

Written TESTIMONY
of Richard Sangrey, Chairman of
Intertribal Monitoring Association on Indian Trust Funds
before the
SENATE COMMITTEE ON INDIAN AFFAIRS
on the
**“NOMINATION OF ROSS SWIMMER AS
SPECIAL TRUSTEE – AMERICAN INDIANS”**
February 12, 2003

The **Intertribal Monitoring Association on Indian Trust Funds (ITMA)** is a representative organization of the following 58 federally recognized tribes: **Central Council of Tlingit & Haida Indian Tribes, Kenaitze Indian Tribe, Metlakatla Indian Tribe, Hopi Nation, Tohono O’odham Nation, Salt River Pima-Maricopa Indian Community, Fort Bidwell Indian Community, Ewiiapaayp Band of Kumeyaay Indians, Hoopa Valley Tribe, Yurok Tribe, Soboba Band of Luiseno Indians, Southern Ute Tribe, Coeur D’Alene Tribe, Nez Perce Tribe, Passamaquoddy-Pleasant Point Tribe, Penobscot Nation, Lac Vieux Desert Band of Lake Superior Chippewa, Sault Ste. Marie Tribe of Chippewa Indians, Grand Portage Tribe, Leech Lake Band of Ojibwe, Red Lake Band of Chippewa Indians, Blackfeet Tribe, Chippewa Cree Tribe of Rocky Boy, Confederated Salish & Kootenai Tribe, Crow Tribe, Fort Belknap Tribes, Fort Peck Tribes, Northern Cheyenne Tribe, Winnebago Tribe, Fallon Paiute-Shoshone Tribes, Walker River Paiute Tribal Council, Jicarilla Apache Nation, Mescalero Apache Tribe, Pueblo of Cochiti, Pueblo of Laguna, Pueblo of Sandia, Three Affiliated Tribes of Fort Berthold, Turtle Mountain Band of Chippewa, Absentee Shawnee Tribe, Alabama Quassarte Tribe, Cherokee Nation, Kaw Nation, Kiowa Tribe of Oklahoma, Muscogee Creek Nation, Osage Tribe, Quapaw Tribe, Thlopthlocco Tribal Town, Confederated Tribes of Umatilla, Confederate Tribes of Warm Springs, Cheyenne River Sioux Tribe, Sisseton-Wahpeton Sioux Tribe, Chehalis Tribe, Confederated Tribes of Colville, Quinault Indian Nation, Forest County Potawatomi Tribe, Oneida Tribe of Wisconsin, Eastern Shoshone Tribe, and the Northern Arapaho Tribe.**

Mr. Chairman and members of the Committee. As the newly elected Chairman of the Intertribal Monitoring Association Board of Directors, I thank you for this opportunity to testify on the nomination of Mr. Ross Swimmer, a presidentially appointed position created by the 1994 Indian Trust Fund Management Act. My name is Richard Sangrey. I am a member of the Chippewa Cree Tribe from the Rocky Boy's Reservation in Montana and serve my Tribe as Chief of Staff.

ITMA is an intertribal organization composed of 58 tribes across the United States who organized in 1990 to actively monitor the activities of the federal government to ensure fair compensation to tribes and individual Indians for the mismanagement of trust funds. ITMA's membership consists of a large number of those tribes with significant funds and assets at stake in the trust reform debate. As statistics recently submitted to the Court in the Cobell v. Norton lawsuit confirm, the tribes in the United States own the majority of the trust corpus currently under Department of the Interior Management, although tribes have not been parties to the Cobell suit.

ITMA's mission has evolved over the years to include the monitoring of the federal government's proposals to restructure the Bureau of Indian Affairs to address the trust mismanagement issues identified by the Cobell v. Norton lawsuit. ITMA has worked extensively with tribal governments to develop alternatives for settlement of tribal historic trust fund mismanagement claims and most recently has been a voice for tribal governments in the recent trust reform efforts of the Tribal DOI Task Force.

Throughout this last year of heightened trust reform efforts, ITMA has been most concerned that reorganization of the BIA not infringe on tribal sovereign rights to govern lands within tribal jurisdiction. Additionally, ITMA has been most concerned that reorganization efforts do not drive wedges between tribal governments and their members. ITMA developed an amicus brief to the Court in the Cobell suit expressing concerns that a third party receiver could result in an interference and infringement on tribal self-government. Further, ITMA has joined with the National Congress of American Indians in the amicus brief submitted as a tribal response to the proposed plans for trust reform submitted by DOI and the Cobell plaintiff's.

