STATEMENT OF
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BEFORE THE HOUSE COMMITTEE ON RESOURCES
FOR THE OVERSIGHT HEARING RELATING TO
THE INDIAN TRUST FUND LAWSUIT

JULY 9, 2003

Mr. Chairman, thank you for the opportunity to testify today on the issues surrounding the longstanding case that originated in 1996 as Cobell v. Babbitt and is now Cobell v. Norton. In your letter of invitation, you asked the Department to address its plan for historical accounting, the results of historical accountings conducted so far, the size of the accounts the Department holds in trust for American Indians, and the likelihood of an expeditious resolution of the Indian trust fund lawsuit.

The Department of the Interior manages about 1,400 tribal accounts and over 225,000 individual Indian money (IIM) accounts. Because the Cobell case only involves IIM accounts, most of my testimony will focus on the issues related to the management of those accounts. The Committee should be aware, however, that 16 tribes have filed 19 lawsuits seeking an accounting.

Background

Trust asset management involves approximately 11 million acres held in trust or in restricted status for individual Indians and nearly 45 million acres held in trust for the Tribes. This land produces income from more than 100,000 active leases for about 350,000 individual Indian owners and 315 Tribal owners. Over $862 million is typically collected annually from leases, permits, sales, and interest income. About $226 million is distributed among the IIM accounts; $536 million is distributed among the tribal accounts.

One of the most challenging aspects of trust management is the management of the very small ownership interests, which result in many very small IIM accounts and land ownership interests.

In 1887, Congress passed the General Allotment Act, which resulted in the allotment of some tribal lands to individual members of tribes in 80 and 160-acre parcels. The expectation was that these allotments would be held in trust for their Indian owners for no more than 25 years, after which the Indian owner would own the land in fee. However, Congress ended up extending the trust period indefinitely once it became apparent that the goal of making the individual Indians into farmers failed.

Interests in these allotted lands started to "fractionate" as interests divided among the heirs of the original allottees, expanding exponentially with each new generation. There are now over 1.4 million fractional interests of 2% or less involving 58,000 tracts of individually owned trust and restricted lands. We have to provide a range of trust services – title records, lease management, accounting, probate – to the growing number of land owners. We have single pieces of property with ownership interests that are less than .000002 of the whole interest. The Department is required to account for each owner's interest, regardless of size. Even though these interests today might generate less than one cent in revenue each year, each is managed, without the assessment of any management fees, and the revenues generated are treated with the same diligence that applies to all IIM accounts. In contrast, in a commercial setting, these small interests and accounts would have been eliminated because of the assessment of routine management fees against the account. Management costs of the IIM accounts, as well as tribal trust accounts, are covered through the general appropriations process and borne by the taxpayers as a whole, rather than the accountholders.

Past Congressional Actions

Over the past 100 years, Congress has reviewed the issue of Indian trust management many times. In 1934, the Commissioner of Indian Affairs cautioned Congress that fractionated interests in individual Indian trust lands cost large sums of money to administer, and left Indian heirs unable to control their own land. "Such has been the record, and such it will be unless the government, in impatience or despair, shall summarily retreat from a hopeless situation,

abandoning the victims of its allotment system. The alternative will be to apply a constructive remedy as proposed by the present Bill." The bill ultimately led to the Act of June 18, 1934, the Indian Reorganization Act, which attempted to resolve the problems related to fractionation, but as we now know it did not.

In 1984, a Price Waterhouse report laid out a list of procedures needed to make management of these funds consistent with commercial trust practices. One of these recommendations was considering a shift of the Bureau of Indian Affairs (BIA) disbursement activities to a commercial bank. This recommendation set in motion a political debate on whether to take such an action. Congress then stepped in and required BIA to reconcile and audit all Indian trust accounts prior to any transfer of responsibility to a third party. BIA contracted with Arthur Andersen to prepare a report on what would be required in an audit of all trust funds managed by BIA in 1988. Arthur Andersen's report stated it could audit the trust funds in general, but it could not provide verification of each individual transaction.

In 1992, the House Committee on Government Operations filed a report entitled "'Misplaced Trust: the Bureau of Indian Affairs' Management of the Indian Trust Fund.'" That report listed the many weaknesses in the BIA management of Indian trust funds. It pointed out that the General Accounting Office's audits of 1928, 1952, and 1955, as well as 30 Inspector General reports since 1982 found fault with management of the system. The report notes Arthur Andersen 1988 and 1989 financial audits stated that "some of these weaknesses are as pervasive and fundamental as to render the accounting systems unreliable."

