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PRESIDENT

ROSEBUD SIOUX TRIBE OF SOUTH DAKOTA

Testimony Before the Committee on Indian Affairs

United States Senate

Oversight Hearing on Indian Trust Reform

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Chairman McCain, Vice-Chairman Dorgan, and members of the Committee, my name is Charles Colombe. As Tribal President, I am honored to testify today on behalf of the Rosebud Sioux Tribe of South Dakota. At Rosebud, we are descended from the Sicangu or Burnt Thigh Band of the Lakota Oyate also referred to as the Great Sioux Nation. On behalf of the Rosebud Sioux Tribe, I thank the Committee for holding this hearing as well as for its continuing commitment to meaningful trust reform.

The Rosebud Sioux Reservation has approximately nine hundred thousand acres of trust land. There are twenty five thousand tribal members. Twenty one thousand live on the reservation. Like most of the Great Plains Region Tribes, my Tribe is a large land-based tribe with fractionated lands, a large population, grinding poverty, and an unemployment rate of close to 80%. We consider ourselves rich in traditions and trust lands.

Land should be the foundation of our reservation economies. Since the reservations were created, the United States has had management and control of our land. As I'm sure you're aware, the Bureau of Indian Affairs' (hereafter "BIA") land management on the Great Plains has been a dismal failure.

Land management is therefore the heart of trust reform in our region, and I know trust land well. I ran the Tribe's land purchase program during the 1970's. From 1979 to 1994, I contracted to provide land title systems to the BIA. In those contract years, I completed chains of title and curative work, and computerized all of the land records on all trust title in the Minneapolis area and the Great Lakes, Great Plains, Rocky Mountain, and Northwest Regions. I built the title plant in the Pacific Region for all California trust lands. I provided the same service for eleven of the nineteen pueblos in New Mexico.

In that time I also did quite a bit of work on title relating to legal claims. For example, law firms asked me to reconstruct heirship files after they won claims against the United States for timber mismanagement. This sometimes required me to construct records for land that had been probated twenty or thirty years earlier, some of which had passed out of trust. Beginning in 1979, I ran the 28 U.S.C. § 2415 claims process for Dakota Plains Legal Services. The United States had filed actions against local governments and utility companies on behalf of tribes and allottees for damaging and using trust lands without first obtaining perfected rights of way. The 2415 claims process was an effort to assist tribal members in filing land claims before the statute of limitations expired.

On a personal level, as a rancher, I have leased and permitted thousands of trust acres, bought and used land, and mortgaged it. I understand the way the Bureau manages land not only on my own reservation, but on many others where I provided contract title services.

Before I get too far into my testimony, I want to acknowledge that almost every tribe has a dog in the fight over the ongoing reorganization of the BIA. Most tribes have been impacted by the deep cuts in the Tribal Priority Allocation budget, which have gutted school construction funds and crucial program funding at the agency level. Because most tribes are impacted, the Department of the Interior (hereafter "DOI") should collaborate

with all tribes for the BIA's trust system to be reformed in a way that truly benefits Indian people.

The United States, the Office of Special Trustee, the BIA and Indian Tribes can collaborate. One has to look at the successful passage of the American Indian Probate Reform Act of 2004. I personally believe that this is the most significant piece of legislation enacted to benefit Indian tribes and their members since the 1934 Indian Reorganization Act.

The Great Plains and the Rocky Mountain Region have the majority of Individual Indian Money Account (hereafter "IIM") stakeholders and we want to collaborate with the United States to come up with meaningful trust reform. These Regions also recognize that some other regions, like Oklahoma, may very well have higher dollar values in their IIM accounts due to the development of mineral resources on their lands.

Every region and every tribe have different trust resources. Two examples from my area illustrate the land management problems we face with the BIA. Both cases involve progressive, forward-thinking initiatives to consolidate land, going back sixty or seventy years. In both cases, current reorganization efforts provide our tribes with no assistance in fixing very old problems.

My first example is from my reservation. In 1943, the BIA created the Tribal Land Enterprise (hereafter "TLE") for the Rosebud Sioux Tribe under a federal charter. The BIA wrote TLE's bylaws and retained supervisory authority over all actions by the Board of Directors. The Board is appointed by the Tribal Council and the shareholders, and as President, I am also a TLE Board member. The BIA today retains signatory authority over all accounts, land transactions, and leasing, and is responsible to ensure that fair value is received by the allottee when he sells his property to TLE.

