

**Tribal Leader/ Department of the Interior Task Force on Trust
Reform Report For the Secretary of The Interior**

June 4, 2002

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I. Summary

The Tribal Leaders/ Department of the Interior Trust Reform Task Force (Task Force), composed of Tribal Leaders and representatives of the Department of the Interior (Department), has developed a number of proposed alternatives to the Bureau of Indian Trust Asset Management (BITAM) proposed by the Department in November, 2001. The elements of the various proposals are not necessarily exclusive of each other and are designed to be flexible concepts for discussion among Tribal Leadership. The Task Force believes that, with sound implementation, the options the Task Force recommends for further consultation could serve as the basis for determining the appropriate organizational structure for the Department to make progress in fulfilling its trust responsibilities toward American Indians and Alaska Natives.

During the next two months, the Department will engage in a series of regional and national consultation sessions with tribal leaders on these proposals. At the recent Task Force meeting in Minneapolis, the Task Force agreed to initiate consultation in early June, hold regional meetings throughout June and early July, and hold a national consultation meeting in Bismark, North Dakota on June, 19. Tribal leaders will be urged to provide their comments on the proposed alternatives.

~~~~~The Task Force believes that there is a need for reform, and that the status quo is not acceptable. However, the Task Force notes that significant progress has been made in the spirit and success of self-determination and self-governance policies. To

date, the Task Force has largely focused on consideration of high-level reorganization options. The Task Force intends to address the regional and field level organizational structure in full detail, in the future, after receiving input regarding the upper-level structure. This Report contains some illustrations of regional and agency level organizational structures, these are purely descriptive illustrations, they are not proposed options.

## II. Background

Pursuant to treaties, statutes, executive orders, and other laws, the United States government has acquired a broad trust relationship with Indian tribes. That trust relationship obligates the Federal government to protect tribal self-government, to provide services to tribal self-government, and to exercise the highest degree of fiduciary responsibility with respect to tribal lands and resources.

The Federal government has held funds in trust for individual Indians since 1820. In 1887, the enactment of the General Allotment Act defined the government's fiduciary duties to individual Indians. The Act opened reservation lands to Indian heads of households and opened "surplus" lands to Indian settlement. The allotted lands were Indian s

designated period. Individual trust accounts were designated period. Individual trust accounts in those lands.

The Indian Reorganization Act of 1934 ("IRA") provided for the return of "surplus" Indian lands indefinitely the period for holding allotted lands in trust. Trust funds consist of money received through the sale of transactions as timber sales, agricultural fees, and oil and gas accounts may also include funds awarded from judgments against the United States.

More recently, reports filed by the General Accounting Office and committees and lawsuits filed by Indian tribes have pointed out government's long-standing mismanagement of funds.

Congress sought to correct some of these problems. Trust Fund Management Reform Act of 1994 Interior's responsibilities for the accounting and management provided the opportunity for Indian tribes to directly manage the Act established a Special Trustee for American Indian trust funds the Act established a comprehensive, strategic plan for management place throughout the Department of the Interior.

The purpose of the Trust Reform Task Force as defined in the Trust Reform Act is as follows:

develop and evaluate organizational options to improve the integrity, efficiency, and effectiveness of the Departmental & Indian Trust Operations consistent with Indian treaty rights, Indian trust law, and the federal government relationship.

Although the Task Force mission is to develop optimal structure, the Task Force has engaged in discussions addressing that the reorganization must address. The purpose is to improve various aspects of trust resources management, while complementing and trust services. However, the Task Force only authorized by the tribal leadership which they represent from their respective regions.

The Task Force has approached the development of its options in a manner that affirms tribal authority over the management of their tribal lands and natural resources. Statutes such as the Indian Reorganization Act, the Indian Self-Determination and Education Assistance Act, and specific resource management statutes, such as the Forest Resources Management Act, confirm the tribes' rights to be primary managers of their tribal lands and natural resources. Titles I and IV of the Indian Self-Determination and Education

assumed trust management responsibilities and have a proven record of effectiveness in performing those functions.

