DEVELOPING A LEGISLATIVE SOLUTION TO THE INDIAN TRUST FUND LAWSUIT

OVERSIGHT FIELD HEARING

BEFORE THE

COMMITTEE ON RESOURCES
U.S. HOUSE OF REPRESENTATIVES

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C O N T E N T S

OVERSIGHT HEARING ON "DEVELOPING A LEGISLATIVE SOLUTION TO THE INDIAN TRUST FUND LAWSUIT"

Saturday, October 25, 2003
U.S. House of Representatives
Committee on Resources
Billings, Montana

The Committee met, pursuant to call, at 10 a.m., in the Lewis and Clark Room, Montana State University Student Union Building, 1500 University Drive, Billings, Montana, Hon. Dennis Rehberg presiding.

Mr. REHBERG. Good morning. I want to thank Troop 93 from Lockwood for taking their Saturday morning with us and joining us. And if you will all please rise and please present the colors.

[Color Guard presentation and Pledge of Allegiance.]

Mr. REHBERG. If you will remain standing, Mr. Windy Boy will give us an invocation.

Alvin?

Mr. WINDY BOY. If you will bear with me, I am going to do my invocation in my native language, Cree.

[Invocation.]

STATEMENT OF THE HON. DENNIS REHBERG, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MONTANA

Mr. REHBERG. Good morning and welcome to this hearing. I thank you for coming out on this Saturday morning. Can everybody in the back hear me OK?

AUDIENCE. [Yes.]

Mr. REHBERG. All right, great. Thank you.

I am Denny Rehberg, representing the State of Montana in the U.S. Congress. I am a member of the Resources Committee, which is conducting this hearing.

Let me begin by apologizing for the formality of this hearing, but this is an official congressional hearing so there are certain procedures that we must conform with.

You will see that there are folks that are recording this hearing. It has to go through the various parliamentary procedures to make it the official hearing that we intend it to be.

This is one, the first, in a series of hearings that will be conducted either throughout the country and/or in Washington, D.C.

We have had a couple of hearings already since I have been in the U.S. Congress, elected in 2000, first sworn in in 2001, to deal with the Indian Trust Account situations.

For those of us who have been involved in business and in perhaps a smaller level of government, the state government, it is incredible to find out that the Federal Government has so severely, in my estimation, mismanaged their trust responsibilities for so many years.

I asked my staff to do the best they could to find a graphic that was presented in the first hearing about a year-and-a-half ago that I attended in Washington, D.C. It was of the Philadelphia Inquirer, and it was a placard that was in the back of the Committee hearing. On this placard was the front page of this newspaper. It was dated 1876.

And on that date, reported on the front page of that newspaper, I have the quote. It said the mismanagement of the Indian Trust Funds dates back to the 1880s. In fact, an article in a July 6, 1876, newspaper—Philadelphia Press—not Inquirer—described the gross irregularities in the investment of the Indian Trust Fund by officers of the government.

On the same page of that newspaper that day they were announcing the death of General George Custer in Montana.

That will tell you how long this problem has existed. That's unacceptable, as far as we're concerned.

Now, as we try and make our way through the various lawsuits that are presented on behalf of the tribes around the country, and as Congress tries to deal with the problem that exists, Chairman Pombo has asked if perhaps there is a legislative solution.

Most of us want to be alive when this is solved. There's no guarantee of that once it gets into the court process. And I think you all recognize that as well.

So, this hearing is an attempt on the Chairman's part to find out if there's a desire to enter into the possibility of a legislative solution.

You know, one of the things that those of us in government are really good at doing is throwing up our hands and saying, let somebody else figure it out; we'll just not deal with something that's either sensitive, controversial or complex.

This chairman, Chairman Pombo, intends to be a different kind of a Resources Committee chairman.

There has been a bill introduced by Chairman—Mr. Campbell in the Senate. If you want to talk briefly about it as well, I am not well-versed in Mr. Campbell's piece of legislation. That's not our intent today.

Our intent today is to open up the microphone to you all; give you an opportunity to have your say on an issue that we believe to be very important to you personally, to your tribes and ultimately to the people of America to try and come to a successful conclusion before the year 2050 or beyond. And so that is our intent; that is our reason for being here.

[The prepared statement of Mr. Rehberg follows:]

Statement of The Honorable Denny Rehberg. a Representative in Congress from the State of Montana

Good morning everyone and welcome to this meeting of the U.S. House of Representatives Committee on Resources. This field hearing is a way for us to bring the legislative process to you so that we can get feedback from folks who might not get the opportunity to testify at a hearing in Washington, D.C. I expect that this will be a productive meeting, what with so many participants—we have several leaders of the Montana tribes here. I'd also like to thank the folks at MSU-Billings for letting us use this great room.

The purpose of this hearing is to explore what a legislative resolution to the Indian trust fund lawsuit might consist of. Chairman Pombo and I—and other Members of the Committee—feel strongly about this topic and we wanted to get close to Indian Country and away from Washington, D.C., to hear from some of the people who are most affected by this issue.

There is a general feeling that the trust fund lawsuit could drag on for many more years and cost billions of dollars, while the individual Indian money account holders get no accounting and get no money they may be owed by the government. My continued interest is in reaching consensus and solving this highly charged issue. That's why we want to hear from you—so we can get an idea of what the Tribal Members are looking for in a solution. Then, hopefully, the Committee will be better able to examine various reform proposals.

I'd like to thank all the witnesses for coming here today—some of you traveled long distances without a lot of notice. I look forward to hearing all of the witnesses' statements.

Mr. REHBERG. The one thing that I am required to do and, if you will bear with me, part of the procedure is to swear you in as witnesses. So if you will please rise and repeat after me.

[Witnesses sworn.]

Mr. REHBERG. Thank you very much. I would like to remind our witnesses today to please limit their oral statements to 5 minutes. Your entire written statement will appear in the record.

At this time, since I had no preestablished order, if you don't mind, why don't we start with Chairman Matt and begin with you, Fred. Thank you for being here.

STATEMENT OF FRED MATT, TRIBAL COUNCIL CHAIRMAN, CONFEDERATED SALISH AND KOOTENAI TRIBES

Mr. MATT. Thank you. Greetings to you, Congressman Rehberg, and welcome to Montana.

You know, I think it is probably good for you to come back every once in a while and smell the roses and feel the nice cool air of fall, and so I appreciate this Committee tackling this venture, because it is huge. It has affected Indian country across the board. It has caused us tribal leaders to sit at the table and try to come up with ideas of how to help resolve this.

I have a prepared statement that I would like to read, and I did submit some copies of a more lengthy written statement. I will try to be brief, and I will try to stay within the confines, and bear with me.

Prior to this hearing, we did have—we didn't have sufficient time, the Tribal Council, to consider and adopt a formal position with respect to congressional legislation addressing the Cobell litigation involving Indian trust funds management. However, I am pleased to be able to provide this Committee with my own views on the issue.

The Salish-Kootenai Tribes have been very active in Indian trust fund management. Not only have we participated in the many

Intertribal discussions on how best to resolve the problems with Federal management of these trust funds, but we have also taken a more direct approach. We have contracted under the Self—Tribal Self-Governance Act—to manage our own trust funds accounts.

I am happy to report to you that the tribal government and the tribal members alike are very happy with our experience in taking over administration of the Federal functions, trust functions.

Due to our experience, we have a unique insight into the trust funds management issue since we can view it from a perspective of both accounts manager and accounts holder.

As managers of these accounts, we can appreciate the complexities in resolving the administration and accounting issues.

As an account holder, we know as well as everyone that Federal mismanagement of these trust funds has long worked great injustices to the many tribal and individual Indian beneficiaries, injustices that would have not been tolerated had they occurred in any other segment of American society.

We appreciate that Congress is continuing to look at ways to correct these injustices and to prevent mismanagement in the future.

As you are aware, the filing of the Cobell litigation has resulted in the trust funds mismanagement issue receiving the attention that it requires. Unfortunately, that litigation was filed over 7 years ago, and it was only within the last month that a decision was rendered by the Federal District Court. In short, the litigation is an extremely lengthy process, and I believe it is both appropriate and productive for Congress to try its hand at a remedy for the situation.

One thing we feel strongly about is the potential for the Congress to spend up to $9 billion doing the historical accounting that Judge Lanberth ordered. To date, millions of dollars have been directed to accounting firms, while the Indian people who may be owed money have received nothing. I am particularly concerned about our elders who may not last the additional years it will take for the accounting to take place and for the litigation and the appeals to run their course.

If the Congress has that kind of money, it could go toward a compensation fund. It could also be spent on tribal land consolidation which alleviates the problems associated with fractionated heirship of land and the accounting nightmares that accompany trust income associated with property that may be owned by hundreds and even thousands of people.

We have also been long opposed to the concept of a receiver being appointed to manage Indian trust funds and, frankly, are a little concerned about that proposal. It is critical that we not lose the flexibility we now have with the BIA to meet the new standards and may be practically unobtainable.

A few days ago, your colleagues in the Senate introduced a bill, S. 1770, which is called the "Indian Money Account Claims Satisfaction Act of 2003." Our Tribal staff is still in the process of reviewing that legislation. However, I would generally support the bill's approach in that it would provide individual Indian account holders with a menu of options for addressing the problem.

Specifically, the bill lays out three alternative approaches. The first option involves the establishment of an Indian Money Account

Claims Satisfaction (IMACS) Task Force which would be charged with analyzing trust records and accounts; developing methodologies for an accounting; and, subsequently determining the balances of individual accounts.

If the account holders agree with the determination, then the bill establishes a mechanism by which the Interior Secretary would then make a full payment in the amount determined, in exchange for a signed accord and satisfaction. Upon completion of this, the individual account holders would be dismissed from the Cobell class action litigation.

However, if an individual did not agree with the IMACS Task Force determination, a second option would allow the individual to submit the issue to an arbitration tribunal which the bill could create. The arbitration would be binding on both the individual and the Federal Government and, like the first option, would also result in the individual being dismissed from the class action litigation.

The third option in S. 1770 is for the individual to remain part of the Cobell class action litigation. I should note that, like the Cobell litigation, S. 1770 does not directly address trust fund accounts where tribes themselves are the account holders.

I would also like to emphasize that I believe that it is important to remember that tribes themselves can be part of the solution. Allowing tribal governments, like the Confederated Salish and Kootenai Tribes, who contract administration for trust fund accounts to continue our successful trust management programs can help to prevent future problems.

Tribal governments are the closest to the trust beneficiaries, and we have the strongest motivation to properly handle these monies for our constituents. That is why we have pressed for inclusion of the Trust Reform Demonstration Project (section 134) in Fiscal Year 2004 Interior appropriations bill (S. 1391). This demonstration project would ensure our ability to continue this effective management without being impaired by the reorganization of trust functions within the Interior.

On behalf of our Tribal Council, I would like to thank Congressman Pombo, Chair of this Committee, for his strong support of this amendment and for the September 30 letter to the Chairman of the House Interior Appropriations Subcommittee. We are likewise grateful for the support of the Resources Committee members.

Over the last decade, a great deal of energy and resources has gone into trust funds management issues. This is true of all three branches of Federal Government, as well as scores of Tribal governments. On behalf of the Confederated Salish and Kootenai Tribes, I welcome congressional efforts to bring relief to individual Indian account holders.

As Judge Lamberth recounted in his decision on the Cobell case, Congress was a catalyst on this issue through its 1992 House Report titled "Misplaced Trust: The Bureau of Indian Affairs' Mismanagement of the Indian Trust Fund."

The Senate bill and this oversight hearing demonstrate that Congress is not content to set on its hands while the issue is examined by its sister branches of government. I believe this engagement by Congress, with active participation from tribal governments and in-

dividual account holders, can be productive in reaching a solution to a long-standing problem.

Mr. Chairman, I thank you for the opportunity to provide my views to this Committee.

Mr. REHBERG. Thank you, Chairman Matt.

[The prepared statement of Mr. Matt follows:]

Statement of D. Fred Matt, Tribal Council Chairman, Confederated Salish & Kootenai Tribes

Greetings Congressman Rehberg. Welcome back to Montana. My name is Fred Matt and I serve as the Chairman of the Confederated Salish & Kootenai Tribal Council. Thank you for the opportunity to provide my views to the House Resources Committee.

Prior to this hearing, we did not have sufficient time for the Tribal Council to consider and adopt a formal position with respect to Congressional legislation addressing the Cobell litigation involving Indian trust funds management. However, I am pleased to be able to provide the Committee with my own views on the issue.

The Salish and Kootenai Tribes have been very active in the area of trust funds management. Not only have we participated in the many intertribal discussions on how best to resolve the problems with federal management of these trust funds, but we have also taken a more direct approach: We have contracted under the Tribal Self-Governance Act to manage our own trust fund accounts. I am happy to report to you that our Tribal government and Tribal members alike are very happy with our experience in taking over administration of this federal trust function.

Due to our experience, we have a unique insight into the trust funds management issue since we can view it from the perspectives of both the accounts manager and account holders. As manager of these accounts, we can appreciate the complexities in resolving the administration and accounting issues. As an account holder, we know as well as anyone that federal mismanagement of the trust funds has long worked great injustices to the many Tribal and individual Indian beneficiaries—injustices that would not have been tolerated had they occurred in any other segment of American society. We appreciate that Congress is continuing to look at ways to correct these injustices and to prevent mismanagement in the future.

As you are aware, the filing of the Cobell litigation has resulted in the trust funds mismanagement issue receiving the attention that it requires. Unfortunately, that litigation was filed over seven years ago and it was only last month that a decision was rendered by the federal district court. In short, the litigation is an extremely lengthy process. I believe it is both appropriate and productive for Congress to try its hand at a remedy for the situation.

One thing we feel strongly about is the potential for the Congress to spend up to $9 billion doing the historical accounting that Judge Lamberth ordered. To date, millions of dollars have been directed to accounting firms while the Indian people who may be owed money have received nothing. I am particularly concerned about our elders who may not last the additional years it will take for the accounting to take place and for the litigation and the appeals to run their course. If the Congress has that kind of money, it could go toward a compensation fund. It could also be spent on tribal land consolidation which alleviates the problems associated with fractionated heirship of lands and the accounting nightmares that accompany trust income associated with property that may be owned by hundreds and even thousands of people.

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The first option involves the establishment of an Indian Money Account Claim Satisfaction (IMACS) Task Force which would be charged with analyzing the trust records and accounts, developing methodologies for an accounting, and subsequently determining the balances of individual accounts. If the account holder agrees with the determination, then the bill establishes a mechanism by which the Interior Secretary would then make a full payment in the amount determined, in exchange for

a signed accord and satisfaction. Upon completion of this, the individual account holder would be dismissed from the Cobell class action litigation.

However, if the individual did not agree with the IMACS Task Force determination, a second option would allow the individual to submit the issue to an arbitration tribunal, which the bill would create. That arbitration would be binding on both the individual and the federal government and, like the first option, would also result in the individual being dismissed from the class action litigation.

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I should note that, like the Cobell litigation, S. 1770 does not directly address trust fund accounts where Tribes themselves are the account holders/beneficiaries.

I would also like to emphasize that I believe it is important to remember that Tribes themselves can be part of the solution. Allowing Tribal governments, like the Confederated Salish & Kootenai Tribes, who contract administration of trust fund accounts, to continue our successful trust management programs can help to prevent future problems. Tribal governments are the closest to the trust beneficiaries, and we have the strongest motivation to properly handle these monies for our constituents. That is why we have pressed for inclusion of a Trust Reform Demonstration Project (Section 134) in the FY'04 Interior appropriations bill (S. 1391). This demonstration project would ensure our ability to continue this effective management without being impaired by any reorganization of trust functions within the Interior Department. On behalf of our Tribal Council, I would like to thank Congressman Pombo, Chair of this Committee, for his strong support of this amendment and for his September 30, 2003, letter to the Chairman of the House Interior Appropriations Subcommittee. We are likewise grateful for the support of other Resources Committee members.

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The Senate bill and this oversight hearing demonstrate that Congress is not content to sit on its hands while the issue is examined by its sister branches of government. I believe this engagement by Congress, with active participation from Tribal governments and individual account holders, can be productive in reaching a solution to a long-standing problem.

Mr. Chairman, thank you for the opportunity to provide my views to this Committee.

Mr. REHBERG. One of the things a chairman gets to do is admit mistakes, so I need to very quickly. I apologize, Liz, for having forgotten to read Senator Baucus' letter. I will do that now without objection.

