms. Westin, can you answer that?

Ms. WESTIN. Yes, may I speak to that?

I think that it is important to keep in mind that the Compact negotiations on economic assistance are not involving our defense rights. We have already taken up the option. The U.S. has to extend the use of Kwajalein through 2016, and all we are talking about is extending it for another 6 years to 2017 through 2023.

What we are talking about with the grants is economic assistance, and I think that it is important to have accountability provisions in there. My staff did a report 2 years ago on which we looked at the economic development from the assistance the U.S. had given under the first 13 years of the Compact, and we did not find very much economic development. So I can understand your point of view, why don't we just give them the money, but from the General Accounting Office point of view, where accountability is important, I think that the recommendations that we have made about accountability of future compact funds are important.

Mr. OTTER. Well, you know, I might pursue that, but then that would be a different subject because, you know, it seems to me this isn't much different than the PILT funds that we have to fight over each and every year, no matter what the negotiations were.

If this is this administration's idea of new federalism, I am a little disappointed. I don't think our track record is so good at taking care of our own house. Now, through forced negotiations and withholding of it is either rent or grants or it is or it isn't or these people are in charge of their own destiny or their not, I am just very, very skeptical of us trying to tell somebody else how to live with their own property, with their own cultures. We have just not done—we do not have a very good record of keeping our promises, whether they are negotiated and whether they are really—heavily relied on or not.

I think it is—I would not be too excited about this, Mr. Chairman, but that is the end of my statement. I will not ask for a response to that. But, Mr. Short, you look anxious like you had like to give one. It could be a short answer.

Mr. SHORT.I think the important point is, as I stated before, we are dealing with sovereign governments; and, as the GAO has pointed out, there are certain concerns that the United States has brought to the fore based on 15 years of experience. We are not trying to create an onerous or overbearing set of conditions, but we do need to account for the funds. The purpose, is to achieve a balance between sovereignty on one hand and accountability on the other hand. I think the mechanism that we are putting in place will do that.

Mr. OSBORNE. Thank you, Mr. Short.

Thank you, Mr. Otter.

Mrs. Christensen.

Mrs. CHRISTENSEN. Thank you, Mr. Chairman.

Let me welcome my panelists. I want to extend a special welcome to Deputy Assistant Secretary Cohen, who also has oversight responsibility for my territory, the U.S. Virgin Islands.

I share some of my colleague's, Mr. Otter's, concern. And listening—I came in during Mr. Cohen's testimony and missed most of the first panelist's testimony, but when Mr. Cohen was talking about the lack of accountability, et cetera, I have to admit I was somewhat suspicious in light of the fact that Mr. Cohen also said that the Office of Insular Affairs also had lack of staff and lack of tools to monitor. That says to me that probably there was also not even sufficient staff or tools to provide the kind of technical assistance that is usually necessary to provide a better outcome. But I am just getting the GAO report, and I will look at that.

I am not going to really ask that question, but I wanted to ask a question and probably direct it first to Ms. Westin, but anyone else can jump in.

I work with the Black Caucus which does work with rural, small and minority organizations and minority-serving colleges and universities. We have been able to get special funding for some of those institutions to do research and provide different kinds of services and what we are finding is that, even though we have provided the funding, they don't have the infrastructure, the capacity to handle those grants; and, therefore, they are not able to get the grants or they have accountability and productivity problems. I wonder to what extent the GAO investigation found that some of these infrastructure deficiencies were responsible for what may be lacking in the outcomes that you had anticipated.

Ms. WESTIN. We have done, as you know, a series of reports on the Compact assistance. In the first report that we put out looking at the impact of the economic assistance and what it had meant for economic development, we did have examples of money going to schools, hospitals, et cetera, where there were infrastructure problems, lack of textbooks, et cetera, and that did have an impact on education. But we also noted that the money had gone to set up the college in the Federated States of Micronesia.

The countries also receive money in these areas from U.S. domestic programs such as Head Start and some of the other health and education programs; and in our report on looking at programs, we had recommended that the State Department and Interior coordinate responses from the agencies responsible for those programs to really look at the results of the programs. Because we did note problems on occasion for a domestic program trying to deliver the same type of service they might in the United States to a small, remote island country.

The last thing that I did want to mention again, that in our report on the impact of migration, we made a recommendation to really look at targeting health and education benefits, whether it is through programs or whether it is through the grants to those problems that could perhaps have an impact both on the country and on those countries where people tended to migrate to. In other words, if you can make the population of FSM healthier or RMI healthier, whether they stay or whether they migrate to Guam, Hawaii, CNMI or the United States, either way people are winners.

Mrs. CHRISTENSEN. Mr. Cohen, it looked like you wanted to answer. Did you want to respond to my assumption that maybe you also didn't have the tools or staff to provide the technical assistance that might have been required as well?

Mr. COHEN. Sure, Congresswoman. The lack of tools that we refer to, that I referred to in my testimony, really has two components to it. One, the Department of the Interior lacked the tools to ensure that our funds were spent wisely, primarily because the documentation, you know, the Compact agreement itself, the subsidiary agreements did not provide the tools. So that—

Mrs. CHRISTENSEN. The framework to make that determination.

Mr. COHEN. Correct. There were no enforcement mechanisms. So even if my office were to determine that funds were not being spent wisely, there really wasn't very much that we could do. So we are trying to correct that problem by making the documents tighter by giving us more tools at our disposal to make sure that the funds that we are spending are achieving the results that we want them to achieve.

The second component, as you pointed out, is a lack of staff. When we entered into these Compacts of Free Association, we really created an entirely new type of relationship that was very extensive in terms of the financial assistance that we provided. The Compacts were signed under certain assumptions, the main assumption being on the economic front that these large grants, essentially block grants, would replace programmatic assistance that the Freely Associated States had relied upon when they were part of the trust territory.

As the relationship evolved, we kept the block grants, but Congress then started to authorize additional programs to be provided to the Freely Associated States; and you know there was real need to do that. But that made it a little more difficult for the Department of Interior to manage, because it was not clear whether those additional programs that came on board after the Compacts were originally signed were subject to our oversight and control. You know, there was always an ambiguity there. So we would like to solve that ambiguity, and we think we are going to solve it going forward.

Then, finally, the lack of staff. We think it is very important that, if we are serious about oversight and making sure that Federal dollars are being spent wisely, that we have sufficient staff to do it. These new documents have in place very specific reporting and monitoring provisions and other accountability provisions, and we need the staff to actually implement those. So, you know, we are attacking this on at least three fronts and hope to make the situation a lot better than it was the first time around.

Mr. OSBORNE. Thank you, Mr. Cohen.

Mr. Faleomavaega.

Mr. FALEOMAVAEGA. Thank you, Mr. Chairman.

I certainly wish the best for Nebraska this coming fall. I still have one of my cousins playing for Nebraska, Mr. Chairman, and I hope he will be a help to the Corn Huskers.

Mr. OSBORNE. All of your cousins have been very helpful.

Mr. FALEOMAVAEGA. Thank you, Mr. Chairman.

Mr. Chairman, for the record, I want to ask unanimous consent that I be placed as a cosponsor of H.R. 2408, as you had sponsored, Mr. Chairman.

I also want to note to the record unanimous consent that I also become a cosponsor of H.R. 3407.

Mr. OSBORNE. Without objection.

Mr. FALEOMAVAEGA. Thank you for calling this hearing. It is long overdue.

I just don't know exactly where to begin, except to first extend my personal welcome to Mr. Short, Mr. Cohen and Ms. Westin representing the GAO. I am probably one of the few Members, Mr. Chairman, that has been to the Marshalls, to Ebeye, to Truk, to Chuuk, to Yap, to Palau.

I want to say that there is a gentleman's memory who served as a long-standing member of this Committee, we are talking about Federal programs knowingly, the real sense of vision, in seeing that the Micronesians be given assistance in these Federal programs, and that is the spirit of Phil Burton.

Mr. Chairman, I don't know where to begin in terms of sharing with the members of our Committee, it is so difficult; and I just wish that every member of this Committee would go to Micronesia and see for themselves the kind of situation that these people have been subjected to, colonial administrations from the Japanese, the Germans; and during World War II I should say that we have become their colonial masters, certainly as a credit to our Nation in holding them in high esteem and establishing this unique relationship under a Compact of Free Association.

We have some serious problems. And I still recall, reverberate the statement made by the great Henry Kissinger when we were at the height of the cold war, there are only 90,000 of them. Who gives a damn?

That was the kind of attitude that some of our leaders nationally had toward the Micronesians, which I personally resent and did not take as a compliment. These people did not even have schools. I could count on my fingers those that went to college or even graduated from high school when this thing started.

I have even heard that our senior members of the administration who retired from high office have said that the $2 billion that we have expended for these people have been a total waste. I think that is a bunch of baloney.

When you consider the fact that our multi-trillion-dollar nuclear testing program that was conducted in the Pacific and that these Marshalls—these people were subject directly to nuclear contamination with the 66 nuclear detonations that our government did to these people—and they didn't ask for much, and I don't think that they want to be considered as leeches or as coming here begging our government for help. With the $2.1 trillion budget that we are discussing right now to suggest that the amount of money that we have expended for these people is far too much would, given the fact that these people have sacrificed their lives, their lives, and us expending money to win the cold war, as it was an integral part of our efforts, I think what these people have done in sacrificing their fortune, their property so that we could be successful in blasting those islands apart so that we could learn better how to vapor-

ize other human beings in the name of democracy and so we could understand in the height of the cold war, to suggest that—

I could still recall—Mr. Chairman, I have been to Rongelap and Utirik, and we detonated this hydrogen bomb that was 1,000 times more powerful than the nuclear bombs that we exploded in Nagasaki and Hiroshima. Despite what our military leaders said about the wind drift, when the wind drifted right toward where these islanders were living—and to this day we still have not resolved the problem of them being subjected directly to nuclear contamination. We are still fumbling with the idea that we may be giving too much to these people.

How much more can we ask from these people in giving their lives—is there an amount of monetary money that can be given to the life of any person subjected to these kinds of hardships? I submit Mr. Chairman, we have a long ways to go.

We are debating the issue of native Americans. I tell you, I have said earlier, Mr. Chairman, that probably no other people in the world have been studied to death more than the people from the Pacific Island cultures. If I catch another anthropologist coming to my island, I am going to shoot him.

I am sick and tired of being studied like specimens. I can just cite you right now the first Americans—oh, 70 Federal studies have been made. I hear now from our friends at the GAO that not much economic development has happened for the past 15 years. How can you expect for 15 years in expending $2 billion that these people have hardly had a chance to establish a nucleus of professionals, accountants, teachers? It is so common here in America, but it is a tremendous hardship for those people to leave their villages and just to get an education, tremendous, tremendous problem of what they are constantly trying to face here.

I could go on, Mr. Chairman, but I do have some questions that I hope that, even after this first round, I will be asking in the second round. I guess my time is over, Mr. Chairman. Can I ask at least one question?

Mr. OSBORNE. The gentleman's time is up.

Mr. Holt, do you care to yield or do you have questions of your own?

Mr. HOLT. I would be happy to yield to my friend.

Mr. FALEOMAVAEGA. Thank you, Mr. Chairman.

I want to ask Mr. Short if the proposed compact of renewal with the Marshall Islands, is this satisfactory to both the administration as well as to the Marshall Islands government?

Mr. SHORT. Well, sir, I can't speak for the Marshall Islands. They will be up in a few minutes.

We feel that the offer that we have put on the table addresses the assistance that is sufficient to fund activities in the Marshall Islands for the next 20 years under the grant procedure. Most important, we are interested in establishing a trust fund that at the end of that 20-year period will have a sufficient corpus to take the place of the annual appropriations; and that money needs to accrue for 20 years.

We have agreed with the Marshall Islands government on the basic structure, that they will contribute an amount of money, $35 million, on the front end, we will make annual contributions. There

are other activities in the trust such as third-party participation that we envisioned.

Mr. FALEOMAVAEGA. Has the administration taken a position to cut a lot of these Federal grant programs for the Marshall Islands?

Mr. SHORT. No, sir, we have not.

Mr. FALEOMAVAEGA. Mr. Chairman, I will wait for the second round. Thank you.

Mr. HOLT. No further questions, Mr. Chairman.

Mr. OSBORNE. Mr. Duncan.

Mr. DUNCAN. I don't have any questions, although Mr. Faleomavaega told me that one of his cousins was getting ready to play for the University of Tennessee. I am sitting wondering how many cousins he has playing football.

Mr. FALEOMAVAEGA. He happens to be the most sought-after lineman in the State of Hawaii. He decided to come to the University of Tennessee. Would you believe that? He loved the people there.

Mr. DUNCAN. We are glad to have him. My people in east Tennessee have been studied a lot, too; and I understand what you mean.

Mr. OSBORNE. Returning to the subject at hand, Mrs. Christensen.

Mrs. CHRISTENSEN. Thank you, Mr. Chairman.

I did have two other questions. Hopefully, you could answer these quickly. Maybe to Mr. Cohen or whoever else might be better able to answer it, I am not sure who I should direct this to.

Did I understand that at the end of the 20 years trust funds would be short for the FSM? And if so, what would—are there any proposals to address that gap or special programs or initiatives being planned to help the FSM be able to overcome that deficiency themselves? Is that what I understood to you say, Ms. Westin?

Ms. WESTIN. I can answer the first part, that in our analysis, assuming a 6 percent rate of return, which was the same rate of return that the administration used in its analysis, the trust fund yield for the FSM would not cover the expiring annual grant assistance, that is correct.

But to the second part about is there a proposal to deal with this, I will—

Mrs. CHRISTENSEN. Maybe someone else on the panel could answer that question.

Mr. SHORT. In estimating the return on a trust fund, of course, you are making a lot of assumptions over 20 years, rate of return, over the 20 years and then rate of return even in the outyears.

The proposal that we have on the table comes very close to replacing the grant assistance that would be available in year 2023. Part of this gets to your assumptions on the inflation rate also, what inflation we are going to experience between now and 2023.

Mrs. CHRISTENSEN. OK. My last question is along the lines of the comments that were made by my colleague from American Samoa. Apparently, the answer to Congressman Underwood's question on the continued testing, continuation of the testing in Kwajalein after 2016 was yes. Shouldn't we be negotiating with the people of Kwajalein to address some of those harsh living conditions and other

hardships and inequities that they now suffer as a part of the displacement from the atoll?

I have been to Ebeye. I haven't been to the other ones. So I have seen some of those harsh conditions for myself. So I wanted to know what specific plans would be in place to address some of those hardships and inequities that they are suffering.

Mr. SHORT. Yes, ma'am. I would be pleased to address this issue.

In Kwajalien, the Island of Ebeye is the residence island where the majority of the Marshallese citizens reside. It represents approximately 25 percent of the population in the Marshall Islands, and it represents not only Kwajalein landowners and their descendants but also other people from the Marshall Islands who have gravitated to that location because of the economic opportunities associated with Kwajalein. So 25 percent of the population in the Marshalls lives there. Thus, obviously, a healthy proportion of any of the resources of the Marshall Islands government will go to activities in and around Kwajalein; and I will let the Marshall Islands representatives get into more detail.

The one area that we have earmarked funds in the grant area is directly to address conditions on Ebeye, and this is self-serving. The United States has a facility there, and the comparison between the conditions on Ebeye and the conditions on Kwajalein are not favorable.

We have dedicated, first of all, under the previous Compact, $1.9 million a year that was passed through the government to an organization on Kwajalein to address conditions on the island. It has not been effectively used, and we have asked the government of the Marshalls to basically recapture that money so it is auditable and goes where it should go.

Further, we have dedicated $4.9 million a year directly to conditions on Ebeye. I should note that we deal with the government, and we help that government to effect change on Ebeye, not the landowners per se.

It is the job of the government to, of course, work with its own people in its own sovereign area regarding conditions on Ebeye. So the total is basically $6 million a year dedicated to addressing conditions on Ebeye.

When the government of Marshalls testifies, they can point out the actions that they have taken on their own in the last year or two to significantly impact the hospital, power, water and basic utility situation on Ebeye; and it has been very favorable.

Mrs. CHRISTENSEN. OK.

Mr. OSBORNE. Thank you, Mr. Short.

Just might mention to everyone there are six more panels to go. We want to make sure everybody gets a chance to ask their questions, but we do have to keep that in mind.

Mr. Otter.

Mr. OTTER. Thank you, Mr. Chairman.

Ms. Westin, just one question in response to a question that was asked by my colleague, Ms. Christensen. You said there was a return in investment on the trust fund of 6 percent per year.

Ms. WESTIN. That was our assumption.

Mr. OTTER. That would not be enough then to create the same kind of revenue that they were getting after we amortized this

newest contract that we are going into, is that right? Because it runs out that the new funds coming off plus the earnings coming off the trust would not match the revenue stream that we had been providing for the last 20 years, is that right?

Ms. WESTIN. That is right. The way the proposal is structured is that there is an annual grant amount that goes for the next 20 years. That continually decreases over time as the contribution to the trust fund increases over time. Assuming a 6 percent rate of return, at the end of 20 years for the FSM the amount that can be taken out of the trust fund is not going to be enough to cover the lapsed grant assistance, the annual grant.

Mr. OTTER. If through these negotiations—if these economic development and social development and educational development and health development schemes work, why wouldn't the entire—if they work, and I hope—we believe they will work, and in 20 years why would that revenue stream from the trust fund be the sole source of income to provide the stability, the economic stability that we are looking to supply here?

Ms. WESTIN. It would not be the sole supply of income. In the report that we did—

Mr. OTTER. Then let me ask you this question. How much of an additional revenue stream did you factor in for the economic development and for the other benefits that you are going to get from all these grants? Has the return on investment for the last 20 years for all this other structure that we are putting into place—

Ms. WESTIN. That is not an analysis that we did. We do have information of the first 13 years of the Compact looking at the results of the money that we had given. We put out a report on that, and we did not find very much economic development.

But let me be really clear on the analysis that we did. We were not saying that the trust fund at the end of the time—it wasn't GAO's assumption that this should cover the retiring annual grant stream, but that was the proposal of the trust fund. It is an exit strategy so that the United States does not keep giving annual appropriations and grant assistance after 20 years.

As we looked at other countries and terrorist funds they had set up, we had seen that these can be successful in providing not the total amount of revenue that a country needs but some.

Mr. OTTER. Well, I guess my concern certainly would be the stability that is provided and the general well-being of the people as we exit. But I would question—it seems like our attitude toward that is we are making all the decisions and getting them to do what we think is the right thing to do by whether or not we give them a grant or not. And part of the development of—part of our help and development ought to be them being stakeholders in where it is going, then being the designers of their system, not us.

Because, as we leave, if they don't have buy-in on this, if they haven't been able to develop in their business acumen and their health acumen and their education acumen, if it is all endowed from us, it seems to me we are just going to leave these folks there no better off except with a piggy bank that may last a little while.

I am not asking for a response to that. I guess it is maybe not as clear to me as it is to you. Thank you. Thank you, Mr. Chairman.

Mr. OSBORNE. In the interest of time, those of you who have other questions we will just open it to the Committee.

Mr. Faleomavaega, do you have any further?

Mr. FALEOMAVAEGA. If you allow me just a couple of questions that I have, because I really, really—this is a very, very critical hearing. And I do respect the fact that we have other bills pending for a hearing. So I would really appreciate if you would allow me to ask these questions.

Mr. OSBORNE. Certainly.

Mr. FALEOMAVAEGA. Thank you, Mr. Chairman.

Ms. Westin, you say the GAO couldn't find much economic development, I guess, in the course of the 13 years that you have done this audit study. What standard are you using to measure this so-called economic development? In my district, we don't even apply the minimum wages that we apply here in the United States. So I want to ask you, what standards are you using that there is not much economic development in these areas?

Ms. WESTIN. We went to the RMI and the FSM, visited all states in the MSM, visited all the governments, looked at the—what kind of documentation there was to use the money that the U.S. had given over the last 13 years at that point, asked for examples of where there had been economic development being—went and visited businesses and whatever.

Mr. FALEOMAVAEGA. Give me your bottom line.

Ms. WESTIN. The bottom line, sir, is we could not find very many viable businesses that were still in business from the result of this U.S. assistance.

Mr. FALEOMAVAEGA. You are suggesting here that we are not going to give more money because we couldn't find economic development.

Ms. WESTIN. No. What we suggested was that we do support the idea that it not just be a check that is given but grant assistance where proposals have to be put in, terms and conditions put in and accountability measures in place; and I certainly share the hope of everybody that this will lead to viable economic development.

Mr. FALEOMAVAEGA. Mr. Short, on the question of—two basic things in terms of this grant, the funding proposal, and I see two basic problems here, one with the operations that we give yearly to the government. But one problem that has really bothered me over the years is the compensation for the victims of nuclear contamination. I wanted to know what the administration's position is in reference to what kind of funding are we prepared to give to these victims, to these people. For the past 50 years we still have not resolved this issue.

Mr. SHORT. Sir, the nuclear claims issue is not on the table right now. That is not in my mandate. But I will brief you on where we are.

The Compact of Free Association, pursuant to section 177, established a claims—

Mr. FALEOMAVAEGA. I understand.

Mr. SHORT. The Marshall Islands government on behalf of its people have put together a proposal for so-called changed circumstances that indicates that they do not agree that the settlement under 177 is adequate. That was submitted to the Congress.

Various Members of Congress have referred it to the President. The Department of State has established an inter-agency group. We are reviewing that petition for changed circumstances, and we will respond to the Congress and to the RMI government.

Mr. FALEOMAVAEGA. Thank you, Mr. Short.

Ebeye, 8,000 people live on this little island, probably the most dense population per capita anywhere that I have known, even here in the United States. I guess this matter comes under the Marshallese government. It doesn't come under your jurisdiction, correct?

Mr. SHORT. We are concerned about Ebeye simply because it represents such a large block of the Marshallese population and also because of the proximity to Kwajalein. But it is the responsibility of the Marshall Islands government.

Mr. FALEOMAVAEGA. Do you consider the Kwajalein arrangement very critical as far as our missile defense program that is now being proposed by the administration?

Mr. BROOKES. Yes, we do. Kwajalein is an important national asset to national defense, our ICBM testing as well as operations.

Mr. OSBORNE. Thank you.

Mr. Underwood had a quick statement.

Mr. UNDERWOOD. I wanted to thank everyone again on the panel for their testimony and to just take the time to point out that we do have a number of issues related to immigration which continue to be of concern not only in terms of the impact of migration.

I just—well, maybe I will just take the opportunity to ask one final question. Do either of you, Mr. Cohen or Mr. Short—and I know is there a neat separation between what is the immigration policy and rules and regulations that is possible for the 50 States as opposed to the territories in reference to the implementation of the Compacts. Do you know what is the existing status of the proposed FAS regulations?

Mr. SHORT. In regard to the latter point, there is a draft regulation that has been commented on by all concerned. My understanding is that draft regulation is still at the INS and has not been published, and I don't believe they have a target date for publication.

Mr. OSBORNE. Thank you, panel. I think we are going to have to move on to the next panel. We appreciate very much your coming and appreciate your testimony today.

At this point, we will move on with Panel II.

Mr. OSBORNE. We have the Honorable Peter Christian, Chief Negotiator for the Federated States of Micronesia, and we have Gerald Zackios, Compact Negotiator for the Republic of the Marshall Islands.

Mr. OSBORNE. Gentleman, we appreciate your being here. Each one will have 5 minutes for an opening statement. The lights in front of you, when they hit red, you have had your 5 minutes, so we will appreciate your staying within the time constraints.

We will start out with Mr. Christian.

STATEMENT OF THE HONORABLE PETER CHRISTIAN, CHIEF NEGOTIATOR FOR THE FEDERATED STATES OF MICRONESIA

Mr. CHRISTIAN. Thank you very much, Mr. Chairman, members of your Committee, and lady gentlewoman of the Committee, too, as well as the honorable members at the other table.

Mr. Chairman, we from the Federated States are very grateful to you and the members of your Committee for affording the government of the Federated States of Micronesia to appear before you today to address issues regarding the ongoing negotiations between the Federated States of Micronesia and the U.S. Government.

Before I continue, sir, I would like to express the appreciation of the government of and people of the Federated States of Micronesia to the United States for its prompt response to the recent landslides in Chuuk, in which over 50 of our citizens lost their lives, hundreds injured, and homes and food supplies destroyed. We thank you very much for that response.

We would like to also take this opportunity to express the gratitude of our government and our people not only for the very considerate assistance which has been provided to us by the United States for the past 16 years, but also for the constant friendship you have extended to us.

This has been an important contributing factor to our political, social and economic advancement during the Compact period.

Mr. Chairman, I invite you and the Committee members' attention to the discussion in my written statement regarding the origins of the U.S.-FSM relationship that found expression in the Compact of Free Association. I stress the important fact that the Compact has been a success. It has enabled the establishment of a stable and democratic political system throughout a vast and strategically sensitive area in the Pacific and the Pacific Rim.

The FSM has taken its place as a full participant in the international community and is a strong supporter of the United States foreign policy. The Compact has also facilitated tremendous economic progress in a relatively short time, having started from a very low point in that regard.

Mr. Chairman, I was born in 1947, the first year of the trusteeship. I can testify with certainty that the FSM of today bears little resemblance to the impoverished, war-torn islands of my youth. During the past 16 years especially, rapid advancements in transportation and communication infrastructure, education, health care, and, yes, private sector development have transformed our society and our quality of life, despite the many obstacles that we face.

Undeniably, sir, there have been mistakes and our journey toward economic self-reliance is far from over. Nevertheless, we feel that all parties who have been involved should feel justifiable pride in the accomplishments of the Compact's first 16 years.

Both the Federated States of Micronesia and the United States are determined in the amended Compact to reinforce those policies that have been successful and correct those which have not. Central to this approach is a shared desire for better administration, for transparency, better accountability in the management of Compact funds.

Again, referring to my written statement, my purpose in going into some detail about the history of our renewed negotiations is twofold: First, of course to give you our perspective on the events that have brought us to where we stand today; second, to inform this Committee of the diligence that we have shown consistently throughout the negotiating process. I assure you that we will continue to work hard to arrive at a document that adequately serves the objectives of both sides. Still, it must be said that significant challenges remain to be overcome.

Mr. Chairman, while the gap between the two assistance proposals has narrowed considerably in recent months through concessions made by both sides, we have not yet been able to agree to the offer of the United States. The ability of the Federated States of Micronesia to sustain and accelerate its economic progress over the next 20 years is, for us, a bottom line requirement. It is also a prerequisite to the successful implementation of the trust fund we have been speaking about.

One of our greatest concerns, sir, at this stage, is the preservation of FSM eligibility for Federal programs and services. Continued extension of these programs to the Federated States has been a mutually shared intention of both sides since the start of the original Compact negotiations and has not changed over time. The economical calculations of both the Federated States and the United States negotiators are based on an assumed continuation of current levels of Federal programs and activities.

However, we are alarmed by recent rumors or signs that the Congress may seek to remove our eligibility in certain critical areas such as health and education.

We are already facing the loss of substantial Federal program components. For example, under the new U.S. proposal, we would no longer be eligible for FEMA. As we have seen in the tragic events that just took place in Chuuk, acts of God, or acts of nature if you will, now hold the potential to wipe out the investments of both the United States and the Federated States in the essential infrastructures of our islands.

One of the aspects of the United States proposal most alarming to us is the move to amend a Compact provision that is not expiring; namely, the immigration section of Title I. Existing Compact privileges of free entry into the United States for FSM citizens to work, study and otherwise acquire useful skills has been a key element in the progress that we have made. We had expected that these negotiations would be limited to expiring provisions of the Compact, thus enabling a relatively speedy consideration and approval by both governments.

Mr. OSBORNE. Excuse me, but we are about 2 minutes over. Are you about to wrap up? We need to move on with our next panelist.

Mr. CHRISTIAN. Mr. Chairman, I will end my testimony right there. Thank you very much for the time.

[The prepared statement of Mr. Christian follows:]

Statement of The Honorable Peter Christian, Chief Negotiator, Joint Committee on Compact Economic Negotiations, Government of the Federated States of Micronesia

We are grateful to you, Mr. Chairman, and to the Committee Members, for affording the Government of the Federated States of Micronesia (FSM) this opportunity

to appear and present our testimony regarding the negotiations between the FSM and the United States Government (US) to amend certain provisions of the Compact of Free Association, primarily those relating to financial and other assistance that are expiring, after fifteen years.

First, we would like to take this opportunity to reiterate the gratitude of our Government and our people, not only for the very considerable assistance which has been provided to us by the United States for the past fifteen years, but also for the constant friendship you have extended to us. This has been an important contributing factor to our political, social and economic advancement during the Compact period. I am sure that I speak for every citizen of the FSM in saying that we are proud of our close association with the greatest Nation on earth. We are motivated in no small part by this association to maintain principles of freedom and democracy that we share with you.

The US and the FSM share important historical ties in the western Pacific. The tragedies of World War II brought our two peoples together, with some of the fiercest battles of the war in the Pacific being fought on our soil. The experience of the war, and the tragic loss of so many American and Micronesian lives, vividly underscored the strategic value of our islands. At the time, some in the US Congress even went so far as to suggest that Micronesia should remain in US hands indefinitely. Given the historic anti-colonial attitude of the US, we were eventually designated as the only Strategic UN Trust Territory. Our sovereignty was never assumed by the United States. Under this arrangement, the US would maintain military control of the region while pledging a solemn commitment to the "economic and social advancement of the inhabitants."

The early years of the Trust Territory were difficult for both sides. Early on, the US embraced what became known as the "zoo theory," under which it believed a hands-off approach to the Micronesian people, thereby leaving us in a traditional subsistence environment, would be best for us. It soon became apparent that it was too late for that kind of thinking, and it amounted to economic neglect of the Micronesians. As a result little or no development took place, with basic services lacking and only rudimentary infrastructure in place. This would change in the mid–1960s with a sudden increase in the levels of assistance from the US, and also the first concrete steps toward the establishment of political institutions and eventual self-governance. In 1979, the Constitution of the FSM was implemented and our nation was born.

In 1986 the Trusteeship was terminated, and the US and FSM entered into a new relationship under the Compact of Free Association at the time the first of its kind in international affairs. The Compact recognized the FSM, the Republic of the Marshall Islands, and later Palau, as self-governing sovereign states in free association with the United States. These entities, to be termed the "freely associated states," or FAS, would contribute to the peace and security in the central Pacific through the granting of certain defense and security rights to the US. In exchange, the US would promote the economic and social well-being of the Micronesian people through continuation of financial and other assistance. These arrangements served the US and the FAS well during the first fifteen years of the Compact, and, hopefully, will be reaffirmed and strengthened in the amended document currently under discussion.

In most important respects, the first fifteen years of the Compact have been successful. Great strides have been made in improving economic and social conditions in the FSM and the quality of life of FSM citizens. A stable and democratic political system has been established in the FSM, determined solely through the will of its people. The FSM has taken its place as a full and active participant in the international community. As such, it has been a strong and consistent supporter of United States foreign policy, in its bilateral relations, regionally and at the United Nations. During the Compact period the central Pacific has remained peaceful, secure, and free of foreign interference, in marked contrast to its previous history and to developments elsewhere in the broader Asia–Pacific region.

As with any new relationship, and as with any newly emerging developing country, mistakes were inevitable. Most that involved the Compact were remedied along the way through US/FSM consultations. Not once did either party resort to formal dispute resolution. Not once did the United States invoke the Compact defense veto against any FSM Government action. After about ten years and with the support of the Asian Development Bank, the FSM National and State governments carried out one of the most successful government reform and restructuring programs on record.

Both the FSM and the US are determined in the amended Compact to reinforce those policies that have been successful and correct those which have not. Central

to this approach is a shared desire for better administration, transparency and accountability in the management of Compact funding.

This brings us to the negotiations over the past several years to continue this historic relationship. Negotiations on the original Compact began in 1969 and lasted 17 years. Of course, the talks this time are focused primarily on the expiring provisions. Nevertheless, it is a credit to all involved that these talks are nearing completion in less than three years.

Even though the scope of the current renegotiation is much more limited than that of the original negotiations, many of the original principles and formulations have had to be reassessed in a substantially different post–Cold War international relations environment. Also, proper account has to be taken of technological innovations that were nearly unimaginable when the Compact was signed in 1986. Further, with fifteen years of history behind the two nations, both must now reinforce and build upon the positive accomplishments of the Compact while addressing the problems that have arisen.

Still, it is understandable that some might ask why these talks have taken this long. Please allow me briefly to trace a history of the renegotiation process, which we hope will shed light on the reasons for the delays that have occurred.

The FSM Joint Committee on Compact Economic Negotiations (JCN) was created by the FSM Congress in 1997, to begin preparations for the Compact negotiations which were mandated to begin in 1999. The JCN was formed a full two years before a similar agency was established by the US.

During these first years, the FSM developed the mechanisms necessary to ensure proper representation by the FSM in the talks, and conducted extensive research into some of the major issues likely to arise in the renegotiation. Keys to this research were a comprehensive survey of the FSM's economic needs and the development of projections for the twenty years following the end of the current Compact. These figures have since been fine-tuned and examined by economists from the FSM, the US, and international organizations. They constitute a detailed and useful picture of the FSM's economic prospects, especially in the near future.

At the opening round of negotiations, mandated by the Compact to be held in November 1999, the two sides agreed to four principles that would guide the work on a renewed Compact agreement. These were: a rededication to the goals of Title Two (economic provisions) and Title Three (security and defense provisions) of the Compact; commitment to completion of public sector reform and to private sector development in the FSM; and greater accountability for the use of Compact funds. This meeting accomplished its purpose as a forum to establish the broad constructs for the new agreement.

