

DOI National Indian Trust Administration and Reform Commission Meeting 2

June 11-12, 2012

Albuquerque, NM

Meeting Summary

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Secretarial Commission on Indian Trust Administration and Reform

Executive Summary

The second meeting of the Secretarial Commission on Indian Trust Administration and Reform was held June 11 and 12, 2012, in Albuquerque, NM at the Office of the Special Trustee for American Indians. Fawn Sharp, Quinault Indian Nation, chaired the meeting. Sarah Palmer of the U.S. Institute for Environmental Conflict Resolution (US Institute or USIECR) facilitated the meeting.

During the two-day working session the Commissioners heard about the Department of the Interior's current model for trust administration and reform; the importance of a definition of trust responsibility and the elements to consider including; private models of trust administration; and suggestions regarding the improvement of trust administration. Commissioners discussed the importance of defining the meaning of the trust relationship, recognizing that it goes beyond, and is deeper than, the systems used to manage and administer trust assets. Commissioners reaffirmed that the trust relationship itself is an important aspect of their work.

Commissioners attended to the administrative aspects of the Commission work discussing and confirming timelines of the subcommittees work. Commissioners discussed the importance of reaching out to Indian Country about their work and discussed outreach approaches to continue at Commission meetings and as individual Commissioners.

The Commission came to agreement on several items, including:

- Approval of the May 16, 2012 public webinar summary
- Commission Subcommittee charges, timelines, and calls
- Commission Outreach Plan

Members of the Commission are:

Chair, Fawn R. Sharp is the current President of the Quinault Indian Nation, the current President of the Affiliated Tribes of Northwest Indians, and a former Administrative Law Judge for the State of Washington and Governor of the Washington State Bar Association.

Dr. Peterson Zah is a nationally recognized leader in Native American government and education issues. Dr. Zah served as the last Chairman of the Navajo Tribal Council and the first elected President of the Navajo Nation.

Stacy Leeds, citizen of the Cherokee Nation, is Dean and Professor of Law at the University of Arkansas School of Law and former Director of the Tribal Law and Government Center at the University of Kansas, School of Law.

Tex G. Hall is the current Chairman of the Three Affiliated Tribes and past president of the National Congress of American Indians. Mr. Hall currently serves as Chair of the Inter-Tribal Economic Alliance and is the Chairman of the Great Plains Tribal Chairmen's Association.

Bob Anderson is an enrolled member of Minnesota Chippewa Tribe, currently Professor of Law and Director of the Native American Law Center at the University of Washington. Mr. Anderson worked as Associate Solicitor for Indian Affairs and as counselor to the Secretary of the Interior on Indian law and natural resources issues from 1995-2001.

Lizzie Marsters, Chief of Staff to the Deputy Secretary – Department of the Interior, serves as the Designated Federal Officer for the Commission.

The Commission will meet in-person two additional times in 2012. The schedule September 12-14, 2012 in Bismarck, ND and December 6-7, 2012 in Seattle, WA.

The Commission will hold an administrative conference call in July and a webinar open to the public in August. The date and time for the public webinar will be posted to the Commission website:

<http://www.doi.gov/cobell/commission/index.cfm>.

Monday, June 11, 2012

Invocation

Commissioner Dr. Peterson Zah of the Navajo Nation provided the invocation.

Opening Remarks

Commission Chair Fawn Sharp welcomed everyone to the meeting and opened the second in-person meeting of the Secretarial Commission on Indian Trust Administration and Reform on June 11, 2012, at the Office of the Special Trustee for American Indians in Albuquerque, NM. Chair Sharp reviewed the agenda for the day and welcomed everyone in attendance. (See Trust Commission Website: <http://www.doi.gov/cobell/commission/index.cfm>). The Chair then asked everyone in attendance for an introduction.

Sarah Palmer of the U.S. Institute for Environmental Conflict Resolution (USIECR) provided the Commission with an overview of the Udall Foundation and USIECR and let the Commissioners know that the Foundation's Board of Trustees Chair is Mr. Eric Eberhard. Ms. Palmer stated that her and Bridget Radcliff's roles, is to serve as impartial facilitators in support of the Commission. She elaborated that the Udall Foundation maintains a conflict of interest policy between the USIECR program staff and the Board of Trustees to ensure the impartiality.

Status Updates on the Cobell Settlement

Vanessa Ray-Hodge, DOI Office of the Solicitor, provided an update on the status of the Cobell Settlement. Ms. Ray-Hodge noted that the terms of the settlement agreement are not final until all appeals are exhausted. There have been two appeals with opinions issued in the month of May 2012. The time clock for those appellants to file for rehearing began. Until the time clock for appeals expires (90 days), the funds provided for the Commission in the settlement will not be available. Until all appeals are settled, all parties in the case are under a confidentiality order and cannot discuss the settlement, which includes the Commission as an advisory body to the Department.

Commission Questions Regarding Cobell Settlement

Commissioner Zah: Have the two classes been notified?

Vanessa Ray-Hodge: Because of the 'no contact rule' the classes cannot be contacted; their counsel has been contacted.

Commissioner Anderson: What is the date of judgment?

Vanessa Ray-Hodge: The 45-day timeline for rehearing has begun and if they petition for rehearing the ninety day clock starts over.

Commissioner Hall: Is this the time clock for Indian Land Consolidation as well?

Vanessa Ray-Hodge: The funding for the Cobell land consolidation is tied to final resolution and therefore is tied to all appeals. The ten year timeline for implementation of the land consolidation effort doesn't start until all appeals are complete and funding becomes available.

