

**INTERTRIBAL MONITORING ASSOCIATION on Indian Trust Funds**

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**WRITTEN STATEMENT  
PRESENTED BY ITMA CHAIRMAN RICHARD SANGREY  
INTERTRIBAL MONITORING ASSOCIATION  
before the  
SENATE COMMITTEE ON INDIAN AFFAIRS  
on the  
“DEPARTMENT OF THE INTERIOR TRUST REORGANIZATION”**

**May 21, 2003**

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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.**

## **Introduction**

Mr. Chairman, Mr. Vice Chairman and members of the Committee, thank you for inviting ITMA to testify today. My name is Richard Sangrey and I come from the Rocky Boy Reservation of Montana. I serve as the Chairman of the Intertribal Monitoring Association. I will provide oral comments today and ITMA's written testimony is submitted separately. ITMA stands ready to answer any questions or provide additional information if requested.

**ITMA's primary objective in the trust reform process is the strengthening of tribal sovereignty and tribal self-governance while holding the United States Government to their fiduciary obligations in the administration of the Indian trust.** ITMA firmly believes these principles can and do co-exist. Tribal governments are working on a legislative proposal to incorporate these principles in the trust reform process. Before discussing the tribal proposal, we will first address the various aspects of the Department's plan.

ITMA has been monitoring and influencing Indian trust reform activities for more than a dozen years now, and we are grateful for the interest and oversight this Committee continues to demonstrate.

ITMA acknowledges the level of attention the current Administration has devoted to trust matters and there can be no doubt that much of what has happened, and is happening now, is driven by the *Cobell* litigation and, thus, by the U.S. Department of Justice in "defending" that lawsuit. While we recognize that oversight of the Justice Department is not within the jurisdiction of this Committee, we cannot overstate the role that Department plays in Indian trust reform. This Committee has taken cognizance of this by the enactment of S. 1857 in the last Congress, reflecting its concern with the number of lawsuits then being filed out of concerns over the statute of limitations. The Justice Department has this same concern but, nevertheless, continues to assert positions that force tribes and individuals into the courts.

## **DOI'S Comprehensive Trust Management Plan**

The Department is rolling out its plan in stages: from defining goals and objectives, to organizational re-alignment and changing of management, to implementation of the trust re-engineering plan. The trust re-engineering will be based on the "TO-BE" and "AS-IS" studies, which included input and participation from Indian country. ITMA's Vice-Chair John Berrey has been very active on this front, and ITMA intends to be involved in the re-engineering phase of the plan.

ITMA notes that while the Department's plan recognizes a commitment to self-determination and self-governance, it does not include any specific plans for tribes to assume more management, control or authority over the management of trust resources.

Most glaring is the lack of clear trusts standards in the plan. The plan only references the accounting requirements in the 1994 Trust Reform Act. The plan does not recognize Supreme Court case law establishing enforceable trust standards.

The plan also lacks substance on addressing the fractionation problem. The legacy of the Allotment Policy has created numerous modern-day trust problems. Any trust reform proposal must address the fractionation problem.

The Department's realignment and FY 2004 budget request expands the authority of the Office of Special Trustee from an oversight function to include operational duties of trust management. This expansion raises questions about the effectiveness of OST's oversight role, and the need for concrete independent review of its performance.

By contrast, the plan places no emphasis on tribal resources management. The enhancement of these programs are critical to the entire trust reform process. Tribal resources, our land, timber, oil, gas, coal, and other resources comprise the trust corpus. Properly managing these resources forms the basis of the trust. In this regard, the Department's plan and FY 2004 budget requests ignores the importance of tribal resources management.

The Department's plan also disregards the Tribes' continued request for a single line of authority at the local level for trust management programs. The plan proposes that OST will develop a regional and agency presence to ensure that trust standards are followed in the management of these assets. OST will also retain the responsibility for financial asset management. This approach raises concerns over the assignment of

responsibilities between OST and BIA and how disputes will be resolved between the agencies.

One of the largest concerns is the cost of the plan. The plan does not address this issue and ITMA is adamant that Congress not allow the Department to deplete funding from existing programs and services to pay for its trust reform proposal. ITMA urges the parties in the Cobell case to enter into settlement negotiations and to include provisions for trust reform to be paid from the Judgment Fund. Using this source of funding for these purposes will ease the strain on the Department's existing budget.

ITMA supports the plan's establishment of a trust training unit within the OST reorganization. Training in the new BIA organization is unclear. ITMA supports agency wide trust training as part of the overall trust reform.

### **ITMA'S Legislative Initiative**

Again, ITMA's primary objective in the trust reform process is the strengthening of tribal sovereignty and tribal self-governance while holding the United States Government to their fiduciary obligations in the administration of the Indian trust. The legislative proposal developed jointly by ITMA and NCAI, along with our member Tribes, addresses some of our key concerns.

The tribal legislative approach would require the Secretary to develop of an integrated land and resources recordation and title system, as an immediate step to focus on the fractionation problem. In addition, we believe the Secretary should request more resources to make available for Tribes to consolidate land holdings on an allotment-by-allotment basis. Tribal attempts to consolidate small fractionated interests are not keeping pace with the current speed of the land fractionation problem.

The bill would establish general trust standards regarding the management of trust funds and assets. Our approach accommodates tribal participation in the development of standards particular to each reservation.

The tribal proposal creates a statutory framework to allow Tribes to manage tribal trust funds and assets. Our intent is to give tribal governments greater control over management of trust funds and resources. We believe that promoting tribal self-governance is consistent with the trust responsibility the United States owes to Tribes.