The comprehensive FSM economic study that we mentioned before served as the basis for the FSM's original economic proposal put forward at the second round of talks in April 2000. In this document, the FSM proposed ongoing grant assistance for a period of twenty years, and the formation of a US-funded trust fund during the same period, which would provide a funding stream at the end of twenty years adequate to eliminate the need for further US grant assistance. This was accompanied by a macroeconomic strategic planning framework that was the result of a series of nationwide economic summits held in the FSM. The first FSM proposal called for a total of $84 million annually in grant funding along with annual $20 million trust fund contributions. We presumed at the time that the inflation adjustment and full faith and credit provisions were not expiring.

Also at the second session, the FSM made a very important concession, agreeing in principle to the US proposal that grants would be specified in sectoral areas.

Work continued in a series of technical meetings between the sides. The FSM waited, meanwhile, for the US reply to its economic proposal. The FSM proposed a third formal round to be held in Yap, in September 2000, to receive the US counterproposal. The US agreed, and the FSM negotiators assembled in Yap, only to be notified from Washington that the US was not yet ready to present its counterproposal.

Two months later, in November 2000, a US economic concept paper was presented in Washington. The FSM was gratified that the US had accepted the need for a trust fund and adopted other elements of the FSM proposal. Still, the financial gap between the two proposals was huge. The US proposed annual grants for fifteen years not twenty amounting to a grant level of $56 million per year and a trust fund contribution of $13 million per year, all without inflation adjustment. An additional $5 million in grant funding would be available if the FSM met a vague macroeconomic performance standard.

In the FSM's view, this proposal, if accepted, quickly would lead to economic chaos and political instability in the FSM and would not result in anything resembling a viable trust fund at the end of the agreement. Further, the FSM viewed the

US proposals regarding accountability as over-reaching, despite both parties' commitments to improvement in that area.

In January, 2001, when the third round finally convened, it was not possible to narrow the gap between the FSM and US proposals, but the parties executed a Joint Statement of Principles, reiterating the four original principles and memorializing progress made up to that time. That statement is provided as an annex to our testimony. This statement expressed agreement on a sector grant approach and a trust fund.

The FSM agreed to another series of technical discussions focusing on the US and FSM financial positions. In one such meeting, in April 2001 in Honolulu, the FSM tabled a revised version of its original proposal, which now offered a $5 million reduction in our earlier request for grant funding, applying somewhat more optimistic assumptions about the future performance of the FSM economy. The key feature of the revised proposal was to establish an entirely new structure for accountability centered on a Joint (US/FSM) Economic Management Mechanism ("JEMM") that would be supported by a full-time joint secretariat. The idea was to move beyond simple oversight, as embodied in the US counterproposal, to the principle of a proactive partnership for FSM economic development and accountability. The revised FSM proposal also specified an inflation adjustment formula and full faith and credit guarantee, as well as continuation of all federal programs.

The longest delay in the negotiating process came about as the result of the uncertainty over the US Presidential results and the eventual change in administrations. A new negotiator was named in the fall of 2001, but the tragic events of September 11 resulted in still more delays.

Finally, with the new negotiator in place, the US agreed to meet in a fourth formal round in Honolulu, last December. The meeting served to reaffirm key principles from past sessions as well as to outline the new US Administration's vision for the renegotiations. Additionally, the two sides agreed to an ambitious negotiating schedule with a view toward completing draft Compact amendments by the summer of 2002. The first agreed document of the negotiations, a subsidiary agreement on Civil Aviation Safety, was initialed ad referendum at the fourth round. Progress was also made on agreements relating to postal services, telecommunications, FDIC and US military civic and humanitarian assistance (CHAP).

A full slate of technical meetings took place leading up to the fifth formal round in San Francisco in May 2002. During these meetings, the US and FSM discussed for the first time in detail the US recently-proposed language for Title Two, regarding economic assistance. The new US proposal narrowed the gap between the sides substantially, offering an initial grant amount of $72 million annually, for a period of twenty years, and provided for sufficient trust fund contributions to ensure viability at the end of the period. Both were subject to partial inflation adjustment and a multi-year appropriation variation of full-faith and credit. These contributions would, however, be conditioned on an initial FSM contribution to the fund of $30 million.

In addition to detailed discussion of new US drafts for Title Two, the San Francisco round was marked by consideration of newly-proposed US draft language for Titles One, Three and Four. The two sides made significant progress on the former, initialing many sections. The latter, however, created a series of unexpected problems for the FSM, as the US draft proposed changes to important elements of the Compact that are not expiring, and are thus beyond the JCN's mandate to negotiate. The sides also initialed agreements related to the FDIC, postal services, and CHAP.

Nearly continuous technical meetings have been held since the San Francisco Round, resulting in further progress on many fronts. We are currently in the process of reviewing the US draft agreements on telecommunications, law enforcement, and military use and operating rights. We are awaiting promised drafts on topics such as the trade provisions of Title Two, status of forces, and the US Weather Service. We have just provided to the US a proposed redraft of the existing agreement relating to economic regulation of civil aviation.

In early 2002, the US announced that it was proposing changes to non-expiring provisions of the Compact in a number of areas, primarily immigration. As the JCN was not granted a mandate to discuss issues other than expiring provisions, we have been unable to negotiate these elements thus far in the process. We am pleased to report that a special negotiating body appointed by the President of the FSM to consider US proposals to amend non-expiring provisions of the Compact, will hold its first meetings with US representatives next week.

That is where we stand today. It had been the mutual goal of both sides to approach the Committee today with an agreed document, and to outline the ways in which this will strengthen our bilateral relationship, enhance the economic develop-

ment of the FSM and serve US security interests in the region. While we are not quite there yet, these remain our goals. I assure you that we are working hard to arrive at a document that adequately reflects these aspirations. Still, we cannot in good faith gloss over the significant challenges that remain in the talks.

We are cognizant of the time constraints we face, and we think the record clearly shows that the FSM has, at every stage in the process, done its part to keep the discussions moving. The process has been subject to several unfortunate delays, and while these were beyond the ability of the FSM to control, and often beyond that of the US, they have placed us in a difficult situation with the deadline for Congressional consideration looming. That said, the issues remaining are too vital not to consider thoroughly.

While the gap between the two assistance proposals has narrowed markedly, and we are appreciative of the US efforts in this regard, the ability of the FSM to sustain and accelerate its economic progress over the next twenty years is a bottom-line requirement. It is also a key to the successful implementation of the trust fund. We are told that the US negotiator has reached the limits of his authority in this regard, and we have looked for any conceivable way in which we could accommodate the figure we are currently offered.

That problem, however, does not exist in a vacuum. Our position on the matter of financial assistance is complicated by a number of other unresolved issues with significant financial implications. Some of these, such as the still-emerging US Fiscal Procedures draft, are highly complex.

As the documents now stand, in the first year of the proposed US draft, the FSM economy would need to absorb a $12 million reduction in grant assistance; repatriate migrants who would no longer be allowed unlimited stays in the US under the more restrictive immigration provisions; scramble to produce the initial $30 million trust fund contribution; adjust to a nearly incomprehensible series of new administrative procedures; bear, for the first time, the cost of audits required by the US at an estimated cost of $1 million annually; prepare for an increase in postal rates; and adjust to the new pay-as-you-go CHAP scheme, as opposed to the $1 million provided for the former Civic Action Teams.

One of our greatest concerns at this stage is the preservation of FSM eligibility for federal programs and services. Extension of these to the FSM has been a mutually shared intention of both sides since the start of the original Compact negotiations, and has not changed over time. The economic calculations of both the FSM and the US negotiators are based on an assumed continuation of current levels of federal program activity. However, we are alarmed by recent signs that Congress may seek to remove eligibility in certain important program areas.

Federal programs have always represented a critical portion of the overall Compact package, providing vital services and technical expertise which still cannot otherwise be funded by grants as currently offered by the US, or by local revenues. Given the proposed reduction in the levels of grant assistance, they will become even more important under the amended Compact. The FSM's health and education sectors are particularly reliant on eligibility for these programs. Any cutback would have a devastating effect. No matter how much the negotiators may agree that these programs should be continued, that is, of course, ultimately subject to the will of the US Congress. It is for these reasons that we seek to work with the Congress to address, in advance of adverse actions, any concerns you may have regarding our eligibility for these programs and to ensure that maximum benefit is derived from their provision. Believe me, we are not talking about "double-dipping" here. Programs as currently provided are envisioned to be an integral part of the future Compact assistance package.

Under the new US proposal, we would no longer be eligible for FEMA disaster assistance should it be required. Acts of God now hold the potential to wipe out the investments of both the US and FSM in the essential infrastructure of our islands. As we have seen in the tragic, storm-driven landslides that struck Chuuk just a few short days ago, killing more than fifty people, the FSM is not immune to these threats. With the scientific community pointing to an increase in the intensity, and possibly the frequency, of tropical storms, this loss of our only substantial disaster assistance channel could not come at a worse time. Given the substantial investment the US has made, and will continue to make in the FSM, the withdrawal of FEMA assistance at this time is difficult to understand.

When one considers the effect of earlier reductions in grant assistance under the Compact step-down process, requiring adjustments far less than those now proposed, it is not difficult to see that the shock to the economy may be too great to recover from, even after twenty years. With one of the primary goals of the two sides being promotion of the private sector, this does not paint an attractive picture for local businessmen, and certainly not for outside investors.

The earlier step downs prompted one of the most ambitious public sector restructuring efforts ever undertaken in the region, and eliminated twenty percent of government jobs. We would face the prospect of undergoing an even more severe restructuring, less than five years after the first.

So yes, as some have said, the gap is "only a few million dollars a year." But a "few million dollars" represents a large share of the FSM economy. And this cannot be considered in isolation, as one must examine the full slate of increased costs due to changes to other elements of the relationship proposed by the US. In all, the current US proposal falls short of meeting one of the key US objectives of the Compact the promotion of the economic self-sufficiency of the FSM.

Outside of the financial provisions, there are a number of items remaining on the table which are not consistent with the FSM's status as a sovereign nation. The first is the provision calling for a grant of a permanent defense veto. Second, Section 234 of the US draft Title Two would provide an over-reaching law enforcement role for the US and would seek to institute intrusive measures such as the enforcement of US subpoena of documents and testimony of witnesses. Finally, many of the elements of the proposed Fiscal Procedures Agreement were developed from legislation applicable to US States, and are not found in other US aid arrangements. The FSM is not a US State or Territory, and does not have access to the resources that make those requirements workable in States and Territories.

Looking at the situation purely as though this were a negotiation between equals, one can fairly say that both sides have shown movement and flexibility that has narrowed the remaining gaps. Without question, the US is offering the FSM a very large amount of assistance, for a long time. We are not ungrateful, nor are we just looking to squeeze the last dime out of the negotiating process. We think that our announced method and intention from the very beginning points in the opposite direction. We believe, Mr. Chairman, that at the end of a day which must come very soon, the US and the FSM will reach an agreement that is faithful to the common interests that we share interests that were first expressed in the original Compact, and again expressed repeatedly as the four principles guiding the present negotiations. With that in mind, now we both must carefully examine the current proposals to judge their impact on our shared aspirations for the social, political and economic future of Micronesia, and the maintenance of peace and security in the greater Pacific region.

We look forward to responding to questions raised by the Committee on any aspect of the talks, and would be happy to provide a more detailed explanation of the issues of contention that remain in Titles One, Two, Three and Four, and with the Fiscal Procedures and Trust Fund Agreements.

In closing, we wish to reiterate our thanks to the Committee for holding this important hearing and for inviting us to provide testimony. We would also like to express our appreciation to the US negotiating team for the constructive spirit in which they have viewed these negotiations, and we share the view that we will soon have an agreement of which both nations can be justifiably proud and one that should lead to speedy and affirmative Congressional approval.

Thank you, Mr. Chairman.

[An attachment to Mr. Christian's statement follows:]

Joint Statement

The United States and the Federated States of Micronesia (FSM) reaffirm their special relationship, as reflected in the Compact of Free Association (Compact). This Joint Statement reaffirms the mutual desire of the FSM and the United States to reach an agreement regarding certain provisions of the Compact.

Reaffirmation of Principles

1. The parties are jointly committed to continued security and defense relations as set forth in TITLE THREE of the Compact.
2. The parties are jointly committed to the purpose of TITLE TWO of the Compact, which is to assist the Government of the FSM in its efforts to advance the economic self-sufficiency of the people of the FSM.
3. The parties are jointly committed to public sector reform in the FSM and to promoting policies, measures and mechanisms that advance the development of the private sector in the FSM.
4. The parties are jointly committed to more effective accountability under the Compact.

Economic Assistance

1. The U.S. Administration remains committed, following the fifteenth anniversary of the effective date of the Compact, to the economic stability and well-being of the FSM. Accordingly, the United States intends to provide a substantial level of financial assistance to the FSM (in a manner that avoids disruptive step-downs), over a limited period of time. The terms and duration of such assistance would be the subject of a subsequent Agreement.

2. The United States and the FSM propose that assistance from the United States would take three forms:

A. Financial assistance, provided on the basis of sectoral grants, on terms that would ensure effective accountability, and an agreed-to degree of flexibility, in addressing sectoral needs from year-to-year. These terms would be set forth in the subsequent Agreement referred to;

B. Annual contributions into a Trust Fund, the governance of which would be agreed by the United States and the FSM. This Trust Fund would be intended to meet the parties' mutual objective of terminating mandatory annual financial assistance from the United States to the FSM. To this end, contributions to the Trust Fund, from all donors, would be intended to build a corpus that could provide an annual income to the Government of the FSM following the termination of annual mandatory financial assistance from the Government of the United States. During the period in which the FSM would continue to receive such financial assistance, no portion of the corpus or earnings of the Trust Fund would be used.

C. Subject to Congressional approval, appropriate U.S. Federal programs, services and technical assistance.

Undertakings by the Government of the FSM

The Government of the FSM would:

A. Continue its efforts to maximize assistance from other foreign sources and from multilateral entities, consistent with the Compact, including contributions to the Trust Fund;
B. Continue its efforts to increase locally generated revenues; and
C. Achieve and maintain compliance with accountability requirements specified in the Compact as it may be amended.

Allen P. Stayman
Special Negotiator

Peter M. Christian
Chief Negotiator

Honolulu, Hawai'i
January 11, 2001

Mr. OSBORNE. Thank you. Mr. Zackios.

STATEMENT OF GERALD M. ZACKIOS, COMPACT NEGOTIATOR FOR REPUBLIC OF THE MARSHALL ISLANDS

Mr. ZACKIOS. Mr. Chairman, distinguished members of the House Committee on Resources, ladies and gentlemen. On behalf of President Kessai Note and the people and government of the Marshall Islands, I want to thank you for the opportunity to appear before you today. I want to reassure you that the RMI will continue to work with the United States in whatever way is necessary to reduce the threats of global terrorism.

As strategic partners and allies of the United States, we stand with you in the war on terrorism and missile defense program.

Before I get to the substance of my remarks, I would like to clarify that we are not engaged in an exercise to amend the entire Compact of Free Association. Our mandate is to extend the expiring provisions of titles II and III pursuant to the provisions of section 231 of the Compact.

If we had followed the mandate of the Compact that instructs us to deal only with expiring provisions, I honestly believe we would have been much closer to a conclusion of title II today.

I also note that if our mandate had been to amend the entire Compact, the RMI would have begun with section 177 regarding the nuclear claims.

Since my time is brief, please excuse me while I move directly to the topic of title II. Other issues of importance to our bilateral relationship are included in my written testimony.

I want to thank the Congress and executive branch for working with the RMI to ensure the success of free association under the Compact. I strongly believe that the challenges that have occurred in our implementation of free association have been strongly outweighed by the mutual benefits of our relationship. I also want to let you know that I think the RMI and the U.S. are very close to concluding a title II agreement. We are actively engaged with the U.S. Chief Negotiator to remove the final stumbling blocks so we can reach consensus on an agreement.

There are three specific topics I would like to touch upon: The base grant, the intergenerational trust fund, and improved fiscal accountability and management procedures.

On the base grant, the title II agreement is structured in such a way that the RMI would be given a base grant to provide essential government services and infrastructure investments. The base grant will be supplemented by continuation of existing Federal programs and services and the extension of additional programs you have if agreed to by the administration and Congress. One significant difference that remains in our discussions with the United States regarding the base grant is the need to maintain the real value of Compact funds. Over the next 20 years, with the half a million dollar annual reduction proposed by the U.S., the value of the funding will decrease substantially at a much faster pace than we think we can generate other revenue or reduce budget costs. Thus, the RMI needs to have to adjust it fully for inflation.

The intergenerational trust fund: A new component of title II economic assistance will be maintaining a trust fund to supplant U.S. assistance in the future. To demonstrate its commitment to the trust fund, the RMI has already put $18.5 million into the fund. We plan to make substantial future inputs and are only potentially deterred from our contributions to the fund by crucial infrastructure needs, particularly the urgent need to repave the Majuro International Airport and to refurbish Majuro Hospital, the principal medical care facility of our nation.

Mr. Chairman, the U.S. has made a proposal to contribute to the trust fund, and I am glad that we both agree that the trust fund is an appropriate mechanism to provide for post-title II budget stability, to invest in future generations and to eliminate our reliance on mandatory U.S. grant assistance.

We do question, however, if the U.S. contribution along with the RMI contributions will be sufficient to provide a distribution in 2024 to succeed U.S. base grant assistance. If the U.S. contribution is adequate and has a full inflation adjustment, we will be in full agreement on the trust fund.

Fiscal monitoring and accountability. From our standpoint, the RMI needs to reduce its reliance on external grant assistance. To do this, we need to ensure that funds allocated over the next 20 years are used effectively and the corpus of the trust fund reaches an adequate level.

We have developed processes in this respect and have worked with the Asian Development Bank and the U.S. to improve planning, monitoring and accountability of our financial management system. We believe, Mr. Chairman, that the fiscal procedures agreement that will accompany our final agreement must be practical for the RMI and the United States and that it must construct fiscal procedures that are transparent and can be implemented by both sides.

In conclusion, Mr. Chairman, I think Congress will be pleased by the agreement you will receive. The final agreement will increase the economic stability of the RMI and simultaneously create a mechanism for the RMI and the U.S. to jointly improve the RMI's financial management and monitoring systems.

The RMI also established a viable mechanism to reduce our dependency on U.S. mandatory assistance in 2024. I am also excited that our new government agreement builds a joint mechanism to train Marshallese in fiscal management and to monitor the progress and performance of the trust fund and the use of Compact funds.

While funding is of crucial importance, the RMI also needs the active involvement of the U.S. on the ground in the RMI to strengthen our capacity to achieve sustainable economic development.

Thank you, Mr. Chairman. Please know that the RMI government remains fully committed to continuing the success of our mutually beneficial relationship and unique strategic alliance. Thank you.

[The prepared statement of Mr. Zackios follows:]

Statement of Gerald M. Zackios, Minister of Foreign Affairs, Republic of the Marshall Islands

Mr. Chairman, Distinguished Members of the House Committee on Resources, Ladies and Gentlemen:

I would like to begin my testimony by recognizing the wisdom of the American and Marshallese leaders who negotiated the Compact of Free Association. Even though none of us could have foreseen the end of the Cold War in 1985, they had the vision to realize that new dangers and new threats to peace would emerge even in a post–Cold War era. This is why a bipartisan consensus developed in Congress in support of strategic denial in perpetuity, rather than a period of years.

Unfortunately, strategic planners in the Department of Defense back in the 1980's were right, the world is still a dangerous place a decade after the Cold War ended, and the Marshall Islands remains strategically vital because of its unique location and capabilities. We do not shrink from our role as a front line defender of democracy and strategic partner of the United States. We welcome this role and its accompanying challenges.

We know the only thing more dangerous than standing with the U.S. led coalition against terrorism would be to hope that somehow we could stay out of harm's way because of our remote location. We learned the folly of that naive worldview during World War II and the Cold War arms race that brought the nuclear age to our homelands.

Today we are realists, which is why the RMI was among the first nations to give its unconditional and unequivocal support to the U.S. leadership in the war on terrorism.

The RMI is proud that no other nation in the world is more closely aligned with the U.S. militarily than the RMI. We are proud of the Marshallese men and women who serve in every branch of the U.S. armed forces, and we are proud hosts to the U.S. Government's missile defense systems development program on Kwajalein Atoll.

I also want to begin my testimony by thanking the Congress and the Executive Branch of the United States Government for working with the RMI to ensure the success of free association under the Compact. I strongly believe that any burden that may be attributed to free association, and even the trusteeship period, are clearly outweighed by the mutual benefits of our relationship.

Despite the successes of free association, I recognize that there are critics in the federal government. A few may even view free association as some sort of historical accident that is frustrating and inconvenient because it commingles domestic and international issues and programs. While some may wish to "normalize" our unusual bilateral relationship, we continue to find greater value in the special relations defined by the Compact than any other political status or relationship. I believe the Compact is a success because it simultaneously reflects the historical linkages between the U.S. and the RMI, including the previous need to terminate the trusteeship. The Compact also effectively creates a new model for bilateral relations that ensures benefits for both of our countries well into the future. Many of the benefits our nations receive from the Compact have only recently become evident, and others are yet to manifest. What is important now is to maintain and to build upon our success.

The Compact is a success.

The Compact was born of optimism and commitment sustained in both the Carter and Reagan administrations. These administrations, along with Congress, understood that the most important purpose of the Compact was to transition the RMI from trusteeship to self-governance. The architects of the Compact were right, and their vision came true; the RMI has become a politically stable nation where democracy and human rights are respected, and where the rule of law is enshrined in our Constitution and effectively administered by our courts. I am proud of what the RMI has become—a nation that adopted a participatory democratic system of governance and which retains the strengths of our traditional culture.

As a result of free association, the Marshall Islands has been transformed from a trusteeship to a democratic and stable nation—a nation that chooses to closely align itself with the United States and a nation that chooses to contribute to crucial U.S. strategic interests. The Compact has also enabled the Marshall Islands to begin recovery from decades of restricted development during the trusteeship. It has become something of a mantra to admit we made some mistakes in our economic development strategies. Without ingratitude for all that was done with the best of intentions, it can be argued, however, that we have made fewer mistakes in fifteen years under the Compact than the U.S. federal government made in its developmental program as Administering Authority during the last fifteen years of the trusteeship.

We also are building mature political and economic relations with the U.S. and the rest of the world. For example, as a nation the RMI unequivocally supports human rights and self-determination; the RMI has chosen to build strong alliances with Taiwan and Israel, and other countries, as evident from the RMI's voting record at the United Nations.

The transition from trusteeship to independence has been a difficult process. We expected the transition to present challenges and in some cases the process has proved even more difficult than expected. We need the continued involvement of the United States to meet these challenges and to fully realize the value of the investment our nations have made in the success of free association under the Compact. By addressing and working through our challenges, I believe the RMI will become a stronger and more resourceful nation.

The benefits outweigh the burdens.

There is no question that some problem areas have resulted during the implementation of the Compact. These imperfections to do not detract from the success of the Compact, and in most cases provide an opportunity for the RMI to acknowledge its problems, learn from its mistakes, and make better choices in the future. This learning process is an integral part of development.

An examination of the economic gains of the RMI provides the perfect example of how the RMI has had successes, and how the RMI has had to learn from its mistakes. The RMI has made major improvements in the quality and extent of the basic infrastructure that it inherited from the trusteeship especially in the areas of trans-

portation, electricity, communications, water, and roads. We have also significantly reduced the size and cost of an excessively large public sector resulting from the trusteeship. The size of the Government was reduced by nearly one third between 1997–2000, and we are striving to create a professional public service that is both effective and efficient. We also have succeeded in attracting investment in fish processing, aquaculture, and in tourism.

While we have made significant progress in developing our economy, the RMI has also made some misjudgments that have slowed our growth. For example, the previous administrations made Government investments in commercial enterprises that were not successful. The Note Administration has learned from these mistakes and our policy is to reduce Government investment and create an enabling environment for the development of our small, but growing private sector.

Another area that has been difficult, but one where we have made significant progress, is the reform of our financial management and accountability systems. As you know, having strong financial systems and properly trained people to work them is a challenge in all countries. The General Accounting Office (GAO) has been extremely helpful in identifying problem areas in the RMI, problems that primarily resulted from the shortcomings in our fiscal and financial mechanisms. We have been working consistently with the Asian Development Bank to strengthen these systems and to minimize the opportunity for inappropriate use of government resources, including Compact funds.

The other area where growth has been frustrating is our human development. While some progress has been made in the areas of health and education, such as the completion of the new Ebeye hospital and successful teacher training and vocational education programs, substantial deficits exist in these areas. As the GAO notes, the deficiencies in our public health and education may be one reason that some of our citizens are emigrating to the U.S. and its insular areas. We would like to work with you to strengthen the public health and education systems in the RMI so that our citizens can reach their full potential, including maximum participation in the economy, and to decrease the number of citizens seeking basic services in other locations.

However, even with a healthy and educated population, emigration will still persist, as experienced in other island countries and a general occurrence in international development. We must face the reality that the RMI is an atoll economy with practical resource limitations that make emigration a necessary "safety valve."

Again, I would like to note that the problems that have emerged with the Compact in no way detract from the overwhelming success of the Compact.

Title II.

The RMI position is that it has made great progress on the negotiations for an effective and beneficial Title II package. We sincerely appreciate the efforts and consideration of the U.S. Chief Negotiator Al Short and his team. We believe we are moving much closer to a final package to be presented to Congress. If approved, the Title II package would maintain economic stability in the RMI, achieve budgetary self-reliance, strengthen our economy, and improve the opportunities available to Marshallese citizens. The RMI's goal for Title II is to establish fiscal stability and budget flexibility while simultaneously ensuring the long-term sustainability of our economy. We believe this is achievable and we have put fiscal incentives in place to help us meet our goals.

The new Title II agreement is structured in such a way that the RMI will be given a base grant to provide basic government services and infrastructure investments. The base grant will be supplemented by the continuation of existing Federal programs and services, such as the current health and education programs the RMI receives, and the extension of additional programs if agreed to by the Administration and Congress. Federal programs and services are critically important because they provide essential technical resources that the RMI, given its size, does not have the capacity or ability to develop.

We do not believe that access to these Federal programs and services are "double dipping" as some have portrayed. These programs and services are supplemental to other Compact funds. More importantly, these programs and services add valuable technical resources and expertise that the RMI simply does not have and would not be effective and efficient for the RMI to try to duplicate on such a small scale on its own.

A new component of Title II economic assistance will be maintaining a trust fund to supplant annual U.S. assistance in the future. The U.S. will provide annual contributions to the Marshall Islands Intergenerational Trust Fund. This trust fund was implemented by the RMI in 2000 to provide for future generations by maintaining future fiscal stability during the post Title II era. Monies in our trust fund will

be managed by a U.S.-based company and invested in the United States. The RMI is working closely with the Chief Negotiator's team to have a trust fund agreement that allows for the build-up of the trust fund as well as responsible access to the fund at the end of the proposed term of Title II.

The U.S. has proposed a base grant of $29.8 annually, which will decrease by half a million dollars each year. In addition to the base grant, $4.1 million will be provided for the special needs of Ebeye, the community adjacent to the Ronald Reagan Missile Defense Testing Site on Kwajalein Atoll. The total annual grant assistance, including the funding for the special needs of Ebeye, ,is $33.9 million with a $.5 million reduction each year of the 20 year agreement. These funds will be allocated to the key sectors of education and health, for which we hope to double spending in the next three to five years, and also environment, capacity building, private sector development and infrastructure development and maintenance. In addition, the $1.9 million available for Kwajalein impact as a result of U.S. military activities on the atoll will be treated as grant assistance if inflation adjustment is provided. This amount could increase if the United States extends its use of Kwajalein as is being contemplated.

We believe the current base grant offer from the U.S can be improved to nearer the $36.6 million we requested. As you can see Mr. Chairman, we are not that far apart and we thank the Chief Negotiator for being responsive in working with us to accomplish our shared goals in these negotiations.

One significant difference that we do have is in regard to maintaining the real value of the funds over the proposed period. Over the 20-year period, with the half million dollar annual reduction, the value of the funding will decrease substantially—at a much faster pace than we think we can generate other revenue or reduce budget costs. Thus, we are striving to have the funds adjusted fully for inflation. As you may know, Mr. Chairman, the current and proposed inflation formula in the Compact is only for a two-thirds inflation adjustment. We see no reason to maintain this formula and have found no real economic basis for such a reduced rate. We strongly believe that full inflation adjustment needs to be applied to the grant assistance otherwise our goal of fiscal stability is undermined from the outset.

I should note that even with the full inflation adjustment, to meet the U.S. objective of reducing our budget reliance on Compact funds, the real value of the U.S. grant assistance would substantially decline over the 20 years on an overall and per capita basis. We should also take into consideration that given the remoteness of the RMI from major markets, inflation in the U.S. mainland, where most of our consumer and capital products and services originate, is often multiplied by the time these goods and services reach our shores. Thus, during inflationary periods, we usually receive a double or triple inflation impact that critically injures our economic performance and reduces living standards.

For the trust fund, the U.S. has proposed a $7 million annual contribution, with the addition of the half million dollars annually deducted from the base grant. The U.S. has also proposed a $1.5 million bump up between 2016 and 2021 if the RMI provides a matching $3 million annually during these years. The RMI proposes to contribute $35 million of its own funds to start the trust fund in 2004. We have already set aside $18.5 million in 2002 for this purpose. We plan to set aside another $16.5 million in 2003, pending some crucial infrastructure needs that I will discuss in a few minutes.

Mr. Chairman, the U.S. contribution offer is generous and I am glad that we both agree on the importance of the trust fund as a mechanism to provide for post Title II budget stability, invest in future generations, and eliminate our reliance on mandatory U.S. grant assistance. We do question if the U.S. contribution, along with the RMI contributions, will be sufficient to provide a distribution in 2024 to supplant U.S. base grant assistance. If the U.S. annual contribution was $8.5 million annually with the full inflation adjustment, we would be in full agreement on the trust fund.

We also see the need to have a bilateral review periodically to review the trust fund's performance to determine if the trust fund is meeting the RMI–U.S. objective of supplanting U.S. economic assistance. I must say, Mr. Chairman, that we do see the trust fund as a viable mechanism to reduce our dependency on U.S. mandatory grant assistance in 2024. However, we should not shift the responsibility of the RMI–U.S. economic and political relationship solely to a trust fund that is more responsive to market forces than the will of our governments' and people. We have real concerns, and the current U.S. financial situation is a much too real example, that the RMI may be left with a trust fund that is not sufficient to replace U.S. assistance. Just as the Compact has various assurances and reassurances for the United States on the political, economic and strategic relationship, we hope to have similar assurances that the trust fund will meet both sides' expectations and needs.

As mentioned previously, the RMI has set aside funds for the trust fund. This money has come from delaying infrastructure development since we believe that the larger our investment to the trust fund in the early years, the less of a burden making such contributions will be in the future, and the funds will be allowed to grow. In the last few months, two infrastructure projects have become urgent:

First, the Federal Aviation Administration has reported that the Majuro international airport needs to be repaved urgently. If it is not done in the immediate future, the airport will be shut down, therefore, closing the RMI's major link to the outside world. The cost of repaving is about $10 million of which the RMI has committed to contribute $2 million.

The second project is the refurbishing and expansion of the Majuro hospital, the principal medical facility for our nation. The Government of Japan prepared the project and has kindly agreed to finance part of these costs. The RMI does have some of its own funds available for this major investment to improve health care. However, we have a shortfall of about $6–7 million.

As stated above, we want to commit to the $35 million initial RMI contribution. We want to be clear, however, that if we cannot find a source of funding for these two critical projects, such as from the United States, than we will have to reduce our initial investment in the trust fund accordingly.

The RMI takes seriously the need for improved planning, monitoring and accountability of Compact funds as well as our domestically generated funds. We are currently establishing a new budget process and financial management system that will improve our technical and human resources for these purposes. The RMI has proposed to the U.S. the inclusion of Compact funds within our Medium Term Budget and Investment Framework that will show how the Compact funds are planned, allocated and used, including measuring results. We also plan on implementing a Performance Scorecard for sectors to transparently evaluate the accomplishments of each ministry. This approach is similar to the OMB's approach to departmental budgeting and performance reviews. Furthermore, we our working with the Chief Negotiator to establish a Joint Economic Review Board that will help to provide joint oversight of the Compact economic assistance.

While the RMI is improving its financial management system to improve planning, monitoring and accountability, we strongly believe the Fiscal Procedures Agreement, as proposed, needs our joint attention to make it practical for the RMI and the United States. This is not only our view, but the view of other third parties, such as the Asian Development Bank. We are more than willing to work with the U.S. to help construct fiscal procedures that are transparent and can be implemented by BOTH sides. We are working with the U.S. Chief Negotiator and his team to create realistic and appropriate fiscal procedures. Let me state emphatically that we are not trying to reduce or deter the need for increased accountability and producing actual results. We, too, have learned from the past and we do not want mistakes repeated.

To help establish such procedures, our Compact proposal asks that the U.S. government place at least two individuals in Majuro to help provide monitoring and to help establish Compact-related reporting procedures. We stand by this request and, since learning of the U.S. interests in depth, would like to add to this request so that there is a team of at least four individuals in Majuro during the first five years of the proposed term of the economic assistance and that two individual be in place thereafter. Such Department of Interior personnel will be essential to implement the new agreement for Compact funding including planning, monitoring, reporting, and training Marshallese to perform these functions. We would also hope to have a joint training program so that procedures are in place and followed according to the agreement. We believe that this is the only way that both governments can implement the new period of financial assistance from day one and make it work.

Although we are generally pleased with the progress that has taken place in our Title II negotiations, we do not want see issues like concluding a viable and realistic fiscal procedures agreement, or proposed changes to the immigration provisions of the Compact derail the process.

Issues relevant to, but not included in Title II negotiations.