Audience Questions Regarding Cobell Settlement

Audience: If the 90-days comes to term and there is no further action and the funds become released is the government prepared to begin procurement for Indian land consolidation?

Vanessa Ray-Hodge: More information is forthcoming. Public comment on the draft plan was given and the Department is in the process of reviewing comments. There will be another plan to come in the near future that will address those issues.

Audience: A couple of years ago there was a start of a project to identify each of the IIM account holders to get an idea on individual dollar amounts on claims. Has that process continued? If not, how long do you anticipate it will take the gov't to get back up-to-speed?

Vanessa Ray-Hodge: I don't have an answer, as I am not familiar with the process.

Michele Singer, Acting Principal Deputy Special Trustee: That particular effort is partially being driven by the Department of Justice (DOJ) and there are two different contracts - Garden City Group and FTI Consulting.

Audience: As time goes by, things are changing. I know information was being provided to contractors, didn't know if effort had come to a halt and didn't know if it had continued.

Michele Singer: The work has continued and as discrepancies and issues have been found, work has gone on to clear 90,000 discrepancies. Data quality is being assured during this time frame. I don't think we are looking at any lag time.

Audience: Thank you on behalf of mother-in-law.

Commission Operations Report

The Commissioners reviewed and approved the May 16, 2012 Public Webinar summary.

The Commission reviewed the Commission Outreach Plan and added organizations to the list of outreach as well as the dates and locations for conferences and meetings. The Commission queried if the regional meetings they planned to hold should be included in the Federal Register and it was confirmed that this was preferred. Commissioner Leeds indicated she would hold a December 3, 2012 town hall meeting in Tulsa, OK for Texas, Oklahoma, and Kansas tribes. Commissioner Hall noted that at the meeting in Bismarck the Commission should coordinate with the United Tribes Technical College to schedule an outreach session.

The Commission approved the Commission Outreach Plan.

Each Commissioner provided an update of outreach they have been engaging in since the inaugural Commission in March 2012.

Commissioner Hall is the Chairman of Great Plains Tribal Chairman's Association (GPTCA). He noted that there are sixteen tribes of North Dakota and South Dakota and that this is the largest IIM account holder region. The whole region is focused on making sure they get adequate time to have input. Commissioner Hall anticipates a good turnout at the September meeting in Bismarck and noted concern about the meeting time frame and ensuring there was adequate time for Commissioner interaction with the public. He noted that the meeting here in Albuquerque is a good opportunity to communicate back to the GPTCA. Commissioner Hall is also working with the Tribal Leaders Council in Montana and Wyoming and they have a large number of IIM account holders as well.

Commissioner Leeds noted that there is a need to communicate with the agriculture sector and ranchers in Indian Country. She is participating in meetings coordinated by the White House around these topics and the next one is coming up; NCAI has also participated in these meetings. Commissioner Leeds suggested that Janie Hipp, USDA Senior Advisor on Tribal Issues, be invited to a future meeting to discuss overlapping concerns with USDA and DOI programs.

Commissioner Zah indicated that he is getting lots of questions about the latest court decision and the Navajo members of the class are waiting for the final exhaustions of remedies that appellants have in the judicial systems. There has been some confusion after the last court decision and they are waiting to see what will happen with the courts.

Commissioner Anderson noted he has had several informal contacts with attorneys and tribal leaders in the northwest. He has been asked if the Commission is looking at timber asset management or just looking at the financial side of trust management. He has been sharing that the Commission is looking at everything. He provided an update at a State Bar Association conference and used the Commission PowerPoint to explain what the Commission is undertaking. Commissioner Anderson has also been solicited by a number of individual tribes expressing concerns about issues pending in the Department and dissatisfaction with the DOJ relationship. He has been stressing that the Commission is serving as an advisory to the Department of the Interior and can't get involved in individual matters. He noted that this is something the Commission should discuss further and develop talking points for these types of situations. Commissioner Anderson also shared that he has received feedback that some think the Commissioners are too busy and don't have enough staff and won't be able to make progress. He has been sharing that the Commission is just getting started with work. Commissioner Anderson also noted that NCAI has mentioned a great deal of work they have done over the years. DFO Marsters agreed to reach out to NCAI and collect this information.

Chair Sharp attended the May 8 annual meeting of the Self-Governance Convention and provided a presentation on the Commission's work using the Commission's PowerPoint. She reported on: the work of the Commission to-date; upcoming Commission meetings dates and times; the outreach letter; and the questions the Commission posed to Indian Country in the letter. On May 17, Chair Sharp testified before the Senate Committee on Indian Affairs as the President of the Quinault Tribe. She shared with the Committee the work that the Commission intends to deliver and how to assist Indian Country. She noted that the Commission is charged to undertake a comprehensive evaluation of trust, management, resources and offer recommendations on how to improve these functions. Chair Sharp shared that the Commission is undertaking outreach to Indian Country in an effort to be engaged with tribal leadership. She stressed that by engaging tribal leadership, tribal organizations, and individual allottees, the work will represent the views of these audiences. On May 21, Chair Sharp convened the Affiliated Tribes of Northwest Indians and the entire first morning was in direct dialogue to each of the tribal delegates present regarding trust administration and management. On June 22 she will have the opportunity to address the work of the Commission with the Warm Springs and Yakama tribal councils.

DFO Marsters thanked each of the Commissioners for their time and commitment and encouraged continued outreach to tribes. She noted that outreach is to continue with United South and Eastern Tribes, Inc. (USET) and that the Alaska nations will also be involved. DFO Marsters confirmed that Jamie Hipp will be at the September meeting.

Facilitator Palmer noted that several Commissioners would be participating in Native American Calling on Wednesday, June 13 and a link to the broadcast would be added to the Commission website if it becomes available.

