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REORGANIZATION WITHIN THE BIA

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED EIGHTH CONGRESS

SECOND SESSION

ON

PROPOSED REORGANIZATION OF MAJOR AGENCIES AND FUNCTIONS RELATED TO INDIAN TRUST REFORM MATTERS WITHIN THE DEPARTMENT OF THE INTERIOR

MARCH 10, 2004
WASHINGTON, DC

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REORGANIZATION WITHIN THE BIA

WEDNESDAY, MARCH 10, 2004

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

The committee met, pursuant to notice, at 9:30 a.m. in room 485, Russell Senate Building, Hon. Ben Nighthorse Campbell (chairman of the committee) presiding.

Present: Senators Campbell and Inouye.

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

The CHAIRMAN. The committee will come to order.

Good morning and welcome to today's oversight hearing on what is going on within the Department of the Interior regarding trust management reform.

In June 2003, Senator Inouye and I laid out our vision for overcoming the challenges before us in trust matters. The four elements that we envision are enacting the Indian probate reforms to help stop land fractionation; launching a large-scale buy-back of fractionated lands to return those parcels of lands to the tribes; settling the *Cobell* v. *Norton* case; and building a forward-looking trust management system that is state-of-the-art and can be tailored to the many differences between tribes in terms of their needs, and one that respects Indian self-determination. I am happy to see that on the first three of these elements, probate reform, the buy-back and settling *Cobell,* we have indeed been making progress.

Today's hearing is about the last element and we will hear from the Department and Indian country on whether the reorganization is going the right direction or not.

In the interests of time, I will submit my complete testimony for the record and yield to Senator Inouye for any opening statement he may have.

STATEMENT OF HON. DANIEL K. INOUYE, U.S. SENATOR FROM HAWAII, VICE CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS

Senator INOUYE. I thank you, Mr. Chairman.

I, too, in the interest of time would like to submit my full statement for the record. However, I wish to assure the witnesses today that I reviewed their submissions to their committee following the trust summit that was held on February 25. I think it is safe to

say that there is strong opposition in some regions of Indian country to the Department's proposal.

Mr. Chairman, I also want to say on behalf of our colleague Senator Johnson, who is at home recuperating from surgery, that he wants to assure the witnesses today that he will reading all of their testimony and he is sorry that he cannot be here in person today.

So with that, Mr. Chairman, thank you very much.

The CHAIRMAN. Senator Daschle has requested time. He has a very, very tight schedule, so we may interrupt the first panel's testimony when he comes in, if you do not mind. Until he gets here, we will go ahead and proceed with panel 1, Dave Anderson, the aAssistant secretary of Indian Affairs. He is accompanied by Ross Swimmer, the special trustee for the American Indians.

If you would like to go ahead, Dave, please proceed. Your full written testimony will be in the record. Are you going first, Ross?

Mr. SWIMMER. Mr. Chairman, if you do not mind, I would like to proceed with a review of where we are with the different reform initiatives, and Secretary Anderson would follow then with some comments that he would like to provide to the committee as well.

The CHAIRMAN. That would be fine.

Mr. SWIMMER. We have a joint statement that was prepared and we offer that to the committee for its acceptance. We would like to have that put into the record.

The CHAIRMAN. Your complete testimony will be included in the record.

STATEMENT OF ROSS O. SWIMMER, SPECIAL TRUSTEE FOR AMERICAN INDIANS, DEPARTMENT OF THE INTERIOR, WASHINGTON, DC

Mr. SWIMMER. Mr. Chairman and Senator Inouye, it is a pleasure to appear before you today.

We appreciate the opportunity given us to present at these hearings and to inform the Congress on the progress that we are making regarding the subjects that you discussed in your opening statement, probate reform, land consolidation, the *Cobell* matter and the reform of the fiduciary trust.

I want to thank the committee and I want to recognize the extraordinary work being done by the committee and the staff of the committee to develop the uniform probate bill and to resolve many of the problems that have plagued us since the 2000 amendments on the Indian Land Consolidation Act. There is probably nothing that is more important in terms of trust reform than figuring out how we can resolve fractionation, the buy-back at least, or the reconsolidation of many of the fractionated land interests held by tens of thousands of Indian individuals in Indian country.

This has been an extraordinary work that has been done by the committee staff. We recognize that and we think we are making tremendous headway in getting legislation that is going to substantially improve on the current operations. We have a few concerns yet about the bill, but we feel that those can be resolved and we appreciate the opportunity of working with the staff on this committee because it is extremely important.

Mr. Chairman, in March 2003 the first comprehensive trust management plan was developed by the Department of the Interior to address those issues that were cited by the *Cobell* court for almost 8 years prior. It was a requirement of the special trustee in the 1994 legislation to develop such a comprehensive plan. It was done and it followed in the footsteps of a 1-year long consultation that was held with tribes, many, many meetings throughout the country attended by the highest level officials in the Department of the Interior.

Several components of the comprehensive plan include, first, the organizational structure or realignment, as we like to say, of some of the offices within the Department of the Interior, within the Bureau of Indian Affairs [BIA], and within the Special Trustee's office. The realignment is there to focus on the need for resources to reform the fiduciary trust management. Where those resources are to be placed is critically important.

We are trying to put them where the need is greatest at the local agency, but at the same time within the BIA to create a clearer focus on the fiduciary trust obligations of the Government; to segregate those trust operations, if you will, from other service bureau operations and from the education operations within the BIA that have already been separated out for purposes of greater focus on those particular issues.

We think that the streamlining that is being done within the BIA, having direct line authority for trust operations from the agency, with deputy superintendents reporting to deputy regional directors, reporting to senior officials in the central office for trust operations is a significant improvement so that people understand where they are in the structure and what their responsibilities are, and what they are supposed to be doing.

The structure also includes an addition to the Office of the Special Trustee in the form of fiduciary trust officers. These are positions that have been criticized by some as, well, they are not necessary, they are just additional management, they are people who are not there really to perform day-to-day activities.

There is nothing further from the truth. We have now scattered throughout all of the agencies individual Indian money management clerks who are basically supervised out of Albuquerque. That is not a good way of doing business. Much of the work that has to be done at the agency offices has to then be approved by someone in Albuquerque. We hear this regularly.

Well, it had to go to Albuquerque; it had to go to the central office; it had to go to the regional office.

The idea of having trust officers and deputy superintendents for trust at the agency level is so that nothing has to go out of that agency. Decisions can be made right there. The trust officers would have the delegated authority to sign off on matters that previously would have to go up the chain to get approval by a higher level.

In addition, the trust officers are what I call worker bees. They are not there to manage just the IM clerks. They are there to provide access to beneficiaries. So when a beneficiary walks into the agency office, they are able to get their questions answered. They are able to get information on their land accounts, on their financial accounts. They are able to ask questions, when is my check

due; what happened to my last check; how much land do I own; where do I own land; someone in my family just died, what is the status of the probate.

The trust officer, like a trust officer in a commercial operation, will we hope with the technology available, and even without it, manually, be able to search the records to find that information and provide it to the beneficiary.

In addition, as issues come up at the agency that may require approval by a trust officer or superintendent, that approval can be made right there. There may be spending plans, for instance, for miners that need to be approved. Today, they go in some instances all the way to Washington. We are hoping to get that resolved right there at the agency.

Other initiatives involved in the plan include new funding requested to support the BIA agency operations, as I said, with the addition of the trust officers, deputy superintendents and the support staff. Nearly all of year 2002 was spent documenting trust business processes. The one thing that had not happened previously as we worked on trust reform and as was ordered by the court, was an assessment of where we are now in the process; how does fiduciary trust work; how do we lease the land; how do we lease the minerals; how do we collect revenues that are due from the leases of the land; how do we cut the timber; how do we cruise the timber; how do we account for the timber; what do we do after it is cut; how do we do our financial operations; what happens when money is collected; does it go immediately into the bank; is it held at the agency; does it have to be mailed to the regional office.

All of these kinds of issues we said we have to know how business is done today and that is what we called the "As-Is" trust business processes. We spent 2002 mapping those trust business processes. Virtually 1,000 pages of material came out of that, where we went out to every region, most of the agencies and the tribes. We said, we want to know how you do business, literally from moving this piece of paper to this person to that person; where do you go when you go out to cruise timber; who does it; what are the certifications required; what kind of lease people do we have; what is required if you are approving a farm and ranch lease; what kind of skills are necessary; and who is doing the job today.

After we completed that exercise in year 2003, we began the effort of creating a model that we call the "to be" model. We went back to the same people and said, you have told us how you do it and here is how we have mapped it out. Now, you have 15 steps to do this activity; can we do it in five steps; can we reduce either through technology; either through better training or some other activity; can we cut out many of these steps that it takes to get from A to B to C to D?

What we have found is that there is great receptivity out there to do things better and to do things in a much more organized and standardized way within the BIA and the Special Trustee's Office. Such things as probate, leasing, mineral production, accounting, ownership, information technology, records management, some of the very fundamental things it takes to run any business, but par-

ticularly a trust business, are the kinds of things that we are talking about reengineering in the "to be" process; things as simple as what is a records retention schedule.

This is a big issue in the *Cobell* case. They said that over the years, the Bureau of Indian Affairs did not keep its records very well. We did not have a system of records. We did not have retention schedules. We did not have anything that tells a superintendent, here is how long you are supposed to maintain this particular record. We do have those things now and they came about because of the reengineering that I am talking about, the things that we have done.

One thing I do want to emphasize, however, is that for the most part the reengineering of the trust business processes in the Department of Interior are internal to the operations of the Department. The idea is to improve the overall fiduciary trust management of the Department of the Interior, whether it is Minerals Management Service, the Bureau of Land Management, the USGS, BIA, Special Trustee, Office of Hearing and Appeals. Whoever touches trust, we are trying to reengineer where necessary to improve the process that we use now to administer that trust.

This is not to say, nor have we proposed in any form or manner, that an Indian tribe must adopt our business process. We recognize that Indian tribes have a unique position in the management of their trust assets when they accept that responsibility. They may have systems that work extremely well on their reservation, yet they may not be adaptable to the universe at large, whereas the Bureau of Indian Affairs and Special Trustee in the Department is looking at it nationwide.

We are trying to work out the processes that work across the board, making allowances for those unique instances through law, regulation or tribal statute, that may require a particular way of doing business in a particular area, but the tribes are still able, and will continue to be, to adopt the systems that they think fits their way of doing business.

Trust is only one of the areas the tribes operate. They are in economic development. They are doing things in social services. Tribes are out building roads. They are doing educational activities. They may have systems that work in a unified manner that they use for their trust business processes as well. We do not have any intention of asking them or forcing them into a process that we may choose that works for the Bureau or the Special Trustee.

It is not to say that those systems are not available. One example of that would be the new title system that we are developing now. We want a title system that allows a person to go into the system, look up a name, and find out what they own. That sounds pretty simple. You would think we could do that today. Well, we almost can on a case-by-case basis, but give me 400,000 names, it would take a long time.

We have people that own land on many different reservations. I can go into a title plant in Anadarko and I can tell you who owns what in Anadarko. But that person may own land on Rosebud. He may own land in the State of Washington. He may own land out in Arizona. Those will not show up on the title plant in Anadarko. The title plant and the title system that we are implementing right

now and hopefully will have fully converted by the end of the year or shortly thereafter, will allow us to go in and look at the nationwide ownership and be able to do those things that are basic to a beneficiary's needs, where do you own land; what is the legal description; how much do you own; what are the encumbrances against it; if it is leased, how much money is coming in on it; whether it is in Rosebud, South Dakota; whether it is in the State of Washington; or whether it is in New Mexico or Arizona.

The tribes most likely would want to align their title system if they are operating one, and we have a couple that do, with that title system so they could have the same ability, because people on their reservation own property on other reservations as well. There may be other areas where the tribes would want to join our system, so to speak, but that is their choice. I might add, however, that we will continue to require the tribes who operate or manage fiduciary trust activities, to meet the same trust standards required of the Secretary when those tribes assume responsibility through contract or compact. The organizational structure that has been the subject of much discussion in the last two years is now in place. There is no such thing as stopping organizational realignment or reorganization. It is done. Most of the remaining jobs at the agencies that the trust officers and some of the deputy superintendents will be filled by the end of this calendar year. They are presently being advertised on the street right now.

The purpose of this organizational alignment that we have chosen for the BIA and Special Trustee and other Interior offices is to create an organization that is transparent to the beneficiaries of the trust, yet provides beneficiaries with the services not previously available. When I say "transparent," what we want is when a beneficiary walks into an agency office, they do not go to the OST or the BIA or the MMS. When they walk into the agency office, they ask a question and they get an answer. They do not care who that particular person is being paid from, or what budget. They want an answer to a question. That is what we want to give them. So we do not want this division to be apparent. We want it to be a team approach. I think that Secretary Anderson has fully committed to that, as previously others in the BIA.

This did not happen easily, this organization that we are talking about. Thousands of hours of meetings and countless man hours have brought us to the point where we truly believe that the trust initiatives that I have discussed are what we must have if we are to correct the problems of trust management and move this trust program into the 21st century.

We do not want to stop there. We want the tribes to enjoy the benefits of these initiatives, including the organization. They also spent considerable time attending consultation sessions, reading the thousands of pages of the "as is" and the thousands pages of the "to be" reports, and providing us with valuable comments. We also recognize the fear of change and that not everyone is likely to get on board until they see the evidence that our trust initiatives will do the job.

We also recognize that there is a finite amount of money to spend for anything. While I am convinced that the money has not been taken from existing service programs to fund trust reform,

one cannot help but wonder whether $109 million as requested for historical accounting is not affecting the budgets of all Interior programs.

We are very grateful for the role this committee has played to help during the Cobell to bring the parties to the mediation table. We embrace this effort and we believe it is an opportunity to resolve the accounting issue, which even the plaintiffs have publicly stated they do not really want. Again, your help with this process is greatly appreciated.

I might add that several of the tribes that have been most vocal about the proposed trust initiatives and trust reform are also those tribes that have lawsuits pending against us for breach of trust. The status quo is not the answer before and it is not the answer now. Well thought-out planned initiatives that have gone through an extensive consultation process are, we believe, the way to have true trust reform. We believe we have done that. We have spent 2½ years doing just that, careful planning; lengthy consultation; meetings after meetings throughout Indian country; engaging tribes; engaging employees and beneficiaries in this process.

We appreciate the time the committee has given us this morning and again I compliment the committee and its staff on the work it is doing on trust reform. I would be pleased to answer questions, or Secretary Anderson may make his statement at this time.

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

The CHAIRMAN. Thank you, Ross.

Mr. Assistant Secretary, if you have comments go ahead and proceed.

STATEMENT OF DAVE ANDERSON, ASSISTANT SECRETARY FOR INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR, WASHINGTON, DC

Mr. Anderson. Thank you. Mr. Chairman and Vice Chairman Inouye and other members of the committee and the tribal representatives here, good morning.

First of all, I would like to start out by saying that I am grateful for the support that everyone in this room has shown me in support of my new position. I thank you all for that.

Today, we are here to discuss a major effort on behalf of the BIA and the Office of Special Trustee to meet the need for a change within the BIA to provide better services to the tribes. While I may be new at this since I have been on board only for a few weeks, a lot of my time has been spent with the staff in reviewing all of the work that has been done before my time, to better understand this reorganization.

One of the things that I have come to realize is that change has to happen. In just watching the day-to-day activities, many times I have stopped and asked, why are we doing things like this? Another one of my questions is, has this been the same for other assistant secretaries who have been here before me? And then I asked, at what point do we stop the merry-go-round and call time-out and say things have to change? Because many times when I am looking at how things get processed, it is no wonder that sometimes things take 6 months to 1 year to go through the system.

I really believe that we have a responsibility to Indian tribes as well as Indian individuals to provide services the same way that I am used to providing services in the outside world. I believe that can happen. I believe that the people within the BIA and the Office of Special Trustee all have a recognition to provide better services in their heart. I believe that we all understand that change has to happen.

In better understanding the *Cobell* lawsuit, many of the problems that have been pointed out by this case is that many times in the past it has been difficult to identify who specifically was responsible to carry out these tasks, which is one of the reasons why I think things appear sometimes to be mismanaged. I really believe that in looking at this reorganization that we are and have attempted to identify positions that would be specific to providing trust services to tribes and individuals in a timely manner and in an organized fashion, where we can provide the best services possible.

One of the most important things that has come out of this reorganization is better computer systems for accountability. I am amazed as I go through my daily activities, how many times our different regions are on different automated systems. Then, I am even more amazed at how many of the different departments within the agencies are on different automated systems. I really believe that this reorganization provides the standardization that we need to see come into play in order for us to enter the 21st century.

What has happened in the past can no longer continue. The BIA, I believe when I came on board that historically there has almost been a certain mustiness to this thing, and things have always been done this way. There is a good-old-boy system of doing things and things have worked like this for many years; why do we have to change? This is often the comment that I hear, well, things are working fine out here in the field; why do you have to change it up there, because you do not really understand what is happening out here, and things have been going on all right. But in fact, when we look at the picture on the whole, things have not been happening for the benefit of Indian people the way they should have.

I think change, at times, is difficult. It has been said if you always did what you always did, you are always going to get what you always got. And then a lot of us when looking at the way we do business, people often shake their heads at the way we have done business. It reminds me of the definition of insanity. If you do the same thing day in and day out and expect different results, it is going to result in insanity.

I think for too long we have been doing the same things day in and day out, and expecting different results. Tribes have come to us and have asked us to be more accountable. Tribes have asked us to provide services in a more timely fashion. We have not been able to do this.

I believe that standardization has to become a way of life for us. We have to be able to communicate with our different offices out in the field. I have talked with tribal leaders and they have commented many times that we do not believe that we should be standardized because we are different; our needs are different; we are different people here; our regions are different. I understand

that. We are not trying to standardize tribes, but we do have a need to standardize the computer systems that we communicate.

I really believe that today in this age of change we have seen more change happen globally in an unprecedented fashion than we have ever seen before. We are living in a day of change where more change is happening in 1 day of your life than in 10 years of your parents' lives. I really believe that today we have to be about the business of change. We have to understand change so that we are no longer victims of change, but we become the architects of our destiny.

I really believe that today we need to bring uniformity. We need to bring standardization of the computer systems that will provide us the accountability so that we can provide better services to our tribes.

Is this change good? I believe it is. Does everyone agree with this change? No, I think the answer could be very definitely no. You will hear testimony where it is. But the one thing that I know today is that, again, we must be about the business of change. I really believe that the people who have worked many long hours to try and figure this out, in their hearts believe that we are doing the right things.

I believe that we have listened to the tribes. It is very difficult to take what some tribes think is appropriate for them in one area, and what other tribes believe is appropriate for them in another area, and then try to bring it all together and make sense. It has been very difficult.

Today, I believe that what we have to offer has been the best that we have been able to do to bring this all together so that we can bring about the change we all recognize needs to happen. With that, I do not believe that this is the end of it. I believe there is tweaking that has to go along with it, and I believe that we are open to listening. I believe that we are open to working with the tribes so that we can make the work that we have to do be appropriate for what has to happen out there.

I believe that in my new position and my new job that one of the things that I represent is the change that has to happen in Indian country. When I came on board, I said, what am I going to do differently than what has been recognized by the other assistant secretaries? I believe there has to be a breath of fresh air, to be about the business of change.

When I go out and start visiting with the tribes, that is one of the things that I make sure that I do is to not only talk to tribal leaders, but get out into the school systems and let our Indian youth know, because they are the leaders of tomorrow, that in this great country we live in, that as Indian people our children can have dreams, and they can accomplish their dreams, and they believe in themselves. If they are going to believe in themselves, they have to understand that they have to stop the cycle of what has been happening heretofore. Today is a brand new day, and today if things are going to change, we have to be about the business of change.

Thank you for your time in listening to me. Thank you.

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

The CHAIRMAN. Thank you.

Senator Inouye had the double hearing this morning. He had to leave early. If he has any questions, he will submit them to you in writing, as other members who may or may not appear this morning. But thank you to both of you for your detailed testimony.

I agree in one respect, and that is very clear that 150 years of what has happened to Indian tribes certainly has not made things better for them from the standpoint of, as you said Dave, helping our children grow.

I was interested in your definition of insanity. It clearly parallels and describes some of the legislative process around here. The two of you might know that.

You also talked a great deal about change. I certainly do not blame tribes for being very, very careful about change, knowing the Federal Government's past record in dealing with American Indians. The Indian tribes, probably more than any other group in America, they have seen almost every change as reducing their sovereignty or reducing the status they once had.

I sometimes look at Indian people in terms of what are just generally called "minority movements" in America. But most minorities in America when they came to this country, it was really for upward mobility in some respects. They looked for a better life. They tried to gain things that the majority culture had, whether in modern society it is a house and a car and a good job, or something of that nature, in the olden days maybe a piece of land to farm.

I think Indian people are probably the only ones in the Nation that had nothing to gain and everything to lose, and they have lost and they have lost and they have lost. And 150 years of dependency on the Federal Government clearly has not worked very well for them. They just continually lose, so I can understand why they are very, very careful about change.

Ross, you mentioned in detail the amount of consultation process that is going on, and I appreciate that. But I have been here long enough to know, and maybe this is not just with Indian people, but no matter how much you consult, somebody will say afterwards, you did not ask me; or I was not at the table; or I didn't know about it, or something. So I just encourage you to do much more of that in every step of the process of reorganization.

We are going to hear some comments today that people that are not at all thrilled about it because they think it is top-heavy, creating many more jobs at the top level and not enough actual workers, but we will get into that in a few moments.

