

**TESTIMONY OF CHAIRMAN TEX G. HALL
OF THE MANDAN, HIDATSA AND ARIKARA NATION
AND
CHAIRWOMAN SUSAN MASTEN OF THE YUOK TRIBE**

**TRIBAL CO-CHAIRS OF THE TRIBAL LEADER / DEPARTMENT OF INTERIOR
TRUST REFORM TASK FORCE**

**BEFORE THE UNITED STATES SENATE
COMMITTEE ON INDIAN AFFAIRS**

JUNE 26, 2002

Chairman Inouye, Vice Chairman Campbell and Members of the Committee, we are honored to appear before you today to discuss the progress of the Tribal Leader / Department of Interior Trust Reform Task Force. As you know, we are the two tribal leaders who serve as co-chairs of the Task Force and we are here to represent the consensus views of the 24 tribal leaders who serve on the Task Force. We greatly appreciate the opportunity to participate in the legislative process of the United States Congress and to provide this Committee with our views.

Summary: The Tribal Leader / DOI Trust Reform Task Force (Task Force) has developed a set of options for tribal leaders to consider for a reorganization of the Department of Interior's offices for administration of trust reform. In sum, these include the creation of an independent oversight body, the creation of a Deputy or Under Secretary for Indian Affairs, and a possible reorganization of Bureau of Indian Affairs activities. The Trust Reform Task Force and the Department are beginning an intensive consultation process with the anticipation that this effort could lead to new legislation this year to amend the Trust Funds Management Reform Act of 1994 and implement other aspects of organizational realignment for trust reform.

Background on Trust Reform and the Creation of the Task Force: The United States Government has committed to a broad trust relationship with Indian tribes that requires the federal government to protect tribal self-government, to provide services to Indian communities, and to exercise the highest degree of care with tribal and Indian lands and resources. In order to gain the advantage of Indian land and resources, the federal government also imposed reservation allotment programs in the period from 1887 to 1934, which spawned the proliferation of hundreds of thousands of trust fund accounts and land records for individuals. It is well documented that the Department of Interior has mismanaged billions of dollars worth of trust funds derived from Indian land, timber, oil & gas, and hard rock minerals.¹

The Trust Funds Management Reform Act of 1994 mandated specific responsibilities for the Department in accounting and management of Indian trust funds. Among other things, the

¹ See *Misplaced Trust: The Bureau of Indian Affairs' Mismanagement of the Indian Trust Fund*, H.R. Rep. No. 499, 102ND Cong., 2ND Sess. 1992, 1992 WL 83494 (Leg.Hist.), and *Financial Management: BIA's Tribal Trust Fund Account Reconciliation Results* (Letter Report, 05/03/96, GAO/AIMD-96-63).

Department is under a requirement to render an accurate accounting for all funds held in trust, develop integrated and consistent trust policies and procedures, and ensure that the trust fund accounting system is integrated with the land and asset management systems of the Bureau of Indian Affairs, the Bureau of Land Management and the Minerals Management Service. To date, the Department has achieved none of these objectives under the 1994 Act.

In November 2001, Interior Secretary Gale Norton announced her intention to establish a new agency, a Bureau of Indian Trust Asset Management (BITAM), to administer responsibilities for trust funds and resources and separate trust assets management from the Bureau of Indian Affairs. Tribal leaders throughout Indian country overwhelming rejected this idea and demanded that they be consulted on matters that would so profoundly affect the rights and interests of their tribes as well as their constituencies. Following the consultation sessions convened in Albuquerque and Minneapolis during the first part of December, agreement was reached to create and fund a Trust Reform Task Force comprised of Tribal Leaders and representatives of the Department of Interior. The Task Force was formally established in January 2002 and has held six meetings: an initial tribal caucus was held in San Diego, CA in January 2002; and full Task Force meetings have been held in Shepherdstown, WV - February 2002; Phoenix, AZ - March 2002; San Diego, CA - April 2002; Minneapolis, MN - May 2002; and, Bismarck, ND - June 2002.

The Task Force Membership includes:

- 24 Tribal representatives (2 each from 12 BIA regions)
- 12 alternates (1 from each BIA region)
- Technical Advisors
- Federal government representatives (12)
- 4 Co-chairs (2 tribal members, 2 federal members)

Co-chairs Tex Hall – Chairman of the Mandan, Arikara & Hidatsa Nation
 Susan Masten – Chairwoman of the Yurok Tribe
 Steven Griles – Deputy Secretary of Interior
 Neil McCaleb – Assistant Secretary of Interior for Indian Affairs

Purpose and Scope of Task Force: The Task Force has established a protocol that defines its purpose: “to develop and evaluate organizational options to improve the integrity, efficiency and effectiveness of the Departmental...Indian Trust Operations consistent with Indian treaty rights, Indian trust law and the government-to-government relationship.” While the purpose of the Task Force is defined narrowly as the development of options for an organizational structure, the scope of the Task Force's inquiry has included a broader look at the nature of the problems that trust reform must also address.

