

**TESTIMONY OF JAMES T. MARTIN, EXECUTIVE DIRECTOR OF UNITED
SOUTHERN AND EASTERN TRIBES (USET)**

Before

THE SENATE COMMITTEE OF INDIAN AFFAIRS

Regarding S. 1439, the Indian Trust Reform Act of 2005

Chairman McCain, Vice-Chairman Dorgan and distinguished members of the Senate Committee on Indian Affairs:

My name is James T. (Tim) Martin. I am an enrolled member of the Poarch Band of Creek Indians, and serve as the Executive Director of United South and Eastern Tribes, Inc. (USET). On behalf of its 24 member tribes, USET has closely followed the *Cobell* case over the past ten years and the Department of Interior's (DOI) subsequent reorganization. Along with USET President Keller George, I represented the tribes of the Bureau of Indian Affairs (BIA) Eastern Region on the DOI/Tribal Trust Reform Task Force (Task Force), and have testified before this Committee on trust reform reorganization several times.

I thank this Committee for the opportunity to testify on this topic again. For USET tribes, the *Cobell* litigation and the DOI's redirecting of funding to trust activities carried out by the Office of the Special Trustee (OST) has had immediate and harmful impact. For fiscal years 2005 and 2006, funding cuts to BIA has reduced full time staff for law enforcement, education and other vital programs. The *Cobell* litigation and the DOI's

interpretations of requirements to meet Court Orders has absorbed resources and limited the ability to implement already under-funded programs.

I thank Senators McCain and Dorgan for introducing S.1439, which represents a critical step for trust reform and provides a solid footing for resolving the inter-related and complex problems of trust reform, the *Cobell* case and Indian affairs more generally. Given the complexity of trust-related issues, one piece of legislation is unlikely to solve all problems. This bill, however, takes on the challenge of addressing the fundamental issues (the settlement of the *Cobell* lawsuit, land consolidation, and prospective trust reform reorganization) all while maintaining a key focus USET continues to stress – that tribes are the entities best suited to drive the reform effort.

USET, in response to Chairman McCain's call for a legislative solution to the crisis in the management of the federal trust responsibility to Indian tribes, developed proposed trust reform legislation and in April provided that proposal to the Chairman and to Committee staff. The USET proposed legislation was intended to introduce measures that would increase the accountability and efficiency of the DOI's administering of the United States' trust responsibility while enhancing tribal self-determination. Those measures included:

- Elevating the Assistant Secretary-Indian Affairs
- Providing standards for the administration of trust funds and trust assets
- Promoting self-determination through tribal management of trust funds and assets
- Consolidating trust functions within the BIA (and eliminating the Office of the Special Trustee)
- Improving trust services to tribal and individual beneficiaries (by consolidating trust functions at the BIA field office level that serves them,

by establishing quality assurance and audit functions and by expediting the implementation of the DOI's core trust business systems)

- Providing procedures to resolve the *Cobell* trust fund class action litigation.

Let me note here that the USET legislative proposal builds upon that provided to this Committee by the Affiliated Tribes of Northwest Indians (ATNI). I am pleased that ATNI President Stensgar is here to discuss that proposal and the concerns of the tribes in the Northwest, which USET member tribes share.

Upon our review of S. 1439, it appears that the Committee shares USET's concerns and provides similar approaches to resolving them. Additionally, USET requests that the Committee further deliberate several critical issues. I am attaching USET's proposed legislation to my written testimony and request that this proposal be included in the hearing record as it may be useful to this Committee as it seeks to finalize trust reform legislation.

But first, I would like to commend the Committee for its recognition and incorporation of the key concepts for trust reform and DOI reorganization that tribes have advocated before this Committee in the past, as well as through the 2002-2003 Trust Reform Task Force and more recently in the Tribal Working Group on Trust Reform Legislation. Specifically, let me mention a few of these here.

Elevation of the Assistant Secretary-Indian Affairs to the position of Under-Secretary and eliminating the OST, which, as tribes have advocated, would improve coordination of trust activities within the DOI and establish decision-making authority and accountability under one executive authority. Tribes in the DOI/Tribal Task Force process endorsed elevation of the Assistant Secretary in order to positively address a

major issue that has been raised in every significant study of trust management at DOI, including the EDS Report, and by the *Cobell* Court: the lack of clear lines of authority and responsibility within the DOI to ensure accountability for trust reform efforts by the various divisions of the DOI. Nearly every agency in the DOI 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 bureaus. (We note a drafting error in Section 504(a), line 5: the word "not" should be eliminated).

USET views the Commission, established by Title II of S. 1459, as the logical extension of the DOI/Tribal Task Force. This Commission is needed to conduct a thorough analytical review of laws and practices in order to make viable recommendations for future legislative action on trust reform.

With regards to land consolidation, highly fractionated lands are difficult to manage, limit their productive use and result in the DOI spending more to administer the accounts than the appraised value of these fractionated lands themselves are worth. S. 1439 responds to the Tribal Trust Reform Workgroup recommendation to expand the voluntary buy back program for highly fractionated shares by providing for sums greater than fair market value for shares, and to take into account cost savings to the DOI by consolidating highly fractionated lands. USET suggests, however, that the problem of locating "whereabouts unknown" individual Indian accountholders for the purpose of land consolidation is a matter that should be addressed by this legislation, or by the Commission created in Title II of S. 1439. If these provisions are realized they will reverse the devastating policy introduced through the Allotment Act by restoring tribal

trust lands.

