

**FINAL FINDINGS**

**AND**

**RECOMMENDATIONS**

of  
the

**NATIONAL INDIAN**

**AGRICULTURAL**

**WORKING GROUP**

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**prepared for:**

**The Assistant Secretary - Indian Affairs  
and the  
Intertribal Agriculture Council**

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December 87

## i. Foreword

The National Indian Agriculture Working Group (NIAWG) was formed as a result of the September 1986 Report to Congress on B.I.A. Agriculture - Range programs. This Working Group was formed by the Assistant Secretary - Indian Affairs under the guidelines of the Wheeler Howard Act. It is comprised of 12 tribal representatives and six BIA representatives. The purpose of the NIAWG is to provide leadership in the areas of agriculture and land management and to effect improvements in the current Bureau of Indian Affairs programs and those of other federal entities. It was assigned six of the nine recommended actions in the Report to Congress referenced above.

This is the final report of <sup>the</sup> Working Group resulting from those six assignments. It contains specific recommended actions which, if taken, can greatly improve the plight of Indian people on Indian reservations through providing an improved environment for the main Indian industry: agriculture.

In conducting the reviews and preparing this report, it became apparent that the issues addressed are neither new, nor unknown. At least a dozen similar efforts have been commissioned at various levels of the Federal Government over the past three decades. These previous efforts have resulted in reports and recommendations to the President, the Congress, the Secretary of the Interior, the Inspector General and the Assistant Secretary - Indian Affairs. They have been commissioned by all of the above entities and prepared by various Federal agencies, private consulting firms, and Blue Ribbon Presidential Commissions. These efforts have all had several attributes in common: they identified similar problems, they recommended similar solutions, and the solutions they have recommended have not been implemented.

Submitted by the  
National Indian Agriculture Working Group

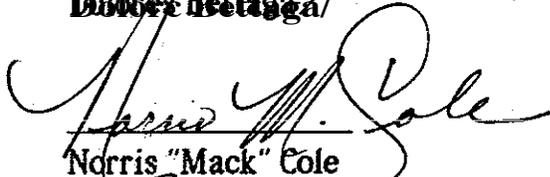
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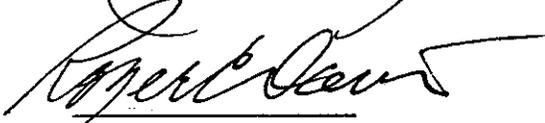
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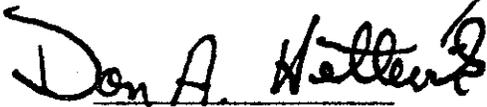
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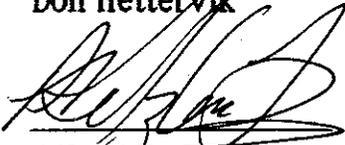
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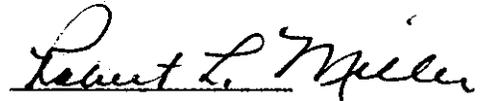
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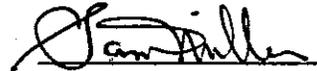
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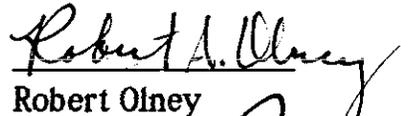
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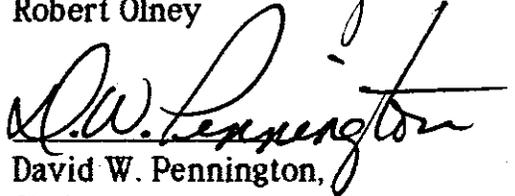
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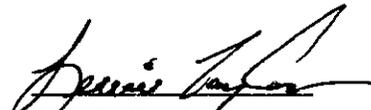
David W. Pennington,  
Chairman



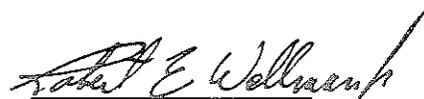
Pat Phillips



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Greg Smitman, Coordinator

In recognizing the precedence of previous review teams and commissions, it is the sincere hope of this Working Group that the issues and solutions presented in this report do not share the fate of previous well-intentioned efforts. This previous work has had little impact on Indian Country simply because the findings and recommendations were not specific enough to facilitate implementation. Therefore, this report contains specific recommendations of both a program and regulatory nature, which can be implemented without the need for re-definition or extensive implementation plans.

To quote from the most recent such attempt, the Report and Recommendations to the President of the United States, by the Presidential Commission on Indian Reservation Economies dated November 1984

*"...the Commission has learned that there is consensus on what the problems are and on the need for fundamental change. In fact, the major Indian organizations have been calling for change since the American Indian Policy Review Commission delivered its report in 1976.*

*We believe it is now time to act"*

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## **I. Executive Summary**

The National Indian Agriculture Working Group was formed by the Assistant Secretary - Indian Affairs to provide leadership and effect improvements in agriculture and land management programs affecting Native Americans and Alaskan Natives. Five assignments from the September 1986 Report to Congress on BIA Agriculture - Range Programs were undertaken by this Working Group, comprised of 12 Indian Agriculture leaders from across the country, and 6 Bureau employees actively involved in agriculture program administration.

Members of the Working Group formed into 5 committees to accomplish the following assignments:

1. Review the Bureau's mission and goals for trust land management and Indian self-determination relative to trust responsibilities for multiple use, sustained yield and maximizing income from lands.
2. Review Bureau programs and regulations to encourage cost-sharing and flexibility in lease and permit administration.
3. Review and recommend action to improve the availability of long and short-term financing at reasonable rates and terms to Indian and Alaskan Native operators in order to assure them a reasonable prospect of success.
4. Identify requirements and needs for the Bureau's programs concerning agriculture resources development and Indian range and farm management projects.
5. In a cooperative effort with USDA, review existing programs, identify opportunities, and recommend alternatives to enhance and achieve Indian participation in USDA programs.

In conducting the reviews and developing the recommendations of this report, primary emphasis was placed on testimony from the 14 public hearings which were held throughout Indian country as part of this effort. Other sources of information included personal knowledge, contacts with Indian people, and numerous similar reports on related subjects.

The Working Group found that agriculture is the leading source of private sector enterprises in Indian country today. Fully 87 percent of Indian trust lands are utilized for agricultural purposes. Agriculture production on Indian lands is valued at more than twice that of all other natural resources combined.

Despite the evident importance of this traditional industry to the economic, cultural and social well being of Indian communities, it has been largely overlooked as a potential avenue for economic development. The Bureau of Indian Affairs and, in some cases, the Tribal governments, have de-emphasized agricultural endeavors as a source of employment and revenue. The result is an outdated agriculture program which enforces archaic regulations and largely ignores the Indian agriculture producers and tribal enterprises as major contributors to reservation economies and stability.

A serious and potentially devastating decline is currently affecting all sections of the Indian Agriculture Community. Indian use of Indian lands has dropped off rapidly in recent years, and idle Indian lands have increased at a rate as high as 40% in one year. Hundreds of thousands of acres of Indian lands are in danger of foreclosure through the default of Indian farmers and ranchers. The expected result is a continually widening gap between the standards of living of the Native American and Alaskan Native people, and the general population of this country.

Predictably, the erosion of the reservation land base with its significant cultural attributes, coupled with decreased private enterprise in the agriculture sector, will result in increased dependency on public assistance and Federal support, while undermining the long-term efforts at Native American and Alaskan Native self-sufficiency. To date, the private sector has been unable or unwilling to meet the needs of Indian Agriculture. For this reason, and in an effort to define realistic and meaningful actions which can be taken to quickly reverse the trends in Indian Agriculture, the working group has concentrated on Federal policies and programs.

The following general actions are presented by the working group to improve conditions for agriculture and support tribal goals in Native American and Alaskan Native Communities:

1. The mission statements, policies and objectives of the Bureau's agriculture program, as rewritten in this report to balance the Federal trust responsibility with promotion of Indian self-determination, should be adopted at all levels of the Bureau and used as the basis for future program development.
2. To rectify the identified conflicts between Federal trust obligations in land management and Indian self-determination, the Congress must clarify its intent, and monitor the preparation of new regulations.
3. The Bureau's agriculture programs should be designed to enhance and sustain the productivity of Indian lands, and promote Indian self-determination. Innovative approaches to land management, with sufficient program support, are necessary. The direction of the Bureau's programs must reflect traditional as well as innovative state of the art approaches to land management, and frequent seminars or workshops must be conducted to ensure Bureau and Tribal employees are well versed in their professions.
4. The Federal Government should formulate a coherent and coordinated agriculture program throughout its various agencies, which meets the needs of Indian communities by clearly defining the roles and expectations of all the Federal agencies involved.
5. Bureau leasing and permitting regulations must be rewritten to recognize the Indian use of Indian lands, the long-term benefits that accrue to the land owners from this use, and the contributions of these lands to the overall reservation economy.
6. Provisions in both statute and regulation are required that grant authority to the Secretary to negotiate and lease highly fractionated undivided interest heirship lands in order to reduce idle land acreage and insure income, when no single individual can claim majority ownership.
7. Rental Rates charged for agricultural lands should reflect the local economy and provide an opportunity for success to the agricultural lessee, while providing a reasonable rate of return to the landowner.

8. The requirement for surety and performance bonds on agricultural leases and permits is overly restrictive on Indian operators, and should be discretionary at the local level.

