

THE CONFEDERATED SALISH AND KOOTENAI TRIBES
OF THE FLATHEAD NATION

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A Confederation of the Salish,
Pend d' Oreilles
and Kootenai Tribes
June 4, 2012

Honorable Fawn Sharp, Chair
Secretarial Commission on Indian Trust Administration and Reform
1001 Indian School Road NW, Suite 312
Albuquerque, NM 87104

TRIBAL COUNCIL MEMBERS:
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Dear Chairwoman Sharp and Members of the Commission:

The Confederated Salish and Kootenai Tribes (CSKT) in Montana are in receipt of your letter of May 3, 2012 soliciting our ideas on the administration and management of trust assets and the implementation of the Interior Department's trust responsibility for both individual Indians and Tribes. We appreciated the opportunity to offer input and a perspective to the important work of the Secretarial Commission on Indian Trust Administration and Reform (Indian Trust Commission or ITC). We appreciate the mission of the ITC which is to offer advice and recommendations to the Secretary of the Interior regarding trust management and reform.

The CSKT are deeply concerned about the level of funding needed to deliver critical services to Indian people. We embrace the challenge of serving our unique population through the opportunity of self-governance. We believe the highest obligation of the Secretary of the Interior (and the ITC) is ensuring and providing adequate funding to sustain and protect Tribal trust resources.

Our greatest objection and concern is that the BIA does not have funding parity generally, when you compare resource management areas. Our forest management programs are underfunded when you compare other federal entities. The funds provided by the BIA for resource management on a per acre basis are not sufficient to meet the standard of "sustainability of resources" as expressed in the recent Cobell land administration claims (case No. 1:96CV01285-JR¹). This case demonstrated agency failure to include or enforce terms requiring that land be *conserved, maintained or improved*.

The recent Cobell suit provides the opportunity for the DOI BIA to "get it right" by re-examining funding priorities (and levels) and trust responsibility. If you follow the standard expressed in the law suit under fund management and land administration claims, BIA funded resource programs would see an increase and discretionary activities funded by the BIA would cease. Instead we have BIA streamlining, clearly an OMB directed method of reducing federal funding. If the lack of funding prohibits tribal and individual Indian trust resources from being properly managed, and if this lack of proper management has led to the recent round of lawsuits against the BIA, we are at a complete loss to understand how the

Administration can propose a \$65.3 million reduction in funding for BIA as has been proposed in the so called streamlining initiative. We believe that until tribes have parity with other federal beneficiaries that cuts in funding are absolutely at odds with actions that need to be undertaken to ensure proper management of fiduciary trust responsibility for managing resources and assets and providing services.

The CSKT embrace and strive to achieve an exceptional service model, within the present funding limitations offered by the US government. We accomplish important performance based results, with limited budgets. We believe that the funding level provided, violates true trust responsibility from every aspect.

The CSKT have a valid relevant example of inadequate forestry funding (and treatment of trust resources) which we will discuss later in the document.

The DOI BIA funds which are provided pursuant to the CSKT Self Governance Annual Funding Agreement (AFA) are not sufficient to sustain a productive home land seven generations into the future. The funds are not sufficient to improve and conserve our resources.

Our responses to the questions posed in your letter of May 3, 2012 follow:

ITC Questions:

1. Do you have any recommendations to improve or streamline delivery of services to trust beneficiaries? This includes matters related to financial management and accounting functions, as well as natural resource management functions.

Financial management:

The present TAAMS system is inadequate for collections of late and or delinquent lease payments. There must be an automatic referral of bad debt to the National Business Center (NBC) for collection of lease payments, similar to irrigation receipts. The present system is not sufficient to ensure payment of leases due the Tribes for use of Tribal property. Failure to address this now will result in the same "Cobell fund administration claim" for historical under collection of bad debt. This system needs some work to facilitate collections and referral to the NBC.

