



# Affiliated Tribes of Northwest Indians

Prepared Statement of the Honorable Ernest L. Stensgar

Vice-Chairman, Coeur d'Alene Tribe

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Oversight Hearing on "A Path Forward: Trust Modernization and Reform for Indian Lands"

Senate Committee on Indian Affairs

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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 S.383 and urge the Committee to advance this legislation without delay.

## **BACKGROUND ON ATNI AND THE DEVELOPMENT OF H.R. S.383**

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 these tribes to the United States. It is also based on our recognition that in nearly every instance, Indian tribes have demonstrated that they are simply much better managers of their natural resources and affairs than is the federal government.

Much of the text of S.383 had its origins in S.1439, which was introduced by then-Committee Chairman McCain and Vice-Chairman Dorgan in the 109th Congress. Following introduction, the Committee staff travelled across the United States to consult with Indian tribes on the legislation. The Committee then generated a revised version of S.1439 to reflect the tribes' input. Using the committees' revised draft of S.1439 as a

template, beginning in 2011 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: the Indian Trust Asset Demonstration Project and Restructuring the Office of the Special Trustee (“OST”). Several individuals and tribal leaders who participated in developing the bill had previous careers working for the Bureau of Indian Affairs (“BIA”) and OST and were able to provide important practical input to guide our efforts.

In the 113th Congress, this Committee heard testimony on a prior version of this legislation (S.165) at a July 16, 2014, oversight hearing. The House Subcommittee on Indian, Insular, and Alaska Native Affairs held legislative hearings on the House bill in the 113th Congress (H.R. 409) and, in the current Congress, on H.R. 812 on April 14, 2015.

As introduced, S.383 and H.R. 812 incorporate a number of changes to reflect the Obama Administration’s feedback. Since the April 2015 House hearing on H.R. 812, we have had productive discussions with Department officials on further revisions to the bill to address outstanding issues. On June 28, 2015, the National Congress of American Indians convened a meeting at its 2015 mid-year conference with OST and tribal leaders and tribal representatives to discuss the future of OST and this legislation. That meeting has generated additional discussions with the Department on the bill, specifically title III.

Based on these ongoing discussions, we are hopeful and optimistic that we will reach common ground with the Administration on this important legislation.

## **OVERVIEW OF S.383**

The substantive provisions of S.383 are in titles II and III, which are discussed below:

### **Title II: Indian Trust Asset Demonstration Project**

Title II of S.383 would establish a demonstration project to authorize Indian tribes, on a voluntary basis, to direct the management of their trust resources through negotiated agreements with the Secretary of the Interior (“Secretary”). To participate, tribes would submit to the Secretary a proposed Indian trust asset management plan that would describe, among other criteria, the trust assets that would 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.

Unlike existing legal 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 acreage 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

S.383 is enacted into law, Indian tribes for the first time would have the flexibility to dictate these management standards under this demonstration project authority.

S.383 also includes a new section 204(e) that authorizes the Secretary to approve trust asset management plans that include provisions authorizing Indian tribes to carry out surface leasing or forest management activities without BIA approval under certain conditions. This concept is substantively identical to the HEARTH Act, which was signed into law in 2012. The Administration has been a strong supporter of the HEARTH Act concept of authorizing tribes to voluntarily carry out surface leasing activities without BIA approval, and that model has proven very successful.

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 represent a fraction of the actual need, this demonstration project is a practical tool that tribes will utilize immediately if they so choose.

### **Title III: Restructuring of the Office of the Special Trustee**

Congress created the OST in 1994 when it enacted the American Indian Trust Fund Management Reform Act. Congress recognized that OST would be a *temporary* entity to oversee certain reforms of how the Department of the Interior (“DOI”) managed and invested Indian trust funds. 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.

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.

The major reforms that OST was charged with implementing were completed years ago. In a 2007 report, the General Accountability Office noted that “OST estimates that almost all key reforms needed to develop an integrated trust management system and to provide improved trust services will be completed by November 2007.”<sup>1</sup> Those reforms, have undoubtedly improved the Secretary’s management of Indian trust funds. We believe that those functions should continue. However, since OST was established, its role has expanded significantly to include activities far beyond managing Indian trust funds and implementing financial reforms, creating additional unintended bureaucracy for Indian Tribes.