The Task Force has concluded that trust reform must be driven by the government and must assure that the government and the United States is improved and strengthened, not diminished or weakened.

The Task Force was formed after Tribal Leaders throughout the country expressed serious concerns regarding Secretary Norton's November 2001 establishment of a new Assistant Secretary position and the creation of an Asset Management (BITAM). The Secretary's plan reorganized all Indian trust asset management functions into a new and separate organizational unit headed by a new Assistant Secretary, and directed additional senior management attention to this unit within the Department. The Secretary believed this newly established unit would have the needed authority and responsibility for improved trust asset management. However, through several meetings, the Tribal Leaders were opposed to BITAM.

At the meeting held on December 16, 2001, in Phoenix, Arizona, Tribal Leader Tex Hall proposed the formation of a Tribal Trust Reform Task Force to provide advice to the Department to guide its trust reform efforts. The purpose of the Task Force was to evaluate all available options and to submit recommendations to the Department.

alternatives to BITAM. To further develop an improved reorganizational structure, Secretary Norton agreed to the creation of a Task Force.

### III. Task Force Members

The composition of the Tribal Membership of the Task Force consists of two elected tribal leaders from each region, with a third acting as an alternate. Tex Hall, Chairman/President of the Yurok Tribe, Susan Masten, Chairwoman of the Yurok Tribe, and Department officials also serve on the Task Force, including Deputy Secretary Assistant Secretary for Indian Affairs Neal McCaleb, who chairs.<sup>1</sup> Tribal Representatives are the following:

**Alaska Region:** Ed Thomas, President, Central Council of Tlingit Haida Indian Tribes of Alaska; Mike Williams, Aniak Village; Alternate Joe Williams, President, Organized Village of Saxman.

**Eastern Oklahoma Region:** Bill Anoatubby, Governor, Chickasaw Nation; Bill Anoatubby, Governor, Chickasaw Nation; O. O. Tillman, Jr., Principal Chief Osage Nation; Alternate Grace Bunner, Mekko, Thlocco Tribal Town.

**Eastern Region:** Keller George, President, United States Indian College.

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<sup>1</sup> Other Departmental representatives to the Task Force included: the Associate Deputy Secretary, the Special Trustee, the Director of the Office of Trust Transition, the Associate Solicitor for Indian Affairs, the Director of Congressional and Legislative Affairs, the Director of Communications and the Counselor to the Assistant Secretary of Indian Affairs.

(USET);(USET); Tim Martin, Executive(USET); Tim Martin, Executive Di(USET); Tim Martin,  
(USET); Alternate Peter Schultz, Vice-Chair, Mohegan Tribe.

**Great Plains Region:** Mike Jandreau, Chairman, Lower Brule S  
Richard Monette, Chairman, Turtle Mountain  
Tex Hall, Chairman/President, Three Affiliated Tribes/NCAI.

**Midwest Region:** Melanie Benjamin, Chief Executive, Mille Lacs Band; Melanie Benjamin  
Business Committee; Paul Ninham, Oneida Tribe of Indians of Wisconsin; Alternate  
Troy Swallow, President, Ho-Chunk Nation.

**Navajo Region:** Ervin Kee: Ervin Keeswood, Navajo Council Delegation; George  
Navajo Council Delegation; Alternate Alfred Yazzie, Navajo Nation.

**Northwest Region:** Ernie Stensgar, Chairman, Coeur d Alene Tribe; W. Ron A  
Chairman, Jamestown S Klallam Tribe; Alternate Colleen Cawston, Colleen Cawston,  
Colville Confederated Tribes.

**Pacific Region:** Susan Masten, Chairwoman, Yurok Tribe; Rache: Susan Masten  
Chairperson, Lone Pine Reservation; Alternate Mary Belardo, Chairperson,  
Torres-Martinez Desert Cahuilla Indians.

**Rocky Mountain Region:** Alvin Windy Boy, Chairman, Chippewa Cree Business  
Council; Ivan Posey, Chairman, Shoshone Business  
Small, President, Northern Cheyenne Tribal Council.