There is no objection?

> "I am sorry I can't be with you today, but Senate business has kept me in Washington. I am working on health care legislation to provide all seniors with a quality, affordable prescription drug benefit. In addition, I am working hard on an energy bill to ensure reliable affordable energy for Montana families, businesses and tribes.
>
> "It's clear that the Federal Government has abdicated it is responsibility—Max knows bigger words than me—of properly managing Indian trust funds. Unfortunately, the Federal Government's mismanagement has severely damaged tribal economies. Thousands of Native Americans across the country have unanswered questions. It is long overdue to get to the bottom of the issue, inject some accountability into the system, and working with tribal leaders, enact real trust reform.

"On October 21st, Senator Ben Nighthorse Campbell introduced the Indian Money Account Claim Satisfaction Act of 2003 in the Senate that in his words, 'would establish a voluntary, alternative claims resolution process to reach settlement of the Cobell v. Norton Class Action Lawsuit.' I encourage you to share with me your thoughts and views on this legislation.

"I would like to thank Congressman Rehberg for holding this important hearing today. By working together we can make a difference."

Thank you, Senator Baucus. It will be put in to the record.

[The statement submitted for the record by Senator Baucus follows:]

Statement of The Honorable Max Baucus, a U.S. Senator from the State of Montana

I'm sorry I can't be with you today, but Senate business has kept me in Washington. I'm working on health care legislation to provide all seniors with a quality, affordable prescription drug benefit. In addition, I'm working hard on an energy bill to ensure reliable, affordable energy for Montana families, businesses and tribes.

It's clear that the federal government has abdicated its responsibility of properly managing Indian trust funds. Unfortunately, the federal government's mismanagement has severely damaged tribal economies. Thousands of Native Americans across the country have unanswered questions. It's long overdue to get to the bottom of the issue, inject some accountability into the system, and working with tribal leaders, enact real trust reform.

On October 21st, Senator Ben Nighthorse Campbell introduced the Indian Money Account Claim Satisfaction Act of 2003 in the Senate that in his words "would establish a voluntary, alternative claims resolution process to reach settlement of the Cobell vs. Norton class action lawsuit." I encourage you to share with me your thoughts and views on this legislation.

I would like to thank Congressman Rehberg for holding this important hearing today. By working together we can make a difference.

Mr. REHBERG. Also, we would like to thank MSU Billings for allowing us the use of this tremendous facility. They have been kind over the years to us in allowing us to do this, and it is very much appreciated. Thank you, MSU Billings.

All right, Chairman Windy Boy.

STATEMENT OF ALVIN WINDY BOY, SR., CHAIRMAN, BUSINESS COMMITTEE, CHIPPEWA CREE TRIBE OF THE ROCKY BOY'S RESERVATION

Mr. WINDY BOY. Thank you, Congressman Rehberg.

Greetings from north central Montana, up by the Canadian border, home of the Cree and Chippewa people. I am a third-generation rancher. We hope the prices are going to hang for another 10 years.

We want to thank you for your invitation to testify today. Like Chairman Matt, I do have a prepared statement for the record. I do have a prepared statement. I would also like to read.

Like Chairman Matt and Salish-Kootenai, Chippewa Cree Tribe do operate through a contract with both the Indian Health Service and the Bureau of Indian Affairs. An initiative that we feel is certainly indicative of the Chippewa and Cree Tribes of assuming a lot of responsibilities, those responsibilities that were always given

to us, or provided by the United States government that allows us the flexibility to provide better services.

To me, unfortunately, a number of initiatives that arose recently are going to be imperative in how we deliver those services. Certainly, with this Cobell v. Norton case, certainly is going to effect my tribe.

But if you don't mind. I would like to read my statement.

Mr. REHBERG. Certainly.

Mr. WINDY BOY. I would also like to have you extend my greetings to Chairman Pombo and let him know we appreciate his authorization for this hearing. In his short tenure as Chairman of the Resources Committee, he's really off to great start in the eyes of many of us in Indian country.

Again, thank you for holding this oversight hearing on developing a legislative solution to the Indian trust fund lawsuit.

This, Congressman, is an important issue to all tribes because the effects of the Cobell v. Norton lawsuit impact all of Indian country, no matter how large or small your or our tribes is.

I say this because the Cobell case is not just about money, such as an accounting and determination of accurate account balances, but equally as important to ensure that reforms are in place so that the United States can bring itself into compliance with its fiduciary duties to both tribal individuals and to tribes.

It is also important because the reforms will affect the manner in which programs are run, whether those programs are directly operated by the Bureau of Indian Affairs, or whether they are managed by the Tribes such as the Chippewa and Cree Tribes, who operate all our programs on the reservation.

Although my tribe is the smallest in Montana in terms of population and land base, we are significantly affected by the Cobell case, as it is leading to the reorganization and reengineering of the Bureau of Indian Affairs.

It really hurts us at the reservation level to have critical funding diverted from tribal programs and be reallocated to the reorganization hierarchy at the Bureau of Indian Affairs to pay for litigation costs with both the individual and tribal cases.

I say this because the funding increases for Indian programs have been nonexistent in the Interior Appropriations bill, especially within the Tribal Priority Allocations (TPA) budget that funds basic governmental services to our people. The Office of Special Trustee for American Indians (OST) is slated to receive an 82 percent budget increase, which amounts to $274.6 million in President Bush's Fiscal Year 2004 budget. Of this amount, 130 million is supposed to be used to complete reconciliation of more than 15,000 individual IIM Accounts and reconcile translations related to the accounts.

Mr. Chairman, I am here today to inform the Committee that it is imperative that we have congressional assistance in correcting the trust funds accounting problems that have plagued the Department of the Interior for years. It has been over a decade since Congress first ordered the Department to conduct an accounting for Indian trust funds. Indian country cannot and should not have to wait any longer. Ten years and over $600 million spent on trust re-

form and still no accounting. Mr. Chairman, Congress must act now.

The legislative involvement and settlement process, the reorganization of the Chippewa and Cree Tribes is in structuring any type of legislative solution, I would recommend that all the necessary parties be at the table. Of course, the litigants and their representatives must be involved in any settlement process, and I would also strongly recommend that tribes be a part of the process to the extent that tribal interests are affected.

Tribes have certainly made it clear that there are numerous aspects of the Cobell case that affect our interests, especially regarding trust reform.

It will be very helpful if senior members of the authorizing committees of both houses of Congress get involved to ensure that all parties come and discuss resolutions in good faith.

The involvement of a mediator, to me, would be essential. The mediator could be a person with significant political experience and respect since they must hold parties to a good-faith effort to resolving the dispute.

The scope of the settlement issues must be predetermined so that negotiations will not reopen issues that have already been settled by the court.

Previously settled issues by the court should determine the necessary legal parameters of any settlement discussions.

The court in Cobell has divided the case into accounting issues and trust reform issues, and it makes sense to keep the same sort of division for any type of settlement legislation or process.

And there should be no preset cap for the settlement.

We must also have full disclosure of material documents and facts in any settlement process. In addition, the government should have the burden of providing to tribes all records from all government agencies and contractors pertaining to the trust fund claims.

Another important issue to tribes is the assurance that any settlement claims be recovered from the Judgment Fund, which I believe is 31 U.S.C. 1304, and can be accessed to cover the cost of any settlement. In addition, the settlement funds should not have to be recovered from future Interior appropriations for Indian programs. This would be counterproductive to Indian country and our already underfunded programs.

We oppose, the Chippewa Cree Tribe opposes putting riders on appropriations bill to deal with this issue and would urge the Congress to not establish or entertain such provisions. Tribes, again, must be involved in helping to craft a compromise on this, and we have had no input into the language of any rider yet.

As a Self Governance Tribe, we are concerned about how the trust reform will affect us. We hope that trust reform doesn't create a situation or ability to have some flexibility in how we operate the programs is lost. We are concerned that litigation will lead to stifling degrees of process, procedure and standards to the point where all tribes must adhere to methodologies that are counter to our present successful operations.

In closing, we are again appreciative that we have held this hearing, and we do think it is important for Congress to help broker a settlement to the Cobell case.

We can see no benefit in spending the next 5 years in litigation and nonstop accounting.

We have only just received the new Campbell/Inouye/Domenici Bill, Senate Bill 1770, the Indian Money Account Claim Satisfaction Act of 2003. The concepts of reaching a settlement as conceived of in that legislation are interesting, and I may supplement my testimony after I have had an opportunity to sit down with, like Chairman Matt, with my staff and read the legislation and discuss that with our staff In reference to the way that we do business in Indian country.

It is certainly different even in your state with the seven tribes. My objective is to make sure we that don't disturb what is already working for us. The way that we provide those governmental service to our people certainly is indicative of a government-to-government relationship that we have had.

The Chippewa Cree Tribe certainly has compacts already in place with Bureau of Reclamation, Bureau of Land Management, and the list goes on. And I am afraid if reform does happen, that may create an additional bureaucracy for the Chippewa Cree Tribe.

Mr. REHBERG. Thank you.

Alvin Windy Boy. I am certainly in support of any direction that this Committee takes and would be also supportive of sitting down and creating some direction.

[The prepared statement of Mr. Windy Boy follows:]

Statement of Alvin Windy Boy, Sr., Chairman, Business Committee, Chippewa Cree Tribe of the Rocky Boy's Reservation

INTRODUCTION

Congressman Rehberg, thank you for your invitation to testify today. My name is Alvin Windy Boy Sr., I serve as the Chairman of my tribe, the Chippewa Cree Tribe of the Rocky Boy's Reservation. Please extend my greetings to Chairman Pombo, and let him know we appreciate his authorization of this hearing. In his short tenure as Chairman of the Resources Committee, he is really off to a great start in the eyes of many of us in Indian country.

Thank you for holding an oversight hearing on "Developing a Legislative Solution to the Indian Trust Fund Lawsuit."

This is an important issue to all tribes because the effects of the Cobell v. Norton lawsuit impact all of Indian Country, no matter how large or small your tribe is. I say this because the Cobell case is not just about money, such as an accounting and determination of accurate account balances; but equally as important, to ensure that reforms are in place so that the U.S. can bring itself into compliance with its fiduciary duties to both tribal individuals and to the tribes. It is also important because the reforms will affect the manner in which programs are run, whether those programs are directly operated by the BIA, or whether they are managed by tribes such as the Chippewa Cree who operate all programs on our reservation.

Although my tribe is the smallest in Montana in terms of population and land base, we are significantly affected by the Cobell case as it is leading to the reorganization and reengineering of the Bureau of Indian Affairs.

It really hurts us at the reservation level to have critical funding diverted from tribal programs and be reallocated to the reorganization hierarchy at the BIA and to pay for litigation costs associated with both the individual and tribal cases. I say this because funding increases for Indian programs have been nonexistent in the Interior Appropriations bill, especially within the Tribal Priority Allocations (ATPA) budget that funds basic governmental services to our people. The Office of Special Trustee for American Indians (OST) is slated to receive an 82% budget increase (to $274.6 million) in President Bush's FY 2004 budget. Of this amount, $130 million is supposed to be used to complete reconciliation of more than 15,000 Individual Indian Money (IIM) accounts and reconcile transactions related to the accounts.

Mr. Chairman, I am here today to inform the Committee that it is imperative that we have Congressional assistance in correcting the trust funds accounting problems that have plagued the Department of the Interior for years. It has been over a dec-

ade since Congress first ordered the Department to conduct an accounting for Indian trust funds. Indian country cannot, and should not, have to wait any longer. Ten years and over $600 million spent on trust reform and still no accounting. Mr. Chairman, Congress must act now.

LEGISLATIVE INVOLVEMENT AND SETTLEMENT PROCESS

In structuring any type of legislative solution, I would recommend that all the necessary parties be at the table. Of course, the litigants and/or their representatives must be involved in any settlement process, and I would also strongly recommend that tribes be part of the process to the extent that tribal interests are affected. Tribes have made it clear that there are numerous aspects of the Cobell case that affect our interests, especially regarding trust reform.

It will be very helpful if senior members of the authorizing committees of both Houses of Congress get involved to ensure that all parties come and discuss resolutions in good faith.

The involvement of a mediator will be essential. The mediator should be a person with significant political experience and respect since they must hold the parties to a good faith effort to resolving the dispute.

The scope of the settlement issues must be pre-determined so that negotiations will not re-open issues that have already been settled by the court.

Previously settled issues by the court should determine the necessary legal parameters for any settlement discussions.

The court in Cobell has divided the case into accounting issues and trust reform issues. It makes sense to keep the same sort of division for any type of settlement legislation or process.

There should be no pre-set cap for the settlement.

We must have full disclosure of material documents and facts in any settlement process. In addition, the government should have the burden of providing to tribes all records from all government agencies and contractors pertaining to the trust fund claims.

Another important issue to tribes is the assurance that any settlement claims be recovered from the Judgment Fund, 31 U.S.C. 1304 can be accessed to cover the cost of any settlement. In addition, the settlement funds should not have to be recovered from future Interior appropriations for Indian programs. This would be counterproductive to Indian country and our already underfunded programs.

We oppose putting riders on appropriations bills to deal with this issue and would urge the Congress to not entertain such provisions. Tribes must be involved in helping to craft a compromise on this and we have had no input into the language of any rider.

As a Self-Governance Tribe we are concerned about how trust reform will affect us. We hope that trust reform doesn't create a situation where our ability to have some flexibility in how we operate the programs is lost. We are concerned that the litigation will lead to stifling degrees of process, procedure and standards to the point where all tribes must adhere to methodologies that are counter to our present successful operations.

In closing we are again appreciative that you have held this hearing, and we do think it is important for the Congress to help broker a settlement to the Cobell case. We can see no benefit in spending the next five years in litigation and non-stop accounting. We have only just received the new Campbell/Inouye/Domenici bill, S. 1770, the Indian Money Account Claim Satisfaction Act of 2003. The concepts for reaching a settlement as conceived of in that legislation are interesting and I may supplement my testimony after I have had an opportunity to sit down and read that legislation and discuss it with our tribal attorney.

Again, thank you.

Mr. REHBERG. Thank you, Chairman Windy Boy.

I used to tell a joke about reform, that people support reform as long it doesn't change anything. Sometimes we worry that the change is, in fact, worse than the problem in the first place.

I will announce at the end of the hearing that the record be left open for additional comments or answering questions that the rest of the Committee might have of you all. So any comments that you have about the Campbell bill and such that will help the Committee better understand this issue would certainly be wel-

comed. Just know that the record will remain open for a period of time. But, I will announce that formally at the end of the hearing.

Next, I would like to introduce Mr. Kayle Howe, who is here today representing Carl Venne, Chairman of the Crow Tribe.

Mr. Howe.

STATEMENT OF KAYLE HOWE, EXECUTIVE AIDE TO CARL VENNE, CHAIRMAN, CROW TRIBE OF INDIANS

Mr. HOWE. Thank you, Mr. Rehberg, Congressman Rehberg.

My name is Kayle Howe, and I am here today with my legal counsel, Mr. James Yellowtail. I just make that for the record.

And we would also apologize for Mr. Venne not being able to be here today. Chairman Venne is on his way to Las Vegas to be a part of the hearing that is being held there by, I believe Ross Swimmer. I don't know his actual function at this time.

However, we do appreciate the fact that we have the opportunity to address an issue that is very large in its capacity. It encompasses quite a few natives throughout the nation, and it does bring to light the fact that we do have this Cobell case having been brought to light on the fact that there are many, many Indians that are being afflicted by this.

Particularly on the Crow Reservation, we have I believe 1.2 million acres of individually owned trust land, and we have 7,303 IIM accounts that this will directly accounts, and which encompasses 460,000 acres of trust land on my reservation.

My reservation consists of 2.3 million acres, and therefore, this problem that we perceive is enormous. And I know that the animosity of the whole thing is that we have 11,000,000 acres nationwide being protected by the government, and so this problem is enormous.

And the Crow Tribe is very concerned as to how we come to some kind of litigation settlement and see that the members of the tribe of which we are responsible for as well as the Federal Government.

In 1948, there was an Act passed. It was the Competent Lease Act. Any member that owned land under five, came under the Competent Lease Act, and so there was indirect payments made.

That accounting is not possibly trackable, however, it could be, but the length of what things are taking place now, it is going to be a lot greater to try and find out what amounts of money are actually missing and actually put in to place.

