S. HRG. 106–218

TRUST FUND MANAGEMENT REFORM ACT

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED SIXTH CONGRESS

FIRST SESSION

ON

S. 1587

TO AMEND THE AMERICAN INDIAN TRUST FUND MANAGEMENT REFORM ACT OF 1994 TO ESTABLISH WITHIN THE DEPARTMENT OF THE INTERIOR AN OFFICE OF SPECIAL TRUSTEE FOR DATA CLEANUP AND INTERNAL CONTROL

AND

S. 1589

TO AMEND THE AMERICAN INDIAN TRUST FUND MANAGEMENT REFORM ACT OF 1994

SEPTEMBER 22, 1999
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TRUST FUND MANAGEMENT REFORM ACT

WEDNESDAY, APRIL 28, 1999

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

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

Present: Senators Campbell, Inouye, and Murkowski.

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

The CHAIRMAN. The committee will come to order.

I apologize for being a little late. We were in the process of a vote. Senator Inouye will be along shortly.

Last Wednesday, I introduced three bills to provide needed reform to management of the Indian Trust Funds. These three bills, together with legislation I cosponsored with Senator Murkowski early this year, which was S. 739, I believe will comprehensively address all the aspects of the Indian Trust Funds reform.

It is the obligation of this committee and this Congress to do all we can to make sure the Federal Government upholds its trust obligation to Indian tribes and to Indian people. For that reason, for the past 3 years this committee held oversight hearings on the Department's plan to implement trust management reform. Without exception, every witness we heard, other than from the Department itself—that is tribal leaders, trust lawyers, a variety of experts, the General Accounting Office [GAO] and Paul Homan, the former Special Trustee for the American Indians—all testified that this plan of the Department's will not work.

The Department's response has been pretty much, "trust us" and we will get it done, but this committee believes the Indians are owed more than promises and that we have gone far enough.

Today, it is my hope that we will begin to lay the foundation for long-term and permanent trust reforms by receiving testimony on bills to require the Special Trustee to focus on data cleanup and internal controls and also to create a commission to make recommendations for specific reforms and which agencies ought to carry them out.

Let me say that I was deeply disappointed when reading the testimony that was turned in from the Department which puts a happy face on the trust fund efforts. For 3 years, the timetable of

implementation has been delayed and progress has not been encouraging. Indian country is continually asked to wait longer for their money.

I believe there are alternatives and these measures represent rational and reasonable proposals and we will bring this whole issue to closure.

[Text of S. 1587 and S. 1589 follow:]

II

106TH CONGRESS
1ST SESSION

S. 1587

To amend the American Indian Trust Fund Management Reform Act of 1994 to establish within the Department of the Interior an Office of Special Trustee for Data Cleanup and Internal Control.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 15, 1999

Mr. CAMPBELL introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

---

A BILL

To amend the American Indian Trust Fund Management Reform Act of 1994 to establish within the Department of the Interior an Office of Special Trustee for Data Cleanup and Internal Control.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 **SECTION 1. FINDINGS.**
4 Congress makes the following findings:
5 (1) Numerous studies by the Office of the In-
6 spector General of the Department of the Interior,
7 the General Accounting Office, and independent
8 auditors have criticized the absence of independent

1 oversight or other forms of internal control over the
2 Department's management of Indian trust assets
3 and trust funds.

4 (2) Indian and tribal account holders have indi-
5 cated that they will have little or no confidence in
6 the reform of the trust management system if the
7 reform is carried out by the same entities that are
8 responsible for the management of the system on the
9 date of enactment of this Act.

10 (3) It would constitute an inherent conflict of
11 interest or at least the appearance of a conflict of
12 interest if the entity establishing internal controls
13 for a trust management system were to be ap-
14 pointed, supervised, and subject to removal by the
15 entity that such internal controls are written for.

16 (4) Account holder confidence will be improved
17 if the same official is not simultaneously responsible
18 for the immediate supervision of the fiduciary and fi-
19 nancial reporting activities of both the trust fund ac-
20 counting system and the trust asset and accounting
21 management system.

22 (5) To the extent practicable, the reform of ac-
23 tivities and creation of internal controls as described
24 in the Department of the Interior's Trust Manage-
25 ment Improvement Project, High Level Implementa-

tion Plan dated July 1998, and any amendments or modifications to that plan, should be carried out by private contractors.

SEC. 2. SPECIAL TRUSTEE FOR DATA CLEANUP AND INTERNAL CONTROL.

The American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.) is amended—

(1) by redesignating title IV as title V;

(2) by redesignating section 401 as section 501; and

(3) by inserting after title III, the following:

"TITLE IV—MISCELLANEOUS PROVISIONS

"SEC. 401. SPECIAL TRUSTEE FOR DATA CLEANUP AND INTERNAL CONTROL.

"(a) ESTABLISHMENT.—There is hereby established within the Department of Interior the Office of Special Trustee for Data Cleanup and Internal Control. The Office shall be headed by the Special Trustee for Data Cleanup and Internal Control (referred to in this section as the 'Special Trustee') who shall report directly to the Secretary.

"(b) SPECIAL TRUSTEE.—

"(1) APPOINTMENT.—The Special Trustee shall be appointed by the Inspector General of the De-

1 partment of the Interior from among individuals
2 who possess demonstrated ability in the—
3 "(A) development and implementation of
4 internal controls;
5 "(B) development and implementation of
6 trust management procedures; and
7 "(C) conversion or rehabilitation of trust
8 management systems.
9 "(2) COMPENSATION.—The Special Trustee
10 shall be paid at a rate determined by the Secretary
11 to be appropriate for the position, but not less than
12 the basic pay payable at Level III of the Executive
13 Schedule under Section 5313 of Title 5.
14 "(3) TERM OF OFFICE.—The Special Trustee
15 shall serve for a term of 2 years and may only be
16 removed for good cause by the Secretary.
17 "(c) DUTIES.—
18 "(1) IN GENERAL.—Notwithstanding title III,
19 the Special Trustee shall oversee the following sub-
20 projects as identified in the Draft Trust Manage-
21 ment Improvement Project Subproject Task Up-
22 dates, dated April 1999:
23 "(A) Subproject #1, OST Data Cleanup.
24 "(B) Subproject #5, Trust Funds Ac-
25 counting System.

"(C) Subproject #9, Policies and Procedures.

"(D) Subproject #10, Training.

"(E) Subproject #11, Internal Controls.

"(2) OVERSIGHT.—The Special Trustee shall oversee the expenditure of funds appropriated by Congress for each of the subprojects described in paragraph (1), including the approval or modification of contracts, and make employment decisions for each of the positions funded for each of such projects.

"(3) CONTRACTING.—To the maximum extent practicable, the Special Trustee shall ensure that activities are carried out under this subsection through contracts entered into with private entities or through the retention of the temporary services of trust management specialists.

"(d) MODIFICATION OF IMPLEMENTATION PLAN.—To the extent that the activities to be carried out under subsection (c) are altered or amended as a result of any modification made after the date of enactment of this Act to the Department of the Interior's Trust Management Improvement Project, High Level Implementation Plan

1 (dated July 1998), the Special Trustee shall continue to
2 be responsible for overseeing such activities.".

○

II

106TH CONGRESS
1ST SESSION

S. 1589

To amend the American Indian Trust Fund Management Reform Act of 1994.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 15, 1999

Mr. CAMPBELL introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

---

A BILL

To amend the American Indian Trust Fund Management Reform Act of 1994.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "American Indian Trust Fund Management Reform Act Amendments".

SEC. 2. DEFINITIONS.

Section 2 of the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001) is amended by adding at the end the following:

1 "(7) The term 'Commission' means the Indian
2 Trust Reform Commission established under section
3 303.".

4 **SEC. 3. OFFICE OF SPECIAL TRUSTEE FOR AMERICAN INDI-**
5 **ANS, INDIAN TRUST REFORM COMMISSION.**

6 (a) OFFICE OF SPECIAL TRUSTEE FOR AMERICAN
7 INDIANS.—

8 (1) IN GENERAL.—Section 302 of the American
9 Indian Trust Fund Management Reform Act of
10 1994 (25 U.S.C. 4042) is amended by striking sub-
11 section (c) and inserting the following:

12 "(c) TERM OF SPECIAL TRUSTEE.—The Special
13 Trustee shall serve for a term of 2 years.".

14 (2) CONFORMING AMENDMENT.—Section 306
15 of the American Indian Trust Fund Management
16 Reform Act (25 U.S.C. 4046) is amended by strik-
17 ing subsection (d).

18 (b) INDIAN TRUST REFORM COMMISSION.—Section
19 302 of the American Indian Trust Fund Management Re-
20 form Act (25 U.S.C. 4042) is amended by adding at the
21 end the following:

22 "(d) INDIAN TRUST FUND REFORM COMMISSION.—

23 "(1) ESTABLISHMENT.—There is established
24 the Indian Trust Fund Reform Commission.

"(2) MEMBERSHIP.—The Commission shall be composed of the following members:

"(A) One member appointed by the Majority Leader of the Senate.

"(B) One member appointed by the Minority Leader of the Senate.

"(C) One member appointed by the Speaker of the House of Representatives.

"(D) One member appointed by the Minority Leader of the House of Representatives.

"(E) One member appointed by the Secretary of the Interior.

"(3) CONSULTATION.—Before making an appointment under paragraph (2), each individual referred to in subparagraphs (A) through (D) shall consult with each other individual referred to in those subparagraphs to achieve, to the maximum extent practicable, fair and equitable representation of different interests, with resect to the matters to be studied by the commission, including the interests of Indian tribes, appropriate intertribal organizations, and individual Indian account holders.

"(4) QUALIFICATIONS OF MEMBERS.—

1 "(A) IN GENERAL.—Each individual ap-
2 pointed as a member under paragraph (2)
3 shall—
4 "(i) have legal, accounting, regulatory,
5 or administrative experience with respect
6 to trust assets and accounts or comparable
7 experience in tribal government; or
8 "(ii) at the time of the appointment,
9 be an individual who is serving as a mem-
10 ber of the advisory board established under
11 section 306(a).
12 "(B) CONCURRENT MEMBERSHIP.—A
13 member of the advisory board referred to in
14 subparagraph (A)(ii) may serve concurrently as
15 a member of the Commission.
16 "(5) CHAIRPERSON.—Not later than the date
17 on which a majority of the members of the Commis-
18 sion have been appointed (but not later than 75 days
19 after the date of enactment of this subsection) a
20 chairperson of the Commission shall be selected a
21 consensus or majority decision made by the Sec-
22 retary of the Interior, the Speaker of the House of
23 Representatives, and the Majority Leader of the
24 Senate.

1 "(6) INITIAL APPOINTMENTS; PERIOD OF AP-
2 POINTMENT; AND VACANCIES.—
3 "(A) INITIAL APPOINTMENTS.—The initial
4 appointment of the members of the Commission
5 shall be made not later than 60 days after the
6 date of enactment of this subsection.
7 "(B) PERIOD OF APPOINTMENT.—Mem-
8 bers shall be appointed for the life of the Com-
9 mission.
10 "(C) VACANCIES.—Any vacancy in the
11 Commission shall not affect its powers, but
12 shall be filled in the same manner as the origi-
13 nal appointment, but not later than 60 days
14 after the date on which the vacancy occurs.
15 "(7) INITIAL MEETING.—Not later than 30
16 days after the date on which a majority of the mem-
17 bers of the Commission have been appointed, the
18 Commission shall hold its first meeting.
19 "(8) MEETINGS.—The Commission shall meet
20 at the call of the Chairman.
21 "(9) QUORUM.—A majority of the members of
22 the Commission shall constitute a quorum, but a
23 lesser number of members may hold hearings.

1 "(10) DUTIES OF THE COMMISSION.—The
2 Commission shall carry out the duties of the Com-
3 mission specified in section 303(a).
4 "(11) POWERS OF THE COMMISSION.—
5 "(A) HEARINGS.—The Commission may
6 hold such hearings, sit and act at such times
7 and places, take such testimony, and receive
8 such evidence as the Commission considers ad-
9 visable to carry out the duties of the Commis-
10 sion under this Act.
11 "(B) INFORMATION FROM FEDERAL AGEN-
12 CIES.—The Commission may secure directly
13 from any Federal department or agency such
14 information as the Commission considers nec-
15 essary to carry out the duties of the Commis-
16 sion under this subsection. Upon request of the
17 Chairman of the Commission, the head of such
18 department or agency shall furnish such infor-
19 mation to the Commission.
20 "(12) POSTAL SERVICES.—The Commission
21 may use the United States mails in the same man-
22 ner and under the same conditions as other depart-
23 ments and agencies of the Federal Government.

1 "(13) GIFTS.—The Commission may accept,
2 use, and dispose of gifts or donations of services or
3 property.
4 "(14) COMMISSION PERSONNEL MATTERS.—
5 "(A) COMPENSATION OF MEMBERS.—Each
6 member of the Commission who is not an offi-
7 cer or employee of the Federal Government
8 shall be compensated at a rate equal to the
9 daily equivalent of the annual rate of basic pay
10 prescribed for level IV of the Executive Sched-
11 ule under section 5315 of title 5, United States
12 Code, for each day (including travel time) dur-
13 ing which such member is engaged in the per-
14 formance of the duties of the Commission. All
15 members of the Commission who are officers or
16 employees of the United States shall serve with-
17 out compensation in addition to that received
18 for their services as officers or employees of the
19 United States.
20 "(B) TRAVEL EXPENSES.—The members
21 of the Commission shall be allowed travel ex-
22 penses, including per diem in lieu of subsist-
23 ence, at rates authorized for employees of agen-
24 cies under subchapter I of chapter 57 of title 5,
25 United States Code, while away from their

1 homes or regular places of business in the per-
2 formance of services for the Commission.
3 "(15) STAFF.—
4 "(A) IN GENERAL.—The Chairman may,
5 without regard to the civil service laws and reg-
6 ulations, appoint and terminate an executive di-
7 rector and such other additional personnel as
8 may be necessary to enable the Commission to
9 perform its duties. The employment of an exec-
10 utive director shall be subject to confirmation
11 by the Commission.
12 "(B) COMPENSATION.—The Chairman
13 may fix the compensation of the executive direc-
14 tor and other personnel without regard to the
15 provisions of chapter 51 and subchapter III of
16 chapter 53 of title 5, United States Code, relat-
17 ing to classification of positions and General
18 Schedule pay rates, except that the rate of pay
19 for the executive director and other personnel
20 may not exceed the rate payable for level V of
21 the Executive Schedule under section 5316 of
22 such title.
23 "(C) DETAIL OF GOVERNMENT EMPLOY-
24 EES.—Any Federal Government employee may
25 be detailed to the Board without reimburse-

1 ment, and such detail shall be without interrup-
2 tion or loss of civil service status or privilege.
3 "(D) PROCUREMENT OF TEMPORARY AND
4 INTERMITTENT SERVICES.—The Chairman may
5 procure temporary and intermittent services
6 under section 3109(b) of title 5, United States
7 Code, at rates for individuals which do not ex-
8 ceed the daily equivalent of the annual rate of
9 basic pay prescribed for level V of the Executive
10 Schedule under section 5316 of such title.".