**Southern Plains Region:** Gary McAdams, President, Wichita & Affiliated; Gary McAdams  
James Potter, Treasurer, Prairie Band Potawatomi Tribe of Kansas; Alternate  
Alonzo Chalepah, Vice Chairman, Apache Tribe.

Treasurer, Absentee-Shawnee Tribe of Oklahoma.

**SouthwestSouthwest Region:** Joe A. Garcia, San Juan Pueblo; Harry E. Early, Governor, PuebloPueblo of Laguna; Alternates Clement Frost, Vice Chairman, Southern Clement Frost, V Tribe and Gregory Ortiz, Lt. Governor, Acoma Pueblo.

**WesternWestern Region:** Edwar: Edward Man: Edward Manuel, Chairman, Tohono Ood Moyle,Moyle, Chairman, Fallon Paiute ShoshMoyle, Chairman, Fallon Paiute Shoshone;Moyle, Ch PaiutePaiute Tribes of Duck Valley, Rose Taveapont, Vice-Paiute Tribes of Duck Valley, R Tribe.

ToTo date, theTo date, the Task Force has held several multi-day meetings. TheseTo date, the Ta beenbeen held in Shepherdstown, Westbeen held in Shepherdstown, West Virginiabeen held in S 2002);2002); San2002); San 2002); San Diego, California (April 2002); and Minneapolis, Minne Additionally, monthly meetings have been scheduled for the nextAdditionally, monthly meetings have the activities and tasks identified by the Task Force.

FromFrom the very first joint meeting, which wasFrom the very first joint meeting, which was held andand the Department have earnestly attempted toand the Department have earnestly attempted to a FebruaryFebruary meetingFebruary meeting inFebruary meeting in Shepherdstown, presentations hig trusttrust responsibility and the important differences from private or commercial fiduciary trust management. Subcommittees were created with specific goals.

#### **IV. Task Force Sub-Committees**

The Task Force established several subcommittees as follows:

1. Protocol Sub-Committee: This subcommittee was charged with the development of protocols for the Task Force's activities. The Tribal Leaders serving on the Protocols Subcommittee were Tim Martin-Chair, Ron Allen, Joe Garcia, and Rachel Joseph. This subcommittee developed ground rules for the Task Force actions which have guided the task force process.
2. EDSEDS Sub-Committee: Another subcommittee was directed to examine the scope of work for the Electronic Data Systems (EDS) proposal. The Tribal Leaders serving on this subcommittee were Tim Martin-Chair, George Arthur, Geri Small, Ed Thomas, and Ed Thomas. This subcommittee reviewed the EDS proposal and is commenting on the development of the Department's Strategic Plan for Tribal Reform.
3. Legislative Sub-Committee: The Task Force recognized that there is a strong interest in trust reform legislation. This year, both the House Committee on Indian Affairs and the Senate Committee on Indian Affairs have held hearings. The Task Force also recognized the need to develop a consensus among the various parties--the tribes, the allottees, the Department and the Congress-- if any legislation is to be passed and effectively implemented. Therefore, in Phoenix, Arizona, the Task Force decided to establish the Legislative Subcommittee.

discussion. The members of the Legislative Subcommittee will continue to review options for trust reform legislation and work with the development of any trust reform legislation. The Subcommittee, Governor Anotubby, has kept the Task Force's activities, invited staff to the Task Force's activities, with key committees regarding hearings related to Task Force activity.

4. Alternative Proposal Sub-Committee: Another subcommittee was formed to review the alternative proposals to BITAM that had been submitted by Tribal Leaders were, Alvin Windy Boy-Chair, Mike Jandreau, Thomas, Ervin Keeswood, Ernie Stensgar, Ervin Carlson, Governor Anotubby, Grace Bunner, Ron Allen, Alvin Moyle, Rachel Joseph and Joe Garcia.

