S. HRG. 108–164

RURAL HEALTH CARE FACILITY ON THE FORT BERTHOLD INDIAN RESERVATION

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

ON

S. 1146

TO IMPLEMENT THE RECOMMENDATIONS OF THE GARRISON UNIT JOINT TRIBAL ADVISORY COMMITTEE BY PROVIDING AUTHORIZATION FOR THE CONSTRUCTION OF A RURAL HEALTH FACILITY ON THE FORT BERTHOLD INDIAN RESERVATION, NORTH DAKOTA

JUNE 11, 2003
WASHINGTON, DC

U.S. GOVERNMENT PRINTING OFFICE
87–959 PDF WASHINGTON : 2003

For sale by the Superintendent of Documents, U.S. Government Printing Office
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RURAL HEALTH CARE FACILITY ON THE FORT BERTHOLD INDIAN RESERVATION

WEDNESDAY, JUNE 11, 2003

U.S. SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The committee met, pursuant to other business, at 10:48 a.m. in room SR–485, Russell Senate Office Building, Hon. Ben Nighthorse Campbell (chairman of the committee) presiding.

Present: Senators Campbell, Conrad, and Dorgan.

STATEMENT OF HON. BEN NIGHTHORSE CAMPBELL, U.S. SENATOR FROM COLORADO, CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS

The CHAIRMAN. We will now proceed to the hearing on S. 1146, the bill to authorize the construction of the health facility at the Fort Berthold Reservation.

[Text of S. 1146 follows]

II

108TH CONGRESS
1ST SESSION

S. 1146

To implement the recommendations of the Garrison Unit Joint Tribal Advisory Committee by providing authorization for the construction of a rural health care facility on the Fort Berthold Indian Reservation, North Dakota.

IN THE SENATE OF THE UNITED STATES

MAY 23, 2003

Mr. CONRAD (for himself and Mr. DORGAN) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

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A BILL

To implement the recommendations of the Garrison Unit Joint Tribal Advisory Committee by providing authorization for the construction of a rural health care facility on the Fort Berthold Indian Reservation, North Dakota.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Three Affiliated Tribes Health Facility Compensation Act''.

SEC. 2. FINDINGS.

Congress finds that—

(1) in 1949, the United States assumed jurisdiction over more than 150,000 prime acres on the Fort Berthold Indian Reservation, North Dakota, for the construction of the Garrison Dam and Reservoir;

(2) the reservoir flooded and destroyed vital infrastructure on the reservation, including a hospital of the Indian Health Service;

(3) the United States made a commitment to the Three Affiliated Tribes of the Fort Berthold Indian Reservation to replace the lost infrastructure;

(4) on May 10, 1985, the Secretary of the Interior established the Garrison Unit Joint Tribal Advisory Committee to examine the effects of the Garrison Dam and Reservoir on the Fort Berthold Indian Reservation;

(5) the final report of the Committee issued on May 23, 1986, acknowledged the obligation of the Federal Government to replace the infrastructure destroyed by the Federal action;

(6) the Committee on Indian Affairs of the Senate—

(A) acknowledged the recommendations of the final report of the Committee in Senate Report No. 102–250; and

(B) stated that every effort should be made by the Administration and Congress to provide additional Federal funding to replace the lost infrastructure; and

(7) on August 30, 2001, the Chairman of the Three Affiliated Tribes testified before the Committee on Indian Affairs of the Senate that the promise to replace the lost infrastructure, particularly the hospital, still had not been kept.

SEC. 3. RURAL HEALTH CARE FACILITY, FORT BERTHOLD INDIAN RESERVATION, NORTH DAKOTA.

The Three Affiliated Tribes and Standing Rock Sioux Tribe Equitable Compensation Act is amended—

(1) in section 3504 (106 Stat. 4732), by adding at the end the following:

''(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this section.''; and

(2) by striking section 3511 (106 Stat. 4739) and inserting the following:

''SEC. 3511. RURAL HEALTH CARE FACILITY, FORT BERTHOLD INDIAN RESERVATION, NORTH DAKOTA.

''There is authorized to be appropriated to the Secretary of Health and Human Services for the construction

of a rural health care facility on the Fort Berthold Indian Reservation of the Three Affiliated Tribes, North Dakota, $20,000,000.''.

○

The CHAIRMAN. If Tex Hall and Fred Baker would please take a seat. We do not have a lot of time before we have to go vote. Senator Conrad is going to chair this part of this morning's meeting. I want to tell you, though, I am very proud to be able to cosponsor this legislation with both of your Senators. I think it is really needed. Let me just make a short statement.

The story of the confiscation of the lands to build the Garrison and Oahe' Dams in North Dakota during the 1940's remains one of the most disheartening episodes in United States history. The Department of the Interior, through the Garrison Unit Joint Tribal Advisory Committee, finally issued a report in 1986 detailing the extent of financial and infrastructure damage suffered by the Three Affiliated Tribes of the Fort Berthold Reservation. Among the recommendations in that report was the replacement of the hospital destroyed when the dams were built. Yet, to date, after all these years, it has not been acted upon.

Chairman Hall, you are very well known to this committee as you are not only a leader in your tribe, but with the National Congress of American Indians. We are delighted to have you here. Before I turn the gavel over to Senator Conrad though, I would like to tell you something else not related to this hearing. I am sorry to inform you that our Indian section for the energy bill that you and I worked on for the last almost 2 years collapsed yesterday. I am very sorry to tell you that. But it just seemed to me that there were less people around here really interested in trying to create some jobs for Indians than I thought there was going to be. Even though NCAI supported it, CERT supported it, the USET supported it, 2 dozen individual tribes sent letters of support, even the U.S. Chamber of Commerce supports it, we simply did not have the votes I think, and I am just sorry to have to tell you that. But rather than taking a chance of losing it on a vote, they are going to work on the bill this week and bring it back up I understand in July. And if we can do a little more bridge building, hopefully by July I might be able to reintroduce it. But I just wanted to pass that on to you.

Mr. HALL. Thank you.

The CHAIRMAN. With that, Senator Conrad, if you would like to chair, I would appreciate you doing that.

STATEMENT OF HON. KENT CONRAD, U.S. SENATOR FROM NORTH DAKOTA

Senator CONRAD [PRESIDING]. Thank you so much, Chairman Campbell. Thank you personally for allowing us to go forward with this hearing. We appreciate it very much. And special thanks, too, to your staff who have just been superb to work with. We appreciate that as well. And, of course, our thanks to Senator Inouye and his staff for their assistance in scheduling this hearing. We appreciate it very much.

I am pleased to welcome Chairman Tex Hall and Fred Baker, chairman of the Mandan Hidatsa and Arikara Elders Organization, to present testimony.

It was 50 years ago today President Eisenhower dedicated the Garrison Dam in North Dakota—50 years ago today. For the Three Affiliated Tribes of Fort Berthold, it closed a bitter chapter of its

history that forever changed its people and their way of life. In 1948, Interior Secretary Krug signed a contract to purchase more than 150,000 acres from the tribe for the construction of the Dam and reservoir to provide flood protection to downstream communities. George Gillette, who was then the chairman of the Three Affiliated Tribes, quite eloquently and in simple terms summarized its impact on the tribe and its future. He said:

> We will sign this contract with a heavy heart. With a few scratches of the pen, we will sell the best part of our reservation. Right now the future does not look too good for us.

And there is the picture of the signing. Chairman Gillette has his head in his hands and you can see that he is very emotional at what he knows will be real hardship for his tribe. And I am told that the fourth gentleman from the right in that picture is the grandfather of Chairman Hall, the very distinguished, handsome looking man standing right over the shoulder of Secretary Krug.

So 1 year later, 325 families, 80 percent of the tribal membership, were forcibly relocated, one-quarter of the reservation's land base was destroyed, 94 percent of the agricultural land of these farmers and ranchers was inundated. The remainder of the reservation was segmented into five waterbound areas. In addition to the loss of land, the Three Affiliated Tribes lost vital infrastructure—bridges, homes, schools, roads. The tribal headquarters at the community of Elbowoods was completely flooded. The tribe also lost its hospital. Here you will see a picture of the Elbowoods Hospital before it was flooded. At the time of the flooding, the Federal Government made a number of commitments to the tribe, one of which was a commitment to replace this hospital. That was 50 years ago.

