

**GOALS AND PRIORITIES OF SOUTH DAKOTA  
TRIBES**

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**HEARING**

BEFORE THE

**COMMITTEE ON INDIAN AFFAIRS  
UNITED STATES SENATE**

**ONE HUNDRED SEVENTH CONGRESS**

SECOND SESSION

ON

TO RECEIVE THE VIEWS ON THE GOALS AND PRIORITIES OF THE  
SOUTH DAKOTA TRIBES

SEPTEMBER 14, 2002

RAPID CITY, SD



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## **GOALS AND PRIORITIES OF SOUTH DAKOTA TRIBES**

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**SATURDAY, SEPTEMBER 14, 2002**

U.S. SENATE,  
COMMITTEE ON INDIAN AFFAIRS,  
*Rapid City, SD.*

The committee met, pursuant to notice, at 2 p.m. in the Central High School Cafeteria, 433 Mount Rushmore Road North, Rapid City, SD, Hon. Daniel K. Inouye (chairman of the committee) presiding.

Present: Senators Inouye and Johnson.

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

The CHAIRMAN. The Senate Committee on Indian Affairs is convening this hearing in Rapid City at the request of your respected Senator, Senator Tim Johnson. We are here to receive testimony on the goals and priorities of the tribal governments that make their home in what is now the State of South Dakota, but which was once all Indian country.

I am especially pleased to be in the land of the great sacred place. We are here in recognition of your sovereignty, your government-to-government relationship with the United States, and we are here because we have two great men who represent you in the U.S. Senate who are among the strongest advocates in the Congress for your rights as sovereign nations and as native people.

I am honored this afternoon to share this table with Senator Tim Johnson because as you know, both during his tenure in the House of Representatives and now in the U.S. Senate, he has worked tirelessly to champion your cause and there can be no doubt that he cares and cares deeply about the native people of South Dakota.

So before I call upon the witnesses to receive their testimony, I am pleased and honored to call upon your colleague, my colleague on the Committee on Indian Affairs, and my friend and your friend, Senator Tim Johnson.

Senator Johnson.

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

Senator JOHNSON. Thank you.

Chairman Inouye, it is an honor and pleasure to welcome you to South Dakota. Thank you for holding this oversight hearing on the goals and priorities of the great Sioux Nations of South Dakota. I

am honored to serve with you as a member of the Committee on Indian Affairs. Your leadership in Indian country is appreciated and South Dakota is blessed to have you here today.

I would also like to welcome Patricia Zell, the staff director and chief counsel of the Senate Committee on Indian Affairs. Patricia has advised Chairman Inouye for many years. Welcome to South Dakota, Chairman Inouye. I commend you and your staff for having this hearing in South Dakota today.

Representing the State of Hawaii in his seventh consecutive term in the Senate, Chairman Inouye is a powerful Senator, war hero, lawyer, public servant, and truly a gentleman. I want to share with my fellow South Dakotans a part of Senator Inouye's story, because like so many young South Dakota men and women who have served their country, so too has Chairman Inouye. Many I think are aware of the fact that Senator Inouye is a war hero, but I think sometimes people have not understood the true dimensions of his heroism. In Italy in 1944, after Senator Inouye's unit was shifted to that area of the world, rescuing a Texas battalion surrounded by German forces, his unit, the 442d, was assaulting the heavily defended hill in the closing months of the war, when then-Lieutenant Inouye was hit in his abdomen by a bullet which came out his back, barely missing his spine. He continued to lead the platoon and advance the line against a machine gun nest which had his men pinned down. Chairman Inouye tossed two hand grenades with devastating effect before his right arm was shattered by a German rifle grenade at close range. Inouye threw his last grenade with his left hand, attacked with a submachine gun, and was finally knocked down the hill by a bullet in the leg.

Dan Inouye spent 20 months in Army hospitals after losing his right arm. On May 27, 1947, he was honorably discharged and returned home as a captain with a Distinguished Service Cross, Bronze Star, Purple Heart with cluster, and 12 other medals with citations. His Distinguished Service Cross has recently been upgraded to Medal of Honor, the Nation's highest award for military valor. He received that medal from the President of the United States in June 2000.

Chairman Inouye is a champion of the interests of Native Americans throughout his career. He has also played a major role in shaping the defense policies of the United States and has worked to strengthen the armed forces and enhance the quality of life for military personnel and their families.

Again, I am delighted that Chairman Inouye is here in my home State. I am honored to share the podium with him, and I am pleased to see that many people have traveled great distances to be here today to share their testimony, whether written or in person. I am also pleased to see Chairman Gray, President Ranfranz, Chairman Bourland, President Kindle, President Steele, and President Jandreau. I look forward to hearing your messages from your reservations, and I know you have much on your mind, such as health care, trust reform, education, and adequate funding for tribal colleges.

I think we would also all agree that one of the most important things we can do in the long run is to improve the private sector economy in Indian country. As the chairman of the Senate Banking

Subcommittee on Financial Institutions, I was proud to hold a hearing earlier this year at which Chairman Jandreau testified. The focus was on efforts to improve private investment and address economic challenges in Indian country. As a member of the Senate Appropriations Committee, I have had an opportunity to work with the leadership of all nine tribes in South Dakota to improve infrastructure and address many of the key problems facing Indian country. Along with our help in the Senate and your leadership on your reservations, we can work together with the people we represent.

I am also pleased to see local citizens from Rapid City here today, too. I would like to acknowledge Stan Adelstein, State Representative from Rapid City and vice chairman of the legislature's State/tribal committee, and Phil Hogen, nominee-select for chairman of the National Indian Gaming Commission. His wife is a schoolteacher here at Rapid City Central High School. It is nice that all of you can join us here today. Welcome to this hearing, and indeed welcome to all.

Thank you, Senator Inouye. I look forward to hearing from the witnesses at this time.

The CHAIRMAN. Thank you for those very generous remarks. Since you brought it up, I would like to salute all the veterans of the many wars that we have participated in. I am certain that many of you are aware that in the last century and in the early days of this century, on a per capita basis more Native Americans have put on the uniform of this land than any other ethnic group in our Nation.

[Applause]

The CHAIRMAN. This is truly the land of the brave, and as chairman of the committee and as chairman of the Defense Appropriations Subcommittee, I salute all of you.

Our first panel consists of the chairman of the Sisseton-Wahpeton Tribe of Agency Village, SD, Andrew J. Grey; the president of the Flandreau Santee Tribe of Flandreau, SD, Thomas Ranfranz; the chairwoman of the Yankton Sioux Tribe of Marty, SD, Madonna Archambeau; and the spokesperson of the Yankton Sioux Tribe, Ellsworth Chytka.

May I first recognize Chairman Grey.

**STATEMENT OF ANDREW J. GREY, CHAIRMAN, SISSETON-WAHPETON TRIBE**

Mr. GREY. Good afternoon. Senator Inouye, Senator Johnson, and all the people here, I would like to say [Native language greeting], with a good heart, I greet you.

We have a lot of issues and concerns already of being a top priority. Among these priorities are the issue of trust land and treaty, health care. On some of those I will touch upon lightly.

First, I would like to talk about trust land and treaty. As a treaty tribe, the Sisseton-Wahpeton Sioux Tribe is concerned with trust reform going on with the Bureau of Indian Affairs. This area has approximately 37 percent of the trust land in the United States. The tribes want input into the reorganization to ensure Indian preference in the hiring of staff and the protection of the fiduciary relationship that exists with the tribes and the Federal Govern-

ment. As a tribe, we are suspect of the Federal Government reform for the, quote, “good of Indians,” unquote. The tribes view a first draft of trust reform as being a Trojan horse, similar to the Treaty of 1889. That was supposed to be good for us, because that was supposed to be good for all the tribal membership, and was in theory going to make us self-sufficient farmers. Indian tribes collectively lost 100 million acres of tribal land with the sweep of a pen. We never did become self-sufficient farmers. We just lost our land.

When the Federal Government has a plan for our own good, we want input and consultation before any such plans are implemented. This is consistent with our government-to-government relationship. No reorganization shall be interpreted or construed to diminish the Special Trust status that Indian Tribes have with the treaty obligations of the Federal Government.

Since the Allotment Act, the Federal Government has passed numerous legislation that was to assist tribes in purchasing land and placing it back into trust. Recently, the Attorney General of the State of South Dakota and his endless arguments opposing the tribes’ efforts to put land into trust, stated that the Sisseton-Wahpeton Tribe was in North Carolina 300 years ago, and somehow this added to his argument of opposing our effort to put land into trust. If the legislation is truly to assist tribes in placing land into trust, it must be clear and concise.

Legislation that was not intended to assist us, or legislation that was intended to assist us, has impeded us. Trust transactions are not limited to gaming activities. There are tribal members who want to purchase homes and put land into trust because they want to be subjected to tribal jurisdiction, not State jurisdiction.

It should come as no surprise when you compare the statistics in the State’s population and the prison population. As indigenous people to this country, we should have an unfettered right to choose a jurisdiction over us, based on trust land. As a treaty tribe, we feel that we should be prioritized on a higher level than an executive order tribe established by the Secretary of the Interior, because our treaty was ratified by the Congress and signed into law by the President. We have a greater degree of sovereignty than any executive order tribe.

I want to talk about health care. Health care is a primary concern for our tribe. In the Aberdeen area, we have the highest infant mortality rates of the 12 regions, at twice the national average. The national average is nine infants in 1,000 die of sudden infant death syndrome in the Aberdeen area. We have 19 in 1,000 infants die of SIDS.

We also have the shortest life expectancy. The quality of life can be measured in these two statistics. The diabetes rate in the Aberdeen area is five times that of the national average. Diabetes leads to kidney failure and amputation, and subsequently early death—all contributing factors to our short life expectancy. The Aberdeen area is in need of a additional health care dollars. Instead of receiving the estimated \$6.3 billion for health care needs, which included construction costs of a facilities of the Indian Health Service, \$1.8 billion was appropriated nationwide, approximately one-third of the amount needed. As the first Americans, we are the first to have our children die, and the first to have our elders die.

I want to talk a little bit about sacred sites. The tribe is looking to Congress to help us address an age-old problem—protecting the sacred and holy places that are important to tribes across the country. We have had presidential executive orders and proclamations, but none of these measures carry the effect into law. In order for these traditional and ceremonial places to be protected once and for all, congressional legislation will be required. Each time the court system rules against Native Americans, we must turn to Congress for a remedy.

We are losing precious spiritual resources to poor land management by Federal agencies, and because of unscrupulous developers and contractors. In South Dakota, we have had a plague of problems with the U.S. Army Corps of Engineers on the Missouri River. Many historically important ceremonial places, including burials, have eroded and fallen into the river. In other cases, the Corps' decisions to allow the river to fall has resulted in hundreds of human remains washing up on shorelines. NCIA has called for a national coalition to address the protection of sacred lands and the Sisseton-Wahpeton Sioux Tribe supports this effort, and we will assist in the development of legislation to protect our sacred places.

As we have heard of Senator Inouye's military action, we, too, have a gentlemen as Sisseton-Wahpeton that we are looking to try to get the Congressional Medal of Honor for. That gentleman's name is Master Sergeant Woodrow Keeble. Woodrow Keeble was a member of the Sisseton-Wahpeton Sioux Tribe. He fought in World War II and Korea. Master Sergeant Keeble was a highly decorated veteran. He was recommended for the Congressional Medal of Honor for single-handedly eliminating three four-man pillboxes in Korea in 1951. His recommendation was lost, but resubmitted. It was also lost the second time. The Sisseton-Wahpeton Sioux Tribe would like the Senate Committee on Indian Affairs to support the efforts of awarding the Congressional Medal of Honor to Master Sergeant Keeble posthumously. Supporting documentation will be submitted. With that, I want to thank you, Senator Inouye, for giving me this opportunity to address you.

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

I will now call upon President Ranfranz.

**STATEMENT OF THOMAS RANFRANZ, PRESIDENT, FLANDREAU SANTEE TRIBE**

Mr. RANFRANZ. Thank you, Mr. Chairman.

My name is Thomas Ranfranz. I am the president of the Flandreau Santee Sioux Tribe in Flandreau, SD. I am also the chairman of the Great Plains Region here, and the Great Plains Chairmen's Association. On behalf of the 16 tribes in our region and the 9 tribes in South Dakota, we appreciate these field hearing here on our Native land. We want to thank the Chairman and Senator Johnson for taking their time off in scheduling this, so we can have a good voice here for Indian country and our concerns here in our homeland.

I just recently spent three days in Sioux Falls, South Dakota. We are meeting with our Aberdeen health groups. It was a very—I have also turned in some written testimony, and it is quite lengthy, but I would like to vary from that a little bit in regards to it, be-

cause the meeting in Sioux Falls was so interesting and so enlightening with our concerns in health care.

There are a lot of positives. We always talk about our concerns and our numbers and our staffs here in the Great Plains region here in South Dakota. Funding for health care must be increased if we are to improve the health care status of Native people in this country. Currently, Indian health care is funded at approximately \$3 billion, when the actual need is five times that across the country. Currently, millions of dollars are sent off-reservation because the services cannot be provided here. Historic underfunding for staff and new equipment has caused a direct transfer of dollars from on-reservation to off our reservations.

Without adequate increases in funding, our staffs, which only get worse—Congress must uphold its responsibility and guarantee our most basic treaty rights and provide adequate funding for health care in the Great Plains Region and the State of South Dakota.

Two weeks ago, we spent two hours with the White House staff that had visited us here in South Dakota. For the 2½ hours that we spent with them, we talked about health care issues. We never even got off that issue, and we have many issues on the table. One of the concerns that we have, as we brought up in the Sioux Falls meeting with our area directors on health care, was tribal alcoholism on our reservations. We need programs for our young and our needy and our starting families. Our health directors had a great concern on how to prioritize injuries and illnesses in Indian country, which the Government is having us do. How do you prioritize which is the worst one?

Inpatient treatments for youth centers are very underfunded. I met a young doctor there, Doctor Duchenow, who just finished his schooling, and I had an interesting conversation with him. Our costs for staffing, our costs for rooms, our cost for clinical counselors—way underfunded. And it was amazing. In talking with the doctor, he had mentioned to me that he had been on the job for, in my notes here, for 5 weeks. And in that five weeks, I just want to talk a little bit on the human side of things, that he has had 12 suicide attempts, and for the year they have had 12 completed suicides. So his work is cut out for him, and he is willing to roll up his sleeves and do whatever he can for the funding for these young people. They are getting younger and younger. It is my understanding that the in-patient treatment youth centers, they only have about 35 percent of the moneys that they really need in order to do the job.

Today, along with health care, diabetes among Native Americans has reached epidemic proportions, with our Native youth becoming affected with the disease at a much younger age than ever before. They are at a greater risk than ever before. Many tribal councils have declared war on diabetes without ammunition to fight the war, and no real plans with which to fight it. Additional funding in education and nutrition is the key to prevention of diabetes and other chronic illnesses that plague our people, including our youth, on our reservations.

We are the only group of people who must prioritize our health care by making life and death decisions based on the availability of funding on our reservations. Young Dr. Duchenow—I was taking

some notes—and I said well, why? Why do we have these problems in mental health programs? He says, because our area has the lowest budget, the least amount of staffing. We have no dollars for experts. We have no dollars for additional facilities or add-ons. We have no dollars for early crisis intervention and prevention. There are not enough dollars. He says the kids feel isolated on the reservations. There is nothing for them to do. They feel hopelessness. There is no family support. They are depressed, and they lack the mentors that can get them to the next stage of their life. A lot of these suicides recently have been copy-cat suicides, because they gain the needed power, or they get the attention from these copy-cats. They make them feel good.

Lack of programs for youth—a lot of our reservations do not even have movie theaters. A lot of them do not have bowling alleys, recreation. They don't even have a McDonald's fast-food chains. And now there are games—games are prominent. They make them feel part of something so they are joining the games.

These are some of the things that the young doctor shared with me. With children of all ages, both male and female, they have an innate need for contact with their fathers. A lot of the fathers, with the economic conditions today, are not there for them because they do not have jobs. According to the National Center of Children without fathers are twice as likely to drop out of school, twice as likely to go to jail, and nearly four times as likely to need treatment for emotional and behavioral problems as boys with fathers.

We talked a little bit about the 13- and 14-year-old boys because I really got onto this because he was so enthused—he was just starting out; 13- and 14-year-olds are commonly the most difficult 24 months in life for the youth. It is in this adolescent period that self-doubts and feelings of inferiority reach all-time high, with peer-group acceptance being the major social pressure—rejection, ridicule, failure and being alone. These years are the most critical to the development of our children on our reservations in the mental health area. Funding is needed.

He asked me to go through some of the newspapers, the Lakota Times, he said, because they always put in there pre-teen talks. He says you can get an idea of our teenagers. Well, I did that. I went down in the Sioux Falls library during lunch hour and they have these pre-teen talks, and it is our youth on the reservations. They ask them from ages 11 to age 10, age 12. The question is, problems and changes that pre-teens face—what are the problems you face? And the answer is drugs, dropping out of school, drinking. Another one here is, somewhere to go for help—who do we go for help? They have nobody to go to for help. And here is another one saying, fighting the drugs problems, the alcohol problems, the peer pressure. Here is another one—drugs, alcohol. It is a constant same thing, right there.

What do pre-teens need most? Loving parents—this is the children speaking. We need loving parents. Here is another one that says, someone to go home to. Here is another one that says, we need respect. Another one says, we need parents to love us and role models. So I think the challenge there is just enormous, and I know it is throughout Indian country.

Real quickly—another priority in our area is bringing businesses to our reservation and jobs. And I know that Tim, Senator Johnson, has been very strong in helping us in that area, creating jobs on Indian reservations. We do have gaming, and we are thankful for that gaming. It provides jobs, but unfortunately they are providing the jobs on most of the reservations, and not economic development. The reasons being because the casinos here in South Dakota are located in rural areas. They are located in less-populated areas. South Dakota is a sparsely populated State. We have our harsh winters where people cannot travel on our roads for six months out of the year. The need for capital, for Indian country to start in gaming is enormous, and the capital pay-back is 10 to 15 years. So we have not seen that yet. But there is an awful lot of positives out there.

Our goals would be to have more funding for continued school construction. Education is critical for successful economic development on our reservations. Job training—more dollars for job training; for experts in career development. It is vital in communities for financial success. I would like to thank Neal McCaleb, actually, because in the economic development area he has been very helpful to South Dakota and the Great Plains area, working with the tribal leaders.

Additional funding for programs like the EDGE, which helps tribes partner with financial and business experts. Also additional funding for community development financial institutions, which helps community members to develop private business, products and services, and provide jobs to keep dollars at home and not leave the reservation.

We have got a lot of success stories, and I know a lot of the other chairmen want to visit also, but on Pine Ridge, there on ongoing successes. In Pine Ridge they have a Chamber of Commerce now that is helping people start businesses, train those people, and they are very successful. I can appreciate that very much. We have got young people coming back to the reservation. Here is another article—business becomes more profitable. Here is a young fellow that is starting a construction business. He is doing so well he is going to open a lumber company on the Pine Ridge Indian Reservation.

So those are some positive things that I think we have to share. I appreciate Senator Johnson's wife coming to South Dakota. She heard among other suggestions with businesswomen and the leaders, the needs for businesswomen starting business here in South Dakota, and she listened very well, and we appreciate that. Because they are creating ideals, to come up with their own solutions. That is what is needed to make the community come alive—they quoted Tim Johnson's wife—Mara, I think it is. Isn't it, Senator?

And one other real thing here is long-term care. I looked in the paper this morning. I woke up and here in the Argus Leader, our local paper, it says:

Bill Targets Lack of Tribal Nursing Homes—A bill to force the Federal Medicaid program to pay nursing home costs on Indian Reservations could be the answer to long-term care for Native Americans, members of the State and Tribal Relations Committee.

I want to thank Senator Johnson and Senator Daschle for this, because our elders, it's tough to send them off-reservation because

we look up to them so much for their leadership, their knowledge, their wisdom—to send them away is devastating—off the reservation and away from their families and away from the people that really respect them.

So I wanted to bring up those issues because we do have a lot of positives. As leaders, we realize the financial issues that face the Administration and this country because of the war on terrorism. We also deal daily with the need to make budget cuts in certain areas to meet the top priority needs of Government. The Administration cannot, however, use the war on terrorism as a reason to cut the budget of the neediest people in this Nation. This is the time for the Administration to make its own citizens a priority. The Federal Government cannot continue to turn its back on social issues that face native people in Indian country. The United States and the Administration must live up to its treaty obligations and begin to fund tribal programs at the level that will allow our leaders to meet the minimum basic needs of our people.

Finally, I would stress that we are not native people asking for a handout. We are asking the Administration to live up to treaty obligations of the United States and to ensure adequate levels of funding so that our people may begin to live at a level that is comparable with the rest of the country.

I thank you very much for your time and your consideration, Mr. Chairman.

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

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

And now may I recognize Mr. Chytka.

**STATEMENT OF ELLSWORTH CHYTKA, SPOKESPERSON,  
YANKTON SIOUX TRIBE**

Mr. CHYTKA. First, I would like to ask my elders to excuse me for speaking in front of them, and I pray to the day when they will all get the opportunity to address these Government people. Thank you, Senator Inouye, for coming to the lands of the great Sioux Nation. Senator Tim Johnson, thank you for your support on the Yankton Sioux Reservation.

Good afternoon, gentlemen. Thank you, Mr. Chairman and members of the U.S. Senate Committee on Indian Affairs for coming to our country today and for giving us the opportunity to voice the goals, concerns and priorities of our peoples and our land with you. When people can truly speak openly of their concerns and issues, be heard, and trust that their message will be communicated and others, and acted upon on their belief by those in positions of power and authority, then we have true representation, a democracy. Again, thank you for being here and listening.

My name is Ellsworth Chytka. I am an enrolled member of the Yankton Sioux Tribe and I am here representing Chairwoman Madonna Archambeau as spokesperson for the Ihanktonwan Sioux Nation. I am here today to discuss the concerns of my people. I would first like to let you know that this is very hard for me to put down—oral history and written testimony. Our way, as you know, since the beginning of time has always been oral—oral history, culture and tradition. But it is important that I do so now so that the voices of my people and our ancestors past, and all those

who care about that have no voice to be heard. I come here today to voice our concerns, of which there are many. I will not have time to discuss all of them. Therefore, I will concentrate on our most pressing issues.

Our main concern and priority is the loss of our history, culture and our spiritual ways as guaranteed us by the Government in the treaties, signed bills, and acts passed, et cetera. Gentlemen, our spiritual way is no different from yours and nothing to be feared. when we pray, we pray to Tunkashila, God, by way of the Sacred Hoop—the Hoop that represents all races. For me, to the east, it represents the yellow race; to the west, it represents the red race; the south represents the black race; and the north the white race. At the center is a little green circle representing Mother Earth. In the center going out in four directions are four equal spokes that show that we are no different than the trees, the grass, whatever; that our bodies come from Mother Earth, and then as we sprout from there and grow, we are now allowed to reach the heavens, and that circle is blue.

So it is saying that we have one God for all divine beings, and shows the connectedness of all of us to everything. We believe through our tradition and history and our culture that it is our duty as human beings to represent all things—the trees, the grass, the deer, the eagle, the hawk. These species are important, for they, too, are created by the hands of God. In order to do this, we must retain our history, our culture and our sacred sites—our burial sites. There have been many laws created to protect these sacred sites. The protection is no good. The laws are no good unless people enforce them. In my country, on the Yankton Sioux Reservation, there is no enforcement. The laws are not enforced. Oral history has been repeatedly given to State and Federal Government officials to let them know where there are burial grounds and sacred sites in our history and culture. But no one heeds these warnings, and they continue to dig into our history and ancient burial sites.

For us and our history and culture and spiritual ways, these are not just bones, but the remains of our ancestors' past. My grandmother told me that many of these ancestors froze to death, starved to death, and fought to preserve this way so that there would be a Native American people.

I come to you asking for your help in protecting these areas—these sacred cultural and burial sites are passed down by our ancestors. These are the ones who are buried there, lived there, did ceremony there. I am here to speak for those—those that have no voice. When I was but a young boy, my grandma told me, grandson, in your lifetime, they are going to tell you one person cannot make the difference, but remember this—all it takes to start a fire is a little bitty spark, and you will be one of those sparks, and in being so, you will be a voice for those who have no voice, for they are humble, they are [native word], they are the four-leg and the two-legged [native word]; those that swim in water, those that crawl upon the earth, and those that stood upon the earth; those that live in the womb of Mother Earth—for these are all sacred, for they too were created by the hands of God. Preserve these for

your great-grandchildren and their children, for they, too, have a right to see Mother Earth in its natural beauty.

So as I speak here today, I speak only for my people, but I speak for all races of children that will be coming up. They deserve to have clean water and air. They, too, deserve to live in a world of peace, a world with democracy, and a world of justice. I ask you, where has democracy and justice been for us native people? It is not about money. It is not about programs. It is about dignity. For on my reservations, the elders can no longer take their grandchildren to the riverfront to talk of these ways and the sacredness of the water, the blood of Mother Earth, and to share the stories of a proud and noble people that have lived here for thousands and thousands of years, since time immortal.

I ask you to please help us. Why is it that we, the Indian people, who have given this country such riches in the land, the minerals, the oil, and all that we have given, why are we the poorest people in this Nation? Why is it that when the land was turned over to the State of South Dakota, it was never thought of to return this land to the native people? With their wisdom and guidance, in conjunction with your expertise in this field, we could cooperatively work together, leaving the sacred sites alone and develop those lands that are not that way, so that we may have rangers, rangerettes, biologists, et cetera, introducing the people of the world to the true history of the Native Americans. Let us be the guides and interpreters of our history, the conservationists, environmentalists, biologists of our land, and not the people who don't live there.

I am not a greedy man and I am not a selfish man. I was taught this by my grandma, who told me that in order to have your prayers answered, [native word], be humble, be free of prejudice and anger. I have no anger for what has happened. I have hurt. For in my hurt, I see the pains of the children who are now on drugs and alcohol. It is despair. It is because they have no history, therefore, they have no pride. It is because they have no history, because even in the school system where 70-some percent of the children are Native American, there is no Native American language taught, no native history or native culture.

Yes; we can teach a lot of it at home, but it is not only our youth that have lost their history and pride and culture. It is the loss and despair that spans through generations of my people. If this is truly a democracy, why is it that other children who have come from other countries are taught their language in their schools, but the native peoples who have always been here do not have this opportunity. This concern weighs heavy on me.

Why is it that we do not have representation? We are supposed to deal directly with Congress. Why are we not allowed to do so? We were to be a nation within a nation, as set forth in our treaties with you. Why are we not treated as such? Why is it that again we meet on these terms, voicing our concerns? We have been telling the government of this great country our concerns for many years, but no one hears us. It is like the voice lost in the wind. I have been taught, and I have always said, a country is only as great as its history. Then let us share our history with the world, the true history and the true culture.

We believe very strongly in God. We believe that God created all things, that God is love and compassion. But where is there compassion for my people from the government of this country? Why is it again that the government of this country tries to ensure that the treaties are enforced with other countries, and they honor the treaties they make with other countries, and they want other countries. When they make a treaty with another country to honor these treaties, and they help restore lands back to peoples who have lost them for thousands of years—example, Palestine; trying to get the homeland back for Palestine and the homeland back for Israel, when in this great country of ours, they take our lands away.

There is something wrong with this. We have done everything asked of us. By population, we have sent more of our young men and women into battle to protect this great country. We stop at the signs. We get driver's licenses. We have travel identification cards and we vote. We do everything that has been asked of us. Why is nothing being done for us? You can give people money, but if they have no home, they have nothing. That land in that reservation is our home. It was promised us by the government that this would be our home for time immemorial; that our children and grandchildren would be able to grow up there. They would be able to live happily and carry on their culture, their traditions and their spiritual ways. Gentlemen, that is not happening. My people are losing their history, their culture, their way because there is no democracy for us.

Where is the Bureau of Indian Affairs trust responsibility to us? Who defends us? Only when we get enough money for an attorney are we defended, and then we run out of money because the average income in Indian country is between \$5,000 and \$7,000 a year. Gentlemen, that is poverty. That is compared to a third-world country. This is going on in your great land. It is going on in the belly of America, and it is the belly of America that feeds this country and the world. And yet my people, many of them, are hungry; many of them are homeless.

Help restore the dignity of a great Nation of people. You can do this by giving the law that it created to help restore and protect and provide for us the legal teeth necessary for enforcement. Stand up for the laws that were created and have been created. Stand up with us and stand up for us. Let our voices be heard.

I in my life have always made my own way. My family and I could grow our own garden and have been taught to be sovereign, to be self-sustaining. I do this and practice this, and teach my children this. But many of my people do not know this way anymore because you, the Government, give them promises. They have gotten used to depending on promises. It is time the native people receive more than promises. We want the loaf of bread. Help us restore our land base. Help us to create opportunity for ourselves, to no longer be dependent on the Government; to help my people stand up once again.

Our land once extended from Minneapolis, Minnesota down into Nebraska, Kansas, along the eastern shore of the Missouri, up to Pierre, SD and into North Dakota—and then, gentlemen, by treaty which my people did not even understand, it was taken away and

reduced to some 400,000 acres. That was supposed to be our permanent home, never to be taken from us, to be put aside so that our children and children's children, as our population grew, would be able to give upon these lands and live, so that we would always have a home for all that we have given away.

Well, sirs, this land has been reduced from 400,000 acres to 200,000 acres, and now the courts are trying to say we only have jurisdiction over one square mile. How can this be a democracy? Where is there justice for us? We do not have the money to defend ourselves in court. When I talk to the elders, they feel it was the government who was supposed to protect us, not to be the ones to be protected from. When I grew up as a little boy, my grandma made me a promise. She told me, [native word] grandson, they took so much away from us, but we reserve this water and the land. This is your home.

Gentlemen, you have made a liar out of my grandma, for you have taken this away.

I come here today humble, because I speak for so many. I wish they could be here speaking for themselves, but they feel they no longer have a voice because that voice has been stripped from them by powers much greater than they—the Government. They are beaten down, for so many no longer know their history and culture. Many of the young ones look upon themselves being Indian is bad, because that is what has been taught them. Remember who kept the Pilgrims alive when they landed here, gentlemen. We provided them with food. They came here because of freedom of religion and freedom of speech. They took our freedom of religion away, and just restored it not that many years ago.

When someone speaks out now about some of these wrongdoings in my homeland, they are labeled, as I have been, radical, anti-government, unpatriotic. Why is it at a house where not [native word] to kill many citizens is preserved as a historical house and site; or preserved in Sioux Falls, SD a cemetery which was prime real estate in the middle of Sioux Falls because it was non-Indian cemetery, a European cemetery—so that land, that cemetery was preserved. Meanwhile, in Mitchell, South Dakota, where there are known native burial mounds, development went ahead, pushing the mounds to the side, scattering the bones as they went. What is wrong with this picture? Where is human dignity? Where is there balance and equality in how we treat our peoples?

I have never in my life asked for anything from the Government or from others. I have always made my own way. But I come to you today, gentlemen, I beg of you, not for myself, but for my children and grandchildren, and all the children in the future, whether it be the two-legged, the four-legged, the wing, those that swim in water, those that crawl upon the earth, those that sit upon the earth, those that live in the womb of Mother Earth—the great creation of God. I beg you to help us retain our culture, our history, our spiritual ways, so that we can continue to stand up for those who have no voice, to preserve for you, your grandchildren, and mine a bright future—a future that no longer is plagued by war and violence, but a future of dialog and democracy, a future of togetherness.

I believe that this country can do that. I know it can, but before our country can go ahead and heal the wounds of the world, it must heal the wounds within its own country. These wounds, gentlemen, have to do with the treatment of my Native American people.

[Applause.]

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

The CHAIRMAN. I thank you very much. I believe Senator Johnson would like to ask a few questions, if you would.

Senator JOHNSON. Mr. Chairman, I wonder if in order to expedite hearing all nine of the South Dakota Tribes, it might be best just to proceed with the next two panels, and then reserve questions at the end so that we do not deprive the other tribes of a full opportunity to make their statements here today. That would be my suggestion, Mr. Chairman.

The CHAIRMAN. Your suggestion will be the rule.

We will now resume our hearings.