The intent of the legislation is to elevate the resource management needs of our member Tribes and to make sure the tribal resources management plans receive adequate funding and attention.

A provision is included in our proposal making clear that the federal trust responsibility to the beneficiaries of the Indian trust shall not be diminished.

ITMA is working on provisions specifying the United States trust obligations, and trust oversight and compliance issues. A copy of the latest version of the ITMA-NCAI draft legislation has been provided to the Senate Indian Affairs Committee for review. It is our hope that we will be able to work with the Committee on advancing the tribal bill. A copy is attached to this testimony for the record.

### **Other Issues of Concern**

**Training** - There are heartening observations contained in these documents, not always highlighted. One of the most encouraging of these is the recognition that, *“The ultimate effectiveness of an organization depends upon the professionalism and credibility of the employees and the manner in which they are organized, motivated, and held accountable.”* CTMP at 2-5. ITMA would add training to this statement and suggests that the manner in which employees are trained, as well as motivated and held accountable, is far more important than the way in which they are organized and urges this Committee to focus its oversight more on these important requirements than on any particular organizational structure, including the one presently before us.

The Thirteenth Quarterly Report recites “a major training effort in the principles of fiduciary trust,” and that “A course was designed by the Cannon [sic] Financial Institute” and DOI and presented to “high-level employees of Interior. The new BIA organization does not indicate any recognition of the need for trust training in those programs not under the direction of the Deputy Director, Trust Services. ITMA urges the Committee to focus on the extent to which the Department proposes to provide all its employees with the training they need, as well as with the tools required to do their jobs in the 21st Century.

**Benefits of Inclusive effort** - The Department now recognizes that the desire for standardization must accommodate the factors that contribute to the complexity of Indian trust management, including the differences between the relationships between tribes and the government.

Also, ITMA emphatically insists that, while considerable latitude is extended to the Department in organizing to carry out its duties, the Department is not free to determine unilaterally what those duties are.

**Costs of administering the Indian trust** - Deputy Secretary Griles' stated that, "Unlike most private trusts, the Federal Government bears the entire cost of administering the Indian trust. This statement implies that administration of the Indian trust is some form of gratuity. The Department has long charged an administrative fee on all timber sales from Indian lands. To whatever extent the federal government does bear any cost, it represents the cost of a legal duty of the United States. ITMA has long urged the Congress to repeal the authority currently contained in 25 U.S.C. 413 for the Secretary unilaterally to determine the level of such fees and to impose them upon trust transactions. We make that recommendation again today.

**Trust culture** - Nowhere in any document we have reviewed do we find any indication that the Department's efforts include an appreciation of the trust culture that characterizes, for example, the work of the Executive Office for United States Trustees. The regulations contained in 28 CFR, Part 58 (Procedures for Suspension and Removal of Panel Trustees and Standing Trustees) specifically recite that trustees in that program, "... are held to very high standards of honesty and loyalty." This is so not only because they are fiduciaries to both debtors and creditors, but because "... they hold large amounts of other people's money."

We observe that in enacting the forward looking Sarbanes-Oxley Act for corporate governance reform, the Congress was mindful that mistakes of the past could not be summarily swept away. We respectfully urge this Committee to give favorable consideration to requiring reports on known losses to trust estates, to the role of the government in litigating these matters, and to the failure of confidence in our government's fidelity to its Indian trust responsibility among our most patriotic citizens.

## **Conclusion**

ITMA worked with this Committee to develop the 1994 Indian Trust Fund Management Reform Act. Each Administration seems destined to learn through its own painful experience the difficulty of trying to find a "quick fix" to the trust reform matter. ITMA does not believe the key to trust reform lies in organizational charts. The ultimate

objective of this Administration's efforts lies in the "To-Be" Model. We do believe that the process adopted for reaching that objective, however, is immeasurably improved over the various previous proposals. And, at the very least, if the matter of reorganization has now been dealt with, perhaps we can get on with the real business of trust reform.

ITMA is grateful for this opportunity to provide these views, and looks forward to working with the Administration in their consultation and communication efforts, and with this Committee in its continuing oversight and lawmaking roles.

*In preparing this testimony ITMA has reviewed the following plans:*  
*Comprehensive Trust Management Plan (March 28, 2003);*  
*Departmental Releases DM 3569-3589 (April 21, 2003);*  
*Federal Register notices on Land Consolidation and Re-engineering*  
*Working Groups (April 22, 2003);*  
*As-Is Trust Business Model Report Executive Summary (March 21, 2003);*  
*Statement of Deputy Secretary Griles to House Appropriations*  
*Subcommittee (March 12, 2003);*  
*Letter of Ross Swimmer to U.S. Senators (April 8, 2003) (unsigned copy);*  
*Executive Order No. 13175 (Nov 6, 2000)*  
*BIA Government-to-Government Consultation Policy (Dec. 13, 2000);*  
*"OST Reorganization" presentation to ITMA (April 23, 2003.*  
*S. 175, 108<sup>th</sup> Cong., 1<sup>st</sup> Sess;*  
*National Tribal Leader-DOI Management Council for Trust Reform*  
*2003-2008 (draft announcement of 3-13-2003);*  
*Status Report to the Court Number Thirteen (May 1, 2003);*  
*Sarbanes-Oxley Act of 2002;*  
*Statements of Lawrence A. Friedman, Executive Director for*  
*United States Trustees (March 4 and April 8, 2003);*  
*Various administrative decisions of USTP (2002 and 2003);*  
*28 CFR, Part 58 (October 2, 1997)*  
*Various documents filed in Cobell v. Norton, (D.C.D.C.)*