

**STATEMENT**

**OF**

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**AND**

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**U.S. DEPARTMENT OF THE INTERIOR**

**BEFORE THE**

**SENATE COMMITTEE ON INDIAN AFFAIRS**

**ON THE**

**TRUST INITIATIVES FOR THE 21<sup>ST</sup> CENTURY**

**March 10, 2004**

Mr. Chairman, Mr. Vice Chairman and Members of the Committee, we are pleased to be here today to discuss the trust initiatives for the 21<sup>st</sup> Century of the Office of the Assistant Secretary – Indian Affairs, the Bureau of Indian Affairs (BIA), and the Office of the Special Trustee for American Indians (OST). The roadmap that guides the Department’s trust initiatives for the 21<sup>st</sup> Century is the Comprehensive Trust Management Plan. The Comprehensive Trust Management Plan is being used to guide the design and implementation of the trust reform efforts.

In January 2002, the Secretary of the Interior, through the Office of Indian Trust Transition (OITT), launched an effort to develop a comprehensive approach for improving Indian trust management. Working with the OST and BIA leadership, the OITT staff developed a set of goals, objectives, and tasks for reforming Indian trust management. This work was based upon statutes, regulations, guiding principles in the Departmental Manual, and reports prepared by Electronic Data Systems.

In May 2002, this effort was expanded and a DOI-wide strategic planning team was created that included representatives from national and regional offices of the OST, BIA, Minerals Management Service (MMS), and Bureau of Land Management (BLM). From May 2002 through December 2002, the DOI strategic planning team met regularly to review and update the goals and objectives. It also presented them to the Joint DOI/Tribal Leaders Task Force for review. After several meetings, the task force's subcommittee on planning approved the goals and objectives.

The goals and objectives of the Comprehensive Trust Management Plan include:

- An organizational structure in the Office of the Assistant Secretary – Indian Affairs, the BIA, and the OST, to support a new service delivery model.
- The implementation of a new land title records system to keep ownership records accurate and current.
- Improve land and natural resource and trust fund asset management including a nation-wide plan for eliminating fractionated interests of land that are burdening the trust and taking resources away from profitable activities.
- Promote Self-Governance and Self-Determination.
- The review and improvement of our trust business processes (the As-Is/To-Be process).

Through the examination of the “big picture” of trust management, the Department created a coordinated and integrated system in which all pieces of trust management function as a coherent whole. We recognize that strategic plans are dynamic and therefore, we will regularly evaluate and update this plan to ensure its responsiveness to the ongoing needs of the Department's trust operations and to adapt to changing environments. We are confident that the goals and objectives of the Comprehensive Trust Management Plan will enable the Department to provide important services to Indian country more efficiently and effectively than in the past. We are confident that our trust initiatives under the plan will result in a noticeable enhancement to the level of service our organizations currently provide.

The organizational realignment of the Office of the Assistant Secretary – Indian Affairs, BIA, and OST was one component of this plan. On April 21, 2003, Secretary Norton made effective an historic trust initiative by signing the Department of the Interior

Manual establishing clear lines of responsibility by which BIA will provide trust services and OST will provide fiduciary trust oversight. In addition, the Secretary added OST staff at BIA agencies to support the work of BIA's Deputy Agency Superintendents for Trust Services managers. We are pleased to announce that the reorganization efforts have largely been completed.

## **ORGANIZATIONAL REALIGNMENT**

In August 2001, during our formulation of the FY 2003 budget, various proposals and issues were identified concerning the trust asset management roles of the BIA, OST, and other Departmental entities carrying out trust functions. By that time, the Department had heard from many sources – e.g., the Special Trustee, Electronic Data Systems, the Court Monitor in *Cobell v. Norton*, and through budget review – recommended multi-bureau consolidation of trust functions throughout DOI and pursued consolidation of functions to improve trust asset management. In short, the Department realized it had to provide an organizational structure that focused on its responsibilities to both individual Indians and tribal beneficiaries.

Tribal Representatives agreed with the Department that the status quo was not acceptable, and that the Department's longstanding approach to trust management needed to change. Moreover, this change must be reflected in a system that is accountable at every level with people trained in the principles of trust management.

