

THE CURRENT REORGANIZATION OF TRUST MANAGEMENT AT THE BUREAU OF INDIAN AFFAIRS AND THE OFFICE OF THE SPECIAL TRUSTEE

OVERSIGHT HEARING

BEFORE THE

COMMITTEE ON RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTH CONGRESS

SECOND SESSION

Wednesday, May 12, 2004

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**OVERSIGHT HEARING ON THE CURRENT RE-
ORGANIZATION OF TRUST MANAGEMENT
AT THE BUREAU OF INDIAN AFFAIRS AND
THE OFFICE OF THE SPECIAL TRUSTEE.**

**Wednesday, May 12, 2004
U.S. House of Representatives
Committee on Resources
Washington, D.C.**

The Committee met, pursuant to notice, at 10:04 a.m., in Room 1324, Longworth House Office Building, Hon. Richard W. Pombo [Chairman of the Committee] presiding.

Present: Representatives Pombo, Hayworth, Osborne, Renzi, Pearce, Pallone, Christensen, Kind, Inslee, Tom Udall and Mark Udall.

STATEMENT OF HON. RICHARD W. POMBO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

The CHAIRMAN. The Committee on Resources will come to order. The Committee is meeting today to hear testimony on the current reorganization or trust management at the Bureau of Indian Affairs and the Office of the Special Trustee for American Indians.

Under Rule 4(g) of the Committee Rules, any oral opening statements at hearings are limited to the Chairman and the Ranking Minority Member. This will allow us to hear from our witnesses sooner and help Members keep their schedules. Therefore, if other Members have statements, they can be included in the hearing record under unanimous consent.

The purpose of today's hearing is to give members of this Committee an opportunity to examine a major reorganization that is underway at the Bureau of Indian Affairs and the Office of Special Trustee for American Indians. This reorganization is intended to implement a comprehensive approach for reforming and improving trust management on behalf of individual Indians and tribes.

The significance of the reorganization cannot be understated. It affects the ability of the Federal Government to manage its fiduciary trust responsibilities to Indians. One of the most far-reaching lawsuits against the Federal Government over the last decade is one with which we are all familiar, the Cobell Indian Trust Fund case. No one will disagree that reforming and improving trust management in the Department is a necessary part of resolving the Indian trust fund problems.

Reforming the Department's management of its trust duties is not only necessary to prevent another Cobell lawsuit, but to improve the lives of Indians. It is needed to promote more self-governance by the tribes, self-governance which can lead to economic development and economic freedom.

Is the current reorganization launched by Secretary Norton the right approach? I think no one disputes the need for the Department to develop a comprehensive approach to trust management that is in line with the 21st Century standards and expectations. But having met with a number of tribal leaders on this matter, I think it is safe to say that in Indian country, there are strong concerns with the Secretary's plan and many Members here need to evaluate this plan in depth.

I hope the witnesses from the Administration will provide Members with an overview of what started the reorganization, its current status, how it has attempted to consult with the tribes, and what expectations of success are. The Committee will then turn to several leaders in Indian country to share their perspectives with the reorganization and what must be done to improve it.

I would like to now recognize Mr. Pallone for an opening statement.

[The prepared statement of Mr. Pombo follows:]

**Statement of The Honorable Richard Pombo, Chairman,
Committee on Resources**

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**STATEMENT OF HON. FRANK PALLONE, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF NEW JERSEY**

Mr. PALLONE. Thank you, Mr. Chairman. I didn't realize I would be giving an opening statement, but I would be glad to oblige in the sense that I think it needs to be said that I personally, and I know many of the members of the Native American Caucus and on this Committee are very, I would say, insulted by what the BIA

and the Department have done in terms of the way they have handled the whole issue of trust reform, and I don't use the word insulted loosely and I don't mean it in a partisan way at all, because I don't think there is anything partisan about this.

The problem that I see from the very beginning is that I felt that the issue of trust reform should have been primarily handled in total consultation with the tribes and that even though the BIA and the Department claim that they had meetings and hearings, and I heard Secretary Norton endlessly tell this Committee about all the forums that she has had, there was never really any serious consultation or any effort certainly to come to a consensus with the tribes on how to deal with trust reform.

Given that there was a suit out there, the Cobell suit, and clearly the tribes and the national organizations that represent the tribes were not comfortable or didn't feel that they were having any say in terms of what the BIA is doing, I could never figure out why the BIA continued to proceed and every other year come up with a new way of reforming the system at the same time that Congress, certainly this Committee, which was never consulted, and the tribes and the courts were all saying that they shouldn't proceed in this fashion.

It continues unabated. I mean, obviously, every year, you come before, and I am not saying you personally to the panel, but every year, the BIA and the Interior Department put in a budget, massive amounts of money to continue with a reorganization plan that takes money from other important concerns, whether it be education, housing, health care, and says, of course, now that they are negotiating and they are trying to work with the Cobell plaintiffs and the tribes to come up with a consensus. Meanwhile, every effort was made behind the scenes, and we were told that it wasn't true but we know that it was based on testimony before the Committee, that the Department was going to the appropriators or individual Members of Congress to try to get them to move legislation or reprogram money that would thwart the Cobell plaintiffs and what the tribes and this Committee wanted to do with trust reform.

I have to admire your persistence in the sense that you paid no attention to this Committee or really to the tribes or to the courts, but I do think it is wrong and you are going to have a hard time convincing me that you should be proceeding at all with this. I frankly think there should be a total moratorium on the BIA and the Department proceeding with any trust reform until these negotiations with the Cobell plaintiffs and the tribes are resolved, and I think it is very wrong for you to continue with it, to take funding away from other issues that are important to Indian country.

But most of all, Mr. Chairman, I go back to what I said before, which I think it is highly insulting for this process to continue without this Committee being informed about what you are doing, how you are doing it, and who is paying for it.

So I do want to thank the Chairman for having this hearing today because I think this is very important, that they be brought here before this Committee and asked some serious questions about what they are doing. And so again, I want to thank the

Chairman and I believe that we are acting in a bipartisan basis. This isn't Democrats versus Republicans. Thank you.

The CHAIRMAN. Thank you.

I would now like to introduce our first panel of witnesses, Aurene Martin and Ross Swimmer. Ms. Martin is the Principal Deputy Assistant Secretary for Indian Affairs and Mr. Swimmer is the Special Trustee for American Indians. Mr. Swimmer is accompanied by Mr. Henry Ware, the Fiduciary Trust Officer for the Concho Agency in Oklahoma.

I would like to take this time to remind all today's witnesses that under our Committee Rules, oral statements are limited to 5 minutes. Your entire written testimony will appear in the record.

If I could have our witnesses stand and raise their right hand.

Do you solemnly swear or affirm under the penalty of perjury that the statements made and responses given will be the whole truth and nothing but the truth, so help you, God?

Ms. MARTIN. I do.

Mr. SWIMMER. I do.

Mr. WARE. I do.

The CHAIRMAN. Let the record show they all answered in the affirmative.

Thank you very much. Welcome back to the Committee. I think we are all very interested in the subject of today's hearing. It is something that we all have heard a lot about and to take this opportunity to hear from these panels here today, I think will be very informative for the Committee.

So Ms. Martin, we are going to begin with you, and if you are ready, you can begin.

STATEMENT OF AURENE MARTIN, PRINCIPAL DEPUTY ASSISTANT SECRETARY FOR INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR; AND ROSS SWIMMER, SPECIAL TRUSTEE FOR AMERICAN INDIANS; ACCOMPANIED BY HENRY WARE, FIDUCIARY TRUST OFFICER, CONCHO AGENCY, OKLAHOMA

STATEMENT OF AURENE MARTIN

Ms. MARTIN. Thank you, Mr. Chairman. Good morning, and members of the Committee. I would like to thank you first for the opportunity to appear today to discuss the Department of Interior's realignment of trust functions.

As discussed by Congressman Pallone, this realignment has a lengthy and detailed history. We have undertaken tremendous efforts to try to work with tribes in coming to an agreement with regard to the realignment, but ultimately we were not able to and we did move forward with a realignment, trying to incorporate as many of the concerns the tribes had as possible.

What I want to discuss today are the details of the realignment and the highlights of the realignment at the Bureau of Indian Affairs. We have provided Committee staff with several materials and I would just like to go through them for you because I will be referring to them throughout my comments.

First of all, you have a color handout which is the new structure of the Bureau of Indian Affairs. It is the 8.5 by 14 inch document.

LOCATION OF TRUST OFFICERS

Anchorage, AK
 Sells, AZ
 Fort Defiance, AZ
 Salt River-Scottsdale, AZ
 Sacaton, AZ *

Palm Springs, CA
 Riverside, CA

Ignacio, CO

Fort Hall, ID
 Lapwai, ID

Ft. Snelling, MN

Fort Peck, MT
 Crow Agency, MT
 Browning, MT
 Harlem, MT
 Lame Deer, MT
 Billings, MT *

Belcourt, ND
 Ft. Yates, ND
 New Town, ND

Winnebago, NE

Crownpoint, NM
 Shiprock, NM

Pawhuska, OK
 Anadarko, OK (2 positions) *
 Okmulgee, OK
 Pawnee, OK
 Muskogee, OK *
 Chickasaw, OK
 Tulsa, OK
 Tahlequah, OK
 El Reno, OK *
 Portland, OR
 Pendleron, OR

Mission, SD
 Rapid City, SD
 Pine Ridge, SD
 Eagle Butte, SD
 Agency Village, SD
 Aberdeen, SD *

Nashville, TN

Fort Duchesne, UT

Yakima, WA
 Everett, WA *
 Taholah, WA
 Seattle, WA
 Colville, WA

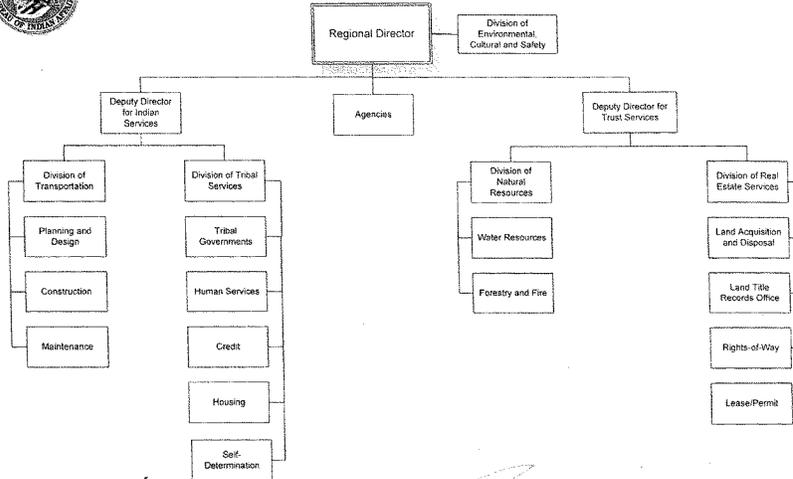
Asland, WI *

Fort Washakie, WY

* Position filled (1 position in Anadarko, OK)



Eastern Regional Office



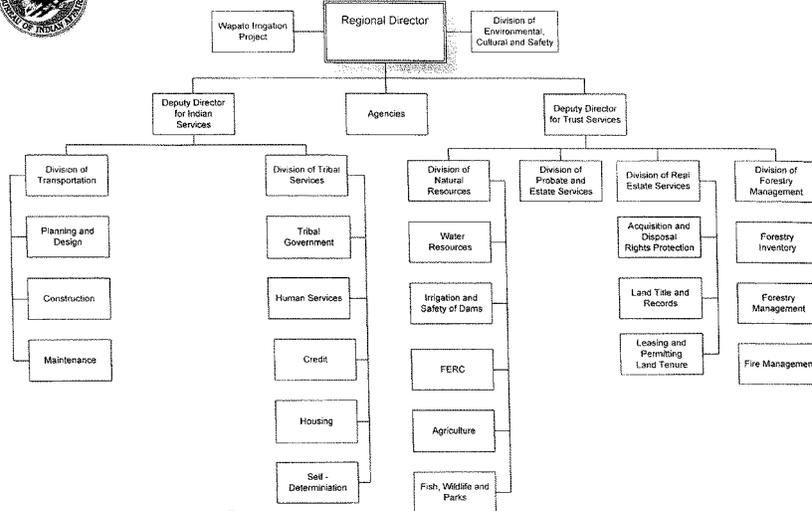
Franklin Keel
 Recommended by
 Regional Director FEB 06 2004

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 Approved by
 Acting Director, Bureau of Indian Affairs

Aurora Martin
 Concurred by
 Principal Deputy Assistant Secretary - Indian Affairs



Northwest Region



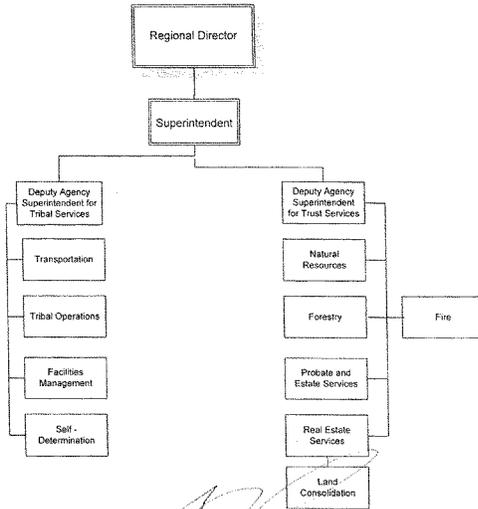
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 Regional Director

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 Approved by
 Director, Bureau of Indian Affairs

Aurora Martin
 Concurred by
 Principal Deputy Assistant Secretary - Indian Affairs



Great Plains Region Fort Berthold Agency



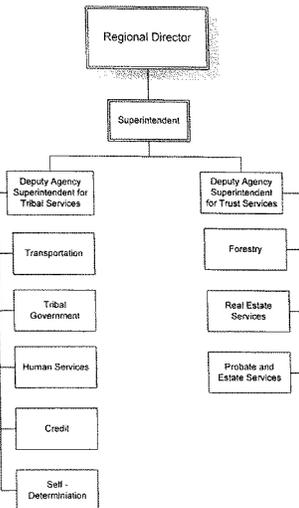
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 Regional Director

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 Acting Director, Bureau of Indian Affairs

Aurene M. Martin
 Concurred by
 Principal Deputy Assistant Secretary - Indian Affairs



Northwest Region Puget Sound Agency

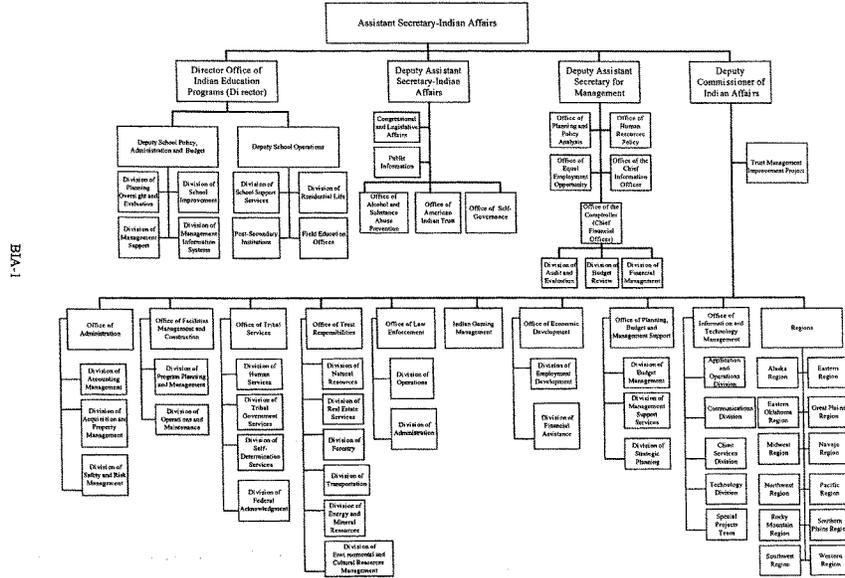


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 Regional Director

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 Director, Bureau of Indian Affairs

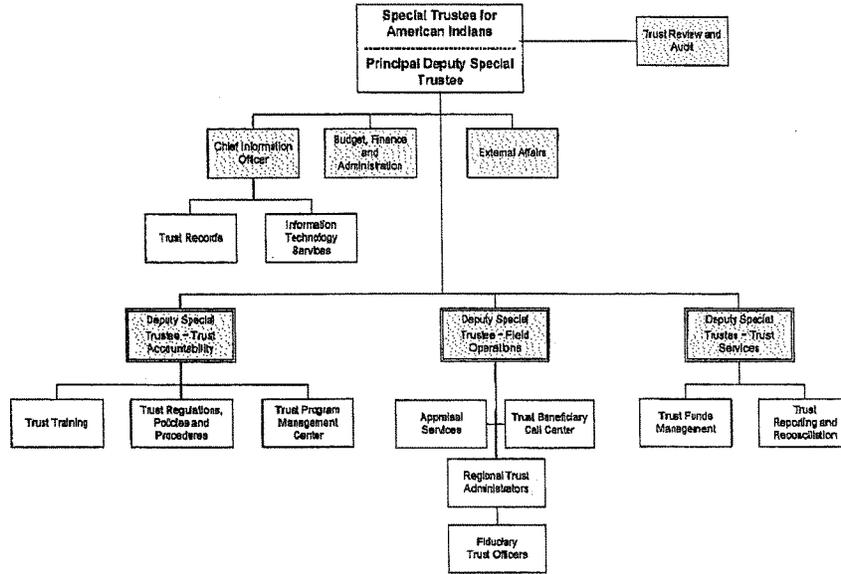
Aurene M. Martin
 Concurred by
 Principal Deputy Assistant Secretary - Indian Affairs

Bureau of Indian Affairs

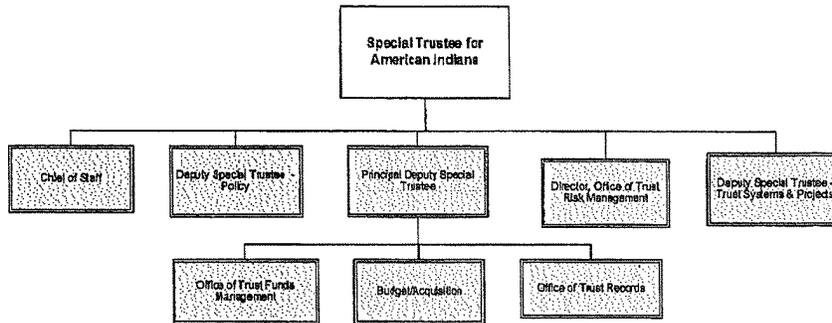


Since establishment of OST, many of the functions that served OST offices and directed trust reform efforts evolved within OTFM. These functions—training, policies and procedures, information technology and records—were reorganized into their own offices. OTFM was also divided between Field Operations staff and Trust Services staff to provide for a separation of duties and more dedicated service to fiduciary trust beneficiaries. The additional staff within the reorganization were Regional Fiduciary Trust Administrators and Fiduciary Trust Officers.

Office of the Special Trustee for American Indians



Office of the Special Trustee for American Indians



Ms. MARTIN. In designing the realignment, the Department sought to achieve two goals, and these two goals were developed both prior to the discussions with tribal leaders and after as a result of discussions with tribal leaders. The first was the improvement of trust asset management at the Department and the second was, after discussing with tribal leaders through the task force discussions, their concerns with overall BIA management. So the second goal was to improve BIA management, as well.

In order to improve overall trust management, we wanted to make sure that trust employees were able to focus on their work and trust services. In the past, throughout the BIA, individual

employees had a tendency to assume duties that were outside of their scope of authority. That is, we would oftentimes have people who were responsible for working on trust matters, like forestry or other resource management issues, end up having to assume other job responsibilities, collateral duties, when there wasn't staff available to do that, things like administrative duties, answering the phone or assuming IT responsibilities. One of the things we wanted to do in doing the realignment was ensure that trust employees do trust work.

We also wanted to make sure that there was focus on serving the beneficiary, be it tribal or individual. In the past, beneficiaries have had problems getting information about their accounts, about their assets, exactly what those were, and they have been having trouble getting that information on a timely basis and we wanted to concentrate on improving those services.

We also wanted to improve the accountability of individual employees and the larger organization itself through better training and ongoing monitoring and review of performance. In going through our workforce planning efforts and our review of our human resources processes, we learned that we simply don't have the resources to train employees, nor have we established a consistent way of reviewing job performance.

We felt also that it was important to keep decisions at the local level whenever possible and to look at ways—over the past several years, we have had a tendency to shift decisionmaking at the central office level and we wanted to look at ways to push some of those decisionmaking processes back out to the regions where they have the best expertise possible to make those decisions.

The other goal of realignment was to improve the management of Indian affairs itself by consolidating support functions, making programs more consistent across the board, and providing effective management controls.

Prior to the realignment, the Director of the Bureau of Indian Affairs, who was formerly known as the Deputy Commissioner, had 22 people who reported directly to him. As a result, he spent a lot of time managing personnel when he should have been dealing with policy issues.

The BIA and the Office of the Assistant Secretary also had responsibilities that overlapped. That is, we would deal with an issue at the BIA and then it would be brought up to central office for the Assistant Secretary to deal with. We wanted to take care of some of those problems.

