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H.R. 946, H.R. 2671, AND H.R. 4148 (YOUNG, R–AK)—TO MAKE TECHNICAL AMENDMENTS TO THE PROVISIONS OF THE INDIAN SELF–DETERMINATION AND EDUCATION ASSISTANCE ACT RELATING TO CONTRACT SUPPORT COSTS, AND FOR OTHER PURPOSES. "TRIBAL CONTRACT SUPPORT COST TECHNICAL AMENDMENTS OF 2000".

OVERSIGHT HEARING

BEFORE THE

COMMITTEE ON RESOURCES
HOUSE OF REPRESENTATIVES

ONE HUNDRED SIXTH CONGRESS

SECOND SESSION

MAY 16, 2000, WASHINGTON, DC

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H.R. 946, H.R. 2671, AND, H.R. 4148 (YOUNG, R–AK) TO MAKE TECHNICAL AMENDMENTS TO THE PROVISIONS OF THE INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT RELATING TO CONTRACT SUPPORT COSTS, AND FOR OTHER PURPOSES. "TRIBAL CONTRACT SUPPORT COST TECHNICAL AMENDMENTS OF 2000".

TUESDAY, MAY 16, 2000

HOUSE OF REPRESENTATIVES,
COMMITTEE ON RESOURCES,

Washington, DC. of I21The Committee met, pursuant to notice, in room 1324 Longworth House Office Building, Hon. Don Young (chairman of the Committee) presiding.

The CHAIRMAN. Where is Mr. J.D. Hayworth? I ask unanimous consent that Congressman J.D. Hayworth be allowed to sit on the dais and participate in the Committee during this hearing. Without objection, so ordered.

We're going to change the order of business today. We're going to take up —H.R. 4148. That's a prerogative of the chairman. I would suggest that the first panel, the Honorable Kevin Gover, Assistant Secretary of the Bureau of Indian Affairs; and Dr. Michael Trujillo, Director of the Indian Health Service, Rockville, Maryland, be seated at the panel.

I would like to extend my welcome to all of my Alaskan constituents. I would especially like to thank everyone for their help in drafting H.R. 4148, a bill that makes technical amendments to the Contract Support Costs Provisions in the Indian Self-Determination Act. These amendments are long overdue. We held our first hearings on contract support costs on February 24, 1999, accepting testimony from tribes and the Administration. Additionally, the Interior Appropriations Subcommittee requested a report from the General Accounting Office regarding contract support costs and to provide Congress with alternatives to the existing problems.

On August 3, 1999, we held a hearing to accept testimony from the Administration, the National Congress American Indians, and their work with the National Policy Work Group on contract support costs, and from the General Accounting Office on their final report to Congress and what alternatives that they recommend with regard to the contract support costs shortfalls.

H.R. 4148 is a result of the National Congress of American Indians National Policy Work Group and the Administration's efforts to resolve contract support costs problems. This is our first hearing on the bill, and I would like to state my many thanks to all the tribes for all their input and patience on this important issue.

On a sideline, may I suggest this has been a battle we have been fighting for the last six years. This Committee thinks it's very unfortunate that we can't reach an agreement on how these contract support costs can be established in a stabilized manner (without all the fluctuation which has occured in the present system). I think it's very unfortunate that many of our tribes and many of our villages do not know for sure that they're going to receive any of the moneys, which were guaranteed under the negotiated contracts. So, I hope this bill, H.R. 4148, will solve some of these problems. I realize there is some opposition to the bill, but I hope those that are opposed to it would reconsider and deeply search their souls. I understand this is a problem and I'd like to see it resolved before we adjourn this session.

I will recognize the ranking member, Mr. Kildee, for an opening statement.

Mr. KILDEE. Thank you, Mr. Chairman. It's great to sit up here with Mr. J.D. Hayworth. J.D. and I are Co-Chairs of the Native American Caucus. We jokingly say sometimes when we see our votes the same up there, it must be an Indian bill, because that's one thing that J.D. and I always agree on. We have other agreements, too.

Mr. Chairman, this hearing will provide us an opportunity to again examine contract support costs. Last year, this Committee held two hearings on this issue. The GAO released its report last summer, offering four alternatives for funding contract support costs, and the National Congress of American Indians also released its report last year, making several recommendations.

Mr. Chairman, in March of this year, you introduced H.R. 4148, that would, among other things, make contract support costs funding an entitlement. While I'm in support of this measure, I hope that as the bill moves forward, you will continue to work with me to address the concerns raised by the administration regarding this bill, so we can get this bill signed into law.

I look forward to hearing today's testimony and I thank you, again, Mr. Chairman, for the introduction of this bill, Mr. Hayworth, and for this hearing today.

The CHAIRMAN. Thank you. Mr. Hayworth?

Mr. HAYWORTH. Chairman Young, let me begin by saying how honored I am that you've asked me to participate in this hearing today on this legislation. I welcome my friend from Michigan, Co-Chair of the Native American Caucus, and others on the other side of the aisle, because this is an issue that transcends partisan politics. I think we are all deeply concerned about the contract support costs funding issue and I strongly believe we need to work toward a sustainable solution that ensures the Federal Government will meet its legal obligation to tribes to help them carry out the management of their health and social services programs.

Mr. Chairman, I was pleased to work with you on the development of H.R. 4148. This legislation has been a cooperative effort,

with input from many tribes and tribal organizations, including the National Congress of American Indians National Policy Work Group. H.R. 4148 is, also, the result of the Administration's efforts to resolve contract support costs problems and includes recommendations from the Government Accounting Office.

I'd like to thank all of the individuals, who will testify before the Committee today and I'd like to extend a special welcome to Lt. Governor Richard P. Narcia and Franklin P. Jackson of the Gila River Indian Community, located in my district back in Arizona. Lt. Governor Narcia will provide an important example of the critical need for full contract support costs funding and the special challenges that all tribes are facing, as they attempt to operate effective tribal programs responsive to their respective community needs. I pledge my continued commitment to working toward a single, consistent Federal policy that applies to all self-determination contracts and self-governance compacts. The end result must provide stability and predictability, so tribes can move forward to successfully implement their tribal programs and the self-determination policy.

I believe that H.R. 4148 is a good starting point. I look forward to receiving additional comments today on this legislation from tribal representatives, the Committee, and the Administration, as we work toward enactment of this important bill. Again, Mr. Chairman, I thank you and I thank the other members of the Committee for the opportunity to be here.

[The prepared statement of Hon. Don Young follows:]

OPENING STATEMENT

ON

HR 946, HR 2671, HR 4148

Today we will receive testimony on 3 bills:

---HR 946 to restore Federal recognition to the Indians of the Graton Rancheria of California;

---HR 2671 to compensate the Yankton Sioux Tribe and the Santee Sioux Tribe for land which was taken from them by condemnation when the Federal government created the Pick-Sloan Missouri River Basin program; and

---HR 4148 to straighten our the contract

support cost problem tribes have encountered..

We have several panels of wintesses but we will start by receiving testimony from Congresswoman Woolsey of California.

Let me announce that each witness will be given 5 minutes to present testimony. Assistant Secretary Gover will be given more time because he will be testifying on all three bills.

Does the gentleman on my left have an opening statement?

Opening Statement of the Honorable Don Young
H.R. 4148 - Contract Support Costs Hearing
May 16, 2000

I would like to extend my welcome to all - particularly to my Alaskan constituents. I would especially like to thank everyone for their help in drafting H.R. 4148, a bill to make technical amendments to the contract support costs provisions of the Indian Self-Determination Act. These amendments are long overdue, and will finally keep faith with the hundreds of tribes and tribal organizations across the country that so ably carry out the Federal Government's health care and social service programs.

We held our first hearing on contract support costs on February 24, 1999 accepting testimony from tribes and the Administration. Additionally, the Interior Appropriations Subcommittee requested a report from the General Accounting Office (GAO) regarding contract support costs and to provide Congress

with alternatives to the existing problems. On August 3, 1999, we held a hearing to accept testimony from the Administration, National Congress of American Indians (NCAI) and their work with the National Policy Work Group on contract support costs and from the General Accounting Office (GAO) on their final report to Congress and what alternatives that they recommend with regard to contract support costs shortfalls.

H.R. 4148 is the result of the National Congress of American Indians National Policy Work Group and the Administration's efforts to resolve contract support cost problems. This is our first hearing on the bill and I want to state my many thanks to the tribes for all their input and patience on this important issue.

The CHAIRMAN. I thank the gentleman. Mr. Kevin Gover, you're the first witness.

STATEMENTS OF THE HONORABLE KEVIN GOVER, ASSISTANT SECRETARY, BUREAU OF INDIAN AFFAIRS, WASHINGTON, DC.; AND DR. MICHAEL H. TRUJILLO, DIRECTOR, INDIAN HEALTH SERVICE, ROCKVILLE, MARYLAND

Mr. GOVER. Thank you, Mr. Chairman. It's always a pleasure to appear before the Committee. We thank the Committee and the chair, in specific, for taking on this issue. I know that the chair was reluctant to enter into the Indian Self-Determination Act, at this time, and, nevertheless, we do think that some clarifications are necessary, in order to finally address this issue of contract support.

Let me lay out the background for our testimony and then get into some of the specifics. The administration does support the goal of full funding of contract support costs for Indian tribes and has proposed increases in the Fiscal Year 2001 budget for contract support. We, also, believe that the effort to reach full funding should be accompanied by timely reporting and auditing of the use of these contract support costs, as required of other Federal agencies. We understand that the contract support issue is one of the primary impediments to the full implementation of the Self-Determination Act. The idea behind the Act is to systematically move the Bureau of Indian Affairs out of positions of making decisions under the delivery of services to Indian communities; invest those decisions in tribal governments. We support that proposition and we believe that the resolution of this issue will assist in that process.

We do have several concerns regarding H.R. 4148. We think most of them are issues that can be worked through. We do have to point out our concern that here we are talking about clearly wanting to spend more money in Indian country through BIA and through IHS and through these tribal contracting procedures. At the same time, the Congress has under consideration a budget resolution that doesn't seem to leave much room for the sort of expansion of these programs that we're hoping for.

In my testimony, Mr. Chairman, we've identified some specific concerns and they just demonstrate how tricky this area is and how we can easily impose unintended consequences when we're not careful with the kind of language that is used. We would like to work with the Committee to address the concerns that we identify in the legislation. I don't think that they really need to be belabored here. But, we do encourage the Committee to continue addressing this issue, to work with us and with the tribes, to try to find a solution to the problem.

We have had a great deal of conversation within the administration concerning the specific provisions of this bill and, in particular, the issue of moving contract support costs to the mandatory side of the budget. The current status of those discussions is that we are prepared to say that were the Congress to identify offsets satisfactory to the administration, that we would not oppose that proposition. That is the result of a great deal of deliberation and debate,

within the administration, but I feel safe in saying that that's where we are at this point.

We would like to work with the Committee to identify those offsets and address the specifics of how we go about calculating these contract support costs. If we can resolve this matter, put the Bureau of Indian Affairs (BIA) and Indian Health Services (IHS) on a smoother trail toward understanding what our contract support obligations are and how they're going to be funded, then the tribes will have the kind of security and the annual funding that they really require to do meaningful planning for the delivery of services.

Mr. Chairman, that is my testimony this morning. As I say, we've submitted some more specific comments for the record, to indicate some of the complications that we've identified in the bill. We do think those complications can be worked out and look forward to working with the Committee on trying to resolve these issues.

[The prepared statement of Kevin Gover follows:]

TESTIMONY
OF
KEVIN GOVER
ASSISTANT SECRETARY - INDIAN AFFAIRS
ON
H.R. 4148
TRIBAL CONTRACT SUPPORT COST TECHNICAL AMENDMENTS OF 2000
BEFORE THE
COMMITTEE ON RESOURCES
UNITED STATES HOUSE OF REPRESENTATIVES

MAY 16, 2000

Mr. Chairman and Members of the Committee, I am pleased to be here today to discuss H.R. 4148, proposed amendments to the Indian Self-Determination and Education Assistance Act. The primary purpose of the bill is to clarify the provisions on the payment of contract support costs. We welcome Congressional action that will make the law clear and unambiguous.

The Administration supports the goal of full funding of contract support costs for Indian Tribes over time and has increased in the FY 2001 budget the amount of discretionary spending for contract support within the balanced budget framework. Also, reaching the full funding goal should be accompanied by timely reporting and auditing of the use of these support costs, as required of other Federal agencies.

Mr. Chairman, I do not exaggerate when I tell you that contract support payments have been among the most contentious issues in Indian Affairs for the past 25 years. BIA and IHS have been placed in an impossible position – we have been charged by the Congress to move program operations from Federal employees to tribal governments that lack modern support structures. Unlike state and local governments that have long had organizations in place to manage state and local revenues and provide services to their citizens, tribal governments began the Self-Determination era with little more than tribal councils. The Congress, the Administration and the Indian tribes all recognize the need to amend Public Law 93-638 to achieve the consistent and uniform policies that have not been gained through continued litigation.

The Administration must point out however that the noteworthy intent of this Committee does not

appear to be consistent with the actions being taken by other parts of this Congress.

Under H. Con. Res. 290, the budget resolution adopted by this Congress on April 13, 2000, Congress anticipates a tax cut of over $175 billion and reductions in overall spending of nearly 10% by FY 2005. As a result of this resolution, the House Appropriations Subcommittee on Interior and Related Agencies is operating with a budget allocation that is $1.7 billion below President Clinton's request for FY 2001. Assuming a pro rata cut, the operating budget for tribal programs would be cut by about $200 million, and the construction funds for Indian schools and projects to repair critical health and safety problems would be cut by about $40 million below the President's request. As that Subcommittee marks up its bill tomorrow hampered by this budget allocation, I seriously doubt that it will provide full funding for the contract support costs of Indian Tribes in the context of the entire Interior and Related Agencies budget.

While we support the goal of full funding for tribal contract support costs, the Administration has a number of serious concerns with H.R. 4148. Its intent is often unclear, specific provisions are contradictory and ambiguous, and some requirements are unnecessary or impossible to implement government-wide. As a result, the proposed amendments could become more contentious than the current statute. We would like to work with the Committee to resolve these problems, including finding suitable offsets and improved management controls over contract spending.

While Section 3 amends the Indian Self-Determination and Education Assistance Act (the Act) to declare that necessary amounts are appropriated to pay contract support, it does not clearly identify the source of these funds. The bill's language could be construed to compel federal agencies to redirect program funds from other recipients or operations to meet the full contract support payments of Indian tribes and tribal organizations. We do not believe that the Committee intends this consequence since it would be disruptive to so many federally-supported state and local government services.

Section 2 provides for a new section 106A of the Act. Subsection (a) of that section is intended to allow Tribes to fully recover indirect costs under awards made by agencies other than the Departments of the Interior and Health and Human Services. This provision would expand the scope of the current law beyond just BIA and IHS to all other Federal agencies that award funds

to tribes or tribal organizations. The other agencies are not required under current law to add contract support payments to the award amount as BIA and IHS are required to do for self-determination and self-governance awards. However, many federal programs already permit a recipient, through statute or regulation, to use a portion of the award for administrative expenses that support the program or project that is being funded. It is also noteworthy that some Tribes have indirect cost rates of 100 percent or more of direct program funds. In situations like this, there is no way that a Tribe could recover indirect costs since those costs would exceed the total amount of the program award.

The most complex provisions of H.R. 4148 are in subsection (d) of the new section 106A. Once a number of conditions are met, the program funds and the contract support payment are to be consolidated into a single award. Once consolidated, however, both the Federal Government and the Tribe would have to maintain annual records on the amount of contract support provided because that amount is to be adjusted each year based on either the medical inflation rate or the consumer price index. Further, at any point during a year that a Tribe's total program funding from all Federal sources increases or decreases by 20 percent or more, the Secretary is required to "deconsolidate" the award and recalculate contract support.

These provisions appear to implement the Consolidated Contract proposal outlined in the General Accounting Office's report: "Indian Self-Determination Act - Shortfalls in Indian Contract Support Costs Need to Be Addressed" (GAO/REC-99-150). GAO recommended a single self-determination contract that includes direct program funds and administrative support costs so that the tribes could manage indirect costs more prudently to achieve the greatest possible program service benefits. GAO's specific recommendations were directed towards the program and funding structures of the Bureau of Indian Affairs and the Indian Health Service.

H.R. 4148 does not make clear which of these provisions under subsection (d) apply to other federal programs. The "Conditions for Consolidation" provisions seem to apply only to Indian self-determination contracts; while the "Deconsolidation" provision seems to include other federal programs. Although Consolidated Contracts are intended to provide tribes with more flexibility in managing fiscal resources, this is contradicted with requirements to retain indirect cost rates and related records. The proposed requirements would be an administrative nightmare for the Tribes

and for us, and would undercut the potential benefits of such consolidation.

We believe that GAO's policy alternatives have merit, but need to be further considered before incorporation in legislation.

Section 3 amends a number of provisions in the Act in order to make contract support payments actual entitlements. It goes far beyond contract support, however. By amending section 105(c)(1), H.R. 4148 would make the entire amount of the self-determination contract an entitlement, which includes direct program costs and contract support costs. We recommend that this provision be deleted.

An amendment to Section 106 would require the Secretary to pay for pre-award and startup costs regardless of when such costs were incurred, subject to two restrictions: (1) the Secretary must have received written notification of the nature and extent of the costs prior to the time any such costs are incurred; and (2) the pre-award costs are payable only during the first year of a contract. We read this to mean that notwithstanding the phrase "including such costs incurred prior to the date of the enactment of this sentence," there would be no retroactive effect on contracts already awarded. This provision would apply only to future contracts. With that understanding, we do not object to the amendment. If the Committee has a different interpretation, we will need to have additional discussions on the subject.

H.R. 4148 would re-enact, without modification, the requirement for an annual report on Self-Determination contracting and contract support payments. The original intent of the report was to advise Congress of our shortfall in contract support in time for action to be taken in the appropriations bills. If contract support payments have assured funding sources, then the main reason for the report disappears. However, the Administration believes that as tribal contracting increases, additional management controls should be authorized through tribal reporting and independent audits of contract results.

Next week, my staff will be meeting with a National Congress of American Indians work group and discussion of this reporting requirement is on the agenda. I suggest that we allow the work group to consider other reporting options which we will then forward to the Committee. Section 4 would

amend the Act to extend from 90 to 180 days the time the Secretary is allowed to review initial proposals for Self-Determination contracts. We have testified in the past that one of the difficulties we face in accurately forecasting contract support requirements for inclusion in the budget request is the lack of lead time to plan for new awards. If contract support payments are reclassified as entitlement payments, there is no need to extend the review period. If such payments continue to be subject to annual appropriations, however, we would need at least a year's notice if the full requirements are to be included in budget requests.

Mr. Chairman, as I stated earlier, the lack of adequate contract support is one of the most serious problems in Indian country. I sincerely hope that the Administration, the Congress, and the Tribes will be able to agree on responsible and pragmatic amendments fully paid for within the framework of a balanced budget to overcome this and other problems that continue to serve as barriers to Indian self-determination.

I'll be pleased to answer any questions you may have.

The CHAIRMAN. I thank you, Mr. Secretary. Dr. Trujillo?

STATEMENT OF DR. MICHAEL H. TRUJILLO

Dr. TRUJILLO. Yes, good afternoon, Mr. Chairman and Committee members. Today with me, in case there are any specific questions, are Mr. Michael Lincoln, Deputy Director of the Indian Health Service, and Mr. Douglas Black, the Director of our Tribal Affairs Program.

The Indian Health Service has testified twice previously this session of Congress on the importance of contract support costs, on the promotion of strong stable tribal governments and the provisions, certainly, of quality costs health care. I come to you today in support of your continued efforts to address the contract support costs issues. This bill before us contains provisions that the Indian Health Service supports. However, there are, also, other provisions within the bill that are of concern to the Indian Health Service and we would be very willing to work with you, the Committee members, tribal leadership, to address our areas of concern.

When I last testified before this Committee, I spoke about our efforts to work with tribal governments, to develop a revised policy to allocate contract support costs in Fiscal Year 2000. In January of this year, I adopted a revised policy, which now governs the administration in allocation of the contract support costs for the Indian Health Service. That policy was developed as a result of very extensive tribal consultation and collaboration to date, regarding contract support costs, and has received the formal endorsements of major national Indian organizations and tribal governments.

The revised policy establishes allocation procedures that are intended, over a period of time, to reduce the disparity of contract support costs funding among tribes in our system without reducing contract support costs funding for tribes that are still underfunded. The allocation procedures were developed to address the present environment, in which available contract support costs appropriated are insufficient to fund the total contract support costs need.

This bill we are discussing today contains provisions that legislate the full funding of contract support costs. At the crux of the contract support costs dilemma and controversy are provisions in the Indian Self-Determination Act that seemingly are in conflict with each other. One law directs the Secretary to fund the full amount of need for such costs; elsewhere, the Act provides that contract funding is subject to the availability of appropriations. As a result, the Indian Health Service continues to be involved in litigation over contract support costs issues that are rooted in this confusion.

The provisions of H.R. 4148 that require the full funding of contract support costs would address and essentially end the confusion over contract support costs by amending the Act, fully funding these costs. Although I have been a strong advocate for increased contract support costs funding throughout my tenure as the Director of the Indian Health Service, I am very concerned about this provision. This bill does not specify the source of funding that will be used to fully address the contract support costs and I would be opposed to funding for contract support costs that comes from any

other existing or future Indian Health Service appropriations for the health care programs and services and which supersede other critical priorities for budget increase for all Indian Health Service-funded health programs, especially for those tribes who chose not to assume direct management of their health care programs.

I do believe that there are provisions in the bill worthy of consideration, including provisions to enlarge the current self-determination proposal review period from 90 to 180 days and one that reconstitutes—reinstates congressional reporting requirements, to assist you in your future consideration of contract support costs issues. There are, also, provisions of the bill that either the Indian Health Service, the Department, and the administration cannot support, and others would require further modification and review before they are supported. A discussion of these provisions is contained in my written formal statement that was submitted earlier.

In closing, I would, again, like to express my support for contract support costs and the activities of this particular committee. I continue to be of the opinion, as I have testified previously, that carefully drafted regulations governing contract support costs are still desirable and that the development of such regulations can be best accomplished through the negotiated rulemaking process. The Indian Health Service would welcome the opportunity to join with tribes, other Federal agencies, such as the Bureau of Indian Affairs and the Office of the Inspector General, in such a process, if authorized by Congress. I would close by emphasizing that the Indian Health Service is committed to upholding, promoting, and strengthening principles of the Self-Determination Act, the empowerment of tribal governments, and the government to government relationship that exist between Indian nations and this country. Thank you for this opportunity.

[The prepared statement of Michael Trujillo follows:]

DEPARTMENT OF HEALTH AND HUMAN SERVICES

STATEMENT

OF

MICHAEL H. TRUJILLO, M.D., M.P.H., M.S.
ASSISTANT SURGEON GENERAL
DIRECTOR, INDIAN HEALTH SERVICE

BEFORE

THE COMMITTEE ON RESOURCES

UNITED STATES HOUSE OF REPRESENTATIVES

May 16, 2000

STATEMENT
of
MICHAEL H. TRUJILLO, M.D., M.P.H., M.S.
ASSISTANT SURGEON GENERAL
DIRECTOR, INDIAN HEALTH SERVICE

May 16, 2000

Mr. Chairman and Members of the Committee:

Good morning. I am Dr. Michael H. Trujillo, and I have served as the Director of the Indian Health Service since 1994. I am accompanied today by Mr. Michel Lincoln, Deputy Director of the Indian Health Service and Mr. Douglas Black, Director of the Office of Tribal Programs. Mr. Ronald Demaray, Director, Self-Determination Services and Mr. Carl Fitzpatrick, Director, Division of Resource Management are also here to help answer any questions the Committee may have.

We welcome the opportunity to testify concerning H.R. 4148, the "Tribal Contract Support Cost Technical Amendments of 2000." We have testified before this Committee on two separate occasions this past year concerning contract support costs. We believe strongly that contract support cost (CSC) funding is critical to the provision of quality health care by Indian tribal governments and other tribal organizations contracting and compacting under the Indian Self-Determination and Education Assistance Act (ISDA).

H.R. 4148 addresses numerous problems that both tribes and the administration have been grappling with these past few years. The GAO Report stated that appropriations for contract support costs have not kept pace with tribes' costs of administering IHS programs. The IHS has been and remains involved in litigation over several CSC issues

which are not clearly addressed under the ISDA. We welcome the efforts of this Committee to address these CSC issues, however, both the IHS and the Administration have serious concerns with this bill. We respectfully request that the Committee keep the hearing record open so that other Federal agencies may submit written statements of their specific concerns. At this time, I will share many of our concerns with H.R. 4148.

Let me now speak to several specific provisions in the legislation. From the perspective of both Tribes and the Federal Government, the single most significant aspect of this legislation is that it would make CSC funding an entitlement, see Section 3(1)-(4). It should be noted that making CSC an entitlement and deleting "subject to the availability of appropriation" provisions is a substantial change to the statutory construct of the ISDA. The Administration does not support the creation of a new entitlement because it only addresses one component of the provision of health services to tribes and only of those tribes who choose to contract, and because we are concerned about the financing of this budgetary change and its effects of the funding priorities of the IHS and other Federal agencies. While there has been much confusion in Indian Country, as well as in the courts, concerning CSC funding, since the enactment of the law in 1974, contract support payments have been categorized as discretionary spending, subject to annual appropriations, the same for most administrative expenses of other Federal agencies.

This legislation would authorize full funding of CSC and at the same time require the appropriation of the necessary resources. We are concerned that funding for this entitlement would have to come from existing or future appropriated IHS funds and supersede the other critical priorities for budget increases for tribal health programs, including funding for the provision of critical health care services and continued

maintenance of IHS' service delivery infrastructure. While we have not yet estimated the cost impact increases of this contract support funding proposal, we believe that the costs would be prohibitive. Such costs certainly could not be covered within IHS' FY 2001 budget, which is already at a level of $2.6 billion, a historic increase of $230 million.

