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REORGANIZATION OF THE BUREAU OF INDIAN AFFAIRS

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

ON

PROPOSED REORGANIZATION OF THE BUREAU OF INDIAN AFFAIRS

MAY 21, 2003
WASHINGTON, DC

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REORGANIZATION OF THE BUREAU OF INDIAN AFFAIRS

WEDNESDAY, MAY 21, 2003

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

The committee met, pursuant to notice, at 10:08 a.m. in room SR–485, Senate Russell Building, Hon. Ben Nighthorse Campbell (chairman of the committee) presiding.

Present: Senators Campbell and Conrad.

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

The CHAIRMAN. The committee will be in session.

Welcome to the committee hearing on the reorganization of the Bureau of Indian Affairs [BIA] and the Office of Special Trustee for American Indians.

Senator Inouye will try to be here; he has a conflict this morning. Senator Daschle sent a statement over that I will include in the record for him. Several Senators may be coming in and out during this morning, but we are going to go ahead and start.

The BIA is no stranger to reorganizations. The Congressional Research Service tells us that since the issuance of the Merriam Report in 1928 there have been 18 major attempts to reorganize the BIA, including the current one. Anyone involved in Indian affairs knows that the current Indian trust management system needs to be updated and reformed.

For decades the system was allowed to remain in place without reform, without improvement, and without much attention being paid to it. Only in the past 15 years or so have the tribes, the Congress, and the executives looked for ways to update the centuries old framework. I believe that we need to update the computer and accounting hardware, but we also need to revisit the basic principles of the trust, such as legislating appropriate standards for Federal and tribal performance in an era of Indian self-determination, expanding tribal control and decisionmaking for their own assets without saddling the United States with all the liability for the decisions, and bringing the discipline and advantages of the private sector to how Indian funds are managed and invested.

From January 2002 to November 2002, the Joint Department of the Interior—Tribal Task Force on Trust Reform met in exhaustive consultations and meetings around the country but could not reach

consensus on the issues it confronted. In December 2002, Congress gave the Department the green light to reorganize with $5 million to begin to carryout the reorganization. That is the subject of today's hearing.

Our first panel will consist of the newly confirmed special trustee, Ross Swimmer, delighted to see you here, Ross, and the acting assistant secretary of Indian affairs, Aurene Martin. In the second panel we will hear from the National Congress of American Indians, the Intertribal Monitoring Association, the United South and Eastern Tribes, the Quapaw Tribe, and the Hoopa Tribe of California.

Senator Inouye, as I mentioned, will not be here, maybe not at all, but certainly not until later. So his written testimony will be included in the record.

[Prepared statement of Senator Inouye appears in appendix.]

The CHAIRMAN. With that, Ross, if you would like to go ahead. Welcome to the committee. If you would like to depart from your written testimony, feel free to do so.

STATEMENT OF ROSS SWIMMER, SPECIAL TRUSTEE FOR AMERICAN INDIANS, DEPARTMENT OF THE INTERIOR, WASHINGTON, DC, ACCOMPANIED BY AURENE MARTIN, ACTING ASSISTANT SECRETARY, BUREAU OF INDIAN AFFAIRS

Mr. SWIMMER. Thank you, Mr. Chairman. I appreciate this opportunity to appear before you today, and particularly in the capacity as special trustee. I thank the committee for its efforts in that regard as far as the confirmation is concerned. We do have prepared testimony and would like to submit that for the record.

The CHAIRMAN. It will be included.

Mr. SWIMMER. Mr. Chairman, the primary purpose of the reorganization that we are to talk about today is to improve the Department's ability to fulfill its trust responsibilities to individual Indians and tribes. It is important that this committee recognize and understand that the Department has been held in breech of certain of its fiduciary responsibilities in what is known as the *Cobell* litigation. In this litigation, individual Indian account holders, as a class, have sued the Department. They have expressed dissatisfaction, extreme dissatisfaction, with the service they have received from the Department in the past and with the service currently, and they are claiming that they are owed tens of billions of dollars for the mismanagement of the trust. The judge, and I quote, has held that the Department:

> Has indisputably proven to the court, the Congress, and the individual Indian beneficiaries that it is either unwilling or unable to competently administer the IIM Trust.

The Secretary takes these allegations very seriously. Regaining the confidence of the trust beneficiaries and ensuring that the Department is in full compliance with its trust obligations is as serious a challenge as the Department has ever faced. It is for this reason that the Secretary, with the support of the former Special Trustee, the Assistant Secretary for Indian Affairs, this Special Trustee, and this Assistant Secretary for Indian Affairs has gone through a long process toward creating what we believe is the right organizational framework and structure to make this happen. It

has been a journey of some time. The reorganization is a critical part we believe in making the Department more accountable.

What we have done over the past year, in addition to the reorganization, is develop the first comprehensive trust management plan to guide the Department's efforts, and, as I think the committee is aware, we have engaged in a long-term process of re-engineering our business processes and how we do trust, how we manage the trust, and how we account to the account holders and to the tribes. And this effort is continuing as well.

All of these three efforts, the reorganization, the comprehensive trust management plan, and the re-engineering, are what it takes we believe to meet our trust responsibilities for our fiduciary trust for the fiduciary trust asset management and accountability to both Indian tribes and Indian account holders.

At this time, I would like to call on Assistant Secretary Martin to give you some of the background of what it took to get to this point in our reorganization efforts.

The CHAIRMAN. Okay. Ms. Martin.

Ms. MARTIN. Good morning, Mr. Chairman. Thank you for the opportunity to appear before the committee today to talk about our reorganization efforts.

As Mr. Swimmer stated, the reorganization of the BIA and Office of Special Trustee is a component of a larger plan to improve the delivery of trust services to tribes and individual Indians. Our strategic plan for improving trust services is outlined in our comprehensive trust management plan and that provides the overall framework of where we want to go with trust improvement and the improvement of trust services. It outlines our mission, our vision, our goals.

The reorganization provides a structure for improved delivery of services and, as such, is a component of the larger overall plan. The "To Be" process, the next phase of the development in our overall reorganization, will result in re-engineered processes that will ultimately provide the final component for improvement of trust services.

As you mentioned in your opening remarks, the Department undertook massive efforts to consult with Indian tribes regarding options for reorganization following its proposal to establish the Bureau of Indian Trust Asset Management. Between November 2001 and December 2002, the Department has held 45 meetings all over the country with tribal leaders to discuss the reorganization efforts. We spent over $1 million in trying to provide this consultation. We have done it at every level. We had a number of meetings, actually 12 meetings, a meeting in every region, to talk about, first, the Bureau of Indian Trust Asset Management, and after it initially became clear that there was overwhelming opposition to that, how we might better reorganize the Department.

It was out of those first meetings that we developed the Joint Tribal Leader Task Force. And we had a number of joint meetings all over the country with regard to the Task Force. And as part of the larger reorganization, the Joint Tribal Leaders-DOI Task Force, we also held regional meetings with members of the Task Force in their own region to discuss the efforts of the Task Force and where we were going with our organizational options.

While I am sure you will hear different perspectives today on the efforts and the results of the Joint DOI-Tribal Leader Task Force on Trust Reform, the Department worked very hard with respect to the agreements made with tribal leaders resulting from the discussions of the Task Force. It was our intent in designing the reorganization to try to abide by those agreements to the extent possible.

In other cases where we have not been able to abide by those agreements, we have tried to fashion from existing lines of authority and existing authorities that we have delegated to the Secretary some way of trying to honor those agreements as well. For example, one of the recommendations of the Task Force was that we create a single executive sponsor who would oversee all trust projects. That recommendation was to either create another deputy secretary or an under secretary for Indian affairs. We lack the authority to create such a position without legislative authorization. So we have increased the authorities of the Office of Special Trustee to try to carry out some of those what the tribal leaders viewed as necessary powers for a single executive sponsor.

In developing the new structure, we sought to highlight a number of things.

First, we wanted to keep decisionmaking at the local level where expertise and knowledge within the Bureau was greatest and where tribal leaders have the most contact with the BIA and the Office of Special Trustee.

We wanted to continue the prominent position that self-governance plays in the BIA and we have expanded the role of self-governance and self-determination by elevating the responsibility for policymaking for all self-determination programs to the Office of the Assistant Secretary. I think the way we view it is that direct service, 477, self-determination contracting, self-governance are all part of a larger continuum that tribes kind of move through in becoming more independent. And we did not see that that was being looked at as one kind of whole progression that tribes make and we do not make policy that way. So we want to try to do that in the future.

We also highlighted the need for accountability within the BIA by creating the Deputy Special Trustee for Accountability. This Deputy Special Trustee is responsible for creating trust training programs for BIA and OST staff, and for developing trust regulations, policies, and procedures for the operation of trust programs.

Within BIA, we have restructured the lines of authority for the BIA, the Office of the Assistant Secretary, and the Office of Indian Education Programs. The most notable change is a separation of the fiduciary trust services from the operation of other Bureau programs. We hope to achieve improved performance of trust services by eliminating the collateral duties that have been performed by employees responsible for trust services, a problem which has long been cited as one of the biggest barriers to improved performance.

Other highlights include the consolidation of direct reports to the Director of the BIA, formerly known as the Deputy Commissioner of Indian Affairs, from 21 direct reports to 5. We have consolidated a number of administrative functions performed by BIA into one centralized unit, making it more efficient.

Many of the structural changes were developed as a result of the discussions with the Joint Tribal Leaders Task Force and the DOI. The actual realignment was developed by career and senior management of the BIA and the Office of Special Trustee.

Reorganizations are never easy. They generate understandable anxiety and concern among the employees who are being asked to change and improve their performance and whose professional and personal lives can be significantly affected. We hope the explanation you receive today will accomplish these two things:

First, we hope that it will generate enthusiasm for successfully meeting the challenges that face us in fulfilling our trust obligations; and

Second, we hope that it will reduce whatever anxiety you may feel about how the necessary changes will affect you and what they will require from you. It is imperative, however, that you understand that change is necessary and that business as usual with respect to trust management is not acceptable. To properly serve the beneficiaries of the trust, we must, and we can, do better. I would like to note here that that was one of the main things that the Trust Task Force recognized at the very beginning of their discussions. The tribal leaders said the status quo was not acceptable, we need to change the way we do business. And we entered into negotiations and discussions to see how we could do that.

As Mr. Swimmer said, the reorganization exists as part of a larger design and represents the structural changes necessary for the organization to improve the delivery of trust services. The reorganization is a realignment of the functions of the Office of Special Trustee, the Office of the Assistant Secretary for Indian Affairs, and the BIA.

As part of the Joint DOI-Tribal Task Force, tribal leaders identified a number of factors necessary to any reorganization effort and which provided benefits to tribes. These included: Promoting self-governance and self-determination; ensuring trust accountability; focusing trust employees on trust duties; and personal and organizational accountability. The Department also felt that it was important to improve beneficiary services by supporting strong beneficiary-focused service delivery, promoting better uses for trust assets, and standardizing business practices.

The reorganization also provides a number of benefits to the Department and its employees, many of which are also important to tribes. Decisions about trust assets continue to be made at the agency and regional levels; effective management controls will be provided; and performance will be measured, creating personal and organizational accountability.

Mr. SWIMMER. As we began this reorganization over 1 year ago, talking and consulting with the tribes about where we were going after the failed attempt at the Bureau of Indian Trust Asset Management, we reached a conclusion in early December of last year of the Task Force consultation meetings. At that time, essentially all the options that had been discussed from November 2001 all the way through the Task Force consultations and following were evaluated. We looked at where we were, where we had come from, what had been proposed, and what we could do within the context of the law as it stood. One of the items that the tribes proposed,

as Ms. Martin had suggested, was that the Department have a deputy secretary or an under secretary, neither of which position could be done without an amendment or an action of the Congress.

Following the conclusion, however, on the December 4, 2002, the Secretary approved the BIA/OST reorganization recommendations. Following that, on December 18, the submission was made to the Appropriations Committees for a very modest reprogramming that would take us through the reorganization at that particular time. And then in February, the BIA and the OST management met with the appropriate unions and the Department of the Interior advised them and it got through that phase. And then on the April 21, 2003, the reorganization was completed, with the appropriate amendments to the Department manual.

The question obviously arises, how will the reorganization affect the BIA and the Special Trustee staff? One of the things that I think is important to recognize here is, what Ms. Martin just said, it cannot be business as usual. The status quo is not acceptable. The suggestion by the plaintiffs in the *Cobell* case is that we simply eliminate the 3,000 employees that are currently performing trust activities and replace them all. We all know that is a very impractical idea but it is one, frankly, that the court may accept. The court is interested in looking at a receiver of some kind. We have no idea how that might play out. But certainly, we believe that the 3,000 or so employees that are working within the BIA and the Special Trustee's Office are doing a pretty credible job and that there needs to be more training, better organizational structure, more focus on the trust activities, and, frankly, more people well trained in trust activities to help support the performance that they are doing now.

In addition to the realignment of boxes, as we call it, within the reorganization, there is more to it than that. We will be adding new staff at the local level. That new staff comes in the form of deputy assistant superintendents and deputy regional directors within the BIA, and also within the Special Trustee's Office we will expect to have new staff, as many as 100 or more people, who will be placed at the local level who will be working directly with the agency superintendents and deputy superintendents who are responsible for delivering the trust services.

Nearly 3,000 employees have already gone through a formal Trust Foundation's training course. There are going to be advancement opportunities for those people as they become certified in trust operations and trust activities. We will obviously look to people that are within the system now to become qualified to handle specific trust positions as well as recruit from the private sector to try to bring in people that have a private sector background in trust and can hopefully be quickly assimilated into the Indian trust business as well. So there is a considerable effort here that we intend to grow the organization, train people into the trust world, and establish a very strong focus on the trust operations and trust activities which we think is very critical and a critical part of this reorganization.

Ms. MARTIN. We have designed templates for how we expect this reorganization to play out throughout the organization and for regional and agency organizations. Each region has had the oppor-

tunity to present justifications to deviate from the template, because we recognize that every region has different needs and requirements because tribes are different and every tribe has different needs and requirements itself. We are in the process of reviewing those proposed changes, but most regions will have the following organizational structure:

We have divided, as I stated earlier, our fiduciary trust services into one direct line of authority, who will report to a deputy director for Trust Services at the regional level. And programs that are included in the trust services line of authority include natural resources programs—water resources programs, forestry, fire, agriculture, fish and wildlife programs, and also real estate services—land acquisition and disposal, land title records offices, probate, rights-of-way.

The other line of authority that runs out of the regional office will be under the deputy director of tribal services. Programs included within that line of authority include transportation, planning and design, construction for transportation services, and other tribal services such as tribal government services, human services, and housing.

We have separated out a lot of our administrative services into a separate organization which is responsible for providing those services to the BIA and to the Office of Indian Education Programs, so that the regional director can focus on two things—managing trust assets and providing services to tribes and individual Indians.

The two deputies are there to concentrate on the specific areas for which they are responsible, one for trust and one for tribal services. The purpose of that is to have the trust people responsible only for trust services so that they can better deliver those services.

The agency field offices mirror what the organization is at the regional level. Again, you will have a superintendent who is responsible for overseeing the activities of tribal services and the trust services, and then a deputy superintendent who is responsible for the tribal services line of authority and another who is responsible for the trust services line of authority. If an agency is particularly small or has no trust assets to manage, it will not need to have deputy superintendents.

Mr. SWIMMER. The Office of the Special Trustee will likewise go through some reorganization, although principally the addition of trust officers and trust administrators is where you will see the differences. The Office of Special Trustee is charged with the oversight responsibility of all of the Department of the Interior trust activities. That activity will continue. The oversight of those agencies within Interior, including such agencies as Mineral Management Service, Bureau of Land Management, Office of Surface Mining, and others will continue to have the oversight of the Special Trustee, particularly as it affects the delivery of trust services. This activity does not change. If we can put up the chart, out to the right you will see the Trust Review and Audit section, which is very similar, in fact, to what some of the tribes had recommended, that there be an independent review and audit function within the Department of the Interior or outside the Department of the Interior. The only way that we could see that being done was to create it within Interior and out of the Office of the Special Trustee.

The Office of Special Trustee will continue its operational responsibility for the Office of Trust Funds Management and the managing of trust funds and trust assets, as well as the oversight of certain improvement projects. The Office of Trust Funds Management was moved under the direction of the Special Trustee several years ago and has established a very quality accounting system that is in effect today.

As I mentioned earlier, the other change in the Office of Special Trustee is the addition of operating authority over regional and agency trust employees. As you will see from the chart, in the regional area, we will have the deputy for trust services, a deputy for field operations, and a deputy for trust accountability. The deputy for field operations will be the one responsible then for overseeing the regional trust administrators. These are folks who have a private sector or Indian trust background. They are expected to be at the SES level, the highest level in the Government. And we anticipate being able to recruit some very quality people for those positions.

And the same is true for the trust officers. The trust officers will be located at the agencies. One of the primary functions of the trust officers, and I understand this has been a point of contention in some circles, but the trust officers I would estimate at this time that 80 percent of their work will be in addressing the needs of beneficiaries. It is things that we do now in an office similar to a call center where beneficiaries want to know and need to know is their land leased, how much has been coming in on it, what is my account balance, where am I, how are we making sure that we reduce the "whereabouts unknown" as much as possible, how do we track people. When people come into the agency and need those kinds of services today, the BIA provides that but it may not be a single person. They may go to a realty officer one day, the superintendent the next day or someone else and whoever is available. It may take longer than it should to provide the services.

What we are trying to create here is a trust officer who would be the beneficiaries point of contact for trust services. That trust officer has to have an intimate knowledge of the agency, we anticipate that they also have to work with and under the guidance of the agency superintendent, that their work is simply an extension of what that agency is already doing in the area of trust. It is additional staff. And if you listen to superintendents, they will tell you that what we really need are more people and more people that understand what this trust is all about. And so we are trying to fill that through these trust officers that we expect to have in the agencies.

There will not be trust officers at every agency. What we are trying to do in placing these folks is to look at where our greatest need is, particularly in terms of IIM accounts, the asset base, revenue, and that sort of thing. In some of our agencies we have very few fiduciary trust activities.

In the next slide you will see sort of an overview of what happens from the Office of the Secretary down through the organization. We do not repeat this slide but I would ask that you just put it to the side and kind of keep it available to you because, as we go through and discuss what is on this slide, I think it will help you under-

stand these relationships that I have just discussed. In the Office of the Secretary, the Secretary has designated the Deputy Secretary as being that single executive sponsor for presence. So, my office reports to the Secretary, the Assistant Secretary for Indian Affairs reports to the Secretary. If you want to know where the buck stops, it is with the Secretary and the Deputy Secretary. So there is that accountable official. And they expect that both the Assistant Secretary and myself have got to work together very closely to make this organization work and to be responsive.

The relationships between the BIA and the Office of the Special Trustee at the central level. You see the Deputy Director of Field Operations for the BIA and the Deputy Special Trustee for Field Operations of the Office of Special Trustee. As you will note from the previous slide, these simply parallel each other, as does, as you will see in the next slides, the regional and the agency. The deputy directors of our respective field operations basically provide that trust oversight management for the positions that are at the regional and the agency level as well.

At the regional, which you see is the next slide, as Aurene mentioned, you have the Deputy Regional Director for Trust Services in the BIA, and we have a Regional Fiduciary Trust Administrator. While the chart that you saw earlier indicates the parallel nature of these reporting then up to the Secretary's office, the intent, again, is that while you have different reporting relationships in your line management, there is the dotted line crossover and that these offices are to be transparent to the tribes. When we have decisions that need to be made at a regional level, we are not expecting tribes to go to the regional trust officer or the regional BIA officer. We are expecting them to follow the system they follow now, which is going to the Regional Director of the BIA. If the Special Trustee's Office has issues that need to be worked out, it is up to our Regional Director there, the Special Trustees, to work that out with the Regional Director of the BIA and to have that not as part of the tribal responsibility. And the same thing at the agency. The activities of the tribes should essentially not differ from what they are today in terms of how they interact with the agencies and with the regional offices.

If you go on down to the next slide, 14, you see at the agency level what we are talking about, where we have the Deputy Agency Superintendent for Trust Operations and the Fiduciary Trust Officer. As I said, the Fiduciary Trust Officer is there to provide beneficiary services primarily. He is also there to assist with the Superintendent, the Deputy Superintendent in those areas that one might call high risk. It is not unusual for a superintendent or a realty officer or another employee of the agency to be a member of the tribe over which the agency is acting. In those instances, a lot of times leasing issues, sale of assets, the use of the assets may be a conflict between the person at the agency making a decision on that particular subject and the beneficiary. There may be a relationship, a family relationship, there may be an ownership relationship. With fractionation as it is today, the average beneficiary that owns property has at least 10 parcels of property. It could be that they have co-owners that number in the thousands. It is up to the superintendent, realty officer, deputy superintendent then to

call upon the Special Trustee and the agency trust officer when those kinds of conditions arise to ensure that there is impartiality and that the duty of loyalty is transacted between the agency and the beneficiary.

Again, we expect that the agency BIA people, superintendent, deputy, whomever, would call upon the Special Trustee. It is not a situation where the trust officer will go in and say, wait 1 minute, you cannot make that decision, that is a conflict of interest. We would anticipate that through the training that we are providing to the people dealing with trust that they would know when there may be a conflict, they would know when there is a high risk to this transaction and they need to have a third party look at that. Again though, it is our opinion that this is a very small percentage of the trust officer's time and duty, that in fact the trust officer is going to spend more time working with the beneficiary.

The CHAIRMAN. Ross, I hate to interrupt you, but we have already had one call to vote and we have got about 6 minutes left on this one. So I am going to have to recess for about 10 minutes. Hopefully, you will stick with us because I do have some questions that I need to ask you. And if you are not done, we will continue with your testimony as soon as I get back.

Mr. SWIMMER. Sure.

The CHAIRMAN. We will recess for about 10 minutes.

[Recess.]

The CHAIRMAN. The committee will be in session.

Ross, would you like to continue? And how much more time do you think you need?

Mr. SWIMMER. We just need about 5 or 6 minutes. I am turning the next two slides at least over to the Assistant Secretary and let her review our timetable and BIA implementation.

Ms. MARTIN. The authority to make the changes that we need to make to effect the reorganization was granted by the Secretary on April 21 of this year when she signed the departmental manual changes that changed the lines of authority for the BIA and the Office Special Trustee. Since then we have been working together, both the BIA and OST, to put together a timetable and to coordinate our efforts to get the reorganization done.

Because our organizations are so different, the size of the BIA is so much bigger than the Office of Special Trustee, they are going to be able to do some of their activities before we are able to do ours. But we have a team that is working together to try to coordinate when we roll out the reorganization so that we roll it out in the same places as the same time.

Implementation has begun in some small ways. One of the things we have begun to do is to take the existing employees that we have, look at where they are located, an develop what we call a crosswalk, putting them in the new organization in the correct line of authority. It is as simple as recoding them in the computer, but because we have over 9,000 employees, it takes a long time to do that manual work. We have also begun to change some of the names. The Deputy Commissioner of Indian Affairs name change was effective last week. He is now known as the Director of the BIA. The actual reason for that is because we wanted to make it

standard with the directors of the other bureaus and the nomenclature that we use throughout the Department of the Interior.