We also had and continue to have two programmatic structures within Indian Affairs, the Office of Indian Education Programs, which is responsible for 184 schools in 23 States, and the Bureau of Indian Affairs, which was responsible for program issues with regard to the whole other range of issues we handle—social services, roads, trust services, law enforcement.

The BIA provided services to both of those structures, that is, the Office of Indian Education Programs and BIA, and this included human resources, facilities management, budget execution, those types of things, accounting services. There were consistent complaints throughout our organization that the other organizations weren't being served. The Office of the Assistant Secretary would

sometimes have problems and the Office of Indian Education in getting accounting work taken care of, something as simple as that. We wanted to improve delivery of those services, as well.

So in looking at all of those things, we have made a number of changes. With regard to some of the specifics of those changes, I will just go through the chart that we have handed out, the color chart. I will start at the very top with the Office of the Assistant Secretary and the box that is labeled Assistant Secretary of Indian Affairs.

There was historically a Deputy Assistant Secretary who was senior at the Department or at the Bureau of Indian Affairs and who handled duties of the Assistant Secretary when he was out. We formalized that position in the Principal Deputy Assistant Secretary for Indian Affairs. That is my position. That person serves as operational officer for Indian affairs and assumes the duties of the Assistant Secretary when he is not available.

At the very left-hand side of the chart, you will see some orange boxes. We created a new position in the Office of the Assistant Secretary who is responsible, the Deputy Assistant Secretary for Policy and Economic Development, responsible for economic development policies and self-determination policies. That office has also assumed responsibility for the Office of Indian Gaming Management, which was previously located in the Bureau of Indian Affairs. The reason for that change was that that office mainly dealt with the Office of the Assistant Secretary in the past and didn't have Bureau of Indian Affairs operations within the Bureau. So it was simpler just to have it moved to where they did all of their work.

The yellow boxes as you move toward the right are the responsibilities or oversight of the Principal Deputy Assistant Secretary. That is the Office of External Affairs, which combine the former Offices of Legislative Affairs and the Office of Public Affairs. That is just combined into one office now. The Principal Deputy Assistant Secretary also assumed responsibility for the Office of Federal Acknowledgment, which was previously known as the Bureau of Acknowledgment and Research. That also was located previously in the Bureau of Indian Affairs and was moved up because their interaction was mainly with the Assistant Secretary's office, as well.

New lines of authority were created—if you look at the green boxes, moving to the right—for management services. These are the services that are provided both to the BIA, to the Office of the Assistant Secretary, and to the Office of Indian Education Programs. These are the accounting, the human resources services I referred to earlier.

And then finally at the Assistant Secretary's level, there was created a Deputy Assistant Secretary for Information Resources Management. This was highlighted because of the information technology problems that the Department, the Bureau of Indian Affairs specifically, has suffered in the past. We wanted to highlight those issues and make sure that there was a line of authority specifically responsible for dealing with IT issues.

And then moving down, you will see that there are blue boxes. The blue boxes are all responsibilities within the Bureau of Indian Affairs. There were some changes made with regard to the Bureau

of Indian Affairs. Their direct reports were reduced for the Director of the Bureau of Indian Affairs. Two new positions were created there, the Deputy Director of Field Operations, responsible for regional offices, and the Indian Land Consolidation Center, which is responsible for operating the Indian Land Consolidation program. That is the program responsible for purchasing fractionated interests.

The rest of the boxes that you see are actually just extensions of the central office function and how they are organized in the field. So the light blue is at the regional level and the darker blue is at the agency level.

We have—there has consistently been a criticism that this reorganization is very top heavy. I think the reason that there is some confusion about that is the chart that you see really focuses on the organization at the high level, but it is an organization which is replicated at both the regional and agency levels, and, in fact, at central office, there are only four new positions that have been created. The majority of all positions have actually been created out in the field at the regional and agency level. There are 12 new positions at the regions and I believe 47 positions out in the agency offices that are to deal with trusts.

In speaking with some of the staff from the Committee, there was a concern about the detail that has been provided to the Committee in the past about the reorganization and that is why we submitted the organizational charts for the field and for the regional offices. I won't go into much detail. I just wanted to refer to a couple of items.

We have placed Deputy Directors at the regional level and Deputy Superintendents at the agency level whose responsibility it is to oversee and personally handle trust issues at those levels. Those people are the officials responsible for coordinating with the Office of Special Trustee on those issues, for elevating issues of importance, or actually just personally resolving issues if they are not getting handled at the level that they are located, either at the agency or at the region.

We have currently, up to now in 2004, hired four of our Deputy Superintendents at the agency level for trusts. We will be hiring 33 more persons this year. We expect to hire, as I said earlier, about 47 people at the agency level to handle trust duties. We expect to hire 12 at the regional level. We have six trust officers who are Deputy Regional Directors for Trust. I am sorry, we are hiring six more. We have a couple of openings at the central office. The Deputy Director for Field Operations is doing double-duty as Acting Director of the Bureau of Indian Affairs right now.

That is the current status of the reorganization at the Department. We have largely completed the realignment organizationally. There are some tasks that we need to clean up within the Departmental manual with regard to law enforcement services and how that is organized, and also just some coding in our computer system to make sure that people continue to get paid.

But we are largely completed with the reorganization and I would be happy to answer any questions if the Committee has any.

The CHAIRMAN. Thank you.

[The joint prepared statement of Ms. Martin and Mr. Swimmer follows:]

Joint Statement of Ross O. Swimmer, Special Trustee for American Indians, and Aurene Martin, Principal Deputy Assistant Secretary, Indian Affairs, U.S. Department of the Interior

Mr. 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. The first component of this plan was the alignment of trust functions within the Department.

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 an outside contractor.

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;
- The improvement of land and natural resource and trust fund asset management including a nationwide plan for eliminating fractionated interests of land that are burdening the trust and taking resources away from profitable activities;
- The promoting of Self-Governance and Self-Determination; and
- The review and improvement of our trust business processes (the As-Is/To-Be process).

Through the examination of the “big picture” of the fiduciary trust management, the Department created a coordinated and integrated system in which all pieces of the fiduciary 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 sure that our trust initiatives under the plan will result in a positive 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. We are pleased to announce that our efforts to align Interior's staff to undertake our trust mission 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 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, the Court Monitor in *Cobell v. Norton*, and through budget review—and all recommended a multi-bureau consolidation of trust functions throughout the Department. 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 long-standing approach to trust management needed to change. Moreover, this change had to be reflected in a system that is accountable at every level with people trained in the principles of fiduciary 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. The resulting organizational alignment complied with the concepts developed during the consultation process that were determined to be critical to improving the delivery of fiduciary trust services, including:

- Keeping specific management decisions about trust assets at the agency level. This allows greater decisionmaking at the agency level where expertise and knowledge of a Tribe's or an individual's need 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 dedicated to fiduciary trust management;
- Promoting the idea of Self-Governance and Self-Determination. We created a new Deputy Assistant Secretary for Policy and Economic Development reporting to the Assistant Secretary, Indian Affairs. We moved the Office of Self-Governance under this Deputy Assistant Secretary and expanded the office's role to include policy development and coordination for all self-determination programs; and
- Creating a new Office of Trust Accountability. Within OST, the position of 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 fiduciary trust administration to ensure the Secretary's trust principles are followed.

In addition to ten months of meetings of the Joint Tribal Leader/ Department of the Interior Task Force on Trust Reform, there were over 45 meetings held with Tribal leaders in which senior level officials from the Department were in attendance.

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

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 acknowledgment 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 all 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 report to their Regional Director who, in turn, reports 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 six additional positions.

At the Agency level, most Agencies will have a Deputy Agency Superintendent for trust, who will manage the trust functions. We have hired four Deputy Agency Superintendents, at Concho, Anadarko, Pima, and Pine Ridge 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 33 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 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 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. Recruitment activity for the trust officer positions also began during FY 2003, and two were hired last year. We expect to have 50 Trust Officers and support positions on board by the end of FY 2004. A recent advertisement provided a certification list of several candidates. However, due to the difficulty of finding highly qualified candidates, OST plans to engage the services of an executive search firm to support the effort of recruiting fiduciary trust officers. A listing indicating where 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 that 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 a Trust Officer's time is expected to be spent with beneficiaries, locating beneficiaries (particularly those whose whereabouts are unknown) supporting the BIA probate effort, distributing funds put into special deposit accounts, and offering counseling and advice on managing assets and answering inquires.

We now 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 measures our success in meeting the fiduciary responsibilities of the Secretary. It also will indicate those areas where additional oversight is required.

Coordination and Outreach

Once a decision was made on reorganization, 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. The strong working relationship that was created through these teams is ongoing. Indian Affairs and OST continue to closely coordinate ongoing trust initiatives. Tribal representatives selected by the 2002 Joint Tribal/DOI Task Force on Trust Reform met with these teams and provided information to Tribes.

In June 2003, Indian Affairs and OST jointly held presentations to explain the trust initiatives to BIA and OST staff and to Tribal leaders. A total of 45 presentations were held throughout the United States, particularly in the cities where Regional offices are located and in other cities where there are large 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 present the Superintendents with written information regarding the reorganization, so that they could in turn educate their Agency staff. Presentations were held for BIA and OST employees to answer their questions about the reorganization. In addition, presentations were held for Tribal Leaders and individuals in each Region. The regional offices distributed information and a schedule for those briefings to employees as well as to tribes. Unfortunately, in some Regions, Tribal Leaders chose not to participate and walked out of the presentations we had scheduled.

Based on the questions we received during our presentations in June 2003, 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.

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 e-mails 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 consultation meetings with the Tribal Leaders from each Region in September and October of 2003 regarding the new structure for their respective Region. We held the sessions for the Eastern, Eastern Oklahoma, Southern Plains, and Midwest Regions on September 24 and 25, 2003, 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 between the OST and BIA staffs. 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.

Remaining Tasks

Although most of the organizational realignment has been completed, some tasks still remain. 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.

As we mentioned above, 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 33 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 revisions to the Department Manual on April 21, 2003, making the changes effective, we are currently preparing a further revision to some non-fiduciary trust operations. The revision will formalize the structure of Indian Affairs' 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. We are continuing to implement the Comprehensive Trust Management Plan. We are nearing the completion of the 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"

As part of the comprehensive trust reform, the Department undertook a project 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 trust assets, accounting for the income from trust assets, putting trust assets to

work such as leasing of land and harvesting timber, supporting the self-determination and self-governance goals of the Department, and providing direct beneficiary services. We met 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" meet and offer suggestions on how the current 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.

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 31, 2004, at the request of tribal leaders, the comment period was extended to March 31, 2004. This model, now considered the Trust Initiatives for the 21st Century, will be a major improvement in the way fiduciary trust business is performed 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. The final model is expected to be completed by May 31, 2004.

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 record keeping 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 March 31, 2004, the Department has purchased 78,321 individual interests equal to approximately 49,155 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 organizations and private entities to carry out aspects of the land acquisition program. The 2005 budget request includes an unprecedented amount of money 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 organizational alignment 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.

[Responses to questions submitted for the record by the Bureau of Indian Affairs follow:]

**Response to questions submitted for the record by the
Bureau of Indian Affairs, U.S. Department of the Interior**

Follow-up Questions from Chairman Richard W. Pombo

QUESTION 1: BIA's budget is shrinking, while the budget for the Office of the Special Trustee is growing. Are funds used for providing services to tribes being diverted from the BIA into funding the Office of the Special Trustee?

ANSWER: Fulfilling our Trust responsibilities remains one of the Department's greatest challenges. The Department has responsibility for the management of approximately 100,000 leases for individual Indians and Tribes on a land trust that encompasses approximately 56 million acres. Revenue from leasing, use permits, sale revenues, and interest, totaling approximately \$195 million was collected in FY 2003 for approximately 240,000 individual Indian money accounts, and about \$375 million was collected in FY 2003 for approximately 1,400 tribal accounts. In addition, the trust manages approximately \$2.8 billion in tribal funds and \$400 million in individual Indian funds. Interior maintains thousands of accounts that contain less than one dollar, and has a responsibility to provide an accounting to all account holders. Unlike most private trusts, the Federal Government bears the entire cost of administering the Indian trust accounts. As a result, the usual incentives found in the commercial sector for reducing the number of accounts do not apply to the Indian trust.

The increases requested in the Office of the Special Trustee's (OST) budget relate to historical accounting and the purchase of fractionated interests of land. 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.

While increases for these programs appear in the OST budget, funds appropriated for these programs are ultimately transferred to the Office of Historical Trust Accounting and the BIA.

The BIA is working closely with the OST on the Secretary's ongoing efforts to reform current trust systems, policies, and procedures. The BIA has proposed increases totaling \$42 million for trust improvements in the areas of information technology, trust services, probate, forestry, and workforce improvements in the Department's FY 2005 Unified Trust Budget, which incorporates all of the fiduciary Indian trust programs of the BIA and OST.

In addition to the trust improvement increases, the BIA has also requested increases in FY 2005 for newly recognized tribal governments, new and expanded tribal contracting, tribal economic development, the Indian school program, tribal law enforcement, new tribal community colleges, and the tribal school construction demonstration program. From FY 2001 to FY 2004, the BIA's funding grew from \$2.1 billion to \$2.3 billion.

Follow-up Questions from Ranking Member Nick J. Rahall, II

QUESTION 1: Did BIA request that these OST trust officers be placed in BIA Agency and Regional offices? Is there a justifiable need to have both BIA and OST employees in Agency offices? How will this speed up responses to Individual Indians and tribal requests?

ANSWER: The Comprehensive Trust Management Plan is being used to guide the design and implementation of the trust reform efforts. The first component of this plan was the alignment of trust functions within the Department.

In January 2002, the Department launched an effort to develop a comprehensive approach for improving Indian trust 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, Secretary Norton 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 Department's trust reorganization plan is closely aligned with, and is a product of, the insight gained from the intensive consultation process.

Trust officers are an integral part of improving beneficiary services at the local level. The Special Trustee for American Indians and the Assistant Secretary for Indian Affairs jointly agreed on the manner in which the trust officers would interact with the Bureau of Indian Affairs (BIA) staff and the locations where these staff persons would be placed. The BIA staff will continue to manage the land and natural resources. The Office of the Special Trustee (OST) staff will provide an additional resource for working directly with the beneficiaries and will assist BIA in making decisions that affect the fiduciary well-being of the beneficiaries. Co-locating OST and BIA staff at the Agency offices will allow for enhanced communication between the staff and more thorough and efficient responses to beneficiary questions and requests for information.

QUESTION 2: Since most, if not all, agencies have severe backlog problems. For example, in some areas there is a great need for on-site field appraisals not more managers in the office. Please explain why your plan is not top heavy with managers and how you will have enough staffing and budgeting authority to meet the needs of the tribes?

ANSWER: As discussed above, the Department, after extensive consultation with Indian country, felt that decision making at the agency level where expertise and knowledge of a Tribe's or an individual's needs is greatest was an integral part of effective trust management. The realignment created an opportunity for increasing support at the local agencies by adding Trust Officers and expertise from OST and Deputy Agency Superintendents from BIA to the agencies. Although they may perform some managerial functions, we expect them to be providing and improving our "on the ground" service to the beneficiaries.

QUESTION 3: Is BIA planning to use roll over funds for its portion of reorganization and, if so, how will you fund the plan in years to come?

ANSWER: No, the BIA is not planning on using roll over funds for its portion of reorganization. Under the Secretary's approved reorganization plan, the BIA is planning for a total of 104 Deputy Superintendents over a span of several years. To date, thirty-five Deputy Superintendent positions have either been filled or are at some stage of being filled. In addition, OST provided start-up funds to assist with the initial reorganization implementation. The FY 2005 President's Budget includes a request for \$5.5 million in appropriated funds in General Trust Services for filling 25 additional positions.

[Responses to questions submitted for the record by the Office of the Special Trustee follow:]

Response to questions submitted for the record by the Office of the Special Trustee (OST), U.S. Department of the Interior

Follow up Questions from Chairman Richard W. Pombo, House Committee on Resources

QUESTION 1: One criticism of the reorganization plan is that the Office of the Special Trustee will handle certain trust functions even though the Office is only specifically authorized by Congress to conduct oversight of the BIA's administration of such functions. What is the statutory authority for assigning OST its trust duties under the Department's plan?

Answer: In addition to the statutory responsibilities for the Office of the Special Trustee as outlined in the American Indian Trust Fund Management Reform Act of 1994, the Secretary of the Interior has delegated certain functions and operating authority to the Special Trustee. This was in conjunction with the FY 1996 appropriations language.

QUESTION 2: Between the OST and BIA plans, 78 new officers will be added in the field. 45 OST trust officers and 33 BIA Deputy Superintendents for Trust. Who is in charge? When a decision on trust resources is made in the field—for example, approval of a farming lease—does the chain of command go up to the Assistant Secretary for Indian Affairs, or to the Special Trustee? Or both? Will the two really be able to work effectively together?

Answer: The OST Trust Officers and BIA Deputy Superintendents for Trust are expected to work constructively and closely together to address the vast majority of tribal and individual Indian matters at the local level and in a more timely manner. BIA will continue to manage all natural resource trust asset functions, including the approval of leasing activities. OST Trust Officers manage the financial aspects of the fiduciary trust. OST Trust Officers will be a resource to support the BIA Deputy Superintendents for Trust, and will serve as the first line of contact for tribal and

individual Indian beneficiaries for issues such as those relating to ownership of trust assets, account balances, trust transactions and local collections. The chain of command for the OST Trust Officer ultimately ends with the Special Trustee, and the chain of command for the BIA Deputy Superintendent for Trust ultimately rests with the Assistant Secretary—Indian Affairs. In those locations where a Trust Officer and Deputy Superintendent for Trust already have been hired, a close working relationship has developed between the OST and BIA staff.

QUESTION 3: Under the comprehensive trust management plan, who sets the standards that self-governance tribes must meet in managing trust assets under a self-governance compact? How are the standards set?

Answer: Consistent with P.L. 98-638, compacts with self-governance tribes for the management of federal programs are negotiated between the tribe and the BIA or OST, as appropriate. Self-governance tribes must meet the same standards for the management of trust assets as those in effect for the Department. The Department Manual outlines those principles. Standard auditing practices also review accounting activities for proper documentation that supports management of fiduciary assets and timely receipt and disbursement of trust funds.

Follow up Questions from Ranking Member Nick J. Rahall, II

QUESTION 1: Each agency and region has its own needs and requirements. How will placing over 75 BIA and OST trust officers in the field meet the individual needs of Indian tribes? Have you incorporated enough flexibility in your plan to meet tribal needs?

Answer: It is precisely because each agency and region has individual needs and requirements that placing additional OST and BIA personnel in the field is a critical component of this reorganization effort to assure accountability. OST and BIA agency and regional personnel are expected to work closely with tribes and individual account holders so that they can meet their individual needs appropriately and efficiently. One goal of these local BIA and OST personnel is the timely formulation of decisions at the local level, where these personnel will be familiar with any special needs and circumstances that are apparent.

QUESTION 2: As I understand the reorganization plan, there will be some 78 new officers placed in the field—45 OST Trust Officers and 33 BIA Deputy Superintendents for Trust. How will the chain of command work for example when an agriculture lease needs to be approved? How will reorganization speed up the process from how it is handled now?

Answer: The OST Trust Officers and BIA Deputy Superintendents for Trust are expected to work constructively and closely together to address the vast majority of tribal and individual Indian matters at the local level and in a more timely manner. Clarifying responsibilities and providing beneficiaries definite points of contact we hope, in turn, will speed up the process. BIA will continue to manage all natural resource trust asset functions, including the approval of leasing activities. OST Trust Officers manage the financial aspects of the fiduciary trust. OST Trust Officers will be a resource to support the BIA Deputy Superintendents for Trust, and will serve as the first line of contact for tribal and individual Indian beneficiaries for issues such as those relating to ownership of trust assets, account balances, trust transactions and local collections. The chain of command for the OST Trust Officer ultimately ends with the Special Trustee, and the chain of command for the BIA Deputy Superintendent for Trust ultimately rests with the Assistant Secretary—Indian Affairs. In those locations where a Trust Officer and Deputy Superintendent for Trust already have been hired, a close working relationship has developed between the OST and BIA staff.

QUESTION 3: As Special Trustee, how will you meet your important oversight functions authorized under the Trust Fund Reform Act of 1994 now that you have all these additional programmatic duties added on?

Answer: I intend to continue to meet the oversight obligations authorized by statute, and will utilize the new funding and staff provided to perform the additional duties delegated by the Secretary of the Interior to OST. As in any organization, both private sector and government, at some point within the organization we have review, oversight and operations reporting to the principal. The Special Trustee has these individuals reporting through separate chains of command to him.

QUESTION 4: OST's budget is growing rapidly while BIA's budget is shrinking. Over 30% of the OST budget is earmarked for historical accounting connected to the Cobell lawsuit. Where is this funding coming from and how can you assure this Committee and Indian country that funds for trust fund reform is not coming out of other Indian programs?