May I now recognize the chairman of the Cheyenne River Sioux Tribe of Eagle Butte, SD, Gregg Bourland.

Mr. BOURLAND. They make that mistake all the time. [Laughter.]

The CHAIRMAN. It sounds pretty good that way. [Laughter.]

**STATEMENT OF GREGG J. BOURLAND, CHAIRMAN, CHEYENNE RIVER SIOUX TRIBE**

Mr. BOURLAND. Mr. Chairman, [native word]. I greet each and every one of you with an open heart and a handshake. My Lakota name is [native word], which means Eagle Flies Over Him. I have testified before your committee many, many times, and indeed it is again an honor.

You know, this last new year's, we had a real tragic event happen. You may have heard about it—in which one of our tribal elders suffered a heart attack and was supposed to be transported to the hospital by the Indian Health Service ambulance. Instead, the doctor at the Indian Health Service in Eagle Butte directed the ambulance driver and the paramedic to either turn around and take the body back, thinking that this tribal elder was dead, not knowing that the elder was dead, but thinking the elder was dead—ordered to take the body and throw it in the ditch. Those were the exact words that an IHS doctor said about my people, about my elder.

We met only a couple of weeks later with Senator Johnson, and we asked for a hearing in Washington, DC. Later, we asked for a hearing out here in the Dakotas, preferably Rapid City. We asked for a hearing on health care, on the disparities of health care for our people; on how our people are treated by IHS. When I heard they were going to have a field hearing in Rapid City, I got really excited because I thought that this hearing was going to be that hearing that we had requested so many, many months ago. As a matter of fact, I will submit written testimony, rather extensive written testimony which is predominantly health-related.

Later, we found out that this hearing was on priorities and goals. While I was somewhat disappointed that it was not on health care, the hearing that we had requested, I decided to change my testimony here today somewhat. This morning, I got my son's diction-

ary—I stayed at his house last night—and I got the Webster dictionary out. I looked up the meaning of the word “goal.” It was the same meaning that it was before, which is something that we seek; something that we wish to achieve. And then I looked up the word “priority.” It said, to give something preference; to make something first. Priorities have always been a problem with me because it is very difficult to take all of our issues in Indian country and make one of them more important than another one.

So I thought about that this morning. I thought, okay, what is the most important thing if I have to prioritize, and I picked the number four, which is a sacred number to us Lakota, what would they be? It was really easy. So my first priority is to request you to go to the United States Congress and request the United States to give us back our Black Hills.

[Applause.]

Mr. BOURLAND. There are millions of acres of land in these beautiful Black Hills, and many of them are Federal. The U.S. Congress can give those back to us. They rightfully belong to us. You know the story. I need not tell you. You know the story better than anyone else. These hills have never been bought and paid for, and our people will never accept money for them, no matter how large that trust fund becomes. We will not accept money for them. I guarantee you, we will be the best stewards this land has ever seen.

Priority number two—millions and millions of acres of these treaty lands were also given to us. In 1851, our territory extended from the east bank of the Missouri River all the way over into Wyoming, all the way north into North Dakota, south down into Nebraska—all of Western South Dakota. We want our treaty lands back as well—not just the Black Hills. We want it all back.

Priority number three goes with the land. For years and years and years, in places like Wyoming, they have mined coal. They have taken billions of dollars worth of oil and gas and minerals and resources illegally from our land. We want that back. It is owed to us. It was stolen from us. They have squatted on our land and we want it back.

And then is issue number four, priority number four—and that is money owed for all that is owed to us. The U.S. Government has had a history of depriving people during wartime of their entitlements. My people could not be defeated by the U.S. Government. My people would not surrender. My people were victors upon this land. Knowing that, the United States purposely came out and killed our buffalo. They destroyed our economy. They subjugated us and forced us on to the reservations as a result of the purposeful destruction of our buffalo herds, of our economy.

In addition to that, what lands we were left with, the U.S. Government, as you well know, mismanaged our trust resources—our moneys, our lands with little oil and gas or what little timber we have have been mismanaged. We want a full accounting, Senators, of all that is owed to us of the great Sioux Nation, and we want it with interest, so that our people can live; so that we can have an economy, a restored economy, so that we may enjoy a Marshall Plan for our people.

Inside this written testimony is a number of other priorities, very important things. I don’t want to list them. I don’t want you to

think that I am listing them, because to do so would be wrong. It would be like having 10 children and only having enough food for three. Which children should I choose of the 10? Which ones do I love the most? Which ones will I feed today? I know that the Federal Government has given very limited resources to the Bureau of Indian Affairs. They have given very limited resources to the Indian Health Service and other branches of government that serve Indian country.

So we Native American leaders are asked to prioritize. Our fear in the Great Plains Region is that if we list one, two, three, four, five, six, seven, eight on down, that those at the bottom of the list may not be funded or pushed aside. So every year when the government asks us to prioritize, we do so under protest, or we do it our way.

So I just want to throw a few simple things out here today when it comes to priorities, ideas. I want you to be aware that I am not prioritizing. But in terms of important issues, it was earlier mentioned—suicide. Many of those suicides are on my reservation. In just a couple of weeks, a delegation led by the vice chairman of the Cheyenne River Sioux Tribe, Harold Fraser—I want Harold to stand up because I want you to see this man so you know what he looks like. I want you to note him because Mr. Fraser will lead the delegation to Washington, DC and he will be asking Senator Johnson, as a member of the Appropriations Committee, and you Senator, as chairman of the Indian Affairs Committee, for help, for aid and assistance, so that we can fully fund the programs to keep our young people from following the ritual of suicide. That will be in just a short couple of weeks.

Also, we have been grateful to receive some funding for domestic violence programs, but domestic violence continues to be a problem on all reservations. I have some ladies here today from our Domestic Violence. I would like to ask them to also rise—[native word] domestic violence. And be aware—be aware that many of these children that feel a sense of hopelessness do so because of domestic violence situations. They have grown from being little tiny babies watching their parents fight; watching their father come home late at night, if indeed there is a father, drunk, stoned, and committing violence against their mother. They have watched violence on TV. They watch violence in the movies. There is violence in the rap music they listen to today. They are surrounded with violence. It is not surprising that they turn to violence in their time of need.

So I please beg for support for the domestic violence programs in South Dakota. You have been very gracious so far, and I know you will continue to do so. We need the [native word] River, and I am going to focus on [native word] River. We need a new high school. Our high school is full of asbestos. It is not like this beautiful school you see here. I was really admiring this school—walking down the hallway, dreaming how my Native American children should have a school like this. After all, this is our Black Hills, this is our land. And yet, my children do not have a school like this. With your help, we will get a school like this for my children—and not only my children, but the children of the Oglala, the [native word], the [native word] and all of the other Bands of the Seven Council Fires of the Great Lakota [native word].

Also, we need some more money for our Native American veterans. It was really good to hear your story again told, Senator Inouye. Both my uncles, my great uncles, my grandmother's brothers, served in World War II. One uncle was a sergeant, and he stormed the beach at Omaha. Most of his platoon was cut down. They have a motto that you leave no man behind. He went back under heavy fire and he pulled the dead and the wounded alive back to shore, to get them to safety, relative safety, if you can call it that. My other uncle was the first Native American pilot, fighter pilot. He served in the Pacific Theater. Both were heavily decorated. Both were heavily honored amongst our people. Both gentlemen, though, when they returned home, could no even drink a glass of beer in a bar in this State. Both were not welcome in many places in this State. For the country that they had served, they were not welcome amongst the white people.

Both received inadequate health care. Many of our World War II, Korean and Vietnamese veterans today still receive inadequate funding for Native American programs. I know, like your people, when you come home, you found out that many of the Japanese American people were interned. They were discriminated against. So I know that you know what I am talking about. You know that there is nothing worse than returning home for more, only to find out that you were not fully supported back home. That is the way many of our Native American people still feel today.

Up and down these streets in Rapid City, I encourage you to drive around today. You will see many homeless Native American people here, many men. Each of them has a story. There are many Vietnamese veterans that are going to sleep alongside that creek tonight. That is a tragedy.

Senator I am going to conclude. I started with health care. I am going to conclude with that. We have introduced in the Senate Finance Committee under the Subcommittee of Health, a nursing home bill that Senator Johnson has graciously introduced. Unfortunately, it is not moving very far. It is a bill to overcome another great discrimination that exists in this State, and that is the fact that the State legislature has arbitrarily imposed its will upon our people by placing a moratorium on nursing homes. We think that is atrocious. There is only one nursing home on a reservation. My good friend here, President Kindle, is lucky enough to have that.

We, just like the Marines, have a motto. We don't leave anybody behind. In the days of old when our warriors went off to battle, we left nobody behind on the battlefield, dead or alive. And yet today, our elderly, our severely disabled, people that have had strokes or quadriplegic, they wind up in nursing homes many, many, many miles from our people. My grandmother died just up here on the hill, in a nursing home. I was chairman for 3 years. My number one priority in 1990 when I became chairman, 12 years ago, was to build a nursing home so I could bring her and many other of my grandmas and grandpas, close to 100 at that time, to bring them home. And I don't want to bring them home in a coffin, Senator. I want to bring them home alive, and I want them to be among their people, where they can live out their days in the luxury of our home health care facility.

In conclusion, we were promised 5 years ago by Dr. Mike Trujillo that we would be built a new hospital in Eagle Butte—5 years ago. We were very excited. As a matter of fact, they gave him a nice little statue. It had the tribal flag in it and everything—really nice. And we have yet to see anything happen. We come to find later that I guess he promised quite a few tribes the same thing. It is unfortunate, because like so many other Federal officials, now we even have Native American officials breaking their promises to us.

We are the only tribe in South Dakota that built their own hospital. We built our own hospital using trust funds, some of the trust funds that were not stolen from us, fortunate enough to have. We went out and we built our own hospital. And a couple of decades later, the U.S. Government came along and decided to put up a big dam by Pierre, SD, and guess what? Our hospital is now 40 feet under water. So the Corps of Engineers said, well, we will build you a replacement hospital. Senator Johnson has come up and he has seen that replacement hospital. And again, it is a travesty.

So we have been promised this new hospital. We are right now working on trying to get the funding for it. We are not asking for special appropriations, even though it might require one, but we have identified funds. Senator Johnson will be working with you. There are existing funds within the system for Dr. Trujillo's promise to be kept. I know he is no longer there, but I know that every good government always keeps its promises.

Senator Inouye, you have always been a man of your word. I appreciate working with you for the last 12 years. I will not be seeing much of you, as I no longer am going to be chairman come December, but you better believe that I am going to be there in spirit. If nothing else, I have got good e-mail, and I will be writing to you regularly.

Thank you very much, Mr. Chairman. Thank you very much, Senator Johnson, for hearing my words, and again I wish to apologize to anybody, especially my elders, for speaking before they have had a chance to speak, and if my words have been strong and offended anybody, I do apologize.

Thank you.

[Applause.]

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

The CHAIRMAN. Thank you very much, Chairman Bourland.

Now may I call upon the president of the Rosebud Sioux Tribe, William Kindle. Mr. President?

**STATEMENT OF WILLIAM KINDLE, PRESIDENT, ROSEBUD  
SIOUX TRIBE**

Mr. KINDLE. Thank you, Senator.

Good afternoon to both of you—Mr. Inouye and Tim, it is good to see you again. Senator Johnson was down and visited with us at Rosebud Pow wow a few weeks back, and the people were really touched by that, and wanted me to tell you they are in support of you and we are glad that you came.

I want to begin by saying, we are a federally recognized tribe down at Rosebud. There are some 28,000 members down there, and I represent those people. I am here today with the concerns and

some hopes for those people down at Rosebud. I want to begin by talking a little bit about treaties and sovereignty. I am not going to take a lot of time today because I know that there are people behind me that wish to speak as well.

With the dialogue that is taking place here today, the Rosebud Sioux Tribe is asserting its fundamental rights as a treaty tribe. We are here as a sovereign nation and continue to stand by the treaties that were signed by our forefathers and the Federal Government. We are in hopes that the United States of America will continue to stand by those treaties as well.

It has been agreed in these signed documents that the Rosebud people as a sovereign nation will look to the United States of America to continue to fulfill its responsibilities in the treaties. These basic responsibilities include health care, education and welfare. Senator, that is what I would like to continue my dialog here with you today, in that order, beginning with health care.

As you probably know, the Department of Health and Human Services is paying approximately 40 percent of the funding that goes into the hospital at Rosebud. Much of that funding is channeled through the community health program, the alcohol treatment program, the emergency medical ambulance service, and the mini-bus service. These services are dearly needed on the reservation, and we certainly would like to have that other 60 percent of the funding put in place there as well. It is one of the main responsibilities that has to be addressed and fixed by the United States Government. Our ambulance service down at Rosebud is one of the most active in the area, but we have a yearly shortfall of \$500,000, and we have had that shortfall for the last 15 years.

When we come up against the shortfall, we begin laying off ambulance personnel and drivers, people that work and serve us there. When that happens, we end up with a lower level of care, and we cannot have that. That must not be. We need to make certain that ambulance service down at Rosebud is put into a line-item in the Indian Health Service budget. That must, must happen.

Continuing along with my dialog here today, we need to talk a little bit about contract schools. Recently, the St. Francis Indian School was awarded several million dollars, and we want to ensure that that money stays intact at that total amount that was needed for the new school there at St. Francis. It is a kindergarten through 12th grade and it is a really needed, vital part of our educational system there at Rosebud.

When we talk about the welfare of the Rosebud people, we have a Rosebud Sioux Tribe founding a services program that recently was turned back to the Federal Government because of lack of funding. The funding that was there was only 50 percent of what was needed. Now, we would very much like to have that program back under tribal control, back under contract, but with the amount of money that is there at this time, it is impossible for us to assume that contract again. So that is something that is on our agenda to do. We want to assume that contract again.

We were fortunate a few months ago to be awarded a grant from the Justice Department to build a juvenile detention facility. We were really thankful for all the help. I am sure Senator Johnson

helped us with that, and you as well. We got a \$9-million grant to build that facility. Now, it is up to me as tribal chairman to seek the funding for the operation and maintenance of that facility, and that has to come through the Bureau of Indian Affairs. So we are asking that you help us get that funding into the Bureau of Indian Affairs Budget, and for the fiscal year 2004, it is about \$3.5 million that is going to be needed for the operation and maintenance for that center.

As always, we have a housing issue on Rosebud. We have a housing list, a waiting list of 400 to 500 people waiting patiently for a home. At this time, the moneys that we receive only allows us to construct 20 to 40 homes per year. At that rate, it is going to take us a long time to house our people down there. So we are asking that that program receive more moneys, more dollars so that we can get out people into some adequate housing. There again we believe that that is a fundamental treaty right as well.

Our tribal court system—we have had that under 638 contract for several years, and it has remained at \$400,000 all those years. We believe that that needs to be doubled. The court system is in a building that was constructed back in 1978. At that time, it was to staff 10 to 12 people. We now have 28 people in that facility. So we are asking that there be some help there with that court system.

The road system down at Rosebud. There are 126 miles of highway on the Rosebud Reservation. There again, funding is inadequate. We have two snow removal machines to clear the snow from that system, those 126 miles, during the winter. It is old. It is obsolete. We are in dire need of equipment and dollars to fund that project.

We would very much like to have a tribal building, a new building to house all of our programs and even house the Bureau of Indian Affairs people as well. That would make the distance that our tribal people have to travel to to do their business, it would cut those miles down tremendously. Now, we have different programs scattered throughout the reservation and they drive many, many miles to do their business. So we are in dire need of a tribal building there as well.

We would very much like to see some economic development monies, perhaps a one-time thing that would allow us to begin to develop some reservation economy. We grow very weary of coming before you year after year asking for funding, and I see the time when the Rosebud Sioux Tribe will be able to stand on its own two feet and perhaps not approach you every year. Before that happens, we are going to have to have the economic development funds to do that. So we are asking that you help us with that.

As I stated, I am going to keep my comments brief. I have some I am going to submit as written to you, but Senator, we want to thank you for taking the time to listen to our concerns from Rosebud. We know that the dollars are short and there are many hands reaching for those dollars in Washington, but please consider what we have said to you here today, and we hope that you will return to Washington, DC and do all that you can to help us with our requests, and we will be anxiously awaiting the response from you.

So thank you, Senator, for accepting my testimony, and Senator Johnson, thank you for coming and listening. We appreciate it, and thank you very much.

[Applause.]

The CHAIRMAN. I thank you very much, President Kindle.

We will listen to the next panel, and then may I call all of you back again.

Panel number three consists of the president of the Oglala Sioux Tribe at Pine Ridge, John Yellow Bird Steele; the chairman of the Standing Rock Sioux Tribe of Fort Yates, Charles W. Murphy, who will be accompanied by Sharon Two Bears and Ron Brown Otter; and the chairman of the Lower Brule Tribe, Michael Jandreau.

May I first recognize President Steele.

**STATEMENT OF JOHN YELLOW BIRD STEELE, PRESIDENT,  
OGLALA SIOUX TRIBE**

Mr. STEELE. Thank you very much, Senator Inouye.

I would like to thank the two Senators for bringing this hearing down to the people, to Indian country. I would like to thank you, Senator Inouye, for the new Federal high school we have on Pine Ridge and the new hospital.

I would like to welcome you, Senator Inouye, to the Black Hills, the sacred Black Hills, the Black Hills that still belong to the Sioux Nation. In 1980, the U.S. Supreme Court said, the most ripe and rank case in the history of the United States is the illegal taking of the Black Hills. And Senators, when you deal with the BIA trust fund moneys, one thing the Oglalas ask you to remember is that just two award moneys that Congress has appropriated, that BIA has in those trust fund moneys, for the sacred Black Hills and for the great Sioux Nation—those are not the Sioux Nation's moneys. Those are still the Federal Government's moneys. We did not sell the land. The land is still ours. So I ask you to remember that when you deal with the trust fund moneys.

[Applause.]

Mr. STEELE. Senators, I have given yourselves quite a number of written testimony in all areas. I have authorized and designated several entities on Pine Ridge to deliver to yourself written testimonies in education, in health care, and the drought systems for our ranchers. I do have, Senators, some very pressing needs I would like to address to yourselves. One of them is a 1976 memorandum of agreement, and I gave you a big packet up there a little while ago, a very volatile situation on Pine Ridge right now dealing with the National Park Service—this 1976 memorandum of agreement. They have not kept their promises from 1976. Just 5 minutes ago, it was reported to me there is a big helicopter out there in the Badlands. What is it doing out there? It has got cables hanging from it and it is taking a package out of there as big as a small car. We are going to have to investigate this to see what they are taking out of there. It belongs to the tribe. The land belongs to the tribe. We may need the Senators' help here in the very near future in dealing with the National Park Service and that memorandum of agreement.

Another very volatile situation I would like to tell you about is the drought assistance. Somewhere, somehow, somebody has said

that there are 13.1 inches of rain on Pine Ridge this year. I say that is a lie. [Laughter.]

We need your help in that drought system budget legislation that was just passed, or we are going to have a lot of our own people, our ranchers going out of business this year if we do not get that drought assistance. So I ask your assistance there.

One other thing is our public safety department—very essential law and order. We have, and I believe it is about 69 cops hired through what they call a circle project of the Justice Department—the homeland security bill was vetoed; moneys in there were for [native word] cops. At the end of this month, September 30, I am going to belowing 69 officers. We are not going to be able to provide 24/7 coverage on Pine Ridge in law and order. We are working with the BIA to help alleviate this situation, but I am looking at in a couple of weeks here operating law enforcement with no officers, about 30 officers. So those are my priorities.

At this time, Senators, I would remind the U.S. Senate that our treaties, according to the U.S. Constitution, are the supreme law of the land. Everything that we have said, begged for, pleaded for—if those promises in those treaties were kept up to today's levels, like the land values have gone up to today's levels, we would not be here asking. We need those treaties honored by the U.S. Government for ourselves, for our future.

I would like to help the Senators—you know the statistics—one, two, and three and four poorest counties in the whole United States according to the 2000 Census are here in South Dakota. You know the statistics in health care; you know the statistics on unemployment. These are growing as we sit here. The 2000 Census says Pine Ridge's median age is 20.6 years old. As we sit here, our housing need is growing more. Our unemployment is growing. Our health care needs are growing more. Our population is very, very young.

On Pine Ridge, nothing was built with the growth in mind. Our infrastructure is lacking because our communities are growing too fast. We are having communities sprout up where there were no communities before. We need to catch up with the rest of America. As President Bush said in his speech to the UN on Iraq, to keep up with the times and progress. Pine Ridge is not keeping up. Our people are very, very impoverished—very hard lifestyles on a daily basis.

At this time, I would like to invite Johnson Holy Rock, a respected elder and a fifth member on the Tribal Executive Board, to state a little on the treaties; and Ron Duke, I would like to have—he is chairman of the American Horse School. On Pine Ridge I have six tribal schools; I have four county schools; I have three parochial schools; and I have one federally run school. They have an organization called ONEC—Oglala Nation Education Consortium. Mr. Duke is the president that, to speak on education.

Mr. Holy Rock.

The CHAIRMAN. Welcome, sir.

#### **STATEMENT OF JOHNSON HOLY ROCK, OGLALA SIOUX TRIBE**

Mr. HOLY ROCK. First of all, I would like to thank Senator Johnson and Senator Inouye for having this field hearing. Very seldom

to these things happen, and I have anticipated this privilege, but I did submit a written testimony which each of you will get one. But basically what I said in my written testimony was that I represent the treaty interests of the Oglala Sioux Tribe. I have been the chairman of the Oglala Sioux Tribe a couple of times, and [native word]. But the goal that I saw at the time that this hearing was announced was that I wanted the United States of America to honor the goal of honoring our treaties, [native word] which in many issues and many times over the years, close to 100–150 years, that it has not been honored.

So [native word] be to a request [native word] in the halls of Congress, that you convey this thought to your colleagues and the other members of Congress, having to do with treaties. And of course, through the treaties, the other activities that establish the trust relationship between the United States and the Great Sioux Nation of which [native word] an integral part of a sovereign nation, the Great Sioux Nation. And the priorities that I [native word] all of those activities that relate to that basic hub, namely the treaties, because of the Constitution of the United States under article VI, and yet over the years, it has been violated time and time again.

But the Sioux Nation of Indians have been a very patient people. In fact, in times of emergency we forget our differences, and we respond in an emergency, in time of war and other activities that confront this Nation. I am not saying that this is a way of reminding you the responsibility and the honesty and the integrity of a nation to honor treaties, but that we have during World War II lost 3 years out of my life packing a rifle in defense of this Nation in my small way. Fortunately, I was able to survive this incident in the history of the United States.

Now, Mr. Steele has stated pretty much what he had in mind as priorities in his capacity as chairman of the Oglala Sioux Tribe. I will not take any more of your time dwelling on that, because it is a day-to-day relationship that exists between Oglala Sioux Tribe and the Congress of the United States.

So with that, you will have the opportunity to read my written testimony, and be apprised of where I am coming from on behalf of the Oglala Sioux Tribe. With that, I want to thank Chairman Steele for giving this surprise privilege to address both Senator Johnson and Senator Inouye. I thank you very much for this opportunity.

The CHAIRMAN. I thank you very much, sir.

[Applause.]

The CHAIRMAN. For the record, will you identify yourself, sir?

**STATEMENT OF RON DUKE, OGLALA SIOUX TRIBE; CHAIRMAN,  
OGLALA NATION EDUCATION COALITION**

Mr. DUKE. Yes; my name is Ron Duke. I am the chairman for one of the schools on the Pine Ridge Reservation. I am also the chairman of the ONEC organization—the organization which represents seven schools on the Pine Ridge Reservation.

Mr. Chairman, honored members of the Senate Committee on Indian Affairs, we welcome you to our nation with a warm handshake and great appreciation for the work that your leadership within the

Senate Committee on Indian Affairs has done on behalf of the Lakota People and other Indian nations across this United States.

The Oglala Nation Education Coalition represents nine schools and 3,300 Lakota students. As schoolboard members, administrators and teachers, we are proud to say that we are embracing the many challenges that come before us in tribal education—low test scores, high drug rates, attendance and social problems caused by unhealthy behaviors and lifestyles within these families and communities. These are the issues that Lakota education people are addressing.

To truly make a lasting, life-long difference in our children's learning, there must be larger financial investments to Indian education. Schools on Pine Ridge are not just for learning, but also for unlearning the unhealthy, negative influences that are experienced daily by our children in their old homes and communities. The Oglala Nation Education Coalition is requesting the Senate Committee on Indian Affairs to hold hearings on the state of Indian education, with expert witnesses to be from the tribal education leaders of schoolboards, administrators, teachers, students and parents living and working on Indian reservations. This is what we are hoping to get, is a Senate select committee hearing basically just for education.

For too long, experts have represented us—those who are not residing and experiencing the day-to-day challenges we face on the Pine Ridge Reservation. We would like to hold special hearings to present issues and concerns from our expert witnesses from Indian country on the [native word] student unit. We have got isolation of schools. Seven schools on the Pine Ridge Reservation are located in rural areas, with student living many miles from the school. This drives the cost of transportation, along with the called for maintenance, as many roads to students' homes are not maintained. With the isolation of schools comes the challenge of recruiting and retaining qualified teachers. Training of tribal members and retaining them is a solution. We need to offer more incentives, like encouraging them to finish teaching programs and offering them wages and benefits that are competitive.

With the old age of schools on the reservation, the cost of upgrading, maintenance, repair and preventive maintenance are becoming more costly as buildings and equipment or parts are becoming more obsolete. Teacher and staff housing are rapidly deteriorating. We have a need for more housing, as the student population increases, to the need for staff housing. All the funding is going into repairs. No funding is left for preventive maintenance.

The need for special staff—increases in personnel other than teachers to meet the needs for students of families is needed—stopping truancy; family services, counseling, drop-outs, day care, therapists, and schools all-day; and funding to pay and book speakers to assist in preservation in developing a curriculum of materials; staffing for after-school programs to assist students to gain grade-level status; tutoring in all subjects and activities for advance work; staff for home visits and checking on families; staff for programs to reduce risk for diabetes, alcohol and drug abuse; special transportation and other costs of isolated schools.

Distance between schools and residents is high in rural areas like Pine Ridge Reservation. Many students live off main roads, which are usually in poor condition and difficult to traverse in inclement weather. The distance and the road conditions require maintenance costs for vehicles. Schools have to travel long distances to purchase supplies and must pay higher transportation costs, which requires expenses by a vendor. There has to be an increase in transportation dollars to be able to provide for our after-school tutoring program. These programs are absolutely necessary for students to catch up and get help, to provide follow-up visits to families, and transportation for personnel to work with families in their homes.

Costs associated with greater length of service and education personnel; the increased pay-scale to retain employees who have maxed out the scale; a fringe benefit package that will appeal to teachers as part of recruiting and retention. We must be able to reward our own tribal members who have worked hard to reach this level of professionalism to stay in the community. Many of the schools cannot go any higher to reward long-term teachers.

The costs of therapeutic programs, with the horrific rates of family violence and alcoholism, along with unreported child and sexual abuses. Many children are in need of therapy, lay therapy, and counseling. The Indian Health Service is not able to begin to meet these needs, as it is underfunded and lacks the personnel that specialize in working with children on adolescent mental health needs. The recruitment and retention for this type of specialty will require a large investment—an investment that will be seen many years later when early-intervention children can grow up to be healthy and well-adjusted regardless of what they experienced.

On behalf of the Oglala Nation Education Coalition, we thank the Committee on Indian Affairs for coming to our homeland and for this opportunity to request hearings on the state of education, to hear from the real experts.

I thank you.

The CHAIRMAN. I thank you very much.

[Applause.]

Mr. STEELE. We will finish up in a few minutes. I see that Vice President Tom Iron here. He is a Vietnam veteran, and president and he is going to be here in a second, tribal members, Senators. They are asking me because the time [native word] on the children's mental health programs that is coming from the Lakota perspective, when we have people with mental health problems, the non-Indian psychologists and psychiatrists, their culture, their traditions, their lifestyles—everything is different from us back home. And so, my tribal [native word] says, ask the committees, the Senate Appropriations Committee and the Indian Affairs Committee, to establish funding for culturally appropriate mental health systems of care. So I pass that on to you. And you, Senator Inouye, have told me over the many years to get involved in the electoral process so that we can show some strength and get something done. I would like to tell you Senator Inouye that in South Dakota here across the State, the Indian vote did get Senator Johnson elected 6 years ago, and in November we will do so again.

Thank you very much.

[Applause.]

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

The CHAIRMAN. Thank you very much, sir.

And now may I recognize Vice Chairman Iron.

**STATEMENT OF TOM IRON, VICE CHAIRMAN, STANDING ROCK  
SIOUX TRIBE**

Mr. IRON. For the record, Senator, my name is Tom Iron. I am vice chairman of the Standing Rock Sioux Reservation. I represent the Standing Rock Sioux Nation, and it is an honor to be here today, sir, to hear testimony. I have provided you a copy of the testimony for the record. I am not going to read page by page, but summarize this testimony to you, basically to share this information with you.

My brother and I are veterans. We served in all four branches of the military service and we are very proud to have had the privilege, and we have a lot of respect for you, Senator Inouye, for your services to our country, just like we did as military men.

One of the things I wanted to share before I forget this part of the important issue that I wanted to share with Senator Tim Johnson, I would like to ask you to research your records to see if there is a possibility that put in capital letters the name of Percy Good Eagle. Percy was a combat veteran, five tours of Vietnam, and many decorations. I submitted an application for a Medal of Honor for him, and I have not heard anything on that yet, but I think he deserves it and I wanted to mention that, and see if we can follow-up on that.

Some of the things that I just wanted to touch on the testimony that was prepared earlier is basically the trust responsibility of the Government and some of the things that are of special concern to the Sioux Tribe about the IM services and all of the services that were established in another department in Albuquerque, so it was to take our IM records and all that from other Indian tribes, which may affect our processing of IM payments to our reservation—there really is no support to our reservation and we very much need to maintain a record. We are starting to lose our records from the Government.

One of the things is the schools that we have on the reservation. I think every chairman has probably addressed this. We have got these dilapidated schools that are probably not the best things in the world, but we do not have the funds to do construction or to build new facilities on the reservation. With the funding that we had, we spent some money on the public schools in [native word], public schools, to build a new school for them. But when we see the new school, we think, well, I wish we could have more schools throughout the reservation in South Dakota, but we just don't have the funds to provide those types of services that we need.

When we come to the schools, we also have to address the need for more tribal roads on the reservation. We look at probably 375 miles of tribal roads that are needing repairs, and you are looking at \$375 million that we are going to need as a reservation to do some work on the roads on the Indian reservation, and that is very important to us because the kids need to be transported to the

schools on the reservation, and utilize those services that we actually need.

I want to touch a little bit on the important problem that every Council and Chairman has ever asked, and address economic development. We talk about economic development, but you know, the important thing that I always say is that in order to have economic development, first of all, we have to become healthy as an Indian nation. And I address it basically because of the fact that there is a higher rate of alcoholism, drug abuse, and suicide situations. In 1998, we probably had the highest numbers of suicides on the reservation. We talk about diseases that affect our reservation—diabetes, a very, very serious situation that we are dealing with. One day I have to go back and go to my cousin's funeral because he died from renal dialysis problems. Many relatives are dying from this situation.

Thanks to Senator Inouye for the funding that we receive for renal dialysis care, but we need far more staff from the Government to care for people that have diabetes. Diabetes just goes on into heart problems, strokes and all these things that affect our people with these situations. I am also affected by diabetes, but mine is the situation from Agent Orange in Vietnam, and I am a disabled veteran, but other people don't have those benefits, but only IHS, and they don't get adequate services of people and personnel. Again, we look at manpower that is needed for care for the problems, the chronic problems that we have with diabetes on reservations. I have always expressed a serious concern because of the fact that you have children, young adults that are abusing drugs and whatever. We have the problem of diabetes which is affecting the health of many, many of our Native American people on the reservation.

I talk about, I think if you look at the records, in 1990 I provided testimony to a Senate investigation regarding the problem of FES/FAE on Indian reservations. Those numbers were about 190 then, but that number in 12 years of outreach became much higher, and we think about the [native word] that are trying to prevent the right education to be used on reservations, they cannot provide [native word] due to the fact that there are very critical needs for therapeutic care and all the things that are basically needed to care for these children as they come in the school systems. That was the really important thing that I wanted to share with you.

