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## The National Congress of American Indians

### Testimony on

## Proposed Reorganization of Major Agencies and Functions Related to Indian Trust Reform Matters Within the Department of Interior

### Presented By:

**Tex G. Hall**

**President, National Congress of American Indians**

**March 10, 2004**

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

As you know, tribal leaders want to see successful change and improvement in the way the Department of Interior manages trust funds and trust resources, but we are certain that the Department is on the wrong track and is in great need of Congressional intervention.

The ongoing reorganization is creating a top-heavy bureaucracy at the expense of staffing and resources in the local agency offices. Such a system cannot meet the need for trust management on the reservations. Trust management requires people and systems on the ground in resource management, inspections, enforcement, title, appraisals, and probate. This is work that cannot be done by bureaucrats and accountants in Washington DC or Albuquerque.

The President's Budget Request for FY2005 demonstrates our concerns clearly. For the second year in a row, huge amounts of funding are shifted to the Office of Special Trustee and BIA Central Office functions. The OST would receive a \$113.6 million increase -- to create a \$322.7 million bureaucratic behemoth out of an entity that was created by Congress to provide only an oversight and planning function. The largest increase proposed for the BIA is for Central Office Operations -- a whopping 52% increase -- for a total of \$134.4 million. And none of this funding would deliver a single service or solve any trust related problems on the ground in Indian country.

While central offices see these enormous increases, the overall BIA budget request drops \$52 million from the FY2004 enacted level, and Indian education gets hammered -- a \$65 million cut. For the second year in a row, Tribal Priority Allocations are scheduled for only a nominal increase that does not keep pace with inflation. Indian tribes are being forced to pay twice for the federal government's mismanagement of our trust funds. First, when our trust funds and natural resources were grossly squandered and mismanaged, and now, when it is time to fix the system, the Department proposes to take the money out of other BIA programs and services. Congress cannot allow this budget to stand.

The Three Affiliated Tribes of the Fort Berthold Reservation conducted a needs-assessment concerning the management of trust assets at the Fort Berthold Agency. The Three Affiliated Tribes' Natural Resource Department met with the Agency and conducted thorough on-sight interviews with the Agency, tribal members, and other federal agencies over the past two years. I am attaching this needs-assessment, but let me give you a few examples of the things that we learned during this exhaustive process:

- At one point, the Fort Berthold Agency employed twenty-three (23) people (seventeen permanent and six seasonal) in the Agency's range department. Today, the Agency has just three (3) employees in the Agency's Range Department. One of these employees is assigned to handle the Agency's Special Deposit Accounts full time so she really is not involved in range management. One employee is responsible for the paper work involved in range management and this is a full-time responsibility. Thus, there is only one employee available in the field to handle enforcement and compliance matters.

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- This shortage of staff results in direct failures of the BIA's responsibilities. For example, 25 CFR § 166.305 requires the BIA to conduct a range assessment of every range unit (both allotted and Tribal land) on the Reservation prior to the issuance of a permit. The last range assessment done on the Fort Berthold Reservation was done in 1982. 25 CFR § 166.312 requires the BIA to develop a conservation plan for each range unit. No conservation plans have been developed or approved by the BIA despite the issuance of grazing permits.
  - Each range unit permit awarded by the BIA for Tribal and allotted units has special provisions concerning the number of cattle that can be grazed on the unit and maintenance. Range Technicians are responsible for ensuring permit compliance and policing the ranges for trespass and overgrazing. The Three Affiliated Tribes has one Range Technician and the Fort Berthold Agency presently has grazing permits issued for approximately 260,000 acres of grazing land spread over 1,376 square miles of Reservation that is divided by Lake Sakakawea--which only has one bridge spanning across it at northern most point of the Reservation.
  - We estimate that it would take approximately eight (8) Range Techs/ Compliance Officers (GS 7-9) and three (3) Range Conservationists (GS 11), one (1) Natural Resource Officer (GS 12) in order for the Fort Berthold Agency to properly manage this trust resource and to comply with the Federal Regulations at 25 CFR Part 166 dealing with Grazing Permits. Twelve new positions are needed in range management alone, and these personnel will need the training and tools to do their jobs properly.
  - There is no appraiser at the Fort Berthold Agency despite the fact that appraisals are required for farm pasture leases, grazing permits, right-of-ways, oil and gas leases, land exchanges, land sales, gift deeds, land consolidations and trespass damage. Appraisals for all of these matters are presently handled by the Office of Special Trustee management which has employed a regional appraiser out of Rapid City, South Dakota. All appraisals, with the exception of appraisals for the sale of crop land, are done on this employee's desk in Rapid City. This appraiser conducts almost no on-site field appraisals of any other type of land transaction, which results in untimely and questionable valuations.
  - There is a three-year backlog of over one hundred fifty probate cases at the Fort Berthold Agency. Furthermore, it takes approximately two years to pay out the estate proceeds to heirs after a case is decided. The backlog and unbelievable delay in estate distribution is directly a result of staff shortages at the Agency level--there is only one probate specialist at the Agency. The Three Affiliated Tribes estimates that the Fort Berthold Agency needs three additional probate specialists (GS 11) to handle the backlog of cases and estate distributions.
  - The Fort Berthold Agency handles approximately 1,000 title records requests annually. Uncertified title searches can be accomplished relatively quickly. However, certified title requests take approximately six months to complete because they are being done at the regional office. This delay creates a significant backlog in land transactions and obstacles in business and economic development.

