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SPECIAL TRUSTEE FOR AMERICAN INDIANS  
BEFORE THE SENATE COMMITTEE ON INDIAN AFFAIRS ON  
THE 2005 PRESIDENT'S BUDGET REQUEST FOR INDIAN PROGRAMS**

**February 4, 2004**

It is a pleasure to be here today with the Special Trustee for American Indians to discuss with you the fiscal year 2005 budget for Indian programs in the Department of the Interior. I appreciate the opportunity to highlight a number of important initiatives and to answer any questions that you might have.

The overall 2005 budget request for the Department of the Interior is \$11.0 billion, the largest Presidential request in the Department's history. These funds are requested to enable the Department to accomplish its four strategic mission components as Follows: Resource Protection, Resource use, Recreation, and Serving Communities. The consolidated Indian budget falls under this fourth component.

President Bush has proposed a \$2.3 billion budget for the Bureau of Indian Affairs (BIA) for Fiscal Year 2005. The Operation of Indian Programs account is funded at \$1.9 billion, an increase of \$36.8 million. The budget continues the Department's commitment to reform trust management and provides increases for law enforcement and public safety, two new tribal colleges, economic development, and self determination efforts.

The President's FY 2004 request for the Office of the Special Trustee for American Indians (OST) is \$322.7 million, an increase of \$113.6 million, 54.4 percent, above the FY 2004 enacted level. The budget provides \$157.8 million in new funding to strengthen the Department's ongoing efforts to reduce the fractionation of Indian lands, reform management of its fiduciary obligation to Tribes and individual Indians, and continue historical accounting efforts for trust funds.

### **Overview -- BIA**

The BIA provides services directly or through contracts, grants, or compacts to a service population of 1.5 million American Indians and Alaska Natives who are members of 562 federally recognized Indian tribes in the 48 contiguous United States and Alaska. While the role of BIA has changed significantly in the last three decades in response to a greater emphasis on Indian self-determination, Tribes still look to BIA for a broad spectrum of services. The extensive scope of BIA programs covers virtually the entire range of State and local government services. Programs administered by either Tribes or the BIA include an education system for almost 48,000 elementary and secondary students; 29 tribal colleges, universities, and post-secondary schools; social services; natural resources

management on 56 million acres of trust land; economic development programs in some of the most isolated and economically depressed areas of the United States; law enforcement; administration of tribal courts; implementation of legislated land and water mission is to fulfill its trust and other statutory responsibilities and promote self-determination on behalf of tribal governments, American Indians, and Alaska Natives. The BIA provides services directly or through contracts, grants, or compacts to approximately 1.5 million American Indians and Alaska Natives who are members of 562 federally recognized Indian Tribes in the 48 contiguous States and Alaska.

While BIA's role has changed significantly in the last three decades in response to a greater emphasis on Indian self-determination, Tribes still look to BIA for a broad spectrum of services. The programs are funded and operated in a highly decentralized manner, with about 90 percent of all appropriations expended at the local level, and about 50 percent of appropriations provided directly to Tribes and tribal organizations through grants, contracts, and compacts.

The scope of BIA's programs is extensive and covers virtually the entire range of State and local government services. The programs administered by either Tribes or BIA include: an education system for almost 48,000 elementary and secondary students; 25 tribally controlled community colleges; social service programs; management of natural resources on 56 million acres of trust land; economic development programs in some of the most isolated and economically depressed areas of the United States; law enforcement; administration of tribal courts; implementation of legislated land and water claim settlements; replacement and repair of schools; repair and maintenance of roads and bridges; and repair of structural deficiencies on high hazard dams.

### **Overview – OST**

The Office of the Special Trustee is responsible for the oversight and coordination of the Department's trust asset reform and daily efforts to ensure the establishment of policies, procedures, systems and practices that allow the Department to effectively discharge its trust responsibilities. OST has operational responsibility for financial trust fund management, including the investment, receipt and disbursement of Indian trust funds. Additional trust functions are carried out by other Bureaus and Offices within the Department.