Now 36 years after the land was taken then Interior Secretary Donald Hodell signed a charter creating the Garrison Unit Joint Tribal Advisory Committee. This committee was charged with examining the effects of the Dam's construction and the making of recommendations for compensation. In its final report, the committee found quite clearly the Three Affiliated Tribes were entitled to financial compensation and the replacement of lost infrastructure. The committee noted that the replacement of the health facility is "an emergency need that should be pursued immediately."

So, 50 years ago a promise was made; 14 years ago it was recommitted to by Congress and the Administration at the time.

In testimony before this committee, C. Emerson Murry, former chairman of the Joint Tribal Advisory Committee, noted that many promises were made by the Government to force the tribe to sell their land, yet many of these promises were never fulfilled. He said:

> Many assurances were given, expressly or by implication, by various Federal officials that the problems anticipated by the Indians would be remedied. The assurances raised expectations which in many instances were never fulfilled, and in other cases were only partially fulfilled.

In 1992, with the leadership and assistance of this committee, we were able to act on some of the recommendations of the Joint Tribal Advisory Committee by passing the Three Affiliated Tribes and Standing Rock Sioux Equitable Compensation Act. However, at the time, due to budget limitations, we were not able to fulfill the com-

mitments on infrastructure replacement. The Indian Affairs Committee, under the leadership of Senator Inouye, in its report on the act, specifically noted that:

> Every effort should be made by the Administration and Congress to provide additional Federal funding for these infrastructure priorities, taking into account the JTAC deemed several of these infrastructure needs to be urgent and critical more than five years before.

More than 10 years later, many of these infrastructure priorities still have not been met.

Without a doubt, the Three Affiliated Tribes paid the highest price for the construction of the Dam. It destroyed communities, it uprooted families, and it disrupted the tribe's way of life; 50 years later, the after shocks of the Dam's construction are still being felt. The time has come to right these wrongs.

This is a recent headline, June 8, from the Fargo Forum, Fargo, ND, the headline "A Flood of Tears: Five Decades Later, Tribes Still Recovering From Dam Losses."

I am especially pleased that Senator Dorgan has joined me in introducing the Three Affiliated Tribes Health Facility Compensation Act, to authorize a $20-million health facility for the tribe. The tribe was clearly promised a hospital to replace the one that was destroyed. However, Chairman Hall and I and Senator Dorgan recognize that a full service hospital is not financially feasible today. The facility we are authorizing is designed to provide extended hours of care to meet the emergency medical needs of those on the reservation on evenings and on weekends. It also includes a cancer screening unit and expanded dialysis services, all of which are critical elements to tackling the conditions afflicting many on the reservation. We believe that this facility will greatly enhance health care services to thousands on the reservation and provide access to the care they have lacked for many years.

The history on this matter is crystal clear. A commitment was made to the tribe that must be kept. We should insist, as a matter of fairness, and more as a matter of law, that this promise be kept by the Federal Government.

I look forward to the hearing today. I again thank the chairman for his willingness to convene this hearing, and to our Ranking Member, our vice chairman, Senator Inouye, for his assistance as well.

I would now turn to my colleague, Senator Dorgan, for his opening statement.

STATEMENT OF HON. BYRON L. DORGAN, U.S. SENATOR FROM NORTH DAKOTA

Senator DORGAN. Once again because of the time, Senator Conrad, I think I will just be very brief. We have an 11:15 vote. I want to make sure that Chairman Hall and Mr. Baker have time to make their presentations. I think it is important to say a couple of things. Within the last 2 weeks I toured the Minne Tohe clinic once again. I fully understand that this is not an acceptable level of service for the need that exists.

There are a couple of things to point out with respect to the bill that we have introduced. Almost certainly, we should be able to get this authorization bill enacted into law. That is different than

being able to fund a facility. Funding a facility is going to be very, very difficult for a number of reasons. First, there is a priority list. At this point, the project is not on it. Second, the President's fiscal policy increases defense funding, increases homeland security funding, decreases revenue, and shrinks almost everything else. It does not add up and the funding is going to be dramatically short in virtually every single area. So, passing an authorization bill is something that we must do. We owe it to the Three Affiliated Tribes. Getting the funding is going to be quite a significant challenge.

It is important I think to emphasize, as Senator Conrad has just emphasized, that we are not talking with this authorization bill about funding a "hospital" in the traditional sense where you have acute care beds for long-term stays and so on. We are talking about building a facility that will dramatically improve the capability for clinic treatment and emergency treatment in the region. That is something that is desperately needed, is owed the tribe, and we would not be at this point to talk about it were it not for the persistence of Chairman Hall and Mr. Baker. Your sheer persistence I think is very admirable. I hope one day we will be able to go to a ribbon-cutting and open a facility that all of us can be proud of that really does meet the health care needs at the Three Affiliated Tribes and begins to keep the promise that was made so long ago to the Three Affiliated Tribes.

Mr. Chairman, thank you.

Senator CONRAD. Let me just say before we begin, Dr. Grim, you and your family are excused. We appreciate very much your being here. We look forward to supporting your confirmation. We look forward to working with you. If you have other obligations, please know that you are free to leave the hearing room. We appreciate your participation here today.

Chairman Hall, welcome. Thank you for being here. Please proceed with your testimony.

STATEMENT OF TEX G. HALL, CHAIRMAN, MANDAN HIDATSA AND ARIKARA NATION, NEW TOWN, ND, ACCOMPANIED BY FRED BAKER, CHAIRMAN, MANDAN HIDATSA AND ARIKARA NATION ELDERS ORGANIZATION

Mr. HALL. Dosha! [Hello] Thank you, Mr. Chairman, Senator Conrad, Senator Dorgan, members of the committee, and staff. Just briefly, it brings up real sad memories to see the pictures that were put up. When I was young, when I was 5 years old my grandfather and my father, he was on the tribal council, we went around to community meetings, 1958, 1960. They told me to pay attention, do not play around like 5-year-olds would do, pay attention because some day you may have to go to Congress and help lobby and replace this facility.

It is 50 years to the day, June 11, 1953, since the dedication of the Garrison Dam. It is not a day to celebrate for our people. It is a sad day, really. But it is also a day to reflect on the promises made and the promises not kept. I looked at Dr. Grim's testimony, and he did a real fine job of answering the questions, but I see he is from the Cherokee Nation and they had a sad chapter in their history; the Trail of Tears happened to his people. A University of North Dakota study, a professor wrote a study about my people

and he equated the Garrison Dam forced removal and dislocation of my people to the same as the 1830 Trail of Tears, that happened in 1953. So it really is with great sadness that I look at the pictures. And as I come before the committee today 50 years later, we are still taking about the difficulties that it could be to get this funding that is needed.

But as my grandparents and my father had indicated, you have to continue this. We will continue to work with you, Senator Dorgan, Senator Conrad, to make this a reality. So we appreciate very much your efforts to sponsor S. 1146, which is entitled, The Three Affiliated Tribes Equitable Compensation Act, by authorizing a new comprehensive rural health care facility to replace what the United States destroyed in 1953 by the flooding of our homelands.

This is an unfulfilled promise, a promise the U.S. Government made to my people to replace the Elbowoods Hospital, a 28-bed hospital that was destroyed 58 years ago by the flood waters. This unfulfilled promise is truly a black mark on the credibility and the decency of the United States, particularly of the Army Corps of Engineers, particularly when the United States over the past 50 years earned billions of dollars from this hydro-electrical dam. This health care facility constitutes an equitable and moral lien on the Dam. And after 50 years, I believe it is time that we look for the funding to pay for this.

This was a wonderful hospital, as Fred Baker will testify later on his testimony. Actually, he was born in that hospital. And over the past 50 years, while waiting for the United States to keep its promise, too many of my people have died on the roadways. My father passed away 2 years ago when he had a heart attack after we were dancing in May 2000 at a memorial. I had to pick him up in my arms and put him into a van, and he is a big man, and put him into a van and drive 35 miles away to Watford City. I saw my mother pass away of stomach cancer because our facility did not have the diagnostic treatment to treat her. And then last year, to literally save a man's life who was bleeding because of a horseback accident, because we do not have 911 or we do not have an ambulatory facility and after hours to treat on Saturday. So, for whatever reason, in my role I have also been asked to play doctor, which I do not care to play because I am not a doctor. I am an example of many of our people who have to do that, literally get in a car and take your relative, your sister, your brother, your mother, father, and drive 90 miles an hour if you can to get to that facility.

