Affiliated Tribes of Northwest Indians

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TESTIMONY

OF

MIKE MARCHAND, 1ST VICE-PRESIDENT

AFFILIATED TRIBES OF NORTHWEST INDIANS

BEFORE THE

SENATE COMMITTEE ON INDIAN AFFAIRS

AND THE

HOUSE COMMITTEE ON RESOURCES

JOINT OVERSIGHT HEARING ON THE SETTLEMENT OF

COBELL V. NORTON

Chairman McCain, Chairman Pombo, Senator Dorgan, Representative Rahall and members of the Senate Committee on Indian Affairs and the House Committee on Resources, my name is Mike Marchand, I am the 1st Vice-President of the Affiliated Tribes of Northwest Indians (ATNI) and a member of the Colville Tribal Council. On behalf of ATNI, I thank you for your leadership on the trust reform issue and this hearing today. We are grateful for the work that has gone into S. 1439 and H.R. 4322, the Indian Trust Reform Act of 2005. ATNI supports enactment of this legislation and we are hopeful that the Congress will act on it this year.

I am delighted to be here today with Mr. Keller George, the President of the United South and Eastern Tribes (USET). USET has been in the forefront of tribal efforts to bring about meaningful reform of the management and administration of the federal trust responsibility. For the last several months, ATNI and USET have been working together to develop recommendations for amendments to S. 1439 and H.R. 4322. We hope to be able to forward to the Committees our joint proposals for amendments in the next few weeks. We look forward to working with the Committees to help ensure enactment of legislation this year.

We are very pleased that the Committees are examining ways to place a value on the claims in the Cobell v. Norton case. Even though the case seeks an accounting for the IIM funds and the Federal District Court is powerless to award damages to the plaintiffs, everyone who is familiar with the case has known for years that funds will be required to settle the case. This understanding is reflected in Title I of S. 1439 and H.R. 4322 and by this hearing today. The plaintiffs have estimated the value of the claim to be somewhere between $27.8 billion and $170 billion. The Departments of Interior, Justice and Treasury have not been willing to openly state an estimate of value for the claims.

The Department of Interior has indicated that it might cost as much as $10 to $12 billion to do an itemized accounting for the IIM funds. That estimate led ATNI, among others, to suggest that an appropriate value for the claim might be in the range of $14 billion on the premise that it would be far better to provide the funds that would otherwise be paid to accounting firms to the account holders themselves. And to further complicate the search for a solution, the November 15 decision in the U.S. Court of Appeals for the D.C. Circuit held that the Department of the Interior can use statistical -

sampling to determine what is owed, which has led some to estimate the cost for the accounting problem to be around $350 million.

We do not know what the correct method is for valuing the claims in the Cobell case, nor do we know the value of those claims. What we do know is to date:

a) there has been no success in getting the parties together to negotiate a compromise settlement figure,

b) that if the present course is left unchanged it is not at all likely that the IIM account holders will receive any compensation during the lifetime of many, especially those who need it most, and

c) we will continue to see an erosion of the gains that tribal governments have made under the policies of self-determination and self-governance.

We understand that it will be necessary for the Committees to place a value on the settlement of the plaintiff's claims in order to move S. 1439 and H.R. 4322 through the legislative process. We do not know which method would be best in the Cobell case, but we will work with the Committees to assess the options. We trust the Committees to be fair in their evaluation of those options.

We note with interest that the Congress has appropriated over $3 billion since 2001 to provide for the defense of the Cobell case and the reform and restructuring of the administration of the trust funds and assets by the Department of the Interior. Most of this money has been provided to the Office of Special Trustee - - an office that was created in the Trust Reform Act of 1994 and was intended to be temporary. That is a lot -

of money to spend in a short period of time, particularly when it is provided in the absence of a defined plan and for poorly understood purposes. It is clear that the Tribes have not supported or requested these appropriations because in most instances they involve the reallocation of funds that are desperately needed for education, law enforcement, and for fighting epidemics of alcohol and substance abuse. It has been more than a little difficult to get the Administration and the Congress to focus on these areas in light of the significant commitment of appropriations to the Department's response to the Cobell case.

We are also seeing the very nature of the trust responsibility redefined by the Department in response to the Cobell case. In some instances the changes that have been made or that are underway run directly counter to the Congressional policies of self-determination and self-governance and undermine the huge investment of fiscal resources that the Congress has made in those policies since 1975. In effect the Cobell litigation has come to hold the Tribes and the Congress hostage to the Department's assessment of what it must do in order to comply with the real or anticipated orders of the Federal District Court. We are weary of policies that are developed in the context of advancing an adversarial position in the Cobell litigation and are concerned of the implications if this is allowed to continue any longer.

There has been some improvement in the day-to-day administration of trust funds and trust assets by the Department. Those changes are welcome, even if the cost benefit ratio is not. At the same time, we are mindful of the fact that those who were supposed to be served by the Cobell litigation have received little. IIM account holders who have been told that they are owed tens of billions, or hundreds of billions of dollars are no -

closer to being made whole today than they were the day before the Cobell case was filed ten years ago. Scores of account holders have died since the case was filed. Without a settlement the litigation is likely to go on for another decade or more. And, even if the plaintiffs prevail, the Federal District Court cannot make the account holders whole.

Only the Congress or the U.S. Court of Federal Claims can provide financial relief to the account holders. Only the Congress can provide the direction for the real reform that is needed to ensure the proper management of the trust funds and assets. And, only the Congress can ensure that the Tribal governments have the opportunity to assume the day-to-day responsibility for the protection and enhancement of the corpus of the trust.

It has been ten months since this legislation was first introduced and this is its third hearing. To date the Administration and the Department have had ample opportunity to lead or be an active participant but have done next to nothing to work with the plaintiff's, Tribes or the Committees to find a workable solution. We stand prepared to work with the Committees to arrive at a value for the Cobell claims and to work for the prompt enactment of S. 1439 and H.R. 4322. We ask that the Committees schedule these bills for markup in the next thirty days.

Thank you again for the opportunity to testify today. I will be pleased to answer any questions the Committees may have.