Answer: Each budget year the Administration looks at the merits of program needs and makes decisions based on this review. The increases requested in the

OST budget for the historical accounting and purchase of fractionated interests of land are consistent with the January 2003 Historical Accounting Plan for Individual Money Accounts filed with the district court and trust fund reform. Funding for all programs must come from Interior appropriations budget, and the appropriations subcommittee addresses the Interior budget within the allocation they receive. In fact, from 2001 to 2004, the BIA's funding grew from \$2.1 billion to \$2.3 billion.

QUESTION 5: BIA has clearly defined rules and regulations setting up its responsibilities and accountability to Indian people. Most of these have been worked out over decades with much input from Indian tribes. OST has none of this. How can those you serve have a comfort level that OST will be accountable to them?

Answer: OST Trust Officers and Regional Trust Administrators will be working with Indian tribes and individual account holders on a daily basis and are expected to develop a constructive relationship with these beneficiaries. OST and BIA are expected to provide full transparency in their decisions to beneficiaries, which will increase their comfort level and ensure accountability. OST is bound by the same trust principles as BIA. OST has established regulations, policies, procedures, inter-agency handbook and Desk Operating Policies in coordination with BIA. In addition, the OST works closely with its Advisory Board pursuant to section 306 of the American Indian Trust Fund Management Reform Act of 1994.

QUESTION 6: Can Indian tribes compact under the Indian Self-Determination Act programs under OST in the same manner they can BIA programs?

Answer: Yes. Tribes can enter into compacts or contracts with OST for trust fund management and/or appraisal functions.

QUESTION 7: Who will have final authority at the agency level an OST staffer or a BIA staffer?

Answer: It is anticipated that OST and BIA at the regional level will work closely together and agree upon the vast majority of trust asset management decisions. If an agreement cannot be reached at the agency level, decisions will be appealed up the OST and BIA respective chains of command, ultimately to the Special Trustee and Assistant Secretary—Indian Affairs, for resolution. This is due to different roles, one being financial and beneficiary and the other being land and natural resource based. The majority of the time we are finding that appropriate delegations are now at the agency level with adequate authority to resolve issues without the elevation to a higher level decision maker.

The CHAIRMAN. Mr. Swimmer?

STATEMENT OF ROSS SWIMMER

Mr. SWIMMER. Thank you, Mr. Chairman and members of the Committee. I appreciate the opportunity to be here today and present some information to the Committee. I will try to be brief, but thorough. I am anxious to hear questions that the Committee might have.

I also want to recognize to my left the Trust Officer, Mr. Henry Ware, from the Concho Agency in Oklahoma. He is one of the first hired trust officers to be placed at the local level and I think he can also enlighten the Committee a lot on the function of the Trust Officer and what they see from day to day as far as their duties and how that is impacting positively the operations at the BIA agency level.

In just a quick review of the trust reform efforts, in 1994, the Trust Reform Act was enacted by Congress which provided for the Office of the Special Trustee. As part of the duties of the Special Trustee at that time, it was to produce a comprehensive trust reform plan that would take all of the various operations of the fiduciary trust, basically where the Federal Government holds the land interest and financial interest of the individual Indians and tribes in trust and manages on their behalf. We were charged with doing a plan for that. We were also charged with preparing an accounting

as provided for in the Act. These two items have been the subject of, primarily the subject of the work of the Special Trustee since that time.

The comprehensive Trust Management Plan was produced. This was done after the consultation on the organizational concepts took place in 2002. We worked through 2002, having meetings with what was called the DOI Tribal Task Force made up of approximately 24 tribal representatives and alternatives and senior management of the Department. That consultation process was completed toward the end of 2002, and 2003 in March, we developed the comprehensive plan. Some of the planning elements had been discussed during that consultation process, including the concept of trust officers and the reorganization concepts that were developed and were included, to the extent possible, in the comprehensive plan.

As Ms. Martin has testified, the organizational alignment was essentially completed last year with the Special Trustee's Office organizing itself with a Principal Deputy and three major categories of effort, one being trust accountability, that would be a group leading the reform, meeting the requirements of the comprehensive plan to help restructure the way that the trust services were offered and all of the business processes, if you will, the management systems, the leasing systems, the financial systems, probate, and all those items tied into the trust, how they would be reengineered to be more efficient and more effective.

The second was in the financial area, and this is an area that the Special Trustee was directed to assume. In 1996 under Secretarial order, they were directed to assume the responsibility of the Office of Trust Funds Management, which had then been in the Bureau of Indian Affairs. The Office of Trust Funds Management at that time and currently is responsible for the investment and accounting of the trust funds that are received from the resources of the land and financial resources belonging to individual Indian people and the tribes. We continue in that road today, and as part of the reorganization effort continue to work in the financial area primarily, that is the effort that the Special Trustee has that they did not have as part of the 1994 Act.

And the third area is in the area of field services, which is the implementation and the deployment of the trust administrators and trust officers.

This is, we think, essential, and it was discussed. It has been discussed at length with the tribes over the past 2 years. The essence of the trust officer is to provide what you would normally see in a private sector trust relationship. You would have a trust officer. If you went to a trust company and you asked them to manage your assets, for instance, financial, land, oil and gas, timber, whatever, you would be talking to a trust officer who would help lay out a plan for you and determine how best those resources might be managed for your best interest.

This is a concept of a trust officer at the agency level, is to work directly with the beneficiaries to let them know what is happening to their trust resources. This is not a position that has ever been there before with the Bureau of Indian Affairs, with the Department or any agency in the Department. In the past, if someone

wanted to know about their oil and gas, they would either go to the Minerals Management Service, to the BLM, or the BIA, or wherever they might go to try to find out what it is. If they wanted to deal with their financial resources, they could go to the Bureau of Indian Affairs. Sometimes they would go to the agency level. Sometimes they may have to go to the Washington level. If they wanted to try to find out what the status of probates are, what the status of their investments are, they would again go to multiple resources.

What we believe is that the concept of a trust officer being there on the ground at the agency allows that information to be provided to those beneficiaries. It also provides a higher level decisionmaker at the agency level so that instead of having either the superintendent or others in the Bureau have to move decisions to a regional office or even to the central office, decisions are able to be made right there on the ground at the agency level. There is no need to go to Albuquerque, as we have heard, or to go to Washington or even go to the regional office because the decisions can be made right there by the trust officer.

The role of the Special Trustee has been discussed many times in many meetings by tribes and there has been a concern that the role of the Special Trustee has been expanded greatly and that all the money, or a lot of the money, anyway, is being moved from the BIA budget to the OST budget. That is simply a mistake. It is not true. It is not happening.

Our budget, as you will see from some of the documents we have submitted, is approximately \$100 million. Our budget does add to that some monies that we do receive through appropriations that are transferred to the Bureau of Indian Affairs. For instance, this year, the BIA will spend approximately \$30 million on the Indian Land Consolidation program, purchasing fractionated interests. This money is coming out of our budget, but we move it directly to the BIA's budget. Likewise, \$10 to \$15 million in information technology resources is again moved from our budget to the BIA budget.

The largest amount of money, I might add, that is being spent in this area of trust today that is different, new money, is in the accounting that has been directed by the court, ordered by the court, and it is an effort that the Department is making to do the historical accounting. It is estimated that our plan for this historical accounting will cost in the neighborhood of \$300-plus million. We have, in fact, asked in the 2005 budget for \$109 million. Of that, approximately a third of that money to move the accounting forward. We had asked for a substantial increase last year and the Appropriations Committee had reduced that in the 2004 budget.

But that money also shows up in our budget. That is in the Special Trustee's budget. I don't consider that our money. That is a Department initiative actually directed by the U.S. District Court. We have little choice but to comply, subject to whatever the Congress may choose to do with that. Or, if our mediation efforts are successful or if there is something else that happens, obviously, that money would not be spent in that manner.

The Special Trustee's Office primarily is engaged, in addition to the financial effort, into the oversight. What we are doing is trying to look over the trust reform effort. We were charged with putting

together not only the comprehensive plan, but the execution of the plan. We have done a major study of all of the trust business processes that I mentioned earlier. We called it the “as is” study. We are moving now into a “to be” phase.

We are working jointly with the Bureau of Indian Affairs, and I think this is the most significant thing that has happened in trust reform in the last several years, is that I consider the Special Trustee’s Office and the BIA to be linked at the hip. We are working together. Whatever money is spent in the Special Trustee’s budget is spent in the BIA’s budget. Whatever the BIA is doing in trust reform is what we are doing in trust reform. There is not an “us” and “they.”

We are moving down this path together and the comprehensive plan allows that to happen. In fact, it directs it to happen, so that when we add trust officers and they add the Deputy Superintendents, they are able to work jointly on all of the issues that are out there, and we will hear from tribes and we have heard from tribes that our members of our tribes have problems getting information. They have problems getting their money distributed to them. They have problems getting their land leased. It is all these things, and that is what the purpose of these Deputy Superintendents and trust officers are there to address.

There are intractable problems and this Committee needs to understand that because it makes our life difficult as it makes your life difficult. The intractable problems stem primarily from fractionation. We have approximately \$4 million interest dealing with approximately ten-plus-million acres of land that are owned by over 400,000 individual Indian people. We have land the size of 80 acres that may—it is not unusual for that land to be owned by 100 to 1,000 individual people. Even though that land interest may be a one-one-thousandth of an interest, for instance, in 80 acres, that interest has to be probated.

Our probate cost for doing a normal, average probate is about \$3,000. We are distributing land interest through that probate that costs us \$3,000 when that interest is worth maybe \$5 at most and sometimes five cents.

These are things that we have to deal with on a daily basis, and not often do the tribes even understand that we are going through those kinds of issues and having to make critical decisions about where we spend our money. Because of that, probate in the past didn’t take a high priority. We got backed up on probates. There are over 20,000 probates that are in backlog status now and we are having to make a major effort to do that, because even if it is a one-one-thousandth interest that is going to go to seven heirs, we have still got to determine who those seven heirs are and distribute the money.

The title system, we are dealing and the BIA is dealing with antiquated IT systems. These systems go back 30 years. We don’t have a title system that can tell us at one glance who owns what property where. We can tell you who owns what property where, but it is on an individual basis, one on one, and we may have to go to four different title systems to do that. That is being brought up and that is a significant cost.

The recruitment—

The CHAIRMAN. Mr. Swimmer, I am going to tell you to wrap it up.

Mr. SWIMMER. Yes, sir. The recruitment and placement of trust officers has been difficult because we have been looking for trust officers that are highly qualified in the area of trust, either through legal or financial experience. Just bringing these people on board is a major effort that we are going through today.

We appreciate the Committee's interest in this and we want to work with the Committee to do what we can to satisfy your concerns about where we are going with the trust reform effort. Thank you very much.

The CHAIRMAN. Thank you.

Ms. Martin, one of the major complaints that I have heard, one of the things that has been brought up repeatedly to the Committee is the level of consultation between the tribes and the individual tribal members and the Department on this reorganization. Can you give me an idea of what kind of consultation process you went through and how did that influence the final recommendation that we are talking about?

Ms. MARTIN. Well, I think that the Department has undergone a tremendous amount of effort in attempting to work with tribes to come to some kind of a consensus vehicle on the realignment, reorganization.

Several years ago, in late 2001, the Department announced its plans to reorganization the Bureau of Indian Affairs with a proposal called BITAM. Prior to announcing that proposal, they had not spoken with tribal leaders and they took the proposal out for consultation with tribal leaders and they unanimously, universally opposed it.

After hearing about this opposition, the Secretary formed a task force that was charged with looking at realignment proposals and making recommendations to the Department with regard to those proposals. They held, I think the list that I looked at was about 40 meetings with the full task force in every region, every BIA region. They held regional meetings to inform tribal leaders about the progress of the task force. But ultimately, the task force could not come to consensus on a vehicle for reorganization and—

The CHAIRMAN. Let me stop you right there. Who was on the task force?

Ms. MARTIN. There were 24 tribal leaders who were on the task force and there were 12 alternates. There were two—basically three people from each region. Two members of the task force, I think are testifying today, Ms. Melanie Benjamin and Mr. Keller George, to name a few—

The CHAIRMAN. And they participated in these meetings?

Ms. MARTIN. Yes, they did.

The CHAIRMAN. And at the 40-plus meetings, all of the members of this task force participated in that, or as many as they could attend?

Ms. MARTIN. It really depended. I think that there were seven meetings, I want to say, of the full task force, and not all of the members always attended all the meetings, but for the most part, they did. They were also attended by some of the alternates. But

then we also had regional briefings and the members from those regions largely attended only the meetings in their region.

Unfortunately, we could not come to consensus on a vehicle. Some other issues were brought into the discussion and discussions broke down. At that point, the Department felt that it needed to move forward with realignment and put together a proposal based on the discussions with the task force and with tribal leaders over time and that resulted in the Departmental manual changes that the Secretary adopted in April of last year.

After that, we felt very strongly that we needed to let tribal leaders know about what the reorganization plans were and we embarked on a process of information sessions. We had about 45 information sessions, 15 specifically for tribal leaders, the remainder for BIA staff.

And then finally, before implementing the reorganization at the regions, late last year, in September and October of last year, I felt it was very important to go out to let tribal leaders know what the plans were for their specific region, present the charts to them, and give them an opportunity to make changes or make comments on the reorganization as it pertained to their region and their agencies, and those were held in Oklahoma, Tulsa, and in Las Vegas in October of last year. There were 12 meetings then.

Then we implemented the reorganization at the field level—

The CHAIRMAN. And with that input that you got in those meetings, did the plan change?

Ms. MARTIN. The overall direction of the reorganization, the realignment, did not change, that is, the—well, with regard to BITAM, we changed and that proposal actually separated trust outside of BIA. After the discussion with the task force, we kept trust in BIA, but separated it out so that it had its own line of authority.

With regard to the fields, we did make a number of changes based on tribal comments, but we did not have a lot of comments from tribes on changing the structure at the field or regional level.

The CHAIRMAN. All right. In looking at your chart, we have two major issues. One is the trust responsibility and the other is the bureaucracy and how difficult it is to get something approved and to go through that process. Isn't there a way to eliminate a bunch of these steps in this thing? I mean, is it absolutely necessary to have this many steps to go through if somebody wants to get something approved?

It seems to me, and maybe you are addressing this, and if you are you can tell me, but there ought to be a way to get a decision made faster on stuff. I think this Committee deals so much with delays and tribes or individual Indians going through years of waiting for an approval on something. Isn't there a way to speed up that process?

Ms. MARTIN. Well, the reorganization doesn't specifically address that issue—

The CHAIRMAN. But it should, shouldn't it?

Ms. MARTIN. Well, the structural. Some of the other things we are doing with trust reform and reorganization deal with that, but there are really two things at issue here. One is that, over time, we have brought decisionmaking more and more to the central

level and we are looking at ways to push decisionmaking back out to the regional level, things like fee-to-trust applications, tribal constitutions, liquor ordinances. Those all come to myself or Mr. Anderson for signature now. They should stay out at the region. We are looking at pushing those kinds of decisions back out so that they don't take so many years.

The other problem, though, is simply a resources issue. We don't have the personnel to process some of the paperwork that we have to complete to get something done, even if it is pushed out at the regional level. For example, one of the problems we have in the Midwest region is fee-to-trust applications and the fact that they take years and years to be processed. Well, part of the problem is—

The CHAIRMAN. I am going to have to stop you. I have gone way over my time. But one of the things I hear all the time is that we don't have enough people to do this. If you didn't take years to make a decision, those people could be making a lot of decisions. But you have got one guy who spends 5 years to make a decision, so he is busy for 5 years making that decision. Why doesn't he just make the decision and go on to the next one? You guys have enough people. Just make the decisions.

It is real frustrating for me. You know, I had one group in here that has been waiting for 30 years for a decision on something and they have been dealing with two people over 30 years. Well, if they had made the decision 30 years ago, they could have made another 100 decisions in the meantime.

You guys need to work on the process that is in place. If you are going to go through all this reorganization, work on the process that is in place so that you make the decisions and get it over with. Don't spend years talking about it. It either works or it doesn't work. It either fits or it doesn't fit. Tell them yes or no and move on to the next decision. If you are going to go through a reorganization, let us get something out of it.

I mean, I know we have got some very complicated and big issues here that you guys are trying to handle and trying to deal with and I respect that and I understand that. But if we are going to go through all of this, let us change the system so the decisions get made.

I am going to recognize Mr. Pallone.

Mr. PALLONE. Thank you, Mr. Chairman, and let me associate myself with your remarks 100 percent.

It disturbed me that Mr. Swimmer claims that the money, or the extra money that is going to OST is not being moved from other tribal needs. Now, I understand that there is not a transfer slip that says, take money from IHS, transfer \$2 million to OST. But the bottom line is that that is what is happening effectively.

I sent a letter, Mr. Swimmer, to you last week and I would ask if I could—it is about the money and how the money is divided, and I would ask unanimous consent to have it included in the record. I would hope that you could respond to it in a timely fashion.

[Mr. Pallone's letter to Mr. Swimmer and his response follow:]

ENERGY AND COMMERCE COMMITTEE:
 ENERGY AND AIR QUALITY SUBCOMMITTEE
 ENVIRONMENT AND HAZARDOUS
 MATERIALS SUBCOMMITTEE
 HEALTH SUBCOMMITTEE
 RESOURCES COMMITTEE:
 FISHERIES CONSERVATION, WILDLIFE AND
 OCEANS SUBCOMMITTEE
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FRANK PALLONE, JR.
 8TH DISTRICT, NEW JERSEY

Congress of the United States
House of Representatives
 Washington, DC 20515-3006

May 6, 2004

REPLY TO:
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The Honorable Ross Swimmer
 Special Trustee
 Office of the Special Trustee for American Indians
 Department of the Interior
 1849 C St., NW
 Washington, DC 20240

Dear Special Trustee Swimmer,

As a Vice-Chair of the Native American Caucus, I am writing to inquire how appropriated funds are being spent with regard to the reorganization efforts being undertaken by the Department of Interior (DOI), and in particular, the Office of the Special Trustee for American Indians (OST).

As you well know, the president's Fiscal Year 2005 (FY05) budget request for OST calls for a substantial increase so that OST can better implement its plan to reorganize the Bureau of Indian Affairs (BIA) trust responsibilities. According to the Administration's request, outlays for OST in FY05 would total \$322.7 million, a \$113.6 million or 54.4% increase over the Fiscal Year 2004 (FY04) enacted amount.

I am extremely concerned that the Bush Administration seeks to pool funds from existing programs in the BIA in order to pay for this increase. Under the President's FY05 budget request the BIA receives a net decrease of \$52 million. More specifically, Contract Support Costs would be decreased by \$2 million, BIA Education would be decreased by \$4.8 million, and Tribal Colleges and Universities would receive a \$5 million cut in funding.

Repeatedly, Tribal leaders have emphasized that the funding needed to correct the problems and inefficiencies of DOI trust management must not come from existing BIA programs or administrative monies. Rather, the Department of Interior should request additional funding from Congress to correct the internal problems that they themselves created through their administrative mistakes. Clean up of federal mismanagement of Tribal trust fund accounts should not be funded on the back of tribes and critical tribal programs.

I believe that increased funding for OST has the potential to be money well spent, but it is an empty promise without clear accountability or a plan set forth to work with the impacted tribes and individuals whose accounts are at stake. Accordingly, I request that you report back to me the details of your office's reorganization plan within 14 days of

receipt of this letter. Specifically, I am anxious to learn how the money appropriated to your office is being spent, and more importantly why you believe it is justifiable to take funds from valuable BIA programs in order to pay for the Department's mismanagement of tribal trust fund accounts. Also, I would like to know what are the overall goals of the reorganization plan? How long do you think the reorganization is going to take? Lastly, Tribes have a wealth of experience in identifying what works and what does not, and I would be interested in learning if you plan to ask for additional input from Tribal leaders with regard to your ongoing reorganization efforts.

These are all valid concerns that Tribes have expressed to me. I feel that you, in your capacity as Special Trustee for American Indians, owe it to the thousands of American Indian for whom you serve to provide them with answers to their concerns.

Thank you in advance for your attention to this important matter. I look forward to your reply.

Sincerely,



FRANK PALLONE, JR.
Member of Congress

UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF THE SPECIAL TRUSTEE FOR AMERICAN INDIANS
WASHINGTON, D.C. 20240
JUNE 8, 2004

Honorable Frank Pallone
House of Representatives
Washington, D.C. 20515

Dear Mr. Pallone:

Thank you for the opportunity to respond to your May 6, 2004, letter concerning the budget of the Office of the special Trustee (OST). I am happy to provide you with some details on the OST reorganization and the activities funded by the OST budget. First, however, I would like to address the following assertions included in your letter:

- The OST budget was substantially increased to better implement its plan to reorganize Bureau of Indian Affairs (BIA) trust responsibilities.
- Funds are being transferred from existing BIA programs to pay for OST increases.
- The Department of the Interior should request new funding to support trust reform.
- OST has no plan to work with Tribes or individuals whose accounts are at stake.

OST Budget

The President's FY 2005 budget for OST does not call for any increase in OST's operational funding. In fact, under the FY 2005 request, OST's operational funds would decrease by 3.24 percent in comparison with the FY 2004 enacted level. This decrease is larger than the 2.24 percent decrease proposed for the BIA. I have attached a comparison of OST's FY 2004 enacted level and the FY 2005 proposed level.

