S. HRG. 108–22

NOMINATION OF ROSS O. SWIMMER

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

ON

CONFIRMATION HEARING OF THE NOMINATION OF ROSS O. SWIMMER TO BE SPECIAL TRUSTEE FOR AMERICAN INDIANS, DEPARTMENT OF THE INTERIOR

FEBRUARY 12, 2003
WASHINGTON, DC

U.S. GOVERNMENT PRINTING OFFICE

85–179 PDF WASHINGTON : 2003

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CONFIRMATION HEARING ON THE NOMINATION OF MR. ROSS O. SWIMMER AS SPECIAL TRUSTEE FOR AMERICAN INDIANS, U.S. DEPARTMENT OF THE INTERIOR

WEDNESDAY, FEBRUARY 12, 2003

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

The committee met, pursuant to notice, at 10:30 a.m. in room 485, Senate Russell Building, Hon. Ben Nighthorse Campbell (chairman of the committee) presiding.

Present: Senators Campbell, Inouye, Johnson, and Thomas.

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

The CHAIRMAN. Good morning. The Committee on Indian Affairs will be in session.

Welcome to the committee's first hearing of the 108th Congress. Congressman Brad Carson will be making an introduction of Mr. Swimmer today, and speak, of course, in favor, and Senator Nickles will too. Before they make their statements, the vice chairman and I will make out statements. Do you have a schedule that is going to allow you to stay here for a few minutes? Okay.

On February 4, 2003, President Bush submitted to the Senate the nomination of Ross Swimmer to be Special Trustee for American Indians, an office located within the Interior Department. Mr. Swimmer is an enrolled member of the Cherokee Nation of Oklahoma. As we heard from several of his friends, Ross Swimmer has had quite an extensive career.

Having known him myself for a good number of years since he was with the Department of the Interior once before when I first came in, I asked him somewhat jokingly, are you sure you want to do this? Are you sure you want to come back? He is sure, and that is good enough for me, but he certainly has an extensive background. He has practiced law. He has been a banker. He has been a general counsel. He was elected Principal Chief of the Cherokee Nation. He was a CEO of the Cherokee Nation Industries, and later founded the Cherokee Group. He was also cochairman of President Reagan's Commission on Reservation Economies and was Assistant Secretary of Indian Affairs between 1985 and 1989.

Currently, Mr. Swimmer is the Director of the Office of Indian Trust. If he is confirmed, which I fully expect, he will be the third special trustee in 8 years, which does not bode well for the job description.

We have received numerous letters regarding this nominee. Most have been favorable, and in all honesty, some have been opposed. That is to be expected. These and other letters that are received in the next 2 weeks will be made part of the record.

At the confirmation hearing of Tom Slonaker I expressed some frustration of the pace of the trust reform. Here we are 2 years later and, very frankly and I am not impressed with what has occurred since. The Trust Reform Task Force has failed. The *Cobell* litigation continues. The Indian account holders have not received a penny, although I have to say the attorneys for the plaintiffs have received over $1 million, which tells me at least some people would like to keep this going on forever. I am sure that does not make them happy, but that is my view on it. The Federal Government continues to spend hundreds of millions of dollars a year on the litigation and in trying to upgrade the systems. I think we certainly need a very strong hand and strong leadership and a new direction for trust reform.

So I am anxious to hear from Mr. Swimmer and the witnesses today. I will tell all members that are here with us today that it is not my intention to take a vote on this nominee today, but do hope to move it through as quickly as we can.

Senator Inouye, did you have a statement you would like to make?

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

Senator INOUYE. Thank you very much.

I wish to join you in welcoming our colleagues from Oklahoma, the distinguished senior Senator from the State, Senator Nickles, and Congressman Brad Carson, as we meet to consider the President's nomination of Ross Swimmer to serve as Special Trustee.

I also wish to welcome our old friend Ross Swimmer to the committee today. Over the years, this committee has worked with Mr. Swimmer on a variety of issues, and we look forward to working with you again, sir.

Thank you.

The CHAIRMAN. Senator Johnson, did you have an opening statement?

STATEMENT OF HON. TIM JOHNSON, U.S. SENATOR FROM SOUTH DAKOTA

Senator JOHNSON. Thank you, Mr. Chairman.

Chairman Campbell, Vice Chairman Inouye and members of the committee, I appreciate holding this hearing today. The tribes from my home State of South Dakota are deeply impacted and concerned about the present and future challenges faced by the Department of the Interior, Bureau of Indian Affairs, and the Office of Special Trustee.

By law, the Federal Government must protect the interests of tribes and its members as their trustee. The facts have dem-

onstrated that the Federal Government in fact has not lived up to its responsibilities to tribes. Understandably, many tribes are angered by the fact that the trust fund accounting problems are still not yet remedied. Perhaps born out of the frustration, many tribes are expressing, frankly, a lack of faith in Mr. Swimmer's ability to turn the current situation around. Many of the tribes' concerns are longstanding and I feel compelled to address them at this time.

The first concern stems from the fact that Mr. Swimmer appears to be caught in an inherent conflict. I understand that as Director of the Office of Indian Trust Transition, Mr. Swimmer is largely responsible for the Fiduciary Obligations Compliance Plan submitted last month by the Department of the Interior, in accordance with an order by Judge Lamberth.

I am concerned by the appearance, if not the reality, of conflict of interest created by Mr. Swimmer's past involvement with trust reform. In his current role, Mr. Swimmer finds himself largely defending the Department's actions in litigation. If he is confirmed, he must turn around and then serve as many of the plaintiffs' Special Trustee. I hope to hear from Mr. Swimmer today regarding how he intends to reconcile that conflict.

My second concern regards whether Mr. Swimmer intends to utilize an appropriate trust standard. Pursuant to the 1994 Act, the Special Trustee is charged with the duty of monitoring the reconciliation of tribal and individual Indian money trust accounts to ensure that the Bureau provides the account holders with a fair and accurate accounting of all Trust accounts. If the Department assumes that tribal accounting claims must go through an administrative review, this could mean that Mr. Swimmer will be in charge of determining that the accountings provided are fair and accurate. This would be the responsibility of the same individual who has advocated for the privatization of trust management outside the government, without the government first providing an accounting. Once again, there are concerns about conflict of interest.

My final concern regards consultation. I am hopeful that Mr. Swimmer and the Department have learned the lesson of BITAM. Consultation is of paramount importance to the tribes. Tribes want to be consulted before the government takes action. Without consultation, it is simply impossible to know whether the trust reform program appropriately serves tribal interests.

I look forward to hearing from Mr. Swimmer and the witness today. I hope today's hearing will help to continue the dialogue between the Department and the tribes relative to these important issues.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Johnson.

Now we will turn to Senator Nickles for his introduction, and then to Congressman Carson.

STATEMENT OF HON. DON NICKLES, U.S. SENATOR FROM OKLAHOMA

Senator NICKLES. Mr. Chairman, thank you very much. It is a pleasure for me to be with you again on this committee. Senator Inouye and Senator Johnson, it is a pleasure.

I am very happy today to introduce my friend, a person I have had the pleasure of knowing, working with and respecting for many years. I have had the pleasure of knowing Ross Swimmer for more than 20 years.

Senator Johnson, the President could not have picked a better person for maybe one of the most difficult, thankless jobs in Government. We all know that these trust management funds have been a mess for a long time. The President could not have picked a better person anywhere in the country, in my opinion, than Ross Swimmer, to help resolve and solve some of these questions. Some people say it is insolvable, but I say, with Oklahoma having the second-largest Indian population in the Nation, that Ross Swimmer has the experience to help solve the problems.

Ross Swimmer has the experience. He has been Principal Chief of the Cherokee Nation for 10 years, one of the largest tribes in the Nation. He has been Assistant Secretary of the Interior for many years, in charge of Indian Affairs. He also has a private sector background. He has been a banker. He has been head of Cherokee Nation's Industries, a multimillion dollar company employing a lot of Native Americans. He is a member of one of the most prestigious law firms in the State of Oklahoma.

Those assets, attributes, qualifications, all of which are vitally important to resolving and untangling some of the very difficult things that we have in Indian trust funds and management of funds.

Mr. Chairman, I am delighted to be here to recommend wholeheartedly my friend Ross Swimmer for this very difficult job. I appreciate your having the hearing. I appreciate your moving the nomination very quickly. This is a job that we need an individual such as Ross Swimmer to take this responsibility and meet this challenge head-on. So it is a pleasure for me to join the committee today to recommend his confirmation.

The CHAIRMAN. Thank you for your statement. Depending on your schedule, I invite you if you have the time to sit with us here at the dais if you would like. We would enjoy having you.

Senator NICKLES. Thank you.

The CHAIRMAN. Now, we will turn to Congressman Carson, who in addition to being a Congressman from Oklahoma is also a member of the Cherokee Tribe, too—one of the two House Members who belong to a federally recognized tribe. Welcome, and please proceed.

STATEMENT OF HON. BRAD CARSON, U.S. REPRESENTATIVE FROM OKLAHOMA

Mr. CARSON. Thank you, Chairman Campbell, and good morning to you, to Vice Chairman Inouye and to Senator Johnson as well.

I want to join with the distinguished Senator from Oklahoma, Senator Nickles, in thank you for having this hearing today, and to join him in offering my support for the nomination of Ross Swimmer to the position of Special Trustee for the Office of Special Trustee for American Indians within the Department of the Interior.

Like me, as you mentioned, Mr. Chairman, Mr. Swimmer is an enrolled member of the Cherokee Nation. He hails from the Second District of Oklahoma, which I have the pleasure of representing in

Congress. Many tribes in my District—indeed, my District is more Native American than any in the entire country—but many tribes, including the Cherokee Nation, support the nomination of Mr. Swimmer.

We are pleased today to be joined by his wife, Margaret, who is sitting behind me, who is one of the most distinguished lawyers in Oklahoma and practices for a very well known and large firm in the State, too.

As everyone in this room knows, the responsibilities of Special Trustee are daunting, to say the least. Accounting for Indian trust moneys has been an insurmountable challenge to this Administration and to previous Administrations. While, like Senator Nickles, I do not envy the task that is being put on Mr. Swimmer, I do admire him for once again answering the call to service to help sort through the challenges in managing and accounting for Indian funds held in trust by the Federal Government.

Mr. Swimmer's experience in the public and private sectors make him uniquely suited to confront Indian trust fund management and accountability. On the tribal level, Mr. Swimmer has served three successive terms as the Principal Chief of the Cherokee Nation, the second-largest tribe in the country. On the Federal level, Mr. Swimmer served as the Assistant Secretary of Indian Affairs from 1985–89. In the private sector, as Senator Nickles outlined, Mr. Swimmer served as the president of two banks in Oklahoma, the First National Bank of Tahlequah and the First State Bank of Hulbert.

Without a doubt, the Department of the Interior's Indian Trust management operations must be brought into the 21st century. This will require a concerted effort by individuals knowledgeable about Indian trust funds from the tribal and from the Federal perspective. I believe Mr. Swimmer's professional background brings to the Special Trustee position a combination of experience and knowledge necessary to confront the task of improving the accountability and management of Indian trust funds. Indeed, I would dare say there are few people in the entire country, much less Indian Country, who combined the unique political, legal and financial experience that Mr. Swimmer offers us.

I certainly respectfully request that this committee support the nomination of Ross Swimmer as Special Trustee for American Indians. I believe that all of the many valid concerns raised by the committee today, especially Senator Johnson, will be well addressed in forthcoming years by Mr. Swimmer in this position.

I thank the committee for their indulgence.

The CHAIRMAN. Thank you for your very positive statement. Congressman Carson, if you can stay, please do so. If you cannot, I would just also remind you if you have not joined the American Indian Caucus yet, please do so.

Mr. CARSON. I am vice chairman over on the House side, Senator, so thank you so much.

The CHAIRMAN. Thank you.

Since we only have one person on the first panel and one on the second, I think I will ask both of them to take seats at the table the same time. That is, Richard Sangrey, the acting chairman of

the Intertribal Monitoring Association from Albuquerque. Welcome, Richard. And of course, Mr. Swimmer, our nominee.

Mr. Swimmer, perhaps we ought to take your testimony first. If you would go ahead and proceed, we will follow with Mr. Sangrey, then we will ask questions in different rounds.

