

**STATEMENT  
OF  
ROSS O. SWIMMER  
SPECIAL TRUSTEE FOR AMERICAN INDIANS  
AND  
AURENE M. MARTIN  
ACTING ASSISTANT SECRETARY INDIAN AFFAIRS  
U.S. DEPARTMENT OF THE INTERIOR  
BEFORE THE  
SENATE COMMITTEE ON INDIAN AFFAIRS  
ON THE  
REORGANIZATION OF INDIAN PROGRAMS**

**May 21, 2003**

Mr. Chairman, Mr. Vice Chairman and Members of the Committee, we are pleased to be here today to discuss the reorganization 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). This reorganization will enable the Department to provide important services to Indian country more efficiently and effectively than in the past. This reorganization is the result of lengthy meetings and consultation sessions with key stakeholders, and we are confident that it will result in a noticeable enhancement to the level of service our organizations currently provide. Some of the highlights of the reorganization include:

- An increased emphasis on tribal economic development, self-determination and self-governance policies and projects.
- Increased accountability by the addition of Regional Trust Administrators and Trust Officers to serve as an additional resource for fiduciary trust transactions.
- The dedication of employees to providing consolidated beneficiary services.

On April 21, 2003, Secretary Norton made effective this historic reorganization by signing the Department of the Interior Manual.

### **INTERIOR'S REORGANIZATION**

After an extensive consultation process with Indian country and additional Congressional oversight, the Department has established an organizational approach for the improved delivery of trust services that differs significantly from the original proposal presented in 2001. The Department's current organizational approach is closely aligned with, and is a product of, the insight gained from this consultation process. Importantly, the reorganization complies with concepts determined during the consultation process to be instrumental to any reorganization, including:

- **Keeping specific management decisions about trust assets at the agency level.** The reorganization leaves decision making at the agency level where expertise and knowledge of an individual tribe's or person's needs is greatest.
- **Creating a Trust Center and trust officers.** The reorganization creates these in the Office of the Special Trustee to provide improved and consolidated beneficiary services.
- **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. Instead, we have 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.
- **Ensuring Trust Accountability by creating a new Office of Trust Accountability under the new Undersecretary.** 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.

- **Creating a new Undersecretary for Trust reporting directly to the Secretary.** The creation of an Undersecretary position would have required legislation. Instead of an Undersecretary, we use the existing statutory framework.

The FY 2004 budget request includes an increase of \$15 million to support the new organization, which together with base funding available in BIA and OST will provide resources needed for the new organization.

### **REPROGRAMMING REQUEST**

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 reorganization. On December 18, 2003, the Department received letters in response from the Committees that were consistent with the Department's intention to reprogram.

### **REORGANIZATION OF THE OFFICE OF THE ASSISTANT SECRETARY – INDIAN AFFAIRS AND THE BUREAU OF INDIAN AFFAIRS**

Under the reorganization, the BIA retains all 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 operations and Deputy Regional Director for all other BIA services except those that report directly to the Assistant Secretary – Indian Affairs. Deputies will report to the 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.

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 existing Deputy Assistant Secretary for Management, the existing 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.

### **REORGANIZATION OF THE OFFICE OF THE SPECIAL TRUSTEE FOR AMERICAN INDIANS**

Under this reorganization, OST continues to be responsible for management of financial assets and certain reform projects, and maintains its statutory oversight responsibilities. Additional operating authority, including line authority over regional trust administrators and trust officers has been delegated to OST by the Secretary. These new positions, to the extent possible, are intended to be filled by skilled trust administrators and staff trained for these responsibilities. A staff of six trust administrators will be located in Albuquerque and will oversee a staff of trust officers and trust account managers in field locations.

We are pleased to report that the first recruitment efforts for these positions are underway. On May 7, 2003, the regional trust administrator positions were advertised. These are SES positions that have been announced on USAJOBS.com and will be advertised in such publications as the Wall Street Journal and the Indian Law Review. The application period will close on June 23, 2003.

Recruitment activity for the trust officer positions will follow. Trust officers will be co-located with BIA agency personnel, or in close proximity to these offices. Trust officers also will be located in urban centers, that have large beneficiary populations. Trust officers will work closely with BIA agency superintendents, and will eventually become the first line of contact for tribal and individual Indian beneficiaries for issues related to their ownership of trust assets. Trust officers will serve as a resource to agency personnel in the performance of trust transactions and will review those transactions that meet the criteria of having an increased risk associated with them (e.g.: such as conflicts of interest or complex transactions). 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 officers time is expected to be spent with beneficiaries offering counseling and advice on managing their assets and answering their questions.

