

REPORT TO
THE CONGRESS OF THE UNITED STATES

NEED FOR EFFECTIVE GUIDANCE
OF
NAVAJO TRIBE OF INDIANS
IN MANAGEMENT OF TRIBAL FUNDS

BUREAU OF INDIAN AFFAIRS
DEPARTMENT OF THE INTERIOR



BY
THE COMPTROLLER GENERAL
OF THE UNITED STATES

JUNE 1966

TO THE READER:

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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-114868

June 30, 1966

To the President of the Senate and the
Speaker of the House of Representatives

The accompanying report concerns the need for effective guidance by the Bureau of Indian Affairs, Department of the Interior, of the Navajo Tribe of Indians in the management of tribal funds. Our finding, conclusions, and recommendations are summarized in this letter and presented in more detail in the report.

In our opinion, the Bureau, as trustee of the Indian estate, should provide effective and timely guidance to assist the Navajo Tribe in the financial management of certain tribal activities. Our review of selected tribal activities showed that in recent years a significant amount of tribal funds had been dissipated through (1) the unauthorized expenditure of funds for the expansion and continued operation of a heavy equipment pool which was operating at a deficit, (2) the unauthorized expenditure of funds for the establishment and liquidation of a commissary which was never opened for business, and (3) unsound purchasing practices.

We brought our findings to the attention of the Navajo Tribe and the Department of the Interior and proposed that the Secretary institute procedures which would provide for improvements in the management of trust funds advanced by the Bureau. The tribal council agreed that tribal funds had been dissipated and that there was a need for improvement in the control of the tribe's fiscal affairs.

In commenting on our proposals, the Commissioner of Indian Affairs indicated he did not believe that any corrective action was necessary and that the Bureau, in carrying out its responsibilities, had followed a policy of allowing tribal officials the highest degree of freedom in the management of tribal affairs in order that the officials may acquire the necessary management skills to assume full responsibility for tribal affairs. We recognize that the aim of this policy is in accordance with the intent of the Bureau's authorizing legislation. We believe, however, that it is incumbent upon the Bureau, in its role as trustee, to provide constructive and effective guidance to tribal officials until such time as it is demonstrated that sound financial management controls and practices, which provide for the prudent management of

tribal assets, have been established. We conclude that the Bureau has not provided the type of guidance needed in order that the Navajo people may receive the maximum benefits from their assets.

Accordingly, we are recommending that the Secretary of the Interior direct the Bureau, in cooperation with the government of the Navajo Tribe of Indians, to (1) review the programs for which tribal funds are currently being expended, to evaluate the appropriateness of such programs, (2) review and evaluate the adequacy of the financial controls and practices for the expenditure of the funds, and (3) formulate and implement a comprehensive plan, based on the results of these reviews, for the effective utilization of tribal assets. We are also recommending that the Secretary require the Bureau to provide its personnel with improved guidelines for carrying out the Government's responsibility for the guidance of tribal officials in the management of tribal funds and to make periodic reviews to evaluate the effectiveness of, and compliance with, such guidelines. We are further recommending that the Secretary consult with the Joint Committee on Navajo-Hopi Indian Administration on the actions he and the tribe propose to take to correct the deficiencies in the management of tribal funds.

We are issuing this report to the Congress because of the particular interest shown in these matters by several members of the Congress and because of the special fiduciary responsibility that the Congress has placed on the Secretary of the Interior and the Commissioner of Indian Affairs for carrying out the Government's guardianship obligations to Indian people relating to trust funds. We are advising the Congress of the actions which we believe should be taken so that the management of tribal assets will be improved.

Copies of this report are being sent to the Director, Bureau of the Budget, and to the Secretary of the Interior.



Comptroller General
of the United States

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INTRODUCTION

The General Accounting Office has made a review of selected activities of the Bureau of Indian Affairs, Department of the Interior, relating to the management of trust funds advanced to the Navajo Indian Tribe. Our review was made as part of our continuing examination of Department and Bureau activities and was initiated after information was brought to our attention which indicated that tribal funds were being expended for improper purposes. The review was made pursuant to the Budget and Accounting Act, 1921 (31 U.S.C. 53), and the Accounting and Auditing Act of 1950 (31 U.S.C. 67) and with the cooperation and assistance of the Chairman of the Navajo Tribal Council.

Our examination, which generally pertained to transactions during the 4-year period ended with fiscal year 1965, was concerned primarily with the manner in which the Bureau was discharging its responsibilities relating to the management of trust funds advanced to the tribe and included a review of (1) applicable laws and regulations, (2) selected tribal programs and related financial transactions, and (3) Bureau supervision of tribal management of these selected programs. Our review was not performed for the purpose of making a determination of whether all tribal funds had been, or were being, expended in the most efficient and economical manner.

As our review progressed, we limited our examination to those activities that appeared to involve significant weaknesses which, in our opinion, indicated a need for timely corrective action.

Our review was made at the Bureau's Central Office, Washington, D.C.; its Gallup Area Office, Gallup, New Mexico; and its Navajo Agency Office, Window Rock, Arizona, which has immediate responsibility for the administration of the activities of the Bureau on the Navajo Indian Reservation.¹ In addition, we reviewed certain Navajo tribal operations and records at Fort Defiance, Arizona, and at the seat of tribal government at Window Rock. In performing our review we interviewed officials of the Department, the Bureau, and the Navajo tribal government.

The principal officials of the Department of the Interior and the Bureau of Indian Affairs responsible for the administration of activities discussed in this report are listed in the appendix.

¹Effective January 1966, the Navajo Area Office was established in Window Rock to administer Bureau activities relating to the Navajo Tribe.

BACKGROUND

The Federal Government has charged itself with certain trust responsibilities for the protection of Indian lands and resources throughout the United States. The special fiduciary responsibility of the Government for Indian trust funds has been established through numerous acts of the Congress and court decisions. The Congress has conferred the authority for the supervision and management of Indian affairs to the Commissioner of Indian Affairs, under the direction of the Secretary of the Interior (25 U.S.C. 2).

To carry out the responsibilities of the Bureau of Indian Affairs as they relate to the Navajo and certain other Indians, the Bureau's Gallup Area Office employed a staff of some 410 employees while its Navajo Agency Office, which was concerned solely with the affairs of the Navajo Tribe, had a staff of some 3,300 employees, the majority of whom were concerned with the operation of the Bureau's school system.

The Navajo Tribe has a population of about 106,000, and the reservation consists of about 12,500,000 acres located in Arizona, New Mexico, and Utah. The reservation was set aside by treaty, executive order, and acts of the Congress for use by the Navajo people, and title to these lands is held in trust by the United States Government.

The governing body of the tribe is the tribal council which consists of 74 delegates who are elected by the Navajo people to represent the people of various areas of the reservation. Additionally, the Navajo people elect a chairman and vice chairman to preside over the tribal council and to act as heads of the executive branch of the tribe. The organizational structure of the executive branch is composed of three divisions: (1) administration,

(2) resources, and (3) public services, with further breakdowns to provide for administering the various tribal activities.

The Advisory Committee of the tribal council consists of 18 council delegates elected by fellow council members. Functionally an executive committee, the advisory committee acts in lieu of the council on routine business when the council is not in session and on behalf of the council on specific delegations of authority therefrom.

The Budget and Finance Committee consists of 10 council members appointed by the tribal chairman and confirmed by the council. This committee reviews the proposed annual tribal budget and other financial and accounting matters and makes recommendations for action to the tribal council.