STATEMENT OF ROSS O. SWIMMER, NOMINEE TO BE SPECIAL TRUSTEE FOR AMERICAN INDIANS, U.S. DEPARTMENT OF THE INTERIOR

Mr. SWIMMER. Thank you, Mr. Chairman, and Senators on the committee. I greatly appreciate the opportunity of being here this morning. I also so greatly appreciate the committee setting this as one of the first actions for the new Congress.

I think it goes without saying that the Senate Indian Affairs Committee is one of the most important to American Indians, if not the most important in the U.S. Government, the U.S. Congress, certainly. I think that has been demonstrated through the work of the staff. Your committee staff has been excellent in addressing issues in Indian Country and, of course, the Senators themselves have obviously taken a very active interest and worked very hard on these sometimes intractable issues that we face in Indian Country.

I was asked to take this position in a moment of interest about 1 year ago. The Deputy Secretary and Secretary of the Department had visited with me on another matter. I happened to send a note back and said I had a lot of experience in the Trust matters, and I still have an interest in seeing that these issues get resolved; if there is anything I can do to help, let me know. They did. They invited me to come up and take on some of the issues and get involved once again. It has been a very interesting and rewarding experience.

What I bring to this job and I think a result of my presence and ultimately the nomination that I received, is much about my background, Mr. Chairman. As both Senator Nickles and Congressman Carson mentioned, I have been in the Indian world working one side or the other, trying to support the sovereignty of tribes, trying to work out litigious issues, trying to reach settlement on claims of my own tribe as well as others, and even working in the area of recognition. That has been going on for nearly 30 years.

During that time, I had also the privilege of having a law degree from the University of Oklahoma. I practiced private law for about 5 years before I was invited to join the Cherokee Nation Housing Authority, actually, as my first legal experience in Indian Country. That was in about 1971, I think.

Following that, however, I was then invited by then-Chief W. W. Keeler of the Cherokee Tribe to become attorney for the Cherokee Nation. We were in the process of rebuilding the tribe, or building a tribe, as many of the tribes were in the early 1970's. We did not have a constitution. We had a one-person government. The Principal Chief was it. I believed firmly that we needed a more democratic form of government. When I ran for election as Principal Chief in 1975, I ran on a platform that I would bring a constitution forward. It would have a tribal council. It would have a tribal court, and there would be a sharing of power with that Principal

Chief. After my election, we did have a vote on the constitution. It was overwhelmingly approved, and I was elected to two more terms after that.

My experience with the Cherokee Nation gave me my first insight into the trust funds matters. We had trust funds on deposit. We still do today. I looked and observed what was going on there, and I had some concern about that, mainly at that time with the investments. As a tribe, we pretty well managed our own accounting for those trust funds, but I was not always satisfied that the investment of the trust funds was what it should be. Following that experience with the Cherokee Nation, I was invited by Secretary Hodel and President Reagan to come to Washington as the Assistant Secretary, at which time I had many, many things on the agenda. The Indian Gaming Act was passed at that time. I began a move toward what became known as self-governance, trying to bring tribes to the next level of assuming leadership and responsibility over Federal funds that were being appropriated for their benefit. That was very successful, ultimately resulting in many tribes assuming a greater role and responsibility for the Federal funds.

My role in the trust funds' management area really began in 1988. I investigated the work that was being done in Albuquerque at that time. I looked at our accounting system, our investment system. I said, this cannot be tolerated. We have to do something. I inquired about what it would take to bring new technology into the BIA. I was told it would happen long after I left, because it would not be possible to do in the short time of that Administration. I said, what we need is an accounting system that is similar to what the private sector uses. I suggested we go out and try to find that system. It has been called various things, whether it is outsourcing, privatizing, or whatever. The idea was to bring an accounting system and an investment system into the BIA.

I understand that after I left the Bureau, those efforts were not successful until much later. In fact, I believe it was in the late 1990's that an outside system was actually adopted for the Bureau of Indian Affairs trust fund accounting. It is a system today being operated by a company known as SEI Investment Company. They operate what is known in the industry as a Trust 3000 system. It is an accounting system. It is state of the art. It is now employed for the benefit of keeping account of trust funds, and I think is doing a very capable job. It was very similar to what I had intended to have happen back in 1988, but obviously it did not happen.

With that kind of a background, I feel a need to do this particular job. I believe that I have the credentials to provide the oversight. I believe that I really have the commitment to seeing that we reach an end goal here of managing the trust funds, accounting for those trust funds, and making sure that Indian people that oftentimes even now rely on this income from the trust assets for their daily living, that they receive that income timely and in the proper amount.

As for the tribes, I feel the same way, having been a tribal leader. It is our responsibility to see that those tribal trust funds are

accounted for, paid out as the tribes desire, and are properly managed and vested, et cetera.

So that is why, that and a love of public service and a willingness to finish the job that I think so many have started and tried to get moving. Things are happening in the Department. It is an advantage that I have. I have in the past year actually assumed the responsibility that was in the Special Trustee, and that was to file the quarterly court reports that the litigation requires. So I have been able to track a lot of the improvements and the reforms that in fact are going on.

With that, I have a prepared statement I would like to submit for the record. I would be happy to take questions.

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

The CHAIRMAN. Thank you. Your statement will be included in the record.

Mr. Sangrey.

STATEMENT OF RICHARD SANGREY, ACTING CHAIRMAN, INTERTRIBAL MONITORING ASSOCIATION

Mr. SANGREY. Good morning, Mr. Chairman, Mr. Vice Chairman, members of the committee.

My name is Richard Sangrey. I am a member of the Chippewa Cree Tribe, Rocky Boy's Reservation, Montana. I serve as chairman of the Intertribal Monitoring Association, ITMA.

I thank you for this opportunity to testify on the nomination of Ross Swimmer for this position of Special Trustee for American Indians. ITMA was organized in 1990 to actively monitor the activities of the Federal Government to ensure fair compensation to tribes and individual Indians for the government's management of trust funds. ITMA membership includes 58 federally recognized Indian tribes who represent the largest trust fund accountholders in Indian Country.

According to recent statistics, Indian tribes in the United States own the majority of the trust corpus currently under Department of Interior supervision and management. Our mission is to represent and advocate for these tribal governments.

Before expressing ITMA's view on Mr. Swimmer's nomination, I would like to briefly list our recent and ongoing trust reform activities. We have been monitoring the proposals to restructure the Bureau of Indian Affairs as a method of trust reform. We are working with the tribal governments to develop alternatives to resolve the longstanding trust fund and asset management claims. We have been a presence for tribal governments in the recent trust reform efforts of the Joint Tribal/DOI Task Force. We are working to ensure that efforts to reorganize the Department of Interior not infringe on sovereign rights of tribal government to govern within their jurisdiction and not drive wedges between tribal governments and their members.

For instance, we submitted an amicus brief in the *Cobell* case expressing concern that a third party receiver could result in an interference and infringement on tribal self-government. We are now reviewing the amicus brief submitted by the National Congress of American Indians to the proposed plan for trust reform submitted by the Department of the Interior and the *Cobell* plaintiffs. We

have drafted a trust reform legislative proposal that establishes strong trust standards for trust funds and trust asset management, strengthens tribal governance in the trust reform arena, while ensuring the protection of individual Indian rights over their assets and funds.

We are also working on crafting legislation to resolve tribal trust fund and trust asset management plans, and we look forward to working closely with this committee on this critical piece of legislation.

Regarding the current nomination of the Special Trustee for American Indians, the ITMA Board of Directors is committed to working closely with the person selected for this position. ITMA has determined that as an organization, it will take no position on the nomination of Ross Swimmer, and that each of our member tribes must act in their own capacity regarding his nomination.

ITMA is committed to continue to work with the Office of the Special Trustee to improve the delivery of trust services to Indian tribal governments and to the individual Indian beneficiaries, and to make sure that Department of the Interior fulfills its trust obligation owed to these Indian beneficiaries.

ITMA has compiled specific recommendations for the new Special Trustee with regard to what is known as the "re-engineering process" currently underway at the Department of the Interior. Accordingly, ITMA recommends that OST undertake and implement the following: An effective and timely consultation method regarding the necessary responsibilities and business process element changes resulting from trust management re-engineering; systems that will effectively manage the critical data regarding all trust and restricted land managed by Department of the Interior, including a central data warehouse that protects and stores all of the land data, included but not limited to survey, ownership, heirship, value and all data regarding land encumbrances, codes and restrictions; a financial system that manages all collections, deposits, transfers, disbursements, imposition of third-party obligations and statements of earnings, investment instruments, and closure of all accounts that relate to the trust assets; a strategy of trust management, education and training so the Department of Interior employees, tribes and individual beneficiaries clearly understand the many business process elements and responsibilities of trust management.

Training must include, but not be limited to obligations, controls, inputs, outputs and process flows related to the ways that the Office of Special Trustee conducts trust service management; a process for clear accountability for trust responsibilities, included but not limited to clear line of authority and responsibility, timeliness and dedication to quality work; programs that promote self-determination, governance and planning.

One final, but critical issue relating to the funding ITMA receives from the Office of the Special Trustee. Our current level of funding is $350,000 in fiscal year 2002. Based on the increased level of trust reform activity, the Administration requested $450,000 in fiscal year 2003. ITMA has requested $500,000, based on our workload. As a minimum, we need the level requested by the Administration, and we need assurance from the Special Trust-

ee that the Office of Special Trustee will distribute the full amount of funding appropriated by Congress. In prior years, the Office of Special Trustee has withheld a portion of our funding—$40,000 in fiscal year 2002—and essentially required us to prove that we need the money. This additional level of scrutiny is not only unnecessary, but also has caused a strain on our relationship with the Office of Special Trustee.

Therefore, ITMA is seeking specific report language in fiscal year 2003 and 2004 appropriation bills directing the Office of Special Trustee to release and distribute the full amount of funding appropriated by Congress for ITMA. We want to make sure that the new Special Trustee and the committee are aware of this past problem and are willing to work with us in resolving this issue.

This concludes my remarks. Thank you.

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

The CHAIRMAN. Thank you.

Before I go to some questions, I would like to invite Senator Thomas if he has an opening statement, if you would like to make that.

Senator THOMAS. Thank you, Mr. Chairman.

I am sorry I am late. We had some other hearings going on. I did want to try to be here. Mr. Swimmer was good enough to stop by my office and we had a good long visit about the issue that is here. It is a very difficult one, certainly. There are lots of things we really have to come up and resolve. It seems to me that he is going to be a real addition to that.

I just wanted to thank you for this hearing and thank Mr. Swimmer for being the candidate for this job.

The CHAIRMAN. What we will do, since there are several of us up here, we will just do several rounds. I would like to start with Mr. Swimmer by telling you that we have a number of letters of support, one from the Cherokee Nation, the Creek Nation, the Choctaw Nation, the Chickasaw Nation, the Seminole Nation, the Quapaw Tribe, and the Confederated Salish and Kootenai Tribes of Montana. We also have letters of opposition from the Navajos, the Oglala Sioux, the Confederated Tribes of Warm Springs, the Iowa Tribe of Oklahoma, and the Absentee Shawnee.

In looking at some of the letters, they almost always what some of them believed was your effort to privatize the trust funds. But as I listen to your opening statement, it seemed to me what you were doing was trying to use a model of the private sector and use that model within the government. Would you clarify what it was you really wanted to do?

Mr. SWIMMER. It has been discussed quite often in Indian Country, more of late than it was then, in my opinion. What I had hoped to do when I investigated where we were in the Bureau of Indian Affairs, as I said, it was apparent that we needed some modern systems. We also were being challenged as far as accounting, and that was as far back as 1988. There was concern about whether the accounting system that we were using and the investment system was adequate and was giving adequate information to the individual Indian participant.

In terms of the investment, you may recall, those of us who were in the banking industry certainly do, during the 1980's it was not

a particularly good time for banks. One of the comments that was made by the FDIC was that we always know where the next failed bank is; that is where the BIA keeps its money. That is not all bad, because the weaker banks were always bidding high for the BIA money. The statute on investments says that the Bureau can invest its funds in government securities or securities that are guaranteed by the government. As a practice, what was going on then was that several hundred banks would be called every couple of weeks and asked what they would bid on a $100,000 CD. Then the bank would fail and BIA would collect its money from the FDIC, and collect the interest sometime later, usually. It was not a system that I felt was very professionally run.