The areas of OST's budget where there are funding increases are the areas where funds pass through OST and are then controlled by other organizations within Interior. Included within this category are the funds for the Office of Historical Accounting. The FY 2005 budget does include a 146.14 percent increase for that office, with funding in the amount of \$109.4 million, to cover the cost of historical accounting ordered by the Cobell court.

Another increase in "pass-through" funding is the increase to \$70 million for the Indian Land Consolidation Program managed by the BIA. One of the greatest prob-

lems facing the administration of Indian lands is the fractionation or continuing subdivision of individual Indian interests in the land that the Federal government holds in trust for them.

With each successive generation the individual interests in the land become further divided and subdivided among heirs, each of whom get smaller and smaller interest in the land. As the number of fractionated interests increase, the cost and difficulty to manage those interests increases each year. As this number of ownership interests grows, the cost of federal resources necessary to undertake accounting and management responsibilities grows accordingly. As these interests pass to successive generations, the estate of the decedent interest holder is processed through the DOI probate process, a quasi-judicial procedure which transfers title and funds from the estate to the heirs. In addition to determining the holdings of the decedent, the Department must track down all heirs of the decedent, and either establish new IIM accounts for them or add interests to their current accounts.

In FY 2004, the Bureau of Indian Affairs (BIA) and the Office of the Special Trustee for the American Indian (OST) are estimated to spend about \$220 million on activities related to fractionation. These costs are expected to grow 6-fold in 20 years, to almost \$1.2 billion annually. Based on the lessons that Interior has learned through a pilot acquisition program, Interior intends to initiate an expanded national program with the requested increase in funds.

Trust reform is one of the Department's highest priorities. We are making real and substantial progress on both reforming our trust management practices and on moving forward with an appropriate accounting. With regard to the issue of "new money" for trust reform, the allocation of funds within the Interior and government-wide budget is ultimately a question for Congress, not the Office of the Special Trustee.

Trust Reform

Interior does have a plan for trust reform. In January 2002, we began a meticulous process to develop an accurate model of our current trust business processes. Through this process, we gained a comprehensive understanding of our old trust business operations, the areas where we needed improvements, the variances of practice that had grown over the years among different geographic regions, and the causes for those variances. Using this knowledge and an examination of standard industry practices in trust management, we are carrying out our Comprehensive Trust Management Plan, which embodies a coordinated and integrated system in which all pieces of trust management function as a coherent whole. We are confident that the goals and objectives of the plan will enable us to provide efficient and effective trust services to Indian country.

On March 31, 2004, the extended comment period closed on the draft "To-Be" Model, the model system under which the Department will operate. As a result of tribal requests, an additional sixty days, was provided for receipt of comments. The final model will represent nearly two years' worth of work. When implemented it is expected to result in notable improvements in the delivery of fiduciary trust services.

With the steady support of the Congress, the Department has made great improvements since 1994 in the overall services provided to Indian beneficiaries. Prior to 1994, no statements of account were sent on a regular basis to account holders. Today, quarterly statements of account are sent to all account holders with known addresses. Prior to 1994, the accounting system used by the Bureau of Indian Affairs was not auditable, nor could it be reconciled and balanced on a regular basis. Today, the trust accounting system in place, Trust 3000, is used by many of the largest trust companies in the United States. It provides the opportunity to reconcile and balance the system to the penny on a daily basis with Treasury, which we do. Prior to 1994, there was no fiduciary trust training provided by or available at the Department. Today, every person involved with fiduciary trust, over 3,000 employees, has had a trust foundations course. Executive-level personnel have taken a course given by the Cannon Financial Institute on the principles of fiduciary trust and the Indian trust. Cannon is the leading trust organization for private sector banks and trust companies. These are just a few of the many changes we have made. We have also recruited new employees with extensive private trust experience, instituted an annual audit, and, as mentioned above, undertaken a total reengineering of our trust business processes.

Trust Realignment

There has been much discussion about the Secretary's realignment of personnel within the Indian programs of the Department. A major element of this has been the concept of placing trust officers at the agency level. This is not a new idea. The

first Assistant Secretary for Indian Affairs, Forrest Gerard, convened a BIA Reorganization Task Force in 1977. That task force included representatives of the National Congress for American Indians and the National Tribal Chairmen's Association. In fact, Mr. Earl Old Person, as a representative of the National Tribal Chairmen's Association, signed the transmittal letter to the Secretary conveying the Task Force's report. Recommendation 23 of the report was as follows:

"The Bureau and Department trust responsibility functions should be strengthened and extended in Washington and the field."

It then went on to specify:

"...Rights Protection units should be established in the field with trust advocates at each agency."

The concept of providing trust officers at the local level should be embraced by the Congress. These trust officers will be the first point of contact for individuals and tribes with concerns related to asset ownership, account balances, and trust transactions. This will relieve the BIA program staff from those duties and will allow them to focus on their primary functions, including providing the expertise necessary for the maintenance of trust assets.

I hope this response serves to assist you in better understanding Interior's mission with respect to trust reform. I would be happy to meet with you personally to discuss these matters further.

SINCERELY,

ROSS O. SWIMMER
SPECIAL TRUSTEE FOR AMERICAN INDIANS

Enclosure

[NOTE: The attachments to Mr. Swimmer's letter have been retained in the Committee's official files.]

The CHAIRMAN. But in the letter, it says that according to the Administration's budget request, outlays for OST in Fiscal Year 2005 would be a 54.4 percent increase over Fiscal Year 2004. At the same time, under the President's budget, BIA receives a net decrease of \$52 million. Specifically, contract support costs are decreased by \$2 million, BIA education decreased by \$4.8 million, tribal colleges and universities receive a \$5 million cut. The list goes on and on.

So I understand what you are saying, that you are not transferring money from these other needs to the OST, but effectively speaking, that is what is happening because of the fact that there is less money for these other things and there is more money going to OST.

I don't want to ask a question about that. I would just like if you could answer this letter maybe in the next few weeks, if possible. I would appreciate that.

What I did want to ask, though, and this is just the one question, Mr. Chairman, I have thanked the former Special Master in the Cobell case, Alan Baleran, who, as I think many of you are aware, brought out the gross mismanagement by the Department of the Interior in the leasing of Indian lands to oil and gas companies. He did an investigative report that said that private oil and gas companies paid Native Americans just a fraction of the amounts they paid private land owners for the right to run pipelines across their property.

Mr. Swimmer, you previously stated that these inequities exist because Indian trust lands will likely be less valuable to utility companies because of the bureaucracy involved in leasing land with

the Federal Government. But it just seems to me that what you are saying here is that the government takes Indian land in trust and with it comes a ton of red tape that devalues the land, and it just seems like it is another example of where the Federal Government fails to live up to its trust responsibility.

So I wanted to ask, considering this case with the pipelines coupled with the overall mismanagement of the trust accounts, what is the benefit of having the Federal Government manage Indian lands? It would seem to me that beneficiaries would be better served by managing the properties themselves, having the tribes manage the properties themselves, maybe with some Federal Government oversight. I mean, we know the tribes have taken over other services, such as health services, TANF. We have had hearings on it.

Wouldn't we have more success if we just allowed the tribes to administer their own trust fund accounts, maybe with some Federal oversight, and manage their own lands? What do we need OST for at all? Why don't we just forget about it, let the tribes manage their own lands. You can have a little oversight. I mean, I listen to this bureaucracy and I am just amazed because it just seems to go on and on and on without any positive outcome that anybody in Indian sees is beneficial to them.

Would you advocate simply letting them manage their own trust funds? What would be your answer to that?

Mr. SWIMMER. I certainly would. In fact, the 1994 Trust Reform Act specifically permits Indian tribes to remove their funds from the trust fund that is managed by the Secretary and to manage it themselves. I have advocated that for many years because I think that they could probably get a better return on it. We are limited in what we can invest their funds in to government securities or the equivalent. With a modest amount of risk, they could probably make 50 to 100 basis points more on their money.

I don't know why the tribes haven't taken advantage of that. There is about \$2 billion that the tribes could take and manage on their own.

In regard to the management of their own resources, the statutes provide that the individual beneficiaries actually do have control. They can tell us what they want to do.

Mr. PALLONE. But what if we did it en masse? In other words, rather than have them individually apply, we just abolish the OST and we just said you are going to have to do it on your own?

Mr. SWIMMER. It is not the OST that does that—

Mr. PALLONE. No, I understand.

Mr. SWIMMER.—Natural Resources in BIA—

Mr. PALLONE. Right. What about if we just did it *carte blanche*? Do you support that?

Mr. SWIMMER. Personally, I would have no problem with that. I think that the Indian community would have a lot of problem with that and you would receive a lot of push-back from tribes because they look at the Bureau of Indian Affairs as the protector more than an obstacle in their resources. As many of us have seen in litigation over this issue, oftentimes, the Department is sued because we allowed individuals or tribes to make their own decisions and that comes back to haunt us. I don't think the tribes would support

that, but if they would, we would certainly support it. I would support it.

Mr. PALLONE. Thank you.

The CHAIRMAN. Mr. Hayworth?

Mr. HAYWORTH. Thank you, Mr. Chairman. Let me thank Ms. Martin, Mr. Swimmer, and Mr. Ware for coming down this morning.

Maybe we are arriving at a point of consensus here, because many of you have heard me talk about this before and Mr. Renzi, now given the realignment of districts, has spent a lot of time with the Sovereign Navajo Nation, as did I before him in what was the old Sixth Congressional District. As I hear the discussion, I go back to what a tribal elder told me at a town hall meeting when he said, "Congressman, as far as we are concerned, BIA stands for 'Bossing Indians Around.'"

I know that is not the intent. There are a lot of well-meaning people, and Ms. Martin, I appreciate the energy it took to deal with something that seems to be a problem that doesn't have solutions, but hearing the comments of the Chairman and my friend from New Jersey, again, it invokes reminiscence of a remark in an earlier Congress from the gentleman who is now the Governor of New Mexico, who used to share the Navajo Nation with me back in the previous incarnation, and that is former Congressman Richardson.

We said, well, here we have yet another reorganization, and I realize you are dealing with the pressures of court cases, and let me thank Secretary Norton and others at the Department who have been serious, in stark contrast to some other folks who said, well, let us just let it ride when we had contempt citations proffered by a Federal judge.

But Ms. Martin, I guess you touched on this before and maybe you can amplify it for me. How does the creation of trust officers in BIA and separate trust officers in OST really differ from the BITAM, or some said the "bite 'em" proposal, which the tribes rejected, which Secretary Norton later renounced? Maybe you can articulate that, but it leads to the second question. Wouldn't it be easier to streamline the services provided and put the other monies into direct services rather than into a lot of Federal salaries, which are typified here by the reorganization plan?

Ms. MARTIN. Well, first, with regard to how this is different from the BITAM proposal, the BITAM proposal proposed to create an entirely different bureau within the Department of Interior which would deal with Indian trust services, and it is significantly different in that the trust function remains in the Bureau of Indian Affairs.

I know one of the biggest fears that tribes had with regard to BITAM was they thought it was just another way to do termination. That is, once you take the trust services out, eventually, the other services would stop being funded and they would never be provided to Indians anymore. That is the first difference.

But what adding the trust people in the regions and in the field does is it puts more bodies out there to do trust services, to provide those direct services to the beneficiaries, and that is our main goal. We want to make sure that things happen out in the field. So I think that is really what our main purpose is here. We like to pro-

mote self-governance. We want tribes to take those things on, but we also want to be able to do what we need to do effectively.

Mr. HAYWORTH. So from the view of BIA, this reorganization gets the people out, whether in Washington, or in our case, gee, we have got to wait on Albuquerque—I think Mr. Swimmer brought that up again in his testimony—because it seems like a lot of times, we are waiting on regional offices.

Again, though, we need a bottom line. How many new employees are being created and what is a rough estimate of the total cost of these new employees?

Ms. MARTIN. Well, for the Bureau of Indian Affairs, there are four at central office here in Washington. There are 12 at the regional offices, 12 regional offices, and then there are 47 in the field at agencies. The rough estimate is between \$12 and \$15 million annually, and that is the cost of salaries for those staff. That is at the BIA.

Mr. HAYWORTH. OK, so \$12 to \$15 million. Forty-seven folks, I guess in the field is what you are telling me, right? OK.

I have got a lot more questions, Mr. Chairman, but I don't know where the clock is. I am probably in my final 30 seconds. I thank the Chair for this indulgence.

We are looking at yet another reorganization, and I appreciate and we have traveled through that before. But we talked about the Self-Governance Act. Allow the tribes that have proven their ability to successfully manage their own resources and stand in the shoes of the DOI to do so. Most often, these tribes had to contribute their own monies to augment those provided by DOI.

An example in my own district, Salt River Pima-Maricopa Indian community. They contract out their trust management system from DOI, and frankly, I have to tell you, I appreciate the attempts, but the Salt River Pima-Maricopa folks are doing a better job. Their system has become a model for not only other tribes, but I believe for the Department as it studies wholesale trust reform.

One example I will leave you with. The tribe can cut checks to allottees in seven to 10 days. The same checks can take months and sometimes a year for the Department to process. One question I will leave with you, and thanks, Mr. Chairman. Why are these tribes being included in any reorganization of the Federal systems when they have proven they are doing as good a job, I think even a better job, than the Department? Why do we see these tribes folded in with everybody else in this reorganization?

Ms. MARTIN. Well, I believe that Salt River is specifically excluded from the reorganization, but self-governance tribes, the reorganization doesn't really affect them because they take their money out of the BIA and they provide those services in the way that they see fit. So the reorganization does not apply to self-governance tribes because they take that money out of the BIA.

Mr. HAYWORTH. Thanks for that clarification. I guess, Mr. Chairman, in closing, we have got an example where if you want to get it done, do it yourself, and I think that may be a point we agree on here across the aisle.

The CHAIRMAN. Mr. Tom Udall?

Mr. TOM UDALL. Thank you, Mr. Chairman, and I thank the panel for being here today. Let me also associate myself with your

frustration, Mr. Chairman, in terms of the decisionmaking over there at the Department and the comments you made earlier.

I also want to thank the Chairman for holding this hearing, because I think that the way the Department has handled this is really an affront to the authorizing committee. As Mr. Swimmer knows, when everything broke down with the task force meetings, you all waited for the Congress to adjourn and then you came over here to the appropriators and went in and reprogrammed this when we were out of town, completely ignoring the authorizing committee. And the first time the authorizing committee has even heard about any of this has just been in the last couple of days. I mean, this stuff has been going on for 2 years. So I applaud the Chairman for weighing into this and asserting some authority in terms of the authorizing committee here.

Now, the issue that I would like to ask you about, first make a little statement about, has to do with consultation. I think, Mr. Swimmer, you know that there is nothing more basic to be done than consult with the tribes when you are talking about a major, major reorganization of the Department, especially when you are dealing with the BIA, which has been the main agency in the government that deals with the tribes and has dealt with the tribes over the years.

This, to me, this consultation that Ms. Martin described here looks to me like a charade and I want to ask you about that, because here you convene a task force, you have 40 meetings. Ms. Martin, your comment was the meetings broke down. I mean, the other side of the coin from—I had constituents that were in those meetings and served in them. They said the Department walked out—walked out. They had the 40 meetings and just rejected everything that was being recommended.

These task forces had very, very specific things that they were asking for which have now been completely ignored in the reorganization. And to just give you a couple of examples, they asked that you not take the programs out of the BIA. They asked that you not cut other programs in the Department. There is now a big education cut of tens of millions of dollars and you are moving money over into this reorganization. They asked for some kind of outside oversight of the Department's activities. None of the things that this task force was trying to get done have been followed.

None of the recommendations have been followed, and that is why I say, and it is probably a strong word to say "charade," but I don't see how you—I think it needs a strong word, because I don't see how you can call this a consultation. You have 40 meetings. You have tribes from all over the country participating. They make all of these recommendations, and then you walk out of the meetings and you go on and do what you are going to do and then you don't even tell this Committee and you go over to the Appropriators Committee and get it reprogrammed and you put out a press release that says, Congress approves historic reorganization plan for the Bureau of Indian Affairs. To me, that is an outright affront to this Committee.

So can you tell me, Mr. Swimmer, if you did all of this consultation, you know, this great consultation where you reached out and you tried to hear from the tribes and what the tribes wanted, why

is there just so much opposition out there to this reorganization proposal? Could you tell me that?

Mr. SWIMMER. I probably can't tell you why there is so much opposition. I am not sure myself. We—

Mr. TOM UDALL. I think it is because you didn't do a consultation. The consultation was a charade. Why would you engage in a consultation that was a charade?

Mr. SWIMMER. Well, it was certainly not intended, Congressman, to do so. As Aurene, Ms. Martin, explained, we did start off and we admitted that shortly before I came to the Department, the Secretary and some folks had decided that a way of dealing with the issues at hand was to create a separate department within DOI, within Interior, to house all of the trust functions so it could be addressed. The court, frankly, had indicated it needed to be.

The first Special Trustee's plan, I might add, was to remove the fiduciary trust, what we have talked about here, totally from the Department and to create something analogous to the Resolution Trust Corporation, where all of the trust items would be taken out of DOI, the Bureau of Indian Affairs, and the Special Trustee's Office and put into a separate agency.

The Secretary believed at that time that the concept of BITAM, which was a separate agency within Interior, would make more sense. The tribes didn't receive consultation on that. As a result of that, I think that was really why the tribes opposed that concept, because they never really heard that concept. And so the Secretary immediately thereafter, in January of 2002, convened this task force and asked for representatives from each of the 12 regions to be available to meet and discuss.

A lot of things did come out of that task force. That was consultation. The first thing that happened was that the tribes came together and presented their plans to the Secretary. There were approximately 40 different plans, maybe a few more than that, that were submitted on how best to reorganization the Department of Interior and the Bureau of Indian Affairs. Those plans eventually were winnowed down to about five.

The essence of the reorganization and those plans was captured in the subsequent reorganization that was done. One of the key points was, we want to ensure that the Bureau of Indian Affairs retains the responsibility for all of the resource management functions in the Department, the oil and gas, land, timber, and those things. The financial side of it would remain in the Special Trustee's Office. That was adopted. There were other things, the assurance that the self-governance tribes would not be impacted, that they would continue to operate, be able to run the programs as they had before.

The things where it broke down were on demands made by tribes—some tribes, not all of them, but some of them—toward the end of the consultation process when we thought we had reached agreement on one of those five plans, and I think that was at our Alaska consultation. The things that were not on the agenda but caused the breakdown were about three items.

One was that a group of tribal leaders said, we want the U.S. Government to give us an unlimited waiver of immunity from suit. We want the U.S. to stand liable for any breach of trust that might

happen and just give us a general waiver of sovereign immunity to sue the U.S. Government. We want these trust principles, these trust standards, common law standards. So any time you violate what we consider to be the duty of loyalty, we can sue.

The other thing was, and it was mentioned, that we want outside control over the Secretary. We want an external agency that says if the Secretary of Interior is not following the mandates of the statutes in administering the trust properly, then this outside agency can, again, hold her accountable, or the Secretary accountable. Well, we have got constitutional issues with that and determined that that was not appropriate.

None of these items had anything to do with reorganization, and that is why we had these task force meetings. We got to the point where we had the reorganization. We thought we had the principles down that the tribe wanted, and we felt that we went forward with that after these consultation sessions to put that together.

We then went back to the tribes in multiple meetings at all of the regional offices, sending out newsletters, sending out information, inviting the tribal leaders in to talk about this. Frankly, I think that the organizational alignment that was done, which did not cost a great deal of money—as Ms. Martin explained, they are spending about \$15 million on new employees and about the same amount in the Special Trustee's Office—but what we achieve in this organization is tremendous. It is putting decisionmaking at the agency level. It is improving the management of the natural resources, trust resources.

I just feel strongly that we believe that we did achieve through those consultation sessions in 2002 what we felt the tribes and what we heard from the tribes that they wanted in the ultimate organization within these agencies.

The CHAIRMAN. The gentleman's time has expired.

Mr. Rehberg?

Mr. REHBERG. Thank you, Mr. Chairman, and thank you for your outrage, and to Mr. Udall, yours, as well. There is an old joke about the definition of a bureaucrat is a Democrat that has a job that a Republican wants, and sometimes you feel that way when you finally get a Republican Administration that can't do anything but create another bureaucracy. It certainly does make you angry.

I have the advantage, perhaps, over some of my colleagues of having served in the executive branch as a Lieutenant Governor in the State of Montana and have had the experience of reorganizing many agencies and trying to fix problems. And what I find unique or perhaps indefensible on the part of this reorganization, and certainly you can label any prior Administrations that haven't solved the problem and prior Congresses, but this is our opportunity to change it.

My question to you, Mr. Swimmer, is did you bring business into this at all? Did you ask anyone outside of government for any advice as to how to set up an agency that can, in fact, manage this kind of a problem? Ms. Martin, I would ask you the same thing. First of all, what is your background? Are you outside of government, come in to save the Bureau of Indian Affairs from themselves, or are you from within, trying to create the same govern-

ment solution to the same problem that has existed since the 1800s?