### **Trust Reform**

Over one-half of the Department's overall \$340 million budget increase for 2004 is intended to fund trust initiatives. This is the largest increase ever proposed in the Department of the Interior's FY 2004 budget. The 2004 budget for Indian trust programs includes \$554 million for trust operations and reform and reflects new management concepts. While the overall budget request is approximately 3.3% over our FY 2003 request, our FY 2004 Indian trust budget request is 50% higher than what was enacted for FY 2003.

Fulfilling our Trust responsibilities remains one of the Department's greatest challenges. The Department has responsibility for the management of approximately 100,000 leases for individual Indians and Tribes on a land trust that encompasses approximately 56 million acres.

Revenue from leasing, use permits, sale revenues, and interest, totaling approximately \$226 million per year, is collected for approximately 230,000 individual Indian money accounts, and about \$530 million per year is collected for approximately 1,400 tribal accounts. In addition, the trust manages approximately \$2.8 billion in tribal funds and \$400 million in individual Indian funds.

## **The Past – Performing an Historical Accounting**

In July 2001, the Secretary created the Office of Historical Trust Accounting (OHTA) within the Office of the Secretary. The mission of OHTA is to coordinate all activities relating to historical accounting – an obligation imposed by the 1994 Trust Reform Act and confirmed by the court opinions in the *Cobell v. Norton* case. On January 6, 2003, the Department presented a plan entitled “The Historical Accounting Plan for Individual Money Accounts” (The Plan) to the District Court in *Cobell v. Norton* for the historical accounting for about 260,000 IIM accounts.

**The FY 2004 Budget** The work described in the January 6, 2003 Plan is expected to take five years to complete and is preliminarily estimated to cost approximately \$335 million. The budget includes an historic \$130.0 million for these historical accounting activities. A portion of these funds will also be used to provide for historical accounting activities related to tribal accounts.

## **The Present -- Reorganizing to Provide Better Trust Management**

**Reorganization of the Office of the Special Trustee for American Indians** Under Interior’s reorganization, the Office of the Special Trustee has been given additional operating authority, including line authority over regional trust administrators and trust officers. These are new positions within Interior and, to the extent possible, are intended to be filled by skilled trust administrators or staff trained for these responsibilities. A field staff of four to six trust administrators will be centrally located in Indian country and will oversee a staff of trust officers and trust account managers in field locations. The trust officers will be co-located with BIA agencies where space is available or located in near proximity to the agencies, and will work closely with the agency person in charge of resource management (superintendent). The trust officers will be the first line of contact for tribal and individual beneficiaries for issues related to their ownership and use of trust assets.

**Reorganization of the Bureau of Indian Affairs** Under Interior’s 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 position of Deputy Regional Director for trust operations and a Deputy Regional Director for all other BIA services except those that report directly to the Assistant Secretary – Indian Affairs. These Deputies report to the Regional Director who, in turn, reports to the Director of BIA. A similar structure follows at the agency level.

A position of Principal Deputy Assistant Secretary for Indian Affairs has been established which along with 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 existing Deputy Commissioner 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 information resources to the Assistant Secretary level, allowing for greater oversight and overarching management in these areas.

**Consultation** As this Committee is aware and on which we have testified previously, in December 2001, the Department committed to a consultation process on the issue of trust reform and organizational reform that was, to our knowledge, the most extensive consultation effort ever undertaken. The first meeting was in Albuquerque, New Mexico, on December 13, 2001. Eight additional meetings were held in different locations. During these meetings, a number of commenters requested a different format for consultation on this issue.

The Tribes asked the Department to participate in a Task Force where the Tribes and senior Departmental officers could sit down together and discuss the generic organizational issues inherent in trust reform collaboratively. Shortly thereafter, the Joint Tribal Leader/ Department of the Interior Task Force on Trust Reform (Task Force) was created.

