S. HRG. 107–138

GOALS AND PRIORITIES OF THE MEMBER TRIBES OF THE MONTANA WYOMING TRIBAL LEADERS COUNCIL

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED SEVENTH CONGRESS

FIRST SESSION

ON

TO RECEIVE THE VIEWS OF THE MEMBER TRIBES OF THE MONTANA WYOMING LEADERS COUNCIL REGARDING THEIR GOALS AND PRIORITIES

JULY 12, 2001
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GOALS AND PRIORITIES OF THE MEMBER TRIBES OF THE MONTANA WYOMING TRIBAL LEADERS COUNCIL

THURSDAY, JULY 12, 2001

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

The committee met, pursuant to notice, at 10:07 a.m. in room 485, Senate Russell Building, Hon. Daniel K. Inouye (chairman of the committee) presiding.

Present: Senators Inouye, Campbell, and Thomas.

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

The CHAIRMAN. The committee meets this morning to receive testimony from the member tribes of the Montana-Wyoming Tribal Leaders Council on their goals and priorities for the session of Congress. This hearing is the sixth in a series of hearings to gather information from tribal governments across the country. The committee has also participated in two tribal leaders' forums in the Pacific Northwest and in southern California for the same purpose.

Testimony received from the witnesses today will not only be published in the record of the hearing today, but a compendium of the goals and priorities identified by the tribal governments will be published upon conclusion of these hearings.

The goals and objectives that Indian country has identified as priorities will guide the continuing development and refinement of the committee's legislative agenda for the 107th session of the Congress.

So on behalf of the members of the Senate Committee on Indian Affairs, I welcome all of the witnesses here this morning and we look forward to receiving your testimony.

If I may, I would like to call upon my distinguished colleague, Senator Thomas.

STATEMENT OF HON. CRAIG THOMAS, U.S. SENATOR FROM WYOMING

Senator THOMAS. Thank you, Mr. Chairman. Let me thank you for having this series of hearings. I think it illustrates the fact that the priorities of all the tribes in our country are not the same. The needs and concerns vary throughout Indian country and I appre-

ciate that this committee has stepped forth to listen to the concerns of so many tribal leaders.

I want especially to note that we are joined today by Ivan Posey, chairman of the Shoshone Business Council and a representative of the Northern Arapaho Tribe. We work closely, with both these tribes. They have some unique problems, some of them simply due to size of the population. I'm particularly interested in irrigation projects that need to be worked on in order to give opportunities to these tribes.

Mr. Chairman, thank you and I look forward to hearing the testimony.

The CHAIRMAN. Thank you very much. Our first panel consists of the chairman of the Arapaho Business Council, Fort Washakie, WY, Anthony Addison, Sr.; the chairman of the Chippewa Cree Business Committee, Box Elder, MT, Alvin Windy Boy, Sr., who will be accompanied by Bruce Sunchild, vice chairman of the Chippewa Cree Business Committee; and the chairman of the Fort Belknap Community Council, Harlem, MT, Joseph McConnell. Will those gentlemen step forward?

Chairman Anthony Addison, Sr., Chairman Alvin Windy Boy, Sr., and Chairman Joseph McConnell.

May I first call upon Chairman Addison.

STATEMENT OF IVAN POSEY, CHAIRMAN, SHOSHONE COUNCIL, FORT WASHAKIE, WY ON BEHALF OF ANTHONY ADDISON, SR., CHAIRMAN, ARAPAHO BUSINESS COUNCIL

Mr. POSEY [reading Chairman Addison's statement].

Good morning. My name is Anthony Addison. I currently serve as the chairman of the Northern Arapaho Tribe—on the Wind River Reservation—which we share with the Shoshone Tribe. The reservation consists of 2.3 million acres. The main economy largely consists of agriculture, oil, gas, development, tourism, and small business. And I want to thank the committee for providing us this time to talk about our testimony.

The Northern Arapaho enjoys a special relationship with the Federal Government that no other group in America has. Historically, the relationship between the Northern Arapaho and the Federal Government has been expressed through the language of treaty and law. Further, this relationship was specifically founded in the United States' Constitution as guaranteed through acts of Congress.

It is the right of the Northern Arapaho to organize and be recognized by the Federal Government as a separate and distinct political entity that has a direct relationship with the U.S. Government. Tribal input and participation is required in the development of all Federal policies which directly affect the lives of American Indians.

The areas of concern that I would like to talk about—I'll begin with our health needs and unmet needs. These are concerns that we have: Diabetes, dentistry, podiatry, optometry, injuries-accidents, cancer, alcohol and substance abuse, mental health in adult and youth or residential treatment center, heart disease, poor environmental living conditions, sewer, water, elderly care, infant care, immunizations, well-child clinics et cetera, women's health care, men's health care, transportation, Medicaid, Medicare, more dialog and understanding with HCFA, traditional medicine, school-based health programs, HIV–AIDS prevention and education, bureaucratic procedure, access to interstate regulations curtailed, unfunded mandates, more contract health dollars, Federal functions, urban Indian health shares, new and expanded health facilities, staff, dental, pharmacy, laboratory, social services data information, building houses on the reservation and renovation, adult and children treatments of alcohol, building for tribal health, adequate state and Federal legislative reform.

These are some of the areas that are of concern to the tribe as far as the Arapaho Nation is concerned. We also have concerns about our tribal court system—more support, training, education, a stronger lawyer system, scholarship programs. And

we always look at our tribal courts as the key to our tribal sovereignty that needs to be maintained and understood.

We have concerns of our water rights. As we talked about, the irrigation system needs cooperation with the state. There are some concerns also of our road system in our country. It is one of the worst in the United States. We need more cooperation from the State and county.

Education—we are always looking for ways to improve our schools. Environment—we need new programs to protect our tribal lands. Natural resource development, we need help in developing tribal-owned companies to develop our oil and gas and other minerals. We need to take control of the development and not leave it in the hands of the outside companies.

When I talk about all these areas to you, we are always concerned of our people. Our people are hurting in all areas of need, and every time it seems like we are moving forward, the next thing you know, we are taking a step back because of cuts—cuts in all areas that we need for the welfare of our people.

So today, I want to thank you for giving me the time to express these areas of concern that we really need to work on, and work together on a government-to-government relationship.

One of the needs that we are always looking for also in housing. We need additional funding for housing. We need help also in the private sector of housing, how to go ahead and access housing through loans or whatever it might be—loan guarantees. Those are the issues that we really need to work on and work together on. And again, I believe that at one time, it was considered that we were 100,000 people that needed homes. And I know through natural disasters in other areas, they were able to get help to provide homes for those who lost. But historically for the Indian tribes in our area, there is a big concern for us that we need to put roofs over our people's head. We need to look forward to better care for our people, again as I mentioned before earlier, for our health needs and other areas, and a better working relationship between the IHS and also with the BIA, but also with the state and the Federal Government.

So with that, I want to thank you for giving me this time today.

[Prepared statement of Mr. Addison appears in appendix.]

The CHAIRMAN. I thank you very much, Mr. Chairman.

And I now call upon Chairman Windy Boy.

Mr. WINDY BOY. Mr. Chairman, if I might ask prior to my testimony if I could call upon a colleague of mine, Vice Chairman Sunchild, to discuss an issue that is very important to the Montana-Wyoming tribes. Bruce Sunchild.

STATEMENT OF BRUCE SUNCHILD, VICE CHAIRMAN, CHIPPEWA CREE TRIBE OF THE ROCKY BOY'S RESERVATION

Mr. SUNCHILD. Thank you, Alvin. Good morning, Mr. Chairman, Mr. Vice Chairman, distinguished committee members. I appreciate the opportunity here today to discuss a little bit on the Water Funding Taskforce.

My name is Bruce Sunchild, vice chairman of the Chippewa Cree Tribe of the Rocky Boy's Reservation. I also serve as cochair of the Tribal/Department of the Interior Water Funding Taskforce. The Tribal/Department of the Interior Water Funding Taskforce was formed in the last administration as an entity that would bring together Indian tribes and involved Federal agencies to examine alternative methods of funding water and land settlements. We are pleased to have been joined in this effort by an ad hoc group on Indian water rights. As this committee is aware, the ad hoc group was established jointly by the Western Regional Council, the Western Governors' Association, the Native American Rights Fund, and the Western States Water Council.

Recently, the Office of Federal Affairs for the State of New York has joined the group because of the State's particular interest in pending Indian land settlements. The ad hoc group has held a

number of successful briefings for congressional staffers who want to learn more about Indian water rights and settlement claims, and the need to figure out a method of funding these settlements.

To that end, I lend my strong support in drafting the proposal by Senator Domenici of New Mexico that is know as the Fiscal Integrity of Indian Settlements Protection Act of 2001. This legislation will amend the Budget Act and permit an adjustment to the statutory discretionary spending limits for appropriations for authorized Indian land and water settlements. This will create room within the budget for the funding of Indian land and water settlements in a manner that will not be detrimental to ongoing annual Indian programs. This is the route recommended by both the Tribal/Interior Water Funding Task Force and the Ad Hoc Group of Indian Water Rights. It is essential that Domenici's language becomes law this year, and I extend my deep appreciation to the Senators who have already cosponsored this amendment.

So with that, I know we don't have much time, and I have written testimony that I will leave with the proper people here.

The CHAIRMAN. Your written testimony will be made part of the record. I thank you very much, sir.

Mr. SUNCHILD. Thank you.

[Prepared statement of Mr. Sunchild appears in appendix.]

The CHAIRMAN. Chairman Windy Boy.

STATEMENT OF ALVIN WINDY BOY, SR., CHAIRMAN, CHIPPEWA CREE TRIBE OF THE ROCKY BOY'S RESERVATION

Mr. WINDY BOY. Thank you, Senator. It is always a pleasure to present testimony on Indian country to this particular committee, and I am pleased to meet Senator Thomas from Wyoming.

Before I begin my testimony, I would like to acknowledge two people that my tribe in particular have a close working relationship with, and that is Stan Ullman of Senator Burns' office and Sarah Dudley with Senator Baucus' office.

Mr. Chairman, I sit here before you and run over years of testimony that I have presented to the houses of Congress for the last several hundred years. When we mention that much was given up in Indian country, that truly, truly has been. I have a written statement that I'm going to be leaving with the committee here.

I am the chairman of the Chippewa Cree Tribe as of November of last year. I also serve as the chairman of the National Tribal Leaders Diabetes Council. I also serve as the chairman of the Montana-Wyoming Indian Stock Growers. I also serve as the vice chairman of the National Tribal Self-Government Advisory Board. The issues that we deal with are very pertinent to Indian country. Times have changed. As a little boy, when my father and grandfather would take me out hunting, my first weapon to get meat was a rock. And as time went on, I supposedly graduated to a .22 rifle then to a bigger gun. But in Indian politics nowadays, we are still hunting with rocks.

In the sunset, we take a look at Indian health care as an example. When Indian health care in Indian country is equated at $1,000 or $1,500, as opposed to the other Federal agencies and people across this country at about $3,000 to $5,000, the inequity, the disparity—the disparity that happens across whether we are deal-

ing with the Bureau of Indian Affairs or the Indian Health Service. I hope that we can accomplish something. We truly, surely have the data. We truly, surely have the expertise.

Several years ago, my tribe, following suit with the Flatheads, opted to compact both the Indian Health Service and the Bureau of Indian Affairs activities. We have gone through lots of stumbling blocks. But there is always a word that kind of stuck in my mind, and that word was "persevere." But I hope as we have marched, that we can create that one word "partnership." My problems that are in my testimony are surely not partisan issues. The people that I represent at Rocky Boy and chairman of the Montana-Wyoming Health Board know no politics. The ability for members of my tribe to endure the hardship to travel one way, up to 250 miles a day, for dialysis in Billings, times that three times a week. That is a lot.

This is very easy country. Very. We in Montana-Wyoming know the geographical location. In fact, we have 2.9 million head of cows in Montana. We've got 882,000 people. And the statistics are saying even with the last census, that count may have dropped a little further. But the Indian count has gone up. We are seeing people moving back to the eight reservations in Montana-Wyoming every year for unknown reasons.

We hope that we are able to partner—partner with the halls of Congress; partner up with the administration. There is one pitch that I would like to make, and that's with the Indian Health Service. And again, health should know no party bounds. But I would ask the honorable Senators here, if we can take a look at keeping Dr. Trujillo in the Indian Health Service for the duration of the 3 or 4 years. Dr. Trujillo has truly been an advocate. Like everything in business, sometimes we don't see eye to eye, but we are able to set down and negotiate something positive for Indian country. I truly would like to ask the Senator from Wyoming if he would partner with the Wyoming tribes and the offices of both the Montana and Wyoming Senate offices in creating a roundtable discussion on health care specific to the Montana-Wyoming tribes. Our geographical location is surely different from California, Oklahoma, Alaska, and all the others. We are right now in Montana experiencing a drought. I am a rancher, and we haven't yet to start our swathers to cut hay because there is no hay. With the SBA, I would hope that the Indian desk would be filled soon, and whether or not an elevation to that would occur, would truly be a step in the right direction. The elevation of the Indian Health Service director to assistant secretary is always on our main plate.

There is one statement that I have thought about for a number of years, and I've been an elected official for 13 years. And earlier on in my early years as a councilman, I always assumed that the best place for the Indian Health Service funding process should be outside the Interior appropriations process, and more in line with the Labor–HHS method. As I came forward in the last year or so, I re- analyzed that thinking. Personally, I don't think that's a very favorable process for the simple reason you take a look at Interior appropriations and Labor–HHS Interior appropriations, because of the Bureau was transferred from the Department of War to where they are at now, they are probably the only agency within this Fed-

eral system that truly is maintaining that Federal relationship government-to-government in trust.

Our land—our land—that's the only agency. You take a look at the Indian Health Service. In the Indian Health design team process that occurred, that now tribal leaders are having to sit at the tables with Indian organizations, urbans. And everybody has their place at the table. But when you start deciphering down that tribal government treaty obligations executive order, then we become meshed into—our relationship is then watered down. And that's my thinking.

But again this morning, I leave my testimony, as in many forums—economic development, Energy, et cetera. With that, thank you.

The CHAIRMAN. Your full statement will be made part of the record, Mr. Chairman.

[Prepared statement of Mr. Windy Boy appears in appendix.]

The CHAIRMAN. Is Chairman Joseph McConnell here? If not, I will proceed.

Chairman Posey, what is the economic base of your nation, the Arapahos?

Mr. POSEY. Right now, a lot of it is dependent on our minerals. You know, like I said, oil and gas et cetera. But we are also looking in other areas of trying to develop our natural resources, and I know we are looking at—we have gypsum there on the reservation that we are looking to try to develop. But also, we are talking about areas of coalbed methane also, as other means of looking at the economic base for our people.

But there are also other areas that we are trying to get into, too, the scanning computer for information, but also we are talking about in lines of the possibilities of trying to put a cogeneration-type plant there, to establish a small power plant to produce both electric and heat.

Those are some of the areas that we are looking at. As I mentioned, the areas of coalbed methane. Parts of that also is the gravel-type. But mostly our economic basis is just based on employment from the BIA, IHS and only local jobs in our local towns in Riverton and Lander. But those are only limited to just seasonal type of work. During the wintertime, we have an employment rate of about 80–85 percent, and during summer we are probably down to maybe 60 or 70 percent because of seasonal work of agricultural type work, and those things of that nature. But right now, we are in dire need to try to do our best to still try to promote economic infrastructure for our tribe.

The CHAIRMAN. So your economic development is still at a planning stage now?

Mr. POSEY. In some of these areas there are some studies being done in these areas to try to promote more economic development. Our people are our empowerment, and we feel that if we can go ahead and promote economic development in those areas, our people will have better values, better goals to shoot for. And I think one of the other areas that we are looking into, too, as far as if we are going to talk about economics, is gaming.

The CHAIRMAN. If you could submit to the committee a report on your economic development prospects and programs, I will have the

staff look it over and we'll see what we can do to assist you. Could you do that for us?

Mr. POSEY. Yes; I could. Thank you.

The CHAIRMAN. You spoke of housing. How many units are you still short on?

Mr. POSEY. Well, right now there is a tremendous need on the reservation. Right now, we have as much as at least 10 to 15 people living in one unit. Our people are so proud that they don't want to see any of their relatives living without homes. We still have a long way to go as far as meeting the need through HUD. But also maybe we need more assistance on the private sector side to go ahead and access, like I mentioned before, guaranteed loans that will help us bring in more housing for our people.

Our population right now is growing fast as far as the Arapaho Tribe is concerned. We are up a little over 7,000 right now, and we have an enrollment rate of at least 20 per month that are being enrolled. That was the last count we took for the month of July.

The CHAIRMAN. Thank you very much, Mr. Chairman.

Chairman Windy Boy, what is the economic base of the Chippewa Cree?

Mr. WINDY BOY. Agriculture, gas exploration and a majority, Federal programs, both with the Ratibo Health Board and Natural Resources Department.

The CHAIRMAN. What is your level of unemployment?

Mr. WINDY BOY. The last count a month or so ago it was about 73.5 percent.

The CHAIRMAN. Seventy-three percent unemployed?

Mr. WINDY BOY. Right.

The CHAIRMAN. On the matter of health care, you spoke at quite some length. What sort of problems are you having?

Mr. WINDY BOY. There is so much: Contract health care, contract health service, many Contract Health Emergency Fund [CHEF]; orthodontics, both adolescent and school children; transportation. The list could go on.

The CHAIRMAN. You spoke of Dr. Trujillo. Have you shared your concerns with the President of the United States?

Mr. WINDY BOY. That I will. I am. And with the help of my own brothers, we can plant a seed in both the Vice President's office as well as the President.

The CHAIRMAN. That might help, because that's where the appointments are made.

Vice Chairman Sunchild, I presume you support the Domenici bill?

Mr. SUNCHILD. I do.

The CHAIRMAN. What sort of impact will it have upon Indian country?

Mr. SUNCHILD. That particular one would. You see, right now was passed a couple last year—I chose to run it through. BIA or Department of the Interior, then you have to treat it as programmatic dollars. We have no problem with that, but it would be better if you had some more flexibility, that flexibility of the tribes. And the only thing that would be is there is some hesitation in doing the water rights settlements in some areas, but once they see

some money sitting there, that will give them an incentive to get the water rights settlement done.

The CHAIRMAN. Senator Thomas.

Senator THOMAS. First of all, let me apologize to Mr. Addison. We didn't have the change that made, so I welcome you here, certainly.

You mentioned a number of things relating to Indian health care. What would be a couple of the priority items that are the most important to you?

Mr. POSEY. Can you repeat that again please?

Senator THOMAS. What would be your priority among the number of listed items you gave on health care?

Mr. POSEY. Of course, the priorities as far as health care is always in the area of diabetes. Right now, our people are hurting. There's a question of dialysis that's needed; also, in the areas of transplants. In the majority, there's in transportation—a lot of times in these areas, I know there is—I guess you could say many sir are increasing in the area of diabetes, but as we look at it, that all has to be divided up with all the other tribes. And still the need is still great in those areas.

Our concern here is also with cancer. It is an everyday occurrence. More and more of our people are coming up with this disease. But also, you know, always in the area of alcohol and substance abuse, mental health, maybe somewhere along the line a priority area there would be for adult and youth residential treatment facility. But also, you know, there is always that need for growing, which you know I think we all—all our tribes have that large number of heart disease cases that afflict all our people, and we are trying to ensure that that need is met.

But one of the other most important things, too, is in the poor environmental living conditions that, you know, our people have to face. Like I mentioned before, there is just not enough housing to provide for the need of all our people.

Senator THOMAS. It is important that we establish some priorities. You have a long list of concerns all of which I'm sure are appropriate. But somehow, in this business you have to kind of figure out where your priorities are.

You talked about alcohol recovery. What happened to the program out at the old Wind River School?

Mr. POSEY. Well, I think discussions there are still happening about what to do with that facility. I know we had to move the programs elsewhere because of the building situation itself. The structure of the building was in poor condition.

Senator THOMAS. You mentioned, and certainly one of the potentials is the oil and gas. I am told that one of the problems is that all the difficulties in exploration and contracting and so on, you have to go through BIA, you have to go through BLM, and it makes it even more difficult on the reservation than it is in Wyoming on Federal lands. Is that your opinion?

Mr. POSEY. Yes; there is an ever-growing—I guess what we need as far as the Arapaho Tribe and looking when we do discuss these items as a joint issue, we all have to make sure that we maintain that type of working relationship. But we also need to go after

what we can—what's best for our people and whatever it might be, you know, working with the oil companies and gas and these.

Senator THOMAS. Some have suggested that you contract with the State as they do it on State, BLM and Federal lands.

Mr. POSEY. That could possibly be an area that can be looked at as far as joint tribes are concerned.

Senator THOMAS. Mr. Chairman Windy Boy, you mentioned the $1,500 compared—I don't quite understand that comparison. What's the $3,000 to $5,000 comparison?

Mr. WINDY BOY. Basically you take the number of American Indians in this country and you divide the allocable dollars given by Indian Health Service, it equates to that $1,500-plus dollars to every individual Indian person in this country, as opposed to the rest of America. And that would equate to——

Senator THOMAS. The rest of America, you mean private money, Government money and everything else?

Mr. WINDY BOY. Private, Government, Medicaid, Bureau of Prisons and so on.

Senator THOMAS. Okay. Is it not true, however, that everyone in the tribe has access to Indian Health Service?

Mr. WINDY BOY. Every area is somewhat different. In Montana and Wyoming, ours—as an example, Rocky Boy has three counties that are covered within contract health care. Outside of that, people are on their own. And on the flip side of that, you've got a State like Oklahoma that the whole State is considered a service delivery area.

Senator THOMAS. So it's handled differently.

Mr. WINDY BOY. Right. As well as in Wyoming.

Senator THOMAS. Yes.

Mr. POSEY. If I recall, Montana-Wyoming tribes enrollment are based upon blood quantum, and the logs that I've seen is one-fourth. And how each tribe handles their enrollment is a tribal matter.

Senator THOMAS. Yes; Okay. Is Fannie Mae helping with your housing? Fannie Mae just began to be active, in Wyoming and also on the Wind River Reservation?

Mr. WINDY BOY. Yes; it has. And you know, it can be better and we can always try to work with those outside entities, and to do that we can provide more housing for our people.

Senator THOMAS. Thank you. I might say I am active as chairman of the Rural Health Caucus, and we'd be more than happy to sit down at a roundtable. Western States, like Wyoming, are familiar with what you're talking about.

So thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Thomas.

May I call upon the vice chairman.

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

Senator CAMPBELL. Thank you, Mr. Chairman. I apologize for being late. Like all of us, we have some conflicts, and I had two this morning, and I apologize to the committee that I wasn't here to hear the introductory statements. So I really don't have any

questions I wanted to ask. I just wanted to welcome you and also to the panel that will be up next, including our first woman chairman of the Northern Cheyenne, Geri Small and some of my own relatives in the audience, too, today, Mr. Chairman.

I would also remind the panels, we have a long way to go, but we've come a long way, too. In the last few years, we've had—in my view—some banner years in moving legislation through Congress to help the Indian people, legislation dealing with Indian health care under the Indian Health Care Improvement Act, legislation coordinating alcohol and drug abuse programs and mental health services, those that would improve the economy on Indian reservations, those that would help with job creation, to strengthen tribal sovereignty, would help the tribal courts; a lot of things, including our land consolidation bill that we did as a study with three tribes first, and it was so successful that it was put into place to allow all tribes to consolidate their land.

So we've done a lot. We still have a long way to go, however, and Senator Domenici's bill was mentioned. I'm a cosponsor of that bill and I think it's probably timely. We've had so much money spent and so many fights over water that's getting more and more scarce in the West, between tribes and States, certainly between the tribes in the State of Wyoming some years ago. I remember that litigation. It was extremely expensive.

And in other places we've been able to get tribes and States to agree with Federal partners, too, and certainly cut off a lot of the litigation that could have happened. But there's got to be a better way to do it, and I think Senator Domenici's approach to taking it off-budget is probably the right thing to do. Whether we can get it passed or not, I don't know.

We got off to a pretty good start this year, too, as you know—passing the Native American Education Improvement Act as part of the larger education reform bill. And we're moving along. We're starting to deal more and more with this terrible energy crunch—electricity in California and fossil fuel energy crunch in the rest of the country. And it would seem to me as we lock up more and more Federal lands, which has been done the last few years under the Antiquities Act by naming national monuments and preventing any exploration on them, that there's a down-side to that, certainly, because it makes America more dependent on foreign energy.

The up-side, I think, is going to be for Indian reservations because Indian people have control of an awful lot of coal reserves, oil reserves, natural gas, coalbed methane, and any number of resources. They haven't been able to develop them and they haven't had the expertise or the market has not been there for them.

But as oil and gas and the products from oil get more and more expensive, I just have a hunch the next few years is going to put tribes really in the driver's seat for helping resolve the energy problem we have nationwide. It will help the tribes. Maybe it will help the nation, too. And I certainly look forward to that time when tribes will be able to develop their resources more.

But Mr. Chairman, thanks for convening this hearing. I have no questions. I just wanted to make that statement.

The CHAIRMAN. Thank you very much. If I may ask one question of Vice Chairman Sunchild. As you know, Senator Burns and Sen-

ator Baucus introduced the Rocky Boy North Central Montana Regional Water System Act of 2001. I presume you're in favor of it.

Mr. SUNCHILD. Yes; I am. I just did not mention that one because I didn't want to cut into Mr. Windy Boy's very important health issues. I am in full support of that. In fact, I sit on the ad hoc committee I cochair with Van Kyle. And I am in full support of that because it will help not only Chippewa Cree Tribe, but the North Central Montana people that really in desperate need of water.

The CHAIRMAN. So this is a joint effort on the part of Indian and non-Indian communities?

Mr. SUNCHILD. Yes, sir.

The CHAIRMAN. It will benefit both communities?

Mr. SUNCHILD. It will benefit both communities—all communities.

The CHAIRMAN. Are you aware whether the State is in favor of it?

Mr. SUNCHILD. Yes; they are. In fact, the Governor was willing to testify on our behalf.

The CHAIRMAN. Well, we'll take a good look at it.

Mr. SUNCHILD. I appreciate it, and I appreciate your mentioning it.

The CHAIRMAN. Thank you very much, sir. Now may I call upon the next panel: the president of North Cheyenne Tribal Council of Lame Deer, MT, Geri Small; the chairman of the Shoshone Business Council of Fort Washakie, WY, Ivan Posey; the vice chairman of the Blackfeet Tribal Business Council of Browning, MT, Darrell "Gordo" Horn; and the vice chair of the Salish and Kootenai Tribal Council, Pablo, MT, Jami Hamel.

It's my pleasure to first call upon President Small.

STATEMENT OF GERI SMALL, PRESIDENT, NORTHERN CHEYENNE TRIBAL COUNCIL

Ms. SMALL. Good morning. My name is Geri Small. I am an enrolled member of the Northern Cheyenne Tribe and the president of the Northern Cheyenne Tribe.

I think you have all received my testimony. I am going to give a brief summary and also go over some of the funding needs and unmet needs of our tribe. I will summarize some of these needs in my testimony today. However, attached to my testimony is a more specific report submitted from the tribal program directors. Please take the time to read these reports for more detailed an explanation in support of my testimony today.

A needs assessment has been completed by the Bureau of Reclamation for the preliminary planning of a municipal, rural and industrial water system to serve the reservation. The assessment reveals that there is a dire need for an MR–I system on the reservation. This pre-feasibility study provides enough information to determine the scope of the feasibility study. The tribe requests $500,000 to initiate a feasibility study. The feasibility report will show that the proposed project is feasible and meets the NEPA requirements. The study will be primarily a supporting document for a subsequent funding request to Congress to design and construct and MR–I system.

I'm just going to briefly go over the needs, the reservation public facility needs. We need a public water system, a waste water pond, a municipal station, a fire protection program. Also on health needs and care, the diabetes treatment and prevention facility and services, a disease prevention program and facility, mental health and alcohol drug abuse, a Rosebud Lodge and emergency shelter for children.

Number three are housing. We need more houses. Education—development of irrigating lands funding requirements; a tribal judicial branch and justice system. Our off-reservation fossil fuel and coalbed methane development, economic development and alternative energy development.

I also briefly want to touch on our housing needs. The tribe has over 700 families waiting for a home on the Northern Cheyenne Reservation. At the rate the tribe is presently funded under the NHSDA Act, it will take 35 years to provide these families a home. The critical housing shortage is in addition to the shoddy construction of the older homes built by the unscrupulous contractors. There are hundreds of houses with foundation, roof and other basic construction deficiencies which have shortened the life of these homes, and they are grossly inadequate. The tribe requests an additional $4 million in funding annually to meet the present housing needs.

The judicial branch and judicial system of the Northern Cheyenne Tribe at its present court facility is undersize and outdated. Programs that are affiliated with the courts are forced to use these facilities. This is inefficient for these programs and the people that they serve. There is very little file space and no storage space in the tribal court. The jail facilities on the reservation are grossly inadequate. The tribe cannot house juveniles in the facilities because they cannot be properly separated. The jail suffers from overcrowding because it is not large enough to handle the in-take.

The BIA Detention Center that inspected the facility recently has identified several areas of negligence, including inadequate space and proper ventilation and sanitation hazards. The tribe proposes a tribal justice center that will house law enforcement, detention facilities and the tribal courts. Total cost of this project is estimated at $8 million.

I also want to briefly touch on the proposed Otter Creek coal development and coalbed methane development. At the present time, the State of Montana is pressuring the Secretary of the Interior to transfer Federal mineral rights of 553 million tons of Federal coal to three tracts of land approximately 8,300 acres located across from our reservation, the Otter Creek tracts. Otter Creek is located near Ashton, MT and just across the Tongue River, less than three miles from the tribe's eastern reservation boundary. This Federal coal transfer is the last step in the state's plan to promote coal development on the lands near our reservation. Our reservation is very vulnerable to the down-side of coal-related development and the least immediate financial benefits.

For the past 30 years, the Northern Cheyenne Tribe has been forced to bear the burden of energy-related impacts without realizing its benefits. The transfer of the Otter Creek Federal mineral rights deeply concerns the tribe, as it has never been consulted

during the negotiation process involving the Crown Butte mine buyout. There are many legal problems the tribe has identified with the proposed transfer. It is difficult for the tribe to understand how the State has compensated for speculative benefits, as it has allegedly lost as a result from the cancellation of the Crown Butte mine permit. Because the tribe has never been involved in the process, the tribe's impact and mitigation concerns have never been addressed. The tribe hereby requests the assistance of the committee in impressing upon the Secretary of the Interior the need to engage in a dialog with the tribe that will ensure the tribe will be treated fairly. The tribe is interested in discussing with the committee some ideas for legislative solutions that will help the Northern Cheyenne Tribe and other tribes in similar situations.

The State is also aggressively pursuing coalbed methane development on and around our reservation. The tribe is deeply concerned about the impacts to the groundwater and surface water located underneath and on the reservation. The tribe is requesting $8.5 million over a 5-year period to develop a baseline data and to analyze and monitor the coalbed methane development impacts. The tribe made an identical request in testimony on March 10, 2001 before the Subcommittee on the Interior and Related Agencies Committee on Appropriations for coalbed methane development impact, sponsored by Senator Conrad Burns, but we have yet to receive a response.

Economic development—the tribe is deeply interested in investigating the feasibility of developing alternative energy projects. The tribe is especially interested in determining the feasibility of a biomass project that would consume forest waste products, but would also like to explore the feasibility of other waste products for alternative energy projects using the wind and filler and hydro resources to assess the feasibility of these projects. We must retain well-qualified professionals in relevant disciplines. The tribe estimates that the cost will be approximately $500,000 over a 5-year period.

In conclusion, I realize that I have asked for a great deal of funding. However, the current system of the Federal funding for Indian tribes does not adequately address tribal needs on an annual basis. Coupled with this funding disparity is the Supreme Court's recent decisions eroding tribal sovereignty. These decisions will force tribes to be more dependent upon the Federal Government for funding because tribes have lost jurisdiction to regulate and tax right-of-ways within their reservation boundaries. The tribe requests Congress to enact legislation that reestablishes Indian tribes' regulatory and taxing authority. Furthermore, Congress should reevaluate the Federal funding scheme for the Indian tribes in order to address the current funding inequities.

Again, I thank you for allowing me the time here to testify before you. I am happy to address any questions that you may have.

Thank you.

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

The CHAIRMAN. Madam President, I thank you very much. Before I proceed, I would like to assure all of the witnesses that your full statements will be made part of the record.

May I now call upon Chairman Posey.

STATEMENT OF IVAN POSEY, CHAIRMAN, SHOSHONE BUSINESS COUNCIL

Mr. POSEY. Good morning. My name is Ivan Posey and I currently serve as chairman for the Eastern Shoshone Tribe. The Eastern Shoshone Tribe resides on the Wind River Indian Reservation and is located in Wyoming and is also home to the Northern Arapaho Tribe. The Wind River Reservation was established by treaty between the Shoshone Tribe and the U.S. Government in 1868 and currently consists of 2.3 million acres. The main economy, like the State of Wyoming, largely consists of agriculture, oil and gas development, tourism, and small business.

I appreciate the opportunity to present issues to the distinguished Senators of the committee, including the Senator from our State, the Honorable Craig Thomas. I also look forward to working with the committee on these issues that are going to be presented this morning. I come forward today to address many issues relating to the indigenous people of this country and the trust responsibility the U.S. Government is entrusted to uphold in its relationship with American Indian tribes.

The first issue I'd like to discuss, and I will touch very briefly on it, is the issue of health care. As Chairman Windy Boy has alluded to in his testimony, we pretty much have the same issues. One is the transfer of IHS from the Department of the Interior to the Department of Health and Human Services. We would like more support and efforts and funding mechanisms for funding agencies such as SAMSA and some of those agencies that grant Indian tribes money to create therapeutic communities and to look at issues in terms of our own tribal wellness. So I would allude to Chairman Windy Boy's for-the-record comments on the health care issues.

The next I would like to talk about is a BIA irrigation project. One cannot have a viable economy and a decent standard of living without adequate quantities and qualities of water resources. The United States litigated successfully over decades to secure water rights for our tribes. It would be a travesty of justice to fail to provide resources that put water to use in a beneficial manner. Currently on the Wind River Reservation, we need to rehabilitate and improve the whole Wind River irrigation system.

Twelve-hundred structures, around 60 percent of them, need repair, as well as 190 miles of canal, which consist of 45 percent of the total canal system. In this year of the drought, I don't know how much water is going to be delivered in that system, but we know that in the years coming, there will be inadequate supply of water that needs to be delivered to those systems, and they do need attention.

The next thing I'd like to discuss is the housing issue, and I would allude to Chairman Addison's comments this morning in terms of the housing issues on the Wind River Reservation. Senator Thomas asked the question of Senator Addison this morning in terms of our unmet need for housing. The Shoshone Tribe, for our general housing program, there's an unmet need of 75 homes. For example, on the Wind River Reservation, 22.8 percent of the dwellings have more than one family living in them. So I will al-

lude to my colleague's comments for the Wind River Reservation—Al Addison's comments this morning on that.

Education—we need to stress education as a tool to assist our tribe to become more self-sufficient. We all realize that this starts at an early age. I want to provide a little briefing on the Headstart and Early Headstart programs in Indian country. We need to keep the Headstart programs within the Department of Health and Human Services, as opposed to moving it to the Department of Education as the president has outlined in his plan for this program. Another concern of ours is the "English only" movement, realizing that in Early Headstart and Headstart programs, language is a strong component. Our tribal language is a strong component of those programs and a lot of our young people learn their first words, whether it's English, Shoshone, Cheyenne, Cree, in those programs. We also want to continue your support of institutes of higher learning within the tribal system—the tribal colleges.

My next issue is taxation. The Eastern Shoshone Tribe urges amendments to Federal laws to provide tax relief to existing and potential taxpayers so that the benefits of increasing the economic base of the Wind River Reservation can be maximized. The tribe requests passage of H.R. 224, which extends Indian employment, credit and depreciation rules for property used predominantly within the Indian reservation. We also seek amendments to Federal laws to treat our tribe as favorably as State governments for taxation purposes by expanding our authority to issue tax-exempt bonds for development purposes and to issue such bonds for private activity purposes. The tribe also desires amendments to the payment in lieu of taxes—the PILT program—which will allow tribes to receive the same benefits as state and local governments which have non-taxable Federal lands within their jurisdiction. Finally, Congress should prohibit taxation of reservation resources by states, or in the alternative, require that 100 percent of such collected taxes be returned to the tribal government to provide services on the reservation.

The ability of any government to provide basic services to its residents is dependent on a viable tax base. The viability of reservation tax bases has been undercut by legislation and court decisions throughout the years. The United States cannot in good conscience tell the tribes it is their responsibility to create a vibrant economy, but eliminate or fail to provide the necessary tools. I agree that we have a responsibility for creating viable communities on our reservations. To that end, we are upgrading and adding new business-related laws to provide certainty and predictability to entities doing business on our reservations.

In addition, we have establish an economic development corporation to spearhead and facilitate increased business activity on the reservation. However, we need the additional tools described above to achieve our goal of full employment and quality jobs.

Next I'd like to touch on the drought we are having and experiencing throughout the Western United States. We are in the second year of a major drought on the Wind River Reservation. Throughout the reservation, we are looking water supplies from 17 to 41 percent of normal. This low water supply follows on last year's, which was only marginally better. Many of our reservoirs

have significantly reduced storage. For example, it is estimated that Washakie Reservoir may be out of water except for a reserve for the municipal systems by the time of this hearing.

These conditions have reduced the carrying capacity of our range lands. We do see yield on crops such as hay and alfalfa used for winter feed, and place drinking water systems at risk. For many of our residents, Indian and non-Indians, income from growing forage crops or the raising of cattle is the difference between able to pay the fuel bill or eating. We are doing everything we can do to stretch the use of the water to the maximum, but that will not be enough. We need to begin immediately to get drought assistance out to the reservations before we have a catastrophe. Getting assistance to our farmers and ranchers now will prevent greater hardships this winter. In addition to immediate relief, Congress should provide authority to tribes to declare areas on reservations as disaster or drought areas. Many times with the competing interests claiming state officials' time, we get left behind, or it is assumed that the Federal Government is addressing all our needs. Providing the authority to tribal chairmen under the same conditions used by Governors will make sure emergency needs of our members are addressed in a timely manner.

Telecommunications. As you are well aware, adequate telecommunication service is vital to competing in the current economy. Moreover, access to the basic phone can mean life or death in an emergency in the rural areas of our reservation. The Eastern Shoshone Tribe urges passage of S. 761, the Native American Telecommunications Improvement and Value Enhancement Act or similar legislation. Telecommunications on the Wind River Reservation is significantly below average, even for rural Wyoming. Telecommunications in the area of commerce, the inferior quality of which presently affects every aspect of life here on the Wind River Reservation. I have some information attached to my written testimony for the committee.