What I suggested was that we look at an investment program more like the private sector would use, and that we go out and solicit advice and that we find private sector companies that could invest those funds on our behalf—not put money in somebody's bank, but be as an investment adviser, using investment systems for government securities that were common in the industry, and at the same time look at an accounting system that again is commonly used in the private sector, and see if we could not contract for those services.

There were a couple of efforts made at that, but ultimately the company that bid on the contract was Security Pacific. I understand after I left the Bureau in 1989 that there were a lot of problems with that. I do not know what they were, but it apparently did not go anywhere. It actually became part of the whole issue with trust reform, which I think is positive from that point of view. The fact was, as I mentioned, we ultimately did manage to engage a firm that has a Trust 3000 system that we were able to put all the accounts on. We do today in the Special Trustee's Office, because the Office of Trust Funds Management was moved over to the Special Trustee's Office, they do manage those funds. Once the funds are received, they are properly invested. We have a government securities program that invests those funds in U.S. Treasuries, notes and bonds and what have you. From there, the accounting is done on the investments and the distributions are made to the individuals, as they should be.

So that was really the genesis of those comments and the criticism. It just was an effort to modernize the systems at the time that the Bureau needed to.

The CHAIRMAN. Basically, you are saying some of the things that we are actually doing now were out of those early suggestions in the 1980's.

Mr. SWIMMER. Absolutely.

The CHAIRMAN. We have moved a long way through Senator Inouye's leadership, and perhaps mine too, in that we try not to move legislation, as an example, until we hear very carefully from the tribes about how they think it is going to affect them. When you made these suggestions in the late 1980's, did you suggest that through the bureaucratic channels, or did you suggest that directly to the tribes?

Mr. SWIMMER. I think it was pretty widely discussed. I do not remember that there was a lot of comment in Indian Country about it. I did have a lot of discussion with then-Congressman Mike

Synar. I would tell the committee, Mike Synar and I were personal friends. We were politically at odds, sort of at the extreme of the spectrum, but Mike was then the Congressman from the Second District of Oklahoma. He worked very closely with the Cherokee Nation while I was the Principal Chief. I had great respect for him.

Where we differed was, when I proposed to him that I thought we should move into an accounting system, and that we should take the accounts that we have, that we know begin with those balances, and move forward. His opposition was that if you do that, you will never get to an accounting of the ones behind. He said,

> I do not think we should go forward with that plan to start a new accounting system now unless we are sure that we have accounted and have accurate opening balances for everyone.

We had a difference of opinion on that. I thought that we should go ahead and get the system underway and do it correctly, at least for the future, while we went back and did the accounting. It was a friendly disagreement, but he felt strongly that it was a government responsibility, that the government should do this accounting, and that one way of making that happen was not to change systems until we had actually done the backward accounting as well.

The CHAIRMAN. Thank you.

As you know, we have had two previous Trustees. They both had a very difficult job and they both left, either resigned or were pressured. You can use whatever terminology you want, depending on your perspective. Each of them attributed their problems to the lack of independence within the Department; lack of independence from the Secretary. Can you tell the committee whether you think, first of all, that independence of the Trustee is necessary; and second, what in the Secretary's proposed reorganization gives you the confidence that you will have that independence?

Mr. SWIMMER. I think the Special Trustee must have the freedom to tell the Secretary there are problems, but the Special Trustee is obligated to seek solutions. He cannot simply say we have identified a problem. We are going to think of ways to get it fixed. I think there are a lot of ways, and part of it is because of the requirements of the Special Trustee. There are a lot of ways that the Special Trustee can interact with the Secretary. The statute even says that he must interact with the Director of the BIA. The Special Trustee has to be responsible for trust reform, and at the same time be able to get the backing of the Secretary and the cooperation. Again, I feel very strongly that the Secretary and the Deputy and the other leadership in the Department is very willing to do what is necessary to advance the trust reform and listen very closely to the Special Trustee.

The CHAIRMAN. Let me ask one more before I turn to Senator Inouye. That is, there are several bills that have been floated. Senator McCain has a bill, S. 175, that would eliminate the Special Trustee's Office and replace it with a Deputy Secretary. Have you looked at that bill?

Mr. SWIMMER. Just in passing, I have.

The CHAIRMAN. Okay.

Mr. SWIMMER. I am aware of it.

The CHAIRMAN. I would appreciate it if you would look at it and give us some feedback on it. For a couple of years, I have been fool-

ing with some language with a bill, too, that would basically—and I do not have a background in banking and I do not have a background in law—but I have a background in Indians, and I will tell you what, I have seen them die waiting for their money, and that is wrong. One of the things that I suggested, and Senator Inouye and I have talked about, is that in the private sector when you have a class action lawsuit, usually there is a provision in there somewhere that if people get tired of waiting for the class action lawsuit, they can opt out and settle individually. That was one of the ideas we were floating.

Obviously, the attorneys for Cobell do not like that, but we have talked to the National Congress of American Indians and some individual tribes, and the Administration, and they all believe it has some merit. What would your thoughts be on that?

Mr. SWIMMER. I would say anything that helps resolve the litigation would be a tremendous help to Indian Country and certainly to the Department of the Interior. It is one of the most debilitating, if not the most debilitating issue as far as trust reform today. It certainly is a great concern throughout Indian Country.

The CHAIRMAN. If we pursue that, I might ask you to help us with some of the language.

I would like to turn to Senator Inouye. I do want to tell you before I do, however, that we do not need an answer for the letters of support, but in some of the letters of opposition to your nomination, I would like that to be part of the record. The letters are, but I am going to submit on behalf of the committee the questions that came up in those letters, and have you answer them in writing, if you would.

Mr. SWIMMER. Certainly.

The CHAIRMAN. Senator Inouye.

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

Before I proceed, may I note the presence of the Deputy Secretary of the Department of the Interior, Secretary Griles. Welcome, sir.

Both prior Special Trustees in testimony before this committee suggested that the reconciliation of trust accounts be conducted by an entity totally outside the Department. We have been told that there are some in the Department who feel that if the United States is to retain full responsibility and the legal liability for the management of the resources and accounting of assets, then the management and the assets must be conducted by the Department. What are your thoughts on this?

Mr. SWIMMER. I think that trying to take the, as I believe you are referring to, the historic accounting part out of the Department for trust funds management would be extremely difficult because of the interrelationship within the Department of all the other agencies that have an impact on Indian matters. I just do not believe that it would be a practical solution to attempt to take a portion of the accounting situation and try to separate it from the government—if that was the question. I may not have understood the question.

Senator INOUYE. So you believe that since the government is to retain full responsibility and legal liability, then the management should be in your hands within the Department?

Mr. SWIMMER. Yes.

Senator INOUYE. And not even part of that goes out?

Mr. SWIMMER. I am sorry?

Senator INOUYE. You do not expect even part of that to go out to a third party?

Mr. SWIMMER. No.

Senator INOUYE. Then don't you think that this would somehow be in conflict with the proposals that you have been supporting all along on self-governance and self-determination?

Mr. SWIMMER. I think that it should go out of the Department in terms of going to the tribes, and certainly the management of tribal trust funds I have always advocated should go to the tribes whenever and wherever possible. The 1994 reform Act permits that to be done. I fully support that. I always have and always supported the concept of self-governance.

I firmly believe that all of the management of the trust assets should be under the management of the tribes whenever they feel comfortable in doing that. I am sure, as you have heard from some of the tribes, there are some that describe themselves as under the responsibility of the Bureau of Indian Affairs, and they do not accept self-governance. I think that is fine. I think that as long as we need to provide those services to those tribes directly, as direct service tribes, then we should do that. But as tribes gain the confidence, the ability and the desire to manage their trust funds and their trust assets, then I fully support that and believe we should provide whatever assistance to those tribes we can to help that happen.

Senator INOUYE. Mr. Swimmer, as former Assistant Secretary and an attorney, in your opinion is the legal standard that governs the United States when it manages assets held in trust similar to the standard that is applicable to a private fiduciary?

Mr. SWIMMER. In many respects, it is. As a trustee, you are always held to a high level of fiduciary responsibility. You have a duty of loyalty. You have a duty of care. You have a duty to communicate with your beneficiaries. All of those responsibilities and all of those trust standards that we talk about, however, are all modified by statute. The statutes that govern the Indian trust are many. An example of that is in the 1994 reform Act, we have to provide an accounting under normal trust law to a beneficiary. The 1994 Act actually not only tells us to do an accounting, it says how to do that accounting. It specifically tells the Department what goes on that statement.

There are other examples. For instance, in the prudent investor rule, normally a trustee is required to invest and do so prudently, but also with moderate amounts of risk so that the return to the beneficiary is reasonable. The statutes that we have to deal with there require that we invest only in government securities or the equivalent. That, of course, is not only the lowest risk investment, but it is the lowest return. Again, I suggest that tribes probably would do better using investment advice from the outside, taking their money and investing it, than what the Bureau can do because of those kinds of statutory restrictions.

There is a common duty that says you cannot commingle funds with the trustee. We do that every day because we invest the bene-

ficiary's money in government securities. As the trustee, we are putting it in the U.S. Treasury by law.

So there are, in terms of the different normal trust standards that you might see in the private sector, they do exist in the Indian Trust as well, but generally are modified quite a bit by different statutes. We are much different. In the private sector, you tend to look at the trust document for guidance. If as a banker I have a trust set up, I usually have a document that backs it up and says, here are the things you are going to do; here are the beneficiaries; here is how I want you to distribute the funds; and here are the limitations on investing.

In our world, it is governed by statute. We do not have that document, but we do have a set of laws and regulations that govern how we manage that trust.

Senator INOUYE. I asked that question because in my reading of the arguments before the Supreme Court in the Navajo case, the government suggests that it has no fiduciary standard, and that the United States has no legal obligations to the beneficiaries beyond that set forth explicitly in the law. Would you go along with that?

Mr. SWIMMER. It is an argument that is going on right now among the lawyers and in the litigation. I do believe that our trust is governed by statute, and I think that we are responsible to administer that trust in accordance with the statutes. Oftentimes, there can be different interpretations of a statute, about the degree of responsibility and whether we have exercised that responsibility appropriately, and that may be an issue in the *Navajo* case.

I believe that we do have the fiduciary duty and that we have to overlay that duty with every statute and every regulation that we administer. We have to do it. If the law says we are to collect the money for beneficiaries, our duty is that we collect it timely and we invest it timely. We cannot simply collect it and leave it on somebody's desk for 1 month while it is not gaining interest.

So we do have the additional responsibility as a trustee not only to collect, but to be sure that it is invested timely and appropriately accounted for. In that sense, I believe that the trustee does have the additional responsibility of being a fiduciary in the administration of the statutory responsibilities.

Senator INOUYE. It has been long suggested that the trustee should be able to exercise independent judgment. Do you believe that under the laws as they apply, you will be able to exercise independent judgment?

Mr. SWIMMER. Senator, I feel very comfortable about that. I really do believe that I can exercise independent judgment and give advice freely.

Senator INOUYE. We have been advised that you were deposed regarding the Department's issuance of coal leases to Peabody Coal in the *Navajo* case, and also as part of the Administration involved in the *Cobell* v. *Norton* case. Do you believe that this would in some way compromise you?

Mr. SWIMMER. I do not believe so. I do not believe I was deposed in the *Navajo* case. I would have to check the record on that. I was deposed in *Cobell* 1 month or so ago. I do not think it would have any impact on my judgment.

Senator INOUYE. These questions appeared in some of the letters that we have received.

So you do not believe that your involvement in these cases would somehow compromise your ability to serve as an independent voice?

Mr. SWIMMER. I do not believe so. As far as *Cobell,* whoever is selected as Special Trustee is going to become involved very quickly. So the fact that I have given a deposition in that case I do not feel would compromise my ability at all to be objective and to exercise the duty as the Trustee.

Senator INOUYE. Thank you, Mr. Chairman. I have a few other questions, but I think there are others.

The CHAIRMAN. Senator Thomas, did you have some questions?

Senator THOMAS. Yes; very briefly. I note that we had the Secretary up yesterday for a budget hearing in Energy. I noticed that the budget for your work here has gone up considerably—$130 million. What basically do you see happening different as a result of that budget?