I had a meeting with one of my people within the system of tribal government and law enforcement. Law enforcement is a critical situation right now on our reservation because we just don't have the manpower and additional funding to take care of these problems. Right now, the crime rate has increased much higher than back in the 1990s, early 1990s. In the last 12 years, our crime rate has really increased, and we just don't have the adequate funds to provide this needed service on Indian reservations so that we can prevent the situation that we are facing on the Indian reservations.

These are some of the things that I have documented and provided some records from the schools, Standing Rock community schools, one of them that provided some information. I think we need to look at that very carefully because it is probably one of the largest Indian schools on our reservation which provides an edu-

cation to our children. They have lack of funds to provide for better facilities for the reservation.

I always have that fear that some day one of these concrete-built schools are going to collapse on our children because they are already deteriorating and [native word] schools that have been built, there may be some day, and I hope it does not happen, but these schools are going to collapse on our children some day and it is going to be really hurting us as an Indian nation to think of why didn't we, you know—those are important things that I always think of that we need to take care of for our people on the reservation.

So gentlemen, without taking too much more of your time in order that others may speak that are here, but hopefully the testimony that we share will be followed through and help our Indian tribes get some funding for these services we need.

Thank you.

[Applause.]

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

And now may I call upon Chairman Jandreau.

**STATEMENT OF HON. MICHAEL JANDREAU, CHAIRMAN,  
LOWER BRULE TRIBE**

Mr. JANDREAU. Chairman Inouye, on behalf of the Lower Brule Sioux Tribe, it is a great honor to welcome you to South Dakota to discuss the needs of the great Sioux Nation.

We greatly appreciate the hard work and the leadership of Senator Tim Johnson as a member of the committee, and as a member of the Committee on Appropriations.

Mr. Chairman, you have already heard today the needs of the great Sioux Nation are many. Our unemployment rate is far too high. Our schools and infrastructure are in need of repair. Our life expectancy is too low. Our infant mortality rate is closer to that of a third world nation than that of the United States. It is painful to see this every day. You simply must address these needs, and also develop a private sector on the reservation to improve the quality of life for everyone.

With your permission, however, as a member of Secretary Norton's task force, I would like to focus my attention on the current trust fund reform initiative. As you may know, the tribal members of the Secretary's task force at the Department of Interior have reached an impasse. The Department has suggested the establishment of an Under Secretary for Indian Affairs. I would personally prefer that would be of Indian Affairs, but the title of that person is not the central issue. The central issue is three-fold—the duties and responsibilities of that official; the standards to be applied by that official; and the ability of Indian people to hold that official of the United States of America accountable for any breach of their fiduciary responsibility.

If we have responsible officials clarifying their responsibility and the standards to apply, to be applied, then they have simply moved the boxes around without enacting true trust reform. I do not believe that raising the issue of standards is having a new and different issue. Rather, the standards are central to trust fund reform and are indeed the essence of trust fund reform.

The Lower Brule Sioux Tribe has endorsed S. 2212, introduced by Senators McCain, Daschle, and Johnson. I believe this legislation would provide an excellent framework for the committee consideration with some amendments, and deserves the support of the Indian Affairs Committee.

Mr. Chairman, it is my belief that time is of the essence. The Department of the Interior is proceeding with trust reform. The Supreme Court is about to consider at least two very important Indian cases. As you know, the Supreme Court has been looking to Congress for various specific guidance on a variety of issues affecting these cases. The Court has been looking for express statutory authority for the actions taken by officials of the executive branch. It is important that Congress establish by statute the fiduciary standards by which to judge the actions of the United States of America with regard to Indian tribes and Indian people.

Finally, Mr. Chairman, it is my hope and recommendation that Congress prohibit the Department of Interior from using any appropriated funds to implement trust fund reform until S. 2212, as amended, is enacted.

In closing, allow me to express my deep appreciation to both of you for bringing the committee to South Dakota. Chairman Inouye, you have been held in the highest possible regard by Indian country for a very long time. We appreciate everything that you and Senator Johnson have done, and are trying to do for Indian people. Thank you, and I will be pleased to answer any questions. However, there was one statement that the ladies from the Sacred Circle incorporated, asked if I could convey to you, Senator, as Chair of the Senate Committee on Indian Affairs and a long-time friend of Indian tribes. Native American women are asking you to call a Senate committee hearing to reveal the battery and rape and stalking of native women and the handling of these kinds of [native word] by the Federal Government, and the programs available to Indian tribes through the U.S. Department of Justice and the domestic violence against women.

[Applause.]

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

The CHAIRMAN. Thank you very much, Chairman Jandreau.

Mr. IRON. Senator Inouye, I have a veteran with me who was combat-wounded. He wanted to share powerful testimony. I said yes, I will allow you to come with me and please share with the Senators, and I almost forgot him. Sir, if you will please acknowledge Allan White Lightning. Would you please come up here, Allan.

**STATEMENT OF ALLAN WHITE LIGHTNING, NATIVE AMERICAN VETERAN**

Mr. WHITE LIGHTNING. Thank you, Mr. Chairman. I appreciate Mr. Irons' request of me to present some testimony.

Mr. Chairman and Senator Johnson, Rapid City here is the home of many of our people, who live and come from Standing Rock, Cheyenne River, Quill Creek, Lower Brule, Pine Ridge, Rosebud, and Yankton. They have always gone home to the celebrations and the happenings that occur at their home. They did not come here living in Rapid City on their own free will. Most of the time, they left because of poverty and despair back home.

What we are asking is that on Standing Rock, there is a bill called Public Law 102-575, title 35, it is called the JTAC bill. The JTAC bill was approved back in 1994, which basically created an opportunity for residents of Standing Rock Reservation, for economic recovery. They did not provide any language in the legislation for people that are living off the reservation. Additionally, there was an economic loss report that was done on that particular report, which provided \$375 million, and this was basically supported also by the General Accounting Office. However, only \$90.6 million was received by Standing Rock.

What we ask is that the difference of \$245 million be provided to Standing Rock so that they can help their members who live off the reservation, specifically like in Rapid City.

Second, Mr. Chairman, when an elder told me that a lot of times when you have the land, that people cross your land to take their cattle to the calf sale, and they in turn make money and they go back across the land. You know, in 1958, when there was a Fifth Amendment taking of the lands that were relative to our people that live along the Missouri River, Standing Rock Sioux Indian Reservation, there was 56,000 acres of homelands that were confiscated by the Federal Government. Many of these homes and homelands were owned by individual members of our tribes. When the legislations were given, they were provided to the tribe. On Standing Rock, there are four communities of Cannonball, Fort Yates, Kensal, and Lefor which were directly affected. What we have also is that there are 22,000-plus acres of river bottomlands currently that have not been compensated for. We still own that land.

Every year, the U.S. Government collects \$660 million annually from the creation of power and the sale of power and creation of hydropower here. We ask, Mr. Chairman, that Standing Rock Sioux Tribe, because of the violation in crossing our land without our permission, that we, the Standing Rock Sioux Tribe, be given an amount plus the interest from the time that the Fifth Amendment-taken was done.

Additionally and last, I, too, support what the Vice Chairman Iron is saying is that Percy Good Eagle, who is a combat veteran many times over, from Standing Rock, be considered and that you, as representatives of our people also take that into consideration.

Thank you very, very much, Mr. Chairman, and I would like to have Mr. Iron ask Jesse Taken Alive, former Chairman of the Tribe, he has a couple of comments he wants to add also.

The CHAIRMAN. Thank you very much.

[Applause.]

**STATEMENT OF JESSE TAKEN ALIVE, COUNCILMAN,  
STANDING ROCK SIOUX TRIBE**

Mr. TAKEN ALIVE. Thank you, Mr. Chairman, Hon. Senator Inouye and Hon. Senator Johnson, Senator from South Dakota.

My name is Jesse Taken Alive. I am from the Standing Rock Reservation. My Lakota name is (Lakota language).

My friends, my name is Jesse Taken Alive, and interpreted, it means taken alive. My relatives have talked for a while today, and I am going to say a few short words, and I am going to speak as

myself, from my heart as a Lakota person, as a common ordinary person who lives here. Again, welcome to the Black Hills, the home or our heart, the heart of our home. This is where are creation stories come from. We come from no place else but from here.

Recently, a huge city in our world celebrated 1 year of mourning—New York City, United States of America. We have experienced those tragedies as indigenous people—acts such as Wounded Knee, episodes of colonization. You have heard the pleadings today for resources, and you will continue to hear those. But what I will share with you today is, number one, I would like to respectfully say that this is a nation-to-nation gathering, because we have treaties. Nations make treaties. Treaties do not make nations. We have those. And they are existing. There are many, many episodes of language that is used, and I say this most respectfully, by the United States that is in existing treaties, implying that treaties are no longer in effect. But they are, and that can be demonstrated.

The reason I am going to talk about this briefly, and talk about an illegal act as it was characterized by a former Under Secretary Gover of the Interior Department a day after former President Clinton visited our Black Hills recently, and that is the March 2, 1889 act. The reason we need to talk about this is because we have States rights. States rights are gobbling up land. States rights are causing State officials in our great State of South Dakota, as it is often called, to refer to the Missouri River as “our water,” and we know that that is our water, as indigenous people.

Also, legislation dealing with indigenous people of the United States of America often is only completed to the process of riders. It is always a rider that is accompanied to something, and in most cases, fortunately, we see the loss of real estate rights to water, rights to land, and the right to use them. This is why we need to keep continually asking this committee that represents the most powerful country, the United States of America, to look at treaties and to look at the illegal act of March 2, 1889.

This is not a Republican or a Democratic issue. This is about a nation-to-nation relationship that must be continued throughout. We are talking about quality of life. You can hear the pleas again, and how the records are there to demonstrate how our quality of life has greatly been diminished because of the colonization, the forced colonization of the United States of America.

Senator Inouye, during my tenure, and I say this gratefully and humbly, upon one of my visits to your office, I remember you telling me that the story and the plight of American Indians is the world’s best-kept secret and it can no longer be the world’s best-kept secret.

[Applause.]

Mr. TAKEN ALIVE. For example, in article 2 of one of our treaties, it describes the boundaries of the land, and it says these lands are set apart for the absolute and undisturbed use and occupation, and that is us, Senators. Also, in article 13, it talks about doctors and teachers, and it talks about sufficient appropriations for doctors, teachers, carpenters, and blacksmiths. We have always been in a discretionary budget of suggestions and recommendations from the President of the United States. I have seen that for myself when it comes to health care. We cannot have that anymore.

I know you have been asked for a lot of money during your tenure as Senators, from various groups. Please, Senators, keep in mind we are not minorities. We are not special interest groups. We are members of indigenous nations, whose lands we are renting to you.

[Applause.]

Mr. TAKEN ALIVE. I would ask, and I beg your apology and your indulgence, if I could physically hand to one of your staff people in the presence of my relatives who are seated behind me, a copy of the 1889 Act—if one of your staff members could come and accept this.

Honorable Senators, chapter 405 of this act of 1889 says, "An Act to divide a portion of the reservation of the Sioux Nation of Indians in Dakota into separate reservations and to secure the relinquishment of Indian title to the remainder, and for other purposes." This is the act, Senators, that former Under Secretary Gover, working for the Bureau of Indian Affairs, said was an illegal act. This is why he said it was an illegal act. He did not say that. This is why we believe, and we concur, that it is an illegal act. Section 28, that this act shall take effect only upon the acceptance thereof and consent thereto by the different bands of the Sioux Nation of Indians, in manner and form prescribed by the top article of the treaty between the United States and said Sioux Indians, concluded April 29, 1868, which said acceptance and consent shall be made known by proclamation by the President of the United States upon satisfactory proof presented to him that the same has been obtained in a manner and form required by said top article of said treaty, which proofs shall be presented to him within one year from the passage of this Act, and upon failure of such proof of proclamation, this act becomes of no effect, null and void. We move to the section 30 that says that all acts and parts of acts inconsistent with the provisions of this act are hereby repealed.

Honorable Senators, we have proof that the three-fourths signatures were not obtained, and that is why this act is an illegal act. And that is why the boundaries have been illegally made. And that is why we must sit down as nations and talk about our title and deed to these lands, because indeed they are ours, beginning with the fact that a pact does not supersede a treaty.

We must also talk about the reparations that we have been hearing all day today—the need for money for schools; the need for health; the need for roads. Senators, I would ask you, as members of this committee, and maybe it is going to take longer than our lifetime, but our children, our grandchildren need to sit down and right this wrong.

Finally, a copy of the Fort Laramie treaty of 1868, as an example. It says, from this day forward, all war between the parties to this agreement shall forever cease. The Government of the United States desires peace and its honor is hereby pledged to keep it. The Indians desire peace and pledge their honor to maintain it. This is the spirit that I talk about. This is the spirit that I bring to this hearing today.

Honorable Senators, when this act of 1889 was put forth, we saw tremendous, tremendous amounts of illegal taking. We saw in 1924 our grandparents and great-grandparents forced to become mem-

bers of this great country. And I know many of them are glad that they are members of this country, but just the act of not being asked to be members of a country could possibly be a human rights violation.

On and on through history up to today, continuing taking and taking and taking. I am fearful for my children and grandchildren. The population growth, and there is land up here that is going to be confiscated unless we sit down and take a look at the March 2, 1889 map. And again for the record, if I could ask some of my relatives to give a copy to you of the 1868 treaty as an example. And there are other treaties that we could talk about, such as the 1851 land treaty.

Again, the spirit of our discussions today as nations must continue on. I respect the integrity each and every one of you who are members of this committee, and especially those of you two who sit here with us.

Senators I would like to close, because testimony means you talk from your heart; testimony means you talk the truth; testimony means that you share this willingly and in good faith, trusting.

I would like to close my testimony by singing the song that honors this flag, because in our culture, we believe respectfully that we own part of that flag as a result of the battle of Breezy Grass of 1876.

[Applause.]

Mr. TAKEN ALIVE. We also respect and admire our grandfathers who fought for this country in a World War I and all the way up to today, in memories of our people who will continue to defend this country. It is not being unpatriotic to this country. Rather, these treaties that I speak about are found in your Constitution. In fact, the reason treaties are put in a constitution is to guarantee the dealings with indigenous people, our ancestors, who still occupy these lands, so let them.

I would like to close by singing a song to the flag that each and every one of us knows.

[Song in Lakota language].

Mr. TAKEN ALIVE. Thank you, Honorable Senators.

[Applause.]

The CHAIRMAN. It was an appropriate song for an appropriate time.

Before I call upon and recognize your distinguished Senator, may I advise the group that the record of the committee will be kept open until September 30. So those of you who wish to submit statements on issues being discussed today may do so, and send that to the Senate Committee on Indian Affairs, U.S. Senate, Washington, DC. May I also assure the witnesses who testified today that your full statements, because I realize that many of you did not provide the full statement, will be made part of the record.

With that, may I call upon your great Senator, Senator Johnson.

Senator JOHNSON. Thank you again, Chairman Inouye, for convening this hearing here in South Dakota. Too often, we have opportunities on our committee to hear experts, so-called experts in Washington, DC, but is important I think to this committee to come out to the home of the—under the tribal homes across this

Nation, to hold hearings where we can directly hear from the people themselves.

I want to commend you, Chairman Inouye, as well for sacrificing the time that might more typically have been used for the committee to ask questions or to express comments of their own in order to maximize the amount of time available for the witnesses to testify themselves. I think that it is the greater good for the committee to spend more time listening and less time talking, and I think once again your wisdom was correct.

I do not have questions at this point. We are going to need to conclude soon, but I do have some closing comments that I want to make relative to all of the witnesses before the committee today.

Chairman Grey, I appreciate all that you have done for Sisseton-Wahpeton. We are working very closely with you on a new IHS facility. I have toured it personally. It is in abominable condition. Much of it is a matter of old, old derelict buildings, trailer houses that should have been hauled to the landfill long ago. We are at the very early stages of replacing that facility. We are also working with you to expand the BDM water system, to again provide opportunities for clean, potable drinking water for members of the tribe.

President Ranfranz, thank you for all that you do at Flandreau, and for your service as leader of the Great Plains Tribal Chairmen Association. I think you have done great work in that regard, and with the particular attention that you have given toward economic development issues and ways that we can help you break down the cycle of poverty and dependence that we have had so much of for far too long. I have appreciated your leadership in that regard.

Mr. Chytka, thanks to you and to Chairwoman Archambeau for all that you have done on the Yankton Reservation. I have shared your frustration in particular over the lack of responsiveness on the part of the Corps of Engineers relative to the burial site problems that now have become chronic. I thought it was bad enough when we first heard the White Swan experiences. I personally toured that, and participated in ceremonies there. But we seem not to be making the progress that we ought to have. It is my understanding that you and your tribe have just concluded a 14-hour mediation process with the Corps regarding burial sites. I applaud your tenacity, but this is a circumstance that should not require that kind of longstanding negotiation. It is simply a matter of the Federal Government doing what is right.

For Chairman Bourland, I want to thank you for your leadership on so many things on the Cheyenne River. Again, I have toured your health care facility as well. It is in terrible condition, and I want to share with you my great frustration that even the plans for a new facility, deleting obstetrics care, I was shocked on my tour that you helped lead on Cheyenne River to find that women about to give birth are expected to get on icy highways and drive 100 miles to Pierre in order to deliver a baby—literally life and death and sometimes death has resulted from that. I appreciate all that you have done relative to nursing home legislation. This has been an issue that has been highlighted by a number of our tribal chairs, but it is in keeping with the kind of respect that needs to be shown to our elders. I agree with you that the legislation is not moving as quickly as we want it to move, but I remain determined

that we are going to make this happen, and we can correct this longstanding injustice.

For President Kindle, I again appreciate your leadership on a whole range of things. We are making some progress with many issues on your reservation, as well as Lower Brule and as well as Pine Ridge, but we have much more to be done. I share your frustration over the new juvenile detention facility, but without the resources as yet to staff it and to make it work in the way that it needs to be done; the shortages of housing; the needs that we have for ambulance and medical care and that regard; and for school facilities is simply overwhelming, and I appreciate your bringing those issues to the committee today.

And for President Steele, again, you have raised and your tribal members have raised profound issues as well on a whole range of issues. I appreciate the documentation you provided me today on the National Park Service conflict. We are having this go on at the same time as we are having Corps of Engineers problems on the Yankton. And all of these are problems that could easily have been corrected with the kind of consultation and government-to-government respect and courtesy that ought to be the standard way of operating, and yet, it has not been the case in too many instances. And so, I appreciate your emphasis on that.

I also appreciate that you are working with the other tribal chairs and presidents, particularly with Andy Grey, relative to articulating in a strong fashion the treaty statement that I am looking forward to reviewing it now and finalizing this, but I am looking forward to submitting into the Congressional Record for all time, to have this as something in the United States record, and you have played a key role in making that happen.

Vice Chairman Iron, again thanks to you and your tribal members for your insights on JTAC, on the lost records of schools, roads, health care needs there. I appreciate again your raising the Percy Good Eagle matter. I know that there and on the Sisseton-Wahpeton, the interest in honoring people who have served with great distinction, and I will do the best we can to make sure that these people are in fact properly honored.

Last, of course, to Chairman Jandreau—there is a great deal that you have done that I have had an opportunity to work with you on, but most of all your leadership on trust issues and your taking on the formal leadership role that you have had has been extraordinary. This is an area where, again, Chairman Inouye and I are going to have to work closely with you. I have submitted legislation with Senator Daschle and Senator McCain, as you know, where we are trying to incorporate the tribal perspectives on trust management reform, rather than having something imposed from the top down incorrectly; have the resolution of this problem come from native peoples themselves. We are trying to accomplish that, and the work of your commission and your leadership has been helpful in great regard there. We also have, again, the question of violence against women, and whether native people or non-native people, there we have much catching up to do and much work that needs to be done.

So in conclusion, let me simply say that this, I think, has been a very beneficial hearing, certainly for Senator Inouye and myself,

but everything is on the record here. This is being transcribed, and this is being returned to Washington, DC for the review of the other members of the committee, Republican and Democrat, and for their respective staffs. I think this will be very beneficial to get the insights directly from native leaders here in the State of South Dakota.

Again, the only way that we will successfully address many problems is to start out with an understanding that this does indeed involve a government-to-government relationship that must respect the sovereignty of our tribes and must respect the Federal Government's responsibilities for treaty and trusts, and that while many years have passed, and while gaming revenues have been generated in some places, they do nothing to diminish the legal obligations and responsibilities that we have to conduct our affairs in a government-to-government basis, with a spirit of integrity and dignity and respect for our native peoples.

So I want to simply conclude the hearing by saying that you have contributed mightily today to a better understanding on the part of the Federal Government of its responsibilities and obligations, and of its opportunities. So thank you again for your testimony and for all that you contributed to this hearing. I yield back to the Chairman.

[Applause.]

The CHAIRMAN. I have heard your sad voices of anger and frustration. I have been hearing them for the past 15 years, when I first became chairman of this committee, and since then as part of the leadership of the Indian Affairs Committee.

I would like to respond to some of the issues that were brought up. The first witness spoke of not being able to place certain lands in trust. The reason given by the Administration was that these lands are not your ancestral lands. You came from somewhere else. Well, I am certain those of you who have studied the history of the United States will conclude that this is a great country. This is a magnificent country, but it is a country like all other countries that are run by men. We make mistakes, and sometimes we make terrible mistakes. For example, our founding fathers in those days of the Revolution, studied government of the Iroquois Confederacy to establish the Government of the United States. The Iroquois had a confederation of tribes. They selected a supreme chief, selected by the clan mothers—women voted in those days. They called it something else but they had a House and a Senate. They had a judiciary. If you look at the writings of Benjamin Franklin and Thomas Jefferson, you will see a reference to the role that this Iroquois Nation played in establishing the model for our country.

Our founding fathers recognized your sovereignty—and that was put in the Constitution of the United States, if you look in the Constitution. It is very clear that Indian Nations are sovereign nations. And as a result of that recognition of your sovereignty, the relationship between the Government of the United States and the sovereign governments of Indian country was carried out through treaties. Eventually, the United States entered into 800 treaties with sovereign Indian nations, signed by either the President or the Secretary of State, and signed by the Chief or whoever was the Elder. But I am sorry to tell you that of the 800 treaties, 430 are still in

the files of the U.S. Senate. They were not acted upon. They were ignored by our predecessors because something happened after the signing—they found gold; they found oil; they found precious material. So they ignored those treaties—370 treaties were signed and ratified by the U.S. Senate, and they became part of the supreme law of the land.

But I am sorry to report that the U.S. Government violated provisions in every one of them—without exception. As a result, you know that many of your brothers and sisters in California were among those that got caught up in this mess. Their treaties of recognition are still in limbo. So they are not currently recognized.

I bring this up because the U.S. Justice Department suggests the following, that to provide assistance and aid to non-federally recognized Indians is race-based and therefore unconstitutional. Just think about that. And think about what you told me about your ancestral lands. I was just thinking about it when the witnesses were testifying. We have this great movement of people—we sometimes call it the trail of tears, where thousands upon thousands of native people were moved from the East Coast to Oklahoma. Oklahoma became the dumping ground. So you have Cherokees who actually come from the Carolinas, living in Oklahoma. You have Seminoles living in Oklahoma. You have Apaches living in Oklahoma. Where are their ancestral lands?

This can be multiplied time and again all over the country, so this ancestral land business is nonsense as far as I am concerned. Whoever speaks of that obviously does not know the history. When I became chairman of the committee, I decided, well, I am going to find out what this is all about. I should point out that this committee had only five members when I joined the committee in 1978—five, because no one else wanted to serve on the committee. That is how important it was. Everyone avoided service. They asked me to serve—this may sound facetious, but I am not being facetious. I was asked by the leader to serve and become chairman because he thought I looked like an Indian. [Laughter.]

Hawaii has no reservations. We have no tribes, but I was told, why don't you serve; you look like an Indian. And yet this committee has held more hearings than any other committee in the Congress of the United States.

[Applause.]

The CHAIRMAN. And it is frustrating. We have passed more bills than any other committee in the Congress of the United States, with the help of people like Tim Johnson. He was in the House; he comes to the Senate. He does not stop his commitment and dedication. I understand your frustrations and I believe that the best solutions to problems in Indian country can be found in Indian country.

[Applause.]

The CHAIRMAN. There are very good people in Washington—good-hearted people, well-intentioned people. But when you live in an air-conditioned house, a heated house, drive an air-conditioned car, eat three meals a day, when you are able to send your kids to college—you somehow cannot appreciate the problems out here. Therefore, I decided to visit reservations. And I am not proud to tell you this, I am sad. I have visited more reservations than any

other chairman of this committee. You know, the others should have done that, too. I have been to Alaska, above the Arctic Circle; risked my life flying around here. [Laughter.]

The first school I visited was the school in Pine Ridge, and I had to address the student body out in the yard, because that school was condemned. It had asbestos. That was my introduction to Indian education. [Laughter.]

On the Rosebud Reservation, I was with one of the community colleges. It was run by a great educator, Mr. Bordeaux. It was in a quonset hut. Now, it is a university. One of the top priorities of my committee is to establish a university for Native Americans.

[Applause.]

The CHAIRMAN. It makes good sense. The lawyers that you have are trained in non-Indian law schools. You should have lawyers who know something about Indian country. You should have doctors who are trained in Indian country, so they know about the problems. You don't have to tell me about the suicide rate. When I made my first visit to Alaska, I was horrified to find that Alaskan men, native men between 18 and 25 had a suicide rate 12 times that of the national average—12 times. And in Indian country, it was 10 times. So it is nothing new to me. We have tried our best. Then one of you said—we are not asking for a handout. I agree with you. You have paid your dues. For a long time, anthropologists have told us that there were at least 50 million Indians living on this continent; some say as high as a 100 million. Today, only a fraction survive. And you owned this place. You own a fraction of it now.

So I know your frustration, and as I indicated earlier, more Indian men and women have put on the uniform and placed themselves in harms way in all of our wars of the last century than any other ethnic group in the United States—more than the Irish, more than the Germans, more than the British, more than the Chinese, more than the Japanese. So you have paid your dues.

Then you spoke of culture. One of the first things that I did as chairman of the Indian Affairs Committee was to do what the leaders were telling me. All these things that we have done is the result of advice from the leadership of Indian country. They told me one of the things lacking among the young men and women of Indian country was pride. So I said, let us establish a museum so that all people can learn of the great cultural legacy of your ancestors. In a couple of years, this museum will open on the national mall. It will be the National Museum of the American Indian.

[Applause.]

The CHAIRMAN. And we are certain that when a young Indian enters the museum and spends a couple of hours there, he will come out and say, "I didn't realize my ancestors were that good. And equally as important, the non-Indian will go through the museum and he will say, "they are very talented people; great leaders; great warriors."

Well, I hope my words are not considered unpatriotic. Let me tell you, it is the height of patriotism to speak up and be criticizing the highest authorities, including the President of the United States.

Now I come to my final word. Well, you say the United States broke its promises—yes. The United States broke our treaties with

the Indian nations—yes. The United States have short-changed you—yes. Then you have asked yourself, how can these seemingly small insignificant issues get recognized and fully funded? I did a study. And this was the result, that in your elections for tribal offices, the average turnout throughout the Nation was 85 percent—85 percent of your tribes turned out to elect their leaders, their chairmen, their president. Sometimes the voter turnout is as high as 99 percent.

At the same time, when the tribes were called upon to vote for the Governor of that State or the Senators or the Representatives, do you know what the national average was? Less than 8 percent. If I am a politician and if I learn that in this sovereign nation of 100,000 people, only 300 voters turned out, I am going to say to myself, why should I waste my time? Why should I go there? Their votes don't mean anything to me.

That has to change. That is what is recognized in Washington. It is either that or money. And so I call upon you, you have it within your power to go up there and register, show the politicians that you can deliver 1,000 votes; that you can deliver 2,000 votes. They will listen to you. Oh yes, they will listen to you. If you have that kind of power, Leonard Peltier would not be languishing in prison. The pressure would be coming from all over the United States. So it is up to you. There are a lot of things you can do. If you leave it up to Tim, he is going to get the management of the trust funds straightened out. [Laughter.]

[Applause.]

Senator JOHNSON. Talk about raising a high standard, Mr. Chairman.

The CHAIRMAN. Well, as you know, we have a task force right now. They are in the last meeting in Anchorage. They are meeting all over the United States. And they have just come up and said to me, they have given me a report saying we are not able to resolve a few questions. But out of ten major areas of controversy, they have resolved eight of them. So we are getting there. If you come out and show the rest of the United States that you can deliver votes, we will be able to fix up the schools with asbestos. We will be able to build a university. We will be able to see that people respect Indian country. One time, in order to protect your freedom and your rights, you used the arrow and the bow and the spear. Now, you have to use your votes.

With that, I thank all of you for joining us this afternoon, and I join Senator Johnson in assuring you that your words of anger and frustration will be heard. We cannot promise that everything will be resolved, because we have been trying our very best to do it, but we will make steps. In the last 15 years, Indian country has not lost an acre. We have gained acreage. We have had more water agreements. We have had more land agreements. And we are going to continue that.

It is going to take more than my lifetime, but when I am gone, Senator Johnson is going to be there. [Laughter.]

So with that, I thank you, and the hearing is adjourned.

[Whereupon, at 4:15 p.m., the committee was adjourned, to reconvene at the call of the Chair.]



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## APPENDIX

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### ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

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#### PREPARED STATEMENT OF ELLSWORTH CHYTKA, MEMBER, YANKTON SIOUX TRIBE

Good afternoon gentlemen. Thank you Mr. Chairman and members of the U.S. Senate Committee on Indian Affairs for coming to “our country” today and for giving us the opportunity to voice the goals, concerns and priorities of our people and our land with you. When people can truly speak openly of their concerns and issues, be heard, and trust that their message will be communicated to others and acted upon on their behalf by those in positions of power and authority than we have true representation—a democracy. Again, thank you for being here and listening.

My name is Ellsworth Chytka. I am an enrolled member of the Yankton Sioux Tribe and am here representing Chairwoman Madonna Archambeau as spokesperson for the Ihanktonwan Sioux Nation. I am here today to discuss concerns of my people. I'd first like to let you know that this is very hard for me to put down oral history in written testimony. Our way as you know, since the beginning of time has always been oral. Oral history, culture and tradition. But it is important that I do so now so that the voices of my people and our ancestors past and all those we care about that have no voice can be heard. I come here today to voice our concerns, of which there are many. I will not have time to discuss all of them; therefore, I will concentrate on our most pressing issues.

Our main concern and priority is the loss of our history, culture and our spiritual ways as guaranteed us by the Government in the treaties signed, bills and acts passed, etc. Gentlemen, our spiritual way is no different from yours and nothing to be feared. When we pray, we pray to Tonkshikala, God, by way of the Sacred Hoop. A hoop that represents all races. To the East it represents the yellow race, to the West represents the red race, the South represents the Black race, and the North, the white race. At the center is a little green circle, representing Mother Earth. From the center going out in the four directions are four equal length spokes that shows that we are no different than the trees, the grass, whatever. That our bodies come from Mother Earth and then as we sprout from there and grow we're now allowed to reach to the heavens and that circle is blue. So it is saying that we have one God for all divine beings and shows the connectedness of all of us to everything. We believe through our tradition, our history and our culture that it is our duty as human beings to represent all things: The trees, the grass, the deer, the eagle, the hawk, all these species are important for they too were created by the hands of God. In order to do this, we must retain our history, our culture and our sacred sites, our burial sites.

There have been many laws created to protect these sacred sites—the protection is no good, the laws are no good unless people enforce them. In my country, on the Yankton Sioux Reservation, there is no enforcement. The laws of NAGPRA are not enforced. Oral history has been repeatedly given to State and Federal Government officials to let them know where there are burial grounds, sacred sites, and our history and culture. But no one heeds these warnings and they continue to dig into our history and ancient burial sites. For us, in our history and culture and spiritual ways, these are not just bones, but the remains of our ancestors past. For my grand-

mother told me that many of these ancestors froze to death, starved to death, and fought to preserve this way so that there would be Native American people.

