

INDIAN RIGHTS PROTECTION

Table of Contents

1. Introduction

- .1 Purpose
- .2 Program Policy
- .3 Policy on Terminated and Other Non-Recognized Tribes
- .4 Goal

2. Unresolved Indian Rights Issues

- .1 System Description
- .2 Inventory - Area and Central Office
 - A. Identify all issues
 - (1) Case Conference
 - (2) Other Agencies
 - B. Development of 5-5101 (Illustration 1)
 - (1) Issue Number
 - (a) Tribal issues
 - (b) Area issues
 - (2) Type
 - (3) Status
 - (4) Method of Resolution
 - (5) Area Project Leader
 - (6) Central Office Project Leader
 - (7) Acres
 - (8) Acre Feet
 - (9) Kilowatt Hours
 - (10) Dollars Needed
 - (a) If issue is in inventory
 - (b) If issue has been selected for resolution
 - (11) Total Dollars to Last Fiscal Year
 - (12) Dollars Current Year
 - (13) Dollars Budget Year
 - (14) Dollars Planning Year
 - (15) Man Years for Solution
 - (16) Tribal Government Priority
 - (17) Date Issue First Described

INDIAN RIGHTS PROTECTION

Table of Contents

-
- (18) Kind and Date This Action
 - (19) Future Action
 - (20) Other Project Leaders
 - (21) Describe Issue
 - (a) Tribes involved
 - (b) Organizations involved
 - (c) Description
 - C. Form 5-5101 as a Control
 - (1) Changes in Form 5-5101
 - .3 Development of Issue for Solution - Area Office
 - A. Selection of an Issue
 - (1) Criteria
 - (2) Involvement
 - (3) Assign Project Leaders
 - (a) Mandatory
 - (b) As Applicable
 - B. Make Action Plan, 5-5102 (Illustration 2)
 - (1) Objective
 - (a) What?
 - (b) Who?
 - (c) When?
 - (2) Number
 - (3) Approval
 - (4) Date
 - (5) Completion Dates
 - (6) Specific Steps
 - (7) Responsible Party
 - (8) Progress Notes
 - C. Development of Issues for Submission to Central Office or Decision by Area Director
 - (1) The Assembly and Classification of Pertinent Documents

INDIAN RIGHTS PROTECTION

Table of Contents

- (2) Notify Affected Agencies
 - (3) Coordinate with Solicitor
 - (4) Final Submission
- .4 Processing Bureau of Indian Affairs - Central Office
 - A. Review Issue
 - B. Affected Agencies
 - C. Solicitor's Review
 - D. Approval
 - .5 Final Processing - Department of the Interior
 - .6 Disposition

INDIAN RIGHTS PROTECTION

Introduction

1. Introduction

1.1 Purpose: The purpose of this Part is to provide guidelines relative to the Bureau's trust and legal responsibilities for the protection of the rights of Indians in their trust property and those rights affecting trust property that are afforded by tribal sovereignty. The rights include, and are not limited to, water rights, land titles, boundary disputes, trespass, hunting and fishing, zoning and other land use.

1.2 Program Policy: It is the policy of the Bureau of Indian Affairs to render to Indians, Indian tribes and Alaska Natives those services necessary to protect and utilize all rights based on treaty, statute, proclamation, sovereignty, trust responsibility or otherwise.

1.3 Policy on Terminated and other Non-Recognized Tribes: Whether a terminated or other non-recognized tribe has rights which are nevertheless entitled to Federal protection shall be determined by analysis of the treaties, statutes, and other materials pertaining to that tribe. Where it is determined that a terminated or other non-recognized tribe holds rights entitled to Federal protection, a further determination shall be made regarding the scope and definition of the services necessary to protect those rights.

1.4 Goal: The goal is to help the Indians and Alaska Natives to fully utilize their resources and exercise their rights in a conscientious manner which will not endanger their resources. Because of the nature of this program, it will require a great deal of understanding and coordination among a multitude of interested parties.

Problems encountered range from those which are very finite and localized to broad issues involving many tribes. Identification and resolution of those items affecting the Indian trust estate is a charge placed before the Bureau of Indian Affairs Rights Protection Office.

