

Tribal Trust Reform Coalition

Summary of Key Provisions and Changes to the NW Tribes' Trust Reform Legislation

The Tribal Trust Reform Coalition (TTRC) proposal builds upon the strengths of the proposed legislation developed by the Northwest Tribes and the California Tribal Trust Reform Consortium (the "NW proposal"), which was presented to the Senate Committee on Indian Affairs on March 9, 2005. The TTRC proposal amplifies the principles of the NW proposal to reflect the diverse interests of tribes and to take into account their distinct geographic locations, the variation in types and quantities of trust resources within their territories, and their different approach to the management of those trust resources (through direct services from the Secretary of Interior, pursuant to self-determination contracts, or through self-governance agreements).

The TTRC proposal represents a tribal alternative to the federal government's promotion of a "one size fits all" approach to trust reform. In order to properly reflect the self-determination and sovereignty of each tribe, this proposal makes flexibility a core principle for its draft legislation. Flexibility is inherent to the proposal as it reflects the concept of a participatory trust appropriate to the unique government-to-government relationship each tribe has with the United States. The key provisions of the proposal are summarized below.

Purpose. Consistent with the tribal positions presented during the 2002 Trust Reform Task Force (many of which were agreed to by the Department of Interior), the purpose of the legislation is to enact measures that increase the accountability and efficiency of the Department's administering of the United States' trust responsibility while enhancing tribal self-determination. Those measures include elevating the Assistant Secretary-Indian Affairs; providing standards for the administration of trust funds and trust assets; promoting self-determination through tribal management of trust funds and assets; consolidating trust functions within the BIA (and eliminating the Office of the Special Trustee); improving trust services to tribal and individual beneficiaries by consolidating functions at the field office level and by establishing mechanisms for quality assurance; expediting implementation of core trust business systems; and providing procedures to resolve the *Cobell* trust fund class action litigation. See Section 2.

Title I. Recognition of Trust Responsibility.

- Section 101 provides "Findings" that set forth the context of the federal trust responsibility to Indians, including recognition that the federal bureaucracy's failure to fulfill the United States' obligations requires corrective measures that enable it to properly discharge the trust responsibility in the unique government-to-government context of the Indian trust. Meanwhile, a "Declaration of Policy" adopts the five trust principles endorsed by the National Congress of American Indians (NCAI), which include: establishing clear and enforceable trust standards; protecting the governing authority of Indian tribes; designing institutional reform

to respond flexibly to local needs and the unique circumstances of each reservation; and promoting tribal involvement in developing systems and policies for trust management.

- Section 105 ("Affirmation of Standards") affirms existing trust standards as to the United States' fiduciary obligations to Indians by providing an illustrative, non-exclusive enumeration of standards. Tribal authority to develop reservation-based standards for trust resource management is also affirmed.

Title II. Indian Trust Fund and Trust Asset Management Program. The proposal significantly expands the 1994 Act's provision for tribal management of trust accounts, by adding new sections that reflect the active involvement of tribes in this beneficiary-driven, participatory trust. This title includes several provisos clarifying that the corrective measures applicable to the Department's administration of trust responsibility (see Title III of this proposed legislation) are not applicable to tribes administering trust functions nor shall that exemption be used as grounds for the Secretary to reject a tribe's request to assume responsibility for the administration of trust functions under the Indian Self-Determination Act.

- Section 208 authorizes the development of reservation-specific 10-year trust resource management plans, which can be planned and/or implemented through direct service by the Secretary (in close consultation with the tribe) or pursuant to self-determination contracts or compacts).
- Section 209 establishes a self-governance trust asset management demonstration project that makes "permanent" the Section 139 program.
- Section 210 is a demonstration project in the Great Plains Region requiring each Agency to work in close consultation with the tribes it serves to develop Agency-specific trust resource management plans.
- Sections 211 and 212 provide measures to facilitate government-to-government agreements and Secretarial approvals, as well as terms for dispute resolution (including judicial proceedings).
- Section 213 provides for annual reporting to the Congress from the Department, with input from tribes, as to the effectiveness of these tribally-driven approaches

Title III. Institutional Reforms Relating to Trust Responsibility.

- Section 302 elevates the Assistant Secretary to the Deputy Secretary for Indian Affairs in order consolidate the administration and oversight of the trust responsibility throughout the Department of the Interior under one line of authority. It eliminates duplicative bureaucracy by consolidating functions within the Bureau of Indian Affairs (and by terminating the Office of the Special Trustee and transferring its functions to BIA). It requires the Department to expedite the development and implementation of core trust business systems.
- Section 303 provides for the Deputy Secretary to oversee trust reform efforts and the coordination of policies throughout the Department. It also requires the Deputy Secretary to certify the adequacy of the budget (and provides for Inspector General review of that certification).

- Section 304 requires consolidation of functions at the BIA field offices including the restoration of functions previously transferred to OST and clarifying the field office directors' line authority over personnel assigned to that field office.
- Section 305 creates internal quality assurance mechanism in the office of the Deputy Secretary with field staff to review periodically (and upon tribal request) trust administrative systems and processes at the field offices. The legislation would require the Deputy Secretary to develop procedures in consultation with tribe, by which the quality assurance unit would issue recommendations to field office directors (but not to oversee, nor be overseen by, field office directors) and through which tribes and individual beneficiaries can request review and recommendations, with a right to appeal to the Inspector General.
- To provide for independent review of the discharge of the Department's trust obligations, Section 306 creates an Assistant Inspector General for Indian Trust to carry out the investigation, review and audit responsibilities identified in this legislation. Additionally, Section 306 provides for annual congressional trust oversight hearings.
- Section 308 authorizes the Deputy Secretary to be provided legal counsel on Indian trust matters that shall be separate and independent from the Office of the Solicitor.

Title IV. Individual Indian Money Account Holder Claims Settlement. Provides procedures for mediation of the *Cobell v. Norton* class action litigation.

Title V. Land Consolidation. Reserved for land consolidation provisions.

Title VI. Administrative Provisions and Disclaimers. Establishes parameters for negotiated rulemaking and provides a disclaimer stating that nothing in the Act diminishes the trust responsibility or rights pursuant to the Indian Self-Determination Act. Additionally, the proposal provides a severability clause to permit the other terms of the Act to continue in effect even if another portion of it were to be deemed unconstitutional.

Title VII. Conforming Amendments. Modifies relevant Government Organizations and Employees statutes to allow for a new Deputy Secretary for Indian Affairs and amends the Inspector General Act of 1978 to establish an Assistant Inspector General for Indian Trust to perform the functions identified in this legislation.

Title VIII. Authorization of Appropriations. Authorizes appropriations of such sums as necessary to implement the provisions of this legislation.