I come to you asking for your help in protecting these areas. The lands that these sacred, cultural and burial sites are on have been passed down by our ancestors. These are the ones who are buried there, lived there, did ceremony there. I am here to speak for those—those that have no voice. When I was but a young boy my grandma told me, Takosha, grandson, in your lifetime they are going to tell you one person can't make a difference, but remember this, all it takes to start a fire is a little bitty spark. And you will be one of those sparks, and in being so, you will be a voice for those that have no voice, for they are humble, they are the unshika, they are the four legged, the two legged, the winged, those that swim in water, those that crawl upon the earth, those that slither upon the earth, those that live in the womb of Mother Earth, for these are all sacred for they too were created by the hands of God. Preserve these for your great grandchildren and their children, for they too have a right to see Mother Earth in its natural beauty. So as I speak here today, I speak not only for my people but I speak for all races of children that will be coming up, they too deserve to have clean water and clean air. They too deserve to live in a world of peace, a world of democracy and a world of justice. I ask you, where has democracy and justice been for us native people? It is not about money, it is not about programs, and it is about dignity. For on my reservation, the Elders can no longer take their grandchildren to the riverfront to talk of these ways and the sacredness of water—the blood of Mother Earth. And to share the stories of a proud and noble people that have lived here for thousands and thousands of years since time immemorial.

I ask you, please help us. Why is it that we, the Indian people, who have given this country such riches in the land, the minerals, the oil, and all that we have given, why are we the poorest people in this Nation? Why is it that when this land was turned over to the State of South Dakota, it was never thought of to return this land to the Native people. With our wisdom and guidance in conjunction with your expertise in this field, we could cooperatively work together leaving the sacred sites alone and develop those lands that are not that way so that we may have rangers, rangerettes, biologists etc. Introducing the people of the world to the true history of the Native Americans. Let us be the guides and interpreters of our history, the conservationists, environmentalists, biologists of our land and not the people who don't live it.

I am not a greedy man and I am not a selfish man, I was taught this. My grandma told me that in order to have your prayers answered, be unshika, be humble, be free of prejudice and anger. I have no anger for what has and is happening, I have hurt. For in my hurt I see the pains of the children who are now on drugs and alcohol. It is despair. It is because they have no history; therefore, they have no pride. Because even in the school system where 70-some percent of the children are Native American, there is no native language taught, no native history or native culture taught. Yes, we can teach a lot of it at home, but it is not only our youth that have lost their history and pride and culture—it is loss and despair that spans through generations of my people. If this is truly a democracy, why is it that other children who come from other countries are taught their language in their schools, but the native peoples who have always been here don't have this opportunity. This is a concern that weighs heavy on us.

Why is it that we don't have representation? We are supposed to deal directly with Congress—why are we not allowed to do so? We are to be a nation within a nation as set forth in our treaties with you—why are we not treated as such? Why is it that again we meet on these terms voicing our concerns? We have been telling the Government of this great country our concerns for many many years, but no one hears us. Its like a voice lost in the wind. I've been taught and have always said, "A country is only as great as its history". Then let us share our history with the world, the true history, and the true culture. We believe very strongly in God. We believe that God created all things. That God is love and compassion. But where is there compassion for my people from the Government of this country? Why is it, again, that the Government of this country tries to ensure that treaties are enforced with other countries and they honor the treaties they make with other countries? And they want other countries, when they make a treaty with another country to honor those treaties. And they help restore lands back to peoples who have lost them for hundreds of years, example Palestine. Trying to get the homeland back for Palestine and the homeland back for Israel when in this great country of ours, they take ours away. There is something wrong with this. We have done everything asked of us. By population, we have sent more of our young men and women into battle to protect this great country. We stop at the stop signs, we get drivers license, we have tribal identification cards, and we vote, we do everything that has been

asked of us. Why is nothing being done for us? You can give people money, but if they have no home, they have nothing. That land, and that reservation is our home. It was promised us by the Government that this would be our home for time immemorial that our children and grandchildren would be able to grow up there, they would be able to live happily and carry on their culture, their tradition and their spiritual ways. Gentlemen that is not happening. My people are losing their history, their culture, their way, because there is no democracy for us.

Where is the Bureau of Indian Affairs trust responsibility to us? Who defends us? Only when we get enough money for an attorney are we defended. And then we run out of money because the average income in Indian country is between \$5000-\$7000 a year. Gentlemen, that is poverty. That is compared to Third World countries. This is going on in your great land. It is going on in the belly of America and it is the belly of America that feeds this country. And yet my people, many of them are hungry, many of them are homeless.

Help restore the dignity of a great nation of people. You can do this by giving the laws that are created to help restore and protect and provide for us the legal teeth necessary for enforcement. Stand up for the laws that are created and have been created. Stand up with us and stand up for us. Let our voices be heard.

I, in my life, have always made my own way. My family and I grow a garden, I have been taught to be sovereign, to be self-sustaining. And I do this and I practice this and I teach my children this. But many of my people don't know this way anymore because you (the government) give them crumbs. And they have gotten used to depending upon crumbs. It's time the native people received more than crumbs.

Help us restore our land base. Help us to create opportunity for ourselves to no longer be dependent on the government. To help my people stand up once again. Our land once extended from Minneapolis., Minnesota down into Nebraska, Kansas, along the eastern shore of the Missouri up to Pierre, SD into North Dakota. And then gentlemen, by treaty, of which my people didn't even understand, it was taken away and reduced to some 400,000 acres. That was supposed to be our permanent home. Never to be taken from us, to be put aside so that our children and children's children, as our population grew, would be able to live upon these lands and live so that we would always have a home for all that we had given away. Well sirs, this land has been reduced from 400,000 acres to 200,000 acres and now the courts are trying to say that we only have jurisdiction over 1 square mile. How can this be in a democracy? Where was there justice for us? We don't have the money to defend ourselves in court. When I talk to the Elders they feel it was the Government who was supposed to protect us not be the ones to be protected from. When I grew up as a little boy, my grandma made me a promise, she told me, Tokosha, grandson, they took so much away from us, but we reserved this water and the land for you, this is your home. Gentlemen, you have made a liar out of my grandma. For you have taken this away.

I come here today, humble, because I speak for so many. I wish they could be here speaking for themselves, but they feel they no longer have a voice because that voice has been stripped from them by powers much greater than they—the Government. They are beaten down. For so many no longer know their history and culture. Many of the young look upon themselves, being Indian, as bad, because that is what has been taught them. Remember who kept the pilgrims alive when they first landed here gentlemen. We provided them with food. They came here because of freedom of religion and freedom of speech. They took our freedom of religion away and just restored it not many years ago.

When someone speaks out now about some of the wrongdoings in my homeland, they are labeled, as I have been, radical, antigovernment, unpatriotic. Why is it that a house where an outlaw lived who killed many citizens is preserved as a historical site? Or preserve in Sioux Falls, SD a cemetery, which was prime real estate in the middle of Sioux Falls because it was a non-Indian cemetery, a European cemetery? So that land, that cemetery was preserved. Meanwhile in Mitchell, SD, where there are known native burial mounds, development went ahead pushing the mounds to the side scattering the bones as they went. What's wrong with this picture? Where is human dignity? Where is there balance, equality in how we treat our peoples?

I have never in my life asked for anything from the Government or from others, I have always made my way. But I come to you today, gentlemen, I beg of you, not for myself, but for my children and grandchildren and all the children of the future, whether it be the two legged, the four legged, the winged, those that swim in water, those that crawl upon the earth, those that slither upon the earth, those that live in the womb of Mother Earth the great creation of God, I beg you, help us to retain our culture and our history and our spiritual ways so that we can continue to stand up for those who have no voice, to preserve for your grandchildren and mine, a

brighter future. A future that is no longer plagued by war and violence, but a future of dialog and democracy and a future of togetherness. I believe that this country can do that. I know it can. But before our country can go land heal the wounds of the world it must heal the wounds within its own country. And those wounds gentlemen have to do with the treatment of my Native American people.

All my relatives, Mitakuyase.

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PREPARED STATEMENT OF JOHN YELLOW BIRD STEELE, PRESIDENT, OGLALA SIOUX TRIBE

Chairman Inouye and members of the Senate Committee on Indian Affairs, my name is John Yellow Bird Steele. I serve as President of the Oglala Sioux Tribe of the Pine Ridge Indian Reservation. I welcome you to the Black Hills of South Dakota. Thank you for scheduling this important field hearing, to listen to the priorities and concerns of the elected representatives of the Indian tribes of the Great Sioux Nation. I also want to thank Senator Tim Johnson and Senator Tom Daschle for assisting with the scheduling of this important hearing. It is very important to us that the Committee on Indian Affairs visit our Treaty homeland, to discuss the priorities of the Sioux Tribes.

At Pine Ridge, our priorities are too many to name. The Bureau of Indian Affairs 1997 Labor Force Report indicates that reservation population totals 39,734, with an unemployment rate of 79 percent. The 2000 Census conservatively estimates the median household income at Pine Ridge at \$17,814, as compared with \$31,354 in South Dakota generally. The Census estimates poverty rates on the reservation at 43 percent, although the tribe estimates that it is nearly twice that level. In South Dakota, 63 percent of the families on Temporary Assistance to Needy Families (TANF) are Native American, although we make up 18 percent of the population. We lag far behind the national average in per capita and family income, life expectancy, and in every economic and public health indicator.

As we address our community and economic development needs, we find that many Federal agencies are actually impeding our efforts. I ask the Committee on Indian Affairs to take a proactive role in helping our tribe obtain accountability from the bureaucracy, and to enact legislation when necessary, in the following areas—

- No. 1. A Reservation Nursing Home.
- No. 2. Debt Relief from the Onerous Farm Service Agency Indian Land Acquisition Program loans to our tribe.
- No. 3. Reform of the Operation of the Bureau of Reclamation Angostura Unit.
- No. 4. Reform of the National Park Service Programs Affecting Indian Lands, namely the South Unit of the Badlands National Park on the Pine Ridge Indian Reservation.
- No. 5. Law and Order at Pine Ridge, including continuation of COPs Grant funding, and enhancement of the CIRCLE Project funding for multi-disciplinary corrections on our reservation, and legislative repeal of the Supreme Court ruling in *Nevada v. Hicks*.

At Pine Ridge, we have over 2,200 elders on the reservation. It is a top priority of my administration to develop a long-term health care facility for our elderly. Funding and state waivers are needed for the development of this facility. Clearly, our demographics justify this, and third-party health care reimbursements would be sufficient for the general operating costs. We would like to become a model in the long-term health care of our tribal elders. Toward that end, I support Senator Johnson and Senator Daschle's bill, the South Dakota Tribal Nursing Facilities Act of 2002. I urge the committee to refer bill to the Senate for final passage.

Second, the existence of our long-term tribal debts impede many worthwhile initiatives. Ironically, our largest and least cooperative creditor is the Federal Government itself. Our tribe makes annual payments to the Farm Service Agency of \$870,000, under a series of Land Purchase notes entered in the 1980's. These notes provided funding to re-purchase lands confiscated from our tribe during the allotment and homestead era.

When prices plummeted during the early 1990's and Federal debt relief became necessary for many operators, I contacted the then-FmHA for relief on the tribe's Indian Land Notes. Initially, the USDA General Counsel took the position that the Secretary of Agriculture lacked statutory authority to assist tribes—he stated that only non-Indian farmers and ranchers were entitled to relief. Indeed, according to GAO, between 1988-97 non-Indian farmers and ranchers received \$15.2 billion in debt relief. During this time period, the amount of relief afforded to tribes was \$0.

Nevertheless, I pursued this issue with my attorneys, and the USDA reversed its position, and acknowledged that there is no statutory impediment to debt relief for tribes. Rather than assist our tribe, however, USDA went into a rulemaking. It took USDA 5 years to issue regulations for debt relief for Indian tribes. On January 9, 2001, FSA published regulations providing debt relief procedures for tribes. On November 5, 2001, our tribe filed our application for a write-down. We clearly meet the stringent criteria established in the USDA Final Rule. The BIA certified our data, as required in the regulation. However, incredibly, the USDA denied our application, rejecting BIA certification and dreaming up reasons for denying our request for a write-down that completely ignore the realities of Indian land management in South Dakota.

A legislative solution is warranted. Our tribal attorneys have been working with counsel for the Senate Committee on Indian Affairs counsel on language for inclusion in the Committee's Technical Corrections bill, to be marked up on September 25, 2002. I request the inclusion of language in the Technical Corrections bill that ensures that the Secretary of the Interior's certification of tribal land lease and appraisal values are binding, for purposes of debt relief for Indian tribes under the Indian Tribal Land Acquisition Program.

An important environmental issue to our tribe is the impact of the Bureau of Reclamation Angostura Unit. The BOR constructed Angostura Dam on the Cheyenne River just upstream from our reservation. The river is impounded and diverted to irrigate over 12,000 acres of land for the Angostura Irrigation District. This generates an economic benefit in South Dakota of \$11.5 million annually. However, our reservation, the poorest in the United States, receives no benefit.

To the contrary, our reservation environment is harmed. The water flow in the Cheyenne River is completely cutoff, although our tribe has longstanding claims to this water under the Winters Doctrine. Water quality is diminished. The fish in the Cheyenne River have lesions, from parasites caused by environmental stress. Traditional fruits and berries have diminished, as the riparian vegetation along the Cheyenne River has dried up with the water flows.

The Congress has established environmental trust funds to remediate the harm caused by Reclamation projects, throughout the west. The Grand Canyon Protection Act, Pyramid Lake Settlement Act, and Central Valley Project Improvement Act provided Federal funding for fish and wildlife mitigation, and directed the Bureau of Reclamation to reform its operations at those projects, to reverse years of habitat loss and environmental degradation. Today, I ask Senator Johnson and the Senate Committee on Indian Affairs to develop legislation to remediate the harm to our water resources and environment, and to establish a Federal trust fund to provide the financial resources that are needed for environmental restoration and mitigation.

The National Park Service has established the South Unit of the Badlands National Park, within the Pine Ridge Reservation. The tribe and NPS entered a Memorandum of Agreement in 1976, whereby the tribe agreed to permit Tribal lands to be used for the National Park, in exchange for assistance with economic and recreation development on the reservation. The Park Service has ignored and blatantly violated its commitments in the MOA. Our Tribal land is used for the Badlands National Park, yet we receive few of the promised benefits, due to the bureaucratic lies and neglect on the part of the Park Service. This causes a great deal of concern amongst many community members at Pine Ridge. The Park Service should be held accountable for the commitments outlined in the 1976 MOA with our tribe. I ask for your assistance in obtaining this accountability, and for the resources for economic and recreation development on our reservation, that was promised by the National Park Service nearly 30 years ago.

Finally, law and order remains a major concern at Pine Ridge. The COPs program must be continued and enhanced. The CIRCLE Project, a DOJ demonstration project involving the Oglalas and only two other tribes nationwide, provides for inter-agency coordination to enhance corrections and community policing. Under the CIRCLE Project, we are constructing an inter-disciplinary corrections facility, combining detention with in-patient detoxification. Additional funds are needed under this creative project, with more flexibility from the DOJ in program administration.

With respect to law and order, I urge this Committee to address the threat to Tribal sovereignty resulting from the decision of the U.S. Supreme Court in *Nevada v. Hicks*. This case subjects Indian tribes to state legal process, even in Indian country. This would have the effect of reducing our sovereignty, and opening our reservations to the jurisdiction of others.

Our treaties reserved our valuable land base, and the right to sovereignty and self determination. We are not subdivisions of the states—we were here first. If we are to survive as a distinct and separate nation, we must govern ourselves according

to our own laws. Yet we need your help, in developing our reservation infrastructure and Tribal administrative systems. Toward that end, I ask for your assistance in holding Federal agencies more accountable to our tribe—from the National Park Service, Bureau of Reclamation, to the Farm Service Agency. These Federal agencies ignore the Treaty rights of our tribe, and their trust responsibility to assist our tribe.

The enrolled members of the Oglala Sioux Tribe are proud to serve in the armed forces of our nation, especially in these troubling times. We serve at much higher rates than other Americans, in part because of our cultural heritage. Yet we are still waiting for our own country to stop fighting us. Thank you.

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PREPARED STATEMENT OF MICHAEL B. JANDREAU, CHAIRMAN, LOWER BRULE SIOUX TRIBE

Chairman Inouye, on behalf of the Lower Brule Tribe, it is a great honor to welcome you to South Dakota to discuss the needs of the Great Sioux Nation. We also greatly appreciate the hard work and leadership of Senator Tim Johnson as a member of this Committee and as a member of the Committee on Appropriations.

Mr. Chairman, as you have already heard today, the needs of the Great Sioux Nation are many. Our unemployment rate is far too high; our schools and infrastructure are in need of repair; our life expectancy is too low; and our infant mortality rate is closer to that of a third world nation than that of the United States. It is painful to see every day. We simply must address these needs and also develop a private sector on the reservation to improve the quality of life for everyone.

With your permission, however, as a member of Secretary Norton's Task Force, I would like to focus my attention on the current trust fund reform initiative. As you may know, the tribal members of the Secretary's Task Force and the Department of Interior have reached an impasse. The Department has suggested the establishment of an Under Secretary for Indian Affairs. I would personally prefer a Deputy Secretary of Indian Affairs, but the title of that person is not the central issue. The central issue is threefold:

No. 1. The duties and responsibilities of that official.

No. 2. The standards to be applied by that official.

No. 3. The ability of Indian people to hold that official, and the United States of America, accountable for any breach of their fiduciary responsibility.

If we merely change the title of the responsible official without clarifying their responsibilities and the standard to be applied, then we have simply moved the boxes around, but not enacted true trust fund reform.

I do not believe that raising the issue of "standards" is adding a new and different issue. Rather, the standards are central to trust fund reform and are indeed the essence of trust fund reform.

The Lower Brule Sioux Tribe has endorsed S. 2212 introduced by Senators McCain, Johnson and Daschle. I believe this legislation would provide an excellent framework for Committee consideration and, with some amendments, deserves the support of the Indian Affairs Committee.

Mr. Chairman, it is also my belief that time is of the essence. The Department of Interior is proceeding with trust fund reform. The Supreme Court is about to consider at least two very important Indian cases. As you know, this Supreme Court has been looking to the Congress for very specific guidance on a variety of issues. The Court has been looking for express statutory authority for the actions taken by officials of the executive branch. It is important that the Congress establish by statute the fiduciary standards by which to judge the actions of the United States of America with regard to Indian tribes and Indian people.

Finally, Mr. Chairman, it is my hope and recommendation that the Congress prohibit the Department of the Interior from using any appropriated funds to implement trust fund reform until S. 2212, as amended, is enacted.

In closing, allow me to again express my deep appreciation to both of you for bringing the Committee to South Dakota. Chairman Inouye, you have been held in the highest possible regard by Indian country for a very long time and we appreciate everything that you and Senator Johnson have done, and are trying to do, for Indian people. Thank you. I would be pleased to answer any questions.

PREPARED STATEMENT OF JESSE TAKEN ALIVE, CHAIRMAN, TETUWAN OCETI SAKOWIN  
TREATY ORGANIZATION, STANDING ROCK SIOUX TRIBE

Honorable Chairman Inouye, members of the committee. I want to thank you for the opportunity for individuals to submit written testimony on the goals and priorities of the South Dakota Tribes.

In all that government does, the quality of life that is created has been the measure of success for the elected leadership of government. The life and treatment of the Native American populations here in this great country is no secret, and is nothing to be proud of. The inability to effectively deal with this situation stems from Federal law and governmental policy that is in direct conflict with the Treaties signed and ratified by the United States of America and the agreed to by the leadership of the Native American populations, who have lived here since time immemorial. The result is evident in the negative statistics across the board that are the telling truth in the quality of life for the Native Peoples of this great country. The situations addressed prominently in the scope of funding are all found in the Fort Laramie Treaty of 1868, signed and agreed to April 1868, Ratified & Proclaimed in 1869.

The Fort Laramie Treaty of 1868 simply states: "The United States hereby agrees to furnish annually to the Indians the physician, teachers, carpenter miller, engineer, farmer, and blacksmiths, as herein contemplated, and that such appropriations shall be made from time to time, on the estimate of the Secretary of the Interior, as will be sufficient to employ such persons."

Mr. Chairman, the overall health and health care are at an immediate crisis situation. There are diseases prevalent among the native populations that are a direct result of the continual neglect to honor the Treaties made with the Great Sioux Nation. It is time to effectively deal with this situation. We must, on a nation to nation basis, convene and revisit the provisions of the Treaties, develop plans to address them, and honorable appropriate adequate funding to implement them. As well as, having a monitor agency to make appropriate revisions in the plans, as agreed upon by both parties. The history of the Federal Government's policies and laws that have been made to address the Native American populations needs to stop. It needs to stop, in order to save a "Nation."

Article 2 of the Fort Laramie Treaty of 1868 set apart for the "Absolute and undisturbed use and occupation," land. Article 3 of said Treaty allows for the accountability of this land to commence. Article 6 of the same Treaty allows for the implementation of a "Sioux Land Book." This book was to be available and subjected to inspection.

What these articles implied to the Great Sioux Nation and its members was local control and local accountability. The United States government is now embroiled in an accounting mess that, once again, is a result of neglect of effectively implementing this agreed to section of the Treaty. The U.S. Government took the duties and turned them over to the Interior. The Interior took these duties and consolidated them with all the Native Populations of the United States, and found these duties to be overbearing. Rather than admit to this oversight and correct them. The government ignores it and history only repeated itself. Only this time with the Indians asking for, "What happen to our money?"

The mismanagement of that sum of money, which has been estimated in the billions of dollars could very well be a contributing factor in the present day crisis facing Native Americans on all fronts.

Out of this social, domestic turmoil, leaders have emerged, and with these Ratified, Legal Documents in hand, we are knocking on the doors of America asking for accountability, and America needs to be accountable.

Trust fund management and it's reform needs to include a mechanism that is Native People based or where Native Americans are seated, to address the intent and legalities of the various trust funds in place for the tribes of the Great Sioux Nation. The Federal Government of the United States needs to realistically deal with the rejection of the monetary offer for the Black Hills and surrounding Treaty lands. Upon the Supreme Court of these United States ruling that this case was unjust, great minds would of have come together and dealt with the issues of what could be done, as opposed to what can't be undone. Once again, a nation is at risk.

The Fort Laramie Treaties of 1851, and 1868 gave us boundaries and land area. The boundaries were natural water ways and a mountain range by which replenishing waters would come each spring. Water rights and securing a future for our generations to come are under attack. Our rejection of the monetary settlement offer for these lands and boundaries is an important issue and must be taken seriously. There are truly some things that money can't buy!! We not are here to be millionaires, but to ask only for what has been agreed to in the Treaties, and to live our

lives and lifestyle, in the land of our grandfathers, that was given to us by the creator.

The history of neglect has spawned a life style that is foreign to Native America. We have and are experiencing a social upheaval not nature to the societies of the Great Sioux Nation. When we agreed to the Treaty the phrase in Article 2 of "Absolute and undisturbed use and occupation" had a lot of meaning. It was agreed upon because we have and had always felt safe in that area of this world. It is the center of all that is, our spiritual home, the Black Hills. It had our economy, food from the land that today health experts would be envious of. A portion of the Great Buffalo Herd lived in this area and the buffalo was a giver of our life and economy. The water of life flowed around this area in its purest form, and from the ground for special use.

There was plenty for the time of the Treaty and the generations that would benefit from this agreement. There are other provisions of the Treaty of 1868 that would compliment this area and allow for the evolving of the Great Sioux Nation in their time not in the way history can demonstrate. There is a present need to once again feel safe on our lands. The Treaty has a "bad man clause- that speaks of Federal trust responsibility.

In closing, terrorists have brought the ills of the world to our doorstep. Our sons and daughters have responded in respect to intent of freedom. We must, as Nations, convene and ensure that the freedoms we both agreed to are honored. We must for a Nation is at stake. I want to thank you again for this opportunity to submit written testimony from individuals.

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PREPARED STATEMENT OF LYLE JACK, MEMBER, OGLALA SIOUX TRIBAL COUNCIL

My name is Lyle Jack. I am a member of the Oglala Sioux Tribal Council. I am the chairman of the Tribal Council's Education Committee and I am also a member of the Tribal Council's Health and Human Services Committee. I want to thank you for this opportunity to present to you some issues that are of grave concern to me and the to students of the Pine Ridge Sioux Indian Reservation.

My primary priority and concern is the operation and management of the Bureau of Indian Affairs Office of Indian Education Programs. During the past 3 years the OIEP has totally disrupted the operation of the Pine Ridge School by retracting management decisions that were imperative to planning by the Oglala Sioux Tribal Council and the local school board.

These management decision reversals have had an adverse effect upon the delivery of services to the students who attend this school. The operation of the school is a local effort yet the problems in management are not local but are within the BIA's organization. Decisions which are made or not made can emanate from Washington, DC, Albuquerque, NM, and/or Aberdeen, SD.

These management issues include the selection of personnel, facilities, and the overall delivery of educational services. The disruption of services on the local level is caused by decisions made at other sites without consideration for local input. Specifically there are three areas that are of immediate concern. The first is the issue of overcrowding. The high school portion of the school was designed for 250 students. There are currently 498.

Last year the Oglala Sioux Tribe agreed to consent to the destruction of the boys' dormitory. This consent was by tribal resolution. Included in that resolution was a request for 10 portable classrooms. Three years ago the school was informed that four portable classrooms would be provided to alleviate this situation. This number was reduced to two portable classrooms and to this date the school has not received any portable classrooms.

The second issue is related to the residential portion of the school. One of the school's dormitories was temporarily closed last winter due to safety deficiencies. The local budget has never been sufficient to adequately maintain these facilities. OIEP admitted the lack of resources and finally provided the fiscal resources to allow the school to meet safety standards. The school was then informed that it would be provided with the construction of a new state-of-the-art dormitory.

Plans were then made for the destruction of the old dormitories and stop orders were issued for the removal of asbestos and the relief of other safety items. The school was then informed that the new dormitory would not be constructed and as of this date we now have dormitories that do not meet safety standards.

We have a waiting list for the residential portion of the school and parents are faced with the prospect of sending their children to off-reservation boarding schools. We were informed that the dormitory decision was related to the school's designation as a "therapeutic model" and that the Office of Management Budget and the

Assistant Secretary for Indian Affairs had made the decision to rescind the school's therapeutic model designation and thus the new dormitory was also canceled. The therapeutic model was a pilot project and was terminated by the OIEP for "lack of progress."

The President of the Oglala Sioux Tribe, John Yellow Bird Steele, met with the Assistant Secretary for Indian Affairs, Neil McCaleb, to rectify this dormitory situation. The Assistant Secretary informed Mr. Steele that his office had no input into this decision.

We, the Oglala Sioux Tribal Council, demand an answer. These decisions have caused incredible hardship upon parents and guardians not to mention our local decisionmakers who are responsible for the operation of this school.

The third issue is that the OIEP within the last 10 days has directly intervened in the operation of this school. Ostensibly the purpose was to take corrective action for the improvement of services to the students. This action was conducted without any notification to our local authorities especially the Oglala Sioux Tribal Council. This lack of simple courtesy is a huge demonstration of the insensitivity to the principle of government to government relations. Furthermore we are capable of resolving our problems on our reservation.

On July 21, 2002 our school team, our Education Line Officer, and our tribal education director met with Mr. William Mehojah, Director of OIEP and Mr. Ed Parisien, Deputy Director of School Operations. The team presented a strengthened school plan that was based upon the original therapeutic model and addressed the so-called deficiencies that were identified in the OIEP sanctioned report on the Pine Ridge School. The team also made it clear that some items listed in the "lack of progress" report were actually OIEP's problems that were beyond the control of the school.

We were taking our corrective action to solve our issues. OIEP's intervention was pre-emptive and unnecessary. We now have a situation where the staff of the school is unclear as to the intent of OIEP in relation to the dormitory and the long term leadership of OIEP on the Pine Ridge Sioux Indian Reservation. I might add that the temporary OIEP Education Line Officer is unfamiliar with the Pine Ridge reservation and that besides the Pine Ridge School we have six BIA grant schools that are diverse in their respective demographics and politics. The lack of a local tribal member to serve as the Education Line Officer is disadvantageous to not only the Oglala Sioux Tribe but to the best interest of the OIEP itself.

The three areas that I have mentioned are major mistakes on the part of the OIEP. The results of these decisions are causing consequences that are harmful to our tribe. It is not too late to undo these decisions. However I am compelled to seek answers as to why OIEP has progressed through this litany of errors and the purpose for causing the Oglala Sioux Tribe to be placed in this situation. I am asking for a congressional inquiry into the operation and management of OIEP to find the answers to my questions and to cause the OIEP to cooperate with the Oglala Sioux Tribe to resolve the dormitory situation at the Pine Ridge School.

**SENATE COMMITTEE ON INDIAN AFFAIRS**

**Hearing on the Goals and Priorities of the  
South Dakota Tribes**

**September 14, 2002**

**My name is Thomas Ranfranz. I am the President of the Flandreau Santee Sioux Tribe of Flandreau, South Dakota. I am also the Chairman of the Great Plains Tribal Chairmen's Association. On behalf of the sixteen Tribes of the Great Plains Region, I thank you for this opportunity to present to this Committee our goals and concerns.**

**We want to thank Chairman Inouye and Chairman Campbell for this field hearing in Indian Country, as well as the Senators from our respective States. This government-to-government consultation is important for all the Tribes in our region to express our concerns of our people.**

**On November 6, 2000, President Clinton issued Executive Order No. 13175 on consultation with Indian Tribal Governments. "I reaffirm our commitment to tribal sovereignty, self-determination, and self-government. The Executive Order builds on prior actions and strengthens our government-to-government relationship with Indian Tribes and will ensure that all Executive Departments and Agencies consult with Tribes as they develop policy on issues that impact Indian communities."**

**We, the TREATY TRIBES within the Great Plains Region, exercise our rights by holding the Federal Government to its treaty and**

trust responsibilities, and demand any program increases be distributed in such a manner as to upgrade the quality of life for Indian people. Historical under-funding has been the main factor contributing to the current economically-depressed environment of our people.

This afternoon we intend to provide you with a broad understanding of the issues affecting us and what we believe are some solutions. We do not come before you as victims asking for handouts. Rather, all of us here today are working towards developing our Nations to become as self-sufficient as possible, and our recommendations are all geared generally towards that goal. But we do come seeking a commitment from the United States to fulfill its historic and present day trust responsibilities.

The Great Plains Region covers a three state area: North Dakota, South Dakota, and Nebraska. The Great Plains Region is comprised of sixteen Tribes which includes a land base of over 7 million acres and a population of approximately 200,000. Our Tribal Nations are Treaty Tribes with treaties signed between our ancestors and the United States guaranteeing lifetime services and benefits from the United States in return for the cession of millions of acres of ancestral homelands.

The Great Plains Tribes rate among the highest in many unenviable statistical categories. Unemployment rates average between 70 and 85 percent. Our Region also has three of the poorest counties in the Country. These are all counties in South Dakota – Shannon County (average annual wage of \$11,630.); Todd County (average annual wage of \$11,197.); and Ziebach County (\$12,062). Further, 9 of the poorest 38 counties in the United States are located in North and South Dakota,

all of which are all or partly within an Indian Reservation. We also face the worst health status in the United States, comparable to Third World Countries, a life expectancy of barely 60 years, high rates of infant mortality, diabetes, heart disease, cancer, alcohol and substance abuse, with many years of productive life lost. We mention health care because without good health, all of our other improvements to our lives such as education, economic development, housing, roads, and many other programs are virtually meaningless.

Tribes within the Great Plains Region must deal daily with the under-funding of these essential programs. These essential governmental programs, designed to ensure an adequate tribal infrastructure and to ensure that living standards are at the same socio-economic level of that of the rest of this great Country. This, however, is not the case. I need not remind the Administration that the Native Aboriginal people of this Country continue to live and survive at the lowest socio-economic levels of any other segment of society. The only word to describe these conditions is extreme poverty. Tribal programs have been historically under-funded and continually have an unmet need. It goes without saying that this results in services provided that are far below the standards of services provided to other Americans in this Country. Native People continue to have the highest statistics for bad news. The highest unemployment rates, highest infant mortality rates, highest substance abuse rates, highest homelessness rates. The list goes on and on. At the other end of the spectrum, the Native People of this Region have the lowest per capita income rates. In the past, the Tribe has submitted statistics and data that demonstrate the unmet

needs of these vital programs.