It is the duty of the Bureau of Indian Affairs Rights Protection Office to work closely with tribal representatives to:

- A. Protect the land base from encroachment and diminution.
- B. Protect the natural resources connected with the land.

INDIAN RIGHTS PROTECTION
Introduction

C. Protect the monies derived from the management of real estate and other resources.

D. Recover land or resources once secured and now lost.

INDIAN RIGHTS PROTECTION
Unresolved Indian Rights Issues

2. Unresolved Indian Rights Issues

2.1 System Description: The system for identifying and reducing the number of unresolved Indian rights issues and the Departmental procedure for resolving such issues has five major components: 2.2 Inventory, Area and Central Office; 2.3 Development of issue for solution, Area and Central Office; 2.4 Processing, Bureau of Indian Affairs, Central Office; 2.5 Final Processing, Department of Interior; 2.6 Disposition.

2.2 Inventory, Area and Central Office: As issues are identified, a Description of Issue, Form 5-5101 (Illustration 1) is prepared by the Agency, Area, or Central Office, as appropriate, and submitted through proper channels to the Office of Trust Responsibilities of the Central Office which will maintain a current catalog of all issues. Areas will maintain an Area catalog of issues. The catalogs will be reviewed periodically and updated as necessary.

A. Identify all issues. An issue is any point in question or dispute that pertains to the Bureau's trust or legal responsibility relative to all matters involving Indian rights including those afforded by tribal sovereignty. Those issues which are being solved by currently operating B.I.A. programs need not be listed.

(1) Case Conference. Issues are discussed with tribal government, tribal attorney and Area and Agency staff. This initial contact with the tribal government is essential to develop a common understanding of the issue. Later case conferences or informal contacts may refine the scope of the issue. Knowledge of tribal governments' priority and commitment to the resolution of an issue should be obtained as early as possible.

This represents the first of several possible uses of the "case conference" in which various interested individuals discuss the merits of the issue and decide on a plan of action. A case conference should be used at any time a major decision is required. Obvious times when a case conference is appropriate are at the time of selection of the issue for solution, when the issue is passed from the Area to Central Office, 2.4, or when it is prepared for the Secretarial Review Committee, 2.5.

INDIAN RIGHTS PROTECTION
Unresolved Indian Rights Issues

(2) Other Agencies. If the resolution of the issue requires participation of or affects another federal agency, contact should be made to obtain their cooperation and assistance. The contact with other affected agencies, 2.3C(2), may be made at any time, either in the inventory or development process. Care should be taken that the contact is made at a time to promote favorable resolution.

B. Development of 5-5101 (Illustration 1). Completed forms 5-5101 will comprise the basis of an inventory of rights issues. Use of the numbered spaces is described:

(1) ISSUE NUMBER. Issues will be assigned a number which specifies the following: Area Office, Agency, Tribe or other location and the chronological number of the issue identified for the location.

(Use current FINANCIAL MANAGEMENT ACCOUNTS HANDBOOK PART II, COST CENTER IDENTIFICATION, PART D: Examples cited below are for Tribal and Area issues).

tribe: (a) Tribal issues: Those issues affecting only one

J52 561 002

Sacramento Area Office, Hoopa AFO, Hoopa Valley Indians, second issue identified for that tribe.

OR

C56 206 001

Billings Area Office, Ft. Peck Agency, Ft. Peck Tribes, first issue identified for that tribe.

OR

PCO 140 006

Portland Area Office, Klamath Indians, sixth issue identified for the Klamath Indians.

BIAM REISSUE
FEBRUARY 1984

INDIAN RIGHTS PROTECTION
Unresolved Indian Rights Issues

(b) Area issues: Those issues that are broadly based and affect more than one tribe:

H-- 000 003

Phoenix Area Office; third issue identified which affects more than one agency or tribe.

(Form 5-5101 is designed to fold in the middle to make a double 8 x 5 card. Spaces one through six are thus on top of the card in ready visual access. Form 5-5101 can also be printed on both sides of an 8 x 5 card with spaces one through eighteen being in the front.)

(2) TYPE. Use three digit descriptor for type of issue.