1. Immigration.

From a Marshallese perspective, one of the most important benefits in the Compact is the right of citizens to enter, reside, join the military, work and go to school in the United States. For the first 15 years of the Compact we have had one approach to immigration that everyone understood; Marshallese citizens entered the U.S. legally with a visa waiver privilege. It is a cornerstone to the concept and relationship of "free association" itself. The U.S. proposed this feature to make free association a viable alternative to territorial status with U.S. citizenship.

In the past few years, the RMI has come to recognize that there are some problems resulting from the immigration provisions of the Compact. We do not want our citizens, for example, to overburden the public health and education systems in the areas where they migrate, primarily Hawaii and the U.S. mainland. I want to note here that we must be careful to acknowledge the positive impact that Marshallese citizens have on areas where they emigrate. Marshallese citizens pay taxes, spend their wages in the U.S., and take low-skilled jobs that are difficult to fill. Despite the positive contributions of Marshallese citizens, we are still prepared to talk to the U.S. about any overburdening of public services as a result of Marshallese emigration.

The RMI has also grown increasingly concerned about the adoption of Marshallese children by U.S. citizens. Adoptions began to occur before the RMI had time to get protection measures in place to monitor the adoption procedures and to research adoptive families. The RMI had hoped to work with the U.S. Government to address this problem.

Because the Compact provides Marshallese citizens with the right to enter the U.S., the RMI believes that any effort to alter existing provisions in the Compact must be done bilaterally with the consent of Congress. For almost a year the RMI has requested that the Department of State engage in bilateral discussions with us to find a solution to the immigration issue.

Unfortunately, early in 2001 the Immigration and Naturalization Service (INS) unilaterally decided to change the legal procedures for entry into the U.S. without any consultation with the RMI. The RMI citizens subjected to unilateral actions of the INS have challenged the changes in Compact immigration procedures in the U.S. Immigration Court, and the courts have ruled that the RMI's legal position is correct in multiple cases.

Recently the Department of State wrote to me to request that immigration provisions in Title I of the Compact be included in the scope of our negotiations on extension of Title II. We are grateful that the Department of State agrees with our suggestion to discuss immigration bilaterally. However, we do not feel that immigration provisions in Title I should be included in our discussions to extend Title II of the Compact.

Title II negotiations are time sensitive because U.S. funding for programs will terminate shortly. We would like to begin bilateral discussions with the U.S. on immigration provisions. If we can reach agreement before Congress extends Title II then both sides would be happy, but the RMI does not want to hold Title II negotiations hostage to an agreement on Title I immigration issues. From our perspective, this would be like negotiating with a gun to our heads.

In recent days we have opened what we believe may be a promising dialogue on immigration issues. The RMI is far more receptive to the reform of immigration procedures than the INS realizes, especially in matters that involve mutual security and anti-terrorism issues. If the State Department is now ready to engage in constructive talks we think the U.S. will be surprised by how forthcoming we will be as long as RMI interests in maintaining economic, social and family links between our nations is accommodated in a reasonable way consistent with security requirements.

2. Changed Circumstances.

In 1982 the Reagan Administration reached agreement with the Republic of the Marshall Islands (RMI) on a full and final settlement of claims arising from the U.S. nuclear testing program in the Pacific. This settlement cleared the way for resolving the political status of the RMI by terminating the trusteeship and entering into free association under the terms of the Compact.

The settlement agreement submitted to Congress by President Reagan included a "Changed Circumstances" provision authorizing the national government of the RMI to petition Congress if it believes developments since the settlement was approved render the compensation for damages and injuries from the testing program manifestly inadequate. This provision operates in tandem with provisions terminating pending claims cases in U.S. and RMI courts, and establishing a claims tribunal as an alternative adjudicative forum to ensure the adequacy of remedies and finality of the settlement. Congress approved the RMI nuclear claims settlement in 1985.

In 2000 the RMI submitted a petition to Congress, also transmitted to President Clinton, alleging that changed circumstances render the settlement manifestly inadequate. The petition, which describes new information about the effects of the nuclear tests and cites awards of the claims tribunal created under U.S. and RMI law, was resubmitted to Congress on November 14, 2001, and transmitted to President Bush.

It is unfortunate that the Congress and the RMI will make decisions on the renewal of expiring provisions of the Compact of Free Association without a comprehensive response to the RMI petition. We understand that federal departments and agencies with policy and program responsibilities under the settlement are examining the petition but a response will not be ready until after Compact renegotiations are complete. While the two issues of Compact renewal and the RMI petition are not linked in a conditional way, informed deliberations on both matters require an assessment of the issues raised in the petition. I would like to request, Mr. Chairman, an opportunity to discuss the issues in the changed circumstances petition with the Committee once the Administration's review of the petition is complete.

3. Kwajalein.

The RMI and U.S. are currently engaged in discussions to consider extending the MOURA agreement. The RMI is working in close consultations with the landowners of Kwajalein during these discussions. The RMI remains committed to its strategic partnership with the United States and wants to renew provisions of Title III and remains strategically aligned with the U.S.

We believe that it is in our mutual interest to agree to a long-term extension for the use of Kwajalein at this time if at all possible. We feel confident that arrangements could provide the U.S. with appropriate terms given the uncertainties of the future while providing the RMI and stakeholders at Kwajalein Atoll with long-term stability and financial security for the future. In order to fully explore the possibilities for our future relationship as it concerns the U.S. defense site at Kwajalein, we ask that the U.S. Department of Defense consider supplementing authorized Office of Compact Negotiation budgets.

4. 177 Health Care Program.

Currently, the 177 Agreement of the Compact of Free Association provides two different medical programs in response to medical needs resulting from the U.S. nuclear weapons testing program, the Department of Energy medical monitoring program and the 177 Health Care Program (HCP).

The 177 Health Care Program is designed to provide primary, secondary and tertiary medical services to the people of Enewetak, Bikini, Rongelap and Utrik islands who were affected by the U.S. nuclear weapons testing program, and referrals from the Nuclear Claims Tribunal who have contracted radiogenic illnesses. The 177 Health Care Program's design was developed through the US Public Health Service (USPHS) in 1985, and is currently managed by Trinity Health International.

Delivery of the health care proposed by the USPHS has been impossible because of limitations in funding. Unlike virtually every Compact program provided by the U.S. Government, there has never been an inflation adjustment to offset increasing costs of healthcare. During the 15 years that the program operated during the Compact funding remained level at $2 million a year although healthcare delivery costs increased by 10–15 percent a year. At the end of the fiscal year in 2001 the U.S. stopped providing funds for the 177 HCP altogether. Since that time, the Nuclear Claims Tribunal has maintained funding at the U.S. level for the first three-quarters of fiscal year 2002. The Tribunal does not have sufficient funds to pay the awards of its claimants and should not have to fund the 177 HCP, but without the Tribunal's assistance the program would terminate.

The 177 HCP has been a great frustration to the RMI since its inception because the Compact created the expectation that services would be provided, but inadequate resources and funding exist to accomplish what it was intended to do by the USPHS and the U.S. Congress. The 177 Health Care Program, with a budget of $2 million annually, has been grossly underfunded. Provision of tertiary care services (off island health care that cannot be provided in the RMI) has been grossly inadequate. Secondary health care (inpatient and hospital based healthcare) has been delegated to the current RMI hospital health system that is not equipped to provide the appropriate level of inpatient care for the 177 population. Tertiary (off island referrals) care is not made available for seven to ten months out of each year. Hence, the people of the 177 Health Care Program have been subjected to a substandard level of primary, secondary and tertiary healthcare services since the program's inception.

The chart below illustrates what it would cost per person per month (PPPM) to achieve basic levels of primary, secondary and tertiary health care in the United States as compared to the 177 Health Care Program. These figures, calculated by Trinity Health International, are based on 1997 Health Care Dollars and do not reflect increased health care costs during the past five years.

PROGRAM	(PPPM)
U.S.	
Commercial Population	$135
Medicare (Nebraska)	$221
Medicare (New York)	$767
Medicaid (Michigan)	$120
RMI	
Section 177	$13.60

There are those in the U.S. Government who believe the inadequate financial resources of the 177 HCP is a result of over enrollment. According to Program Eligibility Determination Plan for the Four Atoll Health Care Program agreed to by the U.S. Government in 1985 it was determined that participation in the program would be based on land rights. Although this would increase the enrollment above the people who were directly exposed to fallout, the designers of the program recognized the health problems resulting from the resettlement of contaminated lands, and the failure to occupy land where people have land rights and access to local foods and a healthy way of life.

The expenditures of the U.S. health care insurance companies and third party payers is based on the premise that appropriate primary, secondary, and tertiary healthcare services are available in close proximity to the patient. Because the health care system of the RMI is developing or lacking, many of the required primary and secondary healthcare services are inadequate and tertiary health care services must be purchased outside the RMI. If the medical care provided to the people who were affected by the U.S. nuclear weapons testing program is expected to meet U.S. standards of care, there are two options. One, the health services could be provided in the United States, i.e. treating the affected people on site in Hawaii, or two, the RMI health capacity could be upgraded to meet the need of the target population. The second goal is consistent with the objectives of the Compact.

Investing in the RMI health infrastructure and supplementing the tertiary care budget is cost effective and will provide the best health care alternative to the nation for several reasons. First, such an approach would represent true development and capacity building of the health system and not mere health service delivery. Second, the economy of scale would result in the system being able to care for a greater number of affected people, on site, at a lesser cost. Third, all present and future generations affected by the U.S. nuclear weapons testing program and living in the RMI would receive appropriate health care within the local infrastructure. Finally, the health care delivery to all people living in the RMI would improve.

The structure and design of the 177 and the DOE (prior to 1998) medical program fostered a victim and dependency mind set in the people it has served. The 177 program does not allow full community participation in health care promotion and has not positively affected the capacity for development or self-reliance in health. As such, the 177 health service delivery programs have a great potential for promoting dependency. The 177 program perpetuates a model of health care that is destructive to the RMI and the people it serves.

The ideal program should target development of a single system of healthcare that is capable of providing special services necessary to the populations affected by the U.S. nuclear weapons testing program. To this end, full integration of health programs for radiation affected peoples is essential. The affected communities should be partners in developing, implementing, and sustaining these programs.

5. USDA supplemental food program for the 4 atolls.

The final issue that I want to raise today, Mr. Chairman, is the U.S. Department of Agriculture (USDA) supplemental food program for the 4 atolls. Access to safe and regular sources of food is difficult for the 4 atolls due to residual radiological contamination on their home islands and the resulting difficulties of securing food for the decades they have been displaced.

Congress recognized the predicament of the 4 atolls by extending a USDA supplemental food program to the 4 atolls for three five-year increments during the Compact. As the administering agency of the supplemental food program, the USDA decides what foods to purchase, and which people will receive them. USDA then purchases the food and ships it to Majuro. The logistics of receiving the foods in Majuro and shipping them to the atoll communities has been cumbersome.

The residual contamination of the environment and the displacement of communities caused by the testing program will continue indefinitely. Therefore, the RMI Government would like to request that the USDA supplemental food programs for

the 4 atolls continue for the twenty-year duration contemplated in the Title II extension. We would prefer, however, that money to purchase supplemental foods be wired to Majuro so that the local communities can decide for themselves what foods they want to eat. The arrangement that we propose is consistent with the Compact's goal of local capacity building, and will stimulate the RMI's economy by purchasing goods from local storeowners.

Conclusion.

In closing, I would like to reiterate what I stated at the outset: the Compact is a success and our goal in these current negotiations is to maintain and build upon that success while taking into account that some mistakes were made by both sides during the past sixteen years. As you can see from some of the bilateral issues raised today, there are matters outside of the expiring provisions of the Compact which need to be addressed by both governments in a timely and mutually satisfactory manner, but those issues must not distract us from our stated mandate of addressing the expiring provisions of economic assistance in Title II of the Compact. If our current Compact negotiations can proceed and stay focused on the matters that must be addressed at this time, I am confident that our governments can agree to a new package to be presented to the Congress in the near future to provide for a smooth transition into the next period of our relationship of free association.

If, however, my government continues to be confronted with proposed amendments to non-expiring provisions of the Compact, matters outside of the scope of these negotiations, then I will not be able to assure that we can conclude a new economic assistance package under Title II in a timely manner.

I remain optimistic that this will not be that case; that we will be able to conclude our current negotiations in relatively short order, and that we can address other bilateral issues on separate tracks with an equal sense of importance and weight. The RMI remains fully committed to the continuing success of the Compact and our mutually beneficial relationship of free association.

Mr. Chairman, thank you very much for this opportunity to present our views before the Committee here today.

Mr. OSBORNE. Thank you, Mr. Zackios. In the interest of time, the majority side is going to yield their time and we will have to definitely constrain our questions to the 5-minute limit. We will start with Mr. Underwood.

Mr. UNDERWOOD. Thank you very much, Mr. Chairman, and thank you very much, Mr. Christian and Mr. Zackios, for your testimony and for the insights that you have given, especially in the extended statements into where we stand with the negotiations.

I want to make sure that I understand exactly what are the issues that you think need clear attention and should be brought to the attention of the Committee, not in the spirit of upsetting the negotiations, because that is between sovereign countries. I do take time to note that everyone loves the trust fund idea and in fact everyone loves it so much everyone tells me they originated it. Every time they say you know, we proposed this. This is a great concept. But, of course, there are many other things attendant to it.

As you pointed out, Mr. Christian, even though there may be a few million dollars apart at some point in time in the negotiations, in your testimony, in your written testimony at least, you point out this is absolutely critical to the success or failure of the entire enterprise, because for you it is a very critical amount.

The two issues that I just want to give you a chance, but it seems to me, and correct me if I am wrong, other than the trust fund issues and other than the funding issues, is there an ongoing concern about the nature of the monitoring and the nature of the proposals being made in terms of monitoring the expenditures?

You know, it used to be that they had a six star flag back here behind me in addition to all the other flags that are still there, and then it went down to a four star flag, and now that four star flag representing the FSM is no longer there. I am just wondering whether all the concern about monitoring is going in the wrong direction, from your point of view.

Second, the issue of immigration, what is the actual rub there? Mr. Christian, perhaps you can go first.

Mr. CHRISTIAN. Mr. Chairman, thank you very much, Mr. Underwood. Let me first address the issue of immigration.

First of all, we did not anticipate that we would continue to discuss the issue of immigration as it is an item that does not expire under the 15 year— under the anniversary of the 15 years of the Compact. We also have difficulty in light of this since the Compact of Free Association, the joint Committee created by Congress of Micronesia to the FSM Congress to address the renegotiation, did not grant this Committee authorization to discuss non-expiring compacts.

What we have done then is recommend to the government that they establish a task force to be able to meet with the U.S. Government to discuss the issues of immigration.

May I proceed to say that this task force has been constituted and they are prepared to begin meeting with the United States as soon as the United States is ready to do so.

Mr. UNDERWOOD. Mr. Zackios.

Mr. ZACKIOS. Thank you, Congressman Underwood. If I may answer on the same issue, as I have stated, we are with the United States on the war on terror. I agree with Senator Christian that the issue of immigration is a fundamental premise of the Compact of Free Association between the United States and the FSM and Marshall Islands.

Having said that, we are willing to work and we have started discussions with the U.S. on certain areas of the issue on immigration, including passports, adoptions and other issues. But it should be made clear that title I is not an expiring provision, as I have stated, and that the issue of people immigrating to the U.S. is very important to the Marshall Islands, and we feel we should not touch on that issue.

Thank you.

Mr. CHRISTIAN. Mr. Chairman, may I elaborate a little more?

Mr. OSBORNE. If you can do it in 5 seconds. We are going to have to move on.

Mr. CHRISTIAN. Thank you very much.

Mr. OSBORNE. Ms. Christensen.

Ms. CHRISTENSEN. Thank you, Mr. Chairman. I am going to try to move quickly. My first question goes to both of you, and you can answer it as briefly as possible, and then I can get to my second one. I think both of you said in your statements that the free association has been a successful— the compacts have been successful. As you now renegotiating this Compact, are you having any second thoughts? Does it still seem successful, the problems that are arising as you are renegotiating now this Compact?

Mr. ZACKIOS. If I may start, we still feel that the Compact is a success and we want to build on the success. As we have stated,

we have been able to achieve a level of political stability and stable governments that are exercising democracy.

Ms. CHRISTENSEN. Let me ask you this way: The issue of sovereignty, do you feel that you are negotiating on an equal level here?

Mr. ZACKIOS. Congresswoman, I would suggest that it is difficult to see that, that we are negotiating at an equal level.

Ms. CHRISTENSEN. Mr. Christian?

Mr. CHRISTIAN. Madam, my problem is that if I said a few things that might hurt the other team, I might end up losing a few million dollars they have already given me.

Ms. CHRISTENSEN. I think I have the answer to my question. Thank you. But I wanted to stay with you, Mr. Christian. I wanted to first extend a welcome on behalf of the former Ambassador from the United States to Micronesia, who is now Congresswoman Dianne Watson, who could not be here due to another meeting that she could not get out of. I wanted to ask you, in your testimony you said outside of the financial provisions there was some other items that were not consistent with FSM's status as a sovereign nation. Would you like to just spend a minute on that just talking about those other issues?

Mr. CHRISTIAN. I think first and foremost is the injection of so many procedural procedures and rules to help us govern grants that have been given us under a negotiated agreement seems to defy the notion of sovereignty. We, however, accept and invite the United States Government's participation in the establishment of necessary controls by which we could proceed to function under the next 20 years' regime.

We have started this process, and I would like to say that the United States negotiating team has treated us fairly well, as far as sitting across the table and being very respectful to each other. I think they recognize the sovereignty of both countries just as equally.

However, that is lost in the process of initiating certain controls through the fiscal procedures agreement that the United States has proposed to us.

Ms. CHRISTENSEN. In the interest of time, and the fact we do have another panel, I will stop there. Thank you.

Mr. OSBORNE. Mr. Faleomavaega.

Mr. FALEOMAVAEGA. Thank you, Mr. Chairman. Our relationship with the FSM, the Marshalls and Palau is one of the most unique political relationships, and I say this to both our friends now on the Committee as well as to Mr. Zackios and Mr. Christian.

When you mentioned, Mr. Christian, earlier about sovereignty and how this touches on the issue of strategic denial, do you both get the impression that my government and the Federal Government is anxious to get rid of you, like 20 years from now, we just don't want to hear about you anymore? Do you get that impression from some of the leaders of my government in your current negotiations? Please be up front with us, because I really want to get to the bottom of this.

Mr. CHRISTIAN. Certainly it is my hope the U.S. Government is not trying to get rid of us. A few years ago the Federated States of Micronesia made a very important decision. We had to decide

who to ally itself with, both politically and as a member of the international community. We decided to go with the Compact, to become allied to the United States. And this is simply a continuation of our previous relationship, however under a trust territory system.

Mr. FALEOMAVAEGA. I have to get moving on this. Your sense is this Compact of Free Association concept is an evolving relationship. It is going to change in time. Supposing that the People's Republic of China wants to do a security agreement with FSM and when we talk about strategic denial, we are definitely going to have a say to that.

There are about 100 submarines of the Chinese government running all over the world right now. You can't tell me the FSM, Marshalls and Palau is not a critical point of geography of this planet as far as these submarines, where they are, how they are going, and how this relates to the security interests of our country. I say this most sincerely, because I wanted to get your sense, if you feel that—let's be up front.

When we negotiated this treaty in the 1970's, during the Carter administration, for years this continued because the attitude of the Department of Defense was take it or leave it. That was the reason why we had to continue negotiating, because that was our interest. The interest was strategic denial, not because of a love for the Micronesians. I sincerely hope this has evolved to a little more sane relationship and that we are working properly in every way to make sure that your needs are met as well as our needs.

I just wanted to convey that to both of you gentleman. You currently qualify for the Asian Development Bank, World Bank and International Monetary Fund loans. Do you also qualify to receive aid from any other countries?

Mr. CHRISTIAN. Yes.

Mr. FALEOMAVAEGA. You are pretty much free to do whatever you want to do as far as seeking economic assistance from other nations. My government has no problem with that.

Mr. CHRISTIAN. No.

Mr. FALEOMAVAEGA. Thank you very much. The overall level of education, bottom line, gentleman, real quickly, where are we as far as educational level of our people in Micronesia? I know, Mr. Christian, you say we are making tremendous economic progress. What about education?

Mr. CHRISTIAN. We are making good progress, but we are not where we would like to be.

Mr. FALEOMAVAEGA. Is it because of lack of funds?

Mr. CHRISTIAN. Both lack of funds and our inability to attract teachers qualified for our high schools and the College of Micronesia.

Mr. FALEOMAVAEGA. Health, immigration and education are probably three of the most critical issues now pending in terms of your current negotiations with the administration.

I might say I might be traveling with Congresswoman Watson to FSM and the Marshalls sometime next month. I look forward to meeting with you, Mr. Chairman. Thank you for your patience and kindness.

Mr. OSBORNE. Thank you very much. I would like to thank the panelists. We appreciate your being here. We know you came a long way. We appreciate your testimony.

We will move on with Panel IV at this time. That panel will consist of Neal McCaleb, Assistant Secretary of Indian Affairs, Department of the Interior, and also we are going to be calling the Honorable John Keys.

If we can have everyone's attention, we are going to get started here fairly quickly. Due to scheduling restraints, Mrs. Bono is submitting her testimony for the record. I ask unanimous consent that her testimony be submitted for the record.

[The prepared statement of Ms. Bono follows:]

Statement of The Honorable Mary Bono, a Representative in Congress from the State of California

Thank you Mr. Osborne. I would also like to thank Chairman Hansen for the opportunity to testify before the Committee on my legislation, H.R. 3407, the "Indian Financing Act Reform Amendment." I am enthusiastic that through this hearing today, the Committee will be able to seriously consider the strong role that this legislation will have in encouraging economic development on Native American lands.

During the Nixon Administration, it became increasingly clear that the potential for economic improvements within tribal lands throughout the country could be realized. A crucial facet to allowing tribes to take their own initiative was providing legislation that would bring private capital into the hands of Indian tribes. With the enactment of the Indian Financing Act of 1974, Congress instituted the Indian Loan Guaranty and Insurance fund, which was a very beneficial step towards helping tribes to start small businesses on their reservations. In turn, this law allowed the Secretary of the Interior to insure and guaranty the repayment of small business loans to qualified Native American borrowers.

In many instances, this created the first time that a Native American community could utilize loans that are issued by private lenders. Many tribes, as a result, were provided with not only financial assistance whereas previously it was difficult to secure financing, but were given an incentive for Native American-owned small businesses to invest substantially in their future.

We have now seen the Indian Loan Guaranty and Insurance Fund grow over the past 28 years to now guarantee up to $75 million in annual lending to Native Americans, though the continued need in Indian economies is far above this amount. The "Mortgage Finance News" reports that for housing finance alone, there is $2.7 billion in pent-up demand in the Indian community. The serious desire for Indian communities to expand their economic base is clearly being stunted.

As you may know, Mr. Chairman, I was a former small business owner, and am thus aware of the many financial challenges a new enterprise faces in its first few years. Securing loans to finance a new business helps all individuals to realize their dream of economic opportunity and independence. I also understand, however, that we must work to minimize government small business intrusion, both on the regulatory and the fiscal level. H.R. 3407 serves this need by providing a clear uniformity in lending that does not currently exist.

This legislation provides a strong path towards the expansion of tribal lending, as can be seen in the evolution of a similar loan guaranty program within the Small Business Administration (SBA). In particular, the passage of this legislation will help to encourage a stronger relationship between private lenders and the communities they assist. One of the important aspects of the SBA revolving loan program is the federal government's guarantee of full repayment of the loans should the loan default. Currently under the Bureau of Indian Affairs' (BIA) existing Indian Loan Guaranty and Insurance fund, a loan does not have this federal government guarantee, which is a disincentive for lenders to work with Native Americans looking to start their own business. H.R. 3407 will provide this notion of a guarantee of full repayment of the loans if a loan defaults.

Further, smaller banks, such as Palm Desert National Bank and Palm Canyon National Bank in California's 44th Congressional district, which I represent, are not easily accessible for financing tribal economies because of the existing law. H.R. 3407 will allow for liquidity in the loan process that provides smaller banks and investors the opportunity to rid themselves of the burden that a 30 year loan can have on the capital that they have on hand. Further, currently the secondary market in-

vestors are not offered uniformity in the way that they are able to pool their loans and then sell of pieces of this pool. This tends to spread and minimize the risk of default among a number of investors. Thus we are able to help both smaller banking institutions as well as those tribes with lands in more rural areas of our country. Proper inclusion of a efficiently functioning secondary market is essential to an expansion of the current program that multiple tribes could enjoy.

I am encouraged by the prospect of employing the principles of entrepreneurship that the Indian Financing Act Amendments of 2002 offers to potential and current Native American small business owners. Only through the mutually beneficial relationship between the Interior Department, the private lending community, and tribal entrepreneurs, can we offer Native Americans the financial tools to help their tribal economies expand and flourish. Mr. Chairman, we continually witness the success that the SBA has had in selling guaranteed loans and the secondary market and I strongly believe this legislation could put us on a route to have the same impressive results.

Serious consideration and passage of legislation such as H.R. 3407 and S. 2017, its counterpart in the Senate, will further encourage the growth of small businesses that empowers tribes and excites development and substantive growth. It is my hope that this Committee will recognize the importance of this legislation being another key to allowing Native Americans across the country realize their potential to become increasingly self-sufficient and economically vibrant communities.

I would like to thank both Mr. Hayworth and Mr. Kildee on this Committee for their support of this legislation as key Members of the House Native American Caucus. Finally, thank you Mr. Chairman for allowing me to testify today on the "Indian Financing Act Reform Amendment."

Mr. OSBORNE. I also ask unanimous consent that a statement from the Independent Community Bankers of America be submitted for the record.

[The information referred to follows:]

Statement of Paul G. Merski, Chief Economist and Director of Federal Tax Policy, On behalf of the Independent Community Bankers of America

The Independent Community Bankers of America applauds Committee on Resources Chairman James Hansen and Ranking Member Nick Rahall for holding this important hearing on the Indian Financing Act Reform Amendment (H.R. 3407). The ICBA represents more than 5,000 community-based financial institutions nationwide and our members provide a vital source of capital, credit and lending—especially throughout rural America and on many Native American lands. Community banks are independently owned and operated and are characterized by attention to customer service, and lending to small businesses, farmers, ranchers, and consumers. ICBA members alone hold more than $500 billion in insured deposits, $600 billion in assets and more than $365 billion in loans. They employ nearly 239,000 citizens in the communities they serve. Simply stated, our community banks are small businesses that serve the lending needs of small businesses in communities throughout America. Community banks are one of the key sources of credit and other financial services to small businesses—the most prolific job-creating sector of our economy. Small businesses employ sixty percent of the nation's workforce and have created two-thirds of all the net new jobs since 1970.

While providing financial services for urban, suburban, and rural regions, forty percent of ICBA members are located in towns with a population of 2,500 or less, where adequate small business lending is critical to the local economy. We applaud Representative Mary Bono for introducing the Indian Financing Act Reform Amendment (H.R. 3407). This legislation would help facilitate a more effective secondary market for Native American small business loans and free up additional bank capital to make new loans. H.R. 3407 would help increase the use of Bureau of Indian Affairs guaranteed loans by lending banks who could more easily access a secondary market. This, in turn would provide more stable and sustainable funding for economic development on Native American lands.

ICBA supports legislation that will enhance the liquidity of the current market for guaranteed loans to Indian borrowers. Currently, agencies like Fannie Mae, Freddie Mac, Farmer Mac, as well as the Small Business Administration facilitate the secondary loan market, provide a solid resale market for loans and boost the availability of lendable funds for community banks. Facilitation of an active secondary market for Native American lending programs is a viable means to increase

lending and economic opportunities on Indian lands. The ICBA supports H.R. 3407 as an important step in facilitating much needed capital and lending into the economies of Indian communities served by our community bank members nationwide. In addition to promoting an effective secondary market for Native American loans, the legislation would clarify that good faith investors in Native American small business loans guaranteed by the Secretary of the Interior will receive appropriate payments through the pledge of the full faith and credit of the United States.

Additionally, ICBA's members successfully utilize the existing SBA guaranteed lending programs to serve the credit needs of rural America and Native lands. ICBA is urging the Administration and members of Congress to accurately and adequately fund the successful Small Business Administration 7(a) and 504 loan programs. These SBA programs are widely used by many community banks to provide needed capital and credit to thousands of small businesses nationwide. Unfortunately, the Administration's Fiscal 2003 federal budget jeopardized the SBA's 7(a) Loan Guaranty Program. While ICBA estimates 7(a) loan demand could reach $11 to $12 billion, the Administration's proposed fiscal year 2003 program level to support $4.85 billion in 7(a) loans is grossly out of sync with historic loan demand figures and current small business needs.

As the economy gains strength climbing out of recession, we estimate the proposed fiscal year 2003 funding level for the SBA 7(a) program will afford only half the expected small business lending needs next year. Therefore, we urge the Bush Administration and Congress to restore adequate budget appropriations to support $12 billion in 7(a) lending in fiscal 2003. Providing needed capital resources to small businesses will help strengthen economic growth and foster much needed job creation. Thriving small businesses and a growing economy will in turn provide greater payroll and business income tax revenue back to the federal government.

We appreciate the opportunity to express our views to the House Committee on Resources. The ICBA pledges to work with you to ensure our Nation's small businesses, particularly Native American businesses, have the access to capital and credit they need to invest, grow, and to provide jobs and continued economic growth. Both BIA and SBA lending programs help facilitate this critical small businesses lending. Fostering a secondary market for BIA guaranteed loans and fully funding SBA loan programs would go a long way in preserving a secure and competitive source of credit for small businesses and rural communities throughout our nation.

Mr. OSBORNE. Due to time constraints, we are going to recognize Panel IV. They will now consist of Assistant Secretary McCaleb, who will testify on H.R. 3407 and H.R. 2408, and Commissioner Keys, who will testify on H.R. 4938 from the Department of Interior.

I might just mention Mrs. Bono's bill is H.R. 3407, to amend the Indian Financing Act of 1974 to approve the effectiveness of the Indian loan guarantee and insurance program, Indian Financing Act reform amendment.

So we appreciate you panelists being here today. We are sorry for the delay, but I am sure you will handle it well.

So, Mr. McCaleb, we will start with you.

STATEMENT OF NEAL A. McCALEB, ASSISTANT SECRETARY INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

Mr. MCCALEB. Thank you very much, Mr. Chairman, members of the Committee, for this opportunity to comment H.R. 3407, the amendments to the Indian Finance Act.

As you know, or may know, I am an enthusiastic advocate for economic opportunities for Native Americans and Alaskan Natives, and I want to thank the Committee for this opportunity, for its support, for the needed change in the area of economic development for our people.

The Indian Finance Act was originally passed in 1974 and the provision we are addressing today has to do with the loan guarantees. This particular provision of the act has been very successful.

We have right now a loan portfolio of around $500 million and just short of 1,000 different tribes and individuals are participating in this. It has made loans available in Indian Country to economic enterprise that would not have otherwise been there for a number of reasons.

The particular bill provides for the creation, authorization and creation of a secondary market for these loans, much like the SBA's secondary market. We want to support that provision. We might have a few technical things we would like to discuss with the bill's author and the Committee as it progresses, but we certainly support the concept.

I am not going to dwell on the issues of the different tribal and business successes we have had. It is part of my written testimony, which I have submitted. But the concept of the bill is a solid one and is the next natural step forward.

I would say that in the last 3 years we have fully loaned out all the available money that is available by the appropriation, about $60 million a year against an appropriation of about $450,000. We think we can subscribe easily another $60 million each year with the appropriations to do that. I think a secondary market would help.

This is a fairly small fund at this time. Although half a billion dollars is a lot of money in terms of a secondary market, it is not a large amount.

I think I will just stop with that testimony there that sums up the support of the administration for this bill and answer any questions you may have.

[The prepared statement of Mr. McCaleb follows:]

Statement of Neal A. McCaleb, Assistant Secretary-Indian Affairs, U.S> Department of the Interior on H.R. 3407

Good afternoon, Mr. Chairman and Members of the Committee. It is a pleasure to appear before you today. As you know, I am a staunch advocate for economic opportunities for American Indians and Alaska Natives, and I want to thank the Committee for its support of needed change in the area of economic development for our people.

The Administration supports H.R. 3407, the "Indian Financing Act Amendments of 2002," and would like to work with the bill's sponsor and the Committee to improve its provisions, including some technical Credit Reform issues.

The Indian Finance Act of 1974 (IFA)

The Indian Financing Act of 1974 (Public Law 93–262), is the source of the authority for the Loan Guaranty, Insurance, and Interest Subsidy programs within the Bureau of Indian Affairs (BIA). The Congress envisioned two ways of encouraging commercial lenders to loan funds to Indian businesses that might otherwise be denied financing. The loan guaranty part of the program caught on with lenders, but the loan insurance aspect did not catch on in those early days. Times have changed however, and the BIA expects to reintroduce the insured loan features of the Act with the fiscal year 2003 appropriations bills that are pending final congressional action. There are now numerous, modest Indian business loan proposals that would make insured loans viable.

BIA Economic Development

The BIA has provided significant economic development assistance to Indian tribes, tribal enterprises, Indian-owned corporations, partnerships and proprietorships through the Indian Financing Act of 1974. The total active loan portfolio of direct loans and loan guarantees totals $470 million and is assisting 757 business entities. The loan purposes include business, mobile home housing, new housing construction, land acquisition, relending to tribal members, agriculture, educational, livestock, refinance, fishing, housing repair, protective advances, expert assistance, aquaculture and investment.