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.”

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, and Alexandria, VA.

During the course of the Task Force effort, we explored almost every organizational issue related to Interior’s trust management organization. The August 27, 2002 meeting of the Task Force was primarily focused on details of a proposed organization. During those meetings, Interior representatives over and over again pointed out that any structure adopted by Interior would not only need to consider the needs of Tribes, but also those of individual Indian beneficiaries as well.

Unfortunately, the Task Force did not result in a consensus on how trust reform should be accomplished. The impasse reached by the Task Force surrounded issues related to trust standards and private rights of action, not organizational structures. The Task Force reached agreement on the creation of an Under Secretary for Indian Trust but the Tribal leaders would not agree with going forward on that proposal without the trust standards

and rights of actions provisions which the Administration could not support. Despite this, Deputy Secretary Griles testified in July before the Senate Indian Affairs Committee that the Department would support the creation of such a position by the Congress. Congress did not act on this recommendation, and the Department lacks the authority to create such a position administratively.

On September 17, 2002, the Court in the *Cobell* 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 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.”

**Views Heard During Consultation** The consultation process began with the Department’s proposal to create a new Assistant Secretary for Indian Trust Asset Management. As a result of a lengthy consultation process, the reorganization we are now implementing differs significantly from the Department’s original proposal. Executive Order 13175 applies to government-to-government consultation with Indian tribes on matters affecting tribes. Because this matter also has an impact on individual Indian beneficiaries, the Department heard comments from them as well.

Indian country does not speak with one voice with respect to reorganization. This is certainly not surprising given the breadth of diverse interests and needs. The Task Force repeatedly stated throughout the consultation that the status quo was not an option for trust reform. Some tribes expressed strong feelings about keeping all trust functions within the Bureau of Indian Affairs. Others acknowledged a need for stronger oversight of BIA trust decisions. Some individual allottees advocated for completely removing trust functions related to their accounts from the BIA.

In short, Interior, as trustee, had to consider the vast amount of information discerned from consultation with tribes and comments from others and decide the best course to take. Consultation need not result in consensus, and, given the divergent views and needs of tribes, often does not. In this case, Interior consulted in depth for over ten months, and then put forth a new and revised reorganization plan.

**Reprogramming Request** To include reorganization in the January 6, 2003 plan, we needed not only a proposed reorganization, but all the approvals needed to accomplish the reorganization by the time we filed the plan with the Court. Therefore the Department sought approval from the Appropriations Committees to reorganize and reprogram funds. The practice with respect to reprogramming is to make a request of the Appropriations Committees, and allow those Committees 30 days in which to express disapproval before reprogramming the funds. This meant we had to make our request by December 6, 2002, to have an answer by January 6. Our request letter was sent on December 4, 2002. Interior received an approval of the request from the House Appropriations Committee, and a concurrence from the Senate Appropriations Committee.

**The FY 2004 Budget** The 2004 budget provides an increase of \$15.0 million to support the new organization, which together with base funding available in BIA and OST will provide resources needed for the new organization. The Department's trust reorganization plan is closely aligned with, and is a product of, the insight gained from the intensive consultation process. Primarily, because the organizational approach is limited to operating within the current statutory structure, it does differ from the organizational approach developed by the Tribal Task Force.

## **The Future – Reducing Land Fractionation**

**History** One of the most difficult aspects of trust management is the management of the individual Indian money accounts. In 1887, Congress passed the General Allotment Act, which basically allocated tribal lands to individual members of tribes in 80 and 160-acre parcels. The expectation was that these allotments would be held in trust for their Indian owners for no more than 25 years. Congress extended the 25-year trust period, but finally, by the 1930s, it was widely accepted that the General Allotment Act had failed. In 1934, Congress, through the first Indian Reorganization Act, stopped the further allotment of tribal lands.