The events that led to the formation of the Task Force stem directly from the Department's inability to provide an accurate accounting for tribal and individual trust funds. These matters are specifically addressed in the Trust Fund Management Reform Act of 1994, and the breaches in trust fund management found by the federal district court judge in the *Cobell v. Norton* litigation. It is clear that the primary goal of the reorganization effort is to address trust funds management, as opposed to general matters of trust resource management or the broader trust

responsibility to protect treaty rights or tribal self-government. Please see the attached "Indian Trust Cycle Chart w/ Reform Areas Noted" for an overview of the scope of trust fund management reform.

However, tribal leaders are greatly concerned that the DOI's focus on just one aspect of the trust relationship -- trust funds -- will lead to solutions that harm other areas of the trust relationship. This was one of the primary concerns about the Secretary's BITAM proposal to separate all trust asset management into a separate Bureau. Ultimately, the various aspects of the trust relationship -- tribal self-determination, tribal self-government, tribal services, and tribal land and resources -- are interrelated at the local level. Since time immemorial, our strong tie to the land and resources is an integral part of who we are, spiritually, culturally and traditionally. Indian people live on trust land and every day we are going to school, building houses and roads, and making a living on trust land. Tribal leaders do not want a "stove piped" bureaucracy that separates trust lands from all of the activities that we do on our lands. So the reorganization must not have a negative effect on other aspects of the trust responsibility, and should seek to integrate and improve the general provision of all Indian services and programs.

Finally, trust funds accounting has a direct relationship to the management of tribal and individual land and natural resources. For example, a collections system must have accurate reporting of production and payment of lease rents and royalties. However, tribes are often very protective of their right to manage their own lands and natural resources. Statutes such as the Indian Reorganization Act, the Self-Determination Act, and the Indian Forest Resources Management Act confirm the tribes' rights to be primary manager of tribal lands and natural resources. Therefore, the Task Force has also insisted that the reorganization not overreach into areas that are committed to tribal control.

Summary of Work Products and Process: The Task Force has created three sub-committees to carry out specific projects: 1) the Alternative Proposal Review Sub-Committee, 2) the Legislative Options Sub-Committee, and 3) the As-Is Business Processes Study Sub-Committee.

Alternative Proposal Review Sub-Committee - This Sub-Committee is charged with the task of reviewing alternative proposals for the organizational structure, and is chaired by Chairman Alvin Windyboy of the Chippewa Cree Tribe and Jim Cason, Assistant Deputy Secretary of Interior. Beginning in February 2002, the Committee collected all of the alternative proposals that had already been put forward. In March, the Sub-Committee developed a list of the "Preliminary Criteria for Analysis and Evaluation of Organizational Proposals for Trust Asset Management Reform" (attached). The Task Force will utilize these criteria for further evaluation of the organizational options. Additionally, the Sub-Committee put out a request to all tribes requesting that they submit any additional alternative proposals by a deadline of April 12. Twenty-nine proposals were received, reviewed, summarized by the Sub-Committee. The preliminary results of this review were put into a June 4, 2002 Task Force Report that has been sent out to all tribes in order to have meaningful consultation with tribal leaders as a part of the evaluation process. Tribal comments are due by July 12. A summary of this is included below, the "Elements of An Organizational Structure for Trust Fund Management Reform."

Legislative Options Committee - This Sub-Committee is charged with working collectively with the Task Force to develop any needed legislation to implement the organizational proposal, and communicating with Congress on the progress of the Task Force. The Task Force is anticipating a significant likelihood that the reorganization will require legislation, most likely as amendments to the Trust Fund Management Reform Act of 1994, and is aiming to develop that legislation within the time frame of this legislative year. Governor Bill Anoatubby of the Chickasaw Nation and David Bernhardt, Director of Legislative and Congressional Affairs and Counselor to the Secretary, chair the Sub-Committee, and they have set a goal of developing a legislative package by July 6.

As-Is Business Processes Sub-Committee - Interior is contracting for a study of the “As-Is” business processes to determine how trust fund management processes are currently being performed, to draw comparisons with private trust systems, and eventually to make suggestions for reforms. This Sub-Committee is working with DOI and EDS on this study and is chaired by Tim Martin, Executive Director of the United Southern and Eastern Tribes and Ross Swimmer, Director of the Office of Trust Transition. It is expected that this study will be completed by December 2002.