Mr. SWIMMER. Is that addressed to me?

Mr. REHBERG. Yes. First of all, what is your background? Are you from government or from business?

Mr. SWIMMER. It is a little bit of everything. I started in 1967, practicing law in the State of Oklahoma. I went into the banking business in the early 1970s and became Principal Chief of the Cherokee Nation of Oklahoma in 1975. I served there for—

Mr. REHBERG. OK. Then let me ask you, from a business standpoint, would you run a business the way this agency is being run now?

Mr. SWIMMER. Absolutely not.

Mr. REHBERG. Then I guess the second question is to Ms. Martin. I would ask your background, as well. Do you come from business or do you come from government?

Ms. MARTIN. I come from mainly government. I graduated from law school in 1993, represented the Oneida Tribe of Indians of Wisconsin for 6 years before moving to the Senate to work for Senator Campbell.

Mr. REHBERG. I respect the desire to bring the tribes in, because that is important. You have got to have ownership by the people that are truly affected. Did you bring anybody else into the discussions on the structure so that you could create a situation that could deal with the fractionalization, because I don't find any recommendations coming to us to solve the problem, and the problem is the fractionalization.

When we tried to deal with the same exact issue in Montana, albeit on a much smaller scale. The same issue of fractionalization of mineral rights came up and we didn't just look for a government solution. We went back and said to business, what would you do to try and change it? They made tremendous recommendations to the State Legislature and to us in the executive branch to fix it.

What have you guys done to bring things to Congress, because we don't deal with this other than we have oversight hearings. We need ideas from you. Have either one of you brought ideas forward to us to deal with the fractionalization issue?

Mr. SWIMMER. Do you want me to do that? The fractionalization issue has, in fact, been addressed, is being addressed currently by the private sector. We have hired several months ago, a year ago, Booz Allen to study the issue and they have been working with the BIA lead person on fractionalization to see if there are some solutions.

We do have some proposals on the table for Congress. Right now, they are being considered in the Senate. I believe the Senate Indian Affairs Committee is bringing forth a bill that will help on some of the structural issues that are dealing with fractionation. But tied into fractionation, of course, is the probate issues, the title issues, a lot of other things that have to be considered.

We are burdened by statute on fractionation. Right now, the solution to the fractionation is to purchase those fractionated interests and then turn them back to the tribe, in essence, re-tribalize those lands. That is, right now, the interim solution. As you, I am sure, know, have—Congress has helped in the past and tried. We

tried to escheat small interests and the Supreme Court said you can't do that, so we have gone back to trying to pay for these very small interests and purchase them so that we can have tracts of land back under a single ownership of the tribe, make it a lot easier for us to manage or the tribe to manage.

In terms of private sector support also in our reengineering of the business processes that we have gone through in the last couple of years and are getting ready to go through now, the adoption of those, we have invited two private sector trust companies. We talked to probably five private sector trust companies about how best to set up a trust organization and whether or business processes that we go through now in leasing land, collecting money, investing money, whether these make sense and how they would change it, and then we try to look at that compared to what we can and can't do.

For instance, I mentioned on the investment, we do have limitations on what kinds of investments we can make with the trust money. It can only be—

Mr. REHBERG. Mr. Chairman, could I ask one other quick question? I have a background in banking, as well, and so I clearly understand the concept of accounting, computers, and government audits.

So my question is, if your computers are out of date, don't come back to us and ask for more computers. Why don't you contract the service out? There are entities that are available that can do this so much faster and better than you ever could possibly do within the government. For those of us who own stocks and have fractionalization, as well, we may have ten stocks in Coca-Cola. That is a pimple on their back, and yet they can figure out how to get hold of us. Why don't you contract that service out with a private entity?

Mr. SWIMMER. Some of that work is, in fact, being done. When the Special Trustee's Office was charged with assuming the accounting responsibility for the trust fund and the throughput of the money, the Special Trustee did go to the private sector, a company called SEI, and they now have working for them basically the major trust system that is used by private sector and we call it the Trust Funds Accounting System, or TFAS. It is a system of the private sector managed by the private sector. It works very well. We are able to account. We balance to the penny every day. We are able to—someone mentioned that checks get paid out by some tribes in 7 days. We pay out within 24 hours of receipt of the money.

So it is working quite well, and I think that the same concept is being adopted by the BIA in trying to bring other systems up that they have to have to replace their legacy systems. In fact, I know it is. The title system again is from the private sector and we are looking at a realty system and a probate tracking system and those kinds of things. They are all being contracted by the private sector.

Mr. REHBERG. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Udall?

Mr. MARK UDALL. Thank you, Mr. Chairman. I wanted to acknowledge, Ms. Martin and Mr. Swimmer, you have done some-

thing that rarely happens on this Committee which is to create unanimity. This Committee normally goes at issues hammer and tong and we seldom agree. But today, you hear across party lines and on different sides of the dais grave concerns about what is unfolding and what has unfolded in the past.

In saying that, I understand you all are working hard and doing everything you think that we can possibly do, but Mr. Swimmer, when I hear you talking about an intractable problem, I then wonder if this Gordian knot has to be sliced by some other government agency or some other effort. I did, I think, hear you suggest a few minutes ago that possibly some legislative approach may be necessary, and I have had conversations with my colleague, Mr. Hayworth, and my colleague, Mr. Udall of New Mexico, and Mr. Renzi and others about our feelings of frustration and that at some point, with 100-plus years of this situation, we are going to have to step up and solve it.

We spend enormous amounts of money and time just trying to understand, as my colleague, Mr. Rehberg, just pointed out, what the accounts look like. At some point, all of us have to be held accountable by the American people for the amount of money that has gone out the door, not to the tribes and not to the individuals but to our friends in the legal community and other administrative undertakings.

In that context, I wanted, if I could, just to talk a little bit about a bill I introduced last year that deals with the Interior Department's handling of trust accounts. The Ranking Member of the Committee, Mr. Rahall, cosponsored it, and probably it is also worth noting that in the Senate, the bill was introduced, an identical bill, by Senators McCain, Daschle, and Johnson. Are you familiar with the legislation that has been introduced, the McCain-Daschle-Johnson bill?

Mr. SWIMMER. It has been some time since I did review it, Congressman. I think it was last year, and I am not familiar with the conditions of it.

Mr. MARK UDALL. If I might, I would like to ask you a couple of questions. Before I do that, on the general theme of the bill, it would make some changes in the organizational structure of the Interior Department. It would also do two other things. It would spell out the standards that would apply to the discharge of trust responsibilities, and it would, second, set up a commission to review the Federal Government's handling of the trust responsibilities and submit a report and a recommendation to Congress and the Administration. Do you have a comment on any of those three pieces of the legislation?

Mr. SWIMMER. On the first, on the standards, we believe that the standards are pretty well set forth in statute. There are thousands of provisions that apply to the trust that give us direction on what we have to do. Any time we see that there is a gap in those duties, then we can apply common law standards to fill those gaps. I am not sure that we need a lot more direction on standards.

I am sorry, what was the—

Mr. MARK UDALL. Let me ask you, if I could, to focus on some of the specific standards and see if you would agree that they would be appropriate. The bill says that the Interior Department

should protect and preserve Indian trust assets from loss, damage, unlawful alienation, waste, and depletion. Would you agree with those?

Mr. SWIMMER. Yes. We have that by statute now.

Mr. MARK UDALL. How about a second set of standards. The Interior Department should ensure that any management of Indian trust assets promotes the interest of the beneficial owner and supports to the maximum extent practicable, in accordance with the trust responsibility of the Secretary, the beneficial owner's intended use of the assets.

Mr. SWIMMER. For the most part, I think that is appropriate. In the trust world, you get into a lot of issues between beneficiaries that may—taken in the context of trust law, that is a standard that is probably acceptable. Where we have conflicts with joint owners and individuals and tribal owners in the same plot of land and we have to make decisions that are in the best interest of both parties.

Mr. MARK UDALL. The bill also says, third, that the Interior Department—this is standards—should promote tribal control and self-determination over tribal trust land and resources without diminishing the trust responsibility of the Secretary. Do you see a problem with that?

Mr. SWIMMER. I don't see a problem with that, but it does present the conflict because obviously if the tribe is given the full control over the asset and the Secretary still have to approve what the tribe has done, then it does leave the Secretary responsible for decisions that she or he has no control over. So it can be a problem.

I like the first part. I am not sure I like the second. And we do—are very much in agreement on the self-governance. We do encourage that and will continue to do so.

Mr. MARK UDALL. If I might, Mr. Chairman, I have other questions that I would like to extend to the witnesses for them to answer outside the Committee hearing today.

And again, I want to thank you for holding this hearing. I want to associate myself with your comments and commitment to solving this and also your frustration. I think enough is enough, and maybe this is something the whole Committee could work together on solving with your leadership, my cousin's leadership, Mr. Hayworth, Mr. Renzi, and others who are so intimately involved with this.

The CHAIRMAN. We will leave the record of the hearing open to allow written questions to be submitted to the witnesses.

Mr. Renzi?

Mr. RENZI. Thank you, Mr. Chairman. I am not going to join in the chorus today on the frustration because I think Ms. Martin, as far as my experience goes, I am going to hold back and show you patience and deference, because the personal experience that we have had in my office has been one of a first-class work ethic.

We came to you within 30 days with a problem of a school that the roof had collapsed. You found shelter for those children and we will now have a new school, have five new schools on Navajo, both Republican and Democrat districts. We will have a new hospital for the San Carlos, who had children with abscessed teeth and with disease that were 30 days in seeing. I can normally be a pretty

tough guy but I am going to show you deference and patience because your work ethic has been phenomenal.

We were up on Navajo Nation with a bipartisan committee, Jim Matheson out of Utah, and we had a good time going through all of the different kinds of issues that are affecting Native American Indian housing. One of the things that came out was the fact that there is a backlog of 113 staff years as it relates to title searches on trust land. We talked to banks and we talked to Realtors. We talked to people in the housing industry who typically will close land that is in fee title, but when it comes to closing or going through the escrows or the title searches as related to trust land, they are looking at a 2-year backup.

Now, 113 staff years at the BIA, even though you guys have done a decent job of decentralizing that, I am told, and it goes down to the regional offices, means we would have to hire 113 people to get it done in a year, just to get it done within a year, cleaning it all up.

In addition, we have got this issue that was talked about earlier that I think Mr. Pallone talked about as it relates to economic development and what I call this business site leasing approvals, which is even over 2 years. We are seeing a two- to 3-year backlog as it relates to economic development, small businessmen and women.

We had a situation up on the Navajo Nation. An individual had the money to open a Denny's restaurant. It took two or 3 years to get the business site leasing approved on trust land so he could open the restaurant, hire Navajos, and it is really the only restaurant up there near Window Rock that we all go to.

And so I would ask, please, and give you a moment here to talk about the improved effectiveness, the improvement for efficiency that you see, particularly within the area of economic development, and I am guessing here in the Division of Real Estate Services, which I am thinking is where this title search and the backlog will be.

Ms. MARTIN. Thank you for your comments, sir. With regard to title searches specifically, we are talking today about the restructuring of the BIA and OST, but there are also a number of other projects. We are changing our processes and we are trying to improve our systems, make them more modern.

One of the problems we have with title searches is we have to update title when we have a probate and we also have to, when we have a probate, we actually have to check all 12 regions separately to find out if title is current because of a probate. So it takes a long time to do a title search. We are trying to improve our system so that we have one central system so that when we do a title search, we just have to go to one computer terminal and do that title search. So that should significantly shorten the amount of time that that takes, and we expect to roll that system out within the next 15 months. It is in the process of being rolled out and will be complete in 15 months.

With regard to business leases, we are trying to improve that process, as well, make it easier to do business leases, to push those decisions out to the field so that they don't have to come to the central office or take as long as they take now.

Mr. RENZI. I appreciate your comments. I am going to hold off and look forward to seeing the new rollout on the technology. I would lend my position in support to the idea that at some point, we are going to need to turn over, within the idea of self-determination, the idea of economic development, business leasing approval, I think, to the Native American people themselves at some point, even if it is gradually so there isn't a real shock there. I think it is something we have to work toward and I appreciate your comments and your hard work especially.

Ms. MARTIN. Thank you.

The CHAIRMAN. Mr. Inslee?

Mr. INSLEE. I have no questions.

The CHAIRMAN. Mr. Pearce?

Mr. PEARCE. Thank you, Mr. Chairman. I would express similar frustrations on the decisionmaking process. I think that issue had come up previously and would return to that.

The tasks, I know, are just exceptional, and though I don't agree with all the findings that we are seeing here, I would tell you that, Mr. Swimmer, when you make your comments about the unreasonable request for immunity, unlimited right to sue, outside control over the Secretary, I think you will find me supportive on your position there, even though I have got some observations about the whole process that I think are applicable.

The Mescaleros are in my district and they had submitted in October and November of last year about seven pages of concerns about the changes, and those were not addressed and I would appreciate it if you could address these, Ms. Martin. It gives the perception that the opinions were not listened to by the Native Americans, and these are not those unreasonable requests that you are referring to. These seem to be balanced concerns.

One of the concerns that they express is that this reorganization is going to require that the timber sales go into trust rather than tribal services, and I will tell you that the Mescaleros have been my example to the Forest Service of what to do in the forest that they are exceptional. And so when the crown fires have been raging in New Mexico, they get to the Indian lands and they drop down and burn on the ground because they have done properly. And yet we are going to take that timber sales department away from them. Right now, if my understanding is correct, they have a timber sales department of two, and in the same area, the Forest Service has 20, so you are going to undo the very positive thing that they are succeeding at and that concerns me greatly.

Also, the expression that they have removed themselves out of the management plans, they have taken their funds or whatever out and so it looks like the fiduciary Trust Officers are going to be sent to them anyway even though they don't have any disbursements. So those are problems that they have expressed.

I guess the Offices of Trust Services and Tribal Services, the two new Deputy Superintendents that appear to be placed out with the tribe, the tribe has expressed that they feel like they are doing many of the management things OK. They need more things on the worker bee level and they wonder if there is any flexibility in your program here.

So those are my concerns. If you would address those, I would appreciate it.

Ms. MARTIN. With regard to the timber sale issue, timber sales were always in trust, so I don't know that that necessarily would have been moved, but I will look into that specifically.

I will let Mr. Swimmer address the Trust Officer question, but with regard to the Deputy Superintendents, those people are expected to perform some management activities, but we expect them to be hands-on in resolving beneficiary concerns. So they should be dealing with people every day and being hands on with regard to solving problems, also coordinating with any Special Trust Officer who might be located in the area. But we also at some point expect those, if they are compacted or contracted by the tribes, to be able to be compacted or contracted, as well.

Mr. PEARCE. Your information that the timber sales have always been in trust is in direct opposition to what my staff has said, that they show those to previously have been in travel services, that the new categorization will put them into trust and therefore will take the responsibility away from the tribe. So we need clarification on that, if you would.

And again, I guess the understanding of exactly what tangible benefits does the OST reorganization provide when the tribe doesn't have any fractional interests and has removed its trust funds from the Department.

Mr. SWIMMER. The Trust Officers are placed at the local agencies to support those trust activities, whether it is tribal beneficiary, individual beneficiary. We are trying to place those Trust Officers at the agencies where the greatest amount of trust work is, and if that is a fact that at Mescalero agency there are no individual beneficiaries, then we are not likely to put a Trust Officer there right away. The Trust Officers generally are responding to the beneficiaries' request.

For instance, at the Concho Agency, Mr. Ware can tell you that we had nearly 1,000 phone calls a month that come in there for issues on oil and gas properties and service leasing. They have special deposit accounts that need to be distributed to individuals. We have whereabouts unknown. The Trust Officers are going out to the community, trying to work with the individual beneficiaries to help locate people, help get their money to them quicker, make sure that the questions get answered.

Mr. PEARCE. Thank you, Mr. Chairman, and I will submit the rest of my questions and this document from the tribe. Thank you.

The CHAIRMAN. Thank you.

[NOTE: The information submitted for the record by Mr. Pearce has been retained in the Committee's official files.]

The CHAIRMAN. Before I excuse this panel, I wanted to give Mr. Ware an opportunity to address the question that Mr. Pearce just asked in terms of what is happening on the ground and possibly get an idea from you, since you are doing it right now.

Mr. WARE. Yes, I am, Mr. Chairman. I would like to thank the other members of the Committee for allowing me to be here today to give you some idea about what my responsibilities have been since becoming a Trust Officer. I have been a Trust Officer for 6 months now at the Concho Agency. We deal with a substantial

number of oil and gas leases there. We have farming and grazing leases that are ongoing all the time.

We have anywhere between 1,000 and 1,500 calls a month to our IM staff that have to be answered. Many of them are just routine calls. Others require research and getting, doing all kinds of work to try to get these answers taken care of. We polled the realty people and the Bureau of Indian Affairs agency folks and they estimated that close to 35 to 37 percent of their time up to recent times have been dealing with the beneficiary calls and referrals and things like that.

I am a person who—I am a worker bee. I know somebody mentioned something about a worker bee. My primary responsibility is beneficiary services. What I am doing is I am dealing face-to-face with the constituents that come in, beneficiary folks. I am taking telephone consultations. I am taking referrals from the IM staff and also the Bureau of Indian Affairs realty people.

We discuss things from the probate process, people wanting to know what the status of their probate is, to things such as wanting to know what their remedies were if they thought there was something wrong with the oil and gas payments. We can get some of the information together, and then other times we work with the other agencies, Bureau of Land Management, Minerals Management Service. So there is a lot going on every day at the agency.

We have questions that come up specifically about IM accounts. Beneficiaries will call in. We even have sometimes folks will call about tax questions, things like that.

My background is that I worked as a legal services lawyer for 7 years and I was also in private practice for an additional 7 years. I would say anywhere from 90 to 95 percent of my practice was dealing with Indian people, so I feel right at home dealing with Indian people and I think that is important, that when you are dealing with Indian people, you have to—they have to have some trust in you. I am developing that relationship with the Indian beneficiaries, at least within the Cheyenne-Arapaho Reservation in Oklahoma.

One of the big things that we have been able to accomplish, what we have had is we have had a number of community meetings within the original reservation boundaries of the Cheyenne-Arapaho Tribes. We realized that some of our Indian people don't have the resources to be coming to the agency all the time, so what I have done is I have gone out there to see them. I have set up meetings out there to talk about issues. We have brought the Bureau of Land Management, Minerals Management Service to go along with our group of people to inform the public about what services were available.

During this process, too, we are learning about some of the issues that are of great concern to our beneficiaries and we are planning to have a series of these community meetings as we go along. I expect that we will have one sometime during the summertime when we will go back out again.

One of the big responsibilities, and Mr. Swimmer alluded to it, is we want to make sure that the IM accounts are paid out, the monies are paid out promptly. One of the responsibilities I have is to watch over the staff, the people who are the worker bees who

make sure that everything is done correctly. I supervise them. I review transactions, and the whole idea is to try to present these—the paperwork that needs to be presented one time so that the payments can actually be done on an expedited basis.

What I have also done is I have worked with the superintendent there at Concho Agency and her name is Galila Johnson. She is a wonderful person to work with. We sit down every week to talk about some of these special deposit accounts that we have to deal with, supervised accounts. We meet with the realty people. It is an open-door policy, so if I am out at some point, out of the office doing something, then when I get back in, there are usually requests made for technical assistance by agency staff.

Some of these requests that come in to the realty staff would take a lot of time away from them processing their daily work, so what I have been able to do is I have been able to take some of these larger issues that actually will take days to deal with. I am taking on those functions and helping the agency on that end.

And, of course, the other function that I am doing, too, is helping the Office of Special Trustee with the special programs that are going on. We are trying to deal with the probate backlogs. We are trying to deal with the special projects, whereabouts unknown. We have—in the future, what we are planning to have is we are going to have some estate planning-type seminars and forums for our beneficiaries.

So we have a lot. We have a lot to do. I feel like that I am a worker bee out there and I work real hard. I have only been on here for 6 months, but I can tell you that there is a lot of work to be done. Beneficiaries need someone to advocate for them, and I feel like I am able to do that. If there are any questions, I will be glad to answer them at this time.

The CHAIRMAN. Thank you. I want to thank this panel for their testimony. Obviously, there is some frustration on the Committee in trying to deal with this issue and I look forward to working with all of you to hopefully smooth out this process as we go through it, so thank you very much.

I would like to call up our second panel, Chairman Harold Frazier of the Great Plains Tribal Chairman's Association; Keller George, President of the United South and Eastern Tribes; Principal Chief Jim Gray of the Osage Tribe; and the Honorable Melanie Benjamin, Chief Executive of the Mille Lacs Band of Ojibwe Indians.

I ask unanimous consent that the statement of Mr. Kildee be entered into the record at the appropriate point, without objection.

[The prepared statement of Mr. Kildee follows:]

**Statement of The Honorable Dale E. Kildee, a Representative in Congress
from the State of Michigan**

Good morning. Mr. Chairman, I want to thank you for scheduling this hearing today.

For more than a century, the United States Government has done a poor job managing the Indian trust. Congress has attempted to rectify the many bureaucratic practices that had stalled the proper administration of trust fund accounts.