The Board of Directors of ITMA is committed to working with the Office of the Special Trustee of American Indians to improve the delivery of Trust services to Native American Tribes and the individual beneficiaries. ITMA believes that the OST can effectively resolve issues that have – and will – arise from the re-engineering process currently underway at the Department of the Interior. The following is a non-exclusive list of objectives that ITMA believes the Department of the Interior and the OST must implement if “trust reform” is to mean anything:

1. Establish and implement clear methods to account for the management of Trust Funds, Trust Lands, Trust Assets and Trust Resources by, at a minimum creating comprehensive Trust Fund, Trust Land, Trust Asset and Trust Resource ownership, location, and use inventories that provide a method for accounting to any beneficiary Indian or Tribe of what land is being

- effectively managed, and where problems or exceptions require greater attention.
2. Establish and implement reasonable methods for consulting with Indian and Tribal beneficiaries to establish effective plans to manage Trust Funds, Trust Assets, Trust Lands and Trust Resources that implement the intent of the Indian or Tribe where such implementation is reasonable.
 3. Consult with each Indian beneficiary and Tribe in the management of the Trust Funds, Trust Assets, Trust Land, or Trust Resources managed by the Secretary, and implement the objectives identified by the Indian Beneficiary or Tribe for any resource managed for them to the extent practical.
 4. Establish clear guidance on what functions with regard to Trust Funds, Trust Assets, Trust Land and Trust Resources are inherently executed by the Secretary and the OST, and how these functions are to be executed by a Tribe upon the execution of Tribal Compacting and Contracting agreements under P.L. 95-638 which establishes consistency in the execution of such agreements.
 5. Provide a yearly program of education and communication for the Secretary's and the OST's Trust service delivery personnel as well as for the beneficiaries, providing the Secretary's and the OST's personnel, the relevant staff of Indian tribes, and interested individual beneficiaries with an understanding of the Secretary's and OST's role and responsibilities with relation to the management of Trust Funds, Trust Land, Trust Resources and Trust Assets.
 6. Build a common data store for all Trust Funds, Trust Land, Trust Resource and Trust Assets related information. Such a data store shall, at a minimum operate in the following manner:
 - Provide a single method of entry for updates and maintenance;
 - Avoid redundant or inconsistent data in multiple systems;
 - Provide query capability by many organizational units; and
 - Provide accurate information for reporting.
 7. Establish a Memorandum of Agreement with each tribe regarding the privacy to be afforded tribal family information.
 8. Establish an office to coordinate investigative efforts intended to establish the location of beneficiaries whose whereabouts are unknown.
 9. Create an office of Inter-Bureau Communication and Coordination to oversee daily operations and facilitate communications and issue resolution between

each of the Secretary's bureaus on issues related to the management of Trust Lands, Trust Assets and Trust Resources.

10. Segregate the staffing and management of probate responsibilities from all other Trust Funds, Trust Land, Trust Resource or Trust Asset management activities to ensure that the decedent's interests are appropriately balanced with overall Trust objectives, while still providing for the use of integrated data in probate matters.
11. Establish that the substantive laws or customs any Indian Tribe relating to Probate shall apply first to provide for the distribution of a decedent's estate. To the extent there are no tribal laws or customs to apply, such descent shall be made in accordance with the laws of the state in which the decedent resided at the time of their death. Where relevant tribal law or custom applies, and allows for estate planning methods to be employed to avoid the need to probate estates it shall apply and any Indian beneficiary shall have the right to use such laws to avoid probate to provide for the distribution of Trust Funds, Trust Land, Trust Resources or Trust Assets; or where no tribal law or custom applies, any Indian beneficiary shall have the right to elect to provide for an estate plan for themselves under the laws of the state of their legal residence that includes providing for the distribution of Trust Funds, Trust Land, Trust Resources or Trust Assets.
12. Consolidate all Indian beneficiary probate adjudication activities into a single organization, moving all Deciding Officials into a single organization to simplify and make uniform the administration of Probate activities.
13. Establish uniform regulations to govern all probate adjudication activities.
14. Implement integrated, nation-wide title and realty information systems that accurately identify Trust Lands, Trust Resources, and Trust Assets, and the complete ownership thereof, all legal encumbrances (mortgages, life estates, etc.), and non-expiratory rights.
15. Create a single archive system based upon electronic information (and where electronic information is not available, paper information) provided by the Bureau that complies with federal record retention policies.
16. Streamline and consolidate, to the extent practicable, recordation and encoding procedures, eliminating duplicate efforts and data, in an effort to free resources to ensure that Trust Funds, Trust Land, Trust Resource, and Trust Asset information is maintained in a timely manner.
17. Eliminate redundant staff functions to eliminate inconsistencies across systems and to reduce the existing backlogs.