We are undertaking the following activities at the BIA to implement the reorganization right now:

We have advertised a number of the positions that will report to the new Deputy Assistant Secretary for Information Resources Management. These positions are located at Herndon, VA, and Albuquerque, NM.

We have completed our position descriptions for the Deputy and Regional Directors and the Deputy Superintendents for Trust. We anticipate advertising for our first agencies that will be rolled out very soon.

We have received all of the reorganization charts, staffing plans, and crosswalk outlines from all of our regions and agencies and we are reviewing those now. We expect to begin transferring not location, but lines of authority and functions in two agencies, Concho and Anadarko, both located in our southern plains region, in July of this year. Other regions and agencies will follow and will coordinate with OST in their roll out so that we roll those out at the same time in the same areas.

Mr. SWIMMER. Now as the Assistant Secretary has said, we are going to do this as a team and we are going to try to continue that approach throughout the time it takes for reorganization and full implementation, and even after that, of course.

The Special Trustee's timetable, we have appointed acting managers at all levels within the Special Trustee's Office. We expect trust officers to be first trust officers, which would perhaps be two or three to be hired later this year, perhaps as early as September or October. We have started recruitment activity with advertisements in various trade publications as well as the Government publications for the Regional Trust Administrator's positions, of which there will be six, the Chief Information Officer, Deputy Trustee for Accountability, and Trust Program Management Center.

The remaining trust officers that would go into the regions, as I mentioned before, we expect to begin placing those after our two pilot agencies, which are anticipated to be Anadarko and Concho in Oklahoma, we will place these trust officers in accordance with certain conditions, particularly looking at the recurring income that comes into that particular agency, the number of IIM accounts they have, and the concentration of account holders in a particular agency, as well as just the general workload issues that affect that agency.

So we are moving. Things are happening. There are an awful lot of things going on. Just to recap. We have the three major areas that we are working with, the comprehensive trust management plan that gives us a roadmap to going through a more effective management of the trust and meeting a lot of those concerns that have been voiced in the *Cobell* court, we have the "To Be" re-engineering of the trust business processes to try to give us a standardized business process wherever possible, so that when we do introduce information technology systems that these will be workable and that they can handle the processes, and the reorganization,

which we believe allows us to have the compatibility then to carry out the trust management plan and the re-engineering.

So that concludes my remarks. I would be happy to respond to any questions that you may have.

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

The CHAIRMAN. Okay. Thank you. I do have some questions. Before I start though, we have been joined by Senator Conrad. Did you have an opening statement, Senator?

Senator CONRAD. I do. I would like to just put that in the record if I could, Mr. Chairman, so that we could get to questions.

[Prepared statement of Senator Conrad appears in appendix.]

The CHAIRMAN. It will be included in the record. Good.

Well, it appears that you have put a great deal of thought and effort into this structure, Ross and Ms. Martin. Let me just ask you a couple of general questions first. You remember the ill-fated BITAM proposal a couple of years ago. To play the Devil's advocate, for those who might say this looks like BITAM in a different suit of clothes or something, can you quickly describe the differences? One, of course, was that tribes had little prior knowledge about BITAM. It looks like after 45 meetings, I would not think that they could say that again. But tell me in a nutshell what the difference is when people say this looks like to separate structures just like BITAM.

Mr. SWIMMER. Go ahead.

The CHAIRMAN. Aurene, go ahead.

Ms. MARTIN. Well, it is actually significantly different from the Bureau of Indian Trust Asset Management proposal. I think the similarity is that the purpose behind the Bureau of Indian Trust Asset Management was to place an emphasis on the delivery of trust services. So there is an attempt to remove all of those services outside of the BIA so that there could be a concentration on providing them. But one of the things that came out of our discussions with the Joint DOI-Tribal Trust Task Force was the tribes felt vehemently that trust services should never be removed from the BIA, in fact, they even resisted the idea that we would separate out between two deputy assistant secretaries trust services and other tribal services or non-fiduciary trust services.

What we have done is we have kept the structure of the BIA at all levels and all of those services continue to be offered at agency, regional, and central office levels within the same Bureau structure, but they have been separated within that structure so that people who do trust services will only do trust services, and the people who do other non-fiduciary tribal services provide those services only. So they are not separated into a whole other structure or bureau within the Department of the Interior, but they stay within the BIA. Budget and all of those other administrative items are developed cooperatively and together, which was our main concern with the Bureau of Indian Trust Asset Management.

Mr. SWIMMER. I think those are very key points. In addition to that, I would say that it continues the basic functions of the Special Trustee's Office and the BIA, continues those to separate organizations. It creates a focus that I think was the intent of the Secretary in the BITAM proposal, was to create a greater focus on the trust. And by the realignment within the BIA, I think that happens. And

with the introduction of trust officers, that allows that oversight of the OST to be down to the agency level I think is accomplished.

The other thing is that the oversight of the Special Trustee for the entire Department continues under the direction of the Special Trustee. It is not merged in any other organization. So you still have that independence within the Special Trustee's Office and the responsibility for providing oversight to the entire Department for trust operations.

The CHAIRMAN. Okay. Thank you. This is not a real big issue but it did kind of just jump out at me. You know we have a terrible deficit in a lot of Government agencies are having tough times struggling this year because of the deficit. But on page 6, where it says we plan to grow, not shrink, I would be careful, you might want to reword that sentence because I think some of my colleagues may start worrying.

On page 5, explain if you could just really quickly, this Memorandum of Understanding that you have agreed to with the Indian Educators Association, AFL–CIO, and so on, what does that consist of?

Ms. MARTIN. Before we undertook the reorganization, we met with the unions for the employees for the Office of Indian Education and the BIA and got their agreement to move forward with the reorganization before we started it.

The CHAIRMAN. And that was part of when you mentioned, or perhaps Ross did, about not losing any jobs?

Mr. SWIMMER. Well, in that instance, any time there is a reorganization of any type, the unions have to be consulted and these were the unions that were appropriate to the consultation and they basically signed off on it. Of course, they wanted assurances like that, is anybody being moved, are they going to lose their jobs, what else are you going to do. So that was all given to the unions and they were satisfied.

The CHAIRMAN. Okay. Fine. Thank you. That is good. Also, because your organization is somewhat forward-looking, your testimony indicates that the thrust will be service delivery, and I certainly support that. But service delivery always has a cost to it. I am a little concerned about the funding to pay for any reprogrammed money from unexpended Bureau funds, or how are you planning on handling the cost of delivering more services?

Mr. SWIMMER. The additional cost for the reorganization trust reform is in the fiscal year 2004 budget. It is, as all the other trust reform activities are, it is separately funded money. It does not come out of the existing program.

The CHAIRMAN. It does not? Okay. Good. You recently solicited nominations for the Trustee's Advisory Board. What is the status of that effort?

Mr. SWIMMER. We are still receiving nominations. We have approximately I think seven or eight from Indian country that qualify for the various five positions. There are four that are private sector oriented positions, could come from Indian country as well but we do not have any specifically for those, but that is the two people who have the fiduciary trust background and an academic who has trust management experience.

The CHAIRMAN. I see. Good. I know you were criticized some, as many people have been, about using private sector tools; that is, accountants, management, and so on, investment experience. But I think, frankly, that we almost have to do that in my view. I know that you have taken a little bit of heat about that, but let me share the heat with you. I do not think that we can do it just with Government entities alone, that we have got to rely on some experts outside of the Government agencies.

Do you think that there will be under this restructuring plan any kind of turf problems, for lack of a better word, or if there is a disagreement, let us say tribal members disagree with the decisions of the Bureau or the OST, is there any possibility that we are going to get caught in a cross-fire, one being played off against each other?

Mr. SWIMMER. I do not think there could be any worse turf problems than we have had in the past.

The CHAIRMAN. I will drink to that.

Mr. SWIMMER. The Assistant Secretary Aurene Martin and I both have a great deal of experience in Indian country and working on Indian issues, and particularly working on this particular trust issue. It is my belief that working together we are going to be able to put a lot of those turf battles aside and that, in fact, if anything, we are going to approach this as a team and, as I explained before, to the extent we can make this happen, there will not be the separation but rather it will be a team project between the Special Trustee's Office and the BIA to make the improvements that are necessary and to enhance trust operations throughout the system.

The CHAIRMAN. Well I appreciate that team approach. Obviously, we are going to be part of that team, too. The members of this committee are very interested in resolving this problem. I look forward to working with you, and I know Senator Inouye does too, as we try to move forward.

Senator Conrad, did you have any questions you would like to ask before we move to the next panel?

Senator CONRAD. I do. Mr. Chairman, thank you. First of all, I want to thank Mr. Swimmer and the Office of Special Trustee and representatives of the Bureau for being here. I appreciate the work that they have done. Let me just say, I do not know how many times I have been at this hearing dias and heard others present similar plans and all of it has come to naught. I will tell you honestly, it leaves me with zero confidence that anything fundamental is going to change here.

Over and over, we have had plans with changes in organization charts and words about how they were going to finally get their arms around these problems. And over and over, we are left with the same old mess. It reminds me very much of rearranging the deck chairs on the Titanic. We just keep plunging ahead and somehow nothing fundamental changes.

I look at this effort and it is impossible for me to know whether this has any prospect for success or not. But I have to tell you, my confidence has been so shaken by previous events. This is not directed at the two of you. I do not know whether you will be successful or not. I hope very much you will, but I have grave doubts. And the gravest doubt I have is that, to me, one of the fundamental

problems is the fractionalization or fractionation, as some call it, of ownership interest. To me, this is right at the heart of the problem. And if we do not have a strategy and a plan to deal with that fundamental, I do not think we will ever catch up with this problem.

My own conclusion is this, Mr. Chairman. I have a background in accounting and business management. I would say to you, I believe we have got a run away train on our hands. I believe the fractionation or fractionalization, as I call it, issue is going to swamp whatever system is devised. And if we do not find a way to address this issue, I do not think we can ever catch up with the problem. And I do not care how well-intentioned the people are or how capable they are, we have got a dynamic occurring here where the interest gets fractionalized or fractionated and the result is a nightmare, an absolute nightmare for anybody to manage. You know, we just keep letting it go on. We do not go to what I think is right at the heart of the problem.

So the question I would have for you is, do you have a plan to deal with that issue? And if not, why not? And if not, what can persuade you that we have got to attack that fundamental dynamic?

Ms. MARTIN. Well, we do have a plan and we do recognize that fractionation or fractionalization is the problem that is plaguing the reorganization, any reorganization effort, because unless we address that, things will continue to go out of control. But one of the things we also are looking at is the fact that all of our systems are interrelated and fractionation affects our probate system, it affects our land title records system, and it affects our accounting systems.

What we have done in past years is we developed an Indian Land Consolidation Pilot Project, which is located in northern Wisconsin, and it is a project whose purpose is to acquire fractionated interests of land. It has been very successful. We plan on expanding that project nationwide and looking at the types of parcels that we are purchasing, the fractionated interests, and trying to be wiser about the fractionated interests that we purchase and looking at purchasing more of them. For people who want to sell their fractionated interests, we have always had a number of willing customers, when we have been able to target our funding and get our funding as necessary, we have been able to buy as many parcels as we have money.

Senator CONRAD. Can I ask you, when do you intend to take this nationwide?

Ms. MARTIN. As soon as we can. We are trying to finalize the plan for the national roll out now. But I think Mr. Swimmer also has some comments regarding fractionation.

Mr. SWIMMER. I would hope that we could see a national program using whatever moneys we have left from fiscal year 2003 and the 2004 budget, keeping in mind that those are fairly minuscule amounts when we are talking about purchasing these fractionated interests. If we were to go down the track of simply that as the only solution is purchasing the interests, we are talking about a $1- to $2-billion expense or cost. The Indian Land Consolidation Act allows us to do that, to spend the money to buy it, and then transfer the title over to the tribes. We think there is also an element here for the tribes. We are working with tribes as we do the buy-outs that we can do with the limited funds available. In

some instances, tribes have their own programs which we can dovetail into and expand on with the money that the Bureau has.

The solutions to fractionation today are the same solutions that were announced in 1938 and actually were discussed in 1900. We have articles that were written by scholars back then and it said fractionation is the Achilles heel, you are going to die from it. We know that, and we are. If it were not for the limited bit of computers that we have today, we would have more than the disaster we already have. Just to give a few statistics. We have currently as a result of the 1994 reform act, we have to maintain accounts for every interest holder. There are 4 million interests and 400,000 interest holders, each of those having an average of about 10 interests scattered all over the country. We have over 19,000 account holders today that have less than $1 in their account and no activity for the past 18 months, yet we have to maintain those on a set of books and report periodically to those account holders. We have people who we call "whereabouts unknown," because, frankly, they are lost. We have returned envelopes from them with "addressee unknown," "no forwarding address." And we have at least four different agencies and private sector companies that are looking for these people constantly. Over one hundred of these high accounts have hundreds of thousands of dollars, millions of dollars in them.

Senator CONRAD. Any of them named Conrad? [Laughter.]

Mr. SWIMMER. I will check the list.

The CHAIRMAN. If you would yield for 1 moment, Senator.

Senator CONRAD. I would be happy to yield to the Chair.

The CHAIRMAN. The cost for fiscal year 2004 is going to be about $21 million. I may have my numbers wrong, but I understand if this were done nationwide, which we need to do eventually, it will cost over $1 billion. Is that one of the things that is really holding it up, the fact that we are not providing enough money to be able to expand it?

Mr. SWIMMER. If that were the only solution. Congress has an opportunity here as well. And obviously working with your staff and others on the House side, there are several things that I think could be done that are currently under discussion.

The CHAIRMAN. But the bottom line is that when you do the buyouts, you have got to come up with an awful lot of money.

Mr. SWIMMER. That is right. If the buy-out is the plan, then in order to reduce the fractionation just with that one solution, it is in excess of $1 billion to bring it down to a reasonable level.

Senator CONRAD. That is exactly where I was headed. I want to say this, if I could. To me, we are going down a blind alley because we are not going to come up with $1 billion or $2 billion for this purpose, not with the extraordinary needs that are out there for health care, for housing, for sanitation, for law enforcement. So that is not going to happen. And the Chairman is right, the Federal budget deficits, we are going to have a deficit on a unified basis of over $400 billion this year on an operating basis between $500 and $600 billion this year. So I do not think that is a fruitful promise of a solution. And I get a feeling, Mr. Swimmer, that you sense that as well. There has got to be some other creative things that we could do. I sense from your comments, Mr. Swimmer, that you are thinking of something that would involve the tribes and their

resources as well and the resources of others who might be interested in the buy-out. I do not think this should just be on the Government's shoulders here. There is an economic interest in accumulating those fractionated interests and somehow we have got to capture the power of that. This is going to eat us alive. I do not care how big a computer one has or how powerful, the fundamental problem is—I heard you say you have got 19,000 accounts of $1 or less, I think we ought to give a legal notice, a generalized legal notice and we ought to close out those accounts. It does not make any sense to maintain 19,000 accounts with $1 or less. That serves no one's interest. It just complicates the situation. And I bet you we have got tens of thousands more that have less than $25. Would I be right?

Mr. SWIMMER. Absolutely.

Senator CONRAD. Do you have a number on that, Mr. Swimmer, on how many accounts would we have that have less than $25?

The CHAIRMAN. If I might interject. I understand there are hundreds of thousands; is that correct? And by the way, those $1 accounts, that costs roughly about $200 a year to do all the paperwork to administer those $1 accounts.

Mr. SWIMMER. Yes; most of the accounts, frankly, are very, very small accounts, I mean in pennies. It is not unusual to have 2,000 people own an 80-acre tract. You lease it for $6 an acre, you divide $480 among 2,000 people, and you get less than a penny. Under the law, we are supposed to invest that less than a penny, pay interest on it, account for it, and send out a statement every quarter.

There are some things that you can do, and the operative word is "you," that we need. We need some relief and some fix on the 1994 act, because it gives the impression that there is this trust like a normal trust, that you actually have assets in this trust. Many of these fractional interests are worth less than a penny themselves. The piece of ground you could not even measure because it is so tiny if you were to partition in kind. But those are the kinds of things that I think we could through collaborative work with the committee and Congress and the Department perhaps fashion some solutions for some of it.

Senator CONRAD. I am going to complete on this note, if I could, Mr. Chairman. I would like for the committee to give a formal request to Mr. Swimmer to consult with tribes and to give us a recommendation on a series of action steps to be taken by us to alter the law to start to break through on this question. I just want to make clear, it may be controversial but I think it should not be controversial, we ought to take these very small accounts, we ought to give legal notice, we ought to give 90-days, we ought to spread the information widely, and then we ought to collapse those accounts, take the money and use it for broad Indian people's welfare. Because otherwise, this thing is going to eat us alive.

The CHAIRMAN. It already is.

Senator CONRAD. And there is no way to then focus on the larger amounts of money and the larger problems to begin to solve this problem. We have got to cut the chaff.

The CHAIRMAN. Yes; it is getting worse with every generation of youngsters that have an interest in the land.

Senator CONRAD. And it is in no one's interest. Nobody can benefit by an account with $18 in it. I think it is time that we really get serious about bold steps, bold steps to deal with these problems.

The CHAIRMAN. We will take your recommendations off the tape. I will check with our vice chairman, Senator Inouye, and with his agreement, we will do that. We will send you a letter, Mr. Swimmer, asking for some recommendations on how you think it could be solved.

Mr. SWIMMER. If I could just quickly address this point, though. We have put together a working group at Interior and we have also put out a Federal Register Notice inviting tribes to send representatives to us who would be interested in working on this problem. That working group should be put together within the next thirty days or so and it would follow very much along the lines of what you are suggesting, it is to come up with those recommendations then to give the committee. We would be very happy to do that and look forward to working with you on this.

The CHAIRMAN. And you might also look up S. 519 I believe it is that we just reintroduced, to establish a tribally-owned bank, the tribes themselves could belong to, that would be authorized to perform land repurchases, too.

Senator CONRAD. Could I ask one other question as part of this, Mr. Chairman.

The CHAIRMAN. Yes.

Senator CONRAD. No. 1, I hope you put this on a fast track, not a slow track. That you ask this group to meet and make recommendations quickly, because otherwise the moments get lost around here. No. 2, that you also give us a recommendation—again, $21 million and a $1- to $2-billion problem, we are never going to get the job done. We also need as part of the recommendation what creative ways could be devised using the economic interest of those who might acquire the fractionated interest to pay for this. I hope that that would be part of the recommendation.

Mr. SWIMMER. We will certainly take those under consideration. If I could, I would just make one caveat to all of this. That is, as long as we are involved in this litigation and the Cobell court is intent on going forward as it is, we do have issues regarding our responsibility as a trustee no matter how small the piece of property is. So we will continue working on that and at the same time continue working with the committee on ways in which we can carry out that trust more effectively.

The CHAIRMAN. Okay. I thank you.

Anything further, Senator Conrad?

Senator CONRAD. Nothing further, Mr. Chairman.

The CHAIRMAN. Well thank you for appearing. I am sorry we had to hold you up because of a late start and the votes. But we will follow up with that recommendation after we talk to Senator Inouye.

Mr. SWIMMER. Good. Thank you.

The CHAIRMAN. We will now move to the second panel and try and give them equal time, although we are going to be a little tight. We have five members on the second panel. Tex Hall, president, National Congress of American Indians; John Berrey, chair-

man, Quapaw Tribal Business Committee; Clifford Lyle Marshall, chairman, Hoopa Valley Tribal Council; Keller George, president, United South and Eastern Tribe; and Richard Sangrey, acting chairman, Intertribal Monitoring Association, from Albuquerque.

Since we have so many, as I mentioned, I want to give equal time for the two panels, but because we have so many in the second one, I am going to have to ask you to abbreviate your comments down to about 5 or minutes so we do have some time for some questions. I do not have anybody to take the gavel for me here and I have a conflict, too, and I do not want to just leave you here talking to the wall. So try and abbreviate as best you can.

We will start with President Tex Hall. Go ahead, Tex.

STATEMENT OF TEX G. HALL, PRESIDENT, NATIONAL CONGRESS OF AMERICAN INDIANS, WASHINGTON, DC, ACCOMPANIED BY JOHN BERREY, CHAIRMAN, QUAPAW TRIBAL BUSINESS COMMITTEE, QUAPAW, OK; CLIFFORD LYLE MARSHALL, SR., CHAIRMAN, HOOPA VALLEY TRIBAL COUNCIL, HOOPA, CA; KELLER GEORGE, PRESIDENT, UNITED SOUTH AND EASTERN TRIBES [USET], NASHVILLE, TN; AND RICHARD SANGREY, ACTING CHAIRMAN, INTERTRIBAL MONITORING ASSOCIATION, ALBUQUERQUE, NM

Mr. HALL. [Greeting in native language.] Senator Campbell, Senator Conrad, members of the committee, thank you for giving me an opportunity to testify on the proposed reorganization of the BIA. I listened very intently to the comments and the questions from the Department of the Interior, BIA. As the committee knows, I am also the chairman of my tribe, the Mandan Hidatsa and Arikara Tribe, a large trust asset tribe with a large amount of IM account holders, and I am also from the Great Plains or the Aberdeen area where 40 percent of all of the trust accounts in the country are in the Aberdeen area. But today I am going to testify on behalf of the National Congress for American Indians.

I would like to express my continued appreciation to you, Chairman Campbell and Senator Conrad, for all your hard work and your dedication to protect the rights of tribes and individuals. Among the most important of these rights is the Federal trust responsibility. When we signed our treaties we gave up millions of acres of land, our economic engine, many of which were our sacred homelands. And for more than a century we have been forced to put the management of our trust resources in the hands of the United States Federal Government. And we know so far the situation has been a mess. In our eyes, it shows that it is hard to trust the Department, the agency based on this historical mismanagement. In many instances, like today, we have to turn to our friends in Congress for your help. You have stood by us in the past, and today we are asking you to stand by us again.

The proposed reorganization of the BIA we believe is an affront to our sovereignty. It is an affront to the fundamental concept of consultation. And it violates the very essence of government-to-government relationship. We had a Task Force and the Government walked away from the Task Force last fall and we have not met since. I would like to state for the record that on May 29 the tribes will be convening a task force. If it is by ourselves, it will be by

ourselves, because we have a vested interest—there are assets in our accounts.

Tribal leaders, more than anyone, understand that the BIA must change the way it conducts business. We are invested in their process because it affects us like no one else in America. We not only want but need to see successful change and improvement within the BIA. So we come to you today with a simple message, a straightforward request, and an alternative approach for Congress to consider.

First, our message is that the Interior Department's attempts to reorganize are wrong. Our request is that Congress stop it. The reorganization is wrong for a number of reasons. The foremost concern to us is the fact that we were not consulted since last fall. And as you know, the Department went ahead with the reorganization plan by approaching the Appropriations Committee. Only later did we find out about their plan. We believe this is a breech of the duty to consult, and they have an executive order that requires them as a trustee to consult, and given that it is our trust resources that are at stake, a possible breech of that trust responsibility in itself.