11 **SEC. 4. REINVENTION STRATEGY.**

12 Section 303 of the American Indian Trust Fund
13 Management Act of 1994 (25 U.S.C. 4043) is amended
14 by striking subsection (a) and inserting the following:
15 "(a) IN GENERAL.—
16 "(1) REINVENTION STRATEGY.—
17 "(A) IN GENERAL.—Not later than 180
18 days after a majority of the members of the
19 Commission have been appointed, the Commis-
20 sion, in consultation with Indian tribes and ap-
21 propriate Indian organizations, shall prepare
22 for submission to the individuals and entities
23 specified in subparagraph (C) in accordance
24 with subparagraph (B) a recommended reinven-
25 tion strategy for all phases of the trust manage-

1 ment business cycle that ensures the proper and
2 efficient discharge of the trust responsibility of
3 the Federal Government to Indian tribes and
4 individual Indians in compliance with this title.
5 "(B) ADOPTION.—Not later than 90 days
6 after the date specified in subparagraph (A),
7 the Commission shall—
8 "(i)(I) meet to consider the reinven-
9 tion strategy developed under subpara-
10 graph (A); and
11 "(II)(aa) take a vote concerning the
12 adoption of the reinvention strategy for
13 recommendation to the individuals and en-
14 tities specified in subparagraph (C), and
15 adopt for recommendation the reinvention
16 strategy if it is approved by a majority
17 vote; or
18 "(bb) modify the reinvention strategy,
19 and if the modified reinvention strategy is
20 approved by a majority vote, adopt the
21 modified reinvention strategy for rec-
22 ommendation to the individuals and enti-
23 ties specified in subparagraph (C); and

1 "(ii) submit a recommended reinven-
2 tion strategy to the individuals and entities
3 specified in subparagraph (C).
4 "(C) INDIVIDUALS AND ENTITIES.—The
5 individuals and entities referred to in subpara-
6 graphs (A) and (B) are as follows:
7 "(i) The advisory commission estab-
8 lished under section 306(a).
9 "(ii) The Secretary.
10 "(iii) The Committee on Resources of
11 the House of Representatives.
12 "(iv) The Committee on Indian Af-
13 fairs of the Senate.
14 "(2) REINVENTION STRATEGY REQUIRE-
15 MENTS.—
16 "(A) IN GENERAL.—In preparing the re-
17 invention strategy under this subsection, the
18 Commission shall explicitly consider and include
19 in the report to the individuals and entities de-
20 scribed in paragraph (1)(C) findings concerning
21 the following options for fulfilling the obliga-
22 tions of the Federal Government (including the
23 trust obligations of the Federal Government) to
24 Indian tribes and individual Indian account
25 holders:

1 "(i) The creation of a Government-
2 sponsored enterprise or a federally char-
3 tered corporation to undertake some or all
4 of the management, accounting, or other
5 parts of the trust management business
6 cycle.
7 "(ii) The use of existing or expanded
8 authority under the Indian Self-Determina-
9 tion and Education Assistance Act (25
10 U.S.C. 450 et seq.) to undertake some or
11 all of the management, accounting, or
12 other parts of the trust management busi-
13 ness cycle.
14 "(iii) Requiring the Secretary to con-
15 tract directly with private sector entities
16 (including banks and other private institu-
17 tions) to undertake some or all of the man-
18 agement, accounting, or other parts of the
19 trust management business cycle.
20 "(iv) Any combination of the options
21 described in clauses (i) through (iii) that
22 the Commission considers to be appro-
23 priate.
24 "(B) ADDITIONAL REQUIREMENTS.—In
25 addition to meeting the requirements under

1 subparagraph (A), the reinvention strategy
2 shall—
3 "(i) identify all reforms to the poli-
4 cies, procedures, practices, and systems of
5 the Department (including systems of the
6 Bureau, the Bureau of Land Management,
7 and the Minerals Management Service)
8 that are necessary to ensure the proper
9 and efficient discharge of the trust respon-
10 sibilities of the Secretary in compliance
11 with this Act;
12 "(ii) include provisions to—
13 "(I) provide opportunities to In-
14 dian tribes to assist in the manage-
15 ment of their trust accounts; and
16 "(II) identify for the Secretary
17 options for the investment of the trust
18 accounts of Indian tribes in a manner
19 consistent with the trust responsibil-
20 ities of the Secretary in compliance
21 with this Act in such manner as to
22 ensure the promotion of economic de-
23 velopment in the communities of In-
24 dian tribes; and

"(iii) include recommendations concerning whether the position of Special Trustee should be continued or made permanent.

"(3) REGULATORY ENTITY.—

"(A) IN GENERAL.—Not later than 90 days after approving a reinvention strategy under paragraph (1), the Commission shall recommend to Congress the Federal agency that should be responsible for regulating the trust management activities of the Federal Government, with respect to funds held in trust under this Act, and submit such recommendations for legislation to implement the reinvention strategy as the Commission considers to be appropriate.

"(B) CRITERIA FOR RECOMMENDING REGULATORY ENTITY.—In determining which regulatory entity to recommend under subparagraph (A), the Commission shall consider—

"(i) the provisions of the recommended reinvention strategy approved under paragraph (1); and

"(ii) the similarity of the recommended reinvention strategy approved

1 under paragraph (1) and the functions and
2 activities of an entity regulated by—
3 "(I) the Office of the Comptroller
4 of the Currency;
5 "(II) the Board of Governors of
6 the Federal Reserve System;
7 "(III) the Office of Federal
8 Housing Enterprise Oversight;
9 "(IV) the Federal Trade Com-
10 mission;
11 "(V) the Office of Thrift Super-
12 vision; or
13 "(VI) any other Federal agency
14 charged with the responsibility of reg-
15 ulating public or private entities that
16 invest or manage financial re-
17 sources.".

○

The CHAIRMAN. I look forward to the testimony of our witnesses. We will start with the Secretary. Mr. Secretary, thank you for appearing today.

STATEMENT OF BRUCE BABBITT, SECRETARY OF THE INTERIOR, DEPARTMENT OF THE INTERIOR, ACCOMPANIED BY KEVIN GOVER, ASSISTANT SECRETARY FOR INDIAN AFFAIRS; JOHN BERRY, ASSISTANT SECRETARY FOR POLICY MANAGEMENT AND BUDGET; AND THOMAS THOMPSON, ACTING SPECIAL TRUSTEE

Mr. BABBITT. Mr. Chairman, thank you.

The letter which came to me indicates that I have 5 minutes.

The CHAIRMAN. No; you have as much time as you like. We try to ask most witnesses to limit their time but administration officials, we give all the time you need.

Mr. BABBITT. Mr. Chairman, thank you.

It's a pleasure to be back before the committee. I appreciate very much the opportunity to continue the discussion of these most important issues.

I have brought with me Kevin Gover, the Assistant Secretary for Indian Affairs; John Berry, the Assistant Secretary for Policy Management and Budget; and Thomas Thompson, the Acting Special Trustee.

At the outset, if I may, just a word about the progress of the various issues. I'd like to briefly review the process of implementation of the Trust Asset and Management System, the TAMS system, the status of the Trust Fund Accounting System, say just a word or two about the high level implementation plan and about our search for a successor trustee to be recommended to the President.

The deployment of the basic data processing system, the TAMS system, is going exceedingly well. I was in Billings in June for the startup of that process with our partners from Applied Terra Vision and the other contractors. The system is moving along nicely. We now have it running in parallel with the existing systems. That's a very important milestone.

The testing that is being done on the system by systems research and applications, the verification and validation is moving along on another track. This is an entirely independent person whose job is to critique the system as it comes up and to write an absolutely independent report.

It is my sense that we will now move to conclusion. That SRA's final report is about 6 to 8 weeks away and I anticipate making a final deployment decision by late November. I invite the committee and its staff to watch this process. It is moving very nicely. The GAO has been invited. The party is open to all participants and I can only say to you that I believe we'll be back here in early November with a comprehensive report which says the TAMS system is meeting expectations, that the original decision to go with off-the-shelf technology was entirely correct and that the validation and testing that is taking place demonstrates that.

The TFAS system, the Trust Fund and Accounting System, which is at the top of this pyramid has been much less controversial. I believe there is, in fact, a pretty good consensus about the correctness of that decision. In any event, it's being deployed quite

rapidly now. The TFAS system has been implemented in Albuquerque, in Navajo, the eastern area office, Billings, and Minneapolis. We have four offices to go—Aberdeen, Anadarko, Muskogee, and Portland.

I believe I can say to you with confidence that system is being deployed and will be operational across the entire system by the spring of 2000.

A word about the high level implementation program. The reason I raise this is because this was the subject of considerable review during the trial before Judge Lamberth. It's an important document because it is a continuing, ongoing assessment and refinement of the issues that will ultimately bring this process to closure, whether it's data cleanup of the land records and information system, the issues of appraisal, the probate backlog and we will be putting out a new version of the high level implementation program in the very near future.

In fact, it's entirely possible that we will be putting out two editions of that in the near future, one on our own internal deadline and one in response to any decisions that Judge Lamberth may hand down, whether by declaratory judgment or otherwise.

I know there's a lot of interest in the Special Trustee search. We have departed from the normal process and engaged a search consultant. This is standard practice in business and industry. My sense from a preliminary look at what has come back is that it was an excellent investment. We've had a rather extensive and comprehensive response that has been narrowed down to six candidates who will now go into a further screening and analysis process prior to making—I don't want to say making a recommendation, I want to say prior to counseling the President about his options as to the administration's choice to send to this committee.

With respect to the legislation, I don't propose to spend much time on 1587 and 1589. My position is well known. I believe these bills are ill-advised; I have consistently said that you don't solve problems by fragmenting authority. You solve problems by lines of clearly placed authority and by programs and goals which can be reviewed. That process is underway. It's working and the idea of having two special trustees, I respectfully suggests borders on fantasy.

With respect to the commission, I would only say this. We've got an oversight process going. I'm in front of the appropriate commission right here this morning and it's called the Senate Committee on Indian Affairs. I am a bit mystified as to why it is there would be yet another committee. One thing this process does not lack is committees.

With respect to the third bill which is the fractionated airship issued, I strongly support the committee's efforts. It is an excellent bill. It has been worked by committee staff and committee members in consultation with Mr. Thompson and his staff. This, as I have reiterated frequently, is an urgent issue because at the bottom of all of these problems is the outgrowth and continuing playout of the effects of the Dawes Allotment Act of 1887.

Until we get control over this geometric increase in the number of undivided interests in these allotments, the rest of it is in, some measure, unavailing. So I would again reiterate I think that bill

was developed in exactly the right way for exactly the right reasons. It is a model of the way my staff, the Special Trustee and this committee can produce productive results.

I would be happy to answer any questions.

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

The CHAIRMAN. Thank you, Mr. Secretary, for that support of S. 1586. I won't belabor that since you're already helping us. Let's talk about the others you are not so supportive of.

First of all, I wish I was as confident as you, but the general lack of progress over the last 5 years has made a lot of us somewhat gun-shy, particularly with the Special Trustee having resigned. You say it's going exceedingly well and that probably by November you will have a report but you also say that you're continuing to revise the plan. If it's continually being revised, maybe you can tell us why these bills wouldn't be effective. If it's continually being revised anyway, why wouldn't they help?

Mr. BABBITT. The bills?

The CHAIRMAN. Yes?

Mr. BABBITT. Because they are mistaken in their fundamental concepts. The idea of having a separate Special Trustee for data cleanup is fantasy. The world just doesn't operate by fragmenting administrative reform tasks creating yet another process to quarrel over, going out and hiring a search firm, spending 6 months trying to find someone, getting it through the White House, having it come over here to get caught up in the typical gamesmanship in Congress, which there might or might not ever be a Trustee confirmed, the Trustee then goes out and spends 6 months hiring a staff, spending money and then another 6 months learning what's been done over the last 2 or 3 years, you just don't put more horses on the boat in midstream.

With respect to the five member committee, all I'm saying is, Senator, you are diluting the significance of this body. I find it astonishing that a Senate committee should say the answer to this is to abrogate our oversight responsibility and to have yet another committee appointed by four or five people roaming across the landscape. This is your responsibility. This is your function and you are manifestly capable of carrying it out.

The CHAIRMAN. Let me suggest I don't believe the GAO has ever been accused of gamesmanship. In June, the GAO labeled your plan highly risky. What has changed since then that would make the GAO—I haven't heard from them in the last week or two but what would make it any better now?

Mr. BABBITT. Well, Senator, the proof of the pudding is that it is working.

The CHAIRMAN. Have the Indians got their money yet?

Mr. BABBITT. Pardon me?

The CHAIRMAN. Have the Indians got their money yet? If they haven't got their money, it doesn't seem to be working to me.

Mr. BABBITT. It's ING, it's a work in process.

The CHAIRMAN. They've heard that for a long time. When they have to pay their bills, unfortunately, when they go to the bank to pay their bills, they can't tell them "I've got work in progress, so trust me on a house loan" or "trust me on a car loan."

In any event, I think you're overstating the confidence of the plan but nevertheless, before this committee in March, you testified that of the $2.4 billion in unreconciled accounts, there is "no instance of theft or fraud."

Mr. BABBITT. No, sir; I did not testify. I did not say that in March.

The CHAIRMAN. You did not say that?

Mr. BABBITT. I did not.

The CHAIRMAN. On page 32 of your testimony, it said,

> Now, I would like to say to the press with all respect, you have badly misrepresented the story and I would say with all respect to the fourth estate, that $2.4 billion has not been stolen and it is not subject to fraud.

Those were your words.

Mr. BABBITT. I stand by that, $2.4 billion has not been stolen.

The CHAIRMAN. "It is not missing. We have not tracked it back." Do you stand by that?

Mr. BABBITT. Senator, I just want to be precise. I did not say there has been no fraud.

The CHAIRMAN. You go on to say,

> There is no suggestion in this process that there has been any significant sums of money that have been absconded with, simply not there.

I assume that means the money.

Mr. BABBITT. Senator, that is a correct reading of my testimony and I stand by that.

The CHAIRMAN. Let me go on. In last Friday's Wall Street Journal, the Chevron Corporation agreed to settle with the United States for $95 million for knowingly undervaluing—that sounds like fraud to me—oil extracted from Native lands. Yet you say that S. 1589 is unnecessary because there is no fraud.

Mr. BABBITT. Senator, you have consistently opposed our royalty reform act and what you are reading, it seems to me, precisely makes the case that you're opposing royalty reform is allowing the oil companies to continue to get away with that kind of collusion and fraud.

The CHAIRMAN. We're going to hear from some tribal witnesses again. I have a hunch they probably won't share your view but with all due respect, if the administration is here simply to say right or wrong, you're staying with your game plan, I'm not sure we're going to find a common ground we can work with. I would hope you're not going to just hunker down because I think somewhere in there you truly do want to help American Indians and you know I do too. So hopefully, we can find some common ground as we move forward.

Senator Inouye, did you have any comments or questions?

Senator INOUYE. Thank you very much.

I would ask unanimous consent that my statement be made a part of the record.

The CHAIRMAN. Without objection, so ordered.

[Prepared statement of Senator Inouye appears in appendix.]

Senator INOUYE. Mr. Secretary, as you know, this matter has been the cause of much concern here and the attempt being made may have many faults but is there anything in these bills that you may find it possible to embrace as being helpful to your effort?

Mr. BABBITT. Senator, the fractionated airship bill will be an enormous help and I enthusiastically support that effort.

Senator INOUYE. When will you have a trustee?

Mr. BABBITT. Senator, the search firm has now come back after an extensive nationwide search with several hundred names and six recommendations. The process of screening and interviewing those is a relatively structured process to some degree dictated by OPM and Federal regulations. We will proceed through that as expeditiously as we can.

The nomination then goes to the White House and that is, of course, beyond my control.

The CHAIRMAN. If the Senator would yield 1 moment, may I ask you, Mr. Secretary, of those six, how many are Indians?

Mr. BABBITT. I have not seen the six names.

Senator INOUYE. Do you think this matter will be resolved, the appointment, in about 1 year? I am saying this because it is election time, as you know.

Mr. BABBITT. Senator, I can't speculate but I will do my best to try to keep this moving and to stress the importance of it.

Senator INOUYE. My next question, Mr. Secretary, has to do with the word "consultation." It is a word that has caused us much misery over the years.

Are you satisfied that in coming up with your strategic plan, that you carried out sufficient consultation with tribal leaders?

Mr. BABBITT. Senator, we went through this in some great detail in the trial before Judge Lamberth. What I said in the courts in the course of testifying was that the strategic plan is now history and that as I look back over that experience, we could have done a better job of consultation.

The difficulty in this consultation phase is the traditional consultation in Indian country goes through tribal governments and the plaintiffs in the lawsuit contend that traditional consultation is not appropriate, that consultation should run to the individual account holders. That has proven to be a much more difficult concept to put into practice.

What I said to the court and would say to you is we understand the importance of this and will try to see if we can't improve those processes.

Senator INOUYE. Will there be any consultation in the selection or the nominating process of the trustee?

Mr. BABBITT. Senator, there was consultation last time in the selection process for the first trustee and there will be consultation this time. I don't think that the consultation can extend to outside—and I use outside in the sense of not within the Government—in the process of interviewing. There are procedures, there are privacy interests here that are quite significant and there are OPM regulations.

Rather than making a specific decision about this, I have asked Kevin Gover, John Berry and Mr. Thompson and Ed Cowen to try to structure as much consultation as we can consistent with OPM regulations and with the privacy concerns of the applicants.

Senator INOUYE. I wish you the very best, sir.

Mr. BABBITT. Thank you, Senator.

Senator INOUYE. Thank you very much.

The CHAIRMAN. Senator Murkowski, did you have some comments or questions?

Senator MURKOWSKI. Is it appropriate to include questions in the general statement?

The CHAIRMAN. Certainly.

Senator MURKOWSKI. Good morning, Mr. Chairman and Mr. Secretary.

I've been concerned for some time about the status of the accountability of the BIA relative to the American Indian trust responsibility associated with the funds. Mr. Secretary, it seemed to me that in your statement, you said that TFAS system had been much less controversial?

Mr. BABBITT. Yes.

Senator MURKOWSKI. I understand that Hilda Manuel, Deputy Commissioner of the Indian Affairs, states they are going to suspend all actions relating to the distribution or disbursement of $11 million in proceeds—excuse me, disbursement of the IIM accounts—and to convene a meeting of all the tribes in Billings in July which suggests that while it may not be as controversial, I wonder if in reality it's workable?