In 2001, a $3.5 million dollar loan was guaranteed by the BIA for the purchase of Dynamic homes, L.L.C., a business that has 118 employees. The Winnebago Tribe of Nebraska has controlling ownership of the business through its investment company, Ho–Chunk, Inc. The President of Ho–Chunk, Inc. is a member of the Tribe and a Harvard educated attorney, who is also one of the managers of Dynamic Homes, L.L.C.. The business manufactures modular homes which are sold through a dealer network. It manufactures preconstructed single-family and multifamily homes, and light commercial buildings. Auxiliary products include garages, wood basements, and retail sales of home building components. The Company markets its products within the States of Iowa, Minnesota, Nebraska, North Dakota, South Dakota, Wisconsin, and Wyoming principally through a network of approximately 65 independent factory authorized builders and dealers. The Company concentrates on high quality workmanship, unbeatable customer service, and a dealer and builder network that is provided the best information service, and training to match the right Dynamic Home product with the buyer. In 2001 the Company generated over $13.6 million dollars in gross sales and paid $156,420 in taxes. The Company was also given a 3A1 rating by Dunn and Bradstreet last year.

The BIA loan program has been instrumental in supporting the Nisqually Tribe's community development program over the past 15 years. The Tribe has utilized loan guarantees to leverage more than $8 million dollars of private and federal funds, and to complete seven major community development projects on the reservation. These projects have provided tribal members with employment, increased revenues to the Tribe, and helped build the capacity of the tribal organization. A guaranteed loan in 1998 to a construction company on the Salish and Kootenai Reservation has allowed it to bid on 500 projects, earn gross revenues of $4.7 million and generate a payroll of $1.2 million.

Outlook for Economic Development for Indian Tribes and Individual Indians

At present, the BIA's Program lacks the critical mass needed to create an active secondary market. However, I believe that the IFA can be amended to make the program amenable to an organized secondary market. We believe additional provisions added to the IFA would more readily accommodate a secondary market.

The BIA has a concern with regard to some of the provisions of H.R. 3407. Under the existing Program, the BIA reviews claims for loss before making payment, so that it is in the best possible position to withhold payment in cases of fraud or lender noncompliance. H.R. 3407 would change that. Under the provisions of H.R. 3407 it appears that if a good faith purchaser of a secondary market interest in a guaranteed loan were to demand payment, the BIA would have no choice but to pay before the BIA would have a chance to fully examine any questionable element of the claim. This could require the BIA to sue to recover that.

Thank you for the opportunity to present the views of the Administration on this legislation. I will be happy to take your questions.

Mr. OSBORNE. Thank you.

At this point I just have one question for you. In your estimation, is it feasible for the Department to create a secondary market for the BIA's loan guarantee program?

Mr. MCCALEB. Yes, I think it is feasible. I think it can be done. I think the demand for a secondary market is a little limited at this time until we have a bigger portfolio.

Mr. OSBORNE. Thank you.

Mrs. Christensen, any questions?

Mrs. CHRISTENSEN. I have no questions.

Mr. OSBORNE. Mr. Faleomavaega?

Mr. FALEOMAVAEGA. I want to welcome our Assistant Secretary for Indian Affairs, and certainly am very happy to hear the administration does support the provisions of the proposed bill and look forward in working with our Committee.

Let's move this forward. Thank you very much.

Mr. OSBORNE. Thank you very much.

At this time, Mr. McCaleb, if you would care to testify on 2408.

Mr. MCCALEB. Mr. Chairman, members of the Committee, H.R. 2408 has to do with the Equitable Compensation Act for the Yankton Sioux Tribe and the Santee Sioux Tribe. I want to thank you, Mr. Chairman, for introducing this important bill that addresses the impacts to the Yankton Sioux Tribe and the Santee Sioux Tribe.

As you may know, this is part and parcel of equitable adjustments that have been made for a number of tribes along the Missouri as a result of the Pick-Sloan Public Improvements Act, in which we built a number of mega-dams along the Missouri to control the flooding, starting back in the forties. As a result of that, we inundated a lot of Indian land along the route.

We have already created an adjustment for the Fort Berthold affiliated Tribes, the three affiliated Tribes at Fort Berthold, and the Standing Rock Sioux. In addition, in South Dakota, we have similarly addressed the impacts on the Crow Creek Sioux Tribe and the Lower Brule Sioux Tribe. This particular bill would address the two remaining Tribes along the Missouri, the Yankton Sioux and the Santee Sioux.

The provisions of the bill provide for a compensation to the Yankton Sioux of a little over $23 million for 2,851 acres inundated as a part of the Pick-Sloan projects, and to the Santee Sioux of $4.789 million for 593 acres inundated along the bottom lands of the Missouri in their area. We support this bill and recommend it.

[The prepared statement of Mr. McCaleb follows:]

Statement of Neal A. McCaleb, Assistant Secretary-Indian Affairs, U.S. Department of the Interior on H.R. 2408

Good afternoon, Mr. Chairman and Members of the Committee. I am pleased to be here today to present the Administration's views on H.R. 2408, the Yankton Sioux Tribe and Santee Sioux Tribe Equitable Compensation Act. I want to thank Representative Osborne for introducing this important bill that addresses impacts to the Yankton Sioux Tribe and the Santee Sioux Tribe of Nebraska resulting from the Pick–Sloan Missouri River Basin program and in particular the development of the Fort Randall and Gavins Point projects. If enacted, this bill would provide final compensation to the Tribes and extinguish their claims for damages caused by these projects.

H.R. 2408 is a continuation of the United States' honorable efforts to correct inequities resulting from a regional Federal project which severely affected several Indian tribal homelands and resources along the Missouri River. In the early 1990's the United States addressed impacts to the Standing Rock Sioux Tribe and the Three Affiliated Tribes of the Fort Berthold Reservation. In 1996 and 1997, respectively, the Congress addressed the impacts to the Crow Creek Sioux Tribe and the Lower Brule Sioux Tribe. Thus, H.R. 2408 continues those efforts to address and mitigate the impacts that the Missouri River Basin Pick–Sloan Project has had on the remaining two Tribes, the Yankton Sioux Tribe and the Santee Sioux Tribe of Nebraska.

The history of the Project is relatively well established. In 1944, the United States undertook the challenge to reduce flooding in the lower Missouri River Basin through the construction of monumental dams capable of harnessing the seasonal raging flows of the Missouri River. In addition, these dams could generate electrical power and needed hundreds of thousands of acres of land to serve as reservoirs for the storage of water over time to release as necessary. So great was the water resource that a whole regional economy grew from the electric power generated by these dams.

The pre-project tribal economy, however, was based on working the rich wooded bottom lands along the Missouri River. These lands were flooded for the reservoir, and the Tribes have never seen the former economy again. In addition, the importance of cultural treasures lost to inundation is now well known. In the 1950's the Yankton Sioux Tribe and its affected tribal members received a total of $227,510 from the government for damages associated with the Fort Randall Project. Of this

amount $121,210 was awarded them by the U.S. District Court for direct damages as the result of condemnation proceedings filed before the federal district court by the Army Corps of Engineers.

Congress authorized the appropriation of an additional $106,500 in 1954 to be available for relocating the Yankton Sioux tribal members who resided on tribal and allotted lands. Unfortunately, the Yankton Sioux Tribe did not receive any additional funding for a rehabilitation program. This bill proposes to provide the Yankton Sioux Tribe with an aggregate amount equal to $23,023,743 in additional compensation for the loss in value of 2,851.4 acres of land taken for the Fort Randall Dam and Reservoir.

Information concerning the amount paid to the Santee Sioux Tribe of Nebraska condemnation settlement is not clear because the federal court docket records are missing from the U.S. District Court in the National Archives. It appears that the Tribe may have been paid $52,000 on the basis of the Tribe's 1955 agreement with the Army Corps of Engineers. We do not know when the settlement money may have been distributed to the individual landholders. Like the Yankton Sioux Tribe, the Santee Sioux Tribe of Nebraska did not receive any rehabilitation program funds. This bill proposes to provide the Santee Sioux Tribe with an aggregate amount equal to $4,789,010 in additional compensation for the loss value of 593.1 acres of land located near the Santee village.

The Administration supports the effort to remedy the inequities caused by the aforementioned federal projects to the Yankton Sioux Tribe and the Santee Sioux Tribe of Nebraska. However, we recommend that Section 6(c)(4) be amended to add a new subparagraph (D) to include an annual report to the Secretary describing any expenditures of funds withdrawn. Our proposed amendment is as follows:

> ANNUAL REPORTS Each Tribe shall submit an annual report to the Secretary describing any expenditures of funds withdrawn by that Tribe under this Act.

This concludes my testimony on H.R. 2408. I will be happy to respond to any questions you may have.

Mr. OSBORNE. Thank you very much, Mr. McCaleb. I guess I have one question of you on this particular bill, and that is do you have a particular timetable for repayment of the Yankton and Santee Tribes?

Mr. MCCALEB. We think it ought to proceed with all deliberate haste since four other Tribes have already been compensated and not having the money means that opportunities are missed for these Tribes, so the sooner the better.

Mr. OSBORNE. I certainly agree with you, but are we talking a year, or are we talking 2 weeks? Do you have any rough timeframe that we might look at here?

Mr. MCCALEB. Well, I think we would like to see it done within the year certainly.

Mr. OSBORNE. All right.

Mr. MCCALEB. I think we would like to see—once the appropriation is made, I think it can be moved on with dispatch.

Mr. OSBORNE. Is there any provision made for the lost time, like accrued interest or whatever, over a matter of years where these folks—I think they are the last people to receive any payment at all. Is there any compensation involved here?

Mr. MCCALEB. I think that compensation is included. I am not certain about this, Mr. Chairman, so I would rather not answer that, since I am not certain.

Mr. OSBORNE. Fair enough. Mrs. Christensen?

Mrs. CHRISTENSEN. No questions.

Mr. OSBORNE. Mr. Faleomavaega?

Mr. FALEOMAVAEGA. Mr. Chairman, as I said earlier, I want to thank you for your leadership and initiative in introducing this legislation, and again I want to thank our good friend from the Inte-

rior Department, Assistant Secretary McCaleb, for the administration's position in support of this bill, and I sincerely hope we move this legislation as fast as possible so we can get it out before October. But I do want to thank you, Mr. Chairman, and thank Secretary McCaleb for his support of this legislation.

Thank you.

Mr. OSBORNE. Mr. McCaleb, we really appreciate your patience. I know you have waited for a couple of hours. So we will let you off the hook at this point if you need to go.

At this point, Mr. Keys, we will hear from you.

STATEMENT OF JOHN W. KEYS, III, COMMISSIONER, BUREAU OF RECLAMATION, DEPARTMENT OF THE INTERIOR

Mr. KEYS. Mr. Chairman, it is a pleasure to be here. I am John Keys, Commissioner of the Bureau of Reclamation. It is a pleasure to be here and offer the administration's views on H.R. 4938, which directs the Secretary of Interior and Reclamation to conduct a feasibility study for municipal, rural and industrial water supplies needs for the Santee Sioux Tribe of Nebraska. H.R. 4938 authorizes the appropriation of $500,000 to conduct this study.

Reclamation has worked with the Santee Sioux Tribe on water supply issues since 1996. In fact, Reclamation published a water supply needs assessment report in 1997 that confirmed that the Santee Sioux Tribe's water supply is degraded and its distribution system is inadequate. Reclamation could, therefore, support H.R. 4938 with a modification.

The administration supports the Tribe's initiative to develop a safe and reliable water supply system. Accordingly, we believe that the scope of the feasibility study should be limited to the Santee Sioux Reservation boundary. Once the feasibility study is completed, we can clearly assess and determine if it deserves further action.

H.R. 4938 as written raises several long-term issues relating to funding and, more generally, clarification of the government's responsibility for rural water supply systems.

Mr. Chairman, I appreciate your leadership and the Sioux Tribe's willingness to work with Reclamation to address the water supply needs of the reservation and for including us in the early stages of the project planning process. The early collaboration will ensure a quality planning document for us to consider.

That concludes my testimony, and I would certainly stand for any questions you might have.

[The prepared statement of Mr. Keys follows:]

Statement of John W. Keys III, Commissioner, U.S. Bureau of Reclamation, Department of the Interior

My name is John Keys, I am the Commissioner of the Bureau of Reclamation. I am pleased to provide the Administration's views on H.R. 4938 which directs the Secretary of the Interior (Secretary) to conduct a feasibility study for the municipal, rural and industrial water supply needs for the Santee Sioux Tribe of Nebraska and adjacent communities. H.R. 4938, authorizes the appropriation of $500,000 to carry out this study.

The Bureau of Reclamation has worked with the Santee Sioux Tribe on water supply issues since 1996. In fact, Reclamation published a water supply needs assessment report in 1997 that confirmed that the Santee Sioux tribe's water supply

is degraded and the water supply distribution system is inadequate. Reclamation could therefore support H.R. 4938 with a modification.

The Administration supports the Tribe's initiative to develop a safe and reliable water supply system. However, we believe the scope of the feasibility study should be limited to the Santee Sioux Reservation. Once the feasibility study is completed, it would allow the Administration to clearly assess and ultimately determine if the situation merits further action. The feasibility study will be based on the existing Principles and Guidelines for Water and Land Resources Implementation Studies. This leaves the Secretary with considerable discretion in deciding whether to proceed with the actual project.

The bill as written also raises issues related to funding, such as cost-share requirements of tribal and non–Indian communities and, more generally, Federal and non-federal government responsibility for rural water supply facilities.

Mr. Chairman, I appreciate Congressman Osborne's and the Santee Sioux Tribe's willingness to work with Reclamation to address the water supply needs on the Reservation, and for including Reclamation in the early stages of the project planning process. This early collaboration will ensure a quality planning document providing linkage between a realistic assessment of needs, budget requirements, and scheduling.

That concludes my testimony, I would be happy to answer any questions.

Mr. OSBORNE. Thank you very much. What do you predict the actual cost of conducting the feasibility study will be?

Mr. KEYS. Mr. Chairman, we think we can do it for $500,000 that is included in the proposed legislation.

Mr. OSBORNE. Thank you. I guess the second question, your testimony suggests that the scope of the feasibility study should be limited to the Santee Sioux Reservation. With this suggestion in mind, what can be done for the surrounding communities?

Mr. KEYS. Mr. Chairman, to date the only people that have come forward with agreements to work with us are the Santee Sioux Tribe. Should other communities wish to participate, we would certainly be willing to talk to them about cooperative agreements, for the cost share agreements that are necessary for those off-reservation communities to be considered. We are certainly open to that and would be more than willing to talk with them.

Mr. OSBORNE. Thank you very much, Mr. Keys. Do you expect on the feasibility study to go under $500,000, or do you have any thoughts?

Mr. KEYS. Mr. Chairman, $500,000 we think is a good estimate. The only concern we have is getting it done in 12 months. We would prefer 18 months to get it done. But the $500,000 is a good estimate. We think we can stay within that. How much we come in under that, I think I would not hazard a guess.

Mr. OSBORNE. Thank you. We think this is a critical project for that particular area and we appreciate it.

With that, Mrs. Christensen?

Mrs. CHRISTENSEN. No questions. I am just happy to be able to support both bills. I have no questions at this time.

Mr. OSBORNE. Thank you for staying, too.

Mr. Faleomavaega.

Mr. FALEOMAVAEGA. Mr. Chairman, I am beginning to believe you are a member of the Lakota Tribe. They are using the word Sioux. I have never been acclimated to use this word Sioux, because it is not really the true description of this great first American Tribe. They are actually Lakota. Sioux is a French word, and we have kind of adopted into it. I may be wrong, but maybe our next witness might straighten me out.

Mr. Keys, I appreciate your testimony and support, the administration's support for the proposed bill. Talk about water supply. We are talking about how many of the first Americans of the Santee Tribe that is involved here?

Mr. KEYS. Mr. Chairman, I do not know how many of those people would receive water. We just know that it would provide an adequate supply to the reservation for the domestic and whatever municipal-industrial supplies they need.

Mr. FALEOMAVAEGA. You mean, all this time they have never had adequate water? Obviously that is why we are having the proposal.

Mr. KEYS. In a lot of cases, that is absolutely the case.

Mr. FALEOMAVAEGA. My gosh. But you don't know how many people are involved?

Mr. KEYS. I do not. We could certainly supply that number.

Mr. FALEOMAVAEGA. This feasibility study of $500,000, is it sufficient to meet this need for the Tribe?

Mr. KEYS. Mr. Chairman, Mr. Faleomavaega, it would provide us the feasibility study to tell us the economic and engineering feasibility of providing the water supply system. So, yes, it is adequate to provide those plans and designs to be ready to come back to Congress for a construction authorization.

Mr. FALEOMAVAEGA. What kind of water system are they being subjected to right now?

Mr. KEYS. Most of their system right now are for some wells. A lot of them are contaminated with nitrates, nitrogen and some forms of coliform.

Mr. FALEOMAVAEGA. I suggest this is not just for the Santee Sioux, it is probably true for other Tribes as well?

Mr. KEYS. Yes, sir. There are a number of Tribes that we are working with on rural water supply systems already.

Mr. FALEOMAVAEGA. I just want to make sure we have enough funding for the feasibility study. I mean, the suggestion that we do half a million dollars, maybe the study might require a little more, so that would make sure a one time shot, we don't want to do another study after this. This is my concern.

Mr. KEYS. Mr. Chairman, we have already done an appraisal level study. In 1996 to 1997 we did an appraisal level study. That gets us on the right plane. This one follows up and says these are the specific facilities that we should study in detail and then be ready to go ahead with the construction authorization.

Mr. FALEOMAVAEGA. Come 16 months after that, there is going to be a water system?

Mr. KEYS. Mr. Chairman, the legislation says 12 months. We would prefer 18. But if 16 is what we get, that is what we will do.

Mr. FALEOMAVAEGA. I will bargain for 12 months.

Mr. Chairman, thank you. Again, I appreciate the administration support for this bill. I just want to make sure that there is sufficient funding and the time scale. I just don't believe it really needs 18 months to do the work. I think 1 year is more than sufficient, but I am not an engineer. I am just saying I have seen other projects be done in a similar manner, but I don't believe it required 18 months to do it.

Mr. KEYS. We think the $500,000 is adequate. If we are only given 12 months, we will get it done in that time.

Mr. FALEOMAVAEGA. Thank you very much, Mr. Commissioner. Thank you, Mr. Chairman.

Mr. OSBORNE. Thank you very much, Mr. Keys. We will be working with you on the timetable. As you know, we will be communicating regularly. We really appreciate your coming. You have been a regular visitor over here. You have been very, very patient today. We appreciate your sticking around. So with that, we will dismiss you, unless you have some other comments.

Mr. KEYS. Mr. Chairman, it is a pleasure to be here. We look forward to working with you on the bill and getting a feasibility study done.

Mr. OSBORNE. Thank you very much for coming.

Mr. OSBORNE. At this time I would like to call the other panelists on Panel IV, Les Minthorn, Board of Trustees, Confederated Tribes of the Umatilla Indian Reservation, and Alberto Peralta, Vice President, Wells Fargo Bank.

We will be continuing testimony on H.R. 3407. Mr. Minthorn, we will start with you.

STATEMENT OF LES MINTHORN, BOARD OF TRUSTEES, CONFEDERATED TRIBES OF THE UMATILLA INDIAN RESERVATION

Mr. MINTHORN. Thank you. I have a prepared statement here, but I prefer just to go through and hit the highlights that I earmarked on the testimony.

Mr. OSBORNE. That will be fine.

Mr. MINTHORN. Primarily my mission here is just to express our support for the proposed legislation that would facilitate the sale of these loans to a secondary market. With that, I will just go through a brief summary of our experience with this program.

In early 1969, our Tribe had a feasibility study done for our Reservation. Of course, it suggested a lot of economic development ventures, hotel, RV park, golf course, those kind of things on our Reservation. Throughout that period, until 1994, I believe nothing really happened because of the relationship that we have with our land. It is held in trust, and not very many parcels were owned in fee, so because of that relationship between our government and our Tribe where most of our land was owned by our elders and was allotted, the Tribe had very little land of its own. All the wealth that was produced by the land was generated pretty much by the elders, because it was allotted to them and their heirs now.

So during that timeframe, we had very little activity from an economic development standpoint, from 1969 to 1994.

In the meantime, of course, we all know the Congress here, the Indian Finance Act of 1974 came on board and then later the self-Determination Act, and those were fine. We did a lot of contracting with the government and had some activities happen to us.

In 1994, as you go through the statement that I have there, the Tribe implemented the provisions of the Indian Gaming Regulatory Act. We have a small, very modest facility on our Reservation that provided us with some seed money for other economics.

Up until that point we had hardly any activity from an economic development standpoint happening, until the Indian Gaming Regulatory Act allowed some activities to take place on the Reservation.

Well, prior to the casino, if you will, we had no relationship with any banking institution because of the lack of trust between the banking institution and the tribal government whose land was held in trust by the U.S. Government, which meant no collateral, which meant no means for the banking institution to come and seize property if we in fact defaulted.

So without that relationship between the tribal government and the banking institutions on our geographical area, we had no relationship develop; as a result of that, no activity.

In 1994, when the Indian Gaming Regulatory Act was passed, we had an opportunity then to try to utilize this Indian guaranteed loan program through the Bureau of Indian Affairs that was available. With that, we had at least a guarantee of $10 million to assist us with the development of this economic venture. As we went around the neighborhood in our own State and our own community, we had no banks willing to enter into this relationship with the government extending its full faith and credit for 90 cents of every dollar. We had no takers from the local banking institutions. As a matter of fact, the first bank that we had a relationship with was in New Mexico, not in the State of Oregon, not in the Pacific Northwest, but in New Mexico.

So as a result of that, we were able to utilize the guaranteed loan program under the Indian Finance Act. Had we not had that vehicle, the opportunities to develop our Reservation going back to the old 1969 plan that was developed for us, chances are pretty good we would not have had this opportunity to develop that parcel of land for these economic ventures.

So it was beneficial for us as a user of the program in that timeframe, going back to 1994, to use the Indian Financing Act and this loan guarantee program to get us to where we are now.

We are probably now in a very short period one of the largest employers on the Reservation. The State of Oregon is the largest employer, and the Confederated Tribes is the second largest employer. So in our limited area, we have done a lot for the people of our Reservation with the limited amount of money, and it was all jump-started by the loan guarantee program that created the golf course, the RV park, the hotel, the cultural center and the casino.

[The prepared statement of Mr. Minthorn follows:]

Statement of Les Minthorn, Treasurer, Board of Trustees, Confederated Tribes of the Umatilla Indian Reservation

Good morning Mr. Chairman, my name is Les Minthorn and I am the Treasurer of the Board of Trustees, the governing body of the Confederated Tribes of the Umatilla Indian Reservation (CTUIR). It is a privilege and a pleasure for me to appear before the Committee today to testify in favor of H.R. 3407, legislation that will permit more tribes and individual Indians to take advantage of the BIA guaranteed loan program, as the CTUIR did, to achieve financial independence.

The purpose of H.R. 3407 is to facilitate the sale of BIA guaranteed loans by the lending bank to the secondary market, along with transferring the guarantee of the United States to the purchaser of the loan. This will have the effect of permitting banks and other lending institutions participating in the BIA guaranteed loan program to make more such loans available to tribes and individual Indians. I will leave it to others with more experience in banking matters to address the mechanics of how H.R. 3407 facilitates the sale of such loans in the secondary market; I want to address the experience of the CTUIR with our BIA guaranteed loans as an indica-

tion of how the expansion of this loan program can benefit other tribes and individual Indians.

On July 18, 2001, Assistant Secretary Neal McCaleb testified before the Senate Indian Affairs Committee on tribal good governance practices as they relate to economic development. In the course of his testimony, Mr. McCaleb made the following statement about the CTUIR:

> Another success story is told by the Confederated Tribes of the Umatilla Indian Reservation located in rural northeast Oregon. Their original economy was based upon agricultural and natural resources, primarily fishing, grain and timber.
>
> Today the tribe has diversified into commercial developments such as a trailer court, a grain elevator, the Wildhorse Casino, a hotel, an RV park, a golf course, and a solid waste transfer station.
>
> The tribe is now the second largest employer in Umatilla County, following the State or Oregon. Their operating budget has increased from $7.6 million to $94.2 million in the last 9 years.

We appreciate the recognition and kind words by Assistant Secretary McCaleb. Our government and our people have worked hard for the modest success we have achieved. The growth in our Tribal budget in the past decade is due to two factors: First, the CTUIR has taken full advantage of the opportunity to contract for BIA and IHS programs under the Indian Self–Determination Act. Second, and much more importantly, the CTUIR has worked diligently to establish a diversified, self-sustaining Reservation economy. The BIA guaranteed loan program played a critical role in providing start-up financing for three Tribal enterprises that form the core of our economy.

Prior to 1994, the CTUIR budget was derived almost exclusively from federal grants and contracts. Only a handful of jobs outside the Tribal government were available for Tribal members and other Reservation residents. The CTUIR had little Tribal income that it could allocate pursuant to Tribal priorities and without the strings attached to federal funds. We knew that governmental jobs and programs were not enough to increase employment opportunities and to improve the financial future for our Tribe and its members. Economic development was necessary to achieve these goals.

The Umatilla Indian Reservation is bisected by Interstate 84 the major east/west highway from Portland to Boise. Because of our rural location, we knew our economy needed to take advantage of the freeway traffic. As far back as 1969, the CTUIR planned for the development of a destination resort at the base of the Blue Mountains offering a golf course, hotel, RV park, gas station and convenience store, and a Tribal museum. Those plans languished for 25 years because the CTUIR was unable to secure the necessary financing. But recently, with the assistance of the BIA guaranteed loan program, our dreams have become reality.

In November, 1994, our small, temporary gaming facilitation opened, and in March, 1995, moved into our larger, permanent casino. To diversify our economic enterprises and to increase the amenities available to our casino patrons, we needed a hotel, RV park and golf course. Attracting financing for these enterprises posed a difficult challenge. The CTUIR had few resources and little it could pledge to secure repayment for loans for these enterprises. The fact that the enterprises were to be located on trust lands and were to be constructed and operated by a Tribe with no experience in such enterprise development or operation made our quest for financing especially difficult. In fact, we were only able to attract financing because of the BIA guaranteed loan program authorized under the Indian Finance Act of 1974.

Working with the agency and regional BIA offices, we received a $10 million loan guarantee. Pursuant to the loan guarantee, the United States guaranteed 90% of the loan and provided an interest rate subsidy to the Tribe to lower financing costs in the critical first three years of operations when our new enterprises were getting off the ground.

If any member of the Committee believes that a Tribe with a BIA loan guarantee has the ability to get a bank loan for any enterprise, regardless of its feasibility, and on sweetheart terms, I am here to tell you your belief is mistaken. We worked with the First Security Bank of New Mexico on our loans and learned valuable lessons in the process leading to the negotiation and closing of the loan transactions. We conducted market feasibility studies for each financed enterprise, we were required to pledge the full faith credit of the CTUIR to secure repayment of the loans and had extensive negotiations on loan terms addressing the construction and management of the financed enterprises. In other words, while the BIA loan guarantee made bank financing available, it did not guarantee that we would get the loan. We were spared none of the rigors that other commercial borrowers are subjected to,

which prepared the CTUIR for the realities of the loan and bond transactions that followed.

While I was not a participant in these loan negotiations, present with me today is our Tribal Attorney, Dan Hester, who was. I am certain that Mr. Hester could explain in excruciating detail the process and terms associated with the loans if the Committee has any interest in exploring these issues further.

The CTUIR BIA guaranteed loans closed in May (Hotel Loan) and December (Golf Course and RV Park Loan) of 1995. All three enterprises opened in 1996 and 1997. Later, the CTUIR financed and developed our Tribal museum and educational facility known as the Tamastslikt Cultural Institute, and have acquired and renovated the Arrowhead Truck Stop/Gas Station/Convenience Store to add to the enterprises and amenities of the Wildhorse Resort and to diversify our economic base and employment opportunities. Currently, the Wildhorse Resort, TCI and Arrowhead employ about 500 persons. Unemployment rates among CTUIR members and other enrolled Indians residing on the Umatilla Indian Reservation have been dramatically reduced from 37% to 17% since Wildhorse Resort opened. Many Tribal members who had gone away to be educated and stayed away to pursue employment opportunities that did not exist at home have returned to their Reservation homeland and to unprecedented job opportunities and salaries.

Even before the introduction of H.R. 3407, the CTUIR did its part to free up BIA guaranteed loan resources. Taking advantage of our increased financial resources, our operating history of Wildhorse Resort enterprises, and an improved interest rate environment, the CTUIR issued taxable and tax-exempt bonds in 1999 to refinance the BIA guaranteed loans and other Tribal commercial loans. We have never missed a loan or bond payment. But I hasten to add that the loan guarantees were absolutely essential for the initial development of our projects. Bonds are difficult to obtain for projects that are just on the drawing board, and for which no operating history exists. It was loans, secured with the guaranteed backing of our trustee, that provided the critical initial financing for the Wildhorse projects that are a reality today.

The experience of the CTUIR with the BIA guaranteed loan program is a real success story. The BIA guaranteed loan program made loans available to our Tribe that would not have been available without the guarantee of the United States. The CTUIR has seen its economic base expand to meet the needs of its people and to acquire the resources and expertise to explore other economic development and financing opportunities as our capability and resources permit. We have used this expertise in our pursuit of other economic development projects such as our proposed Wanapa natural gas-fired power plant, the expansion of our casino which is now nearly complete, the development of a Reservation grocery store and the development of housing to meet the needs of our growing Tribal membership.

While the CTUIR does not foresee the need for future use of the BIA guaranteed loan program, our individual Tribal members may pursue financing for their business ventures, and so will other tribes hoping to break their dependence on governmental grants as the sole source of funding for tribal governmental programs and employment opportunities. Based on our experience with the BIA guaranteed loan program, and our embrace of Tribal economic self-sufficiency, the CTUIR expresses its support for H.R. 3407.

The CHAIRMAN. Thank you very much for your testimony. If you can, when those red lights come on, that is the 5-minute mark. So we certainly appreciate you. You obviously are well acquainted with success.

Mr. Peralta, would you go ahead with your testimony at this time?

STATEMENT OF ALBERTO PERALTA, VICE PRESIDENT, WELLS FARGO BANK

Mr. PERALTA. Mr. Chairman and honorable members, my name is Alberto Peralta. I am here representing Wells Fargo. While I don't want this to be a commercial about Wells Fargo, I do want to say our interest is this: We are one of the largest lenders to tribal governments, to Native Americans, in the United States, and apart from that we are also the largest housing lender.

We are in support of H.R. 3407 because we do think it is going to invite and attract more investors and, thus, more capital to various economic development plans that the Tribes have. In New Mexico, we have 21 Pueblos and Tribes. I personally know quite a few of the Governors there. We have conducted a number of educational seminars, a number of bank service seminars, almost all of them focused to a great degree on economic development. Any element of any component that would attract investors into this markets and help finance economic development projects is something that we perceive as being very good for the market.

In my testimony I talk a little bit more about BIA guaranteed loans, how tough they are to finance, how large they could be. Some banks are not interested in them because they tie up a lot of capital. If they could then resell it, it brings more liquidity to the markets and more loans to Native American enterprises.

Thank you, sir.

[The prepared statement of Mr. Peralta follows:]

Statement of Alberto Peralta, Senior Vice President, Wells Fargo Bank, New Mexico

My name is Alberto Peralta. I am a Senior Vice President of Wells Fargo Bank New Mexico, N.A.

My primary responsibility at Wells Fargo is to provide commercial banking services (including loans, depository and other financial products) to the twenty-one New Mexico pueblos and tribes and to advise Native Americans in New Mexico about banking services.

During 2002, Wells Fargo Bank New Mexico engaged in an active outreach program that included holding a number of free seminars for New Mexico's tribal leaders and members on residential loans, commercial loans, pension plans and investments. Additionally, I met personally with a number of tribal leaders to discuss opportunities available to the pueblos and tribes for economic development on their respective reservations.

The outreach efforts of Wells Fargo Bank New Mexico are in addition to Wells Fargo's national initiatives to facilitate economic and residential development for Native Americans. Wells Fargo's Native American Banking Services Department, located in Phoenix, Arizona, is actively involved in providing banking services and financing projects in Indian country. Additionally, Wells Fargo Mortgage Company is the largest lender to Native American housing projects in the country.

At Wells Fargo Bank, we are proud to be a part of economic development and providing financing for housing to Native Americans. I am also proud and pleased to be here today to represent Wells Fargo Bank and to testify in favor of passage of H.R. 3407.

As a rule, commercial loans to New Mexico pueblos and tribes are either secured by cash collateral or are guaranteed by the Bureau of Indian Affairs under its Indian Financing Act guaranteed loan program. Often, we receive requests to finance start-up projects for pueblos and tribes who have done little or no prior economic development. In those cases, the tribes do not have adequate cash resources or other tangible assets to offer as collateral for loans, and the availability of the credit enhancement offered by the BIA loan guaranty program is critical. As a result, twenty-seven years after its passage, the Indian Financing Act of 1974 remains an essential component in the success of economic development projects in Indian country.

In our experience, typical BIA-guaranteed loans are for amounts in excess of $1,000,000.00. Often they are two-to-three times that amount. The ability to sell BIA-guaranteed loans in a secondary market will allow banks to originate more loans to Native Americans because the banks will be able to sell all or part of the loans and replenish their liquidity so that they can lend again. As a result, banks will be more inclined to pursue the Native American lending market and thus provide much needed capital to Indian country, just as the SBA-guaranteed loan program and secondary market in home mortgages have generated additional capital for commercial loans and in home mortgages.

