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Statement of the Honorable John Berrey, Chairman

Quapaw Tribe of Oklahoma (O-Gah-Pah)

To the Secretarial Commission on Indian Trust Administration and Reform

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Introduction

Good morning Chairwoman Sharp and members of the Commission. It is a privilege for me to participate in the Commission's meeting to discuss a broad range of trust-related challenges Indian Country faces --- from the precise contours of the trust responsibility, to the everyday challenges related to probate, title, and land acquisition.

I am also very pleased to be joined by John Dossett, general counsel of the National Congress of American Indians, and Eric Eberhard, former Staff Director to the Senate Committee on Indian Affairs and currently distinguished Professor of Indian Law at the University of Washington. These are thoughtful men who have spent decades working with Indian tribes on trust and other important matters.

The Evolution of the Quapaw Tribe

I have been the Chairman of the Quapaw Tribe for 11 years, and have seen a great evolution in the Tribe's government and economy. The Tribe participates in Self-Governance and has had many disputes with the Department of the Interior over Self-Governance implementation, including several trips to court to get our tribal shares.

When I became Chairman, the Tribe employed fewer than 80 people. After a decade of land consolidation, steady governance, and the exercise of our rights under the Indian Gaming Regulatory Act, the Tribe now has 2,000 employees. By any standard, the tribe has come a long way in a short amount of time.

One of our remaining challenges is Tar Creek, the largest Superfund site in the United States. The Tribe continues to participate as contractor in remediation activities in partnership with the U.S. Environmental Protection Agency.

Tar Creek is emblematic of the Tribe's evolution, and after many years in the role of passive victim, the Tribe now plays an active and vigorous role in cleanup efforts at that site, and also in most economic and political activities in northeastern Oklahoma and the region.

Previous Trust Reform Efforts and the “As-Is / To-Be” Report

I was enlisted to be part of the “As-Is / To-Be” trust reform efforts of the Gale Norton administration in the early 2000s. I am glad to see some of the very talented Federal officials who participated in that effort are still with the Department of the Interior and continue to do trust related work.

At the outset of the effort, we visited 80% of Bureau of Indian Affairs (BIA) agency offices, all BIA regional offices and title plants, the frontline officers, and hundreds of tribal leaders and allottees to understand and identify the real problems facing trust beneficiaries in terms of the delivery of trust services.

This exercise was undertaken to review the workings of the current trust system, and to then identify ways to thoughtfully improve the system for the Indian beneficiaries.

We also worked with the Self-Governance as well as the direct services tribes to get their perspectives and identify the unique challenges they face. The effort also involved other agencies within and without the Department, including the Office of Special Trustee for American Indians, the Bureau of Land Management, and others.

Systems Reviewed by the “As-Is / To-Be” Effort

The “As-Is / To-Be” effort reviewed existing (1) financial operations; (2) beneficiary services; (3) ownership processes including probate, cadastral surveys, and land title management; (4) land and natural resource planning; (5) land and natural resource use and authority; and others.

At the end of the analysis and systems review, two reports were generated: the first presenting the model of current trust processes; and the second presenting the model of what the trust processes could and should be.

Given the time and resources and thoughtful people who were involved in this effort, I urge the Commission to review these reports as it makes its formal recommendations to the Secretary for further consideration and action.

Today’s panel is entitled “Trust Reform and Administration” and we have been asked to discuss our perspectives on three questions dealing with the delivery of trust services to trust beneficiaries and ways to strengthen and improve trust management and administration.

In terms of improving or streamlining the delivery of services to trust beneficiaries, we must begin with land and resource management which depends, at the outset, on training for Federal and tribal officials.

For example, handbooks that are used and relied on need to be user-friendly and provide these dedicated men and women with the know-how to review and process fee to trust

petitions; leasing of tribal and allottee lands for mineral development, business and agricultural development, and related purposes leasing.

If the Federal trust responsibility is to mean anything practical to trust beneficiaries, it must require that Federal agencies and officials ensure that the land and other trust resources be deployed and managed for the maximum benefit of the beneficiaries.

Balancing Federal and Tribal Involvement to Ensure Success

In this era of Indian Self Determination, Indian Country, the Executive Branch and the Congress routinely call for maximum tribal involvement and managerial control over the design, implementation and management of programs, services and functions.

As the Chairman of a Self-Governance tribe compacting all functions except those dealing with Individual Indian Money Accounts, I know the value and importance tribal experience, managerial acumen, and aspirations and how service delivery has improved markedly in the last 40 years.

At the same time, there are good reasons to maintain a strong, well-resourced Federal role in service delivery. The realty program is one such service, but there must be restrictions on the use of these funds by the BIA. In recent years, the BIA received a \$1 million appropriation with a line item mandate that it be used to benefit the Tribe. After buying office equipment and other questionable overhead, only less than half the money (\$460,000) was used to purchase individual Indian tracts. To salvage the project, the Tribe used its own tribal funds to add a \$100 "bonus" to each purchase offer.

The Buy-Back Program for Tribal Nations

The *Cobell* settlement established a \$1.9 billion land re-consolidation fund to be used over a 10-year period. With a 15% limit on administrative expenses and \$60 million to endow the Education Fund, the Department is actually left with \$1.55 billion to spend on buy-back activities.

The Department has identified 40 Indian reservations with large numbers of fractionated parcels. It has also rightly acknowledged that many tribes are, or could be, undertaking much of the preparatory work that needs to be done before any actual land acquisition can occur. These activities are (1) general outreach, (2) title records updating and ownership transaction processing; (3) land mapping, (4) process automation, and (5) activity plan development.

The initial implementation plan recognizes that, while 638 and Self-Governance compacts may not be employed to operate the Buy-Back Program, tribes might use cooperative agreements to perform some of the "most important functions of the Buy-Back Program" including (1) prioritizing tracts, (2) identifying landowners, (3) performing the valuation work, and (4) administering the acquisition of fractional interests through departmental systems.

It makes a lot of sense for the Buy-Back Program to make most use of tribal capacity to perform these preparatory functions, both for the 40 reservations identified in the initial implementation plan, as well as for those tribes who stand ready and able to make the most use of scarce land re-consolidation funds.

Observations and Conclusions

The Commission has made great progress since its first meeting in March 2012, and I urge you to continue to hear the varying perspectives of tribal leaders and legal and policy experts as you begin to formulate recommendations for the Secretary.

The “trust responsibility” is a kind of “Rorschach Test” for Indian Country, because it can mean many things to many people. For some, it is a Federal guarantee against loss and bad decision-making by tribal governments. For others, it is a tool for litigators to bolster their legal positions in an increasingly hostile judiciary. And for still others, it means a series of unarticulated Federal obligations to improve material conditions in tribal communities.

The *Cobell* IIM settlement and the 40 or so tribal trust settlements will close one chapter of the Federal – tribal relationship, but leave unresolved fundamental questions of the appropriate role of the Federal government in tribal life. This, to me, is at the core of any discussion of trust management and trust reform.

Whatever the Commission concludes in terms of the contours of the trust responsibility, real trust reform must bring with it a continued shift away from Federal domination and management of tribal trust land and other assets and toward greater tribal decision-making.