I notice that Senator Daschle, our distinguished Minority Leader, has been able to show up. So before I ask any questions, I would like to ask Senator Daschle to sit down and make a statement. Senator Daschle has been a great supporter of Indian programs, as most of the people in this room know, and we are delighted to have him here in front of the committee.

Senator DASCHLE. Mr. Chairman, just on a personal note, let me say that I know you have had to make a very difficult decision about your career in the Senate. On a bipartisan basis, as I said to you in person, I know I speak for everybody in this room and the entire Senate in congratulating you on a remarkable Senate career.

The CHAIRMAN. Thank you.

Senator DASCHLE. I just want you to know you have friends here for as long as you live, and we hope that your next year will be every bit as productive as the last years you have served in the Senate. We are proud to call you our friend, and I am honored to be here before you this morning.

The CHAIRMAN. Thank you.

I got a call from our tribe right after I made that decision. They said it is clear that I need to go to the mountain, and I think I do. [Laughter.]

Senator DASCHLE. Having read your book, I know what that means. So, thank you.

STATEMENT OF HON. TOM DASCHLE, U.S. SENATOR FROM SOUTH DAKOTA

Senator DASCHLE. Two weeks ago, tribal leaders from nearly every Indian nation in America traveled to America, Mr. Chairman, as you know, for a meeting of the National Congress of American Indians. Their urgent plea to all of us was that the Federal Government work with native people to find an honorable and equitable solution to the Indian trust fund dispute. This hearing is a first step in honoring that request, and I applaud you for holding the hearing. I want to thank others on the committee as well for their leadership in scheduling it so quickly, especially Senator Inouye.

I represent South Dakota, home of the great Sioux Nation. More than 30,000 men and women in South Dakota are individual Indian money account holders. Most are elders in their sixties, seventies, eighties, and even ninties. Many have lived all their lives in the kind of grinding poverty that most Americans don't even know exists in this Nation. When their land is leased, it is usually for grazing rights. Those rights do not produce much income, but for many Indian trust account holders in South Dakota, it is half of their annual income.

Maida LeBeau is one of the 30,000 trust account holders in my State. She lives in Eagle Butte on the Cheyenne River Reservation. She is the matriarch of an extended family that includes more than 40 kids. She considers them all her grandchildren. Last year, Mrs. Lebow had planned to use a good part of her annual lease payment to buy Christmas presents for the children. She expected her check to arrive in October, as it has for several years. By December, there was still no check and no explanation. Mrs. Lebow spent hours on the telephone trying to reach someone in the Office of Special Trustee who could help, but she could never get beyond the endless voicemail messages. So in her words, Christmas did not come this year for her grandchildren.

In early January, Ross Swimmer the Special Trustee for American Indians, who I am delighted and honored to join on of this panel held a meeting on trust reform in Rapid City, SD. On January 13, Mrs. LeBeau drove more than 3 hours to get to that meeting. She then waited another 8 hours as nearly 100 other account holders stood up and one-by-one described problems they were having with their accounts. Finally after all of that, Maida LeBeau got

a few minutes to plead her case. Weeks later after Mr. Swimmer's personal intervention, Mrs. LeBeau's check finally arrived.

Mr. Chairman, there are 300,000 Indian trust account holders in our country. Most of them do not have Maida LeBeau's strength. Many are in fragile health. They cannot drive 3 hours to speak directly to the head of the Office of Special Trustee to resolve problems with their trust accounts, and they should not have to.

For years, Congress has deferred to the executive branch, administrations of both political parties, to resolve the Indian trust management dispute. Yet the problems are no closer to being solved now than they were a decade ago, when Congress first directed the Interior Department to conduct an accounting of trust assets. It is time for Congress to admit that this hands-off approach is not working and accept our share of the responsibility for planning a fair and timely solution.

This morning before this committee, Chairman Tex Hall, the president of the National Congress of American Indians, will call on Congress to become a more active participant in the effort to broker a just and equitable solution to the trust management problem. He is right. When I look at the long history of the trust management problem, I see three basic paths to its resolution. Congress, the Interior Department and the tribes can work together as co-equal partners to fashion a consensus solution. We can seek a mediated solution to the problem. Or, we can throw our hands up in despair and allow the issue to be resolved in the courts. These paths are not mutually exclusive. They are three distinct routes to the same goal.

I am here today to offer some specific suggestions for how I believe we can move the trust management issue forward in a constructive way. First, congressional meddling in the Cobell case must end. Interventions such as the rider blocking Judge Lambert's ruling do not simply delay justice for Indian trust account holders, they undermine the delicate balance of power that is at the heart of our system of government.

Second, as soon as possible, I believe this committee should initiate three-way discussions involving Congress, the Administration and tribal leaders to search for a consensus solution to the trust dispute. I know the Interior Department maintains that its reorganization has been shaped at least in part by "listening sessions" it held in Indian country. Yet the fact remains that tribal leaders around the country do not accept the premise that those meetings represent true consultation. And neither do I. This problem cannot be solved by Interior Department officials simply by redrawing lines on a BIA organizational chart. The search for a settlement must include real, meaningful, ongoing consultation with tribes and tribal leaders. It is, after all, Indian people's money.

Congress should become more of an active partner in the efforts to broker such a consensus solution. I suggest that putting on the table the Interior Department's plan, the Great Plains regional proposal for trust reform outlined today by Chairman Harold Frazier, and the bill introduced by Senators McCain and Johnson, would be a good place to start.

At the same time, all parties should seriously explore the possibility of a mediated settlement. I commend Chairman Campbell

and Vice Chairman Inouye for the leadership that they have shown in beginning this mediation process. It is my view that in order for the mediation process to be effective, it should be headed by leaders of great stature who are experienced in difficult negotiations and whose integrity is unquestioned. The Indian trust dispute is not a partisan issue, and resolving it must not be viewed as a political effort. For that reason, I strongly urge that the mediation process be cochaired by a prominent Republican and a prominent Democrat.

Finally, Congress must begin budgeting now for the eventual resolution of this dispute. Last year, I introduced the Indian Payment Trust Equity Act [S. 1540], which would create a $10-billion fund to begin making payments to trust holders who have received an objective accounting of their trust assets. The fund could be expanded if necessary.

So I ask the committee to begin now to look seriously at that proposal or perhaps others. Many people who are owed money are elders. They cannot wait for years to learn their account balances and years more to receive their money. They do not have that many years. Maida LeBeau should not be forced to worry about her next Christmas. There should be a mechanism in place to issue regular payments to account holders in case negotiation or mediation fails to produce a consensus solution.

Nearly 1 year ago, the distinguished chairman and vice chairman of this committee wrote a letter to the parties in the *Cobell* case expressing their concern that continuing the litigation would only further delay justice for trust account holders. I would like to read one paragraph from that letter, quote:

> We believe that the most effective and equitable way to resolve this threshold matter is to engage the services of an enhanced mediation team that will bring to bear trust accounting and legal expertise to develop alternative models that will resolve the *Cobell* case fairly and honorably for all parties. If within a reasonable amount of time there is no progress made on such a resolution, we intend to introduce legislation that will accomplish the goal of resolving the *Cobell* matter in a mediated fashion.

The time has come for Congress to become a more active partner in the search for a just and equitable settlement.

So Mr. Chairman, again I want to thank you and members of the committee for holding this hearing. I look forward to working with the committee, the Administration and the tribes to find a solution that all parties can support.

Thank you very much.

[Prepared statement of Senator Daschle appears in appendix.]

The CHAIRMAN. Thank you for your testimony. I am sure you are aware that we have introduced a bipartisan bill, S. 1770, and I know I am speaking for Senator Inouye when I say that we certainly would appreciate your support in helping us craft final legislation that can go to the President to resolve this problem.

I would also say before you have to run, because I have so many relatives in your State, Senator Daschle, I know very well a lot of the problems and often use the plight of Indian people in South Dakota when we hear a dialog on, say, unemployment at 5 or 6 percent nationwide, and I suggest maybe they go to Eagle Butte and see what it is like to live with a 60-percent unemployment; or when we talk about problems that our youngsters are facing and I sug-

gest maybe they go to Pine Ridge and see how many youngsters are driven to suicide or try it because of the lack of opportunity; or when we talk about health, I suggest maybe they go to Rosebud and see what it is like to see people who have lost their limbs because of diabetes where the diabetes rate is probably near 50 percent. The problems Indian people face are just horrendous compared to the population at large. I just wanted to thank you for all your efforts in trying to help our people. Thank you.

Senator DASCHLE. Thank you very much, Mr. Chairman.

The CHAIRMAN. I do have a few questions for our witnesses, if I can get back to those for a little bit. Ross, you did speak at length about how this is going to be reorganized, but there is some question, as you know, I think you alluded to it, that some tribes are saying that this is really going to be a top-heavy bureaucracy, and that there are few new dollars for staff at the local level. Would you care to respond to that again?

Mr. SWIMMER. Certainly. It is everything but top heavy. I do not know of any jobs created at the central office level, for instance, and very few at the regional office. Most of the new jobs that are created are at the agency offices, and that is where we need the most.

The CHAIRMAN. Would that result in more or less 638 contracting?

Mr. SWIMMER. It should not have any impact on 638 contracting. We have that as a major goal within the trust management plan. We encourage it. We want it to happen. We do believe that the tribes will have to be held accountable if they assume trust management activities, but we want them to take those activities over to the greatest extent possible.

The CHAIRMAN. Did I understand that you are consulting with the tribes on the decisions regarding staffing levels, too?

Mr. SWIMMER. The overall organizational plan that was presented includes staffing levels at the agencies, particularly the trust officers and the deputy superintendents and the staff that would be there. That has been discussed at quite some length on the way in which they would perform their activities.

The CHAIRMAN. And for new staffing levels, will that be Indian preference staffing?

Mr. SWIMMER. It is except in the Office of the Special Trustee for the offices that would be added or the work that would be added at the BIA level, it would be Indian preference.

The CHAIRMAN. Okay, thank you.

Frankly, I think a lot of the questions I had, you actually answered in your testimony, so I do not want to belabor it. It is the committee's understanding and maybe I do not have it right, but under the reorganization, there are certain functions that were once handled at regional level that are going to be pulled back to the central office here in Washington, DC at the BIA. Is that true or not?

Mr. SWIMMER. That is true. It is not the function per se. It is the authority for making the decision. For instance in the area of administration, some of the ultimate authority is at central office, and it is simply to get the standardization. It is not pulling jobs up to the central office. The people are still in place at the regions and

the agencies. But when they spend the money, so to speak, it is important that we know where it is being spent and how it is being spent, and that we use systems that are standardized so that we get reports back from the regions and the agencies that we can make sense out of, and the bureau can.

So what the bureau did is that they elevated the ultimate responsibility for some of these activities to the central office. It has been a point of contention because in the past, the regions particularly have pretty much run the regions independent of each other. If we are going to have effective and efficient management, we have to have some standardization in the processes. I think this is the basis for which the BIA restructured that line authority within those administrative functions.

The CHAIRMAN. You touched on one other thing while I was writing some notes here, and I know it is a concern to Senator Inouye and I both, and that is that we do not want money that goes into the reorganization to take away from other areas that are extremely important in Indian health or Indian education or so on. It is my understanding from both of you that that will not be the effect. Is that true?

Mr. SWIMMER. It is not our intention to reprogram existing moneys beyond what we had asked for in the original $5 million last year. We have asked for new money for new positions, and we do have that money for 2004 and we have I think it is a total of about between the two agencies around $7 million that we are asking for in 2005 to finish up the rest of the employment.

But the organizational structure is not itself taking money and we do not expect to have an obligation.

The CHAIRMAN. Okay. I thank you both for appearing. I will probably have a few additional questions that I will submit in writing, as will other members, too. If you could get those back to us at your earliest convenience, I would appreciate it. Thank you for being here.

Mr. ANDERSON. Senator, if I could just take a quick minute to respond briefly to Senator Daschle. I am very familiar with the case that he mentioned. What I would like to say is that the reorganization and the trust reform initiatives we are talking about does exactly what he asked for. It takes care of the Maida LeBeaus. She could get an answer at the agency and she would not have to come to the Special Trustee.

The CHAIRMAN. Good.

Mr. ANDERSON. Thank you very much.

The CHAIRMAN. Perhaps the staff, if they are still here, can carry that message to him.

Now we will proceed to panel 2, which will be Tex Hall, president of the National Congress of American Indians, I do not see Tex here, but would you look out in the hall? Perhaps he is out there; Joe Shirley, president of the Navajo Nation from Window Rock; Edward Thomas, president of the Central Council of Tlingit and Haida Indian Tribes in Alaska; Harold Frazier, president of the Great Plains Tribal Chairman's Association from Eagle Butte; and Clifford Marshall, chairman of Hoopa Valley Tribe in California.

If you gentlemen would all sit down. We will start in that order with President Tex Hall beginning. Nice to see you Tex. I did not

see you in the audience. I was worried that you might not be able to appear this morning. I am glad you are here.

All of your complete written testimony will be in the report for all of our colleagues to read, so you do not need to read that thing word for word because most of us, we can read pretty well.

We will do that. So if you would like to abbreviate or ad lib some of your comments, please feel free to do so.

Tex, why don't you go ahead and begin.

Mr. HALL. Good morning, Senator Campbell and Senator Inouye and members of the committee. Thank you for holding this hearing.

I would like to make just a quick plea to you to reconsider running again. Really, we are shocked that you are not running, and really appreciate your leadership, Senator Ben Nighthorse Campbell.

The CHAIRMAN. Thank you.

Mr. HALL. So if you could reconsider at some time, we really would encourage you to do that.

The CHAIRMAN. I appreciate that. After 38 years of marriage, my wife says she has been a single mom for 22 years and been married at the same time. [Laughter.]

Three of my grandchildren do not know who I am and I have a dog that growls at me when I come home. [Laughter.]

So I think it is perhaps time to get back to Colorado and back to the pow-wow circuit if nothing else. Thank you, though, for your nice thoughts.

Mr. HALL. Thank you.

STATEMENT OF TEX HALL, PRESIDENT, NATIONAL CONGRESS OF AMERICAN INDIANS

Mr. HALL. Again, I want to thank the committee for having this hearing today. On February 25, of course, NCAI held a trust reform summit in this very room to talk about this very important issue. We heard from all 12 regions and they all opposed the current reorganization as the way it is presented. So we specifically asked each region as they presented. They wanted to develop agency-specific plans versus the top-heavy bureaucratic plans. So again, all tribes in all regions are opposed to the reorganization plan.

So we feel that DOI has focused its efforts on the top of the organization, rather than on the bottom, on the local grassroots level where reorganization should really begin. So this ongoing reorganization at the top-heavy bureaucratic level is really now at the expense of local agencies and Bureau of Indian Affairs programs. A top-heavy organization does not address the desperate need for trust account resource management at the agency and local level.

Trust management requires people and systems at the agency level addressing resource management, range unit compliance, inspections, enforcement, title, appraisal and probates. This work cannot be done by bureaucrats and accountants in Washington, DC or Albuquerque, NM. It has to occur at the agency level.

Tribes have always been and continue to be willing to work with DOI on trust reform, but DOI has chosen to shut the tribes out of the consultation process. Tribal leaders want change, contrary to what you may here. We want change. We want improvement in the system and in the way DOI manages trust funds and trust re-

sources. However, tribal comments and suggestions concerning reorganization have fallen on deaf ears. We believe now is the time for congressional intervention. We are really at the crossroads, Mr. Chairman. We really feel that it is so important now that Congress take the lead in this because we simply are not getting anywhere.

If I could add up the number of dollars that have been spent on reorganization since the last 12 years, we would probably exceed $1 billion. Yet, what are the results? What are the results of the reorganization? We have not seen those moneys, those $1 billions really effect change at the local level, and that really the critical crying point that tribes come to appeal to the committee today. That is really where we need to go.

The second thing is the money that is being shifted from BIA that is jeopardizing programs that are so critical, human services, Indian child welfare, education, resource management.

These are people behind those cuts that are being taken from the BIA funds to fund OST and the reorganization.

So as was mentioned earlier, I heard Senator Daschle's testimony about one IM account holder in Eagle Butte. There are so many people like that, and so many people are passing on and their estates are not being processed, and still looking to see where their check is at, still not knowing what that check was appraised at, how much was that resource done.

So we actually did a needs assessment on Fort Berthold, Mr. Chairman. We have actually studied this on Fort Berthold. Many of the tribes are now looking at needs assessment at the agency level. At one point at Fort Berthold, we employed 23 people in range alone. Today, we have three people in range. This shortfall in staff is a direct result of the neglect of providing adequate appropriations.

For example, 25 CFR 166.305 requires the BIA to conduct a range assessment on every range unit on a reservation prior to issuance of a permit. The last range assessment completed on Fort Berthold was in 1982. So we have been neglected since 1982. 25 CFR 166.312 requires the BIA to develop a conservation plan for each range unit. No conservation plans have been developed or approved by the BIA despite the issuance of grazing permits. So we continue to issue permits without conservation plans.

Range technicians are responsible for ensuring permit compliance and policing the ranges for trespass and overgrazing. We have one range technicians to manage over 1 million acres, with the river and the lake, as you know, that runs right in the middle of Fort Berthold, with grazing lands spread over 1,376 square miles, and again, one range technician. There is no way that they could make sure that the IM account or the tribal lands are in compliance.

There is no appraiser at the Fort Berthold agency, despite the fact that appraisals are required for farm pasture leases, grazing permits, right-of-ways, oil and gas leases, land exchanges, land sales, gift deeds, land consolidation and trespass damage. Appraisals for the Great Plains region are presently handled by one appraiser out of Rapid City and he does it with a desktop appraiser.

He does not do an on-site appraisal. Again, in our local agency-specific plan, it requests an appraiser on each of our reservations.

There is a 3-year backlog of over 150 probate cases at the Fort Berthold agency. It takes approximately 2 years to pay out the estate proceeds to heirs after the case is decided. There is only one probate specialist at the agency. We estimate that the Fort Berthold agency needs three additional probate specialists to handle the backlog of cases and estate distributions.

The Fort Berthold agency handles approximately 1,000 title records annually. Certified title requests take 6 months to complete because they are done at the regional office.

Finally, the Fort Berthold agency has a approximately 300 oil and gas leases, 100 pending on the reservation. There is a huge delay in leasing and in payouts of lease income. Although my tribe is in the middle of a known oil field, the Williston Basin, and oil fields are developed all around us, the Fort Berthold agency has no professional staff to handle mineral and oil and gas transactions.

Other regions, Cheyenne River Sioux Tribe, Winnebago Tribe in Nebraska are all developing agency-specific plans. DOI itself has acknowledged that personnel resources are inadequate to address the current workload that is being done at the agency office today. DOI actually stated this in their fiduciary compliance plan submitted to the Federal district court in January 2003.

So rather than making plans to hire the necessary workers, the Office of Special Trustee has announced it will hire six regional trust administrators and 60 trust officers and related support staff. The BIA is planning to hire 25 deputy regional directors for trust and a number of deputy trust superintendents in 2004.

It is difficult to tell exactly the amount from the budget that has been submitted, but it appears that OST and BIA have substantial funds budgeted to hire staff to fill these supervisory positions. I simply ask, who are these managers going to supervise? We do not need more managers at the agency level. We need workers to fulfill these trust transactions.

So as tribes are looking to develop an agency-specific plan, the Great Plains Region and the Rocky Mountain Region both have passed and adopted resolutions to do that. We have not gotten the support of OST or BIA. So again, we are coming to the committee to ask for the Senate Committee on Indian Affairs to assist tribes in this manner and we are very hopeful that we can move toward a resolution.

We feel, in closing that this reorganization is obviously putting the cart before the horse and we have some great principles that we think will help fix the system, but again, Senator Campbell, we are shut out of the consultation process.

Thank you for giving me the opportunity to present.

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

The CHAIRMAN. Thank you.

Since I do not have questions for all of the committee, I will go ahead with a couple for you, President Hall. It is clear you do not believe that the tribes have been involved enough in the consultation process. So that is correct, right?

Mr. HALL. That is correct.

The CHAIRMAN. Have the concerns that you have addressed to the committee right now been made known to the bureau or the Special Trustee during any of the consultation process?

Mr. HALL. On January 13, I believe was the exact date in Rapid City, Senator. I wanted to attend for that specific reason, to put it on the record because it was a taped consultation on the "to be"reengineering. I asked Ross Swimmer. I said I just have a simple question, and my question is, as tribes we are looking to develop agency local specific plans because of all the issues that I said in my testimony; would you support it? And his answer was no. I said, well then we have no other recourse but to talk to Congress about seeing if we can get a plan that looks locally at developing it, versus top-heavy.

The CHAIRMAN. You mentioned that the Great Plains Region, I think it was maybe the Tribal Chairman's Association, passed a resolution concerning the reorganization, and that was then sent to the Administration, to the agencies. Is that correct?

Mr. HALL. Yes; Harold Frazier is the chairman of the Great Plains Chairman's Association.

The CHAIRMAN. Okay. And did you get a response from that after you turned that in?

Mr. HALL. No.

The CHAIRMAN. You did not get a response.

Mr. HALL. I have not.

The CHAIRMAN. You mentioned a big concern about allocation of manpower. I think you probably were not in the room when Special Trustee Swimmer testified that most of the manpower that we are dealing with, and I think I asked him specifically about where it was going, he said it would be going to local levels. You believe, however, it will not be. It is still going to be too centralized.

Mr. HALL. They will be managers and they will not be people that will actually do day-to-day trust transactions, so we disagree with that.

The CHAIRMAN. Also, I asked specifically about if there would be any movement of existing funds from other programs, and was assured in testimony by the earlier panel that there would not. You still have a concern about that, too, that it might raid other needed programs to children or elders or whatever.