The tenure period for agricultural leases and permits should be extended to 10 years to allow lessees and landowners to access USDA farm programs and commercial credit opportunities.

10. Preference in the issuance of agricultural leases should be given to Indian operators, and renewal capability on existing leases should be included to stabilize successful enterprises.
11. The Bureau should conduct a study comparing its agriculture funding and staffing levels with those of other Federal land management agencies. This should be accomplished on a per acre basis for like resources, while considering the additional requirements of trust responsibility, government-to-government relationships, and increased costs associated with fractionated heirship lands.
12. Tribal governments and landowners must be encouraged to exercise their self-determination-rights. This can be facilitated through the creation of tribal zoning ordinances and land use plans, which provide long-term direction for local programming, and reflect Tribal and landowner goals.
13. Inventories of Indian resources, which have been ongoing for several decades, must be finally completed to provide for meaningful Tribal planning and program implementation.
14. The Geographical Information System should be expanded and include provisions for direct access by Tribal governing bodies, or their staff, to facilitate management decision making.
15. Agricultural Extension Agents must be re-established at the agency or reservation level. The existing Memorandum of Understanding between the Bureau of Indian Affairs and the Cooperative Extension Service must be re-implemented to provide technical assistance and training in agricultural practices, financing, record keeping, farm and ranch management, and to facilitate 4-H, FFA, and other youth oriented activities.

16. Since the private sector has not met the credit needs of Indian agricultural enterprises, the Federal government must strengthen its credit program to meet these needs.
17. The Bureau's credit program should be redesigned to recognize the high-risk nature inherent in its role as a lender of last resort. The entire credit system must be standardized and streamlined, with approval authorities at the local level, to eliminate the existing long delays in approval actions.
18. Financial specialists should be hired at the local level to provide assistance and training in all aspects of financial management to individual Indian clients.
19. A specific agriculture title should be established by Congress in the Indian Finance Act to provide direct loans to individuals and assist tribes in acquiring lands in danger of foreclosure.
20. Bureau loans to Tribal relending programs should be consolidated or restructured to provide uniform interest rates throughout the country. These new rates should provide for relending at a rate which provides a reasonable prospect of success to the Indian landowner or lessee.
21. A consistent policy must be established in the administration of the Bureau Grant Program.
22. Loan officers of the FmHA, who service reservations, should maintain an on-reservation office, and be present on the reservation periodically, proportionate to the percentage of Indian clients they serve.
23. FmHA clients who are currently overfinanced should be assigned to the Bureau at either the fair market value or capitalization rate.
24. The Direct Loan Program of the FmHA should not be discontinued.

25. The Bureau and the FmIIA should cooperate to identify mortgaged Indian land in danger of foreclosure, and restructure these loans where feasible. Special funding should be available to the Tribes to purchase foreclosed lands where restructuring is not possible.
26. Trust land which is foreclosed by FmHA should be offered to the tribes or other Indian people prior to obtaining a patent in fee.
27. The Bureau should establish a program to take the place of the FmHA land acquisition program which is being phased out.
28. A public information and public relations effort should be undertaken by both the Bureau and the FmHA to inform Indian people and commercial lenders of the various programs available and how they are administered.
29. Market research and other assistance should be provided to assist in the orderly commercialization of Alaskan Native Agriculture Enterprises.
30. Commercialization of the Alaskan Natives reindeer herds can be accomplished if USDA meat inspection policies are interpreted to reflect the necessities of reindeer slaughter in Alaska.
31. Alaskan Natives engaged in reindeer herding and other agricultural pursuits should be fully informed on available Bureau credit programs through a public information campaign and local contact by the BIA Superintendents.
32. The USDA and USDI should cooperate in a review of existing policies and authorities regarding USDA committees, and recommend changes necessary to promote Indian involvement on local boards.

## iL—Introduction

### A. **Background**

Cultivation of agricultural produce has long been an important aspect of the culture of Native Americans. Archaeological evidence and tribal histories reveal that many different Indian Nations across this country were engaged in cultivation of agricultural crops long before the first contact with European immigrants. The Pueblos of the southwest constructed and utilized irrigation systems which are sophisticated even by modern standards. Evidence associated with the history of trade routes and archaeological finds indicate that these ancient irrigation projects supplied food stuffs over 1,000 years ago to tribes as far away as the Pacific coast. Similar evidence reveals that the Ohio River Valley was highly cultivated and produced corn, beans, various squashes, and tobacco in the year 500 A.D.

In tribute to the agriculture prowess of the Native Americans, reports from several early European colonies indicate that their survival was possible only through the training and assistance in agricultural techniques provided by the resident natives.

The major National holiday of Thanksgiving Day originated with the celebration of the survival of the Pilgrims of Massachusetts Bay Colony. The Pilgrims were taught to grow and eat corn by Squanto, and celebrated the first Thanksgiving Day feast in November of 1621. Massasoit and 90 members of his tribe brought deer and other food stuffs to supplement the grapes and corn of the colony in its first harvest feast. Both Squanto and Massasoit were chieftains of the Wampanoag tribe. By teaching agriculture to the pilgrims, they are credited in the early records of this colony with the responsibility for its survival.

**B. — Historical Basis for Reservation Agriculture Programs**

From the beginning of the Reservation era, commitment to the agricultural development of the Indian people has played a major role in the negotiation and ratification of treaties. Indian Nations and tribes ceded vast areas of land to the Federal Government in return for certain services and obligations. The services offered by the Federal Government through its negotiators included the development of Indian farms and ranches to stabilize the new Indian "Homelands" and provide employment and sustenance to its occupants. This is portrayed as a primary benefit to accrue to the Indian people in return for lands, and a requirement for the "culturalization and civilization" promoted throughout the negotiating testimony and subsequent treaties..

The official record of the Council of the Wallawalla Valley, which was held between the representatives of the United States and representatives of many of the interior northwest Tribes, includes the full testimony of many days of negotiations. The council was held as the basis for agreement on the 1855 Treaty with the Yakimas, and the 1855 Treaty with the Wallawalla, Cayuse, etc. Early in this negotiation process Governor Stevens, representing the United States, described the benefits of entering into the proposed treaty by using the Oklahoma territory as an example:

*"They gave John Ross (Cherokee Chief) and his people a tract of land into which no white man could go without their consent; they sent them an agent, they had schools, they had mills, they had shops, they had teachers, they had farmers,, they had doctors.*

*"...the Great Father said, the white man has his farm, his cattle and his horses; the red man shall have his farm his cattle and his horses.*

*"This brings us now to the question. What shall we do at this council? We want you and ourselves to agree upon tracts of land where you will live; in those tracts of land we want each man who will work to have his own land,*

*his own horses, his own cattle, and his own home for **himself and** his children."*

Several days later in the negotiation process, Governor Stevens described the tracts of land which had been selected for the reservations, and gave the rationale behind the selection:

*"I will give briefly the reason for selecting these two Reservations. We think they are large enough to furnish each man and each family with a farm, and grazing for all your animals."*

Following these negotiations, the actual treaties contained specific language concerning the desire to develop agriculture enterprises among the Indians. The Treaty with the Waliawalla, Cayuse, etc., 1855 states:

*"Article 3: In addition to the articles advanced the Indians at the time of signing this treaty, the United States agree to expend the sum of fifty thousand dollars during the first and second years after its ratification, for the erection of buildings on the reservation, fencing and opening farms, for the purchase of teams, farming implements, clothing, and provisions, for medicines and tools, for the payment of employees, and for subsisting the Indians the first year after their removal.*

*Article 4 : The United States further engage to secure and pay for the services and subsistence, for the term of twenty years, [of] one superintendent of farming operations, one farmer, one blacksmith, one wagon and plough maker, one carpenter and joiner, one physician, and two school teachers."*

The 1855 Treaty with the Blackfeet, developed by a different set of negotiators, contains similar provisions:

*"Article 10. The United States further agree to expend annually, for the benefit of the aforesaid tribes of the Blackfeet Nation, a sum not exceeding fifteen thousand dollars annually, for ten years, in establishing and instructing them in agricultural and mechanical pursuits,*

*and in educating their children, and in any other respect promoting their civilization and Christianization."*

These same provisions are prominent in the several treaties arising from the Fort Laramie council with the Plains Indians in 1868. The treaty with the *Crows* states:

*"Article 8. When the head of a family or lodge shall have selected lands and received his certificate as above directed, and the agent shall be satisfied\_ that he intends in good faith to commence cultivating the soil for a living, he shall be entitled to receive seed and agriculture implements for the year in value one hundred dollars, and for each succeeding year he shall continue to farm, for a period of three years more, he shall be entitled to receive seed and implements as aforesaid in value twenty-five dollars per annum.*

*And it is further stipulated that **such** persons as commence farming shall receive instructions from the farmer herein provided for, and whenever more than one hundred persons shall enter upon the cultivation of the soil, a second blacksmith shall be provided, with such iron, steel, and other material as may be required."*

Language similar to the wording in the Crow treaty occurs in treaties throughout the nation, extending all the way to the Navajo Treaty, which has identical language.