H.R. 3407 provides for the "incontestability", or the "full faith and credit" of a BIA-guarantee for a secondary market investor, like the guarantees offered by the SBA-guaranteed loan program. This provision is critical because, based on our expe-

rience with other government guaranteed loan programs like SBA, we know that in order for secondary market investors to purchase guaranteed loans, investors must be confident that the guarantee will be paid without undue delay or without the risk that a subsequent event might invalidate the guarantee. Therefore, we encourage the Committee to use best efforts to ensure that these provisions in H.R. 3407 remain intact.

We also encourage H.R. 3407 to require BIA to adopt clear, concise regulations as soon as possible to implement the secondary market program contemplated by H.R. 3407 and to make clear the responsibility of the originating lender after it sells a BIA-guaranteed loan in the secondary market. Delay will only serve to confuse and undermine the success of the entire BIA-guaranteed loan program and of its secondary market component. Therefore, we strongly support the provisions in H.R. 3407 that require adoption of final regulations not later than 180 days after enactment of H.R. 3407.

Thank you very much for the opportunity to appear before you today. I am happy to answer any questions that you have.

The CHAIRMAN. Thank you very much for your testimony. We appreciate it.

I guess I will start with you, Mr. Peralta. In your estimation, would the creation of a secondary market pose an increase in cost for securing funding to Indian businesses?

Mr. PERALTA. As I mentioned in my written testimony, I am hoping that it doesn't. I do not know for sure that it will or not. But if the costs are excessive, it becomes an impediment to using the program. I expect there will be some costs for it, but we have to manage those and keep them as low as possible to make sure that it doesn't have the reverse effect and scare away investors rather than attracting them.

Mr. OSBORNE. Mr. Minthorn, you mentioned in your testimony that the Confederated Tribes of the Umatilla Indian Reservation do not foresee the need for future use of the BIA guaranteed loan program. If the proposed amendments to the Indian Financing Act are implemented, what benefits do you foresee in the creation of the secondary market to have an established, self-sustaining Indian enterprise?

Mr. MINTHORN. I am not sure that you got it correct.

Mr. OSBORNE. I probably don't. I probably don't, but you probably can straighten it out.

Mr. MINTHORN. I believe that we will continue to use, if it is available, the loan guarantee program, because it did have a very huge impact on our operations as we have it right now. A lot of that had to do with capacity building. A lot of it had to do with putting fiscal management policies in place and developing what we heard earlier in the testimony here about capacity in the other panel and accountability.

So we think that the future would bring more of these opportunities to the table and to go out with that loan guarantee program, we have other projects that we need this type of support to further our diversified economy, and we need that type of loan guarantee.

Mr. MINTHORN. Sometimes projects that are not on the table, at least in our community, it takes time for us to move to the next project. And so the timeframe 1994 until now, we just used that one loan program, the loan guarantee for the $10 million. We haven't had a second program. We think we have other projects that we would like to utilize the same program for.

Mr. OSBORNE. Thank you very much. I gather then that you do plan to use the guaranteed loan program, and I am sorry if we misread your testimony.

Mr. MINTHORN. We have one application that is pending we haven't implemented.

Mr. OSBORNE. OK. Thank you very much.

Mrs. Christensen, anything further?

Mr. Faleomavaega?

Mr. FALEOMAVAEGA. Thank you, Mr. Chairman.

I thank the members of our panel for their fine testimony. What an irony, Mr. Chairman. As I recall, years ago there was an Indian tribe that wanted to borrow money to start a casino operation, and none of the lenders in the community were willing to give them the money. So this Indian tribe had to go to a foreign investor to give them backup capital to start their operation.

Well, this Indian tribe happens to be the Pequot Indian Tribe, whom I have had the privilege of visiting in Connecticut, now currently has the largest casino operation in the world, I think, grossing well over $600 million a year. And you know what, Mr. Chairman? Now everybody—lending institutions are jumping up to say, hey, borrow money from us. I mean, this is the kind of attitude that our country has had, especially from the private sector, even giving the Indians a chance to do this kind of a commercial development.

Mr. Chairman, I am going to propose an amendment in our bill when it comes before the full Committee, and this is maybe a novel idea, Mr. Chairman.

The fact that there is somewhere between 2 billion to $10 billion that we can't even figure out how much we owe in Indian Trust Funds, the fact that the money is there—it is not the question of whether or not there is no money. The money is there, but we just couldn't calculate exactly how much. And perhaps maybe $2 billion could be given to be part of this trust—I mean, this guaranteed loan program. So that this is exactly the kind of thing that this gentleman is advocating. This thing has been in the books for 27 years, and the fact that there is money there, not taking away the integrity of the funds of who is really owed the money, but at least we could use the money for the benefit of our first Americans who really want to develop their commercial activities and be part of the private sector.

I really believe that this bill is excellent, and I sincerely hope—I am going to develop this novel idea, Mr. Chairman, and definitely look forward to the full Committee hearing for a markup on this. And I want to thank our good friends and Wells Fargo for giving our first Americans a sense of trust, that they can be responsible for borrowing money to conduct their business activities. I really appreciate that. Thank you, Mr. Chairman.

Mr. OSBORNE. Thank you very much.

And thank you, gentlemen, for being here today. Appreciate your testimony.

Mr. OSBORNE. And, with that, we will move on to panel five for consideration of H.R. 24O8. That would be Roger Trudel, Assistant Secretary of Indian Affairs—or, rather, Chairman of the Santee Sioux Tribe; Robert Cournoyer, Tribal Vice Chair, Yankton Sioux

Tribe; and Michael Lawson, senior associate, Morgan, Angel & Associates.

While they are getting seated, I will just mention that H.R. 2408 is a bill that is intended to provide equitable compensation to the Yankton Sioux Tribe of South Dakota and the Santee Sioux Tribe of Nebraska for the loss of value of certain lands, Yankton Sioux Tribe and Santee Sioux Tribe Equitable Compensation Act. And as has been mentioned some dams were built, some land was taken, and this is to compensate for that land.

So, we appreciate all of you being here today, and we will start out with your testimony, Mr. Trudel.

Mr. FALEOMAVAEGA. Would the Chairman yield?

Mr. OSBORNE. Yes, sir.

Mr. FALEOMAVAEGA. Mr. Chairman, I want to offer my apologies for not having the time to listen to our witnesses, but I have got a very important meeting. It means the life or the death of my tuna industry if I don't attend this meeting with the most able Chairman of the Ways and Means Committee, Mr. Bill Thomas. But I want to offer again my commendation and special thanks to you, Mr. Chairman, for chairing these hearings and these important bills that are now before our Committee for consideration.

And, again, my apologies to our witnesses that I won't be able to listen to their testimony.

Mr. OSBORNE. Well, thank you for being here as long as you have been.

Mr. FALEOMAVAEGA. Thank you, Mr. Chairman.

Mr. OSBORNE. All right. Mr. Trudel.

STATEMENT OF ROGER TRUDEL, CHAIRMAN, SANTEE SIOUX TRIBE

Mr. TRUDEL. Thank you, Congressman Osborne, and also Chairman, today, I guess, Chairman of the Committee.

Mr. OSBORNE. Chairman for the day.

Mr. TRUDEL. Chairman for the day.

I have submitted written testimony on 2408, and just to maybe share a little history of the Santee Sioux Tribe for the record, the Santee Sioux Tribe is originally from Minnesota. The State of Minnesota was our traditional lands, as well as western Wisconsin, north central and northeastern Iowa, and southeastern South Dakota.

In 1862, we had a conflict with the U.S. Government and was relocated to the State of—actually, to Crow Creek, South Dakota, first and then to Nebraska in about 1863, 1864. We had 400-some men that were sentenced to hang at Mankato, Minnesota, and President Lincoln commuted the sentence of all but 38 of them. And so 38 of our relatives were hung at Mankato on December 26th, 1862. And as my good friends, the Winnebagos, I always like to remind them that we helped to get them kicked out of Minnesota, too. So, we have a Winnebago relative with us today that is doing an internship here with Congressman Bereuter.

Anyway, when the dam, Gavins Point Dam, was put in in the early 1950's, the tribe lost approximately 400-some acres, not counting Niobrara River. With Niobrara Island, I think it was a total of about 1,000, 1,007 acres. There was some compensation at

that time, but clearly not properly executed. And so this bill that your office, Congressman, yourself and your staff have assisted us with, you know, would bring equity to the Santee Sioux Tribe.

The Santee Sioux Tribe is one of the more economically depressed areas in Nebraska, northeastern Nebraska. Our unemployment rate runs anywhere from 50 to 70 percent depending on what time of the year it is. We have a number of health disparities, a number of education disparities, and definitely a number of economic disparities. And we think this compensation claim would assist the tribe in long-term economic development, invested wisely. There is a plan that would be submitted to the Interior Department on how the funds would be utilized.

We do hope that the Committee will seriously consider the needs of the Santee Sioux Tribe when this goes to full Committee. We respectfully request that—you know, that the funds would be available as soon as possible.

With that, Mr. Chairman, I believe I would end my verbal testimony.

[The prepared statement of Mr. Trudel follows:]

Statement of Roger D. Trudel, Chairman of the Santee Sioux Tribe of Nebraska on H.R. 2408

Mr. Chairman and members of the House Resources Committee, I am Chairman Roger Trudel of the Santee Sioux Tribe of Nebraska. The Santee Indian Reservation is located in northeast Nebraska and the Missouri River borders our reservation's northern boundary.

I am pleased to appear before this committee to provide some views from the perspective of the Santee Sioux tribe in support of H.R. 2408 and appreciate the Committee's consideration of this bill. Our tribe has worked closely with Congressman Tom Osborne, along with the entire Nebraska congressional delegation in both chambers of Congress to advance this legislation through the 107th Congress. We are grateful for their support on this matter, as well as the support of the South Dakota delegation on behalf of our brothers at the Yankton Sioux Tribe. I also want to commend the work of all the congressional staff who have worked so hard to get this legislation before this Committee today.

The Santee Sioux Reservation was established as a permanent home for remnants of six Santee Sioux bands driven out of Minnesota following what is known as the "Sioux Uprising of 1862." Our reservation was established by Executive Order signed by President Andrew Johnson on February 27, 1866.

In 1944, the Congress enacted the Flood Control Act (58 Stat. 887), which authorized implementation of the Pick–Sloan Project for water management and hydroelectric power development in the Missouri River Basin. This plan included the construction of five main-stem dams along the Missouri River. Project purposes included flood control downstream, navigation, irrigation, the generation of hydropower, the provision of improved water supplies, and enhanced recreation. The U.S. Army Corps of Engineers, which constructed and operate the dams, estimates the projects' overall contribution to the national economy averages approximately $1.3 billion. The Gavins Point dam, which is the subject of my testimony, is erected between Yankton County, South Dakota and Knox County, Nebraska and is the farthest downstream and smallest of the six Missouri River dams.

The Gavins Point project inundated 1007.22 acres of land within the Santee Sioux Indian Reservation. This represents nearly fifteen percent (15%) of the reservations total land base. Of that acreage, over half was valuable cropland.

The Santee Sioux lands taken for the Gavins Point project were located just below the main settlement area of the Indian village of Santee. The bottomland was used by our tribal members for hunting, shelters for livestock, and the trees for lumber and fuel. The bottomlands provided a variety of plants used for ceremonial and medicinal purposes. The land taken also included productive agriculture land and pastureland. The Gavins Point project flooded a tribal farm which included cattle and hog confinement buildings, grazing land, and fields that were used for growing hay, oats and corn. That of course is now history; the tribal land taken is now underwater and unusable for any form of economic development or subsistence use.

As a small tribe with a minimal land base, those lands taken by the floodwaters of the Gavins Point dam are a great loss to us and, to date, the Federal government has done nothing to address what the Santee Sioux Tribe feels was an unjust taking of tribal lands.

Neither the Flood Control Act of 1944, nor any subsequent acts of Congress, specifically authorized the U.S. Army Corps of Engineers or the Bureau of Reclamation to condemn Santee Sioux tribal land for the Pick–Sloan projects. Nevertheless, our land was condemned and taken from us in the U.S. District Court. These condemnation proceedings resulted in compensation for our lands that was far less in value than that of other Missouri River tribes whose lands were taken by acts of Congress. The Court did not compensate the Tribe for its indirect damages, but merely provided payment for the appraised value of the land. Moreover, it was several years between the time the land was appraised and when the Tribe actually received any payment stemming from the Court's compensation order. The initial settlement did not take into account the inflation of property values within that period of time.

The lands affected by the Pick–Sloan program were, by and large, Indian lands. The damage to each reservation was unique, depending on the acreage lost, the number of tribal members living in the impacted areas, and the value of the resources located on those lands. However, the result was the same at each reservation tribal communities and their economies were damaged or completely destroyed by the dam projects with little to no regard of the Federal government.

In May of 1985, the Secretary of the Interior established the Joint Tribal Advisory Committee (JTAC) to assess the impacts of the Garrison and Oahe Dams on the Three Affiliated Tribes and the Standing Rock Sioux Tribe. Based on the findings and recommendations of JTAC, Congress enacted legislation to equitably compensate those tribes for their losses from Pick–Sloan.

In 1992, the Congress enacted legislation acknowledging that the U.S. government did not justly compensate the tribes at Fort Berthold (Three Affiliated) and Standing Rock when it acquired their lands and that the tribes were entitled to additional compensation. (Pub. L. 102–575, title XXXV, the Three Affiliated Sioux Tribes and Standing Rock Sioux Tribes Equitable Compensation Act, which provided development trust funds for these two reservations).

In 1996, the Congress again acknowledged that the Indian tribes were not adequately compensated for their losses under the Pick–Sloan Project in passing Pub. L. 104–223, the Crow Creek Sioux Tribe Infrastructure Development Trust Fund Act, which provides for a development trust fund for the Crow Creek tribe for losses due to the construction of the Ft. Randall and Big Bend dams. Then again, in 1997, Congress passed Pub. L. 105–132, the Lower Brule Sioux Tribe Infrastructure Development Trust Fund Act, which also provided a development trust fund for the Lower Brule Sioux Tribe for similar losses.

These four recovery funds were financed by an allocation of 25 percent of the annual gross revenues collected by the Western Area Power Administration (WAPA) from the sale of hydroelectric power generated by the Pick–Sloan dams. The funds were established pursuant to the determination of the General Accounting Office (GAO) that impact to the tribes at the time of the land takings was significant, and the Congressional finding that "the United States Government did not justly compensate [the] tribes when it acquired those lands." The 105th Congress also considered legislation that would have established a Recovery Fund of $290 million for the Cheyenne River Sioux Tribe of South Dakota, which lost approximately 104,000 acres to the Oahe Dam project.

The Fort Berthold, Cheyenne River, Standing Rock, Crow Creek and Lower Brule tribes all received initial settlements from Congress between 1948 and 1962 that included payment for direct property damages, severance damages (including the cost of relocation and reestablishment of affected tribal members) and rehabilitation for their entire reservations. In providing funds for rehabilitation, Congress recognized that the tribes as a whole and not just the tribal members within the taking areas were negatively affected by the loss of the bottomland environment and reservation infrastructure. Accordingly, congressional settlements with the five tribes between 1948 and 1962 provided compensation for severance damages and rehabilitation that averaged 458 percent more than was paid for direct damages. The additional payment to the Standing Rock and Crow Creek Sioux Tribes was over 630 percent more than the amount awarded to them for direct damages.

The Yankton and Santee Sioux Tribes were never provided the opportunity to receive compensation from Congress for their direct damages. Instead, as mentioned above, they received settlements for the appraised value of their property through condemnation proceedings in U.S. District Court. In 1954 Congress provided supplementary compensation to the Yankton Sioux for severance damages. This payment

was distributed to some but not all of the tribal families affected nine years after their properties were condemned. In 1960, the Bureau of Indian Affairs conducted a comparative study of the experiences of six reservations impacted by Pick–Sloan dams. This investigation found that the average total damage payment per family within the taking area at Yankton was $5,605, whereas the payment averaged $16,680 on the other five reservations (Fort Berthold, Standing Rock, Cheyenne River, Crow Creek, and Lower Brule).

The Santee Sioux also received payment for severance damages from the U.S. District Court in 1958. However, the additional severance compensation awarded the Yankton and Santee Sioux did not reflect the fact that their takings involved a greater proportion of agricultural land. Neither did it account for the inflation of property values between the time of taking and the time of settlement. The total compensation for the Yankton Sioux also failed to take into consideration the fact that the White Swan community was destroyed, dispersed and never replaced, whereas communities flooded on the other reservations impacted by Pick–Sloan projects were relocated and reestablished on higher ground. In addition, neither the Yankton nor the Santee Sioux was provided funds for rehabilitation, even though a large proportion of tribal members residing outside the taking area on both tribes' reservations were also impacted by the dam projects.

By the enactment of these various development trust fund acts, Congress has established a strong precedent for settling tribal land takings claims by providing additional and equitable compensation in the form of development trust funds. However, Congress cannot declare a value on the loss of tribal tradition and cultural life along a free flowing river. So therefore, we must look to the cost of what can be measured. The tribe lost a total of 1,007.22 acres to the Gavins Point dam and reservoir. H.R. 2408 correctly identifies the Santee Sioux Tribe's loss of 593.10 acres near Santee village and appreciates the provision of $4,789,010 in compensation as a development trust fund for that taking. However, we also claim a loss of 414.12 acres on Niobrara Island, which was also taken under the Gavins Point Dam project.

This additional loss of land is identified in Tribal histories as well as the April 1999 report titled: "Historical Analysis of the Impact of Missouri River Pick–Sloan Dam Projects on the Yankton and Santee Sioux Indian Tribes," prepared for the Bureau of Reclamation by Dr. Michael L. Lawson of the Washington, DC based public policy firm of Morgan Angel & Associates. In addition to the funding called for under H.R. 2408, the Tribe also requests that Congress establish a recovery fund of $3,343,828 for compensation of the 414.12 lost acreage of Niobrara Island. These valuations are based on the per-acre amount established by the Lower Brule Recovery Fund plus an additional percentage for unpaid severance damages and/or rehabilitation.

The Santee Sioux Tribe, in conjunction with the Yankton Sioux Tribe, would also request Congress to provide supplementary compensation totaling $42,456,581 for their Pick–Sloan damages. Based on the precedent of recovery funds established for the other four tribes, we also seek the establishment of a separate Recovery Fund for each of our Tribes to be funded by allocation of a proportion of the gross receipts deposited by the WAPA in the U.S. Treasury

To this end, I feel that the Santee settlement claim and request is minimal in comparison to the others settlements passed under prior Congresses. Again, we appreciate the level of compensation H.R. 2408 calls for, and consider it a good beginning to our being fully compensated for the unjust takings of tribal lands during the era of the Pick–Sloan projects. With the sponsorship of identical legislation (S. 434) in the United States Senate by majority leader Tom Daschle, we anticipate bipartisan support in both chambers of Congress as well as eventual passage and Presidential enactment of this legislation this year.

I have also attached a resolution from the National Congress of American Indians, representing the voice of over 250 federally recognized tribes in the United States in support of this legislation, which I request be placed in the Congressional Record along with this written statement.

In conclusion, I again want to thank Rep. Osborne for sponsoring this legislation and the House Resources Committee for granting me this opportunity to present testimony on its behalf. Currently, unemployment rates are devastatingly high on my reservation, with little to no economic development opportunities available, due in large part to a lack of tribal finances to generate a sustainable economic base. The socio-economic needs of the Santee Sioux Tribe are great and passage of this legislation is critically important to the Tribe's goal of reversing decades of abject poverty. Therefore, I respectfully request this Committee to quickly pass this legislation and report H.R. 2408 to the House floor for further consideration.

[An attachment to Mr. Trudel's statement follows:]

THE NATIONAL CONGRESS OF AMERICAN INDIANS—RESOLUTION #BIS–02–030

Title: Support for H.R. 2408 / S. 434, the Yankton Sioux Tribe and Santee Sioux Tribe Equitable Compensation Act

WHEREAS, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

WHEREAS, by carrying out the Pick–Sloan Missouri River Basin program approved by Congress under the Flood Control Act during the first half of the 20th Century to promote the general economic development of the United States by providing for irrigation above Sioux City, Iowa to protect urban and rural areas from devastating floods of the Missouri River, vast lands of the Yankton Sioux and Santee Sioux reservations along the Missouri River basin were forever lost; and

WHEREAS, these fertile, wooded bottom lands that were home to the Yankton and Santee Sioux Tribes, which would have been ideal for farming and agricultural use, were buried under billions of gallons of water impounded for the Fort Randall and Gavins Point projects as part of the Pick–Sloan program; and

WHEREAS, the Fort Randall project (including the Fort Randall Dam and Reservoir) overlies the western boundary of the Yankton Sioux Tribe Indian Reservation and the Gavins Point project (including the Gavins Point Dam and Reservoir) overlies the eastern boundary of the Santee Sioux Tribe; and

WHEREAS, the two projects greatly contribute to the economy of the United States by generating a substantial amount of hydropower and impounding a substantial quantity of water, yet the reservations of the Yankton Sioux Tribe and the Santee Sioux Tribe remain undeveloped; and

WHEREAS, the United States Army Corps of Engineers took the Indian lands used for the Fort Randall and Gavins Point projects by condemnation proceedings; and

WHEREAS, the Federal Government did not give the Yankton Sioux Tribe and the Santee Sioux Tribe an opportunity to receive compensation for direct damages from the Pick–Sloan program, even though the Federal Government gave Indian reservations upstream from the reservations of those Indian tribes such an opportunity; and

WHEREAS, the Yankton Sioux Tribe and the Santee Sioux Tribe did not receive just compensation for the taking of productive agricultural Indian lands through the condemnation; and

WHEREAS, the settlement agreement that the United States entered into with the Yankton Sioux Tribe and the Santee Sioux Tribe to provide compensation for the taking by condemnation did not take into account the increase in property values over the years between the date of taking and the date of settlement; and

WHEREAS, in addition to the financial compensation provided under the settlement agreements, H.R. 2408 and S. 434, introduced in the United States House of Representatives by Congressman Tom Osborne (R–3–NE) and in the United States Senate by Senator Tom Daschle (D–SD) call for the Yankton Sioux Tribe to receive an aggregate amount equal to $23,023,743 for the loss value of 2,851.40 acres of Indian land taken for the Fort Randall Dam and Reservoir of the Pick–Sloan program and call for the Santee Sioux Tribe to receive an aggregate amount equal to $4,789,010 for the loss value of 593.10 acres of Indian land located near the Santee village.

NOW THEREFORE BE IT RESOLVED that the National Congress of American Indians (NCAI) does hereby call upon the United States Congress to pass H.R. 2408 and for the U.S. Senate to pass S. 434, and thereby agree to a single legislative bill in the 107th Congress to be sent to the President for enactment.

BE IT FURTHER RESOLVED that the NCAI requests that if such legislation be sent to the President for enactment, that President Bush sign such legislation into law, thereby compensating the Yankton Sioux and Santee Sioux Tribes for such unjust takings of Indian lands.

BE IT FINALLY RESOLVED that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

CERTIFICATION
The foregoing resolution was adopted at the 2002 Mid–Year Session of the National Congress of American Indians, held at the Bismarck Civic Center, in Bismarck, North Dakota on June 16–19, 2002 with a quorum present.

Tex Hall, President

ATTEST:
Colleen Cawston, Recording Secretary

Adopted by the General Assembly during the 2002 Mid–Year Session of the National Congress of American Indians, held at the Bismarck Civic Center, in Bismarck, North Dakota on June 16–19, 2002.

Mr. OSBORNE. You will be the only panelist on the next bill; so if you would care to give your testimony on H.R. 4938 at this time, we would certainly accept it. Or would you rather wait until later?

Mr. TRUDEL. As long as I am close to the mike, I will do it now.

Mr. OSBORNE. There you go.

Mr. UTRUDEL. Again, thank you, Chairman. The bill would provide for a rural study, rural water study on the reservation. The reservation is 12 by 17 miles in dimensions. Within the boundaries of the reservation, we have the Santee Community, which is the growth center of the Santee Reservation. Approximately 600-some people live in that community, tribal members and other Indian people, as well as some non-Indian people. And then we have a community of Lindy, Nebraska, which is within our boundaries. And I am not sure what Lindy's population is; I think somewhere around maybe 40 or 50 people on a good day.

And our plan, or what we envision as a rural water system is we have a number of non-Indian farmers that also reside within those 12-by-17-mile dimensions that we all share bad water. The cost of putting in an average well I think runs right now—and, of course, this is old information—somewhere around $9,000 to put an individual well in just to have bad water.

So, we were hoping, with your assistance and with this bill, that, you know, the study could be conducted that it would be feasible to have a rural water system on the Santee Sioux Indian Reservation.

There are also other communities in the—adjacent to the reservation that are interested in seeing this project go through and hope that somehow that they could benefit from this, and that is the Niobrara Community and Center Community, Center being the county seat of the county. Our reservation does run up to the main—First Street in Center.

All have wished us good luck in bringing this bill to fruition. We believe the water is a major cause of the bad health of the people. As I mentioned before, we do have some health disparities. Good water is a blessing, I guess, you know, and unfortunately we are not blessed with good water. We believe that this study could bring good water to everybody on the reservation, regardless of whether they are tribal members or non-Indian members, residing within the boundaries of the reservation.

We do believe that good water would help attract some economic development to the area, some commercial interests, and allow for further housing. We are restricted in where we can locate housing now, so that is why so many people live in the community of Santee as opposed to other areas of the reservation is because of the water situation.

Again, we believe, as I said earlier, that good water is key to good health, and water to the Indian people is sacred. And, just for the record, I guess I want to close with this part, just saying that earlier a comment was made that you might be Lakota. We are hoping that maybe you are Dakota. We have three dialects, and we are the D, the D dialect.

Mr. OSBORNE. I will be whatever you want, Roger.

Mr. TRUDEL. Thank you.

[The statement of Mr. Trudel follows:]

Statement of Roger D. Trudel, Chairman of the Santee Sioux Tribe of Nebraska on H.R. 4938

Good afternoon Mr. Chairman, and members of the House Resources Committee. I am Chairman Roger Trudel of the Santee Sioux Tribe of Nebraska, here today to present testimony in support of H.R. 4938, a bill that directs the Department of Interior's Bureau of Reclamation, to conduct a feasibility study on the development of a water supply system for the municipal, rural and industrial use of the Santee Sioux Tribe. I am pleased to be offered this opportunity to appear before this committee to provide some views from the perspective of the Santee Sioux tribe in support of H.R. 4938 and appreciate the Committee's consideration of this bill. Our tribe has worked closely with Congressman Tom Osborne, along with the entire Nebraska congressional delegation in both chambers of Congress to advance this legislation through the 107th Congress. We are grateful for their support on this matter. I also want to commend the work of all the congressional staff who have worked so hard to get this legislation before this Committee today.

The reservation for the Santee Sioux Tribe was established via Executive Order in the mid–19th Century as a permanent home to the Eastern, or Santee division of the great Sioux nation, with our majority population historically affiliated with the Mdewakanton and Wahpekute peoples of the northern great plains. The Tribal governing body consists of an elected 12-member Tribal Council, representing nearly 2,500 enrolled members, with over 500 of those members, along with numerous other Sioux tribal members of Lakota, Dakota and Nakota decent, living on the Santee reservation in northern Nebraska along the banks of the Missouri River.

In 1944, the Congress enacted the Flood Control Act (58 Stat. 887), which authorized implementation of the Pick–Sloan Project for water management and hydroelectric power development in the Missouri River Basin. This plan included the construction of five main-stem dams along the Missouri River, including the Gavins Point dam erected between Yankton County, South Dakota and Knox County, Nebraska, the farthest downstream and smallest of the six Missouri River dams. The Gavins Point project inundated 1007.22 acres of land within the Santee Sioux Indian Reservation. This represents nearly fifteen percent (15%) of the reservations total land base. The Santee Sioux lands taken for the Gavins Point project were located just below the main settlement area of the Indian village of Santee.

The bottomland was used by our tribal members for hunting, shelters for livestock, and the trees for lumber and fuel. The bottomlands provided a variety of plants used for ceremonial and medicinal purposes. The land taken also included productive agriculture land and pastureland. The Gavins Point project flooded a

tribal farm, which included cattle and hog confinement buildings, grazing land, and fields that were used for growing oats, corn and alfalfa hay. That of course is now history; the tribal land taken is now underwater and unusable for any form of economic development or subsistence use. As a small tribe with a minimal land base, those lands taken by the floodwaters of the Gavins Point dam are a great loss to us and, to date, the Federal government has done nothing to address what the Santee Sioux Tribe feels was an unjust taking of tribal lands. Moreover, the Tribe has suffered significant negative impacts to the reservation's ground water quality and water delivery system infrastructure stemming from the flooding of the Tribe's agricultural lands since the erection of the Gavins Point Dam. To date, the federal government has done nothing to reverse these negative impacts.

Over the years, the Tribe has attempted to develop a sustainable economy through the creation of light industry, gaming, agriculture and other revenue-generating projects. However, the majority of investors interested in such projects quickly identify the lack of an adequate municipal infrastructure, including water delivery systems, electrical generation facilities, waste water treatment facilities and other municipalities on the reservation that most other areas of the state take for granted. This historical lack of municipal services have led to the demise of several revenue generating activities on the Tribe's lands that are critical in the overall development of a sustainable economy for the Santee Sioux Tribe.

I wish to share with you just a quick overview of the socio-economic detriments the individuals and families of the Santee Sioux reservation are currently experiencing because of our Tribe's inability to generate economic development interests on our reservation. The health status of residents within the Santee service area are some of the worst in the state, if not the entire nation. Unemployment runs as high as seventy-five percent (75%), especially in the winter months. The abject poverty that the lack of jobs for our labor forces creates, along with the absence of various community services that the federal government fails to provide as part of their treaty obligations and trust responsibilities to us, have taken a destructive toll on our families, with the most suffrage occurring within our child and elder populations. Conditions such as substandard housing, poor water quality, crowded living conditions and inadequate nutrition programs affect the vast majority of our members. Injuries, violence, infant diseases and mortality rates, diabetes, cardiovascular disease, cancer, alcoholism, drug abuse, high school dropout rates, teen pregnancy and suicide run rampant throughout our communities, far exceeding the highest, or lowest, apex indicators of the general U.S. population, depending on which is worst scale of measure.

In general, the overall quality of life of our people is disastrous and directly correlated to conditions adversely affected by the deprivation of programs, services and lack of a healthy economy within the Tribe's service area. The socio-economic environment must be improved immediately if the statistical health and well being of the Santee Sioux people is to improve. I feel that the implementation of the water quality and delivery system study as called for under H.R. 4938 is a step in that direction.

I also wish to share with the Committee some of the economic development goals the Tribe has previously implemented, with limited success, as well as those goals that the Tribe continues to try and successfully develop. To date, the Santee Sioux Tribe has established a housing authority, a community facility center, a medical center, a utilities and resources commission, a recreation/vehicle park, a preschool and K–12 school, a community college, an industrial park, a 3,500-acre tribal ranch and a yet to be profitable class II casino operation. Many of these entities are operated under various federally subsidized program funds and a few small grant awards. However, success of these operations could be dramatically improved with additional federal support, both monetary and programmatic, improved relations with state and local governments, and an overall increase in basic economic conditions on the reservation.

Targeted areas of development include the expansion of the Tribe's health service program, an established legal infrastructure including a tribal law enforcement division and tribal court, the establishment of self-sufficient utilities infrastructures and resources management, improved tribal schools and education programs, expanded recreation and tourism facilities, alternative housing, an improved and expanded industrial park, and increased farming/ranching activities. By improving the economic tools to create sustainable development of the Santee reservation, the Tribe believes that more jobs for tribal and non-tribal members will be generated, along with an increase in the mean average income of the reservation population. In addition, increased jobs and salaries of those employed will best serve the Tribe's goals of reversing the litany of socio-economic detriments that our Indian people face on the Santee reservation today.

In conclusion, I again want to thank Rep. Osborne for sponsoring this legislation and the House Resources Committee for granting me this opportunity to present testimony on its behalf. The socio-economic needs of the Santee Sioux Tribe are great and passage of this legislation is critically important to the Tribe's goal establishing a sustainable reservation economy. Respectfully, I urge this Committee to quickly pass this legislation and report H.R. 4938 to the floor of the U.S. House of Representatives for further consideration. In addition, I urge this Congress to pass this bill, request their colleagues in the United States Senate do the same and them urge the President of the United States to enact this legislation this year. This concludes my statement for the record and I look forward to any questions you may have.

Mr. OSBORNE. Mr. Cournoyer.

STATEMENT OF ROBERT COURNOYER, TRIBAL VICE CHAIR, YANKTON SIOUX TRIBE

Mr. COURNOYER. Thank you, Mr. Chairman, and members of the Committee, for the opportunity to speak on behalf of the Yankton Sioux Tribe. We are the Ihanktonwan Dakota Nation of South Dakota. We are located in the southeastern corner of South Dakota. I am the vice chairman of the Yankton Sioux Tribe, and today I have in the audience Miss Madonna Archambo, she is our chairwoman; And our tribal secretary, Ms. Rose Cook.

In addition to Mr. Lawson and Mr. Trudel's testimony, we are here on behalf of the Missouri River Pick-Sloan Program and its impact on the Indian tribes. We will be offering testimony before the Committee on behalf of the Yankton Sioux Tribe. Dr. Lawson has done extensive research on the tribe's claim which serves as a basis for this legislation, H.R. 2408.

First, let me express my sincere appreciation for the Committee's consideration of this bill. We have been working for several years now to relieve some of the past harm our tribe has suffered and bring equity to a settlement that was due our tribe as a result of the construction of the Fort Randall Dam on the Missouri River. Unfortunately, after hearings and markups in both the Senate and House, we ran out of time in 106th Congress to enact this legislation. We continue to have full support for this legislation from the South Dakota and Nebraska delegation.

I am honored here today to speak for the Yankton Sioux Tribe in support of this legislation. I would like to request that the full text of my testimony be submitted for the record, and I will summarize a few important points regarding H.R. 2408.