This reorganization places additional emphasis in the implementation of comprehensive and coordinated audit and risk management functions to improve overall fiduciary trust accountability. The Office of Trust Review and Audit will work with agencies to develop a rating system which identifies transactions requiring increased fiduciary trust controls. It also will designate 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, EDS and the Tribal Task Force.

## **PILOT AGENCIES**

BIA and OST have identified two “Pilot Agencies” which will be the first agency locations to be reorganized. The Concho and Anadarko agencies have been selected as the first to be fully restructured and staffed in FY 2003 (the first placements of Trust Officers and Deputy Agency Superintendents will occur here). 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. Lessons learned at these locations will ensure a smooth reorganization at other locations in FY 2004.

## **HISTORY**

As this Committee is aware, and on which the Department has testified previously, in November 2001, the Department of the Interior submitted to the House and Senate Appropriations Subcommittees on Interior and Related Agencies a request for approval to reprogram funds to establish a new Bureau of Indian Trust Asset Management as well as a new Assistant Secretary for Indian Trust Asset Management. The main concept of the Bureau of Indian Trust Asset Management was to consolidate all fiduciary trust functions performed by the various departmental bureaus and offices under a single, executive sponsor in a separate bureau from the BIA.

Tribal leaders objected to the proposal, articulating a number of concerns including:

- their view that consultation done on the proposal was insufficient;
- their uncertainty regarding the effect of the proposed reorganization on tribes that compact or contract for trust functions; and
- their opinion that stripping trust management responsibilities from the BIA and placing these responsibilities into a new Bureau would ultimately reduce the funding available to the BIA to carry out the other services the United States provides to Indian tribes and their members.

The Senate Appropriations Subcommittee on Interior and Related Agencies asked the Department to resubmit its reprogramming proposal after the completion of additional consultation with the Indian community, a continued review of the management and organization of the Department’s trust program, and further coordination with the authorizing committees of Congress.

The Department spent many months addressing this request. Indeed, the issue of trust management reform has eclipsed any other faced by the Department in terms of the time, energy and effort brought to bear on any issue before this Administration.

## **CONSULTATION EFFORTS**

The Department committed to a consultation process on the issue of trust reform and organizational reform that was the most extensive consultation efforts ever undertaken. Over 45 meetings were held with Tribal leaders in which senior level officials from the Department were in attendance. The first meeting occurred in November 2001, in Spokane, Washington. Nine additional meetings followed in different locations, the first of which was attended by the

Secretary. During those meetings, participants requested a different format for consultation on this issue.

Early in the process, the Tribes asked the Department to participate in a Task Force in which the Tribes and senior Departmental officers could sit down together and discuss collaboratively the organizational issues inherent in trust reform. In January of 2002, the Joint Tribal Leader/ Department of the Interior Task Force on Trust Reform (Task Force) was created, and funded for approximately one million dollars.

The purpose of the Task Force, as defined in the protocol agreement, was 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.” [emphasis added]

Its charge included review of the numerous proposals for trust reform that had been submitted in response to the Department’s Bureau of Indian Trust Asset Management proposal, providing proposals to the Secretary on organizational alternatives. In addition to reviewing all proposals, the Task Force was to assist the Department in its review of current practices.

The Task Force held ten, joint multi-day meetings throughout the country. Meetings were held in Shepherdstown, WV, Phoenix, AZ, San Diego, CA, Minneapolis, MN, and Bismarck, ND, Portland OR, Anchorage, AK, Billings, MT, Alexandria, VA, and Washington, DC.

### **TASK FORCE REPORT**

On June 4, 2002, the Task Force presented its initial report containing its findings and recommendations on the Interior trust organization. The Task Force received more than forty separate alternative organizational proposals (or submissions with observations), providing a wide variety of options for consideration. The options ranged from retaining the status quo to the creation of a new Department of Indian Affairs. Some proposals stated a preference to place only the Department’s trust responsibilities outside of the Department of the Interior.

The Department and the Tribal Representatives agreed that the status quo is 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.