Section 106A(a), addresses other Federal agencies and their responsibility to pay indirect costs (IDC). From the perspective of other Federal agencies, the requirement to fully fund CSC for their programs would likely create significant budgetary and programmatic limitations by diverting funds available for their key discretionary programs to pay for administrative costs. For this reason, the Administration has concerns with the full cost requirement of this legislation. For example, within the HHS, tribes would be allowed full funding of CSC at a rate exceeding other non-tribal grantees, and these increased expenditures would reduce the amounts available for key health and service programs like Head Start. This section provides that tribes should receive full funding of their indirect cost need, consistent with their indirect cost rate agreement with their cognizant Federal agency. At this point no one has assessed the cost of this provision to the Federal government nor looked at the extent to which tribes contracting under the ISDA also have contracts with other Federal agencies. The HHS would support a feasibility study similar to the one proposed in H.R. 1167, to determine whether this proposal is the best option in the context of other potential discretionary solutions, assess the impact on Federal agencies, and provide estimates of the cost of providing full indirect costs for IHS and non-IHS programs. The HHS believes it would be premature to authorize the full funding of indirect costs for all other federal programs prior to the completion of such a study.

Section 106A(d) is a procedure for the management of CSC within a single award amount. The IHS has been working with tribes to develop innovative approaches to the funding of CSC. This section has merit but the IHS would like the opportunity to work with tribes and the committee to further refine this process because we have the following concerns with this section:

1.) it seems to limit a tribal option of maintaining multiple contracts;

2.) it introduces the term "mature contractor" (emphasis added) which is a term that has never appeared in the ISDA;

3.) it unreasonably limits tribal liability for actual overpayments and appropriate adjustments of tribal indirect cost rates, possibly even in the case of a fixed with carry-forward rate; and

4.) it legislatively designates the specific office within the IHS that would be responsible for CSC negotiations. The Agency should be afforded some measure of flexibility in administering CSC matters.

In Section 106A(c), the legislation calls for tribal specific OMB cost principles to be developed through the negotiated rule-making process. The result would be an OMB Circular specifically applicable to Indian Tribes and tribal organizations. The Administration believes that there is not a clear reason or necessity for establishing a separate circular for Indian tribes.

Under Section 3, paragraph (4), a provision authorizing payment of pre-award and startup costs "without regard to the year in which the costs were incurred" has been added. Due to limitations set forth by appropriations language on payment of prior-year start-up costs, some tribes were not awarded their startup costs as a result of the FY 1999 CSC

allocation methodology. This provision attempts to address this situation. However, the Administration is concerned about the potential cost of this provision. Also, this section appears to be worded much too broadly and would likely result in significant confusion as to what the Congress actually intends.

In Section 3(5) and (6), the proposed legislation seeks to reinstate the reporting requirements of the former Section 106(c) of the 1994 amendments to the ISDA. We believe portions of the former reporting requirements may be helpful to the Congress, however, this might be an opportunity to redraft these reporting requirements in light of our current context and the Congress's need for pertinent Self-Determination information. We would be happy to work with Tribes and the Committee to offer appropriate language for this section.

Section 4 of the proposed legislation would enlarge the current proposal review period from 90 days to 180 days. The IHS believes this provision would be consistent with Congressional policy which authorizes "the orderly transition of Federal programs to tribal control." Nothing in the statute or the current regulations precludes the agency from making awards at any time during the 90 (or now 180) day review period but enlarging the time frame would surely result in better planning and a smother transfer of program responsibilities.

Section 5 of the proposed legislation addresses two concepts related to the Equal Access to Justice Act (EAJA). The first, a new paragraph (f) expands the scope of the EAJA to <u>all</u> Tribes who may be party to a claim or dispute related to an ISDA award. This provision may be contrary to the Congress's purpose in imposing the limitation on

extending EAJA coverage to all parties processing claims against the Federal Government. We understand that the Department of Justice will be submitting a statement for the record on the provisions of this section.

The second provision under Section 5, paragraph (g), can not be supported by the IHS. The IHS is committed to Indian Self-Determination and we believe that our record speaks for itself. We enthusiastically support tribes in all of their varied efforts to assume programs under the ISDA. Where we may differ with the courts on how this should be done, our goal is to make tribes whole and to work together in harmony rather than under the constant possibility of litigation. Clearly this provision may encourage the filing of claims in hopes of a double payoff. This provision should not be considered by the Committee as this legislation moves forward through the legislative process.

This concludes our initial comments on H.R. 4148, the "Tribal Contract Support Cost Technical Amendments of 2000." Thank you for this opportunity to discuss contract support costs in the IHS. At this time, we are available to answer any question that you may have.

The CHAIRMAN. I thank both of you. I'm somewhat pleased with your testimony and somewhat discouraged, because this has been a problem for about 6 years or longer. As I mentioned in my opening statement, I hope we can reach a solution. Because if I remember right, both you, Mr. Secretary, and you, Dr. Trujillo, that this is the third time that you've appeared before this Committee and said you supported it. We have a bill that does that and now we have opposition from your Administration. Although, Mr. Secretary, I think if I understood you correctly, you would support it, if we find the offsets. Is that correct?

[No response.]

The CHAIRMAN. I know who is looking over your shoulder and I know who is in this room. You answer freely, because I will protect you, believe me.

Mr. GOVER. I'm trying to pick my words carefully. What I don't want to be saying is we're putting the burden on you to find the offsets. I think the Administration shares that burden. All we mean to say, at this point, is that the offsets should be satisfactory to both Congress and the Administration and we will need to work with you, to try to figure out what that is. The point of my testimony was not just to slough the burden off onto the Committee and onto the Congress.

The CHAIRMAN. Well, I'm saying that's the biggest hold up, as far as you're concerned, in the bill. The Doctor seems to have some other problems. But, again, I go back to: if we don't correct this now, it will always be an uncertainty for tribal health care, because we don't know if they've received enough funds or not.

Mr. GOVER. I agree with you, Mr. Chairman.

The CHAIRMAN. OK. You know, again, as long as we have that understanding. Are you communicating with the tribes all the time and trying to find the solution? Is that occurring?

Mr. GOVER. We have put a lot of effort into working with the tribes on this issue. I think it's fair to say IHS has put even more effort into working with the tribes on this issue. I believe that this bill represents a solid step forward and that it would bridge a lot of the problem between our position and the tribes. Obviously, we would be much more open in adding additional elements of costs to our contract support formulas, if we knew that the money was going to be there. What we don't want to do is make agreements with the tribes, as to what are the appropriate elements of contract support, knowing full well that they are not likely to be funded, because that's just a broken promise to the tribes. I've been holding the line in the discussions with the tribes, saying, look, let's not pile on more costs, until we have some understanding of how they're going to be paid for.

If the Congress and the Administration agreed on a solution as to the funding of contract support costs, I believe it becomes a much easier exercise to agree on what the elements of contract support costs should be.

The CHAIRMAN. Offsets do not have to come out—the Doctor said, out of the existing health services. Offsets can come out from anywhere within the budget. Is that your understanding?

Mr. GOVER. That's my understanding, Mr. Chairman.

The CHAIRMAN. OK. For instance, we have—I'm going to pick on the Administration, The Administration now wants to get some of the funding out of the tobacco settlement and spend it for other purposes. That tobacco settlement could be used for contract support costs (as an offiset). Would that be a correct interpretation?

Mr. GOVER. I can't speak for the Administration, as to whether or not to encourage the Committee to look to the tobacco settlement money for an appropriate offset. But, yes, it's my understanding that an offset could come from any part of the Federal budget.

The CHAIRMAN. This is ignorance on my part, would we have to find an offset every year or is there any way, again, that we can provide stability in the funding? Because once we passed the Self-Determination Act, we tried to make sure that there was the money available, and we haven't done that. And that uncertainty has caused shortfall problems. Is there any way we can write this bill, so that there isn't uncertainty?

Mr. GOVER. I believe so, Mr. Chairman. I believe that we could identify an offset that would continue just the same as this increase in spending would be continuing over some number of years.

The CHAIRMAN. My time is about up. The gentleman from California?

Mr. MILLER. Thank you, Mr. Chairman. I just want to thank the panel for their testimony and I agree with the dialogue that you just had, that we've got to come up with the offsets. I think your bill does it right. I think we should just recognize that these are the costs and we've got to take them out of the ongoing general revenues of the government, instead of believing that we're somehow going to trade this off between law enforcement and Indian health, or other services that we already know are inadequately funded. This is part of the price of self-determination. The program is working and I think your legislation speaks to it quite correctly. And if saying that we've got to look for offsets just is another way to keep postponing this year after year, then we're obviously just robbing already inadequate sources. So, that won't work. And so I think, at some point, we have to sit down with the Administration and make a decision about that, because that holds everybody in abeyance, but it doesn't solve the problem. And there clearly are sufficient revenues to deal with the contract costs.

I want to thank you, very much, and I appreciate the problem that's being presented by the position of the Administration here, but I think we've got to get on and solve this issue. As you have pointed out, we have now punted three years in a row on this and that's not helping anyone.

The CHAIRMAN. Mr. Hayworth?

Mr. HAYWORTH. I just want to thank both the chairman, and the ranking member and these two gentlemen for their testimony. I think we have the context where at long last we need to act. And while I think we've documented the problem and they've outlined their concerns, I would concur with both the chairman and the ranking member, it's time to get this done.

The CHAIRMAN. Mr. Kildee?

Mr. KILDEE. Thank you, very much, Mr. Chairman. I think we have to work together to identify those offsets and I think they have to be in the whole Federal Government, because I don't know

of any Indian program that we haven't been penny pinching in my 24 years here in the Congress. So, I hate to take money from another Indian program for this very good thing here, because we've been penny pinching for so many years. So, I think it's very important that we sit down, not delay, get on immediately and identify some offsets from other areas of government, not Indian programs, so we can do this. And I think that should be our top priority, because the effects of not providing full funding for contract support costs is really a terrible defect.

I think—this is more than just a legal matter. I think it's a moral matter. I think J.D. Hayworth and I agree upon, this is something very—a moral matter, that we really should be fully funding this and make this an entitlement, find some offsets. But, I think that we should not wait until next month. We should start working today or tomorrow on identifying those offsets and not from other areas where we are already underfunding Indian programs.

I've been in Congress for 24 years and I have yet to see where, when I've traveled throughout the country or looked at the books, that we're over funding our responsibilities in our sovereign-to-sovereign relationship and our trust responsibilities to the Indians. So, Kevin and Dr. Trujillo, we look forward to working with you starting today, to try to identify those offsets. And I think that we have, I think, a very important bill here. We can move forward in our support.

I yield back the balance of my time.

The CHAIRMAN. Thank you. The gentleman from Maryland?

Mr. GILCHREST. No questions, at this time, Mr. Chairman.

The CHAIRMAN. All right. I've got a great offset. I know this is going to stir the pot up, but the Senate is considering the pullout of Kosovo. We're spending approximately 20 times the budgets for Indian Health in that activity alone. And once they pull out, maybe we can apply that money for something that helps us in the great United States of America.

I want to thank the panel. We'll be in communications. I was very kind to you today, because I heard what was being said behind the words that were being said, that we want to work together. And I will be talking to OMB to find out what their problem is, because this is an issue and a commitment that should have been met a long time ago. If we believe in the Self-Determination, and Congress said we did, that's not up to the Administration not to fully fund programs. It's up to us to make sure that Self-Determination is fully funded, especially the contracting part of it. So, I do thank both of you and we will be in communication with you. And you are excused for this panel. I think one of you is up for the next bill. Kevin, I think you are.

The next panel, H.R. 4148, the next panel: Mr. Orie Williams, Executive Vice President, Yukon Kuskokwim Health Corporation, Bethel, Alaska; the Honorable Chad Smith, Principal Chief, Cherokee Nation, Tahlequah, Oklahoma; Mr. Richard Narcia, Lt. Governor, Gila River Indian Community, Sacaton, Arizona; and Mr. W. Ron Allen, Vice President, National Congress of American Indians, Washington, DC.

Mr. Williams? Turn your mike on. There you go.

STATEMENTS OF ORIE WILLIAMS, EXECUTIVE VICE PRESIDENT, YUKON KUSKOKWIM HEALTH CORPORATION, BETHEL, ALASKA; HONORABLE CHAD SMITH, PRINCIPAL CHIEF, CHEROKEE NATION, TAHLEQUAH, OKLAHOMA; RICHARD NARCIA, LT. GOVERNOR, GILA RIVER INDIAN COMMUNITY, SACATON, ARIZONA; W. RON ALLEN, VICE PRESIDENT, NATIONAL CONGRESS OF AMERICAN INDIANS, WASHINGTON, DC

STATEMENT OF ORIE WILLIAMS

Mr. WILLIAMS. For the record, my name is Orie Williams and I'm the Executive Vice President of the Yukon Kuskokwim Health Corporation. Thank you for the opportunity to testify this morning on H.R. 4148.

I would like to begin my testimony by putting H.R. 4148 into perspective, our perspective. The Yukon Kuskokwim Health Corporation serves as a consolidated and only health care provider for 25,000 people in 58 Federally-recognized Alaskan native villages. It's spread across 85,000 square miles of roadless area the size of the State of South Dakota.

Poor health and a subsistence lifestyle have led some of the compared conditions in many of our villages to those facing Third World nations. Our people live on the most over regulated lands in the nation. Mr. Chairman, that is no exaggeration. Besides the subsistence—besides subsistence, the largest economy in the region is government, including our YKHC health system. There is no viable commercial fishing, forest, or other resource development industry that can offset the statistics.

The unemployment rate exceeds 80 percent and most of our village homes still have a six gallon plastic bucket for a toilet. That's not all. Our villages post neonatal mortality is more than double the average U.S. rate. Death by suicide is four times the national rate. Fetal alcohol syndrome and fetal alcohol affect are rampant. And despite recent increases in congressional appropriations, the lack of adequate sewer and water systems still leave over many of our communities victims of every known infectious disease.

What have we done to meet some of these challenges? Our tribal government is working together under the Indian Self-Determination Act. I've replaced the Indian Health Service and directly administer 47 village clinics; one mid level sub regional clinic, with two more under construction; a 51 bed hospital; and over 11,000 employees. Since taking over daily operation of the Indian Health Service system, we have witnessed tremendous improvements in the delivery of health care. But, the contracts support shortfall we have faced each year, over $2.3 million each year, has consistently crippled our ability to do more.

As our written testimony details, the shortfall has meant deficiencies in our accounting department, our medical coding and billing department, and our hospital facilities maintenance programs. The shortfall has, also, required us to transfer funds away from key programs and has impaired our ability to enhance our substance abuse and mental health services, our home elder care, and our health prevention education programs to many of our villages. To those unfamiliar with health care conditions in rural Alaska,

our contract support costs deficit is just a number. But for us working out there in the trenches, it is having a corrosive impact on the quality of our health care system and may, in fact, lead to layoffs and salary reductions.

Mr. Chairman, for nearly 20 years, the Administration and Congressional Committees have all acknowledged the grave impact caused by contract support costs shortfalls. For nearly 20 years, the contract support costs system has been studied and restudied and restudied. The last time, read the GAO's June 1999 report.

Never until H.R. 4148 have we seen a solution that fully and completely addresses the problem, so that there are no more shortfalls and no more court cases and we can get on with the process of tribal self-determination without reducing the very government programs we are charged to carry out. Contract support shortfall creates—cheats the tribes and punishes our people. It's not how the country deals with other government contractors, be it General Electric or Boeing, and it's not the way the country should deal with Indian tribes.

Just yesterday an article in the Wall Street Journal reported a GAO study that confirmed that the U.S. Congress spent $2.2 billion to subsidize sugar growers in America. Isn't it ironic that in the same—that is the same amount spent for all of Indian health care in America. It is ironic, also, that the subsidy—the historical subsidy of the tobacco industry, greater than all of the resources spent on the health care of the Americans worse people, are industries, whose products caused some of the greatest health risk to Native American, and probably up to 30 percent of our costs.

Since my time is short, I respectfully refer the Committee to my written testimony for comments on the balance of the bill. I would note, however, that the consolidation initiative proposed in Section 2 is a novel and innovative new way to deal with contract support costs issues. The consolidation initiative answers those, who are concerned that somehow tribes have insufficient incentives to maximize the efficiency and the operation of their health programs. While we find such criticisms demeaning, we recognize that this option, first put forward by the General Accounting Office, does provide a better way for Congress to predict contract support costs requirements from one year to the next.

Mr. Chairman, many years ago, Congress failed—failed to fully fund contract support costs, the single most serious problem with implementation of the Indian Self-Determination Act. H.R. 4148 will at long last firmly and finally solve that problem. Nationally, the cost of the bill is negligible. For us in the trenches on Indian reservations in Alaskan native villages, the financial stability we will regain will translate in desperately needed care for American Indian and Alaska native people. They are far beyond the reach of our nation's typical health care system.

I praise the chairman and Congressman Hayworth and others for introducing this legislation; Congressman Miller and other members of the Native American Caucus for their continued support for self-determination and self-governance. I respectfully urge that the Committee move this bill forward as quickly as possible, so that it can be enacted this year.

Mr. Chairman, with your indulgence, I would like to close my testimony with the request for the Committee to observe a moment of silence for one of the nation's greatest Indian leaders, Mr. Joe De La Cruz, a champion in tribal rights of the Indian Self-Determination Act throughout his life, even up to the day he died of a major heart attack on April 16th, on the way to a national Indian Health Service tribal conference. Thank you.

[The prepared statement of Orie Williams follows:]

U. S. HOUSE OF REPRESENTATIVES
COMMITTEE ON RESOURCES

HEARING ON H.R. 4148, THE TRIBAL CONTRACT SUPPORT COST TECHNICAL AMENDMENTS OF 2000

TESTIMONY OF GENE PELTOLA, PRESIDENT AND CHIEF EXECUTIVE OFFICER OF THE YUKON-KUSKOKWIM HEALTH CORPORATION
Bethel, Alaska

MAY 16 , 2000

Mr. Chairman, thank you for the opportunity to testify on H.R. 4148, the Tribal Contract Support Cost Technical Amendments of 2000.

For the record, my name is Gene Peltola, and I am the President and Chief Executive Officer of the Yukon-Kuskokwim Health Corporation. I am here this morning with our legal counsel and a recognized expert in this field, Lloyd Miller, who is well known to this Committee.

Our health care organization was created by and is controlled by 58 federally recognized Alaska Native tribal governments, their members and their village communities. In financial terms we are one of the second largest tribally-operated IHS programs in America, operating $40.2 million in IHS government programs alone.

In YKHC's testimony during the Committee's two prior oversight hearings, YKHC Executive Vice President Orie Williams noted the daunting conditions we face in carrying out the task of delivering IHS government programs to the beneficiaries of those programs. Recall that we serve:

- a roadless area the size of South Dakota;
- 23,000 people scattered in 58 villages;
- a population where 54 percent are Medicaid eligible–including 90% of all pregnant women and children;
- a population where 44 percent are unemployed (though in some villages unemployment is **over eighty percent**);

- thousands of homes most of whose primary sewer system consists of a six-gallon bucket;

- remote communities where post-neonatal mortality is more than double the average U.S. rate, death by suicide is four times the national rate, fetal alcohol syndrome and fetal alcohol effect are rampant, and the lack of adequate sewer and water systems has left our communities victim to every known infectious disease and high rates of tuberculosis, even as we sit here in the Twenty-First Century.

Rather than go further, I respectfully refer the Committee to our testimony submitted February 23, 1999 and August 3, 1999.

The point is that we are operating the **government's** programs, including a large government hospital, for the benefit of the federal beneficiaries of those government programs. And if the independent DHHS Division of Cost Allocation–another government agency–says it takes $14.9 million to administer that program, then that is what we should be paid to run the government's programs.

And yet, in 1999 once again we were underfunded by $2.3 million. And once again, we were unable to fill positions in our accounting department, in our admissions department, and in support of our hospital. This was not just a crisis in 1999–it has been ongoing since 1992, and it continues in the new Millennium.

The GAO June 1999 report only confirmed what we had been saying for years: First, that contract support costs are legitimate, they are necessary and they are fairly determined; and second, that without full payment of these costs, our people are actually being **penalized** by the transfer of federal health care programs down to the local level.

Mr. Chairman, we are trying to do our part to reduce the federal bureaucracy and to enhance local empowerment and economic development, but why, I ask, should this require such a heavy price in the reduction of direct services going to our people?

When YKHC testified last year we made several recommendations that grew out of our own study, out of the work of the National Congress of American Indians, and out of the work of the General Accounting Office.

Our first recommendation was that the appropriations and budget process must finally catch up with the legal framework established by Congress twenty-five years ago. Remember that we are talking here about government contracts and legally binding obligations. After all, since the Indian Self-Determination Act already specifies

that tribes are automatically "entitled" to receive contract support costs to carry out these government programs, the law should be changed as necessary to also make the payment of contract support an automatic "entitlement" in the appropriations sense of that word.

Tribes and tribal organizations throughout Alaska and throughout the country made the same recommendation. So did the National Congress of American Indians. So did the General Accounting Office, recognizing that the alternative was to severely penalize tribal health care programs. And so did the agencies themselves, the Indian Health Service and the Bureau of Indian Affairs.

I am thrilled to be able to return to this Committee this morning to testify in support of H.R. 4148, primarily because in Section 3 of the bill this change is finally made. Thus, Section 3 not only removes any doubt about the right of tribal organizations to be paid their contract support costs; it actually appropriates funds to pay for those costs.

I cannot emphasize enough how critically important Section 3 is to the success of the Self-Determination policy this country has carried out for over one-quarter of a century. That policy cannot work if the government is to turn over its trust programs to Alaska Native and American Indian Tribes, and then pull a fast one, turn around and force the tribes to pay for those programs themselves. That only cheats the tribes and punishes the people being served. It's not how the country deals with other government contractors, be it General Electric or Boeing, and it is not the way the country should deal with Indian Tribes and the recipients of federal trust services.

I know that this provision of the bill is a bit unusual. But I also know that this very same approach has been followed when funding a variety of other federal obligations, including a wide-range of contracts authorized under the United States Housing Act of 1937, the Housing Act of 1950, the Housing and Urban Development Act of 1965, the Housing and Community Development of 1974, and the National Housing Act. Surely, when the government is exercising a special trust responsibility to the Nation's First Americans it has at least as high an obligation as it has in the delivery of discretionary housing programs. We therefore very strongly urge the Committee to favorably report Section 3 of the bill.

I would also like to briefly note some of the other provisions of the bill that YKHC strongly favors. For instance, Section 2 of the bill would enact a new initiative for consolidating the "contract support" and "program" portions of a tribe's or tribal organization's funding agreement into a single amount. We have studied this proposal carefully and understand its motivation. Clearly Congress wants to see greater efficiencies in the delivery of health care everywhere in the Nation, including improvements in the services provided by tribes and tribal organizations. While some may be uneasy by that prospect, we at the Yukon-Kuskokwim Health Corporation welcome it. If full base funding is secured for our contract support costs, we think it is

reasonable for Congress to then say to us: "That is it; live within your budget. If you can find more savings, spend them to expand your health programs."

Would we prefer an open-ended arrangement, a blank check on the Treasury? Of course we would. But, we know that is not realistic. Assessed in the context of Section 3's provisions regarding full contract support funding, we believe the consolidated funding provisions of Section 2 will work and should be embraced by the Committee.

We also agree with the provision in Section 2 which would move the negotiation of contract support costs within IHS back to the Office of Tribal Programs. For many, many years the Office of Tribal Programs carried out IHS's responsibilities in this area. That office developed enormous expertise and skill in the area, including an intimate knowledge of tribal health care programs and their administration. In a recent reorganization these responsibilities were shifted to the Division of Financial Management, which, frankly, lacks these skills.

To be clear, DFM is staffed with highly skilled individuals. They are good people. But their skill is in accounting for how IHS spends its funds. This office is not skilled in how tribes administer health care programs. And, because it is so focused on money, it is hostile to contract support costs issues, for every penny approved is one penny less that is available for IHS. If IHS is willing to voluntarily move responsibility for contract support costs back to the Office of Tribal Programs, where such a conflict of interest would no longer exist, this provision of H.R. 4148 would not be necessary. But until IHS is prepared to do so, the bill should remain unchanged.

Finally, I want to make special mention of Section 5 of the bill, which would clarify that all tribes, large and small, will be treated the same in the unfortunate event that they are involved in litigation against IHS. Current law discriminates against large tribes and large entities like YKHC, an inter-tribal consortium of very small tribes. Section 5 of the bill will remedy this inequity.

We very respectfully but strongly urge the Committee to move forward with H.R. 4148 as swiftly as possible. Toward that end, we have already supplied Committee staff with technical changes which we think will further improve the bill.

For instance, it is important that the bill make clear that nothing will change the current "indirect cost" system that has been operating for one-quarter of a century. Through successive improvements that system remains the soundest way for determining approximately 80 percent of tribal contract support cost needs.

Another amendment will clarify that tribal organizations that are structured as not-for-profit corporations will remain subject to the same unique OMB circulars that apply to such organizations.

Yet another change would trigger the deconsolidation of a contract in the event of a compelling need such as might occur as a result of a fire, natural catastrophe or other event outside the control of the tribe or tribal organization.

Mr. Chairman, thirteen years ago Congress called the failure to fully fund contract support costs "the single most serious problem with implementation of the Indian Self-Determination policy." H.R. 4148 will at long last firmly and finally solve that problem. Nationally, the cost of the bill is negligible. For us in the field and on reservations, it is critical to meeting the health care needs of Native American people, many of which–like the thousands of people YKHC is responsible to serve–live in third world conditions.

Thanks to the Self-Determination Act we have dismantled a major portion of the federal bureaucracy and brought federal government health care programs down to our local Native American communities. With the enactment of this bill, we can be sure that this is done without those communities getting the short end of the stick.

I praise the Chairman and Congressman Hayworth for introducing this legislation and I respectfully urge that it be favorably reported out of this Committee as swiftly as possible.

The CHAIRMAN. Without objection, a moment of silence.

[Moment of silence.]