After intensive review of five organizational proposals from tribes, the Secretary chose to realign the organization capturing as much as possible from the extensive consultation process. Over 45 meetings were held with Tribal leaders in which senior level officials from the Department were in attendance during the Joint Tribal Leader/ Department of the Interior Task Force on Trust Reform. The results comply with the concepts developed during the consultation process that were determined to be instrumental to improving the delivery of fiduciary trust services, including:

- **Keeping specific management decisions about trust assets at the agency level.** The organizational trust initiative left decision making at the agency level where expertise and knowledge of a Tribe's or an individual's needs is greatest.
- **Creating a Trust Center and staffing it with trust officers.** The realignment created an opportunity for increasing support at the local agencies by adding trust officers and expertise from the Office of the Special Trustee and deputy superintendents from BIA to the agencies.
- **Promoting the idea of Self-Governance and Self-Determination.** The Task Force recommended that the Office of Self-Governance be placed under a new Under Secretary to underscore its importance and expand the ability of tribes to compact outside of the BIA. To address this recommendation, we created a new Deputy Assistant Secretary for Economic Development Policy and expanded the

role of the Office of Self-Governance to include policy development and coordination for all self-determination programs.

- **Creating a new Office of Trust Accountability.** Within OST, a Deputy Special Trustee for Trust Accountability has been created to be responsible for trust training; trust regulations, policies and procedures; and a Trust Program Management Center. In addition, a new division of Review and Audit was created. This division reports directly to the Special Trustee and performs trust related reviews of BIA and tribal fiduciary trust administration to ensure the Secretary's trust principles are followed.
- **Increasing the accountability of the Assistant Secretary – Indian Affairs.** In order to expedite the desire to obtain a high level response within DOI, more accountability was added at the Assistant Secretary-Indian Affairs who already reports to the Secretary.

The Majority of the reorganization effort has been completed. The reorganization of OST was approved on April 21, 2003. Hiring of appropriate personnel to execute the organizational plan will continue through FY 2005. The reorganization of Indian Affairs was considerably more complex, due to the large size of the organization. The initial phase, the reorganization of the Office of the Assistant Secretary – Indian Affairs was completed on July 27, 2003. The reorganization of BIA's Central Office, with the exception of the Law Enforcement Program, took place on September 21, 2003. We expect to have the Law Enforcement program reorganized by March 31, 2004. The reorganization of the Office of Indian Education Programs took place on October 19, 2003 and the realignment of the BIA regional and agency staff took effect on February 22, 2004. This reorganization is a major accomplishment to implementing and moving forward on our trust initiatives.

### **Initiatives of the Office of the Assistant Secretary – Indian Affairs and the Bureau of Indian Affairs**

The role of the Deputy Assistant Secretary – Indian Affairs has been expanded and renamed the Principal Deputy Assistant Secretary for Indian Affairs, who, subordinate to the Assistant Secretary, has line authority over the Deputy Assistant Secretary for Management, the Director of the Office of Indian Education Programs, the Director of the Bureau of Indian Affairs, a new Deputy Assistant Secretary for Economic Development Policy and a new Deputy Assistant Secretary for Information Resources Management. This structure elevates economic development and the federal acknowledgement process to the Assistant Secretary level. It separates the IT functions of BIA allowing for greater oversight and overarching management in these areas. In addition, consistent with the President's management agenda, administrative functions previously performed in a decentralized fashion at the central, regional and agency levels, have been consolidated under the management structure.

Within the DOI structure, BIA retains natural resource trust asset management. The management of the trust functions at the BIA regional and agency levels has been

separated by creating the positions of Deputy Regional Director for trust services and Deputy Regional Director for Tribal Services. The Deputies will report to their Regional Director who, in turn, will report to the Director, Bureau of Indian Affairs (formerly the Deputy Commissioner). A similar structure has been created at the agency level. Seven of our Regions have Deputy Regional Directors for Trust Services on board and we are in the process of adding the additional five positions. Six of the twelve Deputy Regional Directors for Tribal Services have been named and we are in the process of adding the nine additional positions.