Second, the plan will not work. As the committee knows, the Department has already invested millions of dollars to produce an "as is" study of trust services, a study which is supposed to drive the "to be" phase of re-engineering of those trust services. Now, however, the Department wants to cut out the re-engineering phase and just start reorganizing, as we have seen in the charts today. I ask, what was the point of the "as is" study? Of the millions of dollars that were spent? It seems to us the Interior Department and the BIA could have saved Congress and Indian country a whole lot of money and headache by telling us that trust management cannot have been and never will, we are not going to listen to you.

Surely, it makes no sense to go ahead with the reorganization before getting the results of its own management study. The new BIA organizational structure must be driven only after the tribes and the Department officials have at least had the chance to study this "as is" study. Anything else is putting the cart before the horse.

Then there is the fact that the Department's reorganization plan is too expensive, as was echoed by your comments. So not only do we think the Department's reorganization plan will not work, but to add insult to injury, we, the tribes, are being asked to pay for it. Right now, Interior is asking Congress to nearly double the budget for trust management in the Office of Special Trustee—$123 million increase to a projected annual budget in fiscal year 2004 of $275 million. Some $71 million of that comes right out of tribal pockets, $32 million comes out of school construction. You could not ask for a more symbolic and ironic example of the Government's callous indifference to our needs. We are literally being asked to pay for the Government's mistakes with our children's education money. We do not think this is right that our children should be forced to continue to study in aging and crumbling school buildings in order to pay for the reorganization plan. If the Department needs more resources, then, at the very least, they should not come out of BIA programs.

In our view, an effective organizational change must contain the following three elements:

No. 1, a clear definition of core business processes accompanied by meaningful standards for performance and mechanisms to ensure accountability. You have to have standards, otherwise it does not matter.

No. 2, responsive systems that fit with service delivery at the regional and local level where tribal governments interact with the Department.

No. 3, continuing consultation, an effective and efficient means for on-going tribal involvement in establishing the direction and the substance of trust reform.

The multitude of organizational charts that accompany the plan, as we saw, shows trust officers at nearly every level of the BIA's agency offices. The role and authority of these officers has yet to be fully explained. The fact is that Indian country has not had the chance to digest and understand what exactly is the BIA doing. I would respectfully ask, can the committee ascertain what is happening with their reorganization plan, because we cannot.

Today there is a great cry going up across Indian country saying we gave away our land for this, for this reorganization and this mismanagement and lack of consultation? We gave up millions of acres of land for that?

Last, in my testimony NCAI makes a number of specific recommendations regarding title, leasing, and accounting issues. We also restress the need for accountability. It is our money. We also offer an alternative approach to reorganization that would create a structure with three major divisions under the Assistant Secretary: No. 1, trust funds and trust resource management; No. 2, trust services such as law enforcement, social services, and road; and No. 3, Indian education. We also recommend the Office of Fund Management and other offices under the Office of the Special Trustee be phased out and moved back to the BIA. This is what the 1994 Indian Trust Reform Act says.

So in conclusion, we are not opposed to reorganization, we simply want to do it right and be at the table. We request that Congress put an immediate stop to the Department's implementation of its reorganization plan. We would further request that Congress consider placing language in the fiscal year 2004 appropriation bill that prevents the Department from spending money on any reorganization effort unless it has consulted with Indian country. When Indian Country has been consulted and we have rolled up our sleeves, we have been able to come up with a solution together. We will do that. All we are asking today, Mr. Chairman and Senator Conrad, is for Congress to give us that opportunity. Give us that opportunity to re-engage. Have the Department re-engage in consultation with the tribes. I thank you for this opportunity to present testimony and I will be happy to answer any questions after the panel has presented.

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

The CHAIRMAN. Thank you.

Senator CONRAD. Mr. Chairman, might I just make one comment before we go on?

The CHAIRMAN. Sure.

Senator CONRAD. I am going to have leave for another appointment. I would just like to rivet the point that Chairman Hall has made. My own experience with Chairman Hall is extensive and we have dealt with some incredibly complicated and controversial issues. Without exception, sitting down together we have been able to work things out, without exception. And when he says he is ready to sit down and others are to work things out and to come up with a solution, my experience is he is good to his word. And so I would hope that we would take that very seriously. I thank the Chairman.

The CHAIRMAN. I agree. The committee has worked with Tex Hall a long time and I know he is a person of conscience and commitment. As long as we have stopped, before we go on, let me say, and I am not trying to defend the Bureau, but the Bureau is caught between a rock and a hard place. They are caught between the tribes wanting more input, even after 45 consultations, apparently those consultations did not deal with this reorganization, but they have been held in contempt twice by the *Lamberth* court and they have been prodded pretty hard by the courts to do something. And so when they do something, they run into a buzz saw. When they do not do anything, they also run into a buzz saw with the courts. So, I know that it has not been easy for them.

It seems to me we have got to focus time on this problem of the trust funds, but we are spending more and more time also on fractionation. I do not know how, if the litigation keeps being as contentious as it is, how we focus on one unless the lawsuits are stayed or held up for a while. What is your position, and maybe you do not have one, on putting a stay on that litigation so that they can focus on fractionation?

Mr. HALL. Senator Campbell and Senator Conrad, I think that possibility exists if there is mutual consultation. We cannot do it if we are miles apart. And right now, we are miles apart. We are not talking to each other, we are not consulting with each other, and we are not coming up with that possibility you just recommended. If we would jointly do that and that was a joint recommendation, I think we could actually come up and move that.

The CHAIRMAN. Out of all of the consultations they have had, I heard the number 45, I certainly was not at any of them although staff was at some, you mentioned none since last fall, did any of those consultations deal with reorganization that we are hearing today?

Mr. HALL. They dealt with reorganization, you know, like we talked about the Under Secretary, we talked about the trust officers, and then we started talking about standards, we started talking about oversight accountability, and then it went South.

The CHAIRMAN. Okay. I may get back with you, Tex, to ask some more questions.

But let us move on now to John Berrey. John, same thing, your complete testimony will be in the record, if you could condense your statement, I would appreciate it.

STATMENT OF JOHN BERREY, CHAIRMAN, QUAPAW TRIBAL BUSINESS COMMITTEE, QUAPAW, OK

Mr. BERREY. Okay. I will. Mr. Chairman and Senator Conrad, I appreciate your inviting me to speak to you today. Like you said, my name is John Berrey, I am the chairman of the Quapaw Tribe of Oklahoma and I am also the vice chairman of the Intertribal Monitoring Association. I believe my role today is to provide a perspective of the current reorganization in light of my active collaborative involvement in this "as is" and now the "to be" re-engineering phases of trust reform. I want to make it clear that I have a positive outlook, I am also engaged, and I have committed much of my life to creating a better system. I am not a rock thrower, I am not negative; I do not always agree, but I have been taught by my folks that when change is coming about and you do not agree, you provide positive input and hard work to try to work things out. I believe that Indian country is married to the Department of the Interior for life and the only way we can work these things out is to work together.

So what is "As Is"? The "As Is" project was last year's documentation of current trust management business practices. I was on a team of dedicated people that travelled throughout Indian country interviewing over 1,000 hard working people who provide trust services to Native Americans and tribes at every level, every day. We basically took a snapshot of how the DOI and some tribes are performing trust services. We identified in detail how they do their jobs and how the business processes vary from region to region and agency to agency. It was tough work. I was away from my family and my tribe 204 days last year, but I met a lot of dedicated people who are dedicated to serving the Native American people. The detailed "As Is" work product has provided us a map and a basis for the "To Be" re-engineering project.

So what is "To Be"? This is the current project that will redesign the processes and workflows that make up much of the services provided by the United States to Native Americans. This re-engineering will create a massive change and I believe congressional oversight is necessary at each phase to ensure that the trustee delegate, the DOI fulfills the trust responsibility of the United States to Native American tribes and individuals.

I am a leader of the tribal representatives of this re-engineering team. We have a great responsibility not only to participate in the development of these new processes, giving our perspective, our expertise, and our input, but the added responsibility to inform Indian country of our progress and any impact these massive management changes may have on the daily life for the beneficiary. To date, we have had several meetings and we have really just begun the task. Re-engineering is not just duct taping or cobbling a system together with bailing wire, it is a total analysis and rebuilding where needed. It requires that we use our imagination to create as well as our ability to extract the best practices identified in the "As Is" model and implement those practices in a redesigned beneficiary centric service delivery model.

So what is beneficiary centric service? For us, it is our mission as tribal representatives to the "To Be" team, it is the mission of the "To Be" team. I believe that beneficiary focus is a mission of

tribes, individuals, Secretary Norton, Deputy Secretary Griles, the Special Trustee Chief Swimmer, his deputy Donna Erwin, and all the respective employees. The definition of beneficiary in this context is: Tribes and individuals, and not just individual IIM account holders, but also those families that stand behind those account holders and the unborn future beneficiaries that we are trying to provide stewardship for.

So why reorganize before we re-engineer? That is a question that people ask me daily and I think my answer can shed some light on it. Last year while documenting the current DOI management, it was very clear that the DOI has a systemic problem causing much of the delays in trust service delivery. It was not caused by a single decision or individual, but it was created over a long evolutionary process that developed over time. The problem we identified was that the DOI wears so many different hats and has so many conflicting responsibilities it often has problems making critical and final decisions on a timely basis. The regional directors had developed over time kind of an autonomy that resembled small fiefdoms and the central office was extremely disconnected with the needs of the regional staffs as well as the beneficiary.

So, after this long last year that we went through and partially fruitful discussions with the Task Force, I think the DOI decided that they had to make some changes. Are the changes that are described in the new Department manual going to help? I think in some ways they are. In this line authority, this accountability, it is the right step. But there are a lot of issues that still concern me. What are the effects on the promotion of self-governance and self-determination? What are the effects at my agency that desperately needs resources? When is the issue of lease compliance and enforcement going to result in action at the local level? When can I get the backlogs in probate for my people caught up? When are my fee-to-trust applications going to be signed? Without new trust land, my tribe is condemned to live in America's largest EPA superfund site. When is the DOI going to replace the old and worn out LRIS system with the updated version of TAAMS, the 1.49, so we can at least have a consistent platform that we can transition to a better systems architecture?

These are just a few of my concerns. But I commit that I am willing to engage and diligently work with the tribes, the individuals, and the Department of the Interior to address these issues. I am willing to work and work hard at fixing these problems. I think it is also important that we not only improve the lives of the beneficiaries, but we need to create a better Department of the Interior so young Indian people in this country who have interest in participating in the stewardship of Native America are willing to work at the Department, because the bench strength at the Department is weak, they are having trouble finding people to apply for jobs there, and if we create a better Department, we could create some opportunities for Indian people to participate in the stewardship.

So with that, I will finish. If you have got any questions, I will answer them afterwards.

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

The CHAIRMAN. Thank you. We will just go as you are listed on the witness list. So we will now go to Clifford Lyle Marshall.

STATEMENT OF CLIFFORD LYLE MARSHALL, SR., CHAIRMAN, HOOPA VALLEY TRIBAL COUNCIL, HOOPA, CA

Mr. MARSHALL. Thank you, Mr. Chairman, members of the Committee. I would like to submit written testimony for the record.

The CHAIRMAN. It will be included in the record.

Mr. MARSHALL. My name is Clifford Lyle Marshall and I am the chairman of the Hoopa Valley Tribe of California. It is an honor and a privilege to testify before you today. I am here representing the Pacific Region Tribal Trust Reform Consortium, created by seven tribes in 1997. These tribes are the Hoopa Valley Tribe, the Karuk Tribe of California, the Big Lagoon Rancheria, the Yurok Tribe, the Redding Rancheria, the Guideville Rancheria, and the *Cabazon* Band of Mission Indians.

This Consortium has worked together with the BIA Pacific Regional Office to create a unique, successful, and mutually beneficial relationship. The Pacific region, or California, has historically been the lowest funded BIA region in the United States. This historical reality has compelled tribes wanting to develop their governments and provide much needed services to rely on flexibility in budgeting, to find other sources of income to supplement under-funded budgets, and, basically, to do more with less.

I am here today to ask that the relationship and the agreements among the Consortium tribes and with the Pacific Regional Office be preserved and, if I may say so, protected by establishing a pilot project that maintains the working relationship with the Consortium tribes and the regional office. In 1997, the Consortium tribes sought to work together with the regional office to address many of the issues that the Department of the Interior is still wrestling with today in its attempts to address trust asset management. A key component of this successful relationship is the BIA's reliance on the tribe's capabilities to manage trust programs and provide trust services to their members. An agreement between the Pacific Regional Office and the Consortium was signed in 1998 that defined the roles and responsibilities of the regional office as it related to the Consortium tribes and a process for participation in the Consortium. It created a BIA employee selection and evaluation process, a funding process through the regional office, a joint oversight advisory council, a process for developing "measurable and quantifiable trust management standards," methods for resolving disagreements and disputes, and, finally, a participatory process for annual trust evaluation. These processes were further defined in March of this year.

I am not suggesting that the BIA system remains status quo. But the BIA today is not the BIA that existed when the breaches of trust occurred that are the basis of the *Cobell* case. In many parts of Indian country the BIA has evolved, as tribes have evolved, over the past 30 years. This evolution has occurred because the Self-Governance Act and the 1994 amendments to the Indian Self Determination Act provide flexibility in developing tribal budgets to meet tribal priorities and give the BIA the flexibility to address those budget requests with the limited funds that are provided. Tribes then have the added flexibility of matching those funds with tribal funds or other funds.

The DOI trust reform proposal, however, appears to be in direct opposition to this flexibility that has allowed for the development of the most progressive reform of trust asset management to date under self determination and self-governance. I cannot imagine that any Member of Congress that supported the Trust Fund Management Reform Act of 1994 could have foreseen that the OST would become a department with a $141-million budget and a projected $300-million budget next year, with trustee offices for every region and agency, or that the OST would be allowed to take BIA service dollars and personnel.

The successes resulting from the development of working relationships in California through compacting and contracting are successes not unique to California either. We have discussed this proposal with other tribes, including Salt River, Salish-Kootenai, and Rocky Boy, each having demonstrated progressive leadership to address trust issues. They have expressed their concern that their unique agreements in their respective regions and the flexibility needed to develop new proposals not be undermined by OST's trust reform proposals. Interior officials have often responded to us by saying that we may be doing it right but the rest of Indian country needs to be fixed.

But real trust reform solutions to date have come from Indian Country and they have come when tribes take it upon themselves to create their own solutions.

I implore the committee not to discard a flexible process that has such a proven successful track record in a large part of Indian country. Self determination and self-governance are measurably very successful pieces of legislation that have achieved great things in a relatively short period of thirty years. Tribes like the ones I have mentioned stand at the door ready to take the next step forward toward real social and economic independence. It would be a disaster if Congress were to allow that door to be closed.

On behalf of the Consortium and other tribes in support of this proposal, I ask you to consider creating a pilot project like the one that started self-governance and allow tribes like the members of the Consortium to continue to work with BIA to find their own solutions regarding trust reform if, for no other reason, than to analyze the OST proposal against the success of self-determination and self-governance. Included with my testimony is draft legislative language that would create such a pilot project.

Thank you. I am happy to answer any questions.

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

The CHAIRMAN. Thank you, Mr. Marshall.

Now we will go to Keller George.

STATEMENT OF KELLER GEORGE, PRESIDENT, UNITED SOUTH AND EASTERN TRIBES [USET], NASHVILLE, TN

Mr. GEORGE. Thank you, Mr. Chairman. I appreciate the opportunity to come before you and testify on behalf of the United South and Eastern Tribes. I am an old member and on the council at the Oneida Indian Nation of New York and also serve as president of United South and Eastern Tribes.

USET agrees that the trust and other functions need to be separated. However, in the BIA reorganization structure, two competing

organizations have developed—the OST and the BIA. They must compete against each other for authority, resources, and manpower. We believe that this struggle will always exist unless certain issues are addressed.

Tribes have made it clear that DOI should not use program dollars to help fund the mistakes of the Administration. Tribes have stressed that the BIA's funding should not be diminished in order to fund the trust efforts of the OST. The BIA is in dire straits and must have additional funds in order to accomplish a truly successful reorganization. Limited funding would be extremely detrimental to the efficiency of the processes within the BIA's new organization.

An attempt was made by the DOI and Tribal Trust Reform Task Force to work through many of the current reorganization issues and hold consultation meetings with these tribal leaders regarding the suggestions of the task force. This has failed due to road blocks in the negotiating process. I was a part of that task force and some of the things that we worked out we agreed with, but when we started talking about having standards and trust principles, it seemed to all fall apart, and that was in December. The DOI officials have 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 out an idea into Indian country, seeing a negative response, and moving forward with the idea regardless. Consultation is listening to tribal concerns and taking these comments into account.

Two main points tribes wanted addressed, the Under Secretary position and trust principals, still, this remains untouched. Tribes have stated from the beginning of the process that these two items must be incorporated into any reorganization effort in order to establish a sense of accountability within the BIA. Tribes are still waiting to see these very important priorities given attention.

It all comes down to the issue that the tribes must be re-engaged if the reform process is going to be successful. Tribes are receiving confusing information about the reorganization activities, which is extremely frustrating. Tribes must be involved in the entire process, not just shown the end product. We fear that without meaningful consultation and clear information the new reorganization structure will be perceived in the same negative light that has plagued the BIA for years.

Trust principals. Recent Supreme Court decisions have concluded that the Federal Government has avoided fiduciary trust responsibility and operated with "bad faith" in its business relationships with Indian tribes. The tribal leadership of the Trust Reform Task Force made a concentrated effort to get DOI to incorporate a list of general trust principals that could be used as reference points for all trust activities. This suggestion was adamantly opposed by DOI and members of the task force. Both the *White Mountain Apache* and the *Navajo Nation* cases have had opinions written and both reaffirm, now more than ever, the need for a standardized set of trust principles.

Indian country should not be held at bay any longer by pending cases in the Supreme Court. The time is now for the Federal Government and the Secretary of the Interior to be held accountable for their trust responsibilities. It is critical that continuity and ac-

countability be established as cornerstones of the reorganization effort. There can be no oversight of the trust relationship without a standardized set of general trust principles in place. Indian country must have a way to hold their trustees accountable for actions taken that may be contrary to the advancement of Indian people.

Under the Under Secretary position, USET tribes have stressed from the beginning of the reform process the need to have Indian Affairs authority elevated to a secretary level within the Department of the Interior. There is a strong need for an Under Secretary of Indian Affairs position to be established in order to remedy the ambivalent attitude toward Indian affairs that has been so apparent within the DOI.

Through legislation, USET feels that the creation of an under secretary could greatly benefit Indian people. Once again, USET stresses trust principles and oversight must be part of the establishment of an Under Secretary for Indian Affairs. This is the only way that Indian issues will receive the attention, resources, and respect it deserves from the trust relationship.

Many hypotheses are circulating throughout Indian country as to how the 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 Department manual once again is not clear as to all the multiple and complex relationships expected at the regional level and below. The leaders are confused and need clarification.

Some of the things that 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 the tribes need answered in order to understand the complexity of the situation.

On the *Cobell* litigation, it is widely perceived as being the catalyst which first sparked trust reform discussions and exposed gross mismanagement of Indian trust assets by the Department of the Interior and the BIA. USET recognizes the need of the *Cobell* plaintiffs to seek resolution and obtain an adequate remedy at law. The litigation, however, is reaching the dangerous point where the court has threatened to appoint receivership over BIA and trust assets. The plaintiffs have argued that while they appreciate tribal input, *Cobell* is an individual Indian plaintiff's case. If receivership is appointed, then it becomes everybody's case. Receivership could negatively affect numerous Indian programs and service delivery to all tribes.

We believe that it is time to introduce legislation that will bring a fair settlement to the ongoing litigation and to work with Congress to develop a resolution of the case. Congress should appoint a body of legal and financial scholars to recommend a fair and reasonable settlement along with Indian input. The *Cobell* litigation is a drain on the Federal Government and is depleting funding that could go to other Indian programs or to enhance reorganization efforts. We must get beyond *Cobell* in order to realize true and lasting reform.

USET thanks you for this opportunity to testify before you today, and we are prepared to answer any questions that you may have.

[Prepared testimony of Mr. George appears in appendix.]

The CHAIRMAN. Thank you, Mr. George.

We will go on now to the last testimony from Chairman Sangrey.

STATEMENT OF RICHARD SANGREY, ACTING CHAIRMAN, INTERTRIBAL MONITORING ASSOCIATION, ALBUQUERQUE, NM

Mr. SANGREY. Good afternoon, Mr. Chairman. Thank you for inviting ITMA to testify today. I request permission to submit my remarks for the record.

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

Mr. SANGREY. My name is Richard Sangrey. I am chairman of ITMA. My written testimony has been submitted separately and will discuss these issues in more detail.

ITMA's primary objective in the trust reform process is the strengthening of tribal sovereignty and tribal self-governance while holding the U.S. Government to their fiduciary obligations in the administration of the Indian trust. ITMA firmly believes these principles can and do co-exist. We are working on a legislative proposal to incorporate these principles in the trust reform process. Before discussing our proposal, I will first address various aspects of the Department's plan.

The Department is rolling out its plan in stages, from defining goals and objectives, to organizational realignment and changing of management, to implementation of the trust re-engineering plan. The trust re-engineering will be based on the "to be" and "as is" studies, which includes input and participation from Indian country. ITMA's Vice Chairman John Berrey has been very active on this front, and we will be involved in the re-engineering process.

The Department has acknowledged that the *Cobell* v. *Norton* case is the driving factor in the development of its plan. As such, we believe that the Department has avoided tribal involvement and tribal consultation. We also note that while the Department's plan recognizes a commitment to self-determination and self-governance, it does not include any specific plans for tribes to assume more management, control, or authority over the management of trust resources. Most glaring is the lack of clear trust standards in the plan. The plan only references the accounting requirements in the 1994 Trust Reform Act. The plan does not recognize Supreme Court case law establishing enforceable trust standards.

The plan also lacks substance on addressing the fractionation problem. The legacy of the Allotment Policy has created numerous modern day trust problems. Any trust reform proposal must address the fractionation problem.

The Department's realignment and fiscal year 2004 budget request expands the authority of the Office of Special Trustee from an oversight function to include operational duties of trust management. This expansion raises questions about the effectiveness of OST's oversight role, and the need for concrete independent review of its performance.

By contrast, the plan places no emphasis on tribal resources management. The enhancement of these programs are critical to the entire trust reform process. Tribal resources, our land, timber, oil, gas, coal, and other resources comprise the trust corpus. Properly managing these resources forms the basis of the trust. In this regard, the Department's plan and fiscal year 2004 budget request ignores the importance of tribal resources management.

The Department's plan also disregards the tribe's continued request for a single line of authority at the local level for trust management programs. The plan proposes that OST will develop a regional and agency presence to ensure that trust standards are followed in the management of these assets. OST will also retain the responsibility for financial asset management. This approach raises concerns over the assignment of responsibilities between OST and BIA and how disputes will be resolved between the agencies.

One of the largest concerns is the cost of the plan. The plan does not address this issue and ITMA is adamant that Congress not allow the Department to deplete funding from existing programs and services to pay for its trust reform proposal.

ITMA supports the plan's establishment of a trust training unit within the OST reorganization. Training in the new BIA organization is unclear. ITMA supports agency-wide trust training as part of the overall trust reform.

The legislative proposal developed jointly by ITMA and NCAI, along with our member tribes, addresses some of our key concerns.