So, we would ask that if these statutory laws that are being put in place would encompass all of this in consideration, that it would benefit the tribal members as well as the tribes in which they work hand-in-hand.

As my associate, Mr. Windy Boy, had mentioned earlier, it is to the benefit of the tribe and tribal members that this Act should be encompassed. However, not always is it possible for the government to come back, ask these questions and give them the opportunity to address these things.

We really very greatly appreciate the fact that you are holding this hearing today and giving us the opportunity to make such a presentation on behalf of the tribe.

We have fractionated lands of individually owned lands because of five members or more become heirs.

The Bureau of Indian Affairs is directly responsible for overseeing the monies that are disseminated to the members. And in accounting errors that we have seen and heard by way of Cobell v. Norton, it is just an atrocity that the tribe has to suffer such problems that we have seen in the nation's newspapers, USA Today, everybody has published them; everybody is aware of this. We all have the ideas of how to solve the problems, but what we adopt to depend on is Congress, the United States congressional body, for they were given the fiduciary duty to pass on to the Bureau of Indian Affairs, who has established under the Department of Interior, and we at home wonder how and where is somebody going to come up with a solution that is going to benefit us as Indians.

We have this problem, and it is always a negative impact on the funding and the delivery of services to the Crow Tribe because we are so far away. We have other members that are involved in the Congress, and they are not necessarily aware of the problem they have here in Montana.

However, I believe we have a good representative, such as yourself and others, that will try and resolve the problems we have, and so we felt very confident in coming here today.

The Crow Tribe believes that any process that allowed the Indians an option to opt out of the suit, may it be a lot quicker, we would look and entertain these options.

And I believe there were three options given to us. We would try and entertain that as part of the prerogative that would give the individual owners as well as the tribe a lot more leeway of getting to the bottom of this.

As it was said here earlier, we do need to get on with business, and we do not need to be sitting in litigation fighting over all the money that —we need money as well as everybody else; every other government needs money.

We, as a tribe, own one-tenth of all the land that is under management by the Federal Government, and we would like to see our members receive the services and the monies that were suppose to be going to them. However, through problem areas of not following competently accounting procedures and everything of this nature, we were not able to foresee this problem until Cobell brought it to light.

Cobell brought something to light that I think everybody knew about but didn't know quite how to get the spotlight shed on it.

And so we feel that this document we foresee and have heard will come to be resolvable through the efforts of your office, that of our tribe and the members of which we will have meetings with and explain the situation, giving them the options that you are presenting here today. We are looking at entertaining all avenues of trying to resolve the problems we have.

The BIA and Cobell and Interior and whoever else, Judge Lamberth, we know they have good intentions. Everybody has there own agenda. We as the Crow Tribe have ours, and we will keep your office and the offices of those that we know need to be kept in contact, we'll be in contact with them through our legal counsel, through the Chairman's office and anybody else that might be of service to your office.

We would appreciate your having come here again, sit down with us and talk to us of matters that we find that are very important.

Our members, our individual members would appreciate the fact that maybe this extension that you have given to the tribes will also be given to them.

Thank you.

Mr. REHBERG. Thank you, Kayle.

[The prepared statement of Mr. Howe on behalf of Carl Venne follows:]

Statement of Mr. Kayle Howe, Executive Aide to Carl Venne, Chairman, Crow Tribe of Indians

Good Morning, Congressmen Pombo and Rehberg, my name is Kayle Howe, and I am honored to present testimony at this field hearing on behalf of the Crow Tribal Chairman, Carl Venne. Chairman Venne has asked me to convey his personal appreciation for the opportunity to express the views of the government of the Crow Tribe on the critically important question of how best to resolve the issues raised in the Cobell litigation.

The Crow Tribal Administration commends the Cobell plaintiffs because their litigation has exposed the historical mismanagement of the Indian trust and focused the attention of Congress and the Department of the Interior on the necessity for trust reform. We believe that for both individuals and Tribes, a fair and reasonable accounting of trust funds managed by the United States is simple justice which must occur. Tribes and their members are unequivocally entitled to receive the entire value of their trust assets. The question is how best to guarantee that result.

Nationwide, the Department of the Interior manages almost 11 million acres of individually owned Indian lands. One-tenth of all individually owned Indian land is located solely within the Crow Reservation. There are 1.2 million acres of individually owned trust land and 7,303 IIM accounts on the Crow Reservation. Each account holder is impacted by the Cobell case. The Crow Tribe, which owns 460,000 acres of trust land, initiated a lawsuit against the United States in 2002 for a complete and valid accounting of Tribal trust funds. Like the individuals, the Crow Tribe will also be affected by the Cobell case because the solutions for solving the individual claims will also have application to Tribal claims. Under the structural injunction recently imposed by the District Court, the individual account holders have but a single option and that is to await the outcome of a lengthy and expensive accounting process. Because of the unique circumstances pertaining only to the Crow Tribe, we support an expansion of the range of reasonable alternatives for Crow Tribal account holders.

In 1948, the Crow Tribal members were made "competent" Indians by the Congress. This competency designation provided statutory authority for Crow Tribal landowners to manage their lands. For lands with five or fewer owners, competent Crow Tribal landowners can negotiate their own leases without governmental supervision and receive direct payments from lessees completely outside of the system of governmental receipts and disbursements. The BIA's only role in the case of competent leases is to record the document. For fractionated lands with more than five owners, managerial responsibility remains in the BIA. Crow Tribal landowners have a long history of managing their own lands and continue to do so today. Thus, for many competent Crow Tribal members, the lengthy and expensive process of recreating their IIM accounts imposed by the Cobell structural injunction may be needless use of limited resources. The Crow Tribal Administration is concerned that the continuation of costly litigation will negatively impact funding for the delivery of critical services for both the Tribe and its members. Therefore, the Crow Tribe believes that the time has now arrived to consider options to resolve the IIM account holders litigation.

The Crow Tribe believes that any process that allows individual Indians the option to elect to resolve their individual trust fund claims against the United States is a move to empower the individual Indian. For Crow landowners, such individual prerogative is completely consistent with their history of decision making as competent Indians. We further believe that any voluntary settlement process should extend to those tribal members who have had land managed by the BIA. Because the Cobell class numbers in the hundreds of thousands, individual class members have little or no control over the progress of the litigation. A voluntary settlement option broadens their options and provides them with that control.

On behalf of Chairman Venne, thank you for this opportunity to present the views of the Crow Tribe and thank you for the very gracious courtesy which has been extended by this Committee.

Mr. REHBERG. I really appreciate you being here, Jay. I understand there is a funeral up in your neck of the woods, and it means a lot that you would take time away from that to be here today.

So, I now ask you to give your testimony. Jay St. Goddard from the Blackfeet Tribe.

STATEMENT OF JAY ST. GODDARD, CHAIRMAN, BLACKFEET INDIAN TRIBE

Mr. ST. GODDARD. Thank you, Mr. Rehberg.

Thank you for this time and this opportunity to speak on behalf of the Blackfeet people I represent as Chairman. And also here with me is Vice Chairman James Sang In Door.

I am just here to represent the people that elected me in as leader for the Blackfeet Nation up in the mountains border and Canadian border up against the beautiful Rocky Mountain front.

I am here on behalf of the Cobell litigation court case that is going on. I have only been here a year-and-a-half but have been getting strongly involved with the situation.

As Tribal Chairman of the Blackfeet, we do come representing the Cobell case and the individual account holders. And I got some writing here that I would just like to read out, and then I will kind of make some comments. And I just want to thank you for the time.

The Cobell rider is unjust, unnecessary and illegal.

No. 1, the practical impact. The Cobell plaintiffs have waited over 100 to get a full accounting. Now is not the time for delay.

In fact, many of the Cobell beneficiaries will remain income depends on proper accounting or dying. If the Interior Department is allow to delay, the older beneficiaries will never be repaid.

No. 2, perception. The Interior Department is dragging its feet, yet again delaying a full accounting based on common law judiciary obligations.

After 7 years of litigation and nearly 10 years under congressional directive, the Interior Department cannot certify an accuracy of a single one of the estimated 500,000 current individual Indian trust accounts. It is time for DOI to start work now.

No. 3, likelihood of success. There is no question that the Cobell plaintiffs are likely to win. The Interior Department knows this, and that is the reason they are asking for a delay. It simply is not in keeping with American justice to delay the likely meritorious legal claims of hundreds of litigants because the losing party does not like the result.

4, unnecessary. The courts are the proper forum for determining whether the Interior Department should be granted a stay, not Congress.

First of all, the Interior Department has a right to ask for a stay, both at the District Court and Appellate Court level. They do not so yet, but still can. It is not Congress —Congress' place to do the Interior's work for them.

Second, there are complex legal and historical issues regarding methodology of accounting and fixing the system that court experts are in a much better position than Congress to make a fair decision.

5, sign our report. Help to end the Cobell v. Norton litigation. Expose the inadequacies of the Interior Department that led to the 1994 Trust Reform Act.

Now that the Cobell plaintiffs are on the verge of seeing a historical injustice righted, Congress should not undermine Congressmen. Sign ours legacy.

6, if Congress can overturn the District Court's ruling now, what is to stop them from doing so in the future? In fact, why not try to overturn the court's ruling anytime the Indians win?

And finally, legality. Permanently preventing the Cobell plaintiffs from receiving their right to a historical accounting would constitute a taking of property without due process violation and would be fully compensable.

Rogan v. Zimmerman Brush Co., 455 U.S. 422, 428-29 in 1982. Elaine v. Central Hannover Bank & Trust Company 339 U.S. 306 in 1950.

While the rider at the stake is not permanent, it raises serious question of fairness and could ultimately lead to a takings claim.

With that, that was from a —just a note from the Blackfeet.

Also, really do appreciate this time you are taking to hear tribal leaders here in Montana and the nice wide-open state we live in; the beauty of it.

And I know you are here, and you read the letter from Baucus. And as Tribal leaders and government-to-government relations, this is big, as Mr. Matt stated. This is the next biggest thing in Congress, in Washington, D.C., right now besides the Iraq war. That is how big this thing is.

We are very concerned, and I am here representing our individual trust account holders. And as leader of the Blackfeet Nation, I need to be on top of this. And I do feel the courts need to decide, and Congress needs to allow that. We don't need the separation of powers there. It is moving forward, and I believe it is on a winning track.

The people I am speaking for, the people back home, the elders, the people that really don't understand what is going on and how big this is to Indian country. And as Tribal leaders, here, I believe we need to come to the table, such as this hearing, more often with Baucus sitting across from us as well as Mr. Burns.

And I just thank you for this time and appreciate you for being here, and thank all of the Tribal leaders for attending. Thank you.

Mr. REHBERG. Thank you very much.

Mr. REHBERG. Geri Small, representing the Cheyenne Tribe. Geri, thank you.

I might point out, you will all remember that I traveled out to the seven reservations. It was fascinating for me because anticipating or expecting like-minded answers, it is almost like representing Montana. I got seven different answers when I was traveling around the State of Montana.

And I don't know if we are receiving seven different answers today, but it has been fascinating to me. And when I get to the

questioning, I am looking forward to getting a little more into the meat of things.

But, Geri, thanks for taking the time and coming up to be with us today. I appreciate your hospitality when I was down in your neck of the woods, and welcome to Billings.

STATEMENT OF GERI SMALL, PRESIDENT, NORTHERN CHEYENNE TRIBE

Ms. SMALL. Thank you. Good morning, Congressman Rehberg, and tribal leaders that are present here today. I want to thank you for inviting me to testify today.

I am Geri Small, President of the Northern Cheyenne Tribe and also Chairman of the Montana/Wyoming Tribal Leaders Council.

On behalf of the Northern Cheyenne Tribe and the Montana/Wyoming Tribal Leaders Council, I would like to express our appreciation to this Committee, and express my appreciation to Congressman Pombo for his commitment to the Indian people and to upholding the trust and treaty responsibilities of the Federal Government.

Also, I want to take some time and just give a brief background of the Northern Cheyenne Tribe. We are located in the southeastern part of Montana. We own 98 percent of our reservation. We have about 8,200 tribal members and growing.

I firmly believe that the time has come for Congress to establish a fair and equitable process for settling the Cobell v. Norton litigation. The Department of Interior has not maintained a record-keeping system that will allow a complete historical accounting, and the two parties to the Cobell litigation are very far apart in their views as they —or what they want to—as to what redress the beneficiaries should receive.

I am very appreciative that the Committee on Resources is exploring a legislative solution to settling the Indian trust fund lawsuit, as I believe settlement is in everyone's best interest. However, I believe developing a settlement process may prove to be very time-consuming.

If a settlement process is going to be developed, I believe that Congress should continue to attack the root causes of trust mismanagement, including the problem of land title fractionation, the absence of standards for trust management, the lack of functioning and integrated systems for title, leasing and accounting.

I also ask that Congress immediately halt the proposed reorganization of the Bureau of Indian Affairs and the Office of Special Trustee, as it is strongly opposed by Indian country.

I note that my fellow tribal member, Senator Ben Nighthorse Campbell, just recently introduced Senate bill 1770 in an effort to establish a voluntary alternative claims resolution process to reach a settlement of the Cobell lawsuit.

I will not address the merits of this bill directly because I have not had adequate time to study it. My initial observations are that the bill needs a lot of work as it does not include many concepts that I believe should be implemented in any settlement legislation, our legislation enacted by Congress, these settlement concepts are set out fully in my written testimony.

You should also know that I am a little uncomfortable testifying on a settlement process for a case involving individual Indian account holders throughout the United States. I am also an IIM account holder, but I am just one. I believe there is somewhere in the neighborhood of thousands of IIM account holders. The IIM account holders are represented by the Native American Rights Fund and its attorneys. I believe that these are the individuals with whom Congress should discuss settlement of the Cobell claims.

I recognize that I only have 5 minutes to provide you with my oral testimony, so I am going to cut to the chase.

If you were dealing with me directly as a plaintiff in the case, I would ask you to make a settlement offer. The Cobell case has been going on for over 8 years now. Judge Lamberth recently ordered the Department to conduct a historical accounting of the IIM trust accounts.

It is my understanding that the Department of Interior estimates that it will cost the Federal Government $10 billion to conduct an historical accounting. I suggest that this $10 billion would be better spent as an initial payment in settling the Cobell lawsuit. At the very least, it is a good starting point for settlement negotiations.

$10 billion may seem like a lot of money, but it pales in comparison to the billions of dollars that the United States is spending on the Iraq war and the efforts to rebuild Iraq.

I also note that there are costs associated with developing a settlement process. Senate Bill 1770 appropriates $40 million through Fiscal Year 2007 for costs associated with settling individual claims. These costs could be avoided if the government would simply settled the Cobell lawsuit.

Last, Senators Campbell and Inouye sent letters to tribal leaders earlier this year that invited tribes and the Cobell plaintiffs to mediate the dispute. Tribal leaders and the Cobell plaintiffs were overwhelmingly in favor of developing a settlement process that involved mediation.

Senate bill 1770 does not involve a mediation process. If the government insists on pursuing legislation that develops a legislative process as opposed to settling the case, I strongly urge Congress to include mediation in the process.

The other thing that I wanted to mention here earlier, I also have my written testimony that I have submitted. Like other tribal leaders here, I—it was very fast, you calling a hearing here today, so I need to get back with my Council. And we will probably be making some amendments to my written testimony and sending it back in to you.

I also want to thank you, Congressman Rehberg, for having this hearing here today and looking out for the best interest of not only the Montana tribes but the Wyoming tribes. I am thankful that they are here today as tribal leader because it not only concerns Montana; it concerns all tribes in all States.

This concludes my oral testimony, and again, I thank you for inviting me to be able to speak here and testify on this issue, as it is a big issue in Indian country all over. I thank you for that.

Mr. REHBERG. Thank you, Geri.

[The prepared statement of Ms. Small follows:]

Statement of Geri Small, President, Northern Cheyenne Tribe

Introduction

Congressman Rehberg, thank you for inviting me to testify today. On behalf of the Northern Cheyenne Tribe, I would like to express our appreciation to this committee for its commitment to Indian people and to upholding the trust and treaty responsibilities of the federal government.