Mr. HALL. Absolutely. Mr. Chairman, when we are talking to the National Indian Education Association and all of the school administrators and the school boards, they are all upset that $65 million is being taken from school construction because of the backlog, as we all know. So they are very concerned about that, as well as the Indian Child Welfare Act, the Water Settlement Act and all of those funds that are being taken away, and of course the overall $52 million that is being taken from BIA in 2005. People are very upset that there is money being eroded from the BIA budget.

The CHAIRMAN. I note with interest that people from the Administration are still in the room. Do you believe that there is still an opportunity to have a dialog to try to work some of these differences out between the tribes and the Administration?

Mr. HALL. Mr. Chairman, I would hope so, but I really feel that we are at that crossroads right now. We have been trying to, but we were virtually shut out of the consultation process. So we would hope that Congress would help us, the committee would help us with an intervention.

The CHAIRMAN. We will try to. Thank you very much for your testimony.

President Shirley, if you would go ahead and continue. All your testimony will be included in the record, by the way.

STATEMENT OF JOE SHIRLEY, PRESIDENT, NAVAJO NATION

Mr. SHIRLEY. Thank you, Senator Campbell, chairman of the committee, Vice Chairman Senator Inouye, and members of the committee.

I am honored to present testimony today on behalf of my Navajo people. The issue under consideration, the proposed reorganization of major agencies within the Department of the Interior related to Native American trust is complex, and its results will have a tremendous impact on Navajo people. We appreciate the opportunity to express our position to the Senate Committee on Indian Affairs. Thank you.

There are five objectives that must be met before any proposed reorganization, as we see it: First, commitment from Congress to fund any proposed reorganization with new dollars, do not do it at the expense of Native American programs; second, commitment to a full, complete and good faith government-to-government consultation with Native American nations; third, the establishment of clear trust standards; fourth, identification of major agencies to confirm whether reorganization is necessary; and fifth, to be cognizant of the fact that Native American nations differ dramatically in government structure and land base, in order to avoid the one-size-fits-all approach to reorganization.

Regarding a commitment to appropriate new dollars, a reasonable inference drawn from the President's budget request for fiscal year 2005 is that the Administration is committed to reorganizing the BIA and funding the Office of Special Trustee with Native American program dollars. The Navajo Nation was informed by the Administration that there would not be such reallocated funding. However, our inference is drawn from the request to decrease Indian health facilities construction by $52 million and BIA education construction by $65 million, while within the same fiscal year 2005 request, increase the Office of the Special Trustee's budget by $130 million.

The Navajo Nation believes that the objective that must be met is Congress' commitment to appropriate new dollars and not use Indian program dollars for any proposed reorganization. We seek this committee's support for such a commitment.

Now, regarding the full, complete and good faith consultation, we feel the foundation of our government-to-government relationship with the United States has not been adhered to. The Navajo Nation appreciates those members of Congress and those departments within the Administration who try their best to meet the obligation of government-to- government consultation. The recent reorganization at the BIA and the Office of Special Trustee indicates that government-to-government consultation is replaced with the process that limited notice, inadequate response time, and the replacement with presentation of the reorganization for consultation about the reorganization. Full, complete and good faith consultation with all

Native American nations is essential to any successful reorganization.

The Navajo Nation seeks Congress' commitment to such consultation, and seeks this committee's support in securing such a commitment. The task of proposing the reorganization of major agencies affecting Native American trust is daunting, but it is a task that together we can accomplish.

Regarding the establishment of clear trust standards, the next question that must be answered before any proposed reorganization is what are the trust standards. The Navajo Nation continues to argue that the Secretary of the Interior has the trust responsibility. We also continue to ask for accountability to this trust responsibility, but the U.S. Government continues to sway on the clear definition of trust responsibility. The *Cobell* litigation is a backdrop for the discussions of trust reform. Although we support those individuals in asserting their claims before the courts, we recommend Congress, not prematurely proposed trust reform, in reaction to such litigation.

Although Congress and the Administration may not agree with all Native American nations and vice versa on trust standards, we would like Congress' commitment to entertain trust standards that the government and all Native American nations can agree to, prior to any proposed reorganization of major agencies. Without clear trust standards, any reorganization would be based on a system that lacks responsibility and accountability. Thus, any proposed reorganization would falter and result in the same lack of responsibility and accountability. Let us work together on the proposed trust reform. Who better to provide you with what works and what does not work than the trustee of this relationship?

Regarding the reorganization of the major agencies under the Department of the Interior, in the past we have worked with the government in a way where the Navajo Nation reacted to the government's proposals, rather than be proactive. The Navajo Nation believes today is truly historic. This committee is providing us the opportunity to proactively work with the government's proposals by allowing us to provide suggestions prior to proposing trust reform. The Navajo Nation requests a list of those major agencies that may be proposed for reorganization.

We also recommend Congress provide adequate time for Native American nations to review the list. The Navajo Nation would be greatly impacted because we work with several agencies within the Department of the Interior, like the Bureau of Land Management and the Bureau of Reclamation. It is also important to know when an agency is working as intended, not requiring reorganization. Let us work together and know when reorganization is not the answer.

Regarding the avoidance of the one-size-fits-all approach, finally the Navajo Nation stresses to this committee and Congress to avoid a one-size-fits-all approach to any proposed reorganization. As Vice Chairman Senator Inouye noted in his statement at the NCAI legislative summit 2 weeks ago, we must be wary of any trust reform. We must take a thorough look at all differences among all Native American nations. What works for one Native American nation may not work for another. Let us not go down the road of dividing Native Americans by proposing a one-size-fits-all approach. Let us

work together to identify the differences and address those differences through meaningful consultation. Congress and Native American nations will then realize our common goal: trust responsibility and accountability.

In summation, I want to reiterate those points of utmost concern to Navajo people, and if addressed appropriately, will ensure a successful reorganization and improve relations between the Native American nations and the Federal Government. First, we seek a commitment from Congress to fund any proposed reorganization with new dollars. Do not do it at the expense of Native American programs. Secondly, we seek a commitment to full, complete and good faith government-to-government consultation with Native American nations. Third, together we must establish clear trust standards or our labor will be for nothing.

Fourth, we must work together to identify those major agencies subject to reorganization, to confirm that reorganization is necessary. Finally, as we begin this journey, let us be mindful that Native American nations differ dramatically in government structure and land base. A sure road to failure will be to attempt a cheap or quick fix. We must avoid a one-size-fits-all approach to reorganization.

Thank you.

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

The CHAIRMAN. Thank you. I think you have made a very important observation in this statement about one size fits all, and maybe it is the weakness of the Federal Government that we often forget here that all those individual treaties, even though they were all broken, they were not made with one monolithic Indian group nationwide. They were made nation to nation, with each tribe being their own entity and land base and character, as you have mentioned, which is the equivalent of signing contracts or agreements or treaties with foreign nations.

If we apply that logic that one size fits all, that would say that maybe the treaties we have signed with France and England and Germany and Australia and wherever, we should treat them all alike. We do not. They are different countries. They are different nations. They have their own structure. I think we need to remember that more in the Federal Government when we are trying to seek resolution to differences between tribes and the Federal Government. They are all different and should be treated accordingly, with the dignity each tribe has as a nation in itself.

I understand, however, the difficulty of doing that. Not so difficult with the Navajos because they have 280,000 or more people, but in other States like the Dakotas with maybe 30,000 Lakota, as was mentioned. But there are some tribes in America that only have five members or four members, and I can understand the difficulty in dealing with some that have very few members, but still that is the deal. If there were individual treaties, they should treat them individually as nations in their responsibility to it.

Thank you for your testimony.

We will now move to the Honorable Ed Thomas, the President of the Tlingits. Thank you for being here, Ed. Okay, you first. Why don't you go ahead. I would note that Senator Murkowski sent a message over. She is occupied in two other hearings this same

time, and she apologizes for not being here to hear your statement, but she sent a note that said she will read it very carefully.

STATEMENT OF EDWARD THOMAS, PRESIDENT, CENTRAL COUNCIL TLINGIT AND HAIDA INDIAN TRIBES OF ALASKA

Mr. THOMAS. Thank you very much. Thank you very much, Mr. Chairman, first for having this hearing and your deep commitment to our problems.

I am going to recite a little bit of my background, not to toot my own horn, but just to kind of give you an overview of my involvement in this issue. First of all, I have been president of my tribe since 1984. We have 25,000 citizens. I represented Alaska on the BIA Reorganization Task Force that ran from the mid- to late-1980's to the early 1990's. It was through that process that I became aware and my tribe became aware of the problems in trust fund management. We were one of the first tribes to join the Inter–Tribal Monitoring Association. This association worked toward legislation to fix those trust management problems.

One of the proposals we put forth back at that time was to take or remove the entire program from out of the BIA to repair it, fix it, put it in order and put it back again. We got the idea from what happened when the Federal Government addressed the issue of the savings and loan scandal at the very same time, and saw how quickly and efficiently the Federal Government addressed those problems, appropriated dollars and fixed those problems with the savings and loans, and now it is operating like it should.

I must state that we all know that the trust management system within the BIA is broken and has been for quite some time. So while I am not going to talk a lot about that since other testifiers have, I will zero in on a couple of other issues. One is the issue of reorganization. Back when we talked about the reorganization efforts in the 1980's and early 1990's, tribes and tribal leaders were very hesitant to buy into the reorganization plan put forth at that time, for several reasons. Pardon me if some of this sounds like BIA bashing. It is not intended to. It is simply a reciting of what we went through back then.

First of all, it was clear that in most organizational problems are hardly ever solved simply by moving boxes around on the organizational chart. It appeared that that was what was happening. There were a couple of statements that came forward. One was, Indian tribes are tired of seeing people rotated throughout the system. It is like rotating worn out tires. That was one statement. The other one is that when you do any reorganization in government, the deadwood always floats to the top. People that once could not do the job down on lower levels then become escalated and becomes the ones in charge at the upper levels. We have seen that happen more than once, so I wanted to point those things out.

Now, there is no doubt that in the minds of many of us, the funding for trust reform comes from BIA tribal programs, those programs you talked about in your comments. When you see the overall BIA budget just barely keeping flat and you see one line item increase and the others go down, it becomes very apparent to us in a finite budget that the money shifted from one program to another.

Now, is that a big deal? The $109 million that Special Trustee Swimmer spoke of sounds like a lot of money, and it is when it comes from a finite underfunded BIA budget. But when you compare it to what happened in the savings and loan scandal issue, they were not talking about millions, they were talking about billions. And these appropriations, I think the lowest one that I recall was about $5 billion and the highest was about $82 billion, appropriated all in the span of 1 year to fix the savings and loan problem.

So I maintain that if the Federal Government had funded tribal programs at least to keep pace with inflation, we would not be so worried about the extra dollars being used to reorganize the BIA and to fix the Federal trust problems.

When I look at the way land and resources are managed by States and other entities, I see that the moneys that are put aside for these tasks in the BIA and even in BLM is very, very meager compared to what is being used to fund land management by States or dollars being managed by Federal bank systems for non-Indians.

The point being is that even if we were to fully fund our programs as presented by the Special Trustee or the Secretary, I do not personally believe that is enough money to manage these resources. We need more resources to manage all of those properties all the way down to the tribe/agency level. That has to happen at some point in time.

So Mr. Chairman, once again I thank you for your dedication to our issues over your tenure here in Congress. I join others in saying I am sorry that you have made your choices, but I certainly understand them, particularly with the dog growling. [Laughter.]

But I think that your history from our point of view will be a kind history, and I want to say that. I hope that as we leave this era in our relationship with the Federal Government that we can see some of those dollars restored to make whole, if you may, the tribal programs and to create enough of a system so that our trust resources can be managed in a professional manner and adhere to the standards that are being adhered to by other parts of this government for non-Native assets.

Thank you very much.

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

The CHAIRMAN. Thank you. I want to tell you that in my last year as the chairman of this committee, I intend to do everything I can to make sure that we leave it a little better for Indian country than we found it. I know I can speak for Senator Inouye, too, who may also be leaving the committee.

Thank you.

Mr. THOMAS. There are other parts of my written testimony that I hope you will read that builds on some of the comments.

The CHAIRMAN. Yes; we will. It will be included in the record and we will read it very carefully. Thank you.

Now, we will go to President Frazier, please.

STATEMENT OF HAROLD FRAZIER, PRESIDENT, GREAT PLAINS TRIBAL CHAIRMAN'S ASSOCIATION

Mr. FRAZIER. Thank you. Good morning, Mr. Chairman and honorable members of the committee.

I am honored to be here today to testify on the Department of the Interior's reorganization. I thank you for holding this hearing. I am here representing not only the Cheyenne River Sioux Tribe, but the Great Plains Tribal Chairman's Association, in which there are 16 tribes in the Great Plains region. They encompass the States of North Dakota, South Dakota, and Nebraska. We are treaty tribes and many of us have large land bases. We know that we will suffer greatly under the current reorganization plans of the Department of the Interior. We tribes are unique, and we know that one size does not fit all.

Trust comes from treaties and it is time that our treaties are honored. Trust functions cannot be separated. The current Department of the Interior reorganization plan is a waste of money and resources which are much needed at the local agency levels to provide trust functions. Every day, we see problems multiplying because of fractionation of line authority. I could go on and on and tell you stories to justify that, but I believe that the people who testified earlier, their stories are similar and are throughout Indian country.

Presently, many of our people cannot access their records in a timely manner. When they call the Special Trustee office in Albuquerque, they get phone recordings. We need the face-to-face relationship restored, which our people depend upon.

Trust officers from the Office of the Special Trustee will be only duplicating services that the BIA superintendents are currently providing. We also see that they will be operating independently from local control. We question, who are they going to be accountable to? Upper-level bureaucracy will be creating delays and backlogs in trust functions. Right now, the way the BIA reorganization was explained to us, the computer specialist on the Cheyenne River agency, his boss sits here in Washington, DC. And before he is to do any work, he has to get a work order from Washington, DC.

The system that they are trying to impose on our people relies heavily on a computer system. So we know and we foresee a lot of delays in transactions and for our people to find out the status of their assets. We know that policies and plans need to come from local grassroots levels up, not from upper-level down. The solutions are in Indian country. We know what is best for our people. Our plan was developed in Indian country, by Indians, for Indians. Only a few trust functions can be nationalized. The others need to be modified to fit appropriate regions, because one size does not fit all.

Based on 2001 statistics, the Great Plains region had over 67,000 IIM accounts, more than any other regions. We have a plan. We are requesting a pilot program similar to the legislative rider that the Self Governance Tribes received in the 2004 Interior appropriations bill. Our plan would give more authority, funding and functions back to local agencies.

Based on article V and article XI of the 1868 Fort Laramie Treaty, the United States guaranteed that they would provide services at the local level to our people and reimburse the tribes for any

services lost. Right now, as you heard President Hall speak about backlogs in appraisals, I want to say that also, that right now in the Great Plains region, there is one appraiser. We need one at every agency.

There are probate backlogs. We agree that there needs to be a nationalized system that reports all asset transactions at all agencies. But more importantly, we need more positions at the local levels to input data into the systems. We need range and soil conservationists, lease compliance officers, realty, probate, rights-of-way specialists, and accountant positions to better manage our assets.

Also in our plan, the Office of Special Trustee will be only given functions that were intended for them in the 1994 Trust Reform Act. They would only provide monitoring and oversight of trust reform, not operational functions. Our agency superintendents would be given back all authorities, including education and law enforcement because in our treaties, all of these functions are trusts.

We request your support for our plans and we ask that the reorganization be driven to benefit Indians in Indian country, not bureaucrats in Washington, DC, Albuquerque, or Virginia. Remember, one size does not fit all.

Thank you.

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

The CHAIRMAN. Thank you.

We have had some contact with the committee. You mentioned the 1994 Act that authorized the Office of Special Trustee. That was supposed to be a temporary position until we resolve this problem, but some of the contacts we have had are telling us it appears that it is becoming an institution of government now, and there is some concern about it.

Let me ask you about consultation. Mr. President, I assume you do not feel there was adequate consultation with the Great Plains Tribal Chairman's Association or individual tribes. Is that correct or no?

Mr. FRAZIER. Yes; I heard about this "to be,"these meetings going around when I was in an ITMA meeting in Las Vegas. I was quite amazed that in the Great Plains region, there were no meetings scheduled for our region, even though we have the highest amount of IIM accounts.

The CHAIRMAN. There was no meeting scheduled at all?

Mr. FRAZIER. No; not at that time.

The CHAIRMAN. So you, as tribal chairman within your association, have not had any meetings with them?

Mr. FRAZIER. No; we had to bring that issue up, and then they did come on January 13 to Rapid City, but we do not view that as consultation. It always seemed like we are always defending issues. They come to the table and say, they inform us of what they are going to do, and there is no dialogue there, I believe.

The CHAIRMAN. I see. Okay. Thank you. I appreciate your testimony and there will be probably some written questions to you, too.

Mr. FRAZIER. Thank you.

The CHAIRMAN. We now move to Clifford Marshall, chairman of the Hoopa Valley Tribal Council.

STATEMENT OF CLIFFORD LYLE MARSHALL, CHAIRMAN, HOOPA VALLEY TRIBAL COUNCIL

Mr. MARSHALL. Thank you, Mr. Chairman.

Mr. Chairman, members of the committee, I am Clifford Lyle Marshall, chairman of the Hoopa Valley Tribe. I thank you again for inviting me to testify on trust reform.

I last testified before this committee on May 21, 2003 on the subject of trust reform. I testified on behalf of the California Consortium on Trust Reform, a consortium of seven tribes in California, including Hoopa. At that hearing, I presented an attachment with my testimony, the operating agreement between the BIAs' Pacific Regional Office and the California Trust Reform Consortium.

At that time, I testified about the positive activities that the Consortium and the BIA Pacific Regional Office had undertaken and that the Consortium tribes had collectively found ways to work with the BIA to successfully implement one of the most progressive trust resource improvement programs that exists anywhere in Indian country today. I also testified that other tribes, like the Salt River Pima Maricopa in Arizona, the Confederated Tribes of Salish and Kootenai, and the Chippewa Cree of Rocky Boy Montana had accomplished positive trust reform through their own unique working relationships with their respective BIA agencies.

I asked at that time that the California Consortium be allowed to continue implementing our BIA–Consortium effort and work collectively to solve trust management problems at the local level. I also asked that the committee consider establishing a tribal trust reform pilot project that would preserve and protect these established working relationships between these tribes and the BIA.

Last year, this pilot project was established in section 139 of the Department of the Interior and Related Agencies Appropriations Act of 2004. This act provided that the California Consortium, which includes Hoopa, the Salish and Kootenai, Rocky Boy, and the Salt River Pima Maricopa Tribes, were designated by Congress to operate separate and apart from the Department of the Interior's trust reform reorganization.

Section 139, however, had a proviso added that it stated that the tribes referred to in section 139 had to demonstrate to the satisfaction of the Secretary of the Interior that they had the capability to carry out the responsibilities under the same fiduciary standards as those to which the Secretary of the Interior is held. I believe you heard Mr. Swimmer say that today.

We were told that this meant that we had to meet the Secretary's proper discharge of trust responsibilities to the United States as set forth in part 303, chapter two of the departmental manual for the Department of Interior. In discussion with Interior staff prior to the introduction of section 139, we believed that this would be a cursory review of our most recent trust evaluations and audits. However, we were later informed that we would be assessed, and our assessment would be as against the "as is" and "to be" models. We felt that this was entirely unfair and imposition of the department's trust management infrastructure, and what we felt was a clear violation of the intent of Congress, which was that the tribes remain separate and apart from trust reform.

We countered that under the Self-Governance Act, self-governing tribes were required to comply with Federal law and standards set forth in Federal regulation. Between December 2003 and February 2004, each of the 10 tribes were visited by an assessment team of the Office of Special Trustee for Indian Programs, Office of Trust Review and Audit. The teams consisted of four to six auditors and attorneys. The assessments lasted 1 to 4 days. Hoopa's review lasted 2 days. When asked what we were being evaluated against, the response was they were not sure, but they were there to collect information. We were later told that we were being compared to a trust company.

Our fiscal management program policies and procedures, records management program policies and procedures, and our land and resource management program policies and procedures were scrutinized. On March 8, 2004, the Hoopa Valley Tribe received the final draft of the Department of the Interior's assessment. The Hoopa Tribe now has 30 days to provide comments. For forestry, the assessment concluded that no discrepancies were noted in the timber sales transaction file review. For wildland fire protection, the assessment noted that the fire suppression unit is sound, but funding level is one-third of what is necessary to protect the timber resource. The assessment noted that our roads department maintains 108 miles of road, but is funded at 11 percent of need. The assessment also noted that the Pacific Region has not processed one probate for a Hoopa Indian in the last 7 years.

For the records management, the assessment noted that the tribe maintains all California Indian rolls from the 1920's and census records on Indian rancherias going back to 1882; have a record schedule policy for all departments; maintain a records inventory; uses a Doc Star computer system to electronically store records on CD rom discs; and uses an interdisciplinary approach for developing new policies and procedures. The assessment concluded that, "in appearance, all records are well organized, labeled and secured."

The assessment of our fiscal department concludes that the fiscal department appears to have excellent records management systems and superior internal controls operation. Regarding information technology, the assessment states that Hoopa uses a fully integrated fund accounting system, Windows 2000 server with sonic wall firewall software, trackit software to keep an inventory of the software and hardware used; perform security testing, maintains strict controls on software installation; maintains virus scanning updates; and backs up and stores its data weekly on CD rom disc and stores it in a safety deposit box in a fireproof safe at a local bank.

The executive summary concludes that the tribe is capable of performing trust functions. It goes on to say the tribe had some minor weaknesses that need attention, but do not prevent them from meeting section 139 requirements. Specifically, the tribe should seek an external evaluation of their information technology systems, policy, and procedures to certify compliance with applicable information security mandates.

