

July 10, 2013

Secretarial Commission on Indian Trust Administration and Reform

DOI Secretarial Commission on Indian Trust Administration and Reform Members:

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Officer for the Commission, DOI

Kevin K. Washburn, Assistant Secretary – Indian Affairs, DOI

Please accept the following as testimony/public comment in the matter of US government trust responsibilities regarding Individual Indians and Native American tribes.

I am Thomas M. Wabnum, Prairie Band Potawatomi, decorated Viet Nam Veteran, Individual Indian Monies (IIM) Account holder, multiple federal programs victim: former Indian boarding school student, former Haskell student, former Tribal Council Treasurer, Indian Relocation participant, BIA direct employment program, I retired from the Bureau of Indian Affairs and the Office of Special Trustee for American Indians. Each of the Federal programs that I and millions of my fellow Indigenous Americans survived were designed to separate me from my land and cultural heritage and to be forced into an American settler's dream of becoming a complacent farmer.

The Potawatomi Tribe has entered into more treaties with the United States than any other Nation: 43. The Potawatomi Indians held over 25 million acres of land, reserved for our use by Federal policy, with respect to our cultural and traditional heritage, that was reduced by Federal administration policy to 80 tribal trust acres in 1960, with 77,000 of Individual Indian trust acres. Our tribal land base was fleeced from us by administrative rulings relative to the 1887 Dawes Allotment Act. The Dawes Act destroyed my reservation.

The Courts of these United States have proven in numerous decisions that attempts to fulfill its fiduciary responsibilities, US Federal administrative policies have not only failed, but have left an indelible detrimental scar upon the hundreds of Native Nations as well as upon the democracy itself by continuing to create hardship and heartaches for Indigenous Americans. Most recently the Cobell Lawsuit under Judge Royce Lamberth rendered contempt of court charges on the US government for failing to administer their federal trust duties.

Judge Lamberth recognized and ruled in favor of the plaintiff, Elouise Cobell, et al. The US governments' strategy to become victorious over the Cobell Lawsuit utilized war-like surgical strikes that sent deleterious messages to Indians and friends of Indians. Those messages, both implicit and explicit, included: Sue me and I will keep this lawsuit in court forever, run you out of money, your claimants will die until you agree on a low-ball forced settlement. The Cobell decision did not fix the broken Department of Interior/Bureau of Indian Affairs (DOI/BIA) trust problem nor did it complete an accurate accounting of "all funds" deposited in Treasury accounts as the suit requested. IIM accountholders and Tribal governments will never have a beginning balance or true accounting of our trust monies.

In 1868, the Indian Peace Commission submitted a report to President Grant detailing its problems with recommendations on how to fix them.

Many other major historical investigative reports such as "The Problem of Indian Administration of 1928", "Ten Years of Tribal Government under the Indian Reorganization Act of 1947", and the "American Indian Policy Review Commission of 1972" have been prepared and submitted for Congressional review. The recent Cobell lawsuit of 1996 and discovery highlights the entire history of illegal encroachment of Indian Affairs.

In March 1995, the SCIA conducted another meeting to discuss the "Reforming and Downsizing the BIA" and requested a List of All Investigations, Reports, Commissions, and Studies on the Bureau Since its Inception' from the Congressional Research Service, Library of Congress. The report indicated there were more documents but excluded them because of their size and number. If there are any summary indications of these reports, then the Cobell Lawsuit is that summary. There is only one thing consistent with the federal policy on Indian Affairs and that is it has been constantly inconsistent and incessant.

At Senator McCain's request in 1996, a report was given to the Senate Committee on Indian Affairs (SCIA) that there have been 1,050 investigations conducted on the federal problem on Indian Affairs.

More important in this testimony is that I lived in a Dawes' allotment house with my Grandmother. I lived on several Dawes' allotments within my reservation. I witnessed and felt the effects of the federal government's pretense of promised trust responsibility for eternal protection and care and witnessed what it did to my relatives and friends. We felt, and continue to feel, like a combat soldier returning from war with horrible memories of human atrocities resulting in post traumatic stress disorders.

With these invisible but indelible scars and bad memories from failed federal policies and programs, and from being considered a ward of the Federal government, I am uniquely qualified to submit for serious consideration a recommendation to fix the federal government's interminable problem of Indian Affairs. Today, there is only one entity unwilling and unfit to fix this problem; the Federal government.

The following suggestions emanate from my years of experience within the Indian Affairs system from which I continue to witness suffering on the part of those it needs to protect.

Codify Federal Trust Policy

Some people believe that if a lie is reiterated often enough, it will be believed as truth. Other people, on the other hand, know that a lie is a lie no matter how many times it is repeated. Consequently, when laws are passed regarding Indians, the following words are included:

...the Constitution of the United States invests the Congress with plenary power over the field of Indian affairs, and through treaties, statutes, and historical relations with Indian tribes, the United States has undertaken a unique trust responsibility to protect and support Indian tribes and Indian people; the Congress, through treaties, statutes, and the general course of dealing with Indian tribes, has assumed a trust responsibility for the protection and preservation of Indian tribes and for working with tribes and their members to improve their socioeconomic status so that they are able to take greater responsibility for their own economic condition;

However, the only proof or substantiation that the above is true emanates from the Supreme Court, one of the three branches of government that has consistently found in favor of itself and against Indian tribes. The Court has misinterpreted the Commerce clause of the US Constitution to include "the field of Indian affairs," when the Commerce clause states that Congress shall have power "To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." The Commerce Clause does in no way grant plenary power to Congress. In order to clarify for all parties, a clear policy must be established.