The CHAIRMAN. Thank you and I can tell you that Mr. De La Cruz was one of my favorite people who testified before this Committee and his was an unfortunate death. We never know why God reaches down and takes us.

I'm going to use my discretion here, as I do have another appointment, I'm going to have Mr. Gilchrest take over the hearing. But before I do, I want to ask Orie two questions. One is you mention the shortfall of $2.5 million. Is that recoverable money or is that what you're out of pocket? Is there any way you can negotiate that?

Mr. WILLIAMS. That has been the shortfall in our contract. For several years, we filed the claim for the amounts of the shortfall in 1991 and 1994. And despite the desperate telephonic calls and recordings—recording our annual funding agreement, I've never received any written decision from the Indian Health Service in over four years.

The CHAIRMAN. Have there been lawsuits filed by the tribes over this problem?

Mr. WILLIAMS. No, we've tried to resolve it without legal action, at this point.

The CHAIRMAN. OK. No. 2 is you mentioned two things, one sugar and one, I believe, was tobacco. Sugar, you say, is subsidized at 2.—how many billion?

Mr. WILLIAMS. The GAO report, if you can believe everything you read, in the Wall Street Journal yesterday, state that last year $2.2 billion, the total Indian Health Service budget; and this year, so far, $1.6 billion, with a request from the—it's crazy that OMB would oppose any health service contract support. But, then, the Administration asked for another $350 million to subsidize a product, with all due respect to the great farmers, for 544 tribes and two and a half million Indians, and they can fund a subsidy such as this. It's killing our people, and still cheat and rob and treat the first Americans the way they do for the third of the money that's required for health care.

The CHAIRMAN. I think that's a good point. I love sugar myself, but it is probably the biggest villain we have, I know, in Alaskan villages, between soda water and coke and—that's the drinking kind—and I guess candy, two of the—biggest, harmfulness consumption thing that they take now. It's close to alcohol or worse.

Mr. WILLIAMS. Mr. Chairman, it glared at me, because I know if you stop the flights of the soft drinks, which the sugar is in, to our villages, you'd have community in relapse. They've been without good water for 30 and 40 years and they've substituted—the young generation has substituted good drinking water, which Americans take for granted, with soft drinks. That's a fact.

The CHAIRMAN. I appreciate it. Mr. Gilchrest, would you take over for me, please?

[Pause.]

Mr. GILCHREST [PRESIDING]. The chair now recognizes Mr. Smith.

STATEMENT OF CHAD SMITH

Mr. SMITH. Good morning, Mr. Chairman. My name is Chad Smith. I am Principal Chief of the Cherokee Nation. I'm honored to have this opportunity to present the Cherokee Nation's view on contract support costs today.

The Cherokee Nation is comprised of over 230,000 tribal members, nearly half of which live within our 7,000 mile jurisdictional area in northeastern Oklahoma. We are one of the second largest tribes in the country and we have 22 treaties with the Federal Government and Great Britain. Twenty-five years ago, we began the gradual process of contracting local programs to the BIA and IHS, in order to streamline, redesign, and enhance Federal services for people. And from our perspective, I can best convey the message by a story.

Ruth Smith, Rufus Smith's wife, was a great basket maker in our rural community of Marble City, a vibrant, beautiful woman. She contracted diabetes. As all of us know, the Indians have the highest rate of incident of diabetes in this country. She came to town one day. The diagnosis was made. The next time she came to town, she had toes and one foot removed. The next time, she had toes and another foot removed. And every time she came to town thereafter, to Tahlequah, another index was removed, another part of a limb, her ankles, her calves, and then her whole legs. And the last time I saw her with her children, on a hot July day, they were taking her in and out of a backseat of a car, without legs. The next time for Ruth Smith, after dialysis, she passed away.

In response, the Cherokee Nation developed some very aggressive diabetes programs through health care funding. We developed, in cooperation with the local rural hospital, a podiatry and orthopedic clinic. Last year, during my term, we had to reduce our health budget by $1.5 million. We had to cut the podiatry clinic. And now I face the recurring cries of our people, who come to me and say, we need the podiatry clinic. We need that orthopedic clinic. We're going back to the scenario, we'll see more Mrs. Smiths come to town less and less each time by incidents of diabetes.

To complicate matters, we have two Indian hospitals within our territory. We operate six clinics. Each of those hospitals have recorded a million dollar deficit this year. Our population goes from clinic to clinic, from hospital to hospital. When they reduce their services, they come to our clinic. In fact, Indian hospitals reduced their pharmaceuticals by—they no longer issue the asthmatic inhalers. It cost them a dollar and a half each. That creates that market to come to our clinics and we have to deal with it.

We're suffering, because of lack of contract. We have to ask the question, why does a private contractor, such as General Electric and Boeing, get their administrative and general costs paid, full indirect costs, full direct costs, such as unemployment and Worker's Comp, and we don't. We can assure the Committee and Congress that we don't pile on the costs when we run these programs. Each of these programs begin to suffer, because of the lack of funding. For example, the Bureau of Indian Affairs programs that we operate, we've taken a hit of $500,000 for each of the last 10 years, for accumulative amount of $5 million. In health service, we have been

cut back $3.7 million, because of the lack of contract—contract costs.

My written testimony addresses several others, with respect to this excellent bill, including the way it addresses the barriers in our government indirect cost agreement, the need for a new OMB circular, the need to eliminate the conflict of interest presently and how IHS handles contract support costs issues. There is so much more that the Cherokee Nation and the government can do and there's so much more that we must do, to meet the critical health, education, economic and social needs of our citizens and other eligible Indian people in our area. We are pleased to carry out the Federal Government's trust programs. Pleased, because history shows that we have the capacity and capability to do a much better job than the Federal bureaucracy. But, our ability to administer these programs successfully maximize the delivery of these needed services to Indian people depends on having adequate contract support costs funding. This bill will go a long way for resolving a very serious problem in the self-determination, self- governance programs.

Thank you, Mr. Chairman, for the opportunity to testify in support of H.R. 4148.

[The prepared statement of Chad Smith follows:]

U. S. HOUSE OF REPRESENTATIVES
COMMITTEE ON RESOURCES

HEARING ON H.R. 4148, THE TRIBAL CONTRACT SUPPORT COST TECHNICAL AMENDMENTS OF 2000

TESTIMONY OF HONORABLE CHAD SMITH,
PRINCIPAL CHIEF OF CHEROKEE NATION
Tahlequah, Oklahoma

MAY 16 , 2000

Good morning Mr. Chairman. My name is Chad Smith and I am the Principal Chief of the Cherokee Nation, a federally recognized Indian tribe of over 213,000 citizens, nearly half of whom live within the 7,000 square mile Cherokee tribal jurisdictional service area in Northeastern Oklahoma. The Cherokee Nation has approximately 1,800 tribal employees (making it one of the largest employers in Northeast Oklahoma), about one-third of whom work in the Nation's health services department.

The Cherokee Nation was one of the first tribes in the United States to execute a self-determination contract under the original 1975 Indian Self-Determination Act and in 1990 was also the very first tribe to execute a self-governance agreement under Title III of that Act. Since 1994 all of our self-determination programs have been administered under Self-Governance compacts with the Department of the Interior and the Department of Health and Human Services.

Pursuant to our compact with the Department of the Interior, we carry out a wide array of federal government programs serving Indian people, including credit and finance programs; agricultural, forestry and real estate services; tribal courts; social services, Indian child welfare and housing improvement programs; a general assistance program; Johnson O'Malley education programs; law enforcement services; the "TEA-21" and related roads construction, planning and maintenance programs; Individual Indian Money accounting services; higher education and adult education services; and child abuse and early childhood wellness programs.

Under our Self-Governance compact with the Department of Health and Human Services, the Cherokee Nation operates six rural outpatient clinics providing Indians with primary medical care, dental services, optometry, radiology, mammography, behavioral health services, medical laboratory services, pharmacy services, community nutrition programs and a public health nursing program. The

Nation also operates the inpatient and outpatient "contract health" medical referral programs associated with IHS's W.W. Hastings Hospital in Tahlequah, Oklahoma.

Since the time of our first Self-Governance compact with the Department of the Interior, the Cherokee Nation has never been fully funded with contract support costs as mandated by the Indian Self-Determination Act. Last year, the BIA shorted the Nation almost a quarter million dollars in indirect costs, and failed to pay us any "direct" contract support costs at all. As for the Indian Health Service, in 1992 and 1994, respectively, the Cherokee Nation began operating the Redbird Smith Health Center in Sallisaw, Oklahoma, and the Wilma P. Mankiller Health Center in Stilwell, Oklahoma. In 1995, Cherokee Nation began administering the W.W. Hastings Indian Hospital's "contract health" medical referral outpatient program, and in fiscal year 1997, the Cherokee Nation assumed control of that facility's "contract health" medical referral inpatient program. It may come as a shock to this Committee that at no time until last September did the Cherokee Nation ever receive any contract support funding for the operation of these four multi-million dollar programs.

Because the government has grossly underfunded these contracts, the Nation has had to forego substantial services to thousands of Indian people, simply to cover the shortfall in government funding. This has worked a great hardship on people who must rely on these programs and facilities for their basic health care, and that is why I am here today.

Four years ago Cherokee Nation tried to informally resolve its issues with the Indian Health Service. When those efforts failed, in September 1996 we filed a formal claim under the Contract Disputes Act. More than a year later the claim was denied in its entirety, covering three different annual funding agreements for 1994 through 1996. We then took an appeal to the Interior Board of Contract Appeals, where our case has been pending ever since. Despite the Nation's commitment of significant resources to this multi-million dollar claim, the administrative process has yet to produce any resolution.

Early last year, we brought a second claim in federal court in tandem with the Shoshone-Paiute Tribes of the Duck Valley Reservation, against the IHS. We hoped that the litigation process in court might prove to be more efficient than the administrative process at the Department of the Interior. But here we are, fourteen months later, and still the litigation drags on with no result.

We do not believe that litigation is an efficient way to resolve funding problems. Although litigation may be our only option for dealing with the past, the current situation is untenable and cries out for attention from Congress.

The current system simply should not go on any longer. Neither the BIA nor IHS pays full contract support costs even though all other government contractors receive their full administrative overhead when they deal with the federal government.

Neither agency even requests full contract support funding from Congress, at times because they haven't the will, and at other times because the Department or the Office of Management and Budget stands in the way. And, of course, there are other, competing demands on the appropriations committees.

It seems that each year, another slice is taken from contract support cost funding, until our programs are down to the bone. Now they have begun to cut some of the bone. The contract support cost problem has caused severe financial strains on the Cherokee Nation's programs and facilities, as it has for many other tribes in the country. In many ways, our Nation has been fortunate, in that we are sufficiently large to take measures to attenuate some of the more severe impacts. Sadly, many smaller tribes, like the Shoshone-Paiute of Nevada, have been hurt much more.

Given the conduct of the agencies and recent court decisions, it is clear that the Indian Self-Determination Act is flawed. Congress intended that tribes would be fully paid contract support costs if they agree to take over the administration of these federal programs. But that is not what has happened, and the courts have been slow to respond, if at all. For this reason, the Cherokee Nation strongly applauds the Chairman for his leadership in introducing H.R. 4148.

H.R. 4148 remedies almost all of the most severe problems in the current contract support system in a thoughtful and carefully considered way, without demolishing the entire foundation of the Indian Self-Determination Act. This is a key point, because the basic contract support processes that are in place today–for instance the processes for setting indirect costs and direct costs–are functioning well. Indeed, even the General Accounting Office has applauded the integrity of the system. Rather, it is the substantial impediments to executing that system that are the focus of H.R. 4148.

The Cherokee Nation strongly supports the enactment of H.R. 4148, and I would like to pause to comment briefly on a few of the bill's provisions.

First, we applaud the Committee for including in Section 2 a provision to finally resolve the accounting quagmire created when the government-wide indirect cost rate is not followed by all government agencies. This accounting mess has led not only to an undercalculation in indirect cost rates, but it has also severely strained the ability of tribes to operate all their federal programs within OMB's guidelines. For nearly 20 years tribes have called for reform in this area, and finally, it appears that real reform is at hand.

We also applaud the Committee for making clear that existing statutory flexibility in the expenditure of self-governance funds, to best meet special or unique local needs, continues when self-determination funds are pooled with other funds in each tribe's "indirect cost pool." Obviously, funds in that pool lose their individual identity, and we are alarmed that the Office of Inspector General of the Department of

the Interior has recently taken the position that the flexibility expressed in the Indian Self-Determination Act suddenly disappears once self-determination funds are pooled with other federal funds.

Section 2 would also direct the Office of Management and Budget to issue a new circular customized for tribal governments. Presently tribes are governed by the same circular that applies to state and local governments. While this might initially appear sensible, almost all tribes in the country operate the bulk of their programs under the Indian Self-Determination Act, and that Act establishes unique rules not found in federal programs operated by state and local governments. Tribes and the federal government, alike, would be much better served by a new OMB Circular that speaks to the unique legal regime surrounding the federal government in its dealings with Indian tribes.

Most importantly, we applaud the Committee for its creativity in joining together in one bill the provisions regarding the full funding of contract support costs (Section 3) and the consolidation provisions designed to maximize tribal efficiencies (Section 2). Clearly this is a 'package deal' in that one cannot go forward without the other. If tribes are to be fully funded, they must face the challenge of becoming ever-more efficient. And if Congress expects tribes to maximize their efficiencies Congress must begin by fully funding the cost of carrying out the contracted programs.

While H.R. 4148 is an excellent bill, we do have a few technical suggestions.

For instance, we think it is high time that the Department of the Interior and the Department of Health and Human Services adopted a unified approach to the determination of contract support cost amounts. For too long tribes have been forced to live with two differing formulas. In 1994, Congress mandated that the same two departments issue joint regulations under Title I of the Act, and there the rule-making effort was a success primarily because it was done under the Negotiated Rulemaking Act, subject to strict time limits. Today, the Self-Determination Tribes have a single set of rules that govern both agencies for purposes of Title I contracts. The time has come to accomplish the same in the area of contract support calculations. Cherokee Nation recommends that the bill be amended to include such a provision, including tight time-frames for the issuance of such regulations such as occurred under Title I, so that the regulatory process does not drag on for years as it has under Title IV of the Act.

Cherokee Nation also recommends that the consolidation innovation, which we support, include some kind of a safety valve to accommodate any unanticipated catastrophic event that has a substantial impact on the financial structure of the tribe. In such a case, it will be necessary to regroup and reassess how best to administer programs committed to a Self-Governance agreement or a Self-Determination contract.

It is often repeated in these hearings that the greatest threat to Self-Determination is the failure to fully fund contract support costs. On behalf of the Cherokee Nation I can tell you that contract support funding has, indeed, been one of the greatest problems that has impeded our progress. There is so much more that we can do, and so much more that we must do, to meet the critical health, education, economic and social needs of our citizens and all other Indians eligible for our services. We are delighted to be able to carry out the federal government's trust programs, delighted because history shows that we have the capacity to do a much better job than federal bureaucracies. But our ability to administer these programs successfully and to maximize delivery of high-quality services to Indian people, depends on having adequate contract support cost funding.

Thank you Mr. Chairman, for the opportunity to testify in support of H.R. 4148.

Mr. GILCHREST. Thank you, Mr. Smith, for your testimony. We have a vote going on. I think instead of stopping the hearing to go vote, if it's all right with the members, if the gentleman from American Samoa can take the chair while we vote—we'll return after the vote.

Mr. FALEOMAVAEGA. Mr. Chairman, I think they would rather talk to you, as the chairman, than to me. I would respectfully request that we'll wait until you return.

Mr. GILCHREST. Then, we shall return. You all have a 15 minute break then.

[Recess.]

Mr. GILCHREST. The Committee will come to order. We appreciate your indulgence on our fascinating schedule here in the Nation's capital. And before we get started, I ask unanimous consent that Congresswoman Woolsey, if she wants to, to be allowed to sit on the dais and participate with the Committee during this hearing. You want to come up, Lynn, or you want to stay there?

Ms. WOOLSEY. I'll stay here until I offer my testimony, if that's OK.

Mr. GILCHREST. All right, that's fine. Our next witness is Lt. Governor Richard Narcia.

STATEMENT OF RICHARD NARCIA

Mr. NARCIA. Good afternoon. My name is Richard Narcia. I'm Lt. Governor for the Gila River Indian Community. With me today is Franklin Jackson. Mr. Jackson is President of our Health Care Corporation. He's seated to my left. And, also, Ms. Lindsey Naas, who is, also, the counsel for our corporation. Our community is located in south central Arizona. We are located in the heart of Congressman J.D. Hayworth's district. We are pleased and honored to have him sitting with you on the dais today. He has been a dedicated and long-standing friend of our community and deeply committed to the interests of the Native Americans, not only in Arizona, but in the—throughout the nation.

The community provides health care, law enforcement, irrigation system construction, and rehabilitation and other community services under self-determination contracts and self-governance agreements with the Indian Health Service, Bureau of Indian Affairs, and Bureau of Reclamation. The issue of contract support funding is an issue of ongoing concern and importance to the success of our Federal programs. We are pleased to testify in support of H.R. 4148, which would make technical amendments to the contract support provisions in the Indian Self-Determination Act. Our Health Care Corporation's experience with contract support funding from the Indian Health Service demonstrates the failings of the existing contract support system.

The community initially contracted with the IHS, to operate the hospital at Gila River in October 1995. For Fiscal Year 1996, 1997, 1998, the Health Care Corporation's contract support requests worked its way up the IHS waiting list or cue. In late 1998, we were expecting 100 percent funding for the Fiscal Year 1999 contract year; however, the IHS policy changed. While we generally supported the new policy, the Fiscal Year 1999 policy change re-

sulted in a loss of approximately two million dollars in contract support funding for our Health Care Corporation.

Of particular concern during this past year was the IHS policy decision not to reimburse our Health Care Corporation prior year pre-award and startup contract costs. This decision resulted in the community receiving 61 percent of IHS approved Fiscal Year 1999 requests, while most tribes were funded at 80 percent. This decision, also, resulted in our community and other similarly situated tribes being denied reimbursement of these one-time costs, while tribes before and after 1999 will receive reimbursement of these types of costs.

With this background, I would like to briefly address several key issues addressed in H.R. 4148. As the Committee is aware, there is a 25-year history of inadequate funding of tribal government contract support costs. The community operates 14 BIA programs, two programs, public health and public works, with IHS, and recovers 85 to 90 percent of its indirect costs from the BIA and IHS. However, both BIA programs and the public health programs have accumulated over the years a significant amount of unrecovered indirect costs, which are absorbed by the community. H.R. 4148 would remedy this cycle.

H.R. 4148 addresses several key issues that are necessary to ensure the sustainable success of any new contract support system, allowing for consolidation of adequately funded contract support costs, provides additional incentive for efficiently administering, and hopefully generating savings to reinvest in our health care and other programs. Providing for annual funding adjustments, based on medical inflation rates and the Consumer Price Index, recognizes the reality of keeping pace with the rising costs of providing health care and other services. The 2 to 3 percent inflationary increases we typically receive are not sufficient to keep us competitive with the Phoenix Valley health care market, which has experienced medical inflation rates of 8 to 9 percent.

The last provision I want to comment on is section 3 of the bill. It is a provision that would require IHS to pay our Health Care Corporation and other pre-award and startup costs incurred in prior years. This provision would remedy the inequity I described earlier and treat our Health Care Corporation and other affected tribes on the same basis as all other newly contracting tribes have been treated before 1999.

In closing, I want to thank Chairman Young and Congressman Hayworth for introducing this bill. I, also, thank the Committee for your commitment and persistence in pursuing a long-term workable solution to the contract support dilemma. The Gila River Indian community urges the Committee to report favorably on H.R. 4148. Thank you.

[The prepared statement of Richard Narcia follows:]

TESTIMONY OF
RICHARD P. NARCIA, LIEUTENANT GOVERNOR
GILA RIVER INDIAN COMMUNITY
BEFORE THE HOUSE COMMITTEE ON RESOURCES

Washington, D.C.
May 16, 2000

INTRODUCTION

Good morning, Mr. Chairman and Members of the Committee. My name is Richard P. Narcia and I am Lieutenant Governor of the Gila River Indian Community. I am honored to have the opportunity today to represent the Gila River Indian Community before the Committee to testify in support of H.R. 4148 which would make technical amendments to the contract support provisions of the Indian Self-Determination and Education Assistance Act.

The Gila River Indian Community (the "Community") is located on 372,000 acres in south central Arizona. Our Community is composed of approximately 19,000 tribal members, 13,000 of whom live within the boundaries of the Reservation. The Community provides comprehensive preventive and primary health care services through its Department of Public Health ("DPH"), the Department of Public Works ("DPW") and Gila River Health Care Corporation ("GRHCC" or "Corporation"). With minimal exceptions, the Community has operated all health service programs on the Reservation under Indian Self-Determination contracts with the Indian Health Service ("IHS") since fiscal year 1996. The Community also provides law enforcement, irrigation system construction and rehabilitation, and other community services under self-determination contracts and self-governance agreements with the Bureau of Indian Affairs ("BIA") and the Bureau of Reclamation ("BOR").

We are pleased that the Committee has asked the Community to testify today concerning amendments to the contract support provisions of the Indian Self-Determination Act. Contract support funding is an issue of ongoing concern and importance to the success of our federal programs. The Community has had the honor of testifying before this Committee twice last year – in February 1999, concerning the problems with the current contract support system, and in August 1999, concerning the reports issued by the General Accounting Office ("GAO") and the National Congress of American Indians ("NCAI"). Our testimony today focuses on our experience with contracting to operate federal programs and how H.R. 4148 would remedy our problems with the current contract support system.

THE COMMUNITY'S EXPERIENCE WITH CONTRACT SUPPORT COST FUNDING

The Community has operated various IHS, BIA, and BOR programs for years. We have never received full funding of the administrative costs we incur to operate these federal programs. Under the indirect cost rate system, we have typically received only a portion of the percentage of our indirect cost rate attributable to these programs. For example, we currently operate fourteen (14) BIA programs under 638 contracts with the BIA and IHS. We have historically recovered 85-90 percent of our documented indirect cost need from the BIA and IHS.

The Community also has a program funded by the Department of Interior, Bureau of Reclamation (BOR) under authority of Title IV of the Indian Self-Determination Act. The Community receives program funds under the compact and annual funding agreement with BOR for the construction of Indian canals which will ultimately provide water for the Gila River Indian Community Reservation Farms. However, the Community does not receive any indirect cost funding because the BOR does not provide any in its compact or annual funding agreement. We would hope that a solution such as that contained in H.R. 4148 would eventually be extended to remedy this type of situation, as well.

With respect to our health care system, in June of 1995, as the Community was preparing to contract with the IHS to assume operation and management of the Community's Hospital and related programs, we submitted to the IHS a contract support request of approximately $4 million. At that time, it was IHS policy to place new contract support requests, such as ours, on a first-come first-served waiting list or queue. Under this system, our request was placed on the queue and our Health Care Corporation operated the Hospital for three (3) years with no contract support funding -- waiting to reach the top of the queue.

For fiscal years 1997 and 1998, we continued to operate the IHS program while our contract support request moved up the IHS queue. Our Health Care Corporation received no contract support funding for another two years - Fiscal Years 1997 and 1998. In Fiscal Year 1999 we were near the top of the queue and, under then current IHS policy, expected to receive 100% of our fiscal year 1999 contract support request as well as reimbursement for prior years' preaward and start up contract support costs.

However, despite the estimated $60 million backlog of unfunded contract support requests going into Fiscal Year 1999, the Administration request no new contract support funding for Fiscal Year 1999. This brought the contract support

funding situation to a crisis during the summer and fall of 1998. After much debate over existing policy and a significant effort by tribal leaders and supporters, $35 million was appropriated for new contract support requirements in Fiscal Year 1999. While the $35 million appropriation was a tremendous improvement over previous years, it was not sufficient to fund the estimated backlog in requests and did not resolve the underlying problems with the existing system.

For fiscal year 1999, our Health Care Corporation received $2,309,706 or 61% of its IHS approved contract support request. The Corporation's contract support request for fiscal year 1999 was approved by the IHS at approximately $3.7 million. Of this amount, $790,000 is for preaward and startup costs incurred in prior fiscal years. The balance, approximately $2.8 million, represents direct costs which will be recognized by IHS on a recurring basis so long as the Corporation continues to incur these costs each year. While most tribes were funded at 80% in fiscal year 1999, the IHS's failure to pay our approved preaward and start up costs reduced our percentage funded to 61%.

Our preaward and startup costs had been approved by the IHS, some as early as 1995, and were included in our request that was pending on the IHS queue. Our startup costs were extremely conservative to begin with since no IHS funds were available to fund these costs when they should have been incurred -- in fiscal year 1996. As a result, the Corporation delayed purchase and implementation of many administrative systems necessary to responsibly administer the Hospital program, and funded costs it could not delay or avoid with program funds.

In March of 1999, we learned that the IHS was considering legal recommendations from its Office of General Counsel ("OGC") that it not pay preaward and startup costs incurred in prior fiscal years. The OGC opinion on this issue concluded that Section 314 of the fiscal year 1999 Omnibus Appropriations Act prohibits use of any part of the $35 million increase for prior years' preaward and startup costs. We met with IHS officials many times on this issue. We were advised by IHS officials to submit additional current year requests, and to this date, we have not received a written response to our correspondence on this issue.

In our fifth year of operating the Hospital program, we have received 77.1% of one year's contract support request (excluding the approved preaward and startup costs). We expect to receive a higher percentage of our fiscal year 2000 request this year. We estimate our unfunded contract support need from fiscal year 1996 to the present at between $9 and $11 million. As concluded by GAO, NCAI and others, we can affirm that these unfunded contract support costs further jeopardize our underfunded health care program. (By IHS statistics, our Community's federal

health program is funded at only 54% of need.)