The tribe has been investigating pursuing solutions to our telecommunications problems during the last couple of years. We see a low-interest loan program for improvement of telecommunications services on Indian reservations such as the one proposed in S. 765 as an important part of our overall solution. The availability of quality telecommunications is important to our ability to increase economic activity on the reservation.

I would like briefly to touch on our roads. Obviously, we need more resources in terms of reservation roads. President Small briefly touched on the need for roads and the safety issues concerning our roads. If we want to attract viable businesses and become attractive to outside businesses, we need the infrastructure, which includes a roads and transporting systems.

She also touched on tribal courts. Congress needs to fully fund the Tribal Justice Act from 1992. A key component of the sovereignty and legal infrastructure of tribal governments is our court systems. Currently, I would say probably in Montana-Wyoming, all our tribal court systems are underfunded and under-staffed. I think we need to be open to hear and listen to new and innovative ways of providing justice within our tribal court systems.

Another key issue I would like to touch on is the land and the trust. In the effort to reduce jurisdictional disputes, increase tribal income and provide more jobs to tribal members, the tribe has purchased several tracts of land over the years. We have been attempting for 10 years to put these lands into trust. The current system is unworkable and unmanageable. About the time we think we have all the necessary paperwork, the requirements shift. And we are the tribe with specific authority to acquire lands on the reservation. Congress needs to streamline this process. I recommend that the requirements for on-reservation acquisitions parallel the standards for transfer of excess lands on the reservations to tribes.

Last but not least, I would like to discuss the Council of Large Land-based Tribes, which is newly formed and which is a voice for large land-based treaty tribes which the Wind River Reservation, as I mentioned earlier in my statement, has a lot of land. And it will provide a forum for us to come forward and discuss lands, discuss areas or issues that are relevant to large land-based tribes. Sometimes we feel our voice is not heard. So this will be a new organization that we hope will become stronger in the years so that our large rural communities' voice will be heard.

And as Senator Thomas well knows, every time I come out I talk about BIA reform. And I think if it's a legacy that the Senators of this committee would like to undertake, I think it would be well worth it.

As my testimony indicates, there are numerous issues involving tribes that need attention. I come here as a voice for my people—the past, present and future generations who have seen and will see significant changes in the world. The largest population of our tribal society is our young people, and the wisdom and the knowledge of our elders is leaving us fast; 100 years ago, it was said our people would be extinct. Museums and universities stowed our ancestors' remains and ceremonial objects in their institutions so that we may be studied and analyzed. As you can see, we are still here, a testimony to resiliency and to the determination of the human spirit. Our members continue to increase and our voice becomes stronger. American Indians cannot only contribute to one another, but have a tremendous amount to offer society as well. As a great lady Indian in the country, and many of you know her, LaDonna Harris stated, "There are no Indian problems. There are just basic human problems that affect Indian people more at times."

Thank you.

[Prepared statement of Mr. Posey appears in appendix.]

The CHAIRMAN. Thank you very much, Chairman Posey.

And now may I call upon Vice Chair Hamel.

STATEMENT OF JAMI HAMEL, VICE CHAIR, SALISH AND KOOTENAI TRIBAL COUNCIL, ACCOMPANIED BY ANNA WHITING SORRELL, DIRECTOR, OFFICE OF SUPPORT SERVICES, SALISH AND KOOTENAI TRIBAL COUNCIL

Ms. HAMEL. Chairman Inouye, Vice Chairman Campbell and members of the Indian Affairs Committee, I am Jami Hamel, vice chair of the Confederated Salish and Kootenai Tribes of the Flathead Nation. I bring you warm greetings from our tribal council, as you are well-regarded at Flathead. We greatly appreciate your

taking the time to schedule this hearing to seek our views, and we also appreciate the many hours and days that you've spent visiting Indian country.

I am accompanied today by Anna Whiting Sorrell, who is the director of our Office of Support Services, and Mr. Chairman, I would ask your permission if she could join me at the witness table. She has intimate knowledge of self-governance and the health care issues that we will be discussing today.

There are many issues that we could bring to your attention today, but we are going to focus on Indian health care in general, and a particular aspect of tribal contracting within the Indian Health Service. First, I wish to address a particular problem for tribes assuming management of health programs with the IHS wherein we believe contracting tribes are being treated in a discriminatory fashion by IHS As you know, under the Indian Self-Determination Act, an Indian tribe can contract with the Indian Health Service to provide health care delivery the IHS would otherwise be legally obligated to provide. Some tribes contract, while others allow IHS to directly operate their clinics or hospitals.

Flathead's health care delivery system is unique in Indian country. No other CHS-dependent tribe has a reservation in excess of one million acres and a population of over 10,600 IHS-eligible beneficiaries. Most service units serving such a large user population provide care through their own doctors at their own hospitals or clinics. In these locations, only the most serious cases are referred to the private sector for treatment, which is then paid for with CHS funds.

Congress has appropriated catastrophic health emergency funds, or CHEF, to assist IHS in the payment of extremely high-cost CHS cases. The CHEF fund, by law, is managed by IHS headquarters which sets the operating policies and procedures. When health care costs for a single incident are extraordinarily high, for an auto accident or a surgery for instance, and exceed the threshold amount of $20,800 the tribes or service units are reimbursed with CHEF funds. But because the CHEF fund is underfunded, IHS usually runs out of money about the 10th month of the fiscal year, forcing tribes and IHS to look for other resources to pay for these necessary costs.

When a tribe operating its own program under the contract has a case that would normally qualify for CHEF funding reimbursement and the national fund has run dry, that tribe is told that it is out of luck and must either pay for the doctor bill themselves, or stall the hospital and pay for it with the next year's fiscal funds. However, when a service unit being run directly by IHS has a case that would qualify for CHEF, at the same time of year when the CHEF funds are gone, IHS simply reimburses the hospital with other IHS dollars, generally from pooled CHS funds either regionally or nationally.

This is simply unfair to tribes that contract, and we believe it's contrary to Congress' intent and to the spirit of the Indian Self-Determination Act. In fact, having to take on this unmanageable risk, combined with insufficient allocation of funding by IHS, caused Flathead to become within a hair of retroceding our entire health care compact back to IHS just last month. And I would like to Ac-

knowledge Sarah Dudley of Senator Baucus' office and Stan Ullman of Senator Burns' office who were our congressional delegation was instrumental in helping to resolve our health care crisis last month.

We do not believe Congress ever intended a contracting tribe to take on a risk that an IHS direct-operated service unit would not be asked to take. But IHS is doing so and causing a major obstacle to tribes to assume management and operation of this health program. Think of what would happen if the CHEF funds ran dry and we had a few costly emergencies late in our year. We could bankrupt ourselves, our tribal funds by compacting with the Federal Government.

Surely, the Indian Self-Determination Act was not intended to be implemented in such an arbitrary fashion. 25 U.S.C. Section 1680(a) specifically states that contracting tribes should be provided funding, quote, "on the same basis as such funds are provided to programs and facilities operated directly by the service". In the area of CHS and CHEF funds, this is not happening, and we believe this must be corrected.

We ask this committee's help in further clarifying and if necessary amending the Indian Self-Determination Act to make it clear that tribes exercising their rights are not forced to assume this unmanageable risk. And our legal staff would be happy to work with Patricia Zell in creating some language to that effect. Tribes must be allowed to access the same pools of funds that IHS direct service units can. It is only fair and it is what we believe Congress and the act intended.

Mr. Chairman, if the Indian Health Service were properly funded, this wouldn't be as much of a problem. But the fact is, Congress has tremendously underfunded the IHS. Senate Majority Leader Tom Daschle and our Senator Max Baucus acknowledged this earlier this session when they and others proposed an over $4 billion increase in funding for IHS as part of the budget bill. Although this request passed the Senate, it was not agreed to in the conference committee.

I realize it is not the Committee on Indian Affairs that appropriates funds for IHS and that members of this committee are understanding of the unmet needs of the Indian country. But it must be stated that the extent of inequity between the Indian Health Service versus other Federal agencies such as Veterans Administration is simply breathtaking. You have likely seen the comparative data. There was a report from the National Indian Health Board. IHS is funded on a national average of around $1,440 per Indian person. At Flathead, we're only getting around $1,100 per year per eligible IHS beneficiary. The Veterans Administration receives funding at a level in excess of $5,000 per capita for veterans who are eligible to receive health services. This means that the first Americans, who gave up hundreds of millions of acres of land so that the United States could exist, and who bargained in treaty negotiations for the provision of health care, are still considered the least-healthy population of persons in the United States due to the lower funding levels.

Please understand that we fully support funding full funding for the Veterans Administration, and are proud that so many of our

tribal people have served in defense of this country. But the comparison of health-related funding levels cannot be overlooked. We are asking this committee's support for increased funding. It is time that Congress stopped just acknowledging the funding inequity and took action to finally rectify it and bring parity to Indian tribes.

Thank you.

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

The CHAIRMAN. I thank you very much.

I would like to yield to a very distinguished warrior of the Northern Cheyenne Tribe.

Senator CAMPBELL. Thank you, Mr. Chairman. First, to all of our people who testified, I would draw your attention to this morning's Wall Street Journal. There is a very interesting article in here about Indian tribes who are beginning to recognize the potential of the energy crisis, as I mentioned a while ago. And this story is about the Blackfeet—actually that's Earl Old Person who many of you know on the front—that have entered into an agreement with a company in San Diego to build wind turbines. And they estimate that those wind turbines are going to make them about $2 million a year profit and be able to supply energy for 22,000 homes.

The story goes on to say that 11 tribes in South Dakota under the leadership, as I understand it, of Tex Hall of the Three Affiliated Tribes, have formed a consortium to do that, to try to work agreements to supply more energy. I just bring that to your attention because there's no shortage of wind in Montana or Wyoming, either one. The Wind River Reservation didn't get that name by accident.

So you might look into that as an opportunity, because I think there are lots of opportunities out there for Indian people that have some business acumen. And I might mention to the people that are here from Flathead, I think that part of the wonderful business acumen that the Flathead Tribe has developed is perhaps because for years and years some of your what are now called 'elders' like Doug Allard spent many years in California, and he was a very, very good businessman out there. I think people who came back to the reservation who had a lot of business acumen has really helped the Flatheads. He's an old personal friend of mine. You might say hello for me when you see him.

Let me just ask Geri Small, we had talked about this earlier. She came into see me this morning pretty early, and she told me about this Otter Creek problem, Mr. Chairman. But I wasn't totally clear at it, and I am still not totally clear. And I would like to ask her some questions so I can get it on the record, and also so that you and I both could understand a little better. But as I understand it, Geri, the Federal Government and the State of Montana entered an agreement. But they entered an agreement the tribe was not aware of. Is that correct?

Ms. SMALL. Right. Also, we weren't consulted and there was no negotiations between Secretary Babbitt at the time and Marc Racicot, Governor of Montana. There was no negotiations there. There should have been.

Senator CAMPBELL. And it concerns a tract of land under which lies a seam of coal.

Ms. SMALL. Right.

Senator CAMPBELL. Who owns the surface rights? Is that Federal Government that owns the surface rights?

Ms. SMALL. Yes.

Senator CAMPBELL. Or owns the whole thing now?

Ms. SMALL. Yes; they own the whole thing.

Senator CAMPBELL. I see. And the transfer allowed the State of Montana to profit from it, to mine it, to control the coal under it?

Ms. SMALL. Yes.

Senator CAMPBELL. Does the surface—the whole thing transferred to them, the surface rights, too?

Ms. SMALL. It hasn't been transferred yet.

Senator CAMPBELL. Has not been yet.

Ms. SMALL. No; and the tribe wants to intervene in that process so the——

Senator CAMPBELL. It borders the reservation?

Ms. SMALL. Yes; it's right along the Tongue River.

Senator CAMPBELL. Are there other resources under there, like coalbed methane gas, which often comes with coal?

Ms. SMALL. There is, because it is right adjacent to the reservation.

Senator CAMPBELL. And I happened to live on the Southern Ute Reservation, Mr. Chairman, and there are huge deposits of coal and coalbed methane, too. And as I understand it, the coalbed doesn't move, but the gas does. So if there's a seam and if you have a property right line, you could drill on one side of that line and actually drain the gas from the other side of the line, from your neighbor. That's the way gas moves around, unlike coal. I think it's really a major problem and certainly not in the best interests of the tribe to have the State enter an agreement without the tribe even knowing about it. But I did want to get that on the record and get it clarified a little bit.

I think that's the only questions I had to ask, Mr. Chairman.

Ms. SMALL. Thank you.

The CHAIRMAN. It might be something that would require some legislation. I would be very happy to work with you on this.

Senator CAMPBELL. I would appreciate that. I also mentioned to them, I don't know where it's at or what the tribe has done, but they might have to try to get an injunction until the thing is dealt with, too. Thank you.

The CHAIRMAN. I would like to ask all of you a few fundamental questions so that the committee can get a better understanding. What is the population of your tribe?

Ms. SMALL. Total about 8,000.

The CHAIRMAN. What is the rate of unemployment?

Ms. SMALL. 65 percent to 70 percent.

The CHAIRMAN. 65 percent?

Ms. SMALL. Yes.

The CHAIRMAN. And what is your economic base at this moment?

Ms. SMALL. Timber and agriculture, cattle.

The CHAIRMAN. And you are looking to other sources of income?

Ms. SMALL. Yes.

The CHAIRMAN. And Chairman Posey, what is your population?

Mr. POSEY. The population for the Wind River Reservation is around 10,000, Senator. We have around 3,200 Eastern Shoshones and around 7,000 Northern Arapahos.

The CHAIRMAN. And what is your rate of unemployment?

Mr. POSEY. For the Shoshone Tribe, it is 46 percent.

The CHAIRMAN. Vice Chair Hamel, what is your population and rate of unemployment?

Ms. HAMEL. We have just a little under 7,000 tribal members. The rate of unemployment is about 30 percent.

The CHAIRMAN. 30 percent, and your reservation is the best in that area? I believe the national rate of unemployment today is less than four percent. And yours is 65 percent?

Ms. SMALL. Yes.

The CHAIRMAN. On the matter of the Otter Creek problem, will you ask someone in your tribe or a tribal attorney to work with our staff to come up with appropriate legislation?

Ms. SMALL. Yes, I can; yes, I have talked with Senator Campbell already this morning and hopefully we can get something done on that.

Senator CAMPBELL. Mr. Chairman, if you would yield just 1 moment. I might tell you, when you are framing it up and doing your research, you might want to look into the settlement of the *Southern Utes* v. *Amoco* which was just done last year, because they had almost an identical problem. It dealt with checker-boarded land within the reservation, but it was almost the same problem of who owned the gas since it could move, and who would be deprived of their right if somebody else drilled and took the gas from under their land.

Ms. SMALL. Thank you.

The CHAIRMAN. Madam President, you spoke and shared with us a whole list of funding requirements. I am certain you are well aware that as a general principle, if they do not come from the administration, these funding requests are usually initiated by members of the Senate that represent the State. I presume you have discussed this with your Wyoming Senators?

Ms. SMALL. Montana.

The CHAIRMAN. Montana Senators?

Ms. SMALL. Yes.

The CHAIRMAN. And are they supportive?

Ms. SMALL. Yes.

The CHAIRMAN. It would help if they should submit to the Appropriations Committee a letter indicating such support. Would you ask them to do that?

Ms. SMALL. Yes; they will. I just want to add that I have just recently been elected in November and I am just getting moving here.

The CHAIRMAN. Chairman Posey, you spoke at some length on your tax problems. Do you have legislation to address this matter?

Mr. POSEY. At this time, no, Senator. We have been in negotiation with our State in terms of DOL taxation. Right now, if a producer comes on our Wind River Reservation they're paying a 22-percent tax, and so we've got to go into in terms of tax incentives, we're looking at more operating agreements. But we are—that is why we bring this issue forward. I think we need to do something

on some national legislation in terms of our discussions with the State of Wyoming have not moved forward as we would like to see them.

The CHAIRMAN. So the State taxes and you tax the same source?

Mr. POSEY. Yes.

The CHAIRMAN. And you pass it on to the consumer?

Mr. POSEY. The producers pass it on to the consumer.

The CHAIRMAN. And you are now working on an amended tax agreement with the State?

Mr. POSEY. Yes; one of the discussions we have kind of thrown around is the tribes going into operating agreements. That way, it cuts out the tax that the State could impose. But again, some of our biggest roadblocks is the BIA because they feel if the tribes only go on operating agreements and if it's not a lease, whether it's a 38- or 82-lease, they would have no authority or regulation over an operating agreement as opposed to a lease.

The CHAIRMAN. Have you discussed this matter with the new assistant secretary?

Mr. POSEY. No; I haven't, Senator.

The CHAIRMAN. Would you submit a separate report on this tax problem to the committee? We would like to study that. And if you do have any ideas about proposed legislation, will you also list those? It would be very helpful.

Mr. POSEY. Yes; we will, Senator.

The CHAIRMAN. And now if I may call upon the vice chair of the Salish-Kootenai Tribe. When the tribe was told that there were no more catastrophic health emergency funds, what other funding resources were available? Was there anything else available?

Ms. HAMEL. We would have to go into our own tribal funds.

The CHAIRMAN. Now, you have had, as far as you are concerned, very little cooperation from the Indian Health Service on this matter?

Ms. HAMEL. We have been working closely with IHS this past year. And I believe that we have come to an understanding that we will continue the funding agreement, but we have to discuss the issue of managed care, and that would include this risk of the CHEF cases.

The CHAIRMAN. Do you believe that legislation is required to address your problem?

Ms. HAMEL. I believe that's why we are here today, and actually have requested it in addition in the appropriations language, although I don't think it made it through the Senate. As many of you are probably aware, CSKT came very, very close to retroceding the entire IHS compact back to the Indian Health Service. And for those of you that know CSKT, you are well aware that we are one of the forefront tribes and able to manage our programs in an extremely competent manner. This whole funding issue has become extremely difficult. This managing CHEF cases, because we are CHS-dependent, and that means that we purchase our care on the open market, that some major cases—you know, a case can go to $200,000 very easily in the medical world today in two or three weeks. If we are not able to get reimbursed by that, it really could bankrupt the tribe very quickly.

Now, IHS is able to pool their money when the CHEF fund is gone. They will ask the area to pool their money. If the area can't, then they'll ask the nation to do it, and they will get the bills paid through that manner. Because we have assumed the operation of the contract health program, we don't have anywhere to go to pool the money. We believe that there should be some creative mechanism within 638 that allows us to either buy into a pool somehow or to work within Indian Health Service so that we aren't, at the end of the year, forced to cover costs that certainly weren't made available to us in our annual negotiations.

Indian Health Service has worked with us. They have been able to provide us some additional funding to get us through this fiscal year. And so we are really moving in a direction that we believe will really be a pioneering effort in tribes managing their care more like a health management organization, an HMO, as opposed to where we currently are today.

The CHAIRMAN. And you believe that legislation is necessary to address this matter?

Ms. HAMEL. We do. In our resolution of our retrocession issue, although we were able to get some additional funding, that doesn't take care of the long-term issue. And we have not felt like they have been very responsive. Although they will continue to talk, we have been told that they really don't understand how they could ever help us get through this managed risk problem, this shared financial managed risk problem, that really does put tribes in a tremendous financial bind.

The CHAIRMAN. Have you discussed this matter with your Montana Senators?

Ms. HAMEL. We discussed it with Senator—what we have done is during this fiscal year 2002 appropriations process asked that language be included, and we were not successful at being able to get that put into the appropriations language. And since our Senator Burns actually chairs the Subcommittee on Interior Appropriations, we have had discussions with him and his staff on this particular issue and have not come to a resolution that we've been able to mutually agree upon.

The CHAIRMAN. I will assume that this matter is not in the House bill.

Ms. HAMEL. It is not, sir.

The CHAIRMAN. I was just added as a member to the Interior Appropriations Subcommittee, so I will see what I can do.

Ms. HAMEL. If I may for just very briefly clarify for one second. Health care is the number one priority for all Indian people in this country, as it is for everybody. I mean, it's a basic human right that you have health care. We shouldn't have to prioritize whether we want diabetes taken care of, substance abuse, or someone who has cancer. You know, right now if you're in prison, you get more funding for health care than Indian people in this country. The rate is so low of what we actually receive for basic health care, that that has really become a primary issue that our tribes are wanting to take on at this point.

The CHAIRMAN. And the problem that you are confronting on catastrophic health care is faced by all tribes?

Ms. HAMEL. Yes.

The CHAIRMAN. I presume you know the committee's chief council Patricia Zell? Have you discussed this matter with her? I would suggest you do so and see if we can work out something here.

We have been advised that in a few minutes the Senate will be voting, so our timing has been perfect. I would like to thank all of you for traveling long distances to be with us, and if you do have any additional information you would like to share with us, please feel free to do so. And if you feel that some of your problems will require legislation, discuss this matter with us. We will do our very best.

Ms. POSEY. Thank you.

Ms. SMALL. Thank you.

Ms. HAMEL. Thank you, Mr. Chairman.

[Whereupon at 11:40 a.m. the committee was adjourned, to reconvene at the call of the Chair.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF BRUCE SUNCHILD, VICE CHAIRMAN, CHIPPEWA CREE TRIBE OF THE ROCKY BOY'S RESERVATION

Good Morning Mr. Chairman, Mr. Vice Chairman, and distinguished members of the Committee on Indian Affairs. My name is Bruce Sunchild, vice chairman of the Chippewa Cree Tribe of the Rocky Boy's Reservation in Montana. I serve as the tribal cochair of the Tribal/Department of the Interior Water Funding Taskforce. The Tribal/DOI Water Funding Taskforce was formed in the last administration as an entity that could bring together Indian tribes and involved Federal agencies to examine alternative methods of funding Indian Water Settlements. We are pleased to have been joined in this effort by the Ad Group on Indian Water Rights. As this committee is aware, the Ad Hoc Group was established jointly by: The Western Regional Council, the Western Governors' Association, the Native American Rights Fund and the Western States Water Council. Recently the Office of Federal Affairs for the State of New York has joined this group because of that state's particular interest in pending Indian land claims. The Ad Hoc Group has held a number of successful briefings for congressional staffers who want to learn more about Indian Water Rights Claims and Settlements and the need to figure out a method of funding these settlements.

To that end I lend my strong support to the draft proposal by Senator Domenici of New Mexico that is known as the "Fiscal Integrity of Indian Settlements Protection Act of 2001". This legislation will amend the Budget Act and permit an adjustment to statutory discretionary spending limits for appropriations for authorized Indian land and water settlements. This will create room within the budget for the funding of Indian land and water settlements in a manner that will not be detrimental to ongoing annual Indian programs. This is the route recommended by both the Tribal/Interior Water Funding Task Force and the Ad Hoc Group on Indian Water Rights. It is essential that the Domenici language becomes law this year and I extend my deep appreciation to those members of the Senate who have agreed to cosponsor this bill or amendment.

A top priority of the Chippewa Cree Tribe for this legislative session is the "Rocky Boy's/North Central Montana Regional Water System Act of 2001" as introduced by Senators Burns and Baucus and Congressman Rehberg on May 22, 2001 as S. 934 and H.R. 1946. The legislation, among other things, requires the Secretary of the Interior to: Construct the Rocky Boy's North Central Montana Regional Water System in the State of Montana, to offer to enter into an agreement with the Chippewa Cree Tribe to plan, design, construct, operate, maintain, and replace the Rocky Boy's Rural Water System, and to provide assistance to the North Central Montana Regional Water Authority for the planning, design, and construction of the noncore system. This is a joint effort between the tribe and the non-Indian communities of North Central Montana.

North Central Montana is an and region with less than 12 inches of rainfall per year and we are currently experiencing our 6th straight year of drought in this region. The Chippewa Cree Tribe is in critical need of adequate drinking water for

our growing population. In an effort to overcome this problem, the Congress passed the "Chippewa Cree Tribe of the Rocky Boy's Reservation Indian Reserved Water Rights Settlement and Water Supply Enhancement Act of 1999," [Public Law 106–93]. This water rights settlement legislation was the first Indian water rights settlement bill since 1992. Without the leadership of the Committee on Indian Affairs we would not have been successful.

S. 934 authorizes the Federal Government to begin the planning, designing and construction of a water pipeline project to provide drinking water for our reservation and the rural communities in six northern Montana counties. This effort to bring drinking water to our reservation and the non-Indian communities in north central Montana has been a collaborative effort between the tribe and the North Central Regional Water Authority. While our Water Settlement Act authorizes some additional on-reservation storage it also reserved for our future use, 10,000 acre feet of water in the Tiber Reservoir, which is some 50 miles west of our reservation. Our Settlement Act initially included language authorizing a water pipeline from Tiber to the Rocky Boy's Reservation. This was deleted as various entities in the Federal Government felt we should get the settlement act through first and then come back with separate legislation authorizing a pipeline to get the water to us. The non-Indian communities that surround the Rocky Boy's Reservation are also in need of drinking water and are in fact going to be in violation of the Safe Drinking Water Act if they can not increase their supply of clean water. It only makes sense to have this legislation drafted in a manner that benefits both on and off reservation communities. The need for adequate drinking water has brought the reservation community and our surrounding non-Indian neighbors together in realizing that by working together we can better understand each other's needs and help each other to accomplish them.

Mr. Chairman, Mr. Vice Chairman, and members of the committee, on behalf of the Rocky Boy's/North Central Montana Regional Water System, the Chippewa Cree Tribe respectfully requests this committee to prioritize our bill, S. 934 and conduct a hearing as soon as possible.

TESTIMONY PRESENTED BEFORE THE SENATE COMMITTEE ON INDIAN AFFAIRS GOALS AND PRIORITIES FOR THE 107TH CONGRESS UNMET HEALTH NEEDS

Submitted by the Northern Arapaho Tribe

JULY 12, 2001

Mr. Chairman, my name is Anthony Addison and I am Chairman of the Northern Arapaho Business Council. Thank you for the opportunity to speak with you today. I am here from the Wind River Reservation in the State of Wyoming. I would like to extend a special greeting to our Senator, the Honorable Craig Thomas. Today, I want to talk to you mainly about our health issues and living conditions. Let me begin by explaining our relationship to the Federal government.

ESTABLISHED RIGHTS:

The Northern Arapaho enjoy a special relationship with the Federal government that no other group in America has. Historically, this relationship between the Northern Arapaho and the Federal Government has been expressed through the language of treaty and law. Further, this relationship is specifically founded in the United States Constitution and is guaranteed through Acts of Congress, presidential directives and judicial rulings. It is the right of the Northern Arapaho to organize and be recognized by the Federal Government as a separate, distinct political entity that has a direct relationship with the United States Government. Tribal input and participation is required in the development of all Federal policies which directly affect the lives of American Indian people. In April of 1994, the Department of Health and Human Services was given the opportunity by the Office of Management and Budget to involve tribes and representatives of tribes in the formulation of the Federal budget and decisions about the President's budget. The Department of Health and Human Services is in the process of filling the position of Intergovernmental Affairs Specialist within the Office of Intergovernmental Affairs. This is a critical Northern Arapaho position that will be responsible for the Department's implementation of the Federal initiatives and mandates related to government-to-government consultation.

SUGGESTIONS:

1. The legal status of the Northern Arapaho tribes is as an independent Federally recognized government **must** be articulated in all Federal legislation and policy. Each time the window of opportunity opens, the interests of the Arapaho tribe must be expressed, especially at the Congressional level. Without the benefit of federal administrative support structures or funding, tribal governments cannot be expected to bear the burden of managing programs on behalf of the federal government.
2. All legislation and policy governing Federal human services programs should provide the Arapaho tribal government the option of direct federal program funding.
3. The Arapaho tribe should be allowed to serve all tribal members and other eligible persons in their service area regardless of State boundaries.

ASSESSMENT OF CONSULTATION:

For a long time the Northern Arapaho have repeatedly asked to be part of the decision making process at levels of the Federal government that impact upon our tribe. The Northern Arapaho tribe wants to participate in the formation of Federal policy, budget and implementation decisions on a government to government basis.

There is a shared responsibility by the Federal government and the Arapaho tribe for the health, welfare, education and economic development of our Arapaho people on the Wind River Reservation. The Federal Government has developed a consultation process but clearly it is not enough. The Arapaho tribe views this process as being input rather than decision-making process. The Federal Government decides how much effect tribal input will have on the final decision(s) of any Federal entity. The Arapaho tribal government needs to better understand and be better informed how the Federal Government determines what funding formula is used when dollars are disbursed.

SUGGESTIONS:

1. The Arapahos feel their representatives must participate as decision makers at the headquarters, area offices and service units governing bodies.
2. Full Financial and Programmatic Disclosure, on the part of the governing bodies at all levels, is a must when consulting as equal partners with the Arapaho tribe.

INDIAN HEALTH CARE:

It seems that each time the Arapaho tribe negotiate for health care monies, they face the threat of Indian health care being reduced as the federal budget grows, as administrative and FTE cuts are mandated and as IHS is forced to compete with other agencies for reduced amounts of discretionary dollars. The growth rate of the Arapaho tribe is moving at a fast pace and we are told that IHS funding will be cut but we are expected to meet the Healthy People 2000 and 2010 Objectives. There has been specific health status objectives for Indian people included in the amendments to the current Indian Health Care Improvement Act. We think that Dr. Trujillo should continue as the head of IHS to provide continuity in service.

SUGGESTIONS

1. Indian health status will not be met by funding a handful of projects with discretionary grants from agencies scattered throughout the Department. To best meet community needs of the Arapaho tribe, <u>funding must come directly to tribal programs</u>.
2. IHS budget must be adequate to provide care and preventative services to Indian people.
3. How is the IHS budget arrived at? Who determines the formula for IHS funding? The Arapaho tribe feels they are left out when decisions concerning the IHS budget(s) are made. We need to be included in all discussion(s) concerning IHS funding and once again we emphasize the principle of FULL DISCLOSURE. Some views the Arapaho tribe has about the IHS budget are:
    a. DIRECT CLINICAL SERVICES:
        i. When mandatories are presented to the Arapaho tribe, appropriate monies will be included for compensation.
        ii. Third party billing will not be counted to offset budget.
        iii. Whenever new building or additional construction to health facilities occurs,

monies to provide for full staff will result along with operations and maintenance.

iv. Increase in monies to the Arapaho tribe will address population growth. The Arapaho Tribe has a total population of 7,003 as of July 2000. At present, there are 20 applications for enrollment per month; thus far, all have been approved. If this trend continues, there will be a substantial population increase in the near future.

b. CONTRACT HEALTH:

i. The budget must adjust for medical inflation identified by the Bureau of Labor Statistics, Consumer Price Index.

ii. Increased monies to address population growth.

iii. The Catastrophic Health Emergency Fund will be budgeted at a level that **equally** covers all qualifying cases.

iv. Research dollars should go directly to the tribes.

c. COMMUNITY HEALTH SERVICES:

i. Appropriate increases in monies to compensate for all government mandates.

ii. Increase in monies to match population growth.

iii. Full funding to meet full staffing of new or additional building at health facilities.

iv. Increases to meet demands of Amendments to the Indian Health Care Improvement Act.

d. BUDGETS AND LOAN:

i. Any reduction in IHS budget will not impact on the direct delivery programs.

ii. To assure Indian representation in the health professions, the scholarship and loan repayment program will increase.

iii. Any monies designated as budget saving will be put in Contract Support coffers.

iv. Monies will be available for all necessary contract support costs associated with 638 and self-governance tribes.

e. FACILITIES AND RELATED SUPPORT:

i. The Arapaho tribe is in need of more medical staff, buildings and equipment to house them. This is especially true for the needs for more dentists optometrists, and podiatrists. As the Arapaho tribe has a high disproportionate number of diabetics to general population, we feel the need for more support to address this deadly disease. Diabetes often leads to dialysis or amputation and with the amount of people on dialysis; we feel we need a dialysis center. The special diabetes grant for a five year period will certainly help to fight this deadly disease but after five years; where do we go from there?

ii. There are two sites served by Tribal Health; one site is at Arapahoe and the other site is at Ethete. We need two new buildings or modulars. The Ethete site will house the Tribal Health Administration, CHRs, and the Special Diabetes Program. The Arapahoe site will house the CHRs and other special programs. There are 10 employees at the Ethete site and 8 at the Arapahoe site. Presently, the Arapaho Business Council has a request submitted to the Area Director asking to purchase two modular buildings and these are to be placed at Arapahoe and Ethete. The process for purchasing the modulars are described in the request submitted to the Area Director (see attached letter). The buildings housing the CHRs at Arapahoe still has lead base paint on the walls and exposed asbestos in the tiles on the floor. The building is not handicapped accessible. The building housing the CHRs at Ethete is also not handicapped accessible and is not in compliance with fire safety standards.

iii. Transportation is a real problem for Tribal Health. We transport locally and out of state for medical and substance abuse issues. The CHRs do most of the transporting. Not too long ago, OMB felt the CHRs were nothing more than taxi cab drivers and as a consequence, the CHR budget was cut nationally. The Arapaho CHRs need to be relieved of this burden. At one time, at the

early inception of IHS, this was their responsibility - patient transport. Throughout the years, this responsibility has shifted to the Tribe. We need to shift this responsibility back to IHS or be funded for more positions for transporters along emergency transportation vehicles, medivacs and EMTs.

f. ELDERLY:

i. The Elderly on the Wind River reservation need appropriate renovation/additional building to the nursing home on the Wind River reservation. Both the Arapaho and Shoshone members use Morning Star Manor, a nursing home operated by the Shoshone tribe. Included in this need is more medical staff, specialized gerontology training and nutritional training to meet elderly needs. The elderly that choose to remain in their homes should be provided for in building repairs to their homes if needed or homes built for them. Most Arapaho Elderly choose to remain in their own homes.

g. YOUTH:

i. The youth of the Arapaho tribe also need buildings for preventive type activities. This includes space for recreation. There is a shortage of buildings or space to provide recreational activity for our youth on the Wind River Reservation. Again there is a demonstrated need for more dollars in this area.

h. FAMILY AND DOMESTIC VIOLENCE:

i. Family and Domestic violence is an issue that needs attention on the Wind River reservation. Certain programs address the problem of violence and abuse but to adequately house victims is a problem of social services programs on the reservation. We need more dollars to address this growing social issue.

i. GENDER ISSUES:

i. Men and women health issues programs. As an example, special clinics for men — i.e., prostate and colon cancer awareness; for women, mammography, breast and cervical cancer.

j. VETERANS PROGRAM:

i. The Arapaho Tribe has a high number of veterans. Many of these veterans qualify for services through VA clinics and hospitals. A veteran's office on the Reservation could coordinate these services for our veterans.

ELDER HEALTH AND LONG TERM CARE:

In 1972, the life expectancy for American Indians was 60 years of age. By 1990, life expectancy for Indians has increased to 73 years of age and by the year 2000 is expected to be just 3.4 years less than the general population of the U.S. Indian people are living longer; however, Indian elders comprise a major risk group for poor health, chronic disease, limited income, high medical expenditures, institutionalization and an increasing need for long term care. There is a need for improved and quality health care for the elderly on the Wind River reservation.

SUGGESTIONS:

1. Initiate demonstration project in which IHS and the Arapaho tribe will share the responsibility of the delivery of long-term care in a government-to-government partnership basis.
2. IHS must work closely with other DHHS and Federal agencies to focus funding and program development on Indian elder needs. The Arapaho tribe must receive direct funding.
3. IHS must improve access to IHS services and medical coverage by developing:
   a. geriatric training for community health and clinical staff and fund home health positions.
   b. increased funding and give high priority to requests for **more dentists, optometrists, and podiatrists** and other specialized disciplines.
   c. expanded preventive services to elderly and include well-elder clinics in community education programs.
   d. clinical and community health outreach services to tribal operated long term care facilities.
4. Medicare and Medicaid Certification. The Arapaho tribe should be allowed flexibility in design and operation of home and community based long term care to meet the needs

of the elders and to improve their functioning within the community. Medicare and Medicaid receipts will be used to maintain accreditation standards.

HOUSING & SOCIAL SERVICES:

Our living conditions continue to be poor. In addition to more housing we need to improve our sewer and water treatment facilities. There is a great need for additional access to low cost loans so that more of our people can obtain housing. Along with this goes the need for improved social services. Better childcare and greater access to mental health are two important needs.

TRIBAL COURT SYSTEM:

Our Tribal Courts are always an area of concern. We need more support for our Tribal Court System, including assistance in training more lawyers and judges and educating our people.

Our courts are also key to the issue of sovereignty. It is critical that our right to sovereignty be maintained. We welcome the opportunity to enter into government to government discussions on all these issues.

NATURAL RESOURCE AND ECONOMIC DEVELOPMENT:

This is an area of great concern to the Northern Arapaho Tribe. We feel that the development of our natural resources and other economic development opportunities could assist in our efforts to improve the quality of health care and improvement of living conditions. On the Wind River Reservation, we are blessed with oil, gas, coalbed methane, gypsum, gravel and other natural resources. We need help in developing Tribal owned and operated companies to develop our natural resources. We need to take control of the development of our resources and not leave it in the hands of outside companies.

Economic development of other kinds is also of critical importance. Unemployment of the reservation reaches 80-85% during the winter and is 60-65% in the summer. We are actively pursuing economic development programs to bring new jobs and job training to our Tribal members. We are working on identifying contract opportunities in the federal and

private sectors in relation to information technology. Among these projects are digital imaging process, telecommunications projects, resource development as well as other programs. Any assistance that could be given to help us develop those projects would be appreciated.

Water is always a great concern to our Tribe. We not only need to maintain our existing water rights; we need to improve and develop our irrigations systems so we can put that water to beneficial use. We support the Domenici Bill.

Our road systems need improvements. Roads in Indian Country in general are the worst in the United States. We need cooperation with the government at all levels- Federal, State and County- to help improve and maintain our roads.

I would like to thank you for this opportunity to speak with you about some of our areas of concern. We look forward to working with you to address these issues.

The Chippewa Cree Tribe of the Rocky Boy's Reservation

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TESTIMONY OF
ALVIN WINDY BOY, SR., CHAIRMAN

CHIPPEWA CREE TRIBE
OF THE
ROCKY BOY'S RESERVATION

ON
THE GOALS AND PRIORITIES
OF THE
MONTANA AND WYOMING TRIBES
FOR THE
107TH SESSION OF THE CONGRESS

BEFORE THE
COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

WASHINGTON, DC
JULY 12, 2001

Good morning, Chairman Inouye, Vice Chairman Campbell and the other distinguished Members of the Indian Affairs Committee. My name is Alvin Windy Boy, Sr., and I am the Chairman of the Chippewa Cree Tribe of the Rocky Boy's Reservation in Montana. I also serve as the Chairman of the Montana Wyoming Tribal Health Board. On behalf of my tribe and the Montana and Wyoming Tribal Leaders Council, I thank you for this opportunity to present to you our legislative priorities for the 107th Congress.