The after hours, people get sick after 5 or on weekends. It is just a tragedy for my people. So the small, inadequate facility that we have is just not able to reach our needs. Our clinic today, which is right here, the Mini-Tohe, is actually 8,100 square feet. Elbowoods was a 35,000-square foot facility. And as was mentioned, my grandfather was vice chairman at the time of the signing in 1948 when Chairman Gillette is weeping in the picture. And the cessation of the tribal lands broke many of our hearts. Tony Mandan, and elder, yesterday, when we had a diabetes workshop, said:

I blame the diabetes on the Dam. I blame the cancer on the Dam. Because we have never been replaced with the facilities that we need.

And so it is ironic we are coming back 50 years to the day to try to have the Government of the United States fulfill its promise, particularly the Army Corps of Engineers, which had a duty to replace the hospital and did not. I am very appreciative of both of our Senators, Senator Conrad and Senator Dorgan, for their efforts today. We hope we do not have to tell our grandchildren 50 years from now that we are still working on this.

And as Senator Dorgan mentioned, we have been told it is going to be difficult to get S. 1146 appropriated because IHS has a priority list that must be followed. But our legislation is a compensation; it would not put us in the priority list, it would be a compensation that would create a fund, special appropriation funds. This is an entitlement versus the priority list is based on need. So we looked the criteria of the new facilities management criteria on the IHS and it does not take into consideration the high disease factors, and it does not take into consideration the isolation and rural geographic factor. So while our existing facility is grossly inadequate and desperately needs to be replaced, our claim on the United States involves something more compelling than just need. It is compensation legislation; paying for the cost of building the Garrison Dam, just as our Equitable Compensation Act provided compensation for the land that was taken from us.

So to quote Senator Conrad, this facility is owed to us as a matter of fairness, and more as a matter of law. And as a result, it cannot be placed in the same category as the IHS priority list. In fact, to make this clear, one of our suggestions is that S. 1146 be amended so it is entitled "The Health Care Facility Compensation Fund." So that it creates a fund by that name in the Interior Department for the deposit of the $20 million that would be appropriated for the health facility.

I do not know how much time I have, Mr. Chairman. I am trying to be as brief as possible. If you need me to just close it, I will do that.

Senator CONRAD. Why not take another 5 minutes to just conclude your testimony, and then we would turn to Mr. Baker. The problem we are up against is there is a vote at 11:15.

Mr. HALL. Okay.

Senator CONRAD. We can probably go till 11:25 or perhaps even stretch it a little beyond that.

Mr. HALL. Okay. I will be as quick as I can. The chart that is right here is actually our wellness center that is closed. It has got a sign that says "Do Not Enter," and that building is called M–14 and that is because of mold. I know both Senators Conrad and Dorgan are very much aware of the mold problems that exist on all of our reservations in North Dakota and in Indian country. This is an old quarters unit that we had to turn into office space. We had 11 quarters, now we only have 8 because of the use of M–19 and we had to shut it down. So now instead of 11, there is only 8 quarters. And the wellness center staff, most of the diabetes staff are now inside Mini-Tohe. So, Senator Dorgan, when you went there you probably saw the traffic jam of people having to share a desk. So that is the urgent need for a facility as well, because of the mold situation.

The 1986 JTAC Report, it was a huge study and I will not get into the whole detail of it, but it was a tremendous study that deemed the replacement of our health facility is urgent and critical and an emergency need that should be pursued. And that was in 1986. And this Committee, in a 1991 report, noted that the JTAC found tribes at Fort Berthold are entitled to replacement of infrastructure lost by the creation of the Garrison Dam and Lake Sakakawea. The JTAC findings identified health care facilities as the number one priority. And recognizing the limitations currently imposed by the Budget Enforcement Act, the committee nevertheless believes that every effort should be made by the Administration and Congress to provide additional Federal funding through annual appropriations for these infrastructure.

And so, despite all of this, here we are again. The IHS redesign of the priority list has been ongoing for the last 10 years. And as I mentioned, I have seen the draft and the draft is not good for our tribe and I think Aberdeen tribes because of the disease factor, it does not give enough weight, and because of the isolation factor, it does not give enough weight. So we feel if we get on the priority list we are going to sit here again for a long, long time. There has got to be a different way. But, again, we feel this is not based on the need of the priority list, this is an entitlement because of the flooding.

Also, in working with IHS, we have actually talked to Dr. Grim on a conference call on S. 1146 and talked to Dr. Peters, the Aberdeen Area acting director, and our service unit director Carol Parker, so we are working in consultation with them. Dr. Peters advised us that there will have to be additional funds amended to authorize $6.6 million for staffing, because there will be a need for an increase for staffing, $2 million for maintenance, and $2 million for the design, and then eventually new quarters.

The Elbowoods Hospital was 1928 to 1953, a 35,000-square foot, 28-bed hospital. From 1953 to 1968, we had no facility at all. That was based on a recommendation by our trustee, the Bureau of Indian Affairs. The Bureau of Indian Affairs has never advocated for our people, and said that for the Three Affiliated Tribe's health care they can go to off reservation health care providers that were over 160 miles away. So for 15 years we did not even have a facility at all. We all went to a facility in New Town, but we know, in the southern end of our reservation, Twin Buttes is 120 miles away.

The new facility will be a 66,000 square foot. But even though the IHS, in collaboration with Dr. Peters, as I mentioned, their recommendations for our user population, just under 6,000 user population, is 107,000 square foot at a $30-million cost. But we knew that was going to be very difficult and we have agreed to work on this 66,000 square foot facility. But the key thing is it will be open after hours. It will be available to do the emergencies that we had talked about.

I just wanted to point out that this is the sign that our membership, all of our people, have to go see. And if you are non-Indian, good luck. You do not even get to go through that. But this is right on the front door. Our clinic hours are Monday, Tuesday, Thursday, and Friday, 8 to 5, on Wednesday they must have something

going on in the morning so it does not open until 10:30. So you will see huge lines. And for emergencies after hours or on weekends, if you are West of the river, you have got to dial this number. There is no 911 on the whole western half of the reservation. That is where I live and that is where my parents lived. If you are in Montreal County, East of the river, you can get 911 services.

What this does not show as well is that, a true story, a gentleman that is younger than myself, his name is James Hunts Long, who is diabetic, he stepped on a nail. He knew he had to go to the hospital. It was a Saturday. Obviously, as this sign says, this facility is closed. He went to Watford City and convinced the hospital in Watford City that he needed to be treated. They treated him. He came back on Monday and wanted to get the bill paid, and guess what IHS said? That is not a priority one. So a little later on one of James' brothers, same thing, a diabetic, steps on a nail and tells James, "Drive me to the hospital in Watford City, just like you did." James said, "No, the IHS is not going to pay for it." So you know what he did? He stayed home. The point being that many people, including diabetics, stay home.

There are people on Fort Berthold that do not get treated because of these unpaid medical bills that both Senator Conrad and Senator Dorgan were talking about. I think that is illegal to change the status of priority one because you run out of money. But that is the fact of the matter. We have done that research right at Mini-Tohe service unit in IHS. The fact of the matter is we have a young tribal member, she needs a kidney transplant but before she can get a kidney transplant she has to get her old bill taken care of, it was a $30,000-bill. She was approved to get it and, because they ran out of money for the next fiscal year, they said it is not priority one, you owe that $30,000. She had to declare bankruptcy in order to save her house and her car. So that is where she is at. Now she can go and start looking at a kidney transplant.

So, that is the fact of the matter. That is a day to day thing that our people have to see, have to go through. The main thing is a facility has to be emergency ambulatory and it has to be after hours. We have a new bridge, we have a new refinery that is going to be built, we have even more dangerous construction work, and we have a lot of non–Native people that cannot use this facility as well.

So in closing, we know the budgets are tight. But the need for immediate health care facility replacement is the most urgent need on Fort Berthold, and we will do everything we can to assist you, Mr. Chairman, and Senator Dorgan, in this effort so we can finally close this sad chapter in my people's history. Thank you very much. I appreciate the opportunity.