TRIBAL CONTRACT SUPPORT COST TECHNICAL AMENDMENTS OF 2000

As the Committee is aware, there is a 25 year history of inadequate funding of tribal governments' contract support costs. The general framework to pay tribes for operating federal programs has been in place since 1975. Attempts were made in 1988 and again in 1994 to reinforce that framework and ensure it was funded. Despite these efforts, the government has found one reason after another not to request adequate appropriations to fund tribes' contract support costs and has put itself in the position of having to litigate over apportioning inadequate funds to only partially pay tribes the costs of operating federal government programs. The recent GAO study, and work of NCAI, validate tribes' need for adequate contract support funding and officially confirm the adverse effects of underfunding on our local programs. With the introduction of H.R. 4148, we are now in a position to address specifically the problems with the existing system and to put in place a sustainable contract support system that will continue the success of the federal policy of tribal self-determination.

Any sustainable solution has to start with the fundamental issue of adequate funding. H.R. 4148 commits to assuring adequate funding. Section 3 of the bill would assure that a permanent appropriation is available for the costs of tribes operating federal programs, and would eliminate ambiguities in the current law which have served as the justification for underfunding our contract support needs in the past. The reasonableness and validity of tribes' costs in operating federal programs was confirmed by the findings of the GAO in its recent report. Certainly basic community service programs -- such as health care, law enforcement, and social services -- which serve the first Americans and which are operated by tribes under the Self-Determination Act, are worthy of this commitment to permanent adequate funding.

Secondly, in the intense scrutiny of the contract support system over the past several years, we have identified several key issues that are necessary to ensure the sustainable success of any new contract support policy. Notably, H.R. 4148 would allow tribes to consolidate adequately funded contract support with program amounts. This initiative responds to the call to provide for incentives to encourage efficiency in the administration of these federally funded programs. While this initiative will require initial increases to bring our programs up to minimally adequate funding amounts, once we stabilize and consolidate funds, it will be our responsibility to manage our local programs within the consolidated funding.

Consolidation will encourage efficiency and savings in administrative costs by allowing us to use any savings to improve and expand our programs.

The bill also provides for annual adjustments to the consolidated contract support amount based on medical inflation rates and the consumer price index. Finally, this bill recognizes the reality of keeping pace with the rising costs of providing health care and other community service programs. In recent years, we have received at most 2-3% inflationary increases to apply against costs which in reality are rising at rates of 8-9% each year (in the area of health care). Because we are located just south of the metropolitan Phoenix area, our inability to keep up with inflationary rates has placed incredible stress on our ability to recruit and retain capable health care professionals and technicians. In the area of contract support, H.R. 4148 would remedy this dilemma for us.

The bill further provides for additional contract support when federal employees transfer to tribal employment. Under current IHS practice, we receive contract support to pay for the costs of benefits for tribal employees' employed at the time of the initial transfer of the program from IHS to the tribe. As federal employees leave or convert to tribal employment, we are not able to receive from IHS reimbursement for these employees' benefits. In the case of our Health Care Corporation, we retained initially almost all federal employees. Now, in the fifth year of operation, very few of the Corporation's approximately 300 employees are federal employees. Our benefit costs for Corporation employees average 20-25%. This is a significant cost, which we are currently not able to recover through the contract support system. H.R. 4148 would correct this flawed policy and allow tribes to recover these costs regardless of the timing of the transfer of federal employees to tribal employment. This allows tribes to ease the transition from a federal to tribal workforce without being financially penalized for doing so.

The last provision we want to comment on is of particular significance to our Health Care Corporation. A provision in Section 3 of the bill would require IHS to reimburse the Corporation for preaward and startup costs incurred in prior fiscal years. As discussed above, this provision in Section 3 of H.R. 4148 is to remedy a particular inequity from which our Health Care Corporation and several other tribes suffered in fiscal year 1999. The Self-Determination Act provides for reimbursement of these costs and it is fundamentally unfair for IHS to deny reimbursement of these costs for the reason they were incurred in prior years when IHS also denied reimbursement of these costs in the years in which they were incurred. H.R. 4148 would remedy this inequity thus treating our Health Care Corporation and other similarly situated tribes on the same basis as all other newly contracting tribes have been treated before and after fiscal year 1999.

In closing, we thank Chairman Young and Congressman Hayworth for introducing this bill. We thank the Committee for its commitment and persistence in pursuing a workable long-term solution to the contract support dilemma. Previous efforts have only skimmed the surface and left ambiguities that our opponents have used to the detriment of our federal programs and ultimately the members of our communities. This bill provides the opportunity to establish a contract support system that reflects the financial realities within which we operate federal programs in our local communities. We urge the Committee to report favorably on H.R. 4148.

Mr. GILCHREST. Thank you, Mr. Narcia. Mr. Allen?

STATEMENT OF W. RON ALLEN

Mr. ALLEN. Thank you, Mr. Chairman. I am the Vice President of the National Congress of American Indians in Washington, DC., and Chairman of the Jamestown S'Klallam tribe, located in Washington State. I am here testifying on behalf and in support of this particular bill. I am very appreciative of the Chairman introducing this bill and Congressman Hayworth for sponsoring it. I, also, would encourage our Democratic friends and supporters in the Congress to endorse this bill. As Congressman Kildee had noted earlier in his opening remarks, when we find bipartisan or nonspartisan agendas, it's usually about Indian issues that involve the obligations of the Federal Government to Indian communities.

The subject matter of this bill is something about which I have testified before this Committee and the Senate Committee on Indian Affairs many times over the last number of years. I have personally led the NCAI task force that has conducted an exhaustive study with regard to contract support and the responsibilities of the Federal Government to Indian tribes with regard to contract support. We have studied it in conjunction with the GAO and the IGO and the other Federal agencies, which have continued to analyze their responsibilities with regard to contract support, in complying with or carrying out the full intent of the Self-Determination Act.

The Act has been very successful. It is transferring Federal resources to Indian people. It is empowering tribal governments to take over their responsibilities. And reciprocally, it is supposed to reduce the Federal bureaucracy, so that those resources and responsibilities are transferred out to Indian communities.

But, this particular Contract Support Cost problem has become a serious impediment and it is frustrating. I appreciated Orie Williams' comments earlier in his testimony about the priorities of the Congress with regard to the funding. You have a lot of money and a lot of issues you have to deal with every year. But with regard to Indian issues, we have consistently shown that the underfunding of Indian programs continues to be a blemish against the Federal Government with regard to how it is addressing the problems and needs of Indian communities, and contract support is one of the fundamental responsibilities. It is an administrative responsibility of carrying out these Federal functions and it is a legitimate function and legitimate responsibility.

This bill proposes to resolve a lot of legal ambiguities. It proposes to provide solutions that we believe are reasonable. It addresses a consistency of how to approach it. It suggests approaches on how to provide stability and efficiencies, and there are a number of other things that we believe it does to resolve some of the problems and conflicts that we, the tribes, have had with the Administration.

It is quite frustrating that we can't get the Congress or the Administration to raise this issue as a priority and to fully fund it, both in IHS and BIA. It is also equally frustrating that we cannot get the other Federal agencies to take responsibility for this need within their contracts. But this bill puts the pressure on resolving this issue in a logical way.

As you look for your offsets if you pass this bill, we would be concerned that the offsets would count against the allocation to the subcommittees, with regard to this jurisdiction. In other words, are you taking money out of one pocket and putting it into the other pocket of Indian country? That doesn't solve the problem. You know, that is an issue that we have constantly been challenging the Administration and the Congress with regard to. We raise it with regard to potential impact with regard to this proposal.

We believe that this bill moves us off of this contract support cost issue, which we believe is an administrative matter, and moves us on to the serious problems of solving the needs of our communities, to improve health and to improve job opportunities and to deal with the elders and children programs and educational programs and so forth, so that we can focus in on those issues. You will never fund our total needs, but what we do want you to do is fund fully the programs that you have authorized in a way that does not become a detriment to the tribes or enforce us to divert our moneys to cover these expenses, because these expenses are real costs to the tribal government, and we have to cover them some way. So, usually, we will have to divert moneys from other projects, economic projects and so forth, in order to cover these administrative responsibilities.

So, we have worked very hard over the last number years, we will continue to work with you and the Congress to persuade you on how to resolve this issue. We believe this bill goes a long way in that direction to resolve this matter. And we believe that we can address many of the issues that concern us about the bill. They are in our written testimony and we encourage you to take a look at some of the suggestions. But, we believe that the bill goes a long ways to solving this problem.

We appreciate the opportunity to testify and we appreciate the opportunity to continue to work with you on this subject matter, and we do appreciate your championing our cause. Thank you, Mr. Chairman.

[The prepared statement of W. Ron Allen follows:]

W. RON ALLEN, VICE PRESIDENT

NATIONAL CONGRESS OF AMERICAN INDIANS

TESTIMONY BEFORE THE U. S. HOUSE OF REPRESENTATIVES

COMMITTEE ON RESOURCES

HEARING ON H.R. 4148, THE TRIBAL CONTRACT SUPPORT COST

TECHNICAL AMENDMENTS OF 2000

WASHINGTON, D.C.

May 16 , 2000

Good morning Chairman Young and members of the House Committee on Resources. My name is W. Ron Allen, and I am the Chairman of the Jamestown S'Klallam Tribe located in Washington State. I am also the Vice President of the National Congress of American Indians (NCAI) and offer my testimony today in both capacities. It is an honor and a pleasure to come before the Committee to testify in support of H.R. 4148, a bill to make technical amendments to the contract support cost provisions of the Indian Self-Determination Act.

NCAI is the oldest, largest and most representative Indian organization in the United States. NCAI was organized in 1944 in response to federal termination policies and hostile legislation which proved to be devastating to Indian nations and to Indian people. NCAI to this day remains dedicated to the restoration and exercise of tribal sovereignty and the continued viability of all tribal governments. NCAI has over 250 member tribes and has been particularly active in advancing solutions to the problems created by the chronic under funding of contract support costs for those tribes and tribal communities that administer federal government programs under the Indian Self-Determination Act.

I. INTRODUCTION

As the Committee is aware, the Indian Self-Determination Act of 1975 authorizes tribes to enter into contracts to administer federal Bureau of Indian Affairs (BIA) programs and federal Indian Health Service (IHS) programs–"Indian" programs that would otherwise be administered by those federal agencies themselves. The Indian Self-Determination Act was enacted with three primary goals: (1) to place the federal government's Indian programs firmly in the hands of the local Indian people being served; (2) to enhance and empower local tribal governments and their governmental institutions; and (3) to correspondingly reduce the federal bureaucracy. All three of those goals have been realized in the twenty-five years since the Indian Self-Determination Act was first enacted, though not without severe problems along the way.

Chief among those problems, as long recognized by this Committee, has been the consistent failure of the BIA and IHS to fully fund the contract support costs required to

carry out these federal programs. That failure has penalized Native American communities–the real and ultimate victims of the shortfall–by forcing reductions in tribal programs in order to cover the federal government's responsibilities.

Since the early 1980s Congress has focused increasing attention on the contract support cost issue, and the related issue of indirect costs. Study after study has been undertaken by various committees of Congress, Inspectors General, NCAI, the General Accounting Office, tribal governments, and others, and reform legislation was enacted by this Congress in 1988, 1990 and 1994. Nonetheless, the heart of the contract support problem not only persisted, but worsened in the mid-1990s. Year after year the agencies would fail to fully request the requisite sums from Congress, and the paltry sums that were requested would be cut either at the Departmental level or by the Office of Management and Budget. Through Administration after Administration, and Congress after Congress, the hole got deeper and deeper, until a crisis was upon the tribes.

In response to this crisis, in 1998 the Appropriations Committees began to more aggressively probe into the contract support issue. In 1998, NCAI also launched a special nationwide task force to study in depth all aspects of the contract support cost issue, and to formulate recommendations for Congress. Simultaneously, Congress called upon the General Accounting Office to undertake an independent study of the matter. In June 1999 NCAI and the General Accounting Office each issued reports confirming the fundamental integrity of the contract support cost system in theory, as well as the extreme problems in practice facing tribal contractors as a result of the consistent under funding of those costs.

II. H.R. 4148 - CONTRACT SUPPORT COST TECHNICAL AMENDMENTS

Since I have had the honor to testify before this Committee twice last year on contract support cost issues, including the results of the NCAI and GAO studies, I respectfully refer the Committee to my testimony at that time and will not repeat those remarks here. I will note, however, that NCAI offered several key recommendations to Congress, and I am particularly pleased to testify today that all these recommendations are reflected in H.R. 4148. The following summarizes our views:

1. Contract support costs must be fully funded. This was our first and most important recommendation, and it is a recommendation that was confirmed by the GAO's June 1999 study. It is simply not acceptable to shortchange tribes and the Indian people they serve by treating tribal contractors as second-class government contractors. It is not morally right, and in our opinion it is not legally right. Other comparable government contractors, correctly, are paid their general and administrative overhead associated with the services they provide to the United States. Indian tribes ask nothing less.

Section 3 of the bill accomplishes this result in two ways. First, the bill eliminates

ambiguous provisions in the law which have been seized upon by the government as a justification for under funding contract support costs. Second, Section 3 makes a permanent appropriation to cover the full contract support cost requirement. As the Committee may be aware, there is ample precedent for the use of the "permanent appropriation" device in compelling circumstances. If such treatment is appropriate–as it is–in a wide array of federal housing programs for the poor, surely it is appropriate to meet the federal government's obligations to its Indian trust beneficiaries when tribes agree to step into the government's shoes and administer the government's programs.

2. Congress should promote financial stability and efficiency in tribal operations. BIA and IHS experimentation along these lines has already proven to be a success, and it is time to codify this experimental approach into statute. My own tribe has already been involved in such an initiative with the Indian Health Service, where all of our program dollars and contract support cost dollars are rolled into a single-base budget, and in future years our contract support cost requirements are not renegotiated, up or down. Such a system provides a tribe the ability to engage in long-term planning and to be assured of financial stability when making those plans.

We also agree that if Congress is going to fully fund the contract support cost requirement, Congress can certainly demand of tribes that they maximize their efficiencies and operations as much as possible. The consolidated funding approach reflected in Section 2 of the bill accomplishes these goals, and NCAI therefore fully endorses this approach.

These two recommendations, in NCAI's opinion, go hand in hand. So long as the federal government fully funds contract support costs, tribes can reasonably be asked to live within that budget under the strict rule specified in Section 2 of the bill. Full funding, though, is the key. Without it, the improvements and innovations that will come through the consolidated funding approach are simply not possible.

3. Federal agencies other than the BIA and IHS must finally conform their practices to the government-wide federal indirect cost system. Since the early 1980s tribes have continually conveyed to Congress the terrible bind created by the refusal of many agencies other than the BIA and IHS to adhere to the government-wide indirect cost rate set by each tribe's federal cognizant agency (which for most tribes, is the Department of the Interior's Office of Inspector General). The OMB indirect cost system is a sound and sensible system. But that system can only work as intended if all branches of the federal government respect the system.

Under that system, a tribe's indirect cost requirements are fixed by the tribe's federal "cognizant agency"–the agency with which the tribe does its greatest amount of contracting. The accounting principles reflected in that agreement are then binding on all other federal agencies. Unfortunately, most other federal agencies ignore a tribe's

government-wide indirect cost agreement, sometimes due to conflicting statutory barriers though more often due to mere policy or regulatory barriers.

This is not a minor technical issue. Recently the federal government settled five years' worth of liabilities to Indian tribes for nearly $80 million–at that, a settlement that only covered the government's liability through 1993. The first provision in Section 2 of the bill finally closes the book on what has been an accounting nightmare for tribes.

4. OMB should issue a new circular specifically devoted to tribal governments. We also applaud the provision in Section 2 of the bill which will require OMB to issue a new circular exclusively devoted to the expenditure of federal funds paid to tribal governments under the Indian Self-Determination Act and other federal law. A similar provision was a part of the 1994 proposed Self-Determination Act reforms but, at the last minute, was deleted.

The need has remained. Although there are similarities between tribal governments and state and local governments, there are also significant differences, chief among them being the Indian Self-Determination Act itself. The existing OMB circular that is applied to tribal governments simply does not fit, and it is time that a new circular finally be developed.

H.R. 4148 also addresses several other technical matters that I would like to briefly note as follows:

Section 2 of the bill reinforces Sections 106(i) and (j) of the Act by assuring that tribal funds pooled within a tribe's indirect cost pool may be spent under the same guidelines that apply to self-determination funds. For instance, a self-determination tribal contractor or a self-governance tribal contractor is not required to secure advance agency approval before purchasing computer hardware with self-determination funds. But once those funds are placed in a tribe's indirect cost pool, the Office of Inspector General is now suggesting that the pooled funds cannot be used in the same way to purchase new financial accounting hardware, because the pool has other federal funds besides Indian Self-Determination Act funds. H.R. 4148 will put an end to this nonsensical approach that threatens to push the self-determination process backwards into the last century.

Section 2 of the bill also directs that the responsibility within IHS for the negotiation of contract support costs be transferred from the Division of Financial Management to the Office of Tribal Programs. In its June 1999 report, the GAO expressed considerable concern with potential conflicts of interest at the Department of the Interior, but failed to consider the actual conflict present at IHS. Under the IHS system, the very individuals who are responsible for spending IHS's own money are also responsible for administering the contract support cost system. Obviously in that environment there will be the perception that the Division of Financial Management is cutting back on contract support

costs in order to benefit the agency. Such suspicions were never present when contract support cost matters were administered by the Office of Tribal Programs, as was the case prior to 1996. Because of this prior experience, and because of the expertise that office has in the administration of tribal health programs, we support H.R. 4148's reform in this area.

We also support H.R. 4148's provision clarifying that direct contract support costs must be paid on all federal employees. As the Committee is aware from its oversight hearings last year, with little explanation and some embarrassment the Assistant Secretary for Indian Affairs acknowledged that the Bureau had failed over the years to even consider paying direct contract support costs, despite the statutory mandate to do so. Proposed new subsection (f) addresses this issue directly, while also emphasizing that direct contract support costs must be paid in connection with federal employees funded with third-party revenues (a common practice within IHS programs).

H.R. 4148 is written in the spirit of a compromise, and it is in that spirit that we also understand Section 4 of the bill, a provision which would double the amount of time the agencies have to plan to transition federal programs from federal administration to tribal administration. The Committee should understand, however, that under the original Self-Determination Act, the IHS and BIA had a mere thirty days to review and either award or decline a contract proposal. Under pressure from the agencies, this period expanded to ninety days in the 1994 amendments. While we question the wisdom of further enlarging this period, we have approached H.R. 4148 as a compromise measure, and in that spirit NCAI is supportive of the bill in its entirety, including this provision.

Finally, NCAI supports Section 5 of the bill which would improve the judicial remedies available under the Act in two ways. First, Section 5 would eliminate an inadvertent discrimination between tribes based simply upon their size. NCAI represents the interests of all tribes in the United States, and we therefore welcome this correction. Second, NCAI supports the provision for an additional financial penalty on agencies that wilfully fail to follow the mandates of the Act. For too many years, some agency personnel have simply disregarded the Act, knowing that tribes have few resources to challenge such actions. While such agency misconduct is, I am pleased to say, rare, when it happens it can have grave impacts on a tribe's social service, education or health care delivery system. Penalties should be reserved for rare situations. But when those situations arise, we agree that a penalty should be imposed.

III. RECOMMENDATIONS

The following are several technical amendments which NCAI believes should be made to improve H.R. 4148:

First, the new OMB circular called for in the bill should be limited to Indian tribes. Many "tribal organizations" are organized as not-for-profit corporations under state law. Those corporations are governed by a different set of OMB circulars that apply only to such corporations. After consulting with those tribal organizations, NCAI does not believe there is any need to replace the current circular applicable to such organizations with a new circular.

Second, with fiscal year 2000 almost over and the need to plan for the funding consolidation set forth in Section 2, we recommend that the consolidation process commence in fiscal year 2003, rather than fiscal year 2002.

Third, we recommend that the bill consistently refer to contracts and compacts wherever the word "contract" is used.

Fourth, we recommend that current references in the bill to Titles III and IV of the Act be changed to be more general so that no further amendment will be necessary once new Title V is enacted as a result of passage of H.R. 1167.

Fifth, we recommend that the bill's reference to a "mature contractor" be changed to a "mature contract," consistent with Title I of the Act.

Sixth, we recommend that the reference to the Consumer Price Index be to the "national" CPI to avoid any confusion with local price indices.

Seventh, we recommend that the term "consolidated contract amount" be changed to "consolidated amount."

Eighth, we recommend that the bill language and accompanying report make clear that tribes remain free to administer multiple contracts, even if the dollar amount within each contract is consolidated.

Ninth, we recommend a technical correction to the indirect cost overpayment provisions of the bill.

Tenth, we recommend that "deconsolidation" of the consolidated amount occur not only when there is a substantial financial change of the kind described in the bill, but at any other time when the Secretary "for good cause" agrees. If an unforeseen event occurs that impacts a tribe's local economy, such as the disasters which occurred a couple of years ago in northern Florida as a result of a hurricane, deconsolidation should be available so that the tribal government and the federal government can work together to pick up the pieces and restructure as necessary.

Eleventh, we recommend a clarification in the section addressing the Office of Tribal Programs, so that it is clear that nothing in the role of that office is to impair implementation of the tribe's indirect cost rate agreement developed with its cognizant federal agency.

Twelfth, we recommend that a new subsection be added to the bill authorizing a joint BIA and IHS regulation on the determination of contract support cost amounts. For too many years, tribes have been caught between conflicting agency policies on contract support costs. We suggest that the timeline on such regulations be short, consistent with the successful model used in the 1994 amendments to Title I of the Act, and that the bill call for the regulations to be developed through the negotiated rulemaking process. As in Title I, we also recommend similar language regarding waivers under appropriate circumstances.

The language we propose to add is specifically intended not to authorize the Secretaries to adopt policies regarding the allocation of contract support funding. This is consistent with the bill, which will eliminate allocation issues by making provision for full funding of contract support costs. We recommend that the Committee only authorize regulations "relating to the determination of contract support cost entitlements."

Finally, we recommend that the bill include an effective date and an express provision stating that the bill overrides any conflicting provisions of law, including any conflicting provisions of regulations. While this may appear unnecessary to the Committee, our experience in the past has been that some agency attorneys try to argue that until regulations are promulgated, an act of Congress is not really law. Obviously, we want to foreclose any such creative arguments.

IV. CONCLUSION

Mr. Chairman, in closing, I want to convey the deepest appreciation of this Committee and my personal appreciation for the enormous commitment you have made to solving the contract support cost problem over the past two years. You have truly been a leader in this area, and you have worked hard to develop a sensible approach that balances tribal self-governance with tribal accountability.

When you introduced H.R. 4148, you spoke powerfully to the improvements made by Alaska tribal contractors and tribes all across the country in the administration of the federal government's programs. Clearly, dismantling the federal government by turning control back to the local people works, particularly in the context of government-to-government relations with Indian tribes. But you also noted that:

> "When it comes to Native American contractors, the

> government thinks it's alright to change the rules, to break the contract, and to deny any liability regardless of the impact on the local people being served. Tribal contractors are made to be second-class contractors."

You then added: "This is not right, and the bill I introduce today will put an end to this practice." We agree with that statement and respectfully urge the Committee to move H.R. 4148 forward as swiftly as possible.

Thank you again for this opportunity to testify before your Committee and NCAI will be delighted to respond to any inquiries or clarifications from the Committee.

* * * *

Mr. GILCHREST. Thank you, Mr. Allen. I yield first to Mr. Hayworth.

Mr. HAYWORTH. Thank you, Mr. Chairman, and I think we should note for the record that four members of leadership of the Native American Caucus are here on the dais today and we want to thank our friends from Indian country and beyond, who, again, offer compelling testimony from the front lines, personal experience, the real frustrations with the inability to reconcile this problem. And, again, I thank my friend from Michigan and I thank all of those, who have testified this morning, as to our needs to make this a priority and solve this problem. Especially, I am pleased to see Lt. Governor Narcia and others from the Gila River Indian community here with us today.

Lt. Governor Narcia, I am familiar with your community's dilemma concerning prior years pre-award and startup costs. Do you believe that H.R. 4148 will remedy this problem once and for all?

Mr. NARCIA. Congressman Hayworth, it's a pleasure to see you again. We thank you for your advocacy and support for the community on this issue in the past. With your indulgence, Mr. Chairman, I would like to refer this question to our Health Care Corporation President, Mr. Franklin Jackson.

Mr. JACKSON. We believe that H.R. 4148 addresses the legal concerns with reimbursing the community with startup costs.

This provision in the bill will require the Indian Health Service to pay the community and other similarly situated tribes prior years award and startup costs on the same basis as Indian Health Service has reimbursed these costs with tribes prior to and after Fiscal Year 1999.

And it is my understanding that under the Indian Health Service's new contract support policy, tribes will not have to wait for four or five years, as we did for reimbursement of these costs which are necessary to efficiently and responsibly manage local programs.

This will eliminate for other tribes, what has been a financial burden for our health care corporation.

Mr. HAYWORTH. Thank you, sir. I think it's safe to say that's been a severe burden for you and your health care corporation.

Mr. JACKSON. It has been.

Mr. HAYWORTH. I thank you for that testimony, Mr. Jackson. Again, Lt. Governor, thank you.

Whether it's Arizona, Alaska, Oklahoma Cherokee, or Native Americans throughout the nation, again, I thank those who come to testify with their compelling stories, and it is our mission to make sure that the rest of our friends in the U.S. Congress understand how important it is to move forward on that.

With that, Mr. Chairman, I thank you for the time.

Mr. GILCHREST. Thank you, Mr. Hayworth. Mr. Kildee?

Mr. KILDEE. Thank you, Mr. Chairman. First of all, Lt. Governor Narcia, please give my best to Governor Don Antone, and former Governor, Mary Thomas.

Principal Chief, Chad Smith, I have one of your citizens of your sovereign nation working for me, Kim Teehee here. She does a great job. She is a wonderful person.

And Ron Allen, Ron, you've been a mentor of mine for so many years, I'm just always grateful to you and glad that you're here.

And I don't want to neglect you, Mr. Williams. I don't know if we've chatted before, but I feel very close to this issue and very close to you at the table there.

Ron and I had the occasion of spending some time with the President of the United States last summer, flying around the country and out to Pine Ridge, and looked at the housing out there. I appreciated that very much.