Economic development is an important tool for Indian Country and Congress has provided many opportunities for Tribes to pursue economic ventures on their Reservation and to provide employment opportunities. Without adequate infrastructure and a healthy, educated workforce, however, economic development cannot succeed. I encourage you to continue to create viable avenues for economic development in Indian Country. At the same time, the Administration must consider the infrastructure needs on the Reservations and the social needs of the people so that true economic development can succeed.

Continued economic development on our Reservations is a high priority. Tribes across the Great Plains are making progress in their efforts to provide economic opportunity for all of their members in non-gaming areas. One can look to the manufacturing facilities and various companies of the Cheyenne River Sioux Tribe, the Sisseton Wahpeton Sioux Tribe, the Spirit Lake Tribe, the Turtle Mountain Band of Chippewa, and the Three Affiliated Tribes for examples of what a concerted effort to utilize all available economic development resources can provide.

The Tribal Leaders in the Great Plains Region would like to take this opportunity to thank Majority Leader Tom Daschle and Senator Tim Johnson for introducing legislation that will provide economic development and regional job opportunities for the Tribes in the State of South Dakota. S. 493, a Bill to provide for the establishment of the Sioux Nation Economic Development Council, will provide the

resources needed to coordinate economic development projects and centralize expertise and technical support to help Tribes obtain assistance as well as raise funds from private organizations to match federal contributions. We encourage this Committee to consider this Bill and the benefits it will provide to the Tribes in South Dakota. We would also encourage your support of Section 439 of the Bill providing for a direct congressional appropriation, for without the appropriation, the legislation would be meaningless.

**Other Areas of Importance for Economic Success**  
**in Indian Country**

**Indian Business Loans and Grant Programs** – Tribes and individual members need continued loan and grant assistance. Tribal members and Tribes have benefited greatly from such programs as the BIA Direct Loan and Loan Guaranty Program. Programs like these and the Indian Business Development Grants need to be reinstated and funded.

**Native American Tax Incentives** – With only two years remaining before tax incentives expire, many businesses are now reluctant to commit to locating or expanding on our Reservations. Economic planning and construction can take months and sometimes years to develop from start to finish. Tax incentives should be looked at in a variety of ways. One of the critical reforms needed is to give Tribes more opportunities to do bonding for economic development, similar to the job creation type bonding that cities can now do, but which is not

available to Tribes under present Internal Revenue Service statutory authority (29 U.S.C. Section 7871). Other kinds of legislation initiatives such as tax incentives for Reservation investors should be considered as well.

**Tribal Court Development** – A strong court system is the key to a strong Nation. Private businesses feel more secure forming relationships/partnerships when they are sure that they have an equitable dispute resolution mechanism. Additional funding is necessary to enhance tribal courts, including the development of such things as a Uniform Commercial Code, enforcement mechanisms for judgments, training for personnel, and modern case management systems, including electronic filing of documents, to name just a few improvements where assistance is needed.

**Technical Assistance Centers** – Tribes need technical assistance in a wide variety of ways to allow them to take advantage of the many opportunities available to spur economic growth. These opportunities include tax incentives, tax exempt bond financing, Department of Justice Grant Programs, initiatives available under the Native American Housing and Self-Determination Act, and many others. Technical assistance would include: loan packaging, identification of resources, including equity financing, business structure development, and preparation of business plans and financial statements, among other things.

**Increase and Improve Federal Contracting and Procurement Set-Asides** – Federal contracting and procurement standards should be structured to benefit where possible, Indian Tribes, and should not pit

disadvantaged groups against each other. The SBA 8(a) program should be streamlined and improved to better target Indian Tribes.

**Regulations Affecting Business Activity Should Be Streamlined –**

Where appropriate, regulations and statues affecting business activities on the Reservation, such as business leases of tribal lands, should be streamlined to allow a minimum of BIA bureaucratic oversight, consistent with the BIA's continuing trust responsibilities. Congress should consider allowing Tribes to opt out of continued BIA oversight of business activities. This has already been done in the case of the Navajo Nation.

**Increasing Employment Training Opportunities –** Critical to job formation is training for new job skills. Every Federal program having a job training component should have a Native American set-aside to allow Tribes the opportunity to set up adequate job training opportunities for their members. This should include adequate funding for United Tribal Technical College and United Sioux Tribes.

Healthcare is another priority for our people in the Great Plains Area. Studies have shown that to have economic growth in any community you must first have a healthy community. In South Dakota and across the Great Plains Area, our population has increased dramatically to the point where we can no longer provide adequate health care in existing facilities.

Because of overcrowded conditions, which lead to delayed services (some waiting times are up to five hours to be seen); many of our people are going elsewhere or remain untreated.

Health care in the Great Plains Region remains the most pressing

issue for Tribal Leaders and Native People. A major concern is the failure to enact S.212, the Indian Health Care Improvement Act. As you know, the Indian Health Care Improvement Act expired in 2000 and has yet to be reauthorized. The Bill has been pending since 2001. It needs to be reauthorized based on the recommendations of the Tribes and with full meaningful consultation between the Tribes and all agencies. S.212 must be passed as drafted and proposed by the National Steering Committee.

Funding for health care must be increased if we are to improve the health care status of Native People in this Country. Currently, Indian health care is funded at approximately \$3 billion, when the actual need is five times that amount. Currently, millions of dollars are sent off-reservation because of services that cannot be provided. Historic under-funding for staffing and new equipment has caused the direct transfer of dollars from on-reservation to off-reservation.

Without adequate increases, our statistics will only get worse. Congress must uphold its responsibility and guarantee our most basic treaty rights and provide adequate funding for health care in the Great Plains Region. This is a must.

#### **OTHER ISSUES OF CONCERN**

Challenge to the Federal Trust Responsibility – One of the most critical issues facing Indian Country is the Supreme Court. In 2001, the Supreme Court indicated that it is willing to ignore the Federal Indian case law that has developed over the past 200 years based on the

Constitution, treaties, and statutes and substitute its own ill-informed opinions for prior law. We cannot sit idly by while the Supreme Court undermines our treaty rights to self-government and the historic Federal trust responsibility. In October, the Supreme Court will hear the White Mountain Apache and Navajo Nation cases concerning the Federal trust responsibility, and even as the Interior Department has engaged in a seemingly endless series of consultations on its trust accounting system, the Justice Department has asked the Supreme Court to cut back on the historic Federal trust responsibility. Historically, the Supreme Court has said that the United States is to be judged by the “highest standard” of duty and loyalty when managing Indian trust assets and resources, but the Justice Department is arguing that the Federal Government’s conduct cannot be judged by the standards of a “private trustee”. Instead, the Justice Department argues that the United States should be able to balance its other duties against its trust duties, and we can be assured based on the Supreme Court’s prior decisions that the balance will go against Tribes under language in a measure that will pass this year to:

- Recognize the United States’ duty to carry out the Federal trust responsibility to manage, protect, and account for Indian trust assets and resources in accordance with the Fiduciary standards set forth in section 5 of the Secretarial Order No. 3215 (2000) and *Seminole Tribe v. United States* (1942); and
- Recognize the right of Indian Tribes to sue the United States for breach of its trust responsibility to preserve and be

accountable for Indian trust assets and resources under its management; and

- Require the Secretary of the Interior to protect, as the proprietary information of the respective Indian Tribes and Indians, confidential information about trust assets and resources from public disclosure.

This is simply requiring the Federal Government to follow existing law, which has developed over the past 200 years. We believe that it is appropriate for Congress to take such action because the Constitution invests the Congress – not the Supreme Court – with the constitutional authority to regulate commerce with the Indian Tribes.

Chickasaw Nation Tax Issue – In November 2001, the Supreme Court decided *Chickasaw Nation v. United States*, 534 U.S. 84 ;(2001), which held that Indian Tribes that sell paper pull-tabs are subject to the Federal Wagering and Occupational Excise Tax, Internal Revenue Code Chapter 35, 26 U.S.C. secs. 4401-4402 (hereafter referred to as “Federal pull-tab tax”). The Supreme Court’s decision was simply wrong. State governments are exempt from the Federal pull-tab tax and Congress intended to treat “Indian gaming operations conducted pursuant to [IGRA]... in the same manner as such provisions apply to State gaming and wagering operations.” See 25 U.S.C. sec. 2719(d)(1). The Supreme Court ignored the statutory language of the Indian Gaming Regulatory Act because it did not use the word “imposition” and the reference to “Chapter 35” was set forth in parentheses. We request that the Senate Committee on Indian Affairs work with the Senate Finance Committee to correct the erroneous Supreme Court

decision in Chickasaw Nation and treat Indian Tribes the same as States for purposes of the Federal pull-tab excise tax by enacting a provision identical to H.R. 4887, which is pending before the House Ways and Means Committee. The cost of this correction is minimal, only \$16 million over ten years according to the Joint Tax Committee, but the principle is large – Indian Tribes must be respected as governments and tribal government revenue must not be taxed by the United States, especially when State governments are exempt from such taxes.

Class II Technologic Aids – Under the IGRA, Indian Tribes are authorized to use “technologic aids” to facilitate the play of bingo, pull-tabs and other Class II games – provided that the “technologic aids” are not electronic facsimiles of a game of chance or slot machines. 25 U.S.C. sec. 2703(7). Indian Tribes that have not been able to secure a Class III Tribal-State Compact, including the Santee Sioux Tribe of Nebraska, rely on Class II games and technologic aids to generate tribal government revenue. Generally, these are relatively small operations but the funds that they generate are crucial for tribal governments. The National Indian Gaming Commission (“NIGC”) recently issued a Federal Regulation clarifying the definition of Class II Technologic Aids. Yet, the NIGC did not employ a tribal advisory committee in developing this regulation and there is still some confusion about the regulation, both within the Federal Government and among some Tribes.

To address this issue, we request that statutory language be added to the FY 2003 Interior Appropriations Bill to require NIGC to engage in

government-to-government consultation concerning the Class II definition regulation. The NIGC has said that it is difficult to conduct government-to-government consultation because of its budget shortfalls, but for next year, NIGC is requesting a \$2 million Federal appropriation. Therefore, statutory language might be included along with this appropriation to require that “at least 4% of such funds shall be spent to consult with Indian Tribes to implement the regulations published at 67 Federal Register 4116 (June 17, 2002).” This would help bring clarity to this important area.

Our leaders realize the financial issues that face the Administration and this Country because of the war on terrorism. We also deal daily with the need to make budget cuts in certain areas to meet the top priority needs of government. The Administration cannot, however, use the war on terrorism as a reason to cut the budgets of the neediest people in this Nation. It is time for the Administration to make its own citizens a priority. The Federal Government cannot continue to turn its back on the social issues that face Native people in Indian Country. The United States and the Administration must live up to its treaty obligations and begin to fund tribal programs at a level that will allow our leaders to meet the minimum basic needs of our people. Finally, I would stress that we are not Native people asking for a handout; we are asking that the Administration live up to the treaty obligations of the United States and ensure adequate levels of funding so that our people may begin to live at a level that is commensurate with the rest of the Country.

I thank you for your time and consideration.

Pidamaya (Thank You)

Testimony of Gregg J. Bourland  
Chairman, Cheyenne River Sioux Tribe

**United States Senate Committee on Indian Affairs**

Oversight Hearings on the Goals and Priorities of South Dakota Tribes  
September 14, 2002

Introduction

Good afternoon Mr. Chairman and members of the Committee. Thank you for the opportunity to present the Committee with information on the needs of the Cheyenne River Sioux Tribe and thank you for taking the time to hold this hearing in the heart of the Lakota nation – the Black Hills. On behalf of the Tribe, and the Lakota people, I welcome you to our home.

I first want to give you some information about the Tribe so you can understand the enormity of the problems facing the tribal government and the people. The Cheyenne River Sioux Reservation is home to four of the seven bands of the Lakota Teton Sioux – the Minnecoujou, the Itazipco, the Oohenumpa, and the Siha Sapa. The reservation includes all of Dewey and Ziebach counties and encompasses over 2.8 million acres of land. The Tribal enrollment is 13,900 and the population residing within the Service Area is 10,589 according to the B.I.A. Labor Force Report for Fiscal Year 2000. Dewey and Ziebach counties are the fifth and eighty-fourth poorest in the Nation, with annual per capita income at \$10,390.00 and \$14,430.00 respectively, according to the Bureau of Economic Analysis Report for 2001. The unemployment rate for the Reservation is approximately 78% and of those employed, 96% live below the national poverty level according to the B.I.A. Labor Force Report.

I. Health Care Issues

Of all the issues facing our people, perhaps none is more critical than the national crisis in health care occurring on the Cheyenne River Reservation. There has been a long history of federal neglect and mistreatment of Indian people resulting in poor health care and poor health status for our people. The Fort Laramie Treaty of 1868 was a peace treaty wherein the Lakota Tribes and the United States agreed to cessation of war and to certain terms of peace. One of the terms was that the United States was to provide for health care for the members of the Great Sioux Nation in Article VIII, which stated, **“The United States hereby agrees to furnish annually to the Indians the physician, teachers, carpenter, miller, engineer, farmer, and blacksmiths, as herein contemplated, and that such appropriations shall be made from time to time, on the estimate of the Secretary of the Interior, as will be sufficient to employ such persons.”** In the proceedings of the 1882-1883 Agreement with the Sioux, Commissioners Newton Edmunds, Peter Shannon, and James Teller noted “In case of serious accident or sickness among the Indians or agency employees, the need of fit accommodations for the required treatment and nursing is seriously felt. We would

therefore recommend that provisions to made at each agency for such room as may be needed to be used as a hospital.” To date, a hospital facility has never been built and paid for by the Indian Health Service. The Army Corps of Engineers built a facility to replace the one the Tribe had built with its own funds in 1960 when the Tribe’s facility was flooded by the construction of the Oahe Dam. In 1975, the Tribe also paid for an addition which is now the outpatient facility. The facility was constructed as a twenty-seven bed facility with an outpatient clinic. The United States Government has never fully staffed the facility.

The United States government has never fulfilled the promise of health care for Tribal members recognized in the United States trust responsibility. Currently, the facility only has two physicians to serve over 10,000 people. As a result, the facility is underutilized, and cannot handle even routine medical procedures. The health care provided lacks in quality and accessibility, resulting in a long history of death, suffering, and disability inflicted upon Tribal members.

The Cheyenne River Sioux Tribe has conducted Health Hearings in five of the sixteen Reservation communities to assess the problems that Tribal members are having in accessing health care. The testimony overwhelmingly indicates that there is currently a crisis in health care for Tribal members. Some common themes include:

1. Incredible waiting times on average over three hours per clinic visit or Emergency Room visit. This is compounded by the distances from the outlying communities to the facility – over an hour drive in some cases.
2. Serious deficiencies in the quality of care resulting in death and permanent disability of Tribal members.
3. Extensive problems obtaining prescriptions including long waiting times, mis-prescriptions and inability to obtain non-generic prescriptions.
4. Poor quality of care caused by the lack of full time staffing resulting in unavailability of services and use of contract doctors. The use of contract doctors results in a lack of continuity of care for Tribal members because doctors only spend a couple of days at the facility and then are transferred to other facilities.

A. Increased IHS Funding

This crisis in health care is the result, in large part, from the lack of funding. The Indian Health Service has seen a 50% reduction in Area Office and National Office Staff positions in the past eight years. While the Aberdeen Area has seen a doubling of the budget for Indian Health Service, the Cheyenne River Service Unit budget has not increased significantly. This is due in large part to the lack of a new facility and lack of staffing and equipment dollars that accompany a new facility. **At the present time, the Cheyenne River Service Unit is only funded to meet 46% of the need for health care services, leaving the Service Unit at a loss to provide quality care.**

The Presidents 2003 Budget includes plans to eliminate 100 Full Time Employees from the Indian Health Service, to cut Construction dollars for new facilities and only increase the Indian Health Service Budget by two percent. Without marked increases in the budget, the members of the Tribe will continue to suffer unnecessary pain and death at the hands of the federal government.

The Tribe would rather see federal funds spent on preventing injury and death to Tribal members than in paying for lawsuits out of the Department of Treasury for malpractice by funding the Indian Health Service at adequate levels. The current 2003 President's Budget proposes funding at \$2,815,568,000.00. This only funds forty-six percent of the need. The needed increase is at least **\$3,305,232,000.00**. The Tribe proposes that the funding for Indian Health Service needs to be increased to a total budget of \$6,120,800,000.00. This would provide at least a fighting chance for Tribal members to receive quality care to prevent death and disability.

**B. A New Health Care Facility**

The Indian Health Service has proposed a new healthcare facility at Cheyenne River, but it only includes six ambulatory care beds and no obstetric or gynecological services. In 2001, the draft facility included more beds and a birthing unit. This was changed between June 2002 and September 2002 without consulting with the Tribe. The removal of the birthing unit includes removal of two beds and two physicians whose services are desperately needed.

In 2001, there were 129 women from Dewey and Zeibach counties that gave birth at St. Mary's Hospital in Pierre. This does not include women who gave birth in Rapid City, Sioux Falls or Mobridge, or women in Haakon, Potter, Sully and Meade counties which are served by the Cheyenne River Service Unit. These women and their children are put in grave danger traversing icy roads in blizzard conditions and traveling over an hour and a half to the nearest hospital because there are no services in Eagle Butte. We have already had women delivering on ambulances and women have lost babies for no other reason than no qualified medical staff were available to realize there was a problem in time. The federal government needs to live up to its obligation to provide decent health care for tribal members. A properly staffed new facility is long overdue.

**C. Nursing Home Care**

The Tribe is gravely concerned about the lack of nursing home care on the Reservation for tribal elders. Because South Dakota has a moratorium on building new nursing homes, the Tribe cannot receive Medicaid/ Medicare reimbursement for any facility it constructs. The State has imposed an administrative requirement that if a facility shuts down, the beds from that facility can be licensed to a new facility. However, the State requires that the new facility be in close geographical proximity to the old facility, which means the Tribes are ineligible to apply for the licenses on these beds because there never have been nursing home facilities on the Reservations. This barrier prevents the Tribe from operating a nursing home.

As a result, the tribe has requested federal legislation to permit full federal Medicaid/Medicare reimbursement to the tribes in South Dakota so that elders can access quality health care close to home. Without nursing home facilities, our elders are shipped off to far away nursing homes with no Lakota speakers. The result is that they have trouble communicating their health needs. There have been numerous documented reports of our elders receiving sub-standard care in these facilities. In addition, they are

shut off from their families that cannot afford to visit these far off facilities, their community, and their lives. The result is our communities suffer from the loss of their presence and their wisdom, and our elders suffer poor health care. For this reason, full Medicare/Medicaid reimbursement is critical for tribes in South Dakota. In no other state in the Nation are Tribes denied access to these critical funds. A copy of the bill as proposed by the Tribe is included with my written testimony.

## II. Disaster Relief Funding

All agricultural producers and ranchers in western South Dakota have been hit hard by the drought, but none perhaps so much as tribal ranchers. In the winter of 1997, the ranchers here saw incredible losses in livestock from the blizzards, and the lack of any cover available for livestock because the Corps of Engineers flooded all of the river lowland forests when the Oahe Dam was constructed. Our ranchers live on the verge of collapse due to the poor economic conditions on the reservation. Therefore, drought assistance in the form of cash relief is critical. Feed surplus relief recently approved is insufficient to carry our ranchers through the winter and is unavailable for horse owners. Many of our ranchers have already sold their livestock because assistance was too late.

In addition, we need an expansion of the water system to prevent future losses. Stock dams have dried up or become contaminated due to stagnation. The current water system does not have the capacity for added pasture taps to relieve ranchers from the current drought conditions. The lack of an adequate water supply in this drought is also affecting tribal members whose water pressure is inadequate for human use. The water pipeline is lined with asbestos leading to major concerns about the health of the people served by the system. While the drought heightens the water problem, even without a drought, the Tribe cannot construct new housing because the water system will not support additional housing. With a current need for 744 additional housing units, this crisis will deepen unless funds are found to update the water system.

Congress has seen fit to fund timber, oil and coal resource management in the Department of Interior budget, but continues to reduce funds for Prairie Management including funding for repair of stock dams, fencing, and protection of endangered prairie species. While I am sure other Tribes appreciate the funding to protect their natural resources, we need Congress to continue funding for these vital prairie management programs because the prairie is the main source of livelihood for a majority of our people. It is our greatest natural resource.

## III. Education

The current Cheyenne Eagle Butte School is a building lined with asbestos around all the pipes and asbestos floor tiles in all the dormitories and school classrooms. This alone presents a major health hazard to our children. The school was on the priority list until the BIA revamped the list last year – then the Tribe was no longer in line for a new facility. This school is a major liability for the Bureau and a health hazard to our children and our teachers. School construction funds need to increase and the priority list should not be based on which schools are cheaper to fund, but actual threat to students and staff.

In the area of education in general, the level of funding has to be a priority. Unless our children receive a proper education, our children and our families will always suffer. In addition, the Tribe opposes efforts to force privatization of all BIA schools. While some Tribes may want to contract schools and run them, education has to remain a federal trust responsibility. Self-determination demands that the BIA not force Tribes to run schools or other programs and not turn over the responsibility to private institutions with no experience in Indian country.

#### IV. Violent Crime Prevention and Intervention Funding

The Tribe supports continued funding for programs to reduce violence and victimization including domestic violence prevention and intervention. According to Bureau of Justice Assistance statistics, Native American women are victims of domestic violence at a much higher rate than any other racial or ethnic group in the country. The violent crime rate for American Indian females is 98 per 1000 females, a rate higher than that found among white females (40 per 1000) or black females (56 per 1000). This violence has been perpetuated since the days when the United States saw fit to target women and children in its war efforts against the Tribal Nations. The crime of rape was rare in Native nations and the value of women is still alive in the oral history and traditional teachings. The on-going war on Native women needs to stop.

Yet funding for programs to prevent violence is inadequate and is often funneled to the State and never sees the Reservation where Native American women are the hardest hit by this victimization. For example, none of the rape prevention and education funds allocated in South Dakota have gone to Reservation-based programs. Direct funding to Tribes for these programs is critical to success in winning the battle to stop violence against our women and children.

The United States Attorney must take cases involving violence against women seriously and prosecute offenders. Failure to prosecute results in continued victimization. Native women who live on reservations encounter many barriers in reporting crimes and finding any justice or healing in the existing systems. Jurisdictional issues are almost always present especially when the offender is white. Usually the cases do not go to trial until a year later if tried at all. The offenders are put back in the communities without treatment options starting at the incarceration level. Treatment needs to start in the prison system to help reduce the rate of recidivism in this population. The systems in place are often disrespectful to Native women in the delivery of services and this further adds to the mistrust. Direct base funding for law enforcement, courts, and prevention programming must increase to keep pace with the growing population.

#### V. Direct Tribal Funding and Tribal Consultation

Throughout the twelve years I have served as the Tribal Chairman, I have repeatedly seen federal agencies make decisions about what is best for the Lakota people without ever visiting our homes, and without asking the Tribes what is best. If the United States is ever going to fulfill the promise of self-determination and tribal sovereignty, it must begin with tribal consultation. And consultation does not mean giving Tribes

options that have been pre-selected or telling Tribes what has been decided and asking them to weigh in after the fact. It must mean presenting Tribes with the issues and problems and supporting tribal solutions reached by tribes consulting with each other. The Department of Interior's approach to Reform of Trust Fund Management is a good example of how not to support tribal self-determination. Decisions were made before Tribes were ever approached, and even after Tribes weighed in with their views, those views critical of the Interior plan were ignored.

As the examples throughout this speech demonstrate, direct funding to South Dakota tribes is critical in every area. Whether we are discussing Medicaid/Medicare, federal highway funds, or law enforcement and victim assistance funds, when funds are allocated to South Dakota, they do not reach the Reservation. Yet another example is federal HOME funds to promote low-income housing development. While the Department of Agriculture has set aside more funds for technical assistance to Tribes to access state HOME funds, South Dakota denies non-profit corporations and tribes the right to apply for these funds despite the fact that the need of Native Americans on Reservations accounts for between 9% and 27% of the HOME funding received by South Dakota. Until the Federal government either takes action to prohibit the State from denying Tribes access to federal funds or directly funds Tribes in South Dakota, federal efforts to improve the lives of Native people will continue to fall short of what is needed. The funds will never reach the people they are intended to serve.

With the federal courts undermining Tribal sovereignty and self-determination over our lands and relationships with non-Indians on our lands, and federal agencies failing to support tribal self-determination and control over funding allocated for Tribes, Congress must send a strong message to the Courts and the federal agencies that Tribal self-determination and sovereignty will be upheld as part of the federal trust responsibility to Tribes and tribal people. Funding must be made available directly to Tribes with flexibility for Tribes to design the solutions to problems. Legislation must require federal agencies to look to the Tribes for solutions and guidance, and Congress must send a strong message to the Courts that Tribes have territorial jurisdiction over their lands and over all people entering onto tribal lands regardless of their race or political affiliation. Without this commitment to tribal self-determination and sovereignty, the problems facing our Nations shall never be solved.

Thank you for this opportunity to appear before you. I welcome any questions the Committee may have.

Charles W. Murphy  
Chairman



Tosa Iron  
Vice Chairman

Sharon Two Bears  
Secretary

**AT LARGE**

Jesse Taken Alive  
Ravi Gates  
Pat McLaughlin  
Miles McAllister  
Ron Brown Otter  
Issac Dog Eagle, Jr.

**DISTRICTS**

Carol White Eagle  
Cannonball District  
Verna Bailey  
Fort Yates District  
Billo Casette  
Wakpala District  
Frank White Bull  
Rensel District  
Avis Linton Eagle  
Bear Soldier District  
Milton Brown Otter  
Rock Creek District  
Allen Flying Eye  
Little Eagle District  
Randal White Sr.  
Porcupine District

**TESTIMONY BEFORE THE  
SENATE COMMITTEE ON INDIAN AFFAIRS  
UNITED STATES SENATE  
REGARDING THE  
"GOALS AND PRIORITIES OF SOUTH DAKOTA  
INDIAN TRIBES"**

**Chairman Daniel K. Inouye, Presiding  
Tim Johnson, Member**

**Rapid City, South Dakota**

**September 14, 2002**

Chairman Inouye and Senator Johnson:

We are very pleased to be invited to present testimony before the Senate Committee on Indian Affairs' Field Hearing in Rapid City, South Dakota regarding the Goals and Priorities of the South Dakota Indian Tribes.

I am Charles W. Murphy, Chairman of the Standing Rock Sioux Tribe located in South Dakota and in North Dakota. I have with me several members of our Tribal Council who are very interested in hearing the Committee's intentions relative to the priorities we present.

As you are aware in your visit to Standing Rock in 1982, you visited the gravesite of Sitting Bull, one of our esteemed leaders and it is his philosophy of "...seeing what good we can do for our children..." that we will be presenting our testimony on.

Senate Committee on Indian Affairs Testimony  
Page 2

TRUST RESPONSIBILITY:

We hold trust responsibility which the United States assumed through the treaties we entered into be reinforced, strengthened and not squandered away. Tribal governments in each of our homelands must be supported as they work cooperatively with their members in developing their economies, social fabric, and educational endeavors.

Tribal governments through the Public Law 93-638, as amended process should be provided an opportunity to resolve the matters relative to our trust funds. The Federal government is responsible for the conditions as well as the financial losses identified in the management of our trust funds. The Standing Rock Sioux Tribal Council did pass two resolutions unanimously opposing the transfer of our Individual Indian Monies (I.I.M.) office duties and responsibilities to the Albuquerque, New Mexico offices. These resolutions were not respected by the Bureau of Indian Affairs or the Department of Interior.

Under Article 5 and Article 6 of the Fort Laramie Treaty of April 29, 1868, the Federal government promised to maintain offices and staff within our homelands. We believe this includes the administering of our lands, trust funds, and our resources locally. It doesn't do us any good if these offices are located far off in another state being administered by some people who have very little concern for our welfare or livelihood. We urge you to maintain these offices locally with additional funding and with full time equivalent employees.

The Standing Rock Sioux Tribe is attempting to consolidate its land holdings within our Reservation; however, as we purchase non-Indian fee lands that they offered to us; we find that we are unable to get these lands back into trust status. We strongly request that the Committee direct the Department of Interior to authorize the lands purchased within our homelands be transferred into trust status immediately.

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EDUCATION:

It is in this particular trust responsibility we hold highly and expect the United States Congress and the Federal government to meet their obligations through funding the operations, maintenance, and construction of our dilapidated buildings as well as other student needs.

In fact, I am attaching a copy of the Standing Rock Sioux Tribal Grant School's Unmet Needs Report completed by Robert W. McLaughlin for your review and funding. The Report identifies the areas which we believe are critical to our school and requires immediate attention.

HEALTH CARE:

We have been told that if our bodies are not healthy; then, no matter how much economic development, social or educational development are done, we can not be happy. We need to heal first.

My predecessors have addressed the need for our people to undergo healing for the severe trauma they experienced through the flooding of our lands from the Oahe Dam Act of September 2, 1958 (Public Law 89-915). With the approval of Public Law 102-575, Title 35, one of our communities (Long Soldier District which is formerly Fort Yates District) have decided to seek the healing of their members as they proceed in developing their community. This healing is through the use of our traditional leaders, medicine people, as well as contemporary available methods.

Concentrated effort is being made on recovery from the effects of alcoholism, post traumatic stress disorders, drug addiction through in-patient treatment facilities to be located in rural area farms and ranches the Tribe purchased.

Suicide is again showing its evil face on Standing Rock. Some of our program people as well as community members are taking the time and effort to address the families so their children do not take their own lives. We find this method much more productive than having our children sit through endless hours of deliberations.

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Page 4

Another health care situation which needs to be addressed nation-wide is diabetes. On Standing Rock, we are experiencing younger people now being diagnosed with Type II diabetes. Eventually those who are on diabetes will become dialysis patients; and we urge the Committee to consider very carefully an increased amount for diabetes care/prevention and dialysis for Standing Rock.

Heart disease as well as liver complications are becoming a daily matter on Standing Rock. The Committee must aggressively address itself to these severe problems as you get into the Appropriations process.

Our members are still continually experiencing threatening calls and letters from collection agencies and attorneys due to the failure of Indian Health Services in paying the health care referrals they authorize. The Tribal Council did approve a resolution seeking to remove the Service Unit Director for his lack of management or administrative skills and knowledge; but the Aberdeen Area Office is refusing to recognize the resolution approved. We request the Committee to support the Tribe's wishes and have the Director replaced immediately.

There are many diseases such as autism, fetal alcohol syndrome, and ADHD as well as physical therapy for our kids born with disabilities which need attention. We urge your consideration to review these closely.

TRANSPORTATION:

Mr. Chairman, in order for our people to traverse comfortably within our homelands, our roads need to be re-developed and maintained adequately. We urge your Committee to seek the return to 100% funding for the Indian Reservation Roads Program as well as authorize an easier access to other available Programs under the Department of Transportation.

Senate Committee On Indian Affairs Testimony\  
Page 5

WATER:

The Supreme Court Decision on the *Winters' Doctrine* is still totally in effect within Indian Country. We have great concerns relative to the management of the Missouri River by the Army Corps of Engineers. The Standing Rock Sioux Tribe is requesting the Committee to conduct an Oversight Hearing on the Management of Missouri River in the near future.

When Public Law 89-915 (the Oahe Dam Act) was approved, there was a determination made in the Committee level to not pay the Standing Rock Sioux Tribe for the 22,000+ acres of river bottom land owned by members of the Standing Rock Sioux Tribe. To date, no compensation has been received; however, Chairman Inouye, we seek to have a percentage of the annual hydropower sales made from the turbines at Pierre, South Dakota be made to the Standing Rock Sioux Tribe as well as payment from the amount of funds realized plus interest. This payment must be made annually to the Tribe due to their ownership to the Bed of the Missouri River. If you wish, we can have back up information transmitted to your office.

The Four river communities of Cannon Ball, Fort Yates, Kenel, and Wakpala have all suffered by the loss of lands within their districts as well as the negative impacts upon their members. We urge your support for these communities to realize reparations from the compensation for the use of our river beds.

Mr. Chairman, this would conclude my testimony and request that the record remain open so we can submit additional information for the record. Thank you very much.