Later, when the original reservations were being diminished, the purpose of the reservations and justification for reducing the land bases were clearly defined. In the Treaty of October 17, 1885, ratified by Act of Congress on May 1, 1888 (25Stat. 113), the original Blackfeet Reservation *was* broken up into smaller reservations. The act states, in part:

*"Whereas the reservation set apart by Act of Congress approved April fifteenth, eighteen hundred sixty four for the use and occupancy of the tiros Ventre, Piegan, Blood, Blackfeet, River Crow, and such other Indians as the President might from time to time, see fit to locate thereon, is wholly out of proportion to the number of Indians occupying the same, and greatly in excess of their*

*present or prospective wants; and whereas the said Indians are desirous of disposing of so much thereof as they do not require, in order to obtain the means to enable them to become self supporting, as a pastoral and agricultural people, and to educate their children in the paths of civilization: therefore to carryout such purpose it is hereby agreed as follows:..."*

The judiciary has upheld the intent of the above excerpts from various treaties. For example, in the landmark Indian water rights case, the Supreme court upheld a lower court ruling that the primary purpose of the reservations, based on Treaty, was as a permanent Indian homeland, and that the United States had reserved **such** waters and other attributes as. may be reasonably necessary to enable the Indians to succeed at agricultural undertakings. This is referred to as the Winters' Doctrine (Winters vs. United States, 143 Fed. 740, 74 c.c.a. 666 and 148 Fed 684, 78 C.C.A. 546).

### C. Current Status of Indian Agriculture

Indian cultures continue to reflect the importance of agriculture in the daily and spiritual lives of the descendents of America's earliest farmers. In Indian country today, agriculture plays a major role in the social, cultural, and economic well-being of the Indian communities.

As was true a thousand years ago, Indian agriculture varies greatly from one region to another, and currently parallels off-reservation agriculture in kind, if not in scale. Ancient and traditional agricultural pursuits are practiced throughout Indian Country, as is illustrated by the continued hand-harvesting of wild rice crops by the Great Lakes Indians, the gathering of berries and root crops by the Northern tier and Alaskan Natives, and the subsistence farming practiced throughout the country.

Modern commercial agriculture is also common throughout Indian country, Examples of private commercial Indian agricultural enterprises include livestock and dryland farming of small grains in the Northern Great Plains; intense production of high value table crops under irrigation in the southwest;

fruit, nut, vegetable, hop, and small grain production under both irrigation and dryland conditions in the Pacific Northwest; and cattle and citrus fruit production in the Southeast. Tribal governments are involved in a wide array of agri-business pursuits, such as meat packing plants, hydroponic greenhouses, nut orchards, tribally-owned farms and ranches such as the Arapahoe Ranch on the Wind River Reservation, and the leasing of millions of acres of tribally owned lands to individual farmers and ranchers for agricultural use.

The 54.4 million acres of Indian homelands remaining in the contiguous United States contain nearly 47 million acres of agricultural lands used for the production of crops, livestock, or both. In 1984, agricultural products grown on Indian lands were valued at \$548.6 million annually. For comparison, commercial forests occupy 5.8 million acres of Indian lands and generate stumpage values of \$61.5 million, and mineral income totals \$230.7 million from all sources; including oil, gas, coal, and minerals.

Farming and ranching provides the primary source of entrepreneurial opportunity to the Indian people, with 33,572 individual and tribal agricultural enterprises.

Although farming and ranching have been major contributors to the economic and social welfare of Indian communities for centuries, recent years have seen a shift in priorities away from this mainstay of Indian economic growth. With the implementation of self-determination and the Indian Priority System for budget distribution, tribes have allocated scarce economic resources to high profile, less traditional means: of achieving community welfare and economic development goals. Responding to this shift in priorities, the Bureau of Indian Affairs has decreased its support and emphasis on agriculture as an option for self-determination and self-sufficiency in Indian Country.

The result on both individual Indian farmers and ranchers, and on Tribal enterprises, has been a steady decline in services, profitability, and survivorship in the competitive agriculture business community. With a continued deprioritization of agriculture as a viable means of achieving economic development on Indian Reservations the noticeable decline in

this primary Indian industry has accelerated. In 1983, 38 percent of the Indian-owned farmlands were actually farmed by Indians. Just 2 years later in 1985 that percentage had decreased to 35 percent. The same trend is occurring in the Indian livestock industry. In 1983, Indians used 95 percent of the grazing lands on reservations, but by 1985 this figure had also decreased to only 85 percent. For both farming and ranching, Indian land use fell off a full 10 percent in those 2 years alone.

The impact of this decline has also been enormous on the primary source of economic well being of the trust landowners. In calendar year 1985 a reported 1,661,524 acres of trust agricultural lands were vacant, producing no income for the owners. The idle acreage jumped to 2,350,502 in 1986, an increase of 41.5 percent in just one year. According to the Deputy to the Assistant Secretary - Indian Affairs (Trust and Economic Development), in a memorandum to the Assistant Secretary: "As a result of idle land and declining incomes from agricultural leasing/permitting, many tribes can barely cover the basic cost of tribal government." Because these lands are owned by both individuals and Tribes, income losses to allottees or their heirs **have** also been devastating on the depressed reservation economies and increase dependency on other Federal and State programs.

With the decline in Indian agricultural operations another alarming specter looms on the horizon, this in the form of decreasing reservation land bases caused by the foreclosure on individual Indian farmers and ranchers. The March 1987 GAO report: "Farmers Home Administration, Information on Agricultural Credit Provided to Indians on 14 Reservations" reports an estimated 145,450 acres already lost, or in danger of foreclosure by the USDA on 11 reservations in Montana and the Dakotas alone. When the individual farmer or rancher loses his or her land through foreclosure, the land passes out of trust status and the Indian Homeland is decreased. Bankruptcy among Indian farmers and ranchers, therefore, reverberates throughout the Indian community, presenting a serious threat to reservation economies and the trust land base, and swelling already overloaded public assistance rolls.

Although all aspects of the National Agriculture Economy are impacted by such problems as poor markets, falling land values, and pest infestations; the on-reservation Indian farming and ranching community may be impacted much more severely due to the differences °between Indian and non-Indian operations. The multiple heirship status of a majority of the allotted land, and legal barriers preventing sale of tribally-owned lands, result in Indian farmers and ranchers who do not own and cannot acquire the majority of the land from which they produce their crops. Consequently, the majority of land cropped by Indians engaged in commercial agriculture is leased for 5 years or less under existing , Bureau regulations and does not contribute to the ability of operators to obtain financing, stability, or long term capital returns.

Additional barriers which are unique to Native American and Alaskan Native agricultural enterprises include: cultural and economic isolation from the surrounding economy, no tradition of profit motives, profitability may not be a priority with tribal governments, profits are not retained on reservation, reservations do not share in the redistribution of wealth of surrounding communities, there is dependency on Federal monies and Federal regulation, there are jurisdictional uncertainties in legal and contract matters, and reservations are remote from markets with traditionally poor transportation facilities.

#### **1.—Public Law 99-190**

In recognition of the important role agriculture plays in the Indian community, and in response to requests from Tribal leaders, Congress passed Public Law 99-190 with Amendment #1404 in December 1985. This amendment provided an appropriation of \$6,000,000 for the purchase of hay and its transportation in Montana, North Dakota and South Dakota to mitigate national disaster drought impacts on Indian Reservations. The act directed the Secretary of the Interior to submit a Rep<sup>or</sup>t to Congress by September 1, 1986, on the use of the appropriation, and the effectiveness of the carrying out of the roles of the Federal and Tribal governments in agriculture and ranching throughout the United States,

In response to the Congressional mandate contained in that legislation, livestock feed was provided to drought impacted

reservations, and a report was drafted on each reservation participating in the Emergency Hay Program. These reservation reports were consolidated by a team of Bureau resource professionals and sent to all affected tribes and interested parties for review. The reports were commented on at Public Hearings held in Billings, Montana, on July 10, 1986, and Aberdeen, South Dakota, on **July** 11, 1986. These Public Hearings were attended by 176 participants of which 84 gave oral or written testimony. This testimony then served as the basis for the Report to Congress which incorporates tribal and individual viewpoints to most accurately reflect the state of Agriculture in Indian Country.

The final Report to Congress on B.I.A. Agriculture - Range Programs was submitted in September 1986. This report described the decline in Indian Agriculture and contained nine specific recommendations for improving conditions on Indian reservations and resolving problems with Indian agriculture. These action items are:

1. Establish a Commission similar to the Intertribal Timber Council on a National/Regional level for Agriculture/Range.
2. Establish a schedule to continue the public hearing process on a regional basis to obtain testimony from other Tribes concerning improving the effectiveness of the Federal and Tribal role in Indian agriculture.
3. Review and recommend actions to improve the availability of cost effective long-term financing for the Indian agriculture community.
4. Review the Bureau's mission and goals relative to encouraging tribal participation in the management of reservation lands, including enforcement services on leased and permitted lands.
5. Identify requirements and needs for the Bureau's agriculture program and provide funding for seed money and/or cost share assistance for agriculture resources development and Indian range and farm management improvement projects.

6. Include an agriculture extension service activity in the Bureau's agriculture program budget to improve and enhance Indian agricultural education programs for the needs of the Indian people through cooperative agreements with the Department of Agriculture and land grant universities.

Set aside a percentage of the Bureau scholarship fund for Indian students to complete degrees in the renewable natural resources. sciences

8. Modify Department of Agriculture programs and procedures at the county or local level to enhance Indian Agricultural producer involvement in agriculture programs administered' by the Soil Conservation Service (SCS), Agricultural Stabilization and Conservation Service (ASCS), and the Cooperative Extension Service (CES).
9. Review the Agriculture/Range programs and projects to encourage cost sharing with trust land owners, individual land users and other Federal, State and local agencies.

