



# Affiliated Tribes of Northwest Indians

Prepared Statement of the Honorable Ernest L. Stensgar

Vice-Chairman, Coeur d'Alene Tribe

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Legislative Hearing on H.R. 409, the *Indian Trust Asset Reform Act*

Subcommittee on Indian and Alaska Native Affairs

May 7, 2014

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Good afternoon Chairman Young, Ranking Member Hanabusa, and members of the Subcommittee. My name is Ernest Stensgar and I am testifying today in my capacity as Vice-Chairman of the Coeur d'Alene Tribe and on behalf of the Affiliated Tribes of Northwest Indians ("ATNI") as Chair of ATNI's Trust Reform Committee. I am pleased to provide ATNI's and my Tribe's strong support for H.R. 409 and urge the Subcommittee and full Committee to advance the bill without delay.

## **Background on ATNI and Its History on Trust Reform Issues**

Founded in 1953, ATNI represents 57 tribal governments from Oregon, Idaho, Washington, southeast Alaska, northern California and Montana. For more than a decade, ATNI and its member tribes in the Pacific Northwest have been active proponents of forward-looking trust reform. ATNI's support and interest in these issues has been and is grounded in our commitment to maintaining the integrity of the United States' trust responsibility, the foundation of which is based upon the historical cession of millions of acres of ancestral lands by the tribes. It is also based on our recognition that in nearly every instance, Indian tribes have demonstrated that they are in a better position to manage their affairs than the federal government.

Most of the text of H.R. 409 originated from S.1439 and its House companion bill, H.R. 4322, which were introduced in the 109th Congress. Those bills were introduced and co-sponsored by the respective committee chairmen and ranking members of the House Natural Resources Committee and the Senate Committee on Indian Affairs. Following introduction, the committees of jurisdiction travelled across the United States to consult with Indian country on the legislation. The committees then generated a revised version of S.1439 to reflect Indian country's input. ATNI testified in favor of the bill at a joint hearing of the House Natural Resources Committee and the Senate Committee on Indian

Affairs on March 1, 2006. Although S.1439 was not enacted, ATNI continued to promote the bill and its concepts in subsequent years.

The announcement of the *Cobell* settlement in late 2009 consumed much of the attention and energy in Indian country on forward-looking trust reform. Once Congress ratified the *Cobell* settlement in 2010, however, ATNI's Trust Reform Committee refocused its efforts to advance the concepts in S.1439.

Using the committees' revised draft of S.1439 as a template, ATNI focused on updating the two titles of that bill that remained relevant in light of the *Cobell* settlement and that had universal tribal support: title III, the Indian Trust Asset Demonstration Project, and title V, Restructuring the Office of the Special Trustee ("OST").

Passage of the *Cobell* settlement and other considerations preempted the need for the other titles of S.1439. For example, title II of S.1439 would have created a commission to make recommendations on Indian trust policies and regulations. As part of the *Cobell* settlement, the Administration created the Commission on Indian Trust Administration and Reform ("CITAR"), which was charged with a similar, if not broader, mission. To include yet another commission in the bill seemed duplicative in light of the CITAR, especially since Indian country has long known the challenges to reforming the trust system and sought practical, on-the-ground solutions.

H.R. 409, as introduced, represents the culmination of these efforts. Several individuals and tribal leaders who participated in developing H.R. 409 had previous careers working for the Bureau of Indian Affairs ("BIA") and OST and were able to provide practical input to guide our efforts. ATNI is extraordinarily proud of H.R. 409 and is grateful for the Subcommittee holding today's hearing.

### **Overview of H.R. 409**

The substantive provisions of H.R. 409 are in titles II and III, which are discussed below:

#### **Indian Trust Asset Demonstration Project**

Title II would establish a demonstration project to authorize Indian tribes, on a voluntary basis, to direct the management of their non-monetary trust resources through negotiated agreements with the Secretary. To participate, tribes would submit to the Secretary of the Interior ("Secretary") a proposed Indian trust asset management plan that must describe, among other criteria, the trust assets that will be subject to the plan, the tribe's management objectives and priorities for assets subject to the plan, and a proposed allocation of funding for the proposed management activities.

In addition to other enumerated criteria, the Secretary may not approve a proposed plan unless it is consistent with federal law applicable to the management of the trust assets. After an Indian tribe submits a proposed plan, the Secretary must approve or disapprove it within 120 days.

Unlike existing authorities that authorize tribes to contract or compact federal functions under federal standards, this demonstration project is unique in that it would provide

participating tribes the freedom to determine how their resources will be managed under tribal standards.

For example, an Indian tribe with timber resources that seeks to participate in the demonstration project could submit a plan that would direct that some of its forest land be managed in a manner to maximize fair market value on timber sales. The plan might also direct that other forested areas not be harvested at all to encourage tourism or promote certain wildlife habitat. Currently, the BIA is the final decision-maker on these issues. If enacted into law, tribes for the first time would have the flexibility to dictate these management standards under this demonstration project authority.

As the example above illustrates, this demonstration project authority would open new doors for Indian tribes to generate on-reservation economic development using their existing resources, whether those resources are timber, agriculture, or even traditional energy.