Arthur Andersen stated it might cost as much as $281 million to $390 million in 1992 dollars to audit the IIM accounts at the then 93 BIA agency offices. The 1992 Government Operations Committee report describes the Committee's reaction:

> "Obviously, it makes little sense to spend so much when there was only $440 million deposited in the IIM trust fund for account holders as of September 30, 1991. Given that cost and time have become formidable obstacles to completing

> a full and accurate accounting of the Indian trust fund, it may be necessary to review a range of sampling techniques and other alternatives before proceeding with a full accounting of all 300,000 accounts in the Indian trust fund. However, it remains imperative that as complete an audit and reconciliation as practicable must be undertaken."

The Committee report then moves on to the issue of fractionated heirships. The report notes that in 1955 a GAO audit recommended a number of solutions including eliminating BIA involvement in income distribution by requiring lessees to make payments directly to Indian lessors, allowing BIA to transfer maintenance of IIM accounts to commercial banks, or imposing a fee for BIA services to IIM accountholders. The report states the Committee's concern that BIA is spending a great deal of taxpayers' money administering and maintaining tens of thousands of minuscule ownership interests and maintaining thousands of IIM trust fund accounts with little or no activity, and with balances of less than $50.

On April 22, 1993, the late Congressman Synar introduced H.R. 1846. On May 7, 1993, Senator Inouye introduced an identical version, S. 925. It was in these bills that Congress first included a statutory responsibility to account for Indian trust funds. Section 501 was entitled "Responsibility of Secretary to Account for the Daily and Annual Balances of Indian Trust Funds." Senator Inouye's bill included an effective date provision that stated:

> "This section shall take effect October 1, 1993, but shall only apply with respect to earnings and losses occurring on or after October 1, 1993, on funds held in trust by the United States for the benefit of an Indian tribe or an individual Indian."

The Senate Committee on Indian Affairs held a hearing on S. 925 on June 22, 1993. Eloise Cobell in her capacity as Chairman of the Intertribal Monitoring Association, testified in strong support of the bill. The only amendment Ms. Cobell recommended in her oral statement, as well as her written statement, was to allow Tribes to transfer money back into a BIA-managed trust fund at any time if they so wanted. Ms. Cobell mentioned "[W]e have amendments, and we are

willing to work with the committee on these particular amendments. I am not going to devote any more of my time in my oral presentation to the provisions of the bill because we feel it is an excellent bill."

The Navajo Nation and the Red Lake Band of Chippewa Indians were the only tribes to submit testimony. They supported the bill, and did not object to the prospective application of the accounting section in their testimony.

The Director of Planning and Reporting of the General Accounting Office also testified. He was asked if he agreed with the Arthur Andersen estimates I mentioned above. He stated the following:

> "In my statement I talked about how there are a lot of these accounts that maybe you don't want to audit, that maybe what you want to do is come to some agreement with the individual account holder as to what the amount would be, and make a settlement on it. We had a report issued last year that suggested that, primarily because there are an awful lot of these accounts that have very small amounts in terms of the transactions that flow in and out of them. Just to give you some gross figures, 95 percent of the transactions are under $500. One of our reports said there that about 80 percent of the transactions are under $50. So in cases where you have the small ones, maybe there's a way in which we can reach agreement with the account holders and the Department of the Interior on how much we will settle for on these accounts rather than trying to go back through many many years, reconstructing land records and trying to find all of the supporting material. It may not be worth it." [page 29 of S. Hrg 103-225]

On July 26, 1994, Congressman Richardson introduced H.R. 4833 which ultimately became the American Indian Trust Fund Management Reform Act of 1994. The House report on H.R. 4833 notes that H.R. 1846 was the predecessor bill to H.R. 4833. There was one legislative hearing

held on H.R. 4833 by this Committee on August 11, 1994. There is no printed record of that hearing. There was no Senate hearing.

H.R. 1846 and H.R. 4833 were similar in many places. H.R. 4833 did not however include the effective date provision explicitly making the accounting requirement prospective only. While the report notes in a number of places why changes were made to the H.R. 1846 provisions, it is silent with respect to this omission.