For many years prior to 1950, the Bureau provided for the Navajos, through its regular appropriations, health, education, welfare, law enforcement, and other necessary services as well as funds for the development of reservation resources. In 1950, the Navajo-Hopi Rehabilitation Act (25 U.S.C. 631) was enacted and authorized, in addition to the Bureau's regular appropriations, an appropriation of \$88,570,000 for specific programs for the rehabilitation of the Navajo and Hopi Tribes. The 1950 act stated, in part:

"*** in order to further the purposes of existing treaties with the Navajo Indians, to provide facilities, employment, and services essential in combating hunger, disease, poverty, and demoralization among the members of the Navajo and Hopi Tribes, to make available the resources of their reservations for use in promoting a self-supporting economy and self-reliant communities, and to lay a stable foundation on which these Indians can engage in diversified economic activities and ultimately attain standards of living comparable with those enjoyed by other citizens, the Secretary of the Interior is

hereby authorized and directed to undertake, within the limits of the funds from time to time appropriated pursuant to this Act, a program of basic improvements for the conservation and development of the resources of the Navajo and Hopi Indians, the more productive employment of their manpower, and the supplying of means to be used in their rehabilitation, whether on or off the Navajo and Hopi Indian Reservations."

To facilitate the fullest participation by the tribe in the program authorized therein, the 1950 act gave the tribe the right to adopt a constitution. According to the act, the constitution could provide for the exercise of any powers vested in the tribe by then-existing law and of any additional powers the tribe, with the approval of the Secretary of the Interior, deemed proper to include therein. The act provided also that the constitution authorize the fullest possible participation of the tribe in the administration of its affairs and that the Secretary of the Interior approve any amendment to the constitution which, in his opinion, advanced the development of the Navajo people toward the fullest realization and exercise of the rights, privileges, duties, and responsibilities of American citizenship. At the time of our review, the tribe had not adopted a constitution.

The 1950 act also established within the Congress the Joint Committee on Navajo-Hopi Indian Administration. The function of this committee is to make a continuous study of the programs for the administration and rehabilitation of the Navajo and Hopi Indians and to review the progress achieved under these programs. The act also provided that the Committee aid the several standing committees of the Congress having legislative jurisdiction over any part of such programs and report to the Senate and the House of Representatives, from time to time, concerning the results of its studies, together with such recommendations as it may deem desirable.

Section 7 of this act (25 U.S.C. 637) provided that:

"Notwithstanding any other provision of existing law, the tribal funds now on deposit or hereafter placed to the credit of the Navajo Tribe of Indians in the United States Treasury shall be available for such purposes as may be designated by the Navajo Tribal Council and approved by the Secretary of the Interior."

Before the 1950 act was enacted, the tribe had on deposit in the Treasury, about \$1.1 million plus a fund of approximately \$500,000 known as the sawmill fund which was available for tribal use without approval being required. Largely as a result of the authority contained in the Navajo-Hopi Rehabilitation Act, the tribe has acted to develop and maintain an ever-expanding program of community services and programs for resources development.

Tribal funds to finance these programs have been derived principally from the development of oil and gas resources on the reservation. The following table shows tribal income since 1959.

<u>Fiscal</u> <u>year</u>	<u>Income from</u> <u>oil and gas</u>	<u>Other</u> <u>income</u>	<u>Total</u>
----- (000 omitted) -----			
1959	\$15,925	\$3,793	\$19,718
1960	13,914	4,720	18,634
1961	15,644	4,306	19,950
1962	12,540	4,214	16,754
1963	13,243	4,264	17,507
1964	29,639	4,717	34,356
1965	13,314	4,647	17,961

Trust funds on deposit in the United States Treasury are advanced to the tribe on the basis of annual budget requests

prepared by the tribe and approved by the Bureau's Gallup Area Director.¹ Tribal budgets and cash on deposit in the United States Treasury for the past several years have ranged in amounts as shown below.

<u>Fiscal</u> <u>year</u>	<u>Approved</u> <u>budget</u>	Cash on deposit U.S. Treasury (note a)
————(000 omitted)————		
1959	\$22,454	\$80,448
1960	35,032	76,876
1961	28,617	79,119
1962	20,442	74,771
1963	21,792	70,524
1964	22,840	79,260
1965	29,111	78,865

^aThese amounts represent the cash balance of Navajo tribal funds in the United States Treasury at the end of each fiscal year but do not include about \$1.2 to \$1.5 million of unrecorded interest accruing in the last half of each fiscal year.

In order that funds may be available for tribal execution of the approved budgetary programs, the Bureau advances about \$1 million to the tribe at about 2-week intervals. The funds are received by the Tribal Treasurer and deposited in a local bank where they are subject to his withdrawal.

¹Authority to approve Navajo tribal budget requests has been delegated by the Secretary of the Interior to the Commissioner of Indian Affairs who redelegated the approval authority to the Gallup Area Director.

Since 1956 the tribe has employed a nationally recognized firm of certified public accountants (CPAs) as tribal auditors.¹ This firm has performed annual audits and management services for the tribe since that time.

In addition to its obligations as trustee, the Government has a financial interest in the proper management of trust funds advanced to the tribe in that maximum effective management of these funds generally tends to permit reductions in, or minimize further increases in, Federal expenditures for programs beneficial to the tribe. Some tribal budgetary programs have supplemented or completely replaced various Bureau programs initiated for the benefit and advancement of the tribe. For example, on January 1, 1958, the tribe assumed the responsibility for payment of operation and maintenance costs for federally constructed irrigation projects located on tribal lands. From that date through fiscal year 1964, tribal expenditures for irrigation operations and maintenance have amounted to about \$1.6 million.

The tribe has financed some portions of the annual reservation law enforcement costs since about 1953 and in February 1959, the tribe assumed responsibility for all reservation law enforcement activities except those which, by law, remained vested in the Federal Government. Since that time, Federal expenditures for reservation law enforcement have been less than \$50,000 a year, whereas tribal expenditures have ranged from about \$1.1 to \$1.5 million a year. In addition, tribal expenditures have supplemented or replaced Bureau expenditures for such programs as forestry management, welfare, range water development, and others.

¹Prior to 1956, a local CPA firm, whose practice was merged with that of the national firm, had served as tribal auditor.

FINDING AND RECOMMENDATIONS

NEED FOR EFFECTIVE GUIDANCE IN THE MANAGEMENT OF TRUST FUNDS ADVANCED FOR USE BY THE TRIBE

In our opinion, the Bureau, as trustee of the Indian estate, should provide effective and timely guidance to assist the Navajo Tribe in the financial management of certain tribal activities. Our review of selected tribal activities showed that in recent years a significant amount of tribal funds had been dissipated through (1) the unauthorized expenditure of funds for the expansion and continued operation of a heavy equipment pool which was operating at a deficit, (2) the unauthorized expenditure of funds for the establishment and liquidation of a commissary which was never opened for business, and (3) unsound purchasing practices.

Section 7 of the Navajo-Hopi Rehabilitation Act provides that trust funds on deposit to the credit of the Navajo Tribe in the Treasury be available for such purposes as may be designated by the Navajo Tribal Council and approved by the Secretary of the Interior. The tribe annually prepares a budget which is submitted for review and approval pursuant to the aforementioned provisions of section 7. After the tribal budget is approved, the funds are authorized to be advanced to the tribe from the trust funds on deposit in the Treasury.

The importance to the Government of the Bureau's actions relating to the expenditure of funds advanced to the tribe is illustrated by a Supreme Court decision in Seminole Nation v. United States (316 U.S. 286, 296 (1941)). The Court, in commenting on the fiduciary responsibilities of the Government, stated, in part:

"In carrying out its treaty obligations with the Indian tribes the Government is something more than a mere

contracting party. Under a humane and self imposed policy which has found expression in many acts of Congress and numerous decisions of this Court, it has charged itself with moral obligations of the highest responsibility and trust. Its conduct, as disclosed in the acts of those who represent it in dealings with the Indians, should therefore be judged by the most exacting fiduciary standards."

In regard to the expenditure of tribal funds, the Indian Affairs Manual provides, in part:

"Should it develop that funds advanced are not being expended in accordance with the condition of approved programs, the Secretary may not approve subsequent requests for advances until action has been taken to correct whatever malpractices or inadequacies are involved for past advances."

