

TESTIMONY OF THE HONORABLE EDWARD K. THOMAS
President, Central Council of the Tlingit and Haida Indian Tribes of Alaska
on
Bureau of Indian Affairs Trust Management Reform

To the
Senate Committee on Indian Affairs

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GREETINGS FROM ALASKA! My name is Edward K. Thomas. I am the elected President of the Central Council of the Tlingit and Haida Indian Tribes of Alaska, a federally recognized Indian tribe of 24,000 tribal citizens. The ancestral homeland of the Tlingit and Haida people is Southeast Alaska. I have been the President of my tribe since 1984. I am honored to be here today to testify on this very important matter of Bureau of Indian Affairs (BIA) Trust Management. Since its inception pursuant to the 1994 Act, I have served as a member of the Special Trustee's Advisory Board.

Let me begin by commending Congress, and especially this Committee, for showing special interest in this very important issue and for holding this hearing. One of the most important legal principles in defining the relationship between federal government and the Indian and Alaska Native Tribes is that there exists a Trust relationship between our governments. I believe that the United States has a moral and a legal obligation to preserve this Trust relationship. This important Trust relationship is seriously compromised by the extensive breakdown in the BIA management of the Trust assets of tribes and the individual Indian account holders.

I will cover four (4) topics in my testimony today:

1. My understanding of what the 1994 Act was to accomplish;
2. The composition of the Office of the Special Trustee Board and the challenges it faces;
3. The obstacles of Trust Reform; and
4. Recommendations on Trust Asset Management.

The 1994 Act

Prior to the 1994 Act my tribe was actively involved with the Inter-Tribal Monitoring Association (ITMA) in working with Congress to come up with solutions to the many problems that we were aware of in the BIA management of Trust assets. The 1994 Act was tribally driven legislation. This means that it was the tribes, not the Department of the Interior (DOI), who recognized that these Trust management problems were severe enough that it would need Congress to step in and help us fix these serious problems. I must say that many of the questions and problems being discussed today were

similar to the ones we were trying to get answers to back then.

Although, I personally felt the 1994 Act was not aggressive enough because these severe breaches of Trust should have been dealt with at the same level of resolve as the national Savings and Loan (S&L) scandal. You may recall that the federal government set up a temporary, quasi-governmental agency called the Resolution Trust Corporation (RTC) with far-reaching authorities to fix the S&L problems and the findings of the RTC led to immediate acts of Congress to restore to citizens moneys illegally invested and eventually lost by these S&Ls. Nonetheless, I decided that I was willing to do my best to work with others in finding solutions and take necessary action to fix these problems. I was honored in being selected to serve on the initial Advisory Board for the Special Trustee.

I understood that in passing the 1994 Act Congress intended that the Special Trustee take the necessary steps to put forth solutions to the Trust Management problems. The legislative record and the findings set forth in the Act support this assertion. The fatal flaw in this approach was that it left the Office of the Special Trustee (OST) under the administrative authority of the DOI Secretary, who made it very clear from the beginning that he did not feel the OST was necessary nor did he support the work being performed under this authority. Now, Secretary Norton has inherited the Special Trustee put in place by Secretary Babbitt.

Special Trustee Board Composition and Challenges

The OST Board is composed of five (5) tribal leaders and 3 investment bankers with substantial experience in Trust Asset Management. The tribal leaders on the Board are intimately familiar with the legal requirements of tribal and individual Indian Trust Asset Management as well as with the many problems at all levels of the BIA in managing these assets. It is fair to say that the Board needs very little, if any, orientation on the issues of Indian Trust Management.

The Board monitored the implementation of the automated Trust Fund Accounting System (TFAS) as well as the development of the High Level Implementation Plan (HLIP). Although it is clear that the Office of Trust Fund Management (OTFM) is still not up to acceptable standards, the new automated system is a dramatic improvement over what it was before. The HLIP was a plan that had firm dates for completing specific tasks relative to fixing problems in BIA Trust Management. This plan was greatly compromised by the DOI Secretary, Bruce Babbitt:

- Secretary Babbitt refused to sign off on the HLIP unless the tasks relative to the design and implementation the Trust Asset and Accounting Management System (TAAMS) and the BIA Data Cleanup components remain under the direct administration of the BIA.
- The BIA never gave TAAMS the level of priority it needed. The BIA put seven (7) different people in charge of TAAMS in two years. None of whom had the authority or expertise to get the job done.
- Very little was done on BIA data cleanup except in response to very limited, narrow and specific directives from Judge Lamberth in the Cobell case.
- The BIA never took the initiative to finalize and certify the architecture of TAAMS even after numerous reminders that timelines have been missed and that the project could not be properly implemented without certifying the architecture of the proposed system.
- Secretary Babbitt authorized the “roll out” of the Billings component of TAAMS before the

certification of the TAAMS architecture which was intended to demonstrate that they were making progress on TAAMS and it ended up, instead, distracting from the work that should have been done to get the total system running like it was intended to.

- Requests by the Board to meet with Secretary Babbitt were ignored.
- Secretary Babbitt fired former Special Trustee, Paul Homan, when Mr. Homan pointed out the fact that very little more in could be done in data cleanup and TAAMS implementation without total cooperation from all levels of BIA management and a total commitment from Secretary Babbitt to provide the necessary authority to the Special Trustee to require BIA employees to get Trust issues addressed in concert with timelines set for those projects.