It may surprise Members of this Committee to note that there is no mention of the costs associated with either complying with the Act, or completing the accounting in the Committee's report. Moreover, no analysis from the Congressional Budget Office was included in the Committee's report. The Department sent a letter on H.R. 1846 and an amended S. 925 that was placed in the Committee report on H.R. 4833. Its only mention of cost is the following sentence: "We wish to note that, given current fiscal restraints, the funding for implementation of this legislation may necessarily have to be derived from reallocation of funds from other BIA or Department programs." Given the lack of cost analysis contained in the legislative history, one could assume that Congress in enacting the 1994 Reform Act had no idea it may have required a multi-million or billion dollar accounting.

Interior's Historical Accounting Plan

Mr. Chairman, you specifically requested my testimony address the Department's plans for conducting an historical accounting of IIM accounts. The Cobell court ruled that the 1994 Reform Act requires the Department to provide IIM trust beneficiaries an accounting for all funds held in trust by the United States that are deposited or invested pursuant to the Act of June 24, 1938, regardless of when they were deposited. The D.C. Circuit Court noted that the statute does not make clear how to conduct such an accounting, and it is properly left up to the Department what accounting methods to use.

In the Department's FY 2001 Appropriations Act, Congress directed the Department to submit a comprehensive report to the Appropriations Committees as to the costs and benefits of a comprehensive historical accounting. That report was submitted on July 2, 2002. It looked at the costs associated with doing a transaction-by-transaction accounting and transaction-by-transaction verification for the IIM account holders. The estimate for such an accounting and verification was $2.4 billion, and that would take ten years to complete. The feedback received from various Congressional members and staff suggested little support for this plan given its cost, the length of time required, and the fact that such a huge sum of money would go to accountants and lawyers, not Indian people.

In September 2002, Judge Lamberth, who presides over the Cobell litigation, ordered the Department to submit to the court by January 6, 2003 a proposed historical accounting plan. He also allowed the plaintiffs in the case to submit their own proposed accounting plan.

Our proposal is to compile a transaction-by-transaction accounting with transaction verification based in part on various statistical sampling verification methods. But all IIM account holders will receive transaction-by-transaction account histories. By using these different methods, we believe IIM account holders will receive their accountings much sooner. Interior plans to separate the historical accounting into three distinct types of IIM accounts.

- Judgment and Per Capita accounts
- Land-based IIM accounts
- Special Deposit Accounts

For the approximately 42,200 judgment and per capita accounts, we plan to reconcile 100 percent of the transactions in each account and verify all transactions.

For the approximately 200,000 land-based IIM accounts, we intend to reconcile 100% of transactions and verify those transactions using both transaction-by-transaction and statistical methods. We plan to verify all transactions that are equal to or greater than $5,000. For

transactions that are less than $5,000, we will verify transactions using statistically valid sampling technologies. The statistically valid sampling methodology is expected to result in our being able to determine the accuracy rate of the historical accounting with 99 percent confidence.

For the 21,500 Special Deposit accounts, which are in effect holding accounts, we intend to distribute the funds to the proper owners and then close those accounts.

The historical accounting described in our Plan covers all IIM accounts open as of October 25, 1994, the date of the Act, or opened thereafter. The historical accounting period ends on December 31, 2000; transactions occurring thereafter are addressed in current accounting activities. Interior engaged 14 consulting firms to assist in the development of this plan, including five accounting firms (four of which are among the five largest firms in the United States), the largest commercial trust operator in the United States, two historian firms that have specialized in Indian issues for many years, and firms to assist in statistical matters, trust legal matters and other areas pertaining to historical accounting.

Under our plan, at the end of the historical accounting process we propose, we intend to be in the position to provide each IIM account holder with a Historical Statement of Account. This statement will provide information on how much money was credited to each account, and the disbursements made from the account. It will also provide an assessment of the accuracy of the account transaction history. In addition, we intend to be in a position to provide land-based IIM account holders with information regarding their land assets. This information will be prepared by the BIA Land Title and Records Offices as a separate package to be provided to IIM account holders.

The cost of our historical accounting plan is approximately $335 million over five years. The President's proposed FY 2004 budget for the Department of the Interior includes money for this accounting. Our $9.8 billion budget request is the largest in the Department's history, and represents a net increase of $344.1 million over the FY 2003 enacted appropriations. Nearly one half of the proposed increases will fund trust reform improvements. Included within the total is

$100 million to support the Department's plan to conduct an historical accounting for IIM accounts and $30 million to account for funds in tribal accounts.