I firmly believe that the time has come for Congress to establish a fair and equitable process for settling the Cobell v. Norton litigation. The DOI has not maintained a recordkeeping system that will allow a complete historical accounting, and the two parties to the Cobell litigation are very far apart in their views as to what redress the beneficiaries should receive. I am very appreciative that the Committee on Resources is exploring a legislative solution to settling the "Indian Trust Fund Lawsuit" as I believe settlement is in everyone's best interest. However, I believe developing a settlement process may prove to be very time consuming. As the settlement process develops, I believe that Congress should continue to attack the root causes of trust mismanagement, including the problem of land title fractionation, the absence of standards for trust management, and the lack of functioning and integrated systems for title, leasing and accounting. I also ask that Congress immediately halt the proposed reorganization of the Bureau of Indian Affairs and the Office of Special Trustee, as it is strongly opposed by Indian country.

I note that my fellow Tribal member, Senator Ben Nighthorse Campbell, just recently introduced S. 1770 in an effort to establish a voluntary alternative claims resolution process to reach a settlement of the Cobell lawsuit. I will not address the merits of this bill directly because I have not had adequate time to study it. My initial observations are that this bill needs a lot of work. My testimony today provides the Committee with concepts that I believe should be implemented in any settlement legislation enacted by Congress.

Objectives of a Settlement Process

Tribal leaders have consistently supported the goals of the Cobell plaintiffs in seeking to correct the trust funds accounting fiasco that has lingered for too long at the Department. At the same time, tribes are concerned about the impacts the litigation may have on Tribal Government. Any solution, legislative or judicial, should not interfere with Tribes' right to govern trust resources.

From the beginning, the DOI has operated with the primary interest of protecting itself from liability rather than complying with its statutory duties. See, e.g., Cobell v. Norton, 226 F. Supp. 2d at 11. This has had a direct impact on the BIA's ability and willingness to provide the services that are so vital to tribes and individuals. Significant financial and human resources have been diverted by DOI in response to the litigation. The BIA has become extraordinarily risk averse and slow to implement the policies, procedures and systems to improve its performance of its trust responsibility to Indian tribes and individual Indians. Perhaps most significantly, the contentiousness of the litigation is creating an atmosphere that impedes the ability of tribes and the DOI to work together in a government-to-government relationship to promote tribal self-determination and address other pressing needs confronting Indian country.

Continued litigation will cost many more millions of dollars and take many more years to reach completion. It is my understanding that the Department of Interior has estimated that it will cost the Unites States $10 billion to comply with Judge Lambreth's Order for an accounting of IIM trust accounts. I believe that this money would be better spent if it were given directly to the Plaintiffs. Furthermore, I believe that the litigation has caused Interior to become very contentious with Tribes and that the litigation has impeding the ability of the BIA and the DOI to carry out their trust responsibilities to Tribes. For these reasons, I believe that it is in the best interests of tribes and individual account holders that tribal leaders participate in the resolution of trust-related claims and the development of a workable and effective system for management of trust assets in the future.

Guiding Principles—for a Settlement Process

I would like to suggest a number of principles that I believe should be taken into account in developing any settlement process:

1) Involve all necessary parties in a convening this fall to scope and frame the settlement process. I believe a professional mediator should be employed to facilitate discussions involving the parties to Cobell v. Norton, Tribal leadership, and senior members of Congress. Timely and good faith consultation with the elected tribal leadership is essential in the settlement process. Tribes have a number of very important interests in the outcome:

a. Tribal lands are often co-owned or co-managed with individuals' lands.
b. Future delivery of all trust services is a key issue in the case.
c. Tribal regulatory authority, self-determination programs, and natural resource management could be affected.
d. The federal budget for tribal programs could be affected.
e. The settlement for individual account holders could set precedent for tribal claims.

I believe that the House Resources Committee and the Senate Committee on Indian Affairs should forge an alliance to work on this issue and participate in meetings to keep Congress informed of progress and keep the pressure on for settlement.

Formal consultations should be held to enable those not directly involved in the discussions to have an opportunity to comment before the settlement process is finalized.

2) Take the time to do it right. Defining a settlement process is complicated. One "trust reform" quick fix after another has been proposed, implemented, and eventually fallen to the wayside. We have wasted over 20 years looking for a quick fix. Congress should not impose a process that may not be well received and will spell failure for the development of a settlement process.

3) Provide for judicial review and fairness—Settlements should be judicially approved pursuant to the Federal Rules of Civil Procedure. The settlement process must ensure that Indian people are situated in an equitable position to evaluate the fairness of any settlement offer. The settlement process should require full disclosure of all material facts—the government has the burden of providing beneficiaries with all records from government agencies and contractors pertaining to their trust claims. Many individuals do not have access to legal counsel to review settlement documents; therefore review by the courts is necessary to avoid any unfair settlements. The settlement of claims should be final absent fraud or failure to disclose material facts.

4) Establish a process that will keep the pressure on for settlement. The parties to the litigation have tried several times to resolve the case but have been unsuccessful in reaching agreement. I believe that this has been due in large part to a failure to establish a structured process to support settlement discussions. Firm time schedules should be established with periodic reporting and incentives for reaching a settlement. While settlement deliberations are in process, I believe the litigation should continue until the historical accounting has been settled, and the Department has successfully implemented the necessary reforms to ensure sound trust management in the future.

5) Ensure that the settlement also fixes trust systems for the future. The historical record has shown that DOI will only move forward in improving Indian trust systems if there is exterior pressure from the courts or from Congress. There are two critical issues here that need to be addressed: (a) the establishment of account balances (historical accounting); and (b) the functionality of accounting systems. It would be disastrous to create a settlement that would resolve the past liability and then allow the DOI to relapse into ignoring its responsibilities for Indian trust management and accounting.

6) An independent body should play a significant role in the settlement process. The parties to the litigation have a significant financial stake in the outcome. The tribes and the IIM account holders will distrust any process where the Secretary of Interior is in control of all aspects of the settlement. To ensure fairness and transparency and ensure that the process moves forward, an independent body should play a significant role in scoping, fact finding, framing, and management of deliberative processes. Consideration should also be given to: (a) having the Independent Body perform structured evaluations of proposed settlement processes using a consistent set of components and criteria—these evaluations could be used to provide the informational basis for tribal consultation; (b) authorizing the Independent Body to provide recommendations to Congress for a settlement process in the event that parties are unable to reach agreement within a pre-determined time frame.

7) One size will not fit all. There is a great deal of diversity among account holders. Some have large stakes in very valuable natural resources, such as oil, gas, or timber. Others have only a small fractionated interest that is worth less than a dollar. Any settlement process must be able to deal with different classes of accounts and interests.

8) Account holders should have the opportunity to negotiate and make a choice. You cannot force a "settlement." In today's world, the hallmark of fairness is the ability to negotiate an arms length agreement based on a reasonable knowledge and understanding of the underlying facts and circumstances. Indian account holders

must also have this ability. The settlement process should, however, contain incentives that would encourage participation.

9) Move quickly to bring relief to elder account holders. Many of our elders have suffered extreme economic deprivation throughout most of their lifetimes. They should have an opportunity to improve their financial conditions without delay.

While the Settlement Process Develops,

Congress Should Attack the Causes of Trust Mismanagement

I believe that it is imperative that we continue our efforts to legislate solution concerning land consolidation and fractionation. This is the root cause of the problem. But there are also several other issues that we believe Congress should take up at the same time.

Land Consolidation—Maintaining accurate ownership information is made exceedingly difficult by the ever-expanding fractionated ownership of lands divided and redivided among heirs. Today, there are approximately four million owner interests in the 10 million acres of individually owned trust lands, and these four million interests could expand to 11 million interests by 2030. Moreover, there are an estimated 1.4 million fractional interests of 2 percent or less involving 58,000 tracks of individually owned trust and restricted lands. There are now single pieces of property with ownership interests that are less than 0.000002 percent of the whole interest.

Addressing fractionation is critical to improving the management of trust assets and reducing the administrative costs of maintaining IIM accounts. Fractionation promises to greatly exacerbate problems that currently plague the DOI's efforts to fulfill its trust responsibilities, diminish the ability to productively use and manage trust resources, and threaten the capacity of tribes to provide secure political and economic homelands for their members. If allowed to continue unabated, fractionation will eventually overwhelm systems for trust administration and exact enormous costs for both the Administration and tribal communities.

Reduction of fractional interests will increase the likelihood of more productive economic use of the land, reduce recordkeeping and large numbers of small dollar financial transactions, and decrease the number of interests subject to probate. Management of this huge number of small ownership interests has created an enormous workload problem at the BIA. In addition to the development of amendments to the Indian Land Consolidation Act (S. 550), Congress needs to put funding directly on the problem. We believe that an investment in land consolidation will pay much bigger dividends than most any other "fix" to the trust system.

Accountability and Standards—It is well known that DOI has mismanaged the Indian trust for decades. The real question for Congress is why decades of reform efforts have produced so little change in DOI's willingness to take corrective actions, to reconcile accounts, and to put adequate accounting and auditing procedures and policies in place.

The real answer to this is that the DOI and the Department of Justice have always viewed their primary role as ensuring that the U.S. is not held liable for its failure to properly administer trust assets. For this reason, they have never been willing to put standards into regulations that would govern the management of Indian trust assets, and the lack of standards has consistently undermined any effort to take corrective action on trust reform. What is needed is a clear signal from Congress to create a new culture of transparency and accountability for Indian trust management. Once the DOI understands that mismanagement will no longer be tolerated, the system will change and true reform will begin. In effect, the DOI is acting as a bank for Indian trust funds—and just like every other bank in the U.S., the DOI must be subject to standards and accountability.

I believe that it is critical for Congress to substantively address the underlying issues of transparency and accountability in fixing the trust system. I would greatly encourage the Committee to take up trust reform legislation that would hold the DOI to the ordinary standards of a trustee, and we would be pleased to work with you in developing that legislation.

Core Business Systems—Indian trust resource and trust fund administration requires accountability in three core systems that comprise the trust business cycle: 1) Title; 2) Leases/Sales; and 3) Accounting. I believe that Congress should focus its oversight efforts on these core systems to ensure that reform efforts meet requirements for fiduciary trust fund administration. Once these processes have been developed, an organizational structure can be developed to ensure their proper implementation. Correcting the DOI's performance in these core functions will also require the DOI to employ sufficient personnel, provide staff with proper training, and support their activities with adequate funds.

Title—Currently, the BIA is using ten different title systems in the various Land Title Record Offices around the country, both manual and electronic. These systems contain overlapping and inconsistent information. The inaccuracies result in incorrect distribution of proceeds from trust resources, questions regarding the validity of trust resource transactions, and the necessity to repeatedly perform administrative procedures such as probate. Consequently, a large backlog of corrections has developed in many of the title offices, and this has compounded the delays in probate, leasing, mortgages, and other trust transactions that rely on title and ownership information. In turn, each of these delays compounds the errors in the distribution of trust funds. Cleaning up the ownership information and implementing an effective title system that is integrated with the leasing and accounting systems is a primary need for the Indian trust system.

Leasing—Most Indian trust transactions take the form of a lease of the surface or subsurface of an allotment, permits to allow the lessee to conduct certain activities in return for a fee, or a contract for the sale of natural resources such as timber or oil. Although leasing records are vital to ensure accurate collection of rents or royalties, there are no consistent procedures or fully integrated systems for capturing this information or for accurately identifying an inventory of trust assets. Currently, BIA has no standard accounts receivable system and many offices have no systems to monitor or enforce compliance, or to verify and reconcile the quantity and value of natural resources extracted with payments received. The accounting system most often begins with the receipt of a check that is assumed to be accurate and timely. Implementing an effective lease recording system that is integrated with the title and accounting systems is a primary need for the Indian trust system.

Accounting—The DOI needs to develop accounting systems that will integrate and verify information from one function into another (from title to leasing to accounting). The DOI should also set out what oversight capabilities are planned into the system (verification and audit) as well as a plan for document retention and ease of access to facilitate audit and internal verification procedures. Furthermore, the DOI system needs a built-in crosscheck between BIA entries to its control account and Treasury's entries to its control account. This system should automatically produce a daily exception list that would be examined and remedied in a timely manner.

Opposition to Current BIA Reorganization Efforts

The Northern Cheyenne Tribe and the Rocky Mountain Region Tribes are strongly opposed to the current trust reform reorganization effort that the DOI is engaged in, and to the dramatic shifts in BIA funding that are proposed in the FY'04 budget. We would like the assistance of the Committee in stopping this process.

Tribal leaders understand better than anyone that the Bureau of Indian Affairs needs to change, that it has significant difficulty in fulfilling its responsibilities in management of trust funds, and that some of the problems relate to the way that the Bureau is organized. We want to see successful change and improvement in the way the BIA does business. We are not opposed to reorganization per se; we simply want to do it right. We cannot afford to squander the opportunity we have before us.

In our view, effective organizational change to effectuate trust reform must contain three essential elements:

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

These elements are lacking in the current proposal of the Department of Interior (DOI) for reorganizing the BIA.

It is critical Congress appropriate additional funding from Congress to correct the internal problems created through administrative mistakes rather than depleting existing, insufficient BIA program dollars for these purposes. Increased funding for trust reform has the potential to be money well spent—but it is an empty promise if it comes at the costs of diminished capacity to deliver services to tribal

communities, and is implemented without clear standards for federal accountability, a plan to put the money at the local level where it is most needed, and consultation with the tribes and individuals whose accounts are at stake.

I am extremely concerned that the lack of definition of the responsibilities and authorities of new OST offices will cause serious conflicts with the functions performed by the BIA Agency Superintendents and/or Indian tribes. The authority and role of the proposed Trust Officers need much more explanation. Moreover, I believe that the funding and staff needs to flow directly to the agency and regional levels—not just to new Trust Officers—to address long-standing personnel shortages needed to fully carry out the trust responsibility of the United States. Before DOI begins the process of establishing an entire new mini-bureaucracy, the financial and management impact of such an action must be thoroughly examined by the Congress and by affected tribal governments.

I believe that any attempt by DOI to implement its proposed reorganization without addressing the three essential elements we have identified above for trust administration will prove to be ill-advised, premature, and ultimately disastrous. We fear that the DOI is on the verge of repeating the classic mistake that has ruined the majority of its efforts to reform trust administration in the past—a small group of executives get together and simply draw up a new organizational chart. The preoccupation with moving or creating boxes on a chart is the antithesis of how effective organizational change can and should be brought about.

I also firmly believe that this reorganization is putting the cart before the horse. Organizational—structures must be aligned with specific business processes and they must be designed to function within a system where services are provided by the DOI and tribal governments. DOI has not yet figured out its new business processes. Millions of dollars have been invested in an "As-Is" study of trust services, and the Department has not completed the critical "To-Be" phase of reengineering the business processes of trust management. By implementing a new organizational plan prematurely, DOI is running a great risk of ignoring the findings of its own study and wasting the valuable resources that the agency and tribes have already dedicated to understanding systemic problems.

DOI will most likely refer to the so-called "consultation" sessions that are occurring. I would note the tribal leaders strongly object to these so-called "consultations," as the DOI representatives inform tribes about how the re-organization is going to proceed and they fail to tribal concerns regarding meaningful trust reform.

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

At this time, Congress should prevent the DOI from proceeding with its proposed reorganization plan and focus instead on funding land consolidation that will in time reduce the cost of trust administration, and on developing good systems for the core trust business processes: land title, leasing and accounting.

Without adequate land title, leasing and accounting systems, reorganization, especially as proposed by DOI, does little to effectuate true trust reform and the cost of reform of trust administration will continue to escalate.

Conclusion

On behalf of the Northern Cheyenne Tribe, I would like to thank the members of the Committee for all of the hard work that they and their staffs have put into the trust reform effort. If we maintain a serious level of effort and commitment by Congress, the Administration, and Tribal Governments to work collaboratively together to make informed, strategic decisions on key policies and priorities, we can provide the guidance necessary to bring about true reform in trust administration.

Mr. REHBERG. A gentleman I met today for the first time, we welcome you to Billings, Montana. Vernon Hill, Chairman of the Shoshone Business Council in Wyoming.

Vernon.

STATEMENT OF VERNON HILL, CHAIRMAN OF THE EASTERN SHOSHONE BUSINESS COUNCIL OF THE WIND RIVER INDIAN RESERVATION

Mr. HILL. Good morning, Congressman Rehberg. My name is Vernon Hill. I am the Chairman of the Eastern Shoshone Business Council of the Wind River Reservation in Wyoming. Thank you for inviting me to testify today on this important subject.