In order to effect these recommended actions, an implementation plan was created by the Assistant Secretary - Indian Affairs which contained three specific actions. Under this plan, Area Offices were assigned the task of conducting Public Hearings on agriculture throughout Indian country and negotiating cooperative agreements with State Extension Service Offices. Central Office staff were assigned the task of implementing the recommended scholarship program. The National Indian Agriculture Working Group was formed to accomplish the remaining six items.

### **III. The National Indian Agriculture Working Group**

#### **A. Purpose**

The National Indian Agriculture Working Group (NIAWG) was established by the Assistant Secretary - Indian Affairs under the guidelines of the Wheeler Howard Act (73-382, 25 USC 476) to enhance economic development opportunities through Indian Agriculture. The stated goals of this organization are:

1. To further Tribal objectives,
2. Enhance Indian agricultural opportunities,
3. Increase the visibility and importance of Indian agriculture,
4. Promote the long term productivity of Indian lands, and
5. Promote Tribal involvement in the management of agricultural resources.

#### **B. Structure**

There are 12 tribal positions on the NIAWG, with one representative from each of the 12 Bureau areas. Individuals were nominated by the respective Bureau Area Directors and selected by the Assistant Secretary - Indian Affairs to serve on this working group. Selections were based on a combination of factors with the objective of obtaining diverse representation from within the Indian agriculture community. As a result there are three Tribal Chairmen, three tribal program directors, four Indian farmer/ranchers, one tribal representative to the Intertribal Timber Council, and one President of an Intertribal organization. Most of these individuals hold more than one position. For example, two of the Tribal Chairmen also are cattle ranchers, two of the farmers/ranchers have previously served on Tribal Councils, and three of the members have also served in other Federal, State, or local political offices related to agriculture.

In addition to the Indian members, there are six Bureau members on the Working Group. All Bureau members had to be knowledgeable on land issues and serve in a decision making capacity at different levels within the Bureau structure. One Central Office Division Chief, one Area Office Line Officer,

one Agency Line Officer, One Area Natural Resources Officer, and two Agency Land Operations Officers, one with a soils (crop) background and one with a range (livestock) background were appointed.

Technical assistance was provided through the establishment of a Technical Services Pool comprised of individuals both inside and out of the Bureau who have expertise in various areas beneficial to the Working Group.

### G. Assignments

The five committee assignments accepted by the Working Group and covered in this report are:

1. Review the Bureau's mission and goals for trust land management and Indian self-determination relative to trust responsibilities for multiple use, sustained yield and maximizing income from lands.
2. Review Bureau programs and regulations to encourage cost sharing and flexibility in lease and permit administration.
3. Review and recommend action to improve the availability of long and short-term financing at reasonable rates and terms to Indian and Alaskan Native operators to assure them a reasonable prospect of success.
4. Identify requirements and needs for the Bureau's programs concerning agriculture resources development and Indian range and farm management projects.
5. In a cooperative effort with USDA, review existing programs, identify opportunities, and recommend alternatives to enhance and achieve Indian participation in USDA programs.

The sixth assignment, to aid in the establishment of an Intertribal Agriculture Council to represent Indian and Alaskan Native concerns, is ongoing. This council will provide the

leadership and Tribal support necessary to ensure the accomplishment of the recommendations of this Working Group as listed in this report.

#### D. — Methods

To facilitate accomplishment of its tasks, the working group divided into five committees, each of which was assigned one of the five tasks listed under Section III C, assignments. Working group members volunteered for various committee assignments depending on their areas of interest and experience, and committee chairmen were elected from within the committee's membership. Specific tasks and findings were developed by the individual committees and presented to the full working group for discussion and modification. Significantly more time was actually spent in committee work than at the four formal working group meetings.

In reviewing the assignments, defining problems, and making recommendations, the experiences and opinions of the Indian people themselves were given primary attention, both through the Public Hearing testimony and through various contacts with individuals and groups throughout Indian Country. In addition, pertinent material was reviewed for background and information on the assignments, including previous reports on the same or related subjects, and is contained in the Bibliography.

Given the great potential which exists on the remaining Indian Homelands, the National Indian Agriculture Working Group developed and recommends specific actions to address the unique problems and conditions which were identified. These recommended actions have been designed to fulfill existing potential by enhancing opportunities available to Native American and Alaskan Native agricultural enterprises.

To date, the private, sector has been unable or unwilling to meet the needs of Indian agriculture. As a result, it is the intent of the Working Group to modify the delivery and nature of Federal agriculture programs and services in a way that supports Tribal goals and objectives. This refocusing of Federal programs and services is essential in creating conditions which will allow Native American and Alaskan Native agricultural enterprises to help themselves overcome the unique obstacles they face so as to become economically viable and self-sufficient entities.

#### **IV. Findings and Recommendations.**

The following are the findings and recommendations as they relate to the five tasks described in part III C. The findings contained in this section are coupled with specific recommended actions which can be achieved through unilateral action by either the Department of the Interior, the Congress, or other Federal Agencies to create improved conditions for Native American and Alaskan Native agricultural enterprises.

The findings and recommendations contained in this section focus on the needs of the Indian people and, therefore, may be in conflict with the current policies of the Bureau. Due to the nature of the assignments, comments are limited generally to the Federal role in Indian Country.

##### **A. Mission, Objectives and Policy**

The primary objective of the Bureau, as evidenced by past activity, has been the protection of trust land, not the promotion of full resource development or the provision of assistance to operators necessary to promote economic self sufficiency. As a result, Bureau agricultural programs are not currently designed to increase and sustain the productivity of Indian natural resources in ways that are beneficial to Indian People.

The requirement of maximizing landowner income consistent with sustained yield principals, which has been imposed primarily in "legal" interpretations by the Inspectors General's Office and the Government Accounting Office, is in direct conflict with the stated objectives of developing and stabilizing reservation economies and promoting Indian use of Indian resources. This so called Trust responsibility function is also a direct barrier to the stated purposes of the Indian Self-Determination Act.

The mission statements and objectives contained in the several documents reviewed are adequate. They contain language which directs the Bureau to promote sustained yield, maximize income from trust lands, and involve trust landowners in the management of their lands. However, these

various statements are not uniformly applied throughout the several administrative levels of the Bureau. In addition, there are no goals for the Bureau's objectives as they relate to agriculture and no long range agriculture programs exist to accomplish the objectives.

Recommendation:

To achieve uniformity throughout the Bureau of Indian affairs, and to clearly define the role of the Bureau in Indian Agriculture, it is recommended that the following Mission, Objectives, and Policy Statement be formally adopted by the Secretary of the Interior. Following adoption, it is recommended that copies of the statement be provided to all tribes, Alaska Native Associations, Bureau offices, the Congress, and other Federal agencies involved in agricultural activities in Indian Country. It is also recommended that by use of Management By Objectives, Task Orders, or other management tools, the **Bureau**, along with the Tribes, develop goals and plans which ensure that the objectives for agriculture are accomplished.

**MISSION**

The Bureau of Indian Affairs is to act as Principal Agent of the United States in carrying out the government to government relationship that exists between the United States and Federally recognized Indian Tribes and Alaskan Natives; and to act as principal agent for the United States in carrying out the responsibilities of the United States as trustee for property it holds in trust for Federally recognized Tribes, Alaskan Natives and individual Indians.

**OBJECTIVES**

To conserve, restore, improve and enhance the agronomic and range resources on trust and restricted lands; preserve the land in a perpetually productive state to ensure continuous production; develop the renewable resources to provide subsistence, income and employment to Indians and Alaskan natives; to utilize proper watershed management techniques to control

water runoff and minimize soil erosion; preserve and develop other associated values such as wildlife and recreation; provide technical assistance training and education to Indian farmers and ranchers; provide program coordination with all Federal, State, and local programs; and assist trust and restricted landowners in leasing their farmland and rangeland for the highest economic return, consistent with prudent management and conservation practices.

#### POLICY

To inventory all land, water and forage resources; to determine their condition in order to guide the utilization, treatment and development of Indian resources to ensure sustained yield production on farm and rangelands; to reduce flood threat and to safeguard land from overflow, sedimentation, and non-point pollution; to develop available irrigation water and to maintain underground water supplies; to develop and to maintain all cultural, recreational, fish, wildlife, and other land uses in accordance with the potential of the land; to promote the use of Indian resources by Indian people; to make trust landowners full partners with the trustee in making decisions regarding utilization and administration of their lands; to provide coordinated educational programs to assist Indians and Alaskan Natives to assume their responsibility and opportunities in the conservation, use development, and management of their land and related resources; to protect crops, livestock and range resources against rodents, predators, insects and plant invasions which could result in economic loss or decrease in their productivity, and conduct these programs within the intent and spirit of the Indian Self-Determination Act (PL-93-638).

## **B. Lease and Permit Regulations**

Leasing and Grazing regulations contained: in 25 CFR 162 and 166, respectively, were written several decades ago to provide income to individual Indian allottees who were not using their own land by leasing to non-Indians. These rules and regulations provide for the protection of the individual trust landowners from risk associated with the leasing of the land, and set a minimum term of time to provide the owners an opportunity to assume the use of their lands at regular and short intervals. Many parts of these regulations do not reflect the current Indian use of these lands, the undivided heirship status of the allotted lands, or the reality that the majority of Indian landowners will never acquire the majority ownership necessary to use their lands directly.