I would like to address these alleged weaknesses. First, there are no section 139 requirements. Section 139 specifically said that the

139 tribes were to remain separate and apart from trust reform. Second, there are no applicable information security mandates. Third, the BIA and OST do not have an information technology system that works. OST has spent over $70 million on the TAMS system that has never worked, is not on line, and the BIA is still operating without Internet access. Fourth, the Department of Interior has paid $60 million on external evaluations to produce the "as is" and "to be" models, and are not any closer to implementing a system.

In fiscal year 2003, like every previous year for the past 15 years, the Hoopa Tribe was audited by a certified accounting firm, evaluated by the Pacific Regional Office pursuant to the Self Governance Act, and assessed by the Office of Special Trustee. It is hard to understand why OST would now conclude that we need another external evaluation. Hoopa considers the OST assessment an external evaluation.

It appears that OST is holding us to a standard that the BIA and the Secretary have never achieved. Hoopa Tribe's computer systems, used to manage 57 departments, have been an investment that has accumulatively over the past 10 years cost hundreds of thousands of dollars. We have put our funding into developing an infrastructure and developing our capability. We have used our funds to build a system that works for us. It also works for our auditors and it works for the BIA regional office who does our trust evaluations. Why does Hoopa need another evaluation? More importantly, who is going to pay for it? If there are minor weaknesses in Hoopa's management, and I do not read in the assessment any finding that there is, it is because of inadequate funding. I believe that the other section 139 tribes would say the same.

I believe that the section 139 assessment was in fact an application of the trust reform "to be" model and turned the intent of section 139 on its head. But the importance of section 139 is that it shielded the section 139 tribes from trust reform reorganization changes and preserved the operating agreements and working relationships of the 10 tribes and their agencies. Section 139 required that the tribes demonstrate to the Secretary that they have the capability to meet the fiduciary duties of the Secretary.

I am proud to say to this committee today that Hoopa's assessment and, to my knowledge, all the other section 139 tribes state, the tribe is capable of performing trust functions. We passed this arduous test and proved our capability.

In conclusion, since trust reform continues to be a mystery wrapped in an enigma to most of us, and the section 139 tribes have shown that they are managing at the same level or above that of the BIA, I ask that you support extending section 139 for another year. The purpose of section 139 was to maintain what is working now in Indian country.

Thank you for this opportunity to speak to you today.

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

The CHAIRMAN. Thank you. Let me ask you a couple of questions, Chairman Marshall.

Just as a sidebar, do you know the Risling family out there?

Mr. MARSHALL. I will tell you a story, sir.

The CHAIRMAN. You better not do that. It is on the record here. [Laughter.]

Mr. MARSHALL. I have known you for many years. When I was in law school and clerking here in Washington, DC and when I was a tribal councilman, I would shake your hand and you would say, "where are you from?" And I would say, "I am from Hoopa." And you would always say, "Do you know the Risling family?"

The CHAIRMAN. Well, tell them hello.

Mr. MARSHALL. "And do you know David Risling?" And I would always answer, "That is my uncle."

The CHAIRMAN. Yes; I am sorry. I forgot that. We were on the board of D–Q University years and years ago together and he is a fine man, as is the family. Give them my best. I promise not to ask you the next time I see you if you know the Risling family. [Laughter.]

Mr. MARSHALL. I appreciate that you connect me. [Laughter.]

The CHAIRMAN. Okay.

Your tribe has been operating under the so-called "section 139 pilot project," you spoke about, for several months now, and I assume that you want that to continue in the future. Based on your experience so far, what changes would you recommend to make it a better project for your tribe and do you think it could be replicated for other tribes, the pilot project that has worked for you, without getting into this so-called one-size-fits-all syndrome?

Mr. MARSHALL. The program that we operate under is the Self Governance Act. I believe it is a very successful piece of legislation, and in fact 46 percent of all tribes now are Self Governance tribes.

I am concerned that the way that trust reform is restructuring the bureau, that decisionmaking is being moved to being centralized within the Beltway, that our relationships that we have developed over the past 15 years with our local and regional offices, that the decisions that have been made to make the program successful, those decisions will not be able to be made at the local or regional level.

So I guess that is what section 139 was about as a pilot project. Keep what the tribes have developed, and what the tribes are saying loudly are working at the local level, in place. I believe that a lot of tribes would come forward and say the same thing.

The CHAIRMAN. You heard the testimony of the agencies. As I understand them, there will be more people at the local level, but it is your position that even though there may be more people at the local level, the decisions still will not be made at the local level. They will be filtered to a central decisionmaking process. Is that correct?

Mr. MARSHALL. I heard the testimony today that these would be worker bees. I know that everyone at this table, and what would exist in California, is understaffed and underfunded. The way that the Consortium tribes and the Hoopa Tribe makes things work is that they have to take what little they get from the bureau, what we get from the bureau, and we have to find other sources of funding and then we build programs. We use indirect cost money, compact money, and tribal revenues, as well as other grant funding.

Trust evaluation, we asked, what are you evaluating? Are you evaluating just what the bureau gives us or are you evaluating the

rest of the program? I mentioned our roads program. We get 11 percent of our funding from the bureau. The rest of it comes from a business that the tribe built, an aggregate plant that the tribe built, and from timber sales contracts, maintaining roads for timber sales.

Are you evaluating the money against the money that we put into it or the money you give us? Salish Kootenai used the example of a fisheries program where they get $60 from the BIA and put $200,000 more into the program.

What is the trustee going to evaluate, the special trustee? And is he there to evaluate us or help us or provide us with a service? We are not sure. We know that at this point, what we do and the decisions we make, work. So we are really not sure if they can help us.

The CHAIRMAN. Okay. I thank you. We will followup with some written questions. President Shirley, just so you will know that the only friends that I have are not just at Hoopa, please tell the Benn family, old spiritual leaders and sand painters at Navajo, I am still here and look forward to seeing them again back when I am in my private life. Thank you.

With that, we will keep the record open for 2 weeks and we certainly appreciate everybody appearing.

This hearing is adjourned.

[Whereupon, at 11:20 a.m. the committee was adjourned, to reconvene at the call of the Chair.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF CLIFFORD LYLE MARSHALL, CHAIRMAN, HOOPA VALLEY TRIBE

Mr. Chairman, members of the committee, I am Clifford Lyle Marshall, chairman of the Hoopa Valley Tribe. I thank you for again inviting me to testify on Trust Reform. I last testified before this committee on May 21, 2003 on the subject of Trust Reform. I testified on behalf of the California Consortium on Trust Reform, a consortium of seven tribes in California including Hoopa. At that hearing I presented as an attachment with my testimony the "Operating Agreement Between the Bureau of Indian Affairs Pacific Regional Office and the California Trust Reform Consortium."

At that time I testified about "the positive activities that the Consortium and BIA Pacific Regional Office had undertaken," and that "the Consortium Tribes had collectively found ways to work with the BIA to successfully implement one of the most progressive trust resource improvement programs that exists anywhere in Indian country today." I also testified that other tribes like the Salt River Pima Maricopa in Arizona, the Confederated Tribes of Salish and Kootenai, and the Chippewa Cree of Rocky Boy Montana had accomplished positive trust reform through their own unique working relationships with their respective BIA agencies. I asked, at that time, that the California Consortium "be allowed to continue implementing our BIA/Consortium effort and work collectively to solve trust management problems at the local level." And I also asked that the committee consider establishing a Tribal Trust Reform Pilot Project that would preserve and protect these established working relationships between tribes and the BIA.

Last year this pilot project was established in sec. 139 of the Department of the Interior and Related Agencies Appropriations Act of 2004. This Act provided that the California Consortium which includes Hoopa, the Salish and Kootenai, Rocky Boy, and the Salt River Pima Maricopa Tribes were designated by Congress to "operate separate and apart from the Department of the Interior's trust reform reorganization."

Sec. 139, however, had a proviso added to it that stated that the tribes referred to in sec. 139 had to "demonstrate to the satisfaction of the Secretary of the Interior that they have the capability to carryout their responsibilities under the same fiduciary standards as those to which the Secretary of the Interior is held." In discussions with Interior staff prior to the introduction of sec. 139 we believed that this would be a cursory review of our most recent trust evaluations and audits. However, we were later informed that we would be assessed, and our assessment would be as against the "As-Is" and "To-Be" models. We felt that this was entirely unfair, an imposition of the Department's trust management infrastructure, and what we felt was a clear violation of the intent of Congress which was that the tribes remain separate and apart from trust reform. We countered that under the Self Governance Act, Self Governance tribes are required to comply with Federal law and standards set forth in Federal regulations.

Between December 2003, and February 2004 each of the 10 tribes were visited by an assessment team of the Office of Special Trustee for Indian Programs, Office of Trust Review and Audit. The teams consisted of four to six auditors and attorneys, the assessments lasted for 1 to 4 days. Hoopa's review lasted 2 days. When asked what we were being evaluated against the response was that they weren't sure; that they were there to collect information. We were later told that we were being compared to a trust company. Our fiscal management program, policies and procedures, records management program, policies and procedures and our land and resource management programs, policies, and procedures were scrutinized.

On March 8, 2004 the Hoopa Valley Tribe received the final draft of the Department of the Interior's assessment. The Hoopa Tribe now has 30 days to provide comments. For Forestry, the assessment concluded that "no discrepancies were noted in the timber sales transaction file review." For Wildland Fire protection the assessment noted that "the fire suppression unit is sound" but funding level is one-third of what is necessary to protect the timber resource. The assessment noted that our Roads Department maintains 108 miles of road but is funded at 11 percent of need. The Assessment also noted that the Pacific Region has not processed one probate for a Hoopa Indian in the last 7 years.

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I would like to address these alleged weaknesses. First, there are no sec. 139 requirements. Sec. 139 specifically said the 139 tribes were to remain separate and apart from trust reform. Second, there are no "applicable information security mandates." Third, the BIA and OST don't have an "information technology system" that works. OST has spent over $70 million on the TAMS system that has never worked, is not on line, and the BIA is still operating without internet access. Fourth, the Department of the Interior has paid $60 million on external evaluations to produce the "As Is" and "To Be" models and aren't any closer to implementing a system.

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It appears that OST is holding us to a standard that the BIA and the Secretary has never achieved. The Hoopa Tribe's computer systems, used to manage 57 departments, have been an investment that has accumulatively over the past 10 years have cost hundreds of thousands of dollars. We've put our funding into developing an infrastructure and developing our capability. We've used our funds to build a system that works for us. It also works for our auditors and it works for the BIA Regional Office who does our evaluations. Why does Hoopa need another evaluation? More importantly, who is going to pay for it? If there are minor weaknesses in Hoopa's management, and I don't read in the assessment any finding that there is, it's because of inadequate funding. I believe that the other sec. 139 tribes would say the same.

I believe that the sec. 139 assessment was, in fact, an application of the trust reform "To Be" model and turned the intent of sec. 139 on its head. But the importance of sec. 139 is that it shielded the sec. 139 tribes from trust reform/reorganization changes and preserved the agreements and working relationships of the 10 tribes and their agencies. Sec. 139 required that the tribes demonstrate to the Secretary that they have the capability to meet the fiduciary duties of the Secretary.

I am proud to say to this committee today that Hoopa's assessment and, to my knowledge, all the other sec. 139 tribes state, "The tribe is capable of performing trust functions." We passed this arduous test and proved our capability. In conclusion, since Trust Reform continues to be a mystery wrapped in an enigma to most of us, and the sec. 139 tribes have shown that they are managing at the same level or above that of the BIA, I ask that you support extending sec. 139 for another year. The purpose of sec. 139 was to maintain what is working now in Indian country.

Thank you for this opportunity to speak today.

PREPARED STATEMENT OF JOE SHIRLEY, PRESIDENT, NAVAJO NATION

Chairman Nighthorse Campbell, Vice Chairman Inouye and members of the committee, I am honored to present testimony today on behalf of the Navajo people. The issue under consideration, the proposed reorganization of major agencies and functions related to Native American trust reform matters in the Department of the Interior, is complex and its results will have a tremendous impact on the Navajo people. We appreciate the opportunity to express our position to the Senate Committee on Indian Affairs. The Navajo Nation requests that the following written testimony be submitted in the record:

There are five objectives that must be met before any proposed reorganization:

No. 1. Commitment from Congress to fund any proposed reorganization with new dollars, not at the expense of Native American Programs.

No. 2. Commitment to full, complete, and good faith government-to-government consultation with Native American Nations.

No. 3. Establishment of clear trust standards.

No. 4. Identify the "major agencies," and their "functions," and confirm whether reorganization or reform is necessary.

No. 5. Be cognizant of the fact that Native American Nations differ dramatically in government structure and land base, in order to avoid a "one size fits all" approach to reorganization.

A reasonable inference drawn from the President's Budget Request for fiscal year 2005 is that the Administration is committed to reorganizing the Bureau of Indian Affairs, and funding the Office of the Special Trustee, with Native American Program dollars. Navajo was informed by the Administration that there would not be such reallocated funding. Our inference is drawn from the request to decrease Indian Health Facilities Construction by $52 million, and BIA Education Construction by $65 million, while within the same fiscal year 2005 request, increase the Office of the Special Trustee's budget by $42 million. The Navajo Nation believes that one objective that must be met is Congress' commitment to appropriate any proposed reorganization only with new dollars and not Indian Program dollars, and we seek this committee's support of such commitment.

The foundation of our government-to-government relationship with the United States, specifically the Congress and the Administration, we feel, has not been adhered to. The Navajo Nation appreciates those Members of Congress and those departments within the Administration who try their best to meet the obligation of government-to-government consultation. However, the recent reorganization of the BIA and OST indicates that government-to-government consultation is replaced with a process of limited notice, inadequate response time, and the replacement with "presentation" of the reorganization for "consultation" about the reorganization. Full, complete, and good faith consultation with all Native American Nations is essential to any successful reorganization, and Navajo seeks Congress' commitment to such consultation, and seeks this committee's support in securing such commitment. The task of proposing the reorganization of the major agencies and functions affecting Native American trust is daunting; but it is a task that together we can accomplish.

The next question that must be answered before any proposed reorganization goes forward, is WHAT ARE THE TRUST STANDARDS? We, along with other Native American Nations continue to argue that the Secretary of the Interior has a Trust Responsibility. We also continue to ask for accountability to this Trust Responsibility, but we, including the U.S. Government continue to sway on the clear definition of this Trust Responsibility. The *Cobell* litigation is a backdrop for these discussions of reorganization and trust reform and, although we support those individuals in asserting their claims before the courts, we recommend Congress not prematurely propose reorganization and trust reform in reaction to such litigation.

Although the Congress and the Administration may not agree with all Native American Nations, and vice-versa, on the Trust Standards, we, at a minimum, would like Congress' commitment to entertain Trust Standards, and possibly estab-

lish clear trust standard, that may be in agreement by the Government and all Native American Nations, prior to any proposed reorganization of major agencies and their functions or trust reform. Without clear trust standards, any reorganization or reform would be based on a system that lacks responsibility or accountability. Thus, any such proposed reorganization or trust reform would still falter, and result in the same lack of responsibility or accountability. Let us work together in any proposed reorganization or trust reform. Who better to provide you with what works and what doesn't work, than the trustee of this relationship.

In the past, we have worked with the Government in a way where we, the Navajo Nation reacted to your proposals rather than proactively with your proposals. The Navajo Nation believes that today is truly historic. This committee is providing us the opportunity to proactively work with any of your proposals, by allowing us to provide suggestions, prior to approaching proposed agency and function reorganization and trust reform. The Navajo Nation requests a list of those major agencies and functions that may be proposed for reorganization. Further, we recommend the Congress provide adequate time for Native American Nations to review the list and functions. The Navajo Nation would be greatly impacted, as we, along with other Native American Nations, work with several agencies within the Department of the Interior, that is, the Bureau of Land Management, Bureau of Reclamation, and Parks and Service, to name a few.

It is also important to know when an agency and its functions are working as intended, thus, not requiring reorganization. Let us, the Congress and Native American Nations, as we work together, know when reorganization is not the answer and hold steadfast in our possible agreements to not reorganize an agency or its functions.

Finally, the Navajo Nation stresses to this committee, and the Congress, to avoid a "one size fits all" approach to any proposed reorganization or trust reform. As Vice Chairman Senator Inouye noted in a statement at the NCAI Legislative Summit 2 weeks ago, we must be wary of any trust reform. We must take thorough look at all the difference among all Native American Nations. What works for one Native Amen*can Nation may not work for another. Let us not go down the road of dividing us by proposing a "one size fits all" approach. Let us work together to identify the differences and address those differences through meaningful consultation, which I commented on earlier in my testimony. We, both Congress and Native American Nations, will then realize our common goal. Trust Responsibility and Accountability.

In summation, I want to reiterate those points of utmost concern to Navajo People and, if addressed appropriately, will ensure a successful reorganization and improved relations among the Native American Nations and the Federal Government. First, We seek a commitment from Congress to fund any proposed reorganization with new dollars, not at the expense of Native American Programs. Second, we seek a commitment to full, complete, and good faith government-to-government consultation with Native American Nations. Third, together we must establish clear trust standards or our labor will be for naught. Fourth, we must work together to identify those "major agencies," and their "functions," subject to reorganization to confirm that reorganization or reform is necessary. Finally, as we begin this journey, let us be mindful that Native American Nations differ dramatically in government structure and land base. A sure road to failure will be to attempt a cheap or quick fix; we must avoid a "one size fits all" approach to reorganization.

Thank you.

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Statement of Harold Frazier

Chairman, Cheyenne River Sioux Tribe
Chairman, Great Plains Tribal Chairman's Association

Before

THE SENATE COMMITTEE ON INDIAN AFFAIRS

March 10, 2004

Regarding the Proposed Reorganization of the Major Agencies and Functions Related to Indian Trust Reform Matters within the Department of Interior

and to present

The Great Plains Regional Proposal for Trust Reform

Good Morning, Mr. Chairman, Mr. Vice-Chairman and honorable members of the Committee. I am honored to be here to testify regarding the Department of Interior's ongoing reorganization of the Bureau of Indian Affairs and the Office of the Special Trustee for American Indians. I am here today representing not only the Cheyenne River Sioux Tribe, but also the Great Plains Tribal Chairman's Association. The Great Plains Tribal Chairman's Association represents 16 tribes in the Great Plains region, encompassing the states of North Dakota, South Dakota and Nebraska. The Great Plains Tribes -- Cheyenne River Sioux, Standing Rock Sioux, Crow Creek Sioux, Turtle Mountain Band of Chippewa, Lower Brule Sioux, Three Affiliated Tribes, Yankton Sioux, Spirit Lake Sioux, Oglala Sioux, Rosebud Sioux, Santee Sioux, Sisseton-Wahpeton Oyate, Winnebago, Flandreau Santee Sioux, Omaha and Ponca -- are major stakeholders in the Department of Interior's attempt to "reorganize" the Bureau of Indian Affairs and the Office of the Special Trustee for American Indians.

As of July, 2001, we have been advised that the Great Plains tribes held 27 percent of the Individual Indian Money Accounts (over 67,000 accounts) -- more than any other region in the country. The Bureau of Indian Affairs has ignored our repeated requests for updated and more precise information, but we believe the number of accounts has greatly increased in the past three years for our region. Since allotment began in 1887, over 2.6 million land transactions have been recorded in our region alone, as we hold 33 percent of the nation's trust allotments and tribal tracts (approximately 58,000 tracts). Consequently, as land-based, direct services tribes, we believe that we will suffer greatly under the Department's current plan to reorganize its trust functions under the reorganization process.

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As Chairman of the Cheyenne River Sioux Tribe and the Great Plains Tribal Chairman's Association, I am pleased to present the "Great Plains Regional Proposal for Trust Reform" as a positive, concrete alternative to the Department of Interior's trust reorganization plan in our region. I will also outline how reorganization should not be a "one size fits all" approach to trust reform, and how in doing so the Department is sure to fail.

"To-Be" Reengineering & Reorganization

The Bureau of Indian Affairs and the Office of the Special Trustee have been in a state of ongoing reengineering of their trust management processes since the Department issued a new Department Manual in April, 2003. Since November, 2003, the Department has conducted informational meetings regarding its "To-Be" project, which would reengineer current fiduciary trust business processes. At a "To-Be" presentation for tribal leaders in Rapid City, South Dakota, the Department outlined how the "To-Be" project would to reengineer how trust business is conducted and how trust services are provided to beneficiaries. Such so-called "improvements" to the current system include beneficiary relationship development and management; financial operations; ownership; land and natural resources planning; and land and natural resources use and management.

We have been advised that the "To-Be" process was originally only to involve upgrading of the computer systems long in use by the Bureau of Indian Affairs so that they would be national in scope and operate with more speed and accuracy. It may be that some aspects of the "To-Be" process should go forward. Unfortunately, the Department of Interior has cast the "To-Be" reengineering as part of the reorganization process, so that the two are virtually indistinguishable. As a result, "To-Be" should not be implemented before there is a major reassessment of the entire reorganization plan that is being forced down tribes' throats. Changes that are already being made at some agencies as a result of reorganization, such as the hiring of trust officers, have encountered opposition in Indian Country by a large majority of tribes on the basis of lack of consultation, as well as opposition expressed by Senators Daschle and Johnson. Despite such outcry, the Department continues to carry on with its proposal to revamp the system to this day.

Thus far, our protestations based on the long-standing policy of tribal consultation have fallen on deaf ears. As a result, we believe that it is only by proposing a viable alternative to reorganization that fits our needs *as a region* will our concerns be heard and acted upon. Below is our proposed alternative plan for the Great Plains region, along with criticisms and explanations of how and why the current reorganization will not be suitable for tribes in our region.

