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Testimony

Before the Subcommittee on Native American Affairs
Committee on Natural Resources
House of Representatives

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**FINANCIAL
MANAGEMENT**

**Native American Trust Fund
Management Reform
Legislation**

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Mr. Chairman and Members of the Subcommittee:

We appreciate the opportunity to provide a statement for the record on Indian trust fund management reform legislation (H.R. 4833 and H.R. 1846) pending before the Subcommittee. Our work on the Bureau of Indian Affairs' (BIA) trust fund financial management has shown that BIA's systems, internal controls, and policies and procedures do not provide assurance that Indian trust fund balances, reported as \$2.1 billion at the end of fiscal year 1993, are accurate, or that Indian natural resource assets are adequately managed by the Bureau of Land Management (BLM) and the Minerals Management Service (MMS) to ensure that maximum revenue is generated for tribal and individual Indian trust beneficiaries.

During the past year, the Secretary of the Interior has placed greater emphasis on Indian trust programs through (1) a Secretarial Order emphasizing Interior agencies' Indian trust responsibilities, (2) National Performance Review (NPR) initiatives and related user group efforts in BLM and MMS to improve management of Indian mineral resources, (3) establishment of an Indian minerals steering committee to address related BIA, BLM, and MMS policy and management issues, and (4) the Secretary's 6-Point Reform Plan for Indian trust fund and asset management. These initiatives are important first steps to improving Indian trust fund and asset management programs and operations, but much remains to be accomplished.

Trust fund management reform legislation--H.R. 4833 and H.R. 1846--currently before the Subcommittee would enhance trust financial management reform initiatives underway at the Department of the Interior by providing legislative emphasis and authority for additional reforms.

Legislation before the Subcommittee would:

- include a statement of the Secretary's trust responsibility;
- establish, in the Department of the Interior, an Office of Special Trustee;
- provide additional trust fund investment options for tribes;
- establish a trust fund reconciliation project reporting deadline;
- provide for investment demonstration programs; and
- require interest to be paid on Individual Indian Money accounts.

I would now like to discuss each of these areas.

Trust Responsibility

Both H.R. 4833 and H.R. 1846 contain a description of the Secretary's trust responsibilities and emphasize that the Secretary is responsible for management of tribal and individual Indian money trust fund accounts. While the language in the two bills differ significantly in the amount of detail, both statements accurately describe the Secretary's trust responsibility.

Special Trustee

H.R. 4833 would establish, in the Department of the Interior, an Office of Special Trustee to, among other things,

- prepare, in consultation with tribes and appropriate Indian organizations, a comprehensive strategic plan for all phases of the trust management business cycle that will ensure proper and efficient discharge of the Secretary's trust responsibilities to tribes and individual Indians;
- provide oversight for all reform efforts within BIA, BLM, and MMS relating to the Secretary's trust responsibilities to ensure the establishment of policies, procedures, systems, and practices to discharge such responsibilities; and
- coordinate development of policies, procedures, practices, and systems of BIA, BLM, and MMS related to the discharge of the Secretary's trust responsibilities.

The Special Trustee is to have expertise in managing large governmental or business entities and particular knowledge of trust fund management, management of financial institutions, and the investment of large sums of money. Currently, the Secretary does not have this type of in-house expertise, and Interior's organizational structure does not include a single office or manager with overall responsibility for Indian trust programs in all Interior Department agencies, who is accountable solely to the Secretary. We endorse the establishment of the Office of a Special Trustee.

Investment Demonstration Program

Both H.R. 4833 and H.R. 1846 would provide tribes and individual Indians an opportunity to assess new approaches for the management of their funds held in trust by the federal government. The bills would allow tribes and Indians to withdraw their money from the government's trust funds, but also specify that the federal government's trust responsibility would terminate upon such withdrawals. In addition, both bills provide for demonstration programs that would allow tribes to experiment with self-directed investments of their money held in the government's trust funds, in accordance with a plan approved by the Secretary. The bills would

require that tribes acknowledge in writing that the federal government would not be liable for decreased interest rates or lost principle during such demonstration projects, so long as the Secretary prudently implements the demonstration. These provisions are consistent with the goal of Indian self-determination and the government's trust responsibility.