Our approach would require the secretary to develop an integrated land and resources recordation and title system as an immediate step to focus on the fractionation problem. In addition, we believe the secretary should request more resources to make available for tribes to consolidate land holdings on an allotment-by-allotment basis. Tribal attempts to consolidate small fractionated interests are not keeping pace with the current speed of the land fractionation problem.

Our bill would establish general trust standards regarding the management of trust funds and assets. Our approach accommodates tribal participation in the development of standards particular to each reservation.

Our proposal creates a statutory framework to allow tribes to manage tribal trust funds and assets. Our intent is to give tribal governments greater control over management of trust funds and resources. We believe that promoting tribal self-governance is consistent with the trust responsibility the United States owes to tribes. Our intent is to elevate the resource management needs of our member tribes and to make sure the tribal resource management plans receive adequate funding and attention.

A provision is included in our proposal making clear that the Federal trust responsibility to the beneficiaries of the Indian trust shall not be diminished. We are working on provisions specifying the United States trust obligations, and trust oversight and compliance issues.

ITMA appreciates the dialogue we have shared with committee staff on our bill and we welcome further collaboration with the committee. This concludes my remarks. Thank you.

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

The CHAIRMAN. Thank you. I have about 30 questions. I have to tell you, this thing gets more complicated and more difficult all along. We have been working on it steadily for a couple of years now and it seems like every avenue we explore we run into some opposition or a brick wall. We just cannot seem to get all the players involved and going in the same direction to find some solution to it. I know it is complicated, but, as several people have already testified, including the Administration, it is getting worse, not better, and it is going to get much more expensive.

I do not even know where to start with some of these questions I have. So what I am going to do is put these in writing to you. I will keep the record open longer than we normally do, we normally keep it open for about 2 weeks, but I will keep it open 4 weeks and would ask that you get back to us in writing because some of these are rather complicated questions. If you could do that, I would appreciate it.

With that, we will just go ahead and adjourn the hearing. Thank you.

[Additional statements submitted for the record appear in appendix.]

[Whereupon, at 12:10 pm, the committee was adjourned, to reconvene at the call of the Chair.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

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

I want to thank my chairman for scheduling this hearing today, for everywhere I have traveled in Indian country in recent days, there has been a keen interest expressed in the reorganization plan and what new responsibilities will now be delegated to the Office of Special Trustee.

There are many detailed questions about this plan, for instance the role of the trust officers at the local level—many of which we have sent to the Department as part of this committee's role in addressing the President's request for Indian programs for fiscal year 2004.

We look forward today to developing a better understanding of the issues those questions address.

I want to join the chairman in welcoming our old friend, Ross Swimmer, and the assistant secretary, Ms. Martin, back to the committee.

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

Mr. Chairman, thank you for holding this important hearing on the reorganization of the Bureau of Indian Affairs and Office of the Special Trustee.

Last year, the Department of the Interior and Indian leaders undertook a series of meetings and consultations on trust management reform and restructuring in an effort to develop an alternative to the ill-conceived Bureau of Indian Trust Assets Management [BITAM] proposal. Unfortunately, those meetings ended abruptly and, instead, the Department slipped its proposal under the door.

I am disappointed that the Department has not been forthright about keeping the committee informed on this reorganization plan. Even though I am a member of this committee, which has jurisdiction over this matter, I was not informed of the Department's December 4 reprogramming request for this effort or its subsequent approval on December 18. What is of even more concern to me is that the Indian leaders on the joint tribal/DOI Task Force, who were heralded as the Department's partners in an effort to craft a solution to the trust management problem, were not informed of it until it was nearly a done deal. Now we are faced with a reorganization plan that is already in motion, leaving tribes with little opportunity to effect any changes.

There have been more than 1 dozen attempts to reorganize the Bureau of Indian Affairs over the years. I am not yet convinced that this latest attempt, which repackages and reshuffles positions and creates new lines of authority, will get at the root of the problems in the management of the trust funds.

An important item that is missing in this reform discussion is one of the underlying factors that contributes to the challenges in the trust management system—land fractionalization. Let me just give you two examples that we have found on our reservations in North Dakota. At the Standing Rock Reservation, one 320 acre tract

of land has so many owners that the percentage ownership is only.0000025. If this land was divided among the owners, each individual would be entitled to a piece 7.1 inches square. At Turtle Mountain Indian Reservation, one 7.5 acre tract of land has so many owners with undivided interests that each person has a .0000192 percentage ownership in the tract; if divided, this would yield a land equivalent of 2.9 inches square. Until this problem is addressed, no reorganization plan will effect the fundamental change that is needed in the trust management system.

Finally, I am concerned about the budget implications of this reorganization plan. The Office of the Special Trustee is requesting an 82 percent increase in its budget while other important programs for education, health care, and housing are being cut or level funded. This reorganization effort cannot and must not come at the expense of the Government's other trust obligations.

I recognize that the situation we face was not created overnight. For decades we have seen evidence that the accounting and recordkeeping processes for these trust accounts have been in disarray. It is my hope that as this reorganization moves forward the Department will actively consulate with tribes. Consultation must be a key element of the plan's implementation. If it is not, I am afraid that this plan will be doomed to failure.

Thank you again, Mr. Chairman, for holding this hearing.

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

Mr. Chairman, Mr. Vice Chairman and members of the committee, thank you for holding this hearing on the Secretary of the Interior's plan to reorganize the Bureau of Indian Affairs and the Office of the Special Trustee.

This hearing is long overdue. Frankly, it is a hearing I had hoped could have been held before the House and Senate Appropriations Committees approved the Secretary's reprogramming request, which they did late last year.

I don't make that statement to be critical, but rather to echo the concerns of my South Dakota tribal constituents who expressed to me their frustration upon learning that a reorganization of the Bureau of Indian Affairs [BIA] and the Office of Special Trustee [OST] had been approved without a Congressional hearing or full tribal input. They had been operating under the understanding that they would be involved in the construction of a solution to the trust management problem, only to discover that the Department officials and Appropriations committee staff cut an "under the radar deal" to move forward without their fall partnership.

While executive, legislative, and judicial branch officials were discussing different strategies for coming to closure on the trust management issue, one principle upon which all parties had seemingly agreed was that the trust problem, which affects tribal leaders and their members so significantly, must be resolved with the full involvement of the Native American community. I was, therefore, both surprised and disappointed to learn from South Dakota tribal leaders after the fact that, on December 4, the Department of the Interior had sent a reprogramming request to Congress without the knowledge of tribal leadership.

I was also told that Deputy Secretary Steven Griles and other senior Interior Department officials did not even raise the reprogramming request at its 2 day meeting with the Trust Reform Task Force on December 16 and 17 until late on the second day. Adding insult to injury, I understand that neither the membership of the Senate Committee on Indian Affairs, nor the Senate leadership were informed that a reprogramming request had been received and approved by the Appropriations Committee.

Tribal leaders in my State believe strongly that the Department's plan moves in the wrong direction. Instead of integrating the trust and "non-trust" functions of the Department, it separates the functions even further.

In terms of process, they ask what happened to the "consultation" that was so trumpeted by Interior Department officials earlier in the year?

Mr. Chairman, Mr. Vice Chairman and members of the committee, I acknowledge your sincere desire to solve the trust management problem in a way that ensures that stakeholders receive what is due to them in a timely manner. And I greatly appreciate the attention you are devoting to this matter. However, given the recent history of the trust reform debate, I have no credible answer to tribal leaders' lament that the Department appears more interested in affecting the reaction of the Court in the *Cobell* v. *Norton* lawsuit than in considering the opinion of Indian country.

Since the Department formally unveiled its reorganization proposal 6 months ago, numerous questions have been raised about exactly how this reorganization, which

is currently being advanced administratively, will improve the present trust fund management and accounting procedures.

What is the role and responsibilities of the trust officers who will be dispatched throughout Indian country, and how will these positions relate to the local and regional BIA offices?

Who has oversight over these positions, and what accountability mechanism is in place to monitor their performance?

Will Indian preference apply to any new positions that are created by the reorganization and the expansion of the Office of Special Trustee's responsibilities?

Why is the reorganization effort affecting the Office of Indian Education Programs when the court mandate affects only trust fund management reform?

Does the plan violate the BIA amendments to the Elementary and Secondary Education Act reauthorization statute?

This list of questions is long and incomplete. Suffice it to say that there is much more to be explained to my tribal constituents and to me than can be gleaned from the 18 pages of organizational boxes that the Department has provided to explain the rationale for their reorganization plan.

I think it is extremely important for this committee, and indeed the fall Senate, to reflect on two central facts about the Indian trust debate as they consider this proposed reorganization of the BIA and the OST.

First, residents of Indian country have been victimized by persistent mismanagement of trust assets by the Federal Government for generations—through administrations of both political parties. Far too many families for far too long have been denied trust assets to which they are entitled because of Federal mismanagement. And this situation has adversely affected their quality of life.

Second, frustration with the Federal Government's failure to come to grips with this problem has not only lead to litigation [*Cobell* v. *Norton*], it has also solidified the tribes' determination to be part of the solution to the problem. Effective trust management reform will remain an elusive goal if the tribes are not fall participants in this exercise.

Mr. Chairman, Mr. Vice Chairman and members of the committee, the tribes understand that the Interior and Treasury Departments, the BIA, and Special Trustee for American Indians must be their allies in the search for a solution, not independent actors balancing other agendas. The bottomline is that trust beneficiaries deserve trustees in whom they can have confidence to restore sound accounting principles and integrity to the Federal Government's management of trust assets.

Last year, Senator Tim Johnson and I worked with Senator John McCain on a bipartisan alternative to the controversial proposal announced by Secretary Norton in November 2001 to establish a new "Bureau of Indian Trust Asset Management" [BITAM] within the Department of the Interior. Our effort featured the establishment of a single line of authority within the Department of the Interior for trust management, trust standards, and the option of co-beneficiary management of trust assets, all principles I still believe make sense today.

Meanwhile, as BITAM drew a sharp negative reaction, Secretary Norton announced an aggressive outreach program designed to solicit input on trust reform from Indian country. Regional meetings were held around the country with Indian leaders and affected stakeholders, and emotions cooled. Yet, abruptly, last Fall, it all came to a halt. Then, quietly, in mid-December, the phoenix rose from the ashes.

I clearly remember the resounding opposition expressed to me about BITAM 1 year ago, and the main elements of the case against that plan have been raised about the current reorganization scheme. The proposal this committee is reviewing today appears to be a reincarnation of BITAM, so I am interested to hear the Department's explanation of the differences between the two approaches, in substance and in process.

In my opinion, this debate about the reorganization has been a distraction and a side-show from the more fundamental challenge of providing a full and fair accounting to Indian people, and ultimately payment of the money that is owed to them and the Tribes.

Now that the Department has been given authorization to proceed administratively with its reorganization plan, I hope the Department will submit to the Congress a legislative proposal on how to address the underlying, substantive problem that we have been wrestling with for far too long.

We still do not have a historical accounting, we still do not know if records exist, and we still do not know how much the United States of America owes to Indian people and to the Tribes. There has been no proposed mechanism to get to an ultimate solution of this trust debacle. The United States of America continues to fail Indian people every single day, and to compound the problem by its inaction.

Finally, Mr. Chairman, Mr. Vice Chairman, and members of the committee, we need to recognize the human dimension and consequences of trust mismanagement. The lack of an accounting and payment of what is owed prevents the tribes from addressing the very real human needs that we are all so painfully aware of in Indian country.

The bottomline is that the tribes do not have the resources they need to adequately address health care, education, unemployment, infrastructure, and the full range of socio-economic needs. The issue is not simply boxes on an organizational chart, but lives that literally hang in the balance.

As you can see, I am thoroughly frustrated by this issue. The history of trust management has been a travesty and, without a concerted effort to address the issue, the future will not be any better. The United States has a fiduciary responsibility to Indian country based on numerous treaty obligations. We must satisfy our obligations. We must work together to craft a solution to the underlying trust problem.

I look forward to working with all of my colleagues, the Administration, and representatives of Indian country on this important challenge.

Thank you.

PREPARED STATEMENT OF JOHN BERREY, CHAIRMAN, QUAPAW TRIBE, OKLAHOMA AND VICE CHAIRMAN, INTER-TRIBAL MONITORING ASSOCIATION

Mr. Chairman and distinguished members of the committee thank you for the invitation to speak to you today. My name is John Berrey, I am the chairman if the Quapaw Tribe of Oklahoma and vice chairman of the Inter-Tribal Monitoring Association. I believe that my role today is to provide a perspective of the current reorganization in light of my very active collaborative involvement in the "As Is" and "To Be" re-engineering phases of Trust Reform. I want to make it clear that I have a positive outlook, I am also engaged and I have committed much of my life to creating a better system. I am not a rock thrower; I am not negative, I don't always agree but I have been taught by my folks to help guide change with positive input and hard work. I believe that Indian country is married for life with the DOI and the only way to make it work is to work together.

What is "As Is"? The "As Is" project was last year's documentation of current Trust management business practices. I was on a team of dedicated folks that traveled throughout Indian country interviewing over 1,000 hard working people who provide Trust services to Native Americans and tribes at every level, every day. We basically took a snapshot of how the DOI and some tribes are currently performing Trust services. We identified in detail how they do their jobs and how the business processes vary from region to region and agency to agency. That was tough work; I was away from my family and tribe for 204 days but I met so many people who are dedicated to the Native people that they serve. This detailed "As Is" work product has provided us with a map and basis for the "To Be' Trust re-engineering project.

What is the "To Be" re-engineering? This current project will be the redesign of the processes and work flows that make up much of the services provided by the United States to Native Americans. This re-engineering will create a massive change and I believe requires congressional oversight at each phase ensuring that the trustee delegate, the DOI fulfills the trust responsibility of the United States to the Native American Tribes and individuals. I am the leader of the tribal representatives of which we have five members to this re-engineering team. We have a great responsibility to not only participate in the development of these new processes giving our perspective, expertise and input but we have the added responsibility to inform Indian country of our progress and any impact these massive management changes may have on daily life for the beneficiary. To date we have had several meetings and we have really just begun the task. Re-engineering is not just duct taping or cobbling a system together with baling wire; it is total analysis and rebuilding where needed. It requires that we use our imagination to create as well as an ability to extract the best practices identified in the "As Is" model and implement those practices in a redesigned beneficiary centric service delivery model.

Beneficiary centric Trust service is the mission of the tribal representatives and the "To Be" team. I believe that beneficiary focus is a mission shared by tribes, Individuals as well as Secretary Norton, Deputy Secretary Griles, The Special Trustee Chief Swimmer and his deputy Donna Erwin including all their respective employees. The definition of beneficiary in this context is: Tribes and Individuals, and not just Individual Indian Money Account holders [IIM] but also the families that stand behind those folks and the unborn future beneficiaries.

So why reorganize before re-engineering? That is a question that many people have asked me and I believe my answer may shed some light. Last year while documenting the current DOI management it was very clear that the DOI had a systemic problem causing much of the delays in: Trust service delivery. A single decision or individual did not create the problem but it was the result of a long evolutionary process developed over time. The problem we identified was that the DOI wears so many different hats and has so many conflicting responsibilities it often has problems making critical and final decisions on a timely basis. The regional directors had developed over time a sort of autonomy that resembled small freedoms and the central office was extremely disconnected with the needs of the regional staffs as well as the Beneficiary. So, after 1 year of time consuming and difficult but partially fruitful discussions with the Tribal Task Force, I believe that the DOI decided to implement some necessary changes. Are the changes described and implemented in the recently signed Department Manual going to help? I think in some ways the answer is yes but I am not yet sure; there are so many issues that concern me. What are the effects on the promotion of self-governance and self-determination? What are the effects at my agency that desperately needs resources? When is the issue of lease compliance and enforcement going to result in action at the local level? When can I get the backlogs in probates for my people caught up? When are my fee-to-trust applications going to be signed? Without new Trust land my Tribe is condemned to live in America's largest EPA superfund site. When is the DOI going to replace the old and worn LRIS system with TAAMS 1.49 so we can have a consistent platform that we can transition from to a better systems architecture? These are just a few concerns that I have and I commit to you that I will engage with and work diligently with tribes, Individuals and the Department of the Interior to address these issues and I will not throw rocks. We, tribal leaders, Individuals, Congressional Representatives and the DOI must work together to not only create a better system but to provide opportunities for our young people who may have an interest in participation in the stewardship of Native America.

Thank you for this opportunity to, provide input and I also offer myself to the committee and its members my help whenever asked.

Testimony of Keller George
United South and Eastern Tribes, President
and
Member of the Oneida Indian Nation

Before the United States Senate
Committee on Indian Affairs
May 21, 2003

"Re-Organization of the Bureau of Indian Affairs"

Good morning Mr. Chairman and Honorable members of the Senate Committee on Indian Affairs. Thank you for taking time to listen to testimony of tribal leaders regarding the re-organization of the Bureau of Indian Affairs(BIA). My name is Keller George, and I am appearing this morning on behalf of the United South and Eastern Tribes, Inc.(USET). I am a member of the Oneida Indian Nation's Men's Council and have served as USET's President for approximately eight years. As you know, USET is an inter-tribal organization comprised of 24 federally-recognized Indian Tribes. USET is dedicated to assisting its member tribes, through epitomizing the highest ideals of Indian leadership, in dealing effectively with public policy issues and serving the broad needs of Indian people. USET serves a population of approximately 60,000 Indian people in twelve different states.

The USET member Tribes feel strongly that they must work for the advancement of Indian people while maintaining a strong sense of self-determination. Because of this strong belief, USET has been actively involved in the Trust Reform and Re-organization efforts from the very beginning. I served as a representative of the USET Tribes, along with James T. Martin, USET Executive Director and Peter Schultz, Vice-Chairman of the Mohegan Tribe of Connecticut, on the initial DOI/ Tribal Trust Reform Task Force. I believe that the experience gained through this process has produced valuable knowledge that can be used by all parties to forge the Bureau of Indian Affairs into an agency that operates more efficiently.

USET spent many hours analyzing the various issues of re-organization and trust reform in an effort to provide insight and tribal perspective on the changes that are currently taking place and those that are forecast in the years to come. As a result of our analysis and research, we will address six areas of concern in our testimony today: Reform versus General Operation, Consultation with Tribes, Incorporation of Trust Principles, Creation of an Under-Secretary, Regional Level Re-organization relationships, and Continuing Litigation.

Reform/Re-Organization vs. General BIA Operation

The first issue that has become a byproduct of the reform process is the struggle between the establishment of an organization that upholds the fiduciary trust responsibility on the one hand, while maintaining general operations on the other. This internal struggle has become obvious in the past several months as the re-organization process has been pushed into its initial phase. USET agrees that trust and other functions need to be separated, however, in the BIA's re-organization structure two competing organizations have developed. The OST and the BIA must compete against each other for authority, resources, and manpower. This struggle will always exist unless certain issues are addressed.

From the beginning of the Trust Reform process, Tribes have made it clear that the DOI should not use program dollars to help fund the mistakes of the Administration. Tribes have stressed that the BIA's funding should not be diminished in order to fund the trust efforts of the OST. The BIA is in dire straits and must have additional funds in order to accomplish a truly successful re-organization. USET tribes fear that the majority of trust funding will be directed to the OST where the BIA will have to request the use of funds for trust activities. This makes the BIA subordinate to the funding needs of another organization and the employees of the BIA dependant upon two sources of direction for performing tasks. This could be extremely detrimental to the efficiency of processes within the BIA's new organization.

USET is committed to trust reform and the much needed re-organization of the Bureau of Indian Affairs. The mismanagement and trust issues are escalating problems that must be dealt with immediately for the sake of future generations. The Land Consolidation and Fractionation problems alone, if solved today, would take years to organize and properly manage. There are numerous unmet needs in Indian country in addition to Trust Reform which cannot be ignored. Programs such as Law Enforcement, Welfare, Social Services, and Education should not be "taxed" in order to pay for the mismanagement of the federal government's trust responsibility to tribes. New funding must be provided to the BIA for this re-organization process, while other programs should operate as intended without interference from budget restraints due to re-organization.

Consultation with Tribes

An attempt was made by the DOI/Tribal Trust Reform Task Force to work through many of the current re-organization issues and hold consultation meetings with tribal leaders regarding suggestions from the Task Force. This has since failed due to "road blocks" in

the negotiating process. The DOI officials have stated that they have consulted with the tribes on the various re-organization 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. Lately the DOI has made consultation into a mere ritual they must go through in order to push the DOI's agenda. Negotiation is an essential part of consultation and while you may not be able to please everyone, the majority opinion should prevail in the end.

Some aspects of the re-organization efforts do reflect tribal views, but the two main points tribes wanted addressed, the Under-Secretary position and Trust Principals, remain untouched. Tribes stated from the beginning of the process that these two items must be incorporated into any re-organization efforts in order to establish a sense of accountability within the BIA. Tribes are still waiting to see these very important priorities given attention.

It all comes down to the issue that the Tribes must be re-engaged if the reform process is going to be successful. Tribes are receiving ambiguous and confusing information about the re-organization activities, which is extremely frustrating. Tribes must be involved in the *entire* process, not just shown the end product. The Department of the Interior and Bureau of Indian Affairs are not holding to their policy of meaningful consultation with tribes. We fear that without consultation and clear information the new re-organized structure will be perceived in the same negative light that has plagued the BIA for years.

Trust Principles

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. §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 of the Government to preserve the property as a trustee, and determined that its breach 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 towards 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 forces to find remedy through the courts.

The tribal leadership of the Trust Reform Task Force made a concerted effort to get the DOI to incorporate a list of general Trust Principles, that could be used as a reference point for all trust activity, into the re-organization efforts. This suggestion was adamantly opposed by the DOI members of the Task Force, as they wanted to wait until the Supreme Court had provided decisions in both White Mountain Apache and Navajo Nation. These two cases have had opinions written and both re-affirm, now more than ever, the need for a standardized set of trust principles.

Indian country should not be held at bay any longer by pending cases in the Supreme Court. The time is now for the federal government and the Secretary of the Interior to be held accountable for their trust responsibility. It is critical that continuity and accountability be established as a cornerstone of the re-organization efforts. There can be no oversight of the trust relationship without a standardized set of general trust principles in place. Indian country must have a way to hold their trustee accountable for actions taken that may be contrary to the advancement of Indian people.

Under-Secretary Position

USET tribes have stressed from the beginning of the reform process the need to have Indian Affairs authority elevated to a Secretariat Level within the Department of Interior (DOI). Many tribes feel that the DOI overlooks the needs of the BIA , consequently tribal issues are pushed to the bottom of the list of DOI priorities. There is a strong need for an Under-Secretary of Indian Affairs position to be established in order to remedy the ambivalent attitude toward Indian affairs that has been so apparent within the DOI.

Through legislation, USET feels that the creation of an Under-Secretary could greatly benefit Indian people. Both tribal leaders and federal officials on the Trust Reform Task Force reached general consensus on creation of the new position. This common ground shows that both Indian country and the administration support the elevation of Indian affairs within the Administration. Tribes envision the Under-Secretary as having direct contact with the Secretary of the Department of the Interior regarding all Indian issues, as well as exercising authority over other bureaus within the DOI in regard to their Indian trust responsibilities. Currently other DOI bureaus report to the Secretary of the Interior and there is little communication or collaboration among the different bureaus regarding Indian trust issues. It is vitally important that all bureaus understand the importance of the federal government's trust obligation. An Under-Secretary could instill this trust responsibility across the bureaus and within the BIA, whereas the Assistant Secretary of Indian Affairs does not have any authority over other bureaus. This is the most direct way to ensure that Indian issues receive the attention, resources, and respect they deserve and to assure successful trust reform.