18. Implement digital imaging technology at all levels under the Secretary's and the OST's authority, using this technology to maintain a complete and accurate record of Trust Funds, Trust Lands, Trust Resources, Trust Assets and the ownership and utilization of such funds, land, resources and assets.
19. Develop regulations that provide for an expedited procedure for the acquisition of fee interests in Trust parcels.
20. Develop regulations that ensure beneficiary consultation, consent and compensation for all rights of way, easements and mineral access agreements that related to Trust Lands.
21. Establish a specific source of funds to address "unperfected Rights of Way," that will be used to remedy Unperfected Rights of Way that negatively encumber Trust Lands.
22. Establish an office of beneficiary consultation and support services that provides individual Indians and tribes with a point of contact for all consultation questions regarding the Secretary's management of Trust Funds, Trust Lands, Trust Resources and Trust Assets.
23. Develop guidelines for beneficiary consultation to improve the inherent partnership between the Secretary and beneficiaries.
24. Develop guidelines for appraising Trust Assets, Trust Lands, or Trust Resources that defines appraisal principles, appraisal terminology, the appraisal process, and the volatility of the real estate market.
25. Implement Trust Assets, Trust Lands, or Trust Resources appraisal training that all persons who work for the Secretary and who deal with land valuations must attend. Such training must include a written examination, and no person who scores below a reasonable standard established by the Secretary shall appraise Trust Assets, Trust Lands, or Trust Resources.
26. Develop guidelines and procedural manuals to provide more specificity regarding the Forest Management Deduction process, requirements and timelines.
27. Reform 25 C.F.R. part 163 to provide more specificity for procedures and requirements of collecting Forest Management Deductions.
28. Consult with Tribes to enhance the regulations, guidelines, policies and manuals to include clear and specific roles, procedures, formats, reporting and schedules for the oversight of federally managed and tribally managed forestry programs.

29. With consultation from the Tribes, develop regulations that promote Tribal control and self-determination while at the same time ensuring the Secretary's obligation to provide oversight and review of Indian Trust asset management programs.
30. Develop and implement regulations that adequately define rangeland trust management.
31. Implement a Geologic Information System based management information database and reporting system for all Trust Lands, Trust Assets, and Trust Resources.
32. Develop regulations that regularly monitor and audit the management of Trust Lands, Trust Assets, and Trust Resources for compliance with the principles of the Trust Responsibility enunciated herein.
33. Consult with Tribes to develop comprehensive guidelines for the uniform management of all rangeland under the Secretary's jurisdiction.
34. Initiate a program of workshops for Tribes and individual Indians that provides information about leading animal husbandry and land management practices, assists in counseling and problem solving.
35. Identify the most valuable Trust Lands, Trust Resources and Trust Assets and develop specific strategies for the development of this potential.
36. Create standard procedures and decision criteria for selecting appropriate long-term encumbrance vehicles (lease, permit, assignment, information agreement, etc.) for Trust Lands, Trust Resources and Trust Assets that applies to and is enforced within all Bureau regions. Develop standardized consent forms that reinforce Indian Land Consolidation Act consent requirements. Develop regulations to be published in 25 C.F.R. 162 subparts C and D (the Residential and Business subsections currently "reserved" but blank") that clarify procedures for determining which encumbrance vehicles should be used in each circumstance, and how such encumbrance is to be uniformly documented.
37. Record monetary liens against lessees if rental payments are delinquent.
38. Enforce against un-consented trespasses on Trust Lands.
39. Restructuring existing lease agreements upon renewal to meet the obligations imposed by this statute and any regulations promulgated hereunder. Nothing in this statute shall be construed as terminating or invalidating an existing lease or agreement related to Trust Land that was otherwise in compliance with the regulations or practices of the Secretary at the time of its signature.