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

Senator CONRAD. Thank you for that excellent testimony, Chairman Hall. I have just been going through your extended testimony and it really is excellent and will be of great help to the committee.

Mr. Baker, welcome. It is good to have you here. Please proceed with your testimony.

STATEMENT OF FRED BAKER, CHAIRMAN, MANDAN HIDATSA AND ARIKARA NATION ELDERS ORGANIZATION, NEW TOWN, ND

Mr. BAKER. Thank you. Mr. Chairman and members of the committee, I think talking to Senator Conrad and Senator Dorgan is kind of like preaching to the choir. You guys have an understanding of the problem and have been supportive, and we appreciate that very, very much. I think in the interest of time, I will kind of try to summarize what I was going to say here. But other than to say that I am a Paotsa/Mandan, one of the few remaining Hidatsa speakers, I was born at that hospital. Coincidentally, my grandfather was also in the picture with my Uncle Jim Hall. He is the seventh guy. You can see his head and his ear back there. Anyway, that is my grandfather, also named James.

I think three major disasters involving the Three Affiliated Tribes over the years. One was, obviously, a smallpox epidemic of 1781 which reduced the Mandan Tribe from 13 villages, each capable of raising about 200 warriors, down to only 2 villages. And this happened just almost within a blink of an eye, within 1 year's time. Smallpox totally devastated that tribe. The tribe, at one time we were the kingpins in that area and we controlled all the fur trade, all the trade period. We raised crops, we were farmers, very successful in our area. And that drastically reduced us.

The second major disaster was the smallpox epidemic of 1837, which reduced not only our tribe but many of our neighbors as well, but especially it had a really tough effect on especially the Mandan and the Hidatsa. It reduced us down at one point, I remember my grandfather saying that there were only about 50 ablebodied men left after the smallpox epidemic of 1837.

The third disaster was the Garrison Dam. And we are still recovering from that one.

The Elbowoods Hospital was a place where we went for health care. The thing about the hospital there was that we were familiar with people that worked there, our relatives worked there, our friends worked there, and it was kind of like a place where we were welcomed and we felt comfortable. When the Garrison Dam came through and our hospital was closed, we were forced to go to a totally different environment with people we did not know, procedures or situations that we did not understand. It was almost like going to a foreign place. A lot of times we were not very welcome in the areas surrounding the Fort Berthold Reservation. So, as a result, a lot of our elders especially just refused to go. They just kind of stayed home and toughed it out until their life ended from whatever disease they had.

I think the Mini-Tohe clinic, I spent 9 years there as service unit director, I am a retired Federal employee having spent 17 years as a service unit director. I spent my last 9 years there. It is also kind of the same thing. There is a certain amount of I would call it familiarity or whatever you want to call it, but people always were comfortable. I remember many a time talking to folks in the Hidatsa because they did not quite understand what the doctor said to them or what the situation was, or how sick am I, or some of those kind of things. So I would get a chance to visit with those

folks in our Hidatsa language, and I think that was kind of a familiarity that people viewed as a positive healing tool as well.

The problem with that clinic, and we have said this over and over, is that it is inadequate no matter what we do. There are only so many exam rooms and only so many things you can do with patient flow. I spent many, many, many hours trying to figure out how to make the patient flow go faster so that we could get more people in to see the doctors and get people out in a reasonable time. Now, it takes literally days, sometimes weeks. I am a diabetic and I go back for periodic checkups and sometimes when I make an appointment it is two weeks down the road before I can get to see a doctor. And that is pretty much par for the course. So that is a real problem.

The other problem that results from that is that when people come in, sometimes if we have a person who is a lot sicker or if there is an emergency that comes into the clinic, then everything backs up. Recently, my aunt was a patient, came to see the doctor, and she sat there for 2 hours waiting beyond her appointment, she was very ill. So she decided that she was going to go home. She was just too sick to sit there any longer. So she started to walk outside, she collapsed and ended up spending several days in the hospital at Minot after a very terrifying ambulance ride. So these things happen in that place. And again, it is like talking to the choir, you two gentlemen understand that situation.

That in summary is some of the things I was going to say. The other thing is that the new building would not only meet our basic needs but also would allow us to receive a lot of the procedures or the specialty care kinds of things that now we have to go 70 to 150 miles to receive. Ambulatory care surgery, for instance, I think we could build a facility that would be capable of doing ambulatory surgery. And if that were the case, then people could get their surgery procedure there and go home. Now if we have to get ambulatory care, then we are looking forward to 150 mile drive or a 70 mile drive back to Fort Berthold. So I think those things would not only save money but would also make it a little easier for our patients.

I think I will stop at that point. I appreciate the opportunity to be here.

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

Senator CONRAD. Thank you so much for being here. Let me just say that your full statement will be made part of the record.

I think this has been an excellent hearing. It could not have gotten started in a better way than to have Chairman Campbell indicate that he will cosponsor this legislation with us. I think we will enjoy broad support. I think this hearing has laid the case very clearly. The promise was made, the promise was not kept. The promise was repeated in the JTAC Commission that was under the Reagan administration. This is a long time ago. They said it was urgent, urgent that the promise be kept. That was repeated in the followup report that has been made by the Congress of the United States. And this committee has made clear that this was a priority and that it was owed to the people of the Fort Berthold Nation. So I think with that record we have an opportunity to convince our colleagues.

What Senator Dorgan has said here is also true; and that is, it will be very difficult to get the appropriated funds because of the cuts that are occurring. The need, as we heard from the previous testimony, far exceeds the available resources. But my own judgement is this is a priority. This is a circumstance in which a promise was made to convince people to leave their land and to sign a contract. They kept their end of the bargain, the promises that were made to them have not been kept. And that is a shameful circumstance for this Federal Government and it absolutely requires a response.

Senator Dorgan.

Senator DORGAN. Thank you very much. People from Indian country are probably too familiar with broken promises for literally centuries. In the last couple of hundred years, treaties and so many other promises have been made and not kept. I agree with Senator Conrad that this is one that needs to be kept and is a priority.

I think, Chairman Hall and Mr. Baker, you have well made the case today and we will have full statements as a part of the record. And the support of the chairman of this committee is going to be very important in terms of getting the authorization bill passed, which is, of course, the first step in this process.

Senator Conrad and I are very familiar with your tribe, with the leadership both of you have provided on these many issues, and we look forward to working with you.

I regret that we have to abbreviate this hearing just a bit because of the vote, but that is the way the U.S. Senate works sometimes. But I think we have been able to have a pretty good opportunity to hear a full statement from both of you about the urgency of this, and we deeply appreciate your coming to Washington to make it.

Senator CONRAD. Chairman Hall.

Mr. HALL. Just 10 seconds. Senators Conrad and Dorgan, I want to thank you again for your support, and Patricia, I want to thank you and Senator Inouye in his efforts, and all the staffs including both of the Senators' staff, they have worked very hard with us. I feel very confident and comfortable about the testimony because of the research and the collaboration that was done with all of your people and our people and also Indian Health Service. So everybody was included in drafting the testimony. So thank you for the opportunity.

Senator CONRAD. We appreciate that. And with that, we will adjourn the hearing. Thank you.

[Whereupon, at 11:30 a.m., the committee was adjourned, to reconvene at the call of the Chair.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF TEX G. HALL, CHAIRMAN, MANDAN HIDATSA AND ARIKARA NATION

Dosha! [Hello] Mr. Chairman, members of the committee. Thank you for this opportunity to testify on behalf of S. 1146, which would amend the Three Affiliated Tribe's Equitable Compensation Act by authorizing a new comprehensive rural health care facility to replace the hospital the United States destroyed when the Garrison Dam flooded our homeland.

It is ironic that today's hearing is being held on the 50th anniversary of the dedication of the Garrison Dam by President Eisenhower, June 11, 1953. Yet it must be a tainted celebration, because, after 50 years, the United States still has not fully paid for it, even while earning billions from the power generated by the Dam, The Dam destroyed the 28 bed Elbowoods Hospital that served the Mandan, Hidatsa and Arikara tribal members. Fifty years ago, the United States, in order to persuade my people to vote in favor of the dam and to give up 156,000 acres of our best lands, made a solemn commitment to replace the hospital. Once it received that reluctantly given consent from our people, the United States proceeded to abandon its commitment, while reaping all of the monetary and other benefits from the Dam. This health care facility constitutes an equitable if not a legal lien on Dam. After 50 years, it is time to pay for the United States to pay its debt.