Regional Level Re-Organization

Many hypothesis are circulating throughout Indian country as to how the regional re-organization of the Bureau of Indian Affairs will actually work. There has been little direct discussion between the federal government and tribal leaders regarding this level of re-organization despite repeated requests from Indian country. The new Department Manual once again is unclear as to all of the 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.

USET has spent countless hours analyzing the new Department Manual, the Cobell reports to the court, and the relationships between OST employees and BIA employees. USET believes these regional position interactions are based on an oversight (OST employees) and work product (BIA employees) relationship. The BIA employees at the regional level should be responsible for service delivery to the tribes, while the OST Trust Officers should be responsible for ensuring the trust responsibilities of the federal government are upheld. Trust positions should also be able to provide beneficiaries with resources concerning trust issues and look into any complaints of mismanagement by the BIA.

Furthermore, there is confusion as to how the OST Trust Officers will perform these oversight functions. In past discussions, the idea of Memorandums of Agreement (MOA) between the OST and the BIA were suggested. These MOA's would allow the BIA regional and agency level offices to "contract" the trust responsibility from the OST. The OST would then be free to focus totally on the oversight issues of ensuring that trust obligations are upheld by the BIA. If there are going to be two "stovepipe" organizations established to handle trust, one must be in charge of the implementation while the other organization must focus on oversight and standards of service.

These interactive relationships as described are merely speculative and based on USET's analysis of the DOI Department Manual. There are many grey areas in the Department Manual that need further clarification. However, if USET's analysis is correct, the new structure could be a viable tool to reaching greater efficiency within the BIA.

Continuing Litigation

The Cobell litigation is widely perceived as being the catalyst which first sparked trust reform discussions and exposed the gross mismanagement of Indian Trust Assets by the Department of the Interior and the Bureau of Indian Affairs. USET recognizes the need for the Cobell plaintiffs to seek resolution and obtain an adequate remedy at law. The litigation, however, is reaching and dangerous point where the court has threatened to appoint receivership over the BIA and trust assets. The plaintiffs have argued that while they appreciate tribal input, Cobell is an Individual Indian Plaintiff's case. If a receivership is appointed, it becomes everyone's case. Receivership could negatively affect numerous Indian programs and service delivery to all tribes.

The Cobell case is also making members of Congress impatient and less likely to have an open ear regarding other Indian issues. Even if the Cobell case is decided in favor of the plaintiffs, Congress does not have the money to award the large settlement that is due them. A large award to the plaintiffs will inevitability hurt the rest of Indian country during these hard economic and budget restricted times. It is time to introduce legislation that will bring a fair settlement to the ongoing litigation. USET is in favor of looking at possible settlement legislation and working with Congress to develop a resolution to the case. The Cobell litigation is a drain on the federal government and is depleting funding that could go to other Indian programs or to enhance the re-organization effort. We must get beyond Cobell in order to realize true and lasting trust reform.

Conclusion

USET Tribes support reform and understand that re-organization is necessary to get the Bureau of Indian Affairs in line with its fiduciary responsibilities. Many tribes feel like efforts to this point have been futile and the DOI is moving forward with their own agenda. USET recognizes the urgent need for tribes to be actively engaged in the reform and re-organization processes. Future generations of Indian people are depending on tribal leaders to take a stand and approach reform with a united voice. It is time to have that voice heard through legislation being developed and true consultation with the administration. The process has become stagnate over the past several months, but now is the time for Tribes to be active and involved.

In closing, I would like to emphasize the great importance of proper trustee accountability and the federal trust obligation. Efficiently operated trust programs could benefit Indian country greatly, but we all know the chaos that a poorly operated trust system can produce in Indian country. 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.

Mr. Chairman and Honorable Committee Members, USET stands ready to assist in the processes of mending the relationship, establishing accountability of trust, and re-organization of the BIA. USET tribes have the experience and knowledge to work through these issues, all we need is someone to tap into those valuable resources. Thank you for taking the time to listen to tribal comments and take them into consideration. USET looks forward to working with Congress to reach lasting solutions and I would be pleased to answer any questions you may have regarding the USET testimony.

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The National Congress of American Indians

Testimony on

Proposed Reorganization of the Bureau of Indian Affairs

Presented By:

Tex G. Hall
President, National Congress of American Indians

May 21, 2003

Introduction

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

I want to emphasize to the members of this Committee that tribal leaders understand better than anyone that the Bureau of Indian Affairs needs to change, that it has significant difficulty in fulfilling its responsibilities in management of trust funds, and that some of the problems relate to the way that the Bureau is organized. We want to see successful change and improvement in the way the BIA does business.

We are not opposed to reorganization per se, we simply want to do it right. We cannot afford to squander the opportunity we have before us.

In our view, effective organizational change to effectuate trust reform must contain three essential elements:

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

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

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

These elements are lacking in the current proposal of the Department of Interior (DOI) for reorganizing the BIA.

The organizational charts which accompanied the DOI's plan show the establishment of newly created Trust Officers, potentially placed at every BIA local Agency Office. These Trust Officers are to be funded under the Administration's budget request for FY2004 for a significant initiative to increase funding for trust management within the Office of Special Trustee (OST). OST would receive a $123 million increase – to $275 million – which is partially offset by a $63 million cut to the BIA Construction and an $8 million cut to Indian Water and Claims Settlements.

Of BIA Construction accounts, Education Construction will lose $32 million—despite a terrible backlog of new school construction needs that everyone agrees must be addressed. Tribal leaders have repeatedly emphasized that funding needed to correct problems and inefficiencies in DOI trust management must not come from existing BIA programs or administrative monies. It is critical that the DOI request additional funding from Congress to correct the internal problems created through administrative mistakes rather than depleting existing, insufficient BIA program dollars for these purposes. Increased funding for trust reform has the potential to be money well

spent—but it is an empty promise if it comes at the costs of diminished capacity to deliver services to tribal communities, and is implemented without clear standards for federal accountability, a plan to put the money at the local level where it is most needed, and consultation with the tribes and individuals whose accounts are at stake.

We are extremely concerned that the lack of definition of the responsibilities and authorities of new OST offices will cause serious conflicts with the functions performed by the BIA Agency Superintendents and/or Indian tribes. The authority and role of the proposed Trust Officers need much more explanation. Moreover, we believe that the funding and staff needs to flow directly to the agency and regional levels—not just to new Trust Officers—to address long-standing personnel shortages needed to fully carry out the trust responsibility of the United States. Before DOI begins the process of establishing an entire new mini-bureaucracy, the financial and management impact of such an action must be thoroughly examined by the Congress and by affected tribal governments.

We believe that any attempt by DOI to implement its proposed reorganization without addressing the three essential elements we have identified above for trust administration will prove to be ill-advised, premature, and ultimately disastrous. We fear that the DOI is on the verge of repeating the classic mistake that has ruined the majority of its efforts to reform trust administration in the past – a small group of executives get together and simply draw up a new organizational chart. The preoccupation with moving or creating boxes on a chart is the antithesis of how effective organizational change can and should be brought about.

We firmly believe that this reorganization is putting the cart before the horse. Organizational structures must be aligned with specific business processes and they must be designed to function within a system where services are provided by the DOI and tribal governments. DOI has not yet figured out its new business processes. Millions of dollars have been invested in an "As-Is" study of trust services, but the Department has only just begun to undertake the critical "To-Be" phase of reengineering the business processes of trust management. By implementing a new organizational plan prematurely, DOI is running a great risk of ignoring the findings of its own study and wasting the valuable resources that the agency and tribes have already dedicated to understanding systemic problems.

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

At this time, Congress should prevent the DOI from proceeding with its proposed reorganization plan and focus instead on funding land consolidation that will in time reduce the cost of trust administration, and on developing good systems for the core trust business processes: land title, leasing and accounting. Without adequate land title, leasing and accounting systems, reorganization, especially as proposed by DOI, does little to effectuate true trust reform and the cost of reform of trust administration will continue to escalate.

Land Consolidation

Addressing fractionation is critical to improving the management of trust assets. Fractionation promises to greatly exacerbate problems that currently plague the DOI's efforts to fulfill its trust responsibilities, diminish the ability to productively use and manage trust resources, and threaten the capacity of tribes to provide secure political and economic homelands for their members. If allowed to continue unabated, fractionation will eventually overwhelm systems for trust administration and exact enormous costs for both the Administration and tribal communities.

Reduction of fractional interests will increase the likelihood of more productive economic use of the land, reduce record keeping and large numbers of small dollar financial transactions, and decrease the number of interests subject to probate. Management of this huge number of small ownership interests has created an enormous workload problem at the BIA. Given this, we do not understand why the FY2004 Administration request proposes a $123 million increase for OST, but only a $13 million increase (to total funding of only $21 million) for the land consolidation program. Congress needs to put funding directly on the problem, and we believe that an investment in land consolidation will pay much bigger dividends than most any other "fix" to the trust system, including reorganizing the BIA.

Core Business Systems - What are We Trying to Fix?

Over the decades, Indian tribes have witnessed a multitude of trust reform initiatives, reorganizations, plans, meetings, summits, work groups, task forces, computer systems, software, outsourcing contracts, and other efforts to fix the problems with management of Indian trust funds. To date, none of these efforts have proven successful. The DOI has failed to correct fundamental deficiencies in core systems that are the essential to trust funds accounting and trust resource management. NCAI believes that this Congress should focus its oversight efforts on these core systems to ensure that reform efforts meet requirements for fiduciary trust fund administration.

Indian trust fund administration requires accountability in three core systems that comprise the trust business cycle: 1) Title; 2) Leases/Sales; and 3) Accounting. These core systems must be accurate and integrated, timely, and be subject to credible standards and oversight.[1] Pursuant to the 1994 American Indian Trust Funds Management Reform Act, these are exactly the systems that the Special Trustee should address. The Secretary must be able to provide to the beneficiaries an accurate and timely statement of the source, type and status of the funds; the beginning balance; gains and losses; receipts and disbursements; and the ending balance. 25 U.S.C. § 4011. Correcting the DOI's performance in these core functions will also require the DOI to employ sufficient personnel, provide staff with proper training, and support their activities with adequate funds.[2]

Title - The title and ownership system is the most fundamental aspect of the trust system. DOI cannot accurately collect and distribute trust funds if it does not have correct information about the owners of the trust assets. This is the starting point for any effort to fix the trust system.

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[1] The DOI acknowledges that the poor quality of title and realty information is caused "by a lack of standards and quality control and a lack of integrated systems." DOI Plan at 31.

[2] The DOI Plan acknowledges that "the personnel resources are inadequate to address the current workload." (DOI Plan at 38).

Maintaining accurate ownership information is made exceedingly difficult by the ever-expanding fractionated ownership of lands divided and redivided among heirs. Today, there are approximately four million owner interests in the 10 million acres of individually-owned trust lands, and these four million interests could expand to 11 million interests by 2030. Moreover, there are an estimated 1.4 million fractional interests of 2 percent or less involving 58,000 tracks of individually-owned trust and restricted lands. There are now single pieces of property with ownership interests that are less than 0.000002 percent of the whole interest.

Currently, the BIA is using ten different title systems in the various Land Title Record Offices around the country, both manual and electronic. These systems contain overlapping and inconsistent information. The systems are largely "stand alone" in that they do not automatically reconcile the ownership information in the agency offices, in tribal records, or in the lease distribution records that are used for daily operations. Because records management standards and quality control procedures are lacking, there is no assurance that title records are accurate. These inaccuracies result in incorrect distribution of proceeds from trust resources, questions regarding the validity of trust resource transactions, and the necessity to repeatedly perform administrative procedures such as probate.[3]

Consequently, a large backlog of corrections has developed in many of the title offices, and this has compounded the delays in probate, leasing, mortgages, and other trust transactions that rely on title and ownership information. In turn, each of these delays compounds the errors in the distribution of trust funds. *See*, Draft As-Is Model Preliminary Findings, Electronic Data Systems, December 20, 2002. Cleaning up the ownership information and implementing an effective title system that is integrated with the leasing and accounting systems is a primary need for the Indian trust system. NCAI encourages this Congress to ensure that expeditious reforms are made to the title system. The reorganization proposal, which is focused on developing oversight capacity at OST, appears to do little to address this most fundamental problem at the BIA.

Leasing – Most Indian trust transactions take the form of a lease of the surface or subsurface of an allotment, permits to allow the lessee to conduct certain activities in return for a fee, or a contract for the sale of natural resources such as timber or oil. Although leasing records are vital to ensure accurate collection of rents or royalties, there are no consistent procedures or fully integrated systems for capturing this information or for accurately identifying an inventory of trust assets. Currently, BIA has no standard accounts receivable system and many offices have no systems to monitor or enforce compliance, or to verify and reconcile the quantity and value of natural resources extracted with payments received. The accounting system most often begins with the receipt of a check that is assumed to be accurate and timely. Implementing an effective lease recording system that is integrated with the title and accounting systems is a primary need for the Indian trust system, but the BIA has only recently begun to investigate possible technologies for this effort. NCAI urges Congress to ensure that the information management and administrative systems put in place are organized to provide accurate and timely information regarding the trust resource transactions that produce the income that is deposited into trust fund accounts.

[3] Another problem is the backlog of probate determinations. The process of ascertaining the multiple owners of an allotment is often delayed for years – sometimes seven years or more – by the scandalously backed-up Indian Probate Office. This is one phase of the accounting process in desperate need of reform.

Accounting - The 1994 Act requires the Secretary to account for "the daily and annual balance of all funds held in trust by the United States for the benefit of an Indian tribe or an individual Indian ... ." 25 U.S.C. § 4011. The DOI needs to develop accounting systems that will integrate and verify information from one function into another (from title to leasing to accounting). The DOI should also set out what oversight capabilities are planned into the system (verification and audit) as well as a plan for document retention and ease of access to facilitate audit and internal verification procedures. Furthermore, the DOI system needs a built-in cross-check between BIA entries to its control account and Treasury's entries to its control account. This system should automatically produce a daily exception list that would be examined and remedied in a timely manner.

By its own representations, the Government makes clear that it still lacks a cohesive, integrated strategy for fulfilling this fiduciary duty to accurately account for trust funds balances. Rather than focusing attention and energy on a reorganization, Congress should ensure that DOI develops the core trust systems – title, leasing and accounting – to ensure that those systems provide accurate information regarding the trust corpus as well as trust resource transactions that produce income that is deposited into trust funds on behalf of individual and tribal beneficiaries. Once these processes have been developed, an organizational structure can be developed to ensure their proper implementation.

Accountability and Standards

It is well known that DOI has mismanaged the Indian trust for decades. The real question for Congress is why decades of reform efforts have produced so little change in DOI's willingness to take corrective actions, to reconcile accounts, and to put adequate accounting and auditing procedures and policies in place.

The real answer to this is that the DOI and the Department of Justice have always viewed their primary role as ensuring that the U.S. is not held liable for its failure to properly administer trust assets. For this reason, they have never been willing to put any standards into regulations to govern the management of Indian trust assets, and the lack of standards has consistently undermined any effort to take corrective action on trust reform. What is needed is a clear signal from Congress to create a new culture of transparency and accountability for Indian trust management. Once the DOI understands that mismanagement will no longer be tolerated, the system will change and true reform will begin. In effect, the DOI is acting as a bank for Indian trust funds -- and just like every other bank in the U.S., the DOI must be subject to standards and accountability.

Beyond the issue of reorganization, we believe that it is critical for Congress to substantively address the underlying issues of transparency and accountability in fixing the trust system. We would greatly encourage the Committee to take up trust reform legislation that would hold the DOI to the ordinary standards of a trustee, and we would be pleased to work with you in developing that legislation.

Reorganization of the Bureau of Indian Affairs

Tribal leaders very much agree with the goal of the proposed reorganization to ensure accountability for trust management throughout all operational levels. However we have a great concern that a "stove piped" reorganization, such as the current proposal, will sharply separate the ability to make decisions on trust resource management and trust services at the local level, and will put an unbearable level of bureaucracy into a system that is already overloaded with bureaucratic requirements. In short, tribal leaders want to ensure that decision-making and resources are placed at the local level. Tribes believe that the Department must maintain a single point of decision making authority at the local level to deal with issues that cut across both trust resource management and other trust services.

Reservations are active, developing communities that are very dependent on trust property, and need decisions made on routine matters at the local level in a reasonable time frame. For example, all of the major infrastructure activities like housing, roads, irrigation, drinking water, telephone service, etc. take place on trust land. There are also quite a number of important daily relationships at the local level regarding the provision of social services to elders and minors, and the management of their IIM accounts. Social workers, medical professionals and Superintendents work together to set up restricted accounts and approved spending plans for the protection of their trust funds. BIA and tribal law enforcement also must regularly deal with activities that take place on trust lands, deal with trust resources, or relate specifically to leasing activities. Examples of such circumstances include problems of trespassing cattle and the remedies under a grazing lease for impoundment or fees, timber theft and timber leases, violations of irrigation and water rights, eviction of a tenant for nonpayment on a lease, etc.

All of these types of decisions require strong coordination and decision making at the local level on matters that affect both a trust resource interest and the broader trust responsibility to provide services. These make up the routine kinds of decisions local BIA officials make that often never reach the central office level.

Imagine having to get central office approval every time there is a disagreement over a housing lease approval or construction of an irrigation ditch – this is something tribes don't want and we don't think the DOI wants either. Central office decisions take a long time – and this means more business deals go stale, more financing dries up, projects don't move forward, and the cycle of missed opportunities for Indian country is badly exacerbated.

We believe that trust reform reorganization can be effective in improving administrative accountability while still allowing for local decision making on routine matters that cut across trust resource management and trust services. We generally agree with the DOI that it would be valuable to group the trust funds management and the trust resource management activities at the local level, with clear lines of responsibility and staffing. However, we do not believe that the individuals responsible for these functions should be under a separate administrative authority from the staff responsible for performing other trust services. Rather, the BIA Regional and Agency office authorities should remain as the primary focal point of contact with individual tribes, preserving local control of functions and programs to support tribal self-determination. Accountability is not going to be assured through any organizational structure, but we believe it can be achieved in part with the following improvements:

- Identification of duties
- Adequate funding, staffing and training to perform those duties
- Policies, procedures, standards
- Internal controls
- External audits (performance and financial)
- Transparency (basis for decisions is clearly stated and evident)
- Adequate staff training with performance standards
- Focus on responsiveness to beneficiaries
- DOI/BIA staff committed to change and improvement of trust activities

In broad terms, tribal leaders have supported the idea of creating a structure that would have three major operational divisions under the Assistant Secretary for Indian Affairs: 1) Trust Funds and Trust Resources Management; 2) Trust Services (such as law enforcement, social services, roads, etc.); and 3) Indian Education. An administrative services section to handle such functions as budget, personnel and information systems would support these three divisions. Central office functions within these divisions could include: (1) the establishment of standards, procedures, protocols, internal controls for accountability, and program priorities; (2) delegations of authority to regional offices; (3) technical assistance; (4) reporting and troubleshooting; and (5) development of budgetary needs. The tribal leaders who participated in a Trust Reform Task Force with DOI suggested that the Office of Trust Funds Management and other offices, which are currently or prospectively under the administrative control of the OST, would be phased back into the BIA in order to have integrated beneficiary services. This is essential to maintain accountability; by having these offices report to the OST, the OST is placed in the tenuous and untenable position of overseeing itself.

Continuing Involvement of Tribal Governments

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

Conclusion

On behalf of NCAI, I would like to thank the members of the Committee for all of the hard work that they and their staffs have put into the trust reform effort. If we maintain a serious level of effort and commitment by Congress, the Administration, and Tribal Governments to work collaboratively together to make informed, strategic decisions on key policies and priorities, we can provide the guidance necessary to bring about true reform in trust administration.

Hoopa Valley Tribal Council

HOOPA VALLEY TRIBE

Regular Meetings on the First and Third Thursday of Each Month

P.O. Box 1348 • HOOPA, CALIFORNIA 95546 • Phone 625-4211 • Fax 625-4594

Clifford Lyle Marshall
Chairman

TESTIMONY OF THE CLIFFORD MARSHALL, CHAIRMAN
HOOPA VALLEY TRIBE
BEFORE THE SENATE COMMITTEE ON INDIAN AFFAIRS
REGARDING TRUST REFORM AND RELATED MATTERS
MAY 21, 2003

I am Clifford Marshall, Chairman of the Hoopa Valley Tribe. I appreciate the opportunity to testify before the Senate Committee on Indian Affairs regarding the trust reform and related matters. I am here today serving as both the Chairman of my Tribe and as the representative of the Tribal Trust Reform Consortium. The Consortium is a group of seven Tribes in California, consisting of the Big Lagoon, Cabazon, Guidiville, Hoopa, Karuk, Redding Rancheria and Yurok, each of whom have been actively working with the Bureau of Indian Affairs (BIA) Pacific Regional Office (PRO) to resolve many of the trust issues that are typically discussed as major problems in other parts of Indian Country. I am here today to discuss the positive trust reform activities that our Consortium and the BIA Pacific Regional Office has undertaken over the past few years and to ask for your continuing support.

My primary purpose today is to discuss the purpose of the Consortium and the Consortium tribes' concerns that the trust reorganization plans will negatively affect the significant progress we have made to date working with the Bureau of Indian Affairs' Pacific Regional Office on trust management issues.

Consortium Member Tribe Profiles

Many comments have been made that problems associated with trust resource management are so bad in Indian Country that they cannot be fixed. Our Consortium has proven that even in situations where tribes have experienced some of the most damaging Federal Indian policies, we find ways to make improvement. Our Consortium Tribes have collectively found ways to work with the BIA to successfully implement one of the most progressive trust resource improvement programs that exists anywhere in Indian Country today.

For example, the Big Lagoon Tribal Government went from an all-volunteer staff in 1982 to one that contracts nearly all BIA functions today and is contracting with HUD and EPA to carry out activities on their own lands. The Cabazon Band of Mission Indians is a small tribe in Southern California that 20 years ago had few services for their members. Today, their activities have led them to develop one of the most progressive and successful business environments that exists in

Indian Country. The Guidiville Rancheria was terminated by the California Rancheria Termination Act in 1960 and had to regain recognition through a lawsuit against the United States in 1991. Since then, the Tribe has been able to reestablish a fraction of its original land base using HUD Block Grants funds in 1999. For Hoopa, the Tribe spent millions of dollars in over 30 years of litigation with the United States. In 1998, the Tribe became one of the first Self-Governance Tribes and assumed control over most of the BIA and IHS activities by 1993.