- The Fort Berthold Agency has approximately 300 oil & gas leases, 100 pending, on the Fort Berthold Reservation. There is a huge delay in leasing and in payouts of lease income. The Three Affiliated Tribes are positioned in the middle of a known oil field – the Williston Basin. Oil fields have been developed all around the Fort Berthold Reservation. The BIA does not have the manpower to research the companies that desire to lease and therefore the Tribe's interests are not adequately protected. The Fort Berthold Agency has no professional staff to handle mineral and oil & gas transactions.

These severe deficiencies in trust resource management were found at only one BIA agency, but other tribes from my region of the country have conducted their own needs assessments and have found similar deficiencies. Throughout the country, no matter what the resource, the most significant contributor to the problems with trust management is the lack of adequate personnel, systems and training. In fact, the Department of Interior itself has acknowledged that “personnel resources are inadequate to address the current workload,” in its Fiduciary Compliance Plan submitted in federal district court in January of 2003. (DOI Plan at 38).

The Office of Special Trustee has announced that it will hire six regional trust administrators and 60 trust officers and related support staff. The BIA is planning to hire 25 deputy regional directors for trust and a number of deputy agency trust superintendents in 2004. It is difficult to tell the exact amount from the budget that has been submitted, but it appears that OST and the BIA have substantial funds budgeted to hire staff to fill these supervisory positions. Who are they going to supervise?

The Great Plains and Rocky Mountain Region Tribes have passed resolutions calling for a one year moratorium to the BIA reorganization until the tribes within these regions can provide the BIA with “Agency Specific Plans” that will best address each tribe's specific needs in regard to managing trust resources on their respective reservations. The National Congress of American Indians also just approved a resolution (attached) supporting the efforts of the tribes within these regions and calling for a halt to the BIA reorganization for such time as is necessary for these tribes to develop an agency specific plan for their respective agencies. Any plan to fix the system must be built from the ground up, not from the top down, and we do not have time and money to waste on a reorganization that we know will not work.

On February 25, 2004, NCAI sponsored a comprehensive Trust Reform Summit in the hearing room of the Senate Committee on Indian Affairs. Every region and every tribe in attendance was given an opportunity to voice their opinions concerning the reorganization of the BIA. Every region and every tribe opposed the reorganization efforts, and indicated that they believed that agency specific plans were needed. I believe that all tribes should develop agency specific plans and push for resources at the agency level rather than at Central Office and OST as provided in President Bush's proposed FY 2005 budget—tribal governments and local agencies on the ground are the ones that understand best how to fix the mess created by an out of touch central bureaucracy.

Let me give you one very good example of how ineffective the reorganization as currently configured will be. NCAI has strongly supported S. 1721, the Indian Land Consolidation Amendments, and we applaud the Administration for recognizing the need for significant increases in land consolidation spending. We all recognize that fractionation is the root of the

problem and we must address fractionation if we are to ever make real progress in trust reform. But this reorganization will make all of our land consolidation efforts fail, simply because there are *not enough staff* in the realty, title, and appraisal offices to actually carry out the land transactions that are needed for land consolidation.

This reorganization is putting the cart before the horse. Organizational structures must be aligned with specific business processes and they must be designed to function within a system where services are provided by the DOI and tribal governments. DOI has not yet figured out its new business processes. Millions of dollars have been invested in an “As-Is” study of trust services, but the Department has only just begun the critical “To-Be” phase of reengineering the business processes of trust management. By implementing a new organizational plan prematurely, DOI is ignoring the findings of its own study and wasting the valuable resources that the agency and tribes have already dedicated to understanding systemic problems. The entire reengineering is being corrupted by results-oriented management decisions that are intended to make the new systems fit into their pre-determined organizational structure.

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

The federal government has been following a policy of tribal self-determination for over 30 years, and this has been the most enlightened and beneficial era of federal government policy that we have seen in Indian country. The entire thrust of self-determination is that tribal governments themselves are in the best position to determine the needs of their reservations. Tribes are greatly concerned that the federal government is losing sight of self-determination and tribal sovereignty in its rush to institute the reorganization. How are we following self-determination when the Department is implementing a plan over the strong and reasoned opposition of the very tribes that they are supposed to serve?

At our meeting on the trust reorganization two weeks ago, I was very taken by the fact that each of the regions had similar themes in their opposition to the reorganization. It just can't work to have all managers and no workers. We don't need another bureaucracy that will compete with the one we already have. The DOI is not listening to the tribes. The OST is losing sight of its role under the 1994 trust reform act to provide standards and oversight. And finally, tribes still want to work with the Department to improve trust management, but we need tribal specific agency plans as a mechanism to ensure tribal involvement.

Tribal leaders have consistently held that effective organizational change to effectuate trust reform must contain three essential elements:

- (1) Standards and Accountability—a clear definition of core business processes accompanied by meaningful standards for performance and mechanisms to ensure accountability
- (2) Locally Responsive Systems—implementation details that fit specific contexts of service delivery at the regional and local levels where tribal governments interact with the Department
- (3) Continuing Consultation—an effective and efficient means for on-going tribal involvement in establishing the direction, substance, and form of organizational structures and processes involving trust administration.

There is a consensus in Indian country that the reorganization must be redirected toward developing agency specific plans that are developed with the direct participation of the tribal governments. At the same time, DOI's redesign of trust system processes in land title, leasing and accounting must also be backed up for more consultation and direction from tribal leadership.

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

### **Conclusion**

On behalf of NCAI, I would like to thank the members of the Committee for all of the hard work that they and their staffs have put into the trust reform effort. I believe firmly that tribal leadership has hit upon a solution – agency specific plans – that will bring about the needed collaboration between the DOI and Tribal Nations. If we maintain a serious level of effort and commitment by Congress, the Administration, and Tribal Governments to work collaboratively together to make informed, strategic decisions on key policies and priorities, we can provide the guidance necessary to bring about true reform in trust administration.