•To correct these deficiencies, regulations should be modified to reflect 1) Indian use of Indian resources; 2) the long-term benefits (in addition to immediate income) that accrue to Indian landowners from the Indian use of these lands, and 3) the contribution of these lands to the overall reservation economies.

Consistent with this recommendation, the Bureau's Leasing and Permitting programs should reflect the following objectives:

1. Secure a reasonable annual return to the landowners.
2. Promote the use of Indian resources by Indians, to enable them to earn a reasonable standard of living, in whole or in part, through agricultural pursuits.
3. Ensure that the land is in a suitable condition to lease based on current land use, and that such land is protected against deterioration when leased or permitted.
4. Advise landowners of the land's capability, proper use, and new technology and programs available to maintain and improve the land.

Consideration should be given to combining the Leasing Regulations contained in 25 CFR 162 and the Grazing Regulations contained in 25 CFR 166 into a single section to ensure uniformity in the treatment of Indian people, Indian lands and land users. Time was not available to develop the detailed procedure for accomplishing this. Therefore, the recommendations only address the Leasing Regulations in 25 CFR 162. Due to the similar nature of these two sections, however, the recommendations for leasing can be applied to the permitting section and could be used to guide the consolidation process.

#### 1. **Fractionated Ownership/Owners Consent**

Owners of undivided heirship lands usually lack the majority control necessary to use these lands directly, therefore, they are primarily leased to provide income. In some cases, undivided heirship lands sit idle and become infested with weeds or other pests because the large number of landowners are unable to agree on or directly negotiate a lease, and the Bureau lacks specific authority to negotiate or lease on their behalf. Indian agriculture producers must lease the majority of their land holdings from the Tribe or the owners of these undivided heirship tracts.

- The lack of a clear-cut authority to negotiate and make commitments to the lessee, on behalf of the landowner, is a major obstacle to the continuity and stability of Indian agriculture producers. In some instances, this lack of authority has resulted in delays of several years, both in providing a land base to Indian farmers and ranchers, and in providing income to the landowners.

#### Recommendation

The current regulations (sections 25 CFR 162.1, 162.2, 162.3 and 162.4) should be changed to provide authority to directly lease undivided interest lands without the 90-day acceptance of lessor process, when no single owner can legally claim owners-use or directly negotiate a lease. This will require the following changes:

Add in 25 CFR162.1,. "Definitions:"

162.1 (f) *Majority: Interest means a number greater than one half of a total, • or 50% ownership shares, plus one, will have the power to make decisions binding upon the whole.*

Add in 25 CFR162.2, "Grants of leases by Secretary:"

(a)(4) The heirs or devisees to individually owned land, *when no single individual owns a majority interest in the land...*

Change current section 25 CFR 162.3, "Grants of leases by owners or their representatives": to agree with the above language:

...the follow.ng may grant leases where **they are sole owner or hold a majority interest in the land:...**;

**Change** section 25 CFR 162.4 to agree with the above as follows:

The natural parents or legal guardian...may use the *solely* individually owned land of such children...

## 2. Appraised rates

Indian lands are consistently leased at the appraised market rate determined by Bureau real estate appraisers, even though these same appraisers adamantly state that their appraised values are only one tool in the determination of "fair annual rental." Under current Bureau mandates, this "fair annual rental" is established to maximize income to the landowners. Rates paid by the majority of Indian farmers and ranchers are therefore established to support the Tribes and landowners, not to provide a realistic opportunity of agricultural success or enhance the reservation economy. The adherence to the existing appraised rates has been embraced by Bureau officials as the only legally defensible rate, and to avoid negative Inspector General reports.

- The unswerving application of the appraised market rental rates has frequently resulted in the complete loss of income to Indian landowners when their land sits unleased due to the lack of flexibility in determining rental rates. Additional landowner losses accrue when idle farmlands become infested with weeds, reducing their productivity and the possibility of obtaining a lessee.

### Recommendation

To provide flexibility in the establishment of minimum rental rates, and to provide a means to lease lands which **have** not been leased at previously establish rates, change current terminology "present fair annual rental" interpreted as "appraised rate" to "reasonable annual return" where it occurs:

Change 25 CFR 162.5(b) to read:

*...no lease shall be approved at less than a reasonable annual return.*

Change 25 CFR 162.5 (b)(1), to read:

*...leases may be granted or approved by the Secretary at less than a reasonable annual return, when in his judgement such action would be in the best interest of the landowner, and in such instances where the Bureau has satisfactorily advertised for lease, the highest reasonable bid shall be accepted.*

### **3. Bonding**

- Rigid surety bonding requirements for agricultural leases and permits preclude many Indian farmers and ranchers from obtaining or expanding lease holdings necessary to develop an economic operation. Insurance companies have discontinued or dramatically decreased the issuance of surety bonds, with the result that Indian agricultural producers cannot obtain approved leases from the Bureau. Traditionally undercapitalized Indian agriculture operations have not generally supported the cash-flow or net worth necessary to

qualify for these bonds, and in recent years, the premiums charged for some surety bonds actually exceed the rental value of the lease.

**Recommendation**

To alleviate the restrictions placed on Indian agriculture users, the bonding requirement for agricultural leases should be discretionary at the local Superintendent's level.

Change 25 CFR 162.5(c) to read:

Unless otherwise provided for by the Secretary *and except for agriculture leases as provided for in Part 4 below*, a satisfactory surety bond....

And add:

*25 CFR162.5(c)(1), A performance bond satisfactory to the Superintendent may be required for agriculture leases in an amount that will reasonably assure performance of the contractual obligations.*

**4. Tenure period of leases and permits**

Existing Bureau, and in some cases tribal, regulations which limit lease and permit tenure terms to 5 years with no right for renewal are a major obstacle to stability in the Indian agricultural community and prevent operator involvement in many USDA programs. These short duration leases do not provide sufficient tenure for the commercial credit community, and contribute to the generally under-capitalized condition of Indian agricultural operations.

°Current regulations prevent the provision of current lessee preference in granting leases on Indian lands, which greatly reduces stability among Indian operators.

Recommendation

Add a provision to renew expiring leases while protecting the interests of the land owner in those cases where the Superintendent is satisfied with the lessee's performance. Add the following part in 25 CFR 162.5:

*162.5(e)(1), Agricultural leases issued to responsible operators may be renewed by the superintendent where he has authority to grant leases under 162.2 and subject to the requirements of 162.5(b), when in his opinion it is to the benefit of the landowner.*

- Current regulations also prevent the provision of Indian preference in granting leases on Indian lands.

Recommendation

Add an Indian preference right in leasing while protecting the interests of the landowner by making the following changes:

In 25 CFR162.7, "Advertisement," delete:

*...and will not offer preference rights.*

And add new sections as follows:

*162.7(a), Agricultural land will be advertised for Indian use subject to 162.5(b).*

*162.7(b), Agricultural land surplus to the needs of the Indian Community will be advertised for competitive bidding to the general public.*

- The required maximum 5 year term of most agricultural leases prevent the lessee or lessor from using and benefiting from various longer term USDA programs, and contributes to a lack of commercial credit in Indian agricultural operations.

Recommendation

In order to facilitate access to the programs and improve credit conditions; extend the normal lease term to 10 years by changing 25 CFR 162.8(c) to read:

*...farming or grazing leases not granted for the purpose of growing specialized crops shall not exceed 10 years.*

then delete part (d) of the existing section.

**5. Protection of leased lands**

Given that the Bureau's primary objective has been the protection of trust land the proper role of the land user as a manager of trust land has been ignored.

- Although the Secretary is responsible to protect the leased land from abuse, there currently is no regulatory provision to address a lease violation which creates an imminent danger to the land, crops, or general public.

Recommendation

In 25 CFR 162.14, "Violation of Leases," insert a new paragraph as follows:

*When the Secretary has determined that a violation is occurring that is destroying a resource or is creating an imminent danger to the land, livestock or to the general public, the lessee shall immediately upon notification cease such action creating the violation, and the lease may be subject to immediate cancellation and appropriate damages without further notice.*

### C. Bureau Program Requirements

The last several decades have seen a decline in the productivity of Indian natural resources in some areas. Symptoms of this decline may include: the infestation of farm and rangeland with problem weeds and insects; declining agricultural production; increased soil erosion; and declining quantity and quality of surface and groundwater on Indian lands. This decline in productivity has decreased the ability of their natural resources to provide employment and revenues to the Native Americans and Alaskan Native Peoples. Unfortunately, the Bureau's Agriculture program is largely regulatory in nature, providing leasing, permitting, and protection services to trust landowners. (See also Appendix 1-Irrigation)

- There are no Bureau regulations or directives in the Agriculture program to provide direct services to individual farmers or ranchers.

#### Recommendation

The Bureau should establish the following goals for its agriculture programs:

By the year 1990, all of the Bureau of Indian Affairs' agricultural programs will be designed to enhance and sustain the productivity of Indian natural resources and provide for co-management of Indian resources by the Indian people, Tribal governments, and the Federal trustee. In accomplishing this goal, innovative approaches to farm, range, wildlife and water resource management will be investigated, encouraged and applied by the Bureau, and in fulfillment of the Federal Government's trust obligations, the Federal Government will ensure that adequate funding and staffing levels are provided to implement innovative, profitable and sustainable agricultural programs on Indian lands.