The Wind River Reservation was established by the Treaty of July 3, 1868, and is the only Indian Reservation in Wyoming. The Wind River Reservation encompasses over 2.2 million acres and is occupied and shared by two tribes, the Eastern Shoshone and the Northern Arapaho.

There are nearly 3,500 enrolled Eastern Shoshone members and over 7,300 Northern Arapahoe members. The total Reservation population consists of 23,250 people residing on both trust lands and nontrust lands.

There is a long history to the current trust fund situation stemming back to the expansion of America to the West. The Allotment Act and Policy was implemented on the Wind River Reservation in the 1890s. As a result, the Wind River Reservation started out as a 40-million-plus acre reservation and was reduced to 2.2 million acres. The rest was sold as surplus.

Under the same policy, the reservation lands were allotted to individual Indians, and the United States undertook a solemn trust duty to protect the land and resources of the allottees and the tribe. One aspect of that trust duty is the requirement that the United States account for the revenues that are generated by those lands and resources.

For American Indians, the system of allotments failed as non-Indian farmers and ranchers were successful in purchasing much of the individually allotted lands, thereby diminishing the reservation trust land base. As a result, many of our people were left landless. On the Wind River Reservation, there is approximately 2.2 million acres of tribally owned lands and over 100,000 acres of allotted lands affecting our members.

Many of our tribal members are individual Indian Monies (IIM) account holders which are a part of the Cobell v. Norton Case.

I am submitting this testimony on behalf of the tribe to urge a fair and equitable resolution of this lawsuit, both for the benefit of our tribal members who are IIM account holders and for the tribes that have been affected by this case.

First, I would like to acknowledge Elouise Cobell, the lead named plaintiff in the lawsuit. The Cobell lawsuit has brought the Federal Government's historic mismanagement of the Indian trust to the forefront and has caused all three branches of the U.S. Government to focus on fixing these problems.

Yet, after 7 years since the filing of the lawsuit, three Cabinet-level Secretaries and two Assistant Secretaries have been held in contempt of court for litigation misconduct, and Congress has appropriated hundreds of millions of dollars to correct trust fund mismanagement. Unfortunately, this funding has not resolved this case, nor has it improved the delivery of services to tribal members. None of this money has reached the hands of IIM or tribal account holders.

Officials in the Interior Department currently estimated that it will cost $6 to $12 billion to conduct a historic accounting of the IIM trust as required by the court in the Cobell lawsuit.

Even if Congress appropriated the full amount of funding for this accounting, at the end of the day, none of this money will have reached the IIM account holders. All of this funding will only benefit the large accounting firms, like the former Arthur Andersen firm, which already collected close to $50 million for a mere sampling of the accounting problem.

In the meantime, the Federal budget and policy for Indian Affairs is suffering in the name of trust reform. In the recent years, the Interior Department's annual budget has focused on its ability to conform to the Cobell court's directive. As a result, funding for the tribal services infrastructure and economic development have fallen to the bottom of the priority list. In Fiscal Year 2004, funding for Tribal Priority Allocation is slated for an increase of a mere two-thirds of less than 1 percent. Thus, basic funding for tribal governments is actually being reduced when inflation is being considered because trust reform dollars are taken from current appropriations.

Moreover, the Interior Department has developed trust reform policy that will have direct adverse impact on tribes. This year the Interior Department decided to reorganize the BIA by stripping administrative, human resources, information technology, self-determination, contracting and other functions and responsibilities out of the BIA. The funding and resources supporting these functions will also leave the BIA. In addition, the reorganization calls for the creation of additional layers of bureaucracy on higher departmental levels which will hamper local decisionmaking and efficient program operations. What is left will be a totally ineffective agency that will have very little ability to deliver services to tribes. And, there will be very little left for tribal self-determination and compacting.

The Interior Department's current reorganization is an effort to consolidate functions and responsibilities in order to free up additional funding for trust reform. Moreover, the current status of the litigation shows that the United States is not even close to resolving the issues associated with mismanagement of the Indian trust.

The Cobell plaintiffs report that the Interior Department is unwilling to engage in good-faith mediation. The Interior Department claims that the plaintiffs are pursuing a settlement for an unreasonable and outrageous sum of money-making mediation or settlement impossible.

Given these circumstances, Congress must step up and establish a settlement process that is fair and equitable. Therefore, we support the following base line components for a legislative solution to the current Indian trust lawsuit:

No. 1. The process should be voluntary in nature.

No. 2. Congress must authorize access to and use of the Judgment Fund for settlement of claims, such as Section 6 in S. 1770. The United States must pay for a past and ongoing mismanagement of the IIM Trust. As such, this means that the United States must no longer dip into current appropriations dedicated to Indian affairs in the Interior Department's annual budget. Our

people and our program should no longer suffer in the name of trust reform.

No. 3. Congress should further authorize use of the Judgment Fund to pay for Trust Accounting reforms necessary to remedy historical wrongs. This is necessary, otherwise current Indian programs will continue to be jeopardized and again, that just compounds the wrong to American Indian Tribes.

No. 4. Because Indian Tribes have claims for breach of trust for failure to account for funds in tribal trust accounts, Congress should develop an IIM trust accounting settlement process that takes into consideration tribal input. For example the Inter-Tribal Monitoring Association, which the Wind River Tribes belong to, has been having discussions with the Interior Department for over a year on developing a settlement process for settlement of tribal claims. Congress should keep in mind the specific tribal claims and ongoing settlement discussions and work with the tribes in resolving these issues.

No. 5. There should be appropriate avenues for appeal to the Federal courts. The checks and balances inherent in the U.S. Government underscores the need to provide a strong basis for both the Congress and courts to check and balance the Interior Department's implementation of a congressional approve settlement process.

No. 6. Congress must reject appropriations riders developed without consultation and dialog with Tribes and IIM account holders as a way to resolve issues related to the lawsuit.

In closing, Congress should enact a specific framework for a legislative solution, which includes access to the Judgment Fund for both accounting reform and damages for IIM and tribal account holders.

We commend Chairman Pombo, Congressman Rehberg and the Resources Committee for holding these hearing. Thank you for the opportunity to testify on these critically important matters.

[The prepared statement of Mr. Hill follows:]

Statement of Vernon Hill, Chairman, Eastern Shoshone Business Council of the Wind River Indian Reservation

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There is a long history to the current trust fund situation stemming back to the expansion of America to the West. The Allotment Act and Policy was implemented on the Wind River Reservation in the 1890's. As a result, the Wind River Reservation, which started out as a 40+ million acre reservation, was reduced to 2.2 million acres. The rest was sold as surplus. Under the same policy, Reservation lands were allotted to individual Indians, and the United States undertook a solemn trust duty to protect the land and resources of the allottees and the tribe. One aspect of that trust duty is the requirement that the United States account for the revenues that are generated by those lands and resources.

For American Indians, the system of allotments failed as non-Indian farmers and ranchers were successful in purchasing much of the individually allotted lands

thereby diminishing the Reservation trust land base. As a result, many of our people were left landless. On the Wind River Reservation, there is approximately 2.2 million acres of tribally owned lands and over 100,000 acres of allotted lands affecting our members.

Many of our tribal members are individual Indian monies (IIM) account holders which are a part of the Cobell v. Norton class action lawsuit. I am submitting this testimony on behalf of the Tribe to urge a fair and equitable resolution of this lawsuit both for the benefit of our tribal members who are IIM account holders and for the Tribes that have been affected by this case.

First, I would like to acknowledge Elouise Cobell, the lead named plaintiff in the lawsuit. The Cobell lawsuit has brought the Federal Government's historic mismanagement of the Indian trust to the forefront and has caused all three branches of the United States government to focus on fixing these problems.

Yet, after seven years since the filing of the lawsuit, three cabinet level Secretaries and two Assistant Secretaries have been held in contempt of court for litigation misconduct and Congress has appropriated hundreds of millions of dollars to correct trust fund mismanagement. Unfortunately, this funding has not resolved this case nor has it improved the delivery of services to tribal members. None of this money has reached the hands of IIM or tribal account holders.

Officials in the Interior Department currently estimated that it will cost six to twelve billion dollars to conduct an historical accounting of the IIM trust as required by the court in the Cobell lawsuit. Even if Congress appropriated the full amount of funding for this accounting, at the end of the day, none of this money will have reached the IIM account holders. All of this funding will only benefit the large accounting firms, like the former Arthur Andersen firm—which already collected close to $50 million for a mere sampling of the accounting problem.

In the meantime, the federal budget and policy for Indian Affairs are suffering in the name of trust reform. In the recent years, the Interior Department's annual budget has focused on its ability to conform to the Cobell court's directive. As a result, funding for tribal services, infrastructure, and economic development have fallen to the bottom of the priority list. In FY 2004, funding for Tribal Priority Allocation funding is slated for an increase of a mere two-thirds or less than one percent. Thus, basic funding for Tribal Governments is actually being reduced when inflation is being considered because trust reform dollars are taken from current appropriations.

Moreover, the Interior Department has developed trust reform policy that will have direct adverse impacts on Tribes. This year the Interior Department decided to "reorganize" the BIA by stripping administrative, human resources, information technology, self-determination contracting, and other functions and responsibilities out of the BIA. The funding and resources supporting these functions will also leave the BIA. In addition, the reorganization calls for the creation of additional layers of bureaucracy at higher departmental levels which will hamper local decision-making and efficient program operations. What is left will be a totally ineffective agency that will have very little ability to deliver services to Tribes. And, there will be very little left for Tribal self-determination contracting and compacting.

The Interior Department's current reorganization is an effort to "consolidate" functions and responsibilities in order to free up additional funding for "trust reform." Moreover, the current status of the litigation shows that the United States government is not even close to resolving the issues associated with mismanagement of the Indian trust.

The Cobell plaintiffs report that the Interior Department is unwilling to engage in good-faith mediation. The Interior Department claims that that the plaintiffs are pursuing a settlement for an unreasonable and outrageous sum of money-making mediation or settlement impossible.

Given these circumstances, Congress must step up and establish a settlement process that is fair and equitable. Therefore we support the following baseline components for a legislative solution to the current Indian trust lawsuit:

1. The process should be voluntary in nature.
2. Congress must authorize access to and use of the Judgment Fund for settlement of claims (such as Section 6 in S. 1770). The United States must pay for past and ongoing mismanagement of the IIM Trust As such, this means that the United States must no longer dip into current appropriations dedicated to Indian affairs in the Interior Department's annual budget. Our people and our programs should no longer suffer in the name of "trust reform."
3. Congress should further authorize use of the Judgment Fund to pay for trust accounting reforms necessary to remedy historical wrongs. This is necessary, otherwise, current Indian programs will continue to be jeopardized and again, that just compounds the wrong to American Indians and Indian Tribes.

4. Because Indian Tribes have claims for breach of trust for failure to account for funds in tribal trust accounts, Congress should develop an IIM trust accounting settlement process that takes into consideration Tribal input. For example, the InterTribal Monitoring Association, which the Wind River Tribes belong to, has been in discussions with the Interior Department for over a year on developing a settlement process for settlement of tribal claims. Congress should keep in mind the specific Tribal claims and ongoing settlement discussions, and work with the Tribes on resolving these issues.
5. There should be appropriate avenues for appeal to the Federal courts. The checks and balances inherent in the United States Government underscores the need to provide a strong basis for both the Congress and Courts to check and balance the Interior Department's implementation of a Congressional approved settlement process.
6. Congress must reject appropriations riders developed without consultation and dialogue with Tribes and IIM account holders as a way to resolve issues related to the lawsuit.

In closing, Congress should enact a specific framework for a legislative solution, which includes access to the Judgment Fund for both accounting reform and damages for IIM and tribal account holders. We commend Chairman Pombo, Congressman Rehberg and the Resources Committee for holding these hearings.

Thank you again for the opportunity to testify on these critically important matters.

Mr. REHBERG. Thank you. And I really do appreciate you all being here.

I know this is one of these issues that you all have inherited. None of us were around at the beginning, but we would like to be around at the end of this process.

So let me begin by just asking you, if you can answer the question, How many—and I know, Fred, your situation perhaps is different because you have a management arrangement contract, and so do you, Mr. Howe, but—I am sorry, Alvin —but how many individual account tribal members do you have in each of your tribes? Do you know that?

Mr. MATT. I don't have those numbers who is underneath. We manage our own IIM accounts on our reservation. As—like Alvin had mentioned, most of the functions at the BIA used to provide us on the reservation. We do it ourselves.

Mr. REHBERG. But you don't know how many individuals.

Because one of the numbers we hear continually is, you know, the tribes mentioned nationwide, there could be as many as 500,000. The Department of Interior says no, it is more like 250, 280, 290, less than 300.

I am trying to put it into some kind of numerical perspective in Montana. What kind of problem are we talking about? I know asking you first gives these guys a whole lot more time to try and figure out what it is, but you don't have—

Mr. MATT. I don't know a specific number.

Mr. REHBERG. OK.

Mr. WINDY BOY. I can say with Rocky Boy, as an example, I am an IIM account holder. So is my brothers, and there is nine, ten of us. And the list goes on.

In addition to that, I have also got enrolled members of my tribe that are IIM account holders on the Blackfeet, Salish-Kootenai and Crow, and other tribes, and whether or not Cobell is representing them, they are constituents and representatives of my tribe and feel that —

Mr. REHBERG. So do you know how many that would be, just perhaps living on your reservation?

Mr. WINDY BOY. Specifically?

Mr. REHBERG. Or, enrolled in your tribe that would be IIM?

Mr. WINDY BOY. Specifically, not a number offhand.

Mr. REHBERG. OK.

Kayle?

Mr. HOWE. Yeah, we have 7,303 account holders on our Crow Reservation, and I am one of them. And I have established that since 1962 the account, and so have other members prior to that, I believe. But we do have in excess of 11,000 in our enrollment in the Crow Tribe.

Mr. REHBERG. OK.

Mr. HOWE. And so we would feel that it would be important if we could have certain types of hearing of this nature brought to the Crow Reservation, where the account holders themselves can hear the intentions of Congress and how they are trying to resolve the problems.

Mr. REHBERG. You bet.

Jay, do you—

Mr. MATT. Chairman Rehberg, I was just trying to think, out of 6,000 members of our tribe, half of them live off the reservation. But, I was trying to think of what I —I heard the number on our reservation the other day, and there is somewhere in the neighborhood of 1500 to 2000 account holders.

Mr. REHBERG. OK.

Jay?

Mr. ST. GODDARD. Up there on Blackfeet, there is probably 9,800, and as Mr. Windy Boy stated, on the reservation, on Rocky Boy and other reservations that this occurs to families owning other shares on different reservations, being married into different tribes or whatever. I don't know an exact number there, but at home, there it is 9,800, close to that.

Mr. REHBERG. OK.

Geri?

Ms. SMALL. Well, you know, I just wanted to mention, you know, you said 500,000, and that is the last I heard too, nationwide.

But on Northern Cheyenne, we got about 8,200 tribal members, and we have probably about three-quarters of those that are IIM account holders.

Mr. REHBERG. OK.

Vernon?

Mr. HILL. I don't have an exact figure on how many account holders there are, but I would say the majority of them are. I would say enrolled members some way or another are account holders because of the income they receive off of oil/gas royalties.

It kind of depends on the situation, though, involving accounts. I would say a majority of the adults, the children or all tribal members receive income of some type.

And you have the others there that have leased land out, and, you know, you have fractionated interest, and so that is a large number, and I couldn't give it, an exact figure.

Mr. REHBERG. OK. All right.

I just want all of you to know that there is really no right or wrong answer to anything. There is nothing that we are going to hold you all to. We recognize the fact that the hearing came up at a rather late date. Not a lot of preparation could be put into it.

Sometimes that is better because then you just throw out ideas. And this is the period of time that we are throwing out ideas.

I don't know which direction we are going to take, so some of the things I say may not be either correct or end up in the legislation. We have to work within the committee structure itself.

Mr. WINDY BOY. Just one statement. As far as being progressive, I would like to remind you of a demonstration project that is currently being proposed in collaboration with four tribes—the Chippewa and Cree Tribe, the Salish-Kootenai, Hupa Tribe in California, and the Salt River Pima-Maricopa in Arizona in creating a demonstration project, a 1-year demonstration project that looks at the service that we provide and having the reform not negatively involve—interfere with the way that we are doing business.

And I would also want to commend Secretary Griles and his subordinate Dave Burnhardt in working with us. They certainly have been taking a lead in collaborating with us on government-to-government relationship.