TLE seemed like a good idea at the time it was created in 1943. Originally, TLE was supposed to work for the Tribe and its members. TLE has worked well for the BIA and sometimes, but not always, for the tribal government. Here's how it is supposed to work:

- TLE purchases land from individual tribal members; instead of paying them cash, TLE provides tribal members with a certificate of ownership in the corporation comparable to a stock certificate;
- These certificates allow individual allottees to retain a financial interest in a corporation that manages the land that would otherwise be of little or no use to them because it was rapidly turned into fractionated undivided interests;
- Thus, TLE consolidated fractionated undivided land interests and returned those interests to tribal ownership;
- TLE manages such lands by leasing most of it for agricultural uses;
- TLE assigns other lands to individual tribal members thereby allowing them to use their certificates of interest to purchase land assignments; and
- Profits from leased land have been re-invested through the purchase of additional fractionated undivided individually held land interests.

Regrettably, the TLE Bylaws have not been followed for a variety of reasons: the TLE Board of Directors and TLE staff, for the most part, have not been trained in land management. Moreover, the BIA, through acts of omission and nonfeasance, has stood on the sidelines and allowed shareholders, i.e., former allottees, to be defrauded.

On paper, TLE has been wildly successful since its creation in 1943. It appears to have acquired over five hundred and seventy thousand acres of individual land that it now manages for the Tribe. TLE generates approximately three million dollars every year in gross lease income. After expenses, it shows a profit of close to two million dollars a year. In reality, however, TLE has become a black hole for the financial interests of individual certificate holders. Since 1943, TLE has systematically failed to perform the annual land valuations mandated by its bylaws. Increases in land values have not created the concomitant rise in the value of certificates held by individual tribal members.

By our calculations, individuals selling 3 certificates today that were obtained in 1943 would receive less than \$42 per acre for land that is now worth more than \$300 per acre (3 certificates were/are issued for each acre of land). That amounts to a net loss of about \$260 per acre, and isn't difficult to see how quickly that would add up. Thus, individual certificate holders have lost many thousands of dollars worth of value through TLE's failure to follow its bylaws. Since 1943, the BIA has done very little to ensure that correct annual valuations, required under the bylaws, are performed annually. The inability of the BIA to perform its responsibility pursuant to those bylaws and the Code of Federal Regulations has caused tribal member shareholders and the Rosebud Sioux Tribe to lose millions of dollars.

In addition, TLE typically violates leasing regulations, leasing land to relatives, friends and other insiders, rather than to the highest bidder under sealed bid, as required by the Code of Federal Regulations. Again, the BIA has not lifted a finger to assist tribal allottees and certificate holders who are the victims of this racket.

Honorable Chairman, Vice-Chairman, Committee members, we have a problem here. My tribe and its membership have been robbed blind and the BIA has continued to look the other way. I am therefore requesting that the Senate Committee on Indian Affairs provide the Rosebud Sioux Tribe with a General Accounting Office auditor to ensure that the Tribe and individuals who have been harmed by BIA misfeasance be made whole. If a G.A.O. Audit cannot be completed by the government, I would request that your office accept a C.P.A. Audit and that can be completed with Tribal Accountants. Then, I would ask that you assist us with remedial legislation.

Unfortunately, the new BIA reorganization has been almost totally non-responsive to this massive fraud, which has been accruing for more than sixty years. I support meaningful trust reform, but it's got to do more than take money away from vital services. It must recognize that allottees and Tribes have real issues as stakeholders in trust administration. As stakeholders, we have much to offer the BIA and the Office of Special Trustee in their efforts to reform the trust.

I'll give you another example of a homegrown land consolidation program that has not received much assistance from the BIA, and needs it today. The Lower Brule Sioux Reservation, located in central South Dakota, encompasses two hundred and thirty five thousand acres. In addition to being allotted, many acres of the Lower Brule Sioux Reservation were illegally homesteaded by non-Indians. By the time the Indian Reorganization Act was passed in 1934 the Tribe retained only 30% of its land, about seventy thousand acres out of the original two hundred and thirty five thousand.

In 1936, almost seventy five years ago, the Lower Brule Sioux Tribe made restoration of allotted reservation lands its highest priority. Using a gratuity fund established by the IRA, the Tribe repurchased allotted lands. When that fund ran out, the Tribe used a combination of federal funds, private loans, and the Tribe's own funds to restore lands inside their reservation boundaries.