I think this is a great bill. It's really a—you know, I think we do our best work in this Congress when we do it in a bipartisan way.

In the last few years, we really have been approaching Indian legislation in a bipartisan way, and I think that this is—this would really make a real difference in Indian country for health care. It's very important.

You know, if Government's role is to promote human dignity, health care is an essential part of that, and we have a real, as I say, moral obligation.

I look forward to working with—as we say, we have three of the officers of the Native American Caucus right up here, so you have a very sympathetic audience. But I think we are effective enough to influence the others, and I just really have no questions.

I think you've presented compelling reasons why we should proceed this way, and I thank you very much for it.

Mr. GILCHREST. Thank you, Mr. Kildee. I have just a couple of questions. I think Mr. Smith or maybe Mr. Williams mentioned that Native Americans have the highest rate of diabetes of any ethnic group in the country.

Can someone tell me why that is? Why do Native Americans have a higher rate of diabetes than any other group in the country?

Mr. ALLEN. Well, Mr. Chairman, let me just in a very pragmatic way explain. You know, Dr. Trujillo is probably one of the best ones to answer that, because they have spent so much time studying the genetic conditions of Indian people and why the Indian people have such a high propensity for diabetes.

We know that it is true that we have a higher level of diabetes than any other ethnic group in the United States, and it is prevalent throughout the United States. It is as prevalent in Alaska as it is throughout the other parts of Indian country.

And it's a problem we've been wrestling for many, many years. We have not had any overwhelming success in beating it, but we are moving aggressively forward in educating our communities about the fact that genetically, our people, you know, have a higher propensity for diabetes and because of that, they have a better understanding of how to counter it throughout their lives.

So it is a problem we are constantly wrestling with. And how well we're wrestling with it, Dr. Trujillo and his staff will probably know how well we're being successful in beating it back within our communities.

Mr. GILCHREST. Thank you, Mr. Allen.

Mr. WILLIAMS. Mr. Chairman, if I could help, from my perspective, it's not a medical perspective. The increase in diabetes in Alaskan villages is on the upward spiral.

And I expect a tremendous cost for diabetes in the next ten to 20 years to increase dramatically. The change in traditional diet

from traditional foods to sugar is one of the main reasons that I have observed, change in diet, change in lifestyle, but I think diet has to be the biggest one.

As stated, why the article startled me in the paper, and the amount of money spent on sugar, is because for so many years, the lack of clean water to drink, and the average use in our villages which I represent of maybe 50 gallons of water per family per day, instead of the 250 gallons per day of the normal family——

Obviously, the water is going for cooking and food and clothing and doing those necessary things, and it's not going for drinking.

That's just one small answer to the question. I think the government commodities where my wife comes from in South Dakota—there is a history of government commodities and change in lifestyle and change in diet has had a tremendous impact.

Mr. GILCHREST. Thank you, sir. Dr. Trujillo?

Dr. TRUJILLO. Thank you, Mr. Chairman. Yes, we are seeing a great rise of the incidence and also the consequences secondary to diabetes across the Nation among American Indians and Alaska Natives.

Unfortunately, we are now even diagnosing adult onset diabetes, which is called Type II Diabetes, in individuals of the ages of 14, 11 and 10. We also have individuals throughout the Nation who have the end stages of diabetes, and being on dialysis at age 14 and 15.

Unfortunately, the problem is secondary to numerous factors: One is probably—some genetic propensity for development of the diabetes, but primarily it's secondary to a change in lifestyle, the change in diet, activity, and other associated factors. Smoking and cardiovascular diseases are also on the rise, as are other chronic diseases.

There is no tribe throughout the United States and Alaska that is not untouched by diabetes at the present time. We have had some special funding from Congress, secondary to the knowledge that we need additional resources and services.

These funds now are assisting tribes and the Indian Health Service at educating people throughout the Nation of what might be able to be done to avoid or help individuals who are now diagnosed with diabetes.

The difficulty will be is that we are seeing a rise of the diagnosis of diabetes. In 5, 10, 15, 20 years, individuals who are now being diagnosed will have the consequences of this disease and end-stage problems difficulty in seeing, probably blindness, difficulty in end-stage renal disease, probably dialysis or consequently problems with cardiovascular and peripheral vascular disease with loss of limbs that the Chairman from Cherokee mentioned today.

It is a scourge of American Indians and Alaska Natives presently and very similar to the TB that we saw earlier in this century.

Mr. GILCHREST. Thank you, Doctor. Is this—would you say this, at least in part, is due to health care programs that have been grossly underfunded for much of this century, the lack of education and just the lack of attention paid to that particular issue?

Dr. TRUJILLO. The areas of public health are essential in the prevention. The education, health education and the way that we might be able to prevent the disease is essential. For those who

may have inherited propensity for the disease the difficulty is in getting associated care and obtaining adequate care, tertiary care, especially for individuals who have severe disease, throughout the nation.

Mr. GILCHREST. Thank you, Doctor. I have some—I don't have any—basically, I guess, not for the last 250 years, Native Americans on the Eastern Shore of Maryland, which I represent, but on the Eastern Shore of Maryland, we have a much higher than average rate of diabetes. And it's just interesting that—which could be the quality of the water, diet, smoking, a whole range of things.

But we will work as a group together with all of you to ensure that this eventually becomes a thing of the past.

Dr. TRUJILLO. Yes. We are seeing a rise of diabetes in all populations throughout the nation, but unfortunately, American Indians and Alaska Natives lead in that unfortunate disease at the present time.

Mr. GILCHREST. Thank you very much, Doctor. Yes, sir, Mr. Narcia.

Mr. NARCIA. Mr. Chairman, in talking about diabetes, the Gila River Community has the unhappy distinction of having the most—the highest rate of diabetes per capita of any group of people in the world.

And at this time, we're looking to find solutions to this problem. We are in the process of establishing a diabetes center for our people with the help of Congressman Hayworth, and hopefully we can start resolving some of these issues.

But at this point, our people are very frustrated with the care, the research that's been done. We're the most researched people in the world, the Pima people. And it's sad, because we see children as young as less than 10 years old, having diabetes.

And our people are also frustrated with the research that's been done in the past where it targeted not the diabetes that's not—that applies to our people, but to the non-Indians, which studies that were done by the Indian Health Service or the Public Health, so, you know, I'm glad you're very aware of this deadly disease that's plaguing our people. Thank you.

Mr. GILCHREST. Thank you, Mr. Narcia. Just a couple of quick questions. I know someone needs to catch a plane, so I'll try to expedite this.

Mr. Allen in your testimony you state that the Federal Government finally settled $80 million worth of liabilities to tribes which only covered up to the year 1993. Has the Federal Government made any commitment to finalize a settlement to the present date?

Mr. ALLEN. They are currently in the middle of negotiating a settlement. Part of that settlement is a way that they would calculate the indirect cost rate and the contract support responsibilities of Interior with regard to the tribes.

And, of course, the settlement is dealing with the other Federal agencies who have underfunded this indirect cost rate. So, we're looking for a compromise solution, and my understanding is they're having good success in the negotiations, and they have had discussions, preliminary discussions with IHS to try to address their responsibility as well.

And we hope that we'll get that thing resolved as far as the past settlement issues, and try to move this thing forward. But it doesn't solve this problem as well as this bill does, going into the future.

Mr. GILCHREST. I see. So, would you say that this bill—my next question was going to be, what can Congress do to ensure this full settlement up to the year 1999? You feel this bill will do that?

Mr. ALLEN. This bill would significantly contribute to closing the book on what the obligations are, including addressing the matter within the OMB circular in terms of having very specific guidelines as it addresses how you expend these resources from OMB's circular perspective.

We believe that it would resolve it once and for all, and make it very unequivocally clear that this is how we're going to pay for this, these funds associated with these contracts.

Mr. GILCHREST. Thank you. And, Mr. Smith, in your written testimony, you express support for transferring responsibility for contract support cost issues from the Division of Financial Management to the Office of Tribal Programs.

What is your source of criticism of the Division of Financial Management?

Mr. SMITH. Last year, IHS had a circular which said that all contract support costs requirements should be determined by the local area office in negotiations with each tribe.

Disagreements only were to be moved up the chain of command to the Division of Financial Management. We followed that procedure and negotiated a hard number at the Oklahoma Area Office.

Despite complete agreement between us and the area Office, the Division of Financial Management personnel stepped in and unilaterally reduced our requirements by $2.7 million.

The only reason that the Division of Financial Management did this is because the bulk of the $2.7 million was not in the Cherokee Nation's indirect cost pool, a way of saying that the DFM disagreed with the agreement that we had with the Office of Inspector General for how we account for our funds.

By making this reduction, DFM would have us eliminate virtually the entire administrative structure for the Cherokee Nation Health Department.

Mr. GILCHREST. And one more followup to that: Your testimony indicates that the Cherokee Nation has never received any so-called direct contract support costs funding from the Bureau of Indian Affairs.

In fact, last year the Assistant Secretary acknowledged before this Committee that the BIA has never paid such costs. What has the impact been on the Cherokee Nation?

Mr. SMITH. The Cherokee Nation operates over $13 million worth of BIA programs, employing 158 individuals who would otherwise be employed by the Bureau. When the Bureau employed these people, it covered their Workers Compensation and Unemployment Insurance benefits.

When the positions were transferred to us, those benefits were held back. Using IHS's historic estimate that these costs ran about 15 percent of salaries, the Bureau has shorted the Cherokee Nation by over half a million per year for a total of $5 million to date.

Let me clear with the Committee: To cover the Workers Compensation shortfall, we have had to reduce our BIA programs by the same amount, a half a million dollars a year.

This Catch 22 will be remedied by H.R. 4148.

Mr. GILCHREST. Thank you, Mr. Smith. Gentlemen, thank you very much for your testimony, and we look forward to working with you on this bill to see it passed as soon as possible. Thank you very much.

Now, there's a little—as far as I can see, slight alteration in the next panel. Ms. Woolsey, the Congresswoman from the great State of California, and Mr. Greg Sarris, Chairman, Federated Indians of Graton Rancheria Novato, California. Ms. Woolsey and Mr. Sarris, welcome.

Ms. Woolsey, you may begin.

STATEMENT OF THE HONORABLE LYNN C. WOOLSEY, A REPRESENTATIVE IN CONGRESS FROM THE 6TH DISTRICT OF CALIFORNIA; AND MR. GREG SARRIS, CHAIRMAN, FEDERATED INDIANS OF GRATON RANCHERIA, NOVATO, CALIFORNIA

STATEMENT OF THE HONORABLE LYNN C. WOOLSEY

Ms. WOOLSEY. Thank you, Mr. Chairman, and thank you. I'd like for the record to show that two of the four leaders of the Native American Caucus are still with us today, so thank you for your interest in our Native Americans and for sticking in here with this.

I'm pleased to be here today to testify in support of H.R. 946, the Graton Rancheria Restoration Act. It's also a great privilege to sit here with Dr. Greg Sarris, who is the Chair of the Federated Indians of Graton Rancheria. He was supposed to be on Panel II. Thank you for putting him next to me so he can catch a plane. He's barely going to make it.

Together, we've worked for several years on this bill. And on behalf of Greg and on behalf of the tribe, I appreciate your hearing us today, and allowing us to speak.

The bill before you today, H.R. 946, seeks to correct a decades-old wrong by restoring Federal recognition for the Federated Indians of Graton Rancheria.

Composed primarily of the California Coast Miwok and Southern Pomo tribes in my Congressional District, which you know, Mr. Chairman, is north of San Francisco, across the Golden Gate Bridge.

Joe Saulque, who chaired the Advisory Council on California Indians, stated that lack—no, not lack—luck often determined whether a tribe got recognized.

And I am so glad that with today's hearing, we are going to take luck out of the equation by taking the first step in restoring the tribe's status, because it is the right thing to do. It should not be based on luck.

The tribes of the Graton Rancheria are a rich part of the San Francisco Bay Area's cultural heritage. The earliest historical account of the Coast Miwok peoples whose traditional homelands include the California communities of Bodega, Tomales, Marshall,

and Sebastopol, located along the West Coast of my District, dates back to 1579.

Today there are approximately 380 members of the Federated Indians of Graton Rancheria.

In 1966, the U.S. Government terminated the tribe's status under the California Rancheria Act of 1958. Almost two decades later, the Advisory Council on California Indian Policy was established by the Congress to study and report on the special circumstances facing California's tribes, those whose status had been terminated.

The Council's final report, which was submitted to Congress in September 1997, specifically recommended the immediate restoration of the Federated Indians of Graton Rancheria.

Following this report's recommendations, the tribes promptly decided on a course of action for the restoration. Since then, I've been working with them on the bill.

And it's the bill that's before you today. This consensus bill restores Federal rights and privileges to the tribe and to its members.

As is typical with restoration legislation, it reinstates political status and makes tribal members eligible for benefits such as Native American health, education, and housing services.

These are services, as you know, that are available to all other Federally-recognized tribes. A unique aspect of H.R. 946, however, is that it specifically contains a clause that restricts gaming, gaming on land that is taken into trust for the tribes.

This non-gaming clause is at the express request of the tribe, and is the basis for the broad and bipartisan support that this bill enjoys throughout my Congressional District.

It is also key to my support for the tribe's restoration. As most of you know, I'm privileged to represent an area with unparalleled natural beauty. Open space, controlled growth, and quality of life are defining characteristics and values for the residents of Marin and Sanoma Counties.

Greg Sarris, and the tribes recognize and appreciate this because they live there also. They are also acutely aware of the growing pressure on restored Indian tribes to establish gaming as a means of economic independence.

Their sovereign decision—and I repeat, sovereign decision—to choose other means of economic vitality is out of respect for preserving the current character of the North Bay, and a commitment to our community that their quest for restoration is not to establish gaming.

And, most importantly, it is a request for their right to self-determination. As the Federal representative for the area where their tribal land will be established, I'm very proud that this bill addresses their wants and needs as well as the rest of the residents of the vicinity.

Interesting enough, my office recently received a visit from the San Manuel Band of Mission Indians that are located near San Bernardino, California.

They operate gaming on their lands, but they were proud to learn that the Federated Indians of Graton Rancheria were assert-

ing their right to make a sovereign decision about their tribe's future.

Mr. Chairman, I'd like to enter into the record, a statement of support for H.R. 946 from this particular tribe.

Mr. GILCHREST. Without objection, so ordered.

Ms. WOOLSEY. Thank you. And, Mr. Chairman, it's been a long journey for the Federated Indians of Graton Rancheria, and on behalf of their hard work and the support they have received from the local community, I ask that this Committee hold the markup of H.R. 946 and bring this bill to the Floor for consideration so that we can restore the deserved recognition that they request.

I thank the Committee again for the opportunity to testify in support of restoration for the Federated Indians of Graton Rancheria, and I look forward to a continuing working relationship with this Committee on their behalf. Thank you very much, Mr. Chairman.

[The prepared statement of the Honorable Lynn C. Woolsey follows:]

LYNN WOOLSEY
6TH DISTRICT, CALIFORNIA

COMMITTEES:
SCIENCE
EDUCATION AND THE WORKFORCE
STEERING

E-MAIL ADDRESS:
lynn.woolsey@mail.house.gov
WEB PAGE ADDRESS:
http://www.house.gov/woolsey/

Congress of the United States
House of Representatives
Washington, DC 20515–0506

WASHINGTON OFFICE:
439 CANNON BUILDING
WASHINGTON, DC 20515-0506
TELEPHONE: (202) 225-5161

DISTRICT OFFICES:
1101 COLLEGE AVE., SUITE 200
SANTA ROSA, CA 95404
TELEPHONE: (707) 542-7182

NORTHGATE BUILDING
1050 NORTHGATE DRIVE, SUITE 140
SAN RAFAEL, CA 94903
TELEPHONE: (415) 507-9554

The Honorable Lynn Woolsey
Statement in Support of H.R. 946
Committee on Resources Hearing
May 16, 2000

Mr. Chairman, and Members of the Committee, I am pleased to be here today to testify in support of my bill, H.R. 946, the Graton Rancheria Restoration Act. It is also a privilege to have Greg Sarris, Chairman of the Federated Indians of Graton Rancheria, with me. We have worked for several years on this bill, and on behalf of Greg and the tribe, I appreciate Chairman Young, Ranking Member Miller and their staff's effort to make this hearing possible.

The bill before you today, H.R. 946, seeks to correct a decades-old wrong by restoring federal recognition for the Federated Indians of Graton Rancheria, composed primarily of the California Coast Miwok and Southern Pomo tribes in my Congressional District, which is north of San Francisco, across the Golden Gate Bridge.

Joe Saulque, who chaired the Advisory Council on California Indians, stated historically "luck often determined whether a tribe got recognized." I am glad that with today's hearing you are taking "luck" out of the equation by taking the first step in restoring the tribe's status, because it's the right thing to do.

The tribes of the Graton Rancheria are a rich part of the San Francisco Bay Area's cultural heritage. The earliest historical account of the Coast Miwok peoples, whose traditional homelands include the California communities of Bodega, Tomales, Marshall, and Sebastopol -- located along the West Coast of my district -- dates back to 1579. Today there are approximately 355 members of the Federated Indians of Graton Rancheria.

In 1966 the United States government terminated the tribes' status under the California Rancheria Act of 1958. Almost two decades later, the Advisory Council on California Indian Policy was established to study and report on the special circumstances facing California tribes whose status had been terminated. The Council's final report, which was submitted to Congress in September 1997, specifically recommended the immediate restoration of the Federated Indians of Graton Rancheria.

Following this report's recommendation, the tribes promptly decided on a course of action for their restoration. Since then, I have been working with them on the bill that is before you today. This consensus bill restores federal rights and privileges to the tribes and its members. As is typical with restoration legislation, it reinstates their political status and makes them eligible for benefits such as Native American health, education, and housing services that are available to

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federally recognized tribes.

A unique aspect of H.R. 946, however, is that it specifically contains a clause that restricts gaming on land that is taken into trust for the tribes. This non-gaming clause is at the express request of the tribe. This non-gaming clause is the basis for the broad, and bipartisan, support that this bill enjoys throughout my Congressional District, and the key to my utmost support for the tribes' restoration.

As most of you know, I am privileged to represent an area with unparalleled natural beauty. Open space, controlled growth and quality of life are defining characteristics and values for the residents of Marin and Sonoma Counties. Greg, and the tribes, recognize and appreciate this, but, they also are acutely aware of the growing pressure on restored Indian tribes to establish gaming as a means of economic independence. Their sovereign decision to choose another means of economic vitality for the tribe is out of respect for preserving the current character of the North Bay and a commitment to our community that their quest for restoration is not to establish gaming. Most important, it is a request for their right to self-determination.

As the federal representative for the area where their tribal land will be established, I am proud that this bill addresses the wants and needs of all who reside in the vicinity.

Interestingly enough, my office recently received a visit from the San Manuel Band of Mission Indians located near San Bernardino, California. They operate gaming on their lands, but were proud to learn that the Federated Indians of Graton Rancheria were asserting their right to make a sovereign decision about their tribes' future. Mr. Chairman, I would like to enter their statement of support for H.R. 946 into the official record of this hearing.

Mr. Chairman, it's been a long journey for the Federated Indians of Graton Rancheria. On behalf of their hard work and the support they have received from the local community, I ask that this Committee restore the recognition they deserve by holding a mark-up of H.R. 946 and bringing the bill to the floor for consideration.

I thank the Committee for an opportunity to testify in support of restoration for the Federated Indians of Graton Rancheria, and I look forward to continuing to work with you on their behalf to correct this decades old injustice.

Thank you.

San Manuel Band of Mission Indians

May 11, 2000

In reply to: H.R. 946

Congresswoman Lynn Woolsey
439 Cannon HOB
Washington, DC 20515

Dear Congresswoman Lynn Woolsey:

IT WAS A GREAT PLEASURE MEETING WITH YOUR LEGISLATIVE DIRECTOR MS. STACEY LEAVANDOSKY EARLIER TODAY. IN OUR DISCUSSION, MS. LEAVANDOSKY BROUGHT TO MY ATTENTION H.R. 946. I WAS PLEASED TO HEAR THAT YOUR OFFICE IS SEEKING TO PLACE THE GRATON RANCHERIA BACK TO THEIR PROPER STANDING. I APPLAUDE YOU AND THE FEDERATED INDIANS OF GRATON RANCHERIA EFFORTS TO REGAIN WHAT WAS LOST.

IF I COULD BE OF ANY ASSISTANCE, PLEASE DO NOT HESITATE TO CONTACT ME.

Best regards,

D. Marquez

Deron Marquez
Tribal Chairman
San Manuel Band of Mission Indians

cc: Federated Indians of Graton Rancheria (via E-mail)
Congressman Joe Baca (via fax)
Congressman Jerry Lewis (via fax)

26524 Indian Service Rd. • Highland, CA 92346 • Office: (909) 864-8933 • FAX (909) 864-3370
P.O. Box 266 • Patton, CA 92369

Mr. GILCHREST. Thank you, Ms. Woolsey. We will do our best to expedite the bill.

Mr. SARRIS?

STATEMENT OF GREG SARRIS

Mr. SARRIS. First of all, thank you, Mr. Chairman, for rearranging the order of speakers here right now. It took a lot of fried bread sales from my people to get me here today, and I've got to catch a plane back.

Let me give you a little bit of background, everybody here, about the tribe. The Federated Indians of the Graton Rancheria were called by the 1920's 1930's, Coast Miwok or Southern Pomo by linguists and anthropologists.

At pre-contact time, we were approximately 5,000 people of many—several dozen bands of Indians who interacted as one group.

Today we have 380 enrolled members. Of those members, 380 members, we are all descendants of 12 survivors.

We were first contacted by, of course, the Spanish, who put us in the missions. The northernmost missions were in our territory, and then the Mexicans who established an elaborate slave trade situation that enslaved virtually all our men and traded them as far as Mexico, back and forth on the ranchos.

In 1850, when California became a State, one of the first pieces of legislation that was enacted by the State of California was the Act for the Government and Protection of Indians which, in essence, legalized Indian slavery.

It stipulated that Indians became the rightful property of whomever's land they were on. We were bought and sold until that law was repealed in 1868, three years after the Civil War.

For the next 50 years, we lived as indentured servants on whomever's ranch we were on.

In the early part of the 20th Century, the BIA began purchasing small tracts of land for the so-called homeless Indians of California. They did not designate us by tribes, but by areas in which we resided on small rancherias or privately-owned property.

We were still generally referred to by the derogatory term of digger Indians. In 1920, after looking up and down the coast at our territory, 15.45 acres were purchased in Graton for our members. Seventy-five members moved on in 1920.

Unfortunately, of those 15.45 acres, only three were inhabitable; the rest were virtually up and down, so many of our members could not stay there.

In 1958 when they came by and did a census at the height of the harvest season, when no one was around, they found three families and with the Rancheria Termination Act, offered those three families or three designees, the right to buy the land, and, in essence, terminate the rancheria as trust land and, therefore, terminate us as—our tribal status as a recognized tribe.

That was not settled until 1966, at which point there was one family left, and that family got the land. We were then, as Lynn mentioned, Congresswoman Lynn Woolsey, terminated, effectively as a tribe, without the vote or the consensus of the rest of the members.

Due to taxes and what have you, that family was able to hold on to only one acre of that land. A woman, the daughter of the designee, who still lives on the land, has given it to us as a token to restore to trust status, the tribal lands, and, in turn, restore us as a tribe.

Congresswoman Lynn Woolsey mentioned the issue of gaming. We worked closely with both the Democrats and Republicans there who did not want development on the land.

I, for one, and I think I can speak for many people of my tribe, feel strongly that Indian people should have the sovereign right to game. It isn't that issue; it's working together with our group, that we did not want to develop the land for casinos or any other purposes.

What we are asking is for our rights to be returned; that is, our rights to health benefits, education benefits, and housing benefits that are afforded all other recognized American Indian tribes.

And as I mentioned, we were terminated in 1966. As you know, since that time, American Indians have made some significant gains in terms of health and education. We would like access to some of that, and we would like once again to be restored as a people and have rights that we once had so that we might not be as we were before 1920, simply homeless Indians of California. Thank you.

[The prepared statement of Mr. Sarris follows:]

Testimony for H.R. 946
By Greg Sarris

Before contact with Europeans, the people today known as The Federated Indians of Graton Rancheria numbered well over five thousand individuals living in close to fifty different villages throughout what is now Marin and Southern Sonoma Counties in Northern California. We were a peaceful people with complex religious and social structures that stressed a spiritual reverence and respect for the land and ocean that sustained us.

Russian colonizers established an outpost at Bodega Bay in 1809 (and later just North of our territory at Fort Ross in 1812). Not long after, the Spanish established Mission San Rafael (1817) and Mission San Francisco Solano (Sonoma, 1823) in the heart of our ancestral territory. While the Russians used us as a source of labor, the Spanish virtually enslaved us in the missions, using us to build and maintain the missions and to till the land for their crops and livestock. After the Mission Period (1769 – 1834), local Indian people continued in servitude to Mexican land grant owners throughout our confiscated tribal territories. As a result of disease brought on by European contact and brutal treatment by the Spanish and Mexicans, our population had been reduced nearly eighty per cent by the time California became a state in 1850. One of the first pieces of legislation enacted in the state of California was The Law for The Government and Protection of Indians, which stipulated, in essence, that California Indians became the rightful property of landowners who land they inhabited. Landowners, in fact, bought and sold Indians! This law was not repealed until 1868, three years after the Civil War. Afterwards, we became more or less indentured servants for various American landowners: we exchanged labor for a place to live.