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Reorganization: Criticisms & Negative Impacts

In the Fort Laramie Treaty of 1868 (15 Stats. 635), entered into by the majority of tribes in the Great Plains Region, Articles V and IX guarantee that the United States will provide services at the local level to our people and reimburse the tribes for any services lost (other treaties affecting some Great Plains tribes raised similar expectations for those tribes). It was clearly understood by the Indian signers of that Treaty that necessary assistance would be provided to the signatory tribes by a local agent (or superintendent in the modern era) and that sufficient resources would be made available to the agent to allow him to discharge the duties assigned to him. Under the Department's reorganization plan, however, the central office management levels will dominate over the regional and local agencies. Thus, reorganization, as currently proposed by the Department, will circumvent the vested rights under the 1868 Fort Laramie and other treaties, the cornerstone those tribes' relationship with the United States. This cannot stand. We believe that promises made in the treaties must be upheld, and taking away agency level representation would be a violation of the Department's legal obligations toward our tribes.

The current proposal divides services within the Bureau of Indian Affairs and redirects services that were once operated by the Bureau of Indian Affairs to the Office of the Special Trustee. The division of "trust services" from "tribal services" and the hiring of two new bureaucrats -- deputy superintendents -- to perform these "separate" services will cost the Bureau of Indian Affairs approximately $400,000 for every agency that implements these positions. Additionally, the assignation of traditional Bureau of Indian Affairs functions to the Office of the Special Trustee sharply separates the ability to make decisions on trust resource management and trust services at the local level, adding another level of bureaucracy to a system that is already overloaded with bureaucratic requirements.

A prime example of the assignment of traditional Bureau of Indian Affairs functions to the Office of the Special Trustee, and consequently the addition of another bureaucratic layer, is the creation of so-called "trust officers". Employees of the Office of the Special Trustee, trust officers supposedly will be the "first line of contact" for tribal and individual Indian beneficiaries for issues related to their ownership of trust assets, reporting directly to their agency in Albuquerque. We strongly believe that the trust officers will compete with Bureau of Indian Affairs Superintendents -- whose functions would be significantly curtailed in favor of that of the trust officer -- for authority, resources and manpower. The resulting competition will surely subordinate one agency to the other and adversely affect the efficiency of both. Trust officers would furthermore operate on the reservations *independent* of control by either the local superintendent or the tribe. We fear that this would subject the tribes to arbitrary actions by faceless bureaucrats in distant cities with no reason to think that these activities would actually provide a meaningful benefit to the trust beneficiaries. Even worse, superintendents would be further prevented from providing meaningful assistance to the tribes and Indian individuals

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because of the diversion of funds to the reorganization process. Indeed, rather than use the funds available to provide tribes with the actual assistance they need at the local level, the Department has proposed a vast new bureaucracy.

To make the prospect of the types of problems that may arise as a result of dividing trust management authority, as tribal leaders we will share our experiences with you. Everyday, at the local and regional levels, we see problems multiplying because of past fractionation of line authority. For example, one superintendent had an elderly man hitchhike 50 miles to come check on his Individual Indian Money account with the Office of Trust Fund Management (OTFM) staff at the agency. When he arrived, well before 5 pm, both OTFM employees were gone for the day. Fortunately, a Bureau of Indian Affairs social worker called an OTFM employee at the Regional Office, who was able to assist this man. This situation would have been simpler if the authority to help him was still within the line of authority of the superintendent. We strongly believe that the more trust functions are fractionated, the more likely situations like this will arise.

Significantly, the present Department of Interior reorganization plan completely violates the principle that Indian Tribes and Indian People must be free to control their own destiny at the local level, without unnecessary federal meddling in Washington, D.C. This principle has been at the center of federal Indian Policy for more than a third of a century and traces back to President Nixon's historic message to Congress of July 8, 1970. In that message, President Nixon proposed a bold new policy of "Self-Determination," a policy that called for tribes to take over the operation of federal programs that were essential to them, free from the stifling controls of the federal bureaucracy. After observing that Indians "are the most deprived and isolated group in our nation," and "rank at the bottom" with respect to employment, income, education, and health, President Nixon proposed what might be viewed as a Republican solution to the problem -- a smaller role for the federal government. He proposed that Indian tribes be given the right to locally control and operate the federal programs that had been run for their supposed benefit by federal bureaucrats in Washington. In other words, central control by the federal government would be replaced by local control by the tribes. While President Nixon's message focused on the proposal for contracting of government programs, it is also relevant here because of his clear recognition of the need for local control.

We also question the expanded role of the Office of the Special Trustee from that of an agency which performs simple oversight functions, as originally envisioned in the 1994 Act, to performing operational duties of trust management. This expansion raises questions about the effectiveness of the Office of the Special Trustee's oversight role, and the need for concrete independent review of its performance. If accountability is the byword for the "To-Be" process, the Office of the Special Trustee should itself be monitored for breaches of trust management.

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In sum, our tribes want to ensure that decision-making and resources are placed at the local level -- the Department must maintain a single point of decision-making authority at the local level to deal with the issues that involve both trust resource management issues and other trust issues. The Department has acted without regard to the fact that reservations in different parts of the country have very different circumstances and need different programs if administration of the federal trust is to improve. Furthermore, the reorganization plan goes completely counter to the principles of self-determination and local control enunciated by President Nixon and, so far, followed by every succeeding Administration.

Precedent: Section 139

Reorganization will affect all tribes in their relationships with the Bureau of Indian Affairs and the Office of the Special Trustee, however, ten tribes will be exempt from any reorganization changes by their inclusion in a demonstration project: the tribes in the California Tribal Trust Reform Consortium, the Salt River Pima Maricopa Indian Community, the Confederated Salish-Kootenai Tribes of the Flathead Reservation and the Chippewa Cree Tribe of the Rocky Boy Reservation. These tribes, members of the Tribal Self-Governance Program, are currently performing trust functions pursuant to self-governance compacts under P.L. 638. Consequently, they successfully negotiated insertion of "Section 139" to the conference report that accompanied the FY 2004 Interior Appropriations bill, which was signed into law on November 10, 2003.

Section 139 provides that the above-mentioned tribes "shall operate separate and apart from . . . reorganization, and the Department shall not impose its trust management infrastructure upon or alter [these tribes'] existing trust resource management systems . . . ." Section 139 conditions, however, this insulation from reorganization on agreement by the tribes to "carry out their responsibilities under the same fiduciary standards as those to which the Secretary of the Interior is held . . .." The tribes are further required to "demonstrate to the satisfaction of the Secretary" that they are capable of coming into compliance with these standards. The Secretary has delegated her authority to review the tribes' processes to the Special Trustee for American Indians.

Our proposal does not vary significantly from Section 139. We attach draft legislation for your consideration. We discuss our needs in further detail below.

Proposal for the Great Plains Region Tribes

We request that a pilot program, similar to that set up by the legislative rider in the FY 2004 Interior Appropriations bill for Self Governance tribes, be formulated for the Great Plains tribes. We believe that a "one size fits all" approach to trust reform is ill-conceived, as tribes across the country differ in size, population, land base and economy. Differences between

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regions in population, employment, revenue foundation and even geographic location impact how trust reform measures should vary and be flexible to fit the needs of the particular region. For instance, on the Cheyenne River Sioux Reservation, it is hard to imagine how trust officers could function effectively, given the size of the reservation, the sparse population and the distances between communities. The tribe has a current unemployment rate of 80 percent, a high yet common statistic among Indian tribes, yet 25 percent of its revenues are provided by tribal land leases for grazing. Surely, grazing may not be as important to a tribe whose revenues depending on timber, for instance. We believe that trust reform should be adaptable to serve tribal beneficiaries' unique characteristics.

In the FY 2005 budget for the Department of Interior, the Office of the Special Trustee is the only Indian Country program receiving new money from the $250 million increase over current Interior funding levels. The Office of the Special Trustee requested a $113.6 million increase, yet the Bureau of Indian Affairs budget was cut by $52 million, offset by increases for trust related activities within the Office of the Special Trustee. According to the Office of the Special Trustee, their $113.6 million will support ongoing and new trust programs administered by the Office of the Special Trustee -- namely, adding trust officers to the bureaucracy. We believe that if additional funds are available to improve trust functions, they need to be expended on improving core trust functions, not on the hiring of a new bureaucracy with vague functions and no accountability at the local level. This increase has been at the expense of Tribal Priority Allocation funding at the local and regional levels, despite congressional testimony by high-ranking Department officials to the contrary. Superintendents in our region have reported that they have seen funding appropriated to carry out trust functions moved over to the administrative functions of their agency. These funds are being removed from base funding without tribal knowledge or consent, an unacceptable turn of events.

Specifically, our tribes require frequent land appraisals, due to our large land base. Currently, there is only one appraiser for the entire Great Plains region, who is located in Rapid City -- a great distance from many of our reservations. This is a problem because it takes a great deal of time for the appraiser to travel from one reservation to another, and delaying the appraisal process. We believe our system would be improved -- and money better spent than hiring "trust officers" -- by having an appraiser at each agency on each reservation. Furthermore, as a region we are in dire need of technical positions involving land management, such as surveyors, range conservationists, lease compliance officers, rights of way specialists, accountants and more. We have included as part of this proposal plans developed by three tribes in our region: Cheyenne River Sioux Tribe, Three Affiliated Tribes and Winnebago. These agency-specific plans compare costs associated with the Department's proposed changes and our own assessment of current and future needs for reforming the trust asset management system. We believe our current (Phase I) and projected needs assessment (Phases II and III) are a simpler, clearer and will be a more cost-effective use of scarce resources.

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In sum, we urge today a reversal of the reorganization process and that available resources be channeled to where they can be most effectively used -- at the reservation level under the control of the local agent, who is in the best position to work closely with the tribal governments to carry out programs to protect trust assets and meet the responsibilities of administration of the federal trust. We have a close working relationship with our agents and believe that money would be better spent on increasing their presence on the reservation level than by hiring trust officers. In the alternative, hiring land appraisers, who would have accountability at the local level, along with other realty specialists instead of trust officers would avoid potential backlog in appraisals in our region. Indeed, by working with the existing system, our tribes will be better able to work with agency officers at the local level to improve trust management systems and address the trust deficiencies that currently exist. We strongly object to dividing trust management functions between the Bureau of Indian Affairs and the Office of the Special Trustee, as well as the influx of new bureaucrats, or trust officers. Reform of the existing system should begin at the local level where trust responsibilities are carried out, and where we can most efficiently use our already scarce resources for improvement. We have identified the resources and services that we need at the local Bureau of Indian Affairs agencies on the reservations in our agency-specific plans (attached and referenced above), with the federal government available for technical support and oversight.

Trust Principles & Reorganization

Our proposal for a Great Plains region-specific reorganization is consistent with the principle that any meaningful trust reform must incorporate clear trust standards, demonstrate specific plans for tribes to assume more management, control or authority over management of trust resources, and address the fractionation of Indian lands. We believe that a national plan for reform should include these essential elements. We must also stress that we do not in any way intend our plan to upset plaintiffs' right to relief in the ongoing litigation in *Cobell v. Norton*, and fully support an expedited settlement in that case.

Conclusion

On behalf of the Great Plains Tribal Chairman's Association and the Cheyenne River Sioux Tribe, thank you for the opportunity to present my views on reorganization, as well the Great Plains Regional Proposal for Trust Reform. I look forward to answering any questions you may have.

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The National Congress of American Indians

Testimony on

Proposed Reorganization of Major Agencies and Functions Related to Indian Trust Reform Matters Within the Department of Interior

Presented By:

Tex G. Hall
President, National Congress of American Indians

March 10, 2004

Chairman Campbell, Vice-Chairman Inouye, and members of the Committee, I thank you for your invitation to testify today. On behalf of the members of the National Congress of American Indians, I would like to express our appreciation to this Committee for its commitment to Indian people and to upholding the trust and treaty responsibilities of the federal government.

As you know, tribal leaders want to see successful change and improvement in the way the Department of Interior manages trust funds and trust resources, but we are certain that the Department is on the wrong track and is in great need of Congressional intervention.

The ongoing reorganization is creating a top-heavy bureaucracy at the expense of staffing and resources in the local agency offices. Such a system cannot meet the need for trust management on the reservations. Trust management requires people and systems on the ground in resource management, inspections, enforcement, title, appraisals, and probate. This is work that cannot be done by bureaucrats and accountants in Washington DC or Albuquerque.

The President's Budget Request for FY2005 demonstrates our concerns clearly. For the second year in a row, huge amounts of funding are shifted to the Office of Special Trustee and BIA Central Office functions. The OST would receive a $113.6 million increase -- to create a $322.7 million bureaucratic behemoth out of an entity that was created by Congress to provide only an oversight and planning function. The largest increase proposed for the BIA is for Central Office Operations -- a whopping 52% increase -- for a total of $134.4 million. And none of this funding would deliver a single service or solve any trust related problems on the ground in Indian country.

While central offices see these enormous increases, the overall BIA budget request drops $52 million from the FY2004 enacted level, and Indian education gets hammered -- a $65 million cut. For the second year in a row, Tribal Priority Allocations are scheduled for only a nominal increase that does not keep pace with inflation. Indian tribes are being forced to pay twice for the federal government's mismanagement of our trust funds. First, when our trust funds and natural resources were grossly squandered and mismanaged, and now, when it is time to fix the system, the Department proposes to take the money out of other BIA programs and services. Congress cannot allow this budget to stand.

The Three Affiliated Tribes of the Fort Berthold Reservation conducted a needs-assessment concerning the management of trust assets at the Fort Berthold Agency. The Three Affiliated Tribes' Natural Resource Department met with the Agency and conducted thorough on-sight interviews with the Agency, tribal members, and other federal agencies over the past two years. I am attaching this needs-assessment, but let me give you a few examples of the things that we learned during this exhaustive process:

- At one point, the Fort Berthold Agency employed twenty-three (23) people (seventeen permanent and six seasonal) in the Agency's range department. Today, the Agency has just <u>three</u> (3) employees in the Agency's Range Department. One of these employees is assigned to handle the Agency's Special Deposit Accounts full time so she really is not involved in range management. One employee is responsible for the paper work involved in range management and this is a full-time responsibility. Thus, there is only one employee available in the field to handle enforcement and compliance matters.

- This shortage of staff results in direct failures of the BIA's responsibilities. For example, 25 CFR § 166.305 requires the BIA to conduct a range assessment of every range unit (both allotted and Tribal land) on the Reservation prior to the issuance of a permit. The last range assessment done on the Fort Berthold Reservation was done in 1982. 25 CFR § 166.312 requires the BIA to develop a conservation plan for each range unit. No conservation plans have been developed or approved by the BIA despite the issuance of grazing permits.

- Each range unit permit awarded by the BIA for Tribal and allotted units has special provisions concerning the number of cattle that can be grazed on the unit and maintenance. Range Technicians are responsible for ensuring permit compliance and policing the ranges for trespass and overgrazing. The Three Affiliated Tribes has one Range Technician and the Fort Berthold Agency presently has grazing permits issued for approximately 260,000 acres of grazing land spread over 1,376 square miles of Reservation that is divided by Lake Sakakawea--which only has one bridge spanning across it at northern most point of the Reservation.

- We estimate that it would take approximately eight (8) Range Techs/ Compliance Officers (GS 7-9) and three (3) Range Conservationists (GS 11), one (1) Natural Resource Officer (GS 12) in order for the Fort Berthold Agency to properly manage this trust resource and to comply with the Federal Regulations at 25 CFR Part 166 dealing with Grazing Permits. Twelve new positions are needed in range management alone, and these personnel will need the training and tools to do their jobs properly.

- There is no appraiser at the Fort Berthold Agency despite the fact that appraisals are required for farm pasture leases, grazing permits, right-of-ways, oil and gas leases, land exchanges, land sales, gift deeds, land consolidations and trespass damage. Appraisals for all of these matters are presently handled by the Office of Special Trustee management which has employed a regional appraiser out of Rapid City, South Dakota. All appraisals, with the exception of appraisals for the sale of crop land, are done on this employee's desk in Rapid City. This appraiser conducts almost no on-site field appraisals of any other type of land transaction, which results in untimely and questionable valuations.

- There is a three-year backlog of over one hundred fifty probate cases at the Fort Berthold Agency. Furthermore, it takes approximately two years to pay out the estate proceeds to heirs after a case is decided. The backlog and unbelievable delay in estate distribution is directly a result of staff shortages at the Agency level--there is only one probate specialist at the Agency. The Three Affiliated Tribes estimates that the Fort Berthold Agency needs three additional probate specialists (GS 11) to handle the backlog of cases and estate distributions.

- The Fort Berthold Agency handles approximately 1,000 title records requests annually. Uncertified title searches can be accomplished relatively quickly. However, certified title requests take approximately six months to complete because they are being done at the regional office. This delay creates a significant backlog in land transactions and obstacles in business and economic development.

- The Fort Berthold Agency has approximately 300 oil & gas leases, 100 pending, on the Fort Berthold Reservation. There is a huge delay in leasing and in payouts of lease income. The Three Affiliated Tribes are positioned in the middle of a known oil field – the Williston Basin. Oil fields have been developed all around the Fort Berthold Reservation. The BIA does not have the manpower to research the companies that desire to lease and therefore the Tribe's interests are not adequately protected. The Fort Berthold Agency has no professional staff to handle mineral and oil & gas transactions.

These severe deficiencies in trust resource management were found at only one BIA agency, but other tribes from my region of the country have conducted their own needs assessments and have found similar deficiencies. Throughout the country, no matter what the resource, the most significant contributor to the problems with trust management is the lack of adequate personnel, systems and training. In fact, the Department of Interior itself has acknowledged that "personnel resources are inadequate to address the current workload," in its Fiduciary Compliance Plan submitted in federal district court in January of 2003. (DOI Plan at 38).

The Office of Special Trustee has announced that it will hire six regional trust administrators and 60 trust officers and related support staff. The BIA is planning to hire 25 deputy regional directors for trust and a number of deputy agency trust superintendents in 2004. It is difficult to tell the exact amount from the budget that has been submitted, but it appears that OST and the BIA have substantial funds budgeted to hire staff to fill these supervisory positions. Who are they going to supervise?

The Great Plains and Rocky Mountain Region Tribes have passed resolutions calling for a one year moratorium to the BIA reorganization until the tribes within these regions can provide the BIA with "Agency Specific Plans" that will best address each tribe's specific needs in regard to managing trust resources on their respective reservations. The National Congress of American Indians also just approved a resolution (attached) supporting the efforts of the tribes within these regions and calling for a halt to the BIA reorganization for such time as is necessary for these tribes to develop an agency specific plan for their respective agencies. Any plan to fix the system must be built from the ground up, not from the top down, and we do not have time and money to waste on a reorganization that we know will not work.

On February 25, 2004, NCAI sponsored a comprehensive Trust Reform Summit in the hearing room of the Senate Committee on Indian Affairs. Every region and every tribe in attendance was given an opportunity to voice their opinions concerning the reorganization of the BIA. Every region and every tribe opposed the reorganization efforts, and indicated that they believed that agency specific plans were needed. I believe that all tribes should develop agency specific plans and push for resources at the agency level rather than at Central Office and OST as provided in President Bush's proposed FY 2005 budget—tribal governments and local agencies on the ground are the ones that understand best how to fix the mess created by an out of touch central bureaucracy.

Let me give you one very good example of how ineffective the reorganization as currently configured will be. NCAI has strongly supported S. 1721, the Indian Land Consolidation Amendments, and we applaud the Administration for recognizing the need for significant increases in land consolidation spending. We all recognize that fractionation is the root of the

problem and we must address fractionation if we are to ever make real progress in trust reform. But this reorganization will make all of our land consolidation efforts fail, simply because there are *not enough staff* in the realty, title, and appraisal offices to actually carry out the land transactions that are needed for land consolidation.

This reorganization is putting the cart before the horse. Organizational structures must be aligned with specific business processes and they must be designed to function within a system where services are provided by the DOI and tribal governments. DOI has not yet figured out its new business processes. Millions of dollars have been invested in an "As-Is" study of trust services, but the Department has only just begun the critical "To-Be" phase of reengineering the business processes of trust management. By implementing a new organizational plan prematurely, DOI is ignoring the findings of its own study and wasting the valuable resources that the agency and tribes have already dedicated to understanding systemic problems. The entire reengineering is being corrupted by results-oriented management decisions that are intended to make the new systems fit into their pre-determined organizational structure.

Reorganization should only come after the new business processes have been identified and remedies devised through a collaborative process involving both BIA employees and tribal leadership. We must include the input of tribes and BIA employees so that the great numbers of people who must implement changes in trust administration understand and support necessary reforms. Only then, as a final step, can we design an organizational chart to carry out the functions of trust management without creating conflicting lines of authority throughout Indian country. The history of trust reform is filled with failed efforts that did not go to the heart of the problem and do the detailed, hard work necessary to fix a large and often dysfunctional system.

The federal government has been following a policy of tribal self-determination for over 30 years, and this has been the most enlightened and beneficial era of federal government policy that we have seen in Indian country. The entire thrust of self-determination is that tribal governments themselves are in the best position to determine the needs of their reservations. Tribes are greatly concerned that the federal government is losing sight of self-determination and tribal sovereignty in its rush to institute the reorganization. How are we following self-determination when the Department is implementing a plan over the strong and reasoned opposition of the very tribes that they are supposed to serve?

At our meeting on the trust reorganization two weeks ago, I was very taken by the fact that each of the regions had similar themes in their opposition to the reorganization. It just can't work to have all managers and no workers. We don't need another bureaucracy that will compete with the one we already have. The DOI is not listening to the tribes. The OST is losing sight of its role under the 1994 trust reform act to provided standards and oversight. And finally, tribes still want to work with the Department to improve trust management, but we need tribal specific agency plans as a mechanism to ensure tribal involvement.