Mr. BABBITT. Senator, it is workable. All of these issues have some measure of controversy around them. I readily acknowledge that.

Senator MURKOWSKI. This is a letter which, Mr. Chairman, I'd ask be entered into the record. It's dated July 20 and it says,

> This letter is to notify you that I have temporarily suspended all actions relating to the distribution of disbursements of the proceeds of tribal relending funds. The suspension will continue until we have an opportunity to meet and discuss with you and your staff options to the current practices. As such, representatives of the BIA and OTFM plan to meet in Billings on July 28 to discuss proposed resolutions.

That meeting has taken place.

Mr. BABBITT. Senator, if I may, I'd like to ask Mr. Gover to respond.

Senator MURKOWSKI. Sure, go ahead.

Mr. GOVER. Senator, that meeting has taken place and we had a follow-up meeting here in Washington. Those funds are being disbursed at this point. It wasn't really a problem with the TFAS system, it was a problem with the documentation supporting the disbursements which the Special Trustee's Office pointed out was not always adequate. So we said, well, we're going to stop making mistakes until we begin to supply the adequate documentation.

It's an example of a phenomenon in this business which is every time we solve a problem, we find two or three smaller problems underlying it. We found those problems and I believe we've resolved them now.

Senator MURKOWSKI. I gather this system is referred to as a $411 million system?

Mr. BABBITT. I refer to it as TFAS, Trust Funds Accounting System.

Senator MURKOWSKI. The information we have, Mr. Secretary, is in the fiscal year 2000 budget, justification for the Bureau of Land Management concedes that the Department is abandoning the $411 million record system called the ALMRS system.

Mr. BABBITT. Senator, I think you are referring to the ALMRS system in the Bureau of Land Management.

Senator MURKOWSKI. I am.

Mr. BABBITT. That's not a part of this process.

Senator MURKOWSKI. All right. Let's talk about the ALMRS system. You're familiar with that?

Mr. BABBITT. I am.

Senator MURKOWSKI. This is a $411 million system.

Mr. BABBITT. That's right.

Senator MURKOWSKI. Are we abandoning that system, Mr. Secretary?

Mr. BABBITT. Senator, when I arrived here in 1993, the first thing I did was convene a staff meeting on the administrative side and urge that we abandon the ALMRS system. That was in April 1993. I was informed that system had been mandated by the U.S. Congress and the result was that we staggered along, over my objections, for approximately 6 years before we cashiered it.

The lesson from ALMRS is very simple and it's a lesson which I believe is worth repeating. That is that 1960's-style, CPU-dependent systems are for the 1960's and by the 1970's, that was fairly clear and by the 1980's, it was crystal clear, but it was not clear to the congressional committees.

I regret that I was not more persistent in coming back and saying we've got to quit throwing good money after bad because that's exactly what we did.

Senator MURKOWSKI. You don't see any parallel here between what we've come to grips with in the ALMRS system which is that it's a 1960's system that's not working and the TAAMS system which we seem to be readjusting now because the first efforts seem to indicate that it was unworkable?

Mr. BABBITT. Senator, they are as different as day and night. They are entirely different, if I may explain.

The ALMRS system is out of a 1960's concept which says since data processing is highly centralized and mechanical, we need to design from the ground up systems built around a heavy dependence on CPUs. Thirty years later, what the world is about is distributed information processing systems which can be bought off the shelf and modified. That's exactly what we did.

The TFAS system was quite an easy decision because the off-the-shelf programs and equipment for TFAS are really plain vanilla. The TAAMS system is a little bit more subtle because the analogs are not exact. What the GAO said was they didn't like that decision.

I'm not here to fight with GAO but I respectfully submit that we made the correct decision. GAO said we're nervous about going for off-the-shelf. There was a trace of the 1960's kind of mentality. What they wanted to do was go out and start designing from the bottom up, a slight overstatement. We stood our ground on that and I think we're going to be vindicated.

Senator MURKOWSKI. You indicate in general terms that Congress bore the responsibility but let me give you a quote from the GAO regarding BLM.

> The BLM did not develop a system architecture before designing and developing the ALMRS modernization and this is the key reason why ALMRS did not meet the Bureau's business needs.

That is page 10 of the GAO testimony.

Land management systems, major software development does not meet BLM's business needs.

Further, there is a quote from GAO regarding TAAMS,

If the Department has not yet defined an integrated architecture for Indian trust operations, without a target architecture, agencies are at risk of building and buying systems that are duplicative, incomplete and unnecessarily costly to maintain and interface.

It seems to me, Mr. Secretary, that we have a good deal of exposure for deja vu all over again. I want your assurance that is not the case.

Mr. BABBITT. Senator, I'd be happy to do that for this reason. The GAO is mixing apples and oranges. They are still stick in this 1960's mentality. They are right about ALMRS because ALMRS is a system architecture that had to be predicated on 1960's-style system design.

Where we part company from the GAO is they are saying the lesson ALMRS is you've got to do *x* and *y*. What we're saying is sorry, the lesson of ALMRS is obsolete. That's what you learned when you were being trained 30 years ago.

With respect to the system architecture of the TAAMS system, there are two ways to go about it. It basically boils down to attitudes about risk assessment and how redundant you want to be in terms of hiring the world as consultants and building systems on the 1960's analog from the ground up. We do not accept that because I believe in modern, distributed systems where you have off-the-shelf software and components. The risk analysis takes you to a different position. That is that the risks in using these systems by analogy are quite manageable because of the extraordinary flexibility that did not exist in ALMRS days in working off comparable systems.

Is there some risk? Yes. The way to risk down to zero is to take another 5 years listening to consultants yammering on about their favorite theories.

Senator MURKOWSKI. Mr. Secretary, I appreciate the explanation but I don't know that I feel necessarily any better because I think the GAO predicted the IRS system would be a failure and the IRS said it wouldn't and they stuck by their guns and it cost us about $3.3 billion. That's perhaps a generality but the problem I have with your explanation is it seems to me that we're stilling looking at whether or not there's a defined architecture for Indian trust operations in the TAAMS. That is the criticism that GAO has made because they consider that integrated architecture for the Indian trust corporations is lacking from the system and it either is or isn't. You say it is and I guess we'll just express our concern and hold you responsible if it isn't. Is that fair enough?

Mr. BABBITT. Senator, if you go to Billings, MT today, you will see the TAAMS system running in parallel with the old system. You will meet the people, you will meet the outside critics from SSA Associates. You can talk to them and hear what they have to say.

Senator MURKOWSKI. We can go down rabbit trails on computer systems until the cows come home.

Mr. BABBITT. It's very important. I don't view it as a rabbit trail, it's very important.

Senator MURKOWSKI. It will either work or it won't, but it didn't get off to a very good start. Let me move on to the differences of opinion that we've had with regard to the handling of the trust responsibility by the BIA under your department.

You appeared in March 1999 at a joint committee hearing and there was some question of threat of subpoena. You have your own story on that. There was a meeting July 14, a joint committee hearing, that you did not attend, and I understand your record of meeting with tribal leaders to discuss trust fund reform has left a bit to be desired. Maybe that's on both sides of the issue, the tribal leaders as well as yourself.

How do you square your avoidance of this issue if indeed you avoided it when trust reform is obviously a high priority of your department? Could you explain to me why wanting Native Americans to enjoy the same returns on their trust funds as other Americans who have their trust funds invested and successfully managed in the private sector—I know you don't like the term, we all say things we don't mean but there was some reference to racist—"Mr. Babbitt charged that critics, whom he didn't identify, have shown deep condensation toward the BIA." The critics were racially motivated, I think was your terminology.

I would hope that would not include the members of this committee who obviously have an oversight responsibility.

Mr. BABBITT. Senator, with all respect, what is the question?

Senator MURKOWSKI. The question is, what is your explanation of this kind of statement?

Mr. BABBITT. Which statement are you referring to?

Senator MURKOWSKI. Explaining that particular reference to the critics criticizing the manner in which, under your stewardship and others, this trust accounting responsibility has gotten so mired down. Your response seems to have some kind of racist motivation.

Mr. BABBITT. I do not impute that motivation to any member of this committee.

Senator MURKOWSKI. Could you explain the statement a little further because it sounds like——

Mr. BABBITT. Senator, the country is full of people who believe that Indians are incapable of managing these kinds of systems. Many of the criticisms are directed at the BIA, start explicitly with that assumption.

The CHAIRMAN. These charges weren't toward the Department, they were from the Department.

Mr. BABBITT. Whatever the source of them, I respectfully disagree with them.

The CHAIRMAN. If I might interject, Senator, it was tribal leaders themselves that charged a lack of consultation in March and June. Throughout this total dialog, it's been tribal leaders who have been upset about it. As you probably know, the IG in the Interior is looking at the BIA employees lobbying against S. 739. I think some of that lobbying was also connected to these accusations of racism.

Go ahead, Senator.

Senator MURKOWSKI. I would just conclude that the generalization was not made in the tenor that it was communicated, Mr. Secretary, because obviously in our oversight we have an obligation. This system hasn't been working and we don't have to go into it

and explain why it hasn't worked but clearly, for reasons perhaps you can better explain, the system has gotten out of control. The recordkeeping is inadequate and you're trying to do something about it.

You and I factually have a difference of opinion on whether this can better be achieved by contracting outside with professionals who have the capability of doing this in everyday processing where they obviously have the accountability of losing the business if they don't perform as opposed to trying to build it up in-house.

I think you're making a mistake but you have to be held accountable. You're the Secretary. I think it would be much cheaper for your budget and the BIA to contract out this service but you're hell bent to do it yourself and you're going to be held responsible for it.

The Department of the Interior sent out letters to tribal leaders paid for at Government expense which gave false and misleading information about this legislation. In the letter I received on Monday, July 26, the Department acknowledged the inappropriateness of these activities,

We agree that the BIA Superintendent, Robert Ecoffey's interpretation of the legislative proposal was substantially incorrect and misleading. Further, if necessary, we will take disciplinary action and hold the individuals accountable when laws are violated."

I assume the director of the BIA bears the responsibility in this area but I'd appreciate an explanation of why the Department of the Interior would send out letters to tribal leaders, paid for at Government expense, which gave false and misleading information about the legislation?

Mr. BABBITT. Senator, I accept responsibility. We have 10,000 employees in the BIA. Sometimes they make mistakes; when they do, we try to admonish them, make sure they do better next time and accept the responsibility. I accept it.

Senator MURKOWSKI. Has there been any disciplinary action taken?

Mr. BABBITT. I leave that for the internal process. The answer is I don't know if it's appropriate. Presumably, it will be. I would ask the director.

Mr. GOVER. Mr. Chairman and Senator, we're awaiting the results of the IG investigation and we will respond appropriately when we receive them.

Senator MURKOWSKI. I noted in the second to last paragraph of Robert Ecoffey's letter, "Please share this information with the voting population within your represented districts." Are you aware of that paragraph?

Mr. BABBITT. I am now.

Senator MURKOWSKI. I'd be happy to provide you a copy of that letter.

I'm told your office has received copies, but I'm not surprised that you haven't seen it. A letter was sent under the signature of the Chairman and myself directly to you on July 19 at which time we included the letter. I would appreciate if you would report back to the committee subject to the Chairman relative to this matter.

I agree with you totally, Mr. Secretary, that these things happen in big agencies but it's appropriate that someone square a few heads to ensure what is appropriate and inappropriate.

I don't know whether you want to get into this but I'm sure you're aware that as a consequence of an article that appeared in the Washington Times this morning concerning yourself and your nominee, Mr. Hayes, for the Deputy Secretary, that Mr. Hayes' nomination has been temporarily pulled from the committee pending an evaluation of the circumstances in that article.

Mr. BABBITT. I'd be happy to.

Senator MURKOWSKI. It might help clarify this matter.

Mr. BABBITT. I'd be happy to discuss it.

When I came to Washington, 7 years ago, I sat down with the ethics folks.

The CHAIRMAN. If I can interject, Mr. Secretary, you're welcome if you can abbreviate this but I don't want to get offtrack from the hearings. Just give us an abbreviated version.

Mr. BABBITT. I did all my ethics work and was advised that there conceivably be occasional conflicts arising out of my ownership of stock in the family land and cattle and other related businesses. After a fair amount of discussion, I responded to that by divesting myself of all those interests. They are gone forever. Neither me, my wife, nor my children have any present, future or contingent interests in any of my relatives' businesses in Arizona.

It has been 8 to 10 years since I represented one of the applicants in this license proceeding that was going on before the Forest Service. Obviously I terminated that representation.

The decision on this issue is being made by the Forest Service. Forbes Magazine ran a blistering editorial saying that since I was making the decision, this was somehow a conflict. I'm not making the decision. I have no interest in it, I haven't represented anybody for 6, 8 or 10 years. That's the bottomline.

The National Park Service has one interest and that is we are planning and building a transit system from Grand Canyon out to the park boundary which would connect with this development which is the subject of the dispute over the decisionmaking by the Forest Service. Those are the facts.

David Hayes, obviously as my acting deputy, has spent sometime talking with Grand Canyon National Park about this transit program. It's a big deal and we're trying very hard to make sure it works. That's it. I appreciate your interest.

Senator MURKOWSKI. Would you give us a designee so that we can communicate directly and get responses to questions for the committee?

Mr. BABBITT. I'd be happy to do that.

Senator MURKOWSKI. I assume you did recuse yourself from the Canyon Forest Village Project?

Mr. BABBITT. Absolutely, although under no legal obligation to do that. I wrote a recusal letter 7 years ago which is a matter of record.

Senator MURKOWSKI. Do you know if Mr. Hayes spoke with the Regional Forester, Eleanor Tokaros, to confirm the changes that allegedly you directed in the projects EIS?

Mr. BABBITT. I expect he did, I'm sure he did.

Senator MURKOWSKI. That you directed in the EIS?

Mr. BABBITT. The issue was whether or not the transit system under our authority at the National Park should be wrapped into the Forest Service EIS or not. We had a variety of discussions about that and it was my feeling that we should stay away from the EIS that is the subject of the dispute between the developers.

I believe Hayes did say to the Forest Service, we'd like to get out of this and you can keep the transit, the light rail system separate by putting the EIS process in two packages. Apparently what happened, the Forest Service merged the EIS process into one package which has our transit issues and the so-called Canyon Forest Village.

I can say to you with great confidence that none of us have ever discussed the Canyon Forest Village application. We have no interest in that at all. We could care less. I have no financial interest.

Senator MURKOWSKI. Let me pose the question in another way. Did you direct in any manner or form Mr. Hayes in the determination or direction of the EIS on this project?

Mr. BABBITT. My best recollection is that I've certainly discussed the transit piece of the EIS. The recusal doesn't apply anymore, it was seven years ago, and second, I've certainly discussed the transit stuff.

The interface here is David Hayes saying to the parties out there, we want the light rail park transit piece as separate as we can get it. Did I direct him to do that? That probably came out of a group discussion.

Senator MURKOWSKI. You don't have any recollection of directing the EIS in any manner or form?

Mr. BABBITT. With the exception that the Department advocated for separating the transit, that's it. Our interest was transit. I'm dead certain of that. I do not remember precisely the form of the discussions that led to that position. I would guess that it came from Hayes and the Solicitor's Office.

Senator MURKOWSKI. So it's an allegation that you directed the EIS and that's either false or true.

Mr. BABBITT. No.

Senator MURKOWSKI. I don't know.

The CHAIRMAN. We're getting a little far afield, Senator. I'd like us to get back on the agenda.

Senator MURKOWSKI. I encourage you to provide copies of the documentation, including phone records and electronic correspondence on this matter between yourself and Mr. Hayes and between Mr. Hayes and any Forest Service official so that we can try and resolve Mr. Hayes' nomination.

Thank you for the allotted time, Mr. Chairman. I appreciate it.

The CHAIRMAN. If you'll provide that to the Senator, I'd appreciate that. We will also send some further written questions to you.

Let me close by thanking you for being here, Mr. Secretary, but also I might tell you that we've had some representatives of tribes express some concern that if they criticize your high level plan that there may be reprisals against them or something of that nature. I just want your personal assurance that will not happen.

Mr. BABBITT. You have that assurance.

The CHAIRMAN. I appreciate that. Thank you for appearing, Mr. Secretary.

The CHAIRMAN. Our next panel will be Paul Homan of Homan Associates of Washington, DC; Mark Fox, Intertribal Monitoring Association on American Indian Trust Funds from Albuquerque; Jerry Reynolds, associate director, First Nations Development Institute, Fredricksburg, VA; and Anna Whiting Sorrell, program analyst, Confederated Salish and Kootenai Tribes of Montana.

I understand, Mr. Chambers, you're here in place of Mr. Homan, correct?

Mr. CHAMBERS. I don't know, Mr. Chairman. I was asked to come up here yesterday.