In May 1920, Bureau of Indian Affairs John J. Terrell was dispatched "to procure signed contracts for the more urgent purchases" on behalf of homeless Indians of California. At that time, we were ironically referred to as "homeless Indians," not unlike many other Indian tribes in California, Still, we were – and continuously have been – the subject of many anthropological and linguistic studies by some of the most famous social scientists and linguists of the last century, including S.A. Barrett and Alfred Krober. Linguists, identifying the various interacting tribes of the area by language family, referred to our groups as Coast Miwok. The groups north of us have been referred to as Pomo, and the groups east of us as Wintun. Terrell attempted to locate land for the Coast Miwok, then known as the "homeless Indians of Marshall, Bodega, Tomales and Sebastopol," along the coast, but found the cost prohibitive. He also identified a considerable reluctance on the part of non-Indians to sell land for use as a Indian village. By June, Terrell proposed the purchase of a 15.45 acre tract of land near the small rural Sonoma County town of Graton for the homeless Indians from the above mentioned locals. Available land at a reasonable price in the Graton area provided an alternative to coastal lands since Marshall, Bodega, Tomales and Sebastopol peoples were intimately familiar with the area, both historically and as a contemporary camping area while we worked in local fruit harvests. Thus, through the purchase of this land, put into federal trust, the government consolidated these neighboring traditionally interactive groups into one recognizable entity, Graton Rancheria. (Some of the people from the Sebastopol area have been referred to as Pomo, speaking a Pomo language, but, before contract, they were part of the larger interactive group system now referred to as Coast Miwok.) A

Bureau of Indian Affairs census of the Sebastopol Indians of Round Valley Agency, California, enumerated by Superintendent W. W. McConihe with the assistance of local Indian, June 20, 1923, includes seventy-five individuals of Marshall, Bodega, and Sebastopol descent, and demonstrates their congregation in the vicinity of the Graton Rancheria.

The inadequate size of the Graton Rancheria for accommodating the number of homes needed for its intended population is a recurrent theme in Bureau of Indian Affairs records. Not only was the rancheria small, but the terrain consisted of steep hills, further limiting building sites. An additional problem was the limited water supply. Home construction was costly and the Bureau could offer no assistance for such an endeavor. A typical Bureau reply to inquiries about home building was "We have no obligation to you establishing yourself thereon. However, it will be necessary for you to build your own house if you move on the property." Hence, the Graton people found it difficult to build on the Rancheria for financial reasons and because the terrain allowed little suitable space for homesites. For those who did build, tent platforms comprised the usual mode of construction. These platforms were used at different times by different Graton families when they were in the area for seasonal employment, but such floor structures were not suitable for permanent homes.

Graton Rancheria was purchased as a homeland for Coast Miwok and Southern Pomo peoples, who have always lived and continue to live in this area of California as a composite group. Because much of the Rancheria property is steep terrain, the availability of house sites was limited, and because funds for housing assistance were never developed for the Rancheria membership, few people were able to fulfill their desires to live here on a permanent basis. (In August of 1952, the BIA enrollment officers went to Graton where they received eight applications for enrollment. This enrollment involved four households present during a very active harvest month when most people were away working.) Yet, the Rancheria became a focal point for the Miwok and Pomo peoples who could come, live in a tent, and visit with other members while working in the vicinity.

Under the Rancheria Act of 1958, the Bureau of Indian Affairs approved a plan to distribute the assets and remove the Rancheria from federal trust in August 1958 with three distrubuties (now all deceased). The larger Graton Indian community did not have the opportunity to consider and debate the plan, since the majority of the group was working in the crops at the time. Yet, no one begrudged the three distributees since they were not given ample time to contact and organize the entire group and because they have always kept the land open for Graton Indian people to come and go as need be. Gloria Truvido Armstrong (the daughter of a Coast Miwok distributee) and one daughter continue to reside on the former Rancheria land, where she first came as a seven year old child in January 1950.

Today, the membership of the Federated Indians of the Graton Rancheria comprises 370 individuals. Many of these people have maintained their identities as California Indians form birth as shown by their having roll numbers on the 1933 Census Roll of the Indians of California, the 1955 California Combined Roll, and the 1972 California Indian Judgement Rolls. Members born after the last roll numbers were issued

(1969) have provided, for the Graton tribal roll, birth certificates and/or baptismal certificates connecting them with roll number bearers. Roll numbers as well as mission and church records have been essential for establishing intra-inter band and intra/inter family ties among the local people who became Graton Rancheria members at its establishment in 1920.

The genealogical record clearly shows that Marshall, Bodega, Tomales, and Sebastopol people married within their own bands and also with members of other Graton residents. Amicable relations prevailed among these bands, and since their borders abutted one another, communication among the bands was frequent and cordial which facilitated intermarriage. Traditional ceremonies continued to be shared throughout historic times and continue today. Large seasonal gatherings called "Big Times" brought – and bring – people together to dance, share food and trade, and to renew social bonds and form marriage alliances.

The general membership meets on a bi-monthly basis; the tribal council comprised of seven individuals, meets once a month. To avert problems and plan ahead, the internal leadership, working in concert with the general membership, acts in a cohesive manner to resolve issues in a reasonable way. For instance, when another tribal group, the Cloverdale Pomo, attempted to establish a reservation near the Marshall Cemetery in the early 1990's, over a hundred Graton Members gathered at a public meeting to assert their tribal identity publicly and claim their jurisdiction over their tribal territory. Since then we have fought other attempts by local Indian tribes to establish trust land for their tribes within our territory.

Today, the Graton Rancheria, consists of hardly one acre, occupied, as mentioned, by Ms. Gloria Armstrong and her daughters in one small home, the only dwelling on the land. No doubt, we will need another place to establish trust land once we are restored. In the meantime, however, once restored, our people will have access to health, education, and housing benefits currently granted other recognized tribes in the United States of America, something we have been denied as a people for over forty years – the last forty years within which recognized tribes have gained some significant benefits from the United States Government.

Many may think our motives for restoration have been influenced by the opportunity gaming affords some other recognized tribes. Because our local political constituency, both democratic and republican has opposed any sort of development for environmental reasons, we agreed with these local political forces to not develop a gaming complex. So, as proof, we voted as a tribe to include a non-gaming clause in our bill, stipulating that we will not be a gaming tribe. Since the bill was first drafted in early 1999, the anti-gaming clause has become moot in light of the California Compact (enacted March 2000), which stipulates that California Indian tribes cannot establish gaming on newly acquired trust land. So, unless we figure out how to build a multi-story casino on under one acre, gaming is clearly out of the picture for us. Furthermore, the California Compact stipulates that all tribes interested in gaming must have had their various bids for a part of the gaming complex in sixty days after the Compact was voted on and enacted into law – and the sixty days has passed! Nonetheless, we have kept the anti-gaming clause in only as proof to you that our interests are elsewhere, primarily in the rights of our people to have a fair share of what all other recognized Indian tribes are afforded – rights to health, education, and housing. What we are asking for is, in essence,

the restoration of "a home," a place in your eyes and our eyes that is ours, keeping us once and for all from being "homeless Indians," a people homeless in their own homeland.

I mentioned above the Marshall Cemetery, which we have been so anxious to protect and preserve. It is an old Miwok Cemetery, dating from the middle part of the nineteenth century. Our people still continue to be buried there. In death, our people have a place to be together. Shouldn't we in life have a place to live together?

I ask you, on behalf of all my people, to consider our bill (H.R. 946) carefully, and restore the Graton Rancheria to trust status thereby restoring The Federated Indians Of The Graton Rancheria as a recognized American Indian tribe of the United States of America.

Mr. GILCHREST. Thank you, Mr. Sarris. How many—that's an interesting but sad story that's covered, I guess, several centuries, to descend to 12 survivors and now, I guess, ascend to 380, which is quite remarkable.

How many acres does the bill set aside?

Mr. SARRIS. Approximately one acre, sir.

Mr. GILCHREST. One acre?

Mr. SARRIS. Yes.

Mr. GILCHREST. Now, where are the 380 enrolled members? Do they live in the area?

Mr. SARRIS. They live throughout Sonoma and Marin, southern Sonoma and Marin Counties, in and around Santa Rosa in private homes. We have no place to live. We've been gathering in front rooms and garages for our meetings.

Mr. GILCHREST. You're asking for one acre?

Mr. SARRIS. One acre.

Mr. GILCHREST. Even if you wanted a casino, it would be a pretty small casino.

Mr. SARRIS. Mr. Chairman, unless we could get an architect that could build an 87 story casino on one acre, it's unlikely.

Mr. GILCHREST. So, one acre, which will be a site for, among other things, family reunions, I guess?

Mr. SARRIS. Family reunions and a place from which we can educate the larger community about who we are, and, again, house historical information and the things that we would like to keep as a tribe for our children and grandchildren.

Mr. GILCHREST. Now, will the—so, there are 380 people that consider themselves southern Pomo or Indians of Graton?

Mr. SARRIS. Yes, Coastal Miwok.

Mr. GILCHREST. So, do they all—they're in the area. They're all working. There is no—we're not talking about a Navaho Indian Reservation here, the Sioux Indian Reservation, or anything like that.

So, the specific designation would do what for the people that are disbursed? They would receive the same benefits as the other Federally-recognized tribes?

Mr. SARRIS. Once again, we would have access to health benefits, many of which you heard about this morning earlier. We have no access to that, and yet we have the same problems in high incidence of diabetes and so forth.

We cannot get the help from any other Indian agencies. Also, we would be able to apply for scholarships and fellowships as Indians, where at this point we cannot because we're not recognized as a Federal tribe.

Mr. GILCHREST. Where would you have access to health care, a traditional doctor's office, a health care facility?

Mr. SARRIS. We have a health clinic, Sonoma Indian Health right in there that's enjoyed by other tribes.

Mr. SARRIS. I see. Mr. Kildee?

Mr. KILDEE. Thank you very much, Mr. Chairman. I think really the main benefit, aside from the fact that you are sovereign and you have a retained sovereignty, we're not giving it to you, we're recognized that retained sovereignty, and that's John Marshall's decision that you hold a retained sovereignty.

We are not giving it to you by this bill; we're recognizing that retained sovereignty, and that's a very, very important distinction there, a very substantive distinction.

The main gain that you would get by that recognition would be access to Indian Health Service and education. Were you in Michigan—when I was in the Michigan Legislature, I introduced a bill that any Michigan Indian can go to any Michigan public college without paying tuition. It's called the Indian Tuition Waiver Act.

And that was—I know that's probably not the law in California, but there are certain rights that accrue to you when you are a recognized Federal tribe. Again, I want to emphasize recognition, not granting your sovereignty, recognizing your retained sovereignty.

That's a—I carry with me wherever I go, I carry John Marshall's decision and I carry the Constitution. John Marshall's decision talks about the retained sovereignty, and this talks about your—the three types of sovereignty.

I will just read this: Congress shall have the power to regulate commerce with foreign nations, and among the several states, and with Indian tribes, recognized as the three sovereignties.

That's very important. Whether you have one acre or like the Navaho, you are—the fact that you have that sovereignty recognized, that you exercise your natural rights as a sovereign people, and that's very important. That's why this bill is very attractive to me.

I will be candid, however. I have some concerns about limiting the sovereignty in the area of the Indian Gaming Regulatory Act. Mr. Sarris, have you—have other Indian tribes in California expressed any concern about the fact that you're willing yourself to not exercise that right under IGRA?

Mr. SARRIS. There has been some concern, yes, from some tribes mentioned, but the majority of the tribes nonetheless support our move. In fact, we have letters of support from the neighboring Pomo Tribes.

Another thing I should mention is that as a result of Proposition 1 A in California, one of the provisions or stipulations is that tribes cannot establish gaming on newly acquired trust land. So if we were to establish or find a larger tract of land where we could have gaming, we couldn't have it.

But more importantly for us, also part of the provision of Proposition 1 A is that non-gaming tribes can share, have profit sharing in the profits from the gaming tribes. But unless you're recognized, you cannot have access or we will not have access to the profit sharing with the gaming tribes.

Mr. KILDEE. Let me ask you this, because I really am anxious to recognize your sovereignty.

If this legislation was silent about IGRA, would the California law still forbid you then to have gaming on that one acre of land or is that something lawyers have to sort out later?

Mr. SARRIS. Well, technically no. I mean technically we could have gaming on the one acre but in fact we have made an agreement with the woman living on there that we would not do that on her one acre that she has retained. She has expressed that she did not want that in any way and only wanted her home—you

know, there is a little home, her little home that she has retained there—used for historic and cultural purposes.

Mr. KILDEE. But that land would become your land and it would be sovereign land?

Mr. SARRIS. The one acre, yes, sir.

Mr. KILDEE. One acre would be sovereign land. I am just asking these questions because I am really anxious to recognize your sovereignty. You know, we have had tribes in Michigan. I helped get the recognition of five different tribes. We have 12 tribes in Michigan, pretty small tribes.

One was—two, three were down to zero acres of land and I helped get them land also, maybe only about 300 acres but—which by Western standards but obviously not California standards was a fairly good chunk of land, so there are other instances where land has been—Burt, the land in Michigan was illegally taken from the Indians. Burt Lake, 1901, the Governor put them back on the tax rolls for that band and after one year when they did not pay their tax, did not tell them they were back on the tax rolls, they were illegally put back on, confiscated their land because the lumber barons wanted it.

They came in—this was 1901, this is not, you know—my dad was 18 years old. He remembers when it happened. They came in and the Sheriff burned down, chased the Indians off the land, burned down their village so they could not return. Some terrible things have happened to Indians and I think that we in the Congress have not just a legal but a moral obligation to right these wrongs as much as we can.

I certainly appreciate both of you testifying here today. Thank you, Mr. Chairman.

Mr. GILCHREST. Thank you, Mr. Kildee. Mr. Sarris, Congresswoman Woolsey, thank you very much for your testimony and we will do what we can to—I guess you are not going to use that for grazing too many horses or cattle, but maybe you can expand it later on. Thank you for your testimony.

Ms. WOOLSEY. Thank you, Mr. Chairman. Mr. Chairman, when you just said expand it later on, that is exactly why we want that language to stay in the bill for recognizing the sovereignty and what the tribe wants, and that is no gaming, no matter if they expand it or not, and that is important to the community, it is important to me, and it is important to them, and I would hope we could have a markup and keep the language intact as the bill is drafted now.

Mr. GILCHREST. We will work with you, Ms. Woolsey.

Ms. WOOLSEY. Thank you very much.

Mr. GILCHREST. Thank you very much.

Mr. SARRIS. Thank you.

Mr. GILCHREST. Yes, sir.

Our next panel will be the Honorable Kevin Gover, Assistant Secretary, Bureau of Indian Affairs, Washington, DC., Ms. Madonna Archambeau, Chairwoman, Yankton Sioux Tribe, Marty, South Dakota, Mr. Arthur "Butch" Denny, Chairman, Santee Sioux Tribe of Nebraska, Niobrara, Nebraska.

Welcome. Mr. Gover, you have double duty today. You can testify on both bills at this time, sir.

STATEMENT OF THE HONORABLE KEVIN GOVER, ASSISTANT SECRETARY, BUREAU OF INDIAN AFFAIRS, WASHINGTON, DC.; MS. MADONNA ARCHAMBEAU, CHAIRWOMAN, YANKTON SIOUX TRIBE, MARTY, SOUTH DAKOTA; AND MR. ARTHUR "BUTCH" DENNY, CHAIRMAN, SANTEE SIOUX TRIBE OF NEBRASKA, NIOBRARA, NEBRASKA

STATEMENT OF THE HONORABLE KEVIN GOVER

Mr. GOVER. Thank you, Mr. Chairman, and I am under a very severe time constraint at this point. Let me be very brief.

First, on the Santee bill, we have two concerns with the legislation.

First, it is not yet clear to us just how the values for the compensation were established. We certainly support the idea of compensation. We think it is a continuation of the Congress's work over the last few years to compensate all the tribes that were affected by the Missouri Basin projects, and therefore we support the notion of compensation.

No one has yet told us what the basis of these particular amounts is and why it is the United States who ought to provide those particular amounts.

In addition, the bill would further a practice that we have objected to before by establishing a fund that is sort of off budget, and we would still prefer that these compensation acts be put on the budget and be dealt with in a more straightforward way than has been true in the past.

Finally, we strongly recommend a prohibition on per capita payments from these funds. Our experience with per capita in Indian communities, has not been a favorable one. We think that the money is better spent in the hands of the tribal government on community-wide projects as opposed to one-time payments to individual Indians that we have every confidence will have little impact in the community and soon will leave the community.

On the Graton Rancheria restoration, we do support the bill. I want to make that clear. We agree. This tribe was wronged when it was terminated. That wrong needs to be righted.

Our only concern really is with the gaming provision, and it is not that we wish to force gaming onto a community that does not want it, including this tribe. If the tribe chooses not to game, more power to them. We have absolutely no objection. We support their right to make that decision.

Our concern indeed is not even with this particular tribe. If they don't want gaming, that is fine with us. The problem is that what tends to happen in these matters, and frankly this bill is an extension of this phenomenon, is that if we put it in one restoration bill, it will be in every restoration bill, and we think that's wrong.

The tribes that were terminated were grievously wronged by the United States. The terms for readmission to the family of Federally-recognized tribes should not be the waiver of their right to conduct these gaming activities, and we object to that.

I think that there are other ways to accomplish the objective of preventing gaming, with the tribe's consent, on the particular parcel that we are talking about or even in a particular area, without

establishing the precedent that I have every confidence will show up in every restoration bill.

There are a couple dozen California tribes that are in the same boat. Each of them undoubtedly will be coming to the Administration and to the Congress asking for restoration. They should be granted restoration, but as I say, the price of admission should not be to give up so important a right on a blanket basis.

That, Mr. Chairman, summarizes my testimony. We have examined the evidence surrounding the Graton tribe. We are confident that these are the successors to the historical Graton Rancheria, and we very much support their restoration to Federal recognition.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Gover follows:]

STATEMENT OF KEVIN GOVER
ASSISTANT SECRETARY – INDIAN AFFAIRS
BEFORE THE
HOUSE COMMITTEE ON RESOURCES
HEARING ON
H.R. 2671, THE YANKTON SIOUX TRIBE AND SANTEE SIOUX TRIBE OF NEBRASKA DEVELOPMENT TRUST FUND ACT

May 16, 2000

Good morning, Mr. Chairman and Members of the Committee. I am pleased to be here today to present the Administration's views on H.R. 2671. I want to thank Representative Barrett for introducing this important bill that addresses impacts to the Yankton Sioux Tribe and the Santee Sioux Tribe of Nebraska resulting from the Pick-Sloan Missouri River Basin program and in particular the development of the Fort Randall and Gavins Point projects. If enacted, this bill would give the Tribes much deserved benefits to compensate for those impacts. While the Administration supports compensating the Tribes, we are concerned that the compensation figures on a per acre basis are significantly higher than those awarded previously to other Tribes that were compensated for losses resulting from the Pick-Sloan program. We look forward to working with the Committee to discuss these values and the rationale behind the amounts awarded under H.R. 2671.

H.R. 2671 is a continuation of the United States' honorable efforts to correct inequities resulting from a regional Federal project which severely affected Indian tribal homelands along the Missouri River. In the early 1990's the United States forthrightly addressed impacts to the Standing Rock Sioux Tribe and the Three Affiliated Tribes of the Fort Berthold Reservation. In 1996 and 1997, respectively, it addressed the impacts to the Crow Creek Sioux Tribe and the Lower Brule Sioux Tribe. H.R. 2671 addresses and mitigates the impacts of the Missouri River Basin Pick-Sloan Project on the remaining two Tribes.

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

The pre-project tribal economy, however, was based on working the rich wooded bottom lands along the Missouri River. These lands were flooded for the reservoir, and the Tribes have never seen the former economy again. In addition, the importance of cultural treasures lost to inundation is now well-known.

In the 1950's the Yankton Sioux Tribe and its affected tribal members received a total of $227,510 from the government for damages associated with the Fort Randall Project. Of this amount $121,210 was awarded them by the U.S. District Court for direct damages as the result of

condemnation proceedings filed before the federal district court by the Army Corp of Engineers. Congress authorized the appropriation of an additional $106,500 in 1954 to be available for relocating the Yankton Sioux tribal members who resided on tribal and allotted lands. Unfortunately the Yankton Sioux Tribe did not receive any additional funding for a rehabilitation program. This bill proposes to provide them with $34.3 million in additional compensation for the loss value of 2,851.40 acres of land taken for the Fort Randall Dam and Reservoir, and for the use value of 408.40 acres of Indian land on the reservation that the Tribe lost as a result of stream bank erosion that has occurred since 1953.

Information concerning the amount paid to the Santee Sioux condemnation settlement is sketchy because the court docket records are missing from the records of the U.S. District Court in the National Archives. It appears that the tribe may have been paid $52,000 on the basis of the Tribe's 1955 agreement with the Army Corps of Engineers. We do not know when the settlement money may have been distributed to the individual landholders. Like Yankton, the Santee Sioux did not receive any rehabilitation program funds either. This bill proposes to provide them with $8,132,838 million in additional compensation for the loss value of 593.10 acres of land located near the Santee village, and for 414.12 acres on Niobrara Island of the Santee Sioux Tribe Indian Reservation used for the Gavins Point Dam and Reservoir.

The Administration could support H.R. 2671 with amendments. First, the funding mechanisms in section 4(b) for the Yankton Sioux Tribe Development Trust Fund and in section 5(b) for the Santee Sioux Tribe of Nebraska Development Trust Fund would be subject to pay-as-you-go requirements of the Omnibus Budget and Reconciliation Act of 1990, as amended. The Administration is concerned that any amounts required to establish the Funds would need to be offset. As noted in our statement on the Cheyenne River Sioux Tribe Equitable Compensation Act during the 105th Congress, this type of financing mechanism appears to be without cost when in reality it is not free. A more straightforward approach would be to rely on the authorization/discretionary appropriations process to establish the Funds. We are willing to work with the Committee on developing a viable solution.

Second, we recommend that Section 6 be amended to add a subsection (d) which would prohibit per capita payments to tribal members. A similar prohibition was included in the earlier Pick-Sloan project compensation Acts. The suggested amendment is as follows:

> Section 6(d) PROHIBITION ON PER CAPITA PAYMENTS. – No portion of any payment made under this Act may be distributed to any member of the Yankton Sioux Tribe or the Santee Sioux Tribe of Nebraska on a per capita basis.

This concludes my testimony in on H.R. 2671. I will be happy to respond to any questions you may have.

Mr. GILCHREST. Thank you, Mr. Gover. Ms. Archambeau.

STATEMENT OF MS. MADONNA ARCHAMBEAU

Ms. ARCHAMBEAU. Thank you, Mr. Chairman and members of the Committee for this opportunity——

Mr. GILCHREST. I'm sorry, Ms. Archambeau. Just 1 second. Mr. Gover, if you need to leave, we will understand.

Mr. GOVER. I thank you, Mr. Chairman. I really do need to leave. It's a doctor's appointment with my daughter otherwise. I would be happy to stay.

Mr. GILCHREST. Yes, sir. We will make sure that the testimony of Ms. Archambeau gets to you so she may have answered some of your questions.

Mr. GOVER. Thank you.

Mr. GILCHREST. Thank you very much. Ms. Archambeau.

Ms. ARCHAMBEAU.—opportunity to speak on behalf of my tribe.

Mr. Chairman, my name is Madonna Archambeau and I serve as elected Tribal Chairwoman for the Yankton Sioux Tribe. Our land is located in the southeastern corner of South Dakota.

Accompanying me this afternoon is Deborah DuBray, our consultant attorney, who has worked with our tribe on this legislation.

In addition, I have asked Dr. Michael Lawson to accompany me as well. Dr. Lawson is a respected historian who has developed an expertise on the Pick Sloan program and its impact on Indian tribes. Dr. Lawson has done extensive work on the tribe's claim which serves as a basis for H.R. 2671.

They are here to assist me with questions from the Committee.

First, let me express my sincere appreciation for the Committee's consideration of H.R. 2671. We have been working several years now to relieve some of the harm that our tribe has suffered as a result of the construction of the Fort Randall Dam on the Missouri River.

I am honored to be here today to speak in support of this legislation. Now I would like to make a few points regarding H.R. 2671.

The construction of the Fort Randall Dam and Reservoir on the Missouri River destroyed an important part of my tribe's traditional way of life. The Missouri River bottom lands were rich with game and plants and used for traditional foods. We used the plants for ceremonies and medicines, the trees and the bottom lands we used for lumber and fuel.

We lost tribal land when the bottom lands were flooded but much of our traditional way of life was taken from us too.

Our tribe lost acres and acres of rich productive agricultural land. We lost 3,260 in total acres due to the construction of the Fort Randall Dam and Reservoir, and we lost the entire community of White Swan.

It was the practice of the United States to move the Indian communities flooded by the dam construction to higher ground to be re established, but our tribal community of White Swan was not relocated. It was simply destroyed, the families dispersed elsewhere. The community was never replaced. This was and still is a great loss to our people.

My tribe and the Santee tribe did not have the same opportunity to negotiate and obtain settlements by acts of Congress as other

Missouri River tribes did. Our land was taken by condemnation proceedings in District Court. As a result, my tribe and the Santee suffered great inequities in the initial settlements or taken land.

Congress enacted equitable compensation legislation for four other upstream Missouri River tribes whose losses were similar to ours. H.R. 2671 is similar legislation. H.R. 2671 will provide the tribe an annual interest payment from a trust fund established to compensate the tribe for losses and bring some equity to the issue of the Pick Sloan taking.

The income will assist the tribe with its economic development and needs and help strengthen culture and social programs. This is a turn that will help the tribe move forward toward a great self determination in tribal affairs.

I would like to present the Committee, the members, a copy of the letter written by South Dakota Bill Janklow in supporting this legislation. The Governor and the tribe did not always agree on tribal matters but we are in agreement of this bill. Our tribal members support this bill. It will help heal some of the wounds our tribal elders have suffered.

The bill directs our tribal council to develop a plan in the interests of payments to be used. Our tribal plan will include programs and benefit all the tribal members, our elders, and our young.

Mr. Chairman and Committee members, this bill, H.R. 2671, is very important to the future of the Yankton Sioux tribe. For these reasons, I ask the Committee to support us in our efforts to obtain equitable compensation in the past inequities.

In closing, I want to thank Congressman Bill Barrett and his staff for their work in support of our efforts and I thank the members of this Committee and I respectfully ask the members to support our bill and take positive action in recommending its passage to the full House of Representatives. Thank you.