## 1. **Funding/Staffing/Budget**

•Bureau agriculture program funding and staffing levels do not allow the degree of management required for the Bureau to: 1) perform its trust responsibility; 2) fulfill the requirements of its government-to-government relationship with the tribes; 3) promote self-determination; or 4) meet complex management needs resulting from the number and diversity of client Indian land owners and land users. In addition, tribes are not willing to exercise self-determination in the agriculture and related programs though the PL93-638 contracting process because they recognize that these programs cannot be successful at current funding levels.

### Recommendation

To correct this deficiency it is recommended that the Bureau initiate a study to compare its funding and staffing levels with those of other land-managing Federal agencies. Comparisons could be on a per acre basis for like resources and management constraints. This report should be used as the basis for designing a realistic core program for the management and development of trust resources. Care must be taken, however, in directly correlating Bureau funding levels to the funding levels of other natural resource management agencies. This is because the Bureau's additional roles of executing the Federal Government's trust responsibility and meeting the needs of government-to-government relationships while managing allotted and undivided heirship lands result in an increased cost.

## 2. **Indian Priority System of Budget Allocation**

•Although the Indian Priority System (IPS) of budgetary allocation has merit for prioritizing general needs of Indian people, this method of allocating funds may not be totally appropriate for maintaining programs dealing with trust functions. It is particularly inappropriate at multi-tribal agencies. In addition, where needs differ, there exist inequities of allocation of Bureau natural resource budgets between tribes, which has the effect of abridging the Federal trust responsibility to Indian landowners.

### Recommendation

In order to ensure that adequate funding is available to meet trust obligations, it is recommended that the Bureau and the Tribes review alternatives for prioritizing and funding Agriculture and related programs.

### 3. Program Direction and emphasis

•All future Bureau agricultural programs must be designed to increase and sustain the productivity of Indian natural resources in ways that are beneficial to Indian people. The accomplishment of these goals can be achieved by implementation of the following actions:

### Recommendation

Establish a policy encouraging tribes and individual Indian landowners to become active partners with the BIA in the management of their natural resources. As a first step, the Federal Government must encourage and provide necessary technical assistance, funding and staffing to the tribes and agencies, to develop and implement reservation-wide zoning ordinances and resource management plans which reflect tribal goals and the needs of the local Indian community for their respective reservations or land holdings.

Accomplishment of this goal will be facilitated if the BIA and tribes develop and utilize Geographic Information Systems (GIS) based on sound natural resource data. To provide the necessary support for this endeavor it is recommended that the Bureau continue to prioritize and fund the nationwide implementation of GIS for natural resource planning, and provide direct and technical assistance to enable tribal governments to use this technology in daily management decision making.

- Base data, including inventories of existing resources, have not been completed on substantial acreage of Indian lands. This lack of data precludes meaningful planning and program implementation for the orderly development, rehabilitation and maintenance of trust resources and existing improvements.

### Recommendation

It is recommended that the Bureau Central Office direct the completion of soil and range inventories for all trust lands and establish time frames for completion of needs assessments and funding requirements for trust land rehabilitation and maintenance as determined by the tribes and agencies.

- It is necessary to inform, educate and provide technical assistance to Indian landowners, Tribal staff, and land users for the protection, conservation, development and use of their agricultural and other natural resources. Native American and Alaskan Native operators also need technical assistance in obtaining finances, record keeping, farm and ranch management and other aspects of the agriculture business enterprise.

### Recommendation

A Memorandum of Understanding (MOU) exists between the Department of the Interior and the Department of Agriculture which provides Agricultural Extension Services directly to Indian Reservations. This MOU should be re-implemented. Although this Working Group has been informed that this initiative is already ongoing, the issue is extremely important to Indian people across the country as pointed out in the Public Testimony. Therefore, a special recommendation is included here to re-establish Agricultural Extension as a Bureau program in order to provide assistance to Indian farmers. This program will be for the purpose of: 1) providing training in new farming techniques, such as regenerative and organic farming, laser leveling, no-till and minimum till farming; 2) reviewing and disseminating information on latest research on farming and ranching technology; 3) training Indian agricultural producers to develop and

market their own products and maintain efficient record systems for their operations; and 4) work with local school systems and youth oriented programs, such as 4-H and FFA, to increase awareness of agricultural issues and career opportunities, to facilitate recruitment for the established BIA scholarship program for Native Americans and Alaskan Natives to pursue education and obtain careers in natural resource management.

Current commercial practices in agriculture and land management are contributing, in many instances, to erosion, overgrazing, watershed destruction, and depletion of ground water supplies. Additionally, the traditional low impact agricultural pursuits of Native Americans and Alaska Natives are not addressed in general off-reservation agriculture programs, nor do existing institutions of higher education offer courses in this area.

- It is important that the Bureau not ignore traditional or innovative approaches to Indian agriculture, and must not duplicate the mistakes which are destroying resources and bankrupting farmers and ranchers.

### Recommendation

The Bureau should investigate innovative approaches to resource management and promote those approaches which are found to result in profitable and sustainable management of Indian lands. Alternative methods of managing Indian rangelands (such as holistic resource management principals) should be investigated. Farming methods based on appropriate technologies (such as those promoted by the Rodale Institute in Pennsylvania) should also be investigated. Other investigations to be undertaken should include utilizing Geographic Information Systems as a tool to facilitate resource planning, and investigating alternative methods of marketing Indian goods produced from natural resources.

In conjunction with this effort, the Bureau should conduct regular natural resources seminars and workshops on an annual or more frequent basis. These seminars and workshops should provide training in innovative and

current state of the art practices in land management and agricultural production. Topics for initial seminars and workshops include innovative farming techniques (such as regenerative and organic farming, no-till and other new farming methods) and holistic principles of resource management.

#### D. Financing for Indian Agriculture Endeavors

Indian agricultural operations are profit oriented businesses which require the same **high** capitalization as is needed in the non-Indian sector. Numerous reports of previous task forces have decried the under-capitalization of Indian industries as a major cause of early failure. Without available financing the trend of increased unemployment and welfare assistance will continue; while the owners of the land will not be receiving the benefits from their lands.

##### 1. **Barriers to Indian Credit**

•The majority, of commercial banks do not provide adequate long or short-term credit at rates which meet the needs of individual Indian operators. Constraints and regulations imposed by the various laws and regulations pertaining to the Federal Government's trust responsibility, and the Sovereignty of Tribal Government, result in increased costs to lending institutions, reduced loan security, and increased administrative workloads. The jurisdictional issues associated with foreclosure or collection procedures are, in many instances, not clearly defined. This has the effect of further reducing the confidence of these lenders. Lending institutions are reluctant to make loans to Indian operators because foreclosure procedures may lie with tribal jurisdictions.

Additional barriers to Indian credit applicants result from short duration, no-renewal clause land-use leases and permits, undivided interest landownership patterns, and isolation of Reservation economies; all problems which are treated elsewhere in this report.

#### Recommendation

Given that the private sector has been unable or unwilling to meet the needs of Native Americans and Alaskan Natives agricultural enterprises, the Federal Government should strengthen its credit programs to meet the unmet needs. Significant weaknesses in these programs should be eliminated. Until risk and uncertainty can be lowered to levels which are acceptable to private commercial institutions, reliance

on the Federal Government to meet financial needs should remain. The current push to transfer agricultural financial programs to ' commercial lenders should be discontinued, and all lending agencies, both private and governmental, should attempt to work together to meet the credit needs of the Native American and Alaskan Native operators

## 2. **Bureau of Indian** Affairs Credit Programs.

•There are three main Bureau credit programs which are designed to benefit Indian people: the Direct Loan Program, the Loan Guaranty Program, and the Grant Program. These programs are extremely limited, both in scope and availability of funds. Because a requirement of these programs is rejection from other sources, Bureau loans are invariably high-risk loans which can result in reduced pay back.

### Recommendation

Given that the Bureau is a lender of last resort and becomes involved with high risk projects, Bureau officials responsible for the Bureau's Credit Program must recognize and plan for increased defaults on credit loans.

•A major shortcoming of Bureau credit programs involves the extremely long time frames which are required to process applications. The timing of financing is often critical to the success of an agricultural project. There are cases where funding of projects are approved long after the opportunity to use the funds has passed.

### Recommendation

The Bureau's Credit Program should be improved by delegating loan approval authority to the Area or Agency level and requiring the standardization and streamlining of all related procedures.

'Another major shortcoming of the Bureau Credit Programs is the lack of meaningful technical assistance to individual Indian clients. Past assistance of this nature has been largely limited

to instructing Tribal Revolving Credit Program employees on how to fill out and file the myriad of required Bureau forms. Individual operators, whether they are clients of the Bureau's programs or outside lenders, are traditionally very weak in preparing financial statements, keeping financial records, and in general financial management. Monetary systems are relatively new to Native American and Alaska Native cultures and no efforts have been made to assist clients in developing in this important area.

### Recommendation

In addition to Agricultural Extension Agents, the Bureau should hire financial specialists to provide direct training and assistance to individuals in all aspects of personal and business financial management. These specialists should work directly at the Agency or Tribal level. Funding for this program must be at a level which provides maximum benefit to the Native American and Alaskan Native clients.

#### a. Direct Loan Program

•The Direct Loan Program is the most important loan program the Bureau has for assisting Indian agricultural producers in obtaining financial assistance. Tribal revolving programs, as well as direct loans to individuals, are administered under the authorities of the Indian Finance Act. However, the program is utilized primarily for economic development loans outside the agricultural sector, and is grossly under funded for agricultural purposes.