Of the Karuk Tribe's ancestral homeland of 1.2 million acres, it has 621 acres in trust today, all of which it had to purchase with its own funds. The tribe entered into its Self-Governance agreements in 1996 and today operates most BIA and IHS programs. The Redding Rancheria, which the BIA reported consisted of five houses (one burnt out) and twenty-five residents in 1958, also had its federal recognition stripped away under the California Rancheria Termination Act. In 1983, the Tribe's federal recognition was restored by legal action and its government reestablished in 1985. Today, Redding Rancheria has re-acquired 87 acres of its homeland using mainly its own funds, is contracting most of the BIA and IHS programs and is a significant employment and business provider for the Northern California area through its gaming and governmental operations. For the Yurok Tribe, after undergoing decades of legal, political and economic struggles, the Tribe's government was established through an Act of Congress in 1988. Now, the Yurok Tribal Government has over 170 employees who carry out services for over $15 million in annual budgets for its people, and has developed several management and governmental agreements with Federal, State and local agencies.

In spite of this, the Consortium has demonstrated that positive progress toward meaningful self-determination, self-governance and trust reform can be achieved.

Comments Regarding Federal Trust Reform Efforts

Many people have expressed a view that the Cobell-type issues continue to evolve and that "new" trust problems are being created because of present-day management issues. We disagree, at least for the areas in which we work. This is not to say that we have solved every trust problem. But we have committed to working with the BIA Pacific Regional Office to address as many of these problems as we can with our limited budgets and resources.

We have serious concerns regarding the Federal efforts to implement trust reform efforts over the past decade. It is tragic that in light of the scarcity of Indian appropriations, the Office of Special Trustee-controlled trust plan will have spent more than a billion dollars by the end of FY2004 in the name of trust reform. While some positive actions have emerged, like the establishment of the Office of Trust Funds Management, we have yet to work our way through the maze of concerns of tribes, individual Indians, the Federal Government and Congress to arrive at a trust reform agenda that is workable to each. We believe that a major contributor of the problems has been in the organizational approach OST has undertaken.

We believe that many of the problems that we continue to face in trying to implement positive trust reform efforts have been created by the organizational structure in which the reform is supposed to take place. We do not read the 1994 Trust Funds Management Improvement Reform Act of 1994 as intending for the OST to become an agency responsible for actually

carrying out Indian service programs. OST has moved significantly away from its original intended role of monitoring and coordinating trust reform with the agencies within the Department. It does not seem possible that the limited staff and expertise of OST could be successful in assuming the responsibilities and control of the BIA's thousands of employees who carry out trust resource management issues on a daily basis, or to address the problems associated with the vast diversities in Tribal/Federal relationships that have developed through decades of Tribal and BIA conflict resolution. If we have learned anything about the management of Indian affairs over the past decade it is that there is no one-size-fits-all approach that will succeed in accomplishing trust reform.

Unfortunately, since the creation of OST its primary mission appears to have been to either take over or replace the BIA. However, OST has not invested the time to understand and appreciate the kinds of complexities that are regularly associated with how management of trust resources interacts with tribal interests. Perhaps this complexity was best described in a West Coast tribal fishing case when the Federal Court ruled that salmon to West Coast Indians is as important to their existence "as the very atmosphere that they breathe." The same can be said of the relationship between trust resources of our reservation and their effect on the daily lives of Indian people. We believe that this is why tribes across the Nation nearly unanimously demanded to keep the BIA system intact while fixing the resource management problems that need to be addressed. The OST approach is one that is predicated on having to reverse the principles of tribal self-determination upon which Federal Indian Policy has been based for the past twenty-five years. OST's budget plan has also incorrectly re-instituted the old Federal trend of keeping over ninety percent of the benefit for the agency while tribes once again must fend for their budget needs without Department support.

Our Consortium's approach has been one that has taken a directly opposite approach from that undertaken by the OST in years past. Our plan has been based on a vision that successful resolution of trust resource management problems will never be implemented if it costs our tribes our right of self-determination and self-governance.

Successful Trust Reform through Tribal Self-Determination and Self-Governance

By establishing the policy of tribal self-determination in 1975, Congress set out a new and progressive agenda for Indian Country that was based on the fundamental rationale under which treaty-making itself was based. Treaties were based on the understanding that tribes have functioning governments that have inherent sovereign powers to control and direct affairs that are carried out within their territory. The policy of tribal self-determination is similarly based on the principles that tribes, as sovereign entities, must have a voice in the management of their resources, rights and territorial governance. Thus, the framework of the working relationship between our Consortium tribes and the BIA Pacific Regional Office is based on the foundation that both the Federal Government and our Tribes will have a meaningful voice in the management of our respective areas of responsibilities. Likewise, we also understand that our relationship includes an understanding that the management of resources is a shared responsibility and that we each have an integral role in working cooperatively to resolve conflicts and assist in management activities. The BIA Pacific Regional Office has been willing to use the opportunities that are available under self-determination and self-governance to bring our

respective experts together to improve trust resource management and work through problem areas.

Tribes understood that under Self-Determination and Self-Governance they necessarily had to accept that they are a part of a long term initiative. Tribes also understood that they needed to build Tribal infrastructure, capability, systems and standards to be a part of the overall plan of providing the necessary guidance that would ultimately fix the problem areas associated with trust reform. Even then, we did not realize that Self-Determination and Self-Governance would lead us in a direction to help fix major BIA trust problems involving the severe budget deficiencies of the BIA. Under Self-Governance, we have been able to use the BIA's limited budgets and staffing to leverage other funds and resources that are needed to strengthen Tribal capabilities and provide trust services at the reservation level. Again, in the recent year after a long consultation process of the Administration on trust reform, nearly every Tribal leader in the Nation stated that the lack of funding and necessary staff are the most pressing problems that must be resolved if we are going to successfully solve trust reform problems throughout Indian Country. This is a tremendously important issue for our tribes since the Pacific Regional Office has historically been one of the most under-funded regions in the BIA.

Under the authority of Tribal Self-Determination and Self-Governance today we see many places where Tribes and the BIA have worked together to address trust problems that are caused by the lack of funding and staff. Contrary to many statements made that trust problems remain unchecked and continue to become worse, this is not always the case. The Hoopa Valley Tribe has worked to leverage limited BIA funds with those of other agencies to increase the level of trust resources at the reservation level. Just for trust resource programs, our information demonstrates that my Tribe spends $3.00 of non-BIA funds for every $1.00 of BIA compacted/contracted funds (See, Attachment #1). Clearly, this information indicates that the Tribal Self-Determination and Self-Governance initiatives are very beneficial to the goals of reforming Indian trust programs, and in fact have resulted in enabling Tribes to significantly improve trust support capabilities and funding, thereby creating a positive environment for the management of Reservation trust assets. This information is not used to portray that it is acceptable for the United States to under fund trust programs. Congress mandated in the 1994 Reform Act that the Special Trustee certify in writing the adequacy of the trust reform budgets for federal agencies that carry out trust functions. This is a legal requirement that has never been carried out. I request that this Committee continue to work with the Special Trustee to ensure that this important legal mandate is carried out since without it, successful trust reform is not possible.

The BIA Pacific Regional Office/Tribal Trust Reform Consortium Approach to Trust Reform.

Restructuring of any federal agency must be done in accordance with pre-determined plans, identified and measurable goals and specific timeframes. Each seems to be lacking in the Federal reorganization of the BIA today. Restructuring for the sake of restructuring is typically not the best use of limited resources, funds or time. Quite simply, we do not believe that changing employee name tags from BIA to OST and agency addresses will fix trust problems.

The Consortium is fixing trust problems. Operating under the goal of resolving trust problems at the place closest to the Reservation with the most authority, our Tribes began to work with the BIA Pacific Regional Office to analyze and fix many of the trust resource management problems that had haunted us for years. In 1998, we formally established the California Tribal Trust Reform Consortium. Our plan was also to leave the issue of account management with the Office of Special Trustee since, unlike trust resource management, there is a clear cut set of common law standards that apply to those functions. We also believed that it was appropriate for "centralized management" within the Office of Trust Funds Management to retain this function so that its field functions could be coordinated with field activities. On the other hand, with respect to trust resources, while Consortium tribes and the Regional Office understood that there must be generally-accepted standards and responsibilities for resource management, usage of trust resources must be governed by standards that meet the needs of the tribal people being served.

Given the two somewhat different and sometime conflicting roles of the BIA and sovereign Tribal Governments, one of the first steps for our Consortium was to establish the operational guidelines by which the BIA and Consortium Tribes would function. In the Consortium's operational guidelines, formally adopted in 1998, the BIA and member Tribes adopted requirements that each would abide by. Given the potential for differences in legal, political and social responsibilities of the two Governmental entities, a key part of the guidance includes provisions for resolving conflicts as they arise.

Under the Consortium's plan, the Consortium began to address many of the trust problems that are being discussed today, such as how to address conflicts between Tribal and Federal management standards and priorities. In 1998, the Consortium tribes and the BIA adopted an Operating Agreement that set forth, among other things, procedures to:

1. Define the Consortium and BIA purpose under the program;
2. Define the management roles and responsibilities of the BIA and tribes;
3. Design methods of sharing budgets and shares to accomplish priorities;
4. Establish advisory oversight functions;
5. Establish standard trust management principles and procedures;
6. Establish joint evaluation criteria and procedures; and
7. Set forth procedures for resolving disputes and conflicts relating to tribal and federal responsibilities associated with trust resource management issues.

I have attached a copy of the Consortium and BIA Pacific Regional Office (PRO) Operating Agreement to my testimony for your information.

The Consortium Tribes and the BIA PRO entered into the Operating Agreement in the spirit and intent of the general principles of Federal trust responsibilities to tribes, the right of tribal self-determination and self-governance, the government-to-government relationship between tribes and the United States, and providing early and meaningful consultation with tribes. The primary understanding of the Agreement is that the performance of Federal oversight and trust responsibility does not require daily control over tribes. Instead, it can be accomplished by the establishment of Tribal/Federal management standards and an annual trust evaluation process.

Tribal Contracting and United States Trust Obligations

Questions have been raised regarding whether contracting and compacting under the Self-Determination and Self-Governance Acts somehow relieves the United States of their trust obligations to tribes and individual Indians. Our Consortium Tribes completely disagree with any notion that the United States should be held harmless if Tribes choose to exercise their governmental rights to properly manage trust resources.

Tribal and individual natural resources are in a significantly different state today than when the treaties and agreements were entered into between the United States and tribes. In most cases, the United States itself was the party that executed agreements with non-tribal interests that led to the diminished state of our resources. The situation is exacerbated by inadequate funding to properly manage tribal and individual trust resources. To make matters even worse, tribal shares of funds are further reduced by the amount that the Agency needs to carry out inherently federal functions, and residual and retained functions. The end result to tribes is that they receive less than twenty-five percent of the funding needed to manage trust resources. Therefore, the questions of whether the United States should be held harmless for programs that are contracted and compacted by tribes is comparable to saying that the Tribes should be responsible for 100% of the problems while only receiving 20% of the funds needed to manage programs.

From a Tribal perspective, we have our own concerns regarding this unfortunate situation. First, does this situation lead to an obvious question of whether or not the United States should be able to sue a tribe for failing to find non-BIA funds in the amount that the United States determines is necessary to properly manage trust resources? On the other hand, should tribes be entitled to sue the United States for damages if a Tribe uses its funds to help the United States to improve management of Trust resources in situations where the Untied States has failed to adequately fund trust programs? Of course, under this scenario the United States is protected by the Unfunded Mandates Act. In both cases, if we are ever to have a level playing field between tribes and the United States, if the United States is protected by the Unfunded Mandates Act for failing to provide sufficient funds to properly manage trust resources, tribes should not be held liable for helping the United States perform a necessary trust function when they contract or compact trust programs from the under-funded agency.

Tribal Consultation

While time and cost are difficulties associated with Tribal consultation with over 500 Tribes, it is unreasonable for the Administration to try to shorten or get around providing formal consultation opportunities directly to Tribal Governments. Perhaps the best example of trying to circumvent the formal Tribal consultation process is the Trust Reform Task Force. In that process, the Administration established a standard of working through only two tribal representatives for each BIA region. The Task Force process ultimately resulted in a disservice to our Tribal Governments by first not having the administrative support and budgets to carry out their enormous tasks, and by limiting the number of Tribal spokespersons to represent the diverse views of sovereign Tribes across the Nation.

The Hoopa Tribe spent over $250,000 of Tribal funds and submitted over 250 pages of testimony, comments and proposals throughout the Task Force process, of which little was even considered. The Consortium has undertaken the task for the past seven years to address trust reform and is one of the most successful and longest running trust reform efforts in Indian Country today.

Conclusion

In conclusion, the Consortium tribes are pleased that the BIA Pacific Regional Office has been willing to work with us for the past several years and that we have been able to establish a positive working relationship that accomplishes the goals and priorities of both the tribes and the BIA. Our Consortium approach works because our tribes are running programs. The BIA has been willing to work with tribes to find ways to fix problems and we are both committed to addressing problems in a mutually-acceptable manner. While many people have said that there is no room for "status quo" in trust reform today, I am here to say that our status quo means to be allowed to continue implementing our BIA/Consortium effort and work collectively to solve trust management problems at the local level.

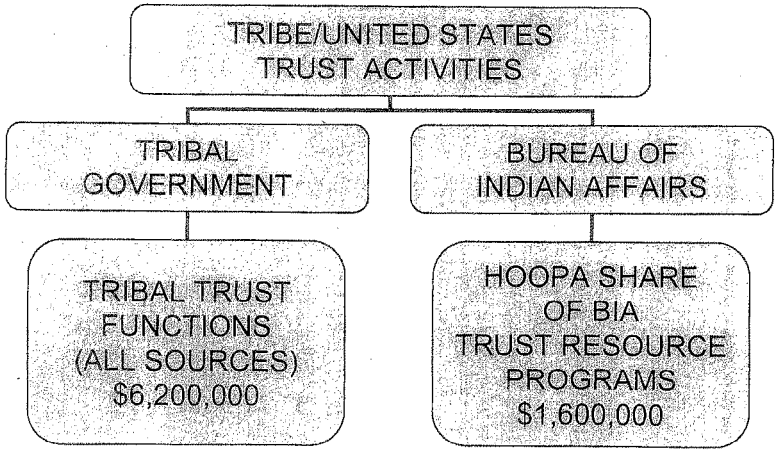
There are also a number of other very positive trust reform efforts that have been under way between tribes and their BIA offices for years. We have talked with tribes like Salt River in Arizona, the Confederated Tribes of Salish and Kootenai and Rocky Boy in Montana, and many others about their efforts. We are heartened by the sense of pride and commitment that tribal governments across the Nation have in their trust reform accomplishments and fully support the continuation of their efforts. Because of this, I have also included in my testimony draft legislative language that I hope the Committee will consider that will establish a Tribal Trust Reform Pilot Project which will support and reinforce the positive efforts of many tribes that contribute to national trust reform through their own efforts. Just as we urge support for the efforts of our Tribal Trust Reform Consortium in California, we also request your support for recognizing and providing similar opportunities for other tribes as well. Our Consortium tribes are committed to working with you and others in Congress to ensure that the positive trust reform contributions of tribes will continue to be a vital part of the national trust reform effort.

Mr. Chairman and members of the Committee, I am very proud of the Tribal Trust Reform Consortium's accomplishments to date and would again like to express my appreciation to the members of this Committee for your continuing support for Tribal Self-Determination and Self-Governance. I would be happy to address any questions that you may have.

ATTACHMENT 1

INDIAN TRUST FUNCTIONS

POST SELF-DETERMINATION/SELF GOVERNANCE
Source: Hoopa Tribe FY 2002 Budget



ATTACHMENT 2

OPERATING AGREEMENT BETWEEN THE
BUREAU OF INDIAN AFFAIRS - PACIFIC REGIONAL OFFICE
AND THE
CALIFORNIA TRUST REFORM CONSORTIUM
June 1998 (revised March 2003)

SECTION I. PURPOSE.

This Trust Agreement ("Agreement) is entered into between the Bureau of Indian Affairs - Pacific Regional Office (PRO) and the California Trust Reform Consortium Indian tribes, listed on Exhibit A hereto ("Participating tribes") for management of trust resources associated with Indian reservations and rancherias and is intended to enhance the true partnership relationship between the Participating tribes and BIA for trust management activities. This Agreement is developed in good faith and in the spirit and intent of the general principles of federal trust responsibilities to Indian tribes, the right of tribal self-determination and self-governance, government-to-government relationship between Indian tribes and the United States, and providing early and meaningful consultation with tribes. It is agreed that any interpretations regarding implementation of this Agreement shall be decided in favor of implementation of the Agreement and furthering the continuation of meaningful partnerships between the Participating tribes and the PRO, to the extent not inconsistent with federal law.

SECTION II. DEFINING ROLES AND RESPONSIBILITIES.

a. The PRO will be primarily responsible for all activities and functions related with trust resources for the Participating tribes. Unless otherwise specifically agreed in writing, the Agencies will have no authority or responsibilities for trust resources of Participating tribes. For purposes of this Agreement, "Agencies" means the Central California Agency, Northern California Agency, and the Southern California Agency of the Bureau of Indian Affairs. All management and administrative issues related to trust resources of Participating tribes will be directed exclusively to and performed in accordance with this Agreement by the PRO.

b. Within 60 days following approval of this Agreement, the PRO Director shall meet with all trust resource branch chiefs to inform them of the requirements of this Agreement.

c. It is agreed that the PRO may not re-delegate trust resources management and administrative issues to any other office without specific approval from the affected tribes(s).

SECTION III. MINIMUM PARTICIPATION TIMEFRAMES/SELECTION PROCESS/RETROCESSION PROCESS.

a. A tribe may choose to participate in the Consortium Project by submitting a written

notice to the PRO Director of its decision to do so. A comparable funding amount will be assessed for each participating tribe, taking into consideration such matters as the benefits of consolidated cost efficiency, increased management expertise, limiting duplication of functions, and sources of funding.

b. Once a tribe has opted to participate in the Consortium its participation must be maintained for a minimum of the full fiscal year. A Participating tribe may not withdraw its tribal share from the demonstration project without first providing a ninety (90) day written advance notice to the PRO Director and negotiating such agreement consistent with the fiscal year funding cycle.

c. In the event that a participating tribe chooses to withdraw from this Agreement, only those funds associated with that tribe, determined in accordance with a tribal shares methodology approved by all Participating tribes, may be withdrawn and transferred to the accounts pursuant to a negotiated agreement with the withdrawing tribe.

SECTION IV. BIA EMPLOYEE SELECTION/EVALUATION PROCESS

a. It is agreed that any increase in the PRO personnel resulting from this Agreement shall be governed primarily by the terms of this Agreement. Any conflicting management prescriptions shall be resolved in accordance with this Agreement. It is further agreed that personnel hired pursuant to this Agreement shall not be entitled to the legal definitions of Inherently Federal Functions, as defined under the Tribal Self-Governance Act, Pub. L. 103-413.

b. It is agreed that the process for selecting PRO personnel for filling vacancies pursuant to this Agreement shag include the direct participation of the Participating tribes. Such involvement may include, but not be limited to, the development of position descriptions, interviewing prospective candidates for the positions, and participation in the selection process for the positions.

c. It is further agreed that Participating tribes may submit documentation regarding staff/employees to the PRO Director concerning the performance of his/her duties under this Agreement and that the Regional Director shall give such documentation due consideration with respect to conducting employee performance evaluations.

SECTION V. PROVISIONS APPLICABLE TO THE PRO.

It is agreed that all management and administrative issues regarding trust resources before the PRO will be finalized within sixty (60) days of the date of submission. The PRO has until the

45th day after the date of submission to identify to the effected tribe(s) any management concerns regarding the submitted proposal. Any lack of decision by the PRO by the 60th day after the date of submission shall be deemed approval by the PRO of the proposed action. Unless specifically agreed to by the effected tribe(s), in no situation shall any management or administrative decision involving trust resources of Participating tribes be delayed by the PRO for more that sixty days after the date of submission.

SECTION VI. FUNDING/BUDGET/ FUNDING WITHDRAWAL PROVISION.

a. Funding provided to the PRO pursuant to this Agreement shall be maintained by the PRO in a separate budget from other PRO funds.

b. In the event that a participating tribe chooses to withdraw from this Agreement, only those funds associated with that tribe, determined in accordance with a tribal shares methodology approved by all Participating tribes, may be withdrawn and transferred to the accounts pursuant to a negotiated agreement with such tribe.

SECTION VII. ESTABLISHMENT OF THE OVERSIGHT ADVISORY COUNCIL/OPERATING PROCEDURES.

a. Oversight of the Trust Management Demonstration Project will be through a Joint Tribal/PRO Advisory Council which will be composed of the PRO Regional Director and one representative of each participating tribe. The Joint Tribal/PRO oversight Advisory Council shall meet at least two times each year.

b. The tribes may appoint an Executive Committee for the purpose of providing more timely input to the Regional Director, which shall meet as may be necessary.

c. A quorum of the Joint Tribal/PRO Oversight Council shall be three-fourths (3/4) of the Participating tribes. A quorum of the Executive Committee shall be as prescribed by the Participating tribes.

d. Decision making for the Joint Tribal/PRO Oversight Advisory Council and Executive Committee shall be by unanimous vote of the attending tribes after a quorum is established.

SECTION VIII. STANDARD TRUST MANAGEMENT PRINCIPLES AND PROCEDURES.

a. Where tribes have developed and adopted management standards for trust resources and where those standards are not inconsistent with federal law, those standards will be utilized by the PRO. In reviewing the Tribal standards, the PRO shall interpret statutes and regulations in a manner that facilitates approval of the Tribe's management standards. The PRO may only refuse to accept the Tribal standards that deviate from federal statutory requirements. The PRO may propose to the Tribe additional standards for their consideration that the PRO believes will assist in managing the trust resources in a prudent manner. Unless the PRO demonstrates that the Tribe's management standards will fail to adequately meet the statutory obligations, the PRO shall approve the Tribe's management standards for the Tribe's trust resources.

b. Tribal management standards may be in a format, including law, plans, procedures, policies, etc., providing that the following principles are clearly described:

1. Formal Tribal Approval. The standards must be formally approved by the tribe in a manner typical of other Tribal enactments and recorded as a formal Tribal action.

2. Values. The standards must be written in a manner to readily compute the amount of revenues that are expected to be received from each trust transaction(s).

3. Measurable/quantifiable standards. The standards must describe in measurable and/or quantifiable terms the expected goals and/or intended results from applying the standards.

4. Methods for resolving disagreements/disputes. The standards used to describe a process whereby disagreements and disputes involving individual Indians, Tribes and the PRO can be resolved; and

5. Trust evaluations. The standards must include a process whereby the Tribe and PRO can conduct mutually acceptable trust evaluations concerning management of trust resources.

c. The PRO shall interpret federal statutes and regulations in a flexible manner to facilitate use of and implementation of the Tribe's approved management standards. The PRO is responsible for identifying federal regulations that conflict with Tribal management standards. To the extent practical, the management standards should identify conflicting federal regulations that have been waived or modified. After management standards have been approved by the Tribe and PRO, and where federal regulations conflict with the approved standards, the PRO must demonstrate why the regulations must be utilized before the PRO makes any efforts to require its use by the Tribe. However, the PRO is required to work with the Tribe to modify the Tribe's standards to accommodate the Federal statutory management standards before the PRO attempts to impose the Federal standards on the Tribe to the exclusion of Tribal standards. The PRO must utilize the

"re-assumption" regulations as a regulatory process to impose, or otherwise require the implementation of, the Federal regulations on the Tribe to the exclusion of the promulgated Tribal standards.