Natural Resource Management Functions:

The publicized BIA streamlining initiative must go beyond balancing an ever declining BIA budget. The CSKT support policy that makes sense and produces a cost savings and a result. The true emphasis should be on empowerment, improved trust responsibility and clear action oriented policy. Efforts to further Tribal management and to improve self-determination and protect natural resources *should be the focal point.*

Our recommendations for policy clarification and improved effectiveness are as follows:

- Improve the process for procuring and using mass appraisals. This is critical for the success of the upcoming Cobell fractionated interest acquisition program.
- Mass appraisals will save money over the long run versus the costs of individual appraisals;
- Develop policy to support land consolidation including title transfers, fee to trust and gift deeds;
- Develop an expedited policy for acquisition of small interests at probate. Prioritize the process for acquisition at probate using the Cobell funds.
- Rescind Environmental Compliance Memorandum 10 -2 which requires costly and unnecessary tests for fee to trust;
- Issue clear policy on fee to trust transactions (land is taken into trust and not the structures);
- Adopt an expedited approach for fee to trust when the land is bare forested land or agricultural land (risk assessment approach versus everything is a liability approach).
- We recommend that the DOI BIA expand the definitions of “mandatory acquisitions for fee to trust”. The requirements of mandatory fee to trust acquisition are greatly streamlined. This would help Tribes and the BIA and eliminate most costs and time delays.
- If a Tribe is re- acquiring **original reservation land** the acquisition should be treated as a mandatory trust acquisition. This does not compromise the review and diligence required of an off reservation acquisition.
- Reward performance by allowing those Tribes and agencies with clean audits and reviews more decision making authority – *reward capacity and effectiveness*. Establish empowerment centers where sustained performance is recognized and other agencies and Tribes can aspire to a higher level of performance and autonomy.
- Redefine the role of BLM as related to federal land determinations.
- Rescind the inefficient, time consuming and outdated policy that requires an on-site BLM survey for distribution of a fractionated fee interest. This policy has individuals waiting for years to inherit their interests. The present policy prohibits beneficial use of property. As such it may well be the basis for future law suits against the BIA.
- The CSKT have over 50 pending fee patent requests pending BLM ability to complete the process.
- Convene a nation to nation discussion on the role of BLM in Indian Country. The BIA cannot afford the BLM and Tribes cannot wait years for BLM to finish their work.
- The CSKT had a 1955 probate needing BLM review and involvement. The project was finally approved for BLM work in 2006, through the CARS system. The BLM came on site in 2009 and completed maps were provided to the CSKT in 2011. Upon review of the maps Tribal staff determined that the BLM generated a map relevant to the current status of the land in 2011, and failed to produce a map relevant to the 1955 probate question. Shouldn't BLM know the work they are being contracted to produce? This could be the second Cobell suit. People who have been waiting since 1955 for BLM services so they can inherit family property.
- During the BLM case referenced above (1955 probate) the BLM traveled back and forth several times. The funds allocated to the job were probably “absorbed’ by inefficient travel costs. Find a solution to replace BLM – a suggestion is to use CFED or other properly licensed surveyors instead of the BLM.

- Consider creating and consolidating functional agency locations where BIA and Tribal staff have expertise in certain areas.
- Allow those Tribes who perform to DO MORE. Performance based Tribes can assist the BIA if given the tools, funding and information.
- Provide adequate funds to facilitate “sustainability of native homelands.”.. Prioritize trust functions and fund them at an adequate level.
- Weed funding is severely inadequate. How do you perform weed treatment on 1.3 million acres with less than \$500.00? This happened to the CSKT one time – BIA funding was less than \$500.00. Yet, we had to report on the funding received and work activity performed. This violates any standard for pest control as referenced in the land claims portion of the Cobell settlement.

At the present time, the process circumvents the intent of Executive Order 13175, Consultation and Coordination with Indian Tribal governments and Executive Memorandum on Tribal Consultation dated November 5, 2009 for the Heads of Executive Department and Agencies.

2. Are there any other trust administration models the ITC should examine as it looks towards improving the Department of the Interior’s trust administration and management?

The CSKT believe that an expanded role for self-governance should be looked at in the overall review and context of improved trust management. Tribes could be granted expanded authority under a self-governance waiver or demonstration, with federal tort claims coverage. This model could be offered to Tribes with sustained performance and capacity. This is true Tribal empowerment.

These Tribes could mentor other Tribes and become a best practice model for true self determination.

3. Given that the sunset provision in the American Indian Trust Fund Management Reform Act of 1994 was predicated on OST’s oversight and reform responsibilities, and that OST now has additional operation duties, should the commission recommend sunseting the OST?