40. Initiate formal information-sharing programs between the Bureau, Tribes, contracted service providers, and Individual Indian owners of agricultural lands.
41. Conduct a thorough review of key federal statutes and regulations which can negatively affect the management and use of Trust Land, Trust Resources and Trust Assets and provide such report to Congress and all Indian Tribes. Such report shall include remedies to remove or refine those statutes and regulations in conflict with the management of Trust Lands, Trust Assets, and Trust Resources.
42. Develop regulations to delegate to Tribes the authority to provide environmental assessments where such assessments are required for the management of Trust Lands, Trust Assets, and Trust Resources.
43. Standardize consent forms and develop a single set of criteria triggering the performance of the consent process for the leasing of agricultural Trust Lands.
44. Integrate agriculturally related billings and collections the Integrated Trust Management system.
45. Develop new regulations that provide a more equitable approach to funding Trust Asset development strategies among all tribes.
46. Review Trust Asset water resources to develop target groups, focused in two areas:
 - In areas where water rights are most at risk of being abused – develop rights communication, negotiation and protection strategies.
 - Areas where water resources are most valuable to the Trust or may be critical to the financial well-being of beneficiaries – finance water resources development projects proactively as part of an economic development strategy.
47. Reengineer, streamline, and standardize the Bureau minerals leasing processes to conform with the principles set forth herein.
48. Update and standardize lease forms, and develop regulations that create an integrated approach to minerals lease management with common systems, data stores and a documented communications plan.
49. Compile and publish all existing Memorandums of Understanding or Agreement (an “MOU/A”) related to the management of Trust Lands, Trust Assets, and Trust Resources. This compilation shall include an indication of

applicability or category of each MOU/A, a brief summary of contents, and a reference to who is the designated responsible party under the Secretary for each MOU/A.

50. Revise and establish clear guidelines for establishing bonding levels for Indian trust mineral leases that address the conflict between reclamation requirements and competitiveness of Indian trust mineral assets.
51. Provide training to all persons who work for the secretary related to bonding mineral leases to ensure that each person is familiar with and can enforce the bonding guidelines. The Secretary shall establish a minimum of competence in this area, and shall test all persons to oversee the bonding of mineral assets. Only those persons to meet or exceed the Secretary's standards shall be authorized to oversee bonding for mineral leases for Trust Lands, Trust Assets, and Trust Resources.
52. Implement electronic document imaging and retrieval capabilities so beneficiary documents and records can be scanned once and made available to appropriate Secretarial staff nationwide on demand.
53. Implement workflow or case management technology combined with imaging capability to manage the information and processing flow and ensure that essential steps and controls are taken, as well as minimize process loops and rework. Decentralize account maintenance through enhancements to information systems and appropriate dual controls, so account administration authority resides with designated field officials.
54. Develop methods to contract with private banking institutions to accept lease payments, deposit such funds received in accounts, provide lock box services, and document the receipt, storage and investment of funds, and transfer such documentation to the Integrated Trust Management System.
55. Establish a centralized collection, deposit, and posting information collection process for documenting the depositing and posting of funds to beneficiary accounts in a timely manner.
56. Develop the guidelines to determine when surveys of Trust Lands, Trust Assets, and Trust Resources are needed, what type is warranted, and who should perform the survey.
57. Inventory the survey needs for Trust Lands, Trust Assets, and Trust Resources, with such data becoming a part of the Integrated Trust Management system.
58. Coordinate with other bureaus under the DOI to centralize all survey and land record keeping activities into one bureau under the Secretary's direction.

Create one unified automated land information and record processing system that is compatible with other record systems and easily accessible by everyone needing the information. The system could include survey and land ownership information and be integrated with other federal automated record systems, such as title systems. Encourage Tribes to provide private survey records in the system so their land information is included.

Regarding the current nomination for the Special Trustee for American Indians, the ITMA Board of Directors is committed to working closely with the person selected for this position. ITMA has determined, that as an organization, it will take no position on the nomination of Ross Swimmer and that each of our member Tribes must act in their own capacity regarding his nomination. ITMA is committed to continuing to work with the Office of the Special Trustee to improve the delivery of trust services to Indian Tribal governments and the individual Indian beneficiaries and to make sure that the Department of the Interior fulfills its trust obligations owed to these Indian beneficiaries.

One final but critical issue relates to the funding ITMA receives from OST. Our current level of funding is \$350,000 in FY 2002. Based on the increase level of trust reform activity, the Administration requested \$450,000 in FY 2003; ITMA requested \$500,000 based on our workload. At a minimum, we need the level requested by the Administration, and we need assurance from the Special Trustee that OST will distribute the full amount of funding appropriated by Congress. In prior years, OST has withheld a portion of our funding (\$40,000 in FY 2002) and essentially required us to “prove” that we need the money. This additional level of scrutiny is not only unnecessary but also has caused a strain in our relationship with OST. Therefore, ITMA is seeking specific report language in the FY 2003 and 2004 appropriations bills directing OST to release and distribute the full amount of funding appropriated by Congress for ITMA. We want to make sure that the new Special Trustee and this Committee are aware of this past problem and are willing to work with us on resolving this issue.

Thank you for the opportunity to submit written and oral testimony. We look forward to continue working with the Office of Special Trustee and Congress.