Testimony of Ross O. Swimmer

Nominated to be Special Trustee for American Indians

Before the Senate Committee on Indian Affairs

February 12, 2003

Mr. Chairman, it is a pleasure to appear before you today as the President's nominee for the Office of the Special Trustee for American Indians. I particularly wish to thank you and other members of the Committee for making this hearing one of the first for the Committee during this session of the new Congress. The Indian trust matter is one of the most important issues in Indian country. All Indian people and tribal leaders are aware of the importance that your committee is placing on this issue which is evident by the series of hearings that you have held for the past several years, as well as the many hours of staff time that have been put into this subject.

My name is Ross Swimmer. I am a member of the Cherokee Nation and served as the principal chief of the Cherokee Nation from 1975 to 1985. During my third term, President Reagan, along with Secretary Don Hodel, asked that I accept a nomination to be the Assistant Secretary-Indian Affairs. I appeared before this Committee at that time and was later confirmed by the Senate. I spent three years as the Assistant Secretary.

My work in Indian affairs spans a period of time exceeding 30 years. It began with my duties as an attorney with the Cherokee Nation, and later as General Counsel to the Cherokee Nation. During that time we were successful in negotiating a settlement with the United States for the loss of Cherokee land that was considered trust property of the Tribe. Just this past year, the Department and Congress were able to settle one of the longest standing issues of the Cherokees by agreeing on a settlement for the loss of value in the Arkansas Riverbed owned by the Cherokee, Choctaw and Chickasaws. My work with the Cherokees resulted in the adoption of a tribal constitution, reconstructing a tribal government and building the infrastructure to move the Tribe into the 21st Century. I also experienced, first hand, some of the weaknesses of the Bureau of Indian Affairs accounting and investment functions. The Cherokees have had money held in trust with the Bureau since the late 1960's. Although the Tribe kept good track of the funds and the earnings, I was often concerned about the type of investments, primarily bank certificates of deposit that were made by the Bureau in earlier years.

As a law student and as an attorney in private practice for five years before joining the Cherokee Nation, I, of course, studied trust law and practiced it in various forms including drafting of wills, probating estates and creating trusts for clients. In the early 1970's, I was also privileged to be invited to be the executive vice president of the First National Bank of Tahlequah, Oklahoma and a year later president of the bank.. I served in that position for ten years, primarily in managing the operating side of the bank. Our trust clients were handled by a larger bank in Tulsa that we used as our correspondent

bank. We sold the bank in 1984 when it had reached approximately $85 million in total assets, over three times the size from when I became president. My second banking experience was after my return to Tulsa from Washington, D.C. In 1992, I put together an investment group and purchased a small bank in Hulbert, Oklahoma. I served as the initial chief executive officer and chairman during the first year and as chairman of the board until we sold the bank three years later. It also tripled in size during our ownership.

During my tenure with the Bureau of Indian Affairs from 1985 to 1989, I believe substantial progress was made in advancing the concept of self-governance for Indian tribes. I also believe our attempts at improving the management of the accounting and investing of trust assets helped focus attention on the need for correcting some long-standing problems within the BIA. In fact, a new system for trust fund accounting was later established and is now working very well. SEI Investments Co. operates the "Trust 3000" program which is an accounting and asset management system for many large private trust companies. Through the efforts of the current acting special trustee, Ms. Donna Erwin and some dedicated individuals, this accounting system is now being operated by SEI to manage the accounting of trust funds coming into the Office of Trust Funds Management. Similarly, the investment of trust funds has become much more professional. Also during my tenure, there were other issues of major importance, not the least of which was the relocation project as a result of the Navajo-Hopi legislation and the drafting and enactment of the Indian Gaming Act.

The Indian fiduciary trust is different from any other trust. It has many of the attributes of a commercial trust and, at the same time, is quite different as a result of the many statutes that direct the way in which the trustee must perform his or her trust duties. Indian issues are incredibly complex. The Special Trustee must have an understanding of the complexity and differences that exist among tribes and among allottees and other beneficiaries of the trust. My background is unique in this regard. It gives me an opportunity to put my experience to work as the Department completes its comprehensive trust management plan and implements the many changes that are needed to make trust management more effective and efficient.

With your help, I believe we can make significant improvement in the management of the Indian trust during the next few years. We must work together, with tribal leadership and individual beneficiaries to the extent legally possible to make sure the Federal Government is doing the best job possible for Indian country. I am very impressed with the quality of work that many of the self-governance tribes are doing and hope to be able to help greatly expand their trust management role in coming years.

Thank you for considering my nomination. If referred by this Committee to the full Senate and confirmed, I pledge to do everything within my power to ensure that the fiduciary role of the Department of the Interior is fully implemented. I will work to ensure that true trust reform moves forward as quickly as possible so that Indian tribes and Indian people can have confidence in the management of their trust assets.

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