At the Agency level, most Agencies will have a Deputy Agency Superintendent for Trust Services, who will manage the trust functions. We have hired three Deputy Agency Superintendents, at Concho, Anadarko, and Pima Agencies, and have advertised for several more. The BIA is working in concert with the OST on this effort, so that we hire Deputy Agency Superintendents and Trust Officers at the same locations and at the same time. We expect to hire approximately 45 Deputy Agency Superintendents.

### **Initiatives of the Office of the Special Trustee for American Indians**

OST continues to be responsible for the management of financial assets and certain reform projects, and maintains its statutory oversight responsibilities. The Secretary has delegated additional operating authority, including line authority over regional fiduciary trust administrators and fiduciary trust officers to OST. These new positions are intended to be filled by skilled trust administrators and staff trained for these responsibilities. A staff of six trust administrators is located in Albuquerque and will oversee a staff of trust officers and trust account managers in or near BIA field office locations.

We are pleased to report that the first recruitment efforts for these positions have been successful. On May 7, 2003, the regional trust administrator Senior Executive Positions were advertised. Five of the six positions have been selected and are going through the hiring process. Two of the five have reported and all are expected to be on-board by mid-year 2004.

Recruitment activity for the trust officer positions also began during FY 2003, and two were hired last year. Twelve more Trust Officers are expected to be hired by the end of March 2004. By the end of FY 2004, we expect to have 45 Trust Officers on Board. A matrix indicating when Trust Officers will be hired and where they will be located is attached as an exhibit to this statement. They will be co-located with BIA agency personnel, or in close proximity to these offices. Trust officers also will be located in urban centers, which have large beneficiary populations. Trust officers will work together with BIA agency superintendents and staff, and will eventually become the first line of contact for tribal and individual Indian beneficiaries for issues related to ownership of trust assets, account balances and trust transactions. Trust Officers and associated support staff will serve as a resource to agency personnel in the performance of fiduciary trust related duties. They also will serve as a primary point of contact for local collections, and ensure that proper documentation for trust transactions and internal controls are followed. The majority of Trust Officer's time is expected to be spent with

beneficiaries, locating beneficiaries, particularly those whose whereabouts are unknown, supporting the BIA probate effort, sorting money put into special deposit accounts, and offering counseling and advice on managing their assets and answering their inquiries.

These initiatives place additional emphasis on the implementation of a comprehensive and coordinated audit and risk management function to improve overall fiduciary trust accountability. The Office of Trust Review and Audit is working with agencies to develop a rating system that indicates the level of compliance with fiduciary trust activities and success in meeting the fiduciary responsibilities of the Secretary. It also will indicate those areas where additional oversight will be required.

The organization charts attached set forth the organizational structure for the BIA and OST. This structure accomplishes most of the goals set forth by the Secretary and the 2002 Tribal Task Force.

### **Congressional Support**

We want to thank the Congress for all of the support it has given the Department during the creation and implementation of its trust initiatives, especially with the reorganization effort. On December 4, 2002, the Department submitted letters to the House and Senate Appropriations Committees regarding the Department's intention to reprogram funds to implement the changes. On December 18, 2002, the Department received letters in response from the Committees that were consistent with the Department's intention to reprogram.

In FY 2004, Congress provided \$453.4 million for the unified trust budget. For FY 2005, the President's budget proposes \$614.4 million, an increase of 36%. Approximately \$7 million is proposed in the 2005 budget for BIA and OST to complete the new staffing required by the reorganization. It is important to note that virtually all new staff is at the local level where the need is greatest.

### **Coordination and Outreach**

To begin the reorganization process, Indian Affairs and OST created Trust Initiative Implementation Teams consisting of staff from both organizations. The teams met regularly in 2003 to discuss the status of their respective reorganizations. These meetings allowed for the coordination and communication of internal organizational activities, which greatly aided our reorganization efforts. This strong working relationship that was created through these teams is ongoing. Indian Affairs and OST continue to closely coordinate their ongoing reorganizations and other trust initiatives. Representatives selected by the Tribal/DOI Task Force of 2002, continued to meet with these teams and provide information to Tribes.