In 1994, we passed a law to reform the management of trust funds and established the Office of Special Trustee for American Indians within the Department of Interior. The purpose of this office is to oversee trust fund management reform among the other departments within the Interior Department.

In 1996, Eloise Cobell filed a federal class action lawsuit against the Department of Interior over the trust fund mismanagement of individual Indian money accounts. The Federal court ruled that the Federal Government breached its trust responsibilities to the Indian account holders.

And last fall, the judge ordered the Department of Interior to conduct a full historical accounting of the Indian trust.

As a result of the Cobell litigation, the Department has been compelled to develop a trust reform plan. In 2001, the Department attempted to create a new Bureau of Indian Trust Assets Management (BITAM), which was met with strong opposition.

The Department abandoned that proposal and created a tribal task force.

Despite not having a consensus of the tribal task force, the Department submitted a \$5 million reprogramming request to the House and Senate appropriators during the December 2002 holiday recess so that it could go forward with another reorganization plan.

The appropriators approved that request despite the fact that the Department failed to share details of the plan with the authorizing Committee.

Simultaneous to the Department's efforts, this Committee has repeatedly fought attempts by the appropriators to limit the Department's responsibility to provide a full historical accounting of the Indian trust and diminish the rights of Indian trust beneficiaries.

Mr. Chairman, while I agree that there is an urgent need for trust reform, tribes have raised numerous concerns about the plan. I look forward to developing a better understanding of the plan and of the tribes' concerns. Thank you.

The CHAIRMAN. I want to welcome our second panel. I know that this has been a long hearing so far. I appreciate your patience, but obviously this is an extremely important issue to all of us and the Committee does need to spend the time necessary to fully understand and make recommendations on this.

Before I begin with this panel, I would like to ask you to stand, raise your right hand.

Do you solemnly swear or affirm under the penalty of perjury that the statements made and the responses given will be the whole truth and nothing but the truth, so help you, God?

Mr. FRAZIER. I do.

Mr. GEORGE. I do.

Mr. GRAY. I do.

Ms. BENJAMIN. I do.

The CHAIRMAN. Thank you very much. Let the record show they all answered in the affirmative.

Welcome. Mr. Frazier, we are going to begin with you.

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

Mr. FRAZIER. Good morning, Mr. Chairman and honorable members of the Committee. I am honored to be here today to testify on the Department of Interior's reorganization and I thank you for holding this hearing.

I also want to thank you, Chairman Pombo, for coming out and visiting Sioux country out on the Rosebud Reservation. I really appreciate you coming out there.

I am here today not only representing the Cheyenne River Sioux Tribe, but the Great Plains Tribal Chairman's Association. 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 and we know that we will suffer greatly under the current reorganization plans of the

Department of 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. The current Department of Interior reorganization is a waste of money and resources which are much needed at the local agency level to provide trust management. The Trust Officers that are planned to be located on reservations is one example. They will be only duplicating services that are now being provided by the agency superintendents. Why do we need \$100,000-a-year positions at our agencies when we could better utilize the funding to hire appraisers, range techs, range conservationists, accountants, surveyors to better manage our lands and our assets.

Another example is the Deputy Superintendents. Their positions are being funded from Fiscal Year 2003 carryover dollars. That funding for their salaries will not be there next year, so we question, where are they going to get their salaries funded from, education, social services, road maintenance? Our people cannot take any more cuts from our programs to fund this reorganization. And also question, is this good management practices, to fund permanent positions with carryover dollars, knowing that the next fiscal year, there will be no longer any funding from that source?

For these reasons, we ask Congress to immediately halt this reorganization and look to Indian country for alternative solutions. We in the Great Plains Region have agency-specific lands that are more cost effective and that would benefit our people more.

More tribes and associations have passed resolutions calling for a halt to this reorganization until their concerns are addressed. There are probably more tribes joining this effort, especially since Senator Johnson is requesting the General Accounting Office to investigate the entire management and administrative system of the Office of Special Trustee.

We feel that it is crucial that an examination be made of the Office of Special Trustee's ever-increasing role in the reorganization and the circumstances that have led it to go far beyond the statutory duties given it by Congress. We strongly believe that the Office of Special Trustee has overstepped its statutorily mandated role of overseeing reform by implementing measures that would shrink the BIA's management functions at the agency level.

Mr. Chairman and Committee members, for these reasons, I urge you to join Senator Johnson in requesting a formal General Accounting Office investigation of the Office of Special Trustee.

In closing, the idea of reforming the trust management is a good one. I believe all tribes, not only my own, realize that the system is flawed. It is not change that tribes fear, it is change without consultation or consideration for each region's unique assets that we dispute.

I, too, can sympathize with the Mescalero Tribe. In the consultation in Las Vegas in October 2003, we in the Great Plains submitted a letter to Aurene Martin. To date, we have heard no response. If any of our comments are going to be taken into consideration, thrown out, we haven't had any response.

On behalf of the Cheyenne River Sioux Tribe and the Great Plains Tribal Chairman's Association, I want to thank you for the

opportunity to testify here today and I look forward to answering any questions you may have.

The CHAIRMAN. Thank you.

[The prepared statement of Mr. Frazier follows:]

**Statement of Harold Frazier, Chairman, Cheyenne River Sioux Tribe,
Chairman, Great Plains Tribal Chairman's Association**

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 efforts to "reorganize" the Bureau of Indian Affairs and the Office of the Special Trustee for American Indians.

On March 10, 2004, I testified before the Senate Committee on Indian Affairs on the very same issue: reorganization. In that testimony, I underscored that a majority of Indian tribes were against reorganization, not only because it was put into effect without meaningful tribal consultation, but also because a "one size fits all" approach to trust management reform is certain to fail. Since that time, there has been little progress toward resolution of many of the problems I highlighted in my testimony, including the problematic expansion of the OST, imposition by trust officers with dubious authority at the local level, and shrinking of the BIA's presence on the reservation, among other concerns. However, there has been a positive development, at least from the tribal perspective: More tribes have voiced a desire to take a hard look at how they would reform the system in their region, based on factors that are unique to them.

For instance, the Great Plains Regional Proposal for Trust Reform, which I presented for the first time before the Senate Committee in March this year, is a viable alternative to reorganization that fits our needs as a region. Our detailed plan for our region, along with specific legislative language to accomplish it, is attached to my written statement. The Great Plains region has developed a proposal for a pilot program, similar to that set up by the legislative rider in the FY 2004 Interior Appropriations bill for Self Governance tribes. Differences between 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. Three of the Great Plains region tribes have developed plans: 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. The plans present a simpler, clearer and more cost-effective use of already scarce resources.

I am pleased to report that the Great Plains Region has been joined by the Montana-Wyoming Tribal Leaders Council and the Fort Peck Indian Tribe in our effort. These organizations have passed resolutions renouncing reorganization in its present form and demanding a halt to any reorganization activity until tribal concerns are considered. Moreover, I am quite optimistic that more tribes from other regions will be encouraged to join our efforts in light of Senator Tim Johnson's request that the Government Accounting Office (GAO) investigate the entire management and administrative system of the OST, including its implementation and budget process. We think that it is crucial that a fair and impartial examination be made of the OST's ever increasing role in reorganization, and the circumstances that have led it to go far beyond the statutory duties given it by Congress. We strongly believe that the OST has overstepped its statutorily-mandated role of overseeing reform by implementing measures that would significantly shrink the BIA's management functions at the agency level. Mr. Chairman, for these reasons, today I encourage you to join Senator Johnson in requesting a formal GAO investigation of the OST.

In sum, the idea of reforming the trust management system is a good one. I believe all tribes, not only my own and those in my region, understand that the system is flawed. Despite reports to the contrary, it is not change that tribes fear—

it is change without consultation or consideration for each region's unique trust assets, including those tribes' ideas for change, that we dispute. The Department's plan for reorganization, including the "To-Be" reengineering process, has noteworthy goals. No one disputes that land consolidation is essential if Indian lands are to be prudently managed, nor is there any disagreement with the idea that there is a need to establish better systems to keep track of leases and receivables. Upgrading the computer systems in use would be of substantial benefit, however, going forward with the present program without addressing fundamental deficiencies in basic services provided at the agency level is doomed to be a useless exercise.

We would like to work with the Department to put into effect those elements of reform that we believe will benefit our region. Our legislative proposal would allow that to be done on an expedited basis. We would welcome a cooperative effort to develop regional systems that both region-tribes and the Department can agree upon. We can work together to effectuate positive change for the benefit of all. I am happy to report that on April 26, 2004, Special Trustee Ross Swimmer met with a number of tribal leaders here in Washington to explain the present process and to listen to tribal concerns. While no agreements were reached at that meeting, there are future plans for similar meetings. I sincerely hope that we can resolve some of the issues of concern through further dialogue.

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. I look forward to answering any questions you may have.

The CHAIRMAN. Mr. Gray?

**STATEMENT OF JIM GRAY, PRINCIPAL CHIEF,
OSAGE TRIBE, OKLAHOMA**

Mr. GRAY. Chairman Pombo, members of the House Resources Committee, I am Jim Gray, Principal Chief of the Osage Tribe based in Pawhuska, Oklahoma. I am honored to be here today to testify today before this Committee and provide the vies of the Osage Tribe.

Before I begin, I would like to thank the Committee for voting out the Osage membership and government form legislation last week. The legislation would be an enormous step forward for the Osage people.

Mr. Chairman, I appreciate the Committee holding this important hearing on trust reform and the efforts of the Department of Interior to implement trust reform through the reorganization of the Bureau of Indian Affairs and the Office of the Special Trustee. I appreciate your willingness to take a close look at these serious issues. You have already held several hearings over the last year in different parts of the country on trust management and trust fund issues, including the Indian trust fund lawsuit, which is the reason that we are all sitting here today.

The Cobell case served as a wake-up call to the Federal Government about its gross mismanagement of trust assets and trust funds that Indians have known for over 100 years, but whose efforts to rectify or reform the system were met with a deaf ear. The Cobell case set off a chain reaction of events, including the reorganization at the Department of the Interior that will reverberate for decades to come.

The issue of trust reform strikes close to the heart of the Osage. The Osage Tribe continues to receive nearly all Federal services directly from the Bureau of Indian Affairs and the Office of the Special Trustee, not through self-governance contracts or compacts. While I am firmly of the view that the Osage Tribe should take

over many of these functions, there are reasons why our tribe has not done this on a significant scale.

First, because of the environmental damage from minerals production on our reservation and the Federal Government not enforcing or cleaning up this pollution as it should. There may be significant environmental liabilities associated with contracting certain Federal programs.

Second, these programs are so badly underfunded that taking them over only places an expensive obligation in our lap we do not yet have the resources to supplement and make work as they should. With reference to Congressman Udall's position or concerns that he has raised I think in the Salt River example, I think you also see a situation where you have a tribe that has the resources to be able to supplement these programs, and that is certainly not the case with other tribes across the country.

Third, over a century of the Federal Government operating through the BIA in the daily lives of our people have created a conditioning, a mindset, that a pervasive BIA role is more comfortable than the unknown. These are difficult problems for a tribe with very limited tribal resources to ensure efficient service delivery to our people. Nonetheless, the movement toward a greater tribal role in decisionmaking and administration of services is a concept I wholeheartedly embrace.

I also agree with the view of the National Congress of American Indians that the determination of how to best manage trust obligations to tribes and Indians should focus on the most local level, BIA agencies. The BIA Osage Agency is an example of an agency specific plan tailored to meet the specific minerals production needs of the Osage. One hundred percent of the Osage Reservation's subsurface is held in trust for the Osage Tribe. Income from minerals production purports to be paid into the Federal trust fund system, then out primarily to individual Indians.

Although non-Indians and corporations also receive funds from our trust asset, because of the tribal and Federal priority of Osage minerals production, the BIA Osage Agency administers all Osage minerals development without the involvement of the Minerals Management Service or other agencies. We believe that this focus of the Osage Agency leads to greater efficiencies in Osage minerals production.

It remains to be seen whether the BIA and OST reorganization will refocus on providing better front-line trust services to tribes and Indians at the local level rather than hunkering down against potential trust liability. Effective choosing and placement of trust officials are critical.

My private and public sector experience informs me that service providing can only be as good as the people you put in those positions. I am disappointed that the tribes have had so little input in the hiring of key Federal positions. I am concerned that avoiding trust liability may be overcoming the commitment to proper administration of moral and legal trust obligations to tribes and Indians.

But focusing on trust reform only through the lens of BIA and OST reorganization risks losing sight of the big picture of trust reform. Real trust reform begins with Congress. The United States Constitution specifically empowers Congress to regulate commerce

between the different sovereigns, States, foreign nations, and Indian tribes. The United States Supreme Court has established that Congress has enormous powers over Indians and tribes. Working with the tribes, it is Congress that must unshackle the BIA and OST from statutory directives requiring BIA officials to look over the shoulders of tribal leaders and post-judge tribal decision-making.

The shameful Federal policies of yesteryear that presumed Indian and tribal incompetence and sought to control Indian and tribal resources and decisions are still found in today's laws, and therefore, also, the daily obligations of Federal employees. The easy route for both Congress and the tribes is to scold the BIA and OST in harsh terms, which both usually deserve when it comes to trust management. The more difficult step in this task is stepping back, taking a broader look at the problems, and seeking consensus from possible solutions. This is in the political environment of dealing with tribes who have learned the hard way to fear what Congress might do.

The Osage Tribe offers several ideas. Revisit anachronistic laws—the BIA and OST continue to do what Congress has told them to do when it comes to pervasive control over the lives of Indians and second-guessing tribal decisionmaking. Congress recently freed both the tribes and the BIA of most contract approvals under 25 U.S.C. 81. Furthermore, the new Navajo leasing statute limits the BIA role in Navajo leasing decisions. These are excellent examples of assisting both tribes and the Federal agencies, relieving them of unwanted and unnecessary duties that have nothing to do with the core missions of either entity. Reforming the broader leasing statute and enacting the Indian energy provisions that were negotiated last year would be steps in the right direction.

Fractionation—enact a new law addressing fractionation of Indian lands, with the policy of tribal self-governance guiding this law.

Accountability—there must be ways to hold Federal decision-makers accountable for failure to properly administer trust obligations. For too long, Congress has treated the BIA and OST as welfare distributors and overseers rather than agencies with more legal duties to tribes and Indians.

Funding—appropriate the funds the agencies need to do their jobs effectively and maintain the treaty and moral obligations of the United States to Indians and tribes.

We believe Congressional initiatives in this direction would help create a more efficient, more effective reform of the BIA and OST.

Thank you for the opportunity to testify today. I would be pleased to answer any questions you may have.

The CHAIRMAN. Thank you.

[The prepared statement of Mr. Gray follows:]

Statement of Jim Gray, Principal Chief of the Osage Tribe

Good morning, Chairman Pombo, Ranking Member Rahall, and other members of the House Resources Committee. I am Jim Gray, Principal Chief of the Osage Tribe based in Pawhuska, Oklahoma. I am honored to be here to testify today before this Committee and provide the views of the Osage Tribe. Before I begin, I would like to thank the Committee for voting out the Osage membership and government form

legislation last week. This legislation would be an enormous step forward for the Osage people.

Mr. Chairman, I appreciate the Committee holding this important hearing on trust reform and the efforts of the Department of the Interior to implement trust reform through the reorganization of the Bureau of Indian Affairs and the Office of the Special Trustee. I appreciate your willingness to take a close look at these serious issues. You have already held several hearings over the past year in different parts of the country on trust management and trust fund issues, including the Indian trust fund lawsuit, which is the reason that we are all sitting here today. The Cobell case served as a wake-up call to the Federal government about its gross mismanagement of trust assets and trust funds that Indians have known for over a hundred years but whose efforts to rectify or reform the system were met with a deaf ear. The Cobell case set off a chain reaction of events, including the reorganization at the Department of the Interior that will reverberate for decades to come.

The issue of trust reform strikes close to the heart of the Osage. The Osage Tribe continues to receive nearly all Federal services directly from the Bureau of Indian Affairs and Office of Special Trustee, not through self-governance contracts or compacts. While I am firmly of the view that the Osage Tribe should take over many of these functions, there are reasons why our Tribe has not done this on a significant scale. First, because of the environmental damage from minerals production on our Reservation and the Federal government not enforcing or cleaning up this pollution as it should, there may be significant environmental liabilities associated with contracting certain Federal programs. Second, these programs are so badly underfunded that taking them over only places an expensive obligation in our lap that we do not yet have the resources to supplement and make work as they should. Third, over a century of the Federal government operating through the BIA in the daily lives of our people has created a conditioning, a mind-set, that a pervasive BIA role is more comfortable than the unknown. These are difficult problems for a Tribe with very limited tribal resources to ensure efficient service delivery to our people. Nonetheless, the movement toward a greater tribal role in decisionmaking and administration of services is a concept I wholeheartedly embrace.

I also agree with the view of the National Congress of American Indians that the determination of how to best manage trust obligations to tribes and Indians should focus on the most local level, BIA agencies. The BIA Osage Agency is an example of an "agency specific plan" tailored to meet the specific minerals production needs of the Osage. 100% of the Osage Reservation subsurface is held in trust for the Osage Tribe. Income from minerals production purports to be paid into the federal trust funds system then out primarily to individual Indians, although non-Indians and corporations also receive funds from our trust asset. Because of the tribal and federal priority of Osage minerals production, the BIA Osage Agency administers all Osage minerals development, without the involvement of the Minerals Management Service or other agencies. We believe that this focus of the Osage Agency leads to greater efficiencies in Osage minerals production.

It remains to be seen whether the BIA and OST reorganization will refocus on providing better frontline trust services to tribes and Indians at the local level rather than hunkering down against potential trust liability. Effective choosing and placement of trust officials are critical. My private and public-sector experience informs me that service providing can only be as good as the people you put in those positions. I am disappointed that the tribes have had so little input on the hiring of key federal positions. I am concerned that overreaching to avoid trust liability may be overcoming the commitment to properly administering moral and legal trust obligations to tribes and Indians.

But focusing on trust reform only through the lens of BIA and OST reorganization risks losing site of the big picture of trust reform. Real trust reform begins with Congress. The United States Constitution specifically empowers Congress to regulate commerce between the different sovereigns: states, foreign nations, and Indian tribes. The United States Supreme Court has established that Congress has enormous powers over Indians and tribes. Working with the tribes, it is Congress that must unshackle the BIA and OST from statutory directives requiring BIA officials to look over the shoulders of tribal leaders and post-judge tribal decisionmaking.

The shameful federal policies of yesteryear that presumed Indian and tribal incompetence and sought to control Indian and tribal resources and decisions are still found in today's laws and therefore also the daily obligations of federal employees. The easy route for both Congress and the tribes is to scold the BIA and OST in harsh terms (which both usually deserve when it comes to trust management). The more difficult task is stepping back, taking a broader look at the problems, and seeking consensus from possible solutions. This in the political environment of dealing with tribes who have learned the hard way to fear what Congress might do.

The Osage Tribe offers several ideas.

- Revisit Anachronistic Laws. The BIA and OST continue to do what Congress has told them to do when it comes to pervasive control over the lives of Indians and second guessing tribal decisionmaking. Congress recently freed both the tribes and the BIA of most contract approvals under 25 U.S.C. §81. Furthermore, the new Navajo leasing statute limits the BIA role in Navajo leasing decisions. These are excellent examples of assisting both tribes and the Federal agencies through relieving them of unwanted and unnecessary duties that have nothing to do with the core missions of either entity. Reforming the broader leasing statute and enacting the Indian energy provisions that were negotiated last year would be steps in the right direction.
- Fractionation. Enact a new law addressing fractionation of Indian lands, with the policy of tribal self-governance guiding this law.
- Accountability. There must be ways to hold Federal decisionmakers accountable for failure to properly administer trust obligations. For too long, Congress has treated the BIA and OST as welfare distributors and overseers, rather than agencies with moral and legal duties to tribes and Indians.
- Funding. Appropriate the funds the agencies need to do their jobs effectively and maintain the treaty and moral obligations of the United States to Indians and tribes.

We believe Congressional initiatives in this direction would help create a more efficient, more effective reform of the BIA and OST.

Thank you for the opportunity to testify today. I would be pleased to answer any questions you may have.

The CHAIRMAN. Mr. George?

**STATEMENT OF KELLER GEORGE, PRESIDENT,
UNITED SOUTH AND EASTERN TRIBES, INC.**

Mr. GEORGE. Good morning, Mr. Chairman, and thank you for this opportunity. Honorable members of the Committee, my name is Keller George. I am a member of the Oneida Indian Nation Men's Council and President of the United South and Eastern Tribes, known as USET. On behalf of the 24 member tribes of USET, I thank you for this opportunity to present our perspective on the reorganization of Indian trust management.

The Administration, in our view, has taken it upon themselves to make drastic and sweeping changes in the Bureau of Indian Affairs in programs and services, functions and activities, regardless of the opposition from Indian country. DOI officials stated that they had consulted with tribes on various reorganization issues that are being instituted. However, this is not totally true. DOI has made consultation a mere ritual they must go through to push their agenda. USET believes that currently, there is still time to implement tribal needs into the process and to gain tribal support.