Trust Relationship Subcommittee Report and Panel Session

Commissioners Anderson and Leeds provided an update on the Trust Relationship Subcommittee. The Commissioners are working to gather recommendations and studies done in the past and synthesizing the information into two page summaries. They are also gathering information about the trust relationship and hope that the testimony provided at this meeting will provide information for a short statement regarding the trust relationship. Commissioner Anderson will have a draft to the Commission by the end of June and will provide the document for public comment as well.

Commissioner Leeds noted that as of June 8, 2012, the staff attorneys working on the subcommittee have consolidated thousands of pages to get the past trust relationship information summarized. They have consolidated all the information regarding prior recommendations made to the Department and in what context the recommendations were given. She also noted that Tim Coulter's group drafted trust principles the Commission should consider.

Commissioner Hall shared that he and Chief Gray developed 50 Trust Principles while he was chair of NCAI. They traveled for many months around regions to get input from tribes and the final was submitted to Senator Dorgan and Senator McCain; he noted that NCAI should have a copy.

The Commissioners noted there is a great deal of work among academics and in Indian Country as well. They indicated the need to get the historical documents that NCAI has access to and get in touch with intertribal regional organizations and ask them to compile information relevant to recommendations.

Trust Relationship Panel Session

The Commission heard from Sam Deloria, Director of the American Indian Graduate Center at the University of New Mexico. Mr. Deloria was asked to address the following questions:

- A. In what concrete ways can the trust relationship between tribes and DOI be improved?
- B. What are the barriers to these improvements? What might it take to implement improvements?
- C. Do you have any recommendations and/or suggestions that would improve the nation-to-nation relationship between DOI and Tribes with respect to trust administration?

Mr. Deloria spoke primarily to points B and C above. Mr. Deloria commented that those issues with larger responsibility are not things we can force the federal government to do – political and moral issues - and this is often confused. Mr. Deloria noted that he did not want to talk about the nuts and bolts. The Department's administrative decision making is where something needs to be done and can be done and is extremely important work. He elaborated that people talk about 'conflict of interest' between the federal government duties between self and its constitutional duty to general welfare and specifically its duties to individuals and tribes. Every relationship that is built upon trust includes an element of duty of the professional to that other person. These trust relationships also have a potential

conflict of interest - the point where the interests of the professional come into conflict with the duty of the professional. The situation is not unique to tribal-federal trust; for example doctors and lawyers have trust relationships and duties. One way to eliminate the conflict is to get another professional. This works with doctors, lawyers but in the federal –tribal relationship, we are stuck with each other. What is required is disclosure of the conflict and finding a fair means to balance the interests of tribes and the federal government. This is not being done in trust responsibility. From Mr. Deloria's perspective too much time is spent talking about the inevitable conflicts that appear in the relationship and pointing them out and framing them as a "sinister conspiracy" of federal officials.

There are other statutory obligations and duties of the federal government (in addition to the federal trust duties to tribes). Tribes, Mr. Deloria pointed out, need to deal with it. Recognize that these obligations and duties exist and see what we [tribes] can do to get the best deal. Simply pointing out conflict doesn't do much good. There are court decisions stating that the federal government should be held to the highest standard of trust administration. Mr. Deloria noted that in cases where courts measure the actual duties of the Secretary of the Interior (Secretary), the courts do not generally uphold the greatest level of responsibility. If the particular standard is not mandated in legislation the court cannot require a different standard. Not being held to the greatest level of responsibility is unconscionable and results in unusual circumstances where Interior officials meet about matters affecting a tribe without the tribe being present. Mr. Deloria noted that a statutory solution is probably not possible. However, the Commission could raise with the Secretary the necessity of adopting a set of standards of behavior for the Department applicable to all employees, including the Secretary. The Secretary can promulgate rules for the Department without statutory authority. If this Commission is going to produce something of lasting impact then a set of regulations/ethical standards in the Department of the Interior, setting an example for other agencies, and having the force of regulations is enormously important. When another administration comes in having the normative impact of a set of standards is enormous. The normative impact will have a lasting impact on federal behavior.

The second suggestion goes back to Nixon's message to Congress in 1970. In President Nixon's message he said that the federal government and particularly DOI and DOJ, have a conflict of interest in Indian trust duties – duties in relation to trust duties and general welfare. Six or seven years later, in the Carter administration, Attorney General Bell wrote a letter that disagreed with Nixon's position. In the letter, Attorney General Bell stated that the DOJ never has a conflict of interest because the client is always the United States and therefore is never in a position to be expected to represent tribes and the US simultaneously. Attorney General Bell went on to say that when there are conflicting claims on the attention of the US the situation is a normal situation for the Justice Department which consistently has to balance. Mr. Deloria observed that Nixon was half right; Attorney General Bell was half right. The sense in which Attorney General Bell was wrong is that the nature of the obligation to Indians is specific in treaty and/or statute in which the United States has undertaken an obligation for an identifiable group of beneficiaries. The duty to other entities is not as clear and initially is completely abstract. At present the trustee argues with itself. For example, the DOI is allocating water in a watershed and the tribes have claims to that water and there are irrigation districts with competing interests. There are individual interests to compete with the Indian interests.