## V. Creating a Better Alternative Than BITAM

By the end of April, a total of twenty-nine separate alternative proposals (submissions with observations) had been received. These alternatives represented a wide variety of options for consideration; the options ranged from a Department of Indian Affairs. The alternative proposals or comments were as follows:

- \* Affiliated Tribes of Northwest Indians
- \* Agua Caliente

- \*  BIA Regional Directors
- \*  Cherokee Nation (OK)
- \*  Cheyenne River Sioux
- \*  Chippewa Cree
- \*  Cobell Plaintiffs Receiver
- \*  Confederated Salish & Kootenai
- \*  Forest J. Gerard
- \*  Fort Peck Business Council
- \*  Hoopa Valley
- \*  Hualapai and Yavapai
- \*  Intertribal Timber Council
- \*  Lower Brule
- \*  Mille Lacs Band of Ojibwe
- \*  Native American Mutual
- \*  Navajo Nation
- \*  Nixon Peabody
- \*  Northwest Region
- \*  OST Advisory Board
- \*  Oglala Sioux
- \*  RavenPack Central
- \*  Resolution Trust Corporation
- \*  Salt River Pima - Maricopa Indian Community



configuration of the Bureau of Indian Affairs and its subordinate line management positions.

The paragraphs that follow describe the alternative options identified by the Subcommittee for consideration by the Task Force. The Subcommittee for consideration describe some of the advantages and disadvantages associated with each particular option. However, the paragraphs that follow describe some of the advantages and disadvantages associated with each particular option. However, the paragraphs that follow do not reflect the totality of the discussion, study and conclusions of the Task Force. The Task Force gave each generic option particular consideration.

## **VI. Cross-Cutting Principles**

In addition to the organizational options described above, the Task Force believes that certain cross-cutting principles be incorporated into any organizational option receiving further consideration. Each option meriting further consideration should receive these principles. These cross-cutting principles include:

- \* □ Support for the role of Tribal self-determination/self-governance (direct service, Title I-638, and Title IV).
- \* □ Recognition that Tribal and individual Indian interests are closely related.
- \* □ Creation of an independent oversight entity for trust administration.
- \* □ Phasing out of the Office of Special Trustee.

- \* □ Regrouping of operations-related functions currently under contract with other Bureau of Indian Affairs functions.
- \* □ Departmental auditing and internal and external controls capability.
- \* □ AA clear definition of the Department's Indian trust assets.

## VII. Options/Advantages/Disadvantages

- \* □ **OPTION 1(a): Create A New Department of Indian Affairs** This alternative envisioned a new Cabinet position and alternative envisioned a new American Indian and Alaska Natives related functions within the Department would be moved to this new organization.

Advantages:

- " Higher profile within the Executive Branch.
- " Consolidates American Indian and Alaska Native functions into one Department.
- " Improves coordination between American Indian and Alaska Native programs.

Disadvantages:

- " Politically difficult to achieve.
- " Executive Branch implementation would be difficult.
- " Small Department, with inadequate clout.

While this alternative has attractive features, while this alternative needs further consultation. It is being being too difficult to pursue - it would take substantial effort and political

capital to seek Departmental status and the likelihood of capital to seek Dep  
high. [See Option 1]

\* □

**OPTION 1(b): Create A New Independent Agency Within The**

**Executive Branch Of Government**

independent agency, possibly temporary, outside of  
would be dedicated to managing all of the American  
Native-related trust functions within the Department.

Advantages: " Outside entity with line authority to make changes.  
" Improved ability to foster organizational change.

Disadvantages: " Tribal involvement may be constrained.  
" Executive branch implementation would be difficult.  
" Small organization with limited clout.

While this alternative had attractive features, While this  
need for further consultation by the Task Force need for further consultation by  
reservations stated in 1(a). [See Option 1]

\* □

**OPTION 2: Create A New Deputy Sec**

alternative envisioned the creation of a  
would be responsible for all of the Indian-related functions within the  
Department.

Advantages: "" " Raises profile of " Raises profile of American Indian and Alaska  
programs within the Department.  
" Makes span of control more manageable.

