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Mr. Chairman and subcommittee members, thank you for the opportunity to be here today. I see this as an opening to correct the course, encouraging change within Mineral Management Service (MMS) to act as a fiduciary and honor the treaty obligations with tribes and individual Indians.

I served and continue to serve Indian nations and the American taxpayer for sixteen years. I look back at my experience and recognize that it is one of the greatest joys of my life to see tribal people get what they are entitled to. However, I also recognize that MMS and other bureaus have forgotten their responsibility and now place industries desires and wants above their trust responsibility to maximize the benefit of oil and gas development to tribes and the American public.

I have a Bachelor's degree in International Trade and Relations and a Master's in Mineral Economics from the Colorado School of Mines. Further, I am a practitioner for Alternative Dispute Resolution with the Morris Udall Foundation and I am a whistleblower.

I started my career in oil and gas management with Navajo Nation as their Mining Financial Analyst and later went to work for the U.S. Government as the Director of the Federal Indian Minerals Office (FIMO).

The creation of FIMO was a result of Navajo individual Indian mineral owners, known as the Shí Shikéyah (roughly translates to, "This is My Land") Allottee Association, filing a lawsuit against the Department of the Interior in 1983 claiming that the federal government mismanaged their resources. After years of litigation, the U.S. District Court ordered Interior to establish FIMO.

FIMO was established in the early 1990s, however the employees mirrored the bureaus, in that they had few common goals, struggled over turf issues, handed off responsibility to other staff based on their bureau functions, and performed little to no asset management. The office failed to become the seamless, efficient and effective office the Department committed to, thus the Shí Shikéyah Allottee Association requested the court intervene.

In 1994, the Department established a National Performance Review Laboratory under Vice President Al Gore's reinventing government initiative. The laboratory is known as the FIMO Pilot project. Part of the initiative was to establish a FIMO Director that would navigate the staff from Bureau of Indian Affairs (BIA), Bureau of Land Management (BLM) and MMS and the mission. This would require delegated authorities to operate as a trustee for individual Indians in the Four Corners Area. The goal was to perform proper lease management, and accurately collect, disburse, and verify all royalties and volumes due from the severance of minerals. In addition, FIMO would be placed near the beneficiaries of these royalties so as to work with the beneficiaries directly.

In November of 1996, I was hired as the FIMO Pilot Director. Over the next six months, I changed the reporting relationship of the FIMO staff from the three bureaus to me, reported to a DC level Interior committee and acquired delegations of authority to act in the capacity of a BIA Area Office, a BLM District Office, and a MMS Compliance Division with regard to mineral issues.

Although FIMO was better equipped to act as the primary source for fulfilling the trust responsibility, the agencies maintained control, continued old practices and engaged in battles with me anytime I questioned their trust management practices. To counter this defiance, during the Pilot phase I found safety in reporting to the District Court, the allottee association, and the committee. I overcame most of the organizational resistance and turned around a negligent approach to managing mineral assets on Indian lands to providing services that met or exceeded the requirements of a Federal District Court consent decree. In one example, we annually collected 7 times the underreported royalty than MMS did for 20 years prior to my management. FIMO had the highest underpayment collection to audit cost in comparison to other MMS audit groups.

After a thorough evaluation of FIMO, it was considered a success and made permanent in October 2001. The Secretary of the Interior gave the green light to the committee to implement the FIMO concept throughout Indian country and I and my staff were nominated for two National Hammer Awards and numerous Spot Awards for excellent performance.

Once the pilot phase ended, the court reporting requirements stopped, and I reported to and took direction from line managers, I lost the shield and became challenged with managing the trust assets under the direction of management that made contrary decisions to maximizing the benefit to the Indian allottees.

Over time, I exhausted all efforts in attempting to protect the beneficiaries' interest against my superior's unethical decisions and decided to communicate with the Special Master of Cobell litigation who had the responsibility to ensure that information vital to the interests of individual Indians be safeguarded. I have experienced the following:

**2000 Indian Gas Rule**

In 2000, MMS changed the Gas Rules on Indian lands allowing companies to use index prices versus doing the full accounting in accordance with the lease requirements. As the Director of FIMO, I opted out of the pricing method because I did not believe I had the right to change lease terms without the consent of the Indian landowners and the method appeared to negatively impact royalties. When I voiced my concerns and decision, I was chastised by management and told that my decision was wrong and burdensome to industry.