Tribal leaders have consistently held that effective organizational change to effectuate trust reform must contain three essential elements:

(1) Standards and Accountability—a clear definition of core business processes accompanied by meaningful standards for performance and mechanisms to ensure accountability

(2) Locally Responsive Systems—implementation details that fit specific contexts of service delivery at the regional and local levels where tribal governments interact with the Department

(3) Continuing Consultation—an effective and efficient means for on-going tribal involvement in establishing the direction, substance, and form of organizational structures and processes involving trust administration.

There is a consensus in Indian country that the reorganization must be redirected toward developing agency specific plans that are developed with the direct participation of the tribal governments. At the same time, DOI's redesign of trust system processes in land title, leasing and accounting must also be backed up for more consultation and direction from tribal leadership.

Tribal governments must be substantively and continuously involved in trust reform efforts, working in partnership with Congress and the Administration. Trust Administration goes to the heart of government-to-government relationships and to the capacity of tribal governments to exercise their sovereign powers and ensure that the rights and interests of its members are protected and well served. Tribal governments have a great deal at stake in developing effective mechanisms for trust administration within unique political-legal-economic relationships with the United States. We urge Congress to make every effort to ensure that tribes are "at the table" when critical decisions regarding trust reform are being made.

Conclusion

On behalf of NCAI, I would like to thank the members of the Committee for all of the hard work that they and their staffs have put into the trust reform effort. I believe firmly that tribal leadership has hit upon a solution – agency specific plans – that will bring about the needed collaboration between the DOI and Tribal Nations. If we maintain a serious level of effort and commitment by Congress, the Administration, and Tribal Governments to work collaboratively together to make informed, strategic decisions on key policies and priorities, we can provide the guidance necessary to bring about true reform in trust administration.

NATIONAL CONGRESS OF AMERICAN INDIA
NS

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The National Congress of American Indians
Resolution WAS-04-05

TITLE: Support for Tribal Efforts to Halt the Department of Interior's Reorganization Efforts in Order For Tribes to Assess the Trust Management Needs of their Respective Agencies and to Report their Findings to the Secretary of Interior.

WHEREAS, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

WHEREAS, Tribal governments are responsible for protecting the interests of their Tribal members and for ensuring that the United States Government fulfills its trust responsibility to the Tribe and its members by providing adequate services; and

WHEREAS, BIA Agencies within the Rocky Mountain and Great Plains Regions manage 41% of all IIM accounts, 54% of all allotments, and 54% of all landownership data managed by the Bureau of Indian Affairs;

WHEREAS, the Rocky Mountain and Great Plains Region Tribes believe that these statistics demonstrate that they have a great interest in the Department of Interior's reorganization of the Bureau of Indian Affairs, especially at the Agency level; and

WHEREAS, the Rocky Mountain and Great Plains Region Tribes met at Rapid City, South Dakota on January 12-13, 2003 to discuss DOI's reorganization and the recently published "To Be' model; and

WHEREAS, the Department of Interior's reorganization of the Bureau of Indian Affairs was completed prior to the completion of the "To Be" project which is an integral part of Interior's reorganization effort; and

WHEREAS, the Department of Interior has authorized Deputy Superintendents and Trust Officers for Reservations without proper consultation with the Tribes within these regions; and

WHEREAS, the Tribes firmly believe that for reorganization of the BIA to be successful and to ensure the proper management of trust assets and resources, DOI needs to recognize and be responsive to each Tribes specific needs at the Agency level; and

WHEREAS, the Tribes believe that such input is vital to the success of Interior's reorganization efforts; and

WHEREAS, the Tribes believe that Tribal comments and input concerning DOI's reorganization efforts has fallen on the deaf ears and DOI has totally ignored Tribal advice due to the fact that DOI is following a predetermined course with regard to reorganization of the BIA; and

WHEREAS, the Great Plains and Rocky Mountain Tribes have responded by committing themselves to conduct an Assessment of the Trust Management Needs of the BIA Agencies located within their respective Reservations; and

WHEREAS, some of the Great Plains and Rocky Mountain Region Tribes have already completed a Trust Management Needs Assessment of their Agencies in order to provide an example of the work that needs to be done at all agencies that handle a substantial number of trust transactions; and

WHEREAS, other Tribes from other regions agree and approve of this effort and have indicated a desire to join and support the Tribes from the Great Plains and Rocky Mountain Regions in their efforts; and

WHEREAS, NCAI membership desires to support the Tribes that desire to join them in this effort.

NOW THEREFORE, BE IT RESOLVED, that the NCAI hereby supports the efforts of the Tribes to halt the reorganization of the BIA and hereby calls on Congress and the Department of Interior to take such action as is necessary to delay any further reorganization of the BIA for such period as is necessary for Tribes to work with their respective agency and develop an agency specific plan that will meet the specific trust management needs of each Agency and Tribe; and

BE IT FURTHER RESOLVED, that the NCAI calls on Congress to appropriate such funds as are needed to carry out these efforts at the tribal level on an equitable basis as are carried out at the Bureau level; and

BE IT FINALLY RESOLVED, that NCAI calls on Indian tribes throughout the Nation to join in this effort.

CERTIFICATION

The foregoing resolution was adopted at the Winter Session of the National Congress of American Indians, held at the Wyndham Washington, D.C. on February 25, 2004 with a quorum present.

President

ATTEST:

Recording Secretary

Adopted by the Executive Council during Winter Session of the National Congress of American Indians, held at the Wyndham Washington, D.C. from February 23-25, 2004.

TRUST MANAGEMENT NEEDS ASSESSMENT
FOR THE
FORT BERTHOLD AGENCY

The Three Affiliated Tribes for the Fort Berthold Agency conducted a needs assessment concerning the management of trust assets[1] at the Fort Berthold Agency. The Three Affiliated Tribes' Natural Resource Department met with the Agency and conducted thorough on-sight interviews with the Agency, tribal members, and other federal agencies over the past two years. Based on the information obtained during this exhaustive process, the Tribes have concluded that the following positions are needed to properly manage the Tribes trust assets and resources at the Fort Berthold Agency:

1. Range Management:

A. Range Assessments

25 CFR § 166.305 requires the BIA to conduct a range assessment of every range unit (both allotted and Tribal land) on the Reservation prior to the issuance of a permit. A range assessment allows the BIA to determine what the carrying capacity (how many cows can graze on the unit) is for each unit. The last range assessment done on the Fort Berthold Reservation was done in 1982. The reason for the lack of range assessments is shortage of staff.

B. Range Compliance

Each range unit permit awarded by the BIA for Tribal and allotted units has special provisions concerning the number of cattle that can be grazed on the unit and maintenance. Range Technicians are responsible for ensuring permit compliance and policing the ranges for trespass and overgrazing. The Three Affiliated Tribes has one Range Technician.

C. Range Conservation Plans.

25 CFR § 166.312 requires the BIA to develop a conservation plan for each range unit with the permittee and the BIA is required to approve the plans. No conservation plans have been developed or approved by the BIA despite the issuance of grazing permits for the range units. The reason for the lack of compliance with the CFR is shortage of staff.

At one point, the Fort Berthold Agency employed twenty-three (23) people (seventeen permanent and six seasonal) in the Agency's range department. These figures do not include the people employed in the Agency's farm pasture department. Today, the Agency has just three (3) employees in the Agency's Range Department. One of these

[1] "Trust Assets" as used in this Needs Assessment means IIM Accounts, Natural Resources (Water, Range, Minerals and Oil & Gas), Realty and Probate.

employees is assigned to handle the Agency's Special Deposit Accounts full time so she really is not involved in range management. One employee is responsible for the paper work involved in range management and this is a full-time responsibility. Thus, there is only one employee available in the field to handle enforcement and compliance matters.

The Fort Berthold Agency presently has 92 grazing permits issued for approximately 260,000 acres of grazing land spread over 1,376 square mile of Reservation that is divided by Lake Sakakawea which only has one bridge spanning across it at northern most point of the Reservation. The Fort Berthold Agency is also responsible for paying out grazing income on 92,252 owner interests.

The Three Affiliated Tribes estimates that it would take approximately eight (8) Range Techs/ Compliance Officers (GS 7-9) and three (3) Range Conservationists (GS 11), one (1) Natural Resource Officer (GS 12) in order for the Fort Berthold Agency to properly manage this trust resource and to comply with the Federal Regulations at 25 CFR Part 166 dealing with Grazing Permits. Twelve new positions are needed.

2. Farm Pasture Leases:

The Fort Berthold Agency manages approximately eight hundred (800) allotted farm pasture leases totaling 20,100 acres of allotted land. The Agency distributes around $900,000 in farm pasture income from allotted land per year to approximately 225,000 ownership interests. The Agency also collects farm pasture income from an estimate 400 farm pasture leases administered by the Tribe.

The Tribe has contracted lease responsibilities for the Tribe's farm pasture leases. The Tribe manages approximately 400 farm pasture leases totaling 10,000 acres. Presently, there are very few executed farm pasture leases for Tribal land due to lack of staff and funding under the Tribe's 638 contract with the Agency.

25 CFR § 162.214 requires the BIA to identify potential environmental impacts and ensure compliance with all applicable environmental laws, land use laws and ordinances (including preparation of the appropriate review documents under NEPA). The Agency has to have an archeological review prior to issuance of a lease. The BIA is also responsible for developing a conservation plan with the lessee and approving a conservation plan for the unit. The Agency has one realty specialist that is responsible for all of this work. In order to handle these responsibilities, the BIA borrows one and on-half positions from the Agency's Range Department to handle compliance, conservation plans, valuation, and enforcement. As a result there is a delay in completing compliance plans prior to leasing the farm pasture units. Some compliance plans are not completed and approved until ten months after receipt of application for the farm pasture lease due staff shortages.

The Agency's Farm Pasture office used to employ four (4) full time employees. Today there is only one (1) employee in the Agency's Farm Pasture office. The Three Affiliated Tribes estimates that the Agency needs one Farm Pasture Tech (GS 7-9) for

compliance, one Soils Scientist (GS-12) to do conservation plans and soils testing and environmental and archeological field reviews; and one filing clerk (GS 5-7) for filing trust records and income distribution.

The Three Affiliated Tribes notes that there are other federal agencies such as USDA and EPA that have programs that could be utilized by the Tribe and its members. The Tribe requests that a Federal Program Specialist be assigned to the Fort Berthold Agency to identify and pursue other federal programs on behalf of the Tribe and its members.

3. Appraisals

The OST/BIA gets about one hundred twenty (120) requests for appraisals on the Fort Berthold Agency a year for land sales. The OST/BIA only conduct on-site appraisals for crop land. There is no appraiser at the Fort Berthold Agency despite the fact that appraisals are required for farm pasture leases, grazing permits, right-of-ways, oil and gas leases, land exchanges, land sales, gift deeds, land consolidations and trespass damage. Appraisals for all of these matters are presently handled by the Office of Special Trustee management which has employed a regional appraiser out of Rapid City, South Dakota. All appraisals, with the exception of appraisals for the sale of crop land, are done on this employee's desk in Rapid City. This appraiser conducts almost no on-site field appraisals of any other type of land transaction which the Three Affiliated Tribes believes results in untimely and questionable valuations.

The Three Affiliated Tribes believes it is critical to have an appraiser at the agency level. The Tribe estimates that one full-time appraiser (GS 12) could handle the appraisal needs at the Fort Berthold Agency.

4. Probate

There is a three-year backlog of over one-hundred fifty cases at the Fort Berthold Agency. Furthermore, it takes approximately two years to pay out the estate proceeds to heirs after the case decided. The backlog and unbelievable delay and estate distribution is due to staff shortages at the Agency level as there is only one probate specialist at the Agency. The Three Affiliated Tribes estimates that the Fort Berthold Agency needs three additional probate specialists (GS 11) to handle the backlog of cases and estate distributions.

All financial records are kept in Albuequerqu, New Mexico. Thus, if there is a question concerning such records the probate specialist has to order these records from the Office of Historical Trust Funds Accounting or Office of Special Trustee to get this information. This procedure takes two much time and thus drags out the probate process. All probate records should be stored and maintained at the Fort Berthold Agency.

5. Land Transactions:

A. Right-of-way Applications

There is a two year back log on 150 right-of-way applications per year. Right-of-ways are handled by the Agency's lone Realty Officer. The Three Affiliated Tribes estimates that two rights-of-way specialists, Realty Specialist (GS 11) are needed to handle right-of-way transactions at the Fort Berthold Agency.

B. Land Sales

The Fort Berthold Agency handles approximately 100 land sales requests a year. There is presently 300 land sale transactions backlogged that translates into a three year delay. This delay in handling sales causes people to take land out of trust and depresses the value of the trust land.

C. Gift Deeds

The Fort Berthold Agency handles approximately 200 gift deeds a year. There is presently 100 gift deeds pending for a half-year back log.

D. Land Exchanges

The Fort Berthold Agency handles an estimated 300 land exchange requests a year. There are 200 land requests pending at this time for an eight month backlog.

E. Title/Ownership Records

The Fort Berthold Agency handles approximately 1,000 title records requests annually. Uncertified title searches can be accomplished relatively quickly. However, certified title requests take approximately six months to complete because they are being done at the regional office. This delay creates a backlog in land transactions and obstacles in business and economic development. The Three Affiliated Tribes recommends that certified title requests be handled at the Fort Berthold Agency.

F. Fee-to-Trust Applications

There are presently seventy fee-to-trust applications pending at the Forth Berthold Agency. The oldest of these applications dates back eight years. The reason for the backlog appears to be lack of staff.

There are six full-time employees and one temporary employee in the Agencies Realty Department. The Fort Berthold Agency has one person, a realty specialist, that handles all of the land transactions mentioned in A-F. The Three Affiliated Tribes estimates that three additional Realty Specialists (GS 9-11) are needed to handle the work

load for these land transactions. The Three Affiliated Tribes believes that these Realty Specialist should specialize in management of a specific land transaction.

5. Energy Development

The Fort Berthold Agency has approximately 300 oil & gas leases, 100 pending, on the Fort Berthold Reservation. There is a huge delay in leasing and in payouts of lease income. The Three Affiliated Tribes in in the middle of a known oil field – the Williston Basin. Oil fields have been developed all around the Fort Berthold Reservation. The BIA does not have the manpower to research the companies the desire to lease and therefore the Tribe's interests are not adequately protected. The Fort Berthold Agency has no professional staff to handle mineral and oil & gas transactions. The Three Affiliated Tribes is seriously considering developing recent oil & gas discoveries on the Fort Berthold Agency Furthermore, the Tribes intends to construct and operate an oil refinery on the Fort Berthold Reservation. The Tribes are also in the process of developing wind energy opportunities.

An Economic Development Specialist at the Fort Berthold Agency is needed to assist the Tribe in an energy development plan including an oil refinery, oil & gas development, and wind and hydro development on the Fort Berthold Reservation. The Three Affiliated Tribes also believes that one geologist/petroleum engineer (GS 11) is needed at the Fort Berthold Reservation.

6. IIM Accounts

The Office of Special Trustee has taken over IIM Account management. There Agency Superintendent has no line authority over the Office of Trust Fund Management employees that supervise these accounts in the Agency building. The Superintendent cannot retrieve a financial trust document for research purposes from the OTFM office within the agency building because of the separation of the IIM Accounts from the BIA. Also, all hard copies of financial trust records were taken to OTFM's office in Albequerque, New Mexico. Thus, if IIM Account Holder or the Tribe requests this information, they cannot get it without considerable delay. At this time, the Fort Berthold Agency is not getting these documents despite many requests. The Three Affiliated Tribes recommends that these functions be handled by the BIA Fort Berthold Agency and the records returned.

Records are in poor condition and our records should be prioritized. Office of OHTA. Central 46 million. Regional Office is 1.1 million reduction. Land Title & Records Office. Land Title Records improvement $9 million decrease.

7. Special Deposit Accounts

Special Deposit Accounts are accounts containing trust funds belonging to the Tribe, Tribal member or third parties that have not been paid out. For instance, if an oil company sent a bonus check on a lease it would go into the special deposit account

before the money is distributed to the Tribe. The Fort Berthold Agency has $2.6 million in its Special Deposit Account at this time. Some of the money in this account has been sitting there for twenty years. According to the Special Deposit Account list, there are two deceased individuals that have money in this account that have been deceased for fifteen and ten years. Tribal members know this money is in this account and demand that it paid over to them in a timely manner. The Tribe, because it knows who the people are that are owed this money and their heirs if the people are deceased, the Tribe would be the best entity to disperse the monies in these accounts.

The Fort Berthold Agency does not have anyone employed to handle this account. The Three Affiliated Tribes would like to contract to disperse the funds in this account.

STATEMENT

OF

ROSS O. SWIMMER

SPECIAL TRUSTEE FOR AMERICAN INDIANS

AND

DAVID W. ANDERSON

ASSISTANT SECRETARY - INDIAN AFFAIRS

U.S. DEPARTMENT OF THE INTERIOR

BEFORE THE

SENATE COMMITTEE ON INDIAN AFFAIRS

ON THE

TRUST INITIATIVES FOR THE 21ST CENTURY

March 10, 2004

Mr. Chairman, Mr. Vice Chairman and Members of the Committee, we are pleased to be here today to discuss the trust initiatives for the 21st Century of the Office of the Assistant Secretary – Indian Affairs, the Bureau of Indian Affairs (BIA), and the Office of the Special Trustee for American Indians (OST). The roadmap that guides the Department's trust initiatives for the 21st Century is the Comprehensive Trust Management Plan. The Comprehensive Trust Management Plan is being used to guide the design and implementation of the trust reform efforts.

In January 2002, the Secretary of the Interior, through the Office of Indian Trust Transition (OITT), launched an effort to develop a comprehensive approach for improving Indian trust management. Working with the OST and BIA leadership, the OITT staff developed a set of goals, objectives, and tasks for reforming Indian trust management. This work was based upon statutes, regulations, guiding principles in the Departmental Manual, and reports prepared by Electronic Data Systems.

In May 2002, this effort was expanded and a DOI-wide strategic planning team was created that included representatives from national and regional offices of the OST, BIA, Minerals Management Service (MMS), and Bureau of Land Management (BLM). From May 2002 through December 2002, the DOI strategic planning team met regularly to review and update the goals and objectives. It also presented them to the Joint DOI/Tribal Leaders Task Force for review. After several meetings, the task force's subcommittee on planning approved the goals and objectives.

The goals and objectives of the Comprehensive Trust Management Plan include:

- An organizational structure in the Office of the Assistant Secretary – Indian Affairs, the BIA, and the OST, to support a new service delivery model.
- The implementation of a new land title records system to keep ownership records accurate and current.
- Improve land and natural resource and trust fund asset management including a nation-wide plan for eliminating fractionated interests of land that are burdening the trust and taking resources away from profitable activities.
- Promote Self-Governance and Self-Determination.
- The review and improvement of our trust business processes (the As-Is/To-Be process).

Through the examination of the "big picture" of trust management, the Department created a coordinated and integrated system in which all pieces of trust management function as a coherent whole. We recognize that strategic plans are dynamic and therefore, we will regularly evaluate and update this plan to ensure its responsiveness to the ongoing needs of the Department's trust operations and to adapt to changing environments. We are confident that the goals and objectives of the Comprehensive Trust Management Plan will enable the Department to provide important services to Indian country more efficiently and effectively than in the past. We are confident that our trust initiatives under the plan will result in a noticeable enhancement to the level of service our organizations currently provide.

The organizational realignment of the Office of the Assistant Secretary – Indian Affairs, BIA, and OST was one component of this plan. On April 21, 2003, Secretary Norton made effective an historic trust initiative by signing the Department of the Interior

Manual establishing clear lines of responsibility by which BIA will provide trust services and OST will provide fiduciary trust oversight. In addition, the Secretary added OST staff at BIA agencies to support the work of BIA's Deputy Agency Superintendents for Trust Services managers. We are pleased to announce that the reorganization efforts have largely been completed.

ORGANIZATIONAL REALIGNMENT

In August 2001, during our formulation of the FY 2003 budget, various proposals and issues were identified concerning the trust asset management roles of the BIA, OST, and other Departmental entities carrying out trust functions. By that time, the Department had heard from many sources – e.g., the Special Trustee, Electronic Data Systems, the Court Monitor in *Cobell v. Norton*, and through budget review – recommended multi-bureau consolidation of trust functions throughout DOI and pursued consolidation of functions to improve trust asset management. In short, the Department realized it had to provide an organizational structure that focused on its responsibilities to both individual Indians and tribal beneficiaries.

Tribal Representatives agreed with the Department that the status quo was not acceptable, and that the Department's longstanding approach to trust management needed to change. Moreover, this change must be reflected in a system that is accountable at every level with people trained in the principles of trust management.

After intensive review of five organizational proposals from tribes, the Secretary chose to realign the organization capturing as much as possible from the extensive consultation process. Over 45 meetings were held with Tribal leaders in which senior level officials from the Department were in attendance during the Joint Tribal Leader/ Department of the Interior Task Force on Trust Reform. The results comply with the concepts developed during the consultation process that were determined to be instrumental to improving the delivery of fiduciary trust services, including:

- **Keeping specific management decisions about trust assets at the agency level**. The organizational trust initiative left decision making at the agency level where expertise and knowledge of a Tribe's or an individual's needs is greatest.

- **Creating a Trust Center and staffing it with trust officers.** The realignment created an opportunity for increasing support at the local agencies by adding trust officers and expertise from the Office of the Special Trustee and deputy superintendents from BIA to the agencies.