In June 2003, Indian Affairs and OST jointly held presentations to explain the reorganization to BIA and OST staff and to Tribal leaders. A total of 45 meetings were held throughout the United States, particularly in the cities where Regional offices are

located and in other cities where there are high concentrations of staff. In fact, three to four regional or agency offices received the presentation each week

Three different types of outreach presentations were conducted. Some presentations were held just with Superintendents. Those meetings were designed to train the Superintendents regarding the reorganization, and to provide them with written information, so that they could in turn educate their Agency staff. Some presentations were held for BIA and OST employees. Those meetings were designed to answer their questions about the reorganization. Finally, presentations were held for Tribal Leaders and individuals in each Region. Information and a schedule for those briefings were widely distributed by the regional offices and to tribes. Unfortunately, in some Regions, the Tribal Leaders chose not to participate with us in discussions about the reorganization, and walked out of the presentations we had scheduled.

Based on the questions we received during our presentations in June, we drafted a Frequently Asked Questions document, which was made available to all Indian Affairs and OST employees and to Tribal Leaders in October 2003. The frequently asked questions and answers are attached to the end of this statement.

In addition to the presentations, Indian Affairs and OST held change management meetings to help their affected staff plan for and deal with the changes in the organization. Both Indian Affairs and OST have also sent periodic emails to all employees, informing them of the status of the reorganization throughout the reorganization process.

### **Regional Consultations**

Prior to implementing the organizational changes at the Regions and Agencies, we wanted to have further discussions with Tribal Leaders about the specific changes that would be occurring in their Regions. We therefore held meetings with the Tribal Leaders from each Region in September and October of 2003 regarding the new structure for their Region. We held the sessions for the Eastern, Eastern Oklahoma, Southern Plains and Midwest Regions on September 24 and 25, in Tulsa, Oklahoma. We held the sessions for the remaining eight Regions the week of October 27, 2003, in Las Vegas, Nevada. We also took written comments from Tribes in each Region for several weeks following the Las Vegas meetings. Following these meetings, we made some changes to the proposed Regional and Agency charts to reflect comments we received at, or after, the meetings.

### **Pilot Agencies**

To begin implementing the trust initiatives, BIA and OST identified two "Pilot Agencies" during 2003. The two pilot agencies were at Concho and Anadarko. In FY 2003, both the Concho and Anadarko agencies realigned staff and added fiduciary Trust Officers as well as Deputy Agency Superintendents. These locations were chosen based on a number of criteria including: the number of beneficiaries served; the high volume of recurring trust income generated; and local workload indicators. The success is already

apparent. A close working relationship is present with the OST and BIA staff. Outreach meetings are now being held by the Trust Officers to become better connected with beneficiaries and more decisions are being made at the agency level. A major challenge is getting reconnected to the Internet and having the information technology systems fully operational so that information can be readily available to all personnel at the agency to solve problems, answer beneficiary questions and assure correct ownership of assets.

OST and Indian Affairs have jointly developed a month long orientation program for the remaining Deputy Agency Superintendents and Fiduciary Trust Officers in order for those agencies to implement the trust initiatives. The orientation programs will be held from April 5, 2004 to April 23, 2004 and the week of May 3, 2004.

### **Remaining Tasks**

Although most of the organizational realignment has been completed, some tasks still remain. As mentioned above, we still need to realign employees in the BIA law enforcement program. BIA intends to have this realignment completed by March 31, 2004.

The Indian Affairs Federal Financial System (FFS) is being modified to reflect the changes made to the organization and staffing. FFS will be fully converted on October 1, 2004, but this project will continue until December 2004 to ensure that FFS is functioning properly.

Several positions are still in the process of being filled. BIA and OST need to complete the hiring of Indian Affairs Deputy Regional Directors, the sixth OST Regional Fiduciary Trust Administrator, Indian Affairs Deputy Agency Superintendents for Trust Services and OST Fiduciary Trust Officers. We anticipate hiring approximately 45 Trust Officers and 45 Deputy Agency Superintendents during the remainder of FY 2004 (including those currently advertised, as discussed above), with the rest to be hired in FY 2005.

Finally, although the Secretary signed the Department manual on April 21, 2003 making the changes effective, we are currently preparing a further revision to some non-fiduciary trust operations in the Departmental Manual for Indian Affairs. The revision will formalize the structure of Indian Affairs' law enforcement program, create a separate Central Office Division for Tribal Courts as requested by Tribes, create a separate Central Office Probate and Estate Services Division to focus on reducing our probate backlog, clarify the reporting structure for our environmental programs and make other technical changes.