When MMS implemented the regulation, the tribes and MMS made the decision for individual Indians, except Navajo allottees, to follow the new rule. At the start, the Navajo allottees were ahead of the index pricing by 25 to 45 cents per mcf every month. I reported this to management and they ignored the evidence that the New Rule potentially resulted in losses to the tribes and individual Indians. Soon after, DC

management told me that I was not to attend the quarterly meetings with tribes and states.

They did nothing to inform other Indian groups that index pricing was producing negative results in the San Juan Basin and tribes had no way to benchmark the method without having gross value information. Although MMS had conflicting data, MMS failed to act and protect the interest of tribes and individual Indians. MMS management behavior violated the requirement to maximize revenues to the beneficiaries as stated in the regulations and law.

*Undervaluation of trust assets, a violation of 64 C.F.R. § 43506, as the Minerals Management Service explicitly acknowledged with regard to valuation of gas production from Indian leases, it is responsible, "[t]o ensure that Indian mineral lessors receive the maximum revenues from mineral resources on their lands consistent with the Secretary of the Interior's (Secretary) trust responsibility and lease terms."; see also Federal Oil & Gas Royalty Management Act – 1982 – Title I, Section 101, Duties of the Secretary "The Secretary shall establish a comprehensive inspection, collection and fiscal and production accounting and, auditing system to provide the capability to accurately determine oil and gas royalties, interest, fines, penalties, fees, deposits, and other payments owed and to collect and account for such amounts in a timely manner; and 30 U.S.C. § 1711 Comprehensive Accounting and Auditing.*

**2001 New Computer Compliance System and the Shut-down**

In November of 2001, MMS shut down the old computer compliance system and turned on the new system created by the Bermuda based Accenture, previously Arthur Anderson. MMS did not parallel test the new system against the old system and the new system systematically failed halting royalty payments to more than half of the federal and Indian leases. In December, the problems were masked or decoyed by the court ordered shut-down resulting from Interior's failure to protect Indian data from internet hackers. Tribes and Indian individual stopped receiving royalties for almost five months and MMS management was able to save themselves from a congressional and public flogging.

The system came back on line at the end of April, 2002 and MMS still could not determine where to allocate monies placed in escrow. In desperation, MMS reduced their error controls and allowed erroneous data to pass through the system in order to get payments out. Only part the payment made it to the correct accounts. During the process, I made a request for the raw data to do my own reconciliation and management told me that their internet contractor had the data, but could not provide it because it was proprietary.

The claim by Interior that they were not able to pay tribes because they were off the internet was false. About five years before, Interior paid tribes using a manual system. During the entire shut-down, MMS and other bureaus blamed the Cobell litigation for the problem. Consequently, many Indian people lost their homes, automobiles and livestock.

In reality, this was a multi-million system not suitable for compliance, as required by Inspector General Act of 1978, as amended, (5 U.S.C. App. 3), which establishes as goals:

1. Promoting economy, efficiency, and effectiveness within the agency.
2. Preventing and detecting fraud, waste, and abuse in agency programs and operations.
3. Keeping the agency head and the Congress fully and currently informed of problems in agency programs and operations and of the necessity for and progress of corrective actions.

To this day, there are still monies sitting in escrow and the new system does not live-up to the compliance system that Accenture told MMS they would create. Accenture's contract was to end once the system was on-line, but their million dollar contract continues. Many tribes and state outright reject using the system for any serious analysis and resort back to the prudent and thorough audit approach. Lastly, how many times has the MMS Director and staff mislead congress on how well the compliance system works?

**2000 to 2002 Closing Legacy Audits**

In 2000, MMS made a decision to close all back-logged audits. To fully and diligently complete the audits, MMS would have to reverse their compliance review course and hire and train additional auditors with oil and gas accounting backgrounds. MMS decided not to change their course and made the deliberate decision to fast track all past audits with inappropriate and illegal valuation methods such as the "bump method" and other questionable practices. I blew the whistle on the actions management was directing me to do that I knew based on past audits would result in 1/8 the collections of underpaid royalties.