We do have limited time here. We took a lot more time with administration witnesses than I had wanted, so if this panel would abbreviate your comments and turn in your complete testimony, I would appreciate it.

Why don't we start with Chief Tillman who is speaking for Mr. Fox, correct?

Mr. FOX. Yes.

The CHAIRMAN. Why don't you proceed, Chief?

STATEMENT OF CHIEF CHARLES TILLMAN ON BEHALF OF MARK FOX, INTERTRIBAL MONITORING ASSOCIATION ON AMERICAN INDIAN TRUST FUNDS, ACCOMPANIED BY SUE MASTON, CHAIRPERSON, YUROP TRIBE AND DAVID HARRISON, OSAGE TRIBE

Mr. TILLMAN. It gives me great pleasure to be here today. I've come 1,400 miles. I hope I get to talk more than 5 minutes. Nevertheless, I have some people with me, Sue Maston who sits to my left. I also have with me David Harrison who is from the Osage Tribe, and he's pretty well known.

The CHAIRMAN. He's well known to this committee.

Mr. TILLMAN. First of all, the ITMA, whom I represent, the Intertribal Monitoring Association, would like to commend this committee in the recent bills that it has introduced, Senate Bills 1587 and 1589. These bills appear to be great strides that you have taken in overseeing this trust fund.

We would like to tell you today that we've only gotten this bill, Senator. I just became aware of it on Friday and I'm up here today to talk to you. We had a meeting last night trying to support this bill and the full board of the ITMA was not present but about four or five of us who were. That four or five does support the bill.

We have some comments I'd like to read and maybe I should read that to you. I don't like to read, I just like to talk.

The CHAIRMAN. That works better in this committee too.

Mr. TILLMAN. You have the complete testimony but ITMA, a few years ago in 1994, said to you, you're going to let the fox guard the hen house and I think that's what is happening, Senator. We supported ITMA to be put under a separate entity than the Department of Interior but it seems this scenario goes on and on and on.

You all asked excellent questions of the Secretary and he promises you some more. He promises you and he promises you and he promises you and says trust me, trust me, trust me.

My money is in the bank in Osage Agency and it's over $10,000 and I'm sitting here listening to him and I don't trust him because I have to watch that account all the time because I've heard the horror stories.

The CHAIRMAN. I wish he had stayed to hear that comment.

Mr. TILLMAN. I have heard horror stories about people losing their money.

We have a new system called TAAMS. The ITMA has some knowledge of TAAMS but never once has the Interior consulted Indian tribes; never once have they told us the problems. We've had to dig and find out these problems ourselves. It's getting to where it's insulting to us. I feel that the Secretary and the Assistant Secretary have insulted the ITMA on numerous occasions.

Why do I say that? Why do I come here and tell you that? Because of the meetings we've had that didn't amount to much. It was kind of like this is more promises, maybe they didn't show up. One time, they said they didn't even want to meet with us but we present Indian people.

We are here to express to you that when I have to go back home and talk to my tribe, back to Oklahoma and try to explain to some of the tribes interested in this, they don't even know what TAAMS means.

I think what ITMA is telling you today is that these bills, Senate Bills 1587 and 1589, we will try to support in any way we can. We know that you're here to support the Indian people. I feel that from you. Every time I come up here, I feel that Senator Inouye, Senator Murkowski, and all of you are here because you have an interest in us. You're here to protect us and see that the right thing is done, and that's all we're asking, the right thing to be done.

We're asking that when I put my money in the bank, I know that it is safe in that bank. I don't know that in the IIM account. I don't know that in tribal trust.

The Osage Tribe filed a lawsuit in Claims Court the other day to make sure. We had to, Senator, we just had to. We got tired of the rhetoric, we got tired of the false promises. So we filed that lawsuit in Claims Court for no less than $100 million. That's where we are today.

I still support ITMA and what it stands for. I still come up here and support you and I support all the Indian people across this country to make sure that things are done right.

Thank you very much.

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

The CHAIRMAN. We thank you for your testimony. I apologize you weren't notified sooner. We just introduced this bill last week.

I agree with you that certainly, trusting your money to the Bureau is like trusting it to a bank, you expect them to do the right thing, to keep accurate records and make sure you can get it out when you need it. After you put it in the bank, you go back and they tell you, "well, we've lost the records and don't know where it is but keep trusting us." That doesn't get the bills paid, does it?

Mr. TILLMAN. No; it does not. It's like an old sermon. Like when he finishes and says, trust me, trust me, I want to say amen, amen, sir and don't have to preach the sermon to say this is sermon number one, two or three because I've heard it before so many

times that I know what your sermon is before you say it. That's what the Indian people have noticed coming out of Interior, the same old sermon. We've been hearing it for years, Senator.

The CHAIRMAN. Thank you.

Mr. Reynolds.

STATEMENT OF JERRY REYNOLDS, ASSOCIATE DIRECTOR, FIRST NATIONS DEVELOPMENT INSTITUTE

Mr. REYNOLDS. Thank you, Senator. I want to thank you for the energy and keen attention you've brought to this issue along with your colleagues on the committee.

I'm Jerry Reynolds with First Nations Development Institute. In the interest of time, I won't spend too much establishing our bona fides, it's in the written record. We've worked on trust issues for about 15 years. Our president, Rebecca Adamson, is actually working on indigenous issues in the Philippines where she is maybe waiting out a typhoon or something, so I'm here in her stead. Thank you for having us.

We're convinced that despite some good signs, reform will not succeed in the current atmosphere of negativity, blame shifting and apparent political gamesmanship. As this goes on, the Indian trust fund's beneficiaries sit stranded between dusting off a strategic plan that First Nations and many tribes found heavily flawed or rallying behind this high level implementation plan of Interior's which the GAO has dismantled and which your witness, Donald Gray, I believe on July 14 also criticized I thought to devastating effect. Indian beneficiaries deserve better choices.

We applaud you for trying to give them some with these bills and we're here to offer our support in providing them as well. They would enforce the internal conditions and establish the institutional structure that will make it possible to perhaps settle the trust accounts and manage them properly in the future.

We can perhaps see some political combinations coming about because of this that would move this issue forward in ways it is hard to anticipate. We applaud it on that basis as well.

We also think this blue ribbon approach that you have come up with is politically realistic. A hundred times out of a hundred times there will be bumps in the road but we like the realism we see here. We find it very level headed. It is very important to remove the cause of trust fund mismanagement; the Interior Department, its antiquated systems and it appears today, with all respect to the Secretary, perhaps it's attitudes.

From the process of the fix, this relationship would be frowned upon and disallowed in any other corporate restructuring. We don't see that it's good enough for Indian people. It simply won't work, we're afraid.

We're also confident that barring a specific choice by a specific tribe, trust accounts will continue in trust status whatever the ultimate findings of the commission.

In brief, Senator, for all the reasons that you have reviewed and that I won't rehash, we urge you to stay the course with these bills, to call on us for help and information that we can provide. I hasten to add that we're not a membership organization so sometimes we move somewhat more quickly than membership organizations.

When we ask you to stay the course, we're not foreclosing perhaps some fine-tuning based on the response of organizations like ITMA and others. We'd simply ask that we be a part of the review process for those as well.

I thank you for having us here. I'm actually kind of eager to answer any questions but in the interest of time, I will close with that.

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

The CHAIRMAN. We appreciate that and we do appreciate any constructive criticism for the bills because the bills were put together by us and our staff but the people whose lives are going to be affected need to have some input also.

I wanted to also tell you before we go on you have a lady named Rebecca Adamson who works with you?

Mr. REYNOLDS. She's the president of First Nations and founder.

The CHAIRMAN. I read with interest the article that she wrote as an op-ed piece for Indian Country Today. You might thank her for me personally for setting the record straight when there was that disinformation campaign going on that literally terrorized some tribes. Some were just scared to death and we were getting letters and calls from them about what this bill would do. In fact, it doesn't take anything away, it's going to help them.

Mr. REYNOLDS. That's exactly right. I will convey your message and thank you very much.

In addition, I might add that we had it from the source that this disinformation was going forward, was coming from the BIA. We had it straight from the source. I'm not at liberty to name names but it's a professional who knew what they were talking about. It was distressing to see racism crop up in this way.

Again, I'm always happy to say more about it but in the interest of time.

The CHAIRMAN. I think that article went a long way in getting out the correct information.

Mr. REYNOLDS. Many thanks, Senator.

The CHAIRMAN. Ms. Sorrell, go ahead and proceed.

STATEMENT OF ANNA WHITING SORRELL, PROGRAM ANALYST, CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD RESERVATION

Ms. SORRELL. Chairman Campbell and Senator Inouye and other members, my name is Anna Whiting Sorrell. I'm an enrolled member of the Confederated Salish and Kootenai Tribes.

I have had the wonderful opportunity over the past 7 years to work directly with our tribal council and I'm speaking here today on behalf of the council and have been given that honor by our vice chairman, Fred Matt, to come here today to represent maybe a little different point of view.

I want to respect the chief and say it's so much easier to carry on a conversation with you but I'm certainly not as experienced as he in doing that so if you'll bear with me, we have submitted written testimony and that's here with you today.

I would like to begin with a few comments about who our tribes are and what we represent, talk a little bit about our general observations about where we see this movement has gone over the

past few years and then end with some specific comments about the bills that we too just saw very recently.

Confederated Salish and Kootenai Tribes have led the way for many years in assuming responsibility for protection of our land, air, water and needs of our membership. We have done that very effectively through all of the options that are provided to us through the Indian Self-Determination Education and Assistance Act. Confederated Salish and Kootenai Tribes in the Nixon era was one of the few tribes to really take on contracting. We did that with the Social Services Program.

Under the guidance of our late chairman, Michael T. Pablo, we really forged the direction in self-governance as one of the first tribes within that demonstration project. We really looked to his leadership to bring us to where we are today, where we operate almost all of the functions previously provided by the BIA and the IHS. We have really exercised our options to the fullest extent and we are one of the few tribes that you might know that is actually mentioned in the Self-Determination Act as we are precluded from compacting some certain functions on our reservation.

We lead a model dam safety program. Mickey was so proud of that. I know he came to this committee with pictures and showed them that we were able to bring in a construction project for renovations of one of our dams not only in a shorter timeframe than was expected but under cost. He was very proud of that and we continue to be proud of that.

We moved forward as one of the first tribes and continue to be one of the very few tribes that has really taken on the management of the financial trust services. We have developed a relationship since April 1996 with the Office of Trust Funds Management as we have attempted to work with that program to manage the IIM accounts and the other financial trust services.

It has been a very difficult relationship at best. I think what I'd really like the committee to hear from me today is if you only go away with one thing that I have said is that it is our belief that the way the bureaucracy is currently implementing the Trust Reform Act of 1994 in its actual implementation is really in conflict with the Indian Self-Determination Act of 1995. We truly believe that a discussion needs to be held with tribal leaders and tribal governments to bring this conflict to resolution. As it is currently being implemented, they are almost at opposite ends.

We have run the IIM program. We have about 4,500 accounts and operate the program. As we speak today, we have a team of people from the Office of Trust Funds Management actually evaluating that program. It's a bit ironic to think that for a $51,000 program, the Office of Trust Funds Management has sent seven people to evaluate the program.

We believe that they are really holding us to a much higher standard, that no other agency within the OTFM is being held to. We welcome that because we know we're running a good program. Although the program was in shambles when we got it, we have really held it to a good standard. We have electronic imaged all of the documents, we have cross-trained staff, we have a comprehensive plan to ensure that our customers are being served and we

have implemented internal controls which are audited each year by an external auditing firm.

We believe tribes can do this and if you allow tribes to be a part of this process, we really believe that they can run these programs in ways that will really benefit account holders such as my little girl who is an account holder and who I really take personal in protecting her money being held in trust for her.

The Office of Trust Fund Management and the Office of the Special Trustee have really stalled the effort of implementing self-determination in Indian country as it relates to trust fund reform. They have taken positions that have made it very difficult for tribes to take on this function. They have failed to communicate with tribes and to educate them about the wonderful opportunities for them to really take on these programs and operate them in a way that meets the Federal trust need, but also the needs of our consumers, the needs of our customers, our account holders.

We have found that OTFM continues to develop this highly centralized system which doesn't allow the tribes to come in. It exaggerates the conflict between the Trust Reform Act and the Self-Determination Act. We believe the way the bureaucracy is responding to the current litigation is also contributing to this retrenchment of the bureaucracy, taking away from the tribes and putting back into centralized bureaucracy.

As I gave you the example with the audit and evaluations, we believe they are really trying to hold tribes to a standard that they wouldn't meet, although we welcome the challenge.

Therefore, in S. 1589, we strongly endorse the reinvention strategy that asks for tribes to be involved in undertaking some or all of the management accounting and other trust management in the business cycle.

We would also encourage you to really stop and think when you say you're going to take something out of the Department of the Interior and really remember that when you take something out of the BIA or out of IHS and place it somewhere else, you bring out this issue about how do tribes access it through self-determination. So keep that on your radar screen, please.

We believe there has been a lack of participation by Indian tribes in this whole process. Although Secretary Babbitt's memorandum where he urged or called for the development of the high level implementation plan, he did call for the development of an outreach and consultation plan. None exists to this date as we are aware. I don't know if any of you have seen it. It is not in the document that describes the 13 categories.

We were not consulted in the high level plan, we haven't seen the consultation plan, we have not been adequately informed as tribes about the implementation of the plan. When we were asked if we would be consulted, former Special Trustee Paul Holman said we wouldn't, he would give tribes updates. I heard that myself.

We feel the high level implementation plan fails to take into consideration tribal operation. If you look at the 13 categories, you're going to find tribes are mentioned in one area and that's training.

I'm surprised to hear Secretary Babbitt say that there is a new plan, that it has been revised. Once again, tribal governments and

tribes haven't been consulted and so we're looking at seeing a plan that will be implemented once again without consultation.

On the specific legislation, I would ask that Congress again really consider the impact of self-determination as it moves forward with trust fund management reform. Tribes can do the job. You have a good Indian policy. It's called Indian self-determination and we believe it has been effective.

We have questions about the legislation and those questions are addressed here, so I won't go through those. We would really ask that you look at the questions we have and try to address them before the legislation moves forward.

Finally, if the commission is formed, we would really ask two things. First, that the commission not be allowed to remove the management of trust resources that generates revenues from the Department of Interior until the question of self-determination and its impact is considered. If you take it out and put it in a separate entity or under a commission, and the issue around self-determination isn't resolved, functions the tribes currently provide could be taken away. We are seeing that happen in OTFM.

Second, we believe you have to require the commission to do meaningful consultation with tribal governments. Although tribal organizations like ITMA can provide wonderful information, they don't speak to this body on the government-to-government relationship. The tribal governments do. We believe that our account holders really look to the tribes for that kind of leadership.

Finally, we would ask that you really look at the composition of that commission and don't limit it to what you currently have where the current Special Trustee Advisory Board might have a preference or is given a preference but really open it up to Indian people who we believe are out there and could do this job.

I really appreciate coming here today. I thank you very much for inviting us and would certainly answer any questions you might have.

[Prepared statement of Ms. Sorrell appears in appendix.]

The CHAIRMAN. Thank you. It's kind of unfortunate that the protocol of committees is that the administration witnesses always testify first. I think they ought to testify last and hear some of the comments of the people themselves that legislation affects. Unfortunately, a lot of times they testify and then they bug out, they leave, so they don't hear this. They may read it sometime or they may not, but they don't hear it.

I was particularly interested in your comments about seven people monitoring a $50,000 system. That's exactly what they ought to hear and exactly one of the things that is wrong with the Bureau now.

You haven't seen the consultation plan, by the way, because there is none yet. You heard the Secretary say maybe another six or eight weeks, maybe November. Well, good luck, maybe it will happen then but in any event, I do appreciate your testifying.

I do want to extend, on behalf of the committee, our condolences about Chairman Mickey Pablo. He was a good friend of the committee and a personal friend of Senator Inouye and myself too. He was certainly a leader in every sense and we're very distressed to hear of his passing.

The CHAIRMAN. With that, we'll go to Mr. Reid Chambers who always makes a very articulate and well-spoken testimony. We're delighted to have you here. I always learn so much when I hear you speak. I'm looking forward to your comments.

STATEMENT OF REID CHAMBERS, ESQUIRE, LAW OFFICES OF SONOSKY, CHAMBERS, SACHSE, MILLER AND MUNSON

Mr. CHAMBERS. This panel is a hard act to follow, Mr. Chairman. Thank you for the good words.

Chairman Campbell, Vice Chairman Inouye, thanks for inviting me to testify about problems we're having concerning my client, the Assiniboine and Sioux Tribes of the Fort Peck Reservation in Montana and their tribal credit program.

