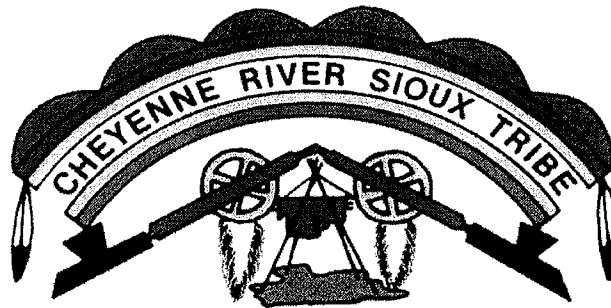


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**Statement of Harold Frazier
Chairman, Cheyenne River Sioux Tribe
Before the Senate Committee on Indian Affairs
Oversight Hearing on the Indian Trust Reform Act of 2005 (S. 1439)**

July 26, 2005

As Chairman of the Cheyenne River Sioux Tribe, I am pleased to present this testimony on S. 1439, the Indian Trust Reform Act of 2005. I commend Senators McCain and Dorgan for introducing such ground-breaking legislation that would provide fundamental change in the federal government's management of Indian trust resources and would provide a method for settlement of *Cobell v. Norton*, a case that has embroiled most of Indian Country for close to ten years. I would like to say at the outset that, because of the short time between the introduction of the bill and this hearing, we have not yet had the opportunity to complete our study of its provisions and it may very well be that we will have additional points to be made after further study of the bill.

In March of this year, I testified as to the effects of the *Cobell* lawsuit, specifically on the Department of Interior's reorganization of the Bureau of Indian Affairs (BIA) and the Office of the Special Trustee (OST), for the Cheyenne River Sioux Tribe at the Great Plains Region. My testimony reflected the nearly universal view that settlement of *Cobell* is necessary and prudent, as the case has been a fiscal drain on vital resources that would otherwise be dedicated to tribal governments for law enforcement, healthcare and other social programs. However, I noted that, like many tribes, the Cheyenne River Sioux Tribe is a tribal account holder and has many members who are Individual Indian Money account holders as well. Consequently, my testimony stressed that any settlement of the watershed case should balance the interests of both tribal and individual account holder interests and recognize that such a balance is an essential element to a successful out-of-court resolution. I also stressed that, in addition to settlement of the *Cobell* case, there also needed to be fundamental reform of the BIA's management of Indian trust resources. Finally, I stressed that any reform of trust management needs to reflect the fact that "one size does not fit all," and that the needs of the Great Plains Region were far different from the needs of other Regions. To that end, we proposed a Great Plains Demonstration project that would allow the Tribes of that region a special role in the management of the trust resources of their reservations.

The blue represents the thunder clouds above the world where live the thunder birds who control the four winds. The rainbow is for the Cheyenne River Sioux people who are keepers of the Most Sacred Calf Pipe, a gift from the White Buffalo Calf Maiden. The eagle feathers at the edges of the rim of the world represent the spotted eagle who is the protector of all Lakota. The two pipes fused together are for unity. One pipe is for the Lakota, the other for all the other Indian Nations. The yellow hoops represent the Sacred Hoop, which shall not be broken. The Sacred Calf Pipe Bundle in red represents Wakan Tanka - The Great Mystery. All the colors of the Lakota are visible. The red, yellow, black and white represent the four major races. The blue is for heaven and the green for Mother Earth

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Today, it is clear that Senators McCain and Dorgan took many tribal views into consideration in drafting S. 1439, particularly in the provisions dealing with the Indian trust resource management demonstration project, creating a new office of the Under Secretary for Indian Affairs, and restructuring the BIA and the OST. On behalf of the Cheyenne River Sioux Tribe, I would like to give my strong general endorsement of these provisions and respectfully request that such provisions be retained in the final version of the bill. Once we have studied the bill more closely, I feel certain that there will be changes that we will request that you consider. For example, while the bill addresses settlement of claims for an accounting of IIM accounts held by individuals, it is unclear whether tribes, as IIM account holders, are considered claimants for purposes of settlement. We address these issues in more detail below.