Elements of An Organizational Structure for Trust Fund Management Reform:

The Proposal Review Subcommittee found a number of major themes and commonalities among the 29 proposals for an organizational structure. The Task Force then selected a number of concepts for consultation with tribal leadership. They are explained in greater detail in the June 4, 2002 Task Force Report to the Secretary of Interior which we attach. This report to the Secretary does not contain any final recommendations, but is intended as an interim step to communicate the progress of the Task Force and create a basis for ongoing consultation with tribal leaders.

Summarized below are three of the major organizational options for trust reform that are contained in the June 4 report. The tribal leaders on the Task Force would like to begin working with Congress to develop potential legislation in these areas as we collectively discuss these options with Indian country.

1) Creation of an Independent Entity with Oversight Responsibility for Trust Reform.

The Indian trust within the Department of Interior is the only trust in the United States that is not subject to any type of external regulation or oversight. We believe that this is one of the major reasons that the Department has consistently, and for so many decades, refused to reform itself, refused to perform audits, refused to set any kind of specific trust standards which would guide the action of its employees, and refused to request adequate budgets to perform the trust duties for which it is responsible. We would note that the Office of Special Trustee, which was created under the 1994 Act, was originally envisioned as an independent office, but was placed in a position subordinate to the Secretary of Interior at the

Administration's insistence. Each of the Special Trustees has testified to this Committee that their ability to perform their duties has been impaired by the lack of independence.

The tribal leadership on the Task Force and the DOI are in agreement that some sort of independent entity is needed. The Department of Interior would prefer that it be advisory in nature rather than regulatory or prescriptive. The tribal leadership on the Task Force believes that Congress should create an independent entity that is capable of exercising regulatory and oversight authority over the Indian trust within the Department of Interior. We do not want the trust responsibility removed from the Department of Interior; we simply want the trust funds accounting system fixed, and true trust reform to be implemented.

In our preliminary discussions among the tribal leaders on the Task Force, we believe that the independent entity should include the following features:

- Responsibilities would include:
 - i. Auditing financial accounts
 - ii. Investigations and compliance
 - iii. Sanctions for nonfeasance and malfeasance
 - iv. Monitoring of corrective actions
 - v. Establishment of standards and regulations for trust fund management (consistent with tribal self-determination)
 - vi. Monitoring DOI budget to ensure adequate resources with reports to Congress

- Commissioners who are American Indians or Alaska Natives who are experts in the Trust Industry, Indian Trust, and Indian Law, and include stakeholders from tribal governments and Indian account holders should direct the independent entity.

- The entity should be independently funded as a permanent agency, and should have the ability to hire experts exempt from the civil service pay scale.

- The oversight and regulatory responsibilities of the Office of Special Trustee should be phased out over an identifiable timeframe.

2) High-Level Responsibility for Indian Affairs.

The Department has agreed with tribal leadership that it is necessary to create a position of Deputy Secretary or Under Secretary of Interior for Indian Affairs would have direct line authority over all aspects of Indian affairs within the Department, including the coordination of trust reform efforts across all of the relevant agencies and programs to ensure that functions are performed in a manner that is consistent with the trust responsibility and to elevate visibility of the trust responsibility in Indian affairs within the Department. This concept is also included in S. 2212, the Indian Trust Asset and Trust Fund Management and Reform Act of 2002.

The creation of this position will address the major issue that was raised in the EDS Report and by the Cobell court: the lack of clear lines of authority and responsibility within the Department of Interior to ensure accountability for trust reform efforts by the various divisions of the Department of Interior. The two major entities responsible for trust assets and accounting are the Bureau of Indian Affairs and the Office of Special Trustee. The lines of authority, responsibility and communication between these two entities has been uncertain and at times has come into direct conflict. In addition, the Minerals Management Service, the Bureau of Land Management, and the U.S. Geological Service all play important roles in trust management, and various responsibilities are spread throughout the Office of Hearings and Appeals, the Office of American Indian Trust, and the newly created Office of Trust Transition and Office of Historical Accounting. Finally, nearly every agency in the Department of Interior has some significant trust responsibilities. At this time, there is no single executive within the Secretary's office who is permanently responsible for coordinating trust reform efforts across all of the relevant agencies. This absence has particularly hurt the progress of those issues that cut across agencies, such as the development of a system architecture that integrates trust funds accounting with the land and asset management systems of the BIA, BLM and MMS (as required by the 1994 Act).

Although the Secretary of Interior has broad authority to reorganize, transfer authority, and delegate power over any matter within the Department according to her desires,² for several reasons we believe that it would be wise for Congress to create the new position of Deputy Secretary or Under Secretary for Indian Affairs.

First, the Special Trustee was created by Congressional act in 1994, and Congress invested a number of significant responsibilities for trust reform in this office. At the same time, the authority of this office was left somewhat unclear by the 1994 Act. Any efforts to clarify the responsibilities of the Special Trustee should probably be done in a joint effort with Congress in order to ensure continued Congressional support.