- **Promoting the idea of Self-Governance and Self-Determination**. The Task Force recommended that the Office of Self-Governance be placed under a new Under Secretary to underscore its importance and expand the ability of tribes to compact outside of the BIA. To address this recommendation, we created a new Deputy Assistant Secretary for Economic Development Policy and expanded the

role of the Office of Self-Governance to include policy development and coordination for all self-determination programs.

- **Creating a new Office of Trust Accountability.** Within OST, a Deputy Special Trustee for Trust Accountability has been created to be responsible for trust training; trust regulations, policies and procedures; and a Trust Program Management Center. In addition, a new division of Review and Audit was created. This division reports directly to the Special Trustee and performs trust related reviews of BIA and tribal fiduciary trust administration to ensure the Secretary's trust principles are followed.

- **Increasing the accountability of the Assistant Secretary – Indian Affairs.** In order to expedite the desire to obtain a high level response within DOI, more accountability was added at the Assistant Secretary-Indian Affairs who already reports to the Secretary.

The Majority of the reorganization effort has been completed. The reorganization of OST was approved on April 21, 2003. Hiring of appropriate personnel to execute the organizational plan will continue though FY 2005. The reorganization of Indian Affairs was considerably more complex, due to the large size of the organization. The initial phase, the reorganization of the Office of the Assistant Secretary – Indian Affairs was completed on July 27, 2003. The reorganization of BIA's Central Office, with the exception of the Law Enforcement Program, took place on September 21, 2003. We expect to have the Law Enforcement program reorganized by March 31, 2004. The reorganization of the Office of Indian Education Programs took place on October 19, 2003 and the realignment of the BIA regional and agency staff took effect on February 22, 2004. This reorganization is a major accomplishment to implementing and moving forward on our trust initiatives.

Initiatives of the Office of the Assistant Secretary – Indian Affairs and the Bureau of Indian Affairs

The role of the Deputy Assistant Secretary – Indian Affairs has been expanded and renamed the Principal Deputy Assistant Secretary for Indian Affairs, who, subordinate to the Assistant Secretary, has line authority over the Deputy Assistant Secretary for Management, the Director of the Office of Indian Education Programs, the Director of the Bureau of Indian Affairs, a new Deputy Assistant Secretary for Economic Development Policy and a new Deputy Assistant Secretary for Information Resources Management. This structure elevates economic development and the federal acknowledgement process to the Assistant Secretary level. It separates the IT functions of BIA allowing for greater oversight and overarching management in these areas. In addition, consistent with the President's management agenda, administrative functions previously performed in a decentralized fashion at the central, regional and agency levels, have been consolidated under the management structure.

Within the DOI structure, BIA retains natural resource trust asset management. The management of the trust functions at the BIA regional and agency levels has been

separated by creating the positions of Deputy Regional Director for trust services and Deputy Regional Director for Tribal Services. The Deputies will report to their Regional Director who, in turn, will report to the Director, Bureau of Indian Affairs (formerly the Deputy Commissioner). A similar structure has been created at the agency level. Seven of our Regions have Deputy Regional Directors for Trust Services on board and we are in the process of adding the additional five positions. Six of the twelve Deputy Regional Directors for Tribal Services have been named and we are in the process of adding the nine additional positions.

At the Agency level, most Agencies will have a Deputy Agency Superintendent for Trust Services, who will manage the trust functions. We have hired three Deputy Agency Superintendents, at Concho, Anadarko, and Pima Agencies, and have advertised for several more. The BIA is working in concert with the OST on this effort, so that we hire Deputy Agency Superintendents and Trust Officers at the same locations and at the same time. We expect to hire approximately 45 Deputy Agency Superintendents.

Initiatives of the Office of the Special Trustee for American Indians

OST continues to be responsible for the management of financial assets and certain reform projects, and maintains its statutory oversight responsibilities. The Secretary has delegated additional operating authority, including line authority over regional fiduciary trust administrators and fiduciary trust officers to OST. These new positions are intended to be filled by skilled trust administrators and staff trained for these responsibilities. A staff of six trust administrators is located in Albuquerque and will oversee a staff of trust officers and trust account managers in or near BIA field office locations.

We are pleased to report that the first recruitment efforts for these positions have been successful. On May 7, 2003, the regional trust administrator Senior Executive Positions were advertised. Five of the six positions have been selected and are going through the hiring process. Two of the five have reported and all are expected to be on-board by mid-year 2004.

Recruitment activity for the trust officer positions also began during FY 2003, and two were hired last year. Twelve more Trust Officers are expected to be hired by the end of March 2004. By the end of FY 2004, we expect to have 45 Trust Officers on Board. A matrix indicating when Trust Officers will be hired and where they will be located is attached as an exhibit to this statement. They will be co-located with BIA agency personnel, or in close proximity to these offices. Trust officers also will be located in urban centers, which have large beneficiary populations. Trust officers will work together with BIA agency superintendents and staff, and will eventually become the first line of contact for tribal and individual Indian beneficiaries for issues related to ownership of trust assets, account balances and trust transactions. Trust Officers and associated support staff will serve as a resource to agency personnel in the performance of fiduciary trust related duties. They also will serve as a primary point of contact for local collections, and ensure that proper documentation for trust transactions and internal controls are followed. The majority of Trust Officer's time is expected to be spent with

beneficiaries, locating beneficiaries, particularly those whose whereabouts are unknown, supporting the BIA probate effort, sorting money put into special deposit accounts, and offering counseling and advice on managing their assets and answering their inquires.

These initiatives place additional emphasis on the implementation of a comprehensive and coordinated audit and risk management function to improve overall fiduciary trust accountability. The Office of Trust Review and Audit is working with agencies to develop a rating system that indicates the level of compliance with fiduciary trust activities and success in meeting the fiduciary responsibilities of the Secretary. It also will indicate those areas where additional oversight will be required.

The organization charts attached set forth the organizational structure for the BIA and OST. This structure accomplishes most of the goals set forth by the Secretary and the 2002 Tribal Task Force.

Congressional Support

We want to thank the Congress for all of the support it has given the Department during the creation and implementation of its trust initiatives, especially with the reorganization effort. On December 4, 2002, the Department submitted letters to the House and Senate Appropriations Committees regarding the Department's intention to reprogram funds to implement the changes. On December 18, 2002, the Department received letters in response from the Committees that were consistent with the Department's intention to reprogram.

In FY 2004, Congress provided $453.4 million for the unified trust budget. For FY 2005, the President's budget proposes $614.4 million, an increase of 36%. Approximately $7 million is proposed in the 2005 budget for BIA and OST to complete the new staffing required by the reorganization. It is important to note that virtually all new staff is at the local level where the need is greatest.

Coordination and Outreach

To begin the reorganization process, Indian Affairs and OST created Trust Initiative Implementation Teams consisting of staff from both organizations. The teams met regularly in 2003 to discuss the status of their respective reorganizations. These meetings allowed for the coordination and communication of internal organizational activities, which greatly aided our reorganization efforts. This strong working relationship that was created through these teams is ongoing. Indian Affairs and OST continue to closely coordinate their ongoing reorganizations and other trust initiatives. Representatives selected by the Tribal/DOI Task Force of 2002, continued to meet with these teams and provide information to Tribes.

In June 2003, Indian Affairs and OST jointly held presentations to explain the reorganization to BIA and OST staff and to Tribal leaders. A total of 45 meetings were held throughout the United States, particularly in the cities where Regional offices are

located and in other cities where there are high concentrations of staff. In fact, three to four regional or agency offices received the presentation each week

Three different types of outreach presentations were conducted. Some presentations were held just with Superintendents. Those meetings were designed to train the Superintendents regarding the reorganization, and to provide them with written information, so that they could in turn educate their Agency staff. Some presentations were held for BIA and OST employees. Those meetings were designed to answer their questions about the reorganization. Finally, presentations were held for Tribal Leaders and individuals in each Region. Information and a schedule for those briefings were widely distributed by the regional offices and to tribes. Unfortunately, in some Regions, the Tribal Leaders chose not to participate with us in discussions about the reorganization, and walked out of the presentations we had scheduled.

Based on the questions we received during our presentations in June, we drafted a Frequently Asked Questions document, which was made available to all Indian Affairs and OST employees and to Tribal Leaders in October 2003. The frequently asked questions and answers are attached to the end of this statement.

In addition to the presentations, Indian Affairs and OST held change management meetings to help their affected staff plan for and deal with the changes in the organization. Both Indian Affairs and OST have also sent periodic emails to all employees, informing them of the status of the reorganization throughout the reorganization process.

Regional Consultations

Prior to implementing the organizational changes at the Regions and Agencies, we wanted to have further discussions with Tribal Leaders about the specific changes that would be occurring in their Regions. We therefore held meetings with the Tribal Leaders from each Region in September and October of 2003 regarding the new structure for their Region. We held the sessions for the Eastern, Eastern Oklahoma, Southern Plains and Midwest Regions on September 24 and 25, in Tulsa, Oklahoma. We held the sessions for the remaining eight Regions the week of October 27, 2003, in Las Vegas, Nevada. We also took written comments from Tribes in each Region for several weeks following the Las Vegas meetings. Following these meetings, we made some changes to the proposed Regional and Agency charts to reflect comments we received at, or after, the meetings.

Pilot Agencies

To begin implementing the trust initiatives, BIA and OST identified two "Pilot Agencies" during 2003. The two pilot agencies were at Concho and Anadarko. In FY 2003, both the Concho and Anadarko agencies realigned staff and added fiduciary Trust Officers as well as Deputy Agency Superintendents. These locations were chosen based on a number of criteria including: the number of beneficiaries served; the high volume of recurring trust income generated; and local workload indicators. The success is already

apparent. A close working relationship is present with the OST and BIA staff. Outreach meetings are now being held by the Trust Officers to become better connected with beneficiaries and more decisions are being made at the agency level. A major challenge is getting reconnected to the Internet and having the information technology systems fully operational so that information can be readily available to all personnel at the agency to solve problems, answer beneficiary questions and assure correct ownership of assets.

OST and Indian Affairs have jointly developed a month long orientation program for the remaining Deputy Agency Superintendents and Fiduciary Trust Officers in order for those agencies to implement the trust initiatives. The orientation programs will be held from April 5, 2004 to April 23, 2004 and the week of May 3, 2004.

Remaining Tasks

Although most of the organizational realignment has been completed, some tasks still remain. As mentioned above, we still need to realign employees in the BIA law enforcement program. BIA intends to have this realignment completed by March 31, 2004.

The Indian Affairs Federal Financial System (FFS) is being modified to reflect the changes made to the organization and staffing. FFS will be fully converted on October 1, 2004, but this project will continue until December 2004 to ensure that FFS is functioning properly.

Several positions are still in the process of being filled. BIA and OST need to complete the hiring of Indian Affairs Deputy Regional Directors, the sixth OST Regional Fiduciary Trust Administrator, Indian Affairs Deputy Agency Superintendents for Trust Services and OST Fiduciary Trust Officers. We anticipate hiring approximately 45 Trust Officers and 45 Deputy Agency Superintendents during the remainder of FY 2004 (including those currently advertised, as discussed above), with the rest to be hired in FY 2005.

Finally, although the Secretary signed the Department manual on April 21, 2003 making the changes effective, we are currently preparing a further revision to some non-fiduciary trust operations in the Departmental Manual for Indian Affairs. The revision will formalize the structure of Indian Affair's law enforcement program, create a separate Central Office Division for Tribal Courts as requested by Tribes, create a separate Central Office Probate and Estate Services Division to focus on reducing our probate backlog, clarify the reporting structure for our environmental programs and make other technical changes.

Organizational realignment, coupled with our other trust initiatives is enabling the Department to provide reliable beneficiary focused services. Implementation of the Comprehensive Trust Management Plan continues with the other initiatives the Department is currently engaged in working on. We are nearing the completion of our review and improvement of our business processes ("As-Is" "To-Be") with implementation to follow; implementing a new land title records system; and improving

our land, natural resource, and trust fund asset management through the reduction of fractional interests.

OTHER TRUST INITIATIVES

"As-Is" – "To-Be"

Following the consultation sessions with the Tribes during 2002, the Department undertook an exercise to determine exactly how fiduciary trust business processes were being performed. Through this effort, various business processes were identified that were required to be performed to meet our fiduciary duties, including determining ownership of the trust asset, accounting for the income from trust assets, putting trust assets to work such as leasing of the land and harvesting timber, supporting the self-determination and self-governance goals of the Department and providing direct beneficiary services. This study was done by meeting with representatives from every BIA region and many Tribes to determine how they conducted these processes at their locations. BIA agency employees, regional employees and representatives from the BLM and the MMS were interviewed to collect this information. After a year's work, over a thousand pages were written that documented the "As-Is" business fiduciary trust processes.

The next step was to develop a "To-Be" Model. The concept was to have many of the same people who provided information for the "As-Is" to meet and offer suggestions on how the process could be improved. Again, meetings were held during all of 2003 to glean information from BIA regions, agencies and tribes to develop a model of best practices that could replace the "As-Is" way of doing business. This has now become the trust initiative for the 21st Century.

The draft "To-Be" Model was completed on September 30, 2003. Since that time, it has been presented throughout Indian country for review and comment. Although comments were due by January 30, 2004, at the request of tribal leaders, the comment period was extended to March 31, 2004. This trust initiative for the 21st Century will be a major improvement in the way fiduciary trust business is done in the Department. Not only is it expected to improve the communications with beneficiaries, but also to streamline the management of fiduciary trust assets and result in a more efficient and effective trust organization.

Title System

The Department is currently working on establishing new technology to maintain a system of land title records using new software that should enable beneficiaries to obtain information regarding their Indian land trust assets in a timely manner. We also are working on ways to invest tribal and individual Indian trust funds to make the trust account productive for the beneficial owner consistent with market conditions existing at the time the investment is made. Through improvements to our record systems, we hope

to be able to communicate better with beneficiaries regarding the management and administration of their trust assets.

Reducing Land Fractionation

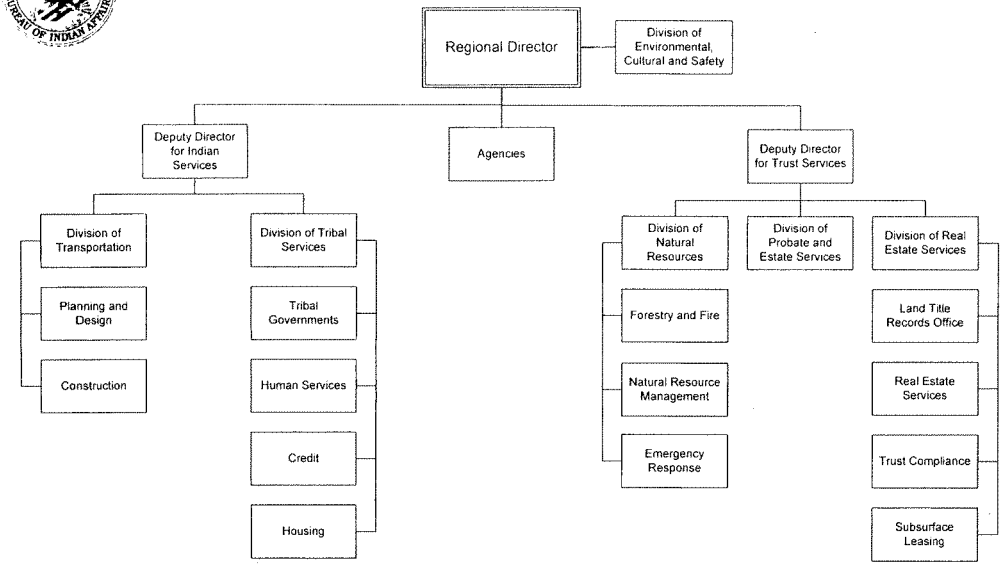
Addressing the rapidly increasing fractionation on Indian land is critical to improving management of trust assets. Purchase of fractional interests increases the likelihood of more productive economic use of the land, reduces recordkeeping and large numbers of small dollar financial transactions, and decreases the number of interests subject to probate. The BIA has conducted a pilot fractionated interest purchase program in the Midwest Region since 1999. As of December 31, 2003 the Department has purchased 68,938 individual interests equal to approximately 42,075 acres. The Department is in the process of expanding this successful program nationwide. We also plan, where appropriate and to the extent feasible, to enter into agreements with Tribes or tribal or private entities to carry out aspects of the land acquisition program. The 2005 budget request includes an unprecedented $75.0 million for this program.

CONCLUSION

These trust initiatives are a major undertaking, and we expect the benefits to be widespread. The Department realized it needed an organization that focused on its fiduciary duties as trustee to both individual Indians and tribal beneficiaries. The completion of the reorganization effort provides a major step forward in our ability to provide an efficient and successful trust management system within the Department of the Interior for our individual and tribal beneficiaries. The completion of the "To-Be" business model will be a major improvement in the way fiduciary trust business is done in the Department. Improving our title systems and reducing fractionated interests will lead to better record keeping, an improved probate system, and a more productive and economic use of Indian land. We are confident that all these efforts, which are part of the Department's Comprehensive Trust Management Plan, will improve the performance and accountability of our management of the trust.

This concludes our opening statement. We look forward to answering any questions the Committee may have.

Eastern Oklahoma Regional Office

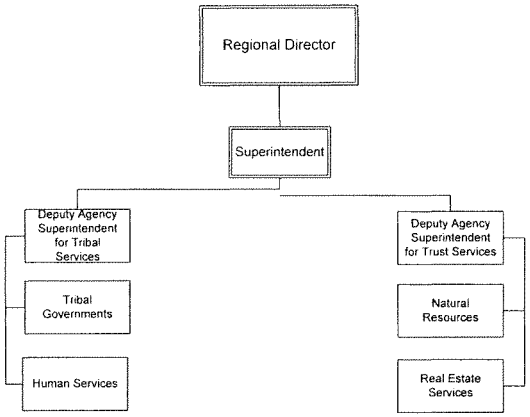


Recommended by
Regional Director

Approved by
Acting Director, Bureau of Indian Affairs

Concurred by
Principal Deputy Assistant Secretary - Indian Affairs

Eastern Oklahoma Region
Chickasaw Agency



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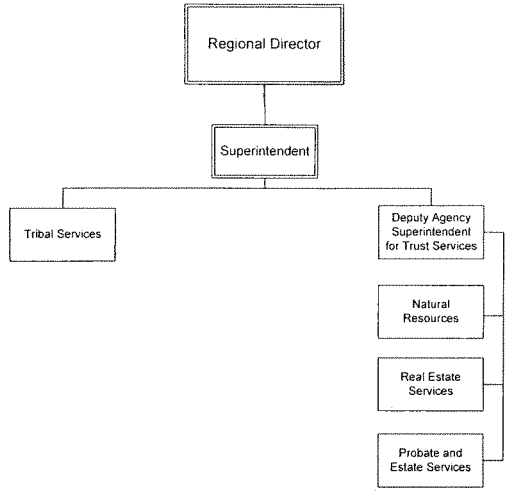
Concurred by
Principal Deputy Assistant Secretary - Indian Affairs

Eastern Oklahoma Region
Miami Agency



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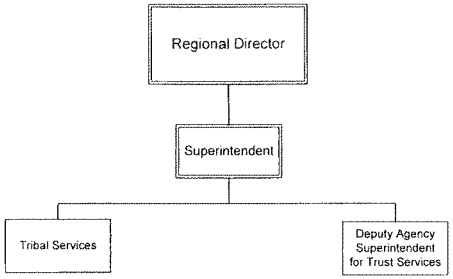
Approved by
Acting Director, Bureau of Indian Affairs

Concurred by
Principal Deputy Assistant Secretary - Indian Affairs

Eastern Oklahoma Region
Okmulgee Agency



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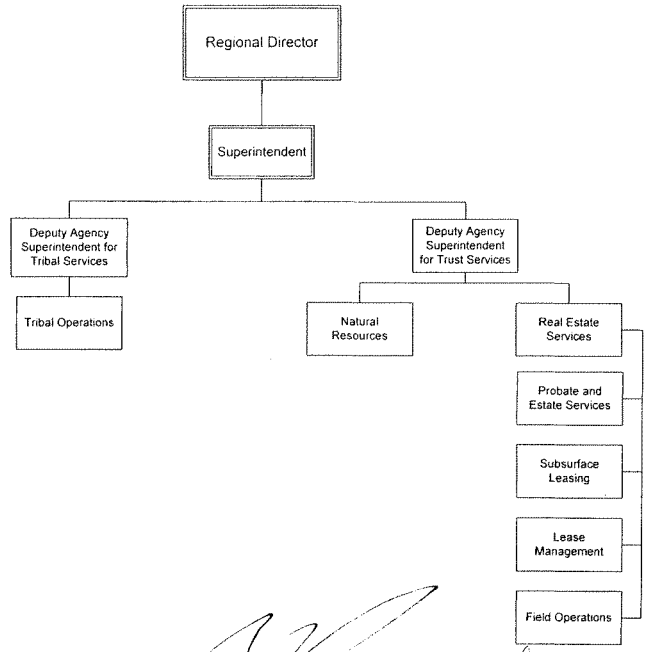
Regional Director

Approved by
Director, Bureau of Indian Affairs

Concurred by
Principal Deputy Assistant Secretary - Indian Affairs

Eastern Oklahoma Region
Osage Agency



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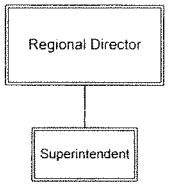
Acting Director, Bureau of Indian Affairs