Mr. REHBERG. OK.

Kayle?

Mr. HOWE. Yeah, I would like to make note to the fact that the 7,303 is the number that we had, but there is pending probates that would probably increase the numbers.

Mr. REHBERG. OK, let me ask you all then a "what if" question.

What if we have a legislative solution that allows an opportunity for the individual tribes to opt in or opt out. There is nothing binding on you. If you want to continue on with the class action lawsuit, we will call it the Cobell case if that is the easiest way to refer to it, you have that ability. Would you be willing to endorse or support legislation that says, Look, it is not good for our tribe to accept this, so we are out, but frankly if the Crows, or if the Blackfeet want to settle, that is their business? Is that something that you would be amenable to?

I know your current situation is that you are currently contracted, so you are kind of opting out already.

Mr. HOWE. Right.

Mr. REHBERG. But is that something that you could support?

Mr. MATT. Yeah, I think our Council would support that idea.

Mr. WINDY BOY. Yeah, ditto.

Guys like me that have like 3 cents and get a statement every so often, that is kind of ludicrous to know that there is administration spending that much money.

The litigation as far as the Congress involvement certainly is important, and litigation appeals would go on forever.

Mr. REHBERG. Kayle?

Mr. HOWE. Yeah, Congressman, I would like to have my attorney address that.

Mr. REHBERG. Would you please state your name and position.

Mr. YELLOWTAIL. Yes. Good morning, Congressman. For the record, my name is James Yellowtail, and I am legal counsel for the Crow Tribe. I am part of a legal team for the Crow Tribe.

Sir, as I understand your question, the question would be, would the Crow Tribe support some kind of voluntary settlement option for individual tribal members who are affected by the Cobell Lawsuit?

The answer is, certainly we do.

I also understood a component of your question that would refer to tribal claims for historical accountings that affect purely tribally owned, or communally held interests. Insofar as those claims go, the Crow Tribe does have a suit of that nature. It is ongoing and pending. And I can inform you that we are involved in settlement negotiations with respect to that.

We do see a major distinction between the two.

Mr. REHBERG. Yes.

Mr. YELLOWTAIL. But in summary, the Crow Tribe does support a broad range of options for individual account holders, and to the extent that there would be legislation for that purpose, we would be in support of that.

Mr. REHBERG. Thank you.

I will point out to the panel that I was aware of the settlement that is occurring, or the discussions with the Crow. I chose not to mention that. Just like you we are talking today specifically about individual accounts. This is not—this hearing does not deal in any way, shape, or form with tribal accounts.

Jay.

Mr. ST. GODDARD. There is a wide variety—a lot of money we are talking about. Right now, I don't know if litigation would be the answer. It is still in court. We would have to push for the courts to continue before we stepped in. I don't know, learn more about the process.

Mr. REHBERG. Well, let me further explain, perhaps to you, just because you are in a little different situation as well.

Mr. ST. GODDARD. Yes.

Mr. REHBERG. There is no doubt in the minds of members of Congress, in the courts, that a problem exists, and the problem needs to be fixed. But there is differing opinion as to how far they want to go with the court cases.

Sometimes we get locked into the court system. I just happened to marry my attorney, and so she is continually saying no, you don't have to sue for everything. Sometimes mediation is better because of the heartache, the lost time in your life and the money.

But, we never want to discourage or lessen anybody's ability, if they do want to go through the court system, to do that.

I guess the question is, if you, as a reservation, or as a tribe, make the determination that you want to continue on with the suit and have that ability, can you support legislation for the rest of these guys if they want to opt out?

Mr. ST. GODDARD. I believe not. I mean, I you know, we can't —if we were involved in the —from the start —I can't —I don't want to speak for any of the other tribes, the other leaders. We would have to go back and talk to the Council what we would do. But I am sure some of them are for it; some of them are against it. But at this time, we probably would be willing to settle for something, mediation.

Mr. REHBERG. OK.

Geri?

Ms. SMALL. I guess I have kind of would echo what Crow tribal attorney stated and also Mr. St. Goddard over here.

I think I need to go back and actually get some official word back from the tribe and actually sit down with the IIM account holders that are present on our reservation. There is probably about half of them that are not on the reservation. So that is something that we are kind of looking into.

When we got notification of this hearing, I was trying to gather people and trying to get situated and trying to get the Council together. It did not happen. But, you know, I was clear in my oral testimony on my behalf because I am an IIM account holder, so I would be looking at settlement.

Mr. REHBERG. Well, I can't imagine the new legislation would be crafted to say that you, as an individual, even if your tribe made the determination that it is OK to settle, that you as an individual couldn't still say, no, I would rather continue getting my 3 cents a month until such time as this thing is answered because I think there is a huge pot on the other side of the 3 cents that you are not fessing up to. Then you perhaps, and I hate to use the word "take the gamble," but sometimes it is a crap shoot in the legal system to decide whether holding out is going to do more for you as an individual.

I just can't imagine that Congress would pass something that would say, Sorry, but your tribe opted in so you are in.

Vernon?

Mr. HILL. I guess I couldn't really answer that question today. I guess one reason that I couldn't answer is we are currently in litigation with the U.S. Government for breach of trust.

Mr. REHBERG. On the individual accounts?

Mr. HILL. No, on the tribal.

Mr. REHBERG. On tribal.

Well, again, this doesn't in any way, shape or form —

Mr. HILL. On the individual accounts, I couldn't really make that decision for them unless we go back, like Geri mentioned, go back and meet with them.

Mr. REHBERG. OK.

Again, I don't even know if I support something like this, but one thing I want to throw out is that a mediator has been presented as an idea in the past and was mentioned several times today.

But I didn't hear anything about binding arbitration or binding mediation. Is that something that ought to be considered?

I am not sure the government could do that or would do that, and I am not sure that you all would want to do that. But is binding mediation or binding arbitration something that has been discussed within your various council or at all in your various reservations?

I will start with you, Fred.

Mr. MATT. Let me decline to my twin brother.

Mr. REHBERG. OK.

Mr. WINDY BOY. What was the question again?

Mr. REHBERG. Binding mediation or binding arbitration. Is that something that ought to be considered on this if we do legislate some kind of a settlement procedure?

Mr. WINDY BOY. I think with each tribal government, I think that would be—that would certainly in my case, nine minds are better than one. And if that so be desired, I certainly could get a response to you in reference to that.

Mr. REHBERG. OK.

Mr. MATT. And that was one of the reasons what I declined to Alvin, so that I would have time to —I think really as we all operate, and I know you have a sense for this, what we would do is go back and discuss it amongst our tribal councils and give you a response.

Mr. HOWE. Again, I would ask my legal counsel to address that, James Yellowtail.

Mr. YELLOWTAIL. Once again, for the record, Jim Yellowtail.

The Crow Tribe's position, sir, is that we support any kind of option that is voluntary and represents a choice for individual account holders.

I would point out that some form of mediation or arbitration is a component of Senate bill 1770, which is the bill recently introduced by Senator Campbell.

But, the Crow Tribe's position is that we do support the option of remaining within the Cobell class and seeing that accounting process through to the end. We support that as an option for tribal members.

But again, we support any broadening of the range of options that could be made available legislatively to account holders who may wish on their own individual claims to opt out of the process and settle.

Mr. REHBERG. OK.

Jay.

Mr. ST. GODDARD. Yes, getting back to that, being agreeable to mediation, but I don't know about binding, I couldn't answer for that.

The other, like Alvin has stated that there are nine other members that need to address that issue.

And the other comment I had is that if the Cobell case won and the account holders, you know, we have individual rights as tribal members.

Account holders, we don't want to overlook those, and we need to see where they're coming from.

But on the binding part, that would be a stickler, because I have yet to see the government binding any agreement that we have had in the past or so forthcoming. That would be my comment.

Mr. REHBERG. All right.

Geri.

Ms. SMALL. You got everybody stumped here when you said "binding mediation and binding arbitration."

I guess if it was voluntary, I could see that, but not if it is binding mediation or binding—

Mr. REHBERG. OK.

Vernon?

Mr. HILL. I guess on that point, I couldn't give you an answer today, but what we will do is we will go back and work with our attorneys on that and give you an answer.

Mr. REHBERG. I am not saying that it is anything that is ever going to be included. It is just one of those things that pops into your mind when we are trying to find some finality so we can put our hands around it.

Well, again, I thank you.

And there may be other questions from other Committee members. We will keep the hearing record open for a period of time for them to do that so you can respond with any other information you might have that you would like to share with us.

Again, I thank you for taking the time to be with us. It means a lot to us that you can be here. And at this time, then, I will excuse this panel and invite Panel No. 2 up.

[Off the record.]

Mr. REHBERG. Again, welcome. Nice to have you here. It is a little easier with a smaller panel now, a little more intimate, and thanks.

And why don't we begin with you, sir.

Mr. MAIN. Start out?

Mr. REHBERG. Yes.

STATEMENT OF JEROME MAIN, MEMBER OF THE GROS VENTRE TRIBE AND REPRESENTATIVE OF THE FORT BELKNAP RESERVATION

Mr. MAIN. My name is Jerome Main. I am a member of the Gros Ventre Tribe and a representative for the Fort Belknap Reservation, and want to thank you on behalf of the tribe for bringing this meeting together and giving tribes an opportunity to provide input on this important issue.

I come from the Fort Belknap Reservation, which is comprised of about 675,000 acres and about 5,300 members. Gros Ventre and Assiniboine Tribes, and we are an IRA Tribe, which means that we accepted the Indian Reorganization Act of 1934.

Our reservation is about 95 percent trust land. We have only 5percent that is in fee status. We are not affected like other tribes that were unfortunately affected by the Homestead Act, so we only have 5 percent of fee land on the reservation. I feel very fortunate in that respect.

I would like to say starting out that the settlement offer is kind of a touchy issue. I just came from a meeting about 2 weeks ago of the Land Tenure Foundation. Its a foundation that is an organization that is made up of Indian tribes that has to do with keeping Indian land in trust, Indian land in trust and finding methodologies and ways to manage land better, keeping land in trust.

The settlement of some of the greatest minds, I think, in managing Indian tribes and managing Indian trust lands at that meeting, and one of the settlement offers that was thrown out was a $143 billion that Indian tribes —that the settlement offer that should be excepted by Indian tribes for the Cobell case.

And in the Cobell case, as we know, is not about money. It is about mismanagement of lands and resources in Indian country. And this $143 billion is a—you know, I don't know where this figure came from, but there has been individuals that have testified before involving a settlement—some settlement issues of individ-

uals involved since 1996 and 1994, the Reform Act, and they have thrown out similar figures of money that should be a settlement.

And I think it is kind of important that individuals and individuals and tribes as well be involved in discussions about—and the previous panel about how we should settle. And I think the Tribes themselves should have very serious discussions about that process.

In our particular tribe, we have our initial allotment, 1921, of our lands. We have 1,296 people that were originally allotted on our reservation. Of that figure, now we have 4,000 land holders of undivided heirship lands.

Of that figure, every one of those individuals who own land have an IIM account. And when you talk about IIM accounts in Indian country probably every Indian at one time or another has an IIM account because if you have settlements of judgments, Treaty Funds, or whatever, then you have an IIM account. You have to have someplace to reconcile that money. So probably everybody has an IIM account when you talk about settlements, payment of judgments and settlements.

And settling the accounts, I was a previous employee of the Department of Interior, Bureau of Indian Affairs for about thirty years, and I was familiar with the record systems. The record system consists of probably the guidelines of the Internal Revenue Service as well the—I can't think of the other organization, Federal organization—but, General Services Administration. We have to follow those guidelines in establishing records, a system of records, and they provide you with the authority to destroy records under that system.

So, when you talk about a historical accounting, how can you have a historical accounting without records? There are no records.

In the proposed legislation here today, you talk about setting up an organization of IMACS, a task force. Our position from the tribe has always been that Indian tribes or Indian individuals should be party to any task force that has to do with litigation or any discussions about Indian country, and it says nine members and made up of the minority leader of the House, the Senate Speaker. I think that Indian tribes or Indian leaders should be a part of this process, you know, the body made up for that.

As we are meeting here today, the BIA is setting up a meeting in Las Vegas to talk about trust reform and their plans for reorganization. And it is basically their plan; it is not the Indian tribes' plan. We didn't have too much voice.

We did at one time in a task force but, that task force was abolished. And a lot of the plans that they have in place were not part of—the Indian tribes didn't have any input in that process.

So that is—our Tribes basically boycotting that because we don't agree with the reorganization of trust reform concept that they have in what they call a Departmental Manual, which provides an individual by the name of Ross Swimmer, who is head of the OST, provides that individual with an enormous amount of authority along with the Assistant Secretary of the Interior. And we object to that because it fragments services to Indian tribes and is not in the best interest of Indian land holders.

Our position for the tribe, for the two tribes at Fort Belknap, is to basically run our programs rather than have some individual run our own programs.

Why would you have someone, you know, hand someone your checkbook? You wouldn't do that. We have to run our own programs and learn how to run our own programs.

And our tribe has been running programs for over 20 years under the 638 contract. And under that concept, under the Anglo concept, we have been managing our own lands for about 25 years through CFR 638.

But, you know, our legends say that we have been managing our lands for a long time. I mean, 40,000 years we have been managing our lands and resources. So we know how to manage our lands and resources.

And the last thing I would like to point out is in talking about a settlement, why can't we in some way set up an initial account and pay those individuals who are elders who have been waiting for these kinds of things for years. Why can't we set up an initial account and compensate those elders before they pass on, and then establish some kind of a formula that they would be reimbursed, or the account for the tribe would be reimbursed or go into some type of probate? I think that would be a fair and equitable thing to do right now for Indian elders. They have been waiting a long time.

That kind of concludes my testimony today Senator—Congressman Rehberg.

Mr. REHBERG. Thank you.

Mr. MAIN. I think that I want to thank you for—we will take a formal position—when I go to the reservation, we will take a formal position by resolution and provide you with a formal paper.

Mr. REHBERG. Great. Thank you.

STATEMENT OF MAJEL M. RUSSELL, ATTORNEY AT LAW, INDIVIDUAL CROW TRUST LANDOWNER

Ms. RUSSELL. Good morning, Honorable Congressman Rehberg. I am honored to be here at the invitation of Congressman Pombo, Chairman of the House Resources Committee.

My name is Majel Russell, and I am here presenting this testimony at this field hearing as an individual Indian account holder. I am an enrolled member of the Crow Tribe of Indians, and I own trust land on Crow Indian Reservation.

Although I am here in my capacity as an individual Indian, I have gained considerable experience regarding the complex issues surrounding the Department of Interior's management of the Indian Trust in my legal practice.

Further, as an attorney for the Crow Tribe in its litigation against the United States for trust mismanagement I am fully aware of the rulings issued by Judge Lamberth in the Cobell v. Norton litigation.

As a member of the class of plaintiffs in the Cobell v. Norton litigation, I understand that the lawsuit against the United States was initiated to provide me, as a land holder, with a full and valid accounting of the activity in my Individual Indian Money account. I have understood that a victory in the lawsuit will not result in

money damages for me, but only a statement of activity in my account from which then I can assess whether or not I have suffered losses. If I determine that I have suffered losses, then I would need to proceed with further litigation to collect money damages in another form.

The Cobell v. Norton litigation has been instrumental in revealing the deficiencies in BIA management in trust assets. Due to the litigation, congressional attention has finally been focused on the daunting tasks of managing Indian trust lands. Specifically, the efforts to resolve the fractionated land problem, to streamline and simplify the probate of Indian lands and to overhaul the day-to-day business processes have long been overdue. However, the Cobell litigation has now reached a point where one must consider whether continued litigation will be best to serve all the varying members of the plaintiff's class.

My landholdings on the Crow Reservation are of two types. I own land with my mother and my two aunts as "competent" Crow Indians. Crow tribal members were designated competent Indians by Congress in 1948, and as such, we have the right to negotiate encumbrances on our lands and receive direct payment from the lessee.

I also own lands with multiple owners that are fully managed by the BIA, as any tract at Crow with five or more owners are completely under BIA management. My family and I know where our land is, how much acreage we own and the value of that land for leasing purposes.

For those lands we hold as competent Indians, we determine who we chose to enter into leases with. We negotiate the rates and the terms of the compensation.