Second, Congressional authorization may be helpful in ensuring that an integrated decision making structure for trust management in the Department of Interior remains in place over an extended time period and through successive administrations. Perhaps it is useful to note that one of the most fundamental Congressional acts in Indian affairs was to establish the office of the Commissioner of Indian Affairs under the Secretary of Interior as a centralized structure for "the purpose of facilitating and simplifying the administration of the laws governing Indian affairs" and "management of all Indian affairs and all matters arising out of Indian relations."³

Since the 1950 reorganization plan, there has arisen a pattern where the authorities of the Commissioner of Indian Affairs have been delegated to separate offices, most often in a well-intentioned effort to focus resources and attention on a particular issue. This started with the delegation of health care to the Department of Health and Human Services in 1954, and subsequently the creation of Assistant Secretary for Indian Affairs, the Office of American Indian Trust, the separation of minerals, oil & gas to MMS and BLM, the Office

² See Reorg. Plan No. 3 of 1950, Sec. 1,2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to 5 U.S.C., Government Organization and Employees.

³ See 25 U.S.C. 1a., 2.

of the Special Trustee, the Office of Trust Transition, and a number of other transitions. These evolutions in the DOI structure have moved far away from the expressed Congressional intent to integrate authority over Indian affairs in a single structure. There would perhaps be a value in having Congress take a look at the issue of fragmented decision-making authority in Indian affairs within DOI and how it relates to the current problems in implementation of trust reform.

Finally, one of the chief advantages of working with Congress to create this new position is that it would ensure that tribal governments have an opportunity to be involved in the process. The management of Indian affairs within the Department of Interior is an incredibly important issue to tribes, and most often the internal reorganizations within DOI have been done with little, if any, tribal consultation and involvement. Working with Congress would ensure tribal input.

One item that requires further discussion between the DOI and the tribal leaders on the Task Force is the question of conflicts of interest. A good example of this conflict is where the Department is required to protect the treaty water rights of Indian tribes, and also required to provide water to irrigators through the Bureau of Reclamation. Tribal Task Force members have suggested that the Deputy or Under Secretary for Indian Affairs should have independent legal counsel on matters that involve a conflict between the DOI's trust responsibility and other responsibilities.

3) Reorganization of the Bureau of Indian Affairs.

One of the major items for continuing discussion between DOI and the tribal leaders on the Task Force is the issue of reorganizing the Bureau of Indian Affairs to ensure accountability for trust management throughout all operational levels, and at the same time to ensure that resources and decision-making are placed at the local level wherever possible.

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

The most difficult discussions have been about the reorganization at the Regional and Agency Office level. The Department has insisted that there must be strict separation of trust resource management in a completely separate organization from the management of

services such as housing and roads. However, the tribes have insisted just as strongly that there must be a single point of decision making authority at the local level to deal with issues that cut across both trust resource management and other trust services. At the local level, nearly all activities on Indian reservations take place on trust property – tribal self-government, tribal services, and trust fund and resources management – and the functions are interrelated. Reservations are active, developing communities that are completely dependent on trust property, and need decisions made on routine matters at the local level in a reasonable time frame. For example, all of the major infrastructure activities like housing, roads, irrigation, drinking water, telephone service, etc. take place on trust land. Approving a lease or an easement often requires balancing the specific trust responsibility to the trust land with the broader trust responsibility to promote tribal services and tribal self-determination.

There are also quite a number of important daily relationships at the local level regarding the provision of social services to elders and minors, and the management of their IIM accounts. Social workers, medical professionals and Superintendents work together to set up restricted accounts and approved spending plans for the protection of their trust funds. BIA and tribal law enforcement also must regularly deal with activities that take place on trust lands, deal with trust resources, or relate specifically to leasing activities. For example, trespassing cattle and the remedies under a grazing lease for impoundment or fees, timber theft and timber leases, violations of irrigation and water rights, ejection of a tenant on nonpayment on a lease, etc.

Tribes are the primary actors in purchasing and consolidating fractionated interests in Indian land into useable parcels. This is an activity that is of great benefit to DOI. But tribes do so for specific development reasons – that is where the money comes from – so when a tribe wants to develop a refinery or a golf course or needs to build a school or a clinic, they often need to purchase the land and they do so with the direct involvement of the Superintendent in finding the fractionated interest owners, making purchase offers, partitioning unwilling sellers, acquiring interests that have gone out of trust – etc.