Empowering tribes to create value with their own resources epitomizes the federal policy of self-determination. In an era where federal appropriations for management of tribal natural resources are declining and yet represent a fraction of the actual need, this demonstration project is a practical tool that tribes will utilize immediately.

#### Restructuring of the Office of the Special Trustee

Congress created OST in 1994 as part of the American Indian Trust Fund Management Reform Act. That Act provided that OST would be a temporary entity to oversee certain financial reforms of Indian trust funds at the Department of the Interior (“DOI”). The 1994 Act provided that OST would be headed by the Special Trustee for American Indians, a position appointed by the President and confirmed by the Senate. That position has been vacant since 2009.

Since the establishment of OST, management of Indian trust assets in DOI has been bifurcated: the BIA manages Indian trust land and *non-monetary* trust resources, while OST manages Indian trust *funds*. Although both entities are within DOI, they are completely separate bureaucracies. Even though their work often overlaps, OST employees do not have authority over BIA employees, and vice versa. Prior to OST’s creation, management of trust land and trust funds was under a single administrative umbrella.

OST completed implementing the major reforms it was charged with implementing years ago. Since it was established, OST’s role has expanded significantly to include activities far beyond managing Indian trust funds and implementing financial reforms.

For example, in 2002 OST assumed responsibility for appraising Indian trust land and trust property, even though this function has nothing to do with trust funds. In the report accompanying the FY 2010 Interior, Environment and Related Agencies spending bill, the House Appropriations Committee said the following about OST’s involvement in the appraisal process:

Indian Tribes routinely experience lengthy delays in obtaining appraisals from the Department for transactions involving the conveyance of Indian

trust lands. The Bureau of Indian Affairs is responsible for requesting appraisals and the Office of the Special Trustee is responsible for procuring the appraisals. Appraisals are required for Indian Tribes and individual Indians to sell, acquire or exchange interests in trust land. Delays in obtaining appraisals also delay these transactions, which negatively impacts Tribal economies.

It is easy to see how involving two competing bureaucracies with no authority over each other and little coordination leads to delays in effectuating routine transactions like appraisals. As this Subcommittee knows from its focus on tribal energy development, delays in securing federal approvals and permits and—in this case—appraisals, often result in lost economic opportunities for Indian tribes and their members.

Title III of H.R. 409 would provide for the transition of OST functions to a new Under Secretary for Indian Affairs. Section 303 would establish the position of Under Secretary for Indian Affairs (“Under Secretary”), which will report directly to the Secretary. The Under Secretary would oversee the administrative transition of necessary OST functions and activities, while eliminating those that are duplicative of existing BIA and DOI programs. Section 305 provides an effective date for the termination of OST and authorizes the Under Secretary to administratively reorganize, discontinue, and appoint officers and employees to carry out transferred OST functions.

Indian country has long complained that the monolithic growth of OST’s footprint and budget has siphoned funding from other BIA programs. In FY 2006, OST’s budget was \$222.7 million – more than double what it had been four years earlier. While OST’s budget has decreased in recent years following the *Cobell* settlement, no other BIA program saw this type of funding increase.

In fact, during those years funding for most BIA activities was either flat or saw reductions. The BIA continues to be woefully underfunded and understaffed. Law enforcement is a good example. On many reservations, one or two officers are responsible for policing large geographic areas because funding has not been available to fill vacant officer positions. Even the infusion of two or three additional officers on these reservations would make a huge impact to public safety. Conversely, OST now has 638 full time equivalent employees according to its FY 2015 budget justifications.

To address this inequity, Section 306 directs the Under Secretary to initiate procedures to identify resulting cost savings from those OST programs and activities that are duplicative or no longer needed as a result of the transfer. This cost savings information would be provided to the Secretary and to joint Tribal/Interior Budget Council (“TIBC”). The TIBC is the advisory committee comprised of tribal representatives from across Indian country and federal officials that collaborates on DOI budget issues. The tribal TIBC representatives would then provide their own recommendations on how any cost savings should be reallocated.

OST performs certain functions related to its original mission that benefit Indian country. These include its toll-free call center, which allows Indian beneficiaries to receive information about their trust funds. These also include the reforms and accounting systems that OST instituted as result of the *Cobell* litigation to reconcile, track and invest Indian trust funds. H.R. 409 contemplates that these and other necessary functions would

continue undisturbed. They would simply be administratively transferred and report to the Under Secretary.

In addition to transitioning OST functions, the Under Secretary would also assist in coordinating BIA policies with the policies of other bureaus and offices within DOI. For decades, this lack of coordination has negatively impacted Indian country as other entities within DOI have made decisions or undertaken initiatives without considering the impacts on Indians and tribes.

Because the Under Secretary would be charged with improving efficiency and coordinating with the Assistant Secretary-Indian Affairs and other DOI agencies, there would no longer be institutional competition between OST and BIA after the OST functions transfer. All of this would provide an immediate, practical benefit to Indian country.

ATNI and the Coeur d'Alene Tribe are grateful for the Subcommittee holding today's hearing. With the legislative calendar quickly slipping away, we look forward to working with the Subcommittee and the full Committee to advance H.R. 409 as quickly as possible.

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