Over the past 50 years, while waiting for the United States to keep its promise, too many of my people have died because they got sick after 5 pm or on weekends when the small and inadequate "replacement" clinic is closed; too many have died from traffic accidents because they did not reach an off-reservation health facility in time, too many of my people have died because the existing 8,100 square foot clinic cannot provide anything close to adequate health care. Yet over the same 50 years, the United States has earned hundreds of millions of dollars in revenue from the power generated by the Dam such that it is in our mind a dam that has been paid for with the blood of my people. It is far past time for Congress to quickly enact S. 1146 and then quickly appropriate the $20 million called for in the bill so this dishonest and dishonorable chapter in our Government's history will come to an end.

We have been told that the budget is tight such that it will be difficult to obtain $20 million in appropriations. We have been told that IHS has a priority list that must be followed. But our request is not part of the priority list appropriations process and it would be wrong to treat it in the same category. While we desperately need a new facility, our claim on the United States involves something more compelling than just need. To boil it down to its essence:

- 50 years ago the United States destroyed our hospital;
- 50 years ago the United States promised to replace the facility it destroyed;
- 50 years later that promise has not been kept.
- For 50 years, my people have been dying because that promise has not been kept.

- After 50 years, it is time for the United States to keep its promise.

My grandfather, James Hall, was present during the signing of the contract between the United States and the Three Affiliated Tribes. He was the tribal vice chairman at the time of the signing and went on to serve as tribal chairman from 1958 to 1960. He is the second to the left of George Gillette, the tribal chairman at the time who is the man weeping in the picture. The cessation of the tribe's lands broke many hearts. Everyone within the tribe knew that life would never be the same. When I was 5, my grandfather told me about the flooding and explained to me that the government never replaced the tribe's hospital or schools. He told me to pay attention to what he was telling me because some day I may have to ask the Government to replace the hospital it took from us. Today I am fulfilling my grandfather's prophecy and I am asking you to do the correct thing and fulfill the Government's moral and legal obligation to my tribe.

I. The Legal and Moral Obligation of the United States To Provide Us With an Adequate Health Care Facility is Fully Documented and Undisputed

Over the past 50 years, numerous Congressional and executive branch reports and hearings have documented that the United States made an unequivocal commitment to replace the health facility that was destroyed, that my tribe is legally entitled to such a facility, and that my people have been dying because of the United States' failure to keep this promise. As a result, there is no doubt that such an obligation exists, as the citations below demonstrate:

- The 1986 JTAC Report confirmed that the Army Corps of Engineers [COE] had made this promise to the tribe. "The [Elbowoods] hospital, like the rest of Elbowoods, was flooded after the dam was completed. The COE had promised to construct a new hospital..."
- The 1986 JTAC Report concluded that the tribes are entitled to the replacement of infrastructure destroyed by the Federal action;...The replacement of a primary care in-patient health facility and outpatient services is deemed to be urgent and critical.
- The JTAC Report found that the tribe had the highest death rates for diabetes, alcoholism and cardiovascular disease in the Aberdeen Area and concluded that "the high death rates are due in part to the available health facilities".
- The JTAC Report recommended that, to meet the United States' obligation to the tribe, it construct; "a primary care in-patient facility and out-patient services to meet the special health care needs of the Tribe. This is an emergency need that should be pursued immediately." The JTAC Report recommended a 25-bed, 35,155 square foot hospital at a cost of $4,688,000, plus annual staffing and maintenance costs of $5 million.
- The Senate Committee on Indian Affairs, in its 1991 Report accompanying the Equitable Compensation Act bill (Report 102-250), stated:

"The committee notes that the JTAC found the tribes at Ft. Berthold are entitled to replacement of infrastructure lost by the creation of the Garrison Dam and Lake Sakakawea. The JTAC findings identified health care facilities, a bridge, school facilities, and adequate secondary and access roads as replacement infrastructure. Recognizing the limitations currently imposed by the Budget Enforcement Act, the committee nevertheless believes that every effort should be made by the administration and the Congress to provide additional Federal funding through annual appropriations for these infrastructure priorities, taking into account that the JTAC deemed several of these infrastructure replacement needs to be urgent and critical more than 5 years ago." (p. 6)

- At a hearing of this committee on August 30, 2001 held on the Ft. Berthold Reservation, Senator Conrad stated: "This Tribe was also promised health facilities, specifically a hospital. That promise has not been kept....[W]e should insist as a matter of fairness and, more, as a matter of law [that this promise] be kept by the Federal Government."

Despite the urgent pleas to Congress by the JTAC Report in 1986 and by this Committee in 1991 to fund the construction of a new facility out of annual appropriations, no action was ever taken to do so. Because the Indian Health Service facilities' priority list has been closed to new applicants for over ten years, our Tribe has not and will not be able to obtain the promised facility through the normal Indian Health Service construction appropriations process for many years to come. As a result, the only way Congress can keep the United States' commitment is through enactment of S. 1146, followed by the immediate appropriations of the $20 million called for in that bill. (As discussed below, according to Indian Health Service, the bill will need to be amended to add $6.6 million for staffing and $2 million for main-

tenance and operation of the new facility.) While I recognize that the budget is tight, I have difficulty explaining to my people why the United States can find hundreds of millions of dollars to pour into the rebuilding of foreign countries but can find no money to keep its 50 year old commitment to rebuild our homeland.

II. Description of the Elbowoods Hospital That Was Destroyed By the Flooding and the Effect the Flooding Has Had On Our Reservation.

The Elbowoods Hospital was a 28-bed, 35,000 square foot facility with six basonettes. In the 1 year period between June 1, 1947 and May 31, 1948, 460 patients were admitted to this hospital and 3,921 were treated as outpatients. Two apartment buildings provided living quarters for the doctors and nurses that served the hospital. The Reservation had eight Reservation communities and the furthest Reservation community, Sanish, was approximately 60 miles from the Elbowoods Hospital.

The United States never replaced the Elbowoods Hospital. The tribe has gone without a comparable hospital for the past 50 years. As set out at length in this testimony, a combination of the absence of an adequate facility, the stress caused by the dislocation, the dispersal of our population to remote and barren uplands, and the change in our lifestyle, all caused by the flooding of the best part of our reservation, has caused the health of the tribe's members to suffered tremendously since.

The Elbowoods Hospital was located within the 156,000 acres of the Reservation's prime river bottomland that was flooded in 1953—what our people called the "heart of our reservation". Three hundred twenty-five families were forced to evacuate these lands. Garrison Dam flooded one- quarter of the reservation's landbase and 94 percent of this land was prime agricultural land. When the Garrison Dam was completed, the reservation was fragmented and the reservation communities became distant from one another as a result of the newly formed Lake Sakakawea. The farthest tribal community from New Town is Twin Buttes which is 120 miles away. The distance of the other reservation communities from New Town are as follows: Mandaree—30 miles; Parshall—20 miles; and Whiteshield—60 miles.

The dispersal of our people has increased traffic accidents because tribal members have to drive long distances on bad roads because the United States failed to keep its promise to build new roads to these outlying communities. At the sametime, the increased distances from New Town have made it more difficult for emergency services to reach injured persons. As discussed below, these factors have led to too many unnecessary deaths of people lying by the side of the road waiting for an ambulance to arrive.

The destruction of our close-knit social and cultural society by the dispersal of our population to the remote communities has contributed to alcoholism, depression, suicide, and violence. The flooding also changed our diet and work habits. When most of the population lived in the rich bottomlands, virtually every family had a farm that included a garden and livestock, which enabled most of the families to be economically self-sufficient. When we were forced out to the barren uplands, where the soil cannot be farmed, families became dependent on commodity foods, which are high in fat and starch, contributing to diabetes. Families also had no way to support themselves, contributing to alcoholism, suicides, and family violence.