All of these types of decisions require strong coordination and decision making at the local level on matters that affect both a trust resource interest and the broader trust responsibility to provide services. These make up the routine kinds of decisions of local BIA officials that often never reach the central office level. Tribes have a great concern that a "stove piped" reorganization that sharply separates the ability to make decisions on trust resource management and trust services at the local level would put an unbearable level of bureaucracy into a system that is already overloaded with bureaucratic requirements. Imagine having to get central office approval every time there is a disagreement over a housing lease approval or construction of an irrigation ditch – this is something tribes don't want and we don't think the DOI wants either. Central office decisions take a long time – and this means more business deals go stale, more financing dries up, projects don't move forward and the cycle of missed opportunities for Indian country would be exacerbated.

We believe that a trust reform reorganization can be effective to meet its goals and still allow for local decision making on routine matters that cut across trust resource management and trust services. We generally agree with the Department that it would be valuable to group the trust funds management and the trust resource management

activities at the local level, with clear lines of responsibility and staffing. However, we do not believe that the individuals responsible for these functions should be under a separate administrative authority from the staff responsible for performing other trust services. Rather, the BIA Regional and Agency office authorities should remain as the primary focal point of contact with individual tribes, preserving local control of functions and programs to support tribal self-determination. Accountability is not going to be assured through any organizational structure, it can be assured through:

- Identification of Duties
- Adequate Funding, Staffing and Training to Perform Those Duties
- Policies, Procedures, Standards
- Internal Controls
- External Audits (performance and financial)
- Transparency (basis for decisions is clearly stated and evident)
- Adequate staffing training with performance standards
- Focus on Responsiveness to Beneficiaries
- DOI/BIA staff committed to change and improvement of trust activities

Other Items for Congressional Consideration:

1) Adequate Funding and Staffing for Trust Management - The DOI and tribal leaders on the Task Force have agreed that one of the primary issues in trust reform is getting adequate resources to perform the trust duties. The BIA has never been provided with an adequate level of financial and human resources to fulfill its trust responsibilities to Indian country. This chronic neglect of trust duties has contributed to dysfunctional management and financial systems at all levels of the BIA.

However it is the reservation level agency offices that have been most adversely impacted. Dedicated personnel have been forced to work in substandard facilities, with inadequate support. The cumulative effects of this longstanding neglect are major deficiencies in the management of individual Indian trust assets that produce much needed revenues from mining, grazing, logging and other royalties. Unfortunately, Interior’s reliance on outside private contractors to bring computer-based technology to bear on management deficiencies has failed and even resulted in further misuse of appropriations.

For example, appropriations in tribal forestry are far short of need:

	Proportion of Amount Required to Provide Adequate Forestry Services to Tribes	
	STAFFING	FUNDING
Management Programs	63%	29% a/

Fire Programs	73%	89%
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a/ BIA Recurring & Special Recurring appropriations only. In 2001, tribes contributed additional funds for forest management which amounted 64% of the Congressional Appropriations for BIA Recurring and Special Recurring forestry programs. When tribal contributions are considered, funding is adequate to meet 49% of needs.

Source: "Draft Funding & Position Analysis for Fiscal Year 2001, Summary of Findings." USDol, BIA< Office of Trust Responsibilities, Division of Forestry, June 2002.

As another example, one member of our Task Force, former Chief Charles O. Tillman of the Osage Tribe, described the situation on the Osage Reservation. The Osage Tribe has over 12,000 oil wells that are managed by the Bureau of Indian Affairs. Individuals from the private oil industry have advised the Chairman that they would have at least 16 inspectors for an oil field of this size, however the BIA provides the Osage oil field with only 4 inspectors.

One of the primary concerns of Tribal Task Force members is that the trust reform effort not result in a mere shifting of resources to trust management away from critical tribal services such as law enforcement, education, alcohol & substance abuse prevention. There must be new appropriations for trust management if trust reform is going to be effective. We will be preparing a budget analysis that will incorporate the BIA tribal unmet needs data, and will be sharing that analysis with Congress as a part of the appropriations process.

2) Clear Definition of the Department's Fiduciary Responsibility to Manage Indian

Trust Assets - The Task Force identified this issue as one that should be included as a part of any trust reform effort. The lack of a clear understanding about the nature of the DOI's trust responsibilities has continually clouded the ability of the DOI and tribal leaders to communicate clearly and come to agreement on the specific issues that must be addressed in trust reform.

The trust relationship between Indian tribes and the federal government is a structure with many different aspects; some highly specific; others more general. In broad terms, the various aspects of the trust relationship include:

a) The responsibility of the federal government to protect tribal self-government and treaty rights from the incursions of state government and from federal overreaching into internal tribal matters -- found in treaties and defined in the Cherokee Nation cases in the 1830's.

b) The federal departments have numerous responsibilities under treaties, statutes, and Executive Orders, to act as trustees in education, health, housing, child welfare, substance abuse, natural resources management, litigation, etc.

c) The responsibility to protect the tribal land base. Tribal lands and natural resources, such as fish, wildlife and water, are held in trust. This trust relationship includes a broad range of duties, including protection from illegal

transfers, protection from impacts of other federal programs, and the duty to make the trust productive consistent with the desires of the beneficiary.

d) Individual Indian allotments are held in trust, and there are many specific statutory, regulatory and judicially imposed requirements that attend to allotted land.

e) Tribal and individual funds derived from trust assets and held in trust, and the management of Indian trust money is also subject to specific statutory, regulatory and judicially imposed requirements.