Organizational realignment, coupled with our other trust initiatives is enabling the Department to provide reliable beneficiary focused services. Implementation of the Comprehensive Trust Management Plan continues with the other initiatives the Department is currently engaged in working on. We are nearing the completion of our review and improvement of our business processes ("As-Is" "To-Be") with implementation to follow; implementing a new land title records system; and improving



our land, natural resource, and trust fund asset management through the reduction of fractional interests.

## **OTHER TRUST INITIATIVES**

### **“As-Is” – “To-Be”**

Following the consultation sessions with the Tribes during 2002, the Department undertook an exercise to determine exactly how fiduciary trust business processes were being performed. Through this effort, various business processes were identified that were required to be performed to meet our fiduciary duties, including determining ownership of the trust asset, accounting for the income from trust assets, putting trust assets to work such as leasing of the land and harvesting timber, supporting the self-determination and self-governance goals of the Department and providing direct beneficiary services. This study was done by meeting with representatives from every BIA region and many Tribes to determine how they conducted these processes at their locations. BIA agency employees, regional employees and representatives from the BLM and the MMS were interviewed to collect this information. After a year’s work, over a thousand pages were written that documented the “As-Is” business fiduciary trust processes.

The next step was to develop a “To-Be” Model. The concept was to have many of the same people who provided information for the “As-Is” to meet and offer suggestions on how the process could be improved. Again, meetings were held during all of 2003 to glean information from BIA regions, agencies and tribes to develop a model of best practices that could replace the “As-Is” way of doing business. This has now become the trust initiative for the 21<sup>st</sup> Century.

The draft “To-Be” Model was completed on September 30, 2003. Since that time, it has been presented throughout Indian country for review and comment. Although comments were due by January 30, 2004, at the request of tribal leaders, the comment period was extended to March 31, 2004. This trust initiative for the 21<sup>st</sup> Century will be a major improvement in the way fiduciary trust business is done in the Department. Not only is it expected to improve the communications with beneficiaries, but also to streamline the management of fiduciary trust assets and result in a more efficient and effective trust organization.

### **Title System**

The Department is currently working on establishing new technology to maintain a system of land title records using new software that should enable beneficiaries to obtain information regarding their Indian land trust assets in a timely manner. We also are working on ways to invest tribal and individual Indian trust funds to make the trust account productive for the beneficial owner consistent with market conditions existing at the time the investment is made. Through improvements to our record systems, we hope

to be able to communicate better with beneficiaries regarding the management and administration of their trust assets.

### **Reducing Land Fractionation**

Addressing the rapidly increasing fractionation on Indian land is critical to improving management of trust assets. Purchase of fractional interests increases the likelihood of more productive economic use of the land, reduces recordkeeping and large numbers of small dollar financial transactions, and decreases the number of interests subject to probate. The BIA has conducted a pilot fractionated interest purchase program in the Midwest Region since 1999. As of December 31, 2003 the Department has purchased 68,938 individual interests equal to approximately 42,075 acres. The Department is in the process of expanding this successful program nationwide. We also plan, where appropriate and to the extent feasible, to enter into agreements with Tribes or tribal or private entities to carry out aspects of the land acquisition program. The 2005 budget request includes an unprecedented \$75.0 million for this program.

### **CONCLUSION**

These trust initiatives are a major undertaking, and we expect the benefits to be widespread. The Department realized it needed an organization that focused on its fiduciary duties as trustee to both individual Indians and tribal beneficiaries. The completion of the reorganization effort provides a major step forward in our ability to provide an efficient and successful trust management system within the Department of the Interior for our individual and tribal beneficiaries. The completion of the "To-Be" business model will be a major improvement in the way fiduciary trust business is done in the Department. Improving our title systems and reducing fractionated interests will lead to better record keeping, an improved probate system, and a more productive and economic use of Indian land. We are confident that all these efforts, which are part of the Department's Comprehensive Trust Management Plan, will improve the performance and accountability of our management of the trust.

This concludes our opening statement. We look forward to answering any questions the Committee may have.