On January 31, 2003, my audit staff and I had a manager meeting in Denver regarding audit goals. We talked with MMS Managers about accounting requirements and we were directed to:

- bypass the negotiated settlement approval process,
- ignore third party verification,
- classify rudimentary reviews as "Yellow Book Audits,"
- not document discussions with industry,
- use a compliance system that did not work, and
- perform duties and meet goals without adequate resources.

I raised concerns continually and provided evidence that their method would loose millions of dollars. MMS management ignored my arguments and used the fast-track approach throughout Indian country.

While the "Bump method" was casually used in the past through a settlement negotiation process with Indian nations, it had never been lawful before 2000 as an alternative method without the required negotiated settlement process. The negotiated settlement process, as defined in Royalty Management Program, Audit Manual 2.0, 2.1.5, requires that if the company is unable to perform requirements under the Order to Perform, they

may use the negotiated/settlement process with the approval of the Director of MMS and Assistant Secretary of Indian Affairs. MMS management willfully violated these rules and continued to implement their "fast track" procedures to meet their unreasonable goals.

As a result of my unwillingness to comply with such outrageous demands I feel that my superiors placed me in a situation with only three alternatives: (1) blatantly breach the trust of the beneficiaries, (2) act against management in insubordinate manner, or (3) leave. I chose to leave.

It is difficult to assess how many millions of dollars were lost because of this decision. Under any fiduciary system, this deception and corrupt practices would be considered malfeasance and negligence and somebody would go to jail. Even after I reported this problem to the Office of Special Council and the Office of the Inspector General, they did nothing to investigate or correct this problem.

**2002 Trespass Issue**

In 2002, I encountered a trespass issue where a company was operating a cancelled lease. The company produced for almost a year without reporting to MMS. The company received checks for production and cashed them monthly at a liquor store in Louisiana. We discovered the trespass when one of my inspectors visited the well site and found that it was producing and selling through the transporter. We contacted the transporter, told them that the producing company was trespassing and that we wanted all sales information. I contacted the trespassing company and told them we would collect 100% of the gross proceeds. They were upset, contacted their attorney and debated about how unfairly they were being treated. I told them that I would not tolerate this violation and would consider filling criminal charges against them.

The trespassing company contacted MMS management. Then an MMS Manager contacted me and told me that I could no longer talk with the company and scrutinized my evidence and my approach to the trespass. I asked management did they understand that they work for the American taxpayer. In order to circumvent "Friends of the Company" MMS management, I passed the responsibility to my auditor and forced the company to comply.

This case revealed how easily a company could circumvent the reporting system and produce and collect revenue without anyone's knowledge. This further emphasized the need for third party verification and field inspections. It also revealed that management considered industry complaints credible to the extent that they were willing to violate the beneficiary's interest, court orders and attack an MMS subordinate's position.

**2003 Zero Production**

After I left federal service, MMS and the Solicitor in Albuquerque, NM reversed my decision to collect additional value from companies violating lease terms of shutting in production without approval, known as "Zero Production." The Solicitor wrongfully believed that liability did not transfer with change in lease ownership. The Solicitor decision is false based on private land oil and gas cases and general property law.

Before I left, I had already collected more than a million dollars and had about million dollars in cases still pending. Even though I was able to collect on past violations, the Solicitor ignored the results of my collections and arguments and reversed my decisions. I believe that MMS and the Solicitors lost more than a million dollars to Indian landowners. Their actions again violated court orders and MMS and the solicitors never looked anywhere else in Indian country to investigate "zero production."

**Compliance Audit Tracking System**

During 2000, MMS management discussed what systems they would continue with and remove. The Compliance Audit Tracking System (CATS) was marked to be removed and when I discussed what the system did – track all orders, issue letters and follow-up of compliance work over time – management stated that they had no idea that the system contained this data. This lead me to conclude that the MMS management was not consulting with auditors and were willing discard anything they did not understand or they intentionally wanted to remove historical information. Discarding this system was in fact a removal of the tool that helped the auditors track "records of decision." In talking with auditors today, I have been told that MMS has a new system, but it does not cover tribes and states and I am concerned that past audit "records of decision" have not been included.