First of all, I would like to commend the Chairman and the Committee Members for conducting these hearings around Indian country to get the perspectives of tribal governments on the goals and priorities for this congressional session. I would like to begin by acknowledging all the tribal leaders that have gone on who fought hard to protect and preserve tribal sovereignty, self-determination and self-governance. The fight to protect tribal sovereignty and preservation of the government-to-government trust relationship continues today more than ever. As the Chairman of my tribe and a tribal leader representing a federally-recognized tribe, I thank the leaders and members of this Committee for acknowledging, respecting and honoring our government-to-government relationship in conducting these hearings and for your continuous commitment to the betterment of our lives as Indian tribes and Indian people.

Protecting Tribal Sovereignty - We have a lot of work ahead of us in this 107th Congress. I say this because of the constant erosion of tribal sovereignty we are experiencing. It would be an understatement to say that the courts have not been very friendly to our effort at protecting tribal sovereignty and the right to self-government. The U.S. Supreme Court has - particularly in the last two decades - consistently decided cases against Indian tribes which have resulted in a significant erosion of our sovereignty and right to self-government. The various decisions of this court have significantly eroded our civil regulatory jurisdiction over those who live and do business within the exterior boundaries of our reservations. In particular, this Court has made it very difficult to develop a tribal tax base involving non-Indians doing business on our reservations. Mr. Chairman, this creates a huge void in the development of our governmental capacity over our homelands. This is particularly true for the tribes of Montana and Wyoming where, due to the relative remoteness and rural nature of our homelands, we have experienced difficulty in attaining economic development. This has not stopped us from trying though, and some tribes in our area have been taxing entities who do business on our reservations for years. However, the U.S. Supreme Court recently told Indian country that we have no right to tax non-Indians who live within reservation borders on fee land. No other government in the world is expected to operate and provide basic service without revenue from taxes. Mr. Chairman, we request the Committee to assist us with legislation to provide us with the ability to create an economic tax base within the exterior boundaries of our reservation. Tribal governmental taxation authority should be allowed to pre-empt state taxation on the same product or service. The Court's legal contortions and opinions - rulings that are totally at odds to the basic provisions of tribal treaties and other commitments made to the Indian tribes by the United States - have so severely handcuffed our governments as to ensure underdevelopment and poverty for decades to come. I recall when the Supreme Court issued its astonishingly short-sighted decision in the case of Duro v. Reina, that this Committee took the lead in the enactment of legislation that effectively

reversed that case. The time has come to now examine the destruction the court has brought in the area of jurisdiction, taxation and economic development and to enact legislation reaffirming the legitimate and long standing rights that our tribes have as governments.

It is impossible in the few minutes I have been allocated to address the numerous issues that are important to my people. I will instead key on a few issues that are of the highest priority but I want to briefly mention other areas that deserve this Committee's attention.

Economic Development - Obviously economic development is critical to the Indian tribes and we hope you will enact the pending bills - including those giving us bonding authority and creating tax incentives - that give us the ability to attract and retain businesses to our homelands. We also want to see Indian country be given a key role as the Congress enacts Energy related legislation. We have the natural resources to greatly assist in the creation of additional energy and doing so would go a long way to help us address the poverty that exists among our people. Enactment of legislation facilitating the creation of banks in Indian county and helping tribes who are caught in the Seminole Catch 22 relative to negotiating good gaming compacts with their state governments would be very helpful.

Tribal Courts - The tribe would like to see the Congress actually fund the legislation already enacted which was intended to create additional funding for our court systems. Our courts are critical components of our government. We need to strengthen our judicial body to build an adequate foundation to support our government and our people while assuring outside entities of the opportunities to do business on the reservation. The tribe is requesting the Congress to support our tribal court systems with adequate funding and training opportunities for our judges and court personnel.

Health Care Needs - I want to focus the remainder of my statement on health care as I believe without doing something to better the health of the Indian people, little else can be accomplished. I have taken a personal interest in the area of health care in Indian Country and am involved in many national and regional health boards and committees. With all due respect Mr. Chairman, there is a great and, frankly, inexcusable disparity between what the Congress provides to the Indian Health Service Indian (IHS) versus what the Congress provides to other federal entities for the provision of health care. I do not understand how it is possible to expect the IHS to provide even remotely decent medical care to my people when you give them just over $1,400 per eligible Indian, while at the same time providing over $3,500 per person receiving Medicaid, slightly under $3,500 for health care per each prisoner in the Bureau of Prisons system and over $5,000 for each veteran receiving health care from the Veterans Administration! We don't begrudge the veterans the 5,000 plus dollars they are receiving but how can this Congress - if you realize that it costs over $5,000 per recipient to provide health care to others for whom the federal government has a responsibility - turn around and only allocate the $1,400 per patient when it comes to Indian people? If you increased the IHS budget by three and one half times what is presently allocated (i.e. the difference between what you allocate to IHS on a per capita basis and what you allocate to the VA for medical care on a per capita basis), you would see a

quantum increase in the general health of the Indian people.

We strongly encourage the enactment of the reauthorization of the Indian Health Care Improvement Act and I have appended to my testimony a separate statement on Diabetes that I believe is critical and deserves this Committee's fullest attention. We strongly urge the elevation of the position of the Director of the IHS to the level of Assistant Secretary. It appears the Senate is going to have to take the lead on this matter and perhaps find another vehicle to attach the elevation to as the pending bill may well end up getting bogged down in the House for yet another Congress. I also want to go on record as the Chairman of the Chippewa Cree Tribe and urge that Dr. Michael Trujillio be reappointed as the Director of the Indian Health Service when his term expires next year. This is not a partisan position and Dr. Trujillio has shown a great degree of responsiveness to the needs of the Indian people. We would be quite concerned about bringing in a new Director when there are so many critical issues that Dr. Trujillio is intimately involved with. Many issues would be put on hold as we waited for a new appointment, for Senate confirmation and for the new Director to get up to speed. We should not change horses in mid-stream and we ask this Committee to communicate with the Bush Administration and urge Dr. Trujillio's reappointment

Special Supplement to Chippewa Cree Testimony

Health Disparities Using Diabetes as a Focus

As the Chairman of the Chippewa Cree Tribe of the Rocky Boy Indian Reservation, I am encouraged by the invitation of the Senate Committee on Indian Affairs to provide recommendations on American Indian/Alaska Native (AI/AN) needs and priorities. Addressing the health disparities of American Indians is an enormous task that will necessitate the input and commitment of tribal communities and their partners in the United States Congress for success.

Through public health ideals we know that the health status of a population is influenced by many factors drawn from biology, behavior, the environment, and the use of health services. Social and cultural factors also play a role in the disease patterns experienced by AI/AN, as well as in the responses of these populations to disease and illness.

It is critical for Tribes to look at definitive factors such as poverty, poor housing, unemployment and other socio-economic problems that may challenge and cause changes to health status. We know that one of the most destructive effects of poverty is that it debilitates some individual tribal members physically and psychologically to such a degree that they are effectively shut out from participating in life. Poor health is the result of poverty and not the cause.

Health, nutrition and social services programs are essential components to the lifeblood of tribal communities. Most importantly, these programs seek to advance the well being of individual tribal members. By improving the health standards of tribal members, these programs increase the individual tribal member's ability to participate in personal, tribal community and global community progress and growth.

The Indian Health Service in partnership with Tribes have made some significant achievements in improving the health status of AI/AN, yet mortality rates for American Indians continue to surpass those of the general population. American Indians have a 249% greater chance of dying from diabetes and a 204% greater chance of dying from accidents.

Infectious diseases are often what we associate with public health but we are now seeing health status affected by behaviorally mediated risks such as tobacco use, diet, alcohol, and injuries. As the Co-chair of the Tribal Leaders Diabetes Committee, I believe to effectively address diabetes, we as Tribal communities must deal with the associated behaviors of diet, exercise and ability to comply with taking medications which affect whether we can successfully combat diabetes.

Diabetes is on the rise not only in tribal communities but also in the nation as a whole. Type II diabetes is on the incline. Type II diabetes is preventable. We are seeing not

only an increase in diabetes within the age groups most commonly affected but in the younger populations as well. AI/AN are known to be young, fast growing populations. We are developing diabetes at a younger age, what strain will this add to our under-funded healthcare system knowing we may be supporting, at great costs, an individual at a younger age for a potentially longer time. What can a tribal community do to prevent diabetes, educate our community on diabetes, and monitor our diabetic tribal members to insure we are providing responsible and quality health care? Tribal leaders and tribal communities have expressed the need to do more than focus on the clinical issues in diabetes treatment. We have stated the need to focus, as tribal communities, on all areas of diabetes prevention, especially in our young people. It will take the cooperative effort of our families, tribal communities, the Indian Health Service and our partners in the United States Congress to address diabetes in Indian Country.

According to the Association for Schools of Public Health, Health Promotion and Disease Prevention technologies have three essential functions. These functions used to illustrate the diabetes crisis in Indian Country are.

1. Assessment and monitoring of the health of communities and populations at risk to identify health problems;

   What we know:
   - In some AI/AN communities, 60 % of the adults have diagnosed diabetes.
   - AI/AN with diabetes have over 4 times greater mortality (deaths) from diabetes compared with the general population.
   - Research from IHS shows that tight blood sugar control prevents complications of type II diabetes.

   Issue: In collaboration with the IHS, tribes are in the beginning stages of data collection, management and analysis. Assessment means data. Monitoring is dependent upon the analysis of data. Research is dependent upon data to ask the questions needed. Tribes are at different levels of expertise in this process. The new IHS Epi-Centers are in the lead in this effort but not all IHS Areas have an Epi-Center. Data needed at the Operating Unit is local data and may be specific to a tribe. Tribes have expressed the need for the control of their data and the interpretation of it as well. In order for this to be realized, Tribes must have the financial resources to build the increased internal capacity to collect, house and interpret their own data. Tribes also need to have access to a national data bank specific to AI/AN health. The lack of data prevents any alert to a potential health risk until the problem becomes a crisis. Any preventative measures, which could save lives and costs, are limited by this lack of data.

2. Formulation of public policies, in collaboration with community and government leaders, designed to solve identified and national health problems and priorities;

   What we know:

- Tribal communities must deal with the behaviors of diet, exercise and ability for compliance in taking medications to address diabetes.
- Tribal communities are seeing an increase in diabetes within younger populations for the first time.
- Tribes are the most effective at developing their programs to best serve their communities.
- The lack of adequate data about their communities limits the Tribe's ability to identify local problems and prioritize accordingly.

Issue: The Tribal Leaders Diabetes Committee (TLDC), an elected tribal leadership committee, representing each of the 12 IHS areas in the nation and the IHS National Diabetes Program continuously collaborate on diabetes policy issues affecting AI/AN. The TLDC and the IHS National Diabetes Program have been effective advocates by making aware the Congress and the agencies to the needs of Tribes in combating diabetes. Through their combined efforts and the major efforts of the Juvenile Diabetes Association and key members of Congress, an increase in Indian Diabetes funding was realized. The TLDC receive their support through the Indian Health Service. This support must continue so that their efforts in bringing the concerns of Tribes to the consultation table may continue.

3. Assuring that all populations have access to appropriate cost-effective care, including promotion/disease prevention services; and evaluation of that care.

What we know:

- To achieve tight blood sugar control and prevention of complications, the average person with diabetes takes ten prescription medications.
- Within the last ten years, new and more effective diabetes medications and glucose monitoring equipment are available for people with type II diabetes.
- Many Indian health care sites are unable to afford these medications and supplies. Operating unit pharmacy budgets remain flat line while drug costs increased 25% last year alone.
- Using a conservative managed care clinical figure of $5,000 per patient with diabetes/year, we can say that:
- Clinical diabetes treatment and management of the 80,000 AI/AN people known with diabetes will cost $400 million per year.
- This $400 million would cover clinical costs only.
- In, 1996, the IHS received $1,578 per capita to care for AI/AN people compared to $3,920 per capita expended for the US general population.

Issue: Tribes are utilizing public health ideals to combat diabetes, but funding is the issue. Even with the increase in Indian Diabetes Funding, the majority of the moneys will go to the underfunded, critical, emergent needs of direct care. Tribes know that prevention is the key to success in fighting diabetes yet there are still insufficient levels of funding for diabetes prevention as well as for direct care.

The FY 2001 budget process identified key areas, which were determined through tribal consultation between IHS and tribal leader representation, in need of increased funding. These key areas are diabetes, cancer, heart and infectious disease, domestic community violence prevention, emergency medical services and injury prevention, mental health, alcohol/substance abuse prevention/treatment and dental health. The health disparities within each of these areas are significant and given the alarming shortages of resources, financial and otherwise, Tribes are challenged to find the balance between our tribal community's needs toward a healthy life and what resources are available to assist us towards a healthy life.

What can the Senate Committee on Indian Affairs do? Tribes have an existing public health infrastructure that needs increased funding, technical assistance, and collaborative partners that respect the needs and wishes of the tribal communities. We are looking to the vital collaboration of the Congress with Tribes and the IHS in addressing the health disparity crisis, which includes diabetes, in Indian Country. I thank you for this opportunity to speak and I look forward to the partnership that will evolve from this forum with the Congress, Tribes, and the IHS in working towards developing healthy Tribal communities.

LNF, CSC, CHS, Diabetes

In FY 2001, Tribes participated in the varied consultation processes of each of these funding allocations: LNF, CSC, CHS and Diabetes. Not all Tribes were satisfied with the outcomes of these consultations or in the allocations/distributions. The major factor of contention were the formulas derived for each respective funding allocation. With critically needed healthcare funding as the goal, Tribes were pressed to insure that their specific tribal/regional needs were best illustrated within the formulas. The outcome was some Tribes felt the formulas represented their needs but many felt otherwise. Recognizing the diversity of Tribes and the factors that would impact their healthcare delivery, a standard funding formula is a serious strategic endeavor that necessitates tribes to be informed and active stakeholders. The opportunity for this level of interaction, education and development can be achieved through a responsible tribal consultation process.

Tribal consultation, defined through Government to Government Tribal Consultation policies implemented by the past administration, the DHHS and the IHS, should be the mode to gather baseline data, disseminate information and begin dialogue with elected tribal leadership and Federal agencies toward any policy issue that affects Tribes. The Executive Order on Government to Government Consultation insures the participation and input of elected tribal leaders in all aspects of Indian Policy. It has further been recognized that in order for elected tribal leadership to make informed decisions there must be a dissemination of technical assistance to Tribes/elected tribal leadership to bring them to a "level playing field" at the federal negotiating table. Tribal consultation forums should be conducted throughout the policy development and implementation period to insure that tribes are stakeholders and decision-makers.

The Chippewa Cree Tribe calls upon your support to:

1. Guarantee that the LNF distribution formula or any version of it will not be used again until there is an appropriate level of tribal consultation towards the redevelopment of the formula;

2. Reaffirm the Executive Order on Government to Government Consultation and begin to develop, in consultation/collaboration with Tribes a protocol/process for Tribal consultation; and

3. Provide the appropriate levels of technical assistance to tribal leaders and their technical staff so they may resume negotiations on any of the funding formulas (LNF, CSC, CHS and Diabetes).

The Chippewa Cree Tribe urges you to:

1. Advocate for an increase in Indian Health Care Funding;

2. Hold the Indian Health Service, as the representatives of the federal government accountable for a full and responsible tribal consultation process on each of the funding formulas (LNF, CSC, CHS and Diabetes) or any future funding formulas.

JULY 12, 2001

TESTIMONY TO THE UNITED STATES SENATE COMMITTEE ON INDIAN AFFAIRS

PRESENTED BY PRESIDENT GERI SMALL NORTHERN CHEYENNE TRIBE LAME DEER, MONTANA

My name is Geri Small. I am a member of the Northern Cheyenne Tribe and am the President of the Northern Cheyenne Tribe. I would like to thank the members of the Committee on Indian Affairs for allowing me to testify here today.

The Northern Cheyenne Indian Reservation is located in south-central Montana approximately 90 miles southeast of Billings, Montana. The Northern Cheyenne Reservation's western boundary is contiguous to the Crow Reservation. Our Reservation is comprised of approximately 455,000 acres of which 99% is held in trust for the Northern Cheyenne Tribe. The Northern Cheyenne Tribe is comprised of over 7,900 Tribal members of which over 4,100 reside on our Reservation. The total population of our Reservation exceeds 7,000 people. The Tribe also serves many Tribal members that live just outside our Reservation boundaries because they are unable to obtain housing on the Reservation. The unemployment rate on our Reservation is at constant 65%.

The Northern Cheyenne Tribe has many needs. The Tribal Council and

Tribal Administration try to address these needs on a daily basis. However, we our overwhelmed and often feel like we are trying to put out a forest fire with a garden hose. Because unemployment is high on the reservation and the Tribe has no tax base, the Tribe is heavily dependent on federal money to address these needs. Simply put, the Tribe does not receive sufficient funding to even to begin to address its needs.

The remainder of this testimony focuses on Public Facilities Needs, Healthcare Needs, Housing, Development of Irrigated Lands, Judicial Branch and Justice System, Off-Reservation Fossil Fuel, Coal Bed Methane Development, and Economic Development. I will summarily address some of these needs in my testimony today. I have, however, attached to my testimony, more specific reports submitted by Tribal Program Directors. Please take the time to read these reports for a more detailed explanation in support of my testimony today.

Public Facilities Needs

A needs assessment has been completed by the Bureau of Reclamation for preliminary planning for a Municipal, Rural, and Industrial Water System to serve the Reservation. The assessment reveals that there is a dire need for an MR&I System on the Reservation. This pre-feasibility study provides enough information to determine the scope of a feasibility study. The Tribe requests $500,000.00 to

initiate the feasibility study. The feasibility report will show that the proposed project is feasible and meets NEPA requirements. The study will be the primary supporting document for subsequent funding requests to Congress to design and construct an MR&I System.

The Tribe is requesting $5,100,000.00 in funding to upgrade the Lame Deer Wastewater Pond and to build a Wastewater Treatment Facility. Without the completion of this project, public health and environmental threats will continue to grow as the permit limits are violated and the stream environment and downstream beneficial users of the stream are effected. Furthermore, without improvements, the Wastewater Pond will not accommodate any growth in community services or in housing.

Solid Waste is also a major concern on our Reservation. The Tribe presently has three open solid waste transfer stations located throughout the Reservation. The current transfer stations are not controlled or maintained properly due to a lack of funding. Dumping fees in the surrounding counties increase without commensurate funding increases. Our present solid waste management system is unmanageable. The Tribe proposes to build a modernized solid waste transfer facility to address this matter. The total cost of the proposed project is $750,000.00.

The Tribe's fire protection program needs updated equipment. The Tribe's vehicles are old and outdated. Furthermore, over half of the fire hydrants in Lame Deer do not work. The fires located out-of-town require a tanker truck which the Lame Deer Fire Department does not have. In order to purchase materials and equipment necessary to provide reliable fire protection services, the Tribe needs funding in the amount of $600,000.00.

Health Care Needs

Diabetes is devastating our Tribal population. Screening of the children going to school on our Reservation revealed that 86% of our children are at risk for diabetes. Presently, 443 people residing on the reservation have diabetes. 301 of these people utilize the local IHS clinic to treat their condition. The people that are on dialysis must travel 58 miles one way to Crow Agency. The initial dialysis treatment is provided 110 miles away in Billings, Montana. The Tribe is in dire need of its own dialysis facility. The Tribe proposes to renovate a present facility in order to operate and maintain a dialysis facility. The Tribe requests $500,000.00 for the facility and $432,000.00 annually for operation and maintenance of the facility.

Our Reservation also suffers from a high rate of drug and alcohol abuse. The Tribe receives $65,000 per year to serve approximately 500 adults. The Tribe

has no long-term care facility, no aftercare service facility, and no detoxification facility. People that need medical detoxification are often given medications and the emergency room and sent home. In order to address these problems, the Tribe requests funding for adult treatment service and a detox facility.

The Tribe, as outlined in the Reports, is also requesting $5,000,000.00 for a Disease Prevention Program and Facility and $350,000.00 in funding for the Tribe's Rosebud Lodge Emergency Shelter For Children.

Housing Needs

The Tribe has over 700 families waiting for a home on the Northern Cheyenne Reservation. At the rate the Tribe is presently funded under NAHASDA, it will take thirty-five years to provide these families a home. This critical housing shortage is exacerbated by the shoddy construction of older homes built by unscrupulous contractors. There are hundreds of houses with foundation, roof, and other basic construction deficiencies which have shortened the life of these homes. Federal funding for housing on the Northern Cheyenne Reservation is grossly inadequate. The Tribe requests an additional $4,000,000.00 in funding annually to meet present housing needs.

Development of Irrigable Lands

The Tribe desires to irrigate lands within the Reservation and utilize its

quantified water rights per the Montana-Northern Cheyenne Water Settlement Act. The Tribe proposes to develop an ambitious irrigation project that will result in new irrigation of approximately 5000 acres on the Reservation. The estimated cost of the total project is $17,000,000.00. The first phase of this project is estimated to cost $2,000,000.00. The first phase includes development costs for final design and construction of irrigation systems to cover 450 acres and project planning.

Judicial Branch and Judicial System

The Tribe's present court facility is undersized and outdated. Programs that are affiliated with the courts are forced to use other facilities. This is inefficient for these programs and the people that they serve. There is very little file space and no storage space available at the Tribal Court. There are no separate restroom facilities for the Judges or employees of the Tribal Court.

The jail facilities on the Reservation are grossly inadequate. The Tribe cannot house juveniles in the facilities because they cannot be properly separated. The jail suffers from overcrowding because it is not large enough to handle the intake. The BIA Detention Specialist that inspected the facility recently identified several areas of negligence including inadequate space, improper ventilation and sanitation hazards.

The Tribe proposes a Tribal Justice Center that will house law enforcement,

detention facilities, and the Tribal Courts. Total cost for this project is estimated to be $8,000,000.00.

Educational Needs

The Tribe encourages Congress to appropriate funding for Tribal Colleges at the levels specified in the Tribal College Bill. The Tribe also requests funding to build a multi-purpose facility for additional classrooms and offices, college level scholarships, funding to build student dormitories, funding to purchase up-to-date equipment, and funding to build an early childhood education center. The total amounts requested to fund these projects is $9.65 million.

Proposed Otter Creek Coal Development & Coal Bed Methane Development.

At the present time, the State of Montana is pressuring the Secretary of the Interior to transfer federal mineral rights (553 million tons of federal coal) to three tracts of land, approximately 8,300 acres, located in Otter Creek. Otter Creek is located near Ashland, Montana and just across the Tongue River - less than three miles from the Tribe's eastern Reservation boundary. This federal coal transfer is the last step in the State's plan to promote coal development on lands very near our Reservation. Our Reservation is very vulnerable to the downside of coal-related development and the least privy to its financial benefits. For the past thirty years, the Northern Cheyenne Tribe has been forced to bear the burden of energy related

impacts without realizing its benefits. The transfer of the Otter Creek federal mineral rights deeply concerns the Tribe as it was never consulted during the negotiation process involving the Crown-Butte Mine buyout. There are many legal problems the Tribe has identified with the proposed transfer.

It is difficult for the Tribe to understand how the State was compensated for speculative benefits it allegedly lost as result of the cancellation of the Crow Butte Mine permit. Because the Tribe was never involved in the process, the Tribe's impact and mitigation concerns have never been addressed. The Tribe hereby requests the assistance of the Committee in impressing upon the Secretary of the Interior the need to engage in a dialogue with the Tribe that will ensure the Tribe will be treated equitably. The Tribe is interested in discussing with the Committee some ideas for legislative solutions that will help the Northern Cheyenne Tribe and other similarly situated Tribes.

The State is also aggressively pursuing coal bed methane development around our Reservation. The Tribe is deeply concerned about the impacts to groundwater and surface water located underneath and on the Reservation. The Tribe is requesting $8.15 million over a five-year period to develop baseline data and to analyze and monitor coal bed methane development impacts. The Tribe made an identical request in testimony on March 10, 2001 before the

Subcommittee on Interior and Related Agencies Committee on Appropriations for Coalbed Methane Development Impacts sponsored by Senator Conrad Burns but has yet to receive a response.

Economic Development

The Tribe is deeply interested in investigating the feasibility of developing alternative energy projects. The Tribe is especially interested in determining the feasibility of a biomass project that would consume forest waste products but would also like to explore the feasibility of other alternative energy projects using wind and solar and hydro resources. To assess the feasibility of these projects, we must retain well-qualified professionals in relevant disciplines. The Tribe estimates that cost will be approximately $500,000.00 over a three-year period.

CONCLUSION

This concludes my testimony. I realize that I have asked for a great deal of funding. However, the current system of federal funding for Indian tribes does not adequately address Tribal needs on an annual basis. Coupled with this funding disparity is the Supreme Court's recent decisions eroding Tribal sovereignty. These decisions will force Tribe's to be more dependent on the federal government for funding because Tribe's have lost jurisdiction to regulate and tax right-of-ways within their Reservation boundaries. The Tribe requests Congress to enact

legislation that re-establishes Indian tribes regulatory and taxing authority. Further, Congress should re-evaluate the federal funding scheme for Indian tribes in order to address the current funding inequities.

Again, thank you for allowing me to testify here today. I am happy to address any question you may have.

JULY 12, 2001

Northern Cheyenne Tribal Appropriation Request to The Senate Committee on Indian Affairs :

I. Reservation Public Facilities Needs		
1.	Public Water System	$500,000
2.	Lame Deer Wastewater Pond and Municipal Sewer Treatment Facility	$5.1 million
3.	Lame Deer Solid Waste Canister Transfer Station Project	$750,000
4.	Fire Protection Program	$650,000
II. Healthcare Needs		
1.	Diabetes Treatment and Prevention Facility and Services	$1.032 million
2.	Disease Prevention Program and Facility	$5 million
3.	Mental Health/Alcohol and Drug Abuse	$1.1 million
4.	Rosebud Lodge Emergency Shelter for Children	$350,000
III. Housing		$4 million
IV. Education		$9.4 million
V. Development of Irrigated Lands Funding Requirements		$2 million
VI. Tribal Judicial Branch and Justice System		$8 million
VII. Off-Reservation Fossil Fuel and Coal Bed Methane Development		$8.15 million
VIII. Economic Development – Alternative Energy Development		$500,000
TOTAL:		$46,532,000

I. RESERVATION PUBLIC FACILITIES NEEDS - - Water Delivery/Treatment, Solid Waste, and Fire Protection

DESCRIPTION OF THE RESERVATION

The Northern Cheyenne Reservation of about 445,000 acres is situated in southeastern Montana, about 80 miles southeast of Billings. It includes parts of Big Horn and Rosebud Counties. The Tongue River forms the eastern border of the reservation, and the Crow Reservation borders the west. As of July 2001, the Tribe had 7,900 enrolled members, 68% of whom reside on or next to the reservation. The non-Indian population makes up about 10% of the total reservation population.

Climate and Topography

The reservation has a continental semiarid climate characterized by cold winters and hot summers, with marked changes in precipitation. Mean annual temperature recorded at the weather station in the town of Birney (about 5 miles south of the reservation) is 42.8 degrees F., ranging from an average low of 9 degrees F. In January to an average of 13.86 inches of precipitation per year, ranging from 5,78 inches in 1960 to 19.78 inches in 1978.

Topography of the reservation varies from grass covered, low rolling hills to moderately high and steep sandstone bluffs with narrow valleys. Elevation range from 3,000 to 5,000 feet above sea level.

1. Public Water System - - Feasibility Study ($500,000)

A. Needs Assessment has been completed by the Bureau of Reclamation for preliminary planning for an MR&I water supply, treatment, and distribution system to serve the Reservation. It shows a dire need for a Municipal, Rural, and Industrial Water System for the Reservation. This pre-feasibility study provides enough information to determine the scope of a feasibility study, the next level of project planning. The Tribe needs $500,000 in federal funding to initiate the feasibility study.

The feasibility study will address the following subjects:

Task 1	Public Participation Program
Task 2	Present and Future Conditions
Task 2.1	Review Existing Reports and Data
Task 2.2	Project Planning Area
Task 2.3	Existing Facilities
Task 2.4	Water Demand
Task 2.5	Resource Capabilities
Task 2.6	Need for Project
Task 3	Water Supply and Distribution System Evaluation

Task 3.1	Water Supply Evaluation
Task 3.1.1	Groundwater
Task 3.1.2	Surface Water
Task 3.1.3	Water Supply evaluation
Task 3.2	Water Distribution Evaluation
Task 3.3	Water Supply and Distribution System Results
Task 4	MR&I Water System Alternative Development
A.	Water Supply
B.	Treatment
C.	Storage, Pumping Stations, and Distributions
Task 5	Alternative Evaluation
Task 5.1	Alternative Costs
Task 5.1.1	Contract Costs
Task 5.1.2	Non-Contract Costs
Task 5.1.3	Alternative Costs Comparison
Task 5.2	Environmental Impacts
Task 5.3	Non-Monetorary Evaluation
Task 5.4	Selected Plan
Task 6	Proposed Project
Task 6.1	Design Criteria
Task 6.2	System Costs
Task 6.3	Implementation Plan
Task 7	National Environmental Policy Act (NEPA) Compliance

The feasibility study report is intended to show that the proposed project is feasible and meets NEPA requirements. The study will be the primary supporting document for subsequent funding requests to Congress for final design and construction funding of the MR & I System.

2. LAME DEER WASTEWATER POND IMPROVEMENTS PROJECT ($5.1 Million)

Congressional appropriations are needed to fund a pond system upgrade project that will ensure safe treatment and disposal of wastewater for another generation of community growth. Without the completion of this project, public health and environmental threats will continue to grow as the permit limits are violated and the stream environment and downstream beneficial users of stream are affected. In addition, the Lame Deer community (the trade center of the Northern Cheyenne Reservation) will not accommodate any growth in community services or in housing without the completion of the wastewater pond improvements.

The Indian Health Service developed the conceptual plan for this project by evaluating four alternatives and determining the following as the most viable and cost-effective solution.

The proposed project consists of upgrading the wastewater pond system to an Advanced Facultative Wastewater Pond System. The central part of the upgrade includes the installation of an additional primary pond and the installation of fermentation chambers. The construction of fermentation chambers creates a deep quiescent anerobic zone in each primary pond. By constructing these fermentation zones and applying a high loading (minimum of 600 lb BOD_5 per acre of fermentation chamber per day), methane fermentation is achieved: a biological process which naturally digests bio-solids and the primary ponds accept a higher BOD_5 loading of 300-400 lb/acre/day.

In addition to the fermentation chamber construction and the expansion to two primary ponds, there are a number of related improvements: (1) To achieve the depth needed for fermentation, it will be necessary to raise the dikes and thereby increase the depth of the entire primary pond system to 15.5 feet including freeboard allowance. The water table level has been documented by IHS at a depth of eight feet in construction zone, making excavation of the fermentation pits impossible. Therefore, raising the dikes is proposed with the construction of a treated timber box which will serve as the fermentation chamber in each of the primary ponds; (2) Raising the dikes and modifying the transfer structures will raise the wastewater collection system. Without action, there would be a considerable hydraulic backup problem. A lift station will be constructed to provide an inlet to the wastewater collection lines currently entering the pond system. One central collection point must be established for all incoming wastewater at the lift station location; (3) A zone of aeration is required in the top vertical meter of the two primary ponds and at the head of the secondary pond. The aeration in the primary ponds serves as additional protection against obnoxious odors from the anaerobic zone below. The methane fermentation itself is the first level of protection against odors - methane is an odorless gas and by providing the fermentation chamber, this type of odorless fermentation can be achieved. A battery of aerators will be installed in both primary ponds and a smaller contingent of aerators in the secondary pond; (4) To eliminate short-circuiting, the existing transfer structure between Ponds 2 and 3 will be abandoned and a new transfer structure installed to route the wastewater to

the far end of Pond 3. Two floating baffles will be installed in Pond 3 to increase detention time. Pond 3 serves as the Polishing Pond.

These represent all of the major design goals of Phases 1 and 2 of the Proposed Lame Deer Wastewater Pond Improvements Project.

The higher loading and increased pond depth results in a minimal amount of pond area expansion. The estimated 2 acres of land area is un-leased Tribally owned land available adjacent to the ponds, representing and in-kind Tribal contribution. The IHS projects that the upgrade would allow for a 40% increase of BOD loading. Operations and maintenance requirements will increase due to the construction of a wastewater lift station, however the overall maintenance for the system will remain low. **The cost of improving the wastewater pond system under this alternative is $1,159,760.**

While the Lame Deer wastewater pond improvements project will address the sewage problem in the short-term, the long-term goal of providing adequate sewer services to the town of Lame Deer that accommodates population and business growth for many generations is still addressed. The Northern Cheyenne Tribe is proposing the construction of a sewage treatment plant to meet is long-term community development and infrastructure goals. This facility would be located outside of the Lame Deer community and would serve the community and all outlying residences upstream from it. The annual Operation and maintenance for this facility is estimated at $250,000 per year. The construction costs are estimated at $4,000,000. Construction costs include all pre-construction activities (i.e. siting studies, architectural design, etc.). The Northern Cheyenne Tribe's contribution to the project is the land base that the facility will be sited on.

3. LAME DEER SOLID WASTE CANISTER TRANSFER STATION PROJECT ($750,000)

Solid waste is a major concern on the Reservation. Currently three open solid waste transfer stations serve the Reservation population. These stations are located in Birney Village, Busby, and Muddy Cluster. The station located near Muddy Cluster serves the largest portion of the Reservation population located in Lame Deer, MT.

Curbside collection is extremely limited.

The current transfer stations are not controlled or maintained due to lack of funding. Also, the roll-off bins at the transfer stations are not emptied frequently enough, so garbage is burned to reduce the volume or is dumped on the ground. People who use the transfer station and workers who empty the roll-off bins are exposed to unsanitary conditions and risk of injury and/or illness from contact with the scattered garbage. The uncontrolled conditions attract potential disease vectors such as rodents and scavenger dogs. For example, rodent droppings have been observed in an abandoned refrigerator at the Muddy Cluster transfer station, so Hanta Virus may be of concern. Additionally, animals are responsible for the scattering of waste materials inside and out of the transfer stations. Residents and workers are exposed to toxic fumes from the burning garbage, and nearby residents have expressed concern about the risks of fire spreading to their homes. Some residents may avoid using the transfer stations because of the conditions, and this increases the open dumping pressure in other areas.

The Muddy Cluster transfer station has become an open dump. Garbage has been burned and buried at the transfer station. In the solid waste survey and preliminary landfill assessment commissioned by the Tribal Natural Resource Department, the Muddy Cluster transfer station was rejected as a potential landfill site because of its proximity to groundwater and nearby probable wetlands.

There is no fencing at the Busby transfer station to capture windblown garbage. A large amount of windblown garbage is scattered around the ground nearby the older, unfenced roll-off bin that is located on the northwest side of Birney Village. The fence orientation and height at the Muddy Cluster transfer station may not be adequate to capture wind-blown waste. Windblown garbage and litter can be seen

along the roadways.

The Tribe is proposing the development of an enclosed modernized solid waste transfer facility to address many of the current problems. This facility, once constructed will allow the Tribe to monitor and control its solid waste stream. The enclosed compactor station and bailer system will prevent the scattering of solid waste by animals, humans, and through natural elements. Also, open burning of solid waste canister contents will be eliminated as individuals monitoring the facility will be able to quickly identify and extinguish any fires that may occur. Additionally, the facility will allow for the sorting and recycling of solid waste materials and thus reduce disposal costs at the County Landfills. This plan is being developed in order to provide for the operation and maintenance of a modernized solid waste canister transfer station upon the completion of its construction.

The conceptual plan for this project was developed by evaluating four alternative and the following was determined the most viable and cost-effective solution.

The proposed project consists of constructing an enclosed facility with a compactor system for the disposal of household solid waste materials. A baler system would also be housed within the facility along with a scale to provide customers with the opportunity to recycle aluminum cans and paper products. Within the exterior perimeter of the facility several areas will be sectioned off to allow for the sorting of solid wastes. Areas will be set up to receive things such as tires, yard wastes, appliances, concrete, asphalt, used oil used antifreeze, used car batteries, and furniture. Appliances, scrap metal, oil, antifreeze, and car batteries will be recycled. Funds received from recycling activities would be revolved into an account to help defray the maintenance and operation costs of the Tribe, and to pay residents for their aluminum cans.

Curbside service will be the primary method of garbage collection. Reservation households will be provided with 90-gallon roll out containers which will be picked up by a rear-load collection truck. Each of the five reservation communities will be serviced at least once a week or more once the waste-loads for the communities has been determined. The wastes that are collected from the communities will be brought into the station and will be dumped into the compactor system. Once the compactor containers are full, they will be hauled to the County landfill for

disposal. This process will reduce the handling time of the solid wastes produced and the chances that these wastes will wind up in places other than the landfill.

The proposed modernized solid waste canister transfer station would be manned seven days a week and operate at least eight hours a day. The facility would be looked up at night for security purposes and security services would be provided by the Tribe to protect the facility from vandalism. Facility operators would observe dumping activities to ensure that no improper mixing of solid wastes by humans, animals and natural elements. **The total cost of the proposed project is $750,000.00 and will create at a minimum 5 new employment opportunities for its operation.**

4. Fire Protection Program

The fire protection program serves the entire Northern Cheyenne Reservation which has a population of well over 7000 residents. The average number of calls per year is 120 and the calls consist of structure fires, grass/wild land fires near structures, vehicle fires/extrication, assisting ambulance, hazardous materials and search and rescue.

Out of the two hundred most hazardous fire areas in the United States, nine of these are in the State of Montana, and four are located on the Northern Cheyenne reservation.

The current equipment utilized by the Northern Cheyenne Fire Protection program consist of:

1995 pumper truck owned by the Bureau of Indian Affairs

1968 small pumper in Busby, also owned by the BIA

1977 pumper owned by the Tribe

1000 gallon tanker owned by the Tribe

1955 Mack truck

Our vehicles are old and outdated. They require a lot of maintenance to keep them running, which does not necessarily mean that they are in good working condition. Half of the fire hydrants in town do not work. All of the out-of-town runs require a tanker truck, which we do not have. We desperately need tankers to meet our water supply needs.

To bring our fire department up to the operating standards to meet the needs of the Northern Cheyenne reservation we would require:

Two Super Tanker Trucks

These trucks have 3,000-gallon tanks with all the capacity to pump as a regular pumper truck. Needed to help make up for our deficient water supply. Ideally we would house one in Lame Deer and one in Busby.

Two Tanker Trucks

Trucks with 2-3,000 gallon tanks, capable of some pumping.

One Quick Attack Vehicle

This would be a 1 ton or a ½ ton truck equipped with a 2-3,000 gallon tank with foam capabilities. Also on the truck would be complete extrication equipment, generator, lighting system, air packs, and a winch.

Pumper Truck

Standard structure firefighting vehicle with a 1,000 gallon tank.

Personal Protective Equipment (PPE)

We are in need of twenty sets of bunker gear. We have had the same gear for almost eight years.