The court has not yet ruled as to whether it believes our accounting plan is adequate. Plaintiffs have argued vehemently that it is not. Plaintiffs argue that the 1994 Reform Act requires a full verification for all transactions since the 1880s, and that such an accounting is "impossible" because the historical records are not complete – something Congress was obviously aware of when it passed the 1994 Reform Act. In the trial, plaintiffs have offered an alternative methodology, which uses various estimating techniques to approximate the amount they contend should have come into the IIM accounts since the 1880s. Their plan will, admittedly, not provide an accounting to even one IIM beneficiary, but will – like a damages model – come up with an amount of money to which plaintiffs as a class claim they are entitled. Press reports state that plaintiffs believe they are owed at least $137 billion.

Indian country argues that the money for this accounting or any judicial or congressional settlement should all be new money and not come from Indian program money. In reality, appropriators are faced with funding this accounting out of the Interior allocation, and have openly stated that funding a multi-million, potentially multi-billion, dollar accounting will mean a reduction in money for other Indian program priorities.

Recent Reconciliations and Accountings

The Committee also asked that I address the results of accountings Interior has done so far. In the 1990s, the BIA contracted with Arthur Andersen LLP to conduct a reconciliation of Tribal trust funds from 1972 to 1992 in accordance with certain agreed upon accounting procedures. More than one million records provided by BIA were examined in the reconciliation which concluded in 1996, but was augmented with additional work completed through 2001. Of the 251,432 transactions examined, 219,599 transactions worth $15.8 billion or 89 percent of total receipts and disbursements for 1972-1992 of the funds were reconciled. The error rate for the reconciled transactions was far less than one percent. For the remaining 11 percent, $1.9 billion

in transactions shown posted in the accounts, sufficient documentation was not provided to reconcile the transactions.

As part of the Cobell litigation, Interior collected over 165,000 documents for the historical accounting of IIM trust fund activity through December 31, 2000 for four of the named plaintiffs and 24 of their agreed-upon predecessors. Of these documents, about 21,000 documents were used to support the transactional histories, which dated back as far as 1914, and which included a total of about 13,000 transactions. The accounting contractor, Ernst and Young, found 86 percent of the transactions and 93 percent of the funds moving through the accounts were supported by the documentation located. The cost of this accounting was over $20 million

Pursuant to the requirement in Section 131 of the FY 2003 Appropriations Act, on March 25, 2003, the Department of the Interior provided Congress with a summary of the expert opinion of Mr. Joseph Rosenbaum, a partner in Ernst and Young, LLP. "on the historical accounting for the five named plaintiffs in Cobell v. Norton." This report describes the process the contractor went through and also contains a summary of his opinions. These conclusions included:

- The historical IIM ledgers were sufficient to allow DOI to create virtual ledgers that are substantially complete for the selected accounts.
- The documents gathered by DOI support substantially all of the dollar value of the transactions in the analyzed accounts.
- The documents gathered by the Department of the Interior do not reveal any collection transactions not included in the selected accounts, with a single exception in the amount of $60.94 that was paid to another account holder.
- An analysis of relevant contracted payments, evidenced primarily by lease agreements, shows that substantially all expected collection amounts were properly recorded and reflected in the IIM accounts.
- There is no indication that the accounts are not substantially accurate, nor that the transactions are not substantially supported by contemporaneous documentation.

The Department's Office of Historical Trust Accounting has also performed historical accountings for 16,821 IIM judgment accounts established for minors or restricted account holders. These accounts represent $48,496,799. No errors were found regarding the collections and postings to these accounts. Only a few of these accountings have been provided to the beneficiaries or their legal representatives because the district court in Cobell found that sending them to plaintiffs is improper and has not acted on our motion for permission to send them to the appropriate person.

Interior Trust Reform Efforts

The Department has developed a comprehensive plan for the management of Indian trust funds. The Secretary established both the Office of Historical Trust Accounting and the Office of Indian Trust Transition. The Office of Indian Trust Transition engaged in a meticulous process to develop an accurate, current state model to document trust business processes. The Department, after the most extensive consultation ever held with Indian country, is well down the road of putting in place a reorganization of trust functions in response to widespread criticism of the former trust management structure.

We have not been sitting on our hands at Interior. Trust Reform has been the number one priority for the senior management of the Department during this Administration.

Settlement of the Ongoing Trust Fund Litigation

Recently Senators Campbell and Inouye sent letters to the parties urging a fair and equitable settlement of the Cobell case. We welcome such a settlement. However, the parties are far apart on the issue of what is fair and equitable. Although I did not work at the Department of the Interior during the previous administration, I understand that the Federal Government has made a number of efforts to engage in settlement talks in Cobell with no success. From June 1996 to July 1997, the Department engaged in negotiations with the Cobell plaintiffs on the issue of

development of an acceptable accounting mechanism. The Department tried again in early 1999 before the July 1999 trial and again right before the trial. Those negotiations failed.