" Provides clear lines of authority " Provides clear lines of authority " Provides clear lines of authority

" Improves coordination with Bureaus. " Improves coordination with Bureaus. " Improves coordination with Bureaus.

" Ensures consistent policy of Alaska Native Affairs. " Ensures consistent policy of Alaska Native Affairs. " Ensures consistent policy of Alaska Native Affairs.

Disadvantages: "" Inconsistent with Reorganization Act (one Deputy Secretary per Department). " Inconsistent with Reorganization Act (one Deputy Secretary per Department).

" Difficult to obtain sufficient support.

" Recruitment & confirmation of a Deputy Secretary.

The Task Force determined this option merited further review. The Task Force determined this option merited further review. The Task Force determined this option merited further review. Option 2]

\* □ **OPTION 3: Create An Organizational Structure With Secretaries**

This alternative envisioned a Secretary's position to manage portfolio responsibilities. This alternative envisioned a Secretary's position to manage portfolio responsibilities. This alternative envisioned a Secretary's position to manage portfolio responsibilities.

Advantages: "Higher profile within the Department.

"Improved span of control.

"Improved ability to focus on key program areas.

Disadvantages: "Too similar to the BITAM proposal.

"May undermine BIA's historical trust obligations.

"May result in confused chain of command.



\* □

## **OPTION 5: Create A New Leadership Position of U**

### **Group BIA Functions** This option envisions the creation of an Under

Secretary of Indian Affairs and the grouping of BIA functions into lo

units. In large part, it is a composite option reflecting the key features of

Option 2 and Option 4.

#### **Advantages:**

"New Under Secretary as single executive sponsor.

"Ability to direct a "Ability to direct and coord

other Bureaus of the Deother Bureaus of the Depart

including the Fish and Wildincluding the Fish and Wildlif

Land MLand Management, and the Minerals Management

Service.

"Under Secretary position more likely to be approved

(versus a new Deputy Secretary position).

"C "Coordinates all American Indian and Alaska Nat "Coordinat

functions within the Department.

"High-profile position elevates American Indian and

Alaska Native Affairs.

#### **Disadvantages:**

"Recruitment & confirmation of an Under Secretary.

The Task Force determined this option merited further consideration. [See

Option 5]

## **VIII. Further Consideration of the Acceptable Options**

The Task Force recommended option 2, Secretary for Indian Affairs, option 4, which would create the Bureau Level, and option 5, which would create a new Secretary and group BIA functions, for consultation, consideration and input for Leaders. The principal focus of further consultation involves the management officials, from top to bottom, in each alternative as well as staff support functions.

## **IX. Line Management**

Most duties and responsibilities within the Department, including Indian assigned by the President, Congress, or the Secretary groups these functions into compatible groups and subordinate Assistant Secretaries. The Assistant Secretaries further delegate responsibilities to subordinate Bureau Directors lower layers of the organization until the delegation rests with the individuals responsible for implementing program responsibilities. In most from high-level policy related decision making, through strategic/priority/budget decision making, to field implementation.

The Task Force supports the continuation of a line n would facilitate tribal self-determination through direct contracting/compacting pursuant to self-determination contracting/compacting pu

the line management structure for Indian Affairs involves five levels. The options for further consideration include possible changes to the status quo.

## X. Changes Needed at Successive Levels of Authority

- \* □ **Level 1: Secretary of the Interior** Because the Task Force determined there was no need for further consultation on Indian Affairs and Independent Agency options, no change is recommended at this level. The creation of a separate Under Secretary of Interior for Indian Affairs within the Department. These positions would have authority over all aspects of Indian Affairs with the coordination of trust reform efforts across all relevant agencies, programs, such as the U.S. Fish and Wildlife Service, involve the Department making formal changes to the current (or incumbent) Deputy Secretary to clearly designate the current (or incumbent) Deputy Secretary as the single accountable executive in charge of Indian Trust responsibilities within the Department on an ongoing basis. Currently, the Deputy Secretary with these responsibilities, in addition to being Chief Operating Officer for the Department, the creation of a separate Deputy Secretary for Indian Affairs position. A similar provision, sponsored by Senators Daschle and McCain, included in Senate Bill 2212. As mentioned earlier, this position may be

difficult to obtain.