The current crisis that led to the formation of the Task Force is directly related to this last aspect of the trust relationship – the Department’s inability to provide an accurate accounting for tribal and individual trust funds. However, tribal leaders have been very interested in having the DOI understand this aspect of the trust responsibility in the context of its broader trust responsibilities. Certainly this would be a very large and difficult legal task to specifically define the nature of the federal trust responsibility to Indian tribes, but it one that the Task Force is interested in discussing.

- 3) Self-Determination Programs and Beneficiary Co-Management - The tribal leadership on the Task Force also believes that it would be useful for Congress to consider further refining the relationship between trust funds management reform and the laws and policies that underpin Tribal Self-Determination. Trust fund accounting has a direct relationship to the management of tribal and individual land and natural resources. For example, a collections system must have accurate reporting of production and payment of lease rents and royalties. However, tribes are very opposed to any reforms that would limit tribes' right to manage their own natural resources. Most tribal lands and natural resources were reserved to the tribes under treaties or executive orders that committed the land to the “exclusive use and occupancy” of the tribe. Subsequent statutes such as the Indian Reorganization Act, the Self-Determination statutes, and the specific resource management statutes such as the Indian Forest Resources Management Act, the American Indian Agricultural Resource Management Act and the Indian Mineral Development Act also confirm the tribes’ rights to be primary manager of tribal lands and natural resources, with a limited approval role for the DOI. So it is important that the scope of “trust reform” not overreach into areas that are committed to tribal control, and not serve to hinder the progress of the self-determination policy. We believe that it would be useful for the Committee to look at the provisions in S. 2212, the Indian Trust Asset and Trust Fund Management and Reform Act of 2002.

- 4) Ongoing Consultation Process With Beneficiaries for Trust Reform - This Task Force was created for a specific purpose; to define organizational options to implement trust reform. However, the Task Force is also serving as a forum for discussion of urgent trust reform issues that the Department is facing, such as the computer shutdown, data

cleanup, historical accounting, TAAMS, etc. While this has been a useful function, there are concerns that the Task Force may go beyond the scope of its original purpose. This has led to a decision by the Task Force to go back and consult with tribal leaders about the need for an ongoing consultation process for trust reform.

The Task Force is also looking at the long-term strategy for beefing up the communications and consultations between tribal leaders and the Department as trust reform moves forward. Trust fund management reform will be a complex, multiyear effort to design and implement a strategic plan, a system architecture and policies and procedures as well as to make improvements or corrections in a broad range of areas, such as records management, probate, appraisals, accounting, computer systems, etc. This process will require a great deal of ongoing consultation and dialogue with the tribes and individual beneficiaries for a sustained period of time, and there would be a significant value in maintaining a Task Force or similar body of beneficiaries to engage in that discussion. This is an important question for Congress to consider for the future of the trust reform effort.

- 5) Process for Settling Historic Account Balances - The Cobell litigation and the subsequent filing of litigation on tribal trust cases has increased interest in the development of a forum or resources for resolution of tribal and/or individual trust disputes. The settlement of current account balances is necessary in order to resolve accounting issues going forward. The DOI requested that the Task Force consider creating a committee that would hold discussions to determine if an acceptable dispute resolution process can be developed to settle tribal trust fund claims. The tribal leaders declined as this was beyond the scope of the Task Force's mission. Instead, the Inter-Tribal Monitoring Association on Indian Trust Funds (ITMA) is coordinating some meetings on ITMA's legislative proposal.

- 6) Land Consolidation Programs - In order to address the escalating magnitude and complexity of land ownership patterns and trust fund accounts, Congress must invest in Indian land consolidation programs. According to the BIA, the 56 million acres of trust and restricted land under its supervision are divided into 170,000 tracts of land with 350,000 Indian owners and, most important, 2 million different owner interests. Fractionation of ownership interests through inheritance has created an accounting nightmare for the federal government, and must be addressed if trust reform is to occur.

Alternatives Considered, but not Pursued:

There were also a number of suggestions among the 29 proposals that merited significant discussion by the Task Force but that they ultimately decided not to pursue:

- 1) The BITAM Proposal – Tribal leaders have clearly rejected the approach of separating trust asset management from other trust responsibilities. Separation would cause a myriad of practical problems in providing services and management of trust assets as the local level. In addition separation would also weaken the overall federal trust responsibility and threaten tribal self-

determination. The tribal leaders on the Task Force believe that accountability for trust funds management can be achieved through standards, reporting and both internal and external controls, without the need for dividing the federal trust obligation.