<u>TYPE OF ISSUE</u>	<u>TYPE DESCRIPTOR</u>
Mineral	MIN
Finance	FIN
Land General	LDG
Title	TTL
Land Utilization	UTL
Rights of Way	ROW
Boundary	BND
Land Restoration	RES
Land Trespass	TRS
Sovereignty	SOV
Taxation	TAX
Hunting Rights	HNT

INDIAN RIGHTS PROTECTION
Unresolved Indian Rights Issues

<u>TYPE OF ISSUE</u>	<u>TYPE DESCRIPTOR</u>
Fishing Rights	FSH
Water	WTR
Phase 1 Water Study	PH1
Phase 2 Water Study	PH2
Phase 3 Water Study	PH3
Power	POW
Other	OTH

(3) STATUS. Use up to ten digit status descriptor for specifying where the action is.

<u>STATUS OF ISSUE</u>	<u>DESCRIPTOR</u>	<u>WHO HAS THE ACTION</u>
(a) Static. Issue has been identified and described. No work is being done.	A-STATIC	AREA OR AGENCY Requires periodic assessment to evaluate when to make active.
(b) Static in court. Certain issues lie dormant in the courts for years. Some issues are filed by Tribes without direct B.I.A. support. Such issues can require massive Rights Protection support in a short time.	A-STAT-CRT	AREA OR AGENCY Requires periodic evaluation.
(c) Active for Area. To be resolved in Area. No Central Office assistance needed.	A-ACT-A	AREA OR AGENCY Develop issue toward solution as in 51 BIAM.

INDIAN RIGHTS PROTECTION
Unresolved Indian Rights Issues

<u>STATUS OF ISSUE</u>	<u>DESCRIPTOR</u>	<u>WHO HAS THE ACTION</u>
(d) Active for Central Office. An Area issue but assistance of the Central Office is necessary for its resolution.	A-ACT-C	AREA OR AGENCY Issue is being developed for submission to Central Office as in 51 BIAM.
(e) Active Solicitor.	A-ACT-S	AREA OR AGENCY Area has the responsibility to remain in contact with Field Solicitor until his work-up is completed and the resolution process is on its way.
(f) Active in Court.	A-ACT-CRT	AREA OR AGENCY Complaint has been filed by the Department of Justice. Area is expected to provide assistance through the Solicitor and the Justice lawyer assigned to the case.
(g) Resolved. No further action required.	RESOLVED	ALL LEVELS.
(h) Retired. Some issues will be rewritten or combined with others. This is a natural process as staff develops additional knowledge of an issue. Retired number is made a part of the background for any new number developed.	RETIREED	ALL LEVELS.

INDIAN RIGHTS PROTECTION
Unresolved Indian Rights Issues

<u>STATUS OF ISSUE</u>	<u>DESCRIPTOR</u>	<u>WHO HAS THE ACTION</u>
(i) Issues other than Rights Protection. Some issues at an Agency are constantly before the B.I.A. and the Tribe and may affect the work of Rights Protection.	A-OTHER	AREA OR AGENCY
(j) Issues other than Rights Protection. Rights Protection is supporting other branches who are taking the lead.	A-SUPPORT	AREA Unit other than Rights Protection is taking the lead in issue resolution. Rights Protection will give such support as is agreed upon between the units.
(k) Active in Central Office or in Secretary's office. Usually an issue which has been worked up and presented by an Area Office to the Central Office for solution.	C-ACT	CENTRAL OFFICE Central Office or Secretary to provide final resolution as in 51 BIAM.

(4) METHOD OF RESOLUTION. Use one of the following three digit solution descriptors:

Administrative ADM

Legislative LEG

Judicial CRT

(5) AREA PROJECT LEADER. Name abbreviations. Area Project Leader (APL) is mandatory for all active issues.

