

Broken Trust

Despite past controversy as BIA head, Ross Swimmer steps back into management role

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Lee Enterprises Newspapers

September 30, 2002

Part Three of a series

First part of series available in [The Authentic Voice](#)

Ross Swimmer's reappearance at the Interior Department last year after a decade-long absence left many Native people surprised and skeptical.

"I believe in resurrection now," said Louis LaRose, a plaintiff in a class-action lawsuit against the department over its management of Native trust funds. "They resurrected Ross Swimmer."

The former three-term principal chief of the Cherokee Nation of Oklahoma led the Bureau of Indian Affairs from 1985 to 1989, during the Reagan administration.

His role as head of the BIA -- in which he advocated eliminating the bureau -- earned him critics in Indian Country.

But Interior Secretary Gale Norton brought Swimmer back last November when she announced her plan to reorganize the BIA by creating the Bureau of Indian Trust Assets Management, an agency that would consolidate the government's Native trust fund responsibilities.

And she appointed Swimmer to lead her newly created Office of Indian Trust Transition "to consolidate Indian trust functions currently located throughout the department into one organizational unit," as she said at the time.

Swimmer may be well suited to his new job. In a 1995 court deposition related to the government's trust responsibility for Natives, he answered the following questions:

His objectives as head of the BIA?

"Well, the first one was to eliminate the Bureau of Indian Affairs because I felt strongly that the bureau was overreaching and that in many instances, the tribes should have the responsibility for tribal decision-making."

Has anyone asked him to return to complete the task?

"Not lately."

Norton's unveiling of her plan to shake up the BIA was blasted by tribal leaders. And Swimmer's appointment was met with skepticism from those close to trust fund reform efforts.

"Mr. Ross Swimmer may be a very experienced manager. He may have been a tribal chief and a bank president," said Joseph Kieffer III, who was appointed by U.S. District Judge Royce C. Lamberth to monitor the Interior Department's trust reform efforts.

"But repeated inquiries by the court monitor about his trust experience have not received any response that he has ever been educated in or performed any trust fiduciary operations to the extent required to fulfill the role he has now been given by the deputy secretary."

Undeterred, Swimmer said he has a goal: To go out of business.

"The office is just what it's called. It's to transition trust reform from a trust operation, from what it is now, to something else. Once the transition has happened, then this office goes away."

Swimmer has supporters, chief among them Norton, who pointed to his "wealth of experience." And Tim Vollman, an Albuquerque attorney and former chief attorney for the BIA under Swimmer, remembers him as "tough and courageous. He was a real advocate for tribes on natural resource issues."

But others say Swimmer could have better protected Native natural resources. They point to his association with an ongoing lawsuit by the Navajo Nation against the government.

In 1987, when Swimmer was head of BIA, his agency and the Interior Department approved a contract negotiated between the Navajo Nation and the Peabody Coal Co.

In 1993, the Navajo filed suit against the government in federal claims court, charging the United States failed to uphold its fiduciary responsibility to the tribe.

A U.S. Court of Appeals eventually agreed that then-Interior Secretary Donald Hodel influenced coal lease amendments in favor of Peabody, now the world's largest coal company.

The Navajo now seek \$600 million in damages. The Bush administration since has asked the Supreme Court to overturn the decision. A hearing is scheduled for this fall.

"How can this current administration ask tribes to work with them in trust reform when they have top officials implicated in a breach of trust responsibility?" asked Levon Henry, Navajo Nation attorney general. Said Swimmer: "I believe we did the right thing and it was supportive at that time of the tribal objectives. I certainly attempted to do what I thought the tribe was supportive of."