We heard this morning that there was over 40 meetings with the tribal task force working in trust reform. I was a member of that task force and only missed one of those meetings during the entire almost a year process. In my view, we in the Indian country viewed this as negotiation, not consultation, because we were there trying to come up with a plan that could be used for reorganization in the trust management.

That is why there was great opposition to the BITAM process that was brought forth by the Secretary of Interior. We made a lot of progress as we went through this. There were over 25 or 30 plans put forth. We got down to either between two and five plans that we could support.

However, after a whole year of meetings, in December of 2002, we had put forth an initiative to create a position of under secretary. The DOI officials, Federal officials that were at table agreed with that. The problem was that we wanted oversight and trust principles or standards put in place, which they were opposed to doing, and that was the breakdown in December of 2002 of that almost a year long process.

After that meeting in December, we didn't meet again. The next notice I get is there is a roll-out of the reorganization that was going to be presented to the Eastern tribes in Nashville, Tennessee. The decisions about the reorganization were made. I will agree, however, that there was a lot of issues that were agreed upon by consensus, and I don't see a whole lot of those issues in this reorganization that we have.

These are some of our recommendations, solutions, and to make these changes for smoother and more effective change. No funds should be diverted from the BIA's programs, finances, to finance the reorganization efforts in regards to the expansion of OST's programming. Tribes have made it clear that DOI should not use program dollars to help fund the mistakes of the Administration. Further, there has been little discussion between the Federal Government and tribal leadership regarding the level of reorganization, despite repeated requests from Indian country.

Rehabilitating the trust requires the DOI to address financial management and land and natural resource management. The current reorganization only addresses financial management issues and will have little impact on DOI's ability to offer improved trust services to tribes that have not allotted substantial portions of their reservations.

Additionally, the reorganization does not provide for the staffing necessary to address the appraisal, surveys, and compliance abilities required to improve the management of land and natural resources.

Carryover funds from previous years should be not used for the reorganization effort. As Chairman Frazier has pointed out, these trust officers are being funded with carryover money. What happens in the next year when that money runs out? Is it the usual way it happens, borrow from Peter to pay Paul? Well, quite frankly, Indian tribes throughout this country are tired of being Peter, and it is true that every time the tribes are denied money to administrative programs that are so vital to Indian country to pay for other programs that have not been allotted in the budget. Is this going to happen again if Congress does not, the appropriators do not have the funding for these trust officers and Deputy Administrators throughout the country? There have been over 47 hired already. Where is that money coming from?

So that is what our concerns are. The "to be" process must be passed into the reorganization effort. The "to be" process determines the best practices for business processes and resources needed to accomplish these goals. USET suggests that one process be introduced per year over a 5-year period, allowing the Department to refine processes as they are introduced. This allows the BIA to request multiple-year appropriations instead of a single-year appropriation from Congress.

Tribes must know how the reorganization is going to affect the regional agency level operations and once and for all. The regional reorganization chart currently in place does not accurately portray the current situation at the local level. Further, tribes cannot be expected to comment on the reorganization where there is no information available on which to base comments. Tribes are not being fully informed of pending changes.

It is time for the Federal Government to be held accountable for their trust responsibility. Indian country must not be held at bay any longer by pending cases in the courts. Recent Supreme Court decisions have concluded that the Federal Government has avoided fiduciary trust responsibilities and operated with bad faith in its business relationship with Indian tribes. Tribes no longer should be forced to find remedies through the courts.

USET tribes support reform and understand reorganization is necessary for the government to fulfill its fiduciary responsibilities. Tribes must no longer receive ambiguous and confusing information about the reorganization process. Future generations of Indian people are depending on tribal leaders to take a stand and to approach reform with a united voice.

I would be happy to answer any questions that you may have. The CHAIRMAN. Thank you.

[The prepared statement of Mr. George follows:]

Statement of Keller George, President, United South and Eastern Tribes, Inc., and Member, Oneida Indian Nation

Good morning, Mr. Chairman and Honorable Members of the U.S. Committee on Resources.

My name is Keller George. I am a member of the Oneida Indian Nation's Men's Council, and President of United South and Eastern Tribes, Inc. (USET). On behalf of the 24 member tribes of USET, I thank you for this opportunity to present our perspectives on the current reorganization of Indian Trust Management.

USET has played an extremely active role in and continues to monitor the reorganization process since the Administration first approached Tribes with the Bureau of Indian Trust Asset Management (BITAM) vision. At that point, we stood with all Tribes across the country in opposition to BITAM in the hopes of finding a better plan that would more effectively meet the needs of Indian Country. USET spent many hours analyzing the various issues of reorganization and trust reform in an effort to provide insight and tribal perspectives on the changes that are currently taking place and those that are forecast in the years to come. While USET does not agree with everything that is being implemented, we recognize that the "status quo" is no longer an acceptable way of doing business.

The Administration has taken it upon themselves to make drastic and sweeping changes to the Bureau of Indian Affairs (BIA) Programs, Services, Functions, and Activities (PSFA's) regardless of the opposition from Indian Country. Tribes want to participate in a joint effort that can benefit everyone, but those attempts have been suppressed time and time again. DOI officials stated that they have consulted with the Tribes on various reorganization issues that are being instituted; however, this is not totally true. Consultation is not throwing an idea out into Indian Country, seeing a negative response, and moving forward with the idea regardless. Consultation is listening to tribal concerns and taking those comments into account. DOI has made consultation into a mere ritual they must go through to push their agenda. Negotiation is an essential part of consultation and while you will never be able to please everyone, the majority opinion must prevail in the end. USET believes that currently there is still time to implement Tribal needs into the process and gain Tribal support.

It is USET's belief that the BIA restructuring has been based more on the National Association of Public Administration (NAPA) report of several years ago than on the research conducted through the As-Is and now the To-Be Process. The OST build-up is leaving very little room for the BIA to achieve adequate staffing levels due to funding going into OST and not into the BIA. These issues must be ad-

dressed now before the Administration inadvertently creates a BIA so weak that it would be easy for the Office of Special Trustee (OST) to fill the vacuum, thereby, by taking over all trust functions and dissolving the BIA completely.

We would ask for your consideration of the following areas of concern and recommended solutions to make these changes soother and more effective:

No funds should be diverted from BIA PSFA's to finance the reorganization efforts in regards to the expansion of OST PSFA's. From the beginning, Tribes have made it clear that the DOI should not use program dollars to help fund the mistakes of the Administration. Reorganization must be contingent upon new appropriations from Congress. Taking money from BIA PSFA's will only damage the level of service that the reform process is designed to protect. USET Tribes are very concerned about the future of the regional office, and would emphasize once again how important the regional level is to the daily operation of programs. Because 90% of the eastern Tribes contract for services from BIA, the regional office is extremely important and acts in place of an agency level office. Many hypotheses are circulating throughout Indian Country as to how the regional reorganization of the BIA will actually work. There has been little direct discussion between the federal government and Tribal Leaders regarding this level of reorganization despite repeated requests from Indian Country. The new Departmental Manual once again is unclear as to the entire multiple and complex relationships expected at the regional level and below. Tribal leaders are confused and need clarification. Will there be Trust Officers at every regional office? Who will they answer to directly? What will be their relationship with other BIA regional staff? What will the relationship be like between the Trust Officers and BIA officials? Who will have final determination authority? These are the types of questions that Tribes need answered in order to understand the complexity of the situation. Both Trust Services and Trust Resources must be funded at the appropriate levels to maintain a satisfactory level of business. USET urges the Administration not to hire new management staff without having basic operational in place. USET is perplexed and asks, "How can a Trust Officer effectively oversee the trust obligations of an agency that doesn't have the manpower and resources to carry out those trust obligations?"

USET suggests that the staffing/hiring initiatives of OST be paralleled with a build up of the BIA regional/agency offices in order to bring those offices up to certain standards regarding adequate staffing and adequate funding levels to diminish backlogs of PSFA's. USET suggests that instead of OST hiring all the trust oversight positions immediately, they only hire one-half of those positions in FY2005. The Department should take the remaining funds from those unfilled positions and "invest" it in the regional/agency offices. Trust officer positions are for oversight, not management, of the Trust. Rehabilitating the Trust requires the Department of the Interior (DOI) to address financial management and land and natural resource management. The current reorganization only addresses financial management issues and will have little impact on the DOI's ability to offer improved trust services to Tribes that have not allotted substantial portions of their reservations. The reorganization is being driven by the number of IIM account holders in an area, not the total volume of trust work that is being performed. Only the OST Trust Officers have been funded, BIA Deputy Superintendents have not yet been authorized. The reorganization does not provide for the staffing necessary to address the appraisals, surveys and compliance activities required to improve the management of land and natural resources. Reorganization is a slow process involving more than just "staffing up." USET fears that the vacuum created by the large OST staff versus the small, inadequate BIA staff will lead OST to try to fill those positions through their organization, thus taking the Tribes back to the BITAM plan which has been strongly opposed by Indian Country.

Carryover funds from previous years should not be used for the reorganization effort. The President's FY05 Budget Proposal has a reduction of \$5.4 million in program operations to "redirect funds" to high priority programs. USET believes that the thought process is that the Administration can take the \$5.4 million cut and use it for "high priorities" such as reform because the anticipated FY04 carryover funds can help sustain the operation of programs. Once again, the Administration's "high priorities" are not necessarily the "high priorities" from Indian Country. The Administration must not take from the programs in hopes that there will be enough carryover to cover the loss. Tribes must have the carryover funds for the already unfunded or underfunded programs they administer. USET believes that the Administration must make a concerted effort to gain new appropriations for their "high priorities" rather than take from the operation of programs.

The To-Be Processes must be phased into the reorganization efforts. The To-Be process determined the best practices for business processes and the resources needed to accomplish these goals. In the March 8, 2003, Federal Register Notice, OST

asked for comments on The To-Be Trust Business Model which identified five processes. Indian Country and Tribal Leaders are unable to comment on how these multiple changes will affect them. USET again will stress that while we support change from the “status quo,” the implementation or reengineering and reorganization must be slowed. USET suggests one process be introduced per year over a five-year period, allow the Department to refine processes as they are introduced. This will also allow BIA to request multiple year appropriations instead of large single year appropriations from Congress.

Tribes must know how the reorganization is going to affect the regional/agency level operations once and for all. The Administration, the To-Be Process, and the OST have yet to determine how these upper-level changes are going to affect the regional and agency levels. The regional organization charts currently in place do not accurately portray the current situation at local levels. USET Tribes were notified of positions at the Eastern Region that will be changing their reporting relationship directly to Central Office. No organizational charts show these new relationships, the impact on the region, impacts to tribal shares and budgets, and impacts to future funding levels. Tribes cannot be expected to make comments on the reorganization where there is no information available on which to base the comments. Tribes are not being fully informed of impending changes. USET would propose to work with the Administration to put into place an organizational system that works with the unique needs of the Eastern Region.

It is time for the Federal government to be held accountable for their trust responsibility. Indian Country must not be held at bay any longer by pending cases in the Courts. It is critical that continuity and accountability be established as a cornerstone of the reorganization efforts. Indian Country must have a way to hold their trustee accountable for actions taken that may be contrary to the advancement of Indian people. Recent Supreme Court decisions have concluded that the Federal government has avoided fiduciary trust responsibilities and operated with “bad-faith” in its business relationships with Indian Tribes. In *United States v. Navajo Nation*, the Supreme Court stated that the Mitchell I and Mitchell II analysis must focus on a specific right-creating or duty-imposing statute or regulation. In this case, the Court held against imposing a trust obligation on the government. It reasoned that the existence of a trust relationship alone is not sufficient to support a claim for damages under the Indian Tucker Act (28 U.S.C. ss 1505). Conversely, in *United States v. White Mountain Apache*, the Court acknowledged the Statute at issue did not expressly subject the government to fiduciary duties of a trustee. Nonetheless, the Court determined that the Fort Apache property was expressly subject to a trust. In so doing, the Court drew a “fair inference” to find an obligation on the part or the government to preserve the property as a trustee, and determined that its branch of trust was enforceable by damages.

From these cases, we have learned that unless a statute or regulation imposes a specific fiduciary obligation on the part of the government toward Tribes and their resources, the Court will look unfavorably on the imposition of such a duty. We have also learned that trust principals must be clearly defined in order for the government to be held accountable for a breach of trust duties. In a sense, Indian Country was fortunate that the Court felt compelled to infer a trust obligation in the *White Mountain Apache* decision; Indian Country was not so lucky in *Navajo Nation*. The dichotomy of rationales created by these decisions indicates that without clear guidelines and definition of trust principles, the Court will continue to infer—or ignore as the case may be—the government’s fiduciary responsibility toward Indian Tribes. Indian Tribes must be allowed to hold their trustee accountable for mismanagement of their resources. We must begin by defining trust principles that create consistency in application across all trust activities. Tribes should no longer be forced to find remedy through the courts.

USET Tribes support reform and understand that reorganization is necessary for the government to fulfill its fiduciary responsibilities. Many Tribes feel that efforts to this point have been futile and DOI is moving forward with their own agenda. Tribes must no longer receive ambiguous and confusing information about the reorganization process. USET recognizes the urgent need for Tribes to be actively engaged in the reorganization process, not just shown the end process. Future generations of Indian people are depending on Tribal Leaders to take a stand and approach reform with a united voice.

Once again, I would like to emphasize the great importance of proper trust accountability and the federal trust obligation. Efficiently operated trust programs could benefit Indian Country greatly and we have all seen what a poorly operated trust system can produce. Indian people have given so much to the Federal government based on the promise of adequate management of assets through the Trustee relationship. That relationship has been severely damaged, and must be mended.

USET stands ready to assist in the processes of mending relationships, establishing accountability of trust, and reorganization of the BIA. USET Tribes have the experience and knowledge to work through these issues.

USET Tribes understand the political pressures associated with completion of the reorganization, but we ask that the Administration look at the far-reaching effects these changes will have on Indian Country today and in the future.

Thank you and I would be pleased to answer questions at this time.

[Mr. George's response to questions submitted for the record follows:

Response to questions submitted for the record by Keller George, President, United South and Eastern Tribes, Inc., and Member, Oneida Indian Nation

Responses to Chairman Richard Pombo's Questions

1. Can you expand on your comments regarding how the reorganization is driven by the individual Indian money account holders, and why it doesn't work for Eastern Tribes?

The current re-organization of the BIA is completely reactionary to the IIM Account Holders and the Cobell case. The Bureau has made no attempts to be forward-thinking or proactive in their implementation of the re-organization. On-going procedural structure research plans have been ignored in the process and the BIA continues to push their ideas, not the Tribes' ideas forward. An example would be that the "To-BE" process is currently funded by the Office of the Special Trustee (OST) to study the best practices for business processes within the BIA and what staff would be needed to operate at ultimate capacity. The "To-BE" study has not been complete, yet the BIA continues to move forward with their reorganization implementation. This is not a cost effective policy and proves that the reorganization is purely driven by reactionary tactics and the Cobell case.

USET would like to see meaningful, long lasting change through a reorganization of the BIA. While we recognize the importance of identifying IN Account holders and their proper payment for the use of their land, this is not the only issue that needs to be addressed. The Eastern Region Tribes do not have the numerous IIM Accounts like those areas in the-West and thankfully do not have to deal with the many problems caused by fractionated land interests. USET wants to ensure that all important aspects of reorganization are identified and discussed.

2. Many Tribes want to develop trust reform plans based on factors that are unique to them. Such trust reform plans would then be implemented on a tribe-by-tribe or region-by-region basis, through the local BIA agency, through a self determination contract, or through a self governance compact. Under such a proposal, the Secretary ultimately bears a trust responsibility for this. To what extent should a tribe be able to develop and implement its own trust reform plan and still hold the Secretary fully liable if something should go wrong with its implementation?

USET has always maintained that there needs to be a set of standardized overarching trust principles. The BIA continually refuses to put trust principles in legislation because that would make the Secretary directly responsible to the Tribes in a more defined way. USET believes that as long as the overarching principles are in place, and the Secretary's responsibilities are finally clearly defined by law, then Tribal/ Regional implementation plans could be instituted. The Tribal/ Regional implementation plans would need to, at the least, meet the standards defined in the over arching principles in order for the Secretary to maintain the trust responsibility. Of course, USET believes that any principles developed and/or Tribal/Regional trust plans implemented should be incorporated through meaningful consultation with the Tribes.

Responses to Ranking Member Nick Rahall, II, Questions

QUESTION: In order for any of this reorganization plan to work there must be excellent communication between OST staff and the BIA staff at all levels. Do you agree? Have you seen a good working relationship between OST and BIA thus far? For example, when Tribes recently met with the Department on reorganization matters, how did the Special Trustee and the Assistant Secretary for Indian Affairs communicate with the Tribes in attendance?

It is true that the OST and BIA must learn to communicate in order to make the reorganization a success, but the level of communication needed depends on to

whom you speak. The OST was brought into existence for the purpose of monitoring the trust activities of the BIA. This oversight function does not always foster great communication. There is no protocol for communicating between agencies and many times information about meetings is not communicated between the two agencies, causing Tribal leaders to show up at meetings with no sign of the important people they came to meet and discuss issues with. This was the case at the recent DOI/Tribal leaders meeting regarding the reorganization. Neither the Assistant Secretary nor the Deputy Secretary for Indian Affairs were in attendance, because of a lack of communication. The Deputy Assistant Secretary, Aurene Martin, when asked by Tribal Leaders why she was not in attendance, stated that she was not aware that any meeting was even going on that day. The only person attending the meeting from the BIA was Mr. Brian Pogue. This is just a single example of the lack of communication between BIA officials internally and between the two organizations.

In the current reorganization process, communication between the two offices has been viewed more as a necessary evil. Neither the OST nor BIA have really communicated what reorganization actions they are taking with each other. It is like they are working on two separate projects instead of one reorganization effort. In fact the BIA, moved forward with the reorganization effort despite the ongoing "TO-BE" trust reengineering efforts of the OST. The BIA has said that they are moving forward with their plan for reorganization regardless and whatever OST and the "TO-BE" recommendations come back with, they will try to implement those changes as best they can. This is a wasteful and sporadic method of implementing true change in the BIA. USET believes that the BIA needs a structured and thoughtful process, based on tribal input and good communication, in order to have a successful BIA reorganization.

Should your office have any further questions regarding these responses, please contact the USET office at (615) 467-1553. Thank you for the opportunity to comment and have the USET Tribal views considered in this process.

The CHAIRMAN. Ms. Benjamin?

**STATEMENT OF MELANIE BENJAMIN, CHIEF EXECUTIVE,
MILLE LACS BAND OF OJIBWE, MINNESOTA**

Ms. BENJAMIN. Chairman Pombo and members of the Committee, my name is Melanie Benjamin and I am the Chief Executive of the Mille Lacs Band of Ojibwe. Mille Lacs Band is a federally recognized tribe located in East Central Minnesota and has enrollment of approximately 3,600 members.

It is our pleasure to provide testimony before the Committee this morning on the Bureau of Indian Affairs' trust reform process from the perspective of a self-governance tribe. This morning, I will talk briefly about tribal self-governance policy, the Federal trust responsibility, and the interplay of the current BIA reform as it relates to the self-governance policy and practice.

In 1990, the Mille Lacs Band of Ojibwe was one of the first tribes to participate in a tribal self-governance demonstration project authorized by the Indian Self-Determination Act. We first compacted for 30 programs from the Bureau of Indian Affairs, and today, we are compacted for all authorized BIA programs through our annual funding agreement and provide direct services to our membership.

We were likewise among the first tribes to negotiate a self-governance compact for programs in the Indian Health Service. As a general matter of policy, the Mille Lacs Band has strongly advocated for the self-governance of all federally supported Indian programs. The United States Federal trust responsibility to Indian tribes has been established through our treaties with the United States, Federal statutes, executive orders, Supreme Court decisions, and the general course of dealings with tribes. The Federal

trust responsibility extends a trust obligation from the United States to Indian tribes and further recognizes a unique government-to-government relationship between each federally recognized tribe and the United States.

Within the Indian Self-Determination Act, provisions of Tribal Self-Governance Act of 1994, and the Tribal Self-Governance Amendments of 2000 provides specific statutory protection for the trust responsibility by prohibiting the Secretary from waiving, modifying, or dismissing the Federal trust responsibility of the United States. The intent of Congress to uphold its Federal trust responsibility to and the government-to-government relationship with self-governance tribes have not been changed by further Congressional action to date.

The BIA exists to advance tribal interests in broad Federal Indian policy matters and has a specific duty to administer programs and services for the benefit of all federally recognized tribes and their members. While self-governance tribes like the Mille Lacs Band believe we can do a better job to administer the same program and services to our members through our self-governance compact, the fact remains that the BIA has a continuing obligation to advance self-governance interests the same as other tribes.

While the Mille Lacs Band and other self-governance tribes have assumed more authority and control over compacted programs, it is important to remember what self-governance laws provide. The Federal trust responsibility of the United States continues to apply to all tribal resources and programs, not just those specific to trust resources or management of trust resources.

In November 2000, President Clinton signed Executive Order 13175 that established the Federal policy of consultation and coordination with Indian tribal governments, the policy extended to all Federal agencies. The purpose of the consultation policy was and is to allow for tribal input on all matters that affect tribal interests.