Basically, the tribes have operated a tribal credit program for 40 years. Since the Indian Financing Act in 1974, they have operated it as a revolving loan fund under that act. The procedures and policies of the credit program have always been approved by the BIA. They've always been in full compliance with the Bureau's regulations. The program is subject to an annual audit which would pick up any problems.

I know both of you know the Fort Peck Reservation, but for the record, it is up in the northeastern corner of Montana, right near the North Dakota and Canadian border. It's an area of very high unemployment, 50 percent at best, seasonally higher. More than 50 percent of the Indians on the reservation are below the poverty level.

The credit program is a vital program for providing small loans to the individual Indians on the reservation for things like funeral expenses, medical needs, sometimes to take care of utility bills, to keep the utilities coming during the winter months and it is a revolving loan program. The last full year, it made 8,500 loans for less than $2,000 to residents of the reservation, to tribal members.

It was working just fine under the regulations approved by the BIA. When a person takes out a loan, often an IIM account is the only security they have. They don't have any other assets. So under the tribal program, a borrower can pledge the IIM account and when they sign a pledge on it, if they become in default, the program can put a hold on the IIM account. They send a so-called "Kennerly" letter giving the borrower notice of the delinquency, an opportunity for a hearing, and an opportunity to resolve it. If it can't be resolved, or they don't seek a hearing, within 40 days I believe it is, the IIM account is disbursed to satisfy the loan.

Beginning in June, the Office of Trust Fund Management began breaking something that was working perfectly well. The Office of Trust Fund Management refused to put holds on accounts and refused to allow disbursements from accounts unless various other documentation was provided. They didn't do this by giving a list to the Fort Peck Tribal Credit Program saying the following requirements are new requirements we are insisting on. They didn't come up and meet with the tribal credit program. There was no negotiation about this.

The people administering the program found out simply piecemeal as they weren't able to access IIM accounts, and the system began to break down because if they couldn't get the old loans re-

paid, they didn't have money to enter into new loans as the summer was going on.

The tribes were absolutely astonished on July 20—Senator Murkowski mentioned this in questioning the Secretary—to get a letter from Deputy Commissioner Manuel putting a hold on all disbursements from all IIM accounts in the whole Billings area and then calling for a meeting for the tribes to come into Billings and meet with her assistants and talk about it.

The meeting was held. What we found out at the meeting was there were problems with one tribal credit program in the Billings area, not any of the others. It's simply not responsible government to put a hold on all disbursements from all accounts if there are problems with one credit program. My friend, Assistant Secretary Gover testified there were some problems. There were 25 problems for one tribe but that's not a reason to call a meeting in Billings and bring every tribal leader to Billings and that's not a reason to put a hold on all tribal credit programs in the northern Great Plains.

At that meeting, there were specific discussions between the tribal leaders at Fort Peck and OTFM and BIA. It was agreed there would not be any imposition of any new requirements, that the old requirements that had always been administered by the program would be honored and the disbursements could come from IIM accounts and the Hilda Manuel hold was released.

Lo and behold, in August, nothing changed. The Office of Trust Fund Management began insisting on reviewing the principal and interest payments from every account even where the Tribal Credit Program had given notice of delinquency, sent out the Kennerly letter and the 40-day period had expired. Of course the program is still hamstrung. The loan base of the revolving loan fund is dwindling and we're facing winter now.

We can't seem to get them to keep their agreements. I don't know whether the problem is the TFAS system or the TAAMS system or whether it's the people administering it but this is a program that was working vitally needed, really it's desperately needed. We can't seem to cut through the problems. It's frustrating for us and very, very frustrating for the tribe.

I'm inclined to agree with Ms. Sorrell. I think what's happening is that the BIA people are trying to take over management of a tribal program. They are not honoring self-determination. I'm also inclined to think that they are very jittery about the lawsuit before Judge Lamberth. Hilda Manuel's letter comes right out and says it was a review that identified a number of serious deficiencies which we believe could potentially place the BIA and OTFM at significant risk of liability. So I think they are very jittery about that lawsuit and they are taking it out on the tribal programs. That's what is happening.

I don't know what else to do except to ask the committee for help. I really appreciate your giving me the opportunity to testify here. We just keep running into stone walls at the Bureau on this.

I'd be happy to answer any questions you have.

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

The CHAIRMAN. Let me start with you first, Reid. What is the practical effect of putting holds on the credit programs of all the

tribes in the Billings area? It certainly upsets their credit ratings doesn't it?

Mr. CHAMBERS. Then they can't access any of the IIM accounts to service existing loans, Mr. Chairman. If they can't do that, those loans don't get repaid.

Another thing that happens is that since the loans don't get repaid, interest keeps accumulating for the individual Indians on the loans. So when they finally do get repaid, the individual Indians owe more interest than they should.

The CHAIRMAN. The Bureau doesn't stand good for the increased interest, I don't suppose?

Mr. CHAMBERS. No; we argued that they should pay it and there were some discussions where they agreed to consider that at the Billings meeting but we haven't been able to get them to come through with that. They should because it really is their fault, Mr. Chairman.

The CHAIRMAN. In your view, did the Department make an adequate effort to solicit tribal input when they were developing their high level implementation plan?

Mr. CHAMBERS. I don't know about the high level implementation plan but I do know this, that they never once came up to Fort Peck, either before or after the July meeting, though they promised to, and go over the new requirements they wanted to impose with the tribal leaders. They did no training, they did no discussions or negotiation. It was just a we know best kind of approach. So it's not late 20th century Indian policy.

The CHAIRMAN. Are you aware of any effort to solicit input from the tribes now as they're developing a new plan?

Mr. CHAMBERS. I'm not aware of that.

The CHAIRMAN. Ms. Maston, did you have some additional comments?

Ms. MASTON. Yes; thank you, Senator.

I'm Susan Maston. I'm chairperson of the Yurop Tribe which is the largest tribe in the State of California. We are a large account holder in that we have approximately $52 million in a trust account.

I have been actively involved as an elected official of the ITMA board since its inception. I'd be happy to address the questions you have just raised. In fact, the Department has never been willing to sit down with the tribes to discuss any of its implementation plans at any stage. In fact, ITMA has had to fight actively and aggressively approach them to demand that they sit down with us as they move forward with the management of trust accounts or the mismanagement of trust accounts.

I want to acknowledge how much we appreciate the fact that you are raising issues that we have been raising since day one and that these pieces of legislation are making a good attempt to look at the fact that the Special Trustee needs to be separate and apart from the Department of Interior if it is to be successful in looking at trust reform.

It is also equally important that professionals be involved who know the business of trust management so that we can deal with the management of trust accounts in an efficient manner. That has not been occurring. You can have the best of systems but if you

don't have the expertise for laying out the plan and getting the system to work for you, it is not going to work.

They just did a review of 270,000-plus accounts. Of those, 380 had adequate data to enter into a system so that you can manage the trust assets or the trust account. The fact that they are not looking at how do you do data cleanup tells you they are not capable of managing or developing trust reform.

We would like to commend you on recognizing that you need people who deal with trust management if you're going to effectively manage trust accounts. It just makes good sense.

I'd like to say how much I appreciate the fact that you have acknowledged that we deserve to have the kind of management that every other citizen gets in the management of trust assets or trust accounts. I think that is something that has been a long time coming and needs to happen and happen now.

We're excited about working with you to make this piece of legislation work for Indian country. I'd like to tell you there is a wealth of knowledge and experience in tribal leadership that sits on the ITMA board and also a wealth of knowledge and experience that sits on the Special Trustee Advisory Board. Neither body has been approached by the Department for any consideration during the process.

I appreciate your efforts to bring up how important it is to have consultation in the selection of the Special Trustee. You need individuals who have been monitoring this process since the beginning of time to be involved in that process. We cannot allow for the selection of that individual who is so important to ensuring that the trust asset reform is conducted in an efficient and independent manner, if we do not have the involvement of the people who are directly affected.

With that, I'd like to encourage you to continue to insist upon the Department having adequate consultation with the tribes, with ITMA, with the advisory board and with the individual account holders.

I thank you for your time.

The CHAIRMAN. Thank you for your comments.

Chief Tillman, you know the Pratt boys, Mike and I've forgotten his brother's name, who used to play football at Utah?

Mr. TILLMAN. Yes, sir; I do know them boys and they are good singers.

The CHAIRMAN. I used to dance with them years ago and for you non-Indians in the audience, don't take that wrong. [Laughter.]

They were good singers, good dancers and good football players. Say hello for me. I haven't seen them for a long time.

Chief, you heard the Secretary speak very glowingly of the reports. Do you share the optimism that there's going to be some progress and this will be brought to a head in the next couple of months?

Mr. TILLMAN. As I expressed to you before, Senator, when you have someone that has a gross amount of mistakes that have happened over a number of years, it's historical, then he comes up here and tells you I'm going to fix it, that inclines me that somebody better bird dog them.

The last time I was here, I said we need some bird dogs to watch them folks because the simple fact of it is I think it may be a cover-up. I think we ought to get an independent firm, like the Osage Tribe did when they assessed their own agency. We got a firm like Coopers Lybrand to come in and assess that agency. It was an outsider's view.

Here we have the insider's view. Like I said, the fox is guarding the hen house again. I just hate to see the waste of all this money, taxpayers' money, going to an effort that may not get us to where we want to be.

Ms. MASTON. If this effort is the priority of the Department, why have they not identified an individual who is responsible for implementing that priority? Why haven't they given adequate resources? You cannot identify one person whose single responsibility is to oversee the trust reform or the implementation plan. There's not one.

The CHAIRMAN. They say they are down to the final six out of 50 that are being interviewed but they already had a good one once before and you know what happened to him.

Anna, how would you respond to the argument that the BIA can only meet the trust standards of the 1994 Trust Fund Act by centralizing the management of the trust funds? Do you agree with that?

Ms. SORRELL. I absolutely disagree with that, Senator. I think the Flathead is an example of that. We have really taken on the management of our trust assets in a way that could be a model.

We did approach the Special Trustee and asked him to enter into a demonstration project with us early on in this process and said we understand we're doing something a little different here, we're probably pioneering an effort and we think we have something to offer. We were told we had nothing to offer to this effort and were put on the back burner.

We want to encourage you to consider how do tribes do that, maybe through a variety of demonstration projects looking at tribes that have been successful in doing this and taking on these operations. I think we know all across the Nation centralization isn't working. The more you can give the decisionmaking to the lowest level where people are really impacted, the better.

I know I look at accounts different because they have a direct impact on my life and my little girl's life and our family. I know our council does because people go to the ballot box and they vote for them every four years. They're held accountable in a way that people in the Department of the Interior never will be held.

The CHAIRMAN. Decentralizing management to the tribes has been a thrust of this committee. I agree with you one of the problems with centralized management of anything is you make people dependent on the management. That's basically what I think we have now. That's one of the reasons they don't want to give up the management or for anyone to come in and help them straighten it out, because it makes tribes less dependent on them.

Let me ask one or two more questions before I turn it over to Senator Inouye.

Mr. Reynolds, after many hearings on this committee, I happen to believe the institution is incapable of internal reform. What is your view on that?

Mr. REYNOLDS. Yes; that's correct. We heard it loud and clear today when Secretary Babbitt, with all due respect, said that you cannot solve problems by fragmenting authority. As Anna just touched upon, if authority is the problem, you'd better decentralize it or learn to love the problem because you'll live with it for a good, long time.

At First Nations Development Institute, I'll go back 6 years, this was when Senator Inouye and the late Senator Synar were the whiphands here and they got some hearings going and we wanted very much to see if we could work with Interior. We thought a few things were still missing and it was hard to see where things were headed. We tried very hard to work with Interior to bring them more into the process and to see if perhaps we could move the process forward in that way.

All we ended up getting from them were these plans and promises of plans and would you just sign onto this incomplete plan which we will complete to your satisfaction six months from now after the opportunity to pass the Reform Act of 1994 had slipped away.

If they had wanted to reform themselves at that point, that was a good way to start. If race were the problem, they could have solved that when they had a very talented Indian man, Jim Parris, working for them and making progress and everyone I think who was a part of the process at that time thought he was doing very well. I know he would be the first to say he wasn't 1 minute away from solving it all but he had turned some important corners. He was a Native American male who could have done a great job. Instead, he ended up saying something that was reasonably accurate and helpful to the committee and got transferred out of OTFM and ended up resigning.

I think that time after time, we have seen that opportunities come up where they would have a chance to change their ways a bit. I think we really saw a lot today when Secretary Babbitt said very clearly, he wasn't equivocal, he said, you cannot solve problems by fragmenting authority. That seems to be the prevailing attitude there and it is wrong.

The CHAIRMAN. Tribes are moving more and more into the corporate world and if you look at corporate America, which are the best run corporations probably in the world, to my knowledge almost all of them look to outside voices when they are trying to reform their management.

Mr. REYNOLDS. That is exactly so.

The CHAIRMAN. The reason is because they need objective viewpoints. They are not turf conscious and are not protecting their hierarchy and so on. It's amazing to me that we have such resistance on the part of the Bureau.

Mr Reynolds. I've been baffled by it too. I came here not quite understanding how it could be but I think today we learned quite a lot. It's not going to change from within. That was pretty clear.

The CHAIRMAN. I appreciate your testimony.

Senator Inouye, did you have some comments or questions? I didn't mean to take so long.

Senator INOUYE. Thank you.

Before I proceed, I would like to state that August 1999 was a sad month for all of us. Indian country lost two great leaders, one from Oklahoma, the other from Montana. We will miss the articulate voice, the obvious dedication and commitment of leaders like Browning Pipestem and Mickey Pablo. So I would like to join those in expressing my condolences and sympathies.

I have two questions I would like to ask the whole panel. I have heard the word bureaucracy mentioned by all here. Do you have any concerns that we will have in S. 1587 a Special Trustee for data cleanup and internal control, that this would add to the redundancy of the bureaucracy or confusion?

Mr. TILLMAN. Senator, I think, speaking for the ITMA, the board has not met to be able to go over the specific issues and that is one. Personally, I think it is probably a step forward in not creating big government or more government, it's kind of a check and balance type of thing to make sure the job gets done. That's the way I see it.

Ms. SORRELL. Senator, thank you for your kind words. I know Mickey loved coming here and part of why he loved coming here was the relationship he had with you personally.

Flathead is really worried about adding more bureaucracy to this current system. We are having an extremely difficult time getting through that at this point. We're afraid that another Special Trustee might continue to centralize rather than decentralize, so unless it's clearly defined how that Special Trustee will work with tribes, then we would be very reluctant to support the creation of another Special Trustee.

We had a wonderful opportunity to visit with the person that is in charge of records management in Kenida and one of your staffers was there. The way he described it was records were his life. He talked about it with passion. So I think we really need to look at what currently is going on and how this gentleman might actually support. He was there talking with tribes, so we were assured on that level.

Ms. MASTON. Senator, to address this issue, we're a little bit concerned and we had some discussions about how a new Special Trustee would interact with the old Special Trustee and the advisory board to the existing Special Trustee. I'm wondering if we couldn't look at how we can strengthen what already exists to meet the kind of objectives it looks like you're trying to reach within this piece of legislation.

I don't know if that's possible but looking at can we elevate the advisory board to the commission level. I know you talk about the advisory board and maybe some of those could be considered.

I guess since we have not had an opportunity to really sit down and understand your intent with this, we didn't formally take a position but we had those kinds of discussions when we did meet.

Mr. REYNOLDS. Senator, I think it would be realistic to have some concerns. As I mentioned earlier, in a process this complex, there will be bumps in the road one hundred times out of one hundred times. However, I think the experience of Paul Homan, who

was hugely talented, and yet for reasons of bureaucracy, politics and on and on, he didn't have the success he had hoped.

I think that suggests that you almost do need a separate person in this position. The bill, as I read it, creates a safe harbor for that person within Interior much in keeping with the recommendations of Mr. Gray on July 14, and in addition, the data here is so phenomenally complex and difficult that I don't and First Nations doesn't necessarily view it as a bureaucracy. It's another effective tool that is sorely needed.

I think in many respects, Mr. Homan's tenure as Special Trustee foundered over issues like this. He simply didn't have that safe harbor and the data is so terrifically complex that you need someone with a safe harbor to get on top of it and get a team around it.

We have some concerns, yes, but properly policed and monitored, I think this is a good step.

Mr. CHAMBERS. Senator Inouye, we haven't had a chance to consult with our clients or even to discuss this in the firm about the recent proposal contained in the bill. I'll just express my own concern.

I guess I'm uncertain about it. I'm deeply troubled with what has happened at Fort Peck and it seems like it's happening other places in the Billings area. But, I am concerned about fragmenting the responsibility for the trust responsibility and administration of Indian affairs.