Mr. OSBORNE. Without objection.

Mr. COURNOYER. As with the case of several other dams built on the Missouri River, the construction of the Fort Randall Dam and the reservoir on the Missouri River destroyed an important part of the Yankton Sioux Tribe's traditional way of life. The Missouri River bottom lands were rich with game and plants used for our traditional foods. The plants were used for ceremonial purposes and medicinal purposes. The trees in the bottom lands were used for lumber and fuel. We not only lost tribal lands when the bottom lands were flooded, but much of our traditional way of life was taken from us at that time.

Due to location of lands in southeastern South Dakota, our tribe lost acres and acres of rich, productive agricultural land, 3,260 acres total, due to construction of Fort Randall Dam and reservoir.

In addition to the loss of our traditional ways of life and agricultural land, the community of White Swan was forced to be abandoned. It was the practice of the United States at that time to move Indian communities flooded by dam construction to higher ground and reestablish, but our tribal community of White Swan was not relocated. The families were disbursed elsewhere, and the community was never replaced. This was and still is a great loss to many of our people.

My tribe and the Santee Sioux Tribe did not have the same opportunity to negotiate and obtain settlements by acts of Congress as other Missouri River tribes did. Our lands were taken by quick condemnation proceedings in district court. As a result, my tribe and the Santee Sioux Tribe have suffered greater inequities in the initial settlements of taken lands.

Congress has enacted equitable compensation legislation for five other upstream Missouri River tribes whose losses were similar to ours. The first was enacted in 1992 during the 103rd Congress to the most recent in 2000, during the 106th Congress, with trust funds ranging from 27.5 million to, I think—I believe Cheyenne River received $290 million.

Our bill is based on solid precedent and similar legislation. We are here today to seek the same consideration. The Yankton Sioux Tribe and Santee Sioux Tribes are two of the last remaining Missouri River Tribes that seek equitable consideration for the taking of our lands for the construction of these dams and reservoirs under the Pick-Sloan Act of the 1950's.

Like previous equitable compensation bills, our bill will provide the tribe an annual interest payment derived from a $23 million trust fund established to compensate the tribe for its loss and bring some equity to the issue of the Pick-Sloan taking. The interest income will assist the tribe with its economic development needs and help strengthen cultural and social programs. This in turn will assist the tribe's move toward greater self-determination in tribal affairs.

This bill directs our tribal council to develop a detailed plan as to how the interest payments will be used, and we have begun that process. Our tribal plan will include programs that will benefit all tribal members, our elders, and our young people. Most importantly, our tribal elders who have suffered firsthand support this bill. It will help heal some of the wounds our elders have experienced.

Mr. OSBORNE. Thank you, Mr. Cournoyer. Your time has expired. And, so we appreciate your testimony.

[The prepared statement of Mr. Cournoyer follows:]

Statement of Robert Cournoyer, Tribal Vice Chair, Yankton Sioux Tribe, Marty, South Dakota

Mr. Chairman and members of the Indian Affairs Committee, my name is Robert Cournoyer, and I serve as the elected vice tribal Chair of the Yankton Sioux Tribe. Our land is located in southeastern South Dakota. The Missouri River borders the reservation's southern boundary.

On behalf of the Yankton Sioux tribal membership, I would like to express my appreciation to you and the committee members for consideration of H.R. 2408, the Yankton Sioux Tribe and Santee Sioux Tribe of Nebraska Equitable Compensation Act. The Yankton tribe, through its representatives, has worked closely with Con-

gressman Osborne's office and Congressman John Thune's office on this bill. We are grateful for their support and their staffs' guidance during this process.

BACKGROUND

Our reservation was established by the Treaty of 1858 which provided our people with 430,405 acres of land along the Missouri River. As time passed our reservation was diminished by the Act of August 15, 1894, which opened up our reservation to non–Indian settlement. By the 1950's, when the Fort Randall dam was constructed, only 44,938 acres of Indian land remained in federal trust status.

In 1944, the United States Congress enacted the Flood Control Act which authorized the construction of five dams along the Missouri River known as the Pick–Sloan Program. The primary purpose of the dams and reservoirs was flood control downstream. Other purposes were navigation, hydropower generation, providing water supplies, and recreation.

The impact of the Pick–Sloan program was devastating to all the Missouri River tribes including the Yankton Sioux Tribe. The Fort Randall dam and reservoir inundated a large portion of the Yankton Sioux reservations bottom lands and rich productive agricultural lands. The Fort Randall project flooded 2,851 acres of Indian trust land within the Yankton Sioux reservation and required the relocation and resettlement of at least 20 families which was approximately 8 percent of the resident tribal population. Over the past fifty years, the tribe lost an additional 408 acres to stream bank erosion.

The Missouri River bottom lands provided a traditional way of life for the Yankton Sioux that is now virtually lost. The bottom lands provided an abundance of game and plants for traditional food, plants for ceremonial and medicinal purposes, and plenty of trees for lumber and fuel. In addition to the loss of the bottom lands, the tribe lost acres and acres of productive agricultural land.

INUNDATION OF THE COMMUNITY OF WHITE SWAN

The waters of the Missouri River completely inundated the traditional and self-sustaining community of White Swan, one of the tribe's major settlement areas. The White Swan families raised various livestock which took shelter in the timbered bottom lands or out buildings. The White Swan families sold surplus milk and eggs in the towns of Lake Andes or Wagner. The money received was generally used to purchase needed staples that were not cultivated from the rich soil in and around the community of White Swan. The community was very close knit and the families helped each other in many ways.

While it was the practice of the United States to relocate flooded Indian communities flooded by the Pick–Sloan program to higher ground, the community of White Swan was not relocated or reestablished elsewhere. The White Swan families were simply dispersed elsewhere and the community was never replaced.

CONDEMNATION PROCEEDINGS

Neither the Flood Control Act of 1944 nor any subsequent acts of congress specifically authorized the U. S. Army Corps of Engineers or the Bureau of Reclamation to condemn Sioux tribal land for Pick–Sloan projects. Unfortunately, the condemnation of Yankton Sioux tribal land was not challenged for a host of reasons.

The condemnation proceedings in U.S. District Court resulted in settlements that did not provide adequate compensation to the Yankton Sioux Tribe. The tribe did not receive compensation for direct damages but rather a compensation for the appraised value of their property. The condemnation proceedings did not take into account the large proportion of productive agricultural land. Further, the settlement did not account for the inflation of property values between the time of taking and the time of settlement which was several years later. The average settlement payment on other Indian reservations whose land was taken by acts of congress was approximately $16,680 per family according to research documents, while the Yankton Sioux Tribe received $5,605 per family as a settlement for the land taken by the United States.

THE IMPORTANCE OF H.R. 2408 TO THE YANKTON SIOUX TRIBE

H.R. 2408 provides that the Yankton Sioux Tribe, as compensation for past inequities, will receive annual interest payments from a $23 million trust fund account in the U.S. Treasury. These funds will be used by the tribe for programs outlined in a tribal plan that will be developed by the tribal council with approval from the tribal membership. The funds will be used to promote greatly needed economic development on our Indian lands. The funds will be utilized to build and improve our infrastructure. And the funds will be used to further education, health, recreation and the social welfare needs of our people.

The precedent is well established. Congress enacted equitable compensation settlement acts for the Standing Rock Sioux Tribe, Three Affiliated Tribes, Crow Creek Sioux Tribe and the Lower Brule Sioux Tribe. The 106th Congress passed legislation to equitably compensate the Cheyenne River Sioux Tribe for its taken land. The funding amount for the individual tribes vary due to the unique losses of each tribe. However, the funding mechanism is the same in all act and bills. Each act and bill provides a trust fund with the interest paid to the tribe to be used for economic development, education, culture and social programs.

CONCLUSION

The Yankton Sioux Tribe, through its Business and Claims Committee, has worked on this legislation for several years. H.R. 2408 has been developed to provide equitable compensation for the taking of land and as an equitable settlement for the tribe's losses. H.R. 2408 is based on recent congressional precedent to provide compensation to Missouri River tribes impacted by Pick Sloan.

Many of our tribal elders who experienced first hand the taking of tribal land and the removal have passed on. It has been long enough for a just and equitable resolution to the devastating impacts of the Pick–Sloan program on our tribe.

I respectfully urge the members of this Committee to report H.R. 2408 out of the committee with a recommendation that it pass the full House.

Mr. OSBORNE. And I guess in the interest of time we will go on with Dr. Lawson, and then we will ask a few questions. And so we will move on at this point. Thank you.

STATEMENT OF MICHAEL L. LAWSON, Ph.D., SENIOR ASSOCIATE, MORGAN, ANGEL & ASSOCIATES, LLC

Mr. LAWSON. Mr. Chairman and members of the Committee, I am grateful to have the opportunity to testify today on behalf of the Yankton Sioux Tribe and the Santee Sioux Tribe in support of H.R. 2408.

I am an historian who first began studying the impact of Pick-Sloan dams on the Indian tribes along the Missouri River 30 years ago when I was a graduate student at the University of Nebraska at Omaha. I subsequently wrote a book called Dammed Indians on the subject. Three years ago I also completed a special study of the impact of the Fort Randall and Garrison Dam projects on the Yankton and Santee Sioux Tribes. This study provided a more detailed analysis of these takings than had been included in my book.

Brevity is the hardest challenge of all for an historian, but within the time allotted, I will try to summarize the essential findings of this study without repeating too much of what has already been stated to the Committee.

The Yankton and Santee Sioux were among nine tribes whose lands were taken for Pick-Sloan projects on the Missouri River. Between 1948 and 1962, five of these tribes received initial settlements from Congress that included payments for direct property damages; severance damages, including relocation costs; and rehabilitation funds for their entire reservations. In providing funds for rehabilitation, Congress recognized that the tribes as a whole, and not just the tribal members within the taking areas, were affected negatively by the loss of bottom land environment and reservation infrastructure.

Since 1992, Congress has also enacted legislation establishing additional recovery funds for these same five tribes. The Yankton and Santee Sioux tribes have not been provided the same opportunity to receive rehabilitation and recovery compensation from Congress.

The Fort Randall Project flooded a substantial portion of some of the best agriculture and timbered lands within the Yankton Sioux Reservation in South Dakota and required the relocation and resettlement of at least 20 families, constituting approximately 8 percent of the resident tribal population of this in the late 1940's. Many families in addition to those who were relocated had been dependent upon the resources of those bottom lands for their subsistence.

The Yankton Sioux Tribe and its affected tribal members received a total of only $227,000 from the government for the damages inflicted by the Fort Randall Project. Of this amount, 121,000 was awarded them by the U.S. District Court for direct damages in 1950. At the urging of the Department of Interior, and despite the objections of the Department of Justice and the Department of the Army, Congress granted the Yankton Sioux Tribe an additional $106,000 for severance damages in 1954. This payment was distributed in 1956 to some, but not all, of the tribal families affected. This was 10 years after some of the properties had been condemned and 6 years after the last tribal members had been evicted.

The Gavins Point Dam Project inundated approximately 8.5 percent of the total land base of the Santee Indian Reservation in Nebraska. The tribe and at least 15 tribal members owned land within that taking area. It is not known precisely how many tribal members were forced to relocate because there were many residents who were not landowners. The Santee Sioux tribes taken from the Gavins Point Project were located just below the main settlement area of the Indian village of Santee, and were similar in many respects to those flooded in the White Swan area of the Yankton Reservation. There was considerably less timber, but enough other natural resources to help sustain the entire reservation and their traditional way of life.

However, the impact of the taking was comparatively less traumatic at Santee, because most of the community remained intact, whereas the White Swan settlement was completely flooded and dispersed. The U.S. District Court awarded the Santee Sioux Tribe and its affected tribal members $52,000 for their damages in 1958. This award was based on a 1955 joint appraisal by both the Army and the Bureau of Indian Affairs. The settlement money was not distributed, however, until 1959, which was more than 4 years after the land had been flooded.

The members of the Yankton and Santee Sioux Tribes have yet to receive their fair share of the multiple benefits that were supposed to be provided by the Pick-Sloan plan, although they have suffered a great deal as a result of its implementation. Neither have they received rehabilitation nor recovery compensation from Congress as have five other tribes impacted by the Pick-Sloan projects. This legislation seeks to remedy this inequitable situation, and I urge its passage.

This concludes my remarks, and I would be happy to answer any questions you might have.

Mr. OSBORNE. Thank you very much, Dr. Lawson. We appreciate it and appreciate your testimony.

[The prepared statement of Mr. Lawson follows:]

Statement of Michael L. Lawson, Ph.D., Senior Associate, Morgan, Angel & Associates, L.L.C.

Mr. Chairman and members of the Resources Committee, I am grateful to have the opportunity to testify today on behalf of the Yankton Sioux Tribe and the Santee Sioux Tribe in support of H.R. 2408.

I am a historian and a senior associate with Morgan Angel & Associates, a public policy consulting firm here in Washington. I first began studying the impact of the Pick–Sloan dam projects on Indian tribes along the Missouri River thirty years ago when I was a graduate student at the University of Nebraska at Omaha. I wrote my doctoral dissertation at the University of New Mexico in 1978 on the impact of four of the Pick–Sloan mainstem dam projects on six Sioux reservations in North and South Dakota and Nebraska. The University of Oklahoma Press subsequently published this work as a book entitled Dammed Indians in 1982. A second, paperback edition, with a revised preface, was published in 1994.

In my book, I explored in detail the development of the Pick–Sloan Plan and the negotiations that took place between the tribes and the Federal government. I measured the physical, aesthetic, cultural, and psychological damages the tribes suffered against the benefits they received and concluded that the critical losses far exceeded the minimal gains

My research has been used in part to document and support all of the legislation that Congress has enacted since 1992 to provide additional compensation to Missouri River tribes for the loss of reservation resources and infrastructure caused by the Pick–Sloan dam projects. This has included the Three Affiliated Tribes of the Fort Berthold reservation and the Standing Rock, Lower Brule, Crow Creek and Cheyenne River Sioux Tribes. Three years ago, I completed a special study of the impact of the Fort Randall and Gavins Point dam projects on the Yankton and Santee Sioux tribes. This study provided a more detailed analysis of these takings than had been included in my book. What follows are the essential findings from this study.

I. The Pick–Sloan Plan, the Missouri River Tribes, and Congressional Compensation

In 1944 Congress enacted the Flood Control Act (58 Stat. 827), which authorized implementation of the Pick–Sloan Plan for water development in the Missouri River Basin. This plan included the construction of five massive earthen dams along the Missouri and incorporation of a sixth facility, the Fort Peck Dam in Montana, built on the river in the late 1930s. The U.S. Army Corps of Engineers, which constructed and operates the dams, estimates that the projects' overall annual contribution to the national economy averages $1.9 billion.

Officially labeled the Missouri River Basin Development Program, the Pick–Sloan Plan caused more damage to Indian reservation lands than any other public works project in this nation. The six mainstem dam projects on the Missouri inundated over 550 square miles of Indian land and displaced more than 900 Indian families. Tributary dams impacted other reservations.

Four of the dams constructed under the Pick–Sloan Plan (Fort Randall, Oahe, Big Bend, and Gavins Point) flooded approximately 204,101 acres of Sioux land on the Standing Rock, Cheyenne River, Lower Brule, Crow Creek, Yankton, and Rosebud reservations in North and South Dakota and on the Santee Sioux reservation in Nebraska.

The Missouri River tribes were told little about the Pick–Sloan Plan while it was being proposed, even though legal precedents, and in some cases treaty rights, provided that tribal land could not be taken without their consent. The portions of the Flood Control Act of 1944 that authorized the Pick–Sloan Plan did not contain any language regarding the protection of tribal interests. Neither did it specifically authorize the taking of Indian trust land. Although the Bureau of Indian Affairs was fully aware of the potential impacts of the legislation, it made no effort either to keep tribal leaders informed or to object to the Army's proposals while they were being debated in Congress in 1944. The Indian Bureau did not inform the tribes of the damages they would suffer in a comprehensive way until 1949. The legislation establishing the Pick–Sloan Plan also ignored the Indians' reserved water rights under the legal principle known as the Winters Doctrine.

The Yankton and Santee Sioux Tribes seek an equitable settlement for uncompensated damages based on modern precedents established by Congress for five other Missouri River tribes impacted by Pick–Sloan. The Three Affiliated Tribes of Fort Berthold and Standing Rock Sioux Tribe Equitable Compensation Act of 1992 authorized capitalization of Recovery Funds of $149,200,000 for the Three Affiliated Tribes and $90,600,000 for the Standing Rock Sioux Tribe. The Three Affiliated Tribes of the Fort Berthold Reservation in North Dakota lost 175,716 acres of land

to the Garrison Dam project. The Standing Rock Sioux Tribe of North Dakota lost approximately 56,000 acres to the Oahe Dam project.

The Crow Creek Sioux Tribe Infrastructure Development Trust Act of 1996 established a $27.5 million Recovery Fund for the Crow Creek Sioux Tribe of South Dakota. The Lower Brule Sioux Tribe of South Dakota benefited from a $39.9 million Recovery Fund created by the Lower Brule Sioux Tribe Development Trust Fund Act of 1997. The Crow Creek Sioux Tribe and the Lower Brule Sioux Tribe lost 15,693 and 22,296 acres of land respectively to the Fort Randall and Big Bend Dam projects in South Dakota. In 2000, Congress awarded the Cheyenne River Sioux Tribe the largest tribal recovery settlement of all in regard to Pick–Sloan damages, $290,722,958. The Tribe lost 104,420 acres to the Oahe Dam.

The Fort Berthold, Cheyenne River, Standing Rock, Crow Creek, and Lower Brule tribes all received initial settlements from Congress between 1948 and 1962 (totaling $352,129,794) that included payment for direct property damages, severance damages (including the cost of relocation and reestablishment of affected tribal members) and rehabilitation for their entire reservations. In providing funds for rehabilitation, Congress recognized that the tribes as a whole and not just the tribal members within the taking areas were affected negatively by the loss of the bottomland environment and reservation infrastructure. Accordingly, the initial congressional settlements with the five tribes between 1948 and 1962 provided compensation for severance damages and rehabilitation that averaged 458 percent more than was paid for direct damages. The additional payment to the Standing Rock and Crow Creek Sioux Tribes was over 630 percent more than the amount awarded to them for direct damages.

The Yankton and Santee Sioux Tribes were not been provided with the same opportunity to receive compensation from Congress. Instead, they received settlements for the appraised value of their property through condemnation proceedings in U.S. District Court.

II. The Taking of Yankton Sioux Lands for the Fort Randall Dam Project

The Fort Randall project flooded 2,851.40 acres of Indian trust land within the Yankton Sioux Reservation and required the relocation and resettlement of at least 20 families, constituting approximately 8 percent of the resident tribal population. Reservoir waters completely inundated the traditional and self-sustaining community of White Swan, one of the four major settlement areas on the reservation. On the Crow Creek, Lower Brule, Cheyenne River, Standing Rock, and Fort Berthold reservations, communities affected by the Pick–Sloan dams were merely relocated to higher ground. However, the White Swan community was completed dissolved and its residents dispersed to whatever areas offered housing or land, including communities on other reservations.

The acreage taken consisted of some of the best agricultural and timber lands on the reservation. Approximately one-third of the acreage was cropland, another third was timber or brush pasture land, and the remaining third was bottom meadow or upland pasturelands.

Many families in addition to those who were relocated had been dependent upon the resources of these lands for their subsistence. Wood from the bottomlands was the primary source of fuel. A variety of crops were planted and harvested near the river. Hunting, trapping, and fishing within the area not only provided important sources of food, but were among the favorite recreational activities. The bottomlands were also filled with a generous supply of wild fruit, vegetables, herbs, and other useful plants, some of which were used for medicinal and traditional ceremonial purposes.

The Fort Randall project also involved the relocation of at least 509 gravesites, primarily from two church cemeteries. In accordance with Army regulations, it was the responsibility of the District Engineer to contract with private firms for the identification, relocation, and reburial of these remains. However, the Corps did not do an adequate job of supervising this work. Because the Corps of Engineers did not attempt to maintain good communications with the Tribe regarding its construction plans, it was not made aware of other isolated burials until it accidentally excavated two of them and dumped the remains into the dam embankment. The Army did such a poor job of locating and removing the burial sites that skeletal remains and caskets continue periodically to be unearthed by the cutting action of the Fort Randall reservoir (Lake Francis Case).

Although the actual Fort Randall damsite was partially located on Indian land within the Yankton Sioux Reservation, the Corps of Engineers began construction on the site without the consent of either the Yankton Sioux Tribe or the Secretary of the Interior. The development of access routes to the site required rights-of-way across parcels of Indian land and the Army filed condemnation suits in U.S. District

Court to obtain this access by right of eminent domain as early as 1946. The Army immediately filed condemnation petitions with the Court and obtained Declarations of Taking for the needed rights-of-way and construction sites. These declarations gave the Corps immediate possession of the land

The Army constructed a village to house the project's construction workers. Named Pickstown after General Lewis Pick, formulator of the Army's Pick Plan, this townsite was located east of the dam site within the boundaries of the Yankton Sioux Reservation. When completed, Pickstown included over 300 duplex housing units with garages, numerous dormitories, grade and high schools, a hospital and chapel, a theater and indoor and outdoor recreation facilities, and retail shops. The construction town stood in glaring contrast to the poor but proud Yankton reservation communities where 10 percent of the housing in 1950 consisted of tents.

The condemnation takings were accomplished by April 1948 and the Army began charging rent to tribal members who still wished to occupy the lands taken from them. This made staying on the land impossible for most former owners because: (1) the settlement amounts deposited by the Army with the District Court had not been distributed; and (2) the affected tribal members operated primarily in a subsistence economy (described in greater detail below) in which cash was scarcely used. These circumstances also meant that the affected tribal families were compelled to move from their homes without benefit of having money either to cover their moving expenses or to obtain other housing or land elsewhere.

Neither the Yankton Sioux Tribe nor its affected tribal members were represented by private counsel in these condemnation cases. Nor does it appear that they made personal appearances at the hearings. Several tribal members later told the BIA they felt there was no other option but acceptance because they desperately needed the money to relocate and considered any protest to be futile.

None of Yankton families impacted by the Fort Randall project were compensated for their relocation costs at the time of taking. The Army was not authorized to cover these expenses until 1952 when Congress enacted a statute mandating that landowners affected by military eminent domain takings be paid up to 25 percent of the appraised value of their property to cover moving costs. This law was of no help to the Yankton Sioux because it did not apply retroactively.

Moving homes and other improvements proved to be expensive and many tribal members were not able to so because they either could not meet the cost or were not given enough time or both. Levi Archambeau, for example, lived with his wife and five children in a four-room house he had been born in on land within the taking area that he leased from the Tribe. Perhaps because he was not a landowner, the Army failed to serve him with a proper eviction notice. In a letter to Senator Francis Case, Archambeau claimed that that a Corps official came to his house and advised him that if he did not move it by 9:00 A.M. the next morning the Army would burn it down. "They came at 4' O' Clock in the evening," he wrote, "so it was burned."

Other families, though notified sufficiently, remained in a state of denial until the bitter end. The Garrett Hopkins family, for example, waited too long to salvage their house and only managed to retain the possessions they could fit into the family automobile. The removal also took place too late for the Army to do anything with the house, so it had to be abandoned. The swirling waters of the new reservoir quickly separated the house from its foundation and the Hopkins family watched from dry land as their home floated away.

It proved difficult to buy or even lease land of the same quality as the bottomlands that had been evacuated. Those forced to relocate received little assistance in locating replacement homes comparable to what they had. The majority of people moved to Lake Andes or Marty, South Dakota. Many moved into a Lake Andes motel that had gone bankrupt. Several leased or purchased one or two-room tract houses that came to be called "the Lake Andes shacks." One two-room house was occupied by 14 family members. Although they eventually received some reestablishment funds, several tribal members lived in this housing until they died. Others only left after a tornado destroyed many of the homes in the early 1960s.

Most of the new locations to which tribal members moved lacked the water and timber resources of their former homes. Families previously engaged in truck farming or the sale of wild fruit or firewood experienced a sudden drop in income. Every family faced higher living costs after the move because of the necessity of purchasing water and fuel and paying rent and utility costs.

Yankton families that did not have to move also felt the economic impact. Most of those who resided near the Missouri and its tributary streams were dependent on these sources for their domestic water supply. Because no provision was made for proper sewers at the construction settlement of Pickstown (see Map, page 15), its raw sewage was merely discharged into the Missouri. This situation made it haz-

ardous to use untreated river water. In addition, creation of the Fort Randall Dam increased the amount of plankton in the Missouri, which made its water taste bad.

An even greater proportion of Yankton tribal members was impacted by the loss of timber resources. Almost half of the resident families on the Yankton Sioux Reservation had depended on wood from the taking area as a fuel source for heating and cooking. Most collected driftwood along the river banks rather than cutting standing timber. In the process of stabilizing the Missouri the Fort Randall Dam eliminated most of the flow of driftwood. Yet the condemnation suits failed to include any valuation for either the utilitarian or commercial use of timber. The standing timber remaining on the reservation was too sparse or inaccessible to serve as a substitute source. The BIA estimated in 1954 that the annual cost for replacement fuel sources was $15,000 or $120 per family for the 125 families that previously depended on driftwood or other timber from the White Swan area. Many families outside the taking area also gathered wild fruit from the bottomlands, particularly from Beebe Island, and hunted game in the area. Yet the Yankton Sioux Tribe was never compensated for these losses. The value of timber, wildlife habitat, and wild fruit products was never included in any reestablishment compensation paid to the Yankton Sioux Tribe or its members.

III. Previous Compensation Provided to the Yankton Sioux

The Yankton Sioux Tribe and its affected tribal members received a total of only $227,510 from the Government for damages inflicted by the Fort Randall project. Of this amount, $121,210 was awarded them by the U.S. District Court for direct damages in 1950; the result of condemnation proceedings filed by the Army that violated the precedents of Federal law regarding the taking of tribal land. At the urging of the Department of the Interior, and despite the objections of the Department of Justice and the Department of the Army, Congress granted the Yankton Sioux Tribe an additional $106,500 for severance damages in 1954. This payment was distributed in 1956 to some but not all of the tribal families affected. This was ten years after some of their properties had been condemned and six years after they had been evicted.

The consensus among the Yankton Sioux is that the majority of families were much worse off after reestablishment than they had been before relocation. They were rapidly transformed from a subsistence to a cash economy. In the bottomlands there were not many items families needed to purchase. After relocation, however, many were forced for the first time to pay rent and utility bills for water and electricity (if they had it) or buy stove wood or heating oil from non–Indians. They had to purchase over-the-counter medicine instead of using home cures derived from wild plants, canned goods instead of canning their own, and meat, dairy products, and eggs instead of producing their own. This situation created much hardship for families not able to readily find a way to generate income.

Relocation disrupted the lifestyle of all the families and contributed to the dysfunction of some. Whereas White Swan tribal members had previously enjoyed the agricultural pursuits and private space of allotted lands, now many were crowded together in town, often without room for even a small garden. Although the families made an effort to continue visiting each other, they gradually lost the cohesiveness that had characterized their former community. They were now scattered all over the reservation, and even outside of it, and some were farther away from churches and schools. Slowly they lost some of the spirituality and much of the connectedness they had known at White Swan. "We lost more than our homes," observed former resident Louie Archambeau, now 61, "We lost our way of living, a part of our culture. That is something we will never get back." The White Swan families had to adjust to a new and less accessible environment. Once that area was inundated, there was no other place like it within the reservation. Most of those who managed to obtain replacement land had less of it. They also had fewer livestock but faced greater costs for shelter, feed, and water. The net result was a rapid decline in agriculture on the reservation. As one former resident observed about the White Swan era: "There were a lot of Indian farmers back in those days, now there are hardly any."

Hunting has continued to be good on the reservation, but fishing and trapping are far less prevalent. A common reaction to their forced relocation inland among many former White Swan residents has been a gradual aversion to fishing or even eating fish. While these people once enjoyed free access to the fish and wildlife of the bottomlands, hunting, fishing, and trapping are now heavily regulated by the State of South Dakota within the taking area of the Fort Randall Reservoir and by the Tribe within the Reservation. When one former White Swan resident tried to gather firewood down by the reservoir, he was also informed that those resources now belonged to the Army.

In 1960 the BIA conducted a comparative study of the experiences of six Indian reservations, including Yankton, that were impacted by Pick–Sloan dams on the main stem of the Missouri. This study found that the average total damage payment received per family within the taking area at Yankton was $5,605 whereas the payment per family averaged $16,680 on the other five reservations. The reservation with the next lowest per family payment was Crow Creek at $10,363 while Fort Berthold families received the highest amount at $30,962. If these funds had been distributed on a per capita basis to all families resident on the reservations, the Yankton families would have received $485 while families on the other five reservations would have received an average of approximately $8,606. Again, Fort Berthold families would have received the most, a total of $24,184 each. This disparity between Yankton and the other reservations reflects the fact that Yankton was the only one of the six that did not receive additional rehabilitation funds. The Santee Sioux reservation was not included in this BIA analysis.

It should be kept in mind that tribes from the other five reservations, including Fort Berthold, Standing Rock, Crow Creek, Lower Brule, and Cheyenne River have since 1992 received additional compensation from Congress. On the other hand, the Yankton Sioux still faired better than families on the Santee and Rosebud reservations who have yet to receive any legislative compensation.

In addition to taking 2,851.40 acres of Yankton Sioux land through condemnation, the Fort Randall Dam project has also caused the erosion of more than 400 acres of prime reservation land adjoining the east bank of the Missouri. This riverbank erosion is a result of fluctuations in the water level caused by the construction and operation of the dam. However, this legislation (H.R. 2408) does not seek compensation for these erosion losses.

IV. The Taking of Santee Sioux Lands for the Gavins Point Dam Project

In March 1952, three months before the gates of the Fort Randall Dam were closed the Corps of Engineers began construction of the Gavins Point Dam. The Gavins Point project straddled the boundary between Yankton County, South Dakota and Knox County, Nebraska, four miles above the town of Yankton, South Dakota.

The Gavins Point dam project inundated 593.10 acres of land within the Santee Sioux Indian Reservation in Knox County, Nebraska. This lost acreage represented approximately 8.5 percent of the reservation's total land base of 6,951 acres. Of the total amount of Indian land condemned by the Army, the Santee Sioux Tribe owned approximately 223 acres. Fifteen individual tribal members or their estates held the remaining 370 acres. The taking included 24 separate tracts of land ranging in size from 1 acre to 207.65 acres. It is not known precisely how many tribal members were forced to relocate.

The Santee Sioux lands taken for the Gavins Point project were located just below the main settlement area of the Indian village of Santee, Nebraska. The bottomland environment of that area and the use that tribal members made of it was similar in many respects to that of White Swan. There was considerably less timber but enough other natural resources to help sustain the entire reservation. The impact of the taking was comparatively less traumatic at Santee because most of the community remained intact whereas the White Swan settlement was completely flooded and dispersed.

The Santee taking area included the old farm established by the Santee Normal Training School to provide agricultural instruction and experience for its students. After the school was closed in 1938, the Tribe obtained possession of the farm. The property included a cattle and hog barn, grazing land, and fields for growing primarily hay, oats, and corn. At one time a boat dock was also maintained in this area. Families who did not have their own land were permitted to live and farm on the tribal tracts. Some families also farmed their individually held land, raising horses and chickens as well as cattle and hogs and growing mostly corn and potatoes. Other families lacked sufficient land to provide for much more than a homesite and perhaps a garden plot.

The Santee village had more of a cash economy than did White Swan but subsistence activities and trading in goods or services instead of money were still common. For example, some women manufactured quilts with Sioux designs that they often traded for food. Most families lived in small frame houses that lacked electricity and plumbing and many did not have a motor vehicle. Several families from throughout the reservation depended upon the Missouri for their water supply. A tribal member named Lloyd James hauled barrels of river water in a two-horse wagon and distributed it in a wide area.

The Santee bottomlands served as a shelter and feeding ground for many kinds of wildlife. Deer and rabbits were abundant year-round and numerous game birds

wintered there each year. The unrestricted hunting and trapping of this game provided the Santee Sioux with an important source of food, income, and recreation. Unlike some Sioux bands, the Santee always fished for subsistence and fish was a part of their diet historically. Tribal members used both lines and spears to fish and some sold a part of their catch. Tribal members from throughout the reservation hunted in the bottomlands and trapped beaver, mink, and opossum.

The gathering and preserving of wild fruits and vegetables was a traditional part of the culture of the Santee Sioux. The many herbs, roots, turnips, strawberries, plums, chokecherries, and other edible plants that grew in the bottomlands added variety and bulk to their diet. These plants were eaten raw, dried and stored for winter, made into soups, sauces, syrups, and jellies or mixed with other foods to add flavoring. A variety of plants were also used traditionally for ceremonial and medicinal purposes. The loss of these plants in the Santee bottomlands greatly reduced the reservation's natural food supply.

Unlike their Yankton neighbors to the north, the Santee Sioux were given considerable advance warning that they might be impacted by the Gavins Point Dam. The BIA reported as early as June 1950 that the project would flood at least 500 acres of "the best agricultural lands on the reservation." To its credit, the Corps invited the BIA to assist in the initial appraisal. This marked the first (and last) time in the history of the Army's taking of Indian land for the Pick–Sloan projects that it chose to cooperate with the BIA from the start and not conduct a separate appraisal.

V. Previous Compensation Provided to the Santee Sioux

The available documentary record does not indicate precisely when the affected Santee Sioux families were forced to move. The extant documents do make it clear; however, that relocation took place long before payment was received for the property lost. The Corps had previously informed the BIA that the inundation of Santee lands was imminent in July 1955, but the U.S. District Court did not award compensation until early 1958. The Santee Sioux defendants were paid a total of $52,000 on the basis of the Tribe's 1955 agreement with the Corps. This meant that no allowance was made for the possible increase in property values between the BIA's 1955 appraisal and the 1958 settlement. The settlement amounted to an average of $87.67 per acre for the affected landowners at Santee, as compared to the total settlement of $77.60 per acre for Yankton, including the congressional compensation.