When the trust reform process first began, tribes were involved through a tribal task force, on which I was a member. The Department suddenly dissolved the task force in late 2002 and proceeded with the trust reform without any further tribal involvement. The action has set the tone for the trust reform process as we see it playing out today.

Although the BIA and the new Office of Special Trustee, OST, have conducted tribal consultation sessions throughout Indian country on the trust reform, these sessions take place following major policy decisions. Tribes are told what changes have been made and what to expect from those changes. From the tribal perspective, when a consultation takes place after the fact of a major decision affecting tribal interests, it is not consultation.

Last fall, a consultation was scheduled for a combined council of the BIA regions in the Central United States. Because the notice was very late, the Mille Lacs Band was just about the only tribe in attendance out of the entire Midwest United States. One has to ask what meaning tribal consultation has if most of the affected tribes cannot be present to receive any information.

This lack of meaningful tribal consultation is illustrative of the mixed message that come from Interior and the BIA. On one hand,

we are told that the BIA wants to work with tribes. On the other hand, the Department is overhauling an entire agency and creating a new one in the process without working with tribes at all. To tribes, the Departmental action without tribal consultation indicates a shift back to the paternalistic policies that appear to replace tribal self-governance and tribal self-determination. In a trust reform process, the consultation policy has become meaningless to tribes.

The Office of the Special Trustee was first authorized as an oversight body for trust reform 10 years ago. Today, the OST is a new agency with new duties and responsibilities beyond trust reform oversight. Transferring BIA trust functions to OST is a major component of the latest trust reform effort, which is a quick fix to an old problem. To achieve this quick fix, most tribes believe we were removed from the trust reform process so the Interior could implement its changes as quickly as possible without any interference.

For the Mille Lacs Band and other self-governance tribes, it seems that the proposed transfer of the BIA function limits the scope of trust responsibility in a number of ways. The following are a few examples.

First is the fee to trust land acquisition of tribes. There is a distinction between tribal fee lands and trust lands. Unless land is in trust status, its treatment as a trust resource is questionable.

Second, we will not have direct access to the proposed integrated data system. We are told we can access the data system if we adopt the Federal model. The Federal trust responsibility would have the OST provide access to this data to us in one manner or another.

Third, our annual funding agreements are with the BIA and not the OST. We wonder whether our access to funding would be affected when a BIA program is now under OST. As a result, self-governance tribes face uncertainty as to the terms of our funding agreements. One solution is to authorize self-governance tribes to compact with OST.

These examples illustrate specific problems for self-governance tribes which have not been fully addressed by either BIA or OST. Under the current trust reform, the Mille Lacs Band seriously questions what measures of Federal trust responsibility can be expected when we believe self-governance concerns and interests are overlooked as changes take place.

Self-governance policies and laws were designed to move the U.S. Government away from the paternalistic policies and practices in the administration of Indian programs. The current trust reform is taking us back to the paternalistic policies that leave tribes out of the process. Self-governance is being dismantled by the changing processes by not allowing tribes to adapt as they see fit. As it is, changes are being forced upon tribes that we were told we must live with. This policy from the Department of Interior is not consistent with self-determination or self-governance policies established by law.

If the BIA and the OST were serious about wanting to work with tribes, our concerns would be given consideration prior to a decision, not after the fact. Working with us would result in tribes gaining increased authority to compact for more programs. Instead, tribes are frequently told that we cannot compact for certain pro-

grams because they are an inherent Federal function. As stated earlier, the Mille Lacs Band strives to compact all of our Federal dollars for all programs. Increased authority to compact additional programs would allow us to work toward that goal.

The Mille Lacs Band and other self-governance tribes continue to assert that we are willing to work together and assist with the trust reform process. Tribes must be part of the solution that addresses the problem involving our interests. Until then, the paternalistic actions and policies that are evolving under the current trust reform are moving tribal self-governance in a direction that Congress did not envision when it enacted self-governance.

Finally, the trust reform means taking administrative action to limit the Federal trust responsibility of the Department of Interior over tribal resources and assets. That action is inconsistent with the existing Federal Indian laws and policies that define that responsibility. The Mille Lacs Band asserts this action amounts to a significant diminishment of Federal trust responsibility.

On behalf of the Mille Lacs Band of Ojibwe, thank you for your consideration.

The CHAIRMAN. Thank you.

[The prepared statement of Ms. Benjamin follows:]

**Statement of Melanie Benjamin, Chief Executive,
Mille Lacs Band of Ojibwe**

Good Morning Chairman Pombo, Ranking Member Rahall, and members of the Committee. My name is Melanie Benjamin and I am the Chief Executive of the Mille Lacs Band of Ojibwe. The Mille Lacs Band is a federally-recognized tribe located in East Central Minnesota and has an enrollment of 3,602 members. The Mille Lacs Band was one of the first tribes to have entered into a self-governance compact with the United States government. It is our pleasure to provide testimony before the Committee this morning on the Bureau of Indian Affairs (BIA) trust reform process from the perspective of a self-governance tribe. This morning I will talk briefly about early self-governance policy, the federal trust responsibility, and the interplay of the current BIA reform and reorganization as it relates to self-governance policy and practice.

Early Self-Governance Policy

The Mille Lacs Band of Ojibwe has struggled for many years under changing federal Indian policies. From the beginning of the Indian Self-Determination and Education Act of 1975, and with the shift to tribal governments operating federal programs, the Mille Lacs Band saw the importance of implementing these concepts. In the early 1980s, the Mille Lacs Band government implemented a new approach to dealing with these changing policies. Following a full review of the Band governmental structure, the Mille Lacs Band adopted a separation of powers governmental structure.

At the 200th anniversary of the signing of the United States Constitution, ten tribal leaders from across the United States recognized the importance of reviewing the tribal relationship with the United States government. Through a series of national tribal meetings in 1986 and 1987, it became clear that tribal governments prioritized the reestablishment of a government-to-government relationship with the United States, very much like the relationship in the treaty-making era. This new direction in federal Indian policy would treat tribal governments more like brothers with the United States, rather than children of the great white father.

At the request of Congress, tribes developed an improved framework and system that would better meet tribal needs at the local level. The Mille Lacs Band and several other tribal governments responded by developing the Tribal Self-Governance Demonstration Project, which Congress supported and subsequently adopted into federal law. Tribes understood this federal legislative action to mean that a more formal relationship would exist to discuss and improve issues for tribes and their reservations. In effect, tribes would be recognized as sovereign governments that could address their respective education, health, social, and economic needs. Implicit in this recognition of tribal self-determination and self-governance was that the new

federal law would not diminish the treaty or trust obligations of the United States to the Indian tribes.

In 1990, the Mille Lacs Band of Ojibwe was one of the first tribes to participate in the Tribal Self-Governance Demonstration Project authorized by the Indian Self-Determination Act. We first compacted for thirty (30) programs from the BIA and today we are compacted for all authorized BIA programs through our Annual Funding Agreement and provide direct services to our membership. We were likewise among the first tribes to negotiate a self-governance compact for programs in the Indian Health Service. As a general matter of policy, the Mille Lacs Band has always strongly advocated for the self-governance of all federally-supported Indian programs.

Federal Trust Responsibility

The United States' federal trust responsibility to Indian tribes has been established through our treaties with the United States, federal statutes, Executive Orders, Supreme Court decisions, and the general course of dealings with tribes. The federal trust responsibility extends from the United States a trust obligation to Indian tribes and further recognizes a unique government-to-government relationship between each federally-recognized tribe and the United States.

The federal trust responsibility has long been interpreted to be very broad in scope and is expressly acknowledged in self-governance laws whose policies strive to maintain, improve, and ensure the continuation of the United States' relationship with and responsibility to Indian tribes. These broad policies underlying the self-governance laws make clear Congress' intent in promoting tribal self-governance as one of the primary means to strengthen the federal trust responsibility to tribes.

The Tribal Self-Governance Act of 1994, Title IV to the Indian Self-Determination Act provides specific statutory protection for the trust responsibility in Sec. 403(b)(9) by prohibiting the Secretary from waiving, modifying, or diminishing the federal trust responsibility of the United States. Later, Congress reaffirmed its commitment to upholding the federal trust responsibility in the Tribal Self-Governance Amendments of 2000 to the Indian Self-Determination Act, by providing that "[t]he Secretary is prohibited from waiving, modifying, or diminishing in any way the trust responsibility of the United States with respect to Indian tribes and individual Indians that exists under treaties, Executive orders, other laws, or court decisions." 25 U.S.C. § 458aaa-6. Clearly Congress intended to uphold its federal trust responsibility to and government-to-government relationship with self-governance tribes, a policy which has not been changed by further congressional action to date.

The BIA exists to advance tribal interests in broad federal Indian policy matters, and whose specific duty is to administer programs and services for the benefit of all federally-recognized tribes and their members. While self-governance tribes like the Mille Lacs Band believe we are better able to administer the same programs and services to our members, via our self-governance compacts, the fact remains that the BIA has a continuing obligation to advance tribal self-governance interests on par with those of all other tribes.

While the Mille Lacs Band and other self-governance tribes have assumed more authority and control over compacted programs, we must emphasize what the statute itself emphasizes: The federal trust responsibility of the United States continues to apply to all tribal resources and programs, not just those specific to trust resources or management of trust resources. Only on this condition, and based upon this understanding of the federal trust responsibility, has the Mille Lacs Band chosen to enter into self-governance compacts in order to better serve our members.

Trust Reform and Reorganization Impacts to Self-Governance

Tribal Consultation

In November 2000, President Clinton signed Executive Order 13175 that indicated a federal commitment to tribal sovereignty and the formalizing of a government-to-government relationship between federally-recognized tribes and the United States. The policy of consultation and coordination with Indian tribal governments extended to all federal agencies. Where it concerns tribal consultation, the Executive Order provides the following:

Sec. 3. Policymaking Criteria. [A]gencies shall adhere, to the extent permitted by law, to the following criteria when formulating and implementing policies that have tribal implications:

...

(c) When undertaking to formulate and implement policies that have tribal implications, agencies shall:

(1) encourage Indian tribes to develop their own policies to achieve program objectives;

- (2) where possible, defer to Indian tribes to establish standards; and
- (3) in determining whether to establish Federal standards, consult with tribal officials as to the need for Federal standards and any alternatives that would limit the scope of Federal standards or otherwise preserve the prerogatives and authority of Indian tribes.

The trust reform process and reorganization seem to be in a perpetual state of motion as a result of Cobell litigation. Initially, tribes were part of the process through a task force of which I was a member of. Although that task force attempted to develop a tribal solution, the Department of Interior suddenly dissolved the task force and proceeded with the trust reform process without any further tribal involvement. That action has since set the tone for the trust reform and reorganization as we see it playing out today, creating an atmosphere of distrust, sporadic paralysis, and uncertainty. Consequently, the Interior and BIA tribal consultation policy has become, with all due respect, meaningless to tribes who reasonably expect to have a voice in policy matters and decisions that affect us.

Although the BIA and the new Office of Special Trustee (OST) have conducted "consultation" sessions throughout Indian Country on the trust reform and reorganization, the sessions are more accurately characterized as informational updates that tell tribes what changes have been made (as the result of prior policy decisions) and their effects upon tribes. From the tribal perspective, if a "consultation" takes place after the fact of a major decision that directly affects tribal interests, it is not a consultation. At most, it is an informational briefing.

In many instances, federal notices to tribes for BIA and OST consultations have been so late that tribal attendance was abysmal. On one such occasion last fall, a consultation was scheduled for a handful of the BIA regions in the central United States. The Mille Lacs Band was just about the only tribe in attendance out of the entire Midwest region. One has to ask what meaning tribal consultation has if most of the affected tribes cannot be present to receive any information.

This lack of meaningful tribal consultation is illustrative of the mixed messages that come from Interior and the BIA. On one hand, we are told that the BIA wants to work with tribes. On the other hand, the Department is overhauling an entire agency, and creating a new one in the process, without working with tribes at all.

Where it concerns the BIA's management of trust resources, the Cobell litigation has shown that the Interior and BIA have failed to properly manage resources held in trust for tribes. It is ironic that tribes are being asked to blindly trust Interior and BIA decisions on how to repair the damage to trust assets when the original damage was caused by Interior and the BIA. It makes no sense at all, unless the policies of federal paternalism have returned to replace tribal self-determination and self-governance.

The Office of the Special Trustee

The Mille Lacs Band first points out that Congress never intended for the Office of Special Trustee (OST) to be a permanently-funded operational program. The OST was initially authorized by the American Indian Trust Fund Management Reform Act of 1994 (Public Law 103-412) as an oversight body that would oversee and coordinate departmental reforms. Today, the OST is assuming all trust functions and will administer a number of programs. It is from this that the OST has drawn its statutory authority, and the expansion of OST duties and responsibilities is being created through administrative rather than legislative action.

Despite this lack of congressional authority, a major component of the latest trust reform effort is based on a transfer of many BIA functions to the Office of Special Trustee. In the opinion of many tribes, this transfer of functions to a new agency with new duties and responsibilities amounts to a quick fix to a long-standing problem within Interior and the BIA that is taking place too quickly for any real effective change to occur. It is the further opinion of many tribes that this is why tribal involvement was removed from the process, so that the Department could implement its changes as quickly as possible to satisfy the Cobell sanctions imposed through court orders.

Caution must be considered with this latest BIA reorganization. History tells us that the latest trust reform and reorganization proposal is the most recent in a long line of failed proposals. Dozens of reorganization plans have been unfurled with great fanfare over the years and countless millions of dollars have been consumed studying and procuring and preparing them. None have been implemented with any measure of success. None. No one has considered that it may be the tribal beneficiaries themselves who may ultimately develop a successful solution to the trust mismanagement problem. This would be consistent with the premise of tribal self-governance—that those who govern best are those who govern closest to the people most affected.

One concern to the Mille Lacs Band and other tribes is that the transfer of functions proposed by the Department also appears to be limiting the scope of the trust responsibility to more limited duties and to promoting paternalistic policies. An example of this is the fee-to-trust land acquisition of tribes. Land acquisition is a major objective for many tribes, yet under the trust reform process there is a distinction between tribal fee lands and trust lands. The problem is that until a piece of tribal land acquires trust status, it would not fall under the OST's responsibilities and its treatment as a trust resource is very questionable.

Placing tribal lands into trust has become very difficult for tribes in recent years, and so there is a growing concern for the Mille Lacs Band and other tribes that Interior is working to minimize its overall trust responsibility to tribes (i.e., less trust resources to manage means less trust responsibility to that resource and its beneficiary). The net effect of separating fee lands and trust lands between the BIA and OST is that tribal priorities of land acquisition and increased self-governance of those lands is undermined and generally not being supported by the very agencies charged with acting in our best interests.

A second concern to the Mille Lacs Band concerns the proposed Integrated Data System which the OST is relying upon as the basis for this entire trust reform process, a system that the Mille Lacs Band and other self-governance tribes will not have access too. The OST officials have told compacted and contracted tribes that we do not have to adopt the proposed model, but that doing so will ensure access to the system and the information within that system. A recommendation of this sort requiring self-governance and contracting tribes to adopt a system in order to have information access undermines self-determination policies and promotes a paternalistic policy that leaves tribes with no choice in data information access. Surely the technical capacity is available for a variety of tribal models and approaches that can create access to the data.

A third concern for the Mille Lacs Band is the fact that our Annual Funding Agreements are with the BIA and not the OST. We have questions whether our access to funding will be impacted if a program used to be under the BIA but is now in the OST. This issue has not been addressed by either the BIA or OST, and consequently self-governance tribes face uncertainty as to the terms of our funding agreements when a program has been transferred to the OST.

Related to the matter of our funding agreements is that Central Office funds have been withheld from our Annual Funding Agreements, and therefore self-governance tribes will not be able to participate in the trust reform efforts insofar as they involve an expansion of funding for Central Office programs, functions, services, and activities. These problems raise questions about the trust reform's effect upon the self-governance process as a whole. Again, the issue is not being directly addressed.

A fourth concern for the Mille Lacs Band and other self-governance tribes is that we want the option to compact with the OST in light of the repeated messages that changes made under trust reform will continue to move forward and will remain so. If true, self-governance policy must remain consistent and authorize tribes to compact for the same programs that were once in the BIA but have been transferred to the OST. In this manner, self-governance policies and interests would be preserved rather than undermined.

With these examples illustrating specific problems for self-governance tribes, the Mille Lacs Band seriously questions what measure of federal trust responsibility can be expected from a new departmental agency with our trust resources and assets under our self-governance compacts. Because these issues, and others, have not adequately been addressed by the BIA and OST, self-governance tribes have come to believe this latest trust reform process is bypassing our particular concerns and interests as changes continue to be implemented.

Conclusion

Self-governance policies and laws were designed to move the United States government away from paternalistic policies and practices in the administration of Indian programs. Today, self-governance is being dismantled by the changing processes under the ongoing trust reform and reorganization. Self-governance was designed to allow tribes to adapt to changes as they see fit, but the latest trust reform is imposing changes upon tribes that we are told we must live with. Such a policy from within the Department of Interior is not consistent with self-determination or self-governance and the reorganization is removing tribal participation out of the entire trust reform process.

If the BIA and OST were serious about wanting to work with tribes, our concerns would be given consideration prior to a decision, not after the fact. Working with us would result in tribes gaining increased authority to compact for more programs. Instead, we are frequently told that certain programs are not compactable due to

their status as an untouchable, inherently federal function. As stated earlier, the Mille Lacs Band strives to compact all of our federal dollars for all programs. Increased authority to compact additional programs would allow us to work towards that goal.

The Mille Lacs Band and other self-governance tribes continue to assert that we are willing to work together and assist with the trust reform process. Tribes must be part of the solution that addresses the problem involving our interests. Until then, the paternalistic actions and policies that are evolving under the current reorganization plan are moving tribal self-governance in a direction that Congress did not envision when it enacted self-governance.

Further, any administrative action taken to limit the federal trust responsibility of the Department of Interior as part of the trust reform process is also inconsistent with existing federal Indian laws and policies that define that responsibility, which the Mille Lacs Band would assert amounts to a significant diminishment of the federal trust responsibility in effect.

On behalf of the Mille Lacs Band of Ojibwe, thank you for your consideration.
Mii Gwetch.

The CHAIRMAN. I thank this entire panel for your testimony. It was extremely informative.

I know I have a number of questions for this panel, but in lieu of the fact that we have been called over to the Floor for a series of votes, I will submit those to you in writing, and if you can answer those in writing for the Committee, I will hold the Committee record open.

With the indulgence of my colleagues, because this hearing did run longer, we have been called for a series of votes. It is probably going to be about an hour to an hour and a half before we are back. Seeing that, I am going to request that if my colleagues ask their questions in writing, as well, those can be submitted to the panel.

Mr. PALLONE. That is fine, Mr. Chairman. I appreciate it. If I could just say, though, that I know Mr. Frazier mentioned this GAO request for a study of certain practices at OST that Senator Tim Johnson has requested, and I just wanted to say that I would like to join that and I will talk to Senator Johnson about joining that, because I think that that makes a lot of sense. But I would like to ask some additional questions in writing and I appreciate the opportunity.

The CHAIRMAN. Thank you, and I want to thank the panel for your testimony. I apologize for the length of the hearing, but I tried to give you all a lot of time for your oral testimony. The questions will be submitted to you in writing, if you could answer those in a timely fashion so they can be included in the record.

Thank you very much. The hearing is adjourned.

[Whereupon, at 12:16 p.m., the Committee was adjourned.]

[A statement submitted for the record by Mr. Rahall follows:]

**Statement of The Honorable Nick J. Rahall, II, a Representative in
Congress from the State of West Virginia**

Mr. Chairman, it is with eager anticipation that I believe we all wait to hear more about the latest, greatest, be-all, end-all, fix to the Indian trust fund mismanagement saga.

The Interior Secretary has decided she will take a chunk of authority from the BIA and slide it over to the Special Trustee, then move some management boxes around at the agency offices, create several new one-size-fits-all boxes, and pull some strings to direct different line authorities.

Keep an eye on those boxes and that moving authority because somewhere under this shell game lies the trust responsibility, self-governance contracting, and the

government-to-government relationship worked on and fought out for over one hundred years.

I am here to suggest that magic wands or sleights of hand will not adequately address the problem. And without the strong support of Indian country, this reorganization is bound to fail.

It is true that after being prodded by Congress several high-ranking officials of the Department spent months working with Indian tribes on reform matters.

It is also true that these officials walked away from these negotiations, waited until Congress adjourned, and then sought a reprogramming of \$5 million to support the reorganization.

Reaching consensus with Indian country on this issue is something that I feel strongly about.

These tribal leaders are not wide-eyed children holding cotton candy, ready to accept the next administrative ruse as pure magic. They are hardworking, elected governmental leaders who know what the specific needs are of their tribe and expect nothing less than the right to have those needs addressed and respected by our Federal government.

Moving full speed ahead with this massive restructuring of the trust relationship will no doubt get the Administration through to the next election busily claiming it is fixing the trust fund management problems.

But when the political leaders of this Department fold up their tent and move on, the mess left behind will once again be left to those affected by this situation in Indian Country to try and clean up.