As you know, perhaps the happiest 3 years I ever spent in a job was in the Interior Department as the Associate Solicitor many years ago. I know you can accomplish great things in the Department. I know also it can get really bogged down. You get very frustrated with the Federal Acknowledgement Project, and some of these other things, and you think "well maybe we'd better move them out of the Department". If you move too many of them out of the Department, you don't have a department anymore.

We talked about it with the Indian Trust Counsel bill years ago, moving the defense of Indian natural resources rights out of the Department, get out of the conflict of interest. But when I was in the Department, I found I won the conflict a lot of the times. So it's a question of whether you are really better in the stomach of the whale or whether you just move outside the whale. I'm uncertain on this one.

The CHAIRMAN. Self-determination in itself, if you follow that to the end objective, it's to basically put Indian people in the position where they don't need the Department.

Mr. CHAMBERS. That's correct and I've spent my life, as both of you have, and your staff in really pushing and supporting to the maximum the self-determination policy. At the end of the day, I think there is still a trust responsibility that is part of the treaties and the trust relationship. There is going to need to be a governmental entity administering that trust responsibility. It shouldn't be micromanaging every IIM account when you're trying to loan $200 or get that loan repaid. It shouldn't be doing that. It does need to be protecting the vital resource rights and self-governing rights of Indian tribes.

How you organize it, whether you think about having a Department of Indian Affairs or something like that, there are reasonable alternatives to consider. I'm uncertain about it.

Senator INOUYE. My second question is if the committee should adopt S. 1587, the Special Trustee, the present bill calls for a 2-year term. Should that 2 years be extended because I think the facts of life would indicate, as the Secretary says, it may take 6 months to get a staff together, a few more months to find out where he is and that leaves just about 1 year to do his work. Would that be enough with all the complexities that you have talked about?

Ms. SORRELL. One of the concerns that we have put in our testimony is the timelines on both of these. We're fearful that those timelines would be unrealistic and what would probably get left out, as was left out in the development of the strategic plan, the high level implementation plan, is tribal consultation, tribal involvement and really trying to get people to a clear understanding of the role tribal governments can play in this real complex situation where we're talking about really decentralization and the roles tribes can play.

We would have that concern around the timelines on both of them.

Senator INOUYE. Mr. Chairman, it seems apparent that all witnesses here have questions and concerns. I think it may help the committee if they assisted us by suggesting changes, if they have any. It would help me.

The CHAIRMAN. It would help me too, Senator.

Mr. REYNOLDS. To quickly answer Senator Inouye's question, I think 2 years is a good start. I think the possibility should exist for an extension. I think two years is a good start. If he or she has not made a good start at that point, then——

The CHAIRMAN. The bill does have an extension clause where tribes can opt in or opt out.

Mr. REYNOLDS. I think that is very well advised.

The CHAIRMAN. We appreciate everyone being here.

Ms. MASTON. On your time limits, there are concerns about if you're going to attract the kind of individual you want if you only offer that two year time period. You may not attract the best candidate, so in that consideration, I think you may want to look at a longer term so that we can get the kind of individual that we need and want for this important position. That is a consideration.

The CHAIRMAN. Thank you.

With that, the record will stay open for 2 weeks for additional comments and we may send some questions to you in writing. If you'd get back to us, we'd appreciate that.

With that, this hearing is adjourned.

[Whereupon, at 11:58 a.m., the committee was adjourned, to reconvene at the call of the Chair.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

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

I am pleased to join Chairman Campbell this morning in welcoming the witnesses who will testify on two bills designed to address apparent shortcomings in the American Indian Trust Fund Management Act of 1994.

The 1994 Act Established the Office of Special Trustee in the Department of the Interior to Reform the Systems and Procedures by which the Department Manages Various Indian Tribal and Individual Trust Assets.

Regrettably, as is well known to all here today, disagreements between the Special Trustee and the Secretary of the Interior over how to implement the act led to the resignation of the Special Trustee last December.

In addition, members of this Committee as well as the General Accounting Office have raised a variety of questions as to the wisdom of the direction and content of the Department's plans to address its many problems in managing Indian trust assets effectively.

The legislation before us today represents an effort to reassert Congressional authority over the direction of the Department's efforts to implement its high level implementation plan for trust management improvement.

S. 1587 would establish within the Department an Office of Special Trustee for data cleanup and internal control.

The Department's Inspector General would be required to appoint a Special Trustee for a 2 year term, during which time he would be responsible for overseeing 5 of 13 sub-projects that comprise the high level implementation plan.

To the maximum extent possible, this Special Trustee would be required to carry-out his responsibilities through contracts with private entities or through the temporary services of trust management specialists.

The other bill before us, S. 1589, provides for the establishment of a 5-member Indian Trust Fund Reform Commission.

This Commission would be required to consult with Indian tribes, organizations and individuals in preparing a strategy for reinventing all phases of the Department's management of Indian trust assets.

The Commission would be required to consider a variety of options for fulfilling the Federal Government's obligations for management and accounting of the assets of tribes and individual Indians which it holds in trust.

These options include creation of a Government-sponsored enterprise or corporation, contracting under existing or expanded authority of the Indian Self-Determination Act, and contracting with private sector entities.

In addition to a "re-invention strategy", the commission would be required to make recommendations to the Congress as to which Federal agency should regulate the Federal Government's management of Indian Trust Funds.

Mr. Chairman, I commend you for developing these legislative proposals and for scheduling today's hearing.

I share your deep concern that a broad consensus needs to be developed as to how the Government can best fulfill its trust obligations to tribes and individual Indians in the management of their trust funds.

I am hopeful that the testimony we will hear today will help us to develop such a consensus as well as to determine what legislation will be most effective in carrying it out.

PREPARED STATEMENT OF JERRY REYNOLDS, ASSOCIATE DIRECTOR, FIRST NATIONS DEVELOPMENT INSTITUTE

On behalf of First Nations Development Institute and our President, Rebecca Adamson, I want to express our appreciation for the opportunity to testify at these vital hearings. Ms. Adamson particularly regrets that prior commitments kept her from appearing here in person, but she has asked me to emphasize her eagerness to continue participating in these proceedings as they move forward.

First Nations has worked diligently on trust funds issues for 15 years, first through a special project with the Saginaw Chippewa Tribe and others in 1984, and since then through our policy activities, our grantmaking, and our publications. We have consistently demanded accountability for Interior's well-documented mismanagement of Indian trust fund assets, and we have stated time and again that the government's fiduciary responsibility toward Indian beneficiaries is not being met.

In October 1994, thanks to the tireless efforts of ourselves and our colleagues—as well as yours in the Senate—the American Indian Trust Funds Management Reform Act became law, incorporating many of the reform initiatives put forward by First Nations over the course of 10 years. Since then, some small progress has been made in bringing order to the condemned structure of the trust accounts records, and we can be grateful for it. Some tribes options now for managing their trust funds that they've never had before, and for this too we must show a proper respect.

On the whole, however, the record since 1994, suggests that reform cannot succeed in the current atmosphere of negativity, blame-shifting, and apparent political gamesmanship. As this goes on, here the Indian trust funds beneficiaries sit, stranded between dusting off a Strategic Plan that First Nations and virtually every tribe found heavily flawed, or rallying behind a High Level Implementation Plan of Interior's which the General Accounting Office has Dismantled in a detailed critique.

Indian beneficiaries deserve better choices. First Nations is here to offer you our support in providing one. Senate Bills 1587 and 1589 would enforce the internal conditions and establish the institutional structure, respectively, that will make it possible to settle the trust accounts and manage them properly in the future. Further, the "blue ribbon" approach they contemplate is politically realistic.

Above all, this is the most level-headed proposal we have seen for removing the cause of trust funds mismanagement, the Interior Department and its antiquated systems, from the process of fixing the problems, a relationship that would be frowned upon, and indeed disallowed, in any other corporate restructuring. We are confident that barring a specific choice by a specific tribe, trust accounts will continue in trust status, whatever the ultimate findings of your proposed Commission.

In brief Senator, for all the reasons that you reviewed in introducing these bills as well as for many other reasons that have been the subject of spirited testimony in these chambers, we urge you to stay the course with these bills, and to call on First Nations for any information we can provide. Thank you.

STATEMENT OF
BRUCE BABBITT
SECRETARY OF THE INTERIOR
FOR THE SENATE COMMITTEE ON INDIAN AFFAIRS

SEPTEMBER 22, 1999

Mr. Chairman, thank you for the opportunity to testify today on S.1587, a bill to amend the American Indian Trust Fund Management Reform Act of 1994 to establish within the Department of the Interior an Office of Special Trustee for Data Cleanup and Internal Control, and S.1589, a bill to amend the American Indian Trust Fund Management Reform Act of 1994.

Status of Trust Reform

As I have previously testified before this committee, I have serious reservations about further fragmenting trust obligations which have historically been handled by the Department of the Interior. Before turning to the Department's reaction to the two bills that are the subject of today's hearing, I am pleased to be able to give you and the members of the Committee a positive report on the status of trust reform within the Department of the Interior as implemented pursuant to the 1994 Trust Reform Act that you passed. The Act is working.

This morning, I want to address four areas: the Trust Asset and Accounting Management System (TAAMS); the Trust Funds Accounting System (TFAS); the Department's High Level Implementation Plan (HLIP); and the search for a new Special Trustee.

TAAMS

Since January of this year, an extensive team of BIA and tribal users have been working with our vendor, Applied Terravision Systems, to design and develop a trust asset management and accounting system which will enable the BIA to manage properly Indian lands in the 21st century. TAAMS will manage the BIA's land title records, all leasing activities, probate tracking, and a number of specialized activities, such as managing timber sales and range units.

On June 25th, I unveiled TAAMS at our pilot site in Billings, MT. Since that time, we have worked extensively with our vendor to run the system through an exhaustive series of tests in order to ensure that TAAMS meets our users' needs and performs as effectively and efficiently as possible. Also during this time, we developed data conversion programs to transfer the electronic information from the existing BIA systems to TAAMS. This was a very challenging task given the characteristics of the 25-year old systems, including widely divergent formats that had been developed by the field offices over the years.

On September 7th we initiated a second round of training for the BIA staff in the Billings Office, focusing on title functions. During the week of September 13th, we began two additional training sessions for realty staff from the Billings Area Office, as well as all of the seven agency offices in the Billings Area. I am pleased to announce that all of these Billings offices are now operating

TAAMS in a parallel environment with the existing systems. We will continue to test the system during this pilot period. We anticipate minor system adjustments as a result of this testing process.

Our current plan is to conduct a final system test in late September. A recognized Independent Verification and Validation contractor, Systems Research and Applications Corp. International, (SRA), along with the employees of the General Accounting Office, will observe this system test. The SRA final TAAMS validation and verification report will be issued on November 12th. While this date is a few weeks later than we originally anticipated, we believe the additional time will improve our development process. Concurrently, a user acceptance evaluation will be conducted in Billings that will determine the initial level of user satisfaction with TAAMS and the need for additional training or modifications.

In addition to TAAMS, we have engaged in an extensive set of related system activities, including developing configuration and data management plans, identifying future user requirements and developing detailed deployment, operation, and maintenance plans. We are also building an extensive set of data integrity tools which will form the foundation of our data administration activities.

My Trust Management Improvement Steering Committee, comprised of appropriate Assistant Secretaries, the Special Trustee, the Chief Information Officer and the Solicitor will make final deployment recommendations to me. Assuming no major problems, I anticipate making the final deployment decision by late November.

TFAS

Following a successful pilot in BIA's Phoenix, Sacramento, and Juneau Area Offices during the period from August through December, 1998, the Office of the Special Trustee (OST) is continuing implementation of a new commercial off-the-shelf Trust Funds Accounting System (TFAS) to administer all 300,000 Tribal and Individual Indian Money (IIM) accounts and investments. OST converted BIA's Albuquerque and Navajo Area Offices in January, 1999, and all Tribal accounts in February, 1999. The Eastern Area Office was converted in April, 1999; Billings in May, 1999; and Minneapolis in July, 1999. The four remaining Area Offices (Aberdeen, Anadarko, Muskogee, and Portland) are on schedule to be completed by March, 2000. The new system is an off-the-shelf, contractor-operated system provided by SEI Investments Company of Oaks, Pennsylvania. SEI is a leading provider of trust accounting services to commercial banks and trust operations nationwide.

AMENDING THE HLIP

When I approved the original HLIP last year, it was recognized that the plan would evolve as circumstances changed and as we learned from the efforts that had been undertaken. Earlier this year, the Department began the effort to revise the HLIP. For example, we have consolidated related projects in the plan by combining the Land Records Information System and TAAMS projects. In addition, we have combined probate projects in the Bureau of Indian Affairs and

Office of Hearings and Appeals into a single effort. These changes have strengthened our approach to interrelated tasks. More importantly, I have asked the involved organizations to carefully review their efforts over the last year, to reflect the progress being made, and to develop greater specificity and detail to guide our efforts in the years ahead. We anticipate publishing the amended HLIP in the near future. The HLIP may require further revision once the Court issues its opinion in the Cobell litigation.

SPECIAL TRUSTEE SEARCH

We have been working since February to find a highly qualified candidate for Special Trustee who has the qualifications and skills required to be successful in that role. Mr. Chairman, the Special Trustee position requires a unique set of management skills, experience and demeanor to tackle the challenges we are facing. In June, the Department contracted with an Executive Search firm that specializes in identifying and placing highly qualified financial management executives.

To date they have contacted more than 500 individuals, companies, and organizations to identify candidates who have the superior qualifications required for the job. Later this week, senior management at the Department will be conducting interviews with referred candidates who we believe have the qualifications we need.

COMMENTS ON PROPOSED LEGISLATION

Based upon our preliminary review of S.1587 and S.1589, I must strongly object to both bills. S.1587 proposes to establish within the Department the position of Special Trustee for Data Cleanup and Internal Control. While we agree with the objectives of timely and comprehensive data cleanup and internal control, we also feel very strongly that these objectives are being met by current, ongoing efforts in these very areas. That is why I have taken this opportunity to update the Committee as to the status of our ongoing trust reform efforts. The process is working. To pass this legislation at this time would only serve to duplicate processes that are currently underway at the Department. Furthermore, S. 1587 creates numerous problems by blurring responsibilities between the proposed Special Trustee, the existing Special Trustee for American Indians, and Bureau Directors by duplicating and even triplicating responsibilities such as TFAS, OST data cleanup, training, and internal controls. In addition, the Department of Justice advises that vesting the appointment of the Special Trustee in the Inspector General may violate the Appointments Clause of the Constitution. Moreover, vesting oversight authority in another Special Trustee for reforms that are underway and must of necessity be carried out by the line organizations which are now tackling these problems will only impede our progress and could result in conflicting positions. In summary, S.1587 would create administrative and managerial confusion, fails to improve accountability, and would delay the improvements that we are beginning to realize.

S.1589 would create a five member commission charged with preparing another reinvention strategy for all phases of the trust management business cycle and recommending a strategy to be implemented. The creation of a commission at this time would only serve to delay and impede the implementation of the reforms currently underway. The approach of reinventing trust funds

and moving trust funds out of the Department of the Interior, as suggested by the American Indian Trust Fund Management Reform Act Amendments, is one I considered and actually advocated in 1993, at the beginning of this Administration as I searched for another organization to specialize in this task. I have come to realize over the last six and half years that my initial inclination was seriously mistaken. The management of the trust responsibility is intrinsically bound to the land held in trust by the Federal Government and managed by the Bureau of Indian Affairs.

Mr. Chairman, notwithstanding what we invest in new trust systems, staffing and internal controls, it will all be for naught if we do not address the perplexing problem of fractionation of ownership of allotted lands. Fractionation is the legacy of misguided policies of decades past. Our failure to address those policies today will overwhelm our ability to manage Indian trust lands. More importantly, it will severely undermine the economic viability of Indian land because potential lessees will not want or be able to do business with the hundreds of owners that may own each parcel of land. I commend the Chairman for taking the lead on fractionation reform and would urge expeditious consideration of S.1586, the Indian Land Consolidation Act Amendments.

Let me conclude by stating that we share your goals. However, we also feel strongly that our current efforts are yielding positive results as we have made considerable progress in achieving trust management reforms, the first real progress on trust reform in decades. We look forward to continuing to work together to achieve our mutual goal of providing American Indians and Tribal governments with accurate, comprehensive, and up-to-date financial information in accordance with our trust responsibilities.

I will be happy to answer any questions from the Committee at this time.

TESTIMONY OF
REID PEYTON CHAMBERS
SONOSKY, CHAMBERS, SACHSE & ENDRESON
BEFORE THE
SENATE COMMITTEE ON INDIAN AFFAIRS
SEPTEMBER 22, 1999

Mr. Chairman and members of the Committee, my name is Reid Peyton Chambers. For the past twenty-three years, I have been a partner in Sonosky, Chambers, Sachse and Endreson, a Washington law firm that represents Indian tribes and tribal organizations, with offices at Suite 1000, 1250 Eye Street, N.W., Washington, D.C. 20005. Prior to that time, I served as Associate Solicitor for Indian Affairs at the Department of the Interior during the Nixon and Ford Administrations. I have also taught Federal Indian law as a faculty member at UCLA, an Adjunct Professor at Georgetown, a Visiting Professor at Tulsa University Law School and a Visiting Lecturer at Yale University Law School and I have served as one of the editors of Felix S. Cohen's Handbook of Federal Indian Law (1982 rev. ed.).