SECTION IX. JOINT EVALUATION CRITERIA AND PROCEDURES/REPORTING

a. The performance of federal oversight and trust responsibility does not require daily control over Tribes. Instead, it can be accomplished through the establishment of Tribal/Federal management standards and annual trust evaluation processes. Once management standards and the trust evaluation process are in place, the Federal Government will not need to regulate the daily affairs of the Participating tribes. In effect, Federal oversight over trust resource programs can be performed in a partnership relationship between Tribes and the PRO through the application of the approved management standards and annual trust evaluations.

   Under this Agreement, individual trust transactions will not require approval by the United States unless required by statute. Under this proposal, Tribes will sign off on individual trust transactions on a daily basis. Instead of signing off on each trust transaction, trust transactions can be randomly reviewed during the annual trust evaluation for consistency with approved management standards. Because of the management of trust functions becomes a shared responsibility, annual trust evaluations must also include provisions for conducting trust evaluations of trust functions performed by both the Tribe and the PRO.

b. Each participating tribe and the PRO Regional Director will develop joint reporting requirements, which are consistent with the reporting requirements of the Government Performance Results Act, Self-Governance and annual trust evaluations. Based on a mutually acceptable non-burdensome reporting format, the report will include methods for determining that trust transactions are being carried out consistent with the requirements contained in trust resource management prescriptions and can be easily reconciled with trust fund accounts. Among the issues reported, the reports shall emphasize the following:

   Land - tribal and individual
   Forestry - tribal and individual
   Agricultural leases
   Minerals and mining leases and sales
   Fisheries - tribal and individual
   Commercial (business) leases
   Water leases and sales Other trust functions

c. Consistent with the self-governance regulations, the PRO may conduct additional trust reviews if sufficient information exists from credible sources that the Tribe is not operating consistent with the Tribal/Federal management standards. During the annual negotiations, the PRO and the Tribe will negotiate and agree on the process for fulfilling the Federal oversight responsibilities.

SECTION X. GRIEVANCE AND DISPUTE RESOLUTION PROCEDURES.

It is agreed that the Tribal management standards include a requirement for resolving conflicts, disagreements and disputes between the Tribe and PRO. Such a process must be based on principles of the government-to-government relationship between the United States and Indian Tribes as well as the partnership relationship between the Tribe and Secretary under Self-Governance agreements and 638 contracts. The burden falls on the Secretary to demonstrate how the Tribe's proposal is inconsistent with Federal trust responsibility standards in order to deny accepting the Tribe's proposal.

SECTION XI. AMENDMENTS.

This Agreement may be amended at any time by the Consortium and PRO.

PARTICIPATING TRIBES

BIG LAGOON RANCHERIA

CABAZON BAND OF MISSION INDIANS

GUIDIVILLE INDIAN RANCHERIA

HOOPA VALLEY TRIBE

KARUK TRIBE OF CALIFORNIA

REDDING RANCHERIA

YUROK TRIBE

ATTACHMENT 3

PROPOSED TRIBAL TRUST REFORM PILOT PROJECT

Section _____. Tribal Trust Reform Pilot Project

A. PURPOSE. The purpose of the Tribal Trust Reform Pilot Project is intended to, but is not limited to:

1. Enhancing the working relationship between the participating tribes and Department of the Interior for trust management activities by establishing mutually acceptable methods for addressing trust issues in manners that are consistent with tribal priorities and applicable federal laws;

2. Maintaining a standard of good faith and in the spirit and intent of the general principles of federal trust responsibilities to Indian tribes, the right of tribal self-determination and self-governance, government-to-government relationship between the Indian tribes and the United States, and providing a meaningful working relationship with participating tribes.

3. Establishing a meaningful process whereby any interpretations regarding the implementation of this Project be decided in favor of the implementation of the Project and furthering the continuation of meaningful partnerships between the participating tribes and the Federal designated officials in cases where Reorganization is not needed to accomplish Trust Resource Improvements, to the extent not inconsistent with federal law.

4. Recognizing and utilizing tribal expertise and systems to accomplish appropriate management of trust resources, using those opportunities to explore the development of effective working models relating to the management of trust resources, and developing meaningful and measurable means of quantifying the respective values, standards and priorities of the participating tribes and the Department.

5. Identifying ways of resolving conflicting management prescriptions between tribal and federal standards, priorities and values in non-litigation and cooperative government-to-government forums, and memorializing those conflict resolution methodologies in a participating tribe's funding agreement.

B. TRIBAL PARTICIPATION.

1. A tribe that has an existing working relationship with BIA that includes specific management or improvement of trust resource management set forth in the funding agreement shall be included as a participating tribe in this trust pilot project. Such tribe must first submit a formal notice to the Secretary to be included as a pilot project.

2. Any tribe that is not included in part B (1) of this subsection may be included in this Trust Pilot Project upon the submission of a request to do so to the Secretary, with appropriate language to be included in that tribe's funding agreement for that purpose. The funding agreement shall identify the tribal and designated Federal officials responsible for carrying out the provisions of this section.

3. A participating tribe may withdraw from the Project at any time.

C. STANDARD TRUST MANAGEMENT PRINCIPLES AND PROCEDURES.

Where tribes have developed and adopted management standards for trust resources, those standards will be utilized under the Project. The designated Federal official shall interpret statutes and regulations in a manner that facilitates approval of a Tribe's management standards. The Federal designated official may only refuse to accept Tribal standards that deviate from federal statutory requirements. The Federal designated official may propose to the tribe additional standards for its consideration if the official believes that additional standards will assist in managing the trust resources in a prudent manner. Unless the Federal designated official demonstrates that the Tribe's management standards will fail to adequately meet statutory obligations, the Federal designated official shall approve the Tribe's management standards for the Tribe's trust resources. Tribal management standards may be in any format, including law, plans, procedures, policies, etc. providing that the following principles are clearly described.

a. Formal Tribal Approval. The standards must be formally approved by the tribe in a manner typical of other Tribal enactments and recorded as a formal Tribal action.

b. Values. The standards must be established in a manner to readily compute the amount of revenues that are expected to be received from each trust transaction(s).

c. Measurable/quantifiable standards. The standards must describe in measurable and/or quantifiable terms the expected goals and/or intended results for applying the standards.

d. Methods for resolving disagreements/disputes. The standards must describe in measurable and/or quantifiable terms the expected goals and/or intended results for applying the standards.

e. Trust evaluations. The standards must include a process whereby the Tribe and Federal designated official can conduct mutually acceptable trust evaluations concerning management of trust resources.

JOINT EVALUATION CRITERIA AND PROCEDURES/REPORTING

Each participating tribe and the Federal designated official will develop joint reporting requirements, which are consistent with the annual trust evaluation requirements. Based on a mutually acceptable non-burdensome reporting format, the report will include methods for determining that trust transactions are carried out consistent with the requirements contained in trust resource management prescriptions and can be easily reconciled with trust fund accounts.

Consistent with the self-governance regulations, the Federal designated official may conduct additional trust reviews if sufficient information exists from credible sources that the Tribe is not operating consistently with the Tribal/Federal management standards. During the annual negotiations, the designated Federal official and the Tribe will negotiate and agree on the Federal designated official in fulfilling the federal oversight trust responsibilities.

D. GRIEVANCE AND DISPUTE RESOLUTION PROCEDURES

Each tribe participating in the Trust Pilot Project will develop and maintain with the Federal designated official non-litigation grievance and dispute resolution procedures that shall be incorporated in the tribes' funding agreement.

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INTERTRIBAL MONITORING ASSOCIATION on Indian Trust Funds
2401 12th Street NW - Suite 207N
Albuquerque, NM 87104
Phone: 505/247-1447 Fax: 505/247-1449 e-mail: itma@flash.net

ORAL STATEMENT

PRESENTED BY ITMA CHAIRMAN RICHARD SANGREY
INTERTRIBAL MONITORING ASSOCIATION
before the
SENATE COMMITTEE ON INDIAN AFFAIRS
on the
"DEPARTMENT OF THE INTERIOR TRUST REORGANIZATION"

May 21, 2003

The **Intertribal Monitoring Association on Indian Trust Funds** (ITMA) is a representative organization of the following 58 federally recognized tribes: **Central Council of Tlingit & Haida Indian Tribes, Kenaitze Indian Tribe, Metlakatla Indian Tribe, Hopi Nation, Tohono O'odham Nation, Salt River Pima-Maricopa Indian Community, Fort Bidwell Indian Community, Ewiiaapaayp Band of Kumeyaay Indians, Hoopa Valley Tribe, Yurok Tribe, Soboba Band of Luiseno Indians, Southern Ute Tribe, Coeur D'Alene Tribe, Nez Perce Tribe, Passamaquoddy-Pleasant Point Tribe, Penobscot Nation, Lac Vieux Desert Band of Lake Superior Chippewa, Sault Ste. Marie Tribe of Chippewa Indians, Grand Portage Tribe, Leech Lake Band of Ojibwe, Red Lake Band of Chippewa Indians, Blackfeet Tribe, Chippewa Cree Tribe of Rocky Boy, Confederated Salish & Kootenai Tribe, Crow Tribe, Fort Belknap Tribes, Fort Peck Tribes, Northern Cheyenne Tribe, Winnebago Tribe, Fallon Paiute-Shoshone Tribes, Walker River Paiute Tribal Council, Jicarilla Apache Nation, Mescalero Apache Tribe, Pueblo of Cochiti, Pueblo of Laguna, Pueblo of Sandia, Three Affiliated Tribes of Fort Berthold, Turtle Mountain Band of Chippewa, Absentee Shawnee Tribe, Alabama Quassarte Tribe, Cherokee Nation, Kaw Nation, Kiowa Tribe of Oklahoma, Muscogee Creek Nation, Osage Tribe, Quapaw Tribe, Thlopthlocco Tribal Town, Confederated Tribes of Umatilla,**

Confederate Tribes of Warm Springs, Cheyenne River Sioux Tribe, Sisseton-Wahpeton Sioux Tribe, Chehalis Tribe, Confederated Tribes of Colville, Quinault Indian Nation, Forest County Potawatomi Tribe, Oneida Tribe of Wisconsin, Eastern Shoshone Tribe, and the Northern Arapaho Tribe.

Good morning Mr. Chairman, Mr. Vice Chairman and members of the Committee. Thank you for inviting ITMA to testify today. I request permission to submit my remarks for the record. Our written testimony will be submitted separately and will discuss these issues in more detail.

ITMA's primary objective in the trust reform process is the strengthening of tribal sovereignty and tribal self-governance while holding the United States Government to their fiduciary obligations in the administration of the Indian trust. ITMA firmly believes these principles can and do co-exist. We are working on a legislative proposal to incorporate these principles in the trust reform process. Before discussing our proposal, I will first address the various aspects of the Department's plan.

The Department is rolling out its plan in stages: from defining goals and objectives, to organizational re-alignment and changing of management, to implementation of the trust re-engineering plan. The trust re-engineering will be based on the "TO-BE" and "AS-IS" studies, which included input and participation from Indian country. ITMA's Vice-Chair John Berrey has been very active on this front, and we will be involved in the re-engineering phase of the plan.

The Department has acknowledged that the Cobell v. Norton case is the driving factor in the development of its plan. As such, we believe that the Department has avoided tribal involvement and tribal consultation.

We also note that while the Department's plan recognizes a commitment to self-determination and self-governance, it does not include any specific plans for tribes to assume more management, control or authority over the management of trust resources.

Most glaring is the lack of clear trusts standards in the plan. The plan only references the accounting requirements in the 1994 Trust Reform Act. The plan does not recognize Supreme Court case law establishing enforceable trust standards.

The plan also lacks substance on addressing the fractionation problem. The legacy of the Allotment Policy has created numerous modern-day trust problems. Any trust reform proposal must address the fractionation problem.

The Department's realignment and FY 2004 budget request expands the authority of the Office of Special Trustee from an oversight function to include operational duties of trust management. This expansion raises questions about the effectiveness of OST's oversight role, and the need for concrete independent review of its performance.

By contrast, the plan places no emphasis on tribal resources management. The enhancement of these programs are critical to the entire trust reform

process. Tribal resources, our land, timber, oil, gas, coal, and other resources comprise the trust corpus. Properly managing these resources forms the basis of the trust. In this regard, the Department's plan and FY 2004 budget requests ignores the importance of tribal resources management.

The Department's plan also disregards the Tribes' continued request for a single line of authority at the local level for trust management programs. The plan proposes that OST will develop a regional and agency presence to ensure that trust standards are followed in the management of these assets. OST will also retain the responsibility for financial asset management. This approach raises concerns over the assignment of responsibilities between OST and BIA and how disputes will be resolved between the agencies.

One of the largest concerns is the cost of the plan. The plan does not address this issue and ITMA is adamant that Congress not allow the Department to deplete funding from existing programs and services to pay for its trust reform proposal. ITMA urges the parties in the Cobell case to enter into settlement negotiations and to include provisions for trust reform to be paid from the Judgment Fund. Using this source of funding for these purposes will ease the strain on the Department's existing budget.

ITMA supports the plan's establishment of a trust training unit within the OST reorganization. Training in the new BIA organization is unclear. ITMA supports agency wide trust training as part of the overall trust reform.

The legislative proposal developed jointly by ITMA and NCAI, along with our member Tribes, addresses some of our key concerns.

Our approach would require the Secretary to develop of an integrated land and resources recordation and title system, as an immediate step to focus on the fractionation problem. In addition, we believe the Secretary should request more resources to make available for Tribes to consolidate land holdings on an allotment-by-allotment basis. Tribal attempts to consolidate small fractionated interests are not keeping pace with the current speed of the land fractionation problem.

Our bill would establish general trust standards regarding the management of trust funds and assets. Our approach accommodates tribal participation in the development of standards particular to each reservation.

Our proposal creates a statutory framework to allow Tribes to manage tribal trust funds and assets. Our intent is to give tribal governments greater control over management of trust funds and resources. We believe that promoting tribal self-governance is consistent with the trust responsibility the United States owes to Tribes.

Our intent is to elevate the resource management needs of our member Tribes and to make sure the tribal resources management plans receive adequate funding and attention.

A provision is included in our proposal making clear that the federal trust responsibility to the beneficiaries of the Indian trust shall not be diminished.

We are working on provisions specifying the United States trust obligations, and trust oversight and compliance issues. For your review, attached is the latest version of our legislation.

ITMA appreciates the dialogue we have shared with Committee staff on our bill and we welcome further collaboration with the Committee. This concludes my remarks. Thank you.

STATEMENT

OF

ROSS O. SWIMMER

SPECIAL TRUSTEE FOR AMERICAN INDIANS

AND

AURENE M. MARTIN

ACTING ASSISTANT SECRETARY INDIAN AFFAIRS

U.S. DEPARTMENT OF THE INTERIOR

BEFORE THE

SENATE COMMITTEE ON INDIAN AFFAIRS

ON THE

REORGANIZATION OF INDIAN PROGRAMS

May 21, 2003

Mr. Chairman, Mr. Vice Chairman and Members of the Committee, we are pleased to be here today to discuss the reorganization 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). This reorganization will enable the Department to provide important services to Indian country more efficiently and effectively than in the past. This reorganization is the result of lengthy meetings and consultation sessions with key stakeholders, and we are confident that it will result in a noticeable enhancement to the level of service our organizations currently provide. Some of the highlights of the reorganization include:

- An increased emphasis on tribal economic development, self-determination and self-governance policies and projects.
- Increased accountability by the addition of Regional Trust Administrators and Trust Officers to serve as an additional resource for fiduciary trust transactions.
- The dedication of employees to providing consolidated beneficiary services.

On April 21, 2003, Secretary Norton made effective this historic reorganization by signing the Department of the Interior Manual.

INTERIOR'S REORGANIZATION

After an extensive consultation process with Indian country and additional Congressional oversight, the Department has established an organizational approach for the improved delivery of trust services that differs significantly from the original proposal presented in 2001. The Department's current organizational approach is closely aligned with, and is a product of, the insight gained from this consultation process. Importantly, the reorganization complies with concepts determined during the consultation process to be instrumental to any reorganization, including:

- **Keeping specific management decisions about trust assets at the agency level.** The reorganization leaves decision making at the agency level where expertise and knowledge of an individual tribe's or person's needs is greatest.

- **Creating a Trust Center and trust officers.** The reorganization creates these in the Office of the Special Trustee to provide improved and consolidated beneficiary services.

- **Promoting the idea of Self-Governance and Self-Determination.** The Task Force recommended that the Office of Self-Governance be placed under a new Under Secretary to underscore its importance and expand the ability of tribes to compact outside of the BIA. Instead, we have created a new Deputy Assistant Secretary for Economic Development Policy and expanded the role of the Office of Self-Governance to include policy development and coordination for all self-determination programs.

- **Ensuring Trust Accountability by creating a new Office of Trust Accountability under the new Undersecretary.** Within OST, a Deputy Special Trustee for Trust

Accountability has been created to be responsible for trust training; trust regulations, policies and procedures; and a Trust Program Management Center.

- **Creating a new Undersecretary for Trust reporting directly to the Secretary.** The creation of an Undersecretary position would have required legislation. Instead of an Undersecretary, we use the existing statutory framework.

The FY 2004 budget request includes an increase of $15 million to support the new organization, which together with base funding available in BIA and OST will provide resources needed for the new organization.

REPROGRAMMING REQUEST

On December 4, 2002, the Department submitted letters to the House and Senate Appropriations Committees regarding the Department's intention to reprogram funds to implement the reorganization. On December 18, 2003, the Department received letters in response from the Committees that were consistent with the Department's intention to reprogram.

REORGANIZATION OF THE OFFICE OF THE ASSISTANT SECRETARY – INDIAN AFFAIRS AND THE BUREAU OF INDIAN AFFAIRS

Under the reorganization, the 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 operations and Deputy Regional Director for all other BIA services except those that report directly to the Assistant Secretary – Indian Affairs. Deputies will report to the Regional Director who, in turn, will report to the Director, Bureau of Indian Affairs (formerly the Deputy Commissioner). A similar structure has been created at the agency level.

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

REORGANIZATION OF THE OFFICE OF THE SPECIAL TRUSTEE FOR AMERICAN INDIANS

Under this reorganization, OST continues to be responsible for management of financial assets and certain reform projects, and maintains its statutory oversight responsibilities. Additional operating authority, including line authority over regional trust administrators and trust officers has been delegated to OST by the Secretary. These new positions, to the extent possible, are intended to be filled by skilled trust administrators and staff trained for these responsibilities. A staff of six trust administrators will be located in Albuquerque and will oversee a staff of trust officers and trust account managers in field locations.

We are pleased to report that the first recruitment efforts for these positions are underway. On May 7, 2003, the regional trust administrator positions were advertised. These are SES positions that have been announced on USAJOBS.com and will be advertised in such publications as the Wall Street Journal and the Indian Law Review. The application period will close on June 23, 2003.

Recruitment activity for the trust officer positions will follow. Trust officers 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 closely with BIA agency superintendents, and will eventually become the first line of contact for tribal and individual Indian beneficiaries for issues related to their ownership of trust assets. Trust officers will serve as a resource to agency personnel in the performance of trust transactions and will review those transactions that meet the criteria of having an increased risk associated with them (e.g.: such as conflicts of interest or complex transactions). They also will serve as a primary point of contact for local collections, and ensure that proper documentation for trust transactions and internal controls are followed. The majority of trust officers time is expected to be spent with beneficiaries offering counseling and advice on managing their assets and answering their questions.

This reorganization places additional emphasis in the implementation of comprehensive and coordinated audit and risk management functions to improve overall fiduciary trust accountability. The Office of Trust Review and Audit will work with agencies to develop a rating system which identifies transactions requiring increased fiduciary trust controls. It also will designate those areas where additional oversight will be required.

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

PILOT AGENCIES

BIA and OST have identified two "Pilot Agencies" which will be the first agency locations to be reorganized. The Concho and Anadarko agencies have been selected as the first to be fully restructured and staffed in FY 2003 (the first placements of Trust Officers and Deputy Agency Superintendents will occur here). 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. Lessons learned at these locations will ensure a smooth reorganization at other locations in FY 2004.

HISTORY

As this Committee is aware, and on which the Department has testified previously, in November 2001, the Department of the Interior submitted to the House and Senate Appropriations Subcommittees on Interior and Related Agencies a request for approval to reprogram funds to establish a new Bureau of Indian Trust Asset Management as well as a new Assistant Secretary for Indian Trust Asset Management. The main concept of the Bureau of Indian Trust Asset Management was to consolidate all fiduciary trust functions performed by the various departmental bureaus and offices under a single, executive sponsor in a separate bureau from the BIA.

Tribal leaders objected to the proposal, articulating a number of concerns including:

- their view that consultation done on the proposal was insufficient;
- their uncertainty regarding the effect of the proposed reorganization on tribes that compact or contract for trust functions; and
- their opinion that stripping trust management responsibilities from the BIA and placing these responsibilities into a new Bureau would ultimately reduce the funding available to the BIA to carry out the other services the United States provides to Indian tribes and their members.

The Senate Appropriations Subcommittee on Interior and Related Agencies asked the Department to resubmit its reprogramming proposal after the completion of additional consultation with the Indian community, a continued review of the management and organization of the Department's trust program, and further coordination with the authorizing committees of Congress.

The Department spent many months addressing this request. Indeed, the issue of trust management reform has eclipsed any other faced by the Department in terms of the time, energy and effort brought to bear on any issue before this Administration.

CONSULTATION EFFORTS

The Department committed to a consultation process on the issue of trust reform and organizational reform that was the most extensive consultation efforts ever undertaken. Over 45

meetings were held with Tribal leaders in which senior level officials from the Department were in attendance. The first meeting occurred in November 2001, in Spokane, Washington. Nine additional meetings followed in different locations, the first of which was attended by the Secretary. During those meetings, participants requested a different format for consultation on this issue.

Early in the process, the Tribes asked the Department to participate in a Task Force in which the Tribes and senior Departmental officers could sit down together and discuss collaboratively the organizational issues inherent in trust reform. In January of 2002, the Joint Tribal Leader/ Department of the Interior Task Force on Trust Reform (Task Force) was created, and funded for approximately one million dollars.

The purpose of the Task Force, as defined in the protocol agreement, was to:

> "develop and evaluate organizational options to improve the integrity, efficiency, and effectiveness of the Departmental Indian Trust Operations consistent with Indian treaty rights, Indian trust law, and the government-to-government relationship." [emphasis added]

Its charge included review of the numerous proposals for trust reform that had been submitted in response to the Department's Bureau of Indian Trust Asset Management proposal, providing proposals to the Secretary on organizational alternatives. In addition to reviewing all proposals, the Task Force was to assist the Department in its review of current practices.

The Task Force held ten, joint multi-day meetings throughout the country. Meetings were held in Shepherdstown, WV, Phoenix, AZ, San Diego, CA, Minneapolis, MN, and Bismarck, ND, Portland OR, Anchorage, AK, Billings, MT, Alexandria, VA, and Washington, DC.

TASK FORCE REPORT

On June 4, 2002, the Task Force presented its initial report containing its findings and recommendations on the Interior trust organization. The Task Force received more than forty separate alternative organizational proposals (or submissions with observations), providing a wide variety of options for consideration. The options ranged from retaining the status quo to the creation of a new Department of Indian Affairs. Some proposals stated a preference to place only the Department's trust responsibilities outside of the Department of the Interior.