Over time, the system of allotments established by the General Allotment Act has resulted in the fractionation of ownership of Indian land. As original allottees died, their heirs received an equal, undivided interest in the allottees' lands. In successive generations, smaller undivided interests descended to the next generation.

**Status of Land Fractionation** Today, there are approximately four million owner interests in the 10 million acres of individually owned trust lands, a situation the magnitude of which makes management of trust assets extremely difficult and costly. Fractionated interests in individual Indian allotted land continue to expand exponentially with each new generation. These four million interests could expand to 10 million interests by the 2030 unless an aggressive approach to fractionation is taken.

There are now single pieces of property with ownership interests that are less than 0.000002 of the whole interest. As a result of fractionation, land owners have a difficult

time making any beneficial use of their land. When land is leased, BIA has the responsibility to deposit receipts from the land into the appropriate Individual Indian Money Account. This involves probating estates, finding heirs, and holding money for unknown heirs. This is all funded through the Department's budget. Often these deposits are just pennies because of the large number of interest holders in a given parcel of land.

As a result of fractionation, there are 230,000 open individual Indian money accounts, the majority of which have balances under \$100 and annual transactions of less than \$1,000. Interior maintains thousands of accounts that contain less than one dollar, and has a responsibility to provide an accounting to all account holders. Unlike most private trusts, the Federal Government bears the entire cost of administering the Indian trust. As a result, the usual incentives found in the commercial sector for reducing the number of accounts do not apply to the Indian trust.

**Purchasing Fractionated Interests** 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. Through FY 2002, the program has acquired 47,188 ownership interests in over 25,000 acres.

Using the Office of Management and Budget's Program Assessment Rating Tool (PART), we have learned that:

- There is a high level of interest and voluntary participation by willing sellers.
- Large numbers of owners are willing to sell fractionated ownership interests.
- Each IIM account closed will save about \$143 annually in administrative costs.
- Significant probate costs will be avoided by buying more interests.

Interior believes that a national purchase program can be administered in a very cost-effective manner to target acquisitions that reduce future costs in trust management functions, such as managing land title records, administering land leases, distributing lease payments to IIM accounts, and processing probate actions.

**The FY 2004 Budget** The 2004 budget proposes \$21.0 million for Indian land consolidation, an increase of \$13.0 million for a nationally coordinated and targeted purchase program. Where appropriate and to the extent feasible, the Department plans to enter into agreements with Tribes or tribal or private entities to carry out aspects of the land acquisition program. The 2003 budget, together with carry-over, will provide approximately \$20 million for BIA to put in place the necessary infrastructure and contractual arrangements to support a major expansion of the program in 2004.

## **Other Trust Reform Efforts**

**Re-engineering** During FY 2002 and 2003, the Department has undertaken a meticulous process to develop an accurate, current state model to document business processes. This documentation of “As-Is” business processes will give Interior a comprehensive understanding of current trust business operations; an opportunity to identify needs and places for improvement; and an understanding of variances of practice among geographic regions and their causes.

After completing the “As-Is” phase review, detailed recommendations will be developed for reengineering business processes, where appropriate. This initial “To-Be” business process phase will take into consideration the lessons learned from the “As-Is” process. After examining existing business processes, Interior will compare these processes to the initial “To-Be” model processes to determine what needs to be changed. In particular, where existing business processes vary from region to region, efforts will be made to standardize processes. In addition, the “As-Is” and “To-Be” model processes will be compared to standard industry practices. Finally, the Department plans to integrate the final “To-Be” model processes with universal support and operational functions, and document these re-engineered business processes with appropriate policies, procedures, guidelines, and handbooks.

**Information Technology** The proposed \$183.8 million increase for trust management reforms includes funding to help rebuild Bureau of Indian Affairs information technology infrastructure to support trust and non-trust programs. Significant new investments are needed that require adequate IT funding. The 2004 budget includes increases of \$29.5 million for a ground-up rebuilding of the BIA IT infrastructure to support trust, as well as non-trust programs, and \$2.5 million for Interior-wide IT security. The proposed rebuilding will fit within an enterprise architecture and includes full business cases for proposed investments.