I am appearing here at the Committee's request to discuss the concerns of my client the Assiniboine and Sioux Tribes of the Fort Peck Reservation with regard to the implementation of the Trust Fund Accounting System and its impact on the Tribes' revolving loan, or Re-lending Program.

By way of background, the Fort Peck Tribes established a Tribal Credit Committee forty years ago, in 1959, with the approval of the Secretary of the Interior, to provide loan and credit services to tribal members. The Fort Peck Tribal Credit Committee, in conjunction with the Bureau of Indian Affairs, operates a Tribal Re-lending program under the Indian Financing Act of 1974. The policies and plan under which the program has been administered are set out in a document

titled "Declaration of Policies and Plan of Operation For The Fort Peck Tribal Revolving Credit Program" which was approved by the Secretary of the Interior. These policies and plan have been in effect since 1959. The regulations governing tribal credit programs require annual audits.

The Tribal Re-lending program is a vital source of loans for many tribal members. The Fort Peck Reservation is located in a remote corner of northeast Montana. Unemployment among tribal members at Fort Peck is at or usually over fifty percent. Over half of the people live below the poverty line. Because of their poor financial condition, many Indians at Fort Peck are generally ineligible for ordinary loans because they do not have sufficient assets or income that can be pledged as collateral.

Many individual Indians at Fort Peck hold small interests in allotted lands on the Reservation that are held by the United States in trust for their benefit. In some cases, these trust lands have been leased for grazing, agriculture and mineral purposes. As you know, if income is generated by the trust land, it is collected by Department of the Interior and deposited to trust accounts for the benefit of the individual Indian holding an interest in the land. These trust accounts are referred to as "Individual Indian Money" or "IIM" accounts. The accounts, and the funds deposited to them, are held in trust by the United States. The amount of income generated by individual Indian trust land and deposited to any individual Indian's IIM account, tends to be very small and will fluctuate over time.

The Tribal Re-lending program was established to provide individual tribal members the ability to use this limited capital to obtain consumer, educational and economic development loans. The vast majority of the loans made under the program are short term loans to meet emergency

needs. These include medical expenses and medical travel, utility bills to avoid shut-off of utility services, funeral expenses and other bills and obligations that cannot be made due to shortfalls in income. The short term loan limit is two thousand ($2,000) dollars per person. Most loans range from $100 to $2000. In 1998, for example, the Tribal Re-lending program made 8500 loans totaling approximately $2 million. Unlike commercial lenders, the Tribal Re-lending Program is willing to secure repayment of loans by an assignment of income deposited to an IIM account. Assignments of income from IIM accounts is the primary basis on which Program secures loans made to tribal members. Under the Tribes' Plan of Operation for the Program, short term loans must be fully secured.

As the Committee knows, the Office of Trust Funds Management (OTFM) – in connection with implementing its new TFAS System in the Billings Area and the centralization of trust records–instituted new requirements this Spring for liens on and disbursements from IIM accounts for Billings Area tribes. In doing so, OTFM insisted that tribal credit programs comply with these new requirements before OTFM would permit any liens upon or distribution from IIM accounts to repay existing tribal loans. However, OTFM never provided the Fort Peck Tribes – or, I believe, any tribal program in the Billings Area – with a written list of these new requirements, or with any training about the new requirements before they implemented the new program in the Billings Area. Consequently, the Fort Peck Tribal Credit Office has only learned of these requirements in a piecemeal fashion, usually as OTFM refused to approve a disbursement from a particular debtor's account to satisfy a loan until some new administrative requirement was satisfied. Because the Fort Peck Re-lending Program is a revolving credit program that can only make new loans as old ones are repaid, the Program was effectively shut down by late June as OTFM refused to release IIM

account funds to satisfy over 400 tribal credit program loans.

On July 20, BIA Deputy Commissioner Hilda Manuel then placed an administrative hold on all disbursements from all IIM accounts to satisfy delinquent debts in the entire Billings Area. This hold was subsequently lifted after a July 28 meeting between OTFM and all of the Billings Area Tribes. At that meeting, it became evident that the only real problems OTFM had were with a single tribal program – not Fort Peck's. There was no basis whatever, in my view, for shutting down all tribal programs because of deficiencies in a single program.

At this meeting, BIA and OTFM officials also promised that new requirements would not be implemented until after OTFM met with tribal credit programs and developed a system that would satisfy both programs. After specific discussions with Fort Peck tribal leaders, OTFM officials agreed to place holds on IIM accounts at Fort Peck where the borrower has signed a promissory note authorizing an assignment of IIM account income in the event of delinquency, and where the borrower has received a notice from the Credit Program announcing a delinquency and a right to a hearing.

Despite OTFM's promises in July, OTFM continues to insist on additional requirements before it will place holds on IIM accounts at Fort Peck. There is still no written list of the additional requirements detailing what needs to be done to ensure that a valid security interest in an IIM account may be collected. OTFM and BIA have not met with the Fort Peck program to develop suitable standards and procedures, as promised at the July meeting. As a result, the Tribal Credit Office at Fort Peck continues to experience significant problems in collecting because they continue

to receive repeated requests for new information from OTFM that is not required under the law and has never been provided before.

Most recently, in August the Fort Peck Tribal Credit Program sought to collect on 180 loans in the amount of $38,560. This request for disbursement was not processed, because OTFM demanded that the Tribal Credit Office provide OTFM with a complete payment history on each of the loans before they would release the funds. This information had never been provided by Tribal Credit and was certainly not part of the agreement that was reached with the Tribal Program in July. Nevertheless, OTFM claims this information is necessary in order to verify that there is an outstanding debt. This however is a function of the tribal credit program, not OTFM. There is no basis for the Department to replace tribal management of audited tribal credit programs – which at Fort Peck have operated successfully for 40 years.

Again, the Tribal Credit Office procedures require that a security interest in an IIM account be signed, along with the loan documents. In addition, if an IIM account holder is in default on such a loan, the Tribal Credit Office is required to send--certified return receipt requested--a so called "Kennerly" letter informing the person of the default and the right to a hearing on the default. The person can either waive their right to a hearing and give Tribal Credit permission to collect on the outstanding debt or request a hearing. If all of these procedures are followed and all of these documents are provided to OTFM, then OTFM has no basis for questioning the administration of the tribal credit program. Most importantly, OTFM agreed not to do this at the July meeting in Billings.

OTFM's continuing obstinacy threatens the very existence of the revolving loan program at Fort Peck. The Fort Peck Tribal Credit Program has served a vital need and worked effectively for several decades. OTFM's persistent failure to process the requests for payment – without meeting with the Fort Peck Tribes as promised to develop a jointly acceptable procedure and list of requirements -- is foreclosing the only source of capital for many impoverished families on the Fort Peck Reservation. The Tribes need this Committee's help to put a stop to this.

FLATHEAD

NATION

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Vern L. Clairmont - Executive Treasurer
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Testimony of the Confederated Salish
and Kootenai Tribes
of the Flathead Nation
Before the Senate Committee on Indian Affairs
of the United States Senate

September 22,1999

Chairman Campbell, Vice Chairman Inouye and honored Members of the Senate Committee on Indian Affairs, my name is Anna Whiting Sorrell, and I am an enrolled member and a Program Analyst for the Confederated Salish and Kootenai Tribes (CSKT) of the Flathead Nation. On behalf of my Tribal Council, I am pleased to provide these comments regarding S.1587, which will amend the American Indian Trust Fund Management Act of 1994 by establishing within the Department an Office of the Special Trustee for Data Cleanup and Internal Control, and S.1589, which will amend the American Indian Trust Management Reform Act of 1994 by establishing a commission to provide oversight for all reforms in regard to Trust management Reform. Our comments begin with some relevant information about CSKT and our management efforts and then proceed with general observations regarding the implementation of the American Indian Trust Reform Act of 1994. We will conclude with specific comments regarding the two pieces of proposed legislation.

CSKT's unique relationship with the United States began with the Hellgate Treaty of 1855. As a result of this treaty, we ceded over 20 million acres of what is now western Montana and reserved for ourselves, and future generations, the 1.25 million acre Flathead Indian Reservation along with the agreement that our lands and treaty rights would be protected forever.

CSKT has led the way in assuming responsibility for the protection of our land, air and water and the needs of our membership as provided by Federal legislation especially through the Indian Self-Determination and Education Assistance Act of 1975, as amended. CSKT was one of the first tribes to exercise the option of contracting when we assumed the operation of a number of Bureau of Indian Affairs programs. In the late 1980's, under the guidance of our late Chairman Michael T. Pablo, we helped forge a new direction between the Federal Government and tribes as one of the 10 original Self-Governance Tribes. It is through this innovative Indian policy that tribes have been able to assume the key role in the programs, functions, services and activities available to their membership yet, maintain the federal trust relationship. Self-Governance returns decision-making authority and control to the local level, the level which is most affected by operations of these programs.

† In honor of the years of dedicated service to the Tribes by the late Michael T. Pablo, the position of Chairman will remain vacant until January 2000, with the Vice Chairman assuming the duties as provided by the CSKT constitution.

Since the inception of P.L.93-638 CSKT has assumed management and operation of the majority of functions previously provided by the federal government. For example, CSKT has compacted all services from the Indian Health Service Flathead Service Unit for health care services provided for approximately 10,000 users. Through a P.L. 93-638 contract, CSKT's Mission Valley Power provides utility services to over 22,000 consumers. All BIA services from Law Enforcement to Social Services to Realty Services and Title Plant functions are now under tribal direction. Additionally, we also operate Forestry and Roads programs previously operated by the BIA and we run what the Interior Department considers the model Safety of Dams in the country. In that capacity, I am proud to tell you that we have repaired dams in less time and under the budget projected by the Bureau of Reclamation. In short, I think it is widely accepted that the CSKT is one of the most sophisticated and advanced tribes in the country. We take great pride in having been on the cutting edge of a number of positive reforms.

In April 1996, CSKT notified the Department of the Interior of our intent to assume operation of the Financial Trust Services programs, including Individual Indian Monies (IIM) program. The Office of Trust Funds Management (OTFM) operates these Programs with oversight by the Office of the Special Trustee. After one year of negotiations, CSKT began managing the IIM program in a limited capacity. CSKT agreed to operate under severe limitations as imposed by the OTFM in order to gain their approval of our compact. Upon CSKT's assumption of management FTS programs, it became immediately apparent the disarray in which the program was in. At the insistence of CSKT, OTFM conducted an inventory of records and their status and condition prior to Tribal assumption. They found approximately 14,000 files in various conditions. To remedy the situation, 57 boxes of files were shipped to Albuquerque, NM for cleanup purposes including several boxes of documents that had not been filed into the appropriate file jackets. Eventually, the active files were returned. When that occurred, CSKT began operation and promptly made improvements to the system. For example CSKT has electronic imaged all documents contained in the IIM accountholder files. We have crossed trained qualified staff to ensure comprehensive coverage and better service to the account-holders. In addition, CSKT has implemented internal controls, which are audited each year by an external auditing firm.

Unfortunately, no agreement has been reached with OTFM for the operation of this program in FY 2000. The negotiations have been difficult and we believe the reasons we have not be able to reach agreement are as follows. We believe this is instructive in that it shows the obstacles that other Tribes will have thrown at them as they try and manage this important component of their financial affairs.

The Trust Reform Act of 1994 and the Indian Self-Determination and Education Assistance Act of 1975, as amended, and as being implemented by the present bureaucracy, are quite simply in conflict with one another. These conflicts must be fully discussed and reconciled with Tribal Governments and Indian people and not just by organizations such as the Inter-Tribal Monitoring Association (ITMA) on Indian Trust Funds. It is not the ITMA's money and future that is at stake here, it is my Tribes' and the funds of many other tribal governments and their members.

a. The Office of Trust Funds Management has stalled the full implementation of P.L. 93-638 Titles I and IV. They have not provided education to tribal governments on the opportunities for tribal management through self-determination. They have not completed a tribal shares process.

b. OTFM's position as a non-BIA program makes negotiations for a Self-Governance compact more difficult by allowing OTFM to argue a different set of procedures, principles and standards for Self-Governance than the BIA can utilize. This allows OTFM to use non-BIA arguments to not enter into agreements with tribes. Initially, OTFM's position was that the Indian Self Determination Act did not apply to them.

c. OTFM is developing of a highly centralized system, which will preclude it from being assumed by Tribes' through P.L. 93-638 in a meaningful way. For example, in Fiscal Years 1997 through 1999, CSKT encoded information into an individual's account. However, in Fiscal Year 2000, OTFM is proposing the removal of this function from the CSKT IIM Program. This is major step backward for CSKT in having some type of management opportunity in this area.

d. OTFM should be required to conduct audits and evaluations consistent with P.L. 93-638. For example, this week, OTFM sent a seven-member team, consisting of OTFM staff and staff from contracted auditing firm to evaluate CSKT's $51,000 IIM program. They are there as I speak to you today. This would appear to hold CSKT program to a much higher standard than that of OTFM operated programs, which are not evaluated to our knowledge. When we requested that the evaluation team review the same files held by OTFM in Albuquerque as a part of the CSKT review, the request was denied by OTFM. OTFM stated that the records are scattered and not easily accessible. An agreement by both parties was reached where the evaluation would occur and CSKT would travel to OTFM Office in Albuquerque to ensure the documents we forward for inclusion in the OTFM files are being maintained accurately and safely.

Therefore, we strongly endorse the language on lines 7-13 of page 12 of S. 1589, requiring that a part of the "reinvention strategy" for implementing the American Indian Trust Fund Management Act include allowing Indian tribes "to undertake some or all of the management, accounting or other parts of the trust management business cycle." With this language, Congress is clearly stating that the Indian Self Determination Act does apply to the operation of Indian Trust Funds. We applaud the inclusion of this provision but we seriously question whether it will come to be implemented as the centralization of trust funds management is totally at odds with a process allowing local tribal management.

It is a misguided position held by some that is "Anything But The BIA" would be better at resolving the current situation found in trust funds management without taking into consideration the impact on P.L. 93-638 and effective elimination of a Tribal Government's option to operate and manage this program. The effect of what those critics are doing can really be summarized as "Anything But the BIA AND Tribal Operation" because the

mechanism for tribal operation is P.L. 93-638, which applies to BIA and IHS.

There has been a lack of meaningful participation by Indian tribes resolving the mismanagement of trust accounts by the Federal Government. While we may respect their intentions, we continue to object to an almost exclusive reliance on the ITMA and the hand-picked Advisory Board to the Special Trustee as the barometer for measuring the views of Indian country.

In Secretary's Babbitt's August 22, 1997 Memorandum on Trust Improvement Project Definition, he directed the development of a "High Level Implementation Plan" (HLIP) regarding trust systems improvement and data clean up efforts. The memorandum included the directive that an outreach and consultation plan designed to reach and inform affected account holders, Indian Tribes and the Congress be developed.

A. Tribes were not consulted in the development of the HLIP.

B. The HLIP does not include an outreach / consultation plan.

C. Tribes have not been adequately informed on the implementation of HLIP. Although there have been attempts to facilitate tribal consultation through tribal organizations, this does not constitute government-to-government consultation. Most organizations are formed for specific purposes, which do not relate to overall trust management reform.

D. The HLIP fails to take into consideration tribal operation of BIA programs through P.L.93-638.

CSKT provides the specific comments on the proposed legislation:

1. Congress must consider the application of Self-Determination as it moves forward with trust fund management reform. This must be done in consultation tribal governments, not tribal organizations. Consideration must be given to experiences of tribes operating the programs at the local level. Self-Determination has been an effective Indian policy and could be useful in solving this long-standing problem.

2. In its present form, the proposed legislation leaves many questions unanswered. What role will the new Special Trustee for Data Cleanup and Internal Control exercise within the current reform efforts? Are the timelines realistic to meet the requirements set forth in the legislation? Will the timelines be adhered to at the expense of meaningful tribal government consultation? We have very serious concerns that this can accomplished in a six month period. Are funds available to meet the needs that are identified as one of the major obstacles to true reform? Until these and other questions are answered, CSKT can not support another entity stepping into the decision-making arena concerning trust fund reform that is vital to our interests.