Task Force members analyzed all of the proposals and created several generic composite options reflecting the best features and major elements presented by the entire body of the alternative proposals. The Task Force report stated that the principal focus of further consultation should involve the configuration of line management officials, from top to bottom, in each alternative as well as the grouping of staff support functions. At the May 2002 Task Force meeting in Minneapolis, Minnesota, the Task Force agreed to initiate regional consultation meetings in Indian Country during June and early July for the benefit of tribal leaders who were unable to

travel to any national meeting. The purpose of those meetings was to discuss the deliberations and recommendations of the task force with local tribal leaders and to receive guidance from them on moving forward.

After the regional consultations, the Task Force ultimately reached agreement to recommend that Congress establish a new position, an Under Secretary for Indian Affairs, that would be subject to Presidential appointment and Senate confirmation and would report directly to the Secretary. The Under Secretary would have direct line authority over all aspects of Indian affairs within the Department. This authority would include the coordination of trust reform efforts across the relevant agencies and programs within the Department to ensure these functions would be performed in a manner consistent with its trust responsibility. Also, the Office of the Special Trustee would be phased-out.

The Task Force also reached agreement on the elevation of the Office of Self-Governance to the office of the new Under Secretary for Indian Affairs. This would enhance the abilities of the tribes that are interested in moving toward more compacting and contracting to carry out the services due to Indian beneficiaries. Similarly, the Task Force agreed to recommend to Congress that it create a Director of Trust Accountability reporting directly to the Under Secretary who would have the day-to-day responsibility for overseeing the trust programs of the Department.

In addition, a working group of the Task Force reached agreement on the restructuring of the Bureau of Indian Affairs to create separate lines of authority for the provision of trust and non trust services. This structure will provide greater accountability and an increased focus on our fiduciary responsibilities.

The Task Force then began the development of legislation that would accomplish the elements of the agreements regarding reorganization that needed Congressional authorization, namely the new Under Secretary position. However, the Tribal leaders on the Task Force stated that they could not support any legislation unless it also included legislative trust standards and separate provisions providing private rights of action related to trust duties. The inclusion of these provisions was not acceptable to the United States. At that point, the Task Force agreed that it could not go forward to the Congress with a legislative proposal.

### **THE COBELL COURT DECISION**

On September 17, 2002, the Judge presiding over the *Cobell v. Norton* case ordered the Department to present to the Court by January 6, 2003 “a plan for bringing itself into compliance with the fiduciary obligations it owes to the IIM trust beneficiaries.” The first element discussed in the Department’s Fiduciary Obligations Compliance Plan is reorganization. The plan describes the reorganization as follows:

“The reorganization within the BIA and OST places a particular focus on each organization’s fiduciary duties to Indian individual and tribal beneficiaries. For instance, land and natural resource management is located in the BIA because it has demonstrated expertise in this area of the trust. The OST has been given the direction to expand its operational role in addition to its statutory oversight duties.

As a result, OST will develop a regional and agency presence to ensure that trust standards are followed in the management of these assets and will retain the responsibility for financial asset management. By further developing and taking advantage of the strengths of each organization, Interior will have a more cost effective, efficient and successful trust management system. Simply put, this reorganization dedicates more trained personnel to provide consolidated trust services, increases the emphasis on tribal contracting and provides direct trust accountability.”

### **REORGANIZATION OUTREACH**

The BIA and OST have created Reorganization Implementation Teams, consisting of staff from both organizations, that meet regularly to discuss the status of their reorganization activities. These meetings allow for the coordination and communication of internal reorganization activities, including the creation of a joint briefing to be presented to all BIA and OST employees nationwide.

Throughout the month of June, six teams of BIA and OST employees will present briefings at regional and agency office locations to provide information to all employees about the reorganization. Three to four regional or agency offices will receive the presentation each week. BIA superintendents will be provided copies of the material and trained on the contents so that they can provide information to employees and tribes at the agency level. In addition to providing presentations to BIA and OST personnel, each team also will provide briefings to interested tribal leaders and individuals. Information and a schedule for these briefings will be widely distributed by the regional offices to tribes so that they may attend.

### **CONCLUSION**

This reorganization is a major undertaking, and the benefits will be widespread. The reorganization allows each organization to focus on its fiduciary duties as trustee to Indian individuals and tribal beneficiaries. The BIA has demonstrated expertise in land and natural resource management which will be administered by a deputy regional administrator with that as his sole responsibility. Direct line authority to the Assistant Secretary - Indian Affairs will remain. The OST will also have a regional and agency presence to ensure that trust standards are followed in the management of those assets and will retain the responsibility for financial asset management. By further developing and taking advantage of the strengths of each organization, BIA and OST will provide the most cost effective, efficient and successful trust management system within the Department of the Interior.

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