After the July 1999 trial, Judge Lamberth asked the parties to work toward a settlement. The parties were unable to agree on an acceptable mediator, so the Judge appointed Stephen Saltzburg, a professor at George Washington University who has served as a special master in two class action cases in the District of Columbia District Court, and serves as a mediator for the U.S. Court of Appeals for the District of Columbia. The mediation ended with no resolution in November 1999.

Near the end of the previous Administration, then Special Trustee Tom Slonaker talked directly to plaintiffs' attorneys. While agreement was reached on a number of issues, other overarching issues went unresolved, and ultimately this effort failed. At the beginning of this Administration, the Department once again tried to enter into settlement talks in Cobell. The discussions became mired in a variety of issues surrounding the conduct of the negotiations. No resolution was reached on those issues.

Last year, the House Appropriations Subcommittee on Interior included language in the Interior FY 2003 appropriations bill that would have limited the historical accounting to the period from 1985 forward. That language was removed by amendment on the House floor. The debate on that amendment, which was more extensive than the debate on the actual 1994 Reform Act, centered on the point that this matter should be addressed by the authorizers, not the appropriators. The appropriators urged the authorizing committees to step in and come up with a legislative settlement. Members of this Committee from both sides of the aisle spoke to the need for hearings and action on this issue.

Congressman Dicks explained on the floor that it was the intent of the appropriators to try to resolve this issue so that the vast amounts of money involved could go to Indian programs instead of accountants. More precisely he said:

> "This thing is broken; and somehow all the people that are here today expressing their wonderful concern, there is going to be a tomorrow, and we will see if anybody really wants to stand up with the majority side obviously having to be involved and work on this. This has to be done. We have got to get something done here." And then later in the debate, "What we are trying to do is get them money in a reasonable period of time without decimating the Interior appropriations bill every single year. I want that $143 million to be used for other programs that will help Native Americans. I do not want to waste $1 billion in going out and trying to do accounting that is not going to give us the information pre-1985."

He also invited the authorizers to develop a settlement compromise -- "[N]ow if these gentlemen who have come to the floor today to help us, if their committees would get busy and develop a compromise and do a settlement on this issue, it could be coming from Congress. Somehow we have to resolve this, because we do not have enough money."

Members of this Committee committed to engage in such a process. Mr. Young from Alaska said:

> "I think it is the responsibility of Congress. Because if we look at the trust, if we look at what is said about American Indians, the trust belongs to the Congress. We have been neglectful in not pursuing and making sure that this issue has been solved in previous years. So I am asking us to sit down, as the gentleman mentioned before, and say, let us solve this problem . . ."

Mr. Pallone stated "[T]here should be a hearing, or perhaps a series of hearings, that are being held in the Committee on Resources, in the authorizing committee, not here on the floor, when we are dealing with this larger bill."

Mr. Hayworth was one of the sponsors of the amendment that deleted the accounting limitation from the bill. He spoke the following on the floor:

> "I think it offers another compelling reason why we thank the appropriators, given the magnitude of the task, but reassert the role of the authorizing committee, and recognize the good but challenging work that has been done thus far to try and deal with this problem."

Mr. Tom Udall echoed the views of the opponents of the appropriations provision by stating:

> "This Congress should address these issues in a bipartisan way, and that is what we are trying to do on the Committee on Resources . . . The gentleman from Washington raises, I think, a very good point when he says we need to move this case to settlement. I do not think there is any doubt that we need to move this case to settlement. We should be working on the settlement issue, and we should let all of the attorneys know we want to move towards settlement. The key issue here, the committee that should be working on this is the Committee on Resources . . ."

Mr. Rahall said "[M]r. Chairman, I perfectly agree with the statements that have just been said. We want to settle this. We want a settlement."

Nearly a year has passed, we are now facing another appropriations cycle, and there has been no movement toward a settlement of the Cobell case. There were no hearings held by this Committee on this issue after that floor debate until today. Since that time, the court has issued a ruling and required plans for a historical accounting to be submitted; we have developed a plan for our accounting and are moving forward with our trust reform plan; and the trial on our accounting plan as well as the plan to bring ourselves into compliance with our fiduciary obligations is wrapping up.