Training money

Currently we can only provide a minimal amount of training. In order to have a fully trained department we would require at least $15-20,000 a year.

Miscellaneous Equipment

Flashlights, gloves, radios, pagers, etc.

Purchasing the listed equipment would be a one-time cost of $600,000. However to keep our program functioning at a level that will meet the needs of our reservation, we would need $50,000 per year.

II. HEALTHCARE NEEDS

1. Diabetes Treatment and Prevention Facility and Services ($500,000 for renovated facility, $532,000 for operations)

On the Reservation, health care for all Indians is provided by the Indian Health Service. The "user" population is listed as 7,365, approximately 52% adolescents and children, with fewer than 150 elders. Diabetes is devastating on the Reservation. Resources are limited but special funding for diabetes received in 1997 has given us the ability to screen those at risk and do minimal education. Primary prevention of diabetes is the goal, but there is no funding to carry it out.

Children and adolescents from four schools on the reservation were screened for risk factors. Among 1,264 youth enrolled, 1,087 were screened (86%).
The risk factors are: overweight, obesity, acanthosis nigricans (AN), and family history.
The results were: 38% overweight, 22% obese, and 30% acanthosis nigricans.
These numbers also show that incidence of the disease is rapidly increasing.
Costs associated with the disease are enormous, for short-term treatment (pharmaceuticals), long term treatment - surgery, dialysis, rehabilitation, transportation, all with devastating effects on the patients quality of life.
558 people are diagnosed with diabetes with 443 residing in this community. 301 utilize the clinic to get care
Available data indicates 31 people are in the chronic kidney failure and will most likely require dialysis treatment. Currently we have 11 patients receiving dialysis treatment.
The future looks bleak for dialysis treatment for at least 69 of the patients currently utilizing the Northern Cheyenne Community Health Center.
Other costs associated with diabetes complications include loss of sight, diabetic neuropathy, cornonary artery disease, and impaired circulation.
Many patients are in need of tertiary care and emphasis to be given on the secondary and tertiary prevention. Curtailing the complications of the disease such as renal failure, amputations, etc. has very little effect, as resources are few.

The reservation previously had a dialysis satellite service arrangement with the local hospital in Billings. Due to shortage of nursing staff at the satellite, the facility was closed down.
Dialysis treatment is available for our patients 58 miles away at Crow Agency, Montana at a satellite dialysis unit operated by a local hospital and at the main Dialysis Center located 110 miles away in Billings. Treatments are needed three times per week. The initial treatment must be given in Billings. The

costs include transportation, dialysis treatment (usually paid by Medicare and/or I.H S.-Contract Health Services), and specialized services. Transportation is usually paid by the Tribal Health Transportation Program, using a leased vehicle and paid driver.

Re-establish Dialysis Facility An on-Reservation facility can be established for dialysis services. The renovated facility would provide services to up to 24 patients. Renovation costs would include: storage unit for medical supplies, water storage unit, and expansion of dialysis unites from it prior size of six dialysis stations which can handle 12 patients per day. The renovation cost is $500,000. The tribe would staff the facility by agreement with qualified professionals.

The annual staffing costs would be:

2 full time registered nurses and 4 technicians -	$352,000
Operations & maintenance -	80,000
Total:	**$932,000**

2. Disease Prevention Program and Facility ($5 million for facilities)

Primary prevention is the most effective investment to curtail and control many of our diseases - - diabetes, hypertension, alcoholism, drug use, etc.... It pays great financial dividends in the form of avoided long-term treatment costs.

A major prevention effort must take place to change the health and behavior of future generations . We lack basic recreation and fitness facilities to help achieve this .

None of our Reservation communities have parks, walking or running tracks, swimming pools, or basketball courts. A non Indian town (Colstrip), 21 miles to the north of Lame Deer is the closest place with such fitness facilities.

A suitable multi-fitness facility must include programs for strength training and weight reduction and maintenance.

This requires an exercise and weight room, a gym for aerobics and the like, and a walking and running mall for winter months,

The cost of such a facility be:

Construction	----------$3,000,000
Purchase of land	2,000,000
Equipment (swimming pool, gym, therapy room)	2,000,000
Total cost:	**$6,000,000**

3. MENTAL HEALTH/ALCOHOL & DRUG ABUSE
($1 million for facility, $100,000 for operations)

Our Reservation has one of the highest rates for drug and alcohol abuse, and an accompanying dire need for mental health services.

The current mental health staff consists of a mental health counselor, a medical social worker, clinical psychologist (4 hours per week) and a contract child psychologist (4 hours per week).

In fiscal year 2000, 3,545 number of visits were made to the behavior health program for services, Hospital inpatient costs are high at an average of $50,000 to $70,000 per suicidal and other mental health disorder. Youth on this reservation represent about 52 % of the population and many of them need drug and alcohol treatment and inpatient services.

We need a Full time child psychologist (therapist) and a Full time psychiatrist.

Staffing Cost: $60,000

The cost of sending youth to residential treatment services is $5000 - $20,000, that deals only with detoxification and start of a step program. Long term aftercare, which includes treating the family as a unit, must also be in place.

We currently receive funding only $65,000 to serve approximately 500 adults. Again, there are no facilities for providing long term care, no aftercare services facilities and no detoxification facility. Those people that need medical detox are often given medications at the emergency room and sent home. The medical detoxification service is available through the regional Indian Health Service hospital that often refuses to admit these patients. The nearest detox facility is in Butte, Montana, approximately 300 miles away. Thus, many adults using alcohol as their drug of choice have moved onto drugs that are more deadly. The most common drug is methaphatimine called "crank" that has far more lasting and possibly permanent adverse effects. The crank is manufactured in homes and sold on the streets. An addict to reach the step work where they are able to begin to release to outpatient -aftercare takes at least three months of inpatient treatment.

Increased funding for Adult Treatment - 100,000 Social detox unit facility - : $1,000,000

4. Rosebud Lodge Emergency Shelter for Children ($350,000 a year for operating needs)

The Tribe has established the Rosebud Lodge Emergency Shelter to provide emergency care for children removed from their homes by the Social Services department. Since its inception, the Lodge has taken in approximately one thousand children. The children range from infancy to twelve years of age, and the length of placement is short term.

The Rosebud Lodge is a Montana State licensed foster home currently capable of taking six children, but is in the process of upgrading its license to be eligible to take twelve children. The Lodge is always filled to capacity because one of the problems that exists is there are not enough foster homes on the Reservation in which to place children temporarily.

Currently, there are five permanent house-parents and funding is available to employ three substitutes. However, to fully satisfy staffing to meet the proposed licensing requirements, it would take an average of twelve permanent house-parents, with two substitutes.

The weakest area is the high turnover rate of house-parents. The majority of the children placed in the Lodge are emotionally, physically and sexually abused. This requires house-parents to be qualified, experienced and mentally, physically and emotionally capable to deal with these special children. The entry salary for a house-parent is approximately $7.50 an hour. A similar shelter operated by the St. Labre Indian School, in Ashland, Montana offers salaries for house-parents starting at $24,000 per year. This factor makes it even more difficult to keep qualified and dependable house-parents employed at the Rosebud Lodge.

The Rosebud Lodge requires staff twenty-four hours a day seven days a week, even on holidays. There are three work shifts during the weekdays and two on the weekends. The weekend shift requires employees to work up to sixteen hours.

Another difficulty is finding reliable substitute house-parents to allow permanent employees to take time off. We are committed to meeting the needs of the children placed in the Lodge and the Director of the Lodge goes over and above her job requirements, working night and weekend shifts without complaint.

To fully meet the needs of our Northern Cheyenne children in need of emergency care we are requesting $350,000 to provide competitive salaries for qualified individuals employed as house-parents. This amount will also cover the purchase of food, utilities, telephone services and extra playground equipment.

III. HOUSING ($4 million additionally)

Under NAHASDA, the Tribe receives approximately $3 million per year to address the Tribe's housing needs. At the present time, there are over 700 eligible families placed on our Housing Authority's waiting list. Families are forced to live together in one home as off-Reservation housing is also scarce. In some instances, as many as four families are forced to live together in a home.

Obviously, this many families living in one home contributes greatly to the degradation of the home and renovation costs become burdensome. The Northern Cheyenne Housing Authority is lucky to build twenty units a year with the NAHASDA funds it receives. At this rate, the Tribe will not be able to provide every family presently on the Northern Cheyenne Housing Authority's waiting list a home for another 35 years.

This critical housing shortage is exacerbated by the extremely shoddy construction of hundreds of houses on the Reservation, especially in the older housing projects. Unscrupulous contractors committed numerous fraudulent acts ranging from the use of substandard materials to billing for services that were never provided.

The end result is hundreds of houses with foundation, roofing, and other basic construction deficiencies which have severely shortened their projected duration and quality of Indian housing. More money for major rehabilitation or in some instances demolition and disposition is needed to address the poor quality of housing construction.

IV. EDUCATION ($9.4 MILLION)

NORTHERN CHEYENNE EDUCATIONAL REQUEST TO SENATE COMMITTEE ON INDIAN AFFAIRS

Encourage Congress to appropriate funding for Tribal Colleges at the level specified in the Tribal College Bill. Our current reimbursement per Indian Student Count (ISC) is less than half that appropriated to the state colleges/universities for FTE enrollment. ($1.5 Million)

Funding to build a multi-purpose facility to house additional classrooms, offices, recreation facilities and large group meeting areas. ($2 Million)

Funding to build student dormitories and married student housing quarters and to provide for land acquisition for campus expansion. ($3.2 Million)

Additional technology funding to provide updated equipment and expanded transmission of courses to outlying communities. ($500,000)

Funding to build an early childhood education center, which would house both day care facilities for students as well as experiential classrooms for degree programs. ($1.2 Million)

College Scholarships. ($1.25 Million)

TOTAL:$9.65 Million

V. DEVELOPMENT (PHASE I) OF IRRIGATED LANDS FUNDING REQUIREMENTS ($2 MILLION)

The Tribe has successfully quantified its reserved water rights with the State of Montana, as confirmed in Public Law 102-374, Northern Cheyenne Indian Reserved Water Rights Settlement Act (Settlement Act) of 1992. The Reservation covers about 694 square miles and consists of rolling hills and buttes which are forested, dissected by relatively narrow streams in the interior of the Reservation and bounded on the east by Tongue River. Rosebud Creek and its tributaries drain the interior of the Reservation. The principal land use is livestock grazing, with small acreages of irrigated land.

In the Northern Cheyenne-Montana Compact, under Article 9, Paragraph F, the parties agreed that "The Tribe and the United States agree to pursue through the normal Bureau of Indian Affairs and Department of the Interior budget process such additional sums as are necessary to implement the terms of this Compact, to develop a Tribal water code, and to provide increased agricultural development on the Reservation. The State agrees to support the efforts of the Tribe and the United States in the regard." This funding request document is being prepared by the Northern Cheyenne Tribe pursuant to this paragraph.

The Settlement Act of 1992 provided for current and future water uses for the Tribe for many purposes, including irrigated agriculture, from both groundwater and surface water sources. A principal element of the Settlement Act was the rehabilitation and enlargement of the Tongue River Dam, a State of Montana owned facility off of the Reservation to the south. The increased yield as a result of the enlargement of the reservoir is allocated to the Tribe. The Tribe also has direct flow and contract rights from the Tongue River and the Reservoir, respectively. Reserved water rights from Rosebud Creek and its tributaries, both surface and groundwater, were also quantified. For agricultural purposes, the Tribe has a right to divert a total of 40,000 ac-ft per year from the Tongue River drainage, both direct flow and stored water, while 1,800 ac-ft per year is to come out from Rosebud Creek, and a conditional right (subject to non-injury of state-based rights) of 19,530 ac-ft per year from Rosebud Creek and its tributaries.

The economy of the Reservation is dependent on public sector employment. Even with public sector employment as of 1997 stood at 65%. The primary private economic activity is livestock grazing. The Northern Cheyenne Tribe has worked diligently to quantify their reserved water rights. In order to improve the economy as a whole on the Reservation, the principal private economic activity, livestock grazing, must be strengthened through the development of additional irrigation to produce hay. The Tribe and its members have a tradition of irrigation but need the resources to implement their water rights. Without development of the water right, the Tribe has achieved only a paper water right. Development of the right is crucial to the long-term self-sufficiency of the Tribe.

As of 1996, about 9,650 cattle were grazed on the Reservation, with a required hay base for over- wintering the cattle of about 19,300 tons per year. The current irrigated hay base equals about 739 acres, with an estimated production of about 2,650 tons per year. The balance of the required hay is harvested from dryland hay meadows or is purchased. However, the dryland hay fluctuates from year to year, depending on climatic conditions. In the last 19 years, the Tribe has requested emergency assistance from the Federal government to purchases hay a total of ten times. If an additional 5,000 acres of irrigated land was available, the total available hay, based on average county production rates, would equal 20,550 tons per year.

Previous studies have been conducted to determine the feasibility of developing additional irrigated lands on the Reservation. The studies were based on a detailed analysis of the soils, water supply, irrigation engineering and agricultural economics. The results of these studies were used as a basis for defining the feasibility level designs were indexed to 1999 level costs.

For the proposed study, a design project area of 5,000 acres will be identified from the results of the feasibility studies. The Tongue River area will have 4,000 acres of new irrigation and the Rosebud Creek drainage will have 1,000 acres of new irrigation. **Estimated costs of development, in 2002 dollars, are about $3,110 per acre for the Tongue River area and $4,124 per acre for the Rosebud Creek drainage, for a project development total of about $17,000,000.**

The irrigation project will be developed in phases. Phase I, for which funds are hereby requested, is a combined planning and design phase. Phase I development

includes final design and construction of irrigation systems for 250 acres in the Tongue River area and for 200 acres in the Rosebud Creek, for a total development cost of $1,650,000. In addition, $350,000 is requested for overall project planning and scooping for the entire 5,000-acre irrigation development. The total funding request through this document for Phase I is $2,000,000. The Northern Cheyenne Tribe anticipates that funding for five additional phases will be requested, totaling about $3,400,000 for each phase, in 2002 dollars.

VI. TRIBAL JUDICIAL BRANCH and JUSTICE SYSTEM: ($8 million for capital improvement)

The facilities that currently house the Tribal Judicial Branch are fragmented and antiquated. The tribal court house, a 50' x 40' steel structure building, was constructed in the early 80's with outdated electrical service and internal wiring. It contains a single courtroom with a jury box, a gallery, the judicial bench and two tables for the parties. It also contains three offices, a multi-purpose area that houses the file cabinets, 6 computers with work stations, other office equipment and furniture. The building has a small receptionist area on the east side along with two restrooms. The total capacity of workers in the building is a Chief Trial Judge, an Associate Judge, Appellate and Pro Tem judges as needed, a Clerk of Court, 4 deputy clerks, a law clerk, and a process server. The Judicial Branch rents a portable steel storage shed approximately 16' x 40' located on the south side of the building to house the approximately 2000 court files date back from the late 1960's. Space is needed for the recently added Guardian Ad Litem program with two employees, the Drug Court with two employees, and the Probation Department with four employees. These positions are under the supervision of the Chief Trial Judge and Clerk of Court. There is no conference room or jury deliberation room.

The adult detention component was built in the 1960's and renovated in the early 1980's. An evaluation of the jail recently conducted by the BIA LES Detention Specialists from the Central office in Albuquerque identified several areas of negligence including; inadequate space for inmates; improper ventilation; sanitation hazards as a result of non-functioning plumbing and fixtures in the cells; and the identified juvenile cell block was not separated by sight and sound of the adult cell block as required by federal regulations. The law enforcement unit is comprised of one multi-purpose area approximately 30' x 30' sq. ft and contains multiple computers, workstations, other office equipment and a steel structured filing cabinet for 12 police officers. In addition, the unit has two offices approximately 10' x 12' which house the Police Chief and the secretary and one mobile trailer located adjacent the jail housing the Criminal Investigator and secretary.

There currently is not a paid public defenders program, but planned for FY 2003 is two public defenders and a clerk.

The prosecution department is located in the tribal administration building separated by the law enforcement department and courthouse by approximately ¼ mile and is administered by the chief prosecutor who filed 2,981 criminal charges in FY 2000. In FY 2000 there were 393 juvenile delinquency petitions filed by the Chief Prosecutor.

The probation department is located in the office of prosecution and supervised by the Chief Clerk of Court. The adult probation officer carried a caseload of 317 for FY 2000 and currently is working with a caseload of 264 offenders. The adult probation officer has an office space approximately 200 sq. ft and contains her computer workstation, file cabinets and interview space. Her office is temporarily located in the Office of Prosecution due to the lack of space in the tribal courthouse. The probation staff will be

increased up to four persons.

It is the intention of the Tribe to build a single structure that will house most components of the Judicial Branch and related justice services in a centralized area accessible to the community on a site of approximately 30 acres. This center will house the services for the adult population to include: Judicial Branch Court, Probation Department, Prosecution Department, Public Defenders Department, Adult Detention, Administration and Law Enforcement services, Drug Court, Guardian Ad Litem program, and Victim Services Department.

PLAN:

After assessing the needs of the Northern Cheyenne Judicial Branch and Justice System, the Tribal Council determined that the Tribe should proceed with planning for a Tribal Justice Center that will include a 50-bed adult detention facility, law enforcement offices, a Victim Services Center that will include space for the domestic violence program, and the Office for Victims of Crime; a Judicial Branch complex that will include space for the following components: Judiciary and Court, Probation Department, Prosecution Department, Public Defenders Department, Adult Detention, Administration and Law Enforcement services, Drug Court, Guardian Ad Litem program, and Victim Services Department. The entire building will be approximately 50,000 gross square feet with a projected cost of $8,000,000.

The adult module will be 26,000 square feet and will provide for secure detention housing for 50 inmates, male and female in the following housing classifications. Special Management/Detoxification units (1) male and (1) female; Male General Population (16 beds); Male low security (8 beds with four each unit; Male work release (8 beds); Female General Population (10 beds); Female low security (4 beds); and Female work release dorm (6 beds). Programs and services will be provided to include: physical fitness; individual and group counseling; education; substance abuse education and counseling; restitution and community services; daily living skills and self-esteem.

The law enforcement module is approximately 8,000 square feet and will be a full-service center providing space for administration and Patrol Services; Investigations; Communications; Facility Support; and Staff Support. This space will include: an administrative area for the department to perform daily administrative duties; an investigative area with ample space for investigators to process daily paperwork; to properly store evidence; and interview spaces to interview victims and suspects; a communications area to perform dispatch and detention security duties; a facility support area for staff to perform report writing duties, store evidence and found property, store impounded vehicles; and a staff support area for staff to store uniforms and equipment and perform physical exercise.

The Judicial Branch module is a 16,000 square feet full-service Court complex. This module will house and provide office and utility space for the staff of all of the

components as listed above, including a conference room for the Court, and will include separate entries, a common lobby, reception areas, office areas, file management and storage areas, supply areas, cleaning supply closets, meeting rooms, and public and private restrooms.

The Victims Services module is a 1,100 square feet full-service center that will provide space for the following areas: Healing Hearts Domestic Violence Program and the Office for Victims of Crime. This space will include four office spaces, receptionist area, 2 file/storage rooms, and a conference room. The Victim Services Center will have a separate entrance to ensure the privacy and rights of the clients and will be separate from the court facility.

This plan does not include juvenile detention since a Youth Services Center will be under construction as early as in the autumn of this year.

VII. OFF-RESERVATION FOSSIL FUEL AND COAL BED METHANE DEVELOPMENT.

The Secretary of the Interior is fashioning plans for a dramatic escalation of fossil fuel development which would encircle our Reservation. Plans for major coalbed methane (CBM) development (10,000 new wells) are being laid in areas adjoining all four sides of our Reservation. Simultaneously, the Secretary is moving toward conveying 553 million tons of federal coal (checkerboarded with substantial additional amounts of state and private coal) to the State of Montana, to facilitate massive industrial development (coal mines, power plants, and a railroad) in the precious and culturally significant Otter Creek area which adjoins the eastern boundary of our Reservation. These development initiatives, if not properly evaluated and fashioned in advance by the Secretary, will severely damage the physical, human and cultural resources of the Northern Cheyenne. We have been endeavoring to carefully and responsibly bring these concerns to the attention of the Secretary (our trustee), but have received no significant response.

1. Our Unique Vulnerabilities. Our 450,000 acre Reservation lies at the heart of Montana's coal and CBM country. Among all communities in the region, our's is the most vulnerable to the downside of coal-related development and the least privy to its financial benefits. For decades we have experienced major negative impacts, and scant benefits, from coal mining and power plant projects to the north and south of us.

a. Socio-economic Conditions. Socio-economic conditions on our Reservation are much worse than those in off-Reservation communities:

- Our public services and facilities are grossly deficient.

- We receive no share of the vast royalties and taxes generated by the development surrounding us.

- There is no tax base on the Reservation to generate funds to address our needs.

- When left to their own devices, off-Reservation mines and power plants do not employ Northern Cheyennes, even though we are the largest and most needy community in the region, with the most readily available workforce (our unemployment rate currently hovers around 70%).

- Despite long-standing and diverse efforts, we have been unable to generate appreciable economic development on the Reservation.

- As development proceeds around us, the gross disparity in quality of life between us and our off-Reservation neighbors grows wider and wider.

b. Physical and Cultural Conditions. In addition, we are uniquely vulnerable to the physical impacts of surrounding coal-related development because of our traditional beliefs and values. Our culture is entirely different from that of our neighbors. We believe that all living things are sacred. Our connection with our land and culture is of transcendent importance. These traditional values extend beyond the technical boundaries of our Reservation, to lands to

the north and south and to our original lands in the Tongue River Valley. The depth of our commitment to our traditional values is manifest from our internal reluctance to exploit the abundant coal resources underlying our Reservation. In an act of extraordinary self-denial, we have thus far refrained from developing those resources for commercial gain, because of our reverence for our Reservation.

2. **CBM Impacts.** CBM development surrounding the Reservation would exacerbate the entire range of socio-economic, physical and cultural impacts we have suffered from encircling coal and power plant development. Moreover, those impacts will be augmented by pernicious new impacts:

a. **Reservation Groundwater and Subsidence.**

- Drawdowns and deterioration of water quality in Reservation wells.
- De-watering of the Reservation aquifer overlying the coal seams.
- Impairment of vested groundwater rights on the Reservation.
- Subsidence of Reservation surface lands due to de-watering of the subsurface.

b. **Reservation Surface Water.**

- Pollution of Tribal water in the Tongue River Reservoir and the Tongue River.
- Non-compliance with Tribal water quality standards.

- Impairment of water rights secured to us in our water settlement with the United States and the State.

- Impairment of on-Reservation irrigation projects, including those to be secured to us as part of our water settlement.

c. Migration of CBM Water.

- Migration onto the Reservation of CBM water discharged from off-Reservation CBM wells.

- Resultant damage to Reservation agricultural lands, fish and wildlife, and their habitats.

d. Reservation Mineral Resources.

- Siphoning of Reservation CBM reserves.

- Siphoning of water from Reservation coalbeds, which may damage our coal by compression or other means.

- On-Reservation coal seam fires.

e. Noise; CBM Venting.

- Noise from compressor stations and vehicles adversely affecting Reservation residents, spiritual values and fish and wildlife.

- Hazardous CBM migration into Reservation

homes and water wells.

f. Air Pollution.

- Air pollution and visibility impairment from CBM venting, coal seam fires, carbon dioxide, No_x from compressor stations and vehicles, dust and other emissions, in violation of the Reservation's Class I Air Quality standard.

g. Socio-economic Concerns.

- Increased traffic.

- Increased stress on already inadequate on-Reservation public services and facilities.

- Increased law and order problems, especially in light of Reservation jurisdictional uncertainties among Tribal, federal and State jurisdictions.

- Exclusion of the Tribe from development-related State and local tax revenues and federal royalties that will accrue to State and local governments, exacerbating the gross disparities between on-Reservation and off-Reservation public services and facilities.

- Exclusion of Tribal Members from job opportunities available to others in off-Reservation CBM projects, unless special measures are adopted to compel opportunities for the Northern Cheyenne.

h. Cultural Concerns.

- Damage to sacred wildlife and plants found on and near the Reservation.

- Damage to sacred sites on and near the Reservation.

- Damage to water spirits in the Tongue River and at Reservation springs.

3. Otter Creek Impacts. The federal legislation directing the Otter Creek Coal transfer to the State of Montana (section 503 of the 1998 Interior Appropriations Act) was developed without even the slightest consultation with the Northern Cheyenne Tribe, and was fashioned without any consideration of the damaging impacts that implementation of the transfer would inflict on the Tribe. If matters remain as they are, massive amounts of federal coal in areas adjoining the eastern boundary of our Reservation will unconditionally be, transferred at no cost to the State to trigger massive development. Well before enactment of the legislation, it was well known that the adverse impacts of expanded coal development in the Tongue River Valley would fall heaviest on our Reservation community, and that our community would be uniquely excluded from the benefits of such development.

Development of the Otter Creek tracts will generate very large public revenues, in the form of royalties and state and local taxes. Those revenues will enable off-Reservation jurisdictions to cope with the impacts of Otter Creek development. None of those revenues will be available to the Northern Cheyenne to address the existing deficits in Reservation public services

and facilities or the increased deficits that the development will create. Also, the jobs and economic opportunities that would flow from Otter Creek development will not reach the Northern Cheyenne.

Well before enactment of the legislation, it had been established in the Tribe's suit against the 1982 Federal Powder River Coal Sale litigation (see para. 6 below), that the United States' trust responsibility to the Tribe requires that these adverse impacts be identified and mitigated in the federal coal leasing and NEPA processes. In complete disregard of this trust responsibility, this unilateral transfer of massive federal coal resources to the State, if carried forward as apparently envisioned by the Secretary and the State, would strip the Tribe of the essential protections of the federal coal leasing and NEPA processes. The coal would be developed in accordance with State processes, which, according to the State, provide no legal authority (under the State environmental protection or strip-mine permitting acts) for requiring operators to adopt mitigation measures to address impacts inflicted on the Reservation.

4. Tribal Efforts to Address These Impacts.

a. CBM Impacts ($8.15 million needed). On an extremely fast track, BLM and the State are preparing an EIS to analyze and plan for the major escalation of CBM development in areas surrounding our Reservation. We want to make sure that this study carefully considers potential impacts on our Tribe (which are unique in many respects) and also develops means to mitigate such impacts. We believe this is required by federal statutes and regulations, and the federal trust responsibility. For this purpose, we approached top BLM and BIA officials in Montana and proposed that a

special MOU be entered into among BLM, BIA and the Tribe, which provides for the careful consideration of Tribal impacts and mitigation in the EIS process. We received a favorable response and then prepared a proposed MOU (a copy of which is attached hereto). We submitted the MOU to BLM and BIA about six weeks ago, but to date have received no significant response from either of them. We are concerned that, given the fast track for the EIS, our efforts will soon be rendered moot. We request assistance from the Committee in assuring that these Federal agencies meet their responsibilities to the Tribe.

If the MOU is consummated, we will do our best to responsibly protect and advance the Tribe's interests under it. However, we lack the financial resources necessary to properly assess and advance the Tribe's interests in the EIS process. We especially need funds to acquire necessary professional assistance in the fields of hydrology, socio-economics and cultural matters, and to develop essential baseline data and establish long-term monitoring in those fields. We estimate this will cost $8.15 million over a five-year period. (See attached budget)

b. Otter Creek Impacts. As to the proposed Otter Creek transfer, we fear that the Secretary may transfer ownership of the 553 million tons of coal without any analysis of the impacts of the transfer on our Tribal community (or any other local community). We believe that such an action would be legally invalid for a number of independent reasons, and have laid out our position in a February 22, 2001 letter to the Secretary, and again in the attached May 30, 2001 letter to the Secretary. To date, we have received no significant response to these letters. We request the support of this Committee in assuring that the

Secretary meets their statutory and trust responsibilities to the Tribe.

5. **Possible Solutions.** We are anxious to engage in a dialogue with the Secretary and the Governor of Montana to discuss and develop means which will resolve our concerns. As noted above, with respect to CBM development we continue to await a meaningful response from BLM and BIA to the proposed MOU which would focus special attention on the analysis of Tribal impacts and mitigation in the CBM EIS now being prepared. Similarly, as to Otter Creek, we continue to await a Secretarial response to our letters laying out our concerns.

Earlier this year, we also wrote to and met with Governor Martz of Montana about these issues. We have proposed a dialogue with her to develop solutions. Although the Governor seems interested, we have had no word on when the dialogue will begin, and we are uncertain about the positions she may take.

If the Secretary and the Governor are willing, we believe reasonable solutions to our concerns can be found. It is essential that those solutions be adopted <u>before</u> transfer of any federal coal and any federal CBM permits are issued. We also have some thoughts about possible legislative solutions, which would assist us and other similarly situated tribes. Our Tribal Council has constituted a special committee to engage in such dialogues with the Secretary, the Governor and this Committee, and we are anxious to commence such discussions.

6. **Lessons from the 1982 Powder River Coal Sale.** The Northern Cheyenne do not want the current initiatives for regional energy development to be a re-

enactment of the failed 1982 Powder River Coal Sale. In studying and fashioning that 1982 sale, the United States did not identify, analyze and require mitigation of Reservation impacts. Before the 1982 sale, we made a major effort to bring these failures to the attention of local, regional, national and industry officials, to no avail.

Left with no other recourse, the Tribe brought suit against the United States and thoroughly prevailed. The court held the United States had committed a massive breach of its trust responsibility to the Tribe, and violated NEPA and other statutory and regulatory requirements. Judgment was entered canceling issued coal leases and holding the United States liable for the Tribe's very substantial litigation costs and expenses.

We would hope that Federal and State officials will not repeat the mistakes of the past. Specifically, to meet its trust responsibilities to the Tribe, the United States must assure that the impacts described above will be carefully assessed and that appropriate mitigation will be adopted in light of the uniquely vulnerable and disadvantaged status of the Cheyenne within the region.

Thank you for the opportunity to present the concerns of the Northern Cheyenne Tribe.

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VIII. ECONOMIC DEVELOPMENT -- ALTERNATIVE ENERGY DEVELOPMENT ($500,000 FOR FEASIBILITY STUDIES)

The Tribe is deeply interested in investigating the feasibility of developing alternative energy projects which can meet current and future energy and fuel needs of the Nation and the Tribe in culturally sensitive ways which will not damage the surface and subsurface of our Reservation. We attach hereto excerpts from our (CEDS document) which discuss the potential for such projects.

We are particularly interested in exploring the feasibility of a biomass project, which would consume forest waste products (including from our own sawmill in Ashland and other mills in the region), and extended agricultural crops using our ample and settled, but unused, water rights.

We would also like to assess the feasibility of alternative energy projects using wind, solar and hydro resources, which would also be compatible with our culture and values.

To assess the feasibility of these projects, we must retain well-qualified professionals in relevant disciplines. We estimate the cost will be approximately $500,000 over a three-year period.

We envision subsequently approaching Congress for assistance with the capital needs of those projects found to be feasible.

TESTIMONY OF
IVAN D. POSEY, CHAIRMAN
SHOSHONE BUSINESS COUNCIL
OF THE
EASTERN SHOSHONE TRIBE
OF THE
WIND RIVER RESERVATION
ON THE GOALS AND PRIORITIES OF THE
MEMBER TRIBES OF THE
MONTANA WYOMING TRIBAL LEADERS COUNCIL
FOR THE
107TH SESSION OF THE CONGRESS

July 12, 2001

My name is Ivan Posey. I am Chairman of the Business Council for the Eastern Shoshone Tribe of the Wind River Reservation in Wyoming. The Tribe appreciates the Committee's request for input on the goals and priorities of member tribes of the Wyoming Montana Tribal Leaders Council. The Tribe looks forward to working with the distinguished Senators on the Committee, including our own Senator Craig Thomas, to move these priorities forward.

The Eastern Shoshone Tribe has 3,500 members. Our Reservation was established by a Treaty with the Shoshone Tribe on July 3, 1868. The Wind River Reservation contains 2.4 million acres in west central Wyoming. We are the only Reservation within the State of Wyoming. Our Reservation is shared with the Northern Arapaho Tribe. The Reservation has approximately 7,000 American Indians and 9,000 non-Indians.

For the leaders of the Eastern Shoshone Tribe, the number one priority is to ensure that our youth and young adults have opportunities for the future. To provide these opportunities will not be easy. The high school graduation rate for Indian people is 65%. Our infant mortality rate is 150% higher than the national average. The median age of our reservation residents is 25 years of age. On the Wind River Reservation, the unemployment rate is 46%. The median household income is $11,290 compared with $33,197 for other residents of our state. One third of our dwellings have more than one family living in the home.

Our Tribe needs the tools to create quality living conditions on our reservations. We do not seek a handout, but seek a level playing field so that as sovereigns we can create a climate for economic development on a level playing field with states and local governments. For example, the Tribes on the Wind River Reservation generate $128 Million in economic activity and 1600 jobs within Fremont County, Wyoming. However, of the $15 million collected each year by the State of Wyoming in severance taxes each year from our resources, only $9.7 comes back in the form of State funded services. We are clearly contributing, but not benefitting from our own resources. Our

Tribe seeks federal funding and authorities commensurate with what states and local governments have received over the years to create viable economies. Funding which in many cases was based, in part, on Native American populations, but which never showed up in comparable services to Native American citizens of those states. In addition, we need to eliminate the multiple levels of outside governmental interference such as state taxation which hinder our ability to create viable economies. While several goals and priorities of my Tribe include additional federal funding, those request merely attempt to achieve parity with federal benefits provided for decades to the non-Indian citizens of this country. Now is the time to address the past and current shortfalls and bring American Indians to parity with other citizens.

I. EDUCATION

Our number one priority is education. A solid education in the basics: reading, writing, and mathematics, combined with teaching of Native American values of respect for people, wise use of natural resources, and perseverance to achieve success are key to self-determination and self-sufficiency for our Tribal members.

The United States promised education resources in exchange for the hundreds of millions of acres of land we gave to the United States. Land which the United States selected, in part, because of its value for generating money. However, we have been kept from receiving our bargained for share of the dollars for education generated from our lands. Moreover, many non-Indian public schools which serve no Indian children are allowed to tax our natural resources, thus taking resources away from our kids. Importantly, our Treaty guaranteed education resources even though the Eastern Shoshone Tribe does not have a BIA school on our Reservation. Our Tribe needs to have its Treaty rights honored in the area of education.

We need the tools to provide educational opportunities equal to those of other citizens of this great country. Early childhood learning is fundamental to success in education. Programs such as the Early Intervention Program, Early Headstart, and Headstart have proven track records. However, many of these programs on our Reservation cannot serve all the children who need the benefits of the programs. We have a waiting list of 50 children for Earlystart and 25 children for Headstart. In addition, basic infrastructure to serve these programs such as adequate and safe buildings is lacking.

Grade school and high school students also need resources and tools equal to that of other Americans. First, we need funding at levels to attract quality teachers to rural communities. The reality today is that we must compete for teachers with large metropolitan populations. Second, we need adequate physical facilities including science labs, computers, and high speed Internet access to make sure our children are ready to take their productive place in society. A key component of attracting jobs to the Reservation is a qualified workforce.

To complete the education process, our children need access to quality college educations. Culturally our people value being near to our families and our homelands. In addition, the low economic activity on reservations requires many household members to help with putting food on the table. For example, our Reservation has a median household income of $11,920 per year. Thus, going away to college puts a unique burden on our people. We need Tribal colleges located near our communities. In addition, for those members who choose to attend other colleges and universities, we need the scholarship resources which will allow them to attend quality schools. For example, in the past we were able to fund 32 students per academic year, while we had an unmet need of 147 students. The Eastern Shoshone Tribe currently appropriates approximately $500,000 of tribal funds for higher education.

II. HEALTH CARE

Quality health care is crucial to an adequate standard of living. Historically, access to quality health care for American Indians has lagged far behind the national average. I cannot urge strongly enough to increase the funding for the Indian Health Service to allow my people to obtain health care available to the average citizen. Significantly, the shortage of funding for the Indian Health Service means that preventive and routine care gets short changed in order to meet catastrophic and emergency care needs. Provision of preventive or routine care in the long run can save costs either (1) by reducing the incidences of catastrophic diseases such as diabetes, cancer, and heart disease, or (2) catching the disease at an early stage when treatment is most effective.

Parity and equal treatment in health care funding and services for American Indians is needed. Our service unit is the lowest funded service unit within the Billings Area. Moreover, per capita health care expenditures for the Wind River Service Unit are tragically inadequate when compared to the per capita expenditures that are made on health care for the rest of the United States population.

Based on the Level of Need Funding (LNF) Study, our service unit has a per capita health expenditure amount that is 49 % lower than the cost of health benefits that are provided to federal employees and members of the United States Congress. An increase in funding of $2,535,757 is needed to bring the service unit to 60 % and a total of $12,714,575 in additional funding is needed by the service unit to bring our per capita health expenditures to 100 % of what is offered to federal employees and members of the United States Congress.

Beside the overall need for increased resources, there are a few key areas which deserve special attention:

A. Pharmaceutical Supplies (Separate Budget Line Item)

A separate budget line item needs to be established for pharmaceutical supplies within the Indian Health Service (IHS) budget. Creation of a new budget line item will allow the IHS to improve its planning and to more efficiently and effectively manage its resources. The costs associated with pharmaceutical purchases for patient care continue to escalate at astronomical rates. The annual inflation rate for pharmaceutical supplies continues to be consistently higher than the inflation rates for medical care and other medical supplies. The national pharmaceutical inflation rate has been increasing an average of 12 to 14 % for the last five years.

During FY 2000, our service unit had an overall 34.79 % increase in its prime vendor pharmaceutical expenditures as compared to the same time period in FY 1999. These increases are directly attributable to the escalation in pharmaceutical prices. The number of prescriptions filled has only had a minor impact on the increases in pharmaceutical expenditures. The number of prescription filled in FY 2000 only increased by 4.28 %. (Exhibit # 1 shows the calculations for the pharmaceutical expenditure increases and the demand for prescriptions filled.)

In order to compensate for the significantly high expenditure levels and escalating costs associated with pharmaceutical supplies, our service unit has had to divert all cost savings that are contained in other budget categories (such as lapsed salaries and benefits) to the pharmaceutical supply budget category. In essence, the service unit has been required to operate in a survival mode due to the escalating pharmacy costs. This has negatively impacted health care services and has taken resources from other important activities that the service unit could be performing - such as preventive health care. In FY 1999, the service unit had an approved budget of $750,000 to purchase pharmaceutical supplies, but actually spent $881,000. This represents a 17.47 % cost overrun that had to be funded from other budget sources.

B. Contract Health Services

Contract Health Services (CHS) represent health care services that IHS is unable to provide to its patients directly. These cases are referred to private doctors and hospitals for the provision of health care services. CHS is typically utilized in situations where a tribal or direct care facility does not exist or when a direct care facility is not capable of providing the necessary emergency and/or specialty patient care that is required.