For those lands managed directly by the BIA, I receive statements from the Office of Trust Funds Management quarterly, or more often if I have funds that have been deposited into my IIM account and then forwarded to my bank account.

During the years that the land that I have inherited were in probate, which was a total of 7 years, I was aware of the trespass upon those lands, the use of the lands without leases and leases of the lands under fair market value, all during the BIA management period.

However, these mismanagement issues and their financial impact would not be revealed by an extensive accounting. Instead, upon finalization of the probate, my family and I took administrative action against the BIA and also actions against those persons who were trespassing on our lands.

I point this out because I believe that there is a serious misunderstanding on exactly what the Cobell litigation can accomplish in terms of misdeeds against the Indian land.

Resource mismanagement issues are not a part of the Cobell litigation. Thus, for me as an individual landowner, I support options to consider to provide me a financial benefit for my trust accounting claim against the DOI short of a historic transaction-by-transaction accounting of my IIM account and the accounts of my predecessors from whom I inherited lands.

Presently, as an owner of Crow Reservation trust lands, I would like to see an improvement in the delivery in services by the BIA.

I would like to see the resources of the agency BIA office increased to allow for the efficient and timely processing of conveyance documents, lease approvals, appraisals and surveys.

I am concerned that a redirection of funds to long-term litigation will not allow me to best use services available for land consolidation and to possible even finance individual landowners like myself to purchase other fractionated lands and assist with that problem.

The current lack of resources to the agency office has resulted in a poor delivery of service to Crow landowners. Logically, the task of a full transaction-by-transaction accounting for all IIM account holders will only impede the improvement of those services further. Additionally, I cannot believe that Congress will elect to fully fund the accounting process detailed in the Cobell structural injunction.

Thus, I support the exploration of options from which I, as an individual, can voluntarily elect to utilize to resolve my claim against the United States as an individual trust landowner.

I believe there are several viable options that should be considered. One viable option that would be to calculate a value of my claim based upon certain criteria, such as the number of acres, the length of time that I have owned the land, the type of land. Then I could chose to accept the value of my claim and forgo my right to an accounting. This option would allow me to receive a financial benefit in the near future and save me from the lengthy document collection process that would be necessary to conduct a full accounting.

While I speak only for myself, this option would also allow those individuals who have waited many years for some resolution of their claims to achieve that resolution during their lifetimes.

Of course, this option, while it is workable for me, may not be workable for others, and I believe such a buy-out plan must be completely voluntary.

Another option would be to develop a process such as that outlined in S. 1770, the legislation that we have referred to here today that was introduced by Senator Campbell, which allows an individual to accept an account balance after an accounting is conducted by a task force of experts.

While that legislation needs to be developed in much greater detail and explored, I do believe that there are some general concepts there that are viable options for individual landowners.

Without options for settlement, I will be forced to remain in the Cobell lawsuit. Instead, I prefer to have options to seek the best resolution of my claim against the United States. Having options is only a matter of fairness and a recognition of my right as an individual landowner.

Thank you.

[The prepared statement of Ms. Russell follows:]

Statement of Majel M. Russell, Attorney at Law, and Member of the Crow Tribe of Indians

Good Morning, Honorable Congressman Rehberg. I am honored to be here at the invitation of Congressman Pombo, Chairman of the House Committee on Resources. My name is Majel Russell and I am here presenting testimony at this field hearing as an Individual Indian Money account holder. I am an enrolled member of the Crow Tribe of Indians and own trust lands on the Crow Indian Reservation.

Although I am here in my capacity as an individual Indian, I have gained considerable experience regarding the complex issues surrounding the Department of Inte-

rior's management of the Indian trust in my legal practice. Further, as an attorney for the Crow Tribe in its litigation against the United States for trust mismanagement, I am fully aware of the rulings issued by Judge Lambreth in the Cobell v. Norton litigation.

As a member of the class of plaintiffs in the Cobell v. Norton litigation, I understand that the lawsuit against the United States was initiated to provide me with a full and valid accounting of the activity in my Individual Indian Money account. I have understood that a victory for the plaintiffs in the litigation will not result in money damages for me, but a statement of activity from which I can assess whether or not I have suffered losses in my IIM account due to Department of Interior management. To collect upon determined losses will necessitate further litigation.

The Cobell v. Norton litigation has been instrumental in revealing the deficiencies in BIA management of trust assets. Due to the litigation, Congressional attention has finally been focused on the daunting tasks of managing Indian trust lands. Specifically, the efforts to resolve the fractionated land problem, to streamline and simplify the probate of Indian lands and overhaul day-to-day business processes have been long overdue. However, the Cobell litigation has now reached a point where one must consider whether continued litigation will best serve all the members of the plaintiff's class.

My land holdings on the Crow Reservation are of two types. I own land with my mother and two aunts as "competent" Crow Indians. Crow Tribal members were designated competent Indians by Congress in 1948 and, as such, we have the right to negotiate encumbrances on our lands and receive direct payment from the lessee. I also own lands that are fully managed by the BIA, as any tract with five or more owners on the Crow Reservation are managed by the BIA. My family and I know the acreage we own, where our lands are located, and the value they have for leasing and other purposes. For those lands we hold as competent Indians, we determine who we choose to enter into leases with, negotiate the rates and terms of compensation. For those lands managed directly by the BIA, I receive statements from the Office of Trust Funds Management quarterly, or more often if funds have been deposited into my IIM account and forwarded to my bank account.

During the years that the lands that I inherited were in probate, a total of seven years, I was aware of trespasses upon the lands, use of the lands without leases and leases of the lands under fair market value. However, these mismanagement issues and their financial impact would not be revealed by an extensive accounting. Instead, upon finalization of the probate, my family and I took action to rectify these mismanagement issues. Resource mismanagement issues are not a part of the Cobell litigation. Thus, for me as an individual landowner, I support options to consider to provide me a financial benefit for my trust accounting claim against the DOI short of a historic transaction by transaction accounting of my IIM account and accounts of my predecessors from whom I inherited lands.

Presently, as an owner of Crow Reservation trust lands, I would like to see an improvement in the delivery of services by the BIA. I would like to see the resources of the agency BIA office increased to allow for the efficient and timely processing of conveyance documents, lease approvals, appraisals and surveys. The current lack of resources to the agency office has resulted in a poor delivery of service to Crow landowners. Logically, the task of a full transaction by transaction accounting for all IIM accounts will only impede the improvement of services further. Additionally, I cannot believe that Congress will elect to fully fund the accounting process detailed in the Cobell structural injunction.

Thus, I support the exploration of options from which I can voluntarily elect to utilize to resolve my claim against the United States as an individual trust landowner. I believe a viable option would be to calculate a value of my claim based upon certain criteria, such as number of acres, length of ownership, and type of lands. Then I could choose to accept the value of my claim and forego my right to a full and valid accounting. This option would allow me to receive a financial benefit in the near future and save me from the lengthy document collection process necessary to conduct an accounting. Of course, this option, while workable for me, may not be workable for others and I believe such a "buy-out" plan must be completely voluntary. Another option would be to develop a process such as that outlined in S. 1770, the legislation recently introduced by Senator Campbell, which allows an individual to accept an account balance after an accounting conducted by a task force of experts. S. 1770 contemplates the development of a practicable accounting method.

Without options for settlement, I will be forced to remain in the class of the Cobell lawsuit. Instead, I prefer to have options to seek the best resolution of my claim

against the United States. Having this choice is only a matter of fairness and a recognition of my rights as an individual landowner.

Thank you.

Mr. REHBERG. Thank you.

And last but not least, Mr. Shields, welcome. Nice to have you here, and please give my regards to Arlyn when you get home.

STATEMENT OF CALEB SHIELDS, CHIEF OF STAFF, ASSINIBOINE AND SIOUX TRIBES OF THE FORT PECK RESERVATION

Mr. SHIELDS. Thank you, Congressman Rehberg. The Chairman also sends his regards to you.

As you are probably aware, the Fort Peck Tribes are—this is election day for the Tribal Council, and they had their final meeting yesterday. They designated me to put together the testimony and to make appearances on behalf of the Tribes here today.

I would like to thank you for bringing the issue here to Montana to hear our views on the Cobell litigation.

I also want to thank all of the other tribal leaders here today that came to present their views because I think this is very important for the tribes to come forward and make their case on their views on the Cobell litigation.

I just want to step back a little bit and talk about the reorganization. Our tribes, and many of the tribes are aware over the years what has happened to any reorganization of the Bureau of Indian Affairs.

You know, every time they had a reorganization, the only people that benefited from reorganization was the top level people back in Washington, D.C. They got higher rates, positions, bonuses, you know, because they had more responsibility.

And the other recent reorganization had to do when the established area offices. Again, more higher positions away from the reservations and bonuses that went along with their responsibilities.

So, in 1994, when the Cobell litigation first started, although we were glad that the Cobell litigation has brought this issue to the forefront, we are fearful, and rightfully so that what would come out of the whole litigation is again another reorganization, which we see—with more positions, higher pay, more bonuses and responsibilities.

That happened with —when they established area offices. Again, they took functions of agencies on the reservations away from the reservation to—you know, like here in Billings.

So that is why we opposed the reorganization from the very start, the BITAM proposal of Secretary Norton, because we knew what would come out it.

And I think there is a letter attached to my testimony that we wrote to Norton back in December of 2002. Also, it makes reference to our testimony at all of the regional hearings that were held on that.

So I think our position has been right all along. We also made reference that eventually this would end up in the hands of Congress, and we are glad to see this Committee come here to address that.

I am here today representing the Fort Peck Tribe. We have, I think within the next couple of months, our enrollment will peak at around 12,000 members. Of that membership, we have, as of yesterday, 8,671 IIM account holders.

Of course, many of those are original allottees and owners of fractionated heirship properties on the reservation.

So we are pleased that the Committee is here today to address the Cobell litigation and to look for ways to resolve the trust fund litigation.

I think settling Cobell, in our view, should include providing damages for past mismanagement and implementing reforms to protect our trust assets for the future.

And we have serious concerns, as I said earlier, with the current Interior Department's reorganization. We have repeatedly testified at the Department's regional hearings that any trust reorganization of the Bureau should include infusing additional resources where they're actually needed, at the reservation level.

This is where the trust lands are located; this is where the BIA's legal responsibility to Indians must be focused. And creating additional levels and shuffling of personnel at the Central Office will not enhance or improve the quality of the judiciary performance.

And we urge this Committee to continue to monitor and seek reports on how the Department's trust reorganization plan is really working in communities like ours at Fort Peck.

The Fort Peck Tribes support proper efforts to settle the Cobell litigation. And it has become very clear to us from the Cobell litigation that the Department cannot do the historical accounting that the court has ordered.

But what has been obvious from the Department's conduct in Cobell is that the Department lacks the ability, they lack the desire and, in some instances, the resources to carry out its duty under the law.

The government cannot, or the government has simply shown an inability or unwillingness to comply with the normal court processes. And we strongly urge and support Congress stepping in and working with the parties to determine how best to approach this matter.

While we do not have a specific legislative proposal to offer to the Committee today, we would urge the Committee to move forward using the following three principals:

First, any proposal for settlement of trust funds by Congress must be based on a premise that the United States is liable for the mismanagement of trust funds. So the question of whether the United States is liable for its actions should be answered in the affirmative in any legislative solution.

Second, with the United States' liability established, it is critical that Congress establish a fund within the Treasury that would be available to the trust beneficiaries. We do not today suggest a figure as an appropriate amount of this fund. We recommend that Congress work with the interested parties and outside experts to develop a range regarding the appropriate amount for this fund, and we would recommend that the money allocated to this fund should not come from the Programs accounts of the Department of

Interior, as it makes no sense to pay for the government's past misdeeds by diminishing funds for current Indian needs.

And we agree with the many statements from Congress that the funding to resolve this has been too long directed to the lawyers, accountants, and system development and not to providing the benefit to Indian people.

The third principle is Congress should establish a fair process for allocating to the IIM account holders for the appropriate share of the fund established by Congress.

As one possibility we think a proposal similar to this, and Senate bill 1770 would be a viable option in this regard. And once the methodology is established, the appropriate share of the fund would be offered to each individual account holders.

If an account holder accepts the payment, the United States' past liability to that account holder would be resolved, and that account holder would no longer be part of the Cobell litigation.

If an account holder does not accept the offer of settlement, he would remain—he or she would remain in the Cobell litigation.

In our view, this kind of approach would have considerable benefits. First, it would provide a significant sum for resolution of this matter.

Second, it would provide a participatory process for developing a fair and simple methodology for distributing that sum.

Third, it would provide certainty to those account holders who wish to resolve this matter relatively quickly rather than proceed with the uncertainty of litigation.

And fourth, it would provide everyone with a choice. We think legislation with these basic elements, refined through a consultation with Indian country, would go a long way toward resolving this matter.

And I would like to close by also mentioning that in our—over the years we have circulated to members of Congress and the Montana delegation's office, to the Secretary of the Interior and to the Deputies, we had requested a 5-year demonstration project to how accountability should be managed at the reservation level. But, so far that hasn't been accomplished by our tribes.

So, we are still requesting a 5-year demonstration project as a direct service tribe. You know, we don't-- some tribes are compacted, some are self-governed. But within the Bureau, we are remaining within the—as a direct service tribe, and we feel that whatever the 3-to-5-year demonstration project would show Congress how these accounts could and should be managed.

So with that, Mr. Rehberg, we thank you for coming here with your capable staff to hear the concerns of the tribes.

[The prepared statement of Mr. Shields follows:]

Statement of Caleb Shields, Chief of Staff, Assiniboine and Sioux Tribes of the Fort Peck Reservation

Mr. Chairman and members of the Committee, my name is Caleb Shields. I am the current Chief of Staff to the Chairman of the Assiniboine and Sioux Tribes of the Fort Peck Reservation. I have in the past served as Chairman and for many years as a Board member for the Tribes. I would like to thank the Committee for this opportunity to testify. In particular, I would like to thank my Congressman Denny Rehberg, who has been an outstanding advocate for the Tribes of this State and has continuously demonstrated his commitment to work on behalf of Indian people.

The title of today's hearing is: "Developing a Legislative Solution to the Indian Trust Fund Law Suit." The Fort Peck Tribes agree that it is important for Congress to look for ways to resolve the Cobell trust funds litigation. At the same time, that trust funds litigation is a symptom of the deeper problem—that the government has failed over the years to properly manage Indian trust assets. This remains the core of the problem—as the government is still unable to properly fulfill its trust duties as enumerated by the District Court in the Cobell litigation. As a result, in our view, consideration of how to resolve Cobell must be coupled with discussion on the efforts to reform the trust resource management system so that, in the future, the government will not repeat the mismanagement that led to the Cobell case. Settling Cobell, in our view, should include providing damages for past mismanagement and implementing reforms to protect our trust assets for the future.

The Fort Peck Tribes have serious concerns with the current Interior Department reorganization efforts. We have repeatedly testified at the Department's regional consultation hearings that any trust reorganization of the BIA should include infusing additional resources where they are actually needed to provide the greatest benefits to tribes and individual Indians, which is at the Reservation level. Additional funds and resources are needed to increase local staff, facilities and equipment at the local BIA agencies, where all documents and transactions regarding trust matters originate. This is where the trust lands are located, and this is where the BIA's legal responsibility to Indians must be focused. Creating additional levels and shuffling of personnel at the Central Office will not enhance or improve the quality of the fiduciary performance. Rather, the Department's plan to centralize all of the trust functions away from the reservation level will continue to result in the loss of funds without solving the basic problem of accountability. We urge the Committee to continue to monitor and seek reports on how the Department's trust reorganization plan is really working in communities like mine at Fort Peck.

The Fort Peck Tribes support proper efforts to settle the Cobell litigation. In our view, the Cobell litigation has provided an important service of bringing the trust mismanagement issue more broadly to the attention of the government and the public. The Cobell litigation has clearly established that there has been a serious mismanagement of Indian resources and violation of the federal trust responsibility owed to Indian account holders, for which the United States now owes restitution. Thus, the Cobell litigation, despite its cost and long duration, has provided a significant benefit to Indian country.

It has become clear from the Cobell litigation that the Department cannot do the historical accounting that the Court has ordered. This is not to say that the Court is wrong in stating that the Department has a duty to provide a historical accounting. Clearly, the Department does have that responsibility. But, what has been obvious from the Department's conduct in Cobell is that the Department lacks the ability, the desire, and, in some instances, the resources to carry out its duty under the law. So, while the United States has a duty to provide restitution to the thousands of Indian account holders whose funds and resources have not been properly managed, we do not believe that is likely to be achieved through the normal process of litigation. The government has simply shown an inability or unwillingness to comply with normal court processes.