Mr. SWIMMER. A significant amount of the budget increase for trust has to do with the backward accounting. It basically has to do with the *Cobell* litigation and to do the historic accounting. There are, however, substantial increases in parts of the budget that as part of the reorganization will permit the Office of Special Trustee to have trust officers, and these will be people trained in the law of trust and in the management of trust, to have trust officers actually located at the local and regional levels of the Bureau of Indian Affairs, basically to provide advice and guidance and to work collaboratively with the agency superintendents and the regional directors on trust issues, and infuse within the trust management the fiduciary relationship that sometimes is not present when decision are made; just to ensure that those issues are highlighted.

The other major impact of the trust officers would be to have a link with the beneficiaries directly so that there is not a question when a beneficiary comes to an agency office, to know what their balance is in their account; when they last got paid; what assets do they own and where. Now, we have many Indian people who own properties on different reservations. The trust officer, we anticipate having that information available in one place so the beneficiary can get all of their questions answered.

This is the first time that there has really been that established beneficiary relationship within the trust area. There is what we call sort of a one-stop shop where they can come to get the information.

Senator THOMAS. That is good. That is interesting. I am not as close to it as all of you are, but it just seems like those are things that should have been done a long time ago in terms of getting this resolved.

In any event, having read over your resume and so on, you have done a number of things with the tribes, Cherokee Nation, and in your own professional life as a banker and a lawyer and secretary and so on. Special Trustee is a difficult job. What is your vision to be able to repair the relationship between Indian Country and the Federal Government?

Mr. SWIMMER. I am sorry?

Senator THOMAS. What do you think can be one of the most important things you can do to strengthen the relationship between Indian Country and the Federal Government?

Mr. SWIMMER. It is a whole host of things that need to happen. It needs to be in partnership. Whatever the Federal Government does, and particularly agencies that have a relationship with Indian tribes, whether the BIA, Indian Health Service, HUD, Department of Labor. There are a lot of different Federal agencies today that deal directly with Indian tribes. They need to have the partnerships there. They need to have the communication with the tribes.

Within our agency at Interior, because we are the closest with agencies actually on the ground working with individual tribes, we need to have better working relationships; better communication; the word "consultation" is used constantly. We do need to have a method of doing that. I think what Chairman Sangrey had mentioned, having ITMA as a sounding board and advice to us is important. We spent a year working with the Tribal Task Force in consultation and negotiations.

So I think the way that we improve that relationship is in partnership, developing a sense of trust in the larger sense, and then encouraging to the extent that we can—I just firmly believe this—the opportunity, the right to build on the self-governance of Indian tribes, trying to help them succeed in managing their own affairs and being governments in the truest sense and doing things that are governmental.

Senator THOMAS. That is good. I certainly wish you well, and I am sure most everyone thinks this problem needs to come to some conclusion in the relatively near future. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. I might suggest that one of the best ways I know of in repairing relationships between the feds and the Indian tribes is give them the money that we owe them. That would help. We can only do that with some pretty aggressive efforts on your part in your new position.

I am going to submit the rest of my questions to you, Ross, in writing. As you probably know, Secretary Norton appeared at our Energy Committee hearing the other day on the fiscal year 2004 budget. She informed us that the trust reform request for fiscal year 2004 is 17 times larger than the original request back in 1996. It is just skyrocketing. So I think that in this day when we are facing perhaps a 10-year deficit, as you probably know, it worries some of us when we talk about the potential of throwing more good money after bad and not making progress on finding a solution. So I would hope you make that a very strong part of your agenda.

I am going to ask you to do something, maybe you might have to do it in conjunction with Deputy Secretary Griles, and maybe I already should have asked him, but February 26 is when we are going to do our budget hearing, too. By that time, I would like to have a breakdown, if I could, of the funds spent on both litigation and trust reform since 1995.

In addition to that, because many of our people who are on both sides of the issue seem to be just almost locked out and doing

verbal battle without very much resolve, I would like to know—as you know, there have been a number of mediation sessions. I would like to know what the results of those mediation sessions have been and the outcomes, too. We do get some periodic updates, but if you could provide the committee with the latest results of that, and the efforts that have been made to enter it under the supervision of Judge Lambert, too. If you could do that, I would appreciate it.

Mr. SWIMMER. Sure.

The CHAIRMAN. Senator Inouye, did you have any more questions?

Senator INOUYE. Mr. Chairman, I would like to submit other questions, but I have just one more.

In the 1994 Trust Fund Management Reform Act, it says that the Special Trustee must review departmental budget proposals and must certify in writing, and I quote:

> The adequacy of such requests to discharge effectively and efficiently the Secretary's trust responsibilities and to implement a comprehensive strategic plan.

I am not certain whether you have had an opportunity to look over the historical accounting plan of individual Indian money accounts and the fiduciary obligations compliance plan, which was prepared by the Department as part of the Cobell case.

Now, will these plans allow the Secretary to effectively and efficiently discharge her trust responsibilities regarding individual Indian money accounts at issue?

Mr. SWIMMER. The two plans that you refer to were developed, created specifically in response to particular litigation issues. The Department has been working for nearly 1 year on developing a comprehensive trust asset management plan. That plan contains a going forward look at trust reform, trust improvement, doing a lot of things in a lot of areas, some of which are not covered by the litigation.

The plan also takes into consideration the larger plan, the work that has been done during the past nine months on what we call the "as is" study, which is defining what all the trust business processes are and looking at them across the board from agency to agency and region to region, and then developing what we call the "2-B" model, how are we going to reconcile a lot of the differences in the way people do business. It is not meant to try to centralize management. It is meant to try and make the processes consistent wherever possible, which then helps us in bringing technology software to support those business processes.

I think that plan will lay out the strategy and the business plan for the trust management for the long term. It should be finished sometime in the next couple of months. The process, however, of completing the "as is" and the 2-B and actually going out and making some of these improvements at the local level is estimated to take up to 2 years to fully implement.

One of the most important things that we have to consider now in trust management is a very methodical, and sometimes it appears slow, approach, but it is to ensure that we use the money wisely that is being appropriated for this purpose, and that we are sure the kind of actions that we are taking are good for the future.

Senator INOUYE. So you are saying that as far as you are concerned, you would be able to certify that this new plan that you just described will allow the Secretary to effectively and efficiently carry out her trust responsibilities.

Mr. SWIMMER. I believe that is correct.

Senator INOUYE. Thank you very much, sir.

The CHAIRMAN. Thank you, Mr. Swimmer. We really appreciate your appearance. We will now move to Mr. Sangrey. Let me start by asking you a little bit about your views on fractionated Indian lands. Most of us know that that is really one of the main obstacles to reforming trust management.

A few years ago, we did move a bill that was signed into law to do a, for lack of a better word, a demonstration project among several tribes to allow them to consolidate some of their lands. It seemed to work very well, but we have not done that nationwide for tribes. What is your organization's belief on the best way to stop this fractionation, or how we should proceed to try to resolve it? If you have somebody with you, if she would identify herself for the record.

Mr. SANGREY. Mr. Chairman, I have Majel Russell who is an attorney and consultant to ITMA who has been working on that.

The CHAIRMAN. Ms. Russell, maybe you would like to answer that if you can.

STATEMENT OF MAJEL RUSSELL, ATTORNEY AND CONSULTANT, INTERTRIBAL MONITORING ASSOCIATION

Ms. RUSSELL. Yes; thank you. ITMA has just recently begun a dialog to discuss fractionation problems in Indian Country. We have identified several different issues that we would like to pursue. One of them is to do effective probate-type planning or assist tribes or to basically provide technical advice to tribes on effective probate planning. We would like to look at a uniform-type probate code that would work throughout Indian Country.

Back to probate planning, estate planning, we would like to see tribes assist their members to do knowledgeable wills that would transfer lands on a one-over-one interest to the individual members, rather than the common wills or lack of wills which just generally create the fractionation problem even to a greater degree.

So we are looking at some probate reform. We are also looking at technical advice to tribes on estate planning and development of wills.

The CHAIRMAN. Okay. Thank you.

I would tell you, then, that in another couple of weeks after the break, we will be introducing a bill that I hope addresses many of the things you have spoken about. Senator Inouye and I are trying to proceed with that. In a couple of weeks you will have that bill to look at. If you would give us some feedback on it, I would appreciate it.

I talked early on a little bit about reaching settlement. I would like to know, on your Association, would they support congressionally led efforts to reach settlement by individual Indians?

Ms. RUSSELL. ITMA has been involved for a number of years on attempting to develop a legislative solution to claims from tribes for trust fund mismanagement. In fact, some years back, ITMA had

developed H. Res. 4485 in an attempt to develop a mechanism that tribes could use for the settlement of claims. We have recently begun a dialog this past year through the Task Force, again with the Department of the Interior, to come up with a solution for tribes who would like to settle their claims.

The CHAIRMAN. Basically, you are talking about the tribes' solutions and basically, as I understand you, it would delegate the management functions to the tribes.

Ms. RUSSELL. Yes.

The CHAIRMAN. Is that right? Well, my original question really was, individual Indian people that would like to settle with the Federal Government, should they be allowed to opt out of the class action lawsuit? I guess that is the clearest way I could ask it.

Ms. RUSSELL. Intertribal Monitoring Association Board of Directors has discussed that issue at great length. There are some Board members who support that opportunity for individual Indians to have an opportunity to opt out of the class and resolve their claims, yes.

The CHAIRMAN. Thank you.

Senator Inouye.

Senator INOUYE. Mr. Sangrey, in your presentation and discussion with the chairman, you mentioned that you have recommendations for specific legislation involving the management of trust assets. If you do, can you share it with us?

Mr. SANGREY. Yes, we will. We are having our final drafting session this afternoon and we will share it.

Senator INOUYE. We would like to look it over. Thank you very much.

Thank you, Mr. Chairman. Are we ready to vote? [Laughter.]

The CHAIRMAN. Yes; I am too, basically, but some members have asked us to hold this off until our next meeting to actually vote on your confirmation. So we will postpone that until the next meeting but from my perspective you should not have any trouble whatsoever. It will be right after the break, February 26. I look forward to your confirmation. I know you will do a terrific job. I look forward to working with you, and hope that you will have the patience of Job because it is going to require that, and the strength of Hercules, too, to get you through that new job. I hope that your wife will be able to put up with that. We had a terrific Oklahoman here. As you know, Neal McCaleb has resigned. He is also a personal friend as well as a professional colleague of mine. Interestingly enough, his wife is a personal friend of my wife, too, and they often discussed the trials that you go through when you are in Washington, D.C.

Let me close by saying I admire you for offering to come back and try and resolve this problem we are having, Ross.

Mr. SWIMMER. Thank you very much, Mr. Chairman. I think we bring our wives to these sessions so that you will not beat up on us too badly. [Laughter.]

The CHAIRMAN. Good thinking.

Mr. SWIMMER. I did want to respond to Senator Inouye's question once again. I honestly do not recall that I was deposed in that *Navajo* case. I would like to research that and I would like to keep that open. I will not say I was or I was not. I just do not remember it.

But I appreciate very much, again, the committee's work, the staff of the committee. There are some legislative things that can be done, and certainly fractionation, I look forward to working with ITMA and others on those kind of issues, and probate issues. They are most, most critical to moving forward on the trust reform.

The CHAIRMAN. Thank you, Mr. Swimmer and Mr. Sangrey, for appearing. This committee is adjourned.

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

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF RICHARD SANGREY, CHAIRMAN, INTERTRIBAL MONITORING ASSOCIATION ON INDIAN TRUST FUNDS

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, Kenaltze 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.

Mr. Chairman and members of the Committee. As the newly elected Chairman of the Intertribal Monitoring Association Board of Directors, I thank you for this opportunity to testify on the nomination of Mr. Ross Swimmer, a presidentially appointed position created by the 1994 Indian Trust Fund Management Act. My name is Richard Sangrey. I am a member of the Chippewa Cree Tribe from the Rocky Boy's Reservation in Montana and serve my tribe as Chief of Staff.

ITMA is an intertribal organization composed of 58 tribes across the United States who organized in 1990 to actively monitor the activities of the Federal Government to ensure fair compensation to tribes and individual Indians for the mismanagement of trust funds. ITMA's membership consists of a large number of those tribes with significant funds and assets at stake in the trust reform debate. As statistics recently submitted to the Court in the *Cobell* v. *Norton* lawsuit confirm, the tribes in the United States own the majority of the trust corpus currently under Department of the Interior Management, although tribes have not been parties to the *Cobell* suit.