Mr. Deloria's concern and he reflected is also the concern of many over the years, has been that these conflicts exist and always will. There is a set of other obligations that federal departments must meet. How are these conflicts resolved? At present federal employees (e.g., a GS 13 and GS 14) meet and develop the United States position; if there are any Indian people in the room they are there as employees, not as Indians. It is the trustee arguing over the position. Mr. Deloria pointed out that it

would not be a workable situation to suggest tribes be in the room as the beneficiaries. However, to him, that does not mean that nothing can be done to govern that process. These types of meetings occur in a 'black box' and arguments and decisions are unknown. Tribes don't know the process, the reasons, etc., for the decision or approach; we [the tribes] know the outcome. Mr. Deloria stated that he can understand the federal agencies reluctance to be so candid as to why they did something. And, he continued, he hoped that the federal agencies can understand as to why we [the tribes] would want to know why certain decisions were made and that we [the tribes] got a fair shake in the process. The second thing that the Commission can do is bring some administrative discipline to the process by which competing statutory obligations are resolved. Mr. Deloria noted that this will require a lot of discussion by a lot of people and will be complicated – and it doesn't mean the Commission shouldn't have discussion. Mr. Deloria emphasized that he thought this topic is worth the Commission's consideration.

A related concern is how the federal government determines the position of the US to argue in court. There are many times when the duty of the DOJ is to represent a federal agency. They, DOJ, have a clear duty to represent the interests of those agencies. There is also a strong countervailing interest of individuals and tribes in that same situation that should be presented to the court as well. At present this is decided by a 'black box' to represent the interest of the US as a single position; consequently one interest that it [the US] has to serve has lost before going to court. Is this an orderly and fair process we [the tribes] feel comfortable with? One of the complications has been the self-esteem and the institutional interest of the Solicitor. The DOJ in general and Solicitor's office feel that it would be an embarrassment to go into court to say to a judge: "*We [the US] have a USDA interest and Indian interest and you decide between them*". Mr. Deloria posited that the DOJ anticipates that the court would say "*Go home and come back with one US position*". Mr. Deloria suggested that there be a campaign to change this culture. He also noted that if he were in this kind of fundamental conflict with a federal agency(ies) where each had plausible claims of loyalty to the US and the decision will be made by federal staff, or alternatively, the argument will be made in open court, which would you pick? He stated that these things are resolved by the 'black box' method. If there was a way for conflicts to be resolved openly in court or through administrative process that would do more to improve the relationship between the tribes and the federal government in the context of trust administration than anything else. This is the structural issue that is most important. Mr. Deloria recognized that the Commission can't bring this structural change about in their work but he thought the Commission could prepare a strongly worded statement about the process of decision making in these situations of competing interests of the US.

Commission Questions for Mr. Deloria

Commissioner Anderson: You said you wouldn't talk about nuts and bolts of administration but there is a whole decision regarding the OST sunset, OST effectiveness, and ways to improve the financial side of things?

Mr. Deloria: One of the things I learned at the recent Nixon seminar from Wally Johnson, a former Assistant Attorney General, is that the best system can fail to work if the wrong people are running it. The right people can do incredible things if they are dedicated, even if the system doesn't work. At the time of the creation of the Special Trustee the tree needed to be shaken a bit – it is good to go back and see if the point has been made. What would happen if this got put back in the Bureau of Indian Affairs? What has happened since the creation of OST? The fundamental problem is the whole trust concept, because the age old notion is the assumption that we [the tribes] have to be looked after. We [the tribes] don't push to change that because if we change too much Congress will say "*do it all tribes.*" There are all kinds of euphemisms that describe tribal self-sufficiency. We have to be careful with the

political aspects of that. Old timers would say that if we come up with a new definition that minimizes the role of the Department they would not trust the euphemism to have intent. Certainly there are lots of tribes interested in managing their own monies and lands. The Cobell case required the shaking up of the system. I would not have learned that I am an heir had it not been for Cobell. With the present organizational structure, is there the will on the part of the people who would be administering in the Bureau, or any new bureaucratic home, to do the job? That comes down to budget. It is necessary to point out that one of the reasons the BIA found itself in the position it did is because of many years of tribal participation in the budget process. Anytime we find that there are areas low on resources, we have to look at competing needs. The basic question of whether the Special Trustee stays where it is what happens to the budget? With the Cobell settlement people's attention will go elsewhere and less focus will be on this. The budget and the focus that tribes and federal officials keep on the functions performed by OST and how well it is being done is the most important.

Commissioner Hall: In my neck of the woods they feel it [OST] is a splintering because of the loss of Indian preference. Some say to bring it back within the realm of BIA is part of preference. I have a comment on conflict of interest. We are involved in oil and gas at Fort Berthold. On that conflict of interest for example, because of lack of staff approving leases and permits, (oil and gas is very aggressive) we never fully develop the resource without delays. One idea is to contract for approvals of leaseings. We are not certain that can happen plus the Secretary of Indian Affairs has liability. We have tribal trust assets and allottee assets so we will not waive liability. The Senate Committee on Indian Affairs is working on a Tribal Energy Resource Agreement (TERA) for tribal assets only. Because of the waiver of trust responsibility, TERA retains trust responsibility. It appears that there is some political support for maintaining trust responsibility.

Mr. Deloria: I have always been disappointed at how ineffective we are at holding the Department's feet to the fire when action has to be made for economic opportunity. We have loud voices but somehow it is not used in cases like this. I don't have a real good handle on where that line is and have never articulated to myself at what point have we left trust responsibility behind. I suspect that this is part of the weaponry of the bureaucracy to scare you off every time you want to do something. I don't know that's the case. Some of the mechanisms we have we need to talk about and we need to come back and force that issue. Maybe the Commission should talk about what we need to identify to determine where that line is. We need more people to talk about this – put up trial balloons. There has got to be a formulation that will allow you [tribes] to contract certain features and allow the oversight/federal role in place. We have tended to look at 638 contracts not in the way the act was intended. As I understood the original act it was that tribes would have the option to come in and dismantle a program to take parts and leave some behind. Perhaps they have taken all but the hook and not kept that which allows economic development. The act permits redesigning the program. I suggest trying to keep as much Secretarial liability as possible while maintaining control.