Concurred by
Principal Deputy Assistant Secretary - Indian Affairs

Eastern Oklahoma Region
Talihina Agency



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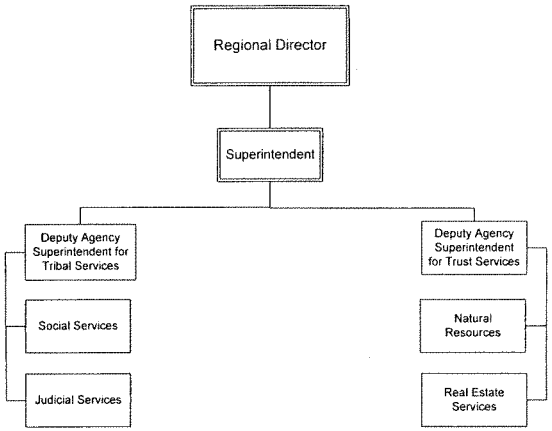
Regional Director

Approved by
Acting Director, Bureau of Indian Affairs

Concurred by
Principal Deputy Assistant Secretary - Indian Affairs

Eastern Oklahoma Region
Wewoka Agency



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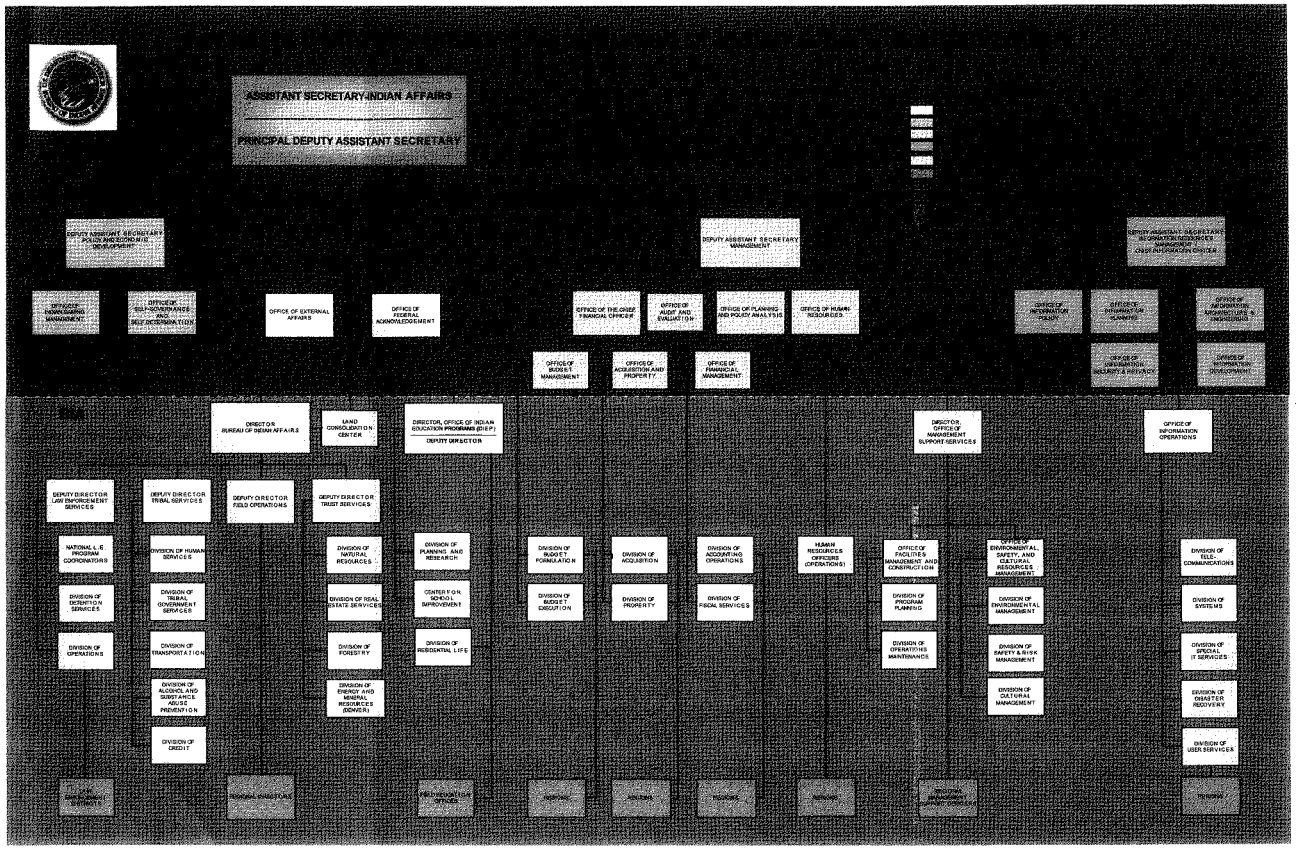
Principal Deputy Assistant Secretary - Indian Affairs


ASSISTANT SECRETARY-INDIAN AFFAIRS
PRINCIPAL DEPUTY ASSISTANT SECRETARY
DEPUTY ASSISTANT SECRETARY POLICY AND ECONOMIC DEVELOPMENT
OFFICE OF DEMONSTRATING MANAGEMENT
OFFICE OF SELF-GOVERNANCE AND SELF-DETERMINATION
OFFICE OF EXTERNAL AFFAIRS
OFFICE OF FEDERAL ACKNOWLEDGEMENT
DEPUTY ASSISTANT SECRETARY MANAGEMENT
OFFICE OF THE CHIEF FINANCIAL OFFICER
OFFICE OF AUDIT AND EVALUATION
OFFICE OF PLANNING AND POLICY ANALYSIS
OFFICE OF HUMAN RESOURCES
OFFICE OF BUDGET MANAGEMENT
OFFICE OF ACQUISITION AND PROPERTY
OFFICE OF FINANCIAL MANAGEMENT
DEPUTY ASSISTANT SECRETARY INFORMATION RESOURCES MANAGEMENT CHIEF INFORMATION OFFICER
OFFICE OF INFORMATION PLANNING
OFFICE OF INFORMATION ARCHITECTURE & STANDARDS
OFFICE OF INFORMATION SECURITY & PRIVACY
OFFICE OF INFORMATION DEVELOPMENT
DIRECTOR BUREAU OF INDIAN AFFAIRS
LAND CONSOLIDATION CENTER
DIRECTOR, OFFICE OF INDIAN EDUCATION PROGRAMS (BIEP)
DEPUTY DIRECTOR
DIRECTOR MANAGEMENT SUPPORT SERVICES
OFFICE OF INFORMATION OPERATIONS
DEPUTY DIRECTOR LAW ENFORCEMENT SERVICES
DEPUTY DIRECTOR TRIBAL SERVICES
DEPUTY DIRECTOR FIELD OPERATIONS
DEPUTY DIRECTOR TRUST SERVICES
NATIONAL LE PROGRAM COORDINATORS
DIVISION OF DETENTION SERVICES
DIVISION OF OPERATIONS
DIVISION OF HUMAN SERVICES
DIVISION OF TRIBAL GOVERNMENT SERVICES
DIVISION OF TRANSPORTATION
DIVISION OF ALCOHOL AND SUBSTANCE ABUSE PREVENTION
DIVISION OF CREDIT
DIVISION OF NATURAL RESOURCES
DIVISION OF REAL ESTATE SERVICES
DIVISION OF FORESTRY
DIVISION OF ENERGY AND MINERAL RESOURCES (DENVER)
DIVISION OF PLANNING AND RESEARCH
CENTER FOR SCHOOL IMPROVEMENT
DIVISION OF RESIDENTIAL LIFE
DIVISION OF BUDGET FORMULATION
DIVISION OF BUDGET EXECUTION
DIVISION OF ACQUISITION
DIVISION OF PROPERTY
DIVISION OF ACCOUNTING OPERATIONS
DIVISION OF FISCAL SERVICES
HUMAN RESOURCES OFFICERS (OPERATIONS)
OFFICE OF FACILITIES MANAGEMENT AND CONSTRUCTION
DIVISION OF PROGRAM PLANNING
DIVISION OF OPERATIONS MAINTENANCE
OFFICE OF ENVIRONMENTAL, SAFETY AND HEALTH RESOURCES MANAGEMENT
DIVISION OF ENVIRONMENTAL MANAGEMENT
DIVISION OF SAFETY & RISK MANAGEMENT
DIVISION OF CULTURAL MANAGEMENT
DIVISION OF FIELD COMMUNICATIONS
DIVISION OF SYSTEMS
DIVISION OF SPECIAL IT SERVICES
DIVISION OF DISASTER RECOVERY
DIVISION OF USER SERVICES

CENTRAL COUNCIL
tlingit and haida indian tribes of alaska
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Testimony on

Bureau of Indian Affairs Reorganization
And
Trust Management

by

Edward K. Thomas,
President
Central Council of the Tlingit and Haida Indian Tribes of Alaska

March 10, 2004

Oversight Hearing of the Senate Committee on Indian Affairs

Greetings from Alaska! My name is Edward K. Thomas. I am the elected President of the Central Council of the Tlingit and Haida Indian Tribes of Alaska, a federally recognized Indian tribe of more than 25,000 tribal citizens. Southeast Alaska is the ancestral homeland of the Tlingit and Haida people. I have been the President of my tribe since 1984. I have been managing federal program contracts and grants since 1975.

In the late 1980s and into the early 1990s I was one of two tribal representatives from Alaska to serve on the Joint Tribal/BIA Reorganization Task Force. My tribe was one of the first to join the Inter-Tribal Monitoring Association (ITMA). I was one of five (5) tribal leaders appointed to the Office of Special Trustee Board after passage of the 1994 Trust Reform Act. I represented Alaska's tribes on the Tribal/Department of the Interior/Bureau of Indian Affairs Trust Management Advisory Council. I am honored to be here today to testify on this very important matter of Bureau of Indian Affairs (BIA) Reorganization and Trust Management.

Federal Trust Relationship to Tribes

The Trust Relationship between the federal government and the American Indian and Alaska Native Tribes is one of the most important legal principles defining the relationship between our governments. The Trust Management system in the BIA is broken. The United States has a moral and a legal obligation to preserve this Trust relationship. The Trust relationship is seriously compromised by the extensive breakdown in the BIA management of the Trust assets.

The problems associated with Trust Asset Management within the BIA have led to this latest effort to reorganize the BIA. As in years past, there appears to be a perception that moving boxes around on the BIA organization chart will substantially contribute to the resolving trust management problems. While there most likely is some need to reorganize the BIA to improve Trust Asset Management, in this testimony I suggest that there are a number of important

questions to ask in making decisions on how to solve the Trust Management problems:

1. Is Trust Management worth fixing?
2. Is the BIA reorganization plan the solution to Trust Management?
3. Are the BIA reorganization and Trust Management efforts being funded through reductions to meagerly funded tribal human services programs?
4. Is it enough to fix BIA Trust Management systems and not the tribal components?
5. Is more tribal consultation needed?
6. Is more legislation needed?
7. Are clearly written and adopted Trust Management standards and principles important?

1. Worth fixing?

It is definitely worth it to fix Trust Management. The federal government must sustain the trust relationship that it has with Native Americans. To do this it is obvious to me that it will require us to concentrate resources on specific areas of Trust Management that are deficient.

2. BIA Reorganization the solution to Trust Management?

There is no question that it will take some reorganization within the BIA to address some of the deficiencies in the management of trust assets. It is also clear that upper level reorganization within the BIA is not related to Trust Management. While it should never be suggested that moving boxes around on an organization chart will solve all management problems it is often necessary to re-define and re-align management responsibilities to properly address deep-rooted problems.

3. BIA Reorganization and Trust Management at the expense of tribal programs?

The federal funding being used to fix the federally-created problems in Trust Management is coming from scarce resources traditionally used to address the problems of needy Native Americans. It is argued that there is no documented "cross-over" showing that money is being transferred out of tribal human services programs to Trust Management needs but it is clear to me that when you have a finite budget where one line item is increased and another is decreased, one is at the expense of the other. In the 2005 President's budget request we see a substantial increase in BIA Reorganization and Trust Management while we see decreases in the Tribal Priority Allocation (TPA) categories of the budget – the place where tribal human services programs are typically funded.

Conversely, when you see one BIA program increasing and the other staying the same or also increasing then one is not at the expense of the other. This is what must happen as a result of this hearing. Tribal programs in the BIA budget must see reasonable increases this year and in some years to come. Tribal programs should not continue to be penalized because of BIA mistakes in trust management.

4. Fix BIA and not Tribal Trust Management?

It is critical that equal attention be paid to the fixing of Trust Management systems that are deficient at the tribal level along with the deficiencies at the BIA management levels. This requires the appropriation of additional dollars to tribes for these purposes. Tribal Trust

Management systems have been deficient for many, many years and are in dire need of funding increases.

5. More Tribal Consultation needed?

Tribal consultation is a very important tool when done correctly and recommendations given by tribal leaders are taken seriously and honorably. Unfortunately, too often tribes are not consulted with in good faith and many of their recommendations are taken as challenges the federal government must defend itself from rather than as suggestions for improvement. It is important that the federal government incorporate a policy of being judicious and clear on where tribal consultation is important and will make a difference. There are certain duties that the federal government must do in a certain way or methodologies required to comply with federal law or court mandates and these issues should not be brought forth for consultation with tribes in a manner that will create false expectations that what tribes say will make a difference. Conversely, there are many things happening in the current reorganization efforts where the BIA would benefit tremendously from tribal leader input.

Another problem we run into in Indian Country is the orchestrated delays in BIA decision making on routine issues suggesting that they can not do anything because they have to first consult with tribes. There are times when it is important to get tribal consultation done in a timely manner and move on to the next order of business.

6. Is more legislation needed?

I am personally not in favor of passing new legislation unless there is a resolve to require compliance with all existing laws for the purpose of Trust Management reform. I believe there are substantial portions of the 1994 Act that would greatly help these problems if implemented in a timely manner. There is no consequence for ignoring Congressional directions in this Act or any other Act.

7. Clear Trust Management standards and principles?

It is vital that tribal and individual Indian trust assets be managed in a professional manner from this point forward. While the federal government advocates that private banks and investment institutes be guided by clear and firm trust managing standards and principles in the management of resources of non-Indians, the Department of the Interior (DOI) forcefully resists the adoption of such standards in managing Indian resources. They worry about government liability. If there was a strong commitment to managing these resources in a professional manner they wouldn't have to worry about liability.

The 1994 Act

Prior to the 1994 Act my tribe was actively involved in the Inter-Tribal Monitoring Association (ITMA) in working with Congress to come up with solutions to the many problems that we were aware of in the BIA in the management of Trust assets. The 1994 Act was tribally driven legislation. This means that it was the tribes, not the Department of the Interior (DOI), who recognized that these Trust management problems were severe enough that they required

Congress to step in and fix it. I must say that many of the questions and problems being discussed today were similar to the ones we were trying to get answers to back then.

I believe the Act as finally enacted was not aggressive enough because I feel these severe breaches of Trust should have been dealt with at the same level of financial and administrative resolve as was the national Savings and Loan (S&L) scandal. You may recall that the federal government set up a quasi-governmental agency with far-reaching authorities to fix the S&L problems and the findings of this agency led to immediate acts of Congress to restore to citizens moneys illegally invested and eventually lost by these S&Ls. Nonetheless, I decided that I was willing to do my best to work with others in finding solutions and taking necessary action to fix these problems. I was honored in being selected to serve on the initial Advisory Board for the Special Trustee.

I understood that in passing the 1994 Act Congress intended that the Special Trustee take the necessary steps to put forth solutions to the Trust Management problems. The legislative history and the findings in the Act support this assertion. The fatal flaw in this approach is that the Office of the Special Trustee (OST) remained under the administrative authority of the DOI Secretary, who made it very clear from the beginning that he did not feel the OST was necessary nor did he support the work being performed under this authority.

Special Trustee Board Composition and Challenges

The OST Board is composed of five (5) tribal leaders and 3 investment bankers with substantial experience in Trust Asset Management. The tribal leaders on the Board are intimately familiar with the legal requirements of tribal and individual Indian Trust Asset Management as well as with the many problems at all levels of the BIA in managing these assets. It is fair to say that the Board needed very little, if any, orientation on the issues of Indian Trust Management.

The Board monitored the implementation of the automated Trust Fund Accounting System (TFAS) as well as the development of the High Level Implementation Plan (HLIP). Although it is clear that the Office of Trust Fund Management (OTFM) is still not up to acceptable standards, the new automated system is a dramatic improvement over what it was before. The HLIP was a plan that had firm dates for completing specific tasks relative to fixing problems in BIA Trust Management. This plan was greatly compromised by then Interior Secretary, Bruce Babbitt:

- Secretary Babbitt refused to sign off on the HLIP unless the tasks relative to the design and implementation the Trust Asset and Accounting Management System (TAAMS) and the BIA Data Cleanup components remained under the direct administration of the BIA.
- The BIA never gave the TAAMS the level of priority it needed. They had seven (7) different people in charge of TAAMS in two years, none of whom had the authority or expertise to get the job done.
- Very little was done on BIA data cleanup unless there were directives from the judge in the Cobell case.
- The BIA never took the initiative to finalize and certify the architecture of the TAAMS even after numerous reminders that timelines have been missed and that the project could

not be properly implemented without certifying the architecture of the proposed system.

- Secretary Babbitt authorized the "roll out" of the Billings component of TAAMS before the certification of the TAAMS architecture which was intended to demonstrate that they were making progress on TAAMS and it ended up, instead, distracting from the work that should have been done to getting the total system running like it was intended to run.
- Requests by the Board to meet with Secretary Babbitt were ignored.
- Secretary Babbitt fired former Special Trustee, Paul Homan, when Mr. Homan pointed out the fact that very little more could be done in data cleanup and TAAMS implementation without total cooperation from all levels of BIA management and a total commitment from Secretary Babbitt to provide the necessary authority to the Special Trustee to require BIA employees to get Trust issues addressed in concert with timelines set for those projects.

The Board has also had difficulty in getting the second Special Trustee to follow-up on our requests or directives:

- A couple of years ago the Board requested that the minutes of our meetings be copied to members of this Congressional Committee on a regular basis. This was not done.
- The Board has authorized the implementation of an "action tracking" form to be used to track administrative action taken on Board action. This form would specify the Board action taken; specify who is responsible for following up on the action and the expected date of completion. The use of this form was never implemented.
- We have requested that BIA employees key to the implementation of the TAAMS project and records cleanup meet with the Board. We have been receiving report after report that BIA employees were behind on these projects so the Board wanted to avoid blaming and instead work together to get the job done. None of these BIA employees were sent to meet with us.
- We requested that the Chief of Staff of this Committee be invited to the Billings TAAMS role out to see that it was deficient and that this was a serious problem. The invitation was not extended.
- As a member of the Board I have asked for specific financial information as to how much it would cost to fully implement the recommendations in the EDS Report and where the money would come from if more money was needed. This was never provided. I am very concerned that if these additional costs are not put forth in the form of DOI budget amendments there would be proposals to take funding from other BIA programs to pay for these costs.
- We requested a meeting with Secretary Norton to discuss our findings and problems encountered with her predecessor. The request to meet with her was never forwarded by the Special Trustee or responded to.

The Board has been very vocal with the Special Trustee and his staff as to our displeasure that project timelines were being violated on a regular basis and that there did not seem to be any

interest in putting these major projects under the direction of highly qualified people within the BIA. The response we got time-after-time was that the BIA didn't do this and the BIA didn't do that but we were never given the opportunity to talk directly to these people who were led to believe were in charge of getting the job done.

I strongly believe that if the last two Secretaries of the Interior would have made a strong personal commitment to implementing the 1994 Act to the best of their ability in a timely manner and if they would have taken all of the advice of the OST Board we would not have to be here today talking about total BIA reorganization.

Reorganization Process and Consultation

The Department of the Interior/Bureau of Indian Affairs policy of reorganizing first and then consulting with tribes once they're done is not right and is very demeaning to tribal leaders. While I understand and appreciate that some of the BIA reorganization is driven by court directives from the Cobell case, I believe that there could have been better participation by tribal leaders in the entire process if there was the proper "will" within the DOI.

To hold a consultation session in Las Vegas for Alaska Natives is insulting. I fail to see why such a session couldn't be held in Alaska. Our people deserve the opportunity to participate in the consultation process just as Native Americans in the Lower-48.

Reorganization in Alaska

I strongly object to having two Regional Director's Offices in Alaska. We don't need two and we can't afford two. Furthermore, the fragmentation of administrative oversight has lead to inefficiencies in the execution of administrative responsibilities. We have seen vacancies go unfilled for as long as a year. We have seen precious unspent balances being called back to BIA Central Office for its needs instead of being used to address the serious social problems facing Alaska Natives.

I strongly disagree with the movement of the Alaska Realty program from Juneau to Anchorage. This is a worthless and wasteful move. We not only can't afford the cost of the move, there is no value to moving the office. It is argued that because there are more realty activities north of Anchorage, it would be more efficient to have the office in Anchorage. When the office was in Juneau the Southeast Alaska tribes did not experience any benefit from it being in our region and we, at Tlingit and Haida, did not benefit from the office being in the same town.

BIA Reorganization at the Expense of Tribal Programs

There is no question that the BIA reorganization efforts are being paid for at the expense of BIA funding for Native American human services programs. Analyses done by the General Accounting Office, the BIA Budget Advisory Council, and the United States Civil Rights Commission all show that this is true. This is wrong-headed and unfair budget policy. The DOI should have been required to do a better job in justifying its reorganization plans to Congress and making requests to have all reorganization costs fully funded through supplemental appropriations. Furthermore and most importantly, DOI should have requested additional funding for the improvement of Trust Management at the Tribe/Agency levels along with the increases requested for its responsibilities in Trust Management.

I thank you for the opportunity to share my views with you on the Bureau of Indian Affairs reorganization activities. I wish you well in your deliberations and I trust you will make the right decisions on the issues affecting our people.

Gunalcheesh! Howa!

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