It is our opinion the Department of the Interior should be held accountable to perform their trust responsibility duties fully. Funds allocated to OST should be re-allocated to improve self-governance and adequately fund trust responsibility functions.

4. Do you have any recommendations and or suggestion that would improve the nation-to-nation relationship between the DOI and the Tribes with respect to trust administration?

The CSKT are a leader in the area of self-governance. We support the model of *governance* that has Indian people serving Indian people. We believe there is a stronger connection to service *-and performance-* when Tribes are able to contract or compact for DOI BIA provided services. True Tribal

empowerment would occur if the DOI BIA would identify additional tasks that Tribes could assume under an existing Self Governance Annual Funding Agreement (AFA). Many Tribes are capable of performing additional “trust administration” tasks which could be negotiated for within the context of the annual funding agreement. For instance, we operate the BIA’s Title Plant here on the Flathead Reservation and as such are one of the very few tribes who do .

This approach of individual nation to nation consultation and negotiation may produce a better result in lieu of the approach offered by the BIA Streamlining which includes elimination of BIA staff and across the board budget reductions. For example, the CSKT could assume more authority in the area of land transactions and forestry.

If the goal is to improve nation to nation relationships, and empower Tribal programs, then the approach should be to identify specific trust functions that could be assumed by those Tribes with capacity, experience and a documented performance record.

The CSKT support additional authority for waivers under self-governance – where Tribes can be acknowledged for their good work and past performance. If a Tribe has sustained performance, then the scope of authority granted to the Tribe should be expanded through the AFA or through waiver authority under self-governance.

As a final comment, in our opinion, the Interior – Tribal relationship would improve, if the DOI BIA would discontinue insincere consultation meetings. While the CSKT appreciate the opportunity to hear the general options under consideration by the BIA in streamlining, the conversation does not exemplify meaningful consultation. Consultation by its nature includes an exchange of views on specific proposals and ideas. The BIA streamlining document does not clearly disclose proposed actions or program impacts. For instance, exactly where will the proposed \$2.6 million cut in Law Enforcement Special Initiatives be implemented and where will you reduce the Indian School Equalization fund by \$4.5 million? Tribal governments cannot be expected to consult on the *vague concepts of budget reduction*. Consultation must be meaningful – involving a specific action item and process for identifying and resolving differences, if necessary.

5. Do you have any recommendations to improve or strengthen trust management and or administration based on information gathered in the course of litigation and settlement of the recent tribal breach of trust cases announced in early April of this year.

In the Class Action Settlement Agreement dated December 7, 2009 (case No. 1:96CV01285-JR) there is a class of claims called “Fund Administration Claims” which includes the failure to properly bill and collect interest on receipts due Indian beneficiaries.

The present TAAMS system does not have an active module or program for collection actions including the assessment of interest and penalties. As a result, this system limitation contributes to under collection of the full amount due to Tribes and individuals for leases. The TAAMS system should be

updated to include a collection function and an automatic referral of bad debt to the National Business Center (NBC).

Another aspect of the fund administration claims was failure to obtain compensation for trespass.

DOI BIA regulations need to be developed that provide authority to seize personal property, if necessary, for compensation for trespass.

The Land Administration Claims is another area where the Tribes have concern. These claims relate to the breach of trust for mismanagement of land, timber, grazing and other resources. If the funds available to a Tribe under a self-governance agreement are not adequate to provide for an improved natural resources outcome, then trust responsibility is not met.

The CSKT have concerns for adequate funding levels related to forestry and Tribal lands. The BIA does not provide adequate funding for weed treatment, monitoring of range permits and agricultural leases and ecologically based forest management and treatment.

The National Indian Forest Resources Management Act (NIFRMA) directs the Secretary of the Interior (Secretary) in consultation with the affected Indian Tribes, to obtain an independent assessment of the status of Indian forest resources and their management every ten years. Ultimately, the DOI BIA must address the funding deficiencies which contribute to loss, waste, and failing to plant and cull timber land for maximum yield, etc. It is time to provide funding for Indian forests that is consistent with the "trust responsibility".

The DOI BIA should establish criteria for funding for Tribal Land Administration that takes into account the acres managed, complexity of leasing, complexity of resource managed, number of land owners, etc. Many Tribes are too underfunded for this to be considered to be properly managed. It is our recommendation that the BIA define essential trust services and then, fund them adequately.