* * * * *

"Superintendents will be responsible for reviewing monthly statements of Tribal programs and comparing expenditures against [sic] approved budget items. Special attention will be given to determine that all conditions of approval placed on budgets by the Area Director or Commissioner are complied with. In instances where deviations are noted, the Superintendent will report his findings to the Area Office and make recommendations for correcting any deficiencies. This will also be brought to the attention of the Tribal Council by letter or memorandum from the Superintendent."

Annual reports prepared by the Navajo Tribe's independent CPAs have disclosed numerous deficiencies recurring over a number of years in the financial management of tribal affairs. These reports, which were made available to, or which could have been obtained by, the Bureau, also pointed out that substantial amounts of tribal funds had been expended for purposes which had not been

designated by the tribal council and/or approved by or for the Secretary of the Interior

After being informed by the tribe's CPAs of the seriousness of the lack of control over tribal financial affairs, the Chairman of the Navajo Tribal Council, by letter dated January 26, 1965, requested the Secretary of the Interior, through the Bureau of Indian Affairs, to provide answers to eight specific questions concerning the Government's relationship to the Navajo people. The letter stated:

"Since the tribal election of 1962, the Navajo people have witnessed some basic changes in what they assumed to be the powers, duties, and responsibilities of their duly elected tribal officials. These have taken place, for the most part, through the actions of the Navajo Tribal Council and, in most instances, with the sanction of the Bureau of Indian Affairs. This has raised many questions among the Navajo people and has left us confused as to what to expect in this regard in the future.

"As their duly elected Chairman, I find it necessary to request answers to the following questions from the Federal Government through your office. In answering these questions, when circumstances permit, please set forth the body or individuals holding ultimate power or responsibility on the point raised and what part other bodies or individuals are required to play in each particular instance. I would appreciate your being as specific as possible as to what powers, duties, and responsibilities are involved and who holds them. We seek answers based on the policies and overall control of the Federal Government over the Navajo people. The term 'Federal Government' as used here is intended to include the Navajo Agency, the Area Office, the Bureau of Indian Affairs, the Department of the Interior, and the United States Congress."

* * * * *

"The Navajo people may be asked to consider the adoption of a Constitution to govern them. The answers to the

questions enumerated above will serve as a basis for deciding whether they should or should not consider such a proposed Constitution. For this and other important reasons, I respectfully request that within sixty days following receipt of this letter you provide me with answers to these questions. I would also appreciate an acknowledgment of the receipt of this letter as soon as possible."

Two of the questions which directly relate to the matters discussed in this report follow.

"VII. What are the powers, duties, and responsibilities of the following in formulating and executing necessary programs to meet the needs of our Navajo people:

1. Federal Government.
2. Navajo Tribal Council.
3. Chairman of the Navajo Tribal Council.
4. The Division Directors of the Executive Branch for Administration, Resources, and Public Services.

"VIII. With whom in the Federal Government or Tribal Government does the ultimate responsibility lie in the present situation that is alleged to exist and reported to be: ... deterioration in the records, procedures and internal control of practically every significant operating department of the Navajo Tribe to a point where control measures will collapse, unless corrective measures are taken. ..."

We inquired of the Department and Bureau on several occasions as to the status of the reply to the chairman's letter. At the time of our last inquiry, on February 25, 1966, the Associate Commissioner of Indian Affairs advised us that a reply had not been made but that the Bureau planned to reply to the chairman's letter in the then near future.

The results of our review of selected tribal activities follow.

Need for improvement in management
of heavy equipment pool

During the period July 1, 1961, through January 22, 1965, the tribe expended \$2,775,464 of tribal funds for the operation and expansion of the tribal heavy equipment pool (HEP), although the required approval for the expenditure of these funds for this purpose had not been obtained from the tribal council and the Bureau. Tribal records show that at January 22, 1965, the cumulative deficit of the HEP operation amounted to \$751,544. In addition, we were advised by the manager of the HEP that anticipated losses on construction contracts in progress, which had not been recognized in the January 22, 1965, financial statements, would increase the deficit by about \$190,000, to a total deficit of about \$941,000.

The HEP was established in fiscal year 1959 as a part of the Farm and Range Management Branch and was subsequently charged with the responsibility of providing and operating heavy equipment (trucks, tractors, dozers, etc.,) for other tribal departments. Funds for the operation of the HEP were provided in fiscal years 1959-61 tribal budgets.

In 1961, the HEP was reestablished as a separate activity within the Division of Administration. The justification for funds for the activation of the HEP as a separate activity, presented by the Director, Division of Administration, to the tribal Budget and Finance Committee on April 21, 1961, stated, in part:

"The Heavy Equipment [Pool] will be operated as a service organization for all departments of The Navajo Tribe on a non-profit basis (except in renting Tribal equipment to non-Tribal organizations) and will charge rental rates *** which will defray all operating expenses of the Heavy Equipment Pool including the replacement of existing

equipment and purchase of additional equipment that may be required ***." (Underscoring supplied.)

* * * * *

*** However, we need some funds to get started after July 1, and this will be the only fund that the department will ask for. This \$25,000 will be a revolving-type fund ***." (Underscoring supplied.)

The amount requested was approved by the Budget and Finance Committee and included in the fiscal year 1962 tribal budget subsequently approved by the tribal council and the Bureau.

In approving the operational procedures of the HEP, on July 28, 1961, the Advisory Committee of the Navajo Tribal Council resolved that the HEP should be economically self-sustaining through rental charges to the various departments and enterprises for services provided. In this regard, the advisory committee further resolved that funds for the operation of the HEP would not be budgeted.

We found that, notwithstanding these resolutions, the activity was not self-sustaining and that substantial amounts of trust funds advanced to the tribe for the execution of approved budgetary programs had been improperly expended for the operation and expansion of the HEP. Tribal records show that the HEP, during the year ended June 30, 1962--its first year of operation as a separate activity--incurred a deficit of \$76,913 from operations and overexpended its budget by \$330,573. At January 22, 1965, the cumulative overexpenditure amounted to about \$2,775,000, the deficit from operations had increased to about \$751,000, and losses of about \$190,000 were anticipated on contracts then in process.

Part of the deficit arose because of the HEP's failure to adequately bill some tribal organizations and therefore was not a loss

to the tribe as a whole. Tribal records did not identify losses with specific projects, and we could not readily determine the amount of the loss to the tribe as a whole. Tribal records showed, however, that more than half the HEP's dealings were with organizations other than tribal government organizations. Therefore, it appears that the operation of the HEP resulted in the dissipation of significant amounts of tribal assets.

A tabulation of HEP's annual budgets and the corresponding overexpenditures as shown by tribal records follows.

<u>Fiscal year</u>	<u>Budget</u>	<u>Overexpenditures</u>	
		<u>Current year</u>	<u>Cumulative</u>
1962	\$ 25,000	\$ 330,573	\$ 330,573
1963	-	833,098	1,163,671
1964	-	1,240,659	2,404,330
1965 ^a	974,968 ^b	371,134	2,775,464

^aTo January 22, 1965.

^bRepresents supplemental appropriation to the fiscal year 1965 budget to provide \$100,000 for use as working capital and \$874,968 to pay outstanding balances on equipment acquired under lease-purchase agreements.

Annual audit reports prepared by the tribe's CPAs and tribal budget reports, both of which were either made available to or could have been obtained by the Bureau, had clearly shown that the HEP was making unauthorized expenditures of funds. We found no documentary evidence, however, that the Bureau had questioned the tribe concerning this practice until September 1964, after the tribal council had authorized the overexpenditures.

With respect to the overexpenditures, the tribe's CPAs, in a letter dated June 3, 1963, addressed to the Chairman of the Navajo Tribal Council stated:

"The Heavy Equipment Pool operation and purchases of equipment have resulted in a deficit budget balance in excess of \$750,000.00. As this deficit represents unauthorized use of Tribal funds, appropriate action should be taken to either approve these expenditures or liquidate the department."