The destruction of the Elbowoods Hospital also left us without any health facility at all for the first 15 years, and then with a tiny and inadequate clinic for the past 35 years. When Elbowoods had to shut down in 1953 because of the flooding, the Corps of Engineers promised the tribe that it would construct a new hospital. However, our trustee, the BIA, in its infinite wisdom, recommended that our tribal members utilize hospital care in cities and towns adjacent to our reservation because it thought it would be easier to travel to other cities and towns than to come to a centralized hospital on our reservation. (See page 20 of the JTAC Report.) Many tribal members opposed the BIA's recommendation at the time, but we lacked the power to challenge the BIA's position, which reflected the Federal Government's termination policy at that time. As a result, from 1953 when the Elbowoods Hospital was destroyed, until 1968, when our present small clinic was built, there was no Federal health care available on our reservations. Tribal members had to go to private non-Indian health facilities. Because of the cultural and transportation barriers to the use of these non-Indian facilities, many, tribal members were unable to obtain adequate health care and there were no preventative programs being provided. It was during this 15-year period that the health status of our people began its precipitous decline.

(In contrast, the Cheyenne River Sioux Tribe, which was also promised a new facility when its reservation was flooded in 1949, but was not subject to BIA interference, had such a facility built for it by the Corps of Army Engineers out of COE's

appropriations. Since then it was replaced by a newer facility and then upgraded again.)

In sum, the flooding of 456,000 acres of our best land was a catastrophe for our people's health in so many different ways. But the ultimate indignity and unconscionable action by the Federal Government was its failure to at least keep its promise to replace the health facility it destroyed in order to enrich itself from the Dam and to benefit all of the downstream populations.

III. The Gross Inadequacies of the Existing 8-5, Five Days a Week Clinic

In 1968, 15 years after Elbowoods was destroyed, the Government finally built a health care facility on our reservation. But instead of giving us a facility that was even remotely comparable to the Elbowoods hospital, it gave us a tiny, understaffed, underequipped 8 am to 5 pm clinic that was inadequate when it was built and that has so deteriorated over 35 years that today it is also a safety and medical disaster area. It is only 8,100 square feet, compared to Elbowoods which was over 35,000 square feet. A report by Dr. Robert Marsland, Retired Assistant Surgeon General, USPHS/IHS documented the shocking and unacceptable deficiencies in our present health clinic and found that these deficiencies were at least partially responsible for this unacceptable health epidemic on our reservation.

Two sentences in his report starkly summarize his findings: **"The current IHS facility and service is inadequate, poorly staffed in numbers, poorly funded and unable to provide more than minimal community and primary health care. While the facility is staffed with competent and dedicated employees and officers, the lack of an adequate facility and budget compromises their ability to provide quality care."** A grossly deficient facility that is less than one-quarter the size of the facility that was destroyed is not the kind of health facility the Mandan Hidatsa and Arikara people ever imagined they would end up with when they gave up 155,000 acres of land in return for a solemn commitment from the United States to replace the Elbowoods Hospital. Given the diabetes, cancer, and other epidemics that are killing our people, the present facility's ability to address these problems has been likened to "trying to put out a forest fire with a garden hose".

The clinic is staffed by only 3 doctors, 2 nurse practitioners, and 3 nurses. In addition to working at the clinic, this small team spends 1 or 2 days a week at the mini-clinics the tribe has built with its own funds out in the remote reservation communities. (Twin Butte is open 1 day a week and Mandaree and White Shields are open 2 days a week. We are unable to open the new facility the tribe built at Parshall because IHS says it does not have the money for staff or operations.) As highlighted by Dr. Marsland's report, this dedicated but understaffed team is trying to provide health care in a facility that is deficient in more ways than one can count. Quoting directly from that report:

"According to the IHS Level of Need Funding Report, Ft. Berthold Service Unit has a level of Need Funding of 45 percent, or less half the amount needed to provide an adequate level of health care." Ft. Berthold's level is even lower than the average for the severely underfunded Aberdeen Area, which averages a level of Need Funding of 54 percent.

"The existing Minni-Tohe Health Center located in New Town, constructed in 1968 and comprising 8,100 square feet, is old, too small and poorly designed to meet the health service needs of the service population."

"Rooms are small and without organization for efficient patient flow. There are too few examination rooms, the six rooms available are small, minimally equipped and some lack privacy.... All parts of the facility are chopped up and so congested that there are potential safety, privacy and HIPPA problems throughout. Additions to the original building and changes to accommodate expanded services have resulted in very poor ventilation, with heating and coolingproblems." (Dr. Marsland also points out that the lack of ventilation forces the physicians to leave the exam room doors open, so the patients have no privacy, putting the facility in violation of the HIPPA Federal privacy requirements.)

"Work space for all departments and services, except for pharmacy, which is minimally acceptable, are totally inadequate and fraught with safety, overcrowding, and numerous maintenance problems. The laboratory space is extremely small, crowded with equipment, poorly ventilated, with no room for desk space for lab and radiology personnel, yet the lab scored 100 percent on the accreditation survey. Credit must go to the dedicated staff to obtain such high results from such a difficult and demoralizing workspace."

"Building settling has produced cracks and separations in several areas. The floor under the Medical Records space was not properly reinforced to sustain weight of medical record storage units and files so the floor is sagging."

"N–19, the building that was to be used as a Wellness Center [a building adjacent to the clinic] is so badly affected by black mold that it must be removed. Lead and asbestos were discovered in planning for removal of the building. Black mold has also been discovered in the quarters' units necessitating extensive repair and renovation of these buildings."

IHS is planning to spend over $1 million to renovate the existing facilities and quarters. But even when finished with that expenditure, the facilities will still require over $1 million to correct the deficiencies needed to bring the facilities into compliance with JCHAO, OSHA, and State safety standards. Funds to do this have not yet been identified. But even if IHS spent the full $2 million, we would still have a clinic that is too small and open only from 8 to 5, so our people would continue to die because of the United State's failure to keep its 50-year old promise. Further, there is no room for expansion, because the site of the existing health care facility is land-locked by the new bridge. As a result, it has no room to grow even if funds were available for an addition to the existing clinic.

In an effort to compensate for the inadequacies of the facility, the Tribe has contracted the employment of medical personnel and each year contributes $700,000 of its own funds to supplement the professionals' salaries, in order to provide them financial incentives to stay longer than 2 years and to work hard. This is apparently succeeding since Dr. Marsland repeatedly noted how the "competent and dedicated employees" try to overcome the deficiencies in their facilities.

IV. Our Health Problems, Intensified by the Flooding and the Inadequate Clinic, Have Created A Health Crisis of Epidemic Proportions

Our health problems are at epidemic proportions, especially in areas such as accidental injuries, cancer, heart disease, and diabetes related health problems. In addition to destroying our hospital, the flooding of our reservation has added to our health problems. Numerous studies have concluded that stress and dislocations of the kind that my people suffered as a result of the flooding cause serious health problems. We have seen our health problems on our reservation grow geometrically since 1953. When this increase is placed on top of the health problems suffered generally by Indian people throughout the country, and is coupled with our inadequate 8 to 5 clinic, it has produced a health epidemic on our reservation, while we have been denied the weapons we were promised and we need to effectively combat it.

Our diabetes rate is more than 14 times the national average; 576 tribal members, approximately 10 percent of our on-reservation population, are known diabetics. Many others likely have yet to be diagnosed. Of those diagnosed, 20 percent are under 18 years of age. Our children are now being diagnosed at an alarming rate with juvenile diabetes. When we tested our Head-Start children, 20 percent were found to be predisposed to diabetes. This means they may suffer with diabetes their entire lives. Our dialysis center presently serves 37 patients diagnosed with "end-stage renal disease". As the name implies, these are people whose diabetes has affected their kidney functions so severely that their blood must be cleaned (dialyzed) not through their kidneys, but through special machines at our dialysis center. Of the 576 members suffering from diabetes, over 300 are between 40 and 60 years of age. Many of them will be needing dialysis and other intensive treatment in the coming years, making the need for an adequate diabetes care center even more pressing. In addition, this center needs to be housed in an adequate health care facility that can serve the needs of patients who may suffer complications while receiving dialysis services.

I recently declared a "War on Diabetes" that will involve a variety of innovative preventative and medical initiatives, including an Internet screening program in conjunction with Georgetown University that has been funded through the Defense Appropriations Act with much appreciated assistance from Senators Conrad and Inouye. However, our existing facility lacks the space to house any preventive health care activities, much less the efforts needed to carry out and win this war.