Investment Options

H.R. 4833 provides investment options for Indian trust funds managed by the government that are modeled after investment options in the Thrift Savings Plan for federal employees. Under the Thrift Savings Plan, federal civilian employees have three investment fund options--government securities, a common stock index fund, and a fixed-income index investment fund. These Thrift Savings Plan investment options provide a useful model for Indian trust fund investments.

Interior currently invests Indian trust funds primarily in government securities, similar to the Thrift's G Fund (government securities) option. H.R. 4833 provides for two additional Indian trust fund investment options modeled after the Thrift's C Fund (common stock index fund) and its F Fund (fixed-income investment fund).

We support establishment of two additional index investment fund options for the Indian trust funds managed by the government. The Thrift Plan options have worked well for federal employees. The use of index funds, such as the Thrift Savings Plan's C and F Funds, provides a conservative investment approach with the potential for greater income (although with some risk) than the government securities option, which is currently available to the Indian trust funds.

Index funds are passively managed, meaning that they duplicate the performance of the index, rather than require sophisticated economic, financial, and market analyses. For example, the Thrift Plan's C Fund uses the commingled Standard & Poor's 500 stock index fund, which is representative of 70 percent of the U.S. stock markets. The Thrift Plan's F Fund consists of a bond index fund, which represents major sectors of the U.S. bond market and is the index of the commingled fixed-income funds used by private managers. In a commingled fund, the assets of many plans are combined and invested together. This approach has less risk than investments in one or more individual securities.

We suggest that, as in the Thrift Savings Plan, both of the Indian trust fund investment options be restricted to index funds. In addition, as in the Thrift Plan, H.R. 4833 would require Indian trust account holders to sign an acknowledgement of risk statement, if they choose to invest in the index stock fund or the fixed-income investment fund options.

While the Thrift Savings Plan's investment fund options provide a good model for the Indian trust funds, the Thrift Plan's focus on long-term investments for retirement purposes is not consistent with tribal investment goals and does not provide the flexibility to address changes in tribal government priorities. For example, the Thrift Plan provides very limited opportunities for withdrawal. H.R. 4833 would provide tribes and individual Indians with short-term investment options and the flexibility to withdraw their funds.

Reconciliation Reporting Deadline

H.R. 4833 would impose a deadline on completion of Interior's trust fund accounts reconciliation project. The bill would require that the Secretary report by September 30, 1995, the balance for each tribal trust fund account that has been reconciled. In addition, the report is to include:

- account holder attestations that (1) the Secretary has provided them with a full and complete accounting of their funds to the earliest possible date and that the account holder accepts the balance as reconciled or (2) for each account where the account holder disputes the balance as reconciled, the reasons for their dispute;
- a statement by the Secretary outlining efforts to be taken to resolve disputed account balances; and
- for each account that the Secretary cannot reconcile as of September 30, 1995, an explanation of why the Secretary is unable to reconcile the account and a statement of the Secretary's plans to negotiate a balance acceptable to both the Secretary and the account holder.

We have long had concerns about whether the trust fund balances can ever be fully reconciled. We have testified and reported on numerous occasions that Interior needs to reach agreement with tribal and individual Indian account holders on their trust fund account balances. We support the Subcommittee's efforts to reach closure on this long-standing problem.

Individual Indian Money (IIM) Interest

H.R. 1846 would require the Secretary to pay interest on IIM accounts. This is consistent with the statutory requirement that the Secretary pay interest on tribal accounts. We have long endorsed consistent interest requirements for tribal and individual Indian accounts.

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Mr. Chairman, this concludes my statement. I would be happy to provide additional information for the record, as you find necessary.

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