The CPAs' concern over this condition was again conveyed to the chairman in a letter dated December 5, 1963, which stated:

"The overexpenditure in the heavy equipment pool budget of \$1,163,671.29 represents unauthorized use of tribal funds. We again urge that appropriate action be taken to provide authorized operating capital for this department if it is to be continued."

Records indicate that, in the fall of 1963, the tribe's Management, Methods, and Procedures Department started an investigation of the operation of the HEP. This investigation, which was completed in April 1964, resulted in the adoption by the advisory committee of an interim operating procedure whereby the HEP was not allowed to make further unauthorized expenditures from the general fund and was required to operate on income from operations until the Navajo Tribal Council took final action as to the future of the HEP. The operating procedure provided that the amount of the overexpenditure of the HEP at April 3, 1964, constituted the limit for overexpenditures. This amount, as determined by the tribe's CPAs, was \$2,488,296.

In August 1964, a new plan of operation for the HEP was adopted by the tribal council. The plan provided, among other things, that the manager of the HEP would not have the authority to expend in excess of income at any time or under any circumstances. The council also (1) authorized the overexpenditure of \$2,488,296 by the HEP, (2) appropriated \$874,967.85 to pay the remaining

balances on equipment acquired by the HEP under lease-purchase agreements, and (3) appropriated \$100,000 as working capital for the HEP. In taking these actions the council acknowledged that the HEP had purchased capital equipment for use in its operations in a quantity costing far in excess of its ability to earn income to pay for the equipment and that the purchase of, and payment out of the general fund for, such equipment had not been authorized by the council either as a part of the annual budget or as a separate item.

In a letter to the chairman, dated September 2, 1964, the Gallup Area Director questioned the propriety of the council's approval of the overexpenditure and advised that the Bureau's approval of the resolution would be withheld until further explanations of the overexpenditures were furnished by the tribe. The letter stated, in part:

"There is no authorization for the use of money from the general fund for purposes not included in the approved annual budget. Deviations within the approved annual program of the tribe are permissible on the basis of budgetary amendments, but apparently the tribal budget was never amended to authorize additional funds for the purchase of machinery for the Heavy Equipment Pool.

"The magnitude of the unauthorized expenditure leads to very serious questions regarding the ability of the Navajo Tribe to manage and control expenditure of a multi-million dollar annual budget. We are reluctant to give approval, after the fact, for the unauthorized expenditure of nearly two and a half million dollars without greater justification than is set forth in the Council resolution. We should like to know what responsible, bonded official of the Navajo Tribe, permitted this unbudgeted expenditure, and what steps the Tribal government has taken to preclude a repetition of comparable, unauthorized expenditures of tribal funds in the

future. *** Upon receipt of the information requested herein, this office will consider approval action."

In the meantime the HEP continued to make unauthorized expenditures from the general fund. Despite tribal council's forbidding the expenditure of funds in excess of income, tribal records show that, by January 22, 1965, the HEP had made unauthorized expenditures of \$287,168 over and above the \$2,488,296 overexpenditure authorized by the council in August 1964.

In reply to the Area Director's letter of September 2, 1964, the chairman advised the Area Director on March 1, 1965, that the tribe's investigation of the overexpenditures had disclosed a considerable number of weaknesses in the management and control of the HEP. He stated that the overexpenditures (and accompanying losses from operations) could be attributed largely to poor business judgment and management. Other contributing factors cited by the chairman were insufficient managerial experience in the HEP and an inadequate accounting system. He stated that certain corrective measures were being implemented to correct these conditions.

On March 3, 1965, the tribal council resolved to further increase the fiscal year 1965 tribal budget by \$980,000, to provide additional funds for the operation of the HEP. The Bureau approved this resolution on March 9, 1965, subject to:

1. All disbursements for the HEP's being made exclusively from one operating account and all receipts of money by the activity's being credited to the same account.
2. The controller of the tribe's being immediately instructed to not honor any expenditure of funds which would over-obligate the authorized amount of \$980,000.
3. Provisions' being made for reevaluation of the HEP immediately after the close of the then-current fiscal year,

for the specific purpose of determining whether the HEP should be continued or abolished.

4. A concerted effort's being made to complete existing contracts before the beginning of the next fiscal year.

The Bureau further stated that the experience of the tribe in the remaining months of fiscal year 1965 and the evaluation study to be completed at the close of the fiscal year would be used as criteria for its approval of any tribal funds budgeted in the future for the HEP. By letter of April 14, 1965, the Gallup Area Director advised the Chairman of the Navajo Tribal Council of the Bureau's approval of the resolution authorizing the overexpenditure of \$2,488,296 by the HEP. The Area Director's letter made numerous suggestions regarding the strengthening of management and management controls in the HEP and stated:

"It is unfortunate that, *** the Heavy Equipment Pool operated at such a heavy loss in the past. The employment and experience provided to Navajo operators and other employees of the pool is valuable. We are hopeful, with you, that the undertaking may operate hereafter on a sound, self-supporting basis. At this point in time, there is little to be done other than to view past losses as the cost of experience."

To identify the causes for and amounts of the HEP loss, we reviewed the HEP's records regarding contracting, equipment rental, and inventory disposals. Following are examples illustrating some of the causes of the \$941,000 deficit.

Loss of \$148,000 incurred
on road construction project

A loss of about \$148,000 was incurred by the HEP for work done on a road construction contract awarded by the Bureau. Identifiable project costs were about \$398,000, whereas the HEP recovered only \$250,136.

On June 28, 1963, the Bureau awarded a contract, in the amount of \$308,569, for construction of 5.9 miles of roadway near Ganado, Arizona. The contractor, in turn, entered into an agreement with the HEP whereby the HEP would perform all work under the contract. Based on Government-estimated quantities of items of work under the contract, payment to the HEP under the agreement was not to exceed \$277,134. The agreement provided that all costs in excess of the agreed unit prices were to be borne by the HEP. Because of reductions in the scope of the work, the Bureau paid the contractor \$278,498 as the final contract amount. The contractor, in turn, advised the HEP that, at agreed unit prices, the value of work done on the project by the HEP amounted to \$250,136.

Cost records on this project were not maintained by the HEP; therefore, we could not make a precise determination of the costs incurred on the project. From available records, however, we identified and computed direct project costs amounting to about \$398,000. Indirect costs were not considered in our computations. Project costs were computed to be as follows:

Materials and services	\$220,266
Equipment operating and ownership costs	171,813
Move-in expenses	2,967
Incidentals	<u>3,500</u>
Total project costs	398,546
Costs borne by contractor	<u>250,136</u>
Total project loss to the HEP	<u>\$148,410</u>

Bureau records show that the contractor's bid on the project was substantially below the range of bids submitted by the other bidders and below the engineer's estimate. Further, bidder responsibility data submitted by the contractor to the Bureau showed that

the firm had had no prior experience as a general contractor or subcontractor and owned no operating equipment of any kind. Because of these and other factors, the Bureau's contracting officer concluded that the contractor could not "be classified as a responsible bidder to whom the contract for subject project may be awarded." The contracting officer advised the Bureau's Central Office of his findings stating that an administrative determination had been made to award the contract to the second lowest bidder. The contracting officer advised us that he had been overruled by Bureau officials, however, and that the contract had been awarded to the low bidder. The engineer's estimate and bids received on the project were as follows:

Engineer's estimate	<u>\$389,687.00</u>
Contractor	\$308,569.28
Bidder 2	398,096.60
Bidder 3	407,554.35
Bidder 4	417,261.95
Bidder 5	434,738.70
Bidder 6	442,308.50

Records show that Bureau officials were aware, prior to the award of the contract, that the tribe had entered into an agreement with the contractor to perform work under the contract. In a memorandum to the contract files dated June 17, 1963, the contracting officer stated that a conference held on June 6, 1963, with the manager of the HEP and a contractor's official had disclosed, among other things, the following pertinent points.