The House Appropriations Committee provided $55 million less for a historical accounting than we have requested in our budget. The House appropriations bill also directs us, when doing the accounting, to use statistical sampling for all transactions. However, I understand the language allows the Secretary to provide funds to accounts from the claims and judgment fund once the statistical accounting is completed. Additionally, it prohibits any downward adjustments of accounts. Thus, if the sampling indicated that account holders have received more than their fair share of moneys, we could not recover those moneys. Finally, the language authorizes the Secretary to conduct a voluntary program to buyout accounting claims of IIM account holders.

On April 20 2003, Eloise Cobell sent a letter to all class members in the Cobell case. Ms. Cobell urged them not to support any effort by Congress to authorize a voluntary settlement for their accounting claims. Ms. Cobell told them, many of whom own a minute share in one parcel of land and have accounts with throughputs under $15 annually, that the plaintiffs are about to receive "a huge many billion dollar judgment in favor of us — all Indian trust beneficiaries." The letter also said if the voluntary program is enacted, "tens of thousands of Indian people will again be cheated by the United States government." As I mentioned above, in the press, the plaintiffs and their representatives have been quoted as saying they expect to receive over $130 billion. They say this even though they have conceded in court that the district court has no jurisdiction to enter such a judgment.

As a result, expectations are high in Indian country. Given what we have seen as a result of the reconciliations and accountings done so far, we do not believe we can justify to the American taxpayers a settlement offer in the billions of dollars.

On June 13, 2003, Senators Campbell and Inouye sent a letter to Tribal leaders asking for their help in tackling 3 major tasks that would improve the management of Indian trust:

- To stop the continuing fractionation of Indian lands and focus on the core problems of Indian probate by swiftly enacting legal reforms to the Indian probate statute.

- To begin an intense effort to reconsolidate the Indian land base by buying small parcels of fractionated land and returning them to tribal ownership.

- To explore "creative, equitable, and expedient ways to settle the Cobell v. Norton lawsuit."

We would like to work with you and the Senate Committee on Indian Affairs on all three of these tasks. Addressing the rapidly increasing fractionation on Indian land is critical to improving management of trust assets. Properly done probate reform could be essential. When land is leased, BIA has the responsibility to deposit receipts from the land into the appropriate IIM account. This involves probating estates, finding heirs, and holding money for unknown heirs. These tasks are all funded through the Department's Indian budget.

The purchase of fractional interests increases the likelihood of more productive economic use of the land, reduces recordkeeping and large numbers of small dollar financial transactions, and decreases the number of interests subject to probate. The BIA has conducted a pilot fractionated interest purchase program in the Midwest Region since 1999. Through FY 2002, the program has acquired 47,188 ownership interests in over 25,000 acres.

Using the Office of Management and Budget's Program Assessment Rating Tool (PART), we have learned there is a high level of interest and voluntary participation by willing sellers and large numbers of owners are willing to sell fractionated ownership interests. The President's FY 2004 budget request proposes $21.0 million for Indian land consolidation, an increase of $13.0 million for a nationally coordinated and targeted purchase program. Interior believes that a national purchase program can be administered in a very cost-effective manner to target acquisitions that reduce future costs in trust management functions, such as managing land title records, administering land leases, distributing lease payments to IIM accounts, and processing probate actions. We are developing a strategic plan and necessary infrastructure to support a major expansion of this program in 2004. Where appropriate and to the extent feasible, the

Department plans to enter into agreements with Tribes or tribal or private entities to carry out aspects of the land acquisition program.

With respect to the third task, the settlement of the Cobell lawsuit, I can honestly say I don't think we can get there without the involvement of Congress. This does not mean we will not continue to try. Contrary to Ms. Cobell's letter to the class members, this case is not on the verge of being over. Even if the district court were to adopt the plaintiffs' accounting plan -- which the Administration argues is fundamentally improper given that this is a lawsuit ostensibly brought under the Administrative Procedure Act -- there are more steps before the district court, and before other tribunals, that will be required before the class members receive any money. The district court has said that it does not have the jurisdiction to compel payment of money damages. It has made clear that the reason it, rather than the Court of Federal Claims, can hear the case is that the plaintiffs have stated many times that they are not seeking money damages. Without a settlement, considerable hurdles remain before anyone other than the lawyers or accountants can see any money from this suit.

That concludes my prepared statement. Thank you again for giving me an opportunity to testify. I would be happy to answer any questions you might have.