In February 2004, the Great Plains Region-Tribes joined efforts in presenting an alternative plan to Reorganization in the Great Plains Region to Congress. The alternative plan focused on the unique land-based needs of the Great Plains Region-Tribes for reform at the local level, such as a need for range management functions such as soil and range conservation. Since that time, significant progress has been made toward effectuating a different course of reform for land management functions in the Great Plains Region. Accordingly, we applaud Title II of the bill, which would effectively codify direct service, self-determination and self-governance tribes' ability to undertake reforms that are specifically targeted to their regions and trust assets.

We also endorse the Title II language that addresses liability issues implicated in the Project plans, requiring that such plans will not diminish, increase, create or otherwise affect the liability of the United States or a participating Indian tribe for any loss resulting from the management of assets under the plan, and that the operation of such plans under the Project in no way diminishes or impacts the trust responsibility of the United States to Indian tribes and individual Indians. As a direct service tribe, we strongly believe that our treaties guarantee that the United States will provide services at the local level to our people and reimburse the tribes for any services lost, and that any failure to do so is a breach of trust. The trust obligation is the cornerstone of our relationship with the federal Government, and any provision rolling back this duty would be unacceptable.

Moreover, we fully support the abolishment of the OST by December 31, 2008 and transitioning that agency's responsibilities back to the BIA during the interim. In previous testimony, we questioned the expanded role of the OST from that of an agency which performs simple oversight functions, as originally envisioned in the American Indian Trust Fund Management Reform Act of 1994, to performing operational duties of trust management. This expansion raised questions about the effectiveness of the OST's oversight role and the need for concrete independent review of its performance. It is commendable that Senators McCain and Dorgan recognized that the agency has gone well beyond its intended purpose and that the proper bureau within Interior for managing trust resources and providing trust services at the local level is the BIA. Our only concern with this provision is that the date of abolishment of this office is postponed until 2008. We respectfully request that the Committee consider an earlier date. In our view, this Office should be phased out no later than December 31, 2006.

Finally, we are in full support the provision creating an Under Secretary for Indian Affairs, who reports direct to the Secretary of the Interior. It is important that the new Under Secretary is authorized to have overall management and oversight authority on matters of the Department relating to trust asset and trust fund management and reform, including those duties transferred from the Special Trustee. However, we hope that the Under Secretary's enumerated management and

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oversight duties will include oversight responsibilities for Indian trust functions and treaty-based rights throughout the Department of the Interior, including all Bureaus (not just BIA, BLM and MMS). It is imperative that the Under Secretary be apprised of all trust-related issues across all Bureaus, since he/she will ultimately be answerable to failure to manage and administer Indian trust resources in accordance with federal law.

The Cheyenne River Sioux Tribe acknowledges that settlement of *Cobell v. Norton* is in the best interest of tribal and individual IIM accountholders. However, any settlement must recognize the rights of both types of beneficiaries and balance their interests so that a fair and equitable resolution can be accomplished. S. 1439 provides for settlement of claims for an accounting of IIM accounts held by individuals, however, it is unclear from the bill language whether tribes, as IIM account holders, are considered claimants for purposes of settlement. Section 110(d) appears to preclude settlement of tribal IIM claims "seeking an accounting, money damages or any other relief relating to a tribal trust account or trust asset or resource," but it is unclear whether a tribal trust account includes tribal IIM accounts. We suggest that this be clarified to avoid any misinterpretation that tribes should not be considered claimants for purposes of settlement in this bill.

To conclude, I would like to thank the Chairman, Vice Chairman and members of Senate Committee on Indian Affairs for holding this hearing today. The many voices of Indian Country should be heard regarding the impact of this landmark legislation on the future of not only the *Cobell* lawsuit, but also the structure of the federal agencies that implement and manage the federal trust responsibility.

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