### Recommendation

Congress should establish a specific title for Agriculture in the Indian Finance Act, to be used for Indian agricultural operators and tribes to acquire restructured loans, or to purchase outright land in danger of foreclosure. A minimum appropriation of \$50 million is recommended for this program to meet its intended purpose.

- In 1984 = Congress acted to increase approval : authority to \$350,000 in the direct: loan program. This change in the law is not reflected in current Bureau practice or regulation.

Recommendation

Regulations should be changed to comply with the 1984 amendment to the Indian Finance Act and improve the delivery of services as intended by Congress.

-Under the Direct Loan Program, revolving credit programs at the Tribal level are paying widely variable interest rates; and must reloan this money to individuals, sometimes at several points over market rates.

Recommendation

Loans stemming from this program to Tribal relending organizations should be consolidated or restructured at the more reasonable commercial rates paid by private sector lenders. All Tribes and Alaska Native Associations should be charged uniform interest rates which provide for relending to individual operators at a rate which provides some reasonable chance of borrower success.

**b. Loan Guaranty Program**

The Loan Guaranty Program provides a 90 percent guaranty to commercial lenders on behalf of eligible Indian clients. There has been resistance to making this loan on the part of the commercial lenders due to a history of extreme bureaucratic delays and somewhat unorthodox requirements imposed by the Bureau.

- The requirement of a yearly premium payment from participant lending institutions is an example of unnecessary procedures which create additional administrative costs and reduce the attractiveness of making this type of loan.

### Recommendation

To correct this and related problems, the premium payment on BIA guaranteed loans should be eliminated, or a one-time payment should be established. The entire procedure should be reviewed to streamline application, processing and approval actions.

#### **c. The Grant Program**

•The Grant program of the Bureau is available to provide financial backing to individuals or groups, who do not have, and are unable to acquire the finances necessary to operate a profit orientated business, which will contribute to the economy of the resident reservation. A key requirement for this program is the use of reservation resources, and creation of employment. However, the funding, policies and procedures of the Grant program have been sporadic, with no long-term direction or guidelines.

### Recommendation

To correct this deficiency, the Bureau should review the current practices so as to establish a consistent policy and adopt a streamlined approach to grant application processing.

#### **3. USDA FmHA**

The Farmers Home Administration in the Department of Agriculture is the largest holder of Indian agricultural loans in the country. Recent years have seen an increase in workload in many regions due to various emergency or disaster programs. As is true for private lenders, the various regulations, roles, and procedures of the Bureau of Indian Affairs are not compatible with the requirements of the FmHA. Indian operators have expressed the opinion that farm failures are caused, in part, by the failure of FmHA to act in a timely matter in approving or rejecting operating loans.

- The high turnover of employees in some regions has: also created a situation where continually new loan officers are not familiar with, nor are they trained in, working with Indian people and their lands or other involved Federal agencies.

### Recommendation

The FmHA should require loan officers to maintain an on-reservation office at the agency headquarters, and be present in that office for a period of time each week or month which is proportionate to the percentage of Indian clients in his portfolio. This would allow FmHA personnel and Indian clients to become familiar with each other and with the various programs and constraints. This recommendation was first made in the Report to Congress on PL99-190; and is repeated here because of the large improvements in delivery of services which can be accomplished by this simple action.

- Accurate information on FmHA programs and procedures is not widespread in Indian Country. This makes it difficult for Native American and Alaskan Native enterprises to obtain services from the FmHA.

### Recommendation

In addition to the previous recommendation. the FmHA should undertake a public information campaign to fully inform Native American and Alaskan Natives of their programs and procedures.

In many instances, the combination of operating loans, emergency loans, and disaster loans with declining markets and weather conditions, which precipitated emergency services in the first place, have left operators in an over financed position. Off reservation clients in this position have been able to attract alternative financing, and restructure or buy out their existing loans at reduced value.

- Unlike off reservation clients, Indian FmHA clients generally cannot obtain alternative financing if adverse action is pending on their loan.

#### Recommendation

Eligible loans in this category should be assigned to the **Bureau** of Indian Affairs at either the fair market value of the securities, or at the capitalization value of the operation.

- There is currently a move to discontinue the FmHA direct loan program, and have all FmHA loans issued as guaranteed loans **through commercial lenders**. As indicated earlier, it is difficult or impossible for many Indian operators to find a bank which will make this type of loan. Because the FmHA was originated as a lender of last resort, it is probable that a large number of off reservation clients are in similar circumstances.

#### Recommendation

FmHA should continue its direct loan program.

#### **4. Foreclosures on Trust lands**

A March 1987 Report on Farmers Home Administration prepared by GAO, (RCED-87-79-BR) revealed that over 145,000 acres of reservation lands in Montana and North and South Dakota have been or are in danger of being foreclosed upon by the FmHA. It is not known how much Indian land nation-wide is in jeopardy from this or other sources.

- Unlike off reservation lands, which remain in the local jurisdiction after foreclosure, Indian lands which are foreclosed upon pass from Trust status and are thereby lost to Tribal jurisdiction.

#### Recommendation

In order to prevent a substantial amount of acreage from being alienated from trust status the Bureau of Indian Affairs, the FmHA, and other lenders should undertake an effort to identify the potential foreclosures on Indian

lands. In the recent past, FmHA officials have indicated that they are unable to cooperate with the Bureau on this project due to the confidentiality of the client/lender relationship. The Bureau has indicated that it is unable to cooperate because it has no jurisdiction once a mortgage is approved. Legal remedies to these objections should be sought. If the Bureau and the FmHA do not work together on this issue, a serious erosion of the Indian land base will result.

In addition, actions should be taken to ensure that monies are readily available for refinancing when trust lands in danger of foreclosure are identified. In these cases, existing loans should be restructured to ensure that the existing operator will be able to succeed. If this cannot be done, special funding should be provided to tribes so they may purchase the foreclosed trust land at a rate of interest not to exceed 2 percent. In addition, legal provisions must be made that allow the FmHA to maintain foreclosed land in trust status. The current requirement that foreclosed trust lands be fee patented is extremely time consuming and a major barrier to the purchase of these lands by Tribes.

To replace the FmHA Land Acquisition Program, which is being phased out, the Bureau should establish a Land Acquisition Loan Program of \$10 million per year with interest rates not to exceed 2 percent. This land purchase program should provide financing for Indian operators to acquire or expand existing operations. The primary benefit would stem from the foreclosure of defaulted loans by the Bureau, not the FmHA or a private, subordinated lender. This should improve the opportunity for Indian people or tribes to acquire these foreclosed lands while maintaining the reservation land base.

#### Farmers Credit Services

Farmers Credit Services (formally Production Credit Association and Federal Land Bank) are providing little or no services to Indian borrowers. Commercial lenders are reluctant to do business on reservations largely due to previously cited

jurisdictional problems and lack of experience or information on Indian financing. Improvements can be made if lending institutions are familiar with the criteria of the tribal courts for foreclosure actions.

- A better understanding by commercial lenders and the Tribal courts may improve the availability of financing on reservations.

#### Recommendation

The Bureau and Tribes should promote public relations with the banking industry. The Bureau should develop a brochure on the Bureau's Credit Programs for distribution to lending institutions. Bureau and Tribal representatives should attend banking and lending association meetings to exchange ideas and information to improve relationships between lenders and Indian borrowers.

#### 6. Special Concerns for Development in Alaska

- At this time, agriculture programs in Alaskan villages are mostly of a subsistence nature. However, they are at the stage of development where commercialization is both possible and desirable.

#### Recommendation

Market research should be conducted to provide for the orderly commercialization of individual village agriculture operations, and investigate the desirability of cooperatives for international marketing of speciality crops.

- Reindeer meat can be commercially marketed in gourmet markets in the United States and abroad. This commercialization is critical to the Native people engaged in this enterprise.

Recommendation

USDA meat inspection and labeling requirements should be interpreted to reflect the desirable butchering techniques employed by the Alaskan Native people. In addition, credit or grant assistance should be provided to the Reindeer Herders' Association. This would enable slaughter facilities, shipping facilities, and markets to be developed.

- Alaskan Natives are generally not aware of Bureau Credit or Financial Assistance Programs which could be used to enhance reindeer operations, and for developing and expanding crop and vegetable production.

Recommendation

Bureau Credit Programs should be made available for **Alaskan** Natives engaged in agricultural pursuits. The Bureau should make a significant effort to inform the various Alaskan Native associations and groups of the availability of this assistance.

### E. Improvement of Federal Services

.There is a lack of clear-cut Federal roles and defined responsibility in **the** several **programs** affecting Indian **agriculture**. **The very** term "Agriculture Program" is not clearly defined. In USDA, the term refers to the "Farm Program" and various cost share programs of both the ASCS and SCS which provide direct assistance to individuals. In Tribal Governments the term most frequently refers to a tribal enterprise engaged in agriculture production. In the Bureau of Indian Affairs the term refers to the Land Management and Leasing programs. This significant misunderstanding of the various Federal roles in Indian Agriculture creates hardships for Indian People who often are unable to access the programs available to non-Indians.

- In meetings with representatives of the USDA they stated that there was no need for special USDA adjustments to existing programs because all USDA programs are open to all Americans. However, this may not be true for all Federal programs. Following National Disaster Flooding in both Montana and Oklahoma last year the Federal Emergency Management Agency (FEMA) informed the Tribes and Indian people in both areas that they were not eligible for assistance provided to non-Indians because their needs were the responsibility of the Bureau. The Bureau, however, is neither funded, staffed, nor mandated to provide the type of emergency services which FEMA is required to provide to all Americans, with the possible exception of Indian people.