The Catastrophic Health Emergency Fund (CHEF) was established solely for the purpose of meeting the extraordinary medical costs associated with the treatment of victims of disasters or catastrophic illnesses who are within the responsibility of IHS. These resources are expended according to the basic requirements of the CHS program and are utilized to partially

reimburse IHS direct and tribally contracted programs for expenditures made on behalf of patients who incur extraordinary medical costs.

The funds that are appropriated for CHS and CHEF are not adequate. Additional funds need to be appropriated for these two budget line items.

In FY 1999, our service unit was allocated a CHS recurring base budget of $4,999,926. During the fiscal year, the service unit ended up having to spend $6,182,912 because of a significant increase in the demand for emergency and acute health care services. Of the $6.2 million that was expended, a total of $1,345,048 was spent on high cost cases that were eligible for CHEF reimbursement. The service unit received 47.58 %, or $639,986, of the total CHEF reimbursement that it was eligible to receive. The service unit was unable to get full reimbursement due to the problem that all CHEF funds had been totally depleted early in the fiscal year. The appropriations authorized for CHEF need to be increased to a more practical level, one that truly reflects the actual need.

There is not enough CHS dollars to adequately fund the health care needs of the Wind River Reservation population. Patients are being placed on deferred waiting lists because their medical priority is not high enough to meet the level of funding at the time of their referral. Typically, these cases turn into emergencies and require higher expenditures of CHS funds in the long run. Minor medical problems progress and become acute or life threatening, necessitating high expenditures of CHS funds to take care of critical or emergency medical care problems. During the first three months of FY 2000, the Wind River Service Unit accumulated a deferred CHS patient list that contains $84,465 in deferred medical services. (Exhibit # 2 contains the deferred CHS patient list.)

C. Dental Resources

Dental services are one of the most sought after services on the Wind River Reservation. Lack of adequate resources to hire qualified professional staff has resulted in long waiting lists of patients that need or desire treatment. Based on the service unit's user population of 9,589, and the service minutes that it takes to perform routine dental procedures, a dental staff that includes 9 dentists, 22 dental assistants, 2 receptionists, and 20 dental chairs is needed to provide adequate dental services on the Wind River Reservation. The service unit currently has 5 dentists, 10 dental assistants, 0 receptionists, and 12 dental chairs. This staffing level represents funding at 55 % of actual need. Patient access to adequate and standard dental health care is severely limited throughout the Indian Health Service. Only 25 percent of the service population has access to dental care.

D. Third Party Resources/Reimbursements

On July 1, 2001, our service unit was granted authority to bill and collect for health care services that are provided to Medicare patients. The inclusion of Medicare as a third party resource represents a significant opportunity for the Wind River Service Unit. It will provide additional resources that are critical to the ongoing financial viability and continued operation of the service unit. Historically, third party reimbursements (which have included Medicaid and private insurance only) have provided funding for approximately 20 % of the service unit's annual budget. Without third party resources, the service unit would be severely limited in the health services that it provides to its patients.

The intent of billing and receiving payments from third party resources, such as Medicare and Medicaid, is to enhance health care services to American Indians. But, due to inadequate appropriations for the Indian Health Service budget, they have been used to supplement American Indian health care services and not for enhancement as they were originally intended. (Exhibit # 3 contains information regarding third party reimbursements for the Wind River Service Unit.)

E. Transfer Indian Health Service Budget

The budget that funds the Indian Health Service needs to be transferred from the Department of Interior and be placed under the Department of Health and Human Services. The Indian Health Service deals specifically with health care for living human beings. It is unconscionable that citizens of the United States, who have been promised standard health care through treaties and are in dire need of such services, have to compete with animals, trees, and birds for funds to meet a most basis human need of adequate health care. By transferring the Indian Health Service budget to the Department of Health and Human Services, American Indians will be afforded the same benefits that are enjoyed by other citizens of the United States and the state of Wyoming. Anything less will not be equal treatment or fair.

III. IRRIGATION

One cannot have a viable economy and the decent standard of living without adequate quantities and quality of water resources. The United States litigated successfully over decades to secure water rights for the Tribe. It would be a travesty of justice to fail to provide resources to put that water to use in beneficial manner. The United States spent decades providing free or low cost funds to develop massive subsidized water infrastructure for non-Indians all over the West while Indians were left in poverty. We deserve the same level of resource development funds provided to our non-Indian neighbors. The Wind River Reservation requests $65,000,000 to rehabilitate and improve the irrigation systems and water supply serving trust lands on the Reservation. The funding

will be used for improvements to the physical, management, finance, and maintenance systems serving those lands.

The BIA irrigation project on the Wind River Reservation is a serious state of disrepair. As of 1994, over 60 % (1200 structures) needed repair or replacement, and 45% (190 miles) of canals and laterals needed repair or reconstruction. Structure failures are routine, resulting in progressive loss of control of Project water. Catastrophic failure of segments of the delivery system are imminent, the Dinwoody Canal blowout is but one example. Problems include dilapidated physical structures, inadequate storage, inefficient canals, improperly sized canals, inadequate maintenance and equipment, failure to maintain systems historically, no reserves for required replacement of structures, an inadequate financial management system, no voice for irrigators in the system operations and maintenance (O&M), and a land leasing system which prevents productive use of the lands. Resolving these problems will involve a combination of traditional engineering and creative thinking. The needs and problems have been there for decades. The solution needs to involve both physical improvements and changes in the way the federal government has been doing business with respect to this project. The Wind River Reservation irrigation rehabilitation and betterment project will develop real world solutions, factual data, and recommendations which will bring Indian irrigation project up to the level of other federally sponsored irrigation projects and provide options to make the project as self-sufficient as possible in the long run.

The rehabilitation and betterment project will allow for full use of reserved water rights within the BIA project and other Indian irrigated lands on the Reservation. The Tribe's Treaty-based right to approximately 210,000 acre feet of historically used reserved water rights was affirmed by the U.S. Supreme Court in 1990. Within the past year, thousand of additional acres owned by successors to Indian allottees were awarded reserved water rights. The system in its present state of repair, configuration, and storage capacities is unable to delivery this water in fulfillment of those rights. The storage capacity in the Little Wind River portion of the irrigation system is barely sufficient to meet the needs of the reserved rights of the Tribe for which they were part of the water supply basis for the Tribe's award. Therefore, the rehabilitation and betterment project includes funds to enlarge Ray Lake to meet the needs of water users within the Little Wind River drainage. Importantly, if we can get the funds to enlarge Ray Lake now they can be combined with already appropriated safety of dams funds to repair safety problems. This will create cost savings over doing enlargement and safety repairs separately.

In addition to the BIA project, there are some individual irrigation ditches, including an area of the Reservation known as the Arapaho Ranch, which are in need of rehabilitation and betterment. These areas include lands owned by individual tribal members and the joint tribes. These lands also deserve to have their lands served by decent irrigation systems.

The Shoshone Tribe has experience with irrigation rehabilitation. The Tribe has completed studies of the long term needs of the project. With limited funding in the early 1990s, the Tribe was able to fix some key structures. In addition, the Tribe tested ideas for construction techniques,

pipelines, canal lining, and on-farm improvements. The Tribe has experienced first hand the results of the BIA's failure to properly maintain the system. The Tribe has had to deal with major canal blowouts and safety of dams issue at irrigation reservoirs. Importantly, the Tribe has approached the project not only from the physical structure standpoint, but also have done reviews for the management, finances, and maintenance of the project.

A. Use of Irrigation Funds

The Project will implement solutions in the areas of physical improvements, management, maintenance, equipment, project finances, governing structure, and on-farm improvements. Funding for the project will occur over five years, provided that completion of physical improvements may extend over a longer period of time. The intended goals in each area are as follows:

1. *Physical System*. The Project shall assess and identify the physical condition of the system, make necessary repairs or replacements, and reconfigure portions of the project as appropriate. The construction work shall be planned to provide the least disruption to ongoing farming operations.

2. *Management*. The Project will identify the adequacy of the existing formal and informal organizational structures, determine the suitability of rules that govern the Project, and make recommendations to correct any deficiencies or to improve the system. The Tribe will review potential organizational structures which take into consideration the rights and responsibilities of the Tribe, the water users, non-water user landowners, and the federal government. The Tribe may come back to Congress if additional authority is necessary to implement changes in the organizational structure of the Project. The Management review will identify recommendations for staffing, water requests, for delivery of water, water measurement, drought conditions, and enforcement. The Tribe also will review the land leasing procedures related to development of the lands served by the project to improve the ability of landowners to have their lands be productive. This will generate income to cover O&M charges.

3. *Finances*. The Tribe will complete evaluation of the financial stability and financial controls of the project. The report shall evaluate the long term viability of the project and identify means for funding operations and maintenance and reserves for future rehabilitation needs. The Tribe shall evaluate issues of ability to pay, collection of delinquencies, and accountability.

4. *Maintenance and Equipment*. The Project shall evaluate and determine the existing inventory of equipment, its condition, and its suitability. The relative costs of equipment also shall be identified. The Tribe will implement recommendations concerning recommended levels of equipment needed for the irrigation project.

5. *On-Farm Practices.* This portion of the project will involve a review of the existing farming systems, develop sample farm budgets, determine the potential for improved farming systems, and determine the present and future ability of water users to pay for construction, operation, and maintenance. The Tribe will analyze cropping patterns and make recommendations for changes and associated educational efforts. The relative costs of categories of on-farm enhancements shall be developed. Cost savings achieved in the other areas of the Project, including set aside of reserves, shall be made available on a cost-share basis for on-farm improvements.

The estimated Project Funding is listed below:

A.	System Rehabilitation and Betterment	$35,000,000
B.	Ray Lake Expansion	$25,000,000
C.	Individual Irrigation Ditches, including Arapaho Ranch	$2,000,000
D.	Implementation of Management, Financial, and Operation and Maintenance Changes	$3,000,000
	Total	$65,000,000

The authorizing and appropriating legislation should indicate that the funding is non-reimbursable and available until expended. The United States promised the Tribe in 1905 to construct an irrigation system. The BIA's failure to maintain the system over the years has prevented landowners from obtaining the revenue and value from their lands achieved by their non-Indian neighbors. Therefore, making the rehabilitation and betterment project non-reimbursable is fair and equitable.

I believe that funding of the Wind River Irrigation Project rehabilitation and betterment program may be a useful pilot project to identify the issues, concerns, problems, and successes in bringing Indian irrigation projects up to levels equivalent to other federal irrigation projects.

IV. HOUSING

The lack of adequate housing affects health, educational achievement, and work performance. Many of our people live in substandard housing. For those who are lucky enough to live in a decent home, it may be shared with two or three other families.

Reading with a child when they are infants and toddlers has been shown to have significant benefits in educational success. You can't expect a parent to read to a child when they have to spend their time just trying to keep the child warm in a house where being inside is not materially different than being directly out in the elements. Throughout Indian country there are a number of deaths each year due to fires in homes with inadequate wiring or heating systems. Importantly, we also have people who live in homes where fire is the sole source of heat and there is no running water.

There is a large need for additional housing on our reservation. In our housing improvement program which serves elderly and handicapped low income individuals we have 110 homes which need repairs. For our general housing program, there is an unmet need of 75 homes. For example on the Wind River Reservation, 22.8% of the dwellings have more than one family living in them. Housing support for large land-based tribes such as the Eastern Shoshone Tribe also needs to take into consideration the rural nature of our reservation. Basic services such as water, electricity, telephone, and Internet are greater on a per household basis. In addition, costs of transportation of materials to building sites is greater. Congress needs to make full housing for Indian families a goal of the 107th Congress.

V. TAXATION

The Eastern Shoshone Tribe urges amendments to federal laws to provide tax relief to existing and potential taxpayers so that the benefits of increasing the economic base of the Wind River Reservation can be maximized. The Tribe requests passage of H.R. 224 which extends the Indian employment credit and depreciation rules for property used predominately within an Indian Reservation. We also seek amendments to federal laws to treat our Tribe as favorably as state governments for taxation purposes by expanding our authority to issues tax exempt bonds for development purposes and to issues such bonds for private activity purposes. The Tribe also desires amendments to the payment in lieu of taxes ("PILT") program which will allow tribes to receive the same benefits as state and local governments which have non-taxable federal lands within in their jurisdiction. Finally, Congress should prohibit dual taxation of Reservation resources by states, or in the alternative, require that 100% of such collected taxes be returned to the Tribal government to provide services on the Reservation.

The ability of any government to provide basic services to its residents is dependant on a viable tax base. The viability of Reservation tax bases has been undercut by legislation and court decisions throughout the years. The United States cannot in good conscience tell the tribes it is their responsibility to create a vibrant economy, but eliminate or fail to provide the necessary tools.

I agree that we have a responsibility for creating viable communities on our Reservation. To that end, we are upgrading and adding new business related laws to provide certainty and predictability to entities doing business on the Reservation. In addition, we have established an economic development corporation to spearhead and facilitate increased business activity on the

Reservation. However, we need the additional tools described above to achieve are goal of full employment in quality jobs.

VI. DROUGHT

We are in our second year of major drought on the Wind River Reservation. Throughout the Reservation, we are looking at water supplies of from 17% to 41% of normal. This low water supply follows on last year which was only marginally better. Many of our reservoirs have significantly reduced storage. For example, it is estimated that Washakie Reservoir may be out of water except for a reserve for the municipal systems by the time of this hearing. These conditions have reduced the carrying capacity of our rangelands, reduced yields on crops such as hay and alfalfa used for winter feed, and placed drinking water systems at risk.

For many of our residents, Indian and non-Indian, income from growing forage crops or the raising of cattle is the difference between being able to pay the fuel bill or eating. We are doing everything we can to stretch the use of the water to the maximum, but that will not be enough. We need to begin immediately to get drought assistance out to the Reservation before we have a catastrophe. Getting assistance know to our farmers and ranchers now will prevent greater hardship this winter.

In addition to immediate relief, Congress should provide authority to tribes to declare areas on reservations as disaster or drought areas. Many times with the competing interests claiming state officials time we get left behind or it is assumed that the federal government is addressing all our needs. Providing the authority to Tribal chairman under the same conditions used by Governors will make sure emergency needs of our members are addressed in a timely fashion.

VII. TELECOMMUNICATIONS

As you are well aware, adequate telecommunication service is vital to competing in the current economy. Moreover, access to a basic phone can mean life or death in an emergency in the rural areas of our Reservation. The Eastern Shoshone Tribe urges passage of S. 761, *Native American Telecommunications Improvement and Value Enhancement Act* or similar legislation.

Telecommunication infrastructure on the Wind River Reservation is significantly below average, even for rural Wyoming. Telecommunications is an area of commerce the inferior quality of which presently affects every aspect of life here on the Wind River Reservation. Attached as Exhibit 4 is a copy of the Tribe's comments to the Federal Communications Commission concerning the telecommunication problems and needs on the Reservation.

The Tribe has been investigating and pursuing solutions to our telecommunications problems during the past couple of years. We see a low-interest loan program for improvement of telecommunications services on Indian reservations, such as the one proposed in S. 761, as an important part of an overall solution. The availability of quality telecommunications is important to our ability to increase economic activity on the Reservation.

VIII. ROADS.

Congress needs to allocate more resources to Reservation roads. We maintain currently over 300 miles of road on our Reservation with at least an equal amount in disrepair because they cannot be accommodated in the current maintenance program. It is difficult to attract business to the Reservation when the basic infrastructure of roads and utilities are lacking. Inadequate roads make life in Indian country harsh and sometimes tragic–as Indian people are often prevented by road conditions from attending schools, obtaining needed health care, and getting to work. Without the basic infrastructure in place, many companies will not even look at the possibility of locating on a reservation.

As Congress addresses reservation road needs, standards for road construction on reservations must be mandated. Some minimal level of quality needs to established either federally or be provided through adoption of Tribal standards. We have new roads being built with federal dollars which are not designed to any industry recognized standards. When questions are raised by the Tribe, we are told "Trust us [BIA]x, we know how to build roads." There is very little if any quality control involved in road construction projects on our reservation. We must assure that the roads which are built are quality roads so Congress does not need to expend funds to repair them in 10 years instead of the normal 20 year life of a road.

IX. AGRICULTURE

The Tribe is responsible for administration of 1.8 million acres of rangeland, 40 tribal farm assignments, and 60 thousand acres of irrigated/subirrigated/dry pasture lands. In order to protect, enhance, and manage these resources on trust lands, additional staff is necessary to provide technical assistance and to address deficiencies required to manage these lands. To bring staffing equivalent to that of other Federal agency staffing, we need: a soil scientist, soil conservationist, soil conservation technician, civil engineering technician, laborer, environmental scientist, GIS specialist, and livestock officers.

X. TRIBAL COURTS

Congress needs to fully fund the Indian Tribal Justice Act nationwide. A key component of the legal infrastructure is a tribal court system. In addition to physical infrastructure, businesses and reservation residents need a working legal infrastructure. A system that can fairly and in a timely manner resolve disputes of a commercial nature is vital to economic development.

Importantly, an adequate tribal court is vital to ensuring the safety of residents of the reservation. A fully operational court system is central to a safe and orderly community. Key to stopping persons from criminal activity is a court system that is adequately staffed with judges, prosecutors, defenders, and probation officers. Holding people accountable when they first get into trouble, in conjunction with options such as a viable job market, are important to reducing crime. The Indian Tribal Justice Act was passed in 1993, the beginning of this new millennium is not too late to implement the goals of the law.

Currently, the Shoshone and Arapaho Tribal Court is understaffed. There are only three judges who hear all cases. There are 3 clerks on staff who process the 3,000 plus civil cases, divorce cases, custody cases and 500 plus juvenile files and take care of the business that flows through the court system everyday. The court system is in dire need of a computerized database on which all cases could be loaded. There is a need for 2 more judges, 3 more clerks, a public defender, a juvenile officer, and a probation officer plus equipment. With the increase to our juvenile cases there is a need for a juvenile officer to monitor juveniles sentences.

XI. NATURAL RESOURCES.

The Eastern Shoshone Tribe requests $1,000,000 for critical staffing and technical needs in the natural resources area. Land is a key Tribal asset, in addition to our people, and it is central to our Tribe's ability to move forward economically. Putting our land to productive use requires federal approval for almost every individual action. However, lack of manpower in key areas has severely limited wise use of the natural resources and in some cases creates burdens on the land which make it nearly impossible to use. Therefore, I request a specific appropriation for a full time surveyor, appraiser, geologist, and petroleum engineer for the Wind River Reservation. In a effort to partially deal with fractionated interest problems related to leasing of lands, individuals have attempted to consolidate their interests through exchange and partitioning. Services required include surveying reservation boundaries, homesites, trust property boundary disputes, trust partitions, road and utility easements, and to verify the existing old land survey as it relates to trust properties. Appraisers are key to getting leases approved to put land into production, thus generating income for our members. For example, failure to get lands appraised prevents their being leased, which eliminates funds for to pay operations and maintenance charges, which then become a lien which increases the cost of leasing in the future. We also have significant mineral development potential on our reservation. The addition of a geologist, petroleum engineer, and field inspection staff will result in net cost savings because this expertise is hired on a consultant basis at this point in time.

The addition of staff with expertise will expedite the processing of existing proposals as well as assist the Tribe with long term planning for wise use of our mineral resources. The Tribe currently does all physical inspections and monitoring of the oil and gas leases within the Wind River Reservation. With increased funding, the Tribe can be effectively inspect and monitor all oil and gas activity.

XII. LANDS INTO TRUST

In an effort to reduce jurisdictional disputes, increase Tribal income, and provide more jobs to Tribal members, the Tribe has purchased several tracts of lands over the years. We have been attempting for ten years to put those lands into trust. The current system is unworkable and unmanageable. About the time we think we have all the necessary paperwork, the requirements shift. And, we are tribe with specific authority to acquire lands on our Reservation. Congress needs to streamline this process. I recommend that the requirements for on-reservation acquisitions parallel the standards for transfer of excess lands on reservations to tribes.

Congressman Lloyd Meeds eloquently described the value of increasing ownership of lands by within their Reservation when the Federal Property and Adminsitrative Services Act was amended to provide for transfer of excess federal lands to tribes.

> Often, Federal lands within [the tribes'] boundaries which are declared excess or surplus would be a Godsend to them – either by providing a new source of income or by providing land upon which to take advantage of many federal social programs.
>
> . . .
>
> The rationale again for this bill is I think in keeping with what we at the Federal level and hopefully at the State levels and other areas of our society have come to look at as a new thrust in Indian matters following very much the admonition and [entreaty] of the President of the United States who in 1970 declared the policy of this Government to be self-determination by Indians. We have gone from assimilation to determination to self-determination, and I think this is certainly in keeping with that to allow Indians to take this property so that they can use it for tribal purposes.
>
> There has been a great awakening in the Indian people in this Nation. Part of that thrust is a desire to increase their economic base, to make their holdings more desirable and more manageable, and to allow them the operation of lands lying within the reservation held by them or by the Federal Government so that they can turn it to tribal purposes. I think I know of no opposition to the bill, and I think it would be one of the most important things we at the Federal level could do in keeping with the total policy of self-determination.

Hearings on H.R. 8958 To Amend the Federal Property and Administrative Services Act of 1949 To Provide For The Disposal Of Certain Excess And Surplus Federal Property To The Secretary Of The Interior For The Benefit Of Any Group, Band, or Tribe Of Indians Before the Subcommittee On Government Operations, 93rd Cong., 2d Sess. 4, 7 (1974) (statement of Congressman Lloyd Meeds). Congressman Meed's view apply to acquisitions by tribes today. Congressman Meeds advocated strong presumption in favor of adding to the Tribal land base.

Simply, lands acquired within original Treaty boundaries, including areas opened to non-Indian settlement within those boundaries, should be taken into trust automatically provided the United States would assume no environmental problems. Tribes are not given a voice when lands are purchased and taken out of trust. There is no reason to provide states or local government's a say when such lands go into trust. As mentioned previously, the states tend to only provide minimal services to reservations lands.

XIII. COUNCIL OF LARGE LAND-BASED TRIBES

The Eastern Shoshone Tribes is one of the charter members of the Council of Large Land-based Tribes. The Council was formed because of the recognition of member tribes that the unique issues affecting tribes with large land bases, and in many cases large populations, were not being adequately addressed by either Congress or the Administration. For example, the Department of Interior held a select meeting to discuss the proposed leasing regulations, an issue which affects large land-based tribes the most. No large land-based tribes were invited or represented in the discussions. Likewise, funding formulas which focus primarily on population can disadvantage large land-based tribes. It takes more manpower and equipment to provide law enforcement over 3500 square miles versus 50 acres.

The Council has taken steps to make sure the that positions taken by the Council in support of member tribes are those of the elected leadership of those tribes, not consultants, staff, or others. This assures that as you and your staff deal with the Council you are receiving information which has been approved by the elected officials of the member tribes.

The Committee's recent hearings to gather information on the goals and priorities of tribes for the 107th Congress indicate an effort to seek information from a broad range of tribes. As the Committee knows, tribes come in all shapes and sizes. As you consider the whole range of issues affecting American Indians, please be sure that the actions taken or legislation passed is fair to all tribes, including the large land-based tribes.

CONCLUSION

As my testimony indicates, there are numerous issues involving tribes which need to be addressed by this Congress. Please don't leave us behind again as you deal with the myriad of issues competing for your attention. We do not seek a handout, but treatment consistent with our status as equal citizens, sovereigns, and people. As Felix Cohen, noted Indian scholar, once said "Like the miners canary, the Indian marks the shifts from fresh air to poison gas in our political atmosphere; and our treatment of Indians . . . reflects the rise and fall in our democratic faith." Let this be a time for fresh air in Congress' dealing with American Indians. I look forward to working with the Committee and its staff to implement these necessary and worthwhile goals.

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WIND RIVER SERVICE UNIT
PHARMACEUTICAL EXPENDITURES

MONTH	FY 99	(running total) FY 99	FY 00	(running total) FY 00	% CHANGE
OCT	$62,150.00	$62,150.00	$68,716.65	$68,716.65	10.57%
NOV	$52,162.00	$114,312.00	$87,168.48	$155,885.13	67.11%
DEC	$59,315.00	$173,627.00	$85,563.35	$241,448.48	44.25%
JAN	$62,206.00	$235,833.00	$75,991.97	$317,440.45	22.16%
FEB	$53,316.00	$289,149.00	$72,293.57	$389,734.02	35.59%
MAR	$73,030.37	$362,179.37			
APR	$52,352.26	$414,531.63			
MAY	$73,320.81	$487,852.44			
JUN	$85,863.81	$573,716.25			
JUL	$67,368.91	$641,085.16			
AUG	$73,092.66	$714,177.82			
SEP	$67,492.73	$781,670.55			
Oct-Feb	$289,149.00		$389,734.02		34.79%
TOTALS	$781,670.55	$781,670.55	$389,734.02 (year to date)	$389,734.02	

NUMBER OF PRESCRIPTIONS

MONTH	FY 99	(running total) FY 99	FY 00	(running total) FY 00	% CHANGE
OCT	8530	8530	8530	8530	0.00%
NOV	8046	16576	8643	17173	7.42%
DEC	9152	25728	9558	26731	4.44%
JAN	9257	34985	9513	36244	2.77%
FEB	8617	43602	9224	45468	7.04%
MAR	9863	53465			
APR	8284	61749			
MAY	8430	70179			
JUN	9079	79258			
JUL	8356	87614			
AUG	8384	95998			
SEP	8488	104486			
Oct-Feb	43602		45468		4.28%
TOTALS	104486	104486	45468 (year to date)	45468	

FORT WASHAKIE
PHARMACEUTICAL EXPENDITURES

MONTH	FY 99	(running total) FY 99	FY 00	(running total) FY 00	% CHANGE
OCT	$31,427.00	$31,427.00	$42,713.30	$42,713.30	35.91%
NOV	$29,336.00	$60,763.00	$50,321.95	$93,035.25	71.54%
DEC	$27,238.00	$88,001.00	$49,528.26	$142,563.51	81.84%
JAN	$36,004.00	$124,005.00	$38,010.11	$180,573.62	5.57%
FEB	$26,713.00	$150,718.00	$49,896.87	$230,470.49	86.79%
MAR	$41,909.25	$192,627.25			
APR	$30,999.02	$223,626.27			
MAY	$49,019.46	$272,645.73			
JUN	$48,243.25	$320,888.98			
JUL	$30,732.14	$351,621.12			
AUG	$47,291.61	$398,912.73			
SEP	$39,307.67	$438,220.40			
Oct-Feb	$150,718.00		$230,470.49		52.92%
TOTALS	$438,220.40	$438,220.40	$230,470.49 (year to date)	$230,470.49	

NUMBER OF PRESCRIPTIONS

MONTH	FY 99	(running total) FY 99	FY 00	(running total) FY 00	% CHANGE
OCT	4753	4753	5017	5017	5.55%
NOV	4609	9362	4880	9897	5.88%
DEC	5080	14442	5499	15396	8.25%
JAN	5474	19916	5428	20824	-0.84%
FEB	4912	24828	5375	26199	9.43%
MAR	5444	30272			
APR	4603	34875			
MAY	4881	39756			
JUN	5066	44822			
JUL	4678	49500			
AUG	4853	54353			
SEP	4992	59345			
Oct-Feb	24828		26199		5.52%
TOTALS	59345	59345	26199 (year to date)	26199	

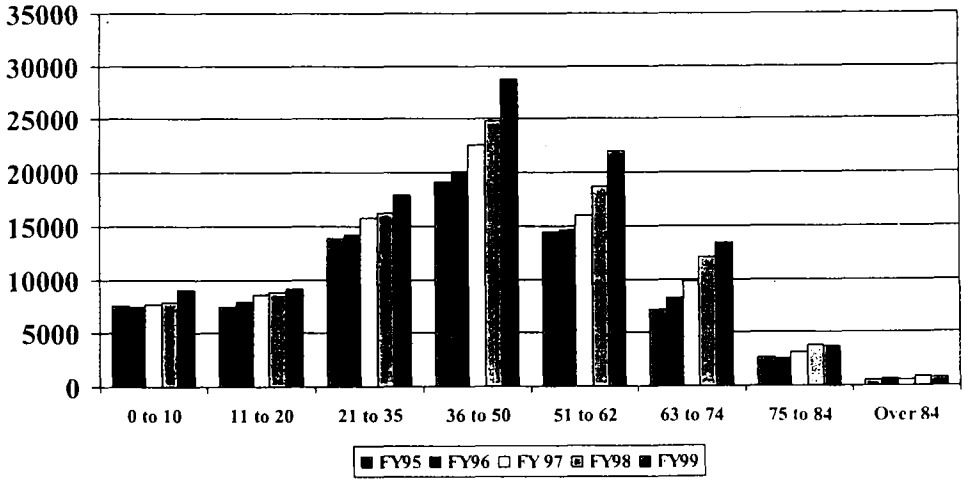
ARAPAHOE
PHARMACEUTICAL EXPENDITURES

MONTH	FY 99	(running total) FY 99	FY 00	(running total) FY 00	% CHANGE
OCT	$30,723.00	$30,723.00	$26,003.35	$26,003.35	-15.36%
NOV	$22,826.00	$53,549.00	$36,846.53	$62,849.88	61.42%
DEC	$32,077.00	$85,626.00	$36,035.09	$98,884.97	12.34%
JAN	$26,202.00	$111,828.00	$37,981.86	$136,866.83	44.96%
FEB	$26,603.00	$138,431.00	$22,396.70	$159,263.53	-15.81%
MAR	$31,121.12	$169,552.12			
APR	$21,353.24	$190,905.36			
MAY	$24,301.35	$215,206.71			
JUN	$37,620.56	$252,827.27			
JUL	$36,636.77	$289,464.04			
AUG	$25,801.05	$315,265.09			
SEP	$28,185.06	$343,450.15			
Oct-Feb	$138,431.00		$159,263.53		15.05%
TOTALS	$343,450.15	$343,450.15	$159,263.53 (year to date)	$159,263.53	

NUMBER OF PRESCRIPTIONS

MONTH	FY 99	(running total) FY 99	FY 00	(running total) FY 00	% CHANGE
OCT	3777	3777	3513	3513	-6.99%
NOV	3437	7214	3763	7276	9.49%
DEC	4072	11286	4059	11335	-0.32%
JAN	3783	15069	4085	15420	7.98%
FEB	3705	18774	3849	19269	3.89%
MAR	4419	23193			
APR	3681	26874			
MAY	3549	30423			
JUN	4013	34436			
JUL	3678	38114			
AUG	3531	41645			
SEP	3496	45141			
Oct-Feb	18774		19269		2.64%
TOTALS	45141	45141	19269 (year to date)	19269	

WIND RIVER
PRESCRIPTION GROWTH
by
AGE BUCKETS

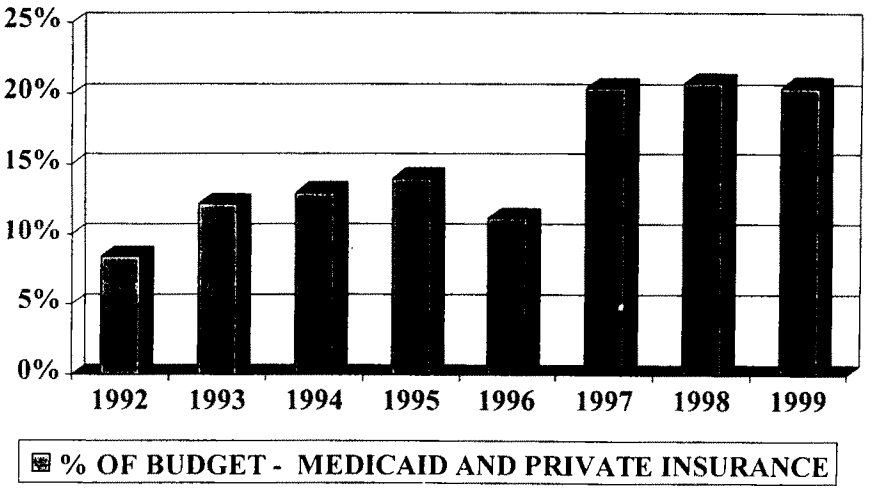


10/13/99	CT ELBOW	200	PEARSON	10
10/20/99	SLEEP STUDY	600	WRIGHT	10
11/10/99	OFFICE VISIT- NEUROLOGY	150	KLINKENBORG	10
10/6/99	UGI SERIES	750	WELLS	10
12/29/99	PULMONARY FUNCTION TEST	350	WELLS	10
10/22/99	VIALS FOR ALLERGY TMTS	100	PEARSON	10
10/20/99	ALLERGY VISIT	100	WELLS	10
10/20/99	CONSULT OPTHAMOLOGIST	50	KLINKENBORG	10
11/4/99	OCCUPATIONAL THERAPY	200	STEFFEY	10
11/24/99	CT SINUS	250	KLINKENBORG	10
10/6/99	F/U VISIT LAMINECTOMY	60	PEARSON	10
10/20/99	PHYSICAL THERAPY	400	WELLS	10
12/29/99	WALERS VIEW SINUS	200	WRIGHT	10
11/4/99	OFFICE VISIT/RHEUMATOLOGY	50	KLINKENBORG	10
10/27/99	TRAVEL TO SLC VA	65	CALDER	10
10/27/99	PHYSICAL THERAPY	400	KLINKENBORG	10
10/27/99	EVALUATION PARATHESIA	150	PEARSON	10
11/24/99	MRI L SHOULDER	1000	WELLS	10
10/27/99	MASS REMOVAL	3500	KLINKENBORG	10
11/10/99	FU OFFICE - BURN ON FOOT	150	PEARSON	10
11/24/99	ARTHROGRAM OR R SHOULDEI	400	WELLS	10
12/15/99	REMOVAL OF PIN DISTAL FIB	3500	WRIGHT	10
11/10/99	CHRONIC BLEPHARITIS OU	50	CADMAN	10
10/27/99	ALLERGY EVALUATION	300	WELLS	10
10/27/99	EGD	750	WELLS	10
11/4/99	PHYSICAL THERAPY	400	BERRY	10
10/13/99	TESTICULAR ULTRASOUND	200	WELLS	10
12/8/99	EVAL SCROTAL MASS	200	WELLS	10
10/27/99	MAMMOGRAM	65	WELLS	10
10/13/99	PHYSICAL THERAPY	600	PEARSON	10
10/27/99	ALLERGY EVAL AND TMT	300	WELLS	10
10/14/99	ARTHROSCOPY KNEE	7000	WHIPP	10
12/15/99	REVIEW OF INSULIN DOSAGE	500	CALDER	10
10/20/99	SEPTOPLASTY	3500	KLINKENBORG	10
10/6/99	UMBILICAL HERNIA REPAIR	3500	STEFFEY	10
11/24/99	CATARACT REMOVAL	3500	ROYS	10
11/4/99	OFFICE VISIT GEN SURGEON	50	KLINKENBORG	10
11/4/99	GALLBLADDER ULTRASOUND	200	BERRY	10
10/20/99	OFFICE VISIT ORTHO	100	STEFFEY	10
10/13/99	SURGICAL RELEASE CARPAL T	3500	KLINKENBORG	10
11/10/99	SLEEP STUDY	600	WRIGHT	10
10/13/99	FU OFFICE - ORTHO	50	PEARSON	10
12/15/99	SURGICAL TOOTH EXTRACTIOI	600	HUFF	10
10/27/99	MRI HEAD AND SINUSES	1000	WELLS	10
11/24/99	EVALUATE & REPAIR EYELID	1000	ROYS	10
10/27/99	MRI HEAD/R INNER EAR	1000	WELLS	10
11/4/99	PHYSICAL THERAPY	600	KLINKENBORG	10
10/6/99	CAUDAL STEROID INJECTION	200	WELLS	10
10/6/99	TREADMILL TEST	300	WELLS	10
12/15/99	BREAST PROSTHESIS	100	CALDER	10
11/17/99	CATARACT REMOVAL	3500	ROYS	10

12/8/99	FIBROMYLAGIA/PHYSICAL TX	600	WELLS	10
10/13/99	FU LOWER BACK PAIN	50	STEFFEY	10
11/24/99	CT PARANASAL SINUSES	200	KLINKENBORG	10
11/10/99	PHYSICAL THERAPY	600	PEARSON	10
11/4/99	OFFICE VISIT/RHEUMATOLOGY	50	WELLS	10
10/27/99	TOTAL KNEE REPLACEMENT	5000	KLINKENBORG	10
10/29/99	MRI NECK/UPPER T SPINE	1000	WELLS	10
10/20/99	ARTHROSCOPY L KNEE	7000	KLINKENBORG	10
11/24/99	ALLERGY INJECTIONS 1 MONTH	300	WELLS	10
11/24/99	NEUROLOGY EVALUATION	150	WELLS	10
12/1/99	TOOTH REMOVAL ORAL SURG	300	HUFF	10
11/17/99	ARTHROSCOPY L KNEE	7000	KLINKENBORG	10
11/4/99	RELEASE TRIGGER FINGER	3500	KLINKENBORG	10
11/10/99	EVAL & RECONSTRUC PUNCTA	3500	ROYS	10
10/20/99	ENDOSCOPIC EXAM	350	KLINKENBORG	10
10/27/99	ALLERGY EVAL AND TMT	300	WELLS	10
10/20/99	YAG LASER TREATMENT	3500	CADMAN	10
10/6/99	FOLLOWUP NEUROLOGY	75	WELLS	10
11/10/99	PTERGIUM REMOVAL	3500	ROYS	9
11/17/99	MRI ELBOW	1000	KLINKENBORG	9
12/29/99	OCCUPATIONAL THERAPY	200	STEFFEY	
		84465		

WIND RIVER SERVICE UNIT

Percentage of Annual Budget
Third Party Reimbursements FY 92-99



CC Docket No. 96-45; FCC 99-204

Comments of the EASTERN SHOSHONE TRIBE
on Proposed FCC Rules re:
Telecommunications in Unserved/Underserved Regions

The Eastern Shoshone Tribe ("the Tribe") of the Wind River Reservation in Wyoming thanks the Federal Communication Commission for its interest in obtaining comments on current levels of telecommunication use and service in tribal areas. Because this Tribe has repeatedly experienced difficulties in the past when attempting to communicate, problem-solve, or register complaints with U.S. West (the local carrier serving the majority of households on this Reservation), the Tribe is very interested in helping the FCC understand and address problems its members experience in both underserved and unserved portions of the Reservation. Much of the information requested in the FCC's notice is not readily available to the Tribe. As a result, the Tribe requests that the FCC reopen the period during which the Tribe might submit to the FCC detailed information concerning existing lack of telecommunication service on its Reservation. Finally, **the Tribe formally requests that the FCC engage a negotiated rule-making process regarding telecommunications in unserved and underserved tribal areas and that it be granted permission to participant in that process.**

Following are the comments of the Eastern Shoshone Tribe concerning information requested by the FCC to the extent it is currently available to the Tribe. **The data presented in these comments excludes data for all residences in areas known as the town of Riverton and the Bureau of Reclamation area.** Both of these areas are in fact within the boundaries of the Wind River Indian Reservation ("the Reservation") but were not sampled in the referenced surveys used as a basis for the data contained in these comments. The Tribe believes, however, that similar problems exist in these areas of the Reservation.