Commissioner Leeds: The universe of options has to include some type of privatization. Can you address this?

Mr. Deloria: In any privatization, if you want to make more money you have to take more risk. If we are all willing to take that chance, then privatize. Forcing people to privatize is not politically viable. No one is going to speculate enough to rid poverty on tribal lands. It is important to look at the differences and look at the unique situation of Indian tribes as compared to others. We are major land owners within our own jurisdiction - the legal systems and the jurisdiction and the ownership of the land where jurisdiction is exercised. We have some natural resources, gaming, and a limited tax base. If state governments make mistakes they have taxes to help make up the funds. Looking at the decisions tribal governments have to make, seeing what the proper analogy is, and seeing the decisions the private,

permanent funds make can be used to make an intelligent opinion on management and investment of tribal funds. This is a good idea for some tribes and not others. I don't want to be the bureaucrat to determine who can and can't.

Commissioner Anderson: Out of the Cobell [litigation] and the tribal trust litigation we always have these competing interests. What has emerged out of this difficult litigation is this overarching theme in terms of wanting to know that in any transaction, whether management on oil and gas lease, or settlement on land consolidation, we are avoiding any potential liability. Can you help us strike more of a balance on these issues?

Mr. Deloria: The most common argument is that they seem to be afraid that if it is an open and transparent process we adopt any argument that is an Indian position. They are obligated to only make arguments plausible in particular cases. They are afraid we will overreach and protect too much. They are in a situation to overreach and protect too much by going so far in the other direction to not act on anything. Government lawyers and officials want to avoid addressing when, why, and how much we need to know. We have a conflict of interest between our duty to the Indians and our duty to the public interest. This litigation is against 10 or 11 timber companies brought by the US on behalf of some Indians. What is the process by which someone has decided the interests of the US embodied by 10 or 11 timber companies? By this logic any old Indian can be painted to look like the general welfare. One needs to get specific to define scope of liabilities.

Chair Sharp: One purpose is to look at the definition of trust. It seems that there is this other question – what is the purpose and goal of trust/trusteeship? If we look at the ward/guardian relationship it works towards our detriment. The protection of treasury and other interests is also to our detriment.

Mr. Deloria: Have to be careful about defining trust. Don't define trust because if you forget something you will have difficulty getting it on the list. What are the specific statutory definitions of trust that you can hold the Secretary responsible for? On the other hand there are larger expectations of the trust, for the federal government and the public. Do these two different ends of the continuum meet any place? What are the holes that need to be filled? Originally the concept was we [the tribes] were not competent to participate in the larger world and had to be protected. Historically there are three basis by which status is rationalized: 1) inherent sovereignty under the Marshal decisions, 2) because we started out culturally distinct we were able to have this cocoon we could live in and govern ourselves within the cocoon, and 3) poverty – if we take what they have we will have to take care of them. These three rationales have been used interchangeably. What happens when tribes are no longer perceived as poor or culturally distinct? Gaming means we are not always as poor as we used to be. The reason to continue some kind of protection is because we want to preserve jurisdictional enclave, preserve the natural resource base to live as societies and don't want them to become pawns between states and the federal government. If we can be guaranteed to forever live in peace we would be willing to let go our grip on the concept of trust. If you are dumb enough to believe this is forever the case, you have not paid attention to history. Once Congress gets in session they can do whatever they want. That is why we hang on to this. These other things important to us we do not want to put them into play.

Audience Questions for Mr. Deloria

Audience: Our allottees association brought a case against the government for mismanagement of timber and in that case it states clearly what the responsibility is to manage of timber.

Mr. Deloria: There are cases where courts have identified trust responsibility and put them together. Another identifiable conflict is the responsibility to tribes and allottees.

Audience: One of the things you mentioned stems from lack of budget and budgetary issues. I have been told that there are 40+ identifiable missions in DOI, of which one is Indians. Can you support the Commission going back to take responsibility out of DOI and make it its own entity so that issues can be addressed at that level?

Mr. Deloria: What I like most about your point is that there is a concept called mission creep – people keep adding to what it is they want to do. There should be constant reexamination to see which conflict with one another. I hope that the last 40 some years have shown that the concept of an independent agency hurts more than helps because as it turns out, we are in the room, constructively, in most federal meetings that have impact on Indians. We have a role to support and provide a view of us. Being in the room is an enormous advantage. If we have our own agency we are no longer part of the conversation and this is an instance in which the conflict of interest is important.

Audience: If any of you are old enough to remember the presidential race when Carter prevailed, there was a commitment that the nation will develop a national water policy. The Associate Solicitor for Indian Affairs and the Assistant Secretary for Indian Affairs tried to develop a strong Indian component in the national water policy. When we looked around the room for professionals there were few. We did put together a proposal and gave the tribe the right to choose whether they wanted to pursue litigation or follow negotiated legislative process. Whenever the Indian interest collides with general interest why can't Indian interest prevail? It is based on legislation, judiciary, etc. Money plays too much of a role in politics. What is the responsibility of the Secretary if the tribe creates its own trust? Do you hold the Secretary harmless if there is mismanagement of tribal assets or resources if assets are held with the tribe? Senator Hatfield was a leader in getting legislation through Congress and discovered termination had dissolved the land base of tribes. He sponsored legislation to set aside BLM lands for timber. The tribes inherited cumbersome regulations and they would lose money. The Indians would take on responsibilities of the Secretary to develop regulations to harvest timber. The Solicitor representative was more concerned about whether the Secretary was held harmless if the tribes moved forward. The Supreme Court had a favorable decision and the tribe switched courses. If the tribe is progressive enough and wants to manage former federal operations and holds control is the Secretary held harmless?