**Conclusion**

The problems of mismanagement of the public and Indian trust go far beyond the MMS royalty issues. I experienced the broad failures in protecting trust asset from BLM's expedited drilling and development approvals to BIA's right-of-way undervaluation. In today's environment, the actions of government executives represent an extension of industry, in which the federal managers fail to understand who they work for. Most federal executives have a company job waiting for them once the administration changes. The revolving door to industry has created a management team that is loyal to industry and the honest and diligent government worker is oppressed and pushed out of the way, thus violating and discounting the public trust. This is a travesty.

**Recommendations**

1. There is evidence that some oil and gas companies have not reported and paid royalties, therefore indicating that the system is still somewhat of an honor system. There must be third party verification through transporter and plant information.

2. Although MMS makes claims that regulation changes will benefit the American public, tribes and industry, it often benefits industry more. Once the regulation is implemented, there is often it is difficult to evaluate if the regulation changes actually benefit the tribes and the American public and MMS usually neglects this evaluation. Needless to say, industry tracks benefit to the penny for any regulation change. MMS needs to reevaluate the regulation changes and if they do no work, report this to the public and change course. The method of evaluating the regulations effectiveness must be emphasized and clear in public registrar at the outset of any proposed regulation change.

3. MMS's regulation changes that modify lease terms are a violation of contractual arrangements between lessees and lessors. MMS uses regulations to modify lease terms and inadvertently damages the interest of the landowner. MMS does not ask the landowner if they would sign a new agreement to clarify or improve lease terms, they simply make changes forcing the Indian landowners to comply. This violates contractual and property law. MMS and other agencies must consult and obtain approval to change lease terms.

4. MMS needs to be accountable to the states, tribes, and federal government. As it is now, MMS reports and is accountable only to federal politically appointed executives. The federal government has a 50% stake in state leases and a 0% stake in Indian leases. As such, MMS should be guided, assessed, and managed by all government stake holders. A board of governors representing the states, tribes and federal government would do more to force MMS to be responsive to their concerns than the current UNILATERAL approach that is often politically manipulated with the industry stakeholders having the largest influence.

5. Although, MMS has limited resources, expediting settlements, compliance and collection at the loss of accountability makes them a "simple paper processor" with little to no concern for maximizing the benefit to the American public and enforcing lease compliance. MMS needs to change their objective from reporting false compliance information to maximizing revenue to the tribes and the public.

6. Everything MMS does must be made transparent and trackable. Any meetings with industry must be recorded and documented. Every action should be recorded in a system that can be queried by any state, tribal and MMS employee working on compliance. The IG should be able review these documented discussions and events at any time.

7. IG audits must go beyond the Yellow Book standards or Government Auditing Standards (GAS) in reviewing oil and gas audit work. Although, the GAS covers important issues such as transparency, accountability and peer reviews, it does not review the intricacies of valuation and volumetrics. For example, an IG auditor will look at the scope of work, internal controls such as signatures by managers, proper indexing and spreadsheets that add up in the total column, but they rarely review methodology of valuation and compliance with regard to court orders and other legal instruments. The IG must support positions that are well versed in mineral and energy accounting, as well energy law.

8. MMS must use the full extent of the lease terms to force compliance. MMS currently uses a penalty process to enforce royalty collection that is rarely collected and gets few if any results. Under royalty violation, I have used the cancellation clause to enforce the lease terms and companies have immediately taken action to comply.

9. With regard to whistle blowers, the staff within the Office of Special Counsel must be diligent and knowledgeable. They must follow-up on issues and hold management accountable. Retaliation laws need to be stronger, the investigative process needs to be thorough, and management needs to be accountable and punished when violating the public trust and employee rights.

10. MMS needs to restore the audit function. Determining underpayment is not an engineering calculation and requires an experienced oil and gas auditor that can look a vast array of data that is not only quantitative, but qualitative. The compliance review that MMS claims is an audit, is not and should be reported as only a review. MMS uses the misinformation and other false data to hype the compliance work that MMS claims they do annually. Many tribes and states have purposely removed themselves from relying on only compliance reviews as a realistic approach to lease compliance. These mineral assets belong to the public and Indians and once exploited, are gone forever. Every penny owed to the public and tribes should be acquired with the most diligent and reasonable approach.

11. MMS must follow not only the laws and regulations, but also the court orders.

This concludes my formal testimony. Thank you for the opportunity to appear here before this Subcommittee. I will be happy to answer any question you may have.