Our cancer rates are up to seven times the national average depending on the kind of cancer. Many of these are forms of cancer that need screening to be detected early enough for treatment. The clinic lacks the equipment and the space for equipment to conduct mammograms, putting additional pressure on the inadequate CHS dollars. My mother died of stomach cancer, not diagnosed early enough, because there had been no screening program instituted for the disease at our local IHS facility.

Heart disease, the third leading cause of mortality, is four times the national average. The tribe's Casino is located just across the highway from the center. We have had seven people die there from heart attacks in the past 18 months because they were unfortunate enough to have suffered the heart attack after 5 pm. One of the persons that died was a mother of a fellow councilman who watched help-

lessly as his mother died in his arms. His mother and the others that suffered heart attacks may have been saved if we would have had a 24-hour healthcare facility on our reservation.

We have just begun construction of the new Four Bears Bridge and, in 1 year, will begin construction of a new refinery. Together they will involve hundreds of workers involved in dangerous construction tasks. The construction work on these projects will not stop at 5 pm or be limited to weekdays. Our present clinic and the hours it is open are totally inadequate to handle the existing workload, much less the increased workload these construction projects will contribute.

V. Absence of a 24-hour Facility Combined with Inadequate Ambulance Services are Causing Too Many Unnecessary Deaths

As indicated throughout this testimony, one of our most serious concerns is that the existing clinic is only open from 8 am-5 pm and only on weekdays. A tribal member who gets sick or injured in the evening or on weekends or holidays must be transported to an off-reservation hospital. The three off-reservation hospitals are all at least 85 miles from New Town and further from the outlying communities. Minot is 85 miles, Williston is 90 miles and Bismarck is 160 miles. (The nearby off-reservation facilities in Stanly and Warford city are only "critical access facilities", capable of just performing triage and then transferring the patient to these other distant hospitals.) There is no Medivac or other air transport available. The IHS ambulance is used only to transport patients from the clinic to the off-reservation hospitals. It is not equipped or staffed for emergency medical services.

Even when the clinic is open, it is too small to handle serious automobile and other injuries. We have a high accident rate on our reservation, largely attributable to the flooding because our community went from a compact one in which most people lived in a 60-mile stretch along the Missouri River, to one that is spread out over a wide and remote upland territory. People must travel dangerous roads, many of which are gravel or dirt, because the COE failed to build the roads it promised to connect the new upland communities. All of these factors increase the critical importance of adequate EMT and ambulance services. However, Dr. Marsland concluded that the ambulance service for doing so is totally inadequate.

The combination of the remote and dangerous roads, the long distance from health facilities, the absence of basic ambulance services, and an 8 am-5 pm clinic, have combined to cause far too many accident victims to become unnecessary fatalities because medical treatment was not provided in a timely manner. All of these problems are attributed to the flooding and the Government's failure to keep its promise to provide a new health facility.

Dr. Marsland's report effectively summarizes the ambulance situation:

> The Ft. Berthold Reservation and Minni-Tohe health Center are medically isolated. The nearest secondary/tertiary health facility is located in Minot—85-100 miles away from various reservation communities. Only one of the four ambulance or Emergency Medical Services that serve the different parts of the Reservation are certified for ACLS stabilization and transport. Currently there is no way to effectively use that "golden hour" of time from the moment a life threatening event occurs to stabilize and transport a patient from the scene of the event, whether home, highway or health center, and transport to a certified facility and provide the advanced cardiac and life support necessary to prevent death or catastrophic results.

To try to reduce the number of deaths, the tribe spends approximately $113,000 a year to pay for ambulance services, which are provided by three off-reservation communities and the city of New Town. But because of the distances, difficulty in finding the victim(s) in the remote countryside, and boundary disputes among these four ambulance services, they often take too long to arrive and three out of four of them lack the sophisticated equipment needed to utilize that ″golden hour″ Dr. Marsland referred to. Also, there are areas of our reservation that have no service at all because they are outside of the ″territory″ of the various ambulance services. The entire west side of our reservation does not even have 911 service, as can be seen from the sign on the clinic advising people what to do for service when the clinic is closed. As a result of all of these factors, most of which are directly attributable to the Dam and the Government's failure to keep its commitment, far too many of my people have died because they picked the "wrong" time and place to get sick or injured.

VI. The Unfulfilled Promise has a Devastating Effect on Our Contract Health Services Program, On Our People's Credit and On Off-Reservation Providers

The inadequate existing facility also has a devastating effect on our contract care (CHS) program. Because the facility can handle such a limited range of medical procedures and services, an inordinate amount of medical services has to be referred to off-reservation providers. Dr. Marsland found that the CHS funds "...are insufficient to meet even Priority I needs for protection of life and limb throughout a 12-month period. The service unit usually depletes its CHS funds sometime from May-July." Many services that others in this country take for granted are never funded because of the, inadequate CHS budget at Ft. Berthold.

The extraordinary dependency on the CHS dollars because of the inadequate facility has also unfairly ruined the credit rating of hundreds of tribal families. This in turn has undermined the tribe's efforts to promote mortgage-financed housing because these families are treated as uncredit-worthy by the mortgage financiers. Yet the fault lies with the Indian Health Service. Even though the Service Unit knows it will run out of CHS funds before the end of the year (and it is prohibited from paying bills incurred in one fiscal year with funds appropriated in the next year) the Indian Health Service has instructed the Service Unit to never deny any tribal member CHS services on the grounds that there is no money. So if a tribal member needs a Priority I procedure, the Service Unit approves it. But, if, when the bill for that procedure is received by IHS, the CHS funds for that year have been exhausted, IHS, in a maneuver that is immoral and probably illegal, simply declares after the fact, that the procedure is now not a Priority I procedure, such that IHS has no legal obligation to pay the bill. Responsibility for the bill now falls, after the fact, on the tribal member. Thus a tribal member who walks into the CHS provider having been told that IHS would cover the costs of the procedure, can learn weeks later that he is personally and legally responsible for thousands of dollars in medical bills. If the tribal member cannot afford to pay this unanticipated bill (which is the usual case), his credit rating is destroyed and he is ineligible for mortgaged financed housing, car loans, etc., through no fault of his own. One family facing a $30,000-medical bill because of this IHS practice, was forced to declare bankruptcy to keep the CHS provider from seizing all of the family's assets.

The absence of a 24-hour facility and the resulting reliance on CHS dollars, also creates financial problems for the off-reservation health facilities. In the situations described above, most tribal members cannot afford to pay these medical bills even if they were willing to let IHS off the hook. As a result, the off-reservation facilities are never fully compensated for the CHS care they provided. This raises the cost of health care to the off-reservation population.

VII. A Description of the New Facility

The $20 million authorized by S. 1146 would pay for the construction of a 66,000-square foot facility, located on 66 acres of land donated by the tribe, set overlooking Lake Sakakawea. This is a bare bones facility. Based on IHS data, a facility for a user population the size of Ft. Berthold (a population of 5826 in 2002 and expected to grow to 7436 in 2010)) should be 107,000 square foot, with $3.5 million for design, $9.7 million for 140 new staff, $13 million for O&M, and $21 million for 75 new housing quarters for the new staff. When the Tribe submitted the $20 million cost to Congress, it was just for construction and was not intended to include these other costs, which we have been told must be authorized, and then specifically appropriated in the first year of operation. If that is done, IHS will include them in its base budget in future years. If that is not done, there will not be funding to staff or maintain the new facility. We therefore request that S. 1146 be amended to provide for the additional staff ($6.6 million), O&M ($2 million), and design ($2 million) that IHS would include in any 66,000 square foot facility.

The $20 million also does not include funds for new quarters for the additional staff needed for the new facility. Yet, some of the existing quarters were converted to use for medical purposes and others cannot be occupied because of black mold. Unless new quarters are provided, it will be virtually impossible for the Tribe to recruit the additional providers that will be needed to staff the new facility. The Tribe requests an opportunity to visit with the Committee at some time in the future to discuss this need for staff housing.