[The prepared statement of Ms. Archambeau follows:]

STATEMENT OF MADONNA ARCHAMBEAU, CHAIRWOMAN OF THE YANKTON SIOUX TRIBE, IN SUPPORT OF H.R. 2671
MAY 16, 2000

Mr. Chairman, my name is Madonna Archambeau, and I serve as the elected tribal Chairwoman of the Yankton Sioux Tribe. Our land is located in southeastern South Dakota.

On behalf of the Yankton Sioux tribal membership, I would like to express my appreciation to you and the committee members for consideration of H.R. 2671, the Yankton Sioux Tribe and Santee Sioux Tribe of Nebraska Development Trust Fund Act. The Yankton tribe, through its representatives, has worked closely with Congressman Bill Barrett's office for several years on this bill. We are grateful for his support and his staff's guidance during this process.

BACKGROUND

Our reservation was established by the Treaty of 1858 which provided our people with 430,405 acres of land along the Missouri River. As time passed our reservation was diminished by the Act of August 15, 1894, which opened up our reservation to non-Indian settlement. By the 1950's, when the Fort Randall dam was constructed, only 44,938 acres of Indian land remained in federal trust status.

In 1944, the United States Congress enacted the Flood Control Act which authorized the construction of five dams along the Missouri River known as the Pick-Sloan Program. The primary purpose of the dams and reservoirs was flood control downstream. Other purposes were navigation, hydropower generation, providing water supplies, and recreation.

The impact of the Pick-Sloan program was devastating to all the Missouri River tribes including the Yankton Sioux Tribe. The Fort Randall dam and reservoir inundated a large portion of the Yankton Sioux reservations bottom lands and rich productive agricultural lands. The Fort Randall project flooded 2,851 acres of Indian trust land within the Yankton Sioux reservation and required the relocation and resettlement of at least 20 families which was approximately 8 percent of the resident tribal population.

The Missouri River bottom lands provided a traditional way of life for the Yankton Sioux that is now virtually lost. The bottom lands provided an abundance of game and plants for traditional food, plants for ceremonial and medicinal purposes, and plenty of trees for lumber and fuel. In addition to the loss of the bottom lands, the tribe lost acres and acres of productive agricultural land.

INUNDATION OF THE COMMUNITY OF WHITE SWAN

The waters of the Missouri River completely inundated the traditional and self-sustaining community of White Swan, one of the tribe's major settlement areas. The White Swan families raised various livestock which took shelter in the timbered bottom lands or out buildings. The

White Swan families sold surplus milk and eggs in the towns of Lake Andes or Wagner. The money received was generally used to purchase needed staples that were not cultivated from the rich soil in and around the community of White Swan. The community was very close knit and the families helped each other in many ways.

While it was the practice of the United States to relocate flooded Indian communities flooded by the Pick-Sloan program to higher ground, the community of White Swan was not relocated or reestablished elsewhere. The White Swan families were simply dispersed elsewhere and the community was never replaced.

CONDEMNATION PROCEEDINGS

Neither the Flood Control Act of 1944 nor any subsequent acts of congress specifically authorized the U. S. Army Corps of Engineers or the Bureau of Reclamation to condemn Sioux tribal land for Pick-Sloan projects. Unfortunately, the condemnation of Yankton Sioux tribal land was not challenged for a host of reasons. The condemnation proceedings in U.S. District Court resulted in settlements that did not provide adequate compensation to the Yankton Sioux Tribe. The tribe did not receive compensation for direct damages but rather a compensation for the appraised value of their property. The condemnation proceedings did not take into account the large proportion of productive agricultural land. Further, the settlement did not account for the inflation of property values between the time of taking and the time of settlement which was several years later. The average settlement payment per family on other Indian reservations whose land was taken by acts of congress was $16,680 while the Yankton Sioux Tribe received $5,605 per family.

THE IMPORTANCE OF H.R. 2671 TO THE YANKTON SIOUX TRIBE

H.R. 2671 provides that the Yankton Sioux Tribe, as compensation for past inequities, will receive annual interest payments from a $34.3 million trust fund account in the U.S. Treasury. These funds will be used by the tribe for programs outlined in a tribal plan that will be developed by the tribal council with approval from the tribal membership. The funds will be used to promote greatly needed economic development on our Indian lands. The funds will be utilized to build and improve our infrastructure. And the funds will be used to further education, health, recreation and the social welfare needs of our people.

The precedent is well established. Congress enacted equitable compensation settlement acts for the Standing Rock Sioux Tribe, Three Affiliated Tribes, Crow Creek Sioux Tribe and the Lower Brule Sioux Tribe. The Senate of the 106th Congress passed legislation to equitably compensate the Cheyenne River Sioux Tribe for its taken land. The funding amount for the individual tribes vary due to the unique losses of each tribe. However, the funding mechanism is the same in all act and bills. Each act and bill provides a trust fund with the interest paid to the tribe to be used for economic development, education, culture and social programs.

CONCLUSION

The Yankton Sioux Tribe, through its Business and Claims Committee, has worked on this legislation for several years. H.R. 2671 has been developed to provide equitable compensation for the taking of land and as an equitable settlement for the tribe's losses. H.R. 2671 is based on recent congressional precedent to provide compensation to Missouri River tribes impacted by Pick Sloan.

Many of our tribal elders who experienced first hand the taking of tribal land and the removal are now in the spirit world. It has been long enough for a just and equitable resolution to the devastating impacts of the Pick-Sloan program on our tribe.

I respectfully urge the members of the House Resource Committee to report H.R. 2671 out of the committee with a recommendation that it pass the full House.

Mr. GILCHREST. Thank you, Ms. Archambeau.

We do have a vote on, but we have time to hear Mr. Denny's testimony. You may begin, sir.

STATEMENT OF MR. ARTHUR "BUTCH" DENNY

Mr. DENNY. OK, thank you. Mr. Chairman, I am Chairman Butch Denny of the Santee Sioux Tribe in Nebraska. I am pleased to appear before the Committee today to provide some views from the perspective of the Santee Sioux tribe in support of H.R. 2671.

I will summarize my remarks from my written statement.

The Santee Sioux reservation is located in northeast Nebraska. The Missouri River borders our reservation's northern boundary. I have attached a map to my written statement for reference to the areas we are talking about. I need not repeat the testimony of Chairwoman Archambeau but to say that the Santee tribe suffered similar losses as a result of construction of the Gavins Point Dam.

Our tribal land was taken in a similar and swift manner through condemnation proceedings in District Court, resulting in the same inequities to the Santee as was experienced by the Yankton Sioux tribe. In 1952, almost 3 months before the Fort Randall Dam was completed, the Army Corps of Engineers began the construction of the Gavins Point Dam, whose water flooded part of our reservation. The Santee, as other Missouri River tribes, lost a way of life that centered on the river bottom lands.

Our bottom land environment was similar in many ways to the other community of White Swan that once existed on the Yankton Sioux reservation. This is why we have joined the Yankton Sioux tribe in seeking an equitable remedy for past unfairness in the initial taking of our tribal lands.

We base the justification of our claim on the same history and treatment by the United States. The Santee tribal land base is small, our tribal membership is small, and our claim is small, but our tribal loss due to the construction of the Gavins Point Dam is great. The dams and reservoirs have provided many benefits to the non-Indian people in surrounding communities in the Missouri River Basin through flood control, irrigation, hydroelectric power, and recreation. It is the Indian tribes who paid most for these benefits with their lands, and the Indian tribes who have yet to reap the benefits of the dam projects.

There are minimal jobs on our reservation. This bill will aid us in developing economic opportunities for our members. This bill will aid us in addressing our housing, education, culture and social welfare needs. Many of our tribal elders are passing on. Soon there will be no elders to remember the traditional life along the rivers long ago. Our tribal elders believe that a just and equitable settlement is possible. The Santee tribal members unanimously support this bill.

One cannot measure the cost of the loss of tradition, the loss of a way of life along a free flowing river, so we must look at the cost of measurable things, the acres of land flooded, the cost of relocation and the like. The Santee lost a total of 1,007 acres to the Gavins Point Project. The Santee settlement claim is minimal in comparison to others that have been enacted before us. The Santee Trust Fund will be capitalized with $8 million and only the interest

of the Trust Fund that would be paid to the Santee. The annual interest payments will greatly assist our tribe to develop programs through a plan developed by the tribal council.

As Chairwoman Archambeau stated, we have been working several years on this bill. With the Committee's support, it is the hope of the Santee Sioux tribe that H.R. 2671 will be enacted this year.

At this time Chairwoman Archambeau and I would like to offer an amendment that will clear up a few inaccuracies in the funding of the bill. I would like to conclude by saying that we are grateful to Congressman Barrett for his support and for his staff, who have worked tirelessly with our tribes on this and other matters.

Thank you.

[The prepared statement of Mr. Arthur "Butch" Denny follows:]

Statement of Arthur "Butch" Denny, Chairman of the Santee Sioux Tribe of Nebraska
in support of
H. R. 2671, Yankton Sioux Tribe and Santee Sioux Tribe of Nebraska
Development Trust Fund Act.

May 16, 2000

Mr. Chairman and members of the Resource Committee, I am Chairman Butch Denny of the Santee Sioux Tribe of Nebraska. The Santee Indian Reservation is located in north east Nebraska. The Missouri River borders our reservation's northern boundary. I have attached a map to this statement so you will have a physical picture of the places we are discussing here today.

On behalf of the Santee tribal membership, I am pleased to appear before this committee to provide some views from the perspective of the Santee Sioux tribe in support of H.R. 2671. We appreciated the committee's consideration of this bill.

Our tribe, along with the Yankton Sioux tribe, through our representatives have worked closely with Congressman Bill Barrett. We are grateful for his support and the assistance of his staff for their guidance in this legislative process.

The Santee Sioux Reservation was established as a permanent home for remnants of six Santee Sioux bands driven out of Minnesota following what is known as the "Sioux Uprising of 1862." Our reservation was established by Executive Order signed by President Andrew Johnson on February 27, 1866.

In 1944, the Congress enacted the Flood Control Act (58 Stat. 887), which authorized implementation of the Pick-Sloan Plan for water development in the Missouri River Basin. This plan included the construction of five main-stem dams along the Missouri River. Project purposes included flood control downstream, navigation, irrigation, the generation of hydropower, the provision of improved water supplies, and enhanced recreation. The U.S. Army Corps of Engineers, which constructed and operate the dams, estimates the projects' overall contribution to the national economy averages approximately $1.3 billion.

The Gavins Point dam, which is the subject of my testimony, is erected between Yankton County, South Dakota and Knox County, Nebraska. Gavins Point dam is the farthest downstream and the smallest of the six Missouri River dams.

The Gavins Point project inundated 593 acres of land with the Santee Sioux Indian Reservation. This represents approximately 8.5 percent of the reservations total land base. Of the 593 acres, 201 acres was valuable crop land.

The Santee Sioux lands taken for the Gavins Point project were located just below the main settlement area of the Indian village of Santee. The bottom lands were used by our tribal members for hunting, shelter for livestock, and the trees for lumber and fuel. The bottom lands provided a variety of plants used for ceremonial and medicinal purposes. The land taken also included productive agriculture land and pasture land. The Gavins Point project flooded a tribal farm which included a cattle and hog barn, grazing land, and fields that were used for growing hay, oats and corn.

That of course is now history; the tribal land taken is now underwater and that way of life is now past. Our tribe is small and our land base is small, but what was taken was great and how it was taken was unjust.

The Flood Control Act of 1944, nor any subsequent acts of congress specifically authorized the U.S. Army Corps of Engineers or the Bureau of Reclamation to condemn Sioux tribal land for the Pick-Sloan dam projects. But our land was condemned and taken in U.S. District Court nevertheless.

The condemnation proceedings resulted in compensation for taken land that was far less in value than that of other Missouri River tribes whose lands were taken by acts of congress. The Court did not compensate the tribe for its direct damages and provided payment for the appraised value of the land. Also, it was several years between the time the tribe received any payment and the time the land was appraised. The initial settlement did not take into account the inflation of property values between that period.

The lands affected by the Pick-Sloan program were, by and large, Indian lands. The damage to each reservation was unique, depending on the acreage lost, the number of tribal members living in the taking area, and the value of the resources located in the taking area. However, the result was the same at each reservation. Tribal communities and economies were damaged or completely destroyed by the dam projects.

In May of 1985, the Secretary of the Interior established the Joint Tribal Advisory Committee (JTAC) to assess the impacts of the Garrison and Oahe Dams on the Three Affiliated Tribes and the Standing Rock Sioux Tribe. Based on the findings and recommendations of JTAC, Congress enacted legislation to equitably compensate those tribes for their losses from Pick-Sloan.

In 1992, the Congress enacted legislation acknowledging that the U.S. government did not justly compensate the tribes at Fort Berthold and Standing Rock when it acquired their lands and that the tribes were entitled to additional

compensation. PL 102-575, title XXXV, the *Three Affiliated Sioux Tribes and Standing Rock Sioux Tribes Equitable Compensation Act* provided development trust funds for these two reservations.

Congress again acknowledged that the Indian tribes were not adequately compensated for their losses under the Pick-Sloan Plan. In 1996, the Congress enacted PL 104-223, the *Crow Creek Sioux Tribe Infrastructure Development Trust Fund Act* which provides for a development trust fund for the Crow Creek tribe for losses due to the construction of the Ft. Randall and Big Bend dams. In 1997, the Congress enacted PL 105-132, the *Lower Brule Sioux Tribe Infrastructure Development Trust Fund Act*, which provides a development trust fund for the Lower Brule Sioux Tribe for similar losses.

By the enactment of these development trust fund acts, the Congress has indicated its willingness to settle the tribal claims by providing additional and equitable compensation in the form of development trust funds.

One cannot measure in cost the loss of tribal tradition or the loss of tribal life along a free flowing river, so we must look to the cost of what can be measured. The tribe lost a total of 1,007 acres to the Gavins Point dam and reservoir.

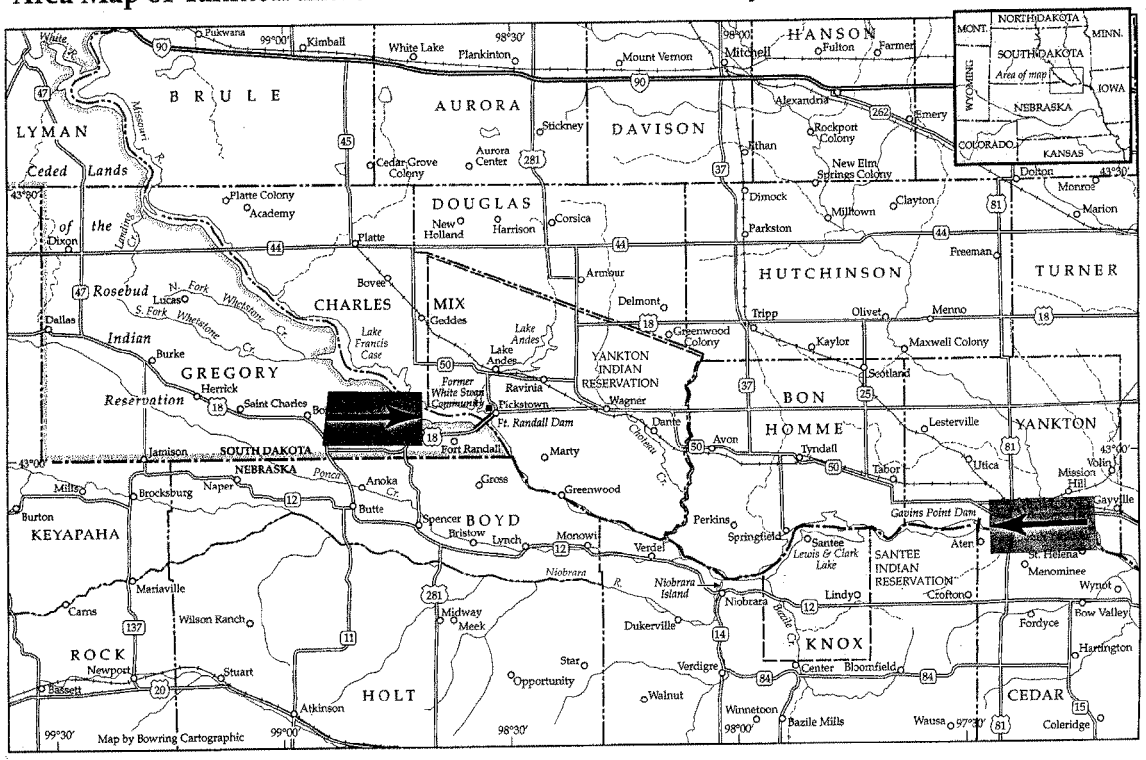
H.R. 2671 provides that the Santee Sioux Tribe will receive annual interest payment from an $8.1 trust fund established in the U.S. Treasury. The annual interest payments are to be used by the tribe according to a tribal spending plan developed by the tribal council with approval from tribal members.

The Santee settlement claim is minimal in comparison to the others settlements enacted before us. However, the annual interest payment will greatly assist our tribe with programs addressing the needs of economic development and social programs.

The Santee Sioux Tribe has worked several years on the development of this legislation. With the sponsorship of Congressman Bill Barrett in the House and Senator Tom Daschle in the Senate, we are hopeful that this legislation will be enacted this year.

I want to again thank the committee for considering this bill. H.R. 2671 is very important to the Santee Sioux Tribe.

Area Map of Yankton and Santee Sioux Lands Affected by Pick-Sloan Dams



Mr. GILCHREST. Mr. Denny, I apologize for the time constraints. We will—we will probably be gone for quite some time on this vote and I didn't want to keep people waiting here.

Your testimony is highly regarded. Our goal here is to ensure justice. If there was any way for us to create a time machine and go back to 1944, the dam would not have been created. You would have kept your land, so it is just and right for you to be compensated.

Mr. Kildee.

Mr. KILDEE. Well, I basically concur in your statements too. I think we should remedy past injustices, and we are probably going over for several votes right now. we may have some questions in writing for our own background here, but I do very much appreciate your seeking justice.

If we are going to be seekers after justice, we have to pursue our own justice.

Mr. DENNY. OK. One thing I would like to add is that we at no time ever felt is that we should give this money out as a per capita payment. It would be used for infrastructure.

Mr. GILCHREST. Thank you, Mr. Kildee.

Ms. Archambeau and Mr. Denny, thank you very much for your testimony and everybody else that accompanied you here today. We will work with you on this issue.

Mr. DENNY. Thank you.

Mr. GILCHREST. Yes, sir. Thank you very much.

I ask unanimous consent that the statement by Mr. Miller be submitted into the record.

[The prepared statement of the Honorable George Miller, a Representative in Congress from the State of California follows:]

STATEMENT OF GEORGE MILLER
HEARING ON HR 946 "GRATON RANCHERIA RESTORATION ACT"
HR 2671 "YANKTON SIOUX & SANTEE SIOUX TRIBES DEVELOPMENT TRUST FUND
HR 4148 "TRIBAL CONTRACT SUPPORT COST TECHNICAL AMENDMENTS OF 2000"
May 16, 2000

Mr. Chairman:

Today we will receive testimony on HR 946, the "Graton Rancheria Restoration Act" introduced by my good friend and colleague, Lynn Woolsey. This legislation would rightfully restore Federal recognition to the Federated Indians of Graton Rancheria who are primarily comprised of the California Coast Miwok and Southern Pomo tribes and live in and around Santa Rosa, California. This Indian tribe was wrongly terminated in 1958 and have suffered because of it.

This bill would return the rights taken from the tribe through the California Rancheria Act of 1958 but does not add or delete any hunting, fishing, gathering, or water rights held by the tribe. The current tribe which numbers about 370 individuals would reestablish access to needed education and health care programs made available only to federally recognized Indian tribes.

I want to commend Congresswoman Woolsey for all her hard work to bring this bill before us today. She has been especially tenacious in pushing for this injustice to be rectified. Her bill has broad support within her district and throughout the state of California. This tribe meets all the Federal criteria for tribal restoration, and has a true champion in Ms. Woolsey. I'm hopeful the Administration will testify in support of the bill and we will be able to move it quickly to consideration by the full House.

We will also be hearing testimony on the Chairman's bill, HR 4148, which addresses the very serious problem of underfunding of contract support to Indian tribes and tribal organizations which contract to administer programs previously run by the Federal government. Contract support costs are

provided in addition to the tribal share for program assumptions under Self Governance funding compacts and "638" contracts to cover the expenses of operation that are not directly attributable to a single program. These costs include support personnel, legal and accounting, insurance, utilities and so on.

The current situation where many tribes are only partially funded or not funded at all for these costs is intolerable. The costs do not disappear if funding is not provided but instead tribes are forced to take funds directly from programs and services to their members. The simplest solution is to have Congress appropriate sufficient funding each year to cover all contract support costs related to tribal management of services. Both the House and Senate Appropriations committees, however, have made it clear that they will not appropriate full funding and have added legislative language to their funding bills placing moratoriums against new contracts.

I thank you, Mr. Chairman for your efforts to bring a solution to this problem and look forward to hearing the testimony on your bill. I know you worked with many in Indian country to develop your bill and incorporated some of the good work done on this issue by the National Congress of American Indians. I hope we all come to agreement on how to deal with this problem so we can move on with the important process of Indian self governance.

Mr. GILCHREST. I wish you all safe travel. The hearing is adjourned.

[Whereupon, at 2:08 p.m., the hearing was adjourned.]

[Additional material submitted for the record follows.]

BRIEFING PAPER - H.R. 946

"Graton Rancheria Restoration Act"

BACKGROUND

HR 946, the proposed "Graton Rancheria Restoration Act", would restore Federal recognition to the Indians of the Graton Rancheria of California which was terminated in 1958 by Public Law 85-671. Today there are approximately 355 members of the Federated Indians of Graton Rancheria living in the general vicinity of Santa Rosa, California.

HR 946 provides that the service area for the tribe shall be Marin and Sonoma counties, that nothing in the legislation shall expand, reduce, or affect any hunting, fishing, trapping, gathering, or water rights of the Tribe, that real property eligible for trust status shall include certain Indian-owned land, and that the Secretary of the Interior shall compile a membership roll of the Tribe. The bill also provides for an Interim Tribal Council, the election of tribal officials, and the ratification of a constitution for the Tribe.

Section 5 (d) of HR 946 provides that real property taken into trust for the benefit of the Tribe pursuant to the bill shall not have been taken into trust for gaming purposes pursuant to section 20(b) of the Indian Gaming Regulatory Act.

Staff Contact: Tim Glidden, x56869

BRIEFING PAPER - H.R. 2671

"Yankton Sioux Tribe and Santee Sioux Tribe of Nebraska Development Trust Fund Act."

BACKGROUND

HR 2761, the proposed "Yankton Sioux Tribe and Santee Sioux Tribe of Nebraska Development Trust Fund Act", would establish a development trust fund in the Treasury of the United States for each of the tribes as compensation for the taking, by condemnation proceedings by the United States, of tribal lands.

The taking of tribal lands began in 1944 with the enactment of the Pick-Sloan Missouri River Basin program which included the Fort Randall and Gavins Point projects. 2,851.4 acres of Yankton Sioux tribal lands were taken for the Fort Randall Dam and Reservoir and 1,007.22 acres of Santee Sioux lands were taken for the Gavins Point Dam and Reservoir.

Pursuant to HR 2761, annual payments to each tribe out of each development trust fund created shall consist of the income generated through the investment of funds by the Secretary of the Treasury in interest-bearing obligations of the United States or in obligations guaranteed by the United States. Payments will be made to each tribe by the Secretary of the Interior as payments are requested by the tribe pursuant to tribal resolution for the carrying out of projects and programs under a tribal plan. Each tribal plan shall promote economic development, infrastructure development and educational, health, recreational, and social welfare objectives.

Similar recovery funds have been created by Congress for four other Missouri River tribes which were impacted by the Pick-Sloan Missouri River Basin program. Those tribes are the Three Affiliated Tribes of the Fort Berthold Reservation, the Standing Rock Sioux Tribe, the Crow Creek Sioux Tribe, and the Lower Brule Sioux Tribe.

S. 964, passed by the Senate in 1999 and now pending before the Committee on Resources, would create a similar tribal recovery trust fund for the Cheyenne River Sioux Tribe which is comprised of the Itazipco, Siha Sapa, Minniconjou, and Oohenumpa bands of the Great Sioux Nation.

Staff Contact: Tim Glidden, x56869

BRIEFING PAPER - H.R. 4148

To make technical amendments to the provisions of the Indian Self-Determination and Education Assistance Act relating to contract support costs, and for other purposes."

Under Section 106(a)(2) of Public Law 93-638, the Indian Self Determination Act, American Indian and Alaska Native tribes are authorized to enter into contracts or compacts with the Indian Health Service (IHS) and the Bureau of Indian Affairs (BIA) to directly administer health care and Bureau of Indian Affairs programs previously administered by the two agencies. Congress strongly advocated this change to allow tribes to provide direct and improved services to their members. Contract support costs is directly associated with administering of these programs and is based on three cost categories: start up costs, indirect costs and direct costs.

Start up costs: One-time costs incurred in planning and assuming management of the programs. Examples include buying computers and training staff.

Indirect costs: On going overhead expenses, which are often divided into three groups-management and administration, facilities and equipment, and general services and expenses. Management and administration includes financial and personnel management, procurement, property and records management, data processing, and office services. Facility and equipment includes buildings, utilities, housekeeping, repair and maintenance, and equipment. General services include insurance and legal services, audit, general expenses, interest and depreciation.

Direct costs: This category covers such costs as unemployment taxes and workers compensation insurance for direct program salaries.

However, the consistent failure of the federal agencies (IHS and BIA) to fully fund contract support costs has resulted in financial management problems for tribes as they struggle to pay for federally mandated annual single-agency audits, liability insurance, financial management systems, personnel salaries, property management and other administrative costs. Congress must remember that tribes are operating federal programs and are carrying out federal responsibilities when they operate self-determination contracts. Tribes, in some instances, have had to resort to using their own financial resources to subsidize contract support costs. It is the Committees' belief, and the House and Senate Interior Appropriations Committees' belief that tribes should not be forced to use their own financial resources to subsidize federal contract support costs.

