

**Testimony of Charles W. Murphy, Chairman
Standing Rock Sioux Tribe
Before the NCAI-ITMA Work Group on Trust Reform and *Cobell*
June 6, 2005**

I am Charles W. Murphy, Chairman of the Standing Rock Sioux Tribe. I appreciate the ongoing efforts by NCAI and ITMA to hear from the Tribes across the country regarding the vitally important issues surrounding the *Cobell* litigation and trust reform. I also appreciate the participation by the staff of Senator McCain and Senator Dorgan in this regard, since the broader purpose of this effort is to advance legislation that will properly address these matters, consistent with Tribal interests. The recent meeting in Bismarck on these matters was very productive, as it provided an opportunity for many Tribal members from the Great Plains to be heard. I submit this testimony, on behalf of the Standing Rock Sioux Tribe, to supplement the presentations made at the Bismarck meeting. I appreciate the Work Group on Trust Reform taking these comments into account in addressing these issues with Congress.

1. Settling *Cobell*. The Standing Rock Sioux Tribe strongly supports efforts to settle the *Cobell* case through legislation. There are two basic reasons for this. First, as the rulings in the *Cobell* case demonstrate, the federal government has grossly mismanaged individual Indian IIM accounts for years. Basic fairness demands that the IIM account holders receive what they are entitled to, as soon as possible. We must make sure that the wrong addressed in the *Cobell* case is corrected and resolved while the current elders of our Tribe are alive and can see justice done.

Second, the *Cobell* case has created many unintended problems for Standing Rock (and for other Tribes as well). The massive cost of pursuing the case – which is to a great degree a result of continuing government misconduct in its handling of the litigation – has hurt Indian country by diminishing the funding available for needed programs serving Indian people. Standing Rock agrees with the comments Senator Dorgan made on the phone in addressing the Bismarck meeting – that *Cobell* must not be sending money in the wrong direction. The money should go to the individual Indians, not to lawyers and accountants locked in a never-ending battle in litigation.

Further, the *Cobell* case has created a fear of liability within the Interior Department that has led to inappropriate, and sometimes bizarre, actions by the Department in dealing with the Tribes. The shut down of the Department's computers, the refusal (for a period of time) of BIA personnel even to speak with individual Indians at all about trust matters, and the failure to process lease checks in a timely fashion – these are examples of the deterioration of services provided by the BIA as a result of *Cobell*. As long as

Cobell continues, the Interior Department will spend too much of its resources and focus too much of its attention on that litigation and not on serving the Tribes and individual Indians.

In short, *Cobell* must end, both to bring justice to the IIM beneficiaries and to bring sanity to the Interior Department in its handling of Indian affairs.

2. Trust reform. Standing Rock supports trust reform that is based on three basic principles: local control, cooperation between the Tribe and the Department, and a Department orientation toward service. Some years ago, these principles were to a large extent in place, and the relationship between the Standing Rock Sioux Tribe and the BIA was generally positive. While the situation was never perfect, in the old days (before the last decade of various failed efforts by the Department at “trust reform”) our people got their lease checks on time, and knew where to go for answers if there were questions about trust funds or resources – to the BIA Agency on our Reservation.

Unfortunately, the situation has gotten dramatically worse over the years. Each “trust reform” effort by the Department has moved in precisely the wrong direction. While local control is the only effective means for managing trust assets, the Department has sought to centralize decisionmaking and remove local control. While Tribal-Departmental cooperation is essential, the Department has become a closed fortress, seeking not to cooperate with the Tribe, but only to protect itself from potential liability. And, while the Department should deal with the Tribe and Tribal members in a service capacity – demonstrating that it provides trust functions in a manner that best serves the beneficiaries – in reality the Department’s approach ignores the needs of the Tribes and Tribal members and focuses instead on reducing costs and preventing Department malfeasance.

Let me provide you with a couple of examples. First, the Department has taken a simple issue – a parent’s request for a disbursement from their child’s trust account – and turned it into a nightmare. At Standing Rock, requests of this kind are typically for modest amounts, derived from grazing revenue. Often, a parent will seek funds for basic needs like clothing for the child for school, or for special matters like small Christmas presents. Such requests must be approved by the local BIA social services representative. But, apparently not satisfied with its own local personnel (who know the parents seeking trust account funds), the Department has required that these requests, although approved by the BIA locally, be reviewed in Washington, D.C. We have had examples where a simple request by a parent for money for sneakers for her child for school was delayed, sent to D.C. and then refused – by a Department person who had no idea of the needs of that family. Nor was this an isolated example, as other parents at Standing Rock faced the same delay, unnecessary review and arbitrary results. This example illustrates the broader problem with the Department today – it does not trust its own local officials, it substitutes additional levels of

review for common sense, and it makes bad decisions because the decisionmakers are too far removed from the issues they are addressing. A reasonable request for funds by a parent, with the approval of the local BIA social services representative who knows the financial needs of the family, should be all that is needed. The BIA's centralization of functions simply destroys a system that worked fine when handled locally.

A second example involves the Tribe's own request to draw down its own trust funds. The BIA has taken the position that the Tribe can not draw down trust funds that exceed the amount shown on an approved Tribal budget. The BIA also has taken the position that any draw down request, documented by a Tribal Council resolution, must be reviewed in Washington, D.C., if the request exceeds a certain amount. In these ways, the BIA is creating serious impediments to the Tribe gaining access to its own money. As to the Tribe's budget, that is an internal Tribal matter, and the BIA has no authority to deny a properly authorized request for a draw down based on the Tribe's budget. It is not only beyond the BIA's authority to limit Tribal draw downs based on a budget, it defies common sense. Under the BIA's approach, a Tribe which turned out to have more income than it had expected at the time it prepared its budget, could not access the increased revenue because that revenue was not contained in the budget. This example shows another aspect of the BIA's dealings with the Tribe. The BIA, far from demonstrating a service orientation in handling trust issues, instead imposes unwarranted obstacles that prevent normal tasks from being accomplished. The Department continues to impose more levels of review, and to exhibit less good sense, in all its dealings on trust issues.

Finally, I would like to address the issue of trust records. The Standing Rock Sioux Tribe has long taken the position that trust records currently maintained on our Reservation at the Standing Rock Agency must remain on the Reservation – and cannot, without the Tribe's consent, be moved to other locations. This is both a matter of principle, and a matter of practical concern. The principle involved is that trust records are an integral part of the trust resources themselves. When the United States, in Treaties and statutes, accepted the responsibility to manage trust resources at Standing Rock, it agreed to serve as trustee for the Tribe and its members. Just as we are entitled to inspect our trust lands to ensure that the trustee is performing his trust duties, so we are entitled to examine the records relating to our trust lands. The records must remain on the Reservation to allow us to maintain reasonable information about and access to our own trust resources. In addition, we have all seen in the *Cobell* case that the BIA has a history of losing records – and missing records are a primary reason that a full accounting in *Cobell* is almost certainly impossible. Given the BIA's failure to protect records to date, we are not willing to allow the BIA to move our trust records off the Reservation – since such an action will undoubtedly lead to more lost records.

We strongly urge the Work Group to support inclusion of language to protect trust records from movement without Tribal consent, in any proposed legislation arising from this effort.

Again, we appreciate the Work Group's efforts, and look forward to working closely with you as this matter moves forward.