For the past thirty years, the Lower Brule Sioux Tribe has used primarily its own revenue to continue to buy back reservation land. The total amount allocated to land consolidation by the Tribe now stands at about ten million dollars. Of this amount, the Tribe itself has pitched in six million dollars. The good news is that the Tribe now owns about twice as much land as it did in 1936, one hundred and forty four thousand acres of its original two hundred and thirty five thousand acres. The bad news is that the Lower Brule Sioux Tribe still needs five hundred and fifty thousand dollars to purchase the remaining twenty eight thousand acres of allotted lands. In the face of BIA inaction, the Tribe put its own resources on the line to restore its land base. Today the BIA is still not willing to provide the Tribe with funding to restore the said lands.

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So how are my problems at Rosebud, and Chairman Mike Jandreau's problems at Lower Brule, relevant to trust reform and the reorganization? Based on these experiences, we have specific recommendations on how to create a road map for fixing trust administration.

First, the DOI's leadership needs to become proactive, instead of reacting to problems. As an example, the BIA should be promoting land partition and exchange that would also serve to alleviate the fractional interest problem. Trust land partitions and exchanges between the Tribe and individual allottees could put as much as fifty million dollars in Rosebud's economy. Further, such partition and exchange would provide many home buyers with merchantable title to homes they have already paid for.

Second, the DOI needs to listen to Tribes that deal with these issues on a daily basis regarding the relatively minor repairs that need to take place at the agency level. For example, I can remember only two land partitions that were done at Rosebud during my lifetime. To improve this particular situation, we need staff positions to perform the work. Another example of a minor repair is the need to exempt monies derived

from the sale of trust property via ILCA funds from being used as an offset against welfare dollars.

Third, decision-making authority must be maximized at the local level. Otherwise, true accountability will always be beyond our reach. So, too, will true Indian self determination.

Fourth, the DOI needs to immediately take its hands off those funds that are designated to provide services at the agency level. Certainly, tribes should not be made to choose between life and death programs, such as law and order, to fund a top heavy bureaucracy. My reservation has one cop for every 1,300 members. Further, the trust responsibility to Tribes must not be relegated to a lesser priority than the DOI's duty to individuals.

Fifth, the DOI cannot be accountable unless it defines its terms. A year ago, Special Trustee Ross Swimmer testified that Trust Officers serve both individual and tribal beneficiaries. However, the examples of services he provided were all focused on individuals.

If the Office of Trust Management will really help individual tribal members, I'm all for it. In fact, I have a Trust Officer on my reservation. But it is difficult to evaluate their contributions when we don't know if they primarily serve individuals, tribes, or both; we don't know whether they have program duties, such as will writing, or are confined by DOI policy and the 1994 Act to monitoring activities; what their relationship is to the Superintendents; and a whole other list of questions that have not yet been adequately or clearly answered by the DOI. We would like to take this opportunity to request more collaboration with the Office of Special Trustee on this particular issue.

Finally, a few words about the *Cobell* litigation. I understand why a legislator would hesitate to interfere in ongoing litigation. But when you consider that individuals in the plaintiff class are being hurt by the drastic funding cuts at the agency and regional levels, that hesitation may not be helping them.

While we as tribal leaders do not represent our IIM accountholders legally in that case, we do speak for them in a more general sense as their elected leaders. Todd County, which is the interior boundary of the Rosebud Sioux Reservation, is the second poorest county in the United States. Only one in five adults works. At the same time, IIM accountholders from my reservation may not be aware that they cannot recover money damages in the United States District Court, where the suit was brought.

Federal funding for any IIM or Trust claims paid in connection with any historical accounting or internal restructuring required by trust reform under the *Cobell* suit or tribal claims should be paid from the United States' permanent judgment appropriation under 31 U.S.C. § 1304 and should not be paid or reimbursed from appropriations for the Department of the Interior/Bureau of Indian Affairs. The Permanent Judgment Fund

should pay for the historic accounting, not current BIA appropriations because it is not right for the victims of this terrible mismanagement to be asked to forego services to pay for the accounting which should have been due tribes and their members since 1887. If the Cobell claims and the historic accounting are not paid from the said Permanent Judgment Fund it is unlikely that the accounting will be effected and that those historic claims will ever be paid.

On their behalf, and as President of the Rosebud Sioux Tribe, I respectfully request that you prioritize a legislative settlement process that is voluntary and fair. Obviously, this cannot be the mother of all claims settlement. However, with collaboration of all stakeholders we can effectuate a meaningful plan to end this litigation that has immobilized the DOI. Wouldn't it be much better to develop a forward thinking road map for the next five years, ten years, and fifty years, together?

I want to thank Chairman McCain, Vice-Chairman Dorgan, and all their staff for their continued hard work on the trust reform issue. I look forward to collaborating with all parties to create a working road map for Indian trust.