A. §§11-12 **Reservation Data**

COMMENTS:
With the exception of population density, the source of the following information is the 1998 Wind River Indian Needs Determination Survey ("the 1998 Survey"), the second major census of the Wind River Indian Reservation (the first Survey having been conducted ten years earlier in 1988). Both Surveys were conducted on behalf of the Joint Business Council (JBC) of the Eastern Shoshone and Northern Arapaho Tribes of the Wind River Indian Reservation ("the Reservation"). An advisory council of JBC members, Reservation and State of Wyoming employees, and two University of Wyoming professors helped design and coordinate the Project. Trained interviewers (residents of the Reservation) conducted face-to-face interviews with an adult member of each household, usually the person who

described him or herself as head of the household. Interviews lasted 30 to 75 minutes depending upon household size, were voluntary, and anonymous. Interviews were conducted in 76.6% of all Indian homes and 56% of all non-Indian homes. Less than 5% declined to participate, while the balance of households not interviewed was, in the case of Indian households, a consequence of no person 19 years of age or older being available at the home after several attempts by interviewers and, in the case of non-Indian households, of a shortage of time and resources for more interviews in those areas of the Reservation comprised primarily of non-Indian residents.

1. Total Population

COMMENT:
The 1998 Survey estimates the population of that portion of the Reservation included in the Survey to be as follows -

ALL	7,680
Eastern Shoshone	1,630
Northern Arapaho	3,810
Other Indians	660
Non-Indians	1,530

2. Population Density

COMMENT:
The Reservation is comprised of 2,200,000 acres. Excluding the town of Riverton (estimated at 40,000 acres) and the Bureau of Reclamation area (estimated at 405,000 acres), the population density of the Reservation is 2.8 persons/square mile.

3. Percentage of Households with Telephone Service

COMMENT:
The following percentage of respondents to the 1998 Survey stated they had telephone service -

ALL	66.8%
Eastern Shoshone	66.0%
Northern Arapaho	56.2%
Indians	59.9%
Non-Indians	92.4%

4. Household Income

COMMENT:
Based on the 1998 Survey, median annual household/family income for 1997 income from all sources (including salaries/wages/investments/tribal per-capita payment/social security/alimony/child support/family help) was as follows -

All	$ 12,300
Eastern Shoshone	12,075
Northern Arapaho	10,700
Indians	11,920
Non-Indians	19,000

Among families on the Reservation, 25% have an income below $4,100 and 25% have an income above $23,000. For specific groups these figures are -

Income of the **poorest 25%** of households is –

All	$4,970
Eastern Shoshone	4,930
Northern Arapaho	4,270
Indians	4,700
Non-Indians	11,300

Income of the **highest 25%** of households is –

All	$23,800
Eastern Shoshone	22,460
Northern Arapaho	20,700
Indians	21,940
Non-Indians	39,000

At the time of the 1998 Survey, the **Poverty Thresholds** for families of various sizes living in rural areas were -

Single individual family	$ 8,050
Family of 2	10,850
Family of 3	13,650
Family of 4	16,450
Family of 5 or more.....	add $2,800 per family member

For the past decade, the national average of families living below the Poverty Threshold has been 13.5% to 15.5%. The **percent** of households/families

on the Reservation with annual income **below the Poverty Threshold**, according to a 1998 Survey, is -

All	53.2%
Eastern Shoshone	49.9%
Northern Arapaho	62.4%
Indians	57.8%
Non-Indians	26.7%

5. Unemployment

COMMENT:

According to the 1998 Survey, the percent of adults aged 18-54 who are unemployed (excluding retired persons, those unable to work, persons with significant responsibilities for the care of others, and homemakers) and residing on the Reservation is -

All	49.0%
Eastern Shoshone	47.8%
Northern Arapaho	58.0%
Indians	53.9%
Non-Indians	19.2%

6. Correlation with Census Territories

COMMENT:
There are essentially 5 different local telephone service territories which extend onto the Reservation, none of which coincide either with the Reservation boundaries or the U.S. census block boundaries. 2 of the Census Tracts (#9831 and #9832) do lie totally within the exterior boundaries of the Reservation, while Census Tract #9877 includes both the area of the Reservation north of Fremont County and within Hot Springs County as well as a large area within Hot Springs County outside the exterior boundaries of the Reservation.

To assist the FCC in its understanding of telecommunication exchange areas covering the Reservation relative to U.S. Census Blocks and the exterior boundaries of the Reservation, please see -

a. Exhibit A – Map of Reservation in Relation to State of Wyoming,

b. Exhibit B – Reservation Census Map,
c. Exhibit C – Local Exchange Areas on the Reservation,
d. Exhibit D – U.S. West Local Exchange Areas, Including Reservation, Served by 1 U.S. West Engineer,
e. Exhibit E – Zones of U.S. West's Riverton Exchange Area, and
f. Exhibit F – Zones of U.S. West's Lander Exchange Area.

7. Description of Local Service Territories

COMMENT:
The 5 local telephone service territories which extend onto the Reservation are owned by 3 different companies, 2 of which are non-competing:

a. The **Dubois Telephone Exchange** (DTE) is a small, independently owned rural company without competition from any other provider in the territory it serves. DTE serves approximately 100 residential customers in areas within the exterior boundaries of the Reservation known generally as Burris and Crowheart (as well as 2300 other customers outside the Reservation in the community surrounding and within the town of Dubois);

b. **R. T. Communication** (RTC) is considered a small, independent rural company and, as such, is free from competition within the territories it serves. RTC serves approximately 300 residential customers in an area within the exterior boundaries of the Reservation (as well as 3000 other customers outside the Reservation in the communities surrounding and within the towns of Shoshoni and Thermopolis served by RTC's Shoshoni Exchange Area and RTC's Thermopolis Exchange Area, respectively); and

c. As a result of Wyoming's 1995 Telecommunications Act, **U.S. West** has, within the last year or two, experienced competition in its service territories around Wyoming. 2 of its territories serve the majority of residents and geographic area of the Reservation, although approximate numbers of total customers served in each of U.S. West's 2 exchange areas serving the Reservation are not available, according to U.S. West regulators, because such information is proprietary given the recent competition to which it is subject. Generally, U.S. West serves –

(1) through its **Riverton Exchange**, roughly ½ of the households who reported having telephone service in the tribal 1998 Survey. Those households are located in the area around Arapaho, Kinnear, and St. Stephens, (as well as customers in and around the town of Riverton and the U.S. Bureau of Reclamation area, both part of the Reservation but excluded from the 1998 Survey) and

(2) through its **Lander Exchange**, roughly the other ½ of the households who reported having telephone service in the 1998 Survey. Those households are located in the areas within the exterior boundaries of the Reservation known generally as Ft. Washakie and Ethete (as well as customers in the community surrounding and within the town of Lander outside the Reservation).

B. #13-18 **Availability and Cost of Service**

1. **Availability**

COMMENT:
The 3 telephone companies whose local exchange territories cover the Reservation (U.S. West, DTE. and RTC) each provide **"buried" telephone service** within the exterior boundaries of the Reservation. Although these companies initially install and provide "buried" telephone services and compete with other companies for long distance service to its customers, U.S. West must now compete, as a result of Wyoming's 1995 Telecommunication's Act, with other "reseller" companies such as McLeod to provide local phone services to customers within its exchange areas. In addition, Bureau of Indian Affairs realty records show 3 approved microwave relay sites on tribal lands. As a result, Union Cellular and other local "independent carriers" provide cellular or **wireless telephone service** to the Reservation via microwave relay sites.

BIA's Rocky Mountain Regional Office and Central Office (Washington DC) are presently in the process of implementing the Trust Asset and Accounting System (TAAMS) within the Regional Agency offices. One major existing problem which the BIA and all other governmental, business, and residential customers within the exterior boundaries of the Reservation have encountered is that a "T1" line **(high speed data line) is presently**

unavailable anywhere within the exterior boundaries of the Reservation. BIA realty personnel report that they, as well as Indian Health Service, could benefit from this type of line if available. Other federal and tribal government offices and Reservation business and residential customers could also benefit by having a high speed data line available to them. According to U.S. West personnel, in order to bring in a "T1" line to Ft. Washakie, it would have to bury a fiber optic cable line from Lander to Fort Washakie at an estimated installation cost of $1 million. Another option would be to build a microwave tower site that would extend digital radio relay to the Fort Washakie area. The cost of this is estimated to be $500,000. As a result, U.S. West has left provision of high speed data line service within the exterior boundaries of the Reservation in a state of limbo.

The U.S. West Lander Exchange office indicated that U.S. West has only **one engineer** who **is responsible for serving** the Riverton, Lander, Cody, Powell and Yellowstone exchange areas. (See Exhibit D) It is not surprising, then, that the vast majority of tribal members living on the Reservation (and outside of these non-Indian population centers which spread over **nearly 1/4 of the geographic area of the State** of Wyoming) receive little or no response from U.S. West when reporting poor quality or system breakdowns even though they pay the maximum state monthly rate for local service.

2. Costs

COMMENT:
Costs for initiating service vary on the basis of whether the hook-up entails simply computer switch activation or else physical construction of a cable extension to a site never before served by a telecommunication provider.

a. Switch Activation/Connect fees

(1) DTE charges its customers a one-time fee of $33.30 to establish a new connection through its switchboard to a site which has previously received telecommunication services.

(2) RTC charges its customers a one-time fee of $52.00 to establish a new connection through its switchboard to a site which has previously received telecommunication services.

(3) U.S. West charges its residential customers a one-time fee of $$36.25 and its business customers a fee of $66.00 to establish a new connection through its switchboard to a site which has previously received telecommunication services.

b. Physically Constructed Installation fees

(1) In addition to DTE's $33.10 "switch activation" fee, DTE charges each new customer the actual cost of its cable, labor, engineering, right-of-way, and permit expenses in those cases where a line is extended to a site which has not previously received telecommunication services. The company's engineer reports that ordinary installation of buried cable costs approximately $1.65 a linear foot, while straight boring under roads, ditches, etc. costs the customer anywhere from $2/ft. to $18/ft. Directional boring has been quoted to DTE at a rate of $65/ft.

(2) In addition to RTC's $52.00 "switch activation" fee, RTC charges customers outside its Base Rate Areas (essentially outside the town of Shoshoni or the town of Thermopolis) an additional $375 as a Rural Network Assessment Tariff (RANT). If the actual construction costs exceed $2300 (the cost of approximately 1650 linear feet of 'free' newly buried line at $1.40/ft. for ordinary installation, $7/ft for sections under roads or small ditches requiring straight boring, or $17/ft. for directional boring under rivers, big ditches, or rough terrain), the customer must pay the amount over $2300 together with the $375 RANT and the $52 switch activation fee.

(3) In addition to U.S. West's $36.25 residential or $66.00 business "switch activation fee", U.S. West charges its customers outside a Base Rate Area (essentially outside the towns of Riverton or Lander) an additional $375 Rural Network Assessment Tariff (RANT). Like RTC, U.S. West charges customers a "Special Assessment Charge" equal to the amount actual construction costs exceed $2300, as well as the $375 RANT and the $36.25 residential customer or $66.00 business customer switch activation fee.

c. Contribution Among Customers

At least U.S. West has a method to reimburse a person paying for extending a line as other, neighboring households, tie-in to the "new line" serving a geographic area insofar as the Special Assessment portion of the customer's expense. This program, administered exclusively by U.S. West, provides up to 100% of the assessment being refunded if, within 5 years of a customer's connection date, 3 additional households connect to the network using the new line extension, provided the refunds amount to $50.00 or more. However,

there remain on the Reservation several outlying geographic areas where no service exists because no single customer can afford to pay for the up-front costs of a line extension, regardless of the possibility of a contribution from others who would thereafter benefit from that line extension within the 3 year limit, and because few residents on the Reservation have been informed of U.S. West's "Special Assessment Charge Refund Program."

d. Local Service Rates for Existing Customers

(1) Wyoming has a"uniform" state-wide average basic local service fee of $23.10/mo. set according to the tariffs allowed by the Wyoming Public Service Commission for **U.S. West** customers. In addition, State law authorizes U.S. West to impose a "distance charge" of up to an additional $46.25/mo. depending on a customer's distance from U.S. West's central office. All U.S. West Reservation customers except those in and immediately surrounding the town of Riverton are now considered as residing in a Zone 3 or maximum $46.25/mo. additional fee area. The basic residential rate for U.S. West's Reservation customers, then, is $23.10/mo. (basic flat-rate) + $46.25/mo. (Zone 3 distance charge) less federal and state universal fund credits resulting in most Reservation residential customers being billed the maximum-allowed-state-residential-customer-rate of **$34.81/mo.** for basic local telephone service. The Tribe predicts that these rates, recently sanctioned by the State's Public Service Commission, coupled with the anticipated decrease in federal universal fee monies to the State of Wyoming (from $4 million/year to$3 million/year according to U.S. West officials) will greatly reduce the already low number of Reservation households reported in the 1998 Survey as having telephone service.

(2) The **Dubois Telephone Exchange Company** (DTE) serves a total of 2400 **customers** both on and off the Reservation, the central office of which is located in Dubois, Wyoming - a town located approximately 15 miles from the northwest boundary of the Reservation. Of DTE's 2400 customers, approximately 100 are Reservation residential customers located in a rural corner of the Reservation

known as the Crowheart area. According to DTE officials, its uniform monthly service rate is **$19.25/mo**. When asked how it can provide local monthly service to Reservation customers at approximately ½ the cost of U.S. West, DTE officials explained that through receipt of federal and state waivers, its rates are still based on historical costs (an investments- expenses-revenues formula + federally and state-approved rates of return up to 11.25%) rather than T.S. L.I.R.I.C. study data (a "forward-looking", cost-of-system-replacement-with-new-technology formula) as required under 1996 federal and 1995 state laws which de-regulated telecommunication services to the disadvantage of rural residential customers.

(3) The **R. T. Communications** company (RTC) purchased U.S. West lines in the Shoshoni area of Fremont County. Although the Tribe has no data from its 1998 Survey regarding the number and ethnicity of Reservation customers served by RTC, RTC officials report that it purchased those U.S. West lines subject to U.S. West tariffs as of the date of purchase in 1994, that RTC has filed for and received permission from the Wyoming PSC since 1994 to avoid making its customers subject to 1996 federal and 1995 state laws de-regulating telecommunications, and that RTC customers still pay only the 1994 U.S. West local service rate of $9.02/mo. in a central exchange area, a rate of $11.52/mo. in zone/rack 1, a rate of $14.27/mo. in zone/rack 2, and a rate of $18.92/mo. in zone/rack 3. The Tribe assumes that if any tribal members receive their local telephone service from RTC, they are paying the highest RTC local basic rate of **$18.92/mo.** Even so, RTC, a small independent rural telecommunications provider like DTE, is once again providing basic local telephone service to its customers at approximately ½ the rate charged the vast majority of Reservation tribal members served by U.S. West. This is true despite the fact that RTC's lines and equipment in its service area are identical to those inherited from U.S. West at the time RTC purchased its system from U.S. West in 1994.

3. Quality Relative to Availability and Cost

COMMENT:
The Tribe does not believe it is proper to charge the vast majority of its members for a quality of service (based upon TS LIRIC data as in the case of U.S. West) for a modern and adequate telecommunication system which in fact does not exist on the Reservation. In truth, the availability of lines and the outdated quality and over-use of existing lines does not justify the high cost of local service which U.S. West has been permitted to charge Reservation customers. Since the cost of local telephone service to the Reservation has doubled in the past 5 years, the quality of and accessability to local telecommunication service has diminished. Meanwhile, geographic areas within the Reservation which have traditionally been unserved remain so as the response time to requests for line extension continues to be delayed (a present lag time of 2 months to 1 year, with the oldest presently pending request, according to BIA personnel, being 4 ½ years old) and the cost of extending a line continues to escalate to the point of being "costly" according to U.S. West regulators. (See discussion of regulating right-of-way acquisition on the Reservation, §C.5., below.)

C. §§ 19-36 Obstacles

COMMENTS:
The main obstacles to increased phone services on the Reservation is: poor quality of existing local telephone service due to over-loading of existing lines and inadequate number of engineers serving the system; refusal by U.S. West to add more lines to increase capacity within the exterior boundaries of the Reservation; the rural distribution of residences throughout the Reservation; the high rates charged Reservation customers who request new line extensions; the high cost and poor quality of existing local basic telephone service; and the relatively low house-hold income of those residing on the Reservation.

1. Demographics

COMMENTS:
The population of the Reservation is scattered over most of the Reservation, although there are 5 main populations centers outside of the town of Riverton. A very rough estimate of the distribution of the population by general, geographically undefined areas is - Ft. Washakie 31.7%, Arapaho 31%, Ethete 26.2 %, Burris 5.8%, and Crowheart 4.1%. Some of the population reside 10 to 15 miles from their nearest neighbor.

2. **Geography**

COMMENTS:
The Reservation consists of approximately 2.2 million acres in a configuration of roughly 50 miles by 70 miles.

3. **Financial Factors**

COMMENTS:
State deregulation of telecommunications became effective less than 1 month ago. Prior to that, the cost of residential telecommunication services were spread throughout larger geographic areas and residential rates were subsidized by commercial rates. Even prior to deregulation, connection costs for new telephone service acted as a great impediment to increased usage throughout the Reservation. Additionally, lower than average household income and relatively high unemployment have historically affected a tribal member's ability to pay his or her telephone bill which, in turn, has restricted his or her ability to re-subscribe due to a poor credit rating if service is ever disconnected by their local provider for failure to pay a bill.

Now that the state-wide average rate for basic local service has been increased to $23.10/mo. and a "distance charge" incurred by the vast majority of tribal members on the Reservation of as high as $46.25/ mo. (absent federal or state universal fee credits), the Tribe expects telephone usage within the exterior boundaries of the Reservation to decline.

4. **Culture**

COMMENTS:
The culture of both tribes residing on the Reservation is such that rural type spacing of houses is preferred by tribal members over cluster type housing developments. Prior housing studies of the Reservation population have documented a significant increase in sociological problems among those residents in cluster-style housing over those in the preferred, rural-style housing arrangement.

5. **Regulation**

COMMENTS:
As stated previously, the Wyoming Public Service Commission recently increased the state-wide average rate for basic service in accordance with its grant to U.S. West for a tariff increase to reflect the 'true cost' of providing residential phone service to rural customers throughout the

State. Since business rates are no longer subsidizing residential rates and residential customers within the most rural zones of a local exchange area incur additional "distance charges" on top of the state-wide average rate, the cost of basic service to those living on the Reservation outside the town of Riverton have doubled.

In addition, whenever a resident of the Reservation seeks to add a new line or extend an existing one to a previously unserved site, the customer must obtain (or pay U.S. West to obtain) the necessary right-of-ways and receive a BIA right-of-way permit regarding the same. The process entails: filling out and submitting a BIA permit application to which is attached the prospective customer's site map; receiving approval from the local BIA realty office; BIA personnel forwarding the permit to the local telecommunications service provider's engineer; the engineer conducting an on-the-ground survey and staking the proposed location for the line; the provider's engineer returning the permit and site map along with the engineer's survey map back to the BIA; BIA right-of-way personnel then examining the proposed route of the line and conducting a title search to determine the name and last known address of all persons having a record interest in lands across which the line will pass; BIA personnel preparing individual consent forms to which is attached a page informing the interest-holder of the 4 different options the individual has for either refusing or granting a right-of-way regarding his or her particular share of interest in the subject land (including an option indicating that the interest-holder and applicant have successfully negotiated the terms for that interest-holder's consent and another option that the interest-holder inform BIA as to how much money he or she is requesting to receive from the applicant before that interest-holder would be willing to grant his or her consent to the applicant's request for a right-of-way; the applicant obtaining signatures of at least 51% of the interest-holders provided he or she can evidence, by submitting to the BIA returned mail certificates, that a serious effort was made to contact every one of the interest-holders; the BIA then providing the necessary environmental and archeological clearances from BIA's regional office in Billings; the single BIA regional archeologist reviewing and processing those clearances through the regional office; mailing of the paperwork evidencing BIA Regional Office's archeological and environmental clearances back to the local BIA office; reviewing of the final right-of-way package (with survey, title reports, consent forms, environmental clearance and archeological clearance) and, if acceptable, granting of approval by the BIA Superintendent for the Reservation. Given the lands on the Reservation are a myriad of tribal, trust, and privately-held fee land, often with numerous individual interest-holders, and key BIA personnel are often busy or away for blocks of time, obtaining a right-of-way is extremely difficult, time-consuming, and costly, if not impossible.

6. **Jurisdiction**

COMMENTS:
The Wyoming Public Service Commission regulates all telecommunication services within the State and asserts authority within the exterior boundaries of the Reservation. Although the Tribe, through the Joint Business Council (comprised of both the Eastern Shoshone and Northern Arapaho Business Councils) has to date not attempted to regulate telecommunication services within the Reservation, the Tribe would be very interested in acquiring the training, expertise, and financial means to do so. In the meanwhile, the Tribe encourages the FCC to assume regulatory jurisdiction over telecommunication services within the Reservation since the Tribe views any regulation within the exterior boundaries of the Reservation by the State as an infringement upon tribal sovereignty.

D. #37 **Intrastate vs. Interstate Calls**

COMMENTS:
Presently, calls outside any one of the boundaries of the 5 local exchange areas which cover the Reservation are treated as intrastate calls. The Tribe believes it would be in their members' best interest to, first of all, have one single local telephone exchange serve the entire geographic area of the Reservation as well as nearby geographic areas (within 30 miles of the Reservation boundaries) and, second of all, have all calls to or from that "Reservation exchange" to other exchange areas treated as interstate (rather than intrastate) calls. Interstate calls for residential customers are at least the same and oftentimes less expensive than intrastate calls depending on the customer's choice of interstate carrier and of the 'plan' selected with that interstate carrier. Also, the present treatment of telephone calls to or from the 5 local exchange areas serving the Reservation as intrastate calls conflicts with and undermines the efforts by the Tribe in all of its other dealings with the State of Wyoming when seeking treatment by the State as a separate and sovereign nation.

E. #38-42 **Tribal Regulation**

COMMENTS:

There is no existing regulation of telecommunications on the Reservation by the Tribe. It is not surprising, then, that there also is presently no promotion of increased service to, nor competition among providers serving, Reservation residents. The Tribe is very interested in working with the FCC to develop a

plan and to implement a program which would both regulate and promote competition among carriers of local telecommunication services to Reservation residents and would appreciate any assistance and training the FCC could provide the Tribe in this regard.

F. #43-46 **Definition of "Tribal Lands"**

COMMENTS:
The Tribe requests that the FCC, for purposes of its rule-making, define "tribal lands" as "all land within the exterior boundaries of any Indian reservation under the jurisdiction of the U.S. Government, notwithstanding the issuance of any patent and including rights-of-way running through the reservation." This definition proffered by the Tribe is easier to interpret and therefore administer than those being proposed (either "within the limits of any Indian reservation..." or else "Indian country") and, thus, would help to avoid future disputes before the FCC.

G. #47 **FCC Trust Responsibility**

COMMENTS:
Until such time as tribal telecommunications regulation exists on the Reservation, the Tribe believes that the FCC is the appropriate agency to regulate telecommunication services on the Reservation. This belief is based upon the express provisions of the Federal Constitution, upon the requirements of the federal trust responsibility, and upon the State's historically proven failure to consistently respect tribal jurisdiction within the exterior boundaries of the Reservation based upon tribal sovereignty and its failure to ensure services are provided within the exterior boundaries of the Reservation at levels available to other state residents.

1. **Constitutional Authority**

The FCC, to the extent its regulation is authorized by Congress, is expressly empowered by the Federal Constitution to address the needs of Indian people. This authority can be specifically traced, in the instance of FCC regulation of telecommunications on Reservations, to the Commerce Clause of the U.S. Constitution.
The Commerce Clause is the only grant of power in the Federal Constitution which mentions Indians. The congressional power over commerce with the Indian tribes plus the treaty-making power is **much broader than the power over commerce between**

states. Handbook of Federal Indian Law, Felix S. Cohen, p. 91 (1986, Five Rings Corp.)

Thus, to the extent that Congress has authorized the FCC to regulate telecommunications in the realm of interstate commerce, and especially to the extent that telecommunication services to and from the Reservation are considered interstate transactions, the FCC has implied administrative authority to regulate (*ibid.*, at 100) telecommunication services to, from, and within the exterior boundaries of the Reservation.

2. Federal Trust Responsibility

The principle of "trust responsibility" owed by the United States to Indian people imposes an affirmative duty upon the federal government to advance the interest of Indian people including, according to a 1977 Senate commission, an obligation to "raise the standard of living and social well-being of the Indian people to a level comparable to the non-Indian society." American Indian Policy Review Commission, *Final Report*, p. 130 (Washington, DC: Gov. Printing Off., 1977). See also, The Rights of Indians and Tribes, Stephen L. Pevar, pp. 26-37 (So. Ill. U. Press, 1992); American Indian Law, William C. Canby, Jr., pp. 38-45 (West Group, 1998); and Handbook of Federal Indian Law, supra, pp. 237-253.

It is difficult to imagine, given the dependence of modern American society upon advanced systems of telecommunication, how the federal government could meet its trust responsibility to the Tribe in this regard without assuming jurisdiction over regulation of the telecommunications industry on the Reservation. The impacts of inadequate telecommunication services upon Reservation tribal members and their families include the social, financial, and political disadvantage of those not served by an affordable telecommunications system when trying to participate in modern health, judicial, and employment systems.

3. Inconsistent State Policy

Finally, the Tribe encourages the FCC to assume regulatory authority regarding telecommunication services to, from, and within the exterior boundaries of the Reservation due to State regulation proving so disadvantageous to the Tribe in the past. That the Tribe has been unable to improve its telecommunication services under State regulation stems, in large part, from the fact that each change of state administration

reflects a new policy towards tribal sovereignty. With each change of state administration comes a different attitude and degree of willingness to recognize and respect the Tribe's sovereignty. The result is an ineffective attempt by the Tribe to establish a working relationship with the State. The Tribe believes, then, that more consistent and effective progress could be made on the subject of improved telecommunication services if it were dealing with the FCC, rather than with the State, since the FCC, as part of the federal government, is resolved in its treatment of the Tribe as a sovereign nation and its members as deserving of affordable and adequate telecommunications services.

H. #48-52 **Separate Tribal Study Areas**

COMMENTS:
The Tribe supports the FCC modifying its rules to permit treatment of tribal lands as separate study areas for purposes of determining price supports.

I. #53-57 **Current Level of State/Federal Subsidy**

COMMENTS:
The State of Wyoming currently contributes its optional share towards price supports, enabling the federal match in order that low-income consumers qualify for the maximum subsidy of $7.00/mo. on their bills. The Tribe supports the FCC modifying its rules, however, to permit the FCC to contribute a state's share, as well as the federal match, for this purpose.

The Tribe would like to bring to the FCC's attention, in any event, the fact that:

1. In Wyoming, the legislature has charged the State's Department of Family Services with responsibility for informing and enrolling qualified low-income consumers in this $7.00 monthly subsidy program. Because Tribal Social Services is treated differently and separately from the otherwise integrated State Social Service system, the Tribe does not believe that enough effort has been made to enroll eligible low-income consumers who reside on the Reservation nor that all eligible low-income consumers necessarily come into contact with a social service agency, whether that be one administered by the State or by the Tribe;

2. Once Reservation customers all receive federal and state universal fund credits to bring their monthly local phone service fee down to the maximum-state-allowed cap of $34.81, they are no longer

eligible for any further $7.00 reduction based on their otherwise meeting any low-income test. Thus, low-income residents pay the same maximum fee as high-income residents, provided these residents live outside a "basic rate area" (i.e., outside the city limits of towns designated as Exchange Area Centers). Only qualifying low-income residents in town, therefore, have their bills reduced by this $7.00 credit; and

3. Qualified low-income residents on the Reservation would be eligible, nevertheless, for a 50% reduction on their "switchboard activation" hook-up fee when initiating service through U.S. West's "Link-up Program." Although this comprises only a minor portion of a new subscriber's expense in those cases where a new line must be constructed, it is beneficial in the more common case of re-activating phone service to a previously served location provided the customer is made aware of the Program.

J. #58-67 **Designation of "Eligible Carrier"**

COMMENTS:
The Tribe does not have sufficient information or expertise to form an opinion, at this time, as to whether or not the FCC should designate an "eligible carrier" to receive federal price supports when that carrier is serving low-income consumers both on and off tribal areas.

K. #68-93 **Recommended Requirements for "Unserved Areas"**

COMMENTS:
The Tribe does not have sufficient information or expertise to make recommendations, at this time, of factors for determining when a carrier should be required to provide services to an otherwise "unserved" area nor whether , in those circumstances, competitive bidding or making other inquiries (to determine which carrier is best able to provide those services) should be required.

L. #94-98 **Recommendation for Increasing Usage**

COMMENTS:
The Tribe believes that additional price supports for low-income consumers is necessary to increase usage among tribal members within the exterior boundaries of the Reservation. The cost of line extensions is prohibitively expensive for most residents given the average annual household income on the

Reservation. (See discussion of line costs in §B.2. and income of tribal members in §A.4., above.) The Tribe believes the federal government, rather than state government, is better able to regulate any requirements regarding initial connection charges. Although the Tribe does not have sufficient information or expertise to make suggestions as to what form any additional price supports should take, it wishes to remind the FCC that any option which depends on wireless service is prohibitively expensive under all current phone plans when it comes to the cost of calls beyond a resident's local exchange area.

M. #99-100 **Local Rates and Calling Areas**

COMMENTS:
The Tribe believes its members would be well served if the local calling area covered all areas on or near (within 30 miles) of the Reservation. This would include the town of Thermopolis just inside Hot Springs County and in close proximity to the Arapaho Ranch area of the Reservation, as well as the most populated areas of the Fremont County which surrounds the Reservation including the town of Lander (the county seat for Fremont County, Wyoming) just south of the Reservation boundary, the town of Shoshoni just east of the Reservation boundary, and the town of Dubois just to the northwest of the Reservation.

N. #101 **Toll-limitation Options**

COMMENTS:
FCC regulation of telecommunication services to, from, and within the exterior boundaries of the Reservation would help ensure toll-limitation options are available to help consumers avoid high telephone bills. The Tribe believes their members could benefit from an advertising program designed in a way to reach both existing and potential Reservation telephone customers and one which would inform Reservation residents of the terms of those toll-limitation options in simple and straight-forward language.

O. #102-105 **Advertising of Price Supports**

COMMENTS:
To make sure that low-income consumers residing on the Reservation are aware of price support programs, the FCC should require that the BIA insert simply-stated flyers in each per capita check mailed to a tribal member, have these also available at the U.S. Post Offices, other local congregation points about the Reservation, and at the legal service office serving the Reservation, conduct

education programs for tribal social service agencies and Indian Health Service staff, and broadcast local service announcements regarding price support programs on local radio and T.V. stations.

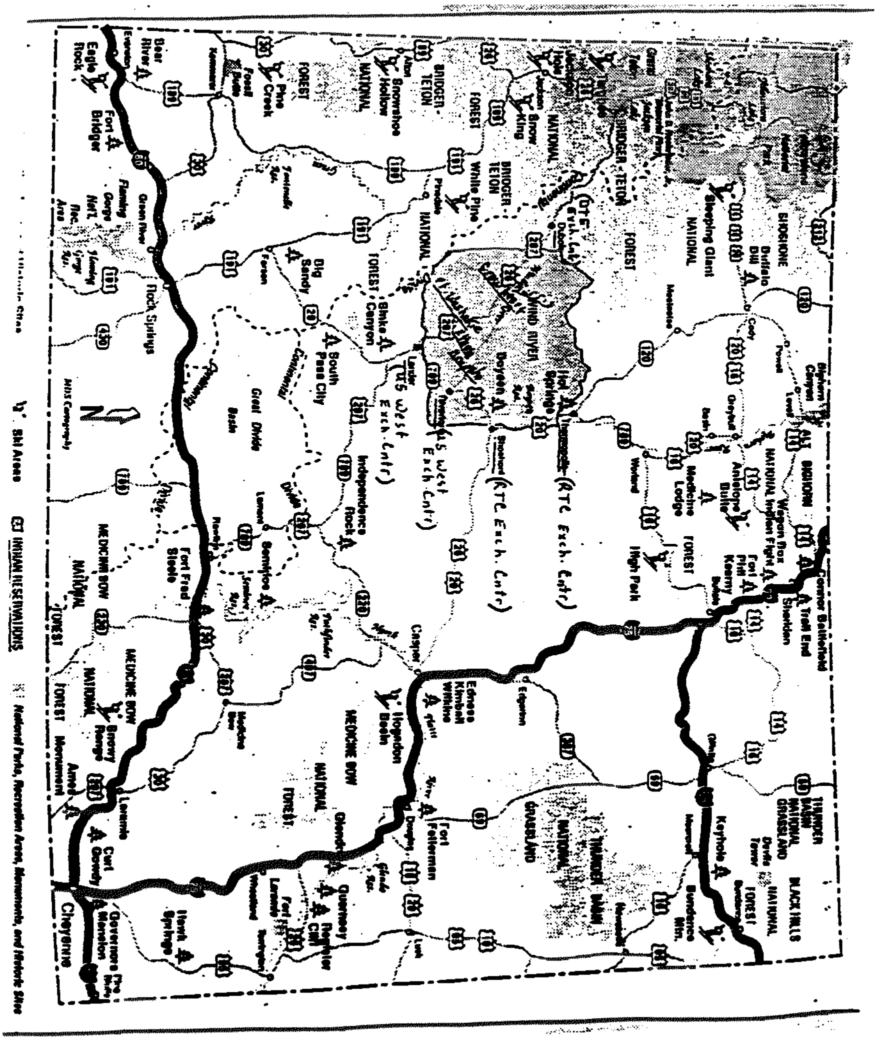
P. #106-108 **Improved Infrastructure**

COMMENTS:
Existing telecommunications equipment servicing the Reservation is insufficient and there are many geographic areas which are not served at all. Over-loading of lines causes a constant buzzing sound on the lines of many served, many cannot get service although they reside in a "served" area because additional or larger capacity lines are needed, and more remote areas are not served at all because the cost of line extensions are prohibitively expensive. Moreover, the local carriers' equipment from which existing lines travel are not modern or sophisticated enough to provide any options close to those provided in surrounding, non-Indian dominated communities. Finally, the equipment and lines which exist for consumers on the Reservation are not serviced by an adequate number of technicians or engineers forcing many people to pay for options or service on their monthly bills which they in fact are not receiving.

tele.002 wpd

EXHIBIT A

Map of R..servation in Relation to State of Wyoming



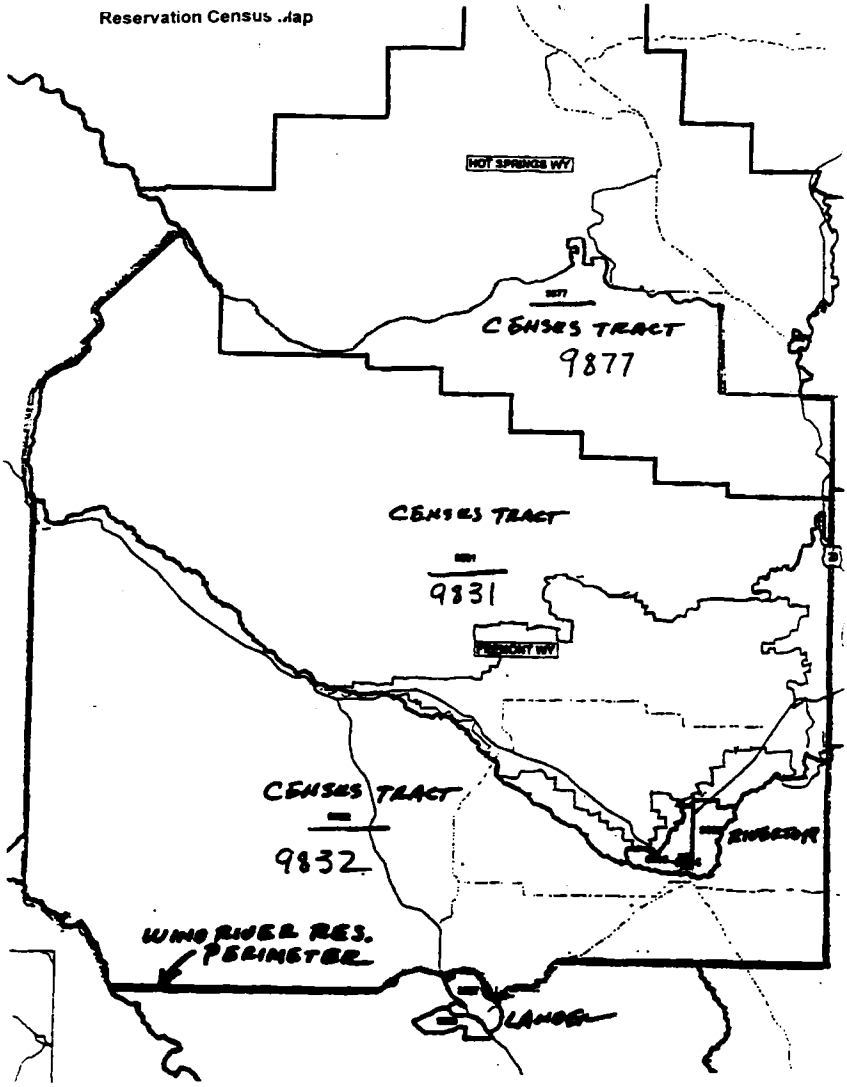
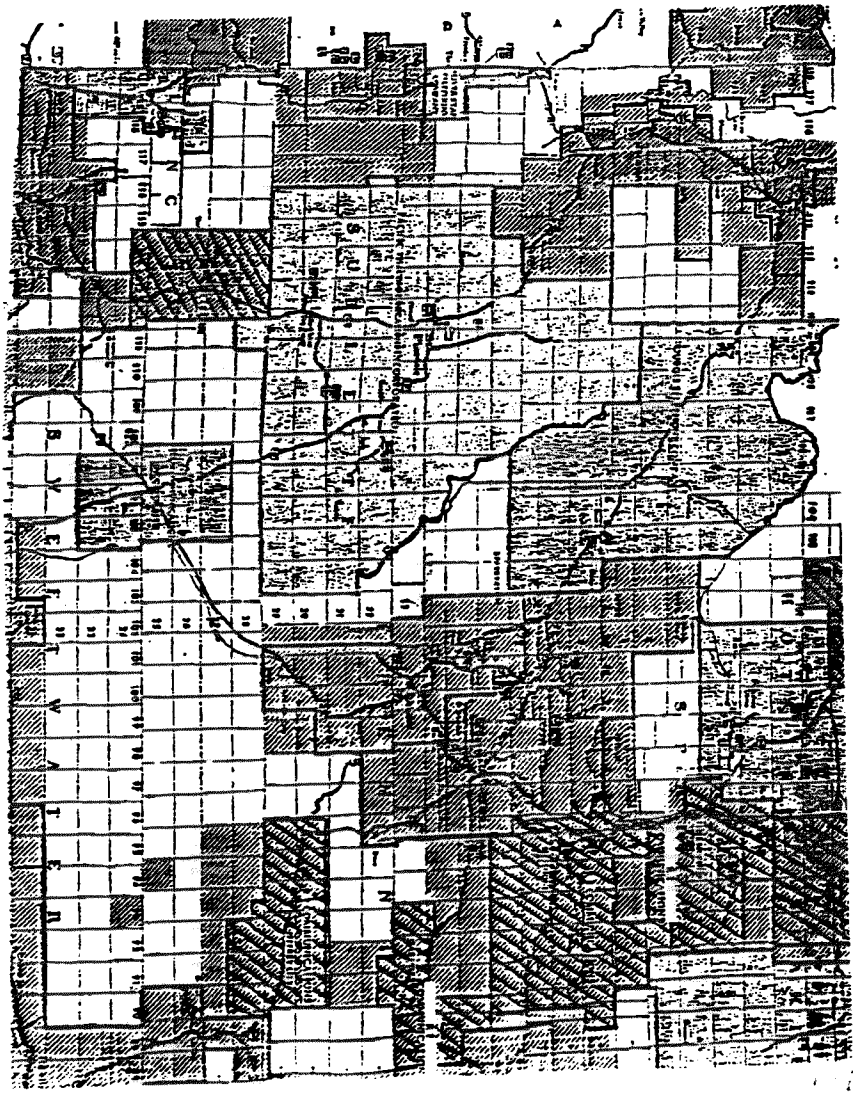

Reservation Census Map
HOT SPRINGS WY
CENSUS TRACT
9877
CENSUS TRACT
9831
FREMONT WY
CENSUS TRACT
9832
WIND RIVER RES.
PERIMETER
LANDER

EXHIBIT C
Local Exchange Areas on Reservati.