So, if the government has, in a sense, disabled the courts, where do we go to resolve the mismanagement of the trust assets? While there is no single answer, we strongly support Congress stepping in and working with the parties to determine how best to approach this matter. While we do not have a specific legislative proposal to offer the Committee today, we would urge the Committee to move forward using the following three principles.

First, any proposal for settlement of trust funds by Congress must be based on the premise that the United States is liable for the mismanagement of trust funds. It is clear from the record in Cobell—as well as the extensive record in numerous Congressional hearings over the course of many years—that the United States has failed in its legal obligations to properly manage and account for trust funds. Other legislative proposals, including S. 1770, which was recently introduced by Senator Campbell, would leave government liability as an open question to be decided by a third party. We believe that the record already establishes that the United States has breached its legal obligations regarding the management of trust assets. So, the question of whether the United States is liable for its actions should be answered in the affirmative in any legislative solution.

Second, with the United States' liability established, it is critical that Congress establish a Fund within the Treasury that would be available to the trust beneficiaries. This Fund must be sufficient to demonstrate the United States' commitment to resolving this issue. We do not today suggest a figure as an appropriate amount of this Fund. We recommend that Congress work with the interested parties

and outside experts to develop a range regarding the appropriate amount for this Fund. Then Congress could determine, from within that range, the amount of the Fund. We recommend that the money allocated to this Fund should not come from program accounts of the Department of the Interior—as it makes no sense to pay for the government's past misdeeds by diminishing funds for current Indian needs.

The establishment of such a Fund would demonstrate to the Indian beneficiaries that the United States accepts responsibility for its mismanagement and is willing to put forward some measure of restitution for the benefit of the Indian beneficiaries. We agree with the many statements from Congress that the funding to resolve this has been for too long directed to the lawyers, accountants, and systems development and not to providing a benefit to Indian people. A Congressionally established Fund to pay damages for government mismanagement is a better expenditure of funds—as it will really help the Indians who have suffered because of the government's misdeeds.

Third, Congress should establish a fair process for allocating to the IIM account holders an appropriate share of the Fund established by Congress. How to do this surely will not be simple and various approaches should be considered. As one possibility, we think a proposal similar to that in S. 1770 may be a viable option in this regard. Under this proposal, Congress would establish an entity with a broad range of expertise, which would be charged within a specific time period, with developing a methodology for allocating the Fund to the individual account holders. While S. 1770 does not make this clear, in our view, the development of the methodology must be an open process with sufficient opportunities for consultation and comment by tribes and individual beneficiaries. In addition, the methodology selected must be relatively simple or the process will be become burdensome or unworkable. The final methodology could be published in the Federal Register.

Once the methodology is established, the appropriate share of the Fund would then be offered to each individual account holders. If an account holder accepts the payment, the United States' past liability to the account holder would be resolved and that account holder would no longer be part of the Cobell litigation. If an account holder did not accept the offer of settlement, he would remain in the Cobell litigation.

In our view, this kind of approach would have considerable benefits. First, it would provide a significant sum for resolution of this matter. Second, it would provide a participatory process for developing a fair and simple methodology, for distributing that sum. Third, it would provide certainty to those account holders who wish to resolve this matter relatively quickly rather than proceed with the uncertainty of litigation. And fourth it would provide everyone with a choice. While there is no single approach that would please everyone, we think legislation with these basic elements—refined through consultation with Indian country—would go a long way toward resolving this matter.

Again, I want to thank the Committee for its work on this issue and would welcome the opportunity to answer any questions that you might have.

Mr. REHBERG. Thank you, Caleb, once again—I guess I am a chairman in training because I forgot to swear you in.

Knowing you all personally, I am going to assume that you told the truth, and we will dispense with the oath, if that is OK.

Well, it is OK. Congratulations in getting out from under the rules again.

And thank you. Again, I appreciate you being here on a Saturday, almost afternoon, and taking time out of your busy schedules. I would ask a specific question, and while you are not here necessarily representing yourselves as individual account holders, Caleb, I assume that you are also an individual account holder—

Mr. SHIELDS. Yes.

Mr. REHBERG. —but since you are here specifically representing individual account holders, could you explain to me just a little bit about how that works. You are in a partnership with your mom and your aunts. Do you own fee land?

Ms. RUSSELL. Trust land.

Mr. REHBERG. Trust land.

But you, then, are the designee for that trust land.

How do you become an individual account member of trust land, and then what kind of leases are there? Can you give me an estimate of what you think somebody owes you for the use of that property forever—for however long?

It would be nice to know in my own mind what an example is.

Ms. RUSSELL. Well, I can speak for just for my experience, but I think that my experience is probably fairly typical for people at Crow.

I first had an IIM account created for me in 1961, when the tribe first received a settlement on the Yellowtail Dam. When we first received payment for the condemnation up there and then created the Yellowtail Dam, then each of the tribal members received a payment. So an IIM account was created for me at that time, as I am sure a lot of other tribal members.

So that account was probably on record. And after that payment was disbursed to me, there was probably no activity for many years until I inherited land. And I inherited land from my grandparents, along with my mother and two aunts.

Now, my inherited lands are two different categories. One category, the lands I inherited are considered competent—I am a competent Indian to manage those lands.

And I know that is complicated, but that means that if there--if there are less than five owners, then we do all of our own land management. We have undivided interests, so we own that land as common owners, and we basically determine what we think the land is worth in terms of an agricultural lease; we negotiate the terms of that lease, and we receive payment directly.

Mr. REHBERG. But the land itself is owned by the tribe?

Ms. RUSSELL. The land itself, the title to the land is held by the United States, and I own it as an individual along with the other owners. We own it as individual landowners of land in trust, but the actual title of it is held by United States.

Mr. REHBERG. OK.

Ms. RUSSELL. It is not fee land.

Mr. REHBERG. But you could, in fact, put a fence around it, or is it—

Ms. RUSSELL. Oh, yeah, we could put a fence. You run it just like you do any other property that you would own. You have—

Mr. REHBERG. Then over the years, who has that land been leased to that you don't know whether you have been receiving—I understand the trespassing aspect of it because if it is open, then other people are running cattle on it and receiving a grass benefit, which you probably could have stopped by fencing, but that is not always--.

Ms. RUSSELL. Right.

Well, let me just—those lands that I am talking about that we manage ourselves as competent Indians are in a different class than probably the majority of lands held by all of the IIM account holders.

Those lands are—there is another type of land that I own with my family, and those are lands that are fully managed by the BIA. They do all of the advertisement of the lands for lease. They would

negotiate the leases themselves; they would collect the money and disburse the money. That is in a different category. And they—

Mr. REHBERG. And that would be essentially your Yellowtail example, the lands underneath the water have been paid for—

Ms. RUSSELL. To every tribal member, yes.

Mr. REHBERG. But did they set up an account that was supposed to see ongoing revenue for—

Ms. RUSSELL. No, darn it.

Mr. REHBERG. OK. Yeah.

Ms. RUSSELL. No, they didn't do that.

Mr. REHBERG. OK.

Ms. RUSSELL. That was a one-time payment.

Mr. REHBERG. Let me ask the other two gentlemen then.

Jerome?

Mr. HILL. I, as well, own two classes of lands. I own—in 1952, an account was set up for me when my father passed away, and it went into probate. So I got an IIM account from that, and I got revenue from that. I inherited land from my father, and I also inherited land from my mother. That is an undivided heirship land they call it.

The other, I purchased land on the reservation. So the undivided heirship land is managed by the Bureau of Indian Affairs in range units and under an established rate that they go and advertise these lands and then collect the money; then pay me my share of—

Mr. REHBERG. Are they leasing it to other tribal members?

Mr. HILL. It all depends. You bid on it. You bid on it.

And then there is what they call an allocation process where Indian individuals can go in there for $8.50 a day, Indian operators can go in there and operate for that price.

And then there are other parts of the range unit were you bid on it. You bid on it, and it is a competitive process.

The lands that I own also that are purchased, I manage those lands as well. I manage them, and I set the price, and if somebody wants to use my land, they pay my price, yeah. They negotiate with me, not the Superintendent.

Mr. REHBERG. OK, Caleb.

Mr. SHIELDS. I guess my situation is probably more typical in general of general Indian population. I have income, not much, but income, fractionated interest in the funds from farm land, grazing land. Also, Indians get the income from if you have gravel, if you have oil or gas royalty payments, they go into your account. But I don't have any of this except just small amounts of grazing and farmland income. Fractionated, you know—

Mr. REHBERG. I can't imagine that your answer here would matter, but let me ask you the question.

If you were to, based upon your best estimate, guess what you think you are owed for the term of your trust ownership, you personally—and if that is not the—you being an attorney, you know you don't want to say something on the record, because as soon as it is on the record—it is binding to you in the future.

But, can you give me an indication—

Ms. RUSSELL. Yeah.

Mr. REHBERG. —are we talking about $100, or are we talking about $100,000, for you individually?

Ms. RUSSELL. For me individually, all of those lands that my family and I own and manage as competent Crow Indians, we do all that negotiation. The only responsibility of the United States is to record the document.

And so for those lands, I can say that I don't believe that our family would be owed anything, and I don't believe that a transaction-by-transaction accounting of those lands which we manage by ourselves would result in any sort of payment to us.

However, the fractionated heirship lands, which have sometimes—I own an interest with 300 other people, or 200 other people that are completely managed by the BIA. They are completely managed by the BIA, and the leases are negotiated; they collect from the lessees, and they disburse the funds. I can't accurately say exactly what I think.

However, I, as a landowner, do pay great attention to all the statements that I get from OTFM, and I understand which lands they are encumbering, and I know where those lands are and what the general value is. So if I am thinking that I am shorted some funds there, I guess it would be because I would think that they are leasing those lands at under what fair market value might be.

However, an accounting is not going to tell me that. An accounting is only going to tell me what was collected, put into the account, and how it was disbursed. Whether or not it was leased at a fair market rental value or for the best benefit of the beneficiaries, that accounting is not going to tell me that.

Further, I have only had those lands, that management responsibilities since 1997, so I—my comment cannot apply across the board to a lot of other people.

Mr. SHIELDS. Yeah, there is no way I could even project might may be owed me, because over the years, up until recently, when we started getting some statements from the BIA, all I used to receive in the mail was a check for a certain amount, and it didn't tell you where it came from, Whether it was a—

Mr. REHBERG. What did a typical check like that—

Mr. SHIELDS. Oh, you know you might get one for 40, 50 bucks, $100, couple hundred. It changed from year to year.

But even our little checks we got didn't say where—you know, was it from the farm interest or the grazing interest, whatever. We just got a check in the mail.

Mr. MAIN. An accounting, like Majel said, an accounting wouldn't tell me how much money I have, you know, on the mismanaged part of my property.

But there is another aspect that you'd look at, is how did they manage the land in terms of, for instance, if your range has deteriorated, your land has deteriorated to the point where your land right now is not worth as much as it was 20 years ago because of weeds and erosion and just mismanagements of those lands. I think there should be some kind of a formula to compensate me for that, for mismanaging my property.

And just like you would mismanage a house off the reservation, you know, I think they mismanaged my land from that standpoint. There was no type of range inventory or no type of process in place by the government to keep that land in a good state where it is worth money.

Mr. REHBERG. Just to be consistent, and this will be my last question with the last panel, I would like to ask you the question that I asked them with the opt in, opt out.

Specifically, if we were to come up with legislation to give you an opportunity as individuals or as a tribe to opt out of the ongoing lawsuit, and I think you have already kind of addressed that, but just for the record, could I ask you to—

Mr. MAIN. My first reaction, I guess, would be to—anytime that you are talking about a process and a decision like that, I think the individual should have the right to make that decision rather than me sitting here and making that decision on behalf of everybody. I think that is what I would say.

Ms. RUSSELL. Well, an individual landowner, I think that I should have the right to decide whether options to settle this claim are workable for me. And although the ongoing litigation, the Cobell litigation, is a class action suit, and as is typical of class action suits, there is little communication with the plaintiffs. I am not favorable to having any option of mine tied up in ongoing litigation for years that I would see no benefit from. So, yes.

Mr. REHBERG. OK, good.

Mr. SHIELDS. I think as an individual, I would encourage endorsing legislation to that effect, but as a tribe I am sure the Fort Peck Tribes would support that.

But, we would encourage—I am sure that the tribe would encourage that we would have community meetings with our membership to explain the options to them and the choice they have.

Mr. REHBERG. Before I excuse you, I will make the same statement, and that is that the record will remain open for a period of time. There may be other questions from other tribal members.

There is one other gentleman, and I am going to take the Chairman's prerogative to open up the audience for one additional individual, representing the Little Shell, so far not recognized. I am one of the supporters of recognizing the tribe, and I do want to recognize you, sir. I want to welcome you. I want to give you a brief moment to make your comment if you would like.

And this is a little unusual. Normally this would not happen in Washington, I want you to know that, but I do respect your position and your attempts to be recognized. I thank you for taking the time to be with us today if you would like to say a word or two.

LITTLE SHELL MEMBER. Representative Rehberg, may I defer to the Little Shell representative?

Mr. REHBERG. You may, and please, if she would identify herself for the record.

Ms. GRANT. Name is Dianna Grant, and I am a representative for the Little Shell Tribe.

And if I may make a comment our Tribal Chairman, John Sinclair, could not be here due to another commitment, so I am representing the Little Shell Tribe.

For many years my uncle, Donald Bishop from Lame Deer, had represented the Little Shell Tribe as the Tribal Chair, and he had talked about the forgotten people and the landless Indians.

And for the record, I would like to say that I would like to change that legacy to the Little Shell Tribe; that we are strong and a continuing tribe that is getting stronger.

I have a statement to read from John Sinclair.

From John Sinclair, Tribal Chairman of Little Shell Tribe, Chippewa Indians in Montana.

"Please excuse the brevity of this letter. Because this meeting was called on short notice, and the Little Shell Tribe was not informed of it all, it gave me little time to research my response."

"1. Senate bill 1770 proposes an alternative settlement to litigation known as Cobell v. Norton. I believe that bypassing the judicial system through such legislation could set a dangerous precedent to future claims by Indians."

"2. There is a $10 billion cost estimate to define Indian trust funds. Senator Campbell's legislation would hopefully put these dollars toward the betterment of Indian interests. I agree that spending billions of dollars to a certain and unknown benefit to the litigants makes little financial sense."

"Therefore, please note that the Little Shell Tribe withholds judgment on said legislation 1770 that supports the decision of a majority of the tribes attending this meeting."

Thank you, Congressman.

Mr. REHBERG. Thank you very much.

Seeing no further business, I guess—

Mr. SHIELDS. The question on the binding arbitration—

Mr. REHBERG. Yes, if you would like to answer that.

Mr. SHIELDS. I don't think the Fort Peck Tribe would support binding arbitration.

Mr. MAIN. We wouldn't—Fort Belknap wouldn't either.

Mr. REHBERG. I don't know if Congress would either, so I was just throwing that out as a point of discussion. I really don't want to be held to that either.

Again, thank you for coming out today. This meeting is adjourned.

[Whereupon, at 4 p.m., the Committee was adjourned.]

[The letter submitted for the record by John Sinclair, Tribal Chairman, Little Shell Tribe of Chippewa Indians of Montana, follows:]

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TO: Members of the Oversight Committee

From: John Sinclair
Tribal Chairman
Little Shell Tribe of Chippewa Indians of Montana

Please excuse the brevity of this letter. Because this meeting was called on short notice and the Little Shell Tribe was not informed of it at all it gave me little time to research my response.

1. Senate bill 1770 proposes an alternate settlement to the litigation known as Cobell vs. Norton. I believe that bypassing the judicial system through such legislation could set a dangerous precedent to future claims by Indian peoples.
2. There is a 10 billion dollar cost estimate for the accounting of Indian Trust funds. Senator Campbell's legislation would hopefully put these dollars towards the betterment of Indian interests. I agree that spending billions of dollars to ascertain an unknown benefit to the litigants makes little financial sense.

Therefore please note that the Little Shell Tribe withholds judgment on said legislation (S. 1770). But supports the decision of the majority of the tribes attending this meeting.