INDIAN RIGHTS PROTECTION
Unresolved Indian Rights Issues

- (6) CENTRAL OFFICE PROJECT LEADER. Name abbreviation. Central Office Project Leader (COPL) is mandatory for all those issues in which Central Office participation is required.
- (7) ACRES. Enter acres in question. An estimate is sufficient. Amount should be stated if known.
- (8) ACRE FEET. Enter acre feet in question. An estimate is sufficient. Amount should be stated if known.
- (9) KILOWATT HOURS. Enter kilowatt hours in question. An estimate is sufficient. Amount should be stated if known.
- (10) DOLLARS NEEDED. ((10), (11), (12), (13), and (14) refer to contract funds, 1081 funds, and expert witness funds. Enter total dollars needed to complete resolution, exclusive of funds already spent as listed in (11).
- (a) If issue is in inventory. Use formula based on Area experience: Average cost per acre, acre foot or kilowatt hour.
- (b) If issue has been selected for resolution. Use figure developed from up-to-date assessment of actual costs.
- (11) TOTAL DOLLARS TO LAST FY: Enter two digit number for current fiscal year and dollar amount allotted for use in that year.
- (12) DOLLARS-CURRENT YEAR: Enter two digit number for current fiscal year and dollar amount allotted for use in that year.
- (13) DOLLARS-BUDGET YEAR: Enter two digit number for year and dollars tentatively allotted for that year.
- (14) DOLLARS-PLANNING YEAR: Enter two digit number for Planning year and dollars planned for that year.
- (15) MAN YEARS FOR SOLUTION: No entry until supplementary manual release.
- (16) TRIBAL GOVERNMENT PRIORITY: Enter figure 1, 2, or 3 to signify the range from the highest to the lowest tribal priority.

INDIAN RIGHTS PROTECTION
Unresolved Indian Rights Issues

(17) DATE ISSUE FIRST DESCRIBED: Enter month and year the issue was identified.

(18) KIND AND DATE THIS ACTION: Enter action being taken, by number on 5-5101. Enter month and year of action.

(19) FUTURE ACTION: Enter six digit number, day, month, and year, of next review, or planned completion date of next significant action.

(20) OTHER PROJECT LEADERS; Name abbreviations as appropriate, for Tribal Project Leader, (TPL); Agency Project Leader, (AGPL); Field Solicitor Project Leader, (FSPL); Departmental Solicitor Project Leader, (DSPL); and Department of Justice Officer in charge, (JPL).

(21) DESCRIBE ISSUE:

(a) Tribes involved-if an Area issue.

(b) Organizations involved.

(c) Description. Should be limited to 250 words.

C. Form 5-5101 as a Control. All forms 5-5101 will be forwarded to the Central Office by the Area making the inventory. Both Area and Central Office must have identical inventories.

(1) Changes in Form 5-5101: Changes will be accomplished by the office initiating the change. Submitting a 5-5101 which contains actual change being made by number on the 5-5101 and the date of the change, in (18) of 5-5101.

Example: Aberdeen Area Office achieves resolution of issue #A07-345-002 listed as A-ACT-A. Aberdeen Area updates 5-5101 by replacing A-ACT-A with RESOLVED and by listing circumstance of resolution in space (21). Date of action is listed in space (18). One copy is retained to update the Aberdeen file and one copy is submitted to the Central Office.

BIAM REISSUE
FEBRUARY 1984

INDIAN RIGHTS PROTECTION
Unresolved Indian Rights Issues

2.3 Development of Issue for Solution, Area Office.

A. Selection of an Issue. Selection of issues for resolution should be made from the backlog or inventory developed in 2.2.

(1) CRITERIA. The following criteria for setting priorities provides guidelines for selection of an issue for solution.

(a) Tribal Priority: Of primary consideration in issue selection.

(b) Authority: Who has the authority may be a factor in selection. If the resolution is within the authority of the Area Director, a favorable conclusion is more likely than if the authority lies with an Agency in another Department.

(c) Probability of Success: While not controlling should be given considerable weight.

(d) Ease of Solution: Not controlling.

(e) Competency: The ability to either undertake, or direct, the investigations that appear necessary.

(f) Cost: Estimated total cost, man months, and the dollar cost. Impact on other agencies should be considered.

(g) Legal Considerations: To be evaluated by legal staff. Includes, but is not limited to, statutes of limitation, legal precedent, existence of supportive case law, the quality of the evidence available in terms of admissibility in a judicial hearing.

(2) INVOLVEMENT: Issue selection should have the involvement of the following committees or individuals:

(a) Area based Tribal Chairmen's Committee. Areas may not have a Rights Protection unit or a Tribal Chairmen's Committee. (If this is the case, the unit of the Area Office assigned the responsibility for processing Indian rights issues should take the lead.) The Area Director may wish to serve on a selection committee.