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<sup>1</sup> See *The Office of the Special Trustee Has Implemented Several Key Trust Reforms Required by the 1994 Act, but Important Decisions about Its Future Remain*, GAO-07-104 (Dec. 2006).

For example, in 2002 OST assumed responsibility for appraising Indian trust land and trust property, even though this function has nothing to do with the management of Indian 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 Committee is aware from its work 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.

#### Report to Congress

S.165 in the 113th Congress would have terminated OST by a date certain, which appeared to be the Administration's primary concern with the bill. We have addressed this issue by taking a different approach in S.383. Instead of mandating the termination of OST, Section 304 of S.383 now directs the Secretary to prepare a report that (a) identifies functions that OST performs that relate to management of *non-monetary* trust resources; (b) describes any OST functions that will be transitioned to other bureaus or agencies within the Department, and (c) includes a transition plan and timetable for the termination of OST to occur not later than 2 years after the date of the report. In preparing the report, the Secretary would consult with Indian tribes and, once complete, submit it to the authorizing and appropriations committees in both chambers.

S.383 does not require the Secretary to implement the report or the transition plan. What actions might be taken as a result of the report, if any, would be questions for a future Administration or a future Congress. This report would serve several purposes, however. First, it would provide OST with an opportunity to educate Indian country about the work that it does. Second, it would provide Congress with information about possibly duplicative land management functions that OST performs that the BIA might also perform. Finally, it would be the first opportunity for Congress and Indian country to see what the Secretary's own plan to transition OST would look like.

The 1994 Act that created OST contemplated that the Special Trustee, upon implementation of reforms, would certify the reforms have been implemented and wind down the office in accordance with Congress's recognition that the Special Trustee is a temporary position. These major reforms were implemented years ago but for whatever reason, no Special Trustee since has taken steps to transition the Office. We believe that

the report required by Section 304 is an eminently reasonable way of advancing this dialogue with Indian country and the Congress.

S.383 also includes two new provisions that will provide all tribes, on a voluntary basis, with new management tools and flexibility:

#### Fiduciary Trust Officers

Section 304(b) would authorize tribes to contract or compact the Fiduciary Trust Officer (FTO) positions within OST under the Indian Self-Determination and Education Assistance Act of 1975. OST created the FTO positions in 2003 to serve as a resource to BIA agency personnel. On some reservations, FTOs are either underutilized or not utilized at all. Allowing tribes the ability to contract and make better use of these positions under P.L. 93-638 would provide tribes with additional staffing capacity in an era of declining BIA personnel and budgets.

#### Appraisals and Valuations

The other new provision is section 305, which addresses appraisals and valuations. Appraisals or valuations are required to complete most transactions involving trust land or trust resources. As mentioned above, both the BIA and OST have a role in the appraisal process and neither have authority over the other. As a result, the bureaucracy of having two separate entities involved in accomplishing a single task often leads to lengthy delays. Section 305(a) requires the Secretary, within 18 months of enactment and in consultation with Indian tribes, to ensure that appraisals and valuations of Indian trust property are administered by a single bureau, agency or other administrative entity within the Department.

Furthermore, Sections 305(b) and (c) would direct the Secretary to establish minimum qualifications for persons to prepare appraisals and valuations of Indian trust property and publish those qualifications in the *Federal Register*. When an Indian tribe or Indian beneficiary submits an appraisal or valuation to the Secretary that satisfies those qualifications and the submission acknowledges the tribe's or beneficiary's intent to have the appraisal or valuation considered under this new subsection, the appraisal or valuation will not require any further Secretarial review or approval and will be considered final for purposes of effectuating the applicable transaction.

Section 305 would also offer tribes and beneficiaries the option to hire their own qualified appraisers and complete transactions in far less time than would be required if the Department had to review and approve the appraisal or valuation. Not only will this expedite transactions involving trust assets, it will also relieve the Department of administrative burdens and will likely result in cost savings.

ATNI and the Coeur d'Alene Tribe are grateful for the Committee holding today's hearing. We look forward to working with the Committee to advance S.383 as quickly as possible.