US West Local Exchange Areas Including Preservation
Served by 1 US West Engineer

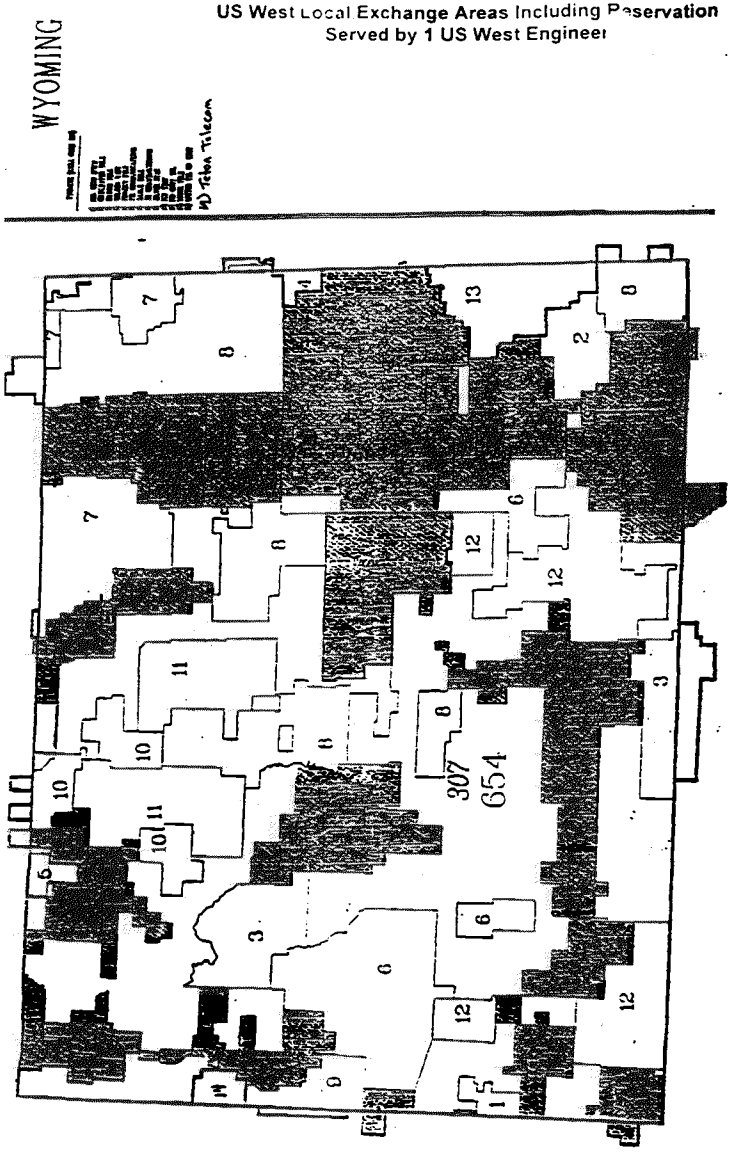
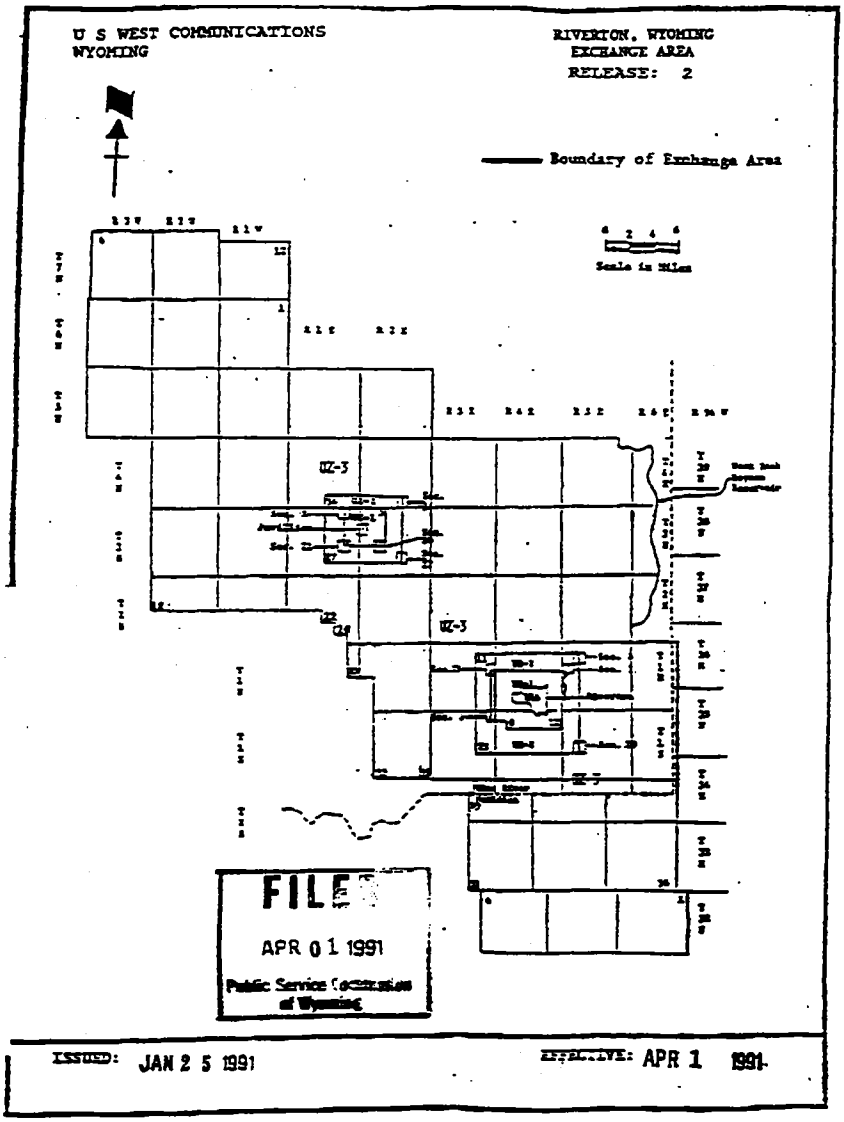
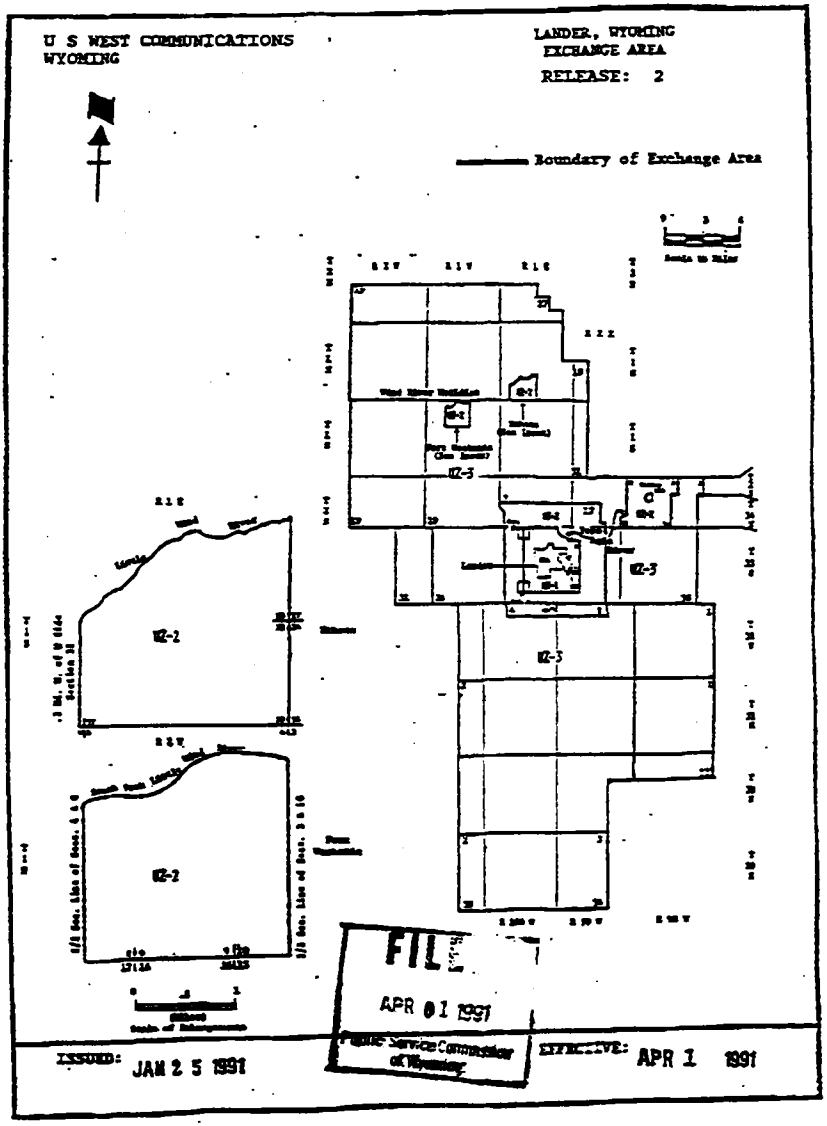


EXHIBIT E
Zor[illegible] f US West's Riverton Exchang[illegible] ea



Zones of US West's Lander Exchange Area



FLATHEAD

NATION

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Jami Hamel - Vice Chair
Carole J. Lankford - Secretary
Lloyd D. Irvine - Treasurer
Darryl A. Dupuis
Margaret Goode
S. Kevin Howlett
Mary Lefthand
Elmer "Sonny" Morigeau
Ron Trahan

TESTIMONY OF

MS. JAMI HAMEL

VICE CHAIR

CONFEDERATED SALISH AND KOOTENAI TRIBES
OF THE FLATHEAD NATION

PRESENTED BEFORE
THE SENATE COMMITTEE ON INDIAN AFFAIRS

ON THE GOALS AND PRIORITIES OF THE MONTANA AND
WYOMING TRIBES FOR THE 107TH CONGRESS

JULY 12, 2001

Chairman Inouye, Vice Chairman Campbell and Members of the Indian Affairs Committee. I am Jami Hamel. I have the honor of serving as the Vice Chair of the Tribal Council for the Confederated Salish and Kootenai Tribes of the Flathead Nation (CSKT). I bring you warm greetings from our Tribal Council where you are well-regarded. We greatly appreciate you taking the time to schedule this hearing and to seek our views and we also appreciate the time you have spent these past years visiting Indian country. I am accompanied today by Anna Whiting Sorrell who is the Director of our Office of Support Services.

There are many issues that we could bring to your attention but we are going to focus on Indian health care in general and a particular aspect of tribal contracting with the Indian Health Service. First, I wish to address a particular problem for Tribes assuming management of health programs with the IHS wherein we believe tribal contractors are being treating in a discriminatory fashion by the IHS.

As you know, under the Indian Self-Determination Act, an Indian tribe can contract (which also pertains to Self-Governance compacting) with the Indian Health Service to provide health care delivery that the IHS would otherwise be legally obligated to provide directly. Some tribes contract while others allow the IHS to directly operate their clinics or hospitals (Service Units).

CSKT's health care delivery system is unique in Indian country. No other CHS dependent tribe has a reservation in excess of one million acres and a population of over 10,600 IHS eligible beneficiaries.[1] Most service units serving such a large user population provide care through their own doctors at their own hospitals or clinics. In these locations, only the most serious cases are referred to the private sector for treatment, which is then paid for with Contract Health Service (CHS) funds.

Congress has appropriated Catastrophic Health Emergency Fund (CHEF) to assist IHS in the payment of extremely high cost CHS cases. The CHEF fund, by law, is managed by the IHS Headquarters, which sets the operating policies and procedures. When health care costs for a single incident are extraordinarily high (from an auto accident or complicated surgery for instance) and exceed the threshold amount of $20,800 in costs, Tribes or Service Units are reimbursed with CHEF funds. Because the CHEF fund is underfunded, IHS usually runs out money around the 10th month of the fiscal year forcing Tribes and IHS to look to other resources to pay for these necessary services.

When a tribe operating its own program under contract has a case that would normally qualify for CHEF funding reimbursement and the national CHEF fund has run dry, THAT tribe is told that it is out of luck and must either pay for the doctor bill themselves or stall the doctor or hospital and pay for with the next fiscal year's funds. However, when a Service Unit being run directly by the IHS has a case that would qualify for CHEF funds at that same time of year, i.e., when CHEF funds are gone, the IHS simply reimburses the doctor/hospital with other IHS dollars (generally from pooled Contract Health Service - CHS - funds from the region or nationally). Federal procurement policy restricts IHS from using different fiscal year funds to pay for these cases, although IHS urges Self-Determination Tribes to do so.

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[1] As a self-governance tribe, we have a signed compact and negotiate an Annual Funding Agreement (AFA) with the IHS. Because there are a large number of already existing hospitals and clinics both on and immediately off our reservation, the IHS at some point determined that it would not make sense to fund the construction of a facility at Flathead. As a result, we do not have an IHS funded hospital or clinic and therefore must purchase our health care on the open market through the Contract Health Service (CHS) budget of the IHS.

This is simply unfair to tribes that contract and we believe is contrary to the Indian Self Determination Act and most certainly violates the Congress' intent and the spirit of P.L.93-638. Having to take on this risk - combined with an insufficient allocation of funding by the IHS - caused our Tribes to come within a hair of retroceding our entire health care compact back to the IHS last month.

We do not believe the Congress ever intended a contracting tribe to take on risk that an IHS directly operated Service Unit would not be asked to take. But, IHS is doing so and causing a major obstacle to tribes to assume management and operation of this health program. Think of what would happen if after the CHEF fund ran dry we had a few costly emergencies late in the year. We could be looking at bankrupting ourselves by compacting with the Federal government. Surely, the Indian Self Determination Act was not intended to be implemented in such an arbitrary fashion.

25 USC Section 1680a specifically states that contracting tribes should be provided funding:

> "...on the same basis as such funds are provided to programs and facilities operated directly by the Service."

In the area of CHS and CHEF funds, this is not happening and we believe this must be corrected. We ask this Committee's help in further clarifying - and if necessary amending - the Indian Self Determination Act, the cornerstone of the federal Indian policy for the past quarter of century, to make it clear that tribes exercising their rights are not forced to assume this unmanageable risk. Tribes must be allowed to access the same pools of funds that IHS direct service units can access. It is only fair and it is what we believe Congress and the Act intended.

Mr. Chairman, if the Indian Health Service were properly funded, this wouldn't be as much of a problem but the fact is that the Congress tremendously underfunds the IHS. Senate Majority Leader Tom Daschle and our Senator Max Baucus acknowledged this earlier this session when they and others proposed an over $4 billion increase in funding for IHS as a part of the Budget Bill. Although this request passed the Senate, it was not agreed to in Conference Committee.

I realize that it is not the Indian Affairs Committee that appropriates funds for the IHS and that the members of this Committee are understanding of the extend of the unmet need, but it must be stated that the extent of the inequity between the Indian Health Service versus what the Appropriations Committees fund for health care at the Veterans Administration - and other agencies - is simply breathtaking.

You have seen the comparative data. IHS is funded on a national average of around $1,440 per Indian person -- at Flathead we are only getting around $1,100 a year per eligible IHS beneficiary. The Veterans Administration receives funding at level in excess of $5,000 per capita for Veterans who are eligible to receive health services. This means that the First Americans, who gave up hundreds of millions of acres of land so that the United States could exist, and who bargained in treaty negotiations for the provision of health care, are being given such short shrift by the Congress as to be relegated as the least healthy population of persons in the United States. We support full funding for the Veterans Administration and are proud that so many of our tribal members served in the defense of this country, but the comparison of health related funding levels can not be overlooked.

It is time the Congress stopped acknowledging the extent of the inequity and took action to rectify it. Thank you.

WEDNESDAY, JULY 11, 2001 THE WALL STREET JOURNAL

Inheriting the Wind

Indian Tribes Look to Tap Energy Source for Income; 'Sweet Irony' on History

By ROBERT GAVIN
Staff Reporter of THE WALL STREET JOURNAL

BABB, Mont.—Since signing their first treaty with the U.S. in 1855, the Blackfeet Indians have been driven from a vast territory with some of Montana's best lands to a desolate reservation near the Canadian border that offers little more than wind and rocks.

In 1896, the Blackfeet lost the rocks when they bowed to pressure from mining interests and gave up a section of the Rocky Mountains. But the tribe still had plenty of wind and now hopes to make it pay.

REGIONAL REPORT

Near this tiny hamlet of 200 people, atop a mile-high ridge where the wind sweeps in through a gap in the mountains, the Blackfeet, in partnership with SeaWest WindPower Inc. of San Diego, are developing what would be the first commercial wind-power project on an Indian reservation.

Abundant winds on the Blackfeet Indian reservation in Montana could mean income for tribal Chairman Earl Old Person (above) and his people by means of a wind farm such as this one (left) in Wyoming.

The Bonneville Power Administration, the federal agency that acquires, sells and distributes power to Northwest utilities, has already agreed to buy the electricity once the Blackfeet wind farm is built, possibly by the end of next year. If all goes well, the farm could produce as much as 66 megawatts for the energy-strapped Northwest, enough to power an average of 22,000 homes. It could also generate as much as $3 million a year in profit—equivalent to about half the tribal budget—for this impoverished reservation, where unemployment is more than 60%.

"The government pushed us to this area which they thought was of no value," says Earl Old Person, the 72-year-old tribal chairman. "But now we see there is something of value."

The Blackfeet, while furthest along in developing wind power, are just one of more than a dozen economically depressed tribes hoping to take advantage of the recent energy crisis. Rising prices and technology improvements have made wind power a practical form of energy to supplement fossil-fuel, nuclear and hydroelectric sources. Because wind is intermittent, however, a wind project produces only about a third of its capacity on average. A 1,000-megawatt capacity, for example, is enough to power about a million homes, but average production at a 1,000-megawatt wind farm would power only about 330,000 homes.

Ironically, some Indian tribes were driven to inhospitable places where wind is one of few things in abundance. In the Dakotas, 350,000 acres on six Indian reservations were flooded by the construction of Missouri River dams between 1944 and 1966, washing away prime land and leaving tribes with "badlands, bluffs and hilltops," says Tex Hall, chairman of the Three Affiliated Tribes of the Fort Berthold Reserva-

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THE WALL STREET JOURNAL WEDNESDAY, JULY 11, 2001

For Some Indian Tribes, Wind's Power Brings Hope

Continued From Page B1

tion in North Dakota.

Today, Mr. Hall and leaders of 11 other reservations on the Dakotas' high plains are considering forming an intertribal corporation to harness winds that could generate as much as 250,000 megawatts of electricity—enough to power an average of 83 million homes, according to the National Renewable Energy Laboratory, a division of the U.S. Energy Department. A single 50-megawatt project could generate an estimated $125 million over the 30-year life of the wind turbines, according to the Intertribal Council on Utility Policy, an organization of Plains Indian tribes based in Rosebud, S.D.

"It is a sweet irony that we have that resource," says Pat Spears, president of the intertribal utility council, and a member of the Lower Brule Sioux Tribe, which also lost homes, communities and a way of life to the dammed waters of the Missouri.

The tribes still face plenty of obstacles in realizing the promise of wind power, starting with limited transmission capacity to connect remote reservations to urban markets in the West and Midwest. And because they pay no federal taxes, tribes can't use the 1.7 cents per kilowatt-hour tax credit that makes wind power competitive with fossil-fuel-fired power plants. Congress, however, is considering a package of incentives to encourage energy development on Indian lands, including allowing tribes to transfer the tax credits to companies that buy tribal power, assigning the credits to nontribal partners, or using them to pay off low-interest federal loans.

The Blackfeet, meanwhile, are also facing regulatory hurdles, such as a yearlong environmental review, and particularly complex land negotiations. The proposed site is a patchwork of tribal land, property owned by nontribal members and so-called allotted lands, traditionally communal land that was parceled out to Indian families under the 1887 Dawes Act. Today, a single piece of allotted land can have several dozen owners, each of whom must agree to sell the property. "We still have a long way to go," says Dennis Fitzpatrick, general manager of the Blackfeet tribal development corporation.

Once these obstacles are surmounted, tribal officials concede, wind power alone won't sweep away deeply embedded social and economic problems. On the Blackfeet reservation, one-third of the residents live in poverty—more than twice the rate in Montana and nationwide—while half the housing is considered substandard and nearly half of high-school students drop out.

On a warm summer afternoon recently, working-age men loitered by liquor stores, some sharing bottles, others panhandling to buy another. Amid such despair, the proposed wind project at least represents hope. One thing people here know they have is wind; they joke that you can always tell the Blackfeet because they walk leaning forward.

"Right now the hottest things in the whole world is energy and water," says Bob Burns, a tribal member and owner of the Cattle Baron Supper Club, "and if you're in position to market any of these, you're in business. And wind is endless."

Mr. Burns's restaurant looks out at the site of the proposed wind farm. The ridge rises from barren range that stretches empty to the horizon, framed by the cold, gray stone of the Rockies. Here, as many as 110 wind turbines, more than 150 feet high, could stand.

"They once said that when the buffalo are gone, the people will be gone, but our people made ways to continue their way of life," says Mr. Old Person, the tribal chairman. "Today, we are hoping the wind turns into something."

COMMITTEE ON INDIAN AFFAIRS

UNITED STATES SENATE

TESTIMONY OF THE NAVAJO NATION

ON

LEGISLATIVE PRIORITIES FOR THE 107th CONGRESS

Mr. Chairman, Mr. Vice Chairman and Members of the Senate Committee on Indian Affairs, I am Kelsey A. Begaye, President of the Navajo Nation. On behalf of Vice President Dr. Taylor McKenzie, Speaker of the Navajo Nation Council Edward T. Begay, and Chief Justice of the Navajo Nation Supreme Court Robert Yazzie, I am submitting for the record, the Navajo Nation's statement on principal legislative priorities for the 107th Congress.

This statement addresses critical issue areas affecting the Navajo Nation, as well as other issues that would assist the Navajo Nation and other Indian Nations toward a path of true self-sufficiency. The Navajo Nation respectfully requests the support of this Committee in addressing the Navajo Nation's immediate and future concerns, as well as assistance in the implementation of our long-term goals and objectives.

At the outset, I note for the Committee the unified view of the Navajo Nation as to the two overriding principles which guide the Navajo Nation leadership:

(1) preservation of Navajo culture, tradition and language; and

(2) preservation, protection and enhancement of Navajo Nation sovereignty.

These two principles reflect not only the traditional philosophy of the Navajo people but also the primary concerns of the Navajo Nation today. Guided by these principles, the Navajo Nation has identified three issue areas in which it intends to focus most closely on achieving, with the leadership and support of this Committee. The Navajo Nation's critical legislative priorities during the 107th Congress are:

(I) Fair and Equitable Share of Federal Resources

(II) Entitlement and Transfer of Indian Health Service Funding

(III) Fundamental Issues Protecting Tribal Self-Determination and Addressing the Needs of Navajo People

At the dawn of the 21st Century, the Navajo Nation and the Navajo people continue the struggle to survive and to thrive in an increasingly competitive economy. We confront this challenge with pride and with dignity. However, conditions that predominate throughout Indian Country – most notably the enormous infrastructure deficit in relation to other parts of America – have perpetually prevented us from competing on a level playing field with even the most economically distressed urban and non-Indian rural areas. As a result, our day-in, day-out challenge is usually to catch up rather than to get ahead.

The Navajo Nation seeks the support and concerted efforts of this Committee in the three noted issue areas as a means of helping to level that playing field, so the Navajo Nation can compete successfully as it strives to move forward on the path toward true self-sufficiency.

I. FAIR AND EQUITABLE SHARE OF FEDERAL RESOURCES

Mr. Chairman, the Navajo Nation continues to advocate for direct input from tribal governments in the federal budget development processes. We support the development of a comprehensive federal Indian funding policy that examines the amount of available funds for programs and services for which Indian Nations are eligible, the mechanisms for distribution and the funding management requirements. Formal consultation with tribal governments in the analysis development is also essential,

provided that consultation is well defined to ensure success in the development of a comprehensive and meaningful Indian funding policy that supports tribal self-government and self-determination while fulfilling the obligations the United States has undertaken to Indian people.

We believe that by involving the Navajo Nation and other Indian Nations in the formulation of annual federal budget proposals, true government-to-government consultation is achieved. Tribal involvement in the budget process creates better dialogue between federal agents and tribal representatives, resulting in a better understanding by federal agencies of the unique budgetary needs of tribal governments. Consultation allows tribal governments to participate in important decision-making activities that directly impact their own communities. And, direct input from tribal governments promotes and respects Indian self-determination.

To some degree, the Navajo Nation's request for tribal involvement in the federal budget development process has been met favorably by various federal agencies; however, more agencies must be involved in this type of consultation. The agencies which need to obtain direct input from tribal governments include, but are not limited to the Department of Agriculture, Department of Commerce, Department of Education, Department of Energy, Department of Health and Human Services, Department of Housing and Urban Development, Department of the Interior, Department of Labor, Department of Veterans Affairs and the U.S. Environmental Protection Agency.

The Navajo Nation participates in the budget development activities with the Bureau of Indian Affairs (BIA), the Department of Health and Human Services (HHS) and the Indian Health Service (IHS). However, the Navajo Nation is concerned that these activities are conducted under processes which hinder a fair and equitable share of resources. The Navajo Nation recommends a process that utilizes needs-basis criteria to determine allocation of dollars. The Navajo Nation is often asked to consent to budget policy that is "consensus-based" and that does not apply sound budgetary logic. This consensus-based approach does not benefit any tribal government.

In Fiscal Year 2002, several federal departments and agencies identified monies in their budget proposals that directly address the needs of Indian Nations. The Navajo Nation is encouraged by this agency-wide approach to addressing budgetary needs of Indian Nations. However, the Navajo Nation, as it has in the past ten years or more, continues to seek revision of the Federal funding processes, procedures and criteria. Toward this goal, the Navajo Nation has been involved in litigation with several federal agencies. One of the cases involved Title III of the Indian Child Welfare Act (25 U.S.C. 1901 et. seq.) and the funding caps imposed by the BIA. This litigation was eventually resolved through a settlement that doubled the Nation's ICWA funding. A second case involved an action against the State of New Mexico for denial of equal protection in the manner it distributed federal funds to the Navajo Nation. Specifically, these were Social Services Block Grant funds (Title XX, Social Security Act 42 U.S.C.). We prevailed in both the Federal District Court and in the Tenth Circuit. The United States Supreme Court later denied New Mexico's petition for certiorari.

A consistent theme that the Navajo Nation has employed is that the agencies' funding procedures often fail to match funding to the needs of the Navajo Nation. In the recent past, the Navajo Nation actively participated in BIA's efforts to respond to the FY1998 Appropriation Rider, commonly known as the Tribal Priority Allocation (TPA) Report. That report demonstrates that the BIA's TPA funding fails to meet the needs of Indian Nations due to more than $1.3 billion in unmet needs when funding is compared to need that is based on benchmarks from other similar governmental programs operated outside Indian Country. The Navajo Nation's unmet need as identified by the TPA Report methodology exceeds $135 million. The Navajo Nation believes other federal programs serving Indian communities are similarly under-funded.

The Navajo Nation has consistently taken the position that funding for all tribes must be needs-based and that fulfilling those needs must be the driving force in funding programs. The Navajo Nation stands by this position as we have experienced too often that not only is the level of funding inadequate to meet actual needs, but that funding requirement, terms and processes often undermine tribal self-government. Therefore,

the concepts embodied in S. 502, the Indian Needs Assessment and Program Evaluation Act of 2001, are attractive to the Navajo Nation in several respects. First, the requirement that federal agencies periodically assess needs is necessary to determine what level of funding is required to address the issues. Second, in addition to the needs assessment, Section 3(b)(1)(B) also requires the agencies to simultaneously assess the procedures by which funding is awarded and the policy behind the funding initiative.

The Navajo Nation requests this Committee to support our recommendation and to seek and support legislative measures, such as S. 502, that encourage all federal agencies to include tribal governments in all federal budget development exercises and encourage federal agency heads to comply with said recommendation. The Navajo Nation appreciates that this Committee is seeking input from Indian Nations on budget policy and appropriations relative to Indian programs and we urge the participation of all federal agencies in the development of a comprehensive federal Indian budget development process.

II. ENTITLEMENT AND TRANSFER OF INDIAN HEALTH SERVICE FUNDING

The federal government has a trust responsibility to provide basic health care for all Indian people through the Indian Health Service (IHS). The National Tribal Self-Governance Council (NTSGC) in its report published in January 2001, supported the transfer of IHS Appropriations from the Department of the Interior to the Department of Labor, Health and Human Services and Education Appropriation Budget. These efforts are especially critical as the NTSGC report also states that most other federally-supported health services within the jurisdiction of the Labor, HHS, Education Appropriations Subcommittee in the House and Senate continue to receive appropriations increases that match or exceed health inflation rates; whereas, the DOI Appropriations Subcommittees allocations, scaled as they are to natural resources program inflation rates, have fallen far below the health inflation indexes.

The provision of health services to members of federally recognized tribes grew out of the special government-to-government relationship between the federal government and Indian tribes. This relationship, established in 1787, is based on Article I, Section 8 of the Constitution, and has been given form and substance by numerous treaties, laws, Supreme Court decisions and Executive Orders. The 1921 Snyder Act authorized regular appropriations for Native health care. The administration for Indian health passed from the Department of the Interior (DOI) to the Department of Health and Human Services (HHS) in 1954 pursuant to P.L. 83-568 also known as the Transfer Act. The 1976 Indian Health Care Improvement Act further recognized the federal responsibility for Indian health and paved the way for more Indian input into Indian health programs.

IHS is responsible for providing quality health services to American Indians and Alaska Natives. IHS services are provided directly and through tribally contracted and operated health programs. These services also include health care purchased from more than two thousand private providers. The IHS system consists of approximately 37 hospitals, 64 health centers, 50 health stations and five school health centers. An additional 34 urban Indian health projects provide a variety of health and referral services. While the health and well-being of Indian people has greatly improved, Indian people still succumb to illnesses and injuries that don't often prove fatal in even the poorest of rural communities. In addition to problems of recruitment and retention of IHS personnel, lack of adequate facilities close enough to reservation populations make existing health care services less significant. This is particularly true when a major health crisis occurs, such as an accident or injury, and for those suffering from chronic diseases.

The Navajo Nation has great concern with the level of funding provided to IHS as it continually fails to keep pace with inflation, growth of the Native American population, and the true needs of tribal governments. IHS services are provided through annual discretionary funding and over the last thirty years there has developed a chronic pattern of under funding which has contributed greatly to the disparity in health status among Native American people.

Unlike other budgets providing for health care, the IHS budget is contained within the DOI Appropriations bill and not the Labor, HHS, and Education Appropriations bill. This places IHS funding of critical health care services to Indian people in direct competition with non-human programs in unrelated agencies such as the Fish and Wildlife Service, the National Parks Service, the Forest Service, and the BIA.

Given the information provided by the NTSGC report, the Navajo Nation is keenly aware of the apparent discrepancy in allocation of dollars with respect to health inflation rates to provide for federal Indian health care services through the Department of the Interior Budget.

III. FUNDAMENTAL ISSUES PROTECTING TRIBAL SELF-DETERMINATION AND ADDRESSING THE NEEDS OF NAVAJO PEOPLE

The Navajo Nation appreciates the continued support of this Committee in addressing the needs of Indian Country. On February 26 through March 2, 2001, the Navajo Nation hosted its Impact Week in Washington, DC. Representatives of the Navajo Nation met with Congressional members to advocate on issues that are the most fundamental for the purposes of protecting tribal self-determination and addressing the needs of the Navajo people. The Navajo Nation reiterates its requests with this Committee in addressing the following issues essential to fulfilling the federal trust responsibility to Indian Country and necessary to enhancing Navajo self-sufficiency.

A. ECONOMIC DEVELOPMENT TAX INITIATIVES

While much of America enjoyed a booming economy and unprecedented economic growth and financial strength during the late 1990's, the Navajo people were largely unable to share in that prosperity. In 1997, 56% of Navajos lived below the poverty level, and per capita income was at $5,599.

The Navajo Nation has worked extraordinarily hard to attract new investment, businesses and jobs to the reservation. The Nation has at last succeeded in streamlining the federal government's involvement in the Navajo Nation's business site leasing

process. However, the massive infrastructure deficiencies within our borders – a relative lack of paved roads, electricity, telecommunications facilities and homes with indoor plumbing, for example continue to act as a disincentive to those who might otherwise look to start-up or to expand businesses on the Navajo Nation. While federal appropriations remain a prerequisite to developing our infrastructure in a way that will allow us to compete on a level playing field, we must also look for new and innovative ways to access private sector resources.

In 1993, with the leadership and strong support of Senators McCain, Inouye, Domenici and other Members of this Committee, the first-ever "Indian Investment and Employment Tax Incentives" was enacted in the Omnibus Budget Reconciliation Act of 1993. These federal tax incentives – accelerated depreciation for investment property on Indian reservations and an Indian employment credit – were intended to provide additional tools to help mitigate the effects of infrastructure deficiencies that serve to increase the non-labor costs of locating businesses in Indian Country.

The primary weakness of these reservation-based federal tax incentives, however, has proven to be the substitution, in conference, for the less valuable accelerated depreciation investment incentive instead of the more powerful investment incentive that was contained in the Navajo Nation's initial proposal and in the bills introduced by Senator McCain and co-sponsored by then-Vice Chairman Inouye and others on this Committee – an Indian Reservation Investment Tax Credit (IRITC).

Indeed, since passage of the Indian Investment and Employment Tax Incentives Act, the Navajo Nation has continued to support adoption of the following two complementary investment mechanisms needed to supplement the less valuable accelerated depreciation now in the law:

(1) the IRITC (which was previously passed by the Senate with bipartisan support and enacted in 1992 within a major tax bill (H.R. 11) that was subsequently vetoed, and passed again by the Senate with bipartisan support

in 1993 prior to its removal from the Budget Reconciliation Act during the House/Senate conference); and

(2) enhanced tax-exempt bond authority to provide tribal leaders a critical tool for attracting the necessary capital to facilitate investments in Indian Country.

These powerful tools can provide a significant boost to our efforts to bring investment, jobs and capital to the Navajo Nation. For example, in the Navajo Nation's New Lands community in Arizona, we are working to develop the Road King Travel Center on Interstate 40 to include such facilities as a gas station, restaurant and rest area. The IRITC would assist private sector investors in recouping their initial investment in a manner that would significantly enhance the opportunities for further investment to expand availability of tourist services at facilities such as Road King. Accompanying such development will be new investments in electricity and water infrastructure.

Likewise, the Navajo Nation is presently considering legislation, entitled the "Navajo Nation Bond Financing Act," which would help raise financing for capital improvement projects and other infrastructure investments. Enhanced authority for tribal governments to utilize tax-exempt bonds as a financing mechanism will be critical to that success.

Presently, adoption of an IRITC is provided under S. 558, the Indian Reservation Economic Investment Act of 2001, introduced by Senator McCain and co-sponsored by Chairman Inouye and Vice Chairman Campbell, among others, and the House companion bill, H.R. 177, introduced by Representative John Shadegg (R-AZ). In addition, Representative Shadegg has introduced H.R. 178, the Tribal Government Tax-Exempt Bond Authority Amendment of 2001. Senator McCain has introduced similar legislation in the Senate, S. 660, the Tribal Government Tax-Exempt Bond Authority Amendments Act of 2001.

Accordingly, we request the Committee's strong and active support for enactment of these long-overdue economic development tax initiatives. In particular, we seek your help in apprising your colleagues on the Finance Committee of the need for, and importance of, these initiatives. Perhaps most significantly, the Committee's intervention and assistance is necessary in order to help secure, for these measures, a realistic revenue estimate that fully takes into account the infrastructure deficiencies and other disincentives to new and expanded private sector investment that continue to exist in Indian Country.

B. PROMOTING HOMEOWNERSHIP IN INDIAN COUNTRY

The Navajo Nation has actively pursued several initiatives to promote mortgage-based homeownership opportunities for residents of the reservation. In 1996, the Nation was one of the first Indian tribes to enter into a partnership with Fannie Mae to offer conventional loan products within the boundaries of the reservation. In 1998, the Navajo Nation agreed to serve as a pilot site for the U.S. Department of Housing and Urban Development/U.S. Department of the Treasury One-Stop Mortgage Center Initiative in Indian Country. During this two-year initiative, the Navajo Nation created a working group comprised of lenders, nonprofits and federal and tribal government representatives to identify barriers to mortgage lending on the Navajo Nation.