Option 5 would not alter the duties of the Deputy Secretary for Indian Affairs. Option 5 would not alter the duties of the Deputy Secretary for Indian Affairs to accomplish the same objective of elevating Indian Affairs to the level of an Under Secretary for Indian Affairs. This new Under Secretary would be responsible for coordinating and directing all Indian Affairs programs within the Department, including the various bureaus, and would be positioned above the Assistant Secretary for Indian Affairs. The Task Force recognized that the creation of a new Under Secretary may be more readily achievable than creating a second Deputy Secretary position within a cabinet agency.

\* □ **Level 2: Assistant Secretary** The Task Force determined that the bifurcation of the Assistant Secretary level. The Task Force rejected the subdivision of Indian Affairs into Assistant Secretaries as was suggested by the BITAM proposal. All options for further consideration for the Assistant Secretary for Indian Affairs.

\* □ **Level 3: Bureau Director** C Currently, the Bureau Director, Commissioner (which has been vacant) and Deputy Commissioner

Task Force has discussed a number of organization (see Option 4 for more details). Depending upon the results of further consultation, the Bureau Director level could involve Office Directors), separate organizations of Deputy Assistant Secretaries in lieu of Bureau Directors.

\* □ **Level 4: Regional Directors** Currently, the BIA has management structures for various regions. Law Enforcement also has subdivided into twelve (12) different a Regional Director.

Each trust program's regional office is responsible for management within a geographical area. Within the regional boundaries, Regional Directors are responsible for representing the Tribal, State and local governments, other Federal agencies, and directing and assisting in the application of policies and programs by agency and field offices, along with a number of other coordinating roles. Regional offices and, in some cases, by discrete field offices.

\* □ **Level 5: Agency Offices** Currently, there are approximately



Each layer of line management may be supported by one or more of these staff support positions may range from Senior to lower-graded positions (General Schedule (GS) grades 5 - 15) to lower-graded positions (General Schedule (GS) grades 1 - 4) depending on the program and location.

Indian Education programs report directly to the Assistant Secretary for Indian Education, the Assistant Secretary for Indian Affairs, and the Task Force did not discuss any change in this reporting structure. Other key support functions, currently reporting to the Deputy Assistant Secretary for Indian Affairs, are being moved into the following program areas:

- \* Administration
- \* Facilities Management and Construction
- \* Tribal Services
- \* Trust Responsibilities
- \* Law Enforcement
- \* Indian Gaming Management
- \* Economic Development
- \* Planning, Budget and Management Support
- \* Information and Technology Support

Depending upon the results of the consultation process, these functions may be grouped in other ways at the Bureau level. An assessment of the BIA suggests that there are significant commonalities in the program staff offices (and functions) located in the Regional Offices and Agency Office levels.

Information and Technology Support function may have subordinate staff attention Inform  
Regional and Agency organizational levels.

Pending decisions on the Bureau level functions and higher, the TaPending decisions  
not yet addressed the lower-level staff organizations in detail. Once the hnot yet addressed t  
organizational decisions are made, it is the intent of the Deporganizational decisio  
detailed information needed to facilitate organizational detailed information needed to facilitate  
levels and to discuss the results with the Task Force. To the extent practic  
be made to streamline decision making and to align program functions betbe made  
organizational layers.

## **XII. Evaluation Criteria**

The Task Force also discussed a set of criteria, and is planning tThe Task Force also  
criteria, to evaluate various organizational options. A summary of the kcriteria, to evaluate  
presented below to facilitate further consultation:

Does the option ensure that the United StatesDoes the option ensure that  
duties to tribal governments as sduties to tribal g

Orders and case law?

Does the option support tribal self-determination and self-government?

Does the option ensure full andDoes the option ensure full andDoes the option ensure  
of Indian trust assets?

Does the option address the various costs of implementation?