3. Should S.1589 and the Commission it proposes move forward, CSKT recommends the following concerns be addressed:

   A. The Congress must clearly restrict the Commission from removing the responsibility for trust resource management from the Department of the Interior. Tribes spoke loudly to the Department of the Interior and Congress when the Special Trustee's proposed in his Strategic Plan the removal of these function when they almost unanimously told Congress that to leave those functions in the Department and continue there accessibility for tribal operation through P.L.93-638.

   B. The Congress require the Commission to conduct meaningful consultation with tribal governments. Although tribal organizations can be helpful in disseminating information, they do not speak for tribes or tribal government.

INTERTRIBAL MONITORING ASSOCIATION on Indian Trust Funds

TESTIMONY BEFORE THE SENATE COMMITTEE ON INDIAN AFFAIRS
ON
S. 1587 and S. 1589

"AMERICAN INDIAN TRUST FUND MANAGEMENT REFORM ACT AMENDMENTS"

SEPTEMBER 22, 1999

SUBMITTED BY THE INTERTRIBAL MONITORING ASSOCIATION ON INDIAN TRUST FUNDS (ITMA)

ITMA appreciates the opportunity to submit testimony on the recently introduced S. 1587 and S.1589, the "American Indian Trust Fund Management Reform Act Amendments". We also would like to express our appreciation to the Committee for its deep commitment to the issue of Indian trust reform and for the enormous amount of time, effort, thought and urgency the Committee has devoted to this critical issue.

We would like to thank and commend Chairman Campbell for the two bills he introduced last week proposing to amend the 1994 American Indian Trust Fund Management Reform Act. We have not had an opportunity to consult with the ITMA board of directors or the 38 tribes that constitute the membership of ITMA on the proposed legislation. As a result, at this point we are able to provide only initial and very general comments. However, it is clear the bills constitute a major step forward in addressing the concerns ITMA, GAO and other outside witnesses have expressed regarding the trust reform effort and the future management of the trust programs. They offer exciting and creative new approaches to these concerns.

We recognize the importance of obtaining legislation this session of the 106th Congress, before the Department of the Interior has expended the millions of dollars Congress likely will be appropriating for trust reform in FY 2000. We will therefore complete the consultation with our membership as quickly as possible. At the end of this testimony, we have proposed an expedited process, in conjunction with Committee staff, to enable our membership to obtain a better understanding of the bills and then to jointly work with the Committee for their enactment before the end of this session of Congress.

ITMA was extremely pleased to see that the statements in support of the introduction of S. 1587 and S. 1589, as well as the "Purposes" sections of those

bills, reflected the same concerns that ITMA and Indian leaders from throughout the country have been expressing over the past few years. For example;

-- the Department's refusal to even consider reforms that would allow at least some trust management functions to be performed by entities outside of the Interior Department.

-- the importance of having the tribal and Indian customers shape the future directions of Indian trust management, rather than permitting the Department to design a future based primarily on the Department's needs, not the needs of the trust beneficiaries.

-- the fact that the Department compromised the 1994 Indian Trust Fund Reform Act by undermining the Special Trustee, such that the reform effort is being carried out without a responsible official within the Department with trust expertise and independence, even though every outside expert says that such expertise and independence must be present for that reform effort to succeed.

-- the Indian and tribal account holders' lack of confidence in a reform effort being carried out by the same entities that have been managing the failed system and thus are the ones who are responsible for the mismanagement that now exists.

-- the need for private contractors, under independent control, to carry out as much of the reform effort as possible.

-- the need for the Interior Department trust systems to be regulated by an outside regulatory body, in the same manner as every private financial institution is so regulated.

There are many more. It is reassuring to us that the sponsors of these two bills and the tribal and individual Indian trust beneficiaries share common goals and objectives for the future of trust management. With such common goals, coupled with a dose of political reality, it should not be difficult for a consensus to quickly develop regarding the best solutions to those problems. This is in sharp contrast to the Interior Department, which is proceeding on a course it developed without consultation with the trust beneficiaries, and is rushing ahead undeterred by the fact that those whose lands and money are at stake, "the customers", have vehemently and consistently opposed the Department's course.

In its previous testimony before this Committee, ITMA set out its proposed approaches for addressing these problems. Most importantly, it was ITMA's position that there is a need to go back to the proposals that were first on the table when the 1994 Indian Management Trust Fund Reform Act was being considered by Congress. The original proposal was for the Special Trustee to be independent

of the Secretary of the Interior. Congress was forced to accept the compromise that became the actual Trust Fund Reform Act when Secretary Babbitt threatened a presidential veto if the Special Trustee were given the level of independence desired by Congress and ITMA. Five years of experience operating under that compromise has demonstrated that the compromise is not workable. An agency cannot be reformed from inside. ITMA has therefore proposed legislation that would remove the responsibility for designing and implementing the reform effort from the Department and place it in a bank regulatory agency, where there is a better understanding of what is entailed when someone takes on the responsibilities of a trustee.

ITMA has also proposed various components that would be included in the kind of comprehensive reinvention of trust management called for in S. 1589. For example ITMA has endorsed the concept of S. 739, which would outsource the management of the investment of trust funds to private financial institutions, so the tribal and Indian beneficiaries will be able to receive the same returns on their investments that are available to every other trust beneficiary. S. 739 would also give a preference to Indian-owned financial institutions in order to get the trust funds working in Indian country. However, ITMA has not had the resources to conduct the kind of comprehensive review of all of the possible options, as is called for in S. 1589. Nor has it had the resources to engage in the comprehensive dialogue with Indian country that is also called for in S 1589.

Chairman Campbell has now proposed several alterative approaches for achieving the same goals and objectives. They present creative and fresh new ideas. However, as indicated above, ITMA has not had an opportunity to consult with its board of directors or members to enable us to comment specifically on the bills. In addition, we have not had an opportunity to explore with the authors of the bill their reasons for including various provisions or how they envisage the various pieces working together. For example, we need to understand how the two Special Trustees that would be in place would work together and how would the existing Special Trustee's advisory board relate, if at all, to the Commission. We would also like to explore such questions as whether there are ways to meld these new approaches with some of ITMA's and whether there are ways to bring the new entities proposed by the various approaches into a single unified entity.

This will require an intensive and expedited effort. We therefore propose to call an ITMA board and tribal leaders meeting here in Washington as soon as possible --hopefully within the next ten days. We request that Committee staff participate in that meeting to help us better understand the bills and, if we identify shortcomings in the bills, for us to work jointly to revise and improve the legislation. Since we already agree on goals and objectives, and since we all recognize the political realities involved in trying to enact legislation at this late date in a session, it should not be that difficult to produce a final product that we can all

work to get enacted by the end of this session. If the Department is willing to play a constructive role, we also invite its representatives to participate. After ten years of polarization, it is time for all of the stakeholders to work together on solutions.

C. Conclusion

ITMA appreciates that enormous effort the Committee is making to address the issues confronting Indian trust management. We look forward to working with you in the coming weeks to finalize the legislation and achieve its enactment this year. Thank you.

October 4, 1999

The Honorable Ben Campbell, Chairman
Committee on Indian Affairs
SH-838 Hart Senate Office Building
U.S. Senate
Washington, D.C. 20510

Dear Chairman Campbell:

On the behalf of the Tribal Council of the Confederated Tribes of the Warm Springs Reservation of Oregon, I am writing to express our views on S. 1589, the American Indian Trust Fund Management Reform Act Amendments. I request that this correspondence be made a part of the Indian Affairs Committee's formal record of its hearing on the bill on September 22, 1999.

The Confederated Tribes of Warm Springs have serious concerns about S. 1589. While the motivation for the legislation - improving trust management of tribal and Indian funds and resources - is clearly well intended, the bill is troublesome in its overall approach and in its specific provisions. Below, we discuss our particular concerns.

The unspecified involvement of trust natural resources.

We are concerned that S. 1589 does not clearly and explicitly delineate that the disposition of trust natural resources is fully subject to the deliberations of the Trust Reform Commission. The potential removal of federal trust title or effective control and oversight of tribal and individual Indian trust natural resources from the U.S. Department of the Interior is something our Tribe and many other tribes have repeatedly opposed. Such a proposal remains extremely controversial. When Special Trustee Paul Homan issued his Strategic Plan that, for many tribes, unexpectedly expanded his portfolio beyond trust funds to include trust natural resources, including their removal from Interior, tribes broadly and vigorously opposed any such move. We believe many tribes were rather startled and offended that he had so brashly expanded the scope of his commission to include natural resources. Now S. 1589 appears to be designed to achieve the same result. The scope of the Commission's "re-invention strategy" is "all phases of the trust management business cycle." The "trust management business cycle" is an undefined term wherein the word "business" could lead one to believe it deals more with financial and investment activities than with, say, the management of a tribal forest that otherwise has been removed from commercial use, set-aside for cultural or wildlife purposes. Yet it is our understanding that all natural resources are to be subject to the considerations of the Commission without making any clear and specific mention of that

being the case. If Indian tribes are to have an open and vigorous discussion about a proposal as momentous as this, any authorizing legislation owes it to the tribes to make it abundantly clear.

The unrealistically short time frame.

We are concerned that S. 1589 only provides six months to accommodate "consultation" between the tribes and the Commission on trust reform, a topic of both historic and emotional content involving many technical and legal issues. It is a subject of the greatest gravity. As such, it is completely unrealistic to believe that, starting on the date that a majority of the Trust Reform Commissioners are appointed, within six months the issues can be framed, the wide variety of options identified, detailed, and distributed, that the tribes will have adequate opportunity to examine them and formulate responses, that full debate and discussion can occur between the tribes and the Commission, and that some form of consensus can arise within Indian Country. It would take at least two or three months for the Commission to establish offices, hire staff, and begin operations, let alone conduct all the research and data gathering necessary to shape the whole range of options that would need to be explored if this most serious subject is to receive the attention it warrants. To insist that the entire consultation process be completed within the six months would render an incredible disservice to the tribes. By denying tribes the fullest opportunity to deliberate on this matter, tribes' role in shaping the decision is reduced and that of the Commission is enhanced. Similarly, a short time-line reduces the ability to conduct necessary research and debate, correspondingly increasing reliance on research and opinions already concluded.

On a subject this important, there must be no rush to judgement. While there may be dissatisfaction about the pace and direction of the current Secretary of the Interior's trust reform efforts, hopefully S. 1589's time-lines are not being driven by an effort to impose a different set of reforms on the current, and soon outgoing, Administration. In fact, trying to initiate a new set of reforms in the final months of an Administration would probably not be very effective. Since this effort is intended to benefit the tribes, time-lines should be calibrated to the tribes' needs, leaving implementation to whatever Administration is in place at the time the deliberative/legislative process is complete.

The interruption and dismissal of current Interior reform efforts.

We are concerned that S. 1589 does not grant the Interior Department an opportunity to fully develop and implement its current efforts. It is our understanding that some in Congress are displeased with Interior's current reform efforts. Nevertheless, those efforts have been conducted to date under the close scrutiny of Congressional appropriators, and tens of millions of dollars have been invested in the process. It deserves a chance. The formation of a Commission to judge Interior's current efforts before they have been fully developed, fine tuned, and tested in the field could be very wasteful of both time and money, cutting off efforts that may, in fact, be worthy. The difficulties in Interior's trust management of Indian assets have evolved over many dozens of years. The problems are widespread and interlaced. Some of them, such as reconstruction of historical data, may simply be impossible to definitively remedy because, out of no fault of the current Administrators, old records simply no longer exist. These things take some time, and impatience may not be the answer. Serious reform efforts have only gotten underway within the Interior Department within the past three or so years, and during that time, there have been mis-steps and controversy that have had to be resolved. But now, some progress seems to be finally underway, and it should have a reasonable chance to be developed and examined, not cut short. Please make no mistake. Our patience is not infinite, and Congressional scrutiny does help keep Interior focused on its reform activities

The preferential treatment of Advisory Board members.

There is no justification for waiving application of the Commission membership qualifications for current members of the Special Trustee's Advisory Board. Such a waiver will create a preference for Advisory Board members to serve on the Trust Reform Commission that is not warranted. Service on the Advisory Board should not create an over-riding right or qualification to serve on the Commission. Moreover, we are concerned that existing Advisory Board members could create a bias among the Trust Reform Commission in favor of removing trust assets or control from the Interior Department. The Advisory Board generally supported Special Trustee Paul Homan's initial Strategic Plan calling for removal of all trust activities, including natural resources, from Interior to a separate bank or other entity. They have continued to support those ideas and Mr. Homan personally. But the idea of creating a separate bank or other entity for management of Indian trust assets has been strongly opposed by most Indian Country. The House Interior Appropriations Report for FY 1998 (H. Rpt. 105-163) specifically addresses this point on page 62:

> "Based upon tribal testimony received by the Committee, tribes seem to be unanimously opposed to implementation of the Special Trustee's Strategic Plan. Given that millions of dollars were provided to OST to complete the Strategic Plan, the Committee is disturbed that the results are unacceptable to tribes. Many tribes requested that language be included directing the Special Trustee to halt implementation until tribes have reached agreement on the plan, mainly objecting to establishment of a new entity and removal of trust functions from BIA. Generally, there appears to be support for systems improvements related to trust funds management, particularly IIM accounting. Since there is no broad support for the establishment of a new entity or bank, the Special Trustee is directed not to plan further or implement any improvement efforts that move or are in support of establishment of a new entity or bank."

Yet at about the same time tribes were presenting those views to the House Interior Appropriations Subcommittee, Advisory Board members were testifying before the Senate Indian Affairs Committee advocating for the removal of trust funds and control of trust resources to a new bank or other separate entity. Quite simply, we do not believe the views of the Advisory Board are in step with those of Indian Country, and dropping qualifications for Advisory Board members' service on the Commission would give them a preference for selection that, in turn, would build a pro-removal bias into the Commission.

The Commission is skewed toward recommending removal of all or most trust functions from Interior.

We are concerned that the bill appears to have a subtle bias toward a Commission recommendation for removal or all or most trust functions from Interior. Advisory Board members, who have a track record of generally supporting removal, are given a preference in getting on the Commission. The Commission's short time line constrains true tribal debate and increases reliance on already drawn conclusions. The Commission's directives require the explicit consideration of removal of trust management from Interior under at least three scenarios, but there is no directive for, or even mention of, consideration of leaving some or all trust management in the Interior Department.

The failure to address funding inadequacies, particularly for natural resources.

It is also noteworthy that the Commission is not explicitly asked to examine and report on what additional funds are needed to bring about improved trust management, unless such a charge is covered under the requirement that the Commission "...identify all reforms to the policies, procedures, practices, and systems of the Department ... that are necessary to ensure the proper and efficient discharge of the trust responsibilities of the Secretary in compliance with this Act." Certainly, a hopelessly inadequate funding level is one of the single key causes of inadequate trust management. And now that trust funds management is in the spotlight, tens of millions of dollars are being heaped upon it while, just out of the spotlight, the considerably more costly management of trust natural resources is still being deliberately ignored, left to limp along in obscurity. We urge that, should a Commission be established to examine improving trust management, the difficult, but absolutely essential, issue of adequate federal funding be explicitly addressed.

Technical deficiencies in the bill.

Failure to inform tribes of the Commission's recommendations.

A concern of a substantially more modest nature is the bill's lack of any requirement that the Commission's recommendations be transmitted to the tribes. That only seems to underscore the vague sense that the bill is not so concerned about serving the tribes as about getting a foreordained removal recommendation promptly to Congress.

Failure to address possible impacts on Self-Determination.

Also, the bill does not address the elimination of the Indian Self-Determination Act's application to trust programs if they are removed from Interior to some other entity. Since a great many tribes run their natural resource trust management programs, such a move, without a corresponding adjustment to the Self-Determination Act, would deal 638 and tribal governments a serious blow.

Weakening the federal - tribal relationship.

Finally, but foremost, we are very concerned that removal of all or most of trust management would seriously weaken the federal trust responsibility. Shuffling trust responsibility for Indian issues out of Interior to some small federal entity would deprive those issues of a location within a principal Department of the Federal government. It would remove Indian trust issues from the Cabinet. And its possible removal from the federal government entirely is a giant step toward completely sundering all ties to the United States. Meanwhile, back at Interior, the remainder of the Bureau of Indian Affairs would be greatly diminished, weakened and demoted within the Federal echelons, moving toward possible elimination. Our treaty, and all that flows from it, is with the United States, not with some bank. Ours is a unique government-to-government relationship that embraces a special trust that should not be shoved into the same mold as that of a commercial fiduciary. The federal trust responsibility is based on our treaty and is inextricably linked with our treaty rights. The federal protection of treaty rights should not be separated from the management of trust resources, yet removal of the trust from Interior would do exactly that.

These issues go to the very heart of the future existence of tribes. They cannot be summarily dispatched in six months by a five person Commission. Accordingly, we are very concerned about S. 1589 and urge that the Committee not advance it.

Sincerely,

Olney Patt, Jr.

Olney Patt, Jr.
Tribal Council Chairman

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