S. 1439, with its tribal trust asset management demonstration project (Title III), embraces a view strongly held by USET member tribes – that Indian self-determination works – for trust asset management as well as other activities benefiting Indian tribes. In the BIA Eastern Region, tribes administer 95% of the government's federal Indian program responsibilities pursuant to agreements under the Indian Self-Determination and Education Assistance Act (ISDEAA). By giving tribes greater authority in determining how best to deliver program services to their members, these services have markedly improved. USET is confident that management of trust functions will benefit from this demonstration project. Moreover, we expect it will foster an array of best management practices to be utilized for the wide range of trust resources managed in Indian Country.

While the legislation does not in itself codify trust standards, USET recognizes that S. 1439 provides for a Commission to issue recommendations on "proposed Indian trust asset management standards" (Section 204(c)(3)) and that the demonstration project provides for the development of trust asset management plans that meet trust standards as established by tribal law and consistent with the trust responsibility of the United States (Section 304(c)). Standards are essential components for assuring accountability and fulfilling the achievement of true trust responsibility. USET recognizes the necessity of standards yet acknowledges those standards must be developed in a manner that allows for flexibility reflecting the diversity that exists among tribes as well as the diversity among the resources to both of which the Secretary has a trust responsibility. The demonstration project will allow for tribes to establish best management practices that can be reinforced and replicated.

Title I of S. 1439 would resolve the complex, protracted and costly *Cobell* lawsuit. The terms of the bill demonstrates the Committee's understanding of the many issues and considerations involved in this large class action lawsuit. Title I addresses such matters as the distribution of the settlement funds and offers mechanisms for judicial review of that distribution, including the filing of claims to challenge the share distribution, to challenge the valuation of claims, and to challenge the constitutionality of the application of this Title to an individual claimant. USET encourages a fair and complete resolution of that litigation and understands that the Committee will hold additional hearings to consider the views of the *Cobell* Plaintiffs. USET urges the parties to this dispute to engage the proposed legislation in the spirit of compromise and in recognition of the unique opportunity this legislation offers.

USET appreciates that tribal trust claims are preserved by section 110(d). USET also endorses Indian Preference in hiring by the Undersecretary as provided by section 506.

USET highlights these provisions as those which directly respond to concerns and approaches that USET, tribes and other tribal organizations have identified as essential for trust reform legislation. USET's preliminary review of other terms in S. 1439 indicates that the complete the legislative package will be positive for carrying out the trust responsibility. USET urges the Committee to give additional attention to several other considerations.

First among them is the need for independent accountability. The DOI's failure to properly fulfill the federal government's trust responsibility to Indian tribes and individual Indians has been pointed out in the numerous opinions of the *Cobell* Court and Special

Master Reports, as well as in testimony before this Committee. The *Cobell* lawsuit has served as the impetus for important DOI reforms. The end of the *Cobell* lawsuit should not be the end of independent review of DOI performance. Recent attempts by the BIA to reorganize under the guise of trust reform, including transferring line authority ("stove-piping") from the Region to Central Office, which has fragmented Regional authority and has resulted in more of a negative effect than a positive one on the delivery of services at the tribal level. Rather, a more systematic monitoring and policing role is needed to assure that reforms identified through this legislation and the recommendations issued by the Commission (established in Title II) are given effect by the DOI.

While the independent external audit provisions contained in Title VI of S. 1439 establishes a sound approach to auditing, USET believes the DOI's management of non-monetary trust assets needs a similar independent review. Additionally, the beneficiaries need a point of redress to report fraud or abuse in the day-to-day implementation of the government's fiduciary trust responsibilities. USET's proposal would create an Assistant Inspector General for Indian Trust to carry out investigation and audit responsibilities associated with the DOI's implementation of the trust responsibility (see USET Proposal, Section 306). We urge the Committee to give greater attention to the need for this mechanism that can police the DOI's compliance with reforms contained in S. 1439. USET's proposal also provides for annual congressional trust oversight hearings based in part upon the findings of the Assistant Inspector General for Indian Trust.

Second, is the inefficiency and duplication that has been created by the DOI's stove-piping its lines of accountability and decision-making authority between trust and non-trust functions. This results in poor administrative coordination not only between

OST and BIA, but also between the BIA field offices and the BIA central office. Tribes have called for a single point of decision-making authority and accountability – one-stop-shopping – at their BIA field office. USET believes this to be a critical issue that trust reform legislation and the Commission created by Title II of S. 1439 must address.

USET's proposed legislation Section 304 requires consolidation of functions at the BIA field offices including the restoration of functions and funding previously transferred to OST and clarifying the field office directors' line authority over personnel assigned to that field office. Any separation of trust and "non-trust" functions duplicates bureaucracy, introduces potentially conflicting authorities with jurisdiction over an issue, and produces an organization incapable of efficiently administering the trust responsibility. Similarly, resources and authority must not be stacked at the Central Office. Rather, field offices must have staff, resources and decision-making authority to resolve in a timely manner the vast majority of issues at the point of first contact with the tribe.

Finally, all the reform in the world will not get the job done without adequate funding. The number of vacant positions and/or under-staffing in the DOI, particularly those in BIA responsible for the implementation of trust activities, in itself should demonstrate why the DOI has failed to meet its trust obligations. This Committee must be vigilant in assuring that budget requests do not cut funding for programs essential to carry out the trust responsibility. Transferring resources for the OST to hire supervisory staff cannot improve the system if personnel are not available to carry out the operational responsibilities.

As the Committee has recognized with S. 1439, trust reform requires tribally-driven, flexible mechanisms that reflect the diversity of tribes and the distinct types and

quantities of trust resources that exist. Moreover, in order for trust reform to advance, the Cobell litigation must be resolved. USET commends Chairman McCain and Vice Chairman Dorgan for their leadership with this bill. In closing, I thank you for the opportunity to present testimony and I assure you that USET will remain engaged with this Committee as this important bill evolves.