Trust Models Subcommittee Report and Panel Session

Commissioner Leeds provided an update on the Trust Models Subcommittee. She noted that the preliminary information is together and that the panel speakers will be able to provide more foundational information. The Subcommittee would like to create a grid that notes the OST functions and compares them to public entities to see if they are similar. Commissioner Leeds then reviewed the programs currently examined and provided information regarding similarities and differences with OST. (Full presentation can be found on the Commission website: <http://www.doi.gov/cobell/commission/index.cfm>)

The Pension Benefit Guaranty Corporation (PBGC) is not analogous when compared to OST because the trust function only kicks in when there is a default in the pension program. Social Security Administration (SSA) is how the OST trust funds are set up and is analogous in terms of management and public interface. The SSA is governed by a Board of Trustees where other programs are statutory. It was suggested that a representative from the SSA attend the meeting in September. Public Pension Plans deal with retirement and annuity benefits. They don't administer trust funds but have similar fiduciary responsibilities like trust. The Railroad Road Investment trust is not a relevant model. The State

of Illinois model is not nearly the same scope as the Indian Trust but the state legislation might be beneficial. The subcommittee is going to continue with research to see if there are public entities analogous to the trust.

Commissioner Zah noted that there are a lot of models out there that one could examine but they all have to do with public entities. This situation with the government is where there seems to be a lot of problems connected to the word trust and relationship. Notice that in all of these entities there are models that seem to be working, to some degree, for the beneficiary. That is a trustee. A trustee is like a policeman that is assigned by the beneficiary to safeguard what is going on at the agency. Unfortunately with Native American programs they have never really had that type of trustee. For social security people are eligible for benefits and the federal government is involved in those kinds of activities but the beneficiary chooses someone to act on their behalf, to have someone interact on behalf of them. Commissioner Zah continued that, as American Indians, we don't really have that. I don't know if anybody has an appointment of a trustee. For the last three years the Special Trustee was never appointed or reappointed. If it is working for these other models, why hasn't the Secretary done the same thing? If there is somebody that really knows why that did not happen I would really like to know. There are lots of problems in the Department that they are trying to work with while addressing the issues the Indian peoples have. As long as they have somebody they trust it seems to work. Maybe one recommendation is to consider continuing those kinds of situations that seem to be working. Look at the remedies available to the beneficiary and keep the people in line in terms of what they should be/aren't doing. The trustee uses the authority to serve every beneficiary within the agency. We don't have that kind of system as part of the law for the Indian peoples to utilize. We go to the courts. If they have a remedy in the organization the administrators can look at and if we don't do our job right the courts will require us to do the right thing. This is something we need to consider as a Commission. I don't want to go through the exercise of looking at all these models and not look at the possibilities of our unique situation. We have the land that nobody as a minority has. We have other laws protecting our status and they are being violated. What we are being charged to do is to come up with a solution because we don't have a specific model in the private sector and we may have to create our own.

Chair Sharp noted that this is absolutely relevant and when you look at the DOI mission statement it states it should have the interests of Indians at heart. We should ensure that we develop sustained solutions and built-in mechanisms for accountability. If there is some sort of administrative solution that will assist, we should consider it.

DFO Marsters noted that the trustee is an important position and the Secretary and Deputy Secretary have been working to fill the position. It is a difficult position and in order to ensure that the correct person is appointed, they are taking time to select the correct individual.

Commissioner Hall asked if the subcommittee had looked at tribal trusts. There are a few tribes with natural resources development that have developed their own trusts to manage these assets. Soon Three Affiliated will offer an RFP to get a trustee and Southern Ute has a huge trust fund that is an established tribal trust of at least 20 years. As Commissioner Zah is saying, maybe we have to develop our own.

Chair Sharp noted Commissioner Hall's recommendation of developing a unique model and that the current model is based on a ward/guardian relationship that is not consistent with our responsibility as tribal nations. The Commission should strive for a model that is representative of our current

relationship. She also noted the importance of looking at international models and for the Relationship and Trust Model Subcommittees to coordinate.

Trust Model Panel Session

The Commission heard from representatives of Bank of New York Mellon and the Northern Trust Company regarding private trust models. Each provided a presentation which can be found on the Commission website (<http://www.doi.gov/cobell/commission/index.cfm>).

Lee Stephens from the Bank of New York Mellon shared some thoughts on private trust models. He provided background on the Bank and noted it is one of the oldest and safest banks in the U.S. He discussed their client management services and noted that they don't make loans, mortgages, or credit cards; they provide investment management and servicing only for sovereign enterprises and commercial services around the world. They work with U.S. Treasury stimulus programs, Small Business Administration (SBA) loan and capital programs, and Housing and Urban Development (HUD) mortgage and finance programs.

Dan D'Ambrosio from Bank of New York Mellon (BNY) discussed management of trusts similar to that the Commission is reviewing. He noted that he viewed the OST and the particular asset management like a large private trust company. The trust should have a chartered trust document that outlines how to manage the trust. The Bank likes to work with clients by process analysis. They discuss with new clients how to do things and develop a roadmap with all parties involved developing a schematic for managing assets. They do this in the most efficient means to make information available and every 2-5 years take a new approach and start fresh. How do you trade and collect information? What is flow of information and how does it feedback to client? BNY offers an online web portal that provides this information regarding transactions, investments, etc. Features include controlled information that can be grouped and alerts can be created to ensure investment objectives are being met. BNY develops a contract that outlines the trust relationship and ensures the staff resources needed to manage the contract is available. The BNY Mellon are a book of record – when they hold assets in trust and in title for individuals in his/her name so that if there is any issue there is no question who the assets belong to. Accounting reporting is also available for individual accounts.

