



March 24, 2016

Michael L. Connor
Deputy Secretary
U.S. Department of the Interior
1849 C Street, NW
Washington, D.C. 20240

Dear Deputy Secretary Connor:

I have reviewed with great disappointment the February 29, 2016, letter that you sent to Senate Committee on Indian Affairs Chairman John Barrasso regarding the Indian Trust Asset Reform Act, H.R. 812 and S.383. This legislation is a product of the Affiliated Tribes of Northwest Indians' Trust Reform Committee, which I have chaired for nearly a decade.

Unfortunately, the letter repeats a series of misrepresentations about the bill that originated in the testimony submitted by the Department for the April 14, 2015, House hearing on H.R. 812.¹ Following that hearing, the House Committee on Natural Resources expressed its displeasure to the Department about the inaccuracies in the testimony. For one, the Committee communicated the fact that much of the written testimony was lifted verbatim from the Department's testimony for H.R. 409 from the 113th Congress, despite major revisions that were made to the bill in the intervening time frame. Simply put, the Department's written testimony on H.R. 812 objected to provisions *that were no longer in the bill*. For these and other reasons explained below, I am perplexed as to why you would sign a letter that perpetuates this type of misinformation.

Your letter states that Title III of the bill would "restructure" the Bureau of Indian Affairs (BIA), the Office of the Assistant Secretary-Indian Affairs (AS-IA), and the Office of the Special Trustee (OST). Nothing in Title III requires or imposes any restructuring of any of these entities. Instead, the bill simply directs the Secretary to provide certain

¹ As passed by the House, H.R. 812 is substantively identical to S.383 as reported by the Senate Committee on Indian Affairs.

information to Congress, including a transition plan and timetable for the termination of the OST, to occur not later than 2 years after the date of submission of the report, unless the Secretary determines that an orderly transition cannot be accomplished during that time period, in which case the Secretary is free to propose an alternative date. Section 304(c) of the bill clearly and expressly states that nothing in section 304 or the submission of information required by that section terminates the OST. Submission of this information by the Secretary to Congress would serve only to inform Congress and Indian country; *it sets nothing in motion*—let alone the termination of the OST.

Section 304(c) of the bill also unambiguously states that nothing in that section or the submission of information to Congress under that section affects the application of sections 302 and 303 of the American Indian Trust Management Reform Act of 1994. This is particularly important because Section 302 of the 1994 Act is the current law that provided for the creation, possible continuation, and sunset of the OST. The bill does nothing to interfere with this controlling statutory framework.

Your letter also states that Title III would “create” an Under Secretary. To the contrary, Section 303(a) only *authorizes* the Secretary of the Interior to establish the position of Under Secretary. If H.R. 812 is enacted into law, no Under Secretary will exist unless the Secretary affirmatively decides to establish the position. Whether or not an Under Secretary position should be established, therefore, would be entirely within the discretion of the Secretary.

Last, your letter states that “H.R. 812 requires the Under Secretary *to constitute some new structure or entity* that would assume OST's functions.” (emphasis added). Should the Secretary establish an Under Secretary, Section 304(c)(1) provides that the Under Secretary will coordinate an orderly transition of OST functions to one or more appropriate agencies, *but only if* the Secretary (or Congress), so directs. The establishment by the Secretary of an Under Secretary would not, by itself, result in the transition of any OST functions or the creation of any new structure or entity.

In addition to the House Committee on Natural Resources’ communications following its April 2015 hearing, OST also learned of these inaccuracies on other occasions. Most notably, at its mid-year conference in St. Paul, MN, in June 2015, the National Congress of American Indians organized a meeting with tribal leaders and OST leadership to discuss the future of trust asset management. Special Trustee Logan and OST’s top management participated in this meeting in person and significant time was spent discussing in detail the provisions of H.R. 812 and S.383 and what the bill would—and would not—do if enacted into law.

If the OST or the Department had any pressing, substantive concerns with Title III of the bill, neither provided any feedback when it was timely to do so despite multiple requests from the committees of jurisdiction and the tribal advocates. In fact, we informed OST's leadership at the NCAI meeting in St. Paul that the bill would be moving forward and that their input, if any, would be needed as soon as possible. And as you probably know, Special Trustee Logan abruptly cancelled his scheduled testimony the day before the Senate Committee on Indian Affairs' hearing on the bill, which might have elucidated the record had he appeared.

Nearly a week before the Committee planned to consider S.383 at a business meeting, we provided the Department's Office of Congressional and Legislative Affairs, as well as the OST's Office of External Affairs, all of the changes that were included in the amendment in the nature of a substitute. We received no response and the Committee approved S.383 as amended. Despite having received no input or communication on Title III from the OST or the Department, on our own initiative we requested that the Committee add the new language in section 304(c) that makes absolutely clear that nothing in the report and transition plan that the Secretary would submit to Congress could be construed to terminate the OST.

In contrast to the Department's and the OST's lack of feedback on Title III, following the April 2015 House hearing, AS-IA officials and the Department's Office of the Solicitor provided us with valuable input on the trust asset demonstration project provisions in Title II that we incorporated in the bill. The OST had ample opportunity to do the same with Title III but chose not to engage at all.

H.R. 812 and S.383 are bipartisan bills that enjoy broad tribal and organizational support throughout Indian country. The tribal leaders that I have spoken with are enthusiastic about the prospect of their tribes having more control over their trust and natural resources. The individual beneficiaries I have spoken with are equally enthusiastic about the prospect of completing sales and leases of their Indian lands without having to wait for the Department to review and approve appraisals. I am unaware of any opposition to the bill in Indian country and, like many others, believe that updating Indian trust asset management through voluntary measures like H.R. 812 and S.383 is long overdue.

The only conceivable explanation for the Department's position on Title III is that OST leadership does not want to consult with Indian country on its future and prepare and submit information that would inform Congress on this issue. In my congressional testimony I said that the core financial accounting functions that the OST performs should continue uninterrupted. Where those functions might be best situated within

the Department would be explored during consultation. This consultation would also provide OST officials with an opportunity to educate Indian country about the work that the Office performs. Most importantly, the dialogue would be the first opportunity for myself and other tribal leaders to openly discuss these issues in a focused manner.

This Administration, the Department, and you personally have made consulting with tribal governments and Indian beneficiaries on a wide spectrum of issues a high priority. The Buy-Back program is a pertinent and timely example. The consultation provided for in Title III is no different and you and the Department should embrace the opportunity.

I invite you to personally read the text of H.R. 812 as passed by the House and arrive at your own unfiltered conclusions about what legislation does and does not do. I believe you will conclude, as has Indian country, that H.R. 812 is practical and reasonable legislation that advances the marker for Indian self-determination.

Sincerely,



Ernest Stensgar
Chair, ATNI Trust Reform Committee
Vice-Chairman, Coeur d'Alene Tribe

cc: Senate Committee on Indian Affairs
House Committee on Natural Resources
National Congress of American Indians