The Department and the Tribal Representatives agreed that the status quo is 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.

Task Force members analyzed all of the proposals and created several generic composite options reflecting the best features and major elements presented by the entire body of the alternative proposals. The Task Force report stated that the principal focus of further consultation should

involve the configuration of line management officials, from top to bottom, in each alternative as well as the grouping of staff support functions. At the May 2002 Task Force meeting in Minneapolis, Minnesota, the Task Force agreed to initiate regional consultation meetings in Indian Country during June and early July for the benefit of tribal leaders who were unable to travel to any national meeting. The purpose of those meetings was to discuss the deliberations and recommendations of the task force with local tribal leaders and to receive guidance from them on moving forward.

After the regional consultations, the Task Force ultimately reached agreement to recommend that Congress establish a new position, an Under Secretary for Indian Affairs, that would be subject to Presidential appointment and Senate confirmation and would report directly to the Secretary. The Under Secretary would have direct line authority over all aspects of Indian affairs within the Department. This authority would include the coordination of trust reform efforts across the relevant agencies and programs within the Department to ensure these functions would be performed in a manner consistent with its trust responsibility. Also, the Office of the Special Trustee would be phased-out.

The Task Force also reached agreement on the elevation of the Office of Self-Governance to the office of the new Under Secretary for Indian Affairs. This would enhance the abilities of the tribes that are interested in moving toward more compacting and contracting to carry out the services due to Indian beneficiaries. Similarly, the Task Force agreed to recommend to Congress that it create a Director of Trust Accountability reporting directly to the Under Secretary who would have the day-to-day responsibility for overseeing the trust programs of the Department.

In addition, a working group of the Task Force reached agreement on the restructuring of the Bureau of Indian Affairs to create separate lines of authority for the provision of trust and non trust services. This structure will provide greater accountability and an increased focus on our fiduciary responsibilities.

The Task Force then began the development of legislation that would accomplish the elements of the agreements regarding reorganization that needed Congressional authorization, namely the new Under Secretary position. However, the Tribal leaders on the Task Force stated that they could not support any legislation unless it also included legislative trust standards and separate provisions providing private rights of action related to trust duties. The inclusion of these provisions was not acceptable to the United States. At that point, the Task Force agreed that it could not go forward to the Congress with a legislative proposal.

THE COBELL COURT DECISION

On September 17, 2002, the Judge presiding over the *Cobell v. Norton* case ordered the Department to present to the Court by January 6, 2003 "a plan for bringing itself into compliance with the fiduciary obligations it owes to the IIM trust beneficiaries." The first element discussed in the Department's Fiduciary Obligations Compliance Plan is reorganization. The plan describes the reorganization as follows:

"The reorganization within the BIA and OST places a particular focus on each organization's fiduciary duties to Indian individual and tribal beneficiaries. For instance, land and natural resource management is located in the BIA because it has demonstrated expertise in this area of the trust. The OST has been given the direction to expand its operational role in addition to its statutory oversight duties. As a result, OST will develop a regional and agency presence to ensure that trust standards are followed in the management of these assets and will retain the responsibility for financial asset management. By further developing and taking advantage of the strengths of each organization, Interior will have a more cost effective, efficient and successful trust management system. Simply put, this reorganization dedicates more trained personnel to provide consolidated trust services, increases the emphasis on tribal contracting and provides direct trust accountability."

REORGANIZATION OUTREACH

The BIA and OST have created Reorganization Implementation Teams, consisting of staff from both organizations, that meet regularly to discuss the status of their reorganization activities. These meetings allow for the coordination and communication of internal reorganization activities, including the creation of a joint briefing to be presented to all BIA and OST employees nationwide.

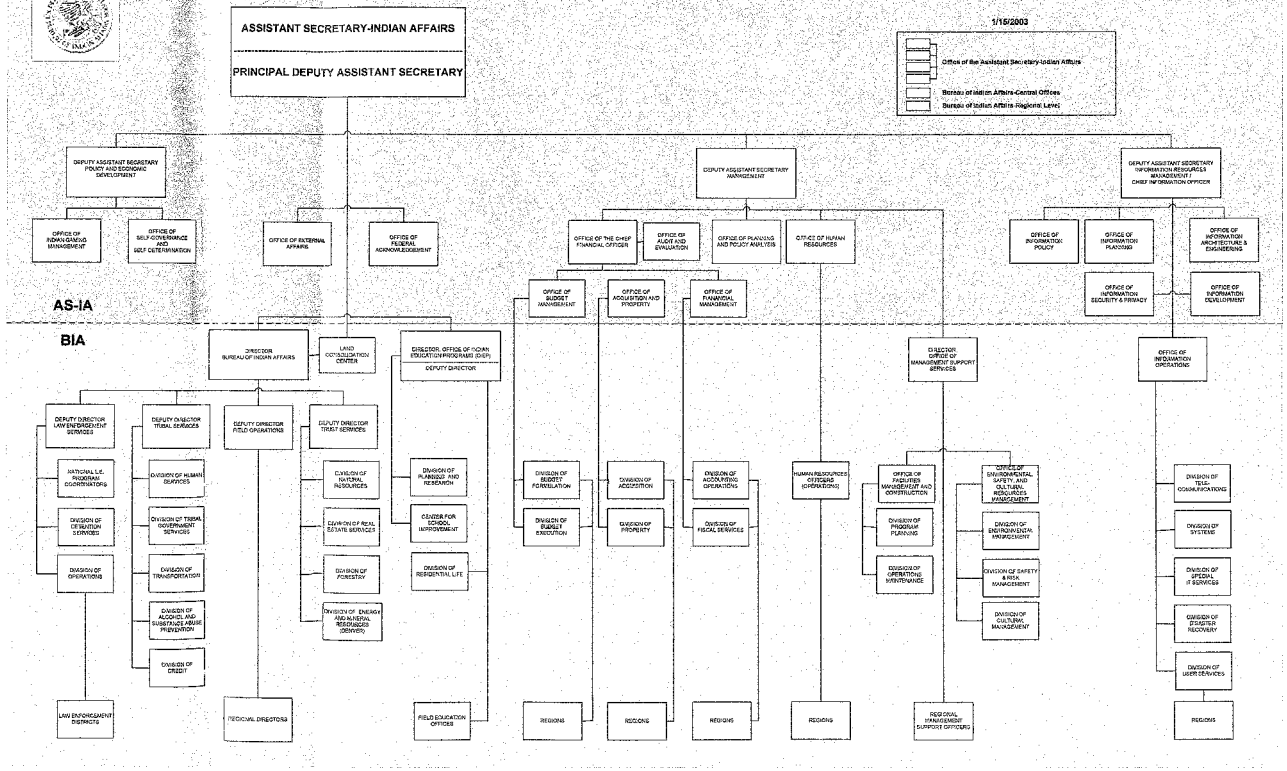
Throughout the month of June, six teams of BIA and OST employees will present briefings at regional and agency office locations to provide information to all employees about the reorganization. Three to four regional or agency offices will receive the presentation each week. BIA superintendents will be provided copies of the material and trained on the contents so that they can provide information to employees and tribes at the agency level. In addition to providing presentations to BIA and OST personnel, each team also will provide briefings to interested tribal leaders and individuals. Information and a schedule for these briefings will be widely distributed by the regional offices to tribes so that they may attend.

CONCLUSION

This reorganization is a major undertaking, and the benefits will be widespread. The reorganization allows each organization to focus on its fiduciary duties as trustee to Indian individuals and tribal beneficiaries. The BIA has demonstrated expertise in land and natural resource management which will be administered by a deputy regional administrator with that as his sole responsibility. Direct line authority to the Assistant Secretary - Indian Affairs will remain. The OST will also have a regional and agency presence to ensure that trust standards are followed in the management of those assets and will retain the responsibility for financial asset management. By further developing and taking advantage of the strengths of each organization, BIA and OST will provide the most cost effective, efficient and successful trust management system within the Department of the Interior.

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

Assistant Secretary-Indian Affairs/Bureau of Indian Affairs Reorganization



Trust Management Plan and Reorganization

Department of the Interior

What is the Reorganization?

A realignment of the:

- Office of the Assistant Secretary – Indian Affairs
- Bureau of Indian Affairs
- Office of the Special Trustee for American Indians

What are the Benefits of Reorganization to Tribes?

- Beneficiary services will be improved
- Will promote Self-Governance and Self-Determination
- Ensure trust accountability
- Support a strong, beneficiary-focused service delivery
- Trust employees focus on trust matters
- Better use of trust assets
- Standardized business processes
- Support personal and organizational accountability

What are the Benefits of Reorganization to Employees?

- Keep specific management decisions about trust assets at the agency level
- Clearly assign and integrate fiduciary obligations
- Trust employees focus on trust matters
- Standardized business processes
- Provide effective management controls
- Support performance measurement
- Support personal and organizational accountability

4

What are Significant Reorganization Dates?

- December 4, 2002 -- Secretary approved joint BIA/OST reorganization recommendation
- December 18, 2002 –Appropriations Committees approval/concurrence
- February 26, 2003 – BIA and OST management and the Indian Educators Federation, AFT, AFL-CIO signed a Memorandum of Understanding
- April 21, 2003 –Departmental Manual signed

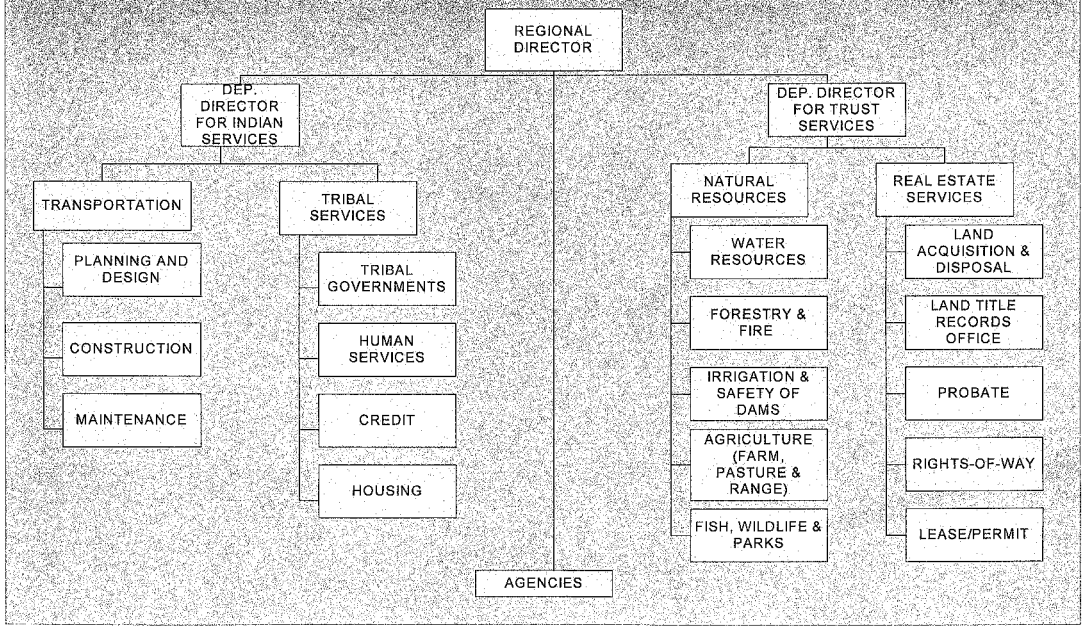
5

How Will the Reorganization Affect BIA and OST Staff?

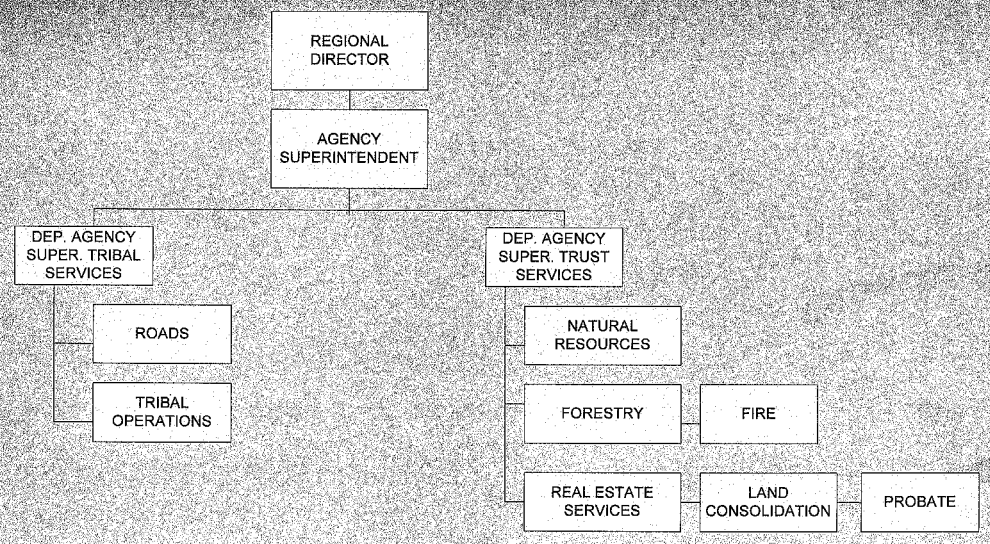
Jobs will not be eliminated as a result of the reorganization!

We plan to grow, not shrink

What Will Typical Region Chart Look Like?

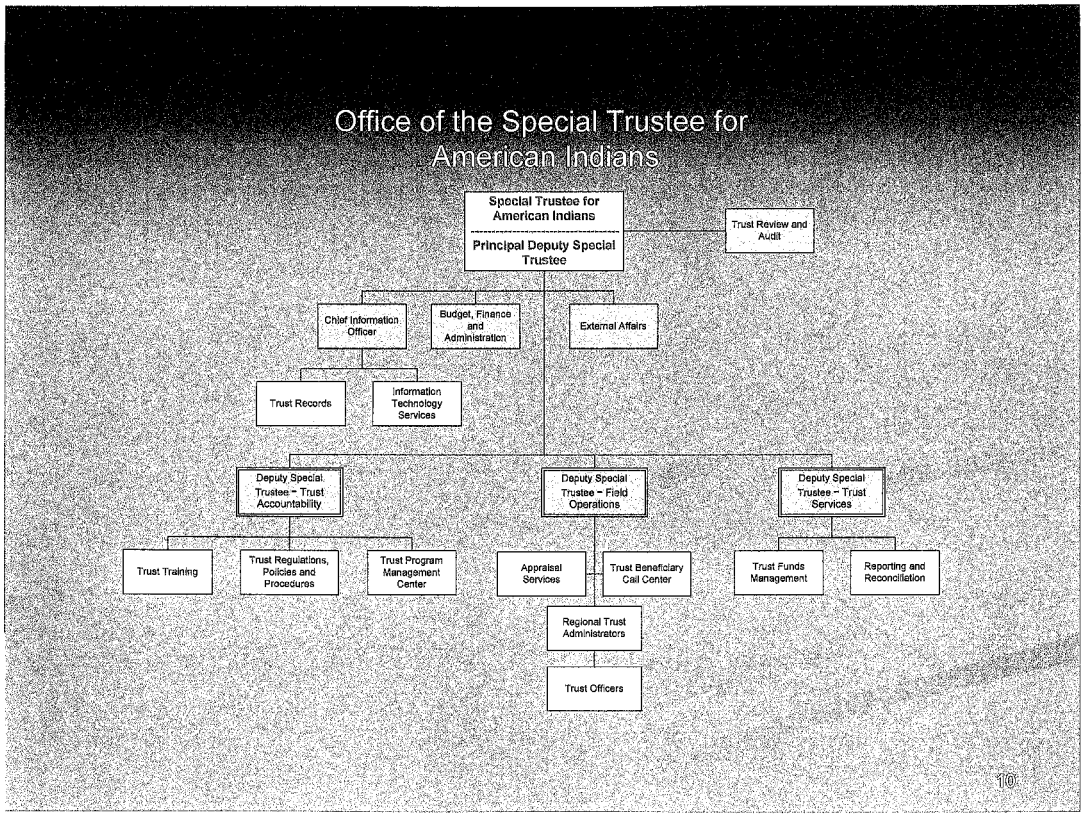


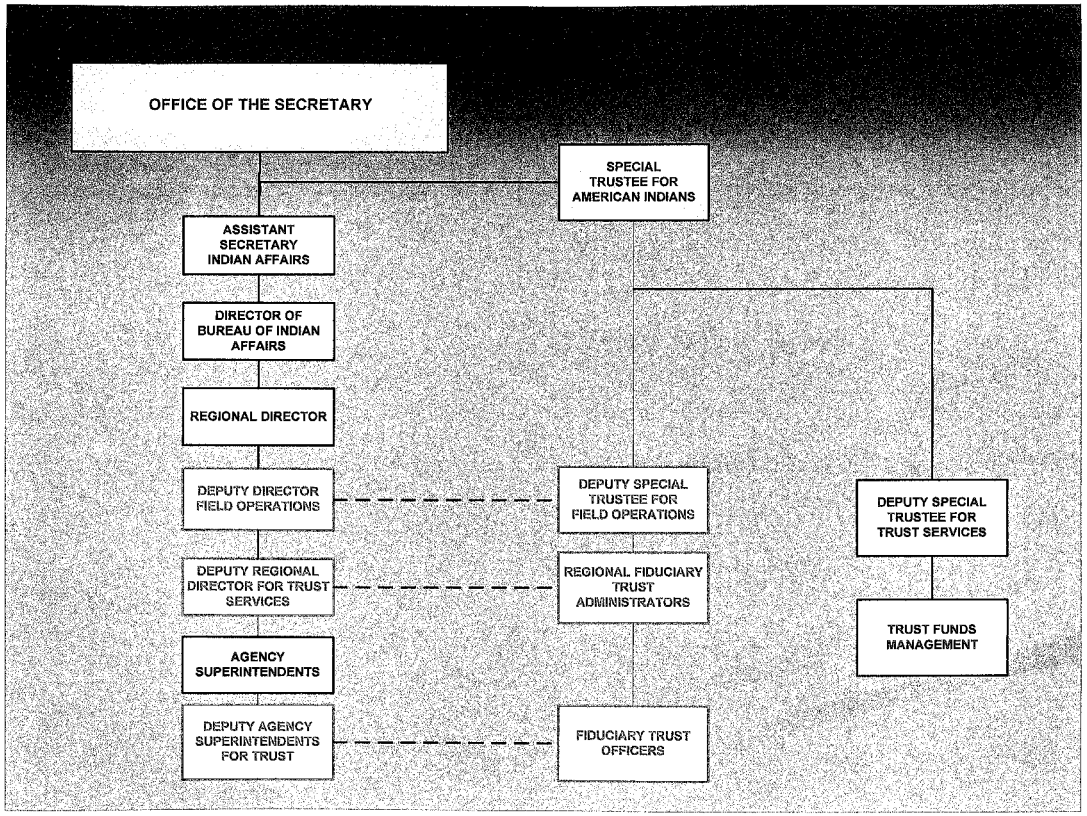
What Will BIA Agencies/Field Offices Look Like?



How Will OST Be Reorganized?

- Retain oversight responsibilities of fiduciary trust asset management
- Continue managing trust funds and trust assets and certain improvement projects
- Add operating authority over new regional fiduciary trust administrators and fiduciary trust officers


Office of the Special Trustee for American Indians
Special Trustee for American Indians
Principal Deputy Special Trustee
Trust Review and Audit
Chief Information Officer
Budget, Finance and Administration
External Affairs
Trust Records
Information Technology Services
Deputy Special Trustee – Trust Accountability
Deputy Special Trustee – Field Operations
Deputy Special Trustee – Trust Services
Trust Training
Trust Regulations, Policies and Procedures
Trust Program Management Center
Appraisal Services
Trust Beneficiary Call Center
Trust Funds Management
Reporting and Reconciliation
Regional Trust Administrators
Trust Officers
10


OFFICE OF THE SECRETARY
SPECIAL TRUSTEE FOR AMERICAN INDIANS
ASSISTANT SECRETARY INDIAN AFFAIRS
DIRECTOR OF BUREAU OF INDIAN AFFAIRS
REGIONAL DIRECTOR
DEPUTY DIRECTOR FIELD OPERATIONS
DEPUTY SPECIAL TRUSTEE FOR FIELD OPERATIONS
DEPUTY SPECIAL TRUSTEE FOR TRUST SERVICES
DEPUTY REGIONAL DIRECTOR FOR TRUST SERVICES
REGIONAL FIDUCIARY TRUST ADMINISTRATORS
TRUST FUNDS MANAGEMENT
AGENCY SUPERINTENDENTS
DEPUTY AGENCY SUPERINTENDENTS FOR TRUST
FIDUCIARY TRUST OFFICERS

Relationships Between BIA and OST Central Level

Deputy Director – Field Operations (BIA)

- Manages Regional Directors
- Technical assistance to field offices and tribes

Deputy Special Trustee – Field Operations (OST)

- Manages Appraisers, Beneficiary Call Center, Regional Fiduciary Trust Administrators and Fiduciary Trust Officers

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Relationships Between BIA and OST
Regional Level

Deputy Regional Director – Trust Services (BIA)

- Natural resource and land management
- Technical assistance to agencies and Tribes

Regional Fiduciary Trust Administrator (OST)

- Manages agency trust officers
- Monitors field activity

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Relationship Between BIA and OST
Agency Level

Deputy Agency Superintendent – Trust Services (BIA)

- Manages natural resources
- Develops and implements trust fund expenditure plans for supervised and encumbered accounts
- Liaison to contract and compact tribes regarding natural resources management

Fiduciary Trust Officer (OST)

- Contact for trust beneficiaries regarding their trust assets
- Collect trust funds, encode transactions, monitor accounts receivable
- Coordinates with BIA to ensure timely receipt and distribution to beneficiaries

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Relationship Between BIA and OST Agency Level

Deputy Agency Superintendent – Trust (BIA)

- Liaison to other agencies to promote natural resources management

Fiduciary Trust Officer (OST)

- Documents fiduciary trust transactions
- Reviews high risk transactions

- Work together to improve trust management

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When Will the Reorganization be Implemented?

- BIA and OST timetables will vary
- BIA and OST both have Reorganization Implementation Teams
  - Reciprocal team members
- Implementation has begun!

What is BIA's Timetable?

- Advertised for IT Management positions
- Completed position descriptions for Deputy Regional Directors & Deputy Agency Superintendents
- Received organizational charts, crosswalks and staffing plans from all Regions and Agencies
- Completing comprehensive crosswalk
- Expect to begin transferring people and functions in July, 2003

What is OST's Timetable?

- "Acting" managers have been appointed
- Trust Officers to be hired by October, 2003 for Concho and Anadarko Agencies
- Recruitment Activity has begun for:
  - Regional Trust Administrator positions (6)
  - Chief Information Officer
  - Deputy Special Trustee – Trust Accountability
  - Director, Trust Program Management Center

What is OST's Timetable (cont)?

- Remaining Trust Officers to be hired in 2004 and beyond based on locations:
  - Recurring income
  - Number of IIM accounts
  - Concentration of IIM account holders in urban locations
  - Local workload indicators