Hugh McGill of Northern Trust discussed their model of management. Northern Trust provides trust administration and asset management services. Mr. McGill commented that the interesting challenge is the model under which the Indian trust exists. There is a fiduciary and investment authority that provides the trustee with responsibilities and duties. In the contract the fiduciary and investment authority is generated by legislation, treaties, etc., which is more similar to probate or guardianship. There is a statute and the judicial orders applying the authority to manage and invest. The investment management process begins with economists and analysts and their investment products are reviewed by a Northern Trust investment policy committee. Portfolio managers work with trust officer to review trust documents, statutes, and judicial orders to determine the extent of and framework for trust authority. Mr. McGill noted that there must be a degree of neutrality for all trust beneficiaries.

Commissioner Comments Regarding Trust Models

Commissioner Leeds: Thank you for your presentations. You mentioned one of the critical issues before the Commission. You pointed out one of our biggest challenges, that we don't have a trust document. What are the other managed assets issues you see?

Panel: The goal to maintain income growth with fixed income securities is difficult. We would also encourage pooling of investment resources. There is lots of interest rate sensitivity and we try to dampen volatility by diversified investments. The prudent investment rule mandates diversification.

Commissioner Leeds: You have HUD, SBA, and Treasury as clients, can you comment on clients?

BNY: These programs were established to carry out missions. Treasury: to extend money to parties in financial services industry in order to support liquidity in those organizations. SBA: to extend credit to small businesses on same terms as larger corporations. HUD: mortgage backed securities – back office work and support. They are not portfolios of assets.

Commissioner Anderson: Special asset management – real estate and mineral interests – do you have someone who manages these types of assets or do you contract out?

GNT: We have experts in-house and around the country in various areas. We do turn to outside experts if needed. For example, on environmental remediation we turn to outside experts.

Commissioner Anderson: Do you complete audits for oil and gas to ensure lessees pay what they should?

GNT: There is careful auditing by in-house staff to review receipts and production.

Commissioner Zah: I was interested in having you elaborate you on pooling of investments. What did you mean?

BNY: When you have a group that is interested in meeting certain needs they buy investments in larger blocks. Saves administration costs and allows you to be more fully invested for longer period and generate a higher yield.

Commissioner Zah: Thank you for coming and spending time with us. I appreciate the information you are providing. If you were sitting in our chair as members of the Commission, if you had to prioritize everything you presented, what would you recommend to make things better?

BNY: Leverage a scale by pooling resources to gain advantages to assist with the challenge of inflation. Think about approach to risk and expending investment opportunities.

GNT: A more contemporary approach is a critical long-term goal. The fact that the US is trustee and investing assets would not be permitted as corporate trustees. This is why I included the prudent investment act – it provides a much better foundation for long term management of trust funds.

Commissioner Hall: Dispute resolution – I am assuming that if there is a dispute among parties the federal court has jurisdiction. If correct, is it with beneficiary and private trust or with US government?

GNT: Disputes resolved in trust for the private sector are resolved in state courts – filed in both levels for tactical reasons. Institutional business would be resolved in federal courts. States have no jurisdiction on tribes. One of the first things is to look at is the terms of the trust and the state interest in the trust.

Commissioner Hall: Oil and gas, each well should have its own portfolio because it generates its own income. The Indian Minerals Development Act (IMDA) allows tribal trust wells to be consolidated. If there is a commitment of 3-5 wells each year and the beneficiary asks about a particular well this is difficult to track because it is not tracked individually by IMDA.

GNT: The concept is transparency in asset administration and management. A fundamental fiduciary duty requires separate control for sake of transparency.

Audience Question Regarding Trust Models

Audience: How does the OST determine what rate of return has been established for trust assets over the last 10 years as compared with the market?

Chuck Evans, OST: That is difficult because our mission is to generate income not generate total return. Return = income + growth. We maintain principal and do not expose the principal to risk while earning income. We measure performance on income only. IIM fund right now is yielding 3.4% current income. We do measure our performance as frequently as we can.

Audience: Commission, thank you. We are one of the 41 tribes that did sue and got the settlement. That was truly historic. When it was first announced the tribe chose to sue because we knew there was mismanagement. Hopefully the Commission can take seriously the recommendations. I don't hear too many of the tribal leaders here. Wasn't easy to go to Washington researching and we are grateful for our experts. We couldn't believe all the mismanagement taking place. We hope the trust responsibility will stay with the tribes forever. Thank you for the opportunity to participate in the Secretarial Commission. Commend Obama and his Administration.

The Commission asked how many tribal leaders were in the room, five were present.

Commission Outreach Letter – Responses to the Questions

Regina Gilbert, Office of Regulatory Affairs and Collaboration (RACA), provided an update of responses to date. Three tribes submitted responses that were received by the June 4 deadline.

Commissioner Comment on Outreach Letter Responses

Commissioner Zah: The Navajo Nation letter was just submitted.

Commissioner Sharp: Written comments from the ATNI session will be forwarded.

Sarah Palmer: Indian Land Tenure Foundation has also submitted comment.

Commissioner Anderson: How do we deal with things like editorials regarding our Commission? It was decided to forward these to the facilitation team to be included in the record.

Commissioner Leeds: What are we going to do to increase the response rate? Regional visits? I would hope that during the course of our information gathering we need the response rates to be higher.