ITMA's mission has evolved over the years to include the monitoring of the Federal Government's proposals to restructure the Bureau of Indian Affairs to address the trust mismanagement issues identified by the *Cobell* v. *Norton* lawsuit. ITMA has worked extensively with tribal governments to develop alternatives for settle-

ment of tribal historic trust fund mismanagement claims and most recently has been a voice for tribal governments in the recent trust reform efforts of the Tribal DOI Task Force.

Throughout this last year of heightened trust reform efforts, ITMA has been most concerned that reorganization of the BIA not infringe on tribal sovereign rights to govern lands within tribal jurisdiction. Additionally, ITMA has been most concerned that reorganization efforts do not drive wedges between tribal governments and their members. ITMA developed an amicus brief to the Court in the *Cobell* suit expressing concerns that a third party receiver could result in an interference and infringement on tribal self-government. Further, ITMA has joined with the National Congress of American Indians in the amicus brief submitted as a tribal response to the proposed plans for trust reform submitted by DOI and the Cobell plaintiff's.

The Board of Directors of ITMA is committed to working with the Office of the Special Trustee of American Indians to improve the delivery of Trust services to Native American Tribes and the individual beneficiaries. ITMA believes that the OST can effectively resolve issues that have—and will—arise from the re-engineering process currently underway at the Department of the Interior. The following is a non-exclusive list of objectives that ITMA believes the Department of the Interior and the OST must implement if "trust reform" is to mean anything:

1. Establish and implement clear methods to account for the management of Trust Funds, Trust Lands, Trust Assets and Trust Resources by, at a minimum creating comprehensive Trust Fund, Trust Land, Trust Asset and Trust Resource ownership, location, and use inventories that provide a method for accounting to any beneficiary Indian or tribe of what land is being effectively managed, and where problems or exceptions require greater attention.

2. Establish and implement reasonable methods for consulting with Indian and Tribal beneficiaries to establish effective plans to manage Trust Funds, Trust Assets, Trust Lands and Trust Resources that implement the intent of the Indian or Tribe where such implementation is reasonable.

3. Consult with each Indian beneficiary and Tribe in the management of the Trust Funds, Trust Assets, Trust Land, or Trust Resources managed by the Secretary, and implement the objectives identified by the Indian Beneficiary or Tribe for any resource managed for them to the extent practical.

4. Establish clear guidance on what functions with regard to Trust Funds, Trust Assets, Trust Land and Trust Resources are inherently executed by the Secretary and the OST, and how these functions are to be executed by a Tribe upon the execution of Tribal Compacting and Contracting agreements under P.L. 95–638 which establishes consistency in the execution of such agreements.

5. Provide a yearly program of education and communication for the Secretary's and the OST's Trust service delivery personnel as well as for the beneficiaries, providing the Secretary's and the OST's personnel, the relevant staff of Indian tribes, and interested individual beneficiaries with an understanding of the Secretary's and OST's role and responsibilities with relation to the management of Trust Funds, Trust Land, Trust Resources and Trust Assets.

6. Build a common data store for all Trust Funds, Trust Land, Trust Resource and Trust Assets related information. Such a data store shall, at a minimum operate in the following manner:

   - Provide a single method of entry for updates and maintenance;
   - Avoid redundant or inconsistent data in multiple systems;
   - Provide query capability by many organizational units; and
   - Provide accurate information for reporting.

7. Establish a Memorandum of Agreement with each tribe regarding the privacy to be afforded tribal family information.

8. Establish an office to coordinate investigative efforts intended to establish the location of beneficiaries whose whereabouts are unknown.

9. Create an office of Inter-Bureau Communication and Coordination to oversee daily operations and facilitate communications and issue resolution between each of the Secretary's bureaus on issues related to the management of Trust Lands, Trust Assets and Trust Resources.

10. Segregate the staffing and management of probate responsibilities from all other Trust Funds, Trust Land, Trust Resource or Trust Asset management activities to ensure that the decedent's interests are appropriately balanced with overall

Trust objectives, while still providing for the use of integrated data in probate matters.

11. Establish that the substantive laws or customs any Indian Tribe relating to Probate shall apply first to provide for the distribution of a decedent's estate. To the extent there are no tribal laws or customs to apply, such descent shall be made in accordance with the laws of the state in which the decedent resided at the time of their death. Where relevant tribal law or custom applies, and allows for estate planning methods to be employed to avoid the need to probate estates it shall apply and any Indian beneficiary shall have the right to use such laws to avoid probate to provide for the distribution of Trust Funds,.Trust Land, Trust Resources or Trust Assets; or where no tribal law or custom applies, any Indian beneficiary shall have the right to elect to provide for an estate plan for themselves under the laws of the state of their legal residence that includes providing for the distribution of Trust Funds, Trust Land, Trust Resources or Trust Assets.

12. Consolidate all Indian beneficiary probate adjudication activities into a single organization, moving all Deciding Officials into a single organization to simplify and make uniform the administration of Probate activities.

13. Establish uniform regulations to govern all probate adjudication activities.

14. Implement integrated, nation-wide title and realty information systems that accurately identify Trust Lands, Trust Resources, and Trust Assets, and the complete ownership thereof, all legal encumbrances (mortgages, life estates, etc.), and non-expiratory rights.

15. Create a single archive system based upon electronic information (and where electronic information is not available, paper information) provided by the Bureau that complies with Federal record retention policies.

16. Streamline and consolidate, to the extent practicable, recordation and encoding procedures, eliminating duplicate efforts and data, in an effort to free resources to ensure that Trust Funds, Trust Land, Trust Resource, and Trust Asset information is maintained in a timely manner.

17. Eliminate redundant staff functions to eliminate inconsistencies across systems and to reduce the existing backlogs.

18. Implement digital imaging technology at all levels under the Secretary's and the OST's authority, using this technology to maintain a complete and accurate record of Trust Funds, Trust Lands, Trust Resources, Trust Assets and the ownership and utilization of such funds, land, resources and assets.

19. Develop regulations that provide for an expedited procedure for the acquisition of fee interests in Trust parcels.

20. Develop regulations that ensure beneficiary consultation, consent and compensation for all rights of way, easements and mineral access agreements that related to Trust Lands.

21. Establish a specific source of funds to address "unperfected Rights of Way," that will be used to remedy Unperfected Rights of Way that negatively encumber Trust Lands.

22. Establish an office of beneficiary consultation and support services that provides individual Indians and tribes with a point of contract for all consultation questions regarding the Secretary's management of Trust Funds, Trust Lands, Trust Resources and Trust Assets.

23. Develop guidelines for beneficiary consultation to improve the inherent partnership between the Secretary and beneficiaries.

24. Develop guidelines for appraising Trust Assets, Trust Lands, or Trust Resources that defines appraisal principles, appraisal terminology, the appraisal process, and the volatility of the real estate market.

25. Implement Trust Assets, Trust Lands, or Trust Resources appraisal training that all persons who work for the Secretary and who deal with land valuations must attend. Such training must include a written examination, and no person who scores below a reasonable standard established by the Secretary shall appraise Trust Assets, Trust Lands, or Trust Resources.

26. Develop guidelines and procedural manuals to provide more specificity regarding the Forest Management Deduction process, requirements and timelines.

27. Reform 25 C.F.R. part 163 to provide more specificity for procedures and requirements of collecting Forest Management Deductions.

28. Consult with Tribes to enhance the regulations, guidelines, policies and manuals to include clear and specific roles, procedures, formats, reporting and schedules for the oversight of federally managed and tribally managed forestry programs.

29. With consultation from the Tribes, develop regulations that promote Tribal control and self-determination while at the same time ensuring the Secretary's obligation to provide oversight and review of Indian Trust asset management programs.

30. Develop and implement regulations that adequately define rangeland trust management.

31. Implement a Geologic Information System based management information data base and reporting system for all Trust Lands, Trust Assets, and Trust Resources.

32. Develop regulations that regularly monitor and audit the management of Trust Lands, Trust Assets, and Trust Resources for compliance with the principles of the Trust Responsibility enunciated herein.

33. Consult with Tribes to develop comprehensive guidelines for the uniform management of all rangeland under the Secretary's jurisdiction.

34. Initiate a program of workshops for Tribes and individual Indians that provides information about leading animal husbandry and land management practices, assists in counseling and problem solving.

35. Identify the most valuable Trust Lands, Trust Resources and Trust Assets and develop specific strategies for the development of this potential.

36. Create standard procedures and decision criteria for selecting appropriate long-term encumbrance vehicles (lease, permit, assignment, information agreement, etc.) for Trust Lands, Trust Resources and Trust Assets that applies to and is enforced within all Bureau regions. Develop standardized consent forms that reinforce Indian Land Consolidation Act consent requirements. Develop regulations to be published in 25 C.F.R. 162 subparts C and D (the Residential and Business subsections currently "reserved" but blank") that clarify procedures for determining which encumbrance vehicles should be used in each circumstance, and how such encumbrance is to be uniformly documented.

37. Record monetary liens against lessees if rental payments are delinquent.

38. Enforce against un-consented trespasses on Trust Lands.

39. Restructuring existing lease agreements upon renewal to meet the obligations imposed by this statute and any regulations promulgated hereunder. Nothing in this statute shall be construed as terminating or invalidating an existing lease or agreement related to Trust Land that was otherwise in compliance with the regulations or practices of the Secretary at the time of its signature.

40. Initiate formal information-sharing programs between the Bureau, Tribes, contracted service providers, and Individual Indian owners of agricultural lands.

41. Conduct a thorough review of key Federal statutes and regulations which can negatively affect the management and use of Trust Land, Trust Resources and Trust Assets and provide such report to Congress and all Indian Tribes. Such report shall include remedies to remove or refine those statutes and regulations in conflict with the management of Trust Lands, Trust Assets, and Trust Resources.

42. Develop regulations to delegate to Tribes the authority to provide environmental assessments where such assessments are required for the management of Trust Lands, Trust Assets, and Trust Resources.

43. Standardize consent forms and develop a single set of criteria triggering the performance of the consent process for the leasing of agricultural Trust Lands.

44. Integrate agriculturally related billings and collections the Integrated Trust Management system.

45. Develop new regulations that provide a more equitable approach to funding Trust Asset development strategies among all tribes.

46. Review Trust Asset water resources to develop target groups, focused in two areas:
    - In areas where water rights are most at risk of being abused—develop rights communication, negotiation and protection strategies.
    - Areas where water resources are most valuable to the Trust or may be critical to the financial well-being of beneficiaries—finance water resources development projects proactively as part of an economic development strategy.
47. Reengineer, streamline, and standardize the Bureau minerals leasing processes to conform with the principles set fort herein.
48. Update and standardize lease forms, and develop regulations that create an integrated approach to minerals lease management with common systems, data stores and a documented communications plan.
49. Compile and publish all existing Memorandums of Understanding or Agreement (an "MOU/A") related to the management of Trust Lands, Trust Assets, and Trust Resources. This compilation shall include an indication of applicability or category of each MOU/A, a brief summary of contents, and a reference to who is the designated responsible party under the Secretary for each MOU/A.
50. Revise and establish clear guidelines for establishing bonding levels for Indian trust mineral leases that address the conflict between reclamation requirements and competitiveness of Indian trust mineral assets.
51. Provide training to all persons who work for the secretary related to bonding mineral leases to ensure that each person is fascicle with and can enforce the bonding guidelines. The Secretary shall establish a minimum of competence in this area, and shall test all persons to oversee the bonding of mineral assets. Only those persons to meet or exceed the Secretary's standards shall be authorized to oversee bonding for mineral leases for Trust Lands, Trust Assets, and Trust Resources.
52. Implement electronic document imaging and retrieval capabilities so beneficiary documents and records can be scanned once and made available to appropriate Secretarial staff nationwide on demand.
53. Implement workflow or case management technology combined with imaging capability to manage the information and processing flow and ensure that essential steps and controls are taken, as well as minimize process loops and rework. Decentralize account maintenance through enhancements to information systems and appropriate dual controls, so account administration authority resides with designated field officials.
54. Develop methods to contract with private banking institutions to accept lease payments, deposit such funds received , in accounts, provide lock box services, and document the receipt, storage and investment of funds, and transfer such documentation to the Integrated Trust Management System.
55. Establish a centralized collection, deposit, and posting information collection process for documenting the depositing and posting of funds to beneficiary accounts in a timely manner.
56. Develop the guidelines to determine when surveys of Trust Lands, Trust Assets, and Trust Resources are needed, what type is warranted, and who should perform the survey.
57. Inventory the survey needs for Trust Lands, Trust Assets, and Trust Resources, with such data becoming a part of the Integrated Trust Management system.
58. Coordinate with other bureaus under the DOI to centralize all survey and land record keeping activities into one bureau under the Secretary's direction. Create one unified automated land information and record processing system that is compatible with other record systems and easily accessible by everyone needing the information. The system could include survey and land ownership information and be integrated with other Federal automated record systems, such as title systems. Encourage Tribes to provide private survey records in the system so their land information is included.