INDIAN RIGHTS PROTECTION
Unresolved Indian Rights Issues

(b) Tribal Chairman and attorney of reservation involved.

(c) Commissioner, Area Director, or Superintendent.

(d) Area based priority committee. Optional. This committee is responsible for establishing Area priorities or issues to be resolved.

(e) Field or Regional Solicitor. The Solicitor, being responsible for initial plausible legal theory, should participate in the selection of issues for development. The Solicitor continues to be responsible throughout the development for legal liaison with Agency and Area personnel developing the facts. The Solicitor also is responsible for coordination with the Departmental Solicitor, Washington, D.C. Contacts by the Solicitor with all involved will continue throughout case development.

(3) ASSIGN PROJECT LEADERS: Upon selection from the inventory of an issue to be resolved, Project Leaders will be assigned. The Area Project Leader is assigned by the Area Rights Protection Officer or by the Area Director. The Central Office Project Leader is assigned by the Director of Trust Responsibilities.

The basic function of the Project Leader is to insure that the agency, or level of government he represents, performs its function with respect to the resolution of unresolved issues. He is also the contact man with other agencies.

The AREA Project Leader has the additional responsibility of following an issue through whatever agency or level of government it must pass to achieve resolution. Though an issue may pass from his direct control for a time, such as to the Solicitor's Office or to the Justice Department, he must constantly be the catalyst for all action taken. The APL does whatever is necessary in terms of generating support or making contacts to achieve resolution.

The Central Office Project Leader (COPL) has a similar role. He must not wait for action to be taken by other levels of government. He must see that action takes place.

The APL and COPL, as an aggressive team, are the keys to speedy resolution of an issue.

INDIAN RIGHTS PROTECTION
Unresolved Indian Rights Issues

Project Leaders may be designated as follows:

- (a) Mandatory -- usually when ACTION PLAN is made.

AREA - APL (5) of 5-5101
CENTRAL OFFICE - COPL (6) of 5-5101

- (b) As applicable (20) of 5-5101

TRIBE TPL
AGENCY AGPL
FIELD SOLICITOR FSPL
DEPARTMENT SOLICITOR DSPL
DEPARTMENT OF JUSTICE JPL
Usually lawyer assigned
to the issue
OTHER BY NAME

B. Make ACTION PLAN - 5-5102 (Illustration 2). When an issue is selected from the inventory an ACTION PLAN will be made.

ACTION PLANS are exceptionally usable tools for the administrator who wishes to achieve results. They describe what is to be done, establish time frames, and specify responsibilities.

If an ACTION PLAN is to be an effective tool, it must constantly be reviewed and brought up to date as the situation changes. From very little to a very considerable amount of material will be available, be sorted, and some discarded as the development proceeds toward final analysis. Final analysis will thus include only meaningful documents.

A logical time for ACTION PLAN review is when unanticipated information is obtained or when the plan passes from one level of government to another.

The designate of the Area Director who actually constructs the ACTION PLAN should be the APL, an individual who has become familiar with the background of the issue through the process of selecting the plan for resolution.

Use of the numbered spaces on 5-5102 is described.

INDIAN RIGHTS PROTECTION
Unresolved Indian Rights Issues

(1) OBJECTIVE. Specific description of an end result. What is it? Who gets it done? When is it to be done?

(a) What? A short, concise statement of the result desired based on the description of the issue in 2.2B(21)(c).

(b) Who? If the issue is to be resolved by the Area Director, enter the name of the Area Project Leader in the first column of line one and the name of the individual responsible for completion of the plan in the second column of line one.

If the issue is to be resolved at the Central Office or Departmental level, also enter the name of the Central Office Project Leader in the first column on line two.

For issues with final resolution in the Central Office, the COPL and the APL, as representatives of the Commissioner and the Area Director, immediately begin negotiations to reach agreement on target dates for 2.4, Processing, Bureau of Indian Affairs, and 2.5 Final Processing, Department of Interior. The negotiations may be completed well after work on the specific steps of the ACTION PLAN for which the Area is responsible has begun.

When agreement is reached, the Commissioner will confirm in writing to the Area Director the final completion dates agreed to by the Central Office and the Department as well as the names of the individuals responsible for carrying out those commitments. These names will be entered in the second column on lines two and three.