- "a. The *** bid was based on calculations made by *** and other Navajo Tribal employees. Equipment operation time required to perform the estimated quantities of bid items was computed and the estimated rental costs were converted to bid item costs; *** applied a profit factor to arrive at the bid price.

"b. Although no formal subcontract with the Navajo Tribe is contemplated, an unidentified type of agreement has been made between the Tribe and *** establishing a maximum cost by item, which, *** would pay the Tribe."

We believe that the Bureau, in view of the substantial difference between the contractor's bid, the engineer's estimate, and other bids submitted, should have been alerted to the probability that the HEP would suffer a loss under this agreement. We were advised, however, that the Bureau had not reviewed the agreement between the contractor and the HEP.

Equipment rental rates appear to be lower than average ownership costs

Our review of the HEP's equipment rental rates disclosed that tribal officials had established monthly rental rates for certain types of HEP equipment, which, on the basis of equipment ownership expense data compiled by The Associated General Contractors of America, Inc. (AGC), appeared to be inadequate for recovering the cost of owning and maintaining the equipment.

Because cost records were inadequate, we were unable to relate HEP's established rental rates to actually experienced costs. However, by using an ownership expense guide published by the AGC, which reflects the average expense of owning and maintaining various types of equipment, we estimated the ownership expense of selected major items of HEP equipment. We compared the results to the HEP's rental rate schedules and found that the HEP's monthly rental rates for these items of equipment were less than the ownership expense that we had estimated, as shown on the following page.

<u>Item</u>	Estimated monthly ownership expense based on <u>AGC guide</u>	HEP monthly rental rates (note a)	
		7-1-63 to 2-1-64	9-4-64 to 4-8-65
Model 619 scraper	\$2,781	\$2,295	\$2,596
D-7 tractor dozer (hydraulic)	2,405	1,980	2,244
D-7 tractor dozer (cable)	2,115	1,665	1,892
D-8 tractor dozer (hydraulic)	3,108	2,340	2,640
D-8 tractor dozer (cable)	2,896	2,250	2,552

^a Monthly rental rates not in effect during the period 2-1-64 to 9-4-64.

The AGC ownership expense guide is based on contractors' average expense of owning and maintaining equipment under average working conditions. The expense rates cited in the guide for the various types of equipment take into consideration (1) depreciation, (2) major repairs and overhauling, (3) interest on investment, (4) storage and incidentals and equipment overhead, (5) insurance, and (6) taxes, but do not include general overhead expenses, equipment operating expenses, or profit. Therefore, although it is possible that HEP's actual monthly expense for owning and maintaining the above equipment may be less than the ownership expenses we estimated, it is unlikely, in our opinion, that the margin between the established rental rates and actual expenses would be sufficient to cover operating and overhead costs.

In April 1965, in discussing the basis used in establishing HEP's equipment rental rates, the manager of the HEP advised us that, since there were no cost records, he did not know how the rates had been determined in the past. The manager stated that he had used various rental rate guides in revising the rates in September 1964. He pointed out, however, that he was working with the

tribe's CPAs in attempting to accumulate sufficient equipment history and cost data for establishing an appropriate rate structure.

Irregularities in the management and disposal of HEP equipment

Tribal records show that on October 8, 1963, HEP officials sold a 6-yard dump truck to a tribal employee for \$3,778. The employee told us that HEP officials advised him, at the time when he acquired the truck, that the HEP had no need for such a small truck and that he could pay for the truck by renting it back to the tribe. Less than 2 weeks after this transaction, the employee rented the truck back to the HEP.

Records show that, during the period from October 9, 1963, through March 19, 1965, the tribe paid the employee and his wife about \$32,700 for equipment rental and operators for various hauling jobs. From these payments, \$221 was applied, on October 21, 1963, toward the purchase price of the truck. The employee told us that he had control of another 6-yard dump truck in addition to the truck that he had acquired from the HEP. Records showed that all the above payments had been for rental of a 6-yard dump truck. However, we were unable to identify what payments had applied to the truck acquired from the HEP.

The employee told us that he did not sign a contract in connection with the purchase of the truck and that he had not been furnished title to the vehicle. Early in April 1965, however, the employee still had possession of the truck and the balance of his account of \$3,557 (\$3,778 minus \$221) remained on the tribe's books as a receivable. The employee told us that, other than issuing the usual monthly statements, the tribe had not requested payment of the account or return of the truck. Under these circumstances, it appears that the tribe is paying the employee for use of its own equipment.

In another similar transaction, a private contractor doing business with the tribe obtained possession of two HEP concrete mixer trucks on February 15, 1964. The transaction purported to be a sale on account, and the \$14,000 selling price was recorded as a receivable from the contractor although tribal records show that, at the time of the transaction, the HEP possessed the trucks under a lease-purchase agreement and did not have title to them. Additionally, the document recording the transaction was not signed by the contractor and tribal officials informed us that they were unable to locate any contract for the sale of the trucks.

In July 1964, the contractor returned the trucks to the HEP. Tribal officials informed us that, since there appeared to be no contract for the sale of the trucks, they had accepted return of the trucks and had decided to treat the transaction as a rental of equipment.

In a letter dated August 17, 1964, the manager of HEP advised the Acting Director of Administration that rental of the two trucks for the time involved should be about \$12,000. On October 21, 1964, however, the tribe accepted a \$1,000 check from the contractor in full settlement of the matter.

Tribal records show that during the 5-month period that the contractor had possession and use of the trucks the tribe had paid the contractor about \$8,600 for various services rendered. From the return of the trucks in July 1964 to the date of the settlement--October 21, 1964--the tribe paid the contractor an additional \$10,780. Therefore it appears that the tribe, rather than settling the \$12,000 debt for \$1,000, might have offset the amount owed to it against the amount it owed to the contractor.

Establishment and liquidation of a commissary
which was never opened for business

The tribe invested about \$130,000 in a commissary which was never opened for business. Since the tribal council had not appropriated funds for this undertaking, the entire amount was an over-expenditure from the tribal general fund.

On May 14, 1963, the Budget and Finance Committee recommended to the tribal council that a commissary for the purchase and resale of clothing and grocery items through the tribal warehouse facilities be authorized and that the controller be granted authority to use the existing profit (or credit balance) in the warehouse account for making the necessary improvements in warehouse facilities.

On December 9, 1963, the tribal council approved this recommendation. In the discussion prior to approval of the recommendation, the controller of the tribe advised the council that, in fiscal year 1962, a profit of over \$81,000 had been realized from the tribal warehouse operation. The council was not advised that the reported profit in the warehouse account was not represented by cash and that funds therefore were not available. In fact, the latest budget report prior to the council meeting showed the warehouse account to be overexpended by about \$77,700. Additionally, the council was not informed that more than \$20,000 had already been expended for additions and alterations to the building which was to house the commissary.

After approval of the recommendation by the council, the controller continued to make substantial expenditures for developing, equipping, and stocking the commissary even though he had not been authorized to expend funds for that purpose.

In a letter to the Chairman of the Navajo Tribal Council dated February 28, 1964, the Acting General Superintendent, Navajo Agency, referred to the council resolution which authorized the commissary and strongly recommended that nonappropriated funds not be used in a venture of this type and stated that he believed that it would be dangerous and that adequate controls would not be provided. At the time of this admonition, over \$114,000, or 88 percent of the cost of the commissary, had been expended or obligated.

Tribal records indicate that sometime in April or May 1964 development of the commissary was suspended pending further consideration of the activity by the tribal council. In May 1964, the council was advised that funds from the tribal general fund had been diverted for use in developing and stocking the commissary. The council was advised also that about \$45,000 had been used for the acquisition of inventory for the commissary and that about \$65,000 had been used for alterations and additions to the building which was to house the commissary.

Local Bureau and tribal officials told us that, although formal action to terminate the undertaking had not been taken in May 1964, it was the consensus of tribal officials that further development of the commissary should be discontinued since the tribe's entry into this competitive field would discourage investment by outside interests.