At the request of the House and Senate Interior Appropriations Committees' and the Committee on Resources, the Indian Health Service increased their contract support costs for FY 2000 by $35 million. This brought the funding level of all tribes to 70% of negotiated contract support costs. The Congress must remember that in the FY 1999 Interior Appropriations bill, Congress directed the IHS and BIA to put a one year moratorium on new contracts or compacts. This increase of $35 million reflects the existing compacts/contracts plus $15 million for new and expanded contract support costs projected for FY 2000 at a 70% level.

The Bureau of Indian Affairs pro-rates their indirect costs, however, the funding for contract support costs does not include direct costs to tribes. For instance, in FY 1999, the BIA plans to continue not paying any direct contract support costs associated with programs transferred to tribal operations. These direct costs are primarily composed of personnel associated costs including retirement, ESC and Workman's Compensation etc. Tribes believe that the direct costs paid by the IHS were in fact legitimate and should also be paid by the BIA as well. It is also the belief of the appropriations committees that the BIA and IHS should remain consistent and utilize similar, if not, identical systems to pay contract support costs.

Secondly, the progress toward Congressional intent has not been met by the Administration. More than twenty years ago when Congress enacted the Indian Self-Determination Act the express intent was that as tribes and tribal groups contracted for Indian Health Service and Bureau of Indian Affairs programs, there would be parallel reduction in the federal bureaucracy and more tribal determination of services options based on local needs and priorities. Tribal administration of these programs has often resulted in substantial additions to available health care services and for more efficient operation of programs. But the parallel reduction in federal bureaucracy does not appear to have been achieved.

The Committee on Resources held two hearings in 1999, February 24, 1999 and August 3, 1999 to accept testimony from the Administration and tribes to provide a proposed resolution to the problems associated with contract support costs to the House and Senate Interior Appropriations committees.

The General Accounting Office (GAO) was asked to submit a report to Congress on the shortfalls of Contract Support Costs needs to be addressed. The GAO submitted its report and made the following recommendations (1) The Secretaries of the Interior and Health and Human Services should work together to a) develop a standard policy on funding contract support costs; and b) ensure that the BIA and IHS correctly adjust funding when tribes use provisional-final rates.

Additionally, the GAO provided four alternatives for Congress to consider (1) Fully fund contract support costs each year; (2) Amend the Act to eliminate the provision requiring that contract support costs be fully funded at 100 percent of the allowable costs identified by BIA and IHS; (3) Amend the Act to limit indirect costs by imposing either a flat rate or capped rate; and (4) Amend the Act to eliminate the provision for funding contract support costs over and above the program base and provide a consolidated contract amount.

Additionally, the National Congress of American Indians National Policy Work Group on Contract Support Costs provided its report and recommendations to Congress. The Committee directed the tribal leadership to work with the Administration to submit recommendations to resolve the shortfalls in contract support costs.

H.R. 4148 is the result of the National Congress of American Indians National Policy Work Group and the Administration's efforts to resolve contract support costs problems. H.R. 4148 also incorporated the GAO recommendations in the bill.

Administration Position

Neither the IHS or BIA have provided their administrative views on this legislation, however, they are expected to provide them at the hearing.

Staff contact: Cynthia A. Ahwinona, x60382

TESTIMONY OF KEVIN GOVER
ASSISTANT SECRETARY FOR INDIAN AFFAIRS
DEPARTMENT OF THE INTERIOR
AT THE HEARING BEFORE THE
HOUSE RESOURCES COMMITTEE
ON
H.R. 946, THE GRATON RANCHERIA RESTORATION ACT

May 16, 2000

Mr. Chairman and Members of the Committee, it's a pleasure to be here today to provide the Administration's support for H.R. 946, a bill "to restore Federal recognition to the Indians of the Graton Rancheria of California" with amendments that I am including as part of my statement.

BACKGROUND

The Graton Rancheria is one of several tribes to be terminated by Congress under the Act of August 18, 1958 (Public Law 85-671, as amended; 72 Stat. 619). This Act, alone, ended the United States' trust responsibility with the Graton Rancheria and over 40 other tribes in California. The Act dissolved the government-to-government relationship between these Federally recognized tribes and the United States.

The Act was the result of the official federal policy on Indian Affairs from the late 1940s to the early 1960s, commonly referred to as the "Termination Era." In 1949, the Hoover Commission recommended the "complete integration" of Indians by assimilating them "into the mass of the population as full, tax-paying citizens." Essentially, termination changed land ownership, ended the special federal-tribal relationship, transferred almost all responsibility for Indians to the States, imposed State legislative jurisdiction and judicial authority, ended all exemptions from State taxing authority, and discontinued all special federal programs to Indian tribes and Indian individuals; in effect, it ended these Tribes' sovereignty.

In the late 1960's and early 1970's, President Nixon and his administration established a new national policy of "Self-determination," which continues to this day. In 1975, Congress established the American Indian Policy Review Commission. In its Final Report, the Commission declared that terminated tribes should be eligible for federal recognition and federal services. In the 1980's, some tribes took their cases to Court. Some tribes obtained restoration through United States Court decisions; others were restored through Congressional action. Yet, the effects of termination still linger. Not all terminated tribes have been restored in California, including the Graton Rancheria or its successor.

In 1992, Congress created the Advisory Council for California Indian Policy (ACCIP) to conduct a comprehensive review and analysis of many problems facing California Indians, including terminated tribes seeking restoration. In its September 1997 report to Congress, the ACCIP

recommended that:

> The Wilton Miwok Indian Community, the Federated Indians of the Graton Rancheria, and the Mishewal Wappo Tribe of Alexander Valley should be immediately restored by Congress. In addition, the other six tribes that remain terminated should receive special consideration . . .when they are ready to seek restoration.

Prior to the report, Congress stated in its findings of the "Federally Recognized Indian Tribe List Act of 1994" that "Congress has expressly repudiated the policy of terminating recognized Indian tribes, and has actively sought to restore recognition to tribes that previously have been terminated." We believe that H.R. 946 demonstrates your commitment to moving us toward that end.

In our review of ACCIP's recommendations, we reviewed the records of the terminated tribes within California, met with their representatives, and compiled documentation on each of the terminated tribes. The Federated Indians of the Graton Rancheria were one of the cases reviewed.

THE PROCESS FOR RESTORING TRIBAL RECOGNITION

In order for us to consider the Graton Rancheria ready for restoration, we requested current certification of documentation from the respective governing body to have available when legislation was introduced. We specifically requested and received the following information:

1) A copy of their present governing document, including membership criteria, separately certified by the Graton Rancheria's governing body; a copy of each available former governing document, as well as a statement describing the circumstances surrounding the preparation of the governing document(s), and, so far as possible, the circumstances surrounding the preparation of former governing documents. These copies were separately certified by the group's governing body.

2) A copy of the official membership list of all known current members of the group, separately certified by the group's governing body. The list includes: (a) member's full name (including maiden name), (b) date of birth, and (c) current residential address.

3) A copy of each available former list of members based on the group's (Graton Rancheria) own defined criteria, as well as a statement describing the circumstances surrounding the preparation of the current list, and so far as possible, the circumstances surrounding the preparation of any former lists. These copies were separately certified by the Graton Rancheria's governing body.

GAMING

I would also like to point out that we are concerned with the language within Section 5 (d). Gaming

is regulated under the Indian Gaming Regulatory Act (IGRA). Section 5 (d) states that real property taken into trust shall not be exempt under Section 20 (b) of IGRA. We oppose this specific prohibition because it essentially provides that gaming cannot occur on restored land for this Rancheria unless the Tribe goes through the two-part Secretarial determination and Governor's concurrence under Section 20 (b)(1)(A) of IGRA. We see no reason to single this Tribe out for gaming restrictions. For this reason, the Administration's proposed amendments would delete section 5 (d).

CONCLUSION

I am pleased to report that after careful review of the information submitted by the Federated Indians of the Graton Rancheria (the successor name), the documentation shows that the group is significantly tied with the terminated tribe known as the Graton Rancheria. Therefore, we support their restoration of tribal status. I would like to thank the Committee for holding this hearing and repeat the Administration's support of H.R. 946 with certain amendments that are provided as a part of my statement.

This concludes my prepared statement. I will be happy to answer any questions you may have.

PROPOSED AMENDMENTS TO H.R. 946

Section 2. FINDINGS. Should appear after the section for definitions. Certain terms in the FINDINGS and subsequent sections should be defined before the terms are used in other sections. Therefore, we suggest that these sections should be reversed and renumbered.

Section 2 (2) should be deleted. See Section 5 (d).

Under FINDINGS, we suggest that this section be consistent with previous restoration legislation.

SEC. 3. FINDINGS.

The Congress finds the following:

(1) the Constitution as interpreted by Federal case law, invests Congress with plenary authority over Indian Affairs.

(2) ancillary to that authority, the United States: has a trust responsibility to recognized Indian tribes, maintains a government-to-government relationship with those tribes, and recognizes the sovereignty of those tribes.

(3) Indian tribes presently may be recognized by Act of Congress; by the administrative procedures set forth in part 83 of the Code of Federal Regulations denominated "Procedures for Establishing that an American Indian Group Exists as an Indian Tribe;" or by a decision of a United States court.

(4) a tribe which has been recognized in one of these manners may not be terminated except by an Act of Congress.

(5) Congress has expressly repudiated the policy of terminating recognized Indian tribes, and has actively sought to restore recognition to tribes that previously have been terminated.

(6) In its 1997 Report to Congress, the Advisory Council on California Indian Policy specifically recommended legislative restoration of Indian Rancherias which were terminated within the State of California.

Section 3 is reversed with Section 2, see above.

Under DEFINITIONS, the term "Tribe" should be referenced to the specific name of the Graton Rancheria that was terminated under the Act of August 18, 1958 (72 Stat. 619), and include the phrase, "or its successor". The term "Tribe" as used in this instance does not identify a specific tribe. This definition should either include those individuals who reside on the Rancheria, individuals who live in the general vicinity, or individuals who have ties to the Rancheria as it existed before termination.

Section 3 (3) defines an "Interim Tribal Council" and describes an Interim Government in Section 7. We submit that there is no need for this definition or provision, since the terminated tribe already maintains a governing document and structure of government. We suggest deleting this definition and Section 7.

Section 3 (4) defines the term "member" as an individual who meets the membership criteria under section 6(b). Comments regarding the membership criteria are found under Section 6.

Section 3(6) refers to the term "reservation" and should be eliminated and replaced by "Rancheria". See above. Putting land into trust should not be addressed in this bill. Land acquired by an Indian tribe and put into trust is regulated under 25 CFR Part 151.

The designation of "service area" for programs is usually accomplished administratively, with an appropriate analysis of needs, funding, and staffing. Therefore, we recommend that the bill not designate a service area.

Section 4 (a) should include "rancheria", in place of reservation.

Section 4 (c)(1) has the sentence, "For the purposes of Federal Services and benefits available to members of Federally recognized Indian tribes residing on a reservation, members of the Tribe residing in the Tribe's service area shall be deemed to be residing on a reservation." This sentence should be deleted.

Section 4 (c)(2) needs clarification. We are unsure of the intent of this provision. Each Federal program has its own eligibility requirements, which may limit the services received from another program.

Section 5(d) should be deleted. Gaming is regulated under the Indian Gaming Regulatory Act (IGRA). We oppose this specific prohibition because it essentially provides that gaming cannot occur on restored land for this Rancheria unless the Tribe goes through the two-part Secretarial determination process in Section 20(b)(1)(A) of IGRA, and obtains the Governor's concurrence. We see no reason to single this Tribe out for gaming restrictions.

Section 6 requires the Secretary to compile a roll for the Tribe. Section 6 (b) lists the criteria for membership in the Rancheria. This section is inconsistent with the governing document of the Constitution of the Federated Indians of Graton Rancheria. The membership provision of the Constitution of the Federated Indians of Graton Rancheria ties to the terminated Graton Rancheria.

In keeping with the doctrine of self-determination, determining membership is a responsibility of the Tribe. We, therefore, recommend that Section 6 be struck and replaced with the following:

SEC. 6. MEMBERSHIP ROLL.

In keeping with the doctrine of self-determination, determining membership is a responsibility of the tribe. [In past recognition bills, tribes were required to submit a membership roll consisting of all individuals currently enrolled in the tribe in accordance with their governing document. The Secretary reviewed the roll and made corrections in consultation with the tribes, if necessary. The roll was then approved by the Tribe's governing body. The Secretary then published notice that the roll had been received and approved]

The membership of the Tribe shall be:

a) Those persons of California Indian descent whose names are listed on the last roll of tribal members approved by the tribe's governing body prior to the enactment of this act, and

b) The lineal descendants of those persons on the roll identified under subsection (a) who meet the requirements for future membership in the tribe's governing document.

Membership rolls are somewhat unique in that there may be substantial personal information. This information may be withheld properly from any requestor under the Freedom of Information Act (FOIA); moreover, its release could violate the rights of individuals protected under the Privacy Act.

Throughout the Act, there has been no mention of a specific tribal affiliation. John J. Terrell was a Special Indian Agent(sometimes titled as Inspector) assigned to locate lands for home sites for landless bands of California Indians under a series of Acts and arranged for the purchase of these lands. The first appropriation for landless California Indians was in 1906 (33 Stat. 333), with subsequent ones in 1908, 1914, 1915, yearly between 1916 and 1929, and in 1937 (House of Representatives 1953, 42).

Typically, he produced a report and a list of members of the band. Presumably this is what H.R. 946 refers to. There may be more than one census made of the group at about this time. Terrell began service in 1915, but was preceded by two other agents who may have also produced records concerning the Graton Rancheria.

Records in the possession of the directorate have identified the Graton Rancheria as a band of Pomo Indians, a general classification equivalent to Sioux in breadth. Sebastopol is an alternative name for the band and the Rancheria. The Rancheria was established in 1917.

There appears to have been two other bands in the immediate vicinity of Sebastopol, besides the Graton group that were being considered by the Special Agents (they considered more groups than eventually got land). It is not entirely clear who is being referred to in the reports. Terrell's correspondence refers to Indians at or near Marshall and Tomales Point, distinguishing them from the Indians at Bodega Bay. A 1927 report gives the population at Sebastopol (meaning the Rancheria) as 76, and distinguishes that group from those at Bodega Bay. A 1914 report identified 46 Indians at Sebastopol, and 34 at Bodega. As far as we can tell, a proposed rancheria purchase for Bodega was not completed.

Section 7 references the "Interim Government." It should only reference the following:

SEC. 7. GOVERNING BODY.

The governing body of the Graton Rancheria or its successor shall consist of those individuals in office under the terms of the tribe's governing document at the time

of enactment of this Act. The authority and term of office of each member of the governing body shall be as provided in the governing document.

Section 8 (a) references the "Tribal Constitution" and the "Election/Time, Procedure." The Secretary is required to call and conduct an election in accordance with the Indian Reorganization Act (IRA) to ratify the Rancheria's constitution. This implies that the Rancheria will organize under the IRA.

Section 8 (b) references the "Election of Tribal Officials; Procedures." The Secretary is required to call and conduct the election of tribal officials in accordance with (a) except where the procedures conflict with the Rancheria constitution. The election of officers should be the responsibility of the Rancheria. Therefore, we suggest amending Section 8 as follows:

SEC. 8 GOVERNING DOCUMENT.

The governing document of the Graton Rancheria or its successor shall be those governing documents in effect on the date of enactment of this Act; Provided that the document has been adopted or ratified by a majority vote of the adult members of the tribe voting in an election in which at least 50 percent of the adult members have participated.

H.R. 946 does not have a provision regarding funding for restoring this terminated Tribe. A provision providing direct appropriations for new tribes needs to be established. We suggest a new section such as:

SEC._. FUNDING FOR NEW TRIBE.

Within six months after acknowledgment, the appropriate regional office shall consult with the newly restored Graton Rancheria or its successor to develop the tribal determinations of needs and recommended budgets. These shall be forwarded to the Assistant Secretary for Indian Affairs. The recommended budget will then be considered along with other recommendations by the Assistant Secretary for Indian Affairs in the usual budget request process.

H.R. 946 does not have a provision regarding the promulgation of such regulations as may be necessary to carry out the provisions of this Act. We suggest the following:

SEC. __. GENERAL PROVISION.

The Secretary may promulgate such regulations as may be necessary to carry out the provisions of this title.

Statement to the House Resources Committee
Regarding the Impact of HR 4148,
Tribal Contract Support Cost Technical Amendments of 2000,
On Tribally-Operated Schools

May 16, 2000

SUBMITTED JOINTLY BY:

The Mississippi Band of Choctaw Indians
The Association of Navajo Community Controlled School Boards
Alamo Navajo School Board
Lukachukai Community School Board
Pinon Community School Board
Ramah Navajo School Board
Rock Point School Board
Rough Rock Community School Board
Shiprock Alternative Schools, Inc.

This statement is submitted on behalf of the above-listed tribal entities that operate Bureau of Indian Affairs-funded elementary and secondary schools. We all heartily support the objective of H.R. 4148 -- to convert to "entitlement" status funding for the "contract support costs" of tribes and tribal organizations that operate federally funded programs for Indian people under the Indian Self-Determination and Education Assistance Act.

This bill represents a laudable step toward meeting the federal commitment to support tribal contracting under the ISDEAA by assuring that a tribal contractor will receive the full amount of administrative/indirect costs needed to support its program operations. This is a promise Congress made in the ISDEAA when it enacted this landmark statute 25 years ago, but it has never been fulfilled.

Tribally-operated schools, however, are not now included in H.R. 4148, and we ask that the bill be amended to provide schools the same coverage as H.R. 4148 would provide to all other tribal contractors. We urge the Committee to make the needed technical correction in the bill to cure this oversight.

"Contract support costs" are called "Administrative Cost Grants" in a School context. The BIA funds the operation of 185 schools, located on or near reservations in 23 states, where 50,000 Indian children are educated. Sixty-five of these schools are located on the Navajo Reservation. In school year 1999-2000, two-thirds of the BIA-funded schools are being operated by tribes or tribal organizations. These tribal contractors receive AC Grants *for the same purpose that they receive contract support costs for the other BIA functions that they assume*--to pay the administrative and indirect costs incurred by tribally-operated schools without reducing direct program services. **The purposes of the AC Grant are identical to the purposes of "contract support costs" provided for all other tribal contracts.**

BIA-funded schools were among the first programs to be contracted after enactment of the ISDEAA in 1975. Indeed, tribal contracting of schools actually pre-dated the ISDEAA, using Buy Indian contracts. Tribes now have two statutory methods for operation of BIA-funded schools: (1) a *contract* under the Indian Self-Determination Act; or (2) a *grant* under the Tribally Controlled Schools Act (TCSA), a law modeled on the ISDEAA. *In either case, however, a tribally-operated school receives the equivalent of "contract support costs" through the mechanism labeled an "Administrative Cost Grant"*, a provision of the basic BIA education statute (codified at 25 USC §2008).

The Administrative Cost Grant is a formula-based method designed by Congress in 1988 to more precisely identify the amount of funding needed for indirect and administrative costs of tribes and tribal organizations who operate Bureau of Indian Affairs-funded elementary and secondary schools for Indian children. These funds address both the contractor's uniquely incurred direct administrative costs as well as costs which the Secretary funds from other resources.

The amount of each tribally-operated school's AC Grant is calculated under a formula set out in the law, but like contract support costs, funding for AC Grants is currently subject to appropriation. It is extremely difficult for tribal school contractors, like all other tribal contractors, to prepare a workable budget in the face of the fluctuations that result from subjecting these fixed costs to the appropriations process annually. For example, schools have had to make unexpected Reductions In Force, in some cases being forced to RIF critical, well-trained administrative staff. Remaining staff have then been overloaded with the work of multiple people. Some of us have had no choice but to reduce our administrative staff to a 10-month employment year, making it extremely difficult to effectively close out the administrative work of the previous school year and prepare for the coming school year and the annual administrative audit. Reduced funding also forces us to curtail staff attendance at trainings offering new education developments, curriculum ideas, and technology information.

Full Funding for AC Grants could be accomplished at a minimal expense, and would have a negligible impact on the scoring for HR 4148. In the current school year (SY1999-2000), BIA has only been able to pay AC Grants at 82% of the amount required by the statutory formula. According to the BIA's calculations, less than $9 million would be needed to supply full funding for AC Grants to tribally-operated schools in this school year:

Amount needed for 100% funding of Administrative Cost Grant formula for SY99-00:	$50,951,000
Amount appropriated for SY99-00:	42,160,000
Amount of Shortfall:	$ 8,791,000

Funding history of AC Grants. Like all IHS and BIA contractors, tribally-operated schools have been plagued by insufficient funding for their administrative costs. In only one year since Congress created the AC Grant mechanism have appropriations been provided to fully fund the AC Grant formula set out in the law. When appropriations fall below the needed amount, all schools suffer a pro-rata reduction in AC Grant funding. In School Year 1999-2000, only 82% of the AC Grant need was met, and the Bureau projects that funding will fall to 81% in School Year 2000-01.

AC Grant funding has been frozen at the same level for three consecutive years (FY1998, FY1999, and FY2000). Yet during those years, additional schools have been converted to tribal operation, resulting in a decline in AC Grant funding for all schools each year.

AC Grants, like Contract Support Costs, should have "entitlement" status. Since the purposes of AC Grants and contract support costs are identical, both should be expressly included in the proposed legislation to make payment of these costs a Federal entitlement. This is needed to keep the promise of the United States that tribes which operate federal programs will not be required to reduce services as a condition of exercising their self-determination rights.

This change could be accomplished by making the following amendment to HR 4148:

> SEC. 6. AMENDMENTS REGARDING TRIBALLY CONTROLLED GRANT AND CONTRACT SCHOOLS.
>
> (a) Public Law 95-561, as amended, is amended in section 1128(a)(1) by striking ",subject to the availability of appropriated funds,";
>
> (b) by striking subsection (g), and replacing with the following new subsection (g):
>
> "(g) Necessary amounts are hereby appropriated to carry out this section when not otherwise provided for."

Conclusion. Thank you very much for considering our concerns. As Representative Young remarked in his statement upon introduction of HR 4148, "...somehow when it comes to Native American contractors, the government thinks it's alright to change the rules, to break the contract, and to deny any liability regardless of the impact on the local people being served...this is not right." We look forward to working with you to assure that this bill is passed into law as a means to ensure that tribally contracted hospitals, clinics, law enforcement, and tribally-operated schools are no longer subjected to the "cruel hoax" of inadequate federal support for administrative costs associated with these contracts.

[Prepared statement of William Janklow follows:]

STATE OF SOUTH DAKOTA
WILLIAM J. JANKLOW, GOVERNOR

August 6, 1999

The Honorable Tom Daschle
United States Senator
SH-509 Hart Senate Office Building
Washington, DC 20510-4103

Dear Tom:

Earlier this year you introduced Senate Bill 1148, known as the "Yankton Sioux Tribe and Santee Sioux Tribe of Nebraska Development Trust Fund Act." The purpose of my letter today is to offer my support.

Many, many people—whether inside or outside of reservation boundaries along the river—suffered serious losses of property and livelihood as a result of the dam projects. Taken from us were 600,000 acres of some of the best river land in South Dakota. In return we were promised developmental benefits. That was two and three generations ago. We are still waiting.

Your legislation for the Yankton Sioux Tribe and the Santee Sioux Tribe of Nebraska is one more step in helping balance some of those tremendous losses suffered by so many. Please count on my support for Senate Bill 1148.

Sincerely,

William J. Janklow

WJJ:drm

EXECUTIVE OFFICE
STATE CAPITOL
500 EAST CAPITOL
PIERRE, SOUTH DAKOTA
57501-5070
605-773-3212

[Prepared statement of Honorable Bill Barrett follows:]

TESTIMONY BY REP. BILL BARRETT (R-NE)
THE YANKTON SIOUX AND SANTEE SIOUX TRIBE OF NEBRASKA DEVELOPMENT TRUST FUND ACT, HR 2671
MAY 16, 2000

Thank you for the opportunity to provide testimony on the Yankton Sioux and Santee Sioux Tribe of Nebraska Development Trust Fund Act, HR 2671. Chairman Young and Ranking Member Miller, I greatly appreciate your time and efforts on this bill.

You will receive good testimony today from Butch Denny, Chairman of the Santee Sioux Tribe. Chairman Denny has always been good to work with. His testimony will demonstrate his dedication to his Tribe and people.

When the Federal Government built the dams on the upper reaches of the Missouri River under the Pick-Sloan Missouri River Basin program, the Yankton Sioux and Santee Sioux were not provided compensation for the taking of their land. While the dams were designed to promote general economic development in the region, provide for irrigation, and protect from flooding, their construction inundated productive agricultural and pastoral lands and the traditional homelands of the Tribes. In the case of the Santee Sioux, the Gavins Point Dam permanently flooded about 1,000 acres of the Tribe's land.

Unfortunately, the Tribes were never compensated for their loss. HR 2671 would provide long-overdue compensation by establishing two trust funds to be used by the tribes. Specifically, this bill would direct the US Treasury to deposit about $34 million into a special account for the Yankton Sioux and $8 million into a special account for the Santee Sioux. The Tribes would then be allowed to draw on the interest earned from the trust funds for economic and infrastructure development and educational, health, recreational, or other social welfare initiatives. The funds would be available without further appropriation through the Secretary of the Interior after the Tribes adopt plans describing in detail how the funds will be spent.

The trust fund proposal in HR 2671 is not without precedent. Over the past decade, Congress has passed three laws providing belated compensation to other Tribes affected by the Pick-Sloan projects. In 1992, Congress provided compensation to the Three Affiliated Tribes of the Fort Berthold Reservation and the Standing Rock Sioux Tribe. In 1996, Congress compensated the Crow Creek Tribe. In 1997, it passed legislation to provide compensation to the Lower Brule Tribe.

I'm pleased to sponsor HR 2671 on behalf of the Yankton Sioux and Santee Sioux Tribes. I believe this bill will provide critical infrastructure and other educational programs for them. I urge the Resources Committee to favorably consider HR 2671 and quickly move it out of committee to the House.

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