Regarding the current nomination for the Special Trustee for American Indians, the ITMA Board of Directors is committed to working closely with the person selected for this position. ITMA has determined, that as an organization, it will take no position on the nomination of Ross Swimmer and that each of our member Tribes must act in their own capacity regarding his nomination. ITMA is committed to con-

tinuing to work with the Office of the Special Trustee to improve the delivery of trust services to Indian Tribal governments and the individual Indian beneficiaries and to make sure that the Department of the Interior fulfills its trust obligations owed to these Indian beneficiaries.

One final but critical issue relates to the funding ITMA receives from OST. Our current level of funding is $350,000 in FY 2002. Based on the increase level of trust reform activity, the Administration requested $450,000 in fiscal year 2003; ITMA requested $500,000 based on our workload. At a minimum, we need the level requested by the Administration, and we need assurance from the Special Trustee that OST will distribute the full amount of funding appropriated by Congress. In prior years, OST has withheld a portion of our funding ($40,000 in FY 2002) and essentially required us to "prove" that we need the money. This additional level of scrutiny is not only unnecessary but also has caused a strain in our relationship with OST. Therefore, ITMA is seeking specific report language in the FY 2003 and 2004 appropriations bills directing OST to release and distribute the full amount of funding appropriated by Congress for ITMA. We want to make sure that the new Special Trustee and this Committee are aware of this past problem and are willing to work with us on resolving this issue.

Thank you for the opportunity to submit written and oral testimony. We look forward to continue working with the Office of Special Trustee and Congress.

Testimony of Ross O. Swimmer

Nominated to be Special Trustee for American Indians

Before the Senate Committee on Indian Affairs

February 12, 2003

Mr. Chairman, it is a pleasure to appear before you today as the President's nominee for the Office of the Special Trustee for American Indians. I particularly wish to thank you and other members of the Committee for making this hearing one of the first for the Committee during this session of the new Congress. The Indian trust matter is one of the most important issues in Indian country. All Indian people and tribal leaders are aware of the importance that your committee is placing on this issue which is evident by the series of hearings that you have held for the past several years, as well as the many hours of staff time that have been put into this subject.

My name is Ross Swimmer. I am a member of the Cherokee Nation and served as the principal chief of the Cherokee Nation from 1975 to 1985. During my third term, President Reagan, along with Secretary Don Hodel, asked that I accept a nomination to be the Assistant Secretary-Indian Affairs. I appeared before this Committee at that time and was later confirmed by the Senate. I spent three years as the Assistant Secretary.

My work in Indian affairs spans a period of time exceeding 30 years. It began with my duties as an attorney with the Cherokee Nation, and later as General Counsel to the Cherokee Nation. During that time we were successful in negotiating a settlement with the United States for the loss of Cherokee land that was considered trust property of the Tribe. Just this past year, the Department and Congress were able to settle one of the longest standing issues of the Cherokees by agreeing on a settlement for the loss of value in the Arkansas Riverbed owned by the Cherokee, Choctaw and Chickasaws. My work with the Cherokees resulted in the adoption of a tribal constitution, reconstructing a tribal government and building the infrastructure to move the Tribe into the 21st Century. I also experienced, first hand, some of the weaknesses of the Bureau of Indian Affairs accounting and investment functions. The Cherokees have had money held in trust with the Bureau since the late 1960's. Although the Tribe kept good track of the funds and the earnings, I was often concerned about the type of investments, primarily bank certificates of deposit that were made by the Bureau in earlier years.

As a law student and as an attorney in private practice for five years before joining the Cherokee Nation, I, of course, studied trust law and practiced it in various forms including drafting of wills, probating estates and creating trusts for clients. In the early 1970's, I was also privileged to be invited to be the executive vice president of the First National Bank of Tahlequah, Oklahoma and a year later president of the bank.. I served in that position for ten years, primarily in managing the operating side of the bank. Our trust clients were handled by a larger bank in Tulsa that we used as our correspondent

bank. We sold the bank in 1984 when it had reached approximately $85 million in total assets, over three times the size from when I became president. My second banking experience was after my return to Tulsa from Washington, D.C. In 1992, I put together an investment group and purchased a small bank in Hulbert, Oklahoma. I served as the initial chief executive officer and chairman during the first year and as chairman of the board until we sold the bank three years later. It also tripled in size during our ownership.

During my tenure with the Bureau of Indian Affairs from 1985 to 1989, I believe substantial progress was made in advancing the concept of self-governance for Indian tribes. I also believe our attempts at improving the management of the accounting and investing of trust assets helped focus attention on the need for correcting some long-standing problems within the BIA. In fact, a new system for trust fund accounting was later established and is now working very well. SEI Investments Co. operates the "Trust 3000" program which is an accounting and asset management system for many large private trust companies. Through the efforts of the current acting special trustee, Ms. Donna Erwin and some dedicated individuals, this accounting system is now being operated by SEI to manage the accounting of trust funds coming into the Office of Trust Funds Management. Similarly, the investment of trust funds has become much more professional. Also during my tenure, there were other issues of major importance, not the least of which was the relocation project as a result of the Navajo-Hopi legislation and the drafting and enactment of the Indian Gaming Act.

The Indian fiduciary trust is different from any other trust. It has many of the attributes of a commercial trust and, at the same time, is quite different as a result of the many statutes that direct the way in which the trustee must perform his or her trust duties. Indian issues are incredibly complex. The Special Trustee must have an understanding of the complexity and differences that exist among tribes and among allottees and other beneficiaries of the trust. My background is unique in this regard. It gives me an opportunity to put my experience to work as the Department completes its comprehensive trust management plan and implements the many changes that are needed to make trust management more effective and efficient.

With your help, I believe we can make significant improvement in the management of the Indian trust during the next few years. We must work together, with tribal leadership and individual beneficiaries to the extent legally possible to make sure the Federal Government is doing the best job possible for Indian country. I am very impressed with the quality of work that many of the self-governance tribes are doing and hope to be able to help greatly expand their trust management role in coming years.

Thank you for considering my nomination. If referred by this Committee to the full Senate and confirmed, I pledge to do everything within my power to ensure that the fiduciary role of the Department of the Interior is fully implemented. I will work to ensure that true trust reform moves forward as quickly as possible so that Indian tribes and Indian people can have confidence in the management of their trust assets.

FEB 25 2003

Honorable Ben Nighthorse Campbell
Chairman
Committee on Indian Affairs
United States Senate
Washington, D.C. 20510-0401

Dear Mr. Chairman:

Enclosed you will find my responses to your written questions following my confirmation hearing before the Senate Indian Affairs Committee on February 12, 2003.

If I can be of further assistance, please let me know.

Sincerely,

Ross O. Swimmer
Special Trustee for American Indians-Designate

Enclosure

cc: Honorable Daniel K. Inouye
Vice Chairman
Committee on Indian Affairs

OST Special Trustee for American Indians – Designate Swimmer

Senator Campbell

1. Question: When you were nominated there was much criticism of a plan you advanced during your tenure as Assistant Secretary – Indian Affairs to privatize certain aspects of Indian trust management. Can you describe for the Committee what the plan was and why it was never pursued?

Answer: As Assistant Secretary I sought to utilize private sector expertise to improve trust fund accounting and investments activities. The initiative was not completed during my tenure, however, during the 1990s the Department contracted with the private sector to manage its trust fund accounting activities.

2. Question: If confirmed, do you see a role for the private sector in any aspect of the management of Indian trust funds and/or accounts? What functions currently being carried out by the United States would be susceptible to such privatization? In your view, are there functions that cannot be constitutionally delegated to the private sector? In your view, are there functions that cannot be constitutionally delegated to the tribes themselves?

Answer: Beneficiary services are currently provided by government employees, tribal governments and the private sector. If confirmed, I plan to continue to use the most appropriate means to fulfill the duties of the Special Trustee and will consult with legal counsel within the Administration if constitutional issues arise.

3. Question: Do you believe that the responsibility of the Special Trustee toward Indian and tribal beneficiaries differs from the responsibility of the Secretary when it comes to discharging the obligations of the United States to the Indians? In follow-up, how would you characterize the contours of your duty of loyalty be carried out with regard to the individual account holders, the tribes, the Secretary and the Department?

Answer: The United States has a trust responsibility to Indians. At the Department of the Interior this responsibility is shared by a wide variety of Departmental employees. If confirmed, I will work to ensure that the Department fulfills its trust responsibilities to individual Indians and tribes consistent with applicable statutes and case law.

OST Special Trustee for American Indians – Designate Swimmer

Senator Campbell

4. Question: Two men have occupied the Special Trustee's chair before you left the office and each of them attributed their problems – in some measure – to a lack of independence of the Special Trustee within the department's structure. Can you tell the Committee (1) whether you think functional independence of the Trustee is necessary? And (2) whether the proposed Reorganization will enable you to retain the required independence and discharge your obligations to the beneficiaries?

Answer: In my view, the Special Trustee advises the Secretary and is a member of the Interior senior management team. The Special Trustee's success in ensuring trust reform depends on an ability to work effectively with other members of the senior management team and the employees of the Office of Special Trustee (OST), the Bureau of Indian Affairs (BIA), the Bureau of Land Management (BLM), the Minerals Management Service (MMS) and others.

The reorganization adds strength to the Special Trustee and brings together those operational areas of trust within the BIA, OST and other DOI agencies necessary for the Special Trustee to oversee and ensure that the trust is being performed as required by law.

5. Question: A bill (S. 175) has been introduced by several of my colleagues including Senators McCain, Daschle and Johnson and would amend the 1994 American Indian Trust Fund Management Reform Act to eliminate the Special Trustee's office and replace it with a new Deputy Secretary. What are your thoughts on this matter?

Answer: There are several options for designating senior management positions to address trust reform and trust management. If confirmed, I will work with the Committee to explore these options fully.

OST Special Trustee for American Indians – Designate Swimmer

Senator Campbell

6. Question: There was much debate within the Joint Tribal-Department of Interior Task Force on trust Funds about the desirability and contours of "clear trust standards." Can you tell the Committee what standard of accountability you understand the Special Trustee to be held to and whether that standard is dependent or independent of a statutory basis?

Answer: If confirmed as Special Trustee, I would be tasked with the duties and responsibilities described in the 1994 American Indian Trust Reform Management Act.

7. Question: Reducing fractionation and reforming Indian probate are the two most important issues that I believe we can make a real headway within the 108th Congress. Do you anticipate a vigorous departmental effort to buy back fractionated lands and what funding is dedicated to the buy-back in Fiscal Year 2004? In follow up, as Trustee, would you favor the concept of an "Indian Land Consolidation Revolving Loan Fund" to assist tribes re-consolidate their land mass and at the same time eliminate what have been called sub-economic activities made necessary by de minimis land holdings?

Answer: Reducing land fractionation is an important goal. If confirmed, I plan to work with Congress to explore the options for addressing this issue.

The Department's Budget Office has provided the following information: The Indian Land Consolidation Program includes an increase of $13 million, for a total of $21 million in FY 2004 budget. The Bureau of Indian Affairs is designing a nationally coordinated and targeted purchase program. This program will be managed by a national program staff, but may utilize contractual arrangements with Tribes or private entities to purchase individual interests on behalf of the Department. The 2003 budget, together with carry-over, will provide approximately $20 million for BIA to put in place the necessary infrastructure and contractual arrangements to support a major expansion of the program in 2004.