HFPAS Funding Formula as related to land administration:

The hazardous fuels allocation system uses two distinct formulas to arrive at a rating that is applied nationally to compare proposed fuels management projects. The Project Prioritization System portion of this formula uses a complex array of business rules to assign points to projects. Those with the highest number of points receive designation as the "highest priority projects." These formula attributes can be gamed, and the parts of the system being used and described as "best science" is theoretical and discriminates against projects that fall outside the parameters of the computer models.

The second portion of the hazardous fuels allocation system is referred to as EMDS or Ecological Management Decision Support. It is totally flawed and the After Action Review has already demonstrated this to be the case. One problem is that it is founded in the designation of Fire Planning Units (FPU) which are large geographic areas of combined ownership and fuel types. Business rules supporting this portion of the overall formula gives more points and favors those ownerships that are

combined Department of Interior (DOI) lands versus those that are combined with Agriculture. This portion of the formula cannot be gamed as it is based ownership and FPU membership. This is the significant reason why some Tribes cannot compete with other DOI agencies within this point system. Our Reservation lands are gauged in association with other lands in our FPU which happen to be US Forest Service lands. The EMDS is not interested in fire spread onto non DOI lands (in our case the Forest Service) so we are behind the eight ball from the beginning and lose points in the rating.

These two rating systems in combination have created a matrix that demands attention to detail when using PPS, but establishes a fixed EMDS score that is not easily manipulated; however arbitrary and unrelated to natural resource management. In the case of Flathead Agency, the entire program has been justified and designed using NEPA compliant analysis and documentation. A \$1.1 million dollar program that can easily be discredited to less than \$100,000 is based in the EMDS score based on ownership. The disparity between resources driven management decisions is now victimized by the arbitrary concept of land ownership orientation to neighboring ownership.

This is not Trust Responsibility provided by the Congress of the United States based on the lack of meeting their own procedural requirements of NEPA compliance for managing Tribal natural resources. How can we divert such a significant amount of funding away from programs established using federal direction and environmental clearance for a decade of successful management and suddenly find these programs lacking because of arbitrary scoring in a system using flawed data (LANDFIRE) and an arbitrary system of allocation.

The Bureau of Indian Affairs has an obligation to recommend suspension of Tribes participation in this program based on Treaty Rights and the circumstances that led to reservations, treaties, executive orders, and recognition of Tribes sovereignty which is not appreciated by the public service agencies (USFS, NPS, USFWS, BLM). Tribes should be allowed relief from the biased application of theoretical programs and unsubstantiated data used in the current EMDS and HFPAS systems that devalue Tribal resources and programs. In the present computer modeling, trust resources will be harmed.

BIA Streamlining:

At the present time, the process circumvents the intent of Executive Order 13175, Consultation and Coordination with Indian Tribal governments and Executive Memorandum on Tribal Consultation dated November 5, 2009 for the Heads of Executive Department and Agencies.

Before any agency office location is eliminated or consolidated, there must be a public disclosure of the number and complexity of trust transactions approved by that agency location.

To merely consolidate and eliminate agencies to achieve an employee reduction is neither ethical nor responsible management. Additionally, agency elimination may not produce the projected savings.

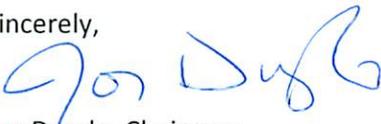
Self-Governance Tribes:

We request additional information and analysis of the agency locations designated for potential elimination and consolidation. How many agency locations serve Self-Governance Tribes?

An evaluation should be done to determine if functions could be assigned to Tribes with capacity, through a modification of the annual funding agreement/s.

The CSKT remain opposed to any streamlining related decision that disrupts self-governance and the provision of present services to Tribal members.

Sincerely,



Joe Durglo, Chairman
Confederated Salish and Kootenai Tribes

ⁱ Case No. 1:96CV01285-JR; page 12, Land Administration Claims; permitting loss, dissipation, waste or ruin, including failure to preserve land whether involving agriculture, (including but not limited to failing to control agricultural pests), grazing, harvesting (including but not limited to permitting overly aggressive harvesting), timber land(including but not limited to failing to plant and cull timber for maximum yield), and oil, natural gas, mineral resource or other resources (including but not limited to failing to manage oil, gas, or mineral resource to maximize total production);