- Even the Congress appears to be uncertain of the function of these various Agriculture Programs. In the testimony presented on Amendment #1404 to PL99-190, it is stated that the Senate Select Committee expected the Bureau of Indian affairs to effectively provide relief to drought impacted reservations from within existing program funds. The subsequent appropriation provided by Congress to purchase hay was \$6,000,000. This is a full 27 percent of the total Bureau Agriculture budget nationwide, and well beyond the ability or authority of the Bureau leadership to take unilateral action. Authority does exist for the USDA to implement Emergency Feed Programs without special appropriations, but that organization was not mentioned in the amendment or

testimony. Additionally, the provision of this emergency hay, which provided one-eighth to one-quarter of the average winter feed requirements for the affected Indian livestock, excluded Indian ranchers from participating in local ASCS programs which provided substantially more cost share assistance on the full winter feed requirement of livestock owned by local non-Indians. -;

### Recommendation

Based on Tribal input, an effort should be undertaken by the Federal Government to formulate a coherent, coordinated, and complete agriculture program which meets the needs of Native American and Alaskan Native communities. This will require the roles and responsibilities of each Federal agency to be clearly defined. Existing conflicts should be identified and resolved. Needed services, not currently being provided, should be identified for inclusion in the Agriculture Program. Federal services should support tribal objectives and goals. They should facilitate the implementation of tribal zoning ordinances and resource management plans. They should also provide adequate emergency relief.

#### 1. Trust Responsibility

The definition of the Federal Government's trust responsibility has been a point of confusion and contention throughout Indian country. Lands and resources of Indian people and, in many cases, Alaska Natives, are held by the Trustee United States. An example of inter-agency inconsistency in exercising trust responsibility occurs when Tribal and individually owned<sup>o</sup> trust lands are used as collateral for USDA-FmHA loans. Many of the mortgaged lands are in danger of foreclosure, presenting a serious threat to reservation economies and their trust land base. Yet, there is no policy or procedure in place to<sup>P</sup> protect these trust resources from alienation through foreclosure, and in most cases the Federal Trustee is an active party in the adverse action.

- The Federal trust responsibility, which has traditionally been considered the domain of the Bureau of Indian Affairs, rests with the Federal Government in its entirety, not merely with a single agency.

### Recommendation

Congress should clarify the various Federal agency responsibilities resulting from the Federal Government's trust responsibility. Each Federal Agency should review its existing policies and procedures to ensure that they protect trust resources.

## 2. **Lack of Interdepartmental Coordination**

**On** July 30, 1987, Mr. Wilmer Mizell, Assistant Secretary of Agriculture for Governmental and Public Affairs, met with members of this Working Group and members of the Bureau Central Office staff from the Division of Water and Land Resources.

Mr. Mizell pointed out that in his travel throughout the country, USDA **programs have** as good an image as any other Federal agency because the Department deals with individuals. For example, the USDA'S Food and Agriculture Committees (FAC's) have started an outreach program with tribes. In addition, USDA has also upgraded and distributed a publication which identifies program opportunities and provides information to Indians. Colorado State University also prepared and produced a career development manual at the request of the USDA and the USDI for all Indian school systems and 4-H programs nationwide to be distributed by the Bureau. Unfortunately, none of the members of this Working Group had knowledge of, or contact with these "outreach" or special information programs through their tribes, farmers organizations, or other contacts.

Similarly, in that meeting, members of this Working Group were told that Tribes were not eligible for some USDA programs because they were technically "local Governments", and not eligible for another because they were technically "Corporations." At the same meeting, two members of this

Working Group, who are themselves farmers and ranchers were told that they were not eligible to sit on USDA County Boards because. 1) their farm holding is leased, not owned, 2) the land they own is actually Federal trust land <sup>and</sup>, therefore, not their own.

•It is the opinion of this working group that the monies Congress appropriates for USDA are intended to provide services to the entire agriculture community. In many instances, additional monies originally appropriated for the benefit of Indian people must then be paid to the USDA by the USDI in order to allow Indian people to participate.

### Recommendations

In order to promote interdepartmental cooperation and coordination, the terms "Native Americans and Alaskan Natives" should be used in existing laws and in all proposed legislation pertaining to agriculture.

### **3. Opportunities for Improvement**

The tone of the meeting between the Working Group, the Bureau and the USDA indicated that it may be impossible to successfully complete the Work Group's assignment: "In a *cooperative* effort with USDA, review existing programs, identify opportunities, and, as needed, recommend alternatives to enhance and achieve Indian participation in USDA programs." However, opportunities do exist for the USDI and USDA to improve services and work more closely together in order to improve economic opportunities and provide farm program assistance on Indian lands.

.The previously mentioned meeting and the 14 public hearings conducted throughout Indian country clearly demonstrate the need for the USDI and USDA to improve working relationships by developing a better understanding of the roles and responsibilities of each agency in providing services and administering the Trust Responsibility of the United States Government to Native American and Alaska Native peoples.

Toward that goal, an "Agreement in Principal" between the USDI and USDA was prepared and reviewed by this Working Group and submitted to both agencies. To date, it has not been signed.

#### Recommendation

The USDI and USDA should sign the "Agreement in Principal" which was prepared and reviewed by the Working Group.

#### a. **Indian Representation on Local Boards**

•The Public Testimony and experience of the Working Group cited above point out the difficulty of gaining Indian involvement on the local USDA committees and boards which actually direct the various programs. The lack of representation at the State and local level is the major stumbling block in providing for Indian participation in the programs of the FmHA, the SCS, or the ASCS. As was previously stated, two Indian landowner/farmers who are members of this Working Group were told by ranking USDA officials that they were not eligible to serve on County committees. The reasons given appear to preclude any Indian involvement from any area.

#### Recommendation

The USDI and USDA should review existing regulations and authorities regarding USDA committees, with particular emphasis on the local interpretations as they relate to promoting Indian representation at the State, County, and local level. If necessary, existing regulations and authorities should be changed to enhance and encourage Indian representation and participation.

## V. Conclusions

Consistent with its purpose of providing leadership in the areas of agriculture and land management the NIAWG has presented recommendations of both a program and , regulatory, nature, which can effect improvements in the current Bureau of Indian Affairs programs and those of other Federal agencies.: These recommendations, if implemented, will improve the plight of Indian people on reservations by providing;. a' improved environment for the main Indian industry - agriculture.

Specific recommendations have been developed for improving Bureau of Indian Affairs programs, Federal Credit programs, and other Federal services. It is hoped that by ; providing these recommendations to. the Congress and Federal agencies, Federal agriculture programs and services will be modified in a way that support tribal goals and objectives and serve to meet the needs of Native American and Alaskan Native communities,

Actual improvement in these programs will not come without sustained interest and pressure from Native American and Alaskan. Native agriculture concerns. For this reason, these recommendations will, also be provided to the Intertribal Agriculture Council. This new organization should prove to be a primary force in the implementation of these and other improvements which are greatly needed in Indian agriculture.

The National Indian Agriculture Working Group recognizes the importance of this new organization to both agricultural development and the general economic well being of reservation economies. Therefore, it is strongly recommended that support in the form of formal recognition, technical assistance, and direct funding be provided by the Federal Government to the the Intertribal Agriculture Council in order to continue this important work.

14. Special Report on the Management Improvement Program in the Bureau of Indian Affairs. Forest J. Gerard, Assistant Secretary - Indian Affairs, Department of the Interior. December, 1978,.
15. 1988 Budget. General Statement and Objectives.

AppendixIrrigation

The main body of departmental regulations pertaining to Indian Affairs are codified in Title 25 Code of Federal Regulations, with specific regulations pertaining to irrigation activities being contained in Parts 134, 135, 136, 137, 138, 139, 152, 160, 162, 171, 172, 175, 176, and 177. The main body of statutory authority for Indian irrigation activities is contained in Title 25 United States Code Chapter 11, Section 381-390 (25 USC 11).

In order to identify specific critical problems affecting the irrigation program, BIA field representatives from all Areas and Agencies with irrigation projects, and from the independent irrigation projects, met recently at a special meeting. The problems identified by the above sources indicated that the problems are not "new" but, rather, reoccurring. This would tend to indicate that they are (1) extremely difficult to solve; or, (2) low in management's priority scheme. The **group also** identified a number of problems which are listed below.

It should be noted that the schedule of the National Indian Agriculture Working Group did not allow time to review and discuss these draft recommendations in detail, nor to solicit the opinion of the Working Group. Never-the-less, these recommendations need to be further evaluated both by Bureau management officials and by the Indian Agriculture Council. For this purpose they are included in this report.

1. Current BIA billing procedures do not reconcile with BIA's Financial Accounting System.
2. Debt collection procedures are inconsistently applied.
3. Confusion exists regarding identification and proper tracking of irrigation program funds that are to be reimbursed to the Federal Government.
4. Procedures for determining and establishing annual O&M rates appears to vary markedly between projects.
5. The irrigation program has been relegated to a comparatively low priority.

6. The financial records of the various projects have reportedly deteriorated.

7. Many O&M deficiencies are related to poor/lack of training of staff:

Land designation; the process utilized to determine and establish irrigable and assessable acreages within each irrigation project, has been completed on a relatively small number of BIA's projects.