- 2) Separate Department of Indian Affairs. This proposal would elevate the status of Indian affairs and address problems with conflicts of interest. However, the Task Force felt that during the consultation sessions on BITAM, a large majority of tribal leaders made it clear that they did not want trust responsibilities taken out of the Department of Interior, and also felt that the creation of a new cabinet level Secretary would be an extremely difficult political hurdle.
- 3) Separate Management of Individual Indian Trust and Tribal Trust. Tribal leaders also rejected the idea of separating out the management of Individual Indian Money (IIM) accounts from the management of tribal trust funds and resources. From a practical standpoint, such separation would be very difficult because of the complexity of resource ownership patterns and the intermingling of administrative and management systems. In addition, tribal leaders felt that it was essential to maintain the relationship between tribal governments and their members since the welfare of the tribal community is affected by the administration of individual allotments.

Conclusion:

On behalf of the Tribal Leaders who serve on the Trust Reform Task Force, we would like to thank Secretary Norton, Deputy Secretary Griles, and Assistant Secretary McCaleb for all of the hard work that they and their staff have put into the trust reform effort. If we maintain this serious level of effort, we firmly believe that we can reach some policy decisions that will put the reform effort on track to a successful conclusion. We would also like to thank the Committee, as always, for their continued interest and concern for Indian issues.

Attachment
PRELIMINARY CRITERIA FOR ANALYSIS AND EVALUATION OF
ORGANIZATIONAL PROPOSALS FOR
TRUST ASSET MANAGEMENT REFORM
(adopted by the TRTF in March 2002)

CRITERIA

1. How does the proposal ensure that the policies, procedures, and systems necessary for the United States to faithfully discharge the entirety of its trust duties to tribal governments as set forth in treaties, statutes, Executive Orders and case law are in place?
2. How does the proposal support tribal self-determination and self-government? How does the proposal address the potential for increased tribal involvement over time in the operation of programs for Indian trust asset management for the benefit of their own communities through contracting and compacting?
3. How does the proposal ensure that the trustee standards of care, policies, procedures, and systems necessary for the United States to faithfully discharge its fiduciary duties and responsibilities towards beneficial owners of Indian trust funds and Indian trust resources are in place? How does the proposal attempt to ensure full and continuing accountability for management of Indian trust assets (e.g., identify mechanisms, such as internal controls, independent audits, disclosure and correction of deficiencies)?
4. To what extent does the proposal clearly define organizational responsibilities and authorities, including a coherent trust orientation, a strategic plan, appropriate business models, measurable performance standards, and accurate reporting/information systems, for implementation?
5. How does the proposal address the organizational responsibility for development of the systems required to manage Indian trust assets?
6. How does the proposal attempt to ensure accountability for both BIA and tribal programs involved in the operation of programs responsible for management of Indian trust assets? How does the proposal provide for involvement of the beneficial owners?
7. What changes within the existing BIA organizational structure would be required at the Central Office? Regional/Agency Offices? Technical Service Centers? Are these changes permanent or temporary? How does the proposal ensure that accurate reports on progress of implementation are provided? What type and extent of interference or disruption of existing BIA and tribal programs for management of Indian trust assets would be anticipated if the proposal were to be implemented? How will dislocation costs and continuity be assured during transition?
8. How does the proposal address costs of implementation? To what extent does it attempt to minimize transaction costs incurred by tribes in their relations with the United States