It is not known when the settlement money was distributed to individual tribal landholders, but the Santee Sioux Tribe did not receive a portion of the $17,527.90 awarded for the tribal tracts until September 1959, more than four years after the land was flooded. The Tribe attempted to use the money to develop recreational facilities that could take advantage of the tourism boom on Lake Lewis and Clark. However, the enterprise never succeeded. The BIA did not track the social and economic status of the affected families at Santee like it did at Yankton, Crow Creek, Lower Brule, Cheyenne River, Standing Rock, and Fort Berthold. Therefore, little is known about their condition after relocation. The available evidence suggests that the families were able to find replacement homes elsewhere within the village of Santee or at other locations on the reservation where they might have already held an interest in land or had the opportunity to purchase or lease other tracts. Judging from the experience of most Indian families impacted by the Pick–Sloan projects, it is reasonable to conclude that their situation was worse after relocation than it had been before.

The compensation awarded the Yankton and Santee Sioux did not reflect the fact that their takings involved a greater proportion of agricultural land. Neither did it account for the inflation of property values between the time of taking and the time of settlement. The total compensation for the Yankton Sioux also failed to take into consideration the fact that the White Swan community was destroyed, dispersed, and never replaced, whereas communities flooded on the other reservations impacted by Pick–Sloan projects were relocated and reestablished on higher ground. In addition, neither the Yankton nor the Santee Sioux was provided funds for rehabilitation, even though a large proportion of tribal members residing outside the taking area on both tribes' reservations were also impacted by the dam projects.

VI. Conclusion: The Ultimate Cost to Benefit Ratio

The Pick–Sloan main-stem projects have now been completed for several years. If the benefits that the Sioux tribes received from these massive projects are to be gauged, they should first be measured in terms of the purposes for which the dams were originally constructed. Assuming that the $30 billion Pick–Sloan Plan was truly designed to be beneficial to the people of the Missouri Basin, then it should

be of equal benefit to those people, both Indian and non–Indian, who suffered the most as a result of its implementation. However, such is not the case.

The U.S. Army Corps of Engineers and the Interior Department's Bureau of Reclamation designed their integrated water development program to provide flood control, irrigation, hydroelectric power, navigation, recreation, and numerous other benefits. An evaluation of their efforts at this juncture reveals that any measurable improvement in the lives of the Sioux people resulting from these projects has been slow in coming.

The Army and the Interior Department succeeded in making long stretches of the Missouri system safe from the catastrophe of high floods. This is particularly true in the populous region between Kansas City and Sioux City. However, floods on the Sioux reservations were never as serious or as frequent as those in the lower basin, and the federal efforts have still not prevented the continuation of tributary inundations. What tribal members are more concerned with is that, in many places, the Corps of Engineers took far more land than was necessary to maintain the reservoirs at their maximum pool level. Yet, in other places the reservoir waters have infringed on land never purchased by the federal government. The fluctuation of the undulating waters has created a far greater hazard than any of the infrequent floods of the past.

The stream-bank erosion caused by the reservoir waters has become a serious problem, as demonstrated by the loss of 428 acres of reservation land at Yankton since 1953. This erosion has led to the gradual reduction in size and productivity of a tribal irrigation farm. Shoreline conditions continually have been made unstable, and sediment deposits in the water have been much greater than expected. Fluctuation in the water levels have made it extremely difficult for the tribes to develop fully their shoreline land and resources. The cutting action of the water not only endangers tribal members and their livestock but has also caused the exposure of skeletal remains from unmarked graves along the shores. Since the Corps of Engineers did not accurately project reservoir boundary lines prior to inundation, water now often infringes on Indian property when at maximum pool level. Because the Army also refused tribal requests to build fences along the boundaries, Indian ranchers regularly suffer livestock losses, as their cattle either fall off the eroding banks or drift into the reservoirs in search of water.

The raising of the water level by the dam projects has also caused frequent landslides. This is particularly true in the area of the Yankton Sioux Reservation adjacent to the Missouri River below the Fort Randall Dam. Landslides are triggered by both stream erosion along the banks and ground water flows through adjacent areas. The increased water level of the river has escalated the speed and pressure of ground water moving through the earth. The instability that stream erosion and increased ground water causes to the banks, hills and bluffs results in various kinds of landslides, including rockfalls, soilfalls, bedrock slumps and glides, soil slumps, slow earthflows, and mudflows. These landslides result in the destabilization of buildings and the gradual loss of grazing and cropland areas and create a hazard for both human beings and livestock.

The instability of the earth caused by the Fort Randall project necessitated the relocation of a housing development of twenty-five homes and the Yankton Sioux tribal office complex at Greenwood, South Dakota. These buildings had to be moved because the shifting soil rocked them off their foundations.

While the Pick–Sloan Plan has generally improved flood protection in the Missouri Basin, the advantage of this fact to the Sioux has been obscured by the present disadvantages of the reservoir projects. The benefits of flood control are outweighed by the damages that these people sustained in order to make these projects possible. The Indians did not have to forfeit their lives, but they certainly suffered greater losses from the human-caused inundations than they would have from any natural flood in their region.

During the summer of 1993, prolonged torrential rains put the Pick–Sloan facilities to their stiffest test yet. Record flooding was experienced along the lower Missouri from Nebraska City, Nebraska, to the river's mouth near St. Louis. There was also major flooding along the tributary Big Sioux River in northwestern Iowa and southeastern South Dakota. The Pick–Sloan mainstream reservoirs saved downstream communities from even worse flooding by capturing much of the runoff in Montana and the Dakotas. Yet all of Iowa and most of the counties in North Dakota, eastern South Dakota, southeastern Nebraska, and the upper two-thirds of Missouri suffered enough flood damage to be included within the designated federal disaster area. Several Indian reservations within the region were also ruled eligible for government disaster aid, including Yankton. Although hydrologists declared that the Great Deluge of 1993 was "in excess of a 100-year flood," meaning that there is less than a one-in a-hundred chance that a similar disaster could happen in any

given year, it caused everyone involved to question whether any amount of engineering and construction can provide absolute flood protection.

The Pick–Sloan dam projects have actually created flood hazards in some areas. Near the Santee Sioux Reservation, for example, the Gavins Point project has increased the amount of silt deposited near the mouth of the Niobrara River. This obstructs the flow of the Niobrara and regularly causes flooding along a seven-mile stretch of Bazile Creek within the reservation. These inundations have impacted farms and ranches along the creek, some of which are owned by tribal members and others that are on tribal trust land. These tracts are gradually losing land each year as the water level increases; some parcels have lost up to 40 percent of their land base.

Although the Pick–Sloan power plants have definitely increased the availability of electrical power in the Missouri Basin, they have not been a factor in actually increasing the use of electrical power by the Sioux tribes. The reservations lacked electrical power before construction of the Pick–Sloan projects primarily because their residents could not afford it rather than because it was unavailable. To this extent the steady increase in the use of electrical power by tribal members over the past four decades is more a result of the rise in the general economic level of the reservations than of the increased availability of electrical power. Affordability remained the most important factor as far as the Sioux were concerned. As late as the early 1980s, there were still many areas of the reservations that lacked electrical service because it was beyond economic capability. There is no evidence to show that Pick–Sloan provided the lower electrical rates its proponents promised, and the Federal Government has done little to make lower power rates available to the Sioux tribes.

It was not until the 1980s that Congress and the executive branch made concessions to the Missouri River Sioux tribes regarding Pick–Sloan hydropower. For the first time the Department of Energy acknowledged that, under Section 5 of the Flood Control Act of 1944, the tribes qualified as preferential low-cost power customers. Unfortunately, nearly all of this power had been allocated to non–Indian municipalities and rural cooperatives. In 1982, however, Congress authorized the Departments of Energy and the Interior to make Pick–Sloan pumping power available for irrigation projects on the Lower Brule, Standing Rock, Cheyenne River, Crow Creek, and Omaha reservations. Irrigation projects on these tribal lands now qualify for the preferential rate of 2.5 mills for their pivots. The catch is that Congress did not provide for the construction of new transmission lines to these Indian projects, and the existing lines are now owned and controlled by Rural Electrification Administration cooperatives that cannot afford to give the tribes a reduced delivery rate. The result is that the tribes can pump water to their farmlands at the Pick–Sloan rate but first must pay a premium rate to get the water to their pumps. Despite these problems, a few Missouri River Sioux, including the Yankton Sioux Tribe, have experienced moderate success with irrigation projects since the1980s.

The long and heated debate over the suitability and practicality of reclamation in the upper Missouri Basin has caused frustrating delays, serious cutbacks, and drastic revisions in the original Pick–Sloan irrigation plans. Consequently, the Bureau of Reclamation's two major projects in the Dakotas, the Garrison and Oahe diversion units, were halted by environmentalists and others who shifted their support to alternative water development programs. In 1964 Congress deauthorized most of the irrigation projects proposed for the Sioux reservation lands.

The Reclamation Bureau determined that approximately 125,000 acres of the Sioux reservations are potentially irrigable, yet it remains to be seen if the tribes will ever be able to develop this potential. First, there is the critical question of whether extensive irrigated farming can ever be financially feasible for the tribes. Second, there is the question of how much of the reservation land is actually irrigable. In some places it has been discovered that neither the water nor the soil was of sufficient quality to make irrigation projects worthwhile.

Under the body of law that developed from the Winters decision of 1907, the Sioux have prior and paramount rights, for the purpose of irrigation, to all waters that flow either through or along the reservations. It has also been claimed that their rights include priority use of water for any other beneficial use, either at present or in the future. The actual extent of the Indians' reserved water rights beyond the purposes of irrigation, however, has never been judicially clarified.

Despite the specific requirements of the law, the federal government has not made an effort to comply with the Winters Doctrine in regard to the Pick–Sloan Plan, and the Sioux Tribes have not attempted to have their rights protected through the process of judicial appeal. Because no effort has ever been made to accurately determine and quantify the precise water needs of the tribes, it is likely that their rights will continue to be ignored.

The Flood Control Act of 1944, which authorized the Pick–Sloan Plan, provided that the irrigation of tribal lands and repayment for such projects would be "in accordance with the laws relating to Indian lands. The Leavitt Act of 1932 established generous policies whereby payment of irrigation construction costs could be deferred by the tribes over a long period according to their repayment ability. To comply with these laws and the provisions of the Winters Doctrine, the Bureau of Reclamation should have fully recognized the Indians' rights and made an effort to quantify their water needs before committing any of the water under its control to other projects. Having guaranteed the priority of native rights, it should then have made plans to develop irrigation wherever feasible on the reservations, without regard to cost. Because this was not done, it is doubtful that the Sioux will ever realize the full benefits of irrigation.

Residents of the upper Missouri Valley, including the Yankton and Santee Sioux Tribes, did not expect any navigation benefit from Pick–Sloan, since its primary project was the development of a navigation channel by the Corps of Engineers from Kansas City to Sioux City. Neither did they anticipate any difficulty in navigating the Army's main-stem reservoirs. Yet, the nature of the clearing operations carried out by the Corps obstructed navigation on many of the Missouri River reservoirs by leaving trees, and sometimes buildings, standing above or just below water surfaces. These obstacles also interfered with recreational activities on the man-made lakes, another of the purposes for which the dams were created.

Of all the benefits promised by Pick–Sloan, the most immediate and successful results have been realized in the areas of outdoor recreation and tourism. Each year millions of vacationers are drawn to the hundreds of public access areas developed along the reservoirs for swimming, boating, camping, and picnicking, but the primary attraction is fishing. State and federal wildlife agents have gradually succeeded in increasing both the number and variety of species through constant restocking, and fishing has become exceptionally good. Businesses catering to tourists and outdoor enthusiasts have thrived, and the Interior Department has considered making all six main stem reservoirs into a National Recreation Area.

Most of the Sioux tribes have been unable to share significantly in the new prosperity of the river-based recreation boom and nearly all still lack tribally developed recreation areas for swimming, boating, and fishing. The Standing Rock and Crow Creek Sioux Tribes developed tourist complexes on their reservations in the early 1970s that eventually failed. These and several other Sioux reservations now have moderately successful casinos that also include hotels and restaurants. While some of these facilities have been built near the Pick–Sloan reservoirs, they thrive on the basis of high stakes gambling and not because of their proximity to good hunting and fishing.

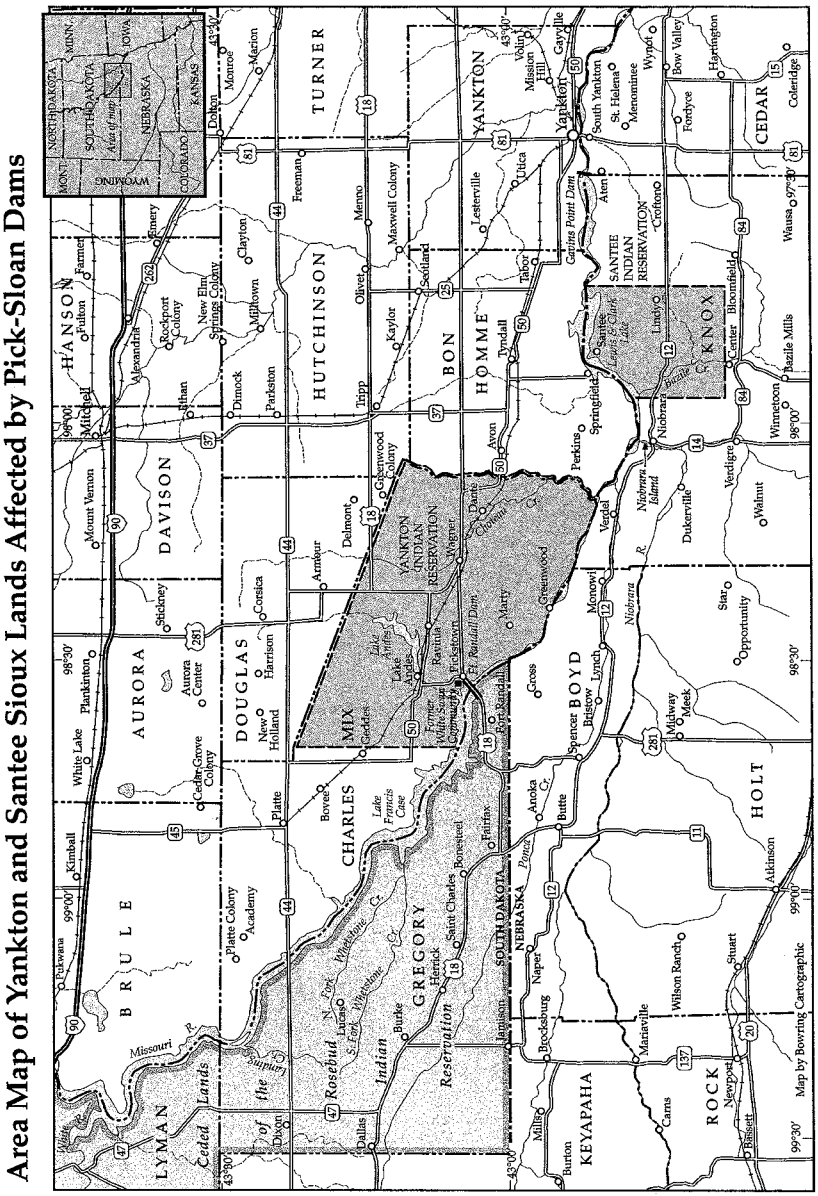
The Santee Sioux Tribe intended to use the money it received from the Gavins Point taking to purchase a small resort complex on fee land near Lake Lewis and Clark in 1960. The complex consisted of four cabins, a cafe, a store, and a service station. The Tribe wanted to refurbish and expand the existing facilities. The prospects seemed bright. The Corps of Engineers had reported that there were 1.3 million visitors to the reservoir in 1958 and the State of Nebraska had issued 194,083 fishing licenses and 153,418 hunting licenses in the area during the same year. However, the BIA held control over expenditure of the money. After the Tribe filed a development plan, it waited five months for the BIA to approve the release of an initial $10,000. Then eight months later the BIA rejected the development plan and informed the Tribe that the additional funding it had requested from the agency's Revolving Credit Fund was not available. By then the opportunity had passed. During the nearly forty years that have elapsed since that time, the Santee Sioux Tribe have lacked the resources to develop a similar project that might allow them to exploit the recreational opportunities created by the Gavins Point project.

By causing the depletion of the wildlife habitat, and the subsequent decline in good hunting, the Pick–Sloan dams have actually reduced the favored recreational activity of Sioux tribal members. However, the reduction in game has not prevented the trespassing of non–Indian sportsmen on the reservations and the regulation of their activities from becoming a serious problem. In 1993, in the case of South Dakota v. Bourland, the U.S. Supreme Court held that Congress, through the vehicle of Pick–Sloan settlement legislation, had abrogated the right of the Cheyenne River Sioux Tribe to regulate hunting and fishing by non–Indians within the taking area of the Oahe Dam project. Although recent legislation has restored portions of taking areas and transferred jurisdiction over recreational areas developed by the Corps of Engineers to the Cheyenne River and Lower Brule Sioux, the Bourland decision does not bode well for the other Missouri River tribes.

The members of the Yankton and Santee Sioux Tribes have yet to receive, therefore, their fair share of the benefits that were supposed to be provided by the Pick–

Sloan Plan, although they suffered a great deal as a result of its implementation. The saga of the Missouri River dams and their impact on the Sioux and other tribes of the Northern Plains region will continue well into the future. It will always be impossible to ignore or excuse the abuse of Native American rights that has characterized much of the history of Pick–Sloan. However, it is sincerely hoped that the federal government will provide corrective initiatives that might allow this historian to someday write a more optimistic conclusion to the episode as it pertains to the Yankton and Santee Sioux Tribes.

[An attachment to Mr. Lawson's statement follows:]



Mr. OSBORNE. I have learned a little bit from you gentleman today. I knew a little bit before, but I know a lot more, and we certainly understand the story that you have to tell.

I guess, first of all, Chairman Trudel, I would like to ask you a question about the water issue up there. Given that you do have

nitrates and you do have bad water, did the dam itself, the backing up of the water, contribute to your problem, or is it just indigenous to the area?

Mr. TRUDEL. I think it is a combination of one of the problems that we have with the dam—we met with the Corps of Engineers, I think, approximately about 15 years ago now, and the dam—the siltation on the dam was about 25 years ahead of schedule at that time. I think they had a 100-year siltation plan, and it is already into about the 50th year. So the siltation was about 25 years ahead of schedule.

We have the Niobrara River, which feeds into the Missouri just above our reservation boundary, and which causes a lot of the siltation because it is an undammed and uncontrolled river, and I think it is under the Wild Rivers Protection Act, or whatever, now. And is a scenic river. Pardon me. And then we have Bazile Creek, which is a tributary on the reservation that runs completely through the reservation and empties into the Missouri.

And where the mouth of the Bazile Creek is, the siltation that is built there has caused a reduced flow of Bazile Creek, which is causing the creek to spread. And that spreading problem is—you know, it is also eating up land, but it is also causing a rising water table in some of our rural areas.

We have a number of homes along Bazile Creek whose wells are—as we sit here now, they are already being affected and will probably be out of use in a very short period of time. The nitrates have been detected in a lot of the outlying wells, and I don't think an exact cause has been provided to us on the reason for the high nitrate. I am thinking health service has done some investigation into it, although I don't think we have a report back.

I know also that the Corps of Engineers did a grid on the siltation problem and what the damage is doing to our land, as it is today into Bazile Creek and the homes along that area. I know that some of the problems that we have had in recent years is, you know, the wells were flooded out. And I know a lot of things come with the floods, and I think maybe that is part of the nitrate problem, is when Bazile Creek did flood, it did flood out our main wells, and the wells were out of use for a number of months, and we were drinking Dakota Splash for a number of weeks there.

Mr. OSBORNE. Well, thank you very much.

Mr. OSBORNE. Just very quickly, Chairman Cournoyer, in your testimony, you mention that condemnation of the Yankton Sioux tribal land was not challenged for a variety of reasons. Could you please share with the Committee what some of those reasons were?

Mr. COURNOYER. I think at that time, according to the history of the Yankton Sioux, we were kind of in a period where we were under the subagency of the—we were considered a subagency, and our fiduciary trust responsibility was taken up by the Rosebud Agency. We were in a period where we didn't have any formalized government at that time. But, you know, the tribe did meet; it had an annual meeting every year in August.

So I think during that time they failed to come out and consult with the tribe, even though we were sort of an unincorporated tribe at that time because we were in a—I think—believe in the 1930's they had the Indian Reorganization Act. I am not sure if it was in

1932, but the Yankton Sioux Tribe did not go along with the—when they came to the Indian Reorganization Act through the history. So, we weren't considered an IRA tribe, and we didn't have formalized tribal government until the 1960's.

So, in essence, the BIA should have been looking out for the trust responsibility of the tribe and came out and informed the tribe that these were happening. But in the history of this whole thing with the Pick-Sloan program, most tribes were not consulted with until after the fact that they were already building these tribes. And a lot of our people didn't understand what was going on at the time. So we had people that were in the White Swan community that didn't leave until the water was lapping at their porches. They were forced to leave.

So it was—I believe that it was a letdown in trust responsibility of the BIA at that time, since we were—did not have formalized tribal government but, like I said, we did have an annual meeting once a year of all the tribal members for many, many years.

So I believe that it was a culmination of a lot of things. But, still, I think that the BIA had the responsibility of coming out and informing the tribe of what was going on so.

Mr. OSBORNE. Well, thank you. We will certainly try to rectify it.

Mrs. Christensen, I want to thank you for staying. You have been very kind in doing so.

Mrs. CHRISTENSEN. Thank you. I know that some of our speakers, our panelists, have traveled to come here, and I also have some Native American heritage, so I feel that I have an obligation to be here.

Mr. OSBORNE. Well, we appreciate it.

We hope you understand that there is a Resources bill on the floor, Interior, and so a lot of the Committee members are over there on the floor today, and that has been our problem. And if you have no further questions, I will ask one question of Dr. Lawson, and it should be very brief.

What percentage of the Pick-Sloan Program would you estimate the Fort Randall and Gavin Points Projects' economic contribution to be?

Mr. LAWSON. What portion? Would you restate that?

Mr. OSBORNE. What percentage of the Pick-Sloan program would you estimate the Fort Randall and Gavins Point Projects will be in terms of economic contribution?

Mr. LAWSON. I haven't—I don't have the data to make a guess of that. You are asking what contribution the projects were?

Mr. OSBORNE. Yes.

Mr. LAWSON. Well, they were among—the Gavins Point was the smallest—one of the smallest of the dams, but the Fort Randall was certainly one of the largest, and it provides billions of dollars a years in benefits to the whole northern plains in terms of flood control and primarily in hydroelectric power and also in the recreation benefits, particularly for Gavins Point Dam, since it is the closest of the Pick-Sloan dams, close to major population areas.

Mr. OSBORNE. So, in essence, the payments being made are—in view of the economic impact are relatively small.

Mr. LAWSON. They are relatively small. And certainly, you know, now it has been almost a half century that these people have gone

without the benefits of having—you know, the multiple benefits that were supposed to be provided by the plan. It is—if you have a situation where they were supposed to flood these—flood the—create these reservoirs to improve water supplies in municipal areas—and it has throughout most of the Missouri Basin, but you still have a situation in Santee and at Yankton where you don't have good water sources. They don't get a portion of the hydroelectric power. They don't get—even for their irrigation projects. And they still have flooding on the reservation. So they don't—there is a negligible flood control benefit as well.

Mr. OSBORNE. Well, we appreciate your testimony. We appreciate your being here today, and I can tell you that we will do everything we can to see to it that these two bills are passed and we have a favorable outcome.

We greatly appreciate all the witnesses' participation in today's hearing, and this concludes the Committee's proceedings, and thank you very much.

[Whereupon, at 5:30 p.m., the Committee was adjourned.]

[Additional statements submitted for the record follow:]

[Responses to questions submitted for the record follow:]

Statement of The Honorable Elton Gallegly, a Representative in Congress from the State of California

Mr. Chairman, the General Accounting Office has issued a staggering report on how the governments of the Republic of the Marshall Islands and the Federated States of Micronesia mishandled federal dollars. U.S. taxpayer dollars were meant to provide basic human services to the people of these countries, such as education and housing. Instead, they were misused, and in some cases, stolen outright. Importantly, the GAO reported that U.S. federal agencies were unable to provide little oversight for these programs.

The GAO studied thirteen U.S.-funded programs. Of these, nine suffered accountability problems. Five involved theft, fraud, or abuse of program funds.

A few examples of theft and abuse include:

- $341,000 missing in Head Start funds. Program officials admit stealing $11,500 of those funds.
- the Minister of Education in the RMI used education grant funds meant for teacher training to travel to Paris for three weeks to attend a U.N. Conference; and ;
- low income rural housing assistance funds were provided to the FSM President and others who were clearly not economically disadvantaged.

The vast majority of the U.S.-funded programs in the FSM and RMI are under the jurisdiction of the Department of Interior. The Department has said that it did not have adequate funds and authority to provide the personnel and oversight needed to ensure taxpayer funds were not misused. Specifically, the Department of Interior said that it did not have the authority to withhold funds from these governments if the funds were being misused.

Mr. Chairman, not only have valuable federal resources been misused, the people of the RMI and FSM did not receive the basic services they were promised. It is my hope that in the negotiations of these compacts, we finally provide federal agencies with the authority needed to ensure that U.S. taxpayer dollars are used for their intended purpose.

Statement of Hon. Tom Osborne, a Representative in Congress from the State of Nebraska

I am pleased that today the Committee is taking up H.R. 2408, the Yankton and Santee Sioux Compensation Act, Today's hearing is the culmination of many years of work on the part of the Santee Sioux tribe, which I represent, and I am pleased that the Chairman of the Tribe, Roger Trudell, is here today to offer testimony on both bills.

H.R. 2408 would provide long overdue compensation by establishing two trust funds to be used by the Santee Sioux and Yankton Sioux tribes. Specifically, this

bill directs the US Treasury to deposit about $23 million into a special trust fund account for the Yankton Sioux and approximately $4.7 million for the Santee Sioux. The tribes would then be allowed to draw on the interest earned from the trust funds for economic and infrastructure development and other activities. The tribes would also be required to adopt economic development plans to account for the way in which these funds will be spent.

This legislation is necessary because when the Federal Government built the dams on the upper reaches of the Missouri River under the Pick–Sloan Missouri River Basin program, the Yankton Sioux and Santee Sioux were not provided compensation for the taking of their land. While the dams were designed to promote general economic development in the region, provide for irrigation, and protect from flooding, their construction inundated productive agricultural and pastoral lands and the traditional homeland of the tribes. In the case of the Santee Sioux, the Gavins Point Dam permanently flooded about 600 acres of the tribe's land.

H.R. 2408 is not without precedent. Over the past decade, Congress has passed three laws providing compensation to other tribes affected by the Pick–Sloan projects. Additional tribes were compensated in 1992, 1996, and 1997. I believe it is only fair that we work to find a way to compensate the Yankton Sioux and Santee Sioux tribes.

I am pleased that the Committee is hearing testimony on this legislation and want to welcome members of the Santee Sioux tribe and the Yankton Sioux tribe here today.

Statement of Rep. Nick Rahall, a Representative in Congress from the State of West Virginia

Thank you Mr. Chairman. I want to welcome both negotiators from the Republic of the Marshall Islands (RMI) and the Federated States of Micronesia (FSM), respectively - Foreign Minister Gerald Zackios and Senator Peter Christian. The Committee recognizes the distance you've had to travel to represent your countries before this Committee and we appreciate your being with us this afternoon.

I want to extend my personal condolences to Senator Christian and to the people of the FSM. About two weeks ago, a tropical storm with torrential rains devastated the state of Chuuk (CHOOK), causing massive landslides. I am told that hundreds were injured, many are still missing, and the death toll is near 50.

FEMA has been dispatched to provide emergency assistance to the people of the FSM and other disaster teams from Hawaii, Guam, and the Northern Marianas Islands have sent doctors and equipment. I know, as do the people of my district, the destruction and displacement that such downpours can cause to a community. Our prayers are with you as your islands and people recover from this tragedy.

I see also that the U.S. is well represented here today. I welcome you as well and I look forward to the information you will provide to this Committee.

I also look forward to hearing testimony on amendments to the Indian Financing Act and legislation affecting the Yankton and Santee Sioux tribes. I must also point out that I've requested in the past and I am requesting again that we schedule a hearing on an important piece of legislation sponsored by Mr. Moran from Virginia, H.R. 2345 dealing with recognizing Virginia tribes.

This afternoon, the Committee hear an update on the progress of renegotiations of Title II of the Compacts of Free Association. For more than a year and half, representatives from the U.S. government, the RMI, and the FSM have been meeting to discuss the new terms of U.S. assistance that contribute greatly to the development of these two countries.

During this same period, Congress requested that the GAO conduct various studies on the shortfalls and successes of the original Compact agreement. I think GAO's work has been valuable in pointing out weaknesses from both the FAS national governments and our own Federal government. I believe GAO's work has helped to ensure that Congressional concerns are addressed during the renegotiations.

It is important for our negotiators to be mindful that the composition and attitude of this Congress is much different than when the first Compact was enacted. It is my sense that this Congress wants to see more accountability and greater economic growth from the RMI and FSM.

We want to know that children are going to good schools, that adequate health care is available to your people, and that your workforce is educated. These are the underpinnings of a successful economy and a prosperous country. We want this to be achieved as part of our relationship with your nations.

I don't expect to see funding levels at the rate of the original agreement. However, there should be thoughtful consideration that the renegotiated assistance will not hamper the economic development that these nations have achieved thus far.

There are also other concerns of this Committee such as the impact of FAS citizens on the U.S. Territories of Guam and the Northern Marianas Islands, as well as the State of Hawaii. The Compact was very clear that it was not the intent of Congress to cause adverse consequences to these jurisdictions. Any resolution to this issue should include a process that can be used across the board to determine actual impact on a State or territory.

The immigration privileges under the Compact are essential elements to the unique relationship between the U.S. and the FAS. The RMI and FSM are partners with us in our War on Terrorism and they understand more safeguards need to be in place to address our security concerns. Though the immigration provisions of the Compact are not being renegotiated, I encourage that any changes to improve immigration procedure be done mutually.

I imagine the continued use of the Kwajalein (KWA–JA–LIN) missile range would be of great importance to this Administration and to the people of the RMI. If this is the case, then I would encourage that this be made clear by both parties. I recognize that the RMI's position on this issue is shaped in collaboration with landowners and I trust that the national government is making an earnest effort to represent their interests.

Again thank you for appearing here this afternoon and I look forward to listening to your testimony.

Statement of Hon. John Thune, a Representative in Congress from the State of South Dakota

Mr. Chairman, I would like to thank you for holding this hearing to provide compensation to the Yankton and Santee Sioux Tribes for their loss of land in the building of the Pick Sloan water project along the Missouri River. I would also like to thank Congressman Osborne for introducing this important piece of legislation, of which I am proud to be a cosponsor.

The Pick Sloan Missouri River program authorized in 1944 was implemented to ease downstream funding of the Missouri River, offer irrigation water for farmers and ranchers, and produce hydroelectric power.

While the intentions of these projects proved to be fruitful for some, it is fair to say that the Pick Sloan program has negatively impacted the Yankton and Santee Sioux Tribes. Much of the land taken and destroyed to create the Ft. Randall and Gavins Point Dams and Reservoirs belonged to these tribes.

H.R. 2408 would offer monetary compensation to these tribes for their lost and destroyed land along the Missouri River. These funds will be held in trust by the Department of Interior and will be released contingent upon a tribal plan. The Tribal plan will be designed to promote economic development, infrastructure, education, health care and social welfare for the Yankton and Santee Sioux Tribes.

These funds will be a great benefit and are very much needed. As you know, Indian reservations are some of the poorest parts of our country, which are in definite need of finding some source of economic development and infrastructure to encourage and maintain that development. Also, Indian health care and education are sorely in need of improvement. I have made it a priority of mine to ensure that Native Americans receive the health care they deserve and the younger generations receive a quality education.

I would like to note that this legislation is not the first time tribes will have been compensated for destroyed and lost land as a result of the Pick Sloan project. In my state alone, the Standing Rock, Lower Brule and Crow Creek Sioux Tribes have received compensation for land taken over by the Pick Sloan project. It is now time for the Yankton and Santee Sioux tribes to be compensated.

I would also ask this Committee to move quickly on Marking–Up this legislation. Similar legislation to H.R. 2408 already passed this Committee in the 106th Congress, but failed to move to the House floor. I urge that quick action be taken on this legislation, so these tribes receive the compensation they truly deserve.

Statement Submitted by Senator Christopher J. Loeak, Chairman Kwajalein Negotiation Commission (KNC) on behalf of Kwajalein Landowners to the Chairman

My name is Christopher J. Loeak, Chairman of the Kwajalein Negotiation Commission. I appreciate the opportunity to present the views of the KNC today.

Besides being Chairman of the KNC, I have substantial experience in government in the Republic of the Marshall Islands. I have been a Senator in the Nitijela representing the Atoll of Ailinglaplap since 1985. I have also served as a Cabinet Minister from 1988 to 1997 as Minister of Justice, Education, Social Services, and other positions.

I presently serve as Chairman of the Committee on Health, Education, and Social Affairs in the Nitijela. I am also a major landowner on Kwajalein Atoll.

Mr. Chairman, I am honored to present the following statement on behalf of the people of Kwajalein and I would like to express my appreciation and sincere thanks to you and the members of this House Resources Committee for giving me the opportunity to do so.