On April 13, 1965, the tribal council formally resolved to terminate the commissary undertaking. In this action, the council resolved that the tribe's establishment and operation of a commissary was incompatible with the planned development and operation of a shopping center at Window Rock by a private corporation.

The commissary was never opened for business and liquidation sales to dispose of the inventory and equipment were held in October, November, and December, 1964. According to the plan for the liquidation of the commissary, sales to other tribal activities were to be made at cost. Sales to individuals were to begin at a 25-percent markup. Provisions were made for these sales to be successively reduced to a 10-percent markup, to cost, to 10 percent below cost, and so on, until all merchandise had been liquidated.

At the time of our review, all the inventory and equipment had not been liquidated and, as a result, the total actual loss incurred in their disposal could not be determined.

At January 8, 1965, gross sales amounted to about \$19,000. Of this amount, some \$7,600 had been sales to other tribal activities at cost, as proposed in the plan for liquidation. The remaining sales of \$11,500 had been made to individuals. Records of the sales to individuals consisted solely of adding machine tapes showing only dollar amounts. Since there was no identification of the items or commodities sold or the percentage of markup thereon, if any, we could not determine the actual loss incurred by the tribe in these sales. However, we were able to identify one specific loss to the tribe on the liquidation of certain items of refrigeration equipment. We found that the tribe had incurred a loss of \$2,696 on the sale of equipment costing \$5,196. The equipment, which had never been used by the tribe, was sold, without bids having been solicited for \$2,500.

We recognize that the tribe will ultimately recover some of its \$130,000 investment through the liquidation of the inventory and equipment and that the tribe may make some future use of the commissary building. We believe, however, that real, although

unmeasurable losses, have been incurred by the tribe and that this venture ultimately will result in the dissipation of substantial amounts of tribal funds.

Need for strengthening
tribal purchasing practices

Our review showed that imprudent and unsound purchasing practices had resulted in the dissipation of trust funds advanced to the tribe. Principally, the deficient purchasing practices involve purchasing (1) without solicitation of bids, (2) under conditions which created an apparent conflict of interest, and (3) from other than known lowest cost supply sources.

The continuing and repetitive nature of the deficient tribal purchasing practices is evidenced in the comments contained in management letters prepared by the tribe's CPAs in connection with their annual audits of tribal accounts. Since 1959, the CPAs have advised tribal officials annually of the weaknesses in tribal purchasing and procurement activities. By 1964, the situation was such that the CPAs advised the Chairman of the Navajo Tribal Council, by letter dated August 21, 1964, that:

"The accounting records are incomplete in certain areas and the internal control over cash disbursements, purchasing and accounts receivable is ineffectual and in danger of collapse if existing practices are allowed to continue. ***"

* * * * *

"*** Our review of the Purchasing Department indicated that the same inefficiencies, lack of supervision and failure to follow established procedures existed as had been encountered in prior years." (Underscoring supplied.)

By letter dated December 7, 1964, the CPAs further advised the council that:

"Centralized purchasing as it is presently functioning does not adequately serve the needs of the various Tribal departments. As noted in our previous letters, the department is ineffectual and does not appear to be obtaining maximum use of Tribal purchasing power. In our opinion, the purchasing policies and procedures presently in use represent the primary area of ineffectiveness and lack of control in the Tribal operations." (Underscoring supplied.)

The Bureau's recognition of the weaknesses in the tribe's purchasing and procurement activities is evidenced in letters to the chairman approving annual tribal budgets. As early as July 1, 1960, the Bureau, in its letter approving the fiscal year 1961 budget, had recognized a need for better control of purchasing and for obtaining formal bids.

In a letter dated July 28, 1961, approving the fiscal year 1962 budget, the Acting Area Director advised the chairman that Bureau officials had considered a conditional approval of the budget whereby any exception to advertising and obtaining bids would be made only with the approval of the General Superintendent of the Navajo Agency. The letter further informed the chairman, however, that tribal officials had convinced the Bureau's representatives that steps would be taken to follow a bid procedure and that such a condition for the budget approval was not necessary.

In the fiscal year 1964 budget approval letter dated August 20, 1963, the Area Director advised the chairman that there was an urgent need for reorganization of the tribal purchasing department, the development of controls, and a clear statement of policy requiring that purchases be made on the basis of competitive bids.

The tribal Budget and Finance Committee revised the tribal purchasing policy on January 17, 1964, to require that the purchasing agent obtain three responsive bids for purchases in excess of \$1,000 and obtain formal, or sealed, bids for all purchases in excess of \$5,000. Additionally, the revision required that:

(1) the controller approve purchases only if funds were available, (2) only the purchasing agent authorize the obligation of funds, and (3) the purchasing agent not confirm any unauthorized purchases.

Despite these requirements, imprudent and unsound purchasing practices continued. Our review showed that, subsequent to the issuance of the revised purchasing policy, numerous purchase orders in excess of \$1,000 and \$5,000 had been issued without bids having been solicited.

Additionally, our review showed that (1) the controller had approved purchase requisitions in substantial amounts for the HEP, an activity for which funds had been overexpended since 1961, (2) persons other than the purchasing agent had negotiated for tribal purchases, and (3) the purchasing agent had continued to confirm these unauthorized purchases.

The Bureau recognized that the tribe's unsound purchasing practices had continued subsequent to the policy revision, and, in a letter dated October 12, 1964, approving the fiscal year 1965 budget, the Area Director advised the chairman that tribal requirements for competitive bidding should be enforced and that the tribal council should adopt regulations prohibiting or limiting purchases involving conflicts of interest.

At April 30, 1965, according to a local Bureau official, the tribe had not adopted regulations prohibiting or limiting

procurement involving conflicts of interest. Further, there is no evidence that the Bureau took any firm action which would have required the tribe to correct its deficient purchasing practices.

The tribe's CPAs had previously reported to the tribe that weaknesses of a continuing and recurring nature existed in the tribal purchasing and procurement activities. We inquired further into the weaknesses cited by the CPAs, and the results of our inquiry are presented below.

Purchases involving apparent
conflicts of interest

1. Unnecessary costs of about \$2,100 were incurred by the tribe on two purchases of antifreeze from a company which was substantially owned by the tribe's Director of Administration who was responsible for the tribe's purchasing organization. The antifreeze was purchased from the official's company during the first quarter of fiscal year 1964 for \$5,835, although it could have been obtained from the General Services Administration for \$3,726. Additionally, other suppliers had quoted prices for antifreeze which ranged from \$308 to \$1,600 below the price paid by the tribe.

Records showed that, during fiscal year 1963, 42 tribal purchase orders amounting to about \$111,000 had been issued to the official's company. Of that amount, purchase orders totaling about \$105,600, or 95 percent of the total dollar amount, has been initiated by activities which were under the supervision of this official.

On September 16, 1963, the official was relieved of his position as Director of Administration and transferred within the tribe to the position of Acting Manager of the Navajo Tribal Utility Authority (NTUA). He remained in this position until his tribal employment was terminated on November 27, 1964. During his tenure, when he was responsible for approving all purchase orders for the NTUA, the volume of purchases from his company increased significantly. The following table shows the changes in the volume of these purchases.

<u>Period</u>	Payments to company substantially owned by the Acting Manager <u>of NTUA</u>
12 months ended June 30, 1963	\$ 411
12 months ended June 30, 1964	18,115
5 months ended November 27, 1964	13,121
4 months ended April 2, 1965	5,601

2. On June 5, 1962, the tribe had purchased a Willys utility wagon for use by the tribal Parks and Rangers Department. As no funds for the acquisition of the vehicle were available at that time in that department's budget, the cost was charged to the HEP at the direction of the Chairman of the Navajo Tribal Council. The vehicle was purchased directly from a member of the tribal council at a cost of \$3,200 without bids or written quotations having been obtained. A notation on the tribe's receiving record indicates that the vehicle originally had been purchased by the councilman on March 5, 1962, for \$3,063.