Commissioner Zah: I would like to make a comment on that issue. I think what's really going on is that there is so much apathy on part of the tribal governments and groups working with local people. The Commission is dealing with something that happened over the last several years. One would think the Indian people would be raising issues but it's as though none of this going on with our own people, our own tribal government. There is so much mistrust going on between the local people and the government. What I have seen now only three or four responses from all the letters that went out does that mean that nobody really cares? I think we are in for a big huge problem as Indian people. We are trying to correct a wrong committed against Indian people and if apathy is setting in, we have additional problems on hand. I would have thought the response would have been higher than what we got today. I agree with Commissioner Leeds that we need to caucus or discuss with our own people to determine how we can get more response. The response rate may have to do with the Commission not having gone out in Committee to do outreach work and encouraging people to respond. We can only ask and see what happens.

It's astonishing to me. I was reading Navajo News and we have 110 chapter elections in November. The paper stated that 212 positions remain open that nobody applied to run in those district chapter houses – that is almost half. It means the people really aren't interested. It is a giant concern. I was also reading that we have school boards and because there isn't interest in our communities in education, of our own children, that there are many positions open. That's an additional concern. There is something going on. I don't want to be critical of other areas and people. Something is going on with my people, in my own community.

Commissioner Hall: I have recommendations for the Bismarck meeting. I am willing to host on site at Fort Berthold and I'm sure Standing Rock would as well, for an opportunity to look at trust functions from the superintendent's view. On September 12 the Commission can spend time at the superintendent's office, ONRR, BLM, and BIA to answer those types of questions that land owners and tribes are asking. Invite all entities that have trust responsibility.

The Commissioners noted they should formulate questions for different agencies that they would like addressed. Individuals suggested to assist in the drafting of these questions were Tom Fredericks, Gary Morishima, and Howie Arnett.

Audience: In time for us to get information to outlying areas wondering if Chair could do an announcement to get out to radio stations.

Chair Sharp: I will do this announcement for the radio. ATNI has an agreement with USET and there will be a joint session in July. The Commission will start to engage with intertribal organizations.

Commissioner Leeds: We talked at the first meeting about the regional meetings and I think we have a budget for that. I would like to see us get those on the calendar before we leave here today.

Commissioner Anderson: We can engage in outreach as part of the Seattle meeting in December. I have my annual Indian Law Symposium on September 6 and 7 and will plan to put this on the agenda.

DFO Marsters: There is a Tribal Interior Budget Council (TIBC) request for an Alaska session.

Commissioner Anderson: I ran the NARF office in Alaska for about 10 years. Work through NARF, Heather Kindall, there is a big statewide convention in October. There is so much going on that week that I feel bad for the Commissioner sitting alone in a room. I don't know how much access will be given during that week. I will work with NARF to get input.

Helen Riggs: Alaska Providers Conference is the week after Thanksgiving in Anchorage that might be a good opportunity.

Audience Round Robin: Outreach Questions 1 and 2

The Commission sent an outreach letter to Tribal leaders and organizations asking for feedback regarding the Commission tasks and perspectives regarding trust management and administration. During the meeting the Commission provided time for Tribal leaders, organizations, and individuals to provide perspectives regarding the discussion from earlier in the meeting and to two of the questions addressed in the outreach letter:

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

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

Tribes, organizations, and individuals were also able to submit statements to the Commission, by mail, email, or at the meeting. Statements that were submitted are part of the public record and can be found on the Commission website (<http://www.doi.gov/cobell/commission/index.cfm>) and a list of the statements submitted to date may be found in Appendix E.

Chair Sharp: It is important to get as much feedback as possible from Indian Country when out in the field. We want to hear from tribes and individual allottees to get their direct feedback. It is important to use the public session for public feedback. We want the session to be interactive and to hear from the public.

Question 1 - Do you have any recommendations and/or suggestions that would improve the nation-to-nation relationship between DOI and Tribes with respect to trust administration?

Richard Grellner, Attorney for Cheyenne and Arapaho Tribes of Oklahoma: If you remember in the termination era in the late '40s-'60s, the US approved the National Security Act and it seems this has been used to classify trust documents. It's my suggestion that the tribe move forward on a claim for Fort Reno. We did not know at the time that the documents were classified and didn't know until 2006 that this was the case. There ought to be something that can be done. Anything that tribes have claims on, the administration should be able to review the classification and change the classification if it is warranted.

Helen Sanders, Indian Land Working Group: I have a comment regarding the Special Trustee. Legislation zeroed in on accounting and reform and nothing more. Thank you, Dr. Zah for your remarks. I think a Special Trustee on behalf of beneficiaries is a great idea. There is less reason for court if we had a trustee. I have no problem being called non-competent and I like someone looking over allotments, we have to fight the outside world and BIA in order to keep our head above water. I wouldn't want that [special trustee] changed.

Janice Prairie-Chief Boswell, Governor, Cheyenne and Arapaho Tribes: Good morning. I am the Governor of the Cheyenne and Arapaho Tribes of Oklahoma. I appear today to assert our claim to Fort Reno. I appreciate the opportunity to be heard. Fort Reno was taken from my people one hundred and twenty-nine years ago for our protection and with the promise that it would be returned. Many of our people are buried there. It is all that is left of over one hundred million acres. It was never ceded, settled for, or otherwise given up. When the Calvary abandoned Fort Reno in 1908, the military converted the property to a remount station. When the horse, as a tool for warfare, became obsolete, Fort Reno was transferred to the USDA and another military agreement was penned. When the agreement expired Fort Reno was placed on "stand-by" military status in an attempt to "invalidate" our claim. Documents effectuating the scheme were then deemed "classified" for fifty years. The Courts ruled that the