This policy must be consistent with the Constitution, specifically with regard to the possibility of litigation. Without a common law, Indian Trust Policy (ITP) court decisions cannot be made against the flawed government because factual Indian law does not exist. "Common law" is detrimental to all aspects of tribal life when applied to Native issues. A policy must be established that can be depended upon to ensure that debacles like the Cobell lawsuit, the Alaska Native Claims Settlement Act, Lone Wolf v. Hitchcock, and others do not continue to occur. Due to Supreme Court rulings in favor of Congress over its wards, Native American Indians and tribes, that ensured plenary power which was decided by the courts themselves, not by Congress as delineated in the original Commerce Clause of the Constitution. All branches of the government cry for clarification as to their roles when dealing with Native people and tribal governments. . This new ITP will protect us from whom we need protection from; the U.S. Government.

In the U.S. Fiduciary Trust and especially the Secretary's trust responsibilities there are no repercussions should the Secretary fail to fulfill those Congressional mandated responsibilities. A policy that outlines not only the duties of the US government, but the consequences that face those who fail in their obligations would aid, or possibly nullify, any future litigation.

Utilize current front line employees who have necessarily become cognizant of both perspectives affected by current Federal Indian Policy. Allow experience rather than politics to dictate policy.

First and foremost, the U.S. must re-define its plenary powers creating a federal trust policy for protection of Indian Affairs so when Courts rule it may in favor of Indians. If not, then silent federal termination of Indian Affairs will continue.

In the meantime, Congress can proceed to improve Indian Affairs by:

Create a Department of Indian Affairs (DIA)

The U.S. has created 15 cabinet-level departments: Agriculture, Commerce, Defense, Education, Energy, Health and Human Services, Homeland Security, Housing and Urban Development, Interior, Labor, State, Transportation, Treasury, and Veterans Affairs, as well as the Attorney General. A Federal Department of Indian Affairs (DIA) is a start to a permanent solution. Each of the existing departments contains personnel and budgetary considerations that deal with Indigenous populations. With the creation of one department to house all of the responsibilities at the constitutionally mandated Federal level, solutions rather than increasing problems may be found. This will also eliminate the inherent conflict of interest if Indian Affairs programs remain under the Department of Interior (DOI).

DIA can be re-created under the new Indian Trust Policy supporting Treaties and U.S. Fiduciary Trust responsibility.

Adequately fund the Department of Indian Affairs

Create an adequate Indian Affairs budget that is commensurate to legally, congressionally care for and protect Indian trust property and money and exempt from budget cutbacks. If federal budget cutbacks occur then Indian property and money or Indian Trust cannot or be protected and deteriorate over time.

U.S. President and Congress must create trust policy that protects preserves and improves its trust property and the money derived from it. All Indian Affairs appropriations must have this policy protection for improvement of Indian Country's future.

Create a Permanent Trust Commission

This Commission should consist of seven commissioners, a minimum of five Native and a maximum of two non-natives educated and knowledgeable in the newly created Trust Policy.. For example, for non-natives: Judge Royce Lamberth, Dennis Gingold, or Alan L. Balaran. For natives, I would add former Administrative Law Judge Sally Willett to the list of commissioners. This will prevent any breaches of trust to continue and will constantly improve conditions in DIA's new challenges. The Commission may continually:

Update All Indian Laws, Code of Federal Regulations 25 and others, to conform with new Indian Trust Policy.

Update Indian Preference Policy and attach to any appropriated funds for Indian services.

Abolish the Office of Special Trustee for American Indians

The Office of Special Trustee (OST) for American Indians was established by the American Indian Trust Fund Management Reform Act of 1994 to improve the accountability and management of Indian funds held in trust by the federal government. BIA needs money and employee positions to complete its tasks, but separating the two organizations caused duplicity of services, difficulty in making decisions, and unnecessary expense to the American taxpayer, these resources will be added to BIA's permanent budget base. The 1994 Office was designed to possibly expire in three years; it is still operating 16 years later. OST struggled for life only to defend itself and Interior against the Court during the Cobell testimony. The government funded litigation costs using money earmarked for Indian programs. OST protects and preserves itself, passing on its broken trust policy for subsequent administrations and future generations of Indian People.

As ordered by the Court;

Tribal Buy Out of all fractionated lands

Cobell buy back money will be inadequate and only one time court settlement money. Other low fractionated lands not purchased will grow over time and will become more highly fractionated and therefore expensive. Buy back money should be in annual appropriations until all interests can be purchased for the tribes. Funds appropriated for administering IIM system will decrease over time using those funds in land consolidation and improving the new DIA projects. The new DIA will not become another BIA since experienced and educated tribal-minded people will set and carry out its new trust policies for the good of the Indian people and U.S; the negative image perpetuated by the BIA will then become a positive one in the DIA. Reverse the effects of the Dawes Act, which is contrary to tribal communal land ownership. This is the Anti-Dawes buy back but ill be short lived if funds are not added to the permanent base.

This is not a complete solution to the federal problem with Indian Affairs. But with our history we have learned so much of what not to do that it cannot get worse if these proposed changes are implemented.

I just hope and pray that this Commission can make a positive change.

Sincerely,

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