

TESTIMONY OF THE HONORABLE ROLAND JOHNSON. GOVERNOR
THE PUEBLO OF LAGUNA, IN OPPOSITION TO H.R. 3782

Submitted to the House Committee on Resources and
The Senate Committee on Indian Affairs

July 22, 1998

Mr. Chairman, members of the Committee, my name is Roland Johnson. I am the Governor of the Pueblo of Laguna, a federally recognized Indian Tribe located in New Mexico, approximately 40 miles west of Albuquerque. On behalf of the Pueblo and its members, please accept our gratitude for the opportunity to address this Committee regarding our views of H.R. 3782, the trust fund resolution bill.

We are vigorously opposed to this bill for reasons that I will elaborate on. In summary though, the bill is deceptive and intended to bring bureaucratic or administrative closure to longstanding and ongoing government mismanagement of tribal trust property. The bill would create a process that by its very design would prohibit tribes from ever getting an accurate accounting of the government's trust property mismanagement. Essentially, a process would be created and put in place that will facilitate a permanent cover-up. We oppose that approach in the strongest possible way. It is our belief that we are entitled to equal justice on a level of equality that the Congress provided to all Savings & Loan account holders: Nothing less and nothing more. Our history and our historic relationship to the United States requires this.

The Pueblo of Laguna and its people occupy the same land that our ancestors have occupied for centuries, long before the first Europeans set foot on this continent. Those chosen for leadership have always served in such positions as a matter of honor and sacred trust. The leadership of the Pueblo has always been accountable to the people of the Pueblo for the proper

care and custody of our lands and common property. This accountability is complete. Nothing less is expected or accepted. We view the obligations of the United States in the context of its self-imposed trust duties to be of the same degree of completeness and integrity. And yet that is not what we have seen from the Department of Interior with regard to its administration of trust property and in its refusal to fully account to the tribal beneficiaries.

As the contractor to the Department (Arthur Andersen, LLP) noted in its so-called reconciliation report it provided to tribes, the balances posited for each tribe were not intended to be relied on. The process used was not an audit conducted pursuant to generally accepted auditing standards. In fact, the scope of the engagement of Andersen was limited to at best to an "attempt" to reconstruct certain historical transactions, to the extent practicable, for certain years with regard solely to trust funds managed by the Bureau of Indian Affairs. Andersen did not have as an objective reconciliation of balances of tribal trust funds. Accordingly, Andersen expressly refused to state an opinion on the accuracy of any of its so-called findings. When the results of these accounting exercises was complete and presented to the tribes, what did the BIA then demand of each tribe? Indeed, what does H.R. 3782 demand of each tribe?

By design, according to the scheme disclosed to the tribes in a meeting in the Assistant Secretary of Interior's conference room with the then Controller of the United States, Ed Mazur, several years ago, the tribes were to be given numbers for trust fund balances which each tribe was then obliged either to agree or disagree with and, if a tribe was in disagreement, to prove otherwise.

To prove otherwise a tribe must get access to all records that pertain to its trust funds wherever such records may be. And yet the Bureau refuses to give open access to all such

records. A tribe that remained in disagreement would then be obliged to sue the government in the United States Court of Federal Claims. That Court has been widely criticized in scholarly law review articles for the manner in which it has treated valid Indian claims. This proposed legislation would legitimize this unconscionable scheme and worse. H.R. 3782 goes much further.

Inserted in the definitions sections of H.R. 3782 under "covered claims" and "deficiencies in the management and accounting of tribal trust funds" is language that would sweep within the coverage of this bill "all errors in the management and accounting of tribal trust funds from the point of their collection through disbursement, including, but not limited to, collection of the appropriate amounts under lease, permit or sale agreements or other contracts, proper recording of transactions, timely collection of revenues, proper accrual of interest, adequate yield on investments, undocumented roll forward amounts, delays in the accrual of interest and proper disbursements." This language has been placed there by design, carefully constructed, for the purpose of forever defeating valid tribal claims and covering-up the Bureau's mismanagement.

It is our understanding that a private trustee has a legal duty to disclose fully all mismanagement that such a trustee may have committed. The Bureau should be held to no less a standard. This bill is so outrageous in the fraud it seeks to perpetrate that this Committee is respectfully requested to investigate the drafting of this bill and its presentation to this Congress. To its credit, Congress did not permit such as response to the Savings & Loan account holders where the government had secondary liability as a guarantor. Congress should not permit such proposed action as H.R. 3782 includes here where the government's liability is primary due to its own defalcations. Those who have drafted this bill should be required to be accountable for this

indecent proposal.

The Pueblo of Laguna has its own investment program which it controls and which it is accountable for. We have produced a better rate of return than the Department of Interior ever has. We have complete and accurate accounting, and we have control that is exercised in a prudent and honest fashion. If we were ever to suggest a scheme to avoid accurate accounting such as this Congress is being asked to consider in H.R. 3782, we would likely be investigated by the office of the United States Attorney in Albuquerque. Of course, we would never, ever, even contemplate such a dishonorable scheme. On behalf of the Pueblo of Laguna and its members, I respectfully ask that you not permit the Department of Interior to do this to us.

It is my understanding that this Committee's hearing record will be kept open for a brief period after today. The Pueblo of Laguna would like to be able to submit additional, more detailed comments on H.R. 3782 as the brief time allotted today for oral testimony is simply not adequate to cover all of the matters that the Committee should be aware of

Once again thank you for the opportunity to appear before this Committee and present our views.