**Recordkeeping** The 2004 budget also proposes an increase of \$4.5 million to accelerate a new strategy to administer, manage; search, retrieve, and store trust records. Reform efforts to date have improved records collection and security. However, recent Interior reviews have resulted in a reassessment of the resource requirements needed to establish proper records retention schedules, establish and implement record keeping requirements, safeguard records, implement and maintain training programs, and meet records-retrieval needs in an effective and cost-efficient way.

## **Indian Education**

No task is more important to the American community than educating its children. The BIA and the Department of Defense are the only two agencies in the Federal government that manage school systems. Almost 48,000 students in 23 States attend the 185 elementary and secondary schools that form the BIA school system. The BIA directly operates one-third of these schools, while the other two-thirds are operated under



contracts or grants to Tribes or other tribal organizations. The BIA is committed to the President's promise to improve education in America and "Leave No Child Behind."

One of BIA's strategic goals is to provide quality educational opportunities from early childhood through adulthood, instilling a desire for life-long learning to keep pace with an ever-changing world. The 2004 school operations request is \$528.5 million. This funding will help to ensure that Indian schools maintain accreditation.

In January 2002, the President signed into law the "No Child Left Behind Act of 2001," a landmark education bill that will help strengthen BIA-funded schools through several components, such as a provision that extends funding eligibility for Department of Education reading programs to the BIA school system. Flexibility and local control of schools are among the pillars of the President's education reform plan. The budget encourages Tribes to assume management of their schools by providing \$3.0 million for initial, start-up administrative costs, and overhead and operations costs at tribally operated schools. A separate fund will be established to enable additional schools to be converted to grant status without compromising funding for current tribally operated schools.

During the 2000 presidential campaign, President Bush promised to provide safe and structurally sound schools for Indian students at BIA-funded schools. The BIA's request for education construction continues the President's commitment to eliminate the repair and maintenance backlog by 2006. The September 5, 2001 deferred maintenance backlog, estimated at \$634 million in 2001, has been reduced to an estimated \$507 million as of December 2002. Funding in 2004 is maintained at the 2003 level, \$292.6 million, which will substantially reduce the school repair and maintenance backlog. The budget includes a request to invest \$141.4 million to replace buildings at a minimum of seven schools determined to be the highest priority based on the 2001 and 2002 priority-ranking lists for education facilities construction and includes \$10.0 million for planning and design for future projects. .

As a result of the PART review, the 2004 budget reflects a policy change to discontinue providing cost estimates for individual replacement schools until the planning and design documents for the schools have been developed to the point where adequate information is available to make a reasonably accurate cost estimate. This generally occurs in the year that construction funds are available for construction.

The education facilities improvement and repair program is funded at \$148.2 million. The 2004 request will fund deferred and annual maintenance needs, and major and minor repair projects to address critical health and safety concerns, noncompliance with code standards, and program deficiencies at existing education facilities.

Finally, the budget request for Indian education continues the President's commitment with a robust \$528.5 million school operations budget request, including funding for teacher pay increases above the 2003 request.

## **Land and Natural Resource Assets**

The 56 million acres of trust lands and natural resources they contain provide the foundation of Interior's trust management responsibilities. The 2004 request includes an increase of \$7.6 million to improve the management of trust land and natural resource assets.

The BIA oversees the exploration and development of 1.8 million acres of actively leased oil, gas, and coal. It is estimated that approximately 15 million acres of undeveloped energy and mineral resources may exist on individual Indian and tribal lands. The 2004 request includes a \$2.0 million increase for grants to Tribes to evaluate mineral resource potential through the acquisition of exploratory data and subsequent geo-scientific interpretation. The request also includes a \$1.0 million increase to facilitate BIA compliance with Section 404 of the Energy Policy Act.