In partnership with the Navajo Partnership for Housing, Inc., a nonprofit organization chartered under Navajo law to help Navajo families buy or build homes with mortgage financing, the Navajo Nation continues to implement many of the local recommendations made by the One-Stop initiative. There are also several national recommendations that the Navajo Nation would like to bring to the attention of the Committee for consideration. These recommendations would not only benefit residents of the Navajo Nation, but they would also benefit potential homebuyers throughout Indian Country.

First, one of the greatest barriers to obtaining mortgage financing in Indian Country is the Bureau of Indian Affairs review process of mortgage-related documents.

The Navajo Nation commends Congress for creating the "Indian Lands Title Report Commission" in the Omnibus Indian Advancement Act last year to "facilitate home loan mortgages on Indian trust lands." However, the time for studying and use of commissions is over. Indian Country needs action. Congress must provide the Bureau of Indian Affairs Realty Division adequate funds and resources to perform its trust responsibility during the mortgage review process in a timely manner in order to keep pace with the private mortgage industry. One Navajo family has been waiting over a year and a half for their mortgage to be recorded by the Navajo Regional Office, and they are still waiting. This delay is unacceptable to private mortgage lenders.

Second, Congress should enact legislation to allow the BIA Title Plants to give access to private sector title insurance companies so that they can conduct title searches as they do in county records offices off reservation. By allowing public access to conduct title searches, the mortgage process would be expedited, and borrowers and lenders would be in a much better position to ascertain whether clear title exists or whether there are title defects.

Third, because Native American homebuyers are most often first-generation homebuyers, the demand for homebuyer education and credit counseling in tribal communities is much higher than from first-time homebuyers off the reservation. This demand is best met by local homeownership intermediaries or housing counseling agencies that are familiar with the local practices and cultures of tribal communities. Off-reservation, these types of organizations are supported by the Federal Housing Administration's (FHA's) housing counseling programs. However, Native American agencies generally lack the capacity to access these FHA resources. Unfortunately, it sometimes takes capacity to obtain capacity-building funds. Congress should enact legislation to restructure FHA's housing counseling program so that Native American organizations can benefit from the program. Since FHA has been experiencing record surpluses over the past two years, now is the time to expand its programs to meet the needs of the one of the most underserved communities in America.

The Navajo Nation appreciates the Committee's consideration of these recommendations to help promote homeownership opportunities in Indian Country.

C. WELFARE REFORM

As this Committee is well aware, Section 412 of the Personal Responsibility and Work Opportunities Act (PROWOA), at 42 USC Section 612, authorizes the Secretary of Health and Human Services and the Secretary of Labor to grant funds to Tribes for Temporary Assistance to Needy Families (TANF) and work training programs respectively. This Act capped federal spending for primary cash assistance program serving poor families and children, ending the Aid to Families with Dependent Children (AFDC) program. Its focus is on moving people from welfare assistance to gainful employment. However, it is not well designed for rural areas and Indian tribes. In part, this is due to a lack of economic development on reservations. Moreover, while tribes can receive funds directly from the DHHS, there are many issues that must be worked out surrounding funding. For example, when Indian tribes receive the funds directly, they only receive the federal portion; there is no requirement that the states provide the tribes with the match funds that they had previously used to serve the tribal populations. Further, most Indian reservations suffer from a lack of facilities and infrastructure which the states had developed over the years when they provided AFDC. Tribal infrastructure needs include intake systems, offices and tracking mechanisms which must be developed, often without adequate funding, since no separate start up funds are made available. Finally, even though the Navajo Nation has operated the Bureau of Indian Affairs Social Services Program (a similar program), contracted under the Indian Self-Determination and Education Assistance Act, the DHHS has failed to allow the Nation to enter a similar contract arrangement, which would allow consolidation of these assistance programs and lead to greater efficiency.

On April 14, 1999, the Navajo Nation presented testimony to this Committee at an oversight hearing regarding Welfare Reform Implementation in Indian Country. At the hearing the Navajo Nation made several recommendations, including greater

availability of administrative funds for infrastructure, providing explicit language making the Indian Self-Determination and Education Assistance Act applicable to this Act; and language providing access to state matching funds.

As this Congress proceeds in reauthorization of the Welfare Reform Act, the Navajo Nation seeks the support of this Committee for the inclusion of language address these concerns in any Congressional measures addressing welfare reform reauthorization. Moreover, the Nation requests the opportunity to provide testimony during all Congressional hearings on the reauthorization, and requests that field hearings be conducted within the Navajo Nation to give the Committees the opportunity to see first hand the economic conditions on the Navajo Nation.

D. INDIAN TRIBAL JUSTICE SYSTEMS

In FY2000, the Navajo Nation tribal court systems' 14 trial judges handled 78,016 cases, an average of 5,500 cases per judge. This enormous caseload illustrates the scope of responsibilities assumed by the Navajo Nation's judicial systems within the states of Arizona, New Mexico and Utah. In addition, the Navajo Nation has concurrent jurisdiction with the federal courts over certain crimes (e.g., under the Major Crimes Act, the Indian Country Crimes Act and the Assimilative Crimes Act, which the United States is obligated to enforce).

The Senate Committee on Indian Affairs has been in the forefront in recognizing and attempting to address the federal government's major responsibilities and obligations for funding of, and technical assistance to, Indian tribal justice systems. First, in the Indian Tribal Justice Act of 1993, and more recently in Public Law 106-559, the Indian Tribal Justice Technical and Legal Assistance Act of 2000, Congress has mandated funding and other support for tribal justice systems. Regrettably, in spite of authorization for funding of $50 million, Congress has never appropriated funds to implement the Indian Tribal Justice Act. With the passage of the new authorizing legislation in 2000, no requests have been made by the Department of Justice for the purpose of carrying out P.L. 106-559. It is now more critical than ever that this Committee actively advocate and

support appropriations for tribal justice systems so that the unfortunate "authorized, but not appropriated" experience of the last eight years is not replicated.

In particular, the Navajo Nation seeks the support of this Committee in securing FY2003 funding for the following:

PERSONNEL

The Navajo Nation court system cannot provide competitive salaries to attract qualified Navajo law school graduates. However, personnel needs extend far beyond attorneys. To fill unmet personnel needs of the Navajo Nation Judicial Branch, funding for the following positions are needed: 7 District Deputy Court Clerks, 5 District Probation Officers, 1 Financial Specialist I, 3 Secretaries III, 7 District Court Accountants, 4 Staff Attorneys, 1 Law Clerk, and 2 District Court Judges

MODERNIZATION AND TRAINING

A major effort of the various entities that comprises the Navajo Nation Criminal Justice System has begun to improve communication, collaboration and cooperation. One goal is to improve data sharing through use of an integrated information system. However, to achieve this goal, additional hardware, software and personnel are needed. Additionally, the communication infrastructure needs to be substantially upgraded. As a result, personnel will need training to ensure they are knowledgeable in operating the software, thus allowing for the most practical and effective means to fulfill the needs of the Navajo Nation Criminal Justice System.

INFRASTRUCTURE

The Navajo Nation Supreme Court and the Administrative Office of the Courts are housed in dilapidated trailers. Aside from the severe limitations that these conditions impose on the Courts' work, the Navajo Nation Supreme Court has no dignified and proper place to conduct its public deliberations. These circumstances demand the immediate attention of Congress. Moreover, most Navajo Nation district courthouses

were built in the 1960s to accommodate a single judge and small staff; today these buildings must house additional judges and staff needed to address the courts' growing caseload. In some districts, probation officers have been forced to relocate due to overcrowded work environments. Funding is needed immediately to repair, expand and improve existing facilities, but long-term funding is required to help the Navajo Nation make its court facilities comparable to state and federal courts and to bring them to the standards that the Navajo people expect and deserve.

E. PUBLIC SAFETY

Public Safety services are an essential part of every society and government and the Navajo Nation is no different in stressing a request of equitable and adequate funding for law enforcement and correction services necessary to maintain an orderly and law abiding society. We cannot allow our citizens to be deprived of such basic life safety services. The lack of law enforcement and public safety services also directly impacts our economic development ventures; our youth development; safety for our elderly; and places current law enforcement officers in frequent impending risks.

INADEQUATE FUNDING FORMULAS / SEGMENTED U.S. DEPARTMENT RESPONSIBILITIES

The Navajo Nation law enforcement, criminal investigations and corrections services have not received federal funds through the Tribal Priority Allocations for the past three to four years when Congress deleted Tribal law enforcement. Congress has continually neglected direct funding for basic Navajo Law Enforcement and Corrections, as well as other public safety services. Currently, the Navajo Nation law enforcement services are a responsibility of the Bureau of Indian Affair's Law Enforcement Services (BIALES). However, the distribution of funds received through the United States Department of Justice under the Law Enforcement initiative from FY2000 to 2001 is to the "neediest of the needy." Consequently, the Navajo Nation received a nominal portion of these funds through the Bureau of Indian Affairs (BIA), and the allocation procedures and methodologies employed by the BIA does not factor in the Navajo

Nation's land base and population as part of the formula. As a result, there are inadequate jail facilities; a poor ratio of police officers to the service population; minimal corrections officers, dilapidated jail facilities; out-dated equipment and technology, and incomparable salaries for police officers, corrections officers, and criminal investigators.

The Navajo Nation strongly emphasizes that funds made available through previous law enforcement initiatives have been minuscule and did not address the need for new jails nor did it provide much needed reoccurring base funding for increased manpower (police officers, corrections officers as well as prosecutors). Most importantly, the funding does not take a comprehensive approach in addressing the criminal justice needs of the Navajo Nation. Navajo Nation law enforcement services needs continuous support, being the largest Native American law enforcement operation and the largest rural law enforcement organization in the United States, and parity should be implemented at the federal level when funding methodologies are developed. The "Band-aid" or "one size fits all" approach in addressing Navajo Nation and Indian Country law enforcement needs has out lived its justification.

Although recent federal law enforcement initiatives have supported distribution of United States Department of Justice (USDOJ) grants, as well as to increase manpower for Federal of Bureau of Investigations (FBI) and place sub-offices of United States Attorney's Offices in a few states near Indian reservations, the Navajo Nation again has not seen any improvement in law enforcement, corrections, prosecution, or court services. Increasingly, the most common complaint by Navajo Nation citizens and communities is the lack of prevention and prosecution of child sexual abuse and other serious criminal violations.

INCREASED SERVICE POPULATION

The 2000 Census results reduced the police officer-to-population ratio to an alarming rate of .5 officers per 1000. In comparison to off the reservation, the officer to population ration continues to be 3 officers per 1000. The Navajo Nation's five adult detention facilities with a combined bed space of 103 beds were built in 1959 when the

population was 69,000. Today the population is well above 220,000. Law enforcement officers are serving a diverse population and encountering increasing jurisdictional complexities, yet Navajo Nation jails are continuously experiencing leaking roofs, shifting walls, increasing numbers of escapes and suicides, while still bound to a consent decree requiring the jails to attempt to maintain a standard the Navajo Nation cannot afford. Our existing jail space has not met the needs of our court system to allow our judges to impose punishment to uphold and enforce our most basic criminal laws.

COMMUNICATION AND TECHNOLOGY

The Navajo Nation's 324 police officers respond to nearly a quarter of a million calls for services per year of which 18,000 are considered serious, requiring in-depth criminal investigations. Manpower, infrastructure, equipment and vehicle needs have always overshadowed technology, communication and equitable pay issues. Navajo police officers, investigators and other public safety service providers still face "dead areas" in their communication systems not only creating response issues to those communities but safety issues for police officers and other emergency responders. Navajo law enforcement is also faced with the lack of technological support to establish a local area network between its seven police districts as well as other criminal justice agencies that would support an effective integrated information management and communications system.

QUALITY ASSESSMENTS OF THE CONSULTATION MEETINGS

Finally, it is critical that the Federal Law Enforcement Initiative's USDOJ Grants and additional dollars to BIALES be farther evaluated to determine its effectiveness in adequately meeting the needs of the Navajo Nation. Currently, the Navajo Nation has to compete with federal and state institutions to be considered for these grants. Although federal efforts have been highlighted and oftentimes mentioned with high regards, the comments by Indian tribes at USDOJ consultation meetings have been nothing but outcries of tragic situations and dire needs of law enforcement in Indian Country. The USDOJ has yet to answer critical criminal justice concerns raised by Tribal leaders at the

consultation meetings and it is undetermined whether these concerns are being shared with the Secretary of Interior, Assistant Secretary of Interior, United States Attorney General and the Office of the United States President.

Navajo law enforcement has yet to see any substantial funding support and advocacy for the Indian Country Criminal Justice system/services that will improve the quality of services comparable to criminal justice services provided outside Indian Country. If the state and federal criminal justice system had to settle for the few dollars and inadequate level of services given to Indian Country, it would be unacceptable and Congress would be quick to address those needs. The Navajo Nation expects Congress to respond quickly to our needs and the people of the Navajo Nation will no longer accept the inadequate funding for public safety services by Congress and the U.S. Government Agencies. Congress as well as each of the U.S. Government agencies has a responsibility to the Navajo Nation as well as all Indian Nations.

F. TRANSPORTATION

The Navajo Nation has a total of 9,682 miles of public roads, consisting of right-of-way ownership, BIA roads, tribal roads, state roads, county roads, and federal agency roads. With a land base the size of West Virginia, the need for reliable transportation throughout the Navajo Nation is critical to the Nation's ability to attract investment and jobs in order to increase economic development.

The Navajo Nation Indian Reservation Road (IRR) program is funded and administered by various government highway programs. BIA, state and county roads are the main road systems serving the Navajo Nation. BIA roads consist of existing and proposed public roads within the Navajo Nation that meet the IRR definition and for which the BIA Navajo Regional Office has or plans to obtain a legal right-of-way. The Navajo BIA road system or Navajo routes include major roads, streets and other local public roads linking to the state highway network, as well as providing access to Navajo communities. The roads on the Navajo Nation need to be maintained. Funding for this

endeavor is critical for the Navajo Nation and other Indian tribes and needs to be addressed in BIA's IRR Budget.

The BIA and the IRR program budget for FY 2002 is insufficient to allow for compliance with U.S. Department of Transportation regulations governing roads and bridges. Though the needs are many and varied, the Navajo Nation will address three priority transportation issues.

MODIFIED RELATIVE NEED FORMULA

The primary funding source of the Navajo Nation IRR program is the Highway Trust Fund (HTF) and interest-bearing accounts funded by gas taxes, state assessments, cross country trucking levies and other sources. IRR funds are allotted for construction and improvement of IRR roads and bridges. Allocation formula must be utilized to allocate IRR funds among tribes (Section 126 and 23 U.S.C Part 22). The Navajo Nation has been very supportive of the Current Relative Need Formula, which consists of three areas: 20% (Population) + 30% (vehicle miles traveled) + 50% (cost of improvements). (The formula is the addition of the percentage of total population of a tribe, the percentage of roads that are most traveled and the percentage to improve the roads.) This formula is the most fair and equitable way to distribute IRR funds as it is measurable and verifiable based on need. The Navajo Nation seeks support of Congress to support the current Relative Need Formula. This formula will assist in bringing all road conditions up to standard on a national level.

BIA ROAD MAINTENANCE

Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) requires that IRR roads be maintained; but Navajo IRR road maintenance is funded separately from IRR construction funds, under the Department of Interior (DOI) Appropriations-Tribal Priority Allocations (TPA).

The Navajo IRR road maintenance funds have never been adequate and are sufficient for only one-third of actual maintenance needs. The Navajo Nation needs to

find other revenues and solutions to fund road maintenance. The Secretary of Transportation is authorized to withhold approval of further HTF if a recipient fails to comply with the federal maintenance standards. Although the Transportation Equity Act for the 21st Century (TEA-21) is authorized for construction activities, there is definitely a need to increase its counterpart of maintaining these roads.

As currently reflected in federal funding, there is severe under-funding of the DOI budget with respect to the Road Maintenance Program. There has to be adequate funding for DOI Road Maintenance Program in order to maintain investment in our roads. The Navajo Nation asks the committee to work actively in supporting full funding for the BIA road maintenance program.

AMENDMENTS TO TEA-21

Section 1102(c) of Public Law 105-178 provides an annual obligation limitation to all categories of Federal Lands Highway Program funds, including IRR program funds. Under this provision, the amount of funds available to the IRR program each fiscal year is limited. This impacts Indian Country severely due to a greater need by tribal governments for such funding. The obligation limitation provisions create a negative impact on tribal transportation programs' net results while states benefit from this language.

We are grateful that Senator Campbell has introduced S. 344, the Indian Tribal Surface Transportation Act of 2001, which would remove the so-called obligation limitation contained within TEA-21 and would allow the already-authorized funds for Indians to reach the intended beneficiaries. In FY 2001, imposition of the obligation limitation diverted $34 million from the IRR program. In FY 2002, the limitation would actually reduce the authorized funding level of $275 million by 12% (assuming full funding is appropriated). Given Indian Country's massive infrastructure needs, the obligation limitation is particularly inequitable; therefore, we support S. 344 and urge the Committee to ensure that this measure is enacted into law.

G. HEALTH ISSUES

Six hospitals serve a population of nearly 250,000 on the Navajo Nation. Health care services are delivered by the Indian Health Service (IHS) and the Navajo Nation Division of Health (NNDOH). NNDOH provides service in areas of nutrition, substance abuse prevention and treatment, environmental health and communicable disease prevention, which are funded from federal, state and private sources. The Navajo Nation is faced with a critical shortage of health facilities which is compounded by the long distances of poorly maintained roads between hospitals and clinics. Moreover, critical care is non-existent in most locations and it is common for people to succumb to conditions that rarely become life-threatening in urban and non-Indian rural communities. Therefore, the Navajo Nation seeks support from this Committee in addressing the following legislative priorities:

NAVAJO NATION HEALTH CARE MANAGEMENT SYSTEM

As the Committee is well aware, the Navajo Nation has been preparing to assume responsibility for delivery of health care services on the Navajo Nation. In 1998, the Navajo Nation completed its *Phase I Report: Conceptual Design of a Tribally Managed Health Care System.* The Report assessed the feasibility, advantages and disadvantages of a tribally managed health care system. In 1999, the Navajo Nation issued the *Phase II Report: Business Plan for the Navajo Nation Health Care System.* A panel of health care experts affirmed that the Navajo Nation has "an unprecedented opportunity to actually exercise its right to control and manage its own health care system."

In January 2000, the Navajo Nation chose to exercise its rights under P.L. 93-638, the Indian Self-Determination and Educational Assistance Act as amended, began the proposed Navajo Nation Health Care System by developing an ISDA contract application for the assumption of the Navajo Area IHS. In January 2001, the Navajo Nation Council adopted a resolution approving the submission of that application; a final contract agreement is expected to go before the Navajo Nation Council in early October 2001, with the Navajo Nation Health Care System expected to assure the ISDA contract

to be operating by January 2002. The Navajo Nation requests the Committee to ensure that the additional $10 million in direct operations for the Federal cost of Navajo ISDA contract conversion and the request of $40 million for Contract Support Costs as provided in the Senate-passed FY2002 Interior Appropriations bill is secured in the final FY2002 Interior Appropriations bill.

FACILITIES CONSTRUCTION

The Navajo Nation has three facilities on the IHS list of construction priorities. Construction of the new Fort Defiance Hospital has been scheduled for completion in February 2002 with a projected need of $41.8 million in the IHS 5-year construction plan for construction completion. However, under the House-passed FY2002 Interior Appropriations bill, $14.3 million was approved for the Fort Defiance Hospital, an amount which is slated only for staff quarters and to purchase equipment. Under the Senate-passed Interior Appropriations bill, $27.8 million has been provided. We ask Members of this Committee to encourage your colleagues to provide the higher level of funding recommended for the Fort Defiance Hospital in the final FY2002 Interior Appropriation bill.

The Fort Defiance Hospital serves approximately 10,000 people per year and houses 21 programs, from dental and surgical clinics, to ob-gyn, mental health and substance abuse programs. If construction of the new hospital is not completed on schedule, the existing Fort Defiance Hospital risks losing its accreditation, due to crumbling infrastructure that necessitated the new hospital in the first place. Should this occur, the hospital would be unable to collect Medicare and/or Medicaid funding essential to its continued operation. Should an extension of accreditation be granted, the existing hospital will be obligated to spend an average of $1 million annually to repair leaky roofs and faulty sprinkler, heating and cooling systems.

In addition, we request this Committee to help ensure the highest level of FY 2002 funding for both outpatient facilities at Pinon and Red Mesa, Arizona. Because the community of Pinon has been heavily impacted by the Navajo-Hopi relocation, Section

640D of 25 USC guarantees enhanced educational and health care facilities to the community. The current facility does not meet the needs of the community, as it is only open two days a week. Its services are at capacity, on average, only being able to serve 13 patients a day. Those needing more immediate care or acute care must travel to the IHS hospital at Chinle, 60 miles away. Likewise, the community of Red Mesa is serviced at Chinle, also nearly 60 miles away. The House-passed FY 2002 Interior Appropriations bill provides no funding to the Red Mesa Health Clinic and $2.6 million to the Pinon Health Clinic. The Senate-passed bill provides $5 million and $2.6 million to Red Mesa and Pinon, respectively.

REAUTHORIZATION OF THE INDIAN HEALTH CARE IMPROVEMENT ACT

Current authorization for the Indian Health Care Improvement Act (IHCIA) is set to expire on September 30, 2001. Initially enacted in 1976, the IHCIA has been periodically reauthorized over the past 25 years. As the keystone law that directs the delivery of health care to American Indians and Alaska Natives, it is critical that this important measure be reauthorized this year. Therefore, the Navajo Nation supports and recommends the passage of S. 212, the Indian Health Care Improvement Act Reauthorization of 2001, with the inclusion of provisions recommended by the Nation. The Navajo Nation is particularly concerned that: mechanisms be reviewed to achieve full funding for health care; Indian Health Services be mandated to provide a full range of services; and an increased emphasis is placed on preventative medical practices. The Navajo Nation requests the opportunity to provide testimony at all Congressional hearings in relation to the reauthorization of IHCIA.

ELEVATION OF DIRECTOR OF INDIAN HEALTH SERVICE

Mr. Chairman, the Navajo Nation thanks the continual support of this Committee in supporting legislation to elevate the Director of the IHS to Assistant Secretary for Indian Health. Elevating the IHS Director would result in greater accessibility and authority within the Department of Health and Human Services, and would help ensure that the health care needs of Indian Country are more effectively

addressed. The Navajo Nation strongly supports S. 214 and urges its passage during the 107th Congress.

H. EDUCATION

One of the most important obligations of the federal government under the Navajo Nation Treaty of 1868 is to provide education to the Navajo people. The Navajo Nation's attitude toward formal education has changed in the last half of the 20th century. The Navajo people now see education as the path to a brighter future rather than a mechanism of Western culture separating Navajo children from their families, language and culture. Providing quality education for Navajo students is a top priority of the Navajo Nation.

Because of various contributing factors, students on the Navajo Nation are not achieving academic levels consistent with national standards. While many reasons can be cited as contributing factors, the Navajo Nation wishes to look ahead and focus its attention on solutions. While funding levels for the full range of Navajo Nation educational needs are often inadequate, the Navajo Nation is trying to maximize the effectiveness of existing funding in a manner that will facilitate a quality education equal or exceeding educational opportunities found elsewhere.

The Navajo Nation is at a critical juncture in the development of its educational system. Increasingly, we are faced with developing new strategies that are necessary to address education standards on the Navajo Nation. Challenges to be met and conquered include the growth of tribally-controlled contract and grant school systems within the Navajo Nation, as well as new initiatives at the state level, including the establishment of charter schools.

ELEMENTARY AND SECONDARY EDUCATION ACT

The Navajo Nation has supported the reauthorization of the Elementary and Secondary Education Act of 1965 (ESEA) and has recommended to this Committee the inclusion of provisions to increase accountability and strengthen the ability of the Navajo

Nation and other Indian tribes to exercise self-determination through the provision of educational services. The Navajo Nation, along with the Three Affiliated Tribes of North Dakota, could not support the version of Senate Amendment 505 after it was reported out of this Committee on March 3, 2001. The language that came out of mark-up took away the tribes' right to oversee tribal educational polices; this was not the intent of Senator Inouye or Senator Campbell's original bill. Therefore, based on our intensive deliberations with the Committee staff regarding the mark-up version of S. 211 (Senate Amendment 505), we ask that consultation with the Navajo Nation be maintained and improved upon. We recognize that the tribal process to comment on urgent legislation should be done at a quicker pace, but to formulate the position of the Navajo Nation takes time. And while our schedule may be inconvenient to respond to the Committee's legislative timeframe, the Navajo Nation must insure that its position and recommendations are conveyed according to the best interest of the Navajo people. Therefore, the Navajo Nation requests the continual assistance of this Committee to ensure that these provisions are included in H.R. 1 as the House and Senate begin negotiations on the bill.

Furthermore, the Navajo Nation is supportive of the maintenance of all currently authorized programs set forth in Title IX of the Elementary and Secondary Education Act of 1965. While some of the programs contained in Title IX have not recently been funded, including the provisions relative to establishment of Tribal Education Departments (TEDs), the purposes and objectives set forth in these programs continue to be valid and important in the delivery of education and education-related services to Navajo students.

The Navajo Nation's education challenge is overseeing a variety of schools: BIA, public, charter, grant and private schools that all have unique systems. Each system has its own funding sources and policies under the oversight of an elected school board. The Navajo Nation is now moving toward the establishment of its Navajo Nation Department of Education, which will address the need for coordination and provision of

uniform education standards. This will enable the Navajo Nation to regulate, manage and direct quality education for all children attending schools on the Navajo Nation.

Funding has been appropriated only once for TEDs since the passage of the authorization in 1988. In FY 2001, no funding was provided. The Navajo Nation has proposed that the ESEA be amended to limit eligibility for this TED funding to tribes which operate at least three BIA-funded schools. In this manner, TED resources would be aimed at tribes that take on major education responsibilities from the BIA, while BIA could focus its resources on schools in smaller tribal communities.

REPLACEMENT SCHOOL CONSTRUCTION FUNDING

The BIA school facilities located on the Navajo Nation comprise approximately 48% of all BIA facilities. Many of these facilities are in dilapidated conditions and have become increasingly difficult to maintain and operate. For many years, the Navajo Nation has reported these conditions to Congress and requested that the problems be addressed and resolved. Finally, in FY 2000 and FY 2001, the federal government began to address the longstanding backlog of facilities replacement and repair. In addition, President Bush, during his campaign, supported continuation of the funding levels required to eliminate the BIA construction backlog.

The Administration's FY 2002 budget request has earmarked construction funding for six schools, including the Navajo Nation's Fort Wingate Elementary School and Holbrook Dormitory. This commitment is appreciated, but the Navajo Nation requests that the Committee advocate for new construction money, so that additional school construction can be funded as rapidly as possible.

ADMINISTRATIVE COST GRANTS (ACG)

The ACG is a statutory, formula-based method created by Congress in 1988 to calculate the amount of funds that should be provided to tribes for the administrative and indirect cost expenses incurred in the operation of BIA contract and grants schools. Although statutorily mandated, funds appropriated by Congress for ACGs have rarely

been sufficient to cover the full amount. In the 1999-2000 school year, schools actually received only 82% of the amount under the formula.

ACG funding has remained at $42.1 million for three years, with a $1 million increase in FY2001. As more BIA schools convert to tribal operation, the annual appropriations must be divided among an increasing number of schools, and the amount of available funding is further diminished as inflation and the costs of operating schools continue to increase. The Navajo Nation recommends that the 107th Congress fully fund ACGs at the levels mandated by the statutory formula.

IMPACT AID PROVISIONS AND REPEAL

The Navajo Nation requests that the Committee introduce legislation to repeal 20 U.S.C. §7709 the provisions of the Impact Aid law allows state education agencies to reduce State financial assistance to a local education agency on the basis of receipt of Impact Aid funds. Only the State of New Mexico still utilizes this section of the Impact Aid law. However, this use of federal funds by the State of New Mexico results in the loss of 99% of funds to the Gallup-McKinley County School District, which primarily serves Navajo students who live on the Navajo Nation as well as other school districts in New Mexico serving Navajo children.

Impact Aid was designed to provide funding to local school districts to make up for funding losses by the large number of children living on federal property (Indian reservations) and who attend local public schools. But since current law allows States to take away the funding from local school districts this law is faulty and goes against Congress intent. The local school districts are still not adequately funded and the Indian children must bear the burden of horrible inadequate educational programs and facilities.

The Navajo Nation has always supported Impact Aid funding and has asked Congress to fully fund this program. But it makes no sense to advocate for increased dollars originally meant to serve Impact Aid students if the State of New Mexico is going to hijack these funds for other non-Impact Aid students.

Throughout Indian Country, facilities are falling apart. The public school facilities in the Gallup-McKinley County School District and other school districts in New Mexico serving Navajo students are feeling the brunt of this confiscated Impact Aid funding. The school districts are not able to keep up with proper maintenance, let alone to replace or to renovate their educational facilities. Any funding allocated to school facilities reduces funds that would normally go toward book replacement, essential supplies and education material development. Public schools within federal lands cannot generate property taxes and have little recourse but through the Impact Aid program.

To add insult to injury, the confiscated funds leaves little to provide safe transportation, increased teachers' salary and teacher housing. The Gallup-McKinley County school district already has a large teacher turnover and with the student drop out rate at 35 to 45% per graduating class, the dollars Congress funds to Impact Aid is not benefiting the children at all. The Navajo Nation recommends that the Committee, along with the Senate Committee on Health, Education, Labor and Pensions combine its efforts to repeal 20 U.S.C. Section 7709. The Navajo Nation will help both Committees in this proposed legislation to allow Impact Aid to accomplish its original purpose: to fund public schools impacted by Indian students who live on federal land.

I. ENERGY

The Navajo Nation is endowed with numerous natural resources such as coal, oil, natural gas, solar, wind and hydro-power that provide the Navajo Nation with tremendous opportunity to pursue energy self-sufficiency and to participate in the dynamic vertically integrated energy industry. The Navajo Nation envisions being involved in solutions to current shortfalls in the supply and demand of energy throughout the southwest United States. The Navajo Nation, as with most communities across the United States, strives for a balanced approach to our energy needs and the environment.

Today, the Navajo Nation seeks to enhance energy development within its borders. In order to achieve this goal, the Navajo Nation has initiated steps in developing a Navajo Nation Energy Policy to guide energy development decision making. The Navajo Nation along with tribal enterprises, Navajo Tribal Utility Authority (NTUA) and Dine Power Authority (DPA), have organized Navajo Nation Energy Policy Work sessions, an initial meeting for Navajo legislators and Executive staff to develop an energy policy framework. In the development of a Navajo Nation Energy Policy, leadership will recognize the importance of environmental and traditional concerns of the Navajo people.

The Navajo Nation recognizes the importance of stable delivery of electricity to homes in America and within the Navajo Nation. The Nation has consistently contributed to America's growth with its energy resources. Southern California alone receives more than 4,800 megawatts of energy generated by the Navajo Nation's energy resources. The Nation now wants to ensure any further development of resources will bring stability of the Navajo Nation's services to its people to meet the electricity needs of growing Navajo communities.

NAVAJO ELECTRIFICATION PROJECT

Currently, nearly 40 percent of Navajo homes do not have electricity. One of the Navajo Nation's utmost priorities is to take advantage of opportunities to provide much needed electrical services throughout the Navajo Nation. Young Navajo children should not have to put homework aside because their homes aren't electrified. Under Title VI, Section 602 (b) of Public Law 106-511, the Cheyenne River Sioux Tribal Equitable Act, $15 million is authorized for Fiscal Years 2002 through 2006 with a total of $75 million. This funding would take initial steps to address the critical needs of electricity throughout the reservation. The provisions of Title VI would create a program which has the goal to ensure that approximately 15,000 homes currently without electricity have will have access to a reliable and affordable source of electricity by the year 2006. We

seek your support during any future discussions with your colleagues on the Appropriations Committee to fully fund this project.

BULK POWER TRANSMISSION PROJECT

The electricity shortages of Spring 2001 in California and the Northwest United States have caused the Navajo Nation to re-evaluate its generation, transmission and distribution situation on the Navajo Nation. The Nation must have affordable, reliable and sufficient electricity to meet the increasing demands by the Navajo people and Navajo economy. On the development side, the projected electricity shortage has elevated the viability and need for several proposed Navajo Nation transmission and generation projects that are being developed by the Navajo Nation enterprises. These projects, if continued, would greatly assist the southwest by adding transmission and generation capacity. With proper funding, the Navajo Nation would be able to provide electricity to Navajo homes as well as sell excess electricity to consumers in southern California. In accordance Title 26, Indian Energy Resources, of the National Energy Policy Act of 1992, the federal government has authorized funding of large-scale Indian energy projects that would vertically integrate Indian resources and put Indian tribes in the energy markets. Pursuant to Title 26, the Navajo Nation seeks an appropriation for a bulk power transmission project to address the southwest energy shortage and appreciates any assistance the Committee can provide.

NATIONAL ENERGY POLICY

The Navajo Nation is aware of several legislative proposals under consideration of the 107th Congress, which seek to create a National Energy Policy. We also understand the Bush Administration would like to develop a National Energy Policy and have been victorious recently with the passage of H.R. 4 in the House of Representatives on August 2, 2001. This bill has been referred to the United States Senate and contains at least one provision, which concerns the Navajo Nation. That provision is Section 305, which would appropriate federal funds in the form of grants from the Department of Energy to create cooperative research, development and special demonstration projects

for the uranium mining industry. On the surface, this appears to be a federal subsidy for the uranium mining industry. Currently, hundreds of Navajo citizens are still being affected by uranium mining that took place (in the best interest of the federal government) on or near the Navajo Nation between the 1940s and 1980s.

The Senate Committee on Energy and Natural Resources is currently holding markups on S. 597, a bill introduced by Senator Jeff Bingaman in March of 2001 calling for a comprehensive and balanced National Energy Policy. The Navajo Nation has yet to develop a position regarding these legislative proposals, however the Navajo Nation will forward for your review, a copy of a finalized Navajo Nation Energy Policy when complete. The Navajo Nation encourages members of the Senate Committee on Indian Affairs to consider our statements on energy issues as legislation moves through the United States Senate and into Conference with the House of Representatives.

REGULATION OF SURFACE COAL MINING

Section 503 of the Surface Coal Mining Control and Reclamation Act (SMACRA) of 1977, allows states to regulate surface coal mining on state and federal lands. However, Indian tribes were not given the same opportunity. The regulation of surface coal mining on Indian lands is vested with the U.S. Office of Surface Mining Reclamation and Enforcement (OSM). Primacy to regulate its own surface coal mining activities has always been a priority of the Navajo Nation. Additionally, other tribes are very interested in primacy including the Hopi Tribe, the Crow Nation and Northern Cheyenne Tribe have worked together seeking funding under Section 2514 of the Energy Policy Act of 1992 to develop tribal regulations and program policies in respect to surface mining. All four above tribes assist OSM in the inspection and enforcement of surface mining activities on Indian lands and sponsor employment training and education in the areas of mining and minerals resources. Since 1996, the above Indian tribes have collaborated on drafting primacy legislation which would provide coal producing Indian tribes the authority to regulate surface coal mining on their respective lands.

The Navajo Nation requests the Committee consider amendments to SMACRA which would allow interested tribes to regulate surface coal mining activities within their land boundaries. The Navajo Nation suggests the following:

> *Not withstanding any other provision of this section or this Act, Indian Tribes may be considered as States for purposes of sections 503 and 504 and may apply for and receive under the provision of section 504(e). Grants developing, administering and enforcing Tribal programs shall be eligible for 100% of the cost of developing, administering and enforcing the approved program.*

FAIR MARKET VALUE

The Navajo Nation seeks the support of this Committee in establishing a fair market value for its crude oil resources. Current regulations relying on posted prices have not been reflective of the true market value of Indian crude oil. The Minerals Management Service (MMS) and the Department of Interior must recognize their fiduciary responsibility in any consideration to amend current regulations regarding the valuation of crude oil from Indian leases. The Navajo Nation loses out of royalties because the value of its crude oil is not priced at true market value. The Navajo Nation strongly encourages the Department of Interior to adopt new regulations placing Indian crude oil at true market value. Furthermore, the Navajo Nation requests the opportunity to testify in all future Congressional hearings held relative to these matters.

CONCLUSION

On behalf of the Navajo people, the Navajo Nation Leadership thanks the Committee for this opportunity to submit for the record the Navajo Nation's legislative priorities for the 107th Congress. The Navajo Nation enjoys working with the Members and the Committee staff in continuing the dialogue and achieving significant progress in addressing the Navajo Nation's priority issues. The Navajo Nation may provide further comments while the record is open.

IGRAU-234-01

RESOLUTION OF THE
INTERGOVERNMENTAL RELATIONS COMMITTEE
OF THE NAVAJO NATION COUNCIL

Approving the Navajo Nation's Written Testimony to the Senate Committee on Indian Affairs on the Goals and Priorities of the Navajo Nation For the 107th Congress

WHEREAS:

1. Pursuant to 2 N.N.C. §821, the Intergovernmental Relations Committee is a standing committee of the Navajo Nation Council; and

2. Pursuant to 2 N.N.C. §824(B)(2), the Intergovernmental Relations Committee is authorized to assist and coordinate all requests for information, appearances, and testimony relating to proposed county, state and federal legislation impacting the Navajo Nation; and

3. During the week of February 15-March 2, 2001, representatives of the Navajo Nation met with members of the U.S. Senate, the U.S. House of Representatives, and the Bush Administration to address crucial issue areas affecting the Navajo Nation; and

4. Beginning on March 22, 2001, the Senate Committee on Indian Affairs has held several hearings regarding the goals and priorities of tribal governments for the 107th Congress; and

5. On July 5, 2001, the Navajo Nation requested to the Senate Committee on Indian Affairs an opportunity to convey to the Committee its legislative goals and priorities for the 107th Congress; and

6. The Intergovernmental Relations Committee has reviewed the Navajo Nation's written testimony on the Goals and Priorities of the Navajo Nation for the 107th Congress and has determined that it would be in the best interest of the Navajo Nation to submit the testimony for the record to the Senate Committee on Indian Affairs.

NOW THEREFORE BE IT RESOLVED THAT:

1. The Intergovernmental Relations Committee of the Navajo Nation Council hereby approves the written testimony set forth in Exhibit "A" to be submitted to the Senate Committee on Indian Affairs.

IGRAU-234-01

2. The Intergovernmental Relations Committee of the Navajo Nation Council further authorizes all Navajo Nation officials and employees to advocate for the Position of the Navajo Nation, as set forth in Exhibit "A", until such time as this resolution is amended by the Intergovernmental Relations Committee.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Intergovernmental Relations Committee of the Navajo Nation Council at a duly called meeting at Window Rock, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of 9 in favor, 0 opposed, and 0 abstained, this 24th day of August, 2001.

Edward T. Begay, Chairperson
Intergovernmental Relations Committee

Motion: Ervin M. Keeswood, Sr.
Second: Young Jeff Tom