Senate Committee on Indian Affairs Testimony\  
Page 6

LAW ENFORCEMENT/DETENTION

With the increase in violent juvenile crimes on the Standing Rock Sioux Indian Reservation, additional funding resources are needed for detention, supervised placement/care, drug/alcohol rehabilitation, suicide intervention, and continued long-term counseling services.

To be proactive, law enforcement needs additional personnel and equipment to place school resource officers in the schools during the entire school year to conduct DARE, GREAT, and other preventative programs to the students. During summer months these preventative programs should be continued in the districts and local communities to be effective.

Charles W. Murphy  
Chairman



Tom Iron  
Vice Chairman

Sharon Two Bears  
Secretary

**AT LARGE**

Jesse Takon Alive  
Reva Gates  
Pat McLaughlin  
Miles McAllister  
Ron Brown Otter  
Isaac Doug Eagle, Jr.

**DISTRICTS**

Carol White Eagle  
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Milo Cadotte  
Wakpala District  
Frank White Bull  
Kenel District  
Acis Little Eagle  
Bear Stablia District  
Milton Brown Otter  
Rock Creek District  
Allen Flying Eye  
Little Eagle District  
Randal White Sr.  
Pocapina District

September 30, 2002

The Honorable Daniel Inouye, Chairman  
Senate Indian Affairs Committee  
Hart Senate Office Building, room 838  
Washington, D.C. 20510

Dear Chairman Inouye:

The Standing Rock Sioux Tribe supplements the record presented at the Rapid City field hearing of September 14, 2002, on the some subject of "Goals and Priorities of South Dakota Indian Tribes." The opportunity to present testimony at that field hearing was greatly appreciated and a credit to both you and Senator Johnson.

The master manual update and revision for the operation of the Missouri River mainstem dams by the Corps of Engineers is a matter of the most serious and urgent concern of the Standing Rock Sioux Tribe. This update of the operational procedures for the dams, including Oahe Dam, which backs water over 56,000 acres of land within the boundaries of the Standing Rock Indian Reservation, is a tragedy upon the Indian people. It constitutes in effect an allocation of water among special interests in seven states of the Missouri River Basin for navigation, recreational and environmental protection and other purposes purposes without consideration of the prior and superior rights to the use of water by the Standing Rock Sioux Tribe and other tribes of the Basin. The Standing Rock Sioux Tribe alone, claims up to 5% of the natural flow for present and future purposes as set out below. These vested property rights, unadjudicated and unsettled, were expressly omitted from consideration by the Corps of Engineers.

The concern of the Standing Rock Sioux Tribe is that considerable investment in navigation, recreation, environmental enhancement, preservation of endangered species and other purposes will be based on the master manual update without considering our water rights. Any future proceedings to adjudicate or settle our reserved water rights will be sharply and irreparably prejudiced by the considerable investment made upon the foundation of the master manual update and revision.

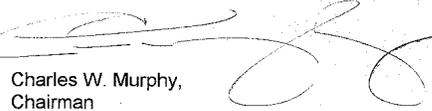
The Standing Rock Sioux Tribe attaches its resolution for your review which

proclaims its continued dominion over all of the lands within the boundaries of the Standing Rock Sioux Indian Reservation as reserved from time immemorial including but not limited to rights, jurisdictions, privileges, prerogatives, liberties, immunities, and temporal franchises whatsoever to all the soil, plains, woods, wetlands, lakes, rivers, aquifers, with the fish and wildlife of every kind, and all mines of whatsoever kind within the said limits; and the Tribal Council declares its water rights to irrigate not less than 303,650 arable acres with an annual diversion duty of 4 acre feet per acre, to supply municipalities, commercial and industrial purposes and rural homes with water for not less than 30,000 future persons having an annual water requirement of 10,000 acre feet annually, to supply 50,000 head of livestock of every kind on the ranges having an annual water requirement of 1,500 acre feet annually; such proclamation made on the basis of the status of knowledge in the year 2002 and subject to change to include water for other purposes, such as oil, gas, coal or other minerals, forests, recreation, and etc; and such proclamation for the purposes and amount of water required to be adjustable in the future to better reflect improved knowledge and changing conditions.

The Standing Rock Sioux Tribe respectfully requests an oversight hearing by your Committee to fully explore the impact of the Missouri River master manual update and revision by the Corps of Engineers, which cannot be tolerated by the Tribe due to its failure to properly consider our vested rights, titles and interests in the Missouri River. I am hopeful that you will correspond with us in order that we may work together with your Committee to insure a most useful and urgently needed hearing.

Sincerely,

STANDING ROCK SIOUX TRIBE



Charles W. Murphy,  
Chairman

cc: Honorable Tim Johnson  
Honorable Tom Daschle  
Honorable John Thune  
Honorable Byron Dorgan  
Honorable Kent Conrad  
Honorable Earl Pomeroy  
Assistant Secretary - Civil Works, USACE  
Commander - Northwest Division, USACE

Charles W. Murphy  
Chairman



Tom Iron  
Vice Chairman

Elaine McLaughlin  
Secretary

May 1, 2001

**AT LARGE**

Jesse Taken Alive  
Reva Gates  
Pat McLaughlin  
Miles McAllister  
Ron Brown Otter  
Isaac Dog Eagle, Jr.

**DISTRICTS**

Robert Cordova  
Cannonball District  
Raphael See Walker  
Fort Yates District  
Joe Strong Heart  
Wakpala District  
Palmer Defender  
Kenel District  
Dean Bear Ribs  
Bear Soldier District  
Milton Brown Otter  
Rock Creek District  
Farren Long Chase  
Little Eagle District  
Randal White Sr.  
Porcupine District

The Honorable Gale A. Norton, Secretary  
U.S. Department of the Interior  
1849 C. Street, N.W.  
Washington, D.C. 20240

Dear Secretary Norton:

The importance to the Standing Rock Sioux Tribe of its rights to the use of water in the Missouri River, its tributaries and aquifers is underscored by the enclosed resolution of the governing body. There is much concern among our tribal leaders and our membership that efforts are increasing to diminish our valid and reasonable claims to water rights. We strongly believe that those water rights stem from time immemorial and are based on an unbroken chain of title from our ancestors. The United States has previously acknowledged our property rights and dominion over vast resources in treaties of 1851 and 1868. The Standing Rock Indian Reservation is part of the Great Sioux Reservation established by the Treaty of 1868, which was subsequently divided into nine separate reservations by an 1889 Act of Congress.

The Tribe humbly requests an opportunity to meet with you on the specific subject of our rejection of the Master Manual for the future operation of the Missouri River mainstem reservoirs by the Corps of Engineers. The draft Master Manual represents a continuing erosion of available water supply in the Missouri River by allocating flows, regulated by the federal reservoirs, to downstream navigation, upstream recreation and basin-wide habitat for endangered and threatened species, among other minor uses for irrigation, domestic and industrial purposes. We need your assistance to effect changes to the Master Manual that provide a mechanism to preserve our vested water rights.

The Standing Rock Sioux Tribe cannot remain silent as the completion of the Master Manual approaches. The Master Manual, if approved in its present form, will make commitments for all of the remaining water supply in the Missouri River to the States and various interest groups. Those commitments are detrimental to the water rights of the Standing Rock Sioux Tribe and its membership. The only approach

THE HONORABLE GALE A. NORTON, SECRETARY  
May 1, 2001  
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offered by the Corps of Engineers is to modify the operation of the reservoirs in the future to (1) accommodate our water rights at such time as a final decree has been entered and all appeals have been taken or (2) at such time as Congress enacts legislation specifying the quantum of our water rights. This approach has been utilized to our detriment for more than half a century while the United States, the States and special interests have developed the waters of the Missouri River Basin. The Standing Rock Sioux Tribe has lagged in that development although you will be pleased with developments since 1986 that have provided for rural water development on the Reservation and Interior support for irrigation of small tracts.

We will be in contact with your Scheduling Secretary to arrange a meeting in your office during the week of June 10, 2001. We will attend the meeting with great hope and anticipation that you and the new Administration can help us bring reason to the Master Manual process and outcome. We simply seek an equitable operation of the Missouri River dams and reservoirs that will provide the requisite care, skill and diligence by the Trustee to preserve, protect and develop the water rights of the Standing Rock Sioux Tribe for present and future purposes.

Sincerely,

STANDING ROCK SIOUX TRIBE



Charles W. Murphy  
Chairman

CWM/eie

cc: The Honorable John Ashcroft, Attorney General  
The Honorable Joseph W. Westphal, Acting Secretary  
of the Army  
The Honorable Tom Daschle  
The Honorable Tim Johnson  
The Honorable John Thune  
The Honorable Byron Dorgan  
The Honorable Kent Conrad  
The Honorable Earl Pomeroy

Charles W. Murphy  
Chairman



Tom Iron  
Vice Chairman

Elaine McLaughlin  
Secretary

May 1, 2001

**AT LARGE**

Jesse Taken Alive  
Reva Gates  
Pat McLaughlin  
Miles McAllister  
Ron Brown Otter  
Isaac Dog Eagle, Jr.

**DISTRICTS**

Robert Cordova  
Conronball District  
Raphael See Walker  
Fort Yates District  
Joe Strong Heart  
Wakpala District  
Palmer Defender  
Kenel District  
Dean Bear Ribs  
Bear Soldier District  
Milton Brown Otter  
Rock Creek District  
Farren Long Chase  
Little Eagle District  
Randal White Sr.  
Porcupine District

The Honorable Joseph W. Westphal, Acting Secretary  
of the Army  
U.S. Department of the Army  
101 Army - Pentagon  
Washington, D.C. 20310-0101

Dear Secretary Westphal:

The Standing Rock Sioux Tribe respectfully submits the attached resolution rejecting, among other things, the Master Manual Update and environmental impact statement documents and processes in support of the Master Manual Update.

The commitment that the Master Manual Update makes to downstream navigation interests, upstream recreation interests and endangered and threatened species is a considerable concern to the Tribe and its membership. Of equal concern is the lack of commitment to the protection or preservation of the water rights of the Standing Rock Sioux Tribe. These factors have caused the governing body to fully reject the effort and to call upon congressional members and others in President Bush's Administration to fully review the consequences of the Master Manual Update on our water rights and to join us in seeking a better course and outcome.

The Corps of Engineers contends in Master Manual documents that future operation of the mainstem Missouri River dams and reservoirs will be modified to reflect future decrees at completion of the appeal process or federal legislation establishing the measure of Indian water rights. Overlooked by the Corps of Engineers is the fact that commitments in the Master Manual diminish the ability of a future Court or Congress to equitably address the water rights of the Standing Rock Sioux Tribe in the future because mortgages, releases, debt, titles and, more generally, economic development outside the Reservation will be based on the commitments now proposed in the Master Manual. It is these pressures on the state, federal and Supreme Courts and the Political Process that result in Creative Laws to Diminish Our Vested Rights to the Use of Water and Circumvent the Equitable Compensation Provisions of the Constitution.

THE HONORABLE JOSEPH W. WESTPHAL  
May 1, 2001  
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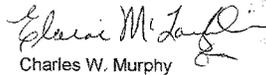
The drafts of the environmental impact statement prepared by the Corps of Engineers have failed completely to address the economic impact of the Master Manual Update on the Standing Rock Sioux Tribe. No consideration has been given to economic conditions on the Reservation and the impact that Master Manual commitments will have on the future Indian population given that the Tribe possesses an equitable title to rights to the use of water in the Missouri River.

Without diminishing the force or effect of our conclusions respecting the Master Manual, please accept our observation that the Corps of Engineers' staff working on the Master Manual Update have, for the most part, conducted themselves in an honorable and professional manner. It is the policy of the Corps of Engineers on this matter that is at issue.

Finally, please ensure that the documents prepared by the Corps of Engineers on the Master Manual reflect the opposition of the Standing Rock Sioux Tribe to the complete set of documents including the environmental impact statement.

Sincerely,

STANDING ROCK SIOUX TRIBE



Charles W. Murphy  
Chairman

CWM/eie

cc: The Honorable John Ashcroft, Attorney General  
The Honorable Gale Norton, Secretary  
The Honorable Christie Whitman, EPA Administrator  
The Honorable Tom Daschle  
The Honorable Tim Johnson  
The Honorable John Thune  
The Honorable Byron Dorgan  
The Honorable Kent Conrad  
The Honorable Earl Pomeroy

RESOLUTION NO. 106-01

FORMALLY ESTABLISHES THE STANDING ROCK SIOUX TRIBE'S  
POLICY ON ITS ABORIGINAL, TREATY AND WINTERS RIGHTS TO THE USE  
OF WATER IN THE MISSOURI RIVER TO MEET ALL  
PRESENT AND FUTURE USES; AMONG OTHER THINGS

WHEREAS, the Standing Rock Sioux Tribe is an unincorporated Tribe of Indians, having accepted the Indian Reorganization Act of June 18, 1934, with the exception of Article 16, and the recognized governing body of the Tribe is known as the Standing Rock Sioux Tribal Council; and

WHEREAS, the Standing Rock Sioux Tribal Council, pursuant to the Constitution of the Standing Rock Sioux Tribe, Article IV, Section(s) 1 (a,b,c,h and j), is authorized to negotiate with Federal, State and local governments and others on behalf of the Tribe, is further authorized to promote and protect the health, education and general welfare of the members of the Tribe and to administer such services that may contribute to the social and economic advancement of the Tribe and its members; and is further empowered to authorize and direct subordinate boards, committees or Tribal officials to administer the affairs of the Tribe and to carry out the directives of the Tribal Council; and is empowered to manage, protect, and preserve the property of the Tribe and natural resources of the Standing Rock Sioux Reservation; and

Master Manual EIS Specifically Excludes Consideration of Indian Water Rights

WHEREAS, the United States Army Corps of Engineers makes the following statement describing how the Corps fails to recognize or consider Indian water rights in its Master Water Control Manual for the future operation of the Missouri River, thereby committing Missouri River water to operational priorities and creating an insurmountable burden for the future exercise of the rights to the use of water by the Standing Rock Sioux Tribe as reserved from time immemorial:

*The Missouri River basin Indian tribes are currently in various stages of quantifying their potential future uses of Mainstem System water. It is recognized that these Indian tribes may be entitled to certain reserved or aboriginal Indian water rights in streams running through and along reservations. Currently, such reserved or aboriginal rights of tribal reservations have not been quantified in an appropriate legal forum or by compact with three exceptions.... The Study considered only existing consumptive uses and depletions; therefore, no potential tribal water rights were considered. Future modifications to system operation, in accordance with pertinent legal requirements, will be considered as tribal water rights are quantified in accordance with applicable law and actually put to use. Thus, while existing depletions are being considered, the Study process does not prejudice any reserved or aboriginal Indian water rights of the Missouri River basin Tribes. (PDEIS 3-64); and*

WHEREAS, the failure of the United States, acting through the Corps, to recognize and properly consider the superior rights of the Standing Rock Sioux Tribe must be rejected by the Tribe for the reason that the Master Manual revision and update is making irretrievable commitments to (1) navigation in the lower basin, (2) maintenance of reservoir levels in the upper basin and (3) fish, wildlife and endangered species throughout the upper and lower basins. These commitments are violations of the constitutional, civil, human and property rights of the Tribe; and

Endangered Species Guidance Specifically Excludes Consideration of Indian Water Rights in Missouri River Basin

WHEREAS, the Working Group on the Endangered Species Act and Indian Water Rights, Department of Interior, published recommendations for consideration of Indian water rights in Section 7 Consultation, in national guidance for undertakings such as the Master Manual, as follows:

*The environmental baseline used in ESA Section 7 consultations on agency actions affecting riparian ecosystems should include for those consultations the full quantum of: (a) adjudicated (decreed) Indian water rights; (b) Indian water rights settlement act; and (c) Indian water rights otherwise partially or fully quantified by an act of Congress... Biological opinions on proposed or existing water projects that may affect the future exercise of senior water rights, including unadjudicated Indian water rights, should include a statement that project proponents assume the risk that the future development of senior water rights may result in a physical or legal shortage of water. Such shortage may be due to the operation of the priority system or the ESA. This statement should also clarify that the FWS can request reinstitution of consultation on junior water projects when an agency requests consultation on federal actions that may affect senior Indian water rights.*

The Working Group recommendations further the failure to address unadjudicated Indian water rights. It is unthinkable that the United States would proceed with water resource activities, whether related to endangered species, water project implementation or Missouri River operation in the absence of properly considering Indian water rights that are not part of an existing decree – presuming, in effect, that the eventual quantification of Indian water rights will be so small as to have a minimal impact on the operation of facilities in a major river, such as the Missouri River, or so small as to be minimally impacted by assignment of significant flow to endangered species. The flows required to fulfill or satisfy Indian water rights are, in fact, not small nor minimal but are significant; and

Final Indian Water Right Agreements and Claims of the United States on Behalf of Tribes Are Denigrated by Master Manual and Other Regional Water Allocation Processes

WHEREAS, failures of federal policy to properly address Indian water rights in planning documents such as the Master Manual is underscored by example. Tribes in Montana

have water right compacts with the State that are complete and final but have not been incorporated into a decree. Incorporation is certain, however, and will be forthcoming. It is not a matter of "if", it is a matter of "when". The water rights agreed upon by compact are substantial, but neither the Corps of Engineers' Master Manual nor the Secretary of Interior's ESA guidance, as currently constituted, will consider these rights – they presume the rights do not exist -- until they become part of a decree. At such time as the decree in Montana is complete, the Master Manual conclusions will be obsolete and any assignment of Missouri River flows to upstream reservoirs, downstream navigation or endangered species, relied upon by the various special interest groups, will be in conflict with the decree; and

WHEREAS, in Arizona, as another example, these same flawed federal policies to ignore Indian water rights in the allocation of regional water supplies are manifest. The United States is in the process of reallocating part of approximately 1.4 million acre-feet of water diverted from the Colorado River and carried by aqueduct system in the Central Arizona Project for the Phoenix area. The reallocation is purportedly for the purpose, in part, of resolving Indian water right claims in Arizona, but careful review of the reallocation demonstrates that only two Indian tribes are involved. The Bureau of Reclamation, agent for the trustee in the reallocation process, has given short shrift to other Indian concerns that the EIS should address the impacts of the reallocation on all affected tribes and on all non-Indian claimants that will be impacted by ongoing adjudication of Indian water rights. In response Reclamation describes claims filed by the Department of Justice on behalf of the tribes as *speculative*. Thus, Arizona tribes are in the same dilemma as Missouri River basin tribes, but the process to determine the magnitude of Indian claims in Arizona is much further advanced. The United States is, on the one hand, pursuing a claim for adjudication of Indian water rights; and the United States, on the other hand, is reallocating water necessary to supply non-Indian interests impacted by Indian water rights-- but is refusing to recognize any potential for Indian water rights success in ongoing adjudications. This denigrates the claims of the United States on behalf of the tribes and draws into question the intent and commitment of the Department of Justice in the proper advancement of Indian claims, claims which at least some tribes consider deficient and poorly prosecuted by the Department of Justice; and

WHEREAS, the Standing Rock Sioux Tribe cannot tolerate these policies: cannot permit reliance by wide and diverse interest groups in the Missouri River – states, environmental, federal agencies and economic sectors– on conclusions associated with the preferred alternative in the Master Manual when the conclusions are based on the presumption of no Indian water rights and insignificant future Indian water use throughout the Basin; cannot expect future courts to undo investments, undertakings, mortgages and economies that build on the basis of the Master Manual conclusions; cannot expect future Congresses to act more favorably than future courts; and

Importance of Master Manual Process is Underscored by Congressional and

Other Activity

WHEREAS, the Master Manual of the Corps of Engineers is the name presently given to the operating procedures for the mainstream dams and reservoirs. The Corps of Engineers has responsibility for those operations as directed by the 1944 Flood Control Act, the controlling legislation for the Pick-Sloan Project. Since 1944, all dams (except Fort Peck Dam) were constructed and have been operated by the Corps of Engineers or the Bureau of Reclamation. The current Master Manual revision is the first public process update of Corps of Engineers operating procedures, and its importance to future exercise of the Tribe's water rights cannot be ignored by the Tribe; and

WHEREAS, the Master Manual is intended by the federal courts and Congress to resolve issues between the upper and lower basin states, irrespective of tribal issues. The federal courts have dismissed cases brought by the states over the last decade and a half, cases designed to settle issues of maintenance of water levels in the reservoirs in North and South Dakota and the conflicting release of water for downstream navigation; and

WHEREAS, most recently, the Energy and Water Resource Development appropriations for FY 2001 were vetoed by the President because upstream senators supported by the President opposed language by downstream senators in the appropriations bill, which contained controversial language as follows:

*Sec. 103. None of the funds made available in this Act may be used to revise the Missouri River Master Water Control Manual when it is made known to the Federal entity or official to which the funds are made available that such revision provides for an increase in the springtime water release program during the spring heavy rainfall and snow melt period in States that have rivers draining into the Missouri River below the Gavins Point Dam.*

The provisions cited above require the Corps of Engineers or any other official to refrain from using any funds to revise the Master Manual if it is determined that the revision would cause any increase in water releases below Gavin's Point Dam in springtime. There is apparently concern by downstream members of Congress that the Master Manual will recommend an increase in releases to the detriment of downstream navigation, environmental values or flood control. Upstream members of Congress stopped the approval of appropriations over this controversy until the above-cited language was omitted from the bill; and

WHEREAS, given the importance of the Master Manual revision and update to the States, the Congress and Courts, the Standing Rock Sioux Tribe cannot tolerate the exclusion of proper consideration of their water rights, nor can the Tribe tolerate the inadequate representation of the Trustee on this matter; and

Brief Historical Review of Indian Water Rights

WHEREAS, the right of the Crown of Great Britain to the territory of North America was derived from the discovery of that continent by Sebastian Cabot, who in 1498 explored a greater part of the Atlantic Coast under a Commission from King Henry VII and took formal possession of the continent as he sailed along the coast. But those commissioned by the Crown to settle in North America were cognizant of the rights, titles and interests of the original possessors. In the proprietary of Maryland, granted to George Calvert, Lord Baltimore, in 1632, for example, it was recognized by English law evolving from invasions against the Celtic tribes and their successors by the Romans, Anglo-Saxons and Normans, among others, over a period of 1,500 years prior to the discovery of America that the rights of the ancient possessors were specific and could not be ignored by a just occupier. The following was the rationale:

*The roving of the erratic tribes over wide extended deserts does not form a possession which excludes the subsequent occupancy of immigrants from countries overstocked with inhabitants. The paucity of their numbers in their mode of life, render them unable to fulfill the great purposes of the grant [by the King to the Proprietary of Maryland]. Consistent, therefore, with the great Charter to mankind, they (Tribes) may be confined within certain limits. Their rights to the privileges of man nevertheless continue the same: and the Colonists who conciliated the affections of the aborigines, and gave a consideration for their territory, have acquired the praise due to humanity and justice. Nations, with respect to the several communities of the earth, possessing all the rights of man, since they are aggregates of man, are governed by similar rules of action. Upon those principles was founded the right of emigration of old: upon those principles the Phenicians and Greeks and Carthagenians settled Colonies in the wilds of the earth.... in a work treating expressly of original titles to Land it has been thought not amiss to explain... the manner in which an individual obtaining from his Sovereign an exclusive licence, with his own means, to lead out and plant a Colony in a region of which that Sovereign had no possession, proceeded to avail himself of the privilege or grant, and to reconcile or subject to his views the people occupying and claiming by natural right that Country so bestowed... in particular, an history, already referred to, of the Americans settlements, written in 1671, after speaking of the acquisition of St. Mary's continues 'and it hath been the general practice of his Lordship and those who were employed by him in the planting of the said province, rather to purchase the natives' interest... than to take from them by force that which they seem to call their right and inheritance, to the end all disputes might be removed touching the forcible encroachment upon others, against the Law of nature or nations... When the earth was the general property of mankind, mere occupancy conferred on the possessor such an interest as it would have been unjust, because contrary to the Law of Nature, to take from him without his consent: and this state has been happily compared to a theatre, common to all; but the individual, having appropriated a place, acquires a privilege of which he cannot be dispossessed without injustice': ... the Grant [to Lord Baltimore] comprehended 'all Islands and Islets within the limits aforesaid, and all Islands and etc. within ten marine leagues of the Eastern Shore, with all Ports, Harbors, Bays, Rivers, and Straits, belonging to the region or Islands aforesaid, and all the soil, plains, woods, mountains, marshes, Lakes, Rivers, Days, and Straits, with the fishing of every kind, within the said limits'; all mines of whatsoever kind, and patronage and advowson of all Churches. Lord Baltimore ... was invested with all the Rights, Jurisdictions, Privileges, Prerogatives, Royalties, Liberties, Immunities, and Royal Rights and Temporal Franchises whatsoever, as well by sea as by land, within the Region, Islands, Islets, and limits aforesaid... (Source: John Klity. Land Holders Assistant and Land Office Guide.*

*Islands, islets, and limits aforesaid...*(Source: John Kilty. *Land Holders Assistant and Land Office Guide*.  
Baltimore: G. Dobbin & Murphy, 1808. MSA SC 5165-1-11.); and

WHEREAS, 130 years later the Proclamation of 1763 by King George III recognized title to the land and resources reserved by the American Indians of no lesser character or extent than the Charter to Lord Baltimore:

*And whereas it is just and reasonable, and essential to our Interest, and the Security of our Colonies, that the several Nations or Tribes of Indians with whom We are connected, and who live under our Protection, should not be molested or disturbed in the Possession of such Parts of Our Dominions and Territories as, not having been ceded to or purchased by Us, are reserved to them, or any of them, as their Hunting Grounds -- We do therefore, with the Advice of our Privy Council, declare it to be our Royal Will and Pleasure, that no... Governor or Commander in Chief in any of our other Colonies or Plantations in America do presume for the present, and until our further Pleasure be known, to grant Warrants of Survey, or pass Patents for any Lands beyond the Heads or Sources of any of the Rivers which fall into the Atlantic Ocean from the West and North West, or upon any Lands whatever, which, not having been ceded to or purchased by Us as aforesaid, are reserved to the said Indians, or any of them. And We do further declare it to be Our Royal Will and Pleasure, for the present as aforesaid, to reserve under our Sovereignty, Protection, and Dominion, for the use of the said Indians, ... all the Lands and Territories lying to the Westward of the Sources of the Rivers which fall into the Sea from the West and North West as aforesaid. And We do hereby strictly forbid, on Pain of our Displeasure, all our loving Subjects from making any Purchases or Settlements whatever, or taking Possession of any of the Lands above reserved, without our especial leave and Licence for that Purpose first obtained. And We do further strictly enjoin and require all Persons whatever who have either wilfully or inadvertently seated themselves upon any Lands within the Countries above described, or upon any other Lands which, not having been ceded to or purchased by Us, are still reserved to the said Indians as aforesaid, forthwith to remove themselves from such Settlements. And whereas great Frauds and Abuses have been committed in purchasing Lands of the Indians, to the great Prejudice of our Interests, and to the great Dissatisfaction of the said Indians: In order, therefore, to prevent such Irregularities for the future, and to the end that the Indians may be convinced of our Justice and determined Resolution to remove all reasonable Cause of Discontent, We do, with the Advice of our Privy Council strictly enjoin and require, that no private Person do presume to make any purchase from the said Indians of any Lands reserved to the said Indians, within those parts of our Colonies where We have thought proper to allow Settlement: but that, if at any Time any of the Said Indians should be inclined to dispose of the said Lands, the same shall be Purchased only for Us, in our Name, at some public Meeting or Assembly of the said Indians, to be held for that Purpose by the Governor or Commander in Chief of our Colony respectively within which they shall lie: and in case they shall lie within the limits of any Proprietary Government, they shall be purchased only for the Use and in the name of such Proprietaries, conformable to such Directions and Instructions as We or they shall think proper to give for that Purpose....*

*Given at our Court at St. James the 7th Day of October 1763, in the Third Year of our Reign.*

*COD SAVE THE KING; and*

WHEREAS, after the American Revolution and consistent with the foregoing, the United States Supreme Court by 1832 relied upon the ancient concepts of its predecessor Great Britain and recognized the property rights of Indians in the classical case of *Worcester v. the State of Georgia*:

*America, separated from Europe by a wide ocean, was inhabited by a distinct people, divided into separate nations, independent of each other and of the rest of the world, having institutions of their own and governing themselves by their own laws. It is difficult to comprehend the proposition, that the inhabitants of either quarter of the globe could have rightful original claims of dominion over the inhabitants of the other, or over the lands they occupied; or that the discovery of either by the other should give the discoverer rights in the country discovered, which annulled the pre-existing rights of its ancient possessors.* (6 P 515, p. 543)

*... This principle, acknowledged by all Europeans, because it was the interest of all to acknowledge it, gave to the nation making the discovery, as its inevitable consequence, the sole right of acquiring the soil and making settlements on it. It was an exclusive principle which shut out the right of competition among those who had agreed to it; not one which could annul the previous rights of those who had not agreed to it. It regulated the right given by discovery among the European discoverers; but could not affect the rights of those already in possession, either as aboriginal occupants, or as occupants by virtue of a discovery made before the memory of man....*

*... This soil was occupied by numerous and warlike nations, equally willing and able to defend their possessions. The extravagant and absurd idea, that the feeble settlements made on the sea-coast, or the companies under whom they were made, acquired legitimate power by them to govern the people, or occupy the lands from sea to sea, did not enter the mind of any man. They were well understood to convey the title which, according to the common law of European sovereigns respecting America, they might rightfully convey, and no more. This was the exclusive right of purchasing such lands as the natives were willing to sell. The Crown could not be understood to grant what the Crown did not effect to claim; nor was it so understood.*  
(6 P 515, p. 544-545) (Emphasis supplied); and

WHEREAS, the principles in the case of *Worcester v. Georgia* are ancient as shown above and are the foundation of the principles announced by the U. S. Supreme Court three quarters of a century later relating to the Yakima Indian Nation in the case of *United States v. Winans* (198 U.S. 371). Title of the Indians in their property rights was fully acknowledged, and the Treaty was interpreted as a grant of property to the United States in the area not reserved by the Tribe to itself.

*The right to resort to the fishing places in controversy was a part of larger rights possessed by the Indians, upon the exercise of which there was not a shadow of impediment, and which were not less necessary to the existence of the Indians than the atmosphere they breathed. New conditions came into existence, to which those rights had to be accommodated. Only a limitation of them, however, was necessary and intended, not a taking away. In other words the Treaty was not a grant of rights to the Indians, but a grant of rights from them - a reservation of those not granted.*

(Emphasis supplied); and

WHEREAS, the Supreme Court case of *Henry Winters v. United States* (207 US 564) found that reservation of water for the purposes of civilization was implied in the establishment of the Reservations:

*The Reservation was a part of a very much larger tract which the Indians had the right to occupy and use and which was adequate for the habits and wants of a nomadic and uncivilized people. It was the policy of the Government, it was the desire of the Indians, to change those habits and to become a pastoral and civilized people. If they should become such the original tract was too extensive, but a smaller tract would be adequate with a change of conditions. The lands were arid and, without irrigation, were practically valueless.*

*... That the Government did reserve them we have decided, and for a use which would be necessarily continued through years. This was done May 1, 1888, [at Fort Belknap] and it would be extreme to believe that within a year later [when the state of Montana was created] Congress destroyed the Reservation and took from the Indians the consideration of their grant, leaving them a barren waste - took from them the means of continuing their old habits, yet did not leave them the power to change to new ones." (207 U S 574, p. 576 577); and*

WHEREAS, the case of *United States v. Ahtanum Irrigation District* (236 Fed 2nd 321, 1956) applied the *Worcester-Winans-Winters* concepts on Ahtanum Creek, tributary to the Yakima River and northern boundary of the Yakima Indian Reservation:

*The record here shows that an award of sufficient water to irrigate the lands served by the Ahtanum Indian irrigation project system as contemplated in the year 1915 would take substantially all of the waters of Ahtanum Creek. It does not appear that the waters decreed to the Indians in the Winters case operated to exhaust the entire flow of the Milk River, but, if so, that is merely the consequence of it being a larger stream. As the Winters case, both here and in the Supreme Court, shows, the Indians were awarded the paramount right regardless of the quantity remaining for the use of white settlers. Our Conrad Inv. Co. Case, supra, held that what the non-Indian appropriators may have is only the excess over and above the amounts reserved for the Indians. It is plain that if the amount awarded the United States for the benefit of the Indians in the Winters Case equaled the entire flow of the Milk River, the decree would have been no different. (236 F. 2nd 321, p. 327) (Emphasis supplied); and*

WHEREAS, these concepts were further advanced in *Arizona v California*, 373 U.S. 546, 596-601 (1963):

*The Master found as a matter of fact and law that when the United States created these reservations or added to them, it reserved not only land but also the use of enough water from the Colorado [River] to irrigate the irrigable portions of the reserved lands. The aggregate quantity of water which the Master held was reserved for all the reservations is about 1,000,000 acre-feet to be used on around 135,000 irrigable acres of land...*

*It is impossible to believe that when Congress created the Great Colorado River Indian reservation and when the Executive Department of this Nation created the other reservations they were unaware that most of the lands were of desert kind -- hot scorching sands -- and the water from the River would be essential to the life of the Indian people and to the animals they hunted and crops they raised. We follow it [Winters] now and agree that the United States did reserve the water rights for the Indians effective as of the time Indian Reservations were created. This means, as the Master held, that these water rights, having vested before the Act [Boulder Canyon Project Act] became effective on June 25, 1929, are present perfected rights and as such are entitled to priority under the Act. We also agree with the Master's conclusion as to the quantity intended to be reserved. He found that water was intended to satisfy the future as well as present needs of the Indian reservations.... We have concluded, as did the Master, that the only feasible and fair way by which reserved water for the reservations can be measured is irrigable acreage. The various acreage of irrigable land which the Master found to be on the different reservations we find to be reasonable; and*

#### General Nature of Attacks on Winter Doctrine

WHEREAS, notwithstanding the injunctions of Lord Baltimore, King George III and favorable decisions of the United States Supreme Court, in practice, Congress, the executive branch and the judiciary have (1) limited Indian reserved water rights, (2) suppressed development of Indian reserved water rights, and (3) permitted reliance by state, federal, environmental and private interests on Indian water, contrary to trust obligations. The federal policy has clearly been .. *how best to transfer Indian lands and resources to non-Indians*.. rather than to preserve, protect, develop and utilize those resources for the benefits of the Indians.