ABOUT THE KWAJALEIN NEGOTIATION COMMISSION

I represent the Kwajalein Negotiation Commission (KNC), an organization established in October 2001 by the people of Kwajalein to represent them in the ongoing Compact renegotiations. Although compact renegotiation discussions between the U.S. Government and the Government of the Republic of the Marshall Islands ((RMI) have been in progress for the past 12 months and are reportedly close to being finalized, no opportunity has been given to the KNC to directly participate in the deliberations. We have completed and presented to the RMI Government, a proposal for a 50-year comprehensive lease arrangement for Kwajalein, which we believe, takes into full account the requirements of both the United States Government and the Kwajalein population. We have requested the RMI Government to convey this proposal to the U.S. Government so that its timely incorporation into the proposed new Compact can be ensured.

We have been provided an advance copy of the testimony submitted by the RMI for this hearing. Notwithstanding the statement in Minister Zackios's testimony that there have been "close consultations" between the RMI and the KNC regarding the future of Kwajalein, there in fact have been no meaningful discussions between us on this subject. We have made multiple proposals to the RMI regarding a joint approach to the Kwajalein issue, but at every instance our entreaties have been rejected. Accordingly, we now find it necessary and advisable to open direct channels of communication with the U.S. Congress and the Administration on this subject in order to make known our position with respect to our proposal for long-term U.S. access to Kwajalein as a military base.

THE MILITARY USE AND OPERATING RIGHTS AGREEMENT

The current Military Use and Operating Rights Agreement (MUORA) governing Kwajalein expires in 2016. Any extension of the MUORA beyond that date requires the approval of the people of Kwajalein as stipulated by our Constitution. While we are aware of U.S. interest in a longer, more secure land use agreement for Kwajalein (negotiator Short has proposed to the RMI a seven year extension to the present MUORA, tied to a 20 year option), this matter has yet to be negotiated with the landowners. We believe that any new agreement that contemplates the use of Kwajalein beyond 2016 must be negotiated with full participation by the KNC, the duly chosen representatives of the people of Kwajalein. Moreover, we find Mr. Short's proposal unacceptable on its face.

The people of Kwajalein have consistently expressed their commitment to providing the U.S. full access to Kwajalein and they hereby reaffirm this commitment. However, it is also their position that a piecemeal approach is not a satisfactory arrangement to either side. Our proposal for a 50-year lease will give the U.S. advantage of long-term security enabling substantial investments in its missile defense program while the people of Kwajalein will have the advantage of economic security. Short-term options do not provide either and in fact will leave our people in a state of suspended animation, severely limiting the ability of determining an appropriate development program for Kwajalein.

The traditional leaders of Kwajalein have formed an unprecedented alliance to provide an opportunity for the U.S. to enter into a long-term relationship guaranteeing secure and uninterrupted use of Kwajalein. The divisions within the local traditional leadership that marred the entry into the first Compact have been put aside in the interest of this relationship.

WHY RENEGOTIATE THE MUORA NOW?

1. The terms need to be re-visited.

The first Compact was negotiated when RMI was still a territory. Many provisions were accepted by RMI in the interest of achieving self-government as early as pos-

sible and sometimes to the detriment of its regional or individual island atoll interests. Agreements pertaining to Kwajalein, although not completely satisfactory, were accepted by Kwajalein people in this context. Indeed, in the plebiscite on the Compact in 1982, the people of Kwajalein overwhelmingly voted to reject adoption of the Compact (the Compact was nonetheless approved by the RMI by a close margin).

In the past fifteen years we have learned the strengths and weaknesses of some of these agreements and are in a better position now to identify areas of needed improvement. We view this renewal period as the most opportune time to rectify the injustices carried over from the Trusteeship period and give new meaning to the long-term Free Association relationship between the U.S. and the RMI. From this experience we are able to propose more realistic programs to deal with the harsh living conditions that Kwajalein people now face as a result of their displacement to provide land to the U.S. military.

2. The need for certainty.

Some argue that the U.S. already has rights to Kwajalein until 2016. The people of Kwajalein honor that right. However, as other matters in the Compact are brought up for discussion or modification, it is only fitting that the most important component of that agreement, namely U.S. defense rights in the Marshall Islands, be revisited. We believe this exercise to be of mutual interest and benefit because it can eliminate those aspects of the first Compact that are unfair to the landowners while at the same time guarantee the long term access that the U.S. seeks. A mere extension would perpetuate the existing hardships and inequities and would ignore the lessons learned in the first fifteen years of the Compact. A careful study of KNC's proposal will reveal a well thought out and reasonable approach and a win-win situation that is good for both the U.S and Kwajalein people. Mr. Short's proposal perpetuates a state of uncertainty between the people of Kwajalein and the U.S. Government that is unacceptable.

3. Kwajalein Needs New Investment

It is no secret that many in the U.S. Military believe that the Ronald Reagan Ballistic Missile Testing Site needs new investment if it is to support the needs of the missile defense program of the United States. Indeed, only recently Lieutenant General Ronald Kadish, head of the Missile Defense Agency, stated at a Pentagon briefing that Kwajalein needs a significant upgrade. He said that the missile test range, "as complex as it is, and it is very complex to do these kind of tests at intercontinental ranges, is not where it needs to be in order to robustly test this system and make it more operationally realistic over time. It requires a major investment to upgrade."

Therefore, it is only logical that in determining the sufficiency of new investment in the Kwajalein base that the U.S. consider the terms of its access to that base. The KNC wishes for the U.S. to make these investments, but it is only fair to all concerned that these investments be made under a long-term arrangement for control of the facility. Indeed, the GAO has estimated that the U.S. Government has already invested over $ 4 billion on Kwajalein. Is it not fair to ask that new investment be made after consideration of the long-term arrangements for access to the facility? It is in the interests of the United States and the people of Kwajalein that these questions are raised and a long term plan, beyond 2016, be adopted, as these new investments are made.

4. Alternatively, a Transition to Repatriation.

If on the other hand the U.S. prefers to close out the Kwajalein Reagan Test Site in 2016 then it should be prepared to discuss now the terms of that closure including resettlement, restoration and rehabilitation programs. Environmental clean up and the planting of crops will take several years and therefore planning and agreements cannot wait until 2016. It is the preference of the landowners that the U.S. remains in Kwajalein, keeping with our mutual defense agreement. However, should the U.S. plans demand otherwise, then we should all face up to that possibility by carefully and adequately planning for it.

SUMMARY

In conclusion, the leadership and people of Kwajalein wish to reaffirm their full support for the U.S. military activities in Kwajalein atoll and hope to continue their friendship and cooperation with the United States. At the same time, we are hopeful that through the Second Compact we will achieve a fair and just arrangement for the continued use of Kwajalein. We have formulated a Proposal as a basis for negotiations for leasing our land upon which a new MUORA can be concluded. We are

prepared to actively participate in the negotiations. We attach particular importance to the current negotiations in view of the fact that in the first Compact we were not accorded the opportunity to realistically protect our interests. We thank the Committee for this opportunity and look forward to working with our negotiators to reach an agreement that will gain early approval by both the U.S. and the RMI in accordance with their Constitutional processes.

Questions for Hon. Peter Christian, Government of the Federated States of Micronesia

1. Under the US Proposals, how would the FSM make grant proposals to the US Government? Would there be one grant at the national level that would then be divided out to the states or would each state submit a grant proposal?

This issue is to be determined with the adoption of finalized Fiscal Procedures Agreement (FPA) and certain provisions of Compact Title II as amended. The draft FPA has been delayed and the FSM is now awaiting the proposed text from the US negotiating team. To maintain a distinct government-to-government relationship, the FSM anticipates submitting a compiled grant package on an annual (or multi-year) basis incorporating six sectors and apportionments across the five governments.

2. The US proposal for a trust fund assumes that each nation will deposit funds, including the "bump-up" Compact grants for 2002 and 2003 in the trust funds, with the RMI contributing $35 million and the FSM $30 million. How do these funds compare to your nation's bump-up and have these funds been set aside? (Ask both the FSM and RMI)

The FSM will receive $33,276,240 in so-called bump-up funds during the two-year extension period. The US has set a $30 million deposit into the Trust Fund as a "pre-condition" for US contributions to the Trust Fund. Thus the $30 million requirement represents over 90 percent of the total bump-up funds.

The FSM has expressed its commitment to deposit a significant sum into the Trust Fund at the outset of the renewed Compact arrangements. This contribution demonstrates a strong commitment to the concept of an adequately funded Trust Fund and to the ultimate achievement of financial self-reliance.

Several governments determined to use a portion of bump-up funds to meet pressing needs during the two-year extension; at this time, the FSM governments have made appropriations and/or firm commitments totaling $26 million. This amount will be available for deposit early in fiscal year 2003.

There is an ongoing effort to mobilize the remaining $4 million; however, this will be a challenge given the pressing need for, in particular, urgent infrastructure projects and disaster response and recovery efforts in at least two states.

3. Does your government have a viable long-term planning process for economic development and private sector investment? (Ask both the FSM and RMI)

Yes, the FSM National and State governments have a coherent and comprehensive economic policy framework in place. The current FSM Planning Framework is policy-driven and represents an evolution from the economic reform policies that have been in place since economic restructuring began in 1996. It consists of policies developed in an open, consultative, participatory manner by people from all four States and for every sector of the economy. The policies include specific measurable objectives and detailed strategies. The policies and strategies were developed for two reasons: firstly, to guide the overall operations, public investments, and policy-making of our national and four state governments. Second, the policies and strategies are an active response to mistakes made and lessons learned in early years of implementing the economic assistance provisions of the Compact.

Two additional points are worth noting: The planning framework encourages and specifies the need to create and enact legislation to accelerate the growth of the FSM's private sector and to improve essential services for FSM citizens in support of a growing and increasingly modern economy. Also, the FSM Planning Framework provides the explicit basis for improving transparency, accountability, monitoring, reporting, and evaluation in the policy-making and economic management process.

4. Does your country have the technical capabilities necessary to meet the terms of future assistance by the fall of 2003? For example, will your country be able to implement any grant conditions that may be applied in areas such as financial management standards or procurement? (Ask both the FSM and RMI)

The change to renewed Compact economic assistance provisions will present financial and technical challenges. Even while awaiting the proposed text of the FPA, the FSM has commenced preparing for the new requirements. New and more highly trained personnel will need to be recruited or transferred to certain key financial management, infrastructure planning, sectoral project monitoring, statistics, and economic policy functions within the five governments. This process will take time and money and the FSM will be requesting a 3–5 year transition period to fully meet the proposed terms.

5. What is your country's timetable for reaching an agreement with the U.S. State Department on amending the Compact and are you on track? (Ask both the FSM and the RMI)

In the absence of secure Compact funding after September 30, 2003, delays in negotiations and/or approval by the US Congress present a grave danger to the economic and social stability of the FSM. The FSM has been negotiating in good faith since 1999 and continues to support an accelerated timetable to get mutually agreeable economic assistance package presented to the US Congress no later than September 30, 2002.

6. We have reviewed the GAO reports that address the accountability issue. Do you agree with their conclusions? How can we do better in the future?

The FSM had previously addressed the issues raised by the GAO in response to its draft reports. In the interest of a detailed response, we would refer the chairman to the FSM responses contained in the annex of each report.

7. As noted in the GAO reports, there have been serious shortfalls and deficiencies in the provision of education and health services to the people of the FSM/RMI. What concret actions have you taken and what long-term plans do you have to address these problems?

Again, these are complex issues and we would refer to our responses provided earlier to the GAO in connection with its findings. In brief, however, following is a summary of some of the main points and ways in which the FSM hopes to address shortcomings in these sectors in the future:

- The FSM concurred with the GAO's findings that health and education infrastructure is inadequate to meet the growing needs of a modern economy. The FSM Congress has, since 1999, dedicated fully 20 percent of all national tax revenues to health and education infrastructure (approx. $4 million annually). This is in addition to core funding for these two sectors.
- The FSM has undertaken a Basic Social Services loan through the Asian Development Bank for the period fiscal year 2002–2006. This first phase of this loan focuses financial and technical resources on improving the health and education delivery systems. The second phase of this loan focuses on improving financing mechanisms for the two sectors, including community support for primary schools and primary health care systems and fee-for services and health insurance. The loan also provides matching grant funds to improve primary school facilities.
- The overall economic policy framework has been enhanced with sector specific summits for educations and planning workshops at the national and state levels for health.
- It is critical that Congress Members realize the proposed grant funding is not designed to replace, or obviate the need for continuing US federal programs in health and education. There is no overlap or duplication involved. Were current programs to be discontinued, grant funding at the levels currently proposed by the US Administration would result in a virtual meltdown of the very health and education sectors we are seeking to improve

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Questions for Albert V. Short, U.S. Department of State

Question:

How will future funds under the renegotiated compact be withheld, particularly in the areas of health and education? For example, if schools in the FSM/RMI are not meeting grant conditions, what is the process for determining the amount and timing of funds to be withheld?

Answer:

The economic provisions in Title Two of the proposed Amended Compact and the proposed implementing agreements (in particular one on fiscal procedures) are drafted to improve accountability and transparency and give the United States rem-

edies for noncompliance with the terms and conditions attached to U.S. assistance, including withholding assistance.

We should note that funds would only be withheld if no other remedies would be sufficient to fix the problem. We expect to set goals and objectives, consult in advance with the RMI and FSM governments with regard to plans for expenditure of U.S. grant funds provided under the Amended Compact, and then work cooperatively to achieve those goals. Priority will be given to assistance to the Health Care and Education sectors. Any withholding of funds will only take place after extensive consultation with the respective governments. The withholding of funds would also be limited to the grant in question and could be restored when compliance is achieved.

Question:

What areas of disagreement, if any, exist at this point between the U.S. government and the governments of the FSM and the RMI regarding the proposed U.S. level and structure of assistance, or proposed accountability measures?

Answer:

Regarding the structure of assistance, the U.S. and the FAS have reached ad referendum agreement on a twenty-year grant regime and establishment of trust funds. Further, the funding will be targeted to funding key sectors: health, education, infrastructure, environment, private sector development and capacity building.

We believe our funding proposals are adequate, and the FSM and RMI representatives have provided their views in their prepared statements and testimony.

Both sides have agreed ad referendum to increased accountability, monitoring and disbursal standards, although we are still discussing the details regarding how these requirements will be implemented and consolidated.

Regarding annual financial assistance, the U.S. has proposed annual assistance for 20 years that is only few million dollars below the FSM and RMI requests, but close to what the U. S. provided in the last year of the current Compact. At the same time, the U.S. is proposing substantial annual payments over the 20 years into a trust fund that would generate substantial support for the FSM and RMI after FY–2023 when the annual grant payments come to an end.

Question:

As you know, timing is critical since funding for the FAS will end at end of fiscal year 03 unless an amended compact is approved and acted on by the Congress. The Committee is concerned that we do not have a final agreement to review before us today. What is your time line for finishing the negotiations between the U.S. and the Freely Associated States?

Answer:

The Administration's goal is to initial the Amended Compact package (including amendments to all four titles of the Compact, a fiscal procedures agreement, and trust fund agreement) by the end of August. We believe this is a reasonable goal and we can achieve it. Additional subsidiary agreements such as the telecommunications and other service agreements will follow.

Question:

Do the RMI and FSM have the ability to satisfactorily comply with the fiscal procedures submitted to you by the Department of Interior? (Ask State and Interior)

Answer:

We believe the FAS have the talent and systemic capabilities to provide the requisite financial management and oversight. To assist in ramping up the fiscal procedures system, we plan to initiate a dry run of the process several months before the beginning of FY–2004, the start of the Amended Compact period. This 'dry run' will entail visits and technical consultations by both sides.

Question:

The U.S. proposals for trust funds assume that each nation will deposit funds, including the "bump-up" Compact grants for 2002 and 2003 in the trust funds, with the RMI contributing $35 million and the FSM $30 million. How do these funds compare to each nation's bump-up and have these funds been set aside?

Answer:

These initial trust fund contributions are comparable to the so-called "bump-up amounts." They are based on ability to contribute rather than the bump-up per se. Both FAS have agreed in concept to the up-front contributions.

In order to help finance urgent requirements for hospital and airport runway projects, the RMI has requested that their contribution of $35 million be phased in,

with $25 million in the first year of the Compact and $5 million following in each of the next two years. The U.S. has agreed ad referendum to this formulation.

The FSM has agreed to a $30 million contribution. To address FSM's concerns, the U.S. adjusted the FSM's base grant, leaving it unchanged in the first three years of the Amended Compact, to permit the FSM to make its trust fund contribution in the first year (FY–2004).

Questions for Susan S. Westin, GAO

1. Question: Do you believe the U.S. proposals sufficiently address GAO's past recommendations regarding increased accountability over future Compact assistance to the FSM and the RMI?

Answer: The U.S. proposals address many key GAO recommendations by requiring, for example, that assistance be provided through specific grants with grant terms and conditions and allowing funds to be withheld for noncompliance with those terms and conditions. However, it is not possible at this point to determine how well proposal accountability measures could prove to be, given that many accountability details will be contained in separate agreements that remain in draft form or have not yet been released. Further, appropriate oversight resources must be made available, and government commitment to enforcing accountability provisions is necessary. Additionally, it is important to remember that the negotiations have not been finalized and that neither Compact country has yet agreed to U.S.-proposed accountability provisions.

2. Question: Based on GAO's past work, what do you believe are the defense or strategic issues that the U.S. government should be considering as it negotiates new Compact assistance with the FSM and the RMI?

Answer: The key U.S. defense interest in the region is access to Kwajalein Atoll in the RMI. From a strategic standpoint, the Department of Defense views the two countries as defense obligations (the U.S. government agreed under the Compact to defend the two countries from attack or threat of attack), not as defense assets. It is worth remembering that, unlike economic assistance, key U.S. defense rights under the Compact, such as strategic denial (the U.S. right to prevent access to the islands and their territorial waters by other countries) and access to Kwajalein Atoll, will not expire in 2003.

3. Question: To what extent do the current U.S. proposals to extend Compact economic assistance differ from the terms of the original Compact?

Answer: Unlike the original Compact, the current U.S. proposals emphasize sector grants, require specific grants terms and conditions, allow for the withholding of funds, call for greater administrative efforts on the part of all three governments, and include an "exit strategy" in that the U.S. government will no longer provide funding to the two countries at the end of 20 years (though it will still have a role to play in spending oversight).

Regarding fiscal year 2004 economic assistance in the current U.S. proposals, the FSM would receive roughly 7 percent less in grants than it would have if the previous compact were extended at the same level of assistance. The RMI would receive roughly 17 percent more in grants. By fiscal year 2023, both countries would receive less money in grants relative to previous compact levels due to the decremented grant contribution. However, in addition to grants, the current proposals provide for U.S. contributions to each country's trust fund such that annual assistance would exceed previous compact levels.

Questions for Gerald M. Zackios, Republic of the Marshall Islands

1. Does your government have a viable long-term planning process for economic development and private sector investment? (Asked to both FSM and RMI)

In the past, the RMI Government used its Office of Planning and Statistics to help prepare the 5-year development plans mandated by the current Compact. However, these plans proved ineffectual and there was little follow-up in their implementation by the RMI and the USG. Also, there was a noted gap between planning and policy making. In addition, the Asian Development Bank has helped to provide some medium term finance and economic strategy development. However, this was mainly done with the help of external consultants.

Now, we are much advanced in putting in place two key components for viable long-term planning that, we hope, will compliment what we are negotiating for the next term of Title II. The first component is an Economic Policy, Planning and Sta-

tistics Office (EPPSO). The EPPSO is linked to the President's Office. It will take several existing units, such as the Office of Planning and Statistics and the Compact Negotiation Office, and streamline their activity into one unit. It will link the policy and development activities of each ministry and help to coordinate economic strategy formulation and monitor implementation. EPPSO will also provide necessary information inputs, such as statistics, to other Government units and the donor community, and will serve as the RMI secretariat for the RMI–U.S. Joint Economic Review Board that we have proposed in the new Title II.

The second component is the establishment of a Medium Term Budget and Investment Framework (MTBIF). The MTBIF is really a hybrid of our former budget system with a new, more performance-oriented and medium term budget system that is directly linked to our overall and sector goals and objectives. This system is currently being put in place and is partially being applied for fiscal year 2003. The initial Framework is for 2001–2005 and will be adjusted annually on a rolling basis. However, the implementation of such a system, consisting of retraining our financial managers throughout the Government, strengthening our economic policy making capabilities, and installing new finance and other information systems, takes time. We hope that the United States is a partner and a supporter of our effort so we have a system that serves both our countries" needs. Although we appreciate outside criticism, we think it'll be more constructive if this is followed up with ways to address the problems. As I have stated in my testimony, the RMI is committed to improve the accountability of all of the RMI's funds, not only Compact funds. We are also committed to improving the performance and returns on our investments.

A further example of our increased emphasis on medium term economic and finance strategy formulation is our recent preparation of an Infrastructure Development and Maintenance Plan. We have taken a more realistic look at our infrastructure construction and maintenance needs within the limits of our expected funding from the Compact and other sources. We are currently putting in place the mechanisms to implement and monitor this plan.

I would especially like to thank the Asian Development Bank and Office of Insular Affairs/DOI for their technical assistance to implement the above. I must note while we appreciate the assistance, our interest is to have these systems and processes done internally with trained Marshallese. We are currently on the road to accomplish this interest.

2. Does your government envision renegotiating Title II of the Compact after expiration of the new 20-year term?

Mr. Chairman, I honestly do not feel comfortable in predicting where all of us will be in 20 years time, how our country will develop, how our relationship will develop, and what will happen in our region. If you were to ask me this same question in 1986 when the Compact became effective, could anyone have predicted the fall of the Berlin Wall, the end of the Cold War, and the confrontation with a global terror network?

The goal of our Government and each Marshallese is not to rely on U.S. grant assistance for generations to come. We do have a goal and an interest in providing for our own needs. While we have this goal, we do feel that our citizens should be compensated for resources provided to others, such as access to our land. This is a basic tenet of economic and business law.

Our concern in 20 years time is two fold. First, while I have stated that we are supportive of the trust fund concept, we do not believe that the success of our future generations and the RMI–U.S. relationship should be solely based on a trust fund that is contingent on market mechanisms. I would be dishonest and irresponsible to accept the USG offer at this time and say that the amounts provided over the next twenty years will replace USG base grant funding at that time. The current situation within the U.S. financial markets bears this assertion all too timely and realistically. While we can forecast and analyze ad infinitum, can your government provide my government and our people with the assurance that the trust fund amount will be sufficient? If the trust fund does not provide the expected distribution, then what recourse does the RMI have?

Thus, Mr. Chairman, we are struggling with the Administration to have language in the proposed Trust Fund Agreement for periodic reviews of the trust fund to insure that it is meeting the Title II objectives of the United States and the RMI and, that if it is not, both sides will consider the necessary remedies. Mr. Chairman, just as the U.S. is imposing restrictions and control on the Title II funding and receiving reassurances, it is only fair that the RMI receive the reassurance that the trust fund provides the necessary funding in 2024 and beyond.

Secondly, I cannot predict what U.S. programs and services will be necessary over the next 20 years and post 2023. We, meaning my Government, and the U.S. Ad-

ministration and Congress, must realize that we are an island nation with limited resources. No matter how much the USG or others invests in the RMI, we will still have limited natural and human resources and we will still be a remote destination. Thus, some U.S. programs and services may still be applicable. In a country of 50,000 individuals you must keep in mind that we are taking on the responsibilities of a full national government. Can we replicate the needed services provided by other countries in a cost effective and efficient manner? To a certain extent, yes. However, we must keep in mind that most island nations in the Pacific (and in the Caribbean) have links to larger countries that provide programs and services that the island nations do not have the resources to provide. If you look at the Pacific Island map, you can easily see these linkages. Australia, New Zealand, the UK, France, Japan and others still play an economic role in most Pacific Island nations as does the USG play a significant role in its commonwealth and territories. We should not be without such a relationship post 2023.

Finally, we seriously hope that the United States does not see the Title II being negotiated as an "exit strategy" and the abandonment of a friend and ally to be left to its own limited resources. While we feel we have made some progress in the past 15 years and will achieve greater progress in the next 20 years, we hope the United States is a friend and ally who will stand with us as we stand with you.

3. Does your country have the technical capabilities necessary to meet the terms of future assistance by the fall of 2003? For example, will your country be able to implement any grant conditions that may be applied in areas such as financial management standards or procurement? (Ask both the RMI and FSM)

As stated in the answer to your first question, we are working diligently in strengthening our economic strategy formulation unit (EPPSO) and capabilities as well as reforming our finance administration and budget systems. We have taken steps as of this time in reference to implementing the MTBIF and are now working with specific ministries (mainly the Ministry of Education and the Ministry of Health our two largest ministries) in implementing the part of the MTBIF that links sector financing with performance-oriented measurement. We hope to have the system in place by fall 2003.

We also hope to have the cooperation of the USG in working hand-in-hand to insure that the system being put in place goes hand-in-hand with the Fiscal Procedures Agreement that is currently being negotiated. As mentioned, the Asian Development Bank and the Department of Interior are providing technical assistance to meet these needs and we are making a substantial investment on our own.

We do hope that the United States understands that implementing such a new financial administration and accounting system, budget process and performance orientation will take several years to implement (at least 3 years). Such reform takes time even in the United States. We ask for your patience and future assistance as we make the necessary reforms.

4. Aside from the U.S. lease payments for Kwajalein, do you know the total amount of U.S. dollars that come into the RMI economy because the location of the U.S. base is in your country? (If DAS Brookes is not asked)

The U.S. Army Kwajalein Atoll (USAKA) defense installation is a significant contributor to our local economy it is estimated to be around 25% of our annual GDP. In terms of dollar amounts, USAKA contractors employ about 1400 Marshallese with a payroll of approximately $17 million per annum. This is out of a total national workforce of approximately 6500 people. In addition, the RMI collects about $2–3 million at a 5% rate in annual income tax revenues from the U.S. citizen employees of USAKA contractors. The USAKA command also provides humanitarian assistance, community out-reach programs, and excess military equipment that are valued at more than half a million dollars a year.

5. The U.S. proposal for a trust fund assumes that each nation will deposit funds, including the "bump-up" Compact grants for 2002 and 2003 in the trust funds, with the RMI contributing $35 million and the FSM $30 million. How do these funds compare to your nations bump-up and have these funds been set aside? (Ask both FSM and RMI)

Our Government has established a Marshall Islands Intergenerational Trust Fund (MIITF) prior to our Compact negotiations and has set aside $18.5 this fiscal year and we hope to set aside $16.5 million in fiscal year 2003. While most of these funds are from what we consider the capital portion of the fiscal year 2002 and fiscal year 2003 Compact funding, the amount is supplemented by our own funds as well as loan funds from the Asian Development Bank.

We are committed to contributing the $35 million in 2004. However, Mr. Chairman, as identified in my testimony and above, the RMI has taken the funds away from potential investment in the development and maintenance of our infrastructure. We have also shored-up our financial stability by paying off past investments and liabilities. Thus, with our keen interest to provide for future generations, we have not had the funds to invest in critical infrastructure projects and two projects have surfaced which we cannot delay any longer. The projects are for the resurfacing of the Majuro international airport and the reconstruction and refurbishment of the main hospital in Majuro. My Government has the choice to either: 1) dip into the trust fund set-aside ($16.5 million) for fiscal year 2003; or 2) find financial assistance for these two projects, such as from the United States. To maintain our commitment to the trust fund, we hope that the United States would supplement our investments in these two projects.

The Federal Aviation Administration informed us of the urgency of the resurfacing of the Majuro international airport earlier this year. We have tried to work with the FAA to find joint remedies but so far to no avail. The FAA has stated that the longer the resurfacing is delayed, the conditions will continue to deteriorate and may cause the termination of flights to and from Majuro. Mr. Chairman, it is not difficult to imagine what the closing of the airport will do to Majuro, our travel and commercial hub. Such an action will make our already remote island community more remote. The closing of the airport will not only reverberate throughout the RMI but also will negatively impact flights to/from the USAKA defense installation and to other flights westward and eastward to/from the Federated States of Micronesia, Guam, the CNMI and Palau. The FAA has estimated the resurfacing at about $10 million. We are able to contribute $2 million of our own funds; thus, we are seeking $8 million in financial assistance.

The Majuro hospital is the primary health care facility in the RMI. It has been in need of upgrading and refurbishment for some time. We have tried to do what we can with our own funding. The Japanese Government has provided a feasibility study for the project and will provide part of the project financing. We will also invest in the project; however, we still have a shortfall of $6–7 million.

Thus, Mr. Chairman, we have a current financing need of $14–15 million. If the United States can provide this funding assistance, we can commit to the $35 million contribution to the trust fund. If the United States does not help in this regard, then we will have no choice but to take the funding from our fiscal year 2003 trust fund set-aside amount and will not be able to commit to a $35 million initial contribution. If we do have to resort to this action, which we are very reluctant, then our trust fund will be in jeopardy and will be unable to come close to supplanting the Title II base grant in 2024.

6. What is your country's timetable for reaching an agreement with the U.S. State Department on amending the Compact and are you on track? (Ask both the FSM and RMI)

Mr. Chairman we are negotiating in the spirit of concluding an agreement as soon as possible. We have really started from scratch only having received rough drafts of Title II language and an initial financial offer early this year. We have only recently received rough drafts of the Fiscal Procedures Agreement and the Trust Fund Agreement. We are responding and negotiating in good faith, as, I believe, our U.S. counterparts will agree.

We must keep in mind that what the Administration has proposed so far is a substantial change to the current Title II and its subsidiary agreements. As an example, Mr. Chairman, the Title II language is totally different along with the makeup and allocation of the financial assistance; the Fiscal Procedures Agreement instills planning, reporting and other requirements that are still being formulated and adjusted by the Administration as well as being negotiated with us; and there is the entirely new trust fund component. In addition, subsidiary agreements for specific U.S. programs and services are substantially different. For instance, the U.S. Postal Services wants to apply international rates and procedures. The Administration wants to replace FEMA with the USAID Office of U.S. Foreign Disaster Assistance a change we are not in favor as exemplified by a recent natural disaster in Chuuk State of the FSM.

In brief, while we would like to conclude negotiations soonest, we do not have the resources of the State and Interior Departments to respond so quickly. We also must not rush through the negotiations and pick up the pieces later. The Title II we are negotiating will not only impact Marshallese over the next 20 years but our citizens for generations to come.

At times, Mr. Chairman, I feel we are losing sight of the forest while viewing with a magnifying glass the trees. We do have a question of what the Unite States wants

to see as its relationship and commitment to the RMI over the next 20 years? And, more importantly, what will be the relationship beyond 2023? We have not seen a clear answer to either question. It seems that the answers are for us to interpret or to read the tea leaves. In addition, Mr. Chairman, given our unique characteristics of a Freely Associated State, we wonder what is the United States" true view of such a status and what it intends now and in the future?

Last, Mr. Chairman, we do believe that if the Administration adhered to the intent of these negotiations, that is concentrate on Title II and the related subsidiary agreements, we would be much closer to a conclusion. However, we have been sidetracked by other issues brought up by the United States, such as immigration. The right of Marshallese to enter, live, work, and study in the United States as enshrined in the Compact is a core component of the relationship of "free association" itself. Without these rights, Mr. Chairman, my Government would question whether there is a relationship of "free association" under the framework of the Compact.

The Administration has tabled major and substantive amendments to these essential non-expiring provisions that would, if adopted, greatly diminish the rights of Marshallese to live, work and study in the United States. Nonetheless, my Government is attempting to engage the Administration in dealing with certain aspects of their immigration proposal in areas such as passport security and other immigration issues that would not impair fundamental rights under Section 141 of the Compact. We believe that these can be addressed without resorting to amending the substantive provisions of the Compact itself, and in fact have offered to meet and address these issues in such a manner over the course of the last several months. We are aware of the post 9–11 security needs and concerns of the United States and are more than willing to work with the Administration to address these issues. As we are presently actively engaged with the Administration on immigration issues, we are hopeful that a mutually acceptable agreement can be reached, however, I would point out that having to engage the Administration on this issue at this time also poses a major distraction to concluding a new Title II.

Finally, Mr. Chairman, I must report to you that the proposals tabled by the Administration during these negotiations go well beyond new Titles II and III, or even the non-expiring immigration provisions in Title I. Rather the administration has tabled proposals to amend the ENTIRE Compact, starting from the Preamble through the last provision of Title IV.

Mr. Chairman, you earlier asked if it was my Government's intention to renegotiate the provisions of Title II after the expiration of the new twenty-year term. What my Government clearly did not intend was to engage in negotiations of the entire Compact at this time, and yet this is precisely what the Administration has proposed despite the fact that these provisions do not expire. While amending the entire Compact may be a fascinating intellectual exercise for lawyers, it is neither necessary nor appropriate, particularly in the context of our present negotiations concerning essential economic and security and defense provisions that will expire on September 30, 2003. If my Government were to consider amendments to the entire Compact, we would have most certainly included amendments to the Section 177 Agreement concerning settlement and compensation for claims resulting from the U.S. Nuclear Testing Program in the Marshall Islands.

The point is that our governments have institutions and mechanisms that have been put in place over the course of the last sixteen years to deal with other Compact issues including provisions to amend the Compact itself. My Government is dedicated to working with the Administration on negotiating and concluding an agreement for a new Title II package to submit to the Congress, and believe that if both governments remain focused in this effort, a new agreement can be concluded in a timely manner.

However, if the Administration continues to insist on negotiating matters and issues outside of the scope of these negotiations concerning non-expiring provisions of the Compact, I cannot promise we will be able to conclude agreements concerning the expiring economic and security and defense provisions of the Compact within the specified time frame.

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