(c) When? Enter on line one the target date for FINAL SUBMISSION, 2.3C(4). Enter on lines two and three the completion dates cited in the Commissioner's letter of agreement.

(2) NUMBER. Issue number. Enter (1) of 5-5101.

(3) APPROVAL. Area Director's final approval, date and signature. Optional.

(4) DATE. Enter in the first blank the date the ACTION PLAN was initiated. Enter in second blank the date of the Commissioner's letter specifying agreement, if solution is above the Area Director.

INDIAN RIGHTS PROTECTION
Unresolved Indian Rights Issues

NOTE: Five (5) through eight (8) relate only to action which is to be completed at the Area level.

(5) COMPLETION DATES. Target dates should be negotiated between the individual responsible for accomplishment and the supervisor. A realistic evaluation of the man hours necessary to deal with material and logistical requirements relating to the issue should produce completion dates that can be met.

(6) SPECIFIC STEPS. Enter the four or more steps described in 2.3C.

(7) RESPONSIBLE PARTY. Name of the individual who is to perform each specific step.

(8) PROGRESS NOTES. Record all major progress on the ACTION PLAN.

C. Development of Issue for Submission to Central Office or Decision by Area Director. The nature of the issue to be resolved will dictate the particular steps necessary for the resolution of any single issue. There are four steps which are common to the resolution of all issues.

(1) THE ASSEMBLY AND CLASSIFICATION OF PERTINENT DOCUMENTS. These documents include, but are not limited to:

- (a) Title information.
- (b) Records and notes of surveys.
- (c) Official documents. Executive Orders, Laws, Treaties, Court Decisions and correspondence.
- (d) Significant historical facts.

(2) NOTIFY AFFECTED AGENCIES. The notification of other agencies requires particular sensitivity on the part of the APL and the COPL. Affected agencies must be notified at both Central Office and Field levels. The Area Director is responsible for notifying Regional Directors and others at the Area level. A reply from the affected agencies at the level of notification is expected. Except for unusual circumstances, notification of the agencies will take

INDIAN RIGHTS PROTECTION

Unresolved Indian Rights Issues

place prior to transmittal of the issue to the Central Office, 2.3C(4). The exact time and method of notification will be determined by the Central Office and Area Office Project Leaders.

(3) COORDINATE WITH SOLICITOR. The local Solicitor must be aware of or give advice on each step in the development of the issue. In addition to being the legal advisor, the local Solicitor, or his Project Leader, serves as the coordinator with the Departmental Solicitor's office.

(4) FINAL SUBMISSION: Prior to the submission of an issue for final decision, a case conference should be held. An issue should be sufficiently developed that it need not be returned to lower levels for further work after it is submitted.

A minimum acceptable submission will include:

(a) Pertinent background materials.

(b) A good cover letter. A review of the significant background materials, applicable legal theory and possible political overtones. It must end with a concise statement of the decision or results desired.

2.4 Processing, Bureau of Indian Affairs - Central Office. The Central Office Project Leader, will, as soon as the analysis is received, commence coordination to move the issue through the Bureau and the Department. The COPL will:

A. Review Issue. Review the issue presented for proper documentation and technical accuracy. This will be a cursory review since the APL and COPL will have been in communication during the development of the issue. If necessary, the COPL will obtain any additional material.

B. Affected Agencies. Transmit a copy of the submission to any other agency affected at the national level for its comments. The reply of an affected agency will state its official position, and failure to reply will be accepted as concurrence. The Regional level of the affected agency will have been notified by the Area Director in 2.3C(2).

In issues that involve more than one agency, informal lines of communication between the agency heads and Secretarial offices should be established.

INDIAN RIGHTS PROTECTION
Unresolved Indian Rights Issues

C. Solicitor's Review. Obtain the Department of the Interior Solicitor's review and opinion. A copy of the issue will be transmitted to the Solicitor at the same time a copy is sent to the affected agencies. The Solicitor and the Commissioner will determine if the issue should go directly to the Secretary, or to the Secretarial Unresolved Indian Rights Issue Review Committee to be convened by the Under Secretary in accordance with the enclosed charter (Illustration 3). The Secretarial Unresolved Indian Rights Issue Review Committee will be used only if official positions of agencies are in conflict and cannot be reconciled.