OST Special Trustee for American Indians – Designate Swimmer

Senator Campbell

8. Question: Secretary Norton testified before the Senate Energy and Natural Resources Committee on February 11, 2003, on the FY 2004 budget request and indicated that the FY 2004 request for trust reform is 17 times as large as the original request back in 1996. Will the Special Trustee's office be the focus of this budget increase? What specific activities will the department undertake with these funds?

Answer: The Department's Budget Office has provided me the following information concerning the FY 2004 budget request.

The specific activities the Department will undertake with the funds requested in FY 2004 for OST include:

- $130.0 million for historical accounting activities.
- $40 million for Information Technology and Records Management activities.
- $39 million for Trust Services, Accounting and Field Office operations.
- $52 million for Trust Accountability activities.
- $14 million provides for oversight, administrative functions, audit capabilities and general overhead expenses, such as space, telephone, etc.

The trust reform funding from FY 1996 through, and including, the FY 2004 Budget totals $551 million. This amount includes funding for OST and for trust programs within BIA. Included within this amount is the amounts noted above for litigation related costs.

OST Special Trustee for American Indians – Designate Swimmer

Senator Campbell

9. Question: In July 2002, the Department submitted its 10-year, $2.5 billion plan to do a Historical Accounting of the IIM accounts. The FY 2004 Budget includes more than $110 million to begin to do the accounting. Can you describe the planned use of the $110 million and why this Committee and Congress should support the request and not see these funds as "good money after bad?"

Answer: The Budget Office has provided the following information. The 2004 request for the Office of Historical Trust Accounting (OHTA) included within the OST budget is $130.0 million. This will provide approximately $100 million for historical accounting of individual accounts and $30 million for tribal accounts. OHTA seeks resources to conduct additional historical accounting beyond those accounts undertaken in 2002 and 2003 for both tribal and IIM accounts. These funds will provide for the reconciliation of an additional 15,000 judgment and per capita IIM accounts; reconciliation of an additional 200,000 transactions related to land-based IIM accounts; and resolve the proper ownership of the balances of 5,000 inactive special deposit accounts, by distributing funds to the appropriate owners and closing these administrative accounts.

OST Special Trustee for American Indians – Designate Swimmer

Senator Campbell

10. Question: I do not believe lawyers, accountants and other experts ought to be on the receiving end of federal largesse to resolve the trust problems. It is the Indian account holders, in my view, who are left without relief and the U.S. is left with paying for all this activity. Can you provide the Committee in time for our budget hearing on February 26th a breakdown of the federal funds spent on both the litigation and trust reform since FY 1995?

Answer: The Department's Budget Office provided the following information:

Through FY 2002, Congress has provided a total of $26.4 million to OST and BIA for Department-wide costs related to the ongoing Cobell litigation.

FY 1998 Supplemental	$ 4.7 million
FY 1999 Supplemental	$15.0 million
FY 2001 Appropriation	$ 4.0 million
FY 2002 Supplemental	$ 2.8 million
Total	$ 26.4 million

In addition to these specific funds provided for litigation support, Bureaus and Offices within the Department have absorbed millions of dollars of costs within program activities, in time and materials spent searching for documents as part of document production requests for the litigation. There is also the time spent by most of the senior level Departmental officials on this issue and in preparation for hearings and the court responses.

The Department of the Interior does not know the amount of funds spent by the Departments of Justice and Treasury, or other Federal agencies on the requirements in this case.

OST Special Trustee for American Indians – Designate Swimmer

Senator Campbell

11. Question: It seems to me that the Cobell litigation could go on for many years without relief being provided to the IIM account holders. What efforts have been made to date to enter mediation under the supervision of Judge Lamberth? If you don't know, I want to know in writing the dates and times of these mediation sessions and what the outcomes of these sessions were.

Answer: I do not have personal knowledge regarding this matter. I've asked the Interior Solicitor's Office to provide responsive information.

12. Question: In its letter to the Committee, the Navajo Nation expressed opposition to your nomination "because of [your] past conduct which resulted in a breach of fiduciary duty to the Navajo Nation in connection with the Peabody Coal lease at Black Mesa while [you were] Assistant Secretary of Indian Affairs. . . "Could you comment on this concern?

Answer: The Supreme Court of the United States is considering this matter to determine whether the government has breached any fiduciary trust duty to the Navajo Nation regarding the Peabody Coal lease.

13. Question: In its letter to the Committee, the Oglala Sioux Tribe opposes your nomination for several reasons including: (1) because of a $550,000 loan you allegedly made to private investors as head of Cherokee Nation Industries that was defaulted on; (2) because you proposed to fix the trust fund system by contracting with a private bank; and (3) because there was no consultation on your nomination process. Could you comment on these concerns?

Answer: (1) The loan was a typical business deal and well within the financial capability of the company. We made similar investments in other commercial business. (2) Please see my response to Senator Campbell's Question #1. (3) The Presidential nomination/Senate confirmation process is not subject to consultation.

OST Special Trustee for American Indians – Designate Swimmer

Senator Campbell

14. Question: In its letter to the Committee, the Confederated Tribes of the Warm Springs Reservation opposes your nomination because of your decision to "privatize" trust funds management in the 1980's. Could you comment on these concerns?

Answer: My efforts to utilize private sector expertise to improve trust fund accounting were not completed during my tenure as Assistant Secretary. Subsequently, during the 1990's, the Department hired private sector contractors to assist trust fund accounting activities.

15. Question: In its letter to the Committee, the Absentee Shawnee Tribe of Oklahoma opposes your nomination because of your past actions and decisions including your "unscrupulous dealings with our housing authority." Could you comment on these concerns?

Answer: I do not recall any dealings with the Absentee Shawnee Housing Authority, but will offer comments if specifics can be furnished.

FEB 25 2003

Honorable Daniel Inouye
Vice Chairman
Committee on Indian Affairs
United States Senate
Washington, DC 20510

Dear Senator Inouye:

Enclosed, please find my responses to your written questions transmitted on Tuesday, February 25, 2003, on the issue of my nomination to be Special Trustee for American Indians.

If I can be of further assistance, please do not hesitate to contact me.

Sincerely,

Ross O. Swimmer
Special Trustee for American Indians-Designate

Enclosure

cc: Honorable Ben Nighthorse Campbell
Chairman
Senate Committee on Indian Affairs

RESPONSES FOR SENATOR INOUYE
Received February 25, 2003

Trust Standards

Question: Please describe the experience you have had, in or out of government, in the management of assets held in trust.

Answer: I have experience with trust asset management both in and out of public service, and as both a beneficiary and a trustee. I spent thirteen years working in a commercial bank. For ten years, I was the Principal Chief of the Cherokee Nation. I served for three years as Assistant Secretary for Indian Affairs at the Department of the Interior, where I worked extensively on Federal Indian Trust. I have spent one year working as the Director of the Office of Indian Trust Transition, which is responsible for overseeing implementation of trust reform within the Department of the Interior. I have also served as a legal representative in the private sector for both trustees and beneficiaries.

Question: Also, please describe any instruction or counsel you have received since joining the current Administration with regard to the specialized legal duties applicable to management by the United States of assets held in trust for Indians to the extent such instruction or counsel relates to the duties of the Special Trustee.

Answer: During the year I have worked as Director of the Office of Indian Trust Transition, I have held extensive meetings with the Office of the Special Trustee, the Solicitor's Office and outside trust experts. This process is ongoing.

Questions: Please expand upon your oral testimony before the Committee on February 12, 2003 with regard to the legal standard governing the actions of the United States when it manages assets held in trust for Indian beneficiaries with regard to the interplay of particular Federal statutes and the common law "private fiduciary" standard. In particular:

1. In your opinion, does the "private fiduciary" standard apply only when a statute or regulation explicitly incorporates that standard, or is the "private fiduciary" standard a background principle of law that is generally applicable to the management of Indian trust assets unless a statute or regulation explicitly overrides it in particular circumstances?

Answer: The management of Indian trust assets is governed by statute. In the limited circumstances where no statutory guidance is provided, a private fiduciary standard may provide helpful guidance for managing Indian trust assets that respects the relationship and protects the assets.

2. Under what circumstances, in your opinion, does the "private fiduciary" standard not apply to the management of Indian trust assets by the United States?

Answer: The management of Indian trust assets is governed by statute. In the limited circumstances where no statutory guidance is provided, a private fiduciary standard may provide helpful guidance for managing Indian trust assets that respects the relationship and protects the assets.

3. Please identify any statutes or rules that, in your opinion, implicitly or explicitly supercede or override the "private fiduciary" standard with regard to management of Indian trust assets by the United States.

Answer: There are hundreds of statutory provisions that apply to the Indian trust. A detailed answer to this question would need to be referred to the Department's Solicitor's Office for response.

4. In general, when managing assets held in trust for Indians, does the United States have a generally applicable and legally enforceable duty to

act in the best interest of the Indian beneficiary of the trust, or does that obligation only arise where a particular statute or rule explicitly imposes such a requirement?

Answer: In general, the United States considers the best interest of the beneficiary, subject to applicable law and Congressional appropriation.

5. If you believe there is no generally applicable and legally enforceable duty to act in the best interest of the Indian beneficiary when the United States manages assets held in trust for Indians, does such an obligation nevertheless exist in the particular circumstance where the United States acts to lease or otherwise authorize the use of trust assets by third-party non-beneficiaries, as when a mineral or grazing lease of Indian lands is executed with a non-beneficiary?

Answer: Again, in general, the United States considers the best interest of the Indian beneficiary, subject to applicable law and Congressional appropriation.

Settlement of Pending and Potential Breach of Trust Litigation

At the hearing on your nomination, the question was raised as to whether or not individuals who are members of the plaintiff class in class action litigation should be able to opt out of the class and should be able to settle their claims separately from the named class plaintiffs.

Question: In your view, is there any statute or rule which would prevent the *Cobell* defendants from entering into immediate settlement negotiations with the plaintiffs in that action?

Answer: No, in my view, there is no statute that prevents *Cobell* defendants from entering into settlement negotiations. Currently, the U.S. District Court has directed the Interior defendants to avoid communication with the *Cobell* class. Any DOI-sponsored settlement discussions with the plaintiff class would require modification of the associated court order.

Question: Please identify any statute or rule of court that prevents members of the plaintiff class in the *Cobell* litigation, other than the named class plaintiffs themselves, from entering into separate settlement negotiations with the defendants. If any statute or rule regulates but does not absolutely prohibit such action (e.g., by requiring court approval of proposed communications or any proposed settlement), please describe the manner in which negotiations and any final settlement agreement might proceed in compliance with the statute or rule.

Answer: The *Cobell* case has been certified as a class-action. I am not familiar with all of the options or limitations for negotiated settlement that would apply in this matter.

Question: Do you believe that additional legislation is necessary to facilitate the settlement of pending and future litigation initiated by Indian plaintiffs who allege that the United States has breached a legal responsibility due to them with regard to the management of assets held in trust on their behalf? If so, would you please identify what additional authority is needed?

Answer: Without knowing the specific situation envisioned, there is no way I can have an opinion as to whether legislation is needed. As Congress also has material responsibility for Indian trust management, there may well be opportunities for Congress to aid in the resolution of these issues.

Potential Conflicts of Interest

Question: Do you believe the duties of the Special Trustee include the obligation to publicly disagree with the Secretary of the Interior (e.g., in testimony to Congress or by declining to certify a budget proposal as sufficient to enable the Secretary to fulfill her trust responsibilities) where, in the opinion of the Special Trustee, the Secretary's intended course of action will not "effectively and efficiently" enable her to comply with her trust responsibilities?

Answer: The duties of the Special Trustee are specifically set out in statute. If confirmed, I will abide by those statutes. I believe the Special Trustee's success within the Department depends on an ability to work effectively and in a frank manner, with other members of the senior management team and the employees of the Office of Special Trustee (OST), the Bureau of Indian Affairs (BIA), the Bureau of Land Management (BLM), and the Minerals Management Service (MMS).

Question: Please describe in detail your involvement, whether as a party, witness, attorney, public official exercising line managerial authority, or otherwise, in any past or current litigation in which Indian beneficiaries of assets held in trust for them by the United States have alleged that the United States or its officials have breached any fiduciary duty or other legal responsibility to them with regard to the management of those trust assets.