The Board has also had difficulty in getting our current Special Trustee to follow up on our requests or directives:

- Last year the Board requested that the minutes of our meetings be copied to members of this Senate Committee on a regular basis. We have no confidence that even this simple task has been done.
- The Board has authorized the implementation of an “action tracking” form to be used to track administrative action taken on Board action. This form would specify the Board action taken; specify who is responsible for following up on the action and the expected date of completion. The Special Trustee has not implemented this “action tracking” form nor any similar accountability procedure.
- We have requested BIA employees key to the implementation of the TAAMS project and records cleanup to meet with the Board. We have been receiving report after report that BIA employees were behind on these projects so the Board wanted to get out of the business of just pointing blame and on to some strategies to work together to get the job done. None of these BIA employees were made available to meet with us.
- We requested that the Chief of Staff to this Committee be invited to the Billings TAAMS roll out to see first hand its deficiencies and that a serious problem was brewing. The invitation was not extended.
- As a member of the Board I have asked for specific financial information as to how much it would cost to fully implement the recommendations in the EDS Report and where would the money come from if more money was needed. This was never provided. I am very concerned that if these additional costs are not put forth in the form of DOI budget amendments there would be proposals to take funding from other BIA programs to pay for these costs.
- We requested a meeting with Secretary Norton to discuss our findings and problems encountered with her predecessor. The request to meet with her was never extended.

The Board has been very vocal with the Special Trustee and his staff as to our displeasure that project timelines were being violated on a regular basis and that there did not seem to be any interest in putting these major projects under the direction of highly qualified people within the BIA. The response we have received time-after-time is that the BIA did not do this and the BIA did not do that but we have never been given the opportunity to talk directly to these people whom we have been led to believe are in charge of getting the job done.

Obstacles to Trust Reform

- The single most formidable obstacle to creating and implementing solutions to problems in Trust Management is the absence of “buy-in” by the DOI Secretary and all administrative levels of the BIA that they have the responsibility and authority to require that BIA employees must fully cooperate in any proposed solutions to Trust Management problems.
- The absence of a written plan as to how the BIA and the OST will work cooperatively in the development of a joint mission statement, guiding principles, goals and objectives and a clear delineation of who is responsible for what is a huge obstacle.
- The absence of authority being placed upon the Board to enable it to require certain action as opposed to just recommending action is an obstacle.
- The absence of a person who is highly qualified to lead these projects to completion is another major obstacle. Whoever is in charge must fully understand the principles and legalities of Trust Management, be an excellent manager, and must have extensive experience in the implementation of computerized data management systems.
- There are no consequences when people who are in charge are directed to perform a task needed to fix a problem and they do not do it. Nothing will happen unless there is accountability.
- There is a lack of adequate human, financial, and technological resources to administer Trust Management in a manner consistent with acceptable industry standards.
- The pressure on the Department brought to bear by the Cobell litigation is a two-edged sword. It has indeed caused this Department, like no other Administration before it, to spend lots of time and effort on the Indian trust mismanagement problems. But it has also been a distraction, geared more toward avoiding punishment and toward ducking responsibility than in paying the price of fully rehabilitating the system.
- Finally, there is reluctance by the United States to do what is necessary to fix all of the Trust Management problems to the same level of resolve that it did in the savings and loan scandal.

Recommendations

I must make it clear that my recommendations are mine and do not in each instance reflect the entire Board of the Office of the Special Trustee. For the most part, my recommendations are broad in nature put forth for the consideration of Congress.

- The United States Congress and the President must make a commitment to fix the Trust Management problems with the same degree of resolve that you did in addressing the problems in the savings and loan scandal.
- The EDS Report recommendations must be implemented in the Bureau of Indian Affairs **before looking at alternative structures**. There are so many false expectations created by talking about alternative structures when we have not taken the time to fully evaluate the EDS recommendations. There are no political solutions to these problems. All solutions require work carried out in a professional and timely manner.
- Establish the Office of Indian Trust Transition and hire an Executive Sponsor who is highly qualified and fully authorized to get the job done. I believe that this office could remain in the

BIA if given the proper authority and held responsible to an appointed Board.

- Appoint a member of this Senate Committee on Indian Affairs to serve on the Board charged with overseeing Trust Management Reform. This may be the best way to vest the Board with a voice of authority that will instill accountability into the reform effort.
- Request that the President modify his budget to include all anticipated costs for getting the job done and enough money to run all Trust programs after reform tasks are completed.
- Require that all proposals demonstrate how they will improve the Trust process and how they will apply industry standards to every aspect of Trust Management while honoring and furthering tribal self-governance and Indian self-determination.
- Finally, there must be consequences for not performing duties as assigned when it comes to implementing solutions to Trust Management problems. People at all levels who do not do what they are requested to do must be given notice and replaced if necessary when they do not perform.

Once again Mr. Chairman, I thank you for the opportunity to share my views with you on Trust Management. I wish you well in your deliberations and I trust you will make the right decisions on the issues of grave concern to our people.

Gunalcheesh! Howa!