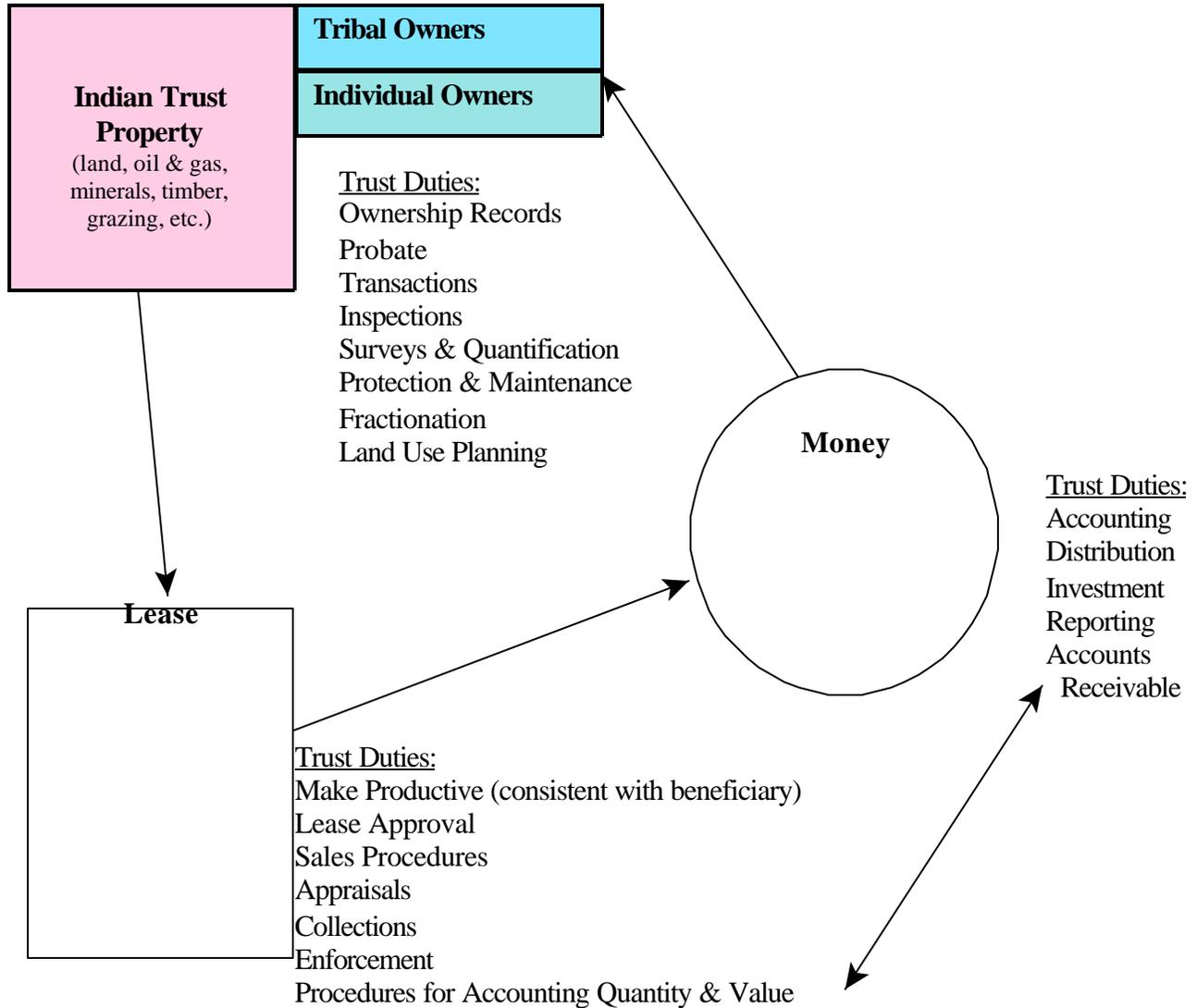
in fulfilling its obligations to Indian tribes and individual Indians? To what extent does it attempt to identify, quantify, and minimize costs incurred for additional bureaucracy and administration? Does it identify the source of funds to be used to defray these costs? How does it attempt to minimize costs of administration (records and information systems, standardized practices, trust transactions, etc.) to provide efficient, effective services to Indian beneficiaries?

9. How does the proposal ensure that individuals responsible for Indian trust asset management are adequately trained and qualified to discharge the duties to which they are assigned? How does the proposal ensure that individuals responsible for administration of the trust are rewarded for outstanding performance, and sanctioned for acts of malfeasance or nonfeasance?
10. How does the proposal deal with conflict of interest?
11. Can the proposal be implemented within existing authorities? If legislation will be required, what will the legislation need to address?
12. How does the proposal address the issues involved in the Cobell contempt proceeding?
13. What issues are likely to be raised with respect to acceptability of the proposal to the Congress? The Administration? The Court? Tribal Governments? Individual Indian beneficiaries?
14. Is the organizational structure capable of serving/exercising the best interest/fiduciary duty for individual Indian trust beneficiaries?
15. To what extent does the proposal allow for sufficient flexibility in trust asset management in order to accommodate regional and/or tribal variations in the mix of trust resources and/or special laws or treaties applicable from region or tribe to another?
16. To what extent does the proposal address process problems that are identified in trust asset management by the TRTF or EDS?

Attachment

Draft - Simple Indian Trust Cycle Chart w/ Reform Areas Noted (3/19/02)

“What are we trying to fix?”



Crosscutting Duties:

- Tribal Self-Determination
- Treaties, Laws, Cases
- Funding
- Training
- Internal Controls
- External Audits and Monitoring
- Errors and Omissions

- Strategic Planning
- Policies and Procedures
- Establishing Account Balances
- Security & Privacy of Information
- Systems Architecture
- Beneficiary Focus
- Performance Measures