*With an opportunity to study the history of the Winters rule as it has stood now for nearly 50 years, we can readily perceive that the Secretary of the Interior, in acting as he did, improvidently bargained away extremely valuable rights belonging to the Indians... viewing this contract as an improvident disposal of three quarters of that which justly belonged to the Indians, it cannot be said to be out of character with the sort of thing which Congress and the Department of the Interior has been doing throughout the sad history of the Government's dealings with the Indians and Indian tribes. That history largely supports the statement: From the very beginnings of this nation, the chief issue around which federal Indian policy has revolved has been, not how to assimilate the Indian nations whose lands we usurped; but how best to transfer Indian lands and resources to non-Indians. (United States v Ahtanum Irrigation District, 236 F. 2nd 321, 337); and*

WHEREAS, the McCarran Amendment interpretation by the United States Supreme Court, if not in error, is a further example of the contemporary attack on Indian water rights. The discussion of the McCarran Amendment here is intended to show why tribes are (1) opposed to state court adjudications and (2) negotiated settlements under the threat of state court adjudication. In 1952 the McCarran Amendment, 43 U.S.C. 666 (a), was enacted as follows:

*Consent is given to join the United States as a defendant in any suit (1) for the adjudication of rights to the use of water of a River system or other source, or (2) for the administration of such rights, where it appears that the United States is the owner or in the process of acquiring water rights by appropriation under State law, by purchase, by exchange or otherwise, and the United States is a necessary party to such suit; and*

WHEREAS, the McCarran Amendment has been interpreted by the U.S. Supreme Court to require the adjudication of Indian water rights in state courts. *Arizona v San Carlos Apache Tribe*, 463 U.S. 545,564,573 (1981) held:

*We are convinced that, whatever limitation the Enabling Acts or federal policy may have originally placed on State Court jurisdiction over Indian water rights, those limitations were removed by the McCarran Amendment.*

In dissent, however, Justice Stevens stated:

*To justify virtual abandonment of Indian water right claims to the State courts, the majority relies heavily on Colorado River Water Conservancy District, which in turn discovered an affirmative policy of federal judicial application in the McCarran Amendment. I continue to believe that Colorado River read more into that amendment that Congress intended... Today, however, on the tenuous foundation of a perceived Congressional intent that has never been articulated in statutory language or legislative history, the Court carves out a further exception to the virtually unflagging obligation of Federal courts to exercise their jurisdiction. The Court does not -- and cannot -- claim that it is faithfully following general principles of law... That Amendment is a waiver, not a command. It permits the United States to be joined as a defendant in state water rights adjudications; it does not purport to diminish the United States right to litigate in a federal forum and it is totally silent on the subject of Indian tribes rights to litigate anywhere. Yet today the majority somehow concludes that it commands the Federal Courts to defer to State Court water right proceedings, even when Indian water rights are involved; and*

WHEREAS, in Arizona, Montana and other states, general water right adjudications to quantify *Winters* Doctrine rights are ongoing. For example in the state of Montana:

- (1) the state of Montana sued all tribes in a McCarran Amendment proceeding.
- (2) the State of Montana established a Reserved Water Rights Compact Commission. The purpose of the Commission was to negotiate the *Winters* Doctrine rights of the Montana tribes.
- (3) the Department of Interior has adopted a negotiation policy for the settlement of Indian water rights. The United States Department of Interior has a negotiating team which works with the Montana Reserve Water Rights Compact Commission and Indian tribes, some forced by the adjudication in

state court, to negotiate, while others are willing to negotiate.

(4) the Department of Interior makes all necessary funding available to any Tribe willing to undertake negotiations. A Tribe refusing to negotiate cannot obtain funding to protect and preserve its *Winters* Doctrine water rights.

(5) upon reaching agreement between the State of Montana and an Indian tribe, congressional staff are assigned to develop legislation in the form of an Indian water rights settlement that may or may not involve authorization of federal appropriations to develop parts of the amount of Indian water agreed upon between the Tribe and the State or for other purposes.

(6) in the absence of the desire of a Tribe to negotiate, the State of Montana will proceed to prosecute its McCarran Amendment case against the Tribe; and

WHEREAS, this process relies on ongoing litigation to accomplish negotiated settlements of *Winters* Doctrine Indian water rights. The process is held out to be a success by the state and federal governments. However, comparison with the taking of the Black Hills from the Great Sioux Nation, the taking of the Little Rocky Mountains from the Fort Belknap Indian Reservation and the taking of Glacier Park from the Blackfeet are valid comparisons. There are elements of force and extortion in the process; and

WHEREAS, in the Wind River adjudication, 753 P. 2nd 76, 94-100 (WY 1988), the State of Wyoming utilized the McCarran Amendment to drastically diminished the Arapaho and Shoshone *Winters* Doctrine water rights in the Big Horn River Basin. The Wyoming Supreme Court found as follows:

*The quantity of water reserved is the amount of water sufficient to fulfill the purpose of the lands set aside for the Reservation.*

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*The Court, while recognizing that the tribes were the beneficial owners of the reservations timber and mineral resources... and that it was known to all before the treaty was signed that the Wind River Indian Reservation contained valuable minerals, nonetheless concluded that the purpose of the reservation was agricultural. The fact that the Indians fully intended to continue to hunt and fish does not alter that conclusion.... The evidence is not sufficient to imply a fishery flow right absent a treaty provision.... The fact that the tribes have since used water for mineral and industrial purposes does not establish that water was impliedly reserved in 1868 for such uses. The District Court did not err in denying a reserved water right for mineral and industrial uses... the District Court did not err in holding that the Tribes and the United States did not introduce sufficient evidence of a tradition of wildlife and aesthetic preservation that would justify finding this to be a purpose for which the Reservation was created or for which water was impliedly reserved... not a single case applying the*

*reserved water right doctrine to groundwater is cited to us... In Colville Confederated Tribes v. Walton, supra, 547 F.2d 42, there is slight mention of the groundwater aquifer and of pumping wells, id. at 52, but the opinion does not indicate that the wells are a source of reserved water or even discuss a reserved groundwater right.... The District Court did not err in deciding there was no reserved groundwater right; and*

WHEREAS, the statement by the Wyoming Supreme Court that *Colville* does not discuss a reserved water right to groundwater is in error, for *Colville* did decree reserved groundwater rights; and

WHEREAS, the *Wind River* case must be carefully examined by all tribes, including those of the Missouri River Basin. The single purpose of the Wind River Indian Reservation recognized by the Wyoming Supreme Court was limited to agriculture: severely limited relative to the... *Rights, Jurisdictions, Privileges, Prerogatives, Royalties, Liberties, Immunities, and Royal Rights and Temporal Franchises whatsoever, ... within the Region, ...comprehending... 'all the soil, plains, woods, mountains, marshes, Lakes, Rivers, Dags, and Straits, with the fishing of every kind, within the said limits'; all mines of whatsoever kind...* received by from the King by Lord Baltimore in the Proprietary of Maryland, which were, nevertheless, subject to purchase from the Native possessors. The Arapaho and Shoshone must have believed that the purpose of the reservation was to provide a permanent home and abiding place for their present and future generations to engage and pursue a viable economy and society. Despite existing oil and gas resources, they were denied reserved water for mineral purposes. Despite the need for industry in a viable economy, they were denied reserved water for industry. Despite a tradition of hunting and fishing, they were denied reserved water for wildlife and aesthetic preservation. Despite the existence of valuable forests, they were denied reserved water for this purpose. Despite the existence of valuable fisheries, established from time immemorial, they were denied a reserved water right to sustain their fisheries; and

WHEREAS, the United States Supreme Court reviewed the *Wind River* decision on the following question:

*In the absence of any demonstrated necessity for additional water to fulfill reservation purposes and in presence of substantial state water rights long in use on the reservation, may reserved water rights be implied for all practicably irrigable lands within reservation set aside for specific Tribe? 57 LW 3267 (Oct. 11, 1988); and*

WHEREAS, acting without a written opinion and deciding by tie vote, the United States Supreme Court affirmed the decision of the Supreme Court of the State of Wyoming and rejected the thought process presented in the question above that the Tribes needed no additional water than the amount they were using and that state created water rights with long use should not be subjected to future Indian water rights. But a change in vote by a single justice would have reversed the decision and severely

constricted the benefits of the *Winters* Doctrine to the Indian people, a subject to be discussed further. The decision is limited to the State of Wyoming on critical issues, namely that Indian reserved rights do not apply to groundwater; the absence of a reserved water right for forest and mineral purposes; the absence of a reserved water right for fish, wildlife and aesthetic preservation; and a reduction of the Tribes claims to irrigation from 490,000 to less than 50,000 acres; and

WHEREAS, the acreage for irrigation finally awarded to the Wind River Tribes for future purposes was 48,097 acres involving approximately 188,000 acre-feet of water annually:

*In determining the Tribes claims to practicably irrigable acreage, the United States (trustee for the tribes) began with an arable land-base of approximately 490,000 and relied on its experts to arrive at over 88,000 practicably irrigable acres. The claim was further "trimmed" by the United States to 76,027 acres for final projects. The acreage was further reduced during trial to 53,760 acres by Federal experts with a total annual diversion requirement of about 210,000 acre-feet. (Teno Roncalio, Special Master. In Re: The General Adjudication of All Rights to the Use of Water in the Big Horn River System and All Other Sources, State of Wyoming, Concerning Reserved Water Right Claims by and on Behalf of the Tribes of the Wind River Indian Reservation, Wyoming, Dec. 15, 1982, pp. 154 and 157); and*

WHEREAS, the *purposes* of reservation issue addressed by the Wyoming courts evolved from the 1978 United States Supreme Court case, *United States v. New Mexico* (438 U.S. 696), involving the water rights of the Gila National Forest:

*The Court has previously concluded that Congress, in giving the President the power to reserve portions of the federal domain for specific federal purposes, impliedly authorized him to reserve "appurtenant water then unappropriated to the extent needed to accomplish the purpose of the reservation."... The Court has repeatedly emphasized that Congress reserved "only that amount of water necessary to fulfill the purpose of the reservation, no more."... Where water is only valuable for a secondary use of the reservation, however, there arises the contrary inference that Congress intended, consistent with its other views, that the United States would acquire water in the same manner as any other public or private appropriator.... The legislative debates surrounding the Organic Administration Act of 1897 and its predecessor bills demonstrate that Congress intended national forests to be reserved for only two purposes -- "to conserve the water flows, and to furnish a continuous supply of timber for the people."... Not only is the Government's claim that Congress intended to reserve water for recreation and wildlife preservation inconsistent with Congress's failure to recognize these goals as purposes of the national forest, it would defeat the very purpose for which Congress did intend the national forest system.... While Congress intended the national forest to be put to a variety of uses, including stockwatering, not inconsistent with the two principal purposes of the forest, stock watering was not, itself, a direct purpose of reserving the land; and*

WHEREAS, there may be debate with respect to the purposes for which a national

forest was created and for which purposes water was reserved, but it is a "slender reed" upon which to found a debate that when Indian reservations were established by the Indians or Great Britain or the United States, the purpose of establishment might vary among the Indian reservations; and, depending upon that purpose, the Indians would be limited in the beneficial uses to which water could be applied. Indian neighbors could apply water to any beneficial purpose generally accepted throughout the Western United States, but Indians could not. It is inconceivable that an Indian Reservation was established for any other "purpose" than an "Indian" reservation or that each Reservation was established for some arcane reason other than the pursuits of industry, self-government and all other activities associated with a modern, contemporary and ever-changing society embracing all of the ... *Rights, Jurisdictions, Privileges, Prerogatives, ... and Temporal Franchises whatsoever, ... within the Region, ...comprehending... 'all the soil, plains, woods, mountains, marshes, Lakes, Rivers, Dais, and Straits, with the fishing of every kind, within the said limits; all mines of whatsoever kind, and*

WHEREAS, nevertheless, the Wyoming courts relied upon the "purposes" argument to exclude water reserved for the pursuit of many of the arts of civilization... industry, mineral development, fish, wildlife, aesthetics... on the basis that the purpose of the Wind River Indian Reservation was limited to an agricultural purpose absent specific Treaty language to the contrary. As crude as this conclusion may be, however, Tribes of the Missouri River basin and throughout the Western United States are faced with the "purposes" limitation originally applied in 1978 to national forests; and

WHEREAS, if there may be a question that the issue ended in Wyoming, it is only necessary to examine the state court general adjudication process in Arizona. A June 2000 pretrial order by the Special Master in the *General Adjudication of All Rights to Use Water in the Gila River System and Source* summarizes the issues as follows:

*... Does the "primary-secondary" purposes distinction, as announced by the U.S. Supreme Court in United States v. New Mexico, 438 U.S. 696 (1978), apply to the water rights claimed for the Gila River Indian Reservation?...*

*.... The State Litigants takes the position that the distinction does apply.*

*... If the "primary-secondary" purposes distinction does apply to the Gila River Indian Reservation, what were the primary and secondary purposes for each withdrawal or designation of land for the Gila River Indian Reservation? May the Reservation have more than one "primary" purpose?...*

*.... The State Litigants takes a position that the federal government withdrew or designated land to protect existing agriculture, create a buffer between the community and non-Indians who were settling in the area, provide substitute agricultural lands when non-Indians encroached on existing Indian agricultural lands, and provide for other specific economic activities such as grazing; and*

WHEREAS, the restriction or limitation of Indian water rights in the Missouri River basin is not confined to a federal denial of them in federal actions, such as the Master Manual and endangered species consultation. The limitations are expected to grow and expand from these federal actions. Indian water right opponents will concentrate on the language of *United States v. New Mexico* that "...only that amount of water necessary to fulfill the purpose of the reservation, no more..." has been reserved by the Tribes or the United States on behalf of the tribes. The effort will be to first limit the purposes for which an Indian reservation was established and second limit the amount of water necessary to fulfill that purpose. If, for example, opponents could successfully argue that the purpose of an Indian reservation in the Missouri River Basin was primarily a "permanent homeland" and that agriculture was secondary, they would further argue that the amount of water reserved was limited to domestic uses, and no water was reserved for irrigation; and

WHEREAS, *Cappaert v. United States* (426 U.S. 128, 1976) was the basis, in part, for the decision in *United States v. New Mexico* discussed above. Here again the purposes of a "federal" reservation (as distinguished from a reservation by Indians or a reservation by the United States on behalf of Indians) and the use of water for that purpose is the subject. But the Cappaert decision is helpful in showing the extreme interpretations to which the State Court in Wyoming went in its *Wind River* decision:

*....The District Court then held that, in establishing Devil's Hole as a national monument, the President reserved appurtenant, unappropriated waters necessary to the purpose of the reservation; the purpose included preservation of the pool and pupfish in it.... The Court of Appeals for the Ninth Circuit affirmed... holding that the "implied reservation of water" doctrine applied to groundwater as well as surface water...and*

WHEREAS, the purpose of establishing the national monument was clearly limited -- to preserve the Devil's Hole pupfish, which rely on a pool of water that is a remnant of the prehistoric Death Valley Lake System an object of historic and scientific interest. This is not an Indian reservation which embraces all of the purposes related to civilization, society and economy. Yet, Wyoming seized on the concept of an Indian reservation with purpose limited in the same manner as a national forest or a national monument. Note, however, that the Wyoming case (1988) grasps at the purposes argument to diminish the Indian water right but ignores the damaging aspect of *Cappaert* (1976) that reserved water concepts apply to groundwater as well as surface water. Not only did Wyoming ignore *Colville Confederated Tribes*, it ignored *Cappaert*. Recently, the Arizona Supreme Court, after considering the Wyoming decision, could not countenance a similar decision in Arizona, specifically rejected the Wyoming decision and found as follows:

*...the trial court correctly determined that the federal reserved water rights doctrine applies not only to surface water but to groundwater...and...holders of federal reserved rights enjoy greater protection from groundwater pumping than do holders of state law rights...; and*

WHEREAS, similarly, Wyoming ignored *Cappaert*, a U.S. Supreme Court decision about federally reserved water rights in a National Monument in Nevada, where *Cappaert* specifically rejected the concept of "sensitivity" or balancing of equities when water is needed for the purpose of a federal or Indian Reservation. In *Cappaert* the Court cited the *Winters* decision as a basis for rejecting the notion of Nevada that competing interests must be balanced between federal (or Indian) reserved water rights and competing non-federal (or non-Indian) water rights. Wyoming returned to the U.S. Supreme Court seeking a more favorable decision respecting "sensitivity" than provided by *Cappaert*:

*Nevada argues that the cases establishing the doctrine of federally reserved water rights articulate an equitable doctrine calling for a balancing of competing interests. However, an examination of those cases shows they do not analyze the doctrine in terms of a balancing test. For example, in Winters v. United States, supra, the Court did not mention the use made of the water by the upstream landowners in sustaining an injunction barring their diversions of the water. The "Statement of the Case" in Winters notes that the upstream users were homesteaders who had invested heavily in dams to divert the water to irrigate their land, not an unimportant interest. The Court held that, when the Federal Government reserves land, by implication, it reserves water rights sufficient to accomplish the purposes of the reservation; and*

WHEREAS, the United States Supreme Court reviewed the decision of the Wyoming Supreme Court and upheld the decision by a tie vote as discussed above. However, the majority of the court had apparently been swayed by the Wyoming argument:....  
*In the absence of any demonstrated necessity for additional water to fulfill reservation purposes and in presence of substantial state water rights long in use on the reservation, may reserved water rights be implied for all practicably irrigable lands within reservation set aside for specific Tribe?... and had prepared a draft opinion referred to by the Arizona Supreme Court as the "ghost" opinion. The draft opinion was apparently not issued because Justice Sandra Day O'Connor, author of the "ghost" opinion on behalf of the majority, disqualified herself because she learned that her ranch had been named as a defendant in the Gila River adjudication in Arizona. Despite more than 350 years of understanding of justice and law relating to Indian property, the O'Connor opinion would have destroyed the basic tenets of the Winters Doctrine:*

*...The PIA standard is not without defects. It is necessarily tied to the character of land, and not to the current needs of Indians living on reservations....And because it looks to the future, the PIA standard, as it has been applied here, can provide the Tribes with more water than they need at the time of the quantification, to the*

detriment of non-Indian appropriators asserting water rights under state law....this Court, however, has never determined the specific attributes of reserve water rights – whether such rights are subject to forfeiture for nonuse or whether they may be sold or leased for use on or off the Reservation....Despite these flaws and uncertainties, we decline Wyoming's invitation to discard the PIA standard... The PIA standard provides some measure of predictability and, as explained hereafter, is based on objective factors which are familiar to courts. Moreover no other standard that has been suggested would prove as workable as the PIA standard for determining reserve water rights for agricultural reservations...we think Master Roncolio and the Wyoming Supreme Court properly identified three factors that must be considered in determining whether lands which have never been irrigated should be included as PIA: the arability of the lands, the engineering feasibility (based on current technology) of necessary future irrigation projects, and the economic feasibility of such projects (based on the profits from cultivation of future lands and the costs of the project... Master Roncolio found...that economic feasibility will turn on whether the land can be irrigated with a benefit-cost ratio of one or better....Wyoming argues that our post-Arizona cases, specifically Cappaert and New Mexico, indicate that quantification of Indian reserved water rights must entail sensitivity to the impact on state and private appropriators of scarce water under state law.... Sensitivity to the impact on prior appropriators necessarily means that "there has to be some degree of pragmatism" in determining PIA...we think this pragmatism involves a "practical" assessment – a determination apart from the theoretical economic and engineering feasibility – of the reasonable likelihood that future irrigation projects, necessary to enable lands which have never been irrigated to obtain water, will actually be built....no court has held that the Government is under a general legal or fiduciary obligation to build or fund irrigation projects on Indian reservations so that irrigable acreage can be effectively used.... massive capital outlays are required to fund irrigation projects...and in today's era of budget deficits and excess agricultural production, government officials have to choose carefully what projects to fund in the West. ... Thus, the trier of fact must examine the evidence, if any, that additional cultivated acreage is needed to supply food or fiber to resident tribal members, or to meet the realistic needs of tribal members to expand their existing farming operations. The trier must also determine whether there will be a sufficient market for, or economically productive use of, any crops that would be grown on the additional acreage....we therefore vacate the judgment insofar as it relates to the award of reserved water rights for future lands and remand the case to the Wyoming Supreme Court for proceedings not inconsistent with this opinion; and

WHEREAS, the United States Supreme Court has virtually unlimited power to arrive at unjust decisions as evidenced by the *Dred Scott* decision, and the opinion of the minority would have had no force and effect in *Wyoming* as given by Justice Brennan:

*...In the Court might well have taken as its motto for this case in the words of Matthew 25:29: "but from him that has not shall be taken away even that which he has." When the Indian tribes of this country were placed on reservations, there was, we have held, sufficient water reserved for them to fulfill the purposes of the reservations. In most cases this has meant water to irrigate their arable lands.... The Court now proposes, in effect, to penalize them for the lack of Government investment on their reservations by taking from them those water rights that have remained theirs, until now, on paper. The requirement that the tribes demonstrate a "reasonable likelihood" that irrigation*

*projects already determined to be economically feasible will actually be built – gratuitously superimposed, in the name of “sensitivity” to the interests of those who compete with the Indians for water, upon a workable method for calculating practicably irrigable acreage that parallels government methods for determining the feasibility of water projects for the benefit of non-Indians – has no basis in law or justice; and*

WHEREAS, whether inspired by the “ghost” opinion of Justice O’Connor or not, the Arizona Supreme Court held arguments in February 2001 on the issue of: “what is the appropriate standard to be applied in determining the amount of water reserved for federal lands?”, particularly Indian lands, which were not reserved by the United States for the Standing Rock Sioux Tribe but were, rather, reserved by the Tribe by its ancient ancestors from time immemorial. The outcome by the Arizona Supreme Court is immaterial but provides the question for review by the United States Supreme Court with full knowledge from the “ghost” opinion of the probable outcome. The Salt River Project and Arizona, principal losers in *Arizona v California I*, make the following arguments in *Gila* River against Indian reserved rights to the use of water:

*...Under the United States Supreme Court’s decision in United States v New Mexico..., all federal land with a dedicated federal purpose “has reserved to it that minimum amount of water which is necessary to effectuate the primary purpose of the land set aside.” Judge Goodfarb also found, however, that this “purposes” test does not apply to Indian reservations. Instead, he held that, for Indian reservations, “the courts have drawn a clear and distinct line”...that mandates that reserved rights for all Indian reservations must be quantified based on the amount of “water necessary to irrigate all of the practicably irrigable acreage (PIA) on that Reservation” without considering the specific purposes for which the Reservation was created...this interlocutory proceeding with respect to Issue 3 arose because Judge Goodfarb incorrectly ruled (as a matter of law and without the benefit of any factual record, briefing, or argument) that PIA applies to all Indian reservations...*

*...as shown below, the Supreme Court in that case (Arizona I) and the courts in all reported decisions since that time, have applied the following analysis: first, review the historical evidence relating to the establishment of the Reservation and, from that evidence, determine the purposes for which the specific land in question was reserved (a question of fact). Second, determine, based upon the evidence, the minimum quantity of water necessary to carry out those purposes (a mixed question of law and fact). ...and in Colville Confederated Tribes V. Walton, for instance, the ninth circuit stated: “to identify the purposes for which the Colville Reservation was created, we consider the document and circumstances surrounding its creation, and the history of the Indians for whom it was created. We also consider their need to maintain themselves under changed circumstances.”*

*...the Zuni Reservation in northeastern Arizona, for example, was established*

by Congress expressly "for religious purposes."...the original 1859 creation of the Gila Reservation and each of the seven subsequent additions had different rationales and were intended to address different purposes or combinations of purposes (e.g. protecting existing farmlands, adding lands for grazing, including lands irrigated by Indians outside the Reservation as part of the Reservation...

....in addition to varying in size, Indian reservations also vary in location and terrain. Reservations in Arizona, for instance, run the gamut from desert low lands to the high mountains and everything in between. Certain reservations along the Colorado River include fertile but arid river bottom land and were created for the purpose of converting diverse groups of "nomadic" Indians to a "civilized" and agrarian way of life...other reservations, such as the Navajo Reservation in extreme northeastern Arizona, consist largely of "very high plateaus, flat-top mesas, inaccessible buttes and deep canyons."....there can be little doubt that the PIA standard works to the advantage of tribes inhabiting alluvium plains or other relatively flat lands adjacent to stream courses. In contrast, tribes inhabiting mountainous or other agriculturally marginal terrains are at a severe disadvantage when it comes to demonstrating that their lands are practicably irrigable....

...the special master (Arizona I) conducted a trial, accepted and reviewed substantial evidence regarding the purposes of the five Indian reservations at issue in that case, made factual findings as to purposes, and only then found that the minimum amount of water necessary to carry out those purposes was best determined by the amount of water necessary to irrigate all "practicably irrigable" acres on those reservations.....the special master stated: "moreover the 'practicably irrigable' standard is not necessarily a standard to be used in all cases and when it is used it may not have the exact meaning it holds in this case. The amount reserved in each case is the amount required to make each Reservation livable."

...although the United States Supreme Court affirmed the Wyoming court's decision in that case without opinion, events surrounding that review shed considerable light on the Supreme Court's concerns about the continued viability of PIA as a standard, at least in the form it was applied in Arizona I. ....several Justices challenged the United States's defense of PIA.... "at this point, Chief Justice Rehnquist challenged the precedential validity of Arizona I by noting that the opinion 'contains virtually no reasoning' and the Court merely had accepted the special master's conclusion as to the PIA standard...arguing that Congress must of contemplated the size of the tribe that would live on the Wind River Reservation, ...the Chief Justice stated that he found it difficult to believe that 'in 1868 Congress...should be deemed have said we're giving up water to irrigate every - every inch of arable land. No matter how large the tribe they thought they were settling. Did they expect to make some tribes very rich so that they can have an enormous export business... in agricultural products?" (State Litigant's Opening Brief on

Interlocutory Issue 3, Gila River Adjudication); and

Historical Analysis of Thought Processes Embraced by Master Manual

WHEREAS, the means employed by the Corps of Engineers to deny consideration of Indian water rights in the preparation of the Master Manual and those same means employed by the Department of Interior to deny consideration of Indian water rights in baseline environmental studies of endangered species have been presented. Also, presented was the favorable body of law supporting the proper consideration of Indian water rights followed by the denigration of that law in state court adjudications, namely in Wyoming and, more recently, in Arizona. Briefly examined here are historical examples of the diminishment of property rights by a superior force and the strikingly similar arguments in support of that diminishment, and

WHEREAS, the concepts and techniques for diminishing the water rights of the Standing Rock Sioux Tribe in the Missouri River, its tributaries and aquifers are not novel. The colonization of Ireland by the English (*circa* 1650), for example, was justified in a manner that provides insight in the federal treatment of Indian water rights in the Missouri River Basin. Sir Thomas Macaulay, a prominent English politician in the first half of the 19<sup>th</sup>-century and one of the greatest writers of his or any other era, rationalized the taking of land from the native Irish and the overthrow of King James II in 1692, which overthrow was due, in part, to the King's efforts to restore land titles to the native Irish: (Sir Thomas Macaulay, 1848, *The History of England*, Penguin Classics, pp 149-151)

*To allay national animosity such as that which the two races [Irish and English] inhabiting Ireland felt for each other could not be the work of a few years. Yet it was a work to which a wise and good Prince might have contributed much; and King James II would have undertaken that work with advantages such as none of his predecessors or successors possessed. At once an Englishman and a Roman Catholic, he belonged half to the ruling and half to the subject cast, and was therefore peculiarly qualified to be a mediator between them. Nor is it difficult to trace the course which he ought to have pursued. He ought to have determined that the existing settlement of landed property should be in violable; and he ought to have announced that determination in such a manner as effectually to quiet the anxiety of the new proprietors, and to extinguish any wild hopes which the old proprietors might entertain. Whether, in the great transfer of estates, injustice had or had not been committed, was immaterial. The transfer, just or unjust, had taken place so long ago, that to reverse it would be to unfix the foundations of society. There must be a time limitation to all rights. After thirty-five years of actual possession, after twenty-five years of possession solemnly guaranteed by statute, after innumerable leases and releases, mortgages and devises, it was too late to search for flaws in titles. Nevertheless something might have been done to heal the lacerated feelings and to raise the fallen fortunes of the Irish gentry. The colonists were in a thriving condition. They had greatly improved their property by building, planting and fencing..... There was no doubt that the next Parliament which should meet at Dublin, though representing almost exclusively the English interest, would, in return for the King's promise to maintain that interest in all its legal rights, willingly grant to him a considerable sum for the purpose of indemnifying, at*

*least in part, such native families as had been wrongfully despoiled.*

*Having done this, he should have labored to reconcile the hostile races to each other by impartially protecting the rights and restraining the excesses of both. He should have punished with equal severity that native who indulges in the license of barbarism and the colonists who abused the strength of civilization.... no man who was qualified for office by integrity and ability should have been considered as disqualified by extraction or by creed for any public trust. It is probable that a Roman Catholic King, with an ample revenue absolutely at his disposal, would, without much difficulty, have secured the cooperation of the Roman Catholic prelates and priests in the great work of reconciliation. Much, however, might still have been left to the healing influence of time. The native race might still have had to learn from the colonists industry and forethought, arts of life, and the language of England. There could not be equality between men who lived in houses and men who lived in sties, between men who were fed on bread and men who were fed on potatoes, between men who spoke the noble tongue of great philosophers and poets and men who, with the perverted pride, boasted that they could not writhe their mouths into chattering such a jargon as that in which the Advancement of Learning and the Paradise Lost were written. Yet it is not unreasonable to believe that if the gentle policy which has been described had been steadily followed by the government, all distinctions would gradually have been effaced, and that there would now have been no more trace of the hostility which has been the curse of Ireland ...and*

WHEREAS, the Master Manual rationale... *Currently, such reserved or aboriginal rights of tribal reservations have not been quantified in an appropriate legal forum or by compact with three exceptions.... The Study considered only existing consumptive uses and depletions; therefore, no potential tribal water rights were considered....* or the ESA rationale.... *The environmental baseline used in ESA Section 7 consultations on agency actions affecting riparian ecosystems should include for those consultations the full quantum of: (a) adjudicated (decreed) Indian water rights; (b) Indian water rights settlement act; and (c) Indian water rights otherwise partially or fully quantified by an act of Congress... Biological opinions on proposed or existing water projects that may affect the future exercise of senior water rights, including unadjudicated Indian water rights, should include a statement that project proponents assume the risk that the future development of senior water rights may result in a physical or legal shortage of water....* does not represent a significant step forward from that advanced by Macaulay given the opportunity of 150 years for refinement in America. There cannot be significant differences between the statement of the Corps of Engineers and the Macaulay logic; and