Answer:

- The primary issue that arises in the *United States v. Navajo Nation* litigation occurred early in my tenure as Assistant Secretary for Indian Affairs. (See response to the next question.)

- During my tenure as Assistant Secretary for Indian Affairs, the Department was a party to Indian related litigation.

- I have been associated with the *Cobell* litigation.

- There may have been circumstances during my private sector experience where organizations I was affiliated with may have had an interest in Indian related litigation.

Question: With regard to *United States v. Navajo Nation*, now pending before the U.S. Supreme Court, please describe in detail your involvement, if any, in the renegotiation and approval of the coal leases at issue in that case; in particular, please describe: (1) any communications between you and officials of either the Navajo Nation or Peabody Coal Company or its predecessors with regard to the subject leases; (2) your role, if any, in delaying the issuance of a decision in a then-pending administrative appeal regarding the leases; and (3) your role, if any, in approving the leases in their final form.

Answer: My activities as Assistant Secretary for Indian Affairs during the time that gave rise to the *United States v. Navajo Nation* case is a matter that is described in the deposition I gave on Wednesday, September 20, 1995, in Tulsa, Oklahoma. That case is pending litigation and I do not believe further comment is appropriate at this time.

Question: With regard to *Cobell v. Norton*, in particular please describe your participation, if any, in the preparation of the July 3, 2002, "Report to Congress on the Historical Accounting of Individual Indian Money Accounts" and the "Historical Accounting Plan for Individual Indian Money Accounts" and the "Fiduciary Obligations Compliance Plan" prepared by the Department of the Interior and submitted on January 6, 2003, to Judge Lamberth.

Answer: As a member of the Department of the Interior's Indian trust management team, I am aware of the content of each of the aforementioned plans. My involvement ranged from review and commenting on draft text prepared by others, to drafting materials for others to consider.

Question: Do you believe your past or potential future involvement in the litigation identified in your answer to the last question creates any conflict with regard to your ability to fulfill the responsibilities of the Special Trustee as set forth in the 1994 Act?

Answer: No.

Question: Do you believe it is appropriate for the Special Trustee, as he performs his trust management responsibilities under the 1994 Act, to be assisted by attorneys who also represent defendants in litigation initiated by Indian beneficiaries who allege that the United States or its officials have breached a legal duty owed to the Indian plaintiffs? If so, under what circumstances would such assistance be appropriate?

Answer: If confirmed, my work as Special Trustee would be governed by the statutes setting forth the duties of the Special Trustee. Any advice, or legal assistance from whatever source, would be received and evaluated in the context of the standards created by law.

Question: Please state whether or not any of the attorneys who have assisted you in preparing for the hearing on your nomination or in the preparation of your responses to the questions posed to you, either orally or in writing, by members of this Committee have represented or are currently representing any defendant in now-pending litigation initiated by Indian beneficiaries who allege that the United States or its officials have breached a legal duty owed to the Indian trust beneficiaries.

Answer: The Department of Justice represents the defendants in the above-mentioned litigation. Nobody who currently works for the Department of Justice, and to the best of my knowledge, nobody who has ever worked for the Department of Justice on this case, assisted me in preparation for this nomination or in my response to your questions.

Potential Referral to District Court's Committee on Grievances in *Cobell*

Controversy exists over the propriety of communications sent to certain members of the plaintiff class in the Cobell case with regard to distribution of funds to members of the White Mountain Apache Tribe. In a recent filing, *Cobell v. Norton*, ___ F.R.D. ___, 2002 WL 31867798 (D.D.C. Dec. 23, 2003), Judge Lamberth

> ORDERED that, pursuant to Rule 83.16(d)(2) of the Rules of the U.S. District Court for the District of Columbia, this matter shall be referred to the Committee on Grievances of the U.S. District Court for the District of Columbia for an investigation of the conduct of defense counsel who appeared on defendants' Motion and Supporting Memorandum for Order Permitting the Provision of Copies of Historical Statements of Account to Class Counsel (filed on September 10, 2002) [footnote omitted] and any other attorneys that the Committee determines to have been involved in connection with the improper transmission of the statements of account, and for such further proceedings as it may deem appropriate."

Subsequently, Plaintiffs in the *Cobell* litigation "identified" you as among the "additional attorneys" whose actions should be reviewed by the Committee on Grievances. Plaintiffs' Notice of Supplemental Information in Support of this Court's December 23, 2002 Referral of Attorneys to the Committee on Grievances of the U.S. District Court for the District of Columbia, filed December 26, 2002. The Interior Defendants are vigorously contesting any suggestion that any government officials have acted improperly in this matter, however, and on January 8, 2003, they filed their Motion for Reconsideration of Order Prohibiting Communications with Class Members, the granting of which would moot the issue of possible sanctions against you and other government officials in this regard.

Question: Please describe in detail your activities with regard to the mailing of notices to certain members of the plaintiff class that is at issue in this particular instance.

Answer: Regarding the aforementioned controversy, during my current tenure at Interior, I serve as the Director of the Office of Indian Trust Transition in a senior management role. I am not serving in the role of an attorney.

Question: Please describe the current status of the proceedings on Defendants' Motion for Reconsideration.

Answer: It is pending before the Court

Question: Please describe the potential range of sanctions that could be imposed on attorneys referred to the court's Grievance Committee in the event that Committee's investigation finds that disciplinary action is warranted with regard to one or more of those attorneys.

Answer: Regarding the aforementioned controversy, during my current tenure at Interior, I serve as the Director of the Office of Indian Trust Transition in a senior management role. I am not serving in the role of an attorney.

Question: Please state your response to the substance of the allegations which have been made against you in this regard.

Answer: Regarding the aforementioned controversy, during my current tenure at Interior, I serve as the Director of the Office of Indian Trust Transition in a senior management role. I am not serving in the role of an attorney.

Questions Raised in Testimony Submitted to the Committee

Question: Certain tribes and other entities have submitted testimony to the Committee in opposition to your nomination. Where such testimony contains specific factual allegations of wrongdoing or of other circumstances that are claimed to render you unfit to serve in the position of Special Trustee, please present your view of the facts of the matters at issue and your response to claims regarding your fitness to serve in this responsible position.

Answer: I would respectfully refer you to the answers already provided to Chairman Campbell responding to the concerns raised by Tribes in letters to the Committee.

FEB 2 5 2003

Honorable Ben Nighthorse Campbell
Chairman
Committee on Indian Affairs
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

Enclosed, please find my responses to the written questions regarding my nomination to be the Special Trustee for American Indians, that were transmitted on behalf of Senator Lindsey Graham, that were transmitted on Monday, February 24, 2003.

If I can be of further assistance, please do not hesitate to contact me.

Sincerely,

Ross O. Swimmer
Special Trustee for American Indians-Designate

Enclosure

cc: Honorable Daniel Inouye
Vice Chairman
Senate Committee on Indian Affairs

RESPONSES FOR SENATOR CAMPBELL
Received February 25, 2003

Question 1: Can you explain how you will perform independent oversight on offices and functions over which you have operational control?

Answer: If confirmed as Special Trustee, my job would be to insure that statutory goals and other management objectives are achieved, either by working with the managers of programs over which I do not have operational control; or by working with the managers of programs over which I do have operational control.

Question 2: How will you conduct independent verification and validation of the EDS work to ensure that this work meets your requirements?

Answer: EDS was a facilitator for the "As Is Review." This report, which is compiled, has been resubmitted to the participants in the "As Is" process for their concurrence that the material in the report is correct. If confirmed, I would continue to work closely with beneficiaries and other interested parties to determine the appropriate method for reviewing the work of the Department's contractors.

Question 3 (a): Do you think there is a conflict of interest with EDS in having the same company that is performing the business process modeling eligible to bid on the work of executing the same business models?

Answer: No. First, EDS is not configuring the business process modeling. Second, with regard to this and all other contracting, contracts entered will be done in accordance with the applicable guidance and regulations governing federal acquisition.

Question 3 (b): Is it possible that EDS is configuring your business processes to better position their competitive advantages?

Answer: EDS is not configuring our business process.

Question 3 (c): What steps will be taken to guarantee fair competition?

Answer: If confirmed, I will follow all appropriate federal procurement provisions.

Question 3(d): How will you deal with conflicts of interest if you determine that one exists?

Answer: If confirmed, I will follow the process required by the federal procurement guidelines.

Question 4: Do you plan to start enforcing the Buy Indian requirements for contracts awarded from the Office of the Special Trustee?

Answer: Beneficiary services are currently provided by government employees, tribal governments and the private sector. If confirmed, I plan to comply with all applicable laws that apply to the Office of the Special Trustee.

Question 5 (a): "Finally, the friction between BIA and OST is particularly noteworthy. As long as it continues, we fear that little meaningful progress will be made in the arena of Indian Trust reform." Do you concur with the IG's comments regarding the relationship between OST and BIA?

Answer: Yes.

Question 5 (b): As the incoming Special Trustee, what specific steps are you going to take to correct this problem?

Answer: I believe the Special Trustee's success will depend on his or her ability to work effectively with senior members of the Department's management team and with the employees of the Office of the Special Trustee, the Bureau of Indian Affairs, the Bureau of Land Management, the Minerals Management Service and others. If confirmed, I would work to the extent of my ability, in accordance with all applicable laws, to make meaningful progress to reduce the friction between BIA and the OST.

OST Special Trustee for American Indians – Designate Swimmer

Senator Johnson

1. Question: In your current position as Director of the Office of Indian Trust Transition, you are largely responsible for defending against the Cobell plaintiffs. If you are confirmed, you will serve as the Plaintiff's trustee. Will your loyalties lie with the Department or with the tribes in which you serve? Please explain.

Answer: If confirmed, my loyalty will be to undertaking the broad duties and responsibilities of the Special Trustee as defined in the 1994 Trust Management Reform Act.

2. Question: What do you intend to do to prove to the tribes, tribal people, and the public that you can zealously represent the tribal interest as a trustee?

Answer: I intend to be an active Special Trustee and actively fulfill the role of Special Trustee that Congress intended in the 1994 Act.

3. Question: If you are confirmed, do you know whether someone will replace you as Director of the Office of Indian Trust Transition?

Answer: To the best of my knowledge, no specific determination has been made regarding this matter.

4. Question: If you are confirmed, will you agree to only sign off on accounting that satisfies ordinary trust standards for fairness and accuracy as set forth in case law and trust treaties?

Answer: If confirmed as Special Trustee, I will work to ensure trust fund accounting complies with the requirements of applicable statutes and case law.

5. Question: If you are confirmed, will you agree that the accounting must meet ordinary accounting standards for trustees including that all doubts are resolved against the trustee?

Answer: If confirmed as Special Trustee, I will work to ensure trust fund accounting complies with the requirements of applicable statutes and case law.

OST Special Trustee for American Indians – Designate Swimmer

6. Question: The President's budget indicates that the department is prepared to spend $275 million in fiscal year 2004, an 82 percent increase of $124 million, to beef up the Office of Special Trustee's operations. As the trustee, how do you intend to use that money?

Answer: If confirmed, I intend to use the funds in a manner consistent with the President's budget. The Department's Budget Office has provided me with the following information concerning the assumptions upon which the request was made. The Administration's proposed FY 2004 budget seeks approximately 47% of the requested funds, or $130 million to be used to conduct Congressionally mandated historical accounting for individual Indians and tribes; $79 million will be used for ongoing day-to-day trust accounting activities, including trust administrators and trust officers in field locations to provide better services to beneficiaries; $52 million will provide for Trust Accountability activities, which includes the trust reform projects, such as training, policy and regulation, probate clean up, and new system development.

7. Question: Will any of the huge proposed increase be used to increase the capacity of agencies to effectively carry out their duties? What specific plans do you have to reform the BIA agency capacity and function?

Answer: I believe the Department's trust reform budget increases will be used to continue the historical accounting and to improve how the Department provides trust services. I plan to work with the BIA to improve its ability to provide these services.

8. Question: Would you agree that the trust funds system is broken? Do you agree that legislation is the only way to resolve this broken system? Will you pledge to work with Congress in resolving the trust fund problems?

Answer: I believe that the Department can work with Congress to improve the trust asset management system. I believe that this effort has already begun and I am committed to continuing it.

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