We have been planning our new facility for almost 15 years, ever since the JTAC Report acknowledged our right to such a facility. While we were promised a new hospital to replace Elbowoods, the Tribe has agreed to compromise on a 24-hour outpatient facility. We have had numerous community meetings and have consulted other tribes and various health experts. The result is a facility plan that was designed specifically to address the health problems that are killing our people, based on the successful model of a comprehensive rural health care facility.

The facility will provide 24 hour, 7 day a week outpatient and emergency room services. It will have an expanded kidney dialysis unit, since diabetes on the Res-

ervation is 14 times the national average and is the leading cause of death. It will have a cancer screening unit because our Reservation has a cancer rate seven times the national average and cancer is the second leading cause of death. It will have a telemetry unit for testing persons with heart problems, since heart disease is the third leading cause of death. It will also have an Intenet-based health information technology resource center, to be developed with the cooperation of the Georgetown University Medical Center, that will enable the medical staff to monitor diabetes patients in their homes and will provide the staff with information on the best practices available on diabetes and cancer treatment, particularly, in regard to diet and lifestyle of the patients.

It will provide 10 "swing beds" for patients who need skilled nursing care but do not belong in a hospital, such as for rehabilitation and alcoholism. These beds, the numbers for which were based on analysis of existing utilization, will produce significant savings in IHS Contract Health Services dollars that are now spent putting patients in expensive hospital beds, not because they need to be in a hospital but because there are no alternatives. These beds will also enable patients to recover at a facility that is close to home, rather than in an off-reservation hospital that may require a 2- to 4-hour drive, one way, for family members seeking to visit.

Finally, the budget includes funding for fully equipped ambulances that will serve the remote communities. The Tribe will provide the facilities to house the ambulances. The staffing includes EMS personnel in each segment. The budget also includes funds for a helipad. All of these are designed to reduce the unnecessary deaths caused by the dispersed communities caused by the dam.

Conclusion

The United States has a legal and moral obligation to enact S. 1146 and to provide the appropriations called for in the bill. The Tribe's request does not interfere with or override the IHS health facility priority list or the appropriations process for that list. The tribe is not simply seeking a new facility because its existing one is deficient. It is owed that facility because the United States destroyed its old hospital and promised to replace it. As Senator Conrad stated at the August 30, 2001, hearing the tribe is morally and legally entitled to this facility. To make this distinction clear, the Tribe requests that Congress consider revising S. 1146 so that it creates the "Equitable Compensation Health Care Facility Settlement Fund" in the Office of Special Trustee, and that it provide that the $20 million for construction of the new facility, when appropriated, be placed in this fund. The Tribe would then use the funds to build the new facility. This takes the appropriations out of the priority list category and makes it clear to all that the appropriations are being provided in settlement of an obligation of the United States. There are precedents for this. For example, the Northern Cheyenne Water Settlement Act created a similar Fund for the construction of a darn, with the dollars appropriated, pursuant to settlement, directly into that Fund.

While appropriations are always difficult, the Garrison Dam has created enormous economic opportunities for those downstream who will forever be spared devastating floods, produces generous amounts of cheap electricity, provides recreational opportunities that now benefit all of the upper Great Plains, and is an enormous reservoir of water to meet the needs of North Dakota's residents, farms, and industries. In particular, the Dam has enabled WAPA to earn significant profits, which it pays over into the United States Treasury. While reaping these profits, the United States has not paid the full costs of generating that power since it has failed to provide us with the replacement health facility that is one of those costs. We view those profits as being earned on the backs of our people. It is time for the United States to fully pay the cost of the facility it has been benefiting from for 50 years.

Congress has recognized the connection between a Federal Power Authority's profits and the Government's obligations to meet its commitments to Indian tribes. The Colville Tribe had a claim against the United States and the Bonneville Power Authority for under-compensating the tribe for the land taken for the construction of Grand Coulee Dam. The tribe and BPA worked out a settlement that is actually being paid for by BPA out of its revenues, thereby eliminating the need to obtain an appropriation from Congress. While that model may not be an acceptable approach here, it makes the point that there is a direct relationship between the revenues earned by the Power Authorities and the obligations and commitments made by the United States in order to obtain the land needed to earn those revenues.

In conclusion, on this the 50th anniversary of the dedication of the Garrison Dam this Congress, led by this Committee, must move forward aggressively to enact S. 1146 and then to appropriate the funds—as a matter of fairness, as a matter of con-

science, and as a proof that a great nation keeps its promises. Thank you for this opportunity to testify.

PREPARED STATEMENT OF FREDERICK BAKER, CHAIRMAN, MANDAN, HIDATSA AND ARICKARA ELDERS ORGANIZATION

My name is Frederick Baker. I chair the Mandan, Hidatsa, and Arickara Elders Organization, which is a duly sanctioned organization of the three affiliated tribes. Our responsibility is to provide services to, advocate for, and provide leadership to those enrolled members of our tribe who are sixty years and older. I am a retired Federal employee, with seventeen years as a service unit director for the Indian Health Service, including nine years at the Ft. Berthold Service Unit.

I was raised as a Hidatsa Mandan and I am one of the few remaining Hidatsa speakers. I was born prior to the construction of the Garrison Dam, and have clear memories of life before our homelands were flooded. In fact, I was born in the Elbowoods Hospital, and spent the first two weeks of my life there, (although my memories of those two weeks are a little fuzzy).

The Elbowoods Hospital was the place where we went for health care. People came from all corners of the reservation in their horse drawn wagons or sleighs, depending on the time of year, to seek medical care. We came to Elbowoods because that was our hospital. chances are that one of our close relatives or one of our good friends worked there. The staff knew our ways, and made us feel comfortable and welcome.

With the advent of the Garrison Dam, our hospital at Elbowoods was closed, and we were forced to seek care at hospitals where we knew no one, everything was strange and different, and sometimes we were not treated very well. as a result, many of us, especially our elders refused to seek medical care and many died at home, rather than seek care at such a foreign place.

Today, many of us elders still hesitate to seek care away from the reservation. we look at the mini-tohe clinic as our own; we see our relatives and our friends working there, and feel assured that we will be better understood. I remember that as the service unit director, I spoke to patients, sometimes in the hidatsa language in an effort to help people better understand their health condition. Although we depend on our clinic for our health care, it is woefully inadequate. Our population has grown, and will continue to grow at a fast pace. While other communities are closing their schools because of declining rural populations, we are building on to our schools to meet the growth.

As previously stated, we have outgrown our mini-tohe health center building both in size, and technology. There are insufficient numbers of exam rooms, hence patients have to wait long periods of time to get appointments, and if an emergency type patient presents during clinic hours, the patients that do have appointments, have to wait sometimes as long as two hours beyond their appointment times to be seen. We have had elders who have left because of a long wait only to collapse outside the clinic and require an ambulance ride to the nearest emergency room which is 70 miles away.

Our clinic is only open from 8 am to 5 pm, Monday thru Friday. If we get sick and require care outside of these hours, then we have to go at least seventy miles to seek medical care. We are always feuding with the Indian Health Service because they will only pay for what they consider is an emergency. If we present at a non-IHS facility, theirs will only authorize payment for what they consider an emergency. If our situation does not fall within their definition of an emergency, then we are stuck with the bill. Many of us have had our credit ruined because we sought medical care at an outside facility during non-clinic hours, for what we thought was an emergency, only to have the IHS deny payment, and we, not having the resources to pay the bill, end up at the hands of a bill collector.

We desperately need a building that is adequate to meet not only our basic needs for medical care, but that can provide us with twenty-four hour emergency service, and specialty clinics including ambulatory surgery. In all, these specialty care services will save money because they will allow more patients to receive services early enough to prevent costly urgent and emergent procedures further down the road. I recall an occasion when, as a service unit director, I had neither the resources available at the clinic, nor the contract health care dollars to pay for a diagnostic procedure that would have cost about 500 dollars. Six months later, this same patient had to have a life-saving procedure that cost the Indian Health Service 65,000 dollars. This procedure and its subsequent costs could have been avoided, had we had the proper resources at the clinic to make the diagnosis.

A new clinic, equipped with today's technology, and the necessary staff, will bring our level of care to a more reasonable level and closer to the level of health care that all other Americans enjoy. Further, it will fulfill the promise of replacing our hospital at Elbowoods.

Thank you for your interest in our healthcare and for supporting our desperate need for a new clinic.

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