The 2004 request includes a \$2.5 million increase for forest management functions that generate trust revenue through timber harvest. An increase of \$1.5 million promotes production and facilitates sales of forestry products and \$1.0 million doubles the number of integrated resource management plan grants. At the 2004 request level, the 17 million acres of Indian forests are expected to produce 570 million board feet of timber, 10 million board feet higher than the 2003 level. The increase of \$1.0 million is included to provide 12 additional grants to Tribes for integrated resource management plans for a total of 82 plans.

The remaining \$2.1 million requested for land and natural resource assets will provide BIA with additional resources to improve its ability to meet environmental, cultural resources, and endangered species requirements on Indian lands. The requested increase will allow BIA to manage its environmental responsibilities through streamlined and properly funded NEPA compliance activities and to increase by 10 percent, the percentage of land surveyed for endangered species.

## **Economic Development**

Working closely with federally recognized Tribes, the Department promotes economic development and an improved quality of life for 1.4 million American Indians in communities across the country. To support the goal of advancing quality communities for Tribes, the 2004 budget proposal includes \$1.2 billion, increasing focus on continuing the President's commitment to Indian education and promoting economic development in Indian Country.

Unemployment is still one of the greatest challenges facing Indian Country. The 2004 budget includes an increase of \$1 million to leverage \$20 million in additional guaranteed and insured loans. The BIA loan guarantee program enables Indian economic enterprises on or near Indian reservations that otherwise would not be able to get a loan to secure loans from private lenders. This increase supports Indian economic development and BIA's performance goal to reduce unemployment on Indian reservations. The guaranteed

and insured loan program is a cost-effective way to stimulate economic development in Indian Country. The annual default rate on these loans has been less than one percent since 1997, and over 90 percent of the businesses funded through this program have been successful.

## **Resolving Land and Water Claims**

The 2004 Interior budget includes \$51.4 million for payment of authorized Indian land and water claim settlements in Oklahoma, Colorado, Nevada, New Mexico, and Utah. These settlements resolve longstanding claims to water and lands by Indian Tribes and impact ongoing projects in the Bureau of Reclamation as well as BIA. They are the result of negotiations between the Tribes, Federal government, and other interested parties. While the specific provisions of each settlement differ, most contain multi-year funding commitments necessary to implement the agreements.

The 2004 request for settlements reflects a decrease of \$6.6 million from the 2003 funding level because the Federal commitment was completed in 2003 for the Rocky Boy's and Shivwits Band settlements. The BIA budget request includes \$10.0 million for one new settlement for Cherokee, Choctaw, and Chickasaw Nations land claims which this Committee passed during the 107<sup>th</sup> Congress. The total settlement of \$40.0 million for the Cherokee, Choctaw, and Chickasaw settlement will be paid over four annual installments. The budget includes \$9.9 million for the Santo Domingo settlement, a \$6.7 million increase for the final payments needed to implement the settlement legislation.

The budget also provides \$22.5 million for the Ute Indian rights settlement and \$8.0 million for the Colorado Ute/Animas La Plata settlement. In addition to this settlement funding, the Colorado Ute Settlement Act amendments of 2000 provide for implementation and completion of the development of the Animas La Plata project located in southwestern Colorado and northwestern New Mexico. The Bureau of Reclamation budget proposal includes \$58.0 million for the second year of funding for the project, pursuant to the Act. As its most stalwart proponent, the Chairman knows the Animas La Plata project will fulfill the Federal government's trust responsibility to address the Colorado Ute Tribe's water rights; respect existing water rights held by non-Indian water users throughout the basin; furnish the Navajo Nation with a water supply; allow for additional municipal and industrial water for non-Indian communities in the Four Corners area; and provide an increased level of certainty for water managers in the San Juan Basin.

In summary, with this budget request, the President has made clear his firm commitment to improving the lives of Indian people through trust reform, education and economic development. The BIA and the OST are prepared to meet these goals with Congress' support. I would be happy to answer any questions you might have at this time.