Purchases from other than
known lowest cost supply sources

1. The purchase of motion picture and recording equipment on April 29, 1964, for \$944 resulted in an excess cost to the tribe of about \$264 because it failed to purchase from the known lowest cost supply source. The equipment was purchased from a local vendor, although it could have been obtained through the General Services Administration for about \$680.
2. Because the tribe failed to buy from the lowest bidder, excess costs of about \$2,625 were incurred in the purchase of three house trailers costing \$15,000.

In fiscal year 1964, the tribal Parks and Rangers Department obtained a budget authorization of \$14,000 for the purchase of two portable housing units. The requisition for the purchase of the house trailers submitted to the Department of the Controller for approval was for two trailers. After the requisition had been approved by the

Department of the Controller, however, the quantity was changed by the purchasing agent to three trailers, at the request of the Director of the Parks and Rangers Department.

The purchasing agent received quotations for three house trailers as follows (adjusted for comparability):

Low bid	\$12,372
Other bid	12,777
High bid	15,000

Despite the fact that lower prices had been quoted and the fact that the budget authorization was for only \$14,000, a purchase order was issued to the high bidder on December 26, 1963.

On May 1, 1964, the Budget and Finance Committee authorized an additional \$1,000 to cover the overexpenditure. The authorizing resolution stated that "sufficient funds were not appropriated *** to complete payment for a house trailer ***."

In the discussion preceding this action, the committee did not request information as to why the originally budgeted amount had not been sufficient. Further, the committee was not advised that lower prices had been quoted or that three, rather than two, trailers had been purchased.

Agency comments and our evaluation

We brought our findings to the attention of the Department in August 1965 and proposed that the Secretary of the Interior institute procedures which would provide improvement in the guidance of tribal officials in the management of trust funds advanced by the Bureau. The Department's comments dated January 10, 1966, which incorporated the comments by the Commissioner of Indian Affairs, together with our evaluation, are discussed below.

The Commissioner stated that the supervision exercised by the Bureau over the tribal activities discussed in this report had been consistent with the Bureau's policy of allowing tribal officials the highest degree of freedom in the management of tribal affairs in order that the officials may acquire the necessary skills to assume full responsibility for tribal affairs. He stated that the Bureau's agency personnel are in almost constant communication with tribal officials and that every effort is extended to assist tribal officials in the proper exercise of their responsibility. He stated, however, that since the Bureau does not deal with the tribes at arm's length, but rather as friendly advisors, the records will seldom show documentation in the form of written memoranda except, as a general rule, in connection with the approval of tribal budgets. The Commissioner said that the record outlined in our report showed that continuing and consistent efforts were being made by Bureau representatives to effect improvements in tribal management practices. In this respect, he stated that Bureau representatives concerned with the affairs of the Navajo Tribe had been effective in providing guidance to the tribe in the management of its activities.

As previously noted in this report, the Bureau's Indian Affairs Manual requires that Bureau superintendents review monthly

statements of tribal programs, comparing expenditures against approved budget items, and, where deviations are noted, report their findings to the area office and make recommendations for correcting any deficiencies. The manual requires also that such deficiencies be brought to the attention of the tribal council by letter or memorandum from the respective superintendents. Although we found documentary evidence that Bureau representatives had made some effort to advise tribal officials in the management of the activities discussed in this report, this effort, as evidenced by the continuing nature of the deficient management practices disclosed by our review had not, in our opinion, been sufficiently timely or effective.

For example, unauthorized expenditures of about \$2.5 million for the HEP operations had been made over an approximate 3-year period before the records showed that the Bureau had formally advised the tribe, as required by Bureau regulations, of the impropriety of this practice. Records showed that, even after the matter had been brought to the attention of tribal officials, the HEP had continued to make unauthorized expenditures of tribal funds. In the case of the commissary, we found that Bureau representatives had formally advised tribal officials against entering into a venture of this type. This advice was not given, however, until approximately 3 months after the tribal council had approved the establishment of the commissary and after about \$100,000 had been expended or obligated.

Other pertinent comments of the Commissioner concerning the matters presented in this report are discussed below.

1. "With respect to these findings, I should like to point out that the losses by the tribal heavy equipment pool result in fact from failure of the pool

management to bill other units of the Navajo Tribe for services performed. This is a poor management practice, but it does not result in a loss to the tribe as a whole."

Although we recognize that some of the losses incurred by the HEP had resulted from the failure to have adequately billed other tribal activities, our review disclosed that, as illustrated by the road construction contract, a significant portion of the losses had been incurred in dealings with nontribal organizations. Tribal records show that more than half the HEP's dealings were with organizations other than tribal government organizations. Thus, the tribe had, in fact, incurred substantial losses of its funds from HEP operations. In this regard, the Navajo Tribal Council passed a resolution on February 15, 1966, that stated:

"The Heavy Equipment Pool, through defective administration and financing procedures, failed to properly carry out the functions and objectives required by ACJY-117-61 resulting in severe financial loss to the Tribe."

2. "With respect to the diversion of funds from approved budgetary programs, it is true that these diversions were not approved until long after the fact. This, again, is a poor management practice and represents a continuing problem in the total fiscal management for the tribe including the preparation and approval of budgets. It does not, in my opinion, represent a 'dissipation of assets.'"

We agree that the diversion of funds from approved budgetary programs does not in itself represent a dissipation of assets. Our review showed, however, that tribal funds diverted for the HEP and commissary operations had been mismanaged and dissipated.

3. "With respect to the construction of the road, there is no showing that the prime contractor *** obtained undue profit. The road is on tribal land, so that

there has been no 'loss' to the tribe; in fact, the entire amount of the contract could properly have been paid from tribal funds if the tribe had desired."

We recognize that the road had been constructed on tribal land for the benefit of the tribe and that it possibly could have been paid for entirely from tribal funds, if the tribe had so desired; however, the fact remains that the construction of the road was an undertaking of the Federal Government and not the tribe. Therefore it was not necessary for the HEP to have become involved in the construction of the road, and, had it not become involved, the tribe would not have expended \$398,000 of tribal funds on a project for which it received only \$250,000. Furthermore, the benefits accruing to the tribe from the use of the road would have been the same, whether it was constructed by the HEP or by another subcontractor. Accordingly, we believe the \$148,000 loss incurred by the HEP in constructing the road was an actual loss to the tribe which could have been avoided.

4. "*** (a) It [the tribe] has adopted a new plan of operation and has provided stronger management for the heavy equipment pool. (b) It has adopted the principles of centralized purchasing and now advertises for consolidated orders of materials, supplies, and equipment to a considerable extent. (c) The official alleged in the GAO report to have been guilty of a conflict of interest has been discharged. The purchase of materials, services, and supplies from members of the tribe wherever possible continues to be a tribal policy and we concur in that policy. (d) Certain reorganizations of other major tribal enterprises are being effected and should result in more efficiency in those endeavors."

Except for discharging the tribal official having apparent conflicting interests--which is noted in this report--the actions cited by the Commissioner either had not been initiated, or had

not shown measurable results, at the time of our field examination. Accordingly, we are unable, at this time, to assess the effectiveness of these measures for correcting the deficiencies disclosed during our review.

Navajo Tribal Council comments and our evaluation

To provide assurance of the completeness, fairness, and objectivity of our reports, in all instances where there is direct, indirect, or implied criticism of an agency, contractor, or other identified organization or individual, it is our policy to afford, to the extent practicable, those so affected a reasonable opportunity to comment on our findings before our reports are released. In accordance with this policy, we furnished copies of the draft of this report to the government of the Navajo Tribe. We were advised that the Navajo Tribal Council had considered the matters discussed in the draft report and on January 28, 1966, by a vote of 36 in favor and 22 opposed, had passed a resolution entitled "Submitting Comments on the Preliminary Report of the General Accounting Office Reporting on its Investigation of Secretary of the Interior Udall and Bureau of Indian Affairs in respect to the Navajo Reservation, Offering Further Information, and Expressing Appreciation to the United States General Accounting Office."