D. Approval. Obtain the Commissioner's approval.

2.5 Final Processing - Department of Interior. Dependent upon the decision made by the Solicitor and the Commissioner, 2.4, the issue will proceed within the specified time frames to one of the following:

The Secretarial Review Committee, for recommendation to the Secretary, or

Directly to the Secretary (Administrative), or

The Solicitor requests the Justice Department to file (Judicial), or

The Secretary approves processing for legislation (Legislative).

2.6 Disposition. The Commissioner, upon disposition of an issue at the Central Office level, will notify, through appropriate channels, the affected tribe or tribes and other affected agencies of the action taken.

In situations where an issue is resolved below the Central Office level, the Area Director or Agency Superintendent will notify, through appropriate channels, the Central Office and the Area Director or Agency Superintendent, as appropriate, of resolution. The notification of resolution will include an identification of the issue and an explanatory statement of how the issue was resolved.

BIAM REISSUE
FEBRUARY 1984

21. DESCRIBE ISSUE - 250 WORDS OR LESS

1. Tribes Involved.
2. Organizations Involved.
3. Body of Description.

1. ISSUE NUMBER	2. TYPE	3. STATUS	4. SOLUTION	5. APL	6. COI
7. ACRES			8. ACRE FEET		
8. KILOWATT HOURS		10. DOLLARS NEEDED		11. TOTAL DOLLARS TO LAST YEAR AMOUNT	
12. DOLLARS CURRENT FY YEAR AMOUNT		13. DOLLARS BUDGET YEAR YEAR AMOUNT		14. DOLLARS PLANNING YEAR YEAR AMOUNT	
15. MAN YEARS FOR SOLUTION			16. TRIBAL GOVERNMENT PRIORITY (1, 2, or		
17. DATE ISSUE FIRST DESCRIBED (Mo. - Yr.)			18. KIND AND DATE THIS ACTION (No. on 5-5101, Month and Year)		

FUTURE ACTION (Mo.-Da.-Yr.)	20. PROJECT LEADERS AGPL FSPL	DSPL	JPL	TPL	OTHER
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51 BIAM
Illustration 2

(1) OBJECTIVE

(2) NUMBER

(a) WHAT?

(3) APPROVAL

(b) WHO?

Project
Leader

Completion
Responsibility

(c) WHEN?

(4) DATE

2.3 AREA

2.4 CENTRAL OFFICE

2.5 SECRETARY

(5) COMPLETION
DATES

(6) SPECIFIC
STEPS

(7) RESPONSIBLE
PARTY

(8) PROGRESS
NOTES

BIAM REISSUE
FEBRUARY 1984

UNITED STATES
DEPARTMENT OF THE INTERIOR
WASHINGTON, D. C. 20240

C H A R T E R

Secretarial Unresolved Indian Rights Issue Review Committee

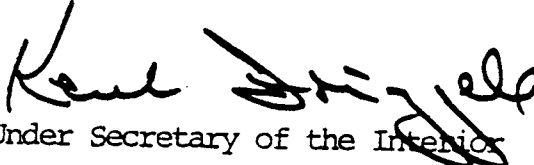
The Secretarial Unresolved Indian Rights Issue Review Committee is established to resolve and/or make recommendations to the Secretary of the Department of the Interior on those Indian rights issues which cannot be resolved at a lower level.

The Committee will meet as necessary as convened by the Under Secretary to review specific cases where the official positions of agencies are in conflict and cannot be resolved at the agency level. The Committee shall consist of the Commissioner of Indian Affairs and all Assistant Secretaries of the Department of the Interior, or their designees who shall have authority to make decisions in regard to the issue under review. Although all Assistant Secretaries will be on the Committee as a whole, only those Assistant Secretaries whose functions are concerned with a specific issue under review need be convened in a meeting to deal with the issue. This does not preclude other Committee members attending if they desire.

It is estimated that the annual operating cost will be \$10,000 and 1/4 man-year.

The Bureau of Indian Affairs will be responsible for providing necessary support services.

The termination date of this Committee will be December 31, 1978 unless prior to this date the Under Secretary determines that it shall be continued.


Under Secretary of the Interior

10-29-76
Date Approved

BIAM REISSUE
FEBRUARY 1984