WHEREAS, it is material, not immaterial, whether there has been injustice or a fitting of the law to the purpose in the transfer of Standing Rock waters of the Missouri River, its tributaries and its aquifers to non-Indians in the Master Manual update. It is rejected as correct ... that after the new proprietor's (downstream navigation, upstream recreation and endangered species) have enjoyed the Indian "estate" for a period of 25 to 35 years, the wild hopes of the Indian proprietors for participation must be extinguished. It is rejected as correct that the lacerated Indian feelings be healed, or for a considerable sum, despoiled Indian families can be made whole and the new possessors of Standing Rock Sioux water rights can be indemnified. It is rejected as proper that this be justified on the basis that the new possessor has greater industry, forethought, arts of life, language, diet, and housing. It is rejected

as untrue that after numerous leases, releases, and mortgages by non-Indians relying upon unused Indian *Winters* doctrine water rights, it is too late to search for flaws in titles. It is accepted as true that the Master Manual promotes reliance by non-Indians upon unused Indian *Winters* doctrine water rights; and

WHEREAS, the rationale of Supreme Court Justices, Master Manual and ESA is but a limited improvement from historical examples even earlier than Macaulay. Over 400 years ago, the sovereigns of England and Scotland, upon their union, sought possession of the borderlands between the two nations and to dispossess the native tribal inhabitants. The following provides the rationale of the Bishop of Glasgow against those ancient inhabitants as they sought (in vain) to stay in possession of their ancient lands:

*I denounce, proclaim and declare all and sundry acts of the said murders, slaughters,... thefts and spoils openly upon daylight and under silence of night, all within temporal lands as Kirklands; together with their partakers, assistants, suppliers, known receivers and their persons, the goods reft and stolen by them, art or part thereof, and their counselors and defenders of their evil deeds generally CURSED, execrated, aggregate and re-aggregate with the GREAT CURSING.*

*I curse their head and all their hairs on their head; I curse their face, their eye, their mouth, their nose, their tongue, their teeth, their crag, their shoulders, their breast, their heart, their stomach, their back, their wame (belly), their arms, their legs, their hands, their feet, and every part of their body, from the top of their head to the sole of their feet, before and behind, within and without.*

*I curse them going and I curse them are riding; I curse them standing, and I curse them sitting; I curse them eating, I curse them drinking; I curse them walking, I curse them sleeping; I curse them arising, I curse them laying; I curse them at home, I curse them from home; I curse them within the house, I curse them without the house; I curse their wives, their barns, and their servants participating with them in their deeds. I wary their corn, their cattle, their wool, their sheep, their horses, their swine, their geese, their hens, and all their livestock. I wary their halls, their chambers, their kitchens, their storage bins, their barns, their cowsheds, their barnyards, their cabbage patches, their plows, their harrows, and the goods and houses that is necessary for their sustenance and welfare.*

*The malediction of God that lighted upon Lucifer and all his fellows, that struck them from the high heaven to the deep hell, must light upon them. The fire in the sword that stopped Adam from the gates of Paradise, must stop them from the glory of heaven until they forbear and make amends; and*

WHEREAS, truly, the rationale of the Master Manual may be a slight improvement in the techniques that were used to justify dispossession 400 years ago and represents progress, Standing Rock and other tribes have repeatedly encountered equally effective, if less colorful, opposition to their efforts to preserve, protect, administer and utilize their water rights; and

WHEREAS, the distinguishing feature for the Standing Rock Sioux Tribe, however, is

the fact that the water right "estate" in the Missouri River has not been taken from them, even though it is under attack in the Master Manual. It is proposed in the Master Manual to commit water away from the Indians, but the process is not accomplished, and those who would rely on unused Indian water rights have not yet taken possession and executed mortgages, leases and releases on the basis of them. The Standing Rock Sioux Tribe remain in position to retain its "estate" in the Missouri River by rejecting the Master Manual and taking affirmative action to protect its ancient and intact possessions; and

WHEREAS, by taking steps to protect their ancient possessions the Standing Rock Sioux Tribe recognizes that it cannot expect support from the United States or its agencies acting as Trustee. Strong reaction can be expected from any current attempt to do so, including strong reaction by the Trustee. First, the Trustee has no funds for litigation of Indian water right issues. Second, the Trustee has considerable funds for settlement of Indian water right issues, but the Indian costs in lost property are great. Third, the Trustee has considerable technical criteria and requirements to impose on the Indian tribes as a basis for limiting the Indian water right "estate": irrigable land criteria, water requirement criteria, limitation on beneficial uses and, most limiting, economic feasibility criteria that few, if any, existing non-Indian water projects could survive.

NOW THEREFORE BE IT RESOLVED THAT, the Tribal Council of the Standing Rock Sioux Tribe rejects the Master Manual Review and Update by the U. S. Army Corps of Engineers for the express reason that it establishes a plan for future operation of the Missouri River addressing inferior downstream navigation, upstream recreation and endangered species water claims of the States and Federal interests and specifically denies proper consideration or any consideration of the superior, vested water rights of the Standing Rock Sioux Tribe while committing reservoir releases to purposes and interests in direct opposition to those of the Tribe.

BE IT FURTHER RESOLVED THAT, the Tribal Council of the Standing Rock Sioux Tribe, seeking to protect and preserve its valuable rights to the use of water in the Missouri River, its tributaries and aquifers upon which the Tribe relies and has relied since ancient times for its present and future generations, directs the Chairman to take all reasonable steps, through the appointment of himself, Tribal Council members and staff to working groups to petition members of Congress and officials at the highest levels in the Bush Administration, including the Department of Justice, among other proper steps, for the single purpose of ensuring a full rejection and re-constitution of the Master Manual as now proposed for action by the Corps to properly reflect the rights, titles and interests of the Standing Rock Sioux Tribe.

BE IT FURTHER RESOLVED THAT, the Tribal Council of the Standing Rock Sioux Tribe proclaims its continued dominion over all of the lands within the boundaries of the Standing Rock Sioux Indian Reservation as reserved from time immemorial including

but not limited to rights, jurisdictions, privileges, prerogatives, liberties, immunities, and temporal franchises whatsoever to all the soil, plains, woods, wetlands, lakes, rivers, aquifers, with the fish and wildlife of every kind, and all mines of whatsoever kind within the said limits; and the Tribal Council declares its water rights to irrigate not less than 303,650 arable acres with an annual diversion duty of 4 acre feet per acre, to supply municipalities, commercial and industrial purposes and rural homes with water for not less than 30,000 future persons having an annual water requirement of 10,000 acre feet annually, to supply 50,000 head of livestock of every kind on the ranges having an annual water requirement of 1,500 acre feet annually; such proclamation made on the basis of the status of knowledge at the start of the third millennia and subject to change to include water for other purposes, such as oil, gas, coal or other minerals, forests, recreation, and etc; and such proclamation for the purposes and amount of water required to be adjustable in the future to better reflect improved knowledge and changing conditions.

BE IT FURTHER RESOLVED THAT, the Tribal Council of the Standing Rock Sioux Tribe directs the Chairman to take all reasonable steps, through the appointment of himself, Tribal Council members and staff to working groups to petition members of Congress and officials at the highest levels in the Bush Administration to support and promote legislation that would, among other things, enable the Standing Rock Sioux Tribe to exercise its rights to the use of water in the Missouri River, in part, by purchasing the generators and transmission facilities of the United States at Oahe Dam at fair market value, subject to such offsets as may be agreed upon, with provisions to sell power generated at Oahe Dam at rates necessary to honor all existing contracts for the sale of pumping power and firm, wholesale power during their present term and sufficient to retire debts of the United States that may be agreed upon; provided, however, that the Tribe may increase power production at the dam by feasible upgrades and market the new power at market rates and after expiration of current contracts market power at rates reflective of the market; and provided further that legislation to purchase generators and transmission facilities will also include provisions to finance wind and/or natural gas power generation on the Standing Rock Indian Reservation to combine with hydropower production, thereby using Tribe's water and land resources effectively for the benefit of the Tribe without further erosion, diminishment and denigration of Tribe's water right claims.

BE IT FURTHER RESOLVED THAT, the Standing Rock Sioux Tribal Council rejects all reports and investigations of the Bureau of Reclamation on the Cannonball and Grand Rivers watersheds and any and all proposals by Bureau of Reclamation for an Indian Small Water Projects Act and that all ongoing efforts of the Bureau of Reclamation respecting these specific efforts will cease by this directive of the Tribal Council.

BE IT FURTHER RESOLVED THAT, the Tribal Council of the Standing Rock Sioux Tribe directs the Chairman to take all reasonable steps, through the appointment of himself, Tribal Council members and staff to working groups, to petition members of Congress,

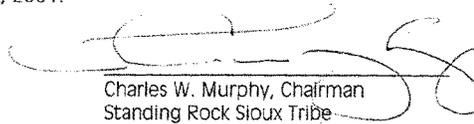
United States Supreme Court, when engaged in a Whiggish course, to subject the least powerful to the will of the States in matters involving property rights as evidenced by the *Dred Scott*, the *O'Connor Ghost* and comparable decisions of expediency.

BE IT FURTHER RESOLVED THAT, the Chairman and Secretary of the Tribal Council are hereby authorized and instructed to sign this resolution for and on behalf of the Standing Rock Sioux Tribe.

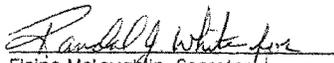
### CERTIFICATION

We, the undersigned, Chairman and Secretary of the Tribal Council of the Standing Rock Sioux Tribe, hereby certify that the Tribal Council is composed of (17) members, of whom 12 constituting a quorum, were present at a meeting thereof, duly and regularly, called, noticed, convened and held on the 5<sup>th</sup> day of April, 2001, and that the foregoing resolution was duly adopted by the affirmative vote of 11 members, with 0 opposing, and with 1 not voting. THE CHAIRMAN'S VOTE IS NOT REQUIRED, EXCEPT IN CASE OF A TIE.

DATED THIS 5<sup>th</sup> DAY OF APRIL, 2001.

  
Charles W. Murphy, Chairman  
Standing Rock Sioux Tribe

ATTEST:

  
Elaine McLaughlin, Secretary  
Standing Rock Sioux Tribe

(OFFICIAL TRIBAL SEAL)

A. Introduction

Daniel Inouye (Democrate Hawaiian Islands), Chairman of the Senate Indian Affairs Committee: It is with honor I speak of the Great Lakota and Dakota Nation, which once was and still remains, a proud Nation and the First Citizens of this Country, the United States of America. With deep respect to the Lakota and Dakota Chiefs and Warriors that died in battle to preserve yuonihan and wowicake, I introduce myself.

My birth right name is Hehaka-Sinte-Luta (Red Tail Deer), English name Celestia Agnes Ta-Sunka- Luzahan (Fast Horse), youngest child of William Ta-Sunka- Luzahan ( Fast Horse) and Elizabeth Mato Gleska ( Spotted Bear) seventh generation Great- Great -Great Granddaughter and descendant of Soka-Aguyapi ( Thick Bread) nakun (and) Psito (Beads). I am a member of the Oglala Sioux Tribe, Tribal Member number 344 NO.62663.

At present, I am a resident and registered voter of 03 Congressional District, 43 Senate District, 43A House District, 02 Commissioner District and 284-00 School District Plymouth Minnesota W-3 p-15 voting address Vision of Glory Church 13200 State HWY 55, Plymouth Minnesota 55441. I reside at 13309 34<sup>th</sup> Ave North, , mailing address POBOX 41832, both located in Plymouth, Minnesota 55441.

I was honored to be able to attended the United States Senate Indian Affairs Field Hearing, held by Senator Tim Johnson on Saturday September 14<sup>th</sup>, 2002, 2:00 P.M. Rapid Central High School, Rapid City, South Dakota

At this point, I would like to thank you Honorable Chairman Daniel Inouye for taking the time to review my written testimony.

B. Treaties

The Great Sioux Nation spoke with one clear voice saying, " It is very important to us that the Committee on Indian Affairs visit our treaty homeland to discuss the priorities of the Sioux Tribes."

"The Black Hills are not for Sale." We, the TREATY TRIBES within the Great Plains Region exercise our rights by holding the United States Government to its treaties and Government-to-Government Federal Trust Responsibility with the Lakota and Dakota Sioux Nations and demand increases be distributed in such a manner as to upgrade the quality of life for Indian people.

November 6<sup>th</sup>, 2000, President Clinton issued Executive Order No. 13175 on consultation with Indian Tribal Governments. I reaffirm our commitment to tribal sovereignty, self-determination, and self-government. The Executive Order builds on prior actions and strengthens our government-to-government relationship with Indian tribes and will ensure that all Executive Departments and Agencies consult with Tribes as they develop policy on issues that impact Indian Communities.

To date we, the Native Aboriginal people of this Country, serve as a reminder to the United States Government that we continue to live and survive at the lowest socio-economic levels of any other segment of society. The only word to describe these conditions is extreme poverty at best **“fourth world living”**, forget the term third world living. It goes without saying that the services currently being provided are far below the standards of the services provided to other Americans in the United States.

Federal Trust Responsibilities:

- One of the most critical issues facing Indian Country is the Supreme Court. In 2001, the Supreme Court indicated that it is willing to ignore the Federal Indian case law that has developed over the past 200 years based on the Constitution, treaties, and statutes to substitute the Supreme Courts own ill-informed opinions instead of the Constitution, Treaties and statutes.
- October 2002, the Supreme Court will hear the White Mountain Apache and Navajo Nation cases concerning Federal Trust Responsibility and even as the Interior Department has engaged in seemingly endless series of consultations on it trust accounting system, the United States Justice Department has asked the Supreme Court to cut back on the historic Federal trust responsibility.
- Historically, the Supreme Court has said that the United States is to be judged by the “Highest Standard” of duty and loyalty when managing Indian trust assets and resources.
- However, the United States Justice Department is arguing that the Federal Government’s conduct cannot be judged by the standards of a “private trustee”. the Justice Department’s term private trustee omits that fact that United States Government has Ratified and by Proclamation of President of the United States signed Treaties with the Indian Tribes.
- It would be accurate to say that the United States Senate passes the laws and the Supreme Court, Federal Courts and lower State Courts uphold and interpret the laws. This brings us back to THE TREATIES, The President of the United States and United States Senators and Representatives in Congress, in accordance with the Treaties, should verify that Indians are in trust status within the jurisdiction of the United States Federal Government and United States Congress.
- This is simply requiring the Federal Government to follow existing law which has been developed over the past 200 years. It is appropriate for Congress to take such action because

the Constitution invests the Congress - not the supreme Court - with the Constitutional authority to regulate commerce with Indian Tribes.

- We recognize the issues facing the Bush Administration and the United States as a whole resulting from the War on World terrorism. However, we deny this government the opportunity that the War on Terrorism will evoke, to stop and/or cut funding of the neediest people in this Nation.
- The United States Government historically has demonstrated a propensity to penalize and withhold Treaty monies when at war. This is not acceptable, and never has been. My observations are based on:
  1. the 1851 Fort Laramie, Articles 1 through 8
  2. Zebulon Pike Treaty 1805 (Unratified)
  3. Treaty of Traverse Des Sioux 1851 Treaty Articles 1 through 6
  4. Sioux - O'Gallala Band 1865 Articles 1 through 6
  5. Fort Laramie Treaty 1868
  6. The definition of "trust relationship" as defined within the treaties.

During the Administration of President Abraham Lincoln presidency from March 4, 1861 to March 3, 1865 little over a month after Lincoln is inaugurated on April 12, 1861 the Civil War begins. The argument that the President himself was destroying the experiment by his dictatorial policies, systematic violations of civil rights liberties, and the consolidation of the great new powers by the federal government. Lincoln was the Nations most controversial President, and his most detested act was emancipation. There is no doubt that Lincoln wielded unprecedented executive power in fighting the American Nation's most costly war.

Lincoln, began with the very act of accepting war rather than allowing the Southern States to "depart in peace". Although secessions itself was unconstitutional, the Constitution gave the federal Government no right to "coerce" seceded states to return to the Union.

Lincoln did not wait for Congressional approval to call out the troops or draw on the Federal Treasury in attempting to put down the rebellion in the Southern States.

Emancipation Proclamation is recorded as "the most execrable measure recorded in United States History of guilty men." In other words, an insurrection organized to establish government.

As President of the United States Abraham Lincoln, moved to suspend the Writ of Habeas Corpus within two weeks of the first shot at Fort Sumter. By the time it ended thousands of civilians had been arrested without warrants, held without bail and tried by Military Courts.

Abraham Lincoln, was not just the leader of a hostile power, but a man known to the

Southern States as “Lincoln Fiend (Devil) a man of real evil, despot who aimed at nothing less than destruction of the free.

The Civil War compounded costly difficulties for the Administration. The Indians and their problems slid to the background as seemingly more immediate concerns took precedence. Incompetent men were often put in charge by the government. Annuities came late.

In the summer of 1862 tensions among Dakota, when annuity payments, were not made. In August, starving Indian broke into the agency warehouse. Thus began the Sioux Uprising.

The annuity payment of \$71,000 in gold could have prevented the Sioux Wars. Instead the \$71,000 in gold coins were packed in two heavy boxes, locked in the officers quarters at Fort Ripley.

Between October 25<sup>th</sup> and November 5<sup>th</sup>, 1862 a military commission tried 272 of the 396 in Military Court. President Lincoln so called prisoner of war status was based on the Military Courts sketchiness as evidence all an Indian had do was be there guilty or not it did not matter.

War status ruling defense is that the Indians lived within limited boundaries, were ruled by their own people and are not citizens of the United States.

Thus President Lincoln ordered 38 to be executed to be hung until dead. The rest were judged prisoners of war. Tried and convicted of war crimes and condemned to death on insufficient evidence.

Governor Ramsay a direct political supporter of Lincoln stated “ **Sioux Indians must be exterminated**” also supporting Governor Ramsay was Brigadier General Pope with his statement “ **It is my purpose utterly to exterminate the Sioux.**” “ **They are to be treated as barbarians or wild beasts**”.

The United States Government has a responsibility to build back the trust that is lost both in it own people as well as This Country’s First Citizens. The whole of trust is to learn to tell the truth to each other and to the world. If we can not establish the simple goals of the truth how can we as humans be accountable.

As the history of the United States Government has proven time after time, this Government can not be trusted in any honorable or honest way. We, as Lakota and Dakota, must always be ever vigilant in our efforts to remind this government of the government-to-government trust relationship between the United States and its First Citizens, the Indian tribes of this Country. We must remind this government that any War of this administration is by far not an excuse to neglect the trust responsibility it has agreed to via Treaty with the Indian Tribes of the what is known as the United States.

It remains a very deep void that only our people seem to place any sanctity on the Treaties and honor them with the spirituality they engender. No Treaty was ever entered without full spiritual regality, rituals and blessings of tankasila. Those who participated were of one mind on the blessed nature of the Treaty process. We are so laden that everyone in attendance prayed in unison and then your people did not honor what they prayed for. We will retain our culture and history through time-honored spiritual ways so that we can continue to stand for those who have no voice to preserve these for our children, grandchildren and future generations.

### C. HEALTH CARE ISSUES

Of all the issues facing our people, perhaps none is more critical than the National crisis in Health Care in Indian Country. There has been a long history of neglect and mistreatment of Indian people resulting in poor health care and poor health status for Indian people. The Fort Laramie Treaty of 1868 was a peace treaty wherein the Lakota Tribes and the United States agreed to cessation of War and to certain terms of peace. One of the terms was that the United States was to provide for Health care for the members of Great Sioux Nation in Article VIII.

In the proceedings of the 1882-1883 Agreement with Sioux, commissioners Newton Edmunds, Peter Shannon and James Teller noted, "In case of serious accident or sickness among the Indians or agency employees, the need of fit accommodations for required treatment and nursing is seriously felt. We would therefore recommend that provisions to be made at each agency for such room as may be needed to be used as a hospital. The United States Government has never fulfilled the promise of health care for tribal members recognized in the United States trust responsibility. The health of the Indian Health Services IHS health care lacks in quality and accessibility resulting in a long history of death, suffering and disability inflicted upon Tribal members on our reservation in the 21<sup>st</sup> century.

The crisis in health is the result, in part, from the lack of funding and Prepaid Health Plans HMO (Health Management Operations).

The President's 2003 Budget includes plans to eliminate, to cut construction dollars for new facilities and only increase the Indian Health Services by 2% without marked increases in the budget, WILL INSURE members of the tribes will continue to suffer unnecessary death due to server health conditions.

Why is having a Health plan that provides health coverage for member of Indian Tribes not seen as more necessary than spending federal monies on lawsuits for malpractice? The current 2003 President's Budget proposes funding at \$2,815,568,000.00. This only funds forty six percent of the need. The needed increase is at least \$3,305,232,000.00.

Health care in the Great Plains Region remains the most pressing issue for Tribal Leaders and members of each tribe. A major concern is the failure to enact S.212, the Indian Health Care Improvement Act. The Act expired in 2000 and has yet to be reauthorized based on the

recommendations of the Tribes with consultation between Tribes and all agencies. S. 212 must be passed as drafted and proposed by the National Steering Committee despite the fact that little if any effort was spent to proofread it and make obvious grammatical corrections.

Funding for health care must be increased if we are to improve the health care status of this Country's First Citizens. The improvement of health care status is a major issue what type of Health plan could be a workable solution for the over all Indian population, Does S. 212 afford a solution?

S. 212 in section 2 Findings

"Congress makes the following findings":

(1) Federal delivery of health services and funding of tribal and Urban Indian health programs to maintain and improve the health of the Indians are consonant with and required by the Federal Government's Historical and unique legal relationship with American Indian people, as reflected in the Constitution, Treaties, Federal Laws, and the course of dealings of the United States with Indian Tribes, and the United States' resulting government to government and trust responsibility and obligations to the American Indian people.

(2) From the time of European occupation and colonization through the 20<sup>th</sup> century, the policies and practices of the United States caused or contributed to the severe health conditions of Indians.

(3) Indian Tribes have, through the cession of over 400,000,000 acres of land to the United States in exchange for promises, often reflected in treaties, of health care secured a de facto contract that entitles Indians to health care in perpetuity, based on the moral, legal, and historic obligation of the United States.

(4) The population growth of the Indian people that began in the later part of the 20<sup>th</sup> century increases the need for Federal health care services.

(5) A major national goal of the United States is to provide the quantity and quality of health services which will permit the health status of Indians, regardless of where they live, to be raised to the highest possible level, a level that is not less than that of the general population, and to provide for the maximum participation of Indian Tribes, tribal organizations, and urban Indian organizations in the planning, delivery, and management of those services.

(6) Federal health services to Indians have resulted in a reduction in the prevalence and incidence of illnesses among, and unnecessary and premature deaths of, Indians.

(7) Despite such services, the unmet health needs of the American Indian people remain alarmingly severe, and even continue to increase, and the health status of the Indians is far

below the health status of the general population of the United States.

(8) The disparity in health status that is to be addressed is formidable. In death rates for example, Indian people suffer a death rate for diabetes mellitus that is 249 percent higher than the death rate for all races in the United States, a pneumonia and influenza death rate that is 71 percent higher, a tuberculosis death rate that is 533 percent higher, and a death rate for alcoholism that is 627 percent higher.

### SEC. 3. DECLARATION OF HEALTH OBJECTIVES

Congress hereby declares that it is the policy of the United States, in fulfillment of its special trust responsibilities and legal obligations to the American Indian People --

- (1) to assure the highest possible health status for Indians and to provide all resources necessary to effect that policy;
- (2) to raise the health status of Indians by the year 2010 to at least the levels set forth in the goals contained within the Healthy People 2010, or any successor standards thereto;
- (3) in order to raise the health status of Indian People to at least the levels set forth in the goals contained within the Healthy People 2010, or any successor standards thereto, to permit Indian Tribes and tribal organizations to set their own health care priorities and establish goals that reflect their unmet needs;
- (4) to increase the proportion of all degrees in the health professions and allied and associated health professions awarded to Indians so that the proportion of Indian health professionals in each geographic service area is raised to at least the level of that of the general population;
- (5) to require meaningful, active consultation with Indian Tribes, Indian organizations, and urban Indian organizations to implement this Act and the national policy of Indian self-determination; and
- (6) that funds for health care programs and facilities operated by Tribes and tribal organizations be provided in amounts that are not less than the funds that are provided to programs and facilities operated directly by the Service.

### SEC. 4. DEFINITIONS

In this act:

- (2) Area Office. The term "area office" means an administrative entity including a program office, within the Indian Health Service through which services and funds are provided to the service units within a defined geographic area.
- (3) Assistant Secretary. The term "assistant Secretary" means the Assistant Secretary of the

Indian Health as established under section 601.

(6) Fund. The terms "fund" or "funding" mean the transfer of monies from the Department to any eligible entity or individual under this Act by any legal means, including funding agreements, contracts, memoranda of understanding, Buy Indian Act contracts, or otherwise.

(7) Funding Agreement. The term "funding agreement" means any agreement to transfer funds for the planning, conduct, and administration of programs, functions, services and activities to Tribes and tribal organizations from the Secretary under the authority of the Indian Self-Determination and Education Assistance Act.

(8) Health profession. The term "health profession" means allopathic medicine, family medicine, internal medicine, pediatrics, geriatric medicine, obstetrics and gynecology, podiatric medicine, nursing, public health nursing, dentistry, psychiatry, osteopathy, optometry, pharmacy, psychology, public health, social work, marriage and family therapy, chiropractic medicine, environmental health and engineering, and allied health professions, or any other health profession.

(9) Health promotion; disease prevention. The terms "health promotion" and "disease prevention" shall have the meanings given such terms in paragraphs (1) and (2) of Section 203(c).

(15) Service. The term "service" means the Indian Health Service.

(16) Service Area. The term "service area" means the geographical area served by each area office.

(17) Service Unit. The term "service unit" means --

(a) an administrative entity within the Indian Health Service; or

(b) a tribe or tribal organization operating health care programs or facilities with funds from the Service under the Indian Self-Determination and Education Assistance Act, through which services are provided, directly or by contract, to the eligible Indian Population within a defined geographic area.

(23) Urban Indian Organization. The term "urban Indian organization" means a non-profit corporate body situated in an urban center governed by an urban Indian controlled board of directors, and providing for the participation of all interested Indian groups and public and private entities for the purpose of performing the activities described in Section 503(a)

TITLE 1 -- INDIAN HEALTH, HUMAN RESOURCES AND DEVELOPMENT

SEC. 101 PURPOSE

The purpose of this title is to increase, to the maximum extent feasible, the number of Indians entering the health profession and providing health services, and to assure an optimum supply of health professionals to the Service, Indian tribes, tribal organizations, and urban Indian organizations involved in the provision of health services to Indian People.

SEC. 102 GENERAL REQUIREMENTS

(A) Service Area Priorities. Unless specifically provided otherwise, amounts appropriated for each fiscal year to carry out each program authorized under this title shall be allocated by the Secretary to the office of each service area using a formula.

SEC. 103 HEALTH PROFESSION RECRUITMENT PROGRAM FOR INDIANS

(2) Preference. In awarding funds under this section, the area office shall give a preference to applications submitted by Indian tribes, tribal organizations, or urban Indian organizations.

(103)(C) Definition. For purposes of this section and sections 104 and 105, the terms "Indian" and "Indians" shall, in addition to the definition provided for in section 4, mean any individual who

- (1) irrespective of whether such individual lives on or near a reservation, is a member of a tribe, band, or other organized group of Indians, including those Tribes, bands, or groups terminated since 1940;
- (2) is an Eskimo or Aleut or other Alaska Native;
- (3) is considered by the Secretary of the Interior to be an Indian for any purpose; or
- (4) is determined to be an Indian under regulations promulgated by the Secretary.

SEC. 104 HEALTH PROFESSIONS PREPATORY SCHOLARSHIP FOR INDIANS

(A) In General. The secretary, acting through the Service, shall provide coheirships through the area offices to Indians who --

SEC. 105 INDIAN HEALTH PROFESSIONS SCHOLARSHIPS

(A) Scholarships

- (1) in general:
- (2) no delegation.

(b) Eligibility

(2)(a) Public health service act. The active duty service obligation under a written contract with the Secretary under section 338A of the public Health Service Act (42 USC 2541) that an Indian has entered into under that section shall, if that individual is a recipient of an Indian Health Scholarship, be met in full-time practice on an equivalent year for year obligation, by service --

(4) Breach of Contract.

(a) In general. An Indian who has, on or after the date of the enactment of this paragraph, entered into a written contract with the area office pursuant to a scholarship under this section and who --

(i) fails to maintain an acceptable level of academic standing in the educational institution in which he or she is enrolled (such level determined by the educational institution under regulations

- of the Secretary);
- (ii) is dismissed from such educational institution for disciplinary reasons;
- (c) Funding for Tribes for Scholarship Programs.

SECTION 106 AMERICAN INDIANS INTO PSYCHOLOGY PROGRAMS  
THROUGH END OF DOCUMENT

Please refer to Senate 212 for the remainder of the verbiage of this bill.

#### CHALLENGE TO INDIAN HEALTH SERVICE "INSURANCE"

As stated previously, the crisis in health is the result, in part, from the lack of funding and Prepaid Health Plans HMO (Health Management Operations). The Indian Health Service is woefully inadequate in meeting the needs of native people in that they cannot process claims efficiently or adequately, medical records are delayed or declined, referrals are rarely - if ever - honored, malpractice lawsuits are paid via the U.S. Treasury, staffing and professionals are inadequate for the Indian population. The most obvious solution, and I'm surprised you haven't thought of it yourself, is that HMO's bid on this contract. The network and paperwork is already in place, the money would be funded via the Treasury using Indian Health Service funding. The Indian Health Service would be phased out to be replaced by a more efficient and economically feasible plan. Medicare and Medicaid programs would welcome this type of proposal because the obvious built in discriminatory practices would by function be eliminated.

We recognize that somewhere in Senate 212, this proposal has been raised with respect to children. There is no sensible reason to limit such a proposal to just children. It would be no effort at all on your part to simply expand this concept to be inclusive to the overall Native American Indian population. Until the federal government takes action to improve the lives my people, we, too, shall continue to fall short of what is needed to bring us under the same constitutional protections enjoyed by your people.

#### SENATOR'S COMMENTS

SENATOR TIM JOHNSON:

Although the Senator acknowledge the government has broken the government-to-government trust responsibility, **that the United States has lied about and broken that trust responsibility is only the beginning. We need to know how reparations will be addressed. Several solutions have been addressed above.**

SENATOR DANIEL INOUE:

The Senator spoke of honoring the First Citizens of America by opening a wing at the Smithsonian dedicated to our People and building an Indian University. Although these are nice little trophies, they by far do not realistically fit our needs. We seek to maintain our ancestral

We can teach all Americans about our people better than some little wing in a museum. We seek inclusion, not exclusion. We deserve education in the same university system your people enjoy because we no longer trust you to have an "Indian University" that will be of the same academic status as others.

CONCLUSION

On behalf of the sixteen Tribes of the Great Plains, I thank you for the opportunity to express via written testimony, an overview of priorities.

The enrolled members of the Oglala Sioux Tribe are proud to serve in the armed forces of the United States, especially in this troubling time. We serve at much higher rates than any other minority, in part because of our cultural heritage, yet we are still await a time of peace between the United States government and the First Citizens - the native people of this land - the American Indians.

It is time for the United States government to directly and adequately meet the needs of the First Citizens. We will not be ignored by this governmental body. Our voice will be heard on the treaties and government-to-government trust responsibility. The U.S. government has a long history of degrading my people and our way of life. That practice will no longer be tolerated. Your people must abide to the treaty obligations to bring forth a way of life that is more than above the current fourth world reservations conditions currently experienced by my people.

Respectfully submitted



Celestia Two Eagles

Cc: Senator Tim Johnson  
Senator Ben Nighthorse Campbell  
Senator Tom Daschle  
Senator John McCain  
Senator Daniel K. Inouye