The resolution made several allegations concerning the management of tribal assets and the Bureau's and Department's dealings with the tribe which are not discussed in this report but which the council wished to bring to the attention of the Congress and this Office. The resolution included statements (1) that the Chairman of the Navajo Tribal Council had complete control of purchasing and other fiscal affairs which had led to the dissipation and mismanagement of tribal funds, (2) that Bureau and Department officials had interfered excessively in the tribe's internal affairs and in so doing had attempted to persuade the council to take various actions that were not in the best interests of the tribe, and (3) that there had been unreasonable delays and extreme communications problems within the Bureau in connection with Bureau

decisions concerning the NTUA which resulted in increases in costs to the tribe of materials and equipment and delays in providing service. Since these matters were not included in our review, we are not commenting on them.

In regard to our finding, the resolution stated that the council expected to consider a plan for the complete reorganization of the HEP. Subsequently, we were advised that the reorganization plan had been adopted by the council on February 15, 1966. Since this reorganization plan was adopted subsequent to our field examination, we are unable, at this time, to assess the effectiveness of the council's action in correcting the deficiencies disclosed during our review.

In regard to our proposal that the Secretary of the Interior institute procedures which would provide for improvements in the guidance of tribal officials in the management of tribal funds, the resolution dissented from this suggestion and proposed that the Bureau of Indian Affairs be removed from the Department of the Interior and established as an independent Government agency. In our opinion, the Council's proposal is a policy matter for legislative and executive consideration, and, accordingly, we are not commenting on the matter.

By letter dated February 1, 1966, the Chairman and Vice Chairman of the Navajo Tribal Council and 30 council delegates furnished dissenting comments on the council's resolution of January 28, 1966, to several members of the Congress. The letter stated that the tribe faced grave problems and that our draft report showed that there had been a definite lack of control over the expenditure of tribal funds. The letter also made several allegations of financial mismanagement of tribal funds and other problems within the

tribal government which are not discussed in this report or in the previously mentioned council resolution.

The letter stated also (1) that the absence of fiscal controls was of long standing and that reports by the tribe's CPAs pointing out the lack of controls had been withheld from the council, (2) that the council had diluted the executive powers of the chairman although he was held responsible for all tribal operations by the Navajo people, and (3) that the unstable government of the tribe could no longer benefit the Navajo people because various individuals were seeking power and benefits for themselves. Since these matters were not included in our review, we are not commenting on them.

The letter stated further that closer supervision by, and cooperation with, the Bureau of Indian Affairs, to secure proper management of tribal resources for the maximum benefit of the Navajo people would be welcomed. The letter requested that a detailed examination of all facets of the operation of the tribal government since 1947 be made to serve as a basis on which appropriate action could be taken. The letter also requested assistance from the Congress in establishing a plan of operation for the tribal government which could be altered only by referendum.

Conclusions

It appears that, once trust funds have been advanced to the tribe by the Bureau, the power to spend and control the funds becomes a tribal responsibility. This does not mean, however, that the Bureau of Indian Affairs, acting on behalf of the Secretary of the Interior, has no further responsibility in relation to such funds. We believe that, to carry out the duties imposed upon the Secretary under section 7 of the Navajo-Hopi Rehabilitation Act, it is the responsibility of the Bureau to know whether the funds advanced to the tribe are spent in a manner that conforms to the budget submitted by the Navajo Tribal Council and approved by the Bureau on behalf of the Secretary and, if the Bureau finds that deficiencies exist in the management of the funds advanced to the tribe, to take such action as is necessary to correct such deficiencies.

We believe that the Bureau has not fully responded to these responsibilities, as evidenced by the finding of our review and the statements of both the majority and minority of the Navajo Tribal Council. Serious deficiencies have existed in the management of funds advanced to the tribe, and the Bureau has not, in our opinion, taken timely action to correct these deficiencies. Moreover, we believe that the Bureau, as trustee of the Indian estate, should have promptly provided the assistance, requested by the chairman, to the Navajo government in defining the extent and character of the responsibilities of the Federal Government and the tribal government relating to the management of funds advanced to the tribe, which are being spent at the rate of about \$25 million annually.

In carrying out its responsibilities, the Bureau has followed a policy of allowing tribal officials the highest degree of freedom in the management of tribal funds in order that tribal officials may acquire the necessary management skills to assume full responsibility for tribal affairs. We recognize that the aim of this policy is in accordance with the intent of the Navajo-Hopi Rehabilitation Act. We believe, however, that it is incumbent upon the Bureau, in its role as trustee, to provide constructive and effective guidance to tribal officials until such time as it is demonstrated that sound financial management controls and practices, which provide for the prudent management of tribal assets, have been established. We conclude that the Bureau has not provided the type of guidance needed in order that the Navajo people may receive the maximum benefits from tribal assets.

In our opinion, the Bureau's written instructions to its personnel in this regard do not adequately outline specific steps for a positive approach to providing such guidance to tribal officials in the management of tribal assets. Furthermore, it appears that Bureau personnel responsible for providing guidance to the Navajo Tribe have not followed the instructions that have been issued. We believe that, in view of the serious deficiencies that exist in the management of tribal assets, the Bureau should take positive formal steps to guide the tribe toward the necessary corrective action.

Recommendations to the Secretary of the Interior

Accordingly, we recommend that the Secretary of the Interior direct the Bureau of Indian Affairs, in cooperation with the government of the Navajo Tribe of Indians, to (1) review the programs for which tribal funds are currently being expended, to evaluate the appropriateness of such programs, (2) review and evaluate the

adequacy of the financial controls and practices over the expenditure of the funds, and (3) formulate and implement a comprehensive plan, based on the results of these reviews, for the effective utilization of tribal assets. We recommend also that the Secretary require the Bureau to provide its personnel with improved guidelines for carrying out the Government's responsibility for the guidance of tribal officials in the management of tribal funds and to make periodic reviews to evaluate the effectiveness of, and compliance with, such guidelines. We further recommend that the Secretary consult with the Joint Committee on Navajo-Hopi Indian Administration on the actions he and the tribe propose to take to correct the deficiencies in the management of tribal funds.

APPENDIX

PRINCIPAL OFFICIALS OF THE
DEPARTMENT OF THE INTERIOR
AND THE BUREAU OF INDIAN AFFAIRS
RESPONSIBLE FOR THE ADMINISTRATION OF ACTIVITIES
DISCUSSED IN THIS REPORT

	Tenure of office	
	From	To
<u>DEPARTMENT OF THE INTERIOR</u>		
SECRETARY OF THE INTERIOR:		
Stewart L. Udall	Jan. 1961	Present
UNDER SECRETARY:		
James K. Carr	Jan. 1961	July 1964
John A. Carver, Jr.	Jan. 1965	Present
ASSISTANT SECRETARY--PUBLIC LAND MANAGEMENT:		
John A. Carver, Jr.	Jan. 1961	Dec. 1964
Harry R. Anderson	July 1965	Present
ASSISTANT SECRETARY FOR ADMINISTRATION:		
D. Otis Beasley	Sept. 1952	Dec. 1965
<u>BUREAU OF INDIAN AFFAIRS</u>		
COMMISSIONER OF INDIAN AFFAIRS:		
John O. Crow (acting)	Feb. 1961	Sept. 1961
Philleo Nash	Sept. 1961	Mar. 1966
Robert L. Bennett	Apr. 1966	Present
DEPUTY COMMISSIONER OF INDIAN AFFAIRS:		
H. Rex Lee	Nov. 1959	Sept. 1961
John O. Crow	Sept. 1961	Nov. 1965
Robert L. Bennett	Jan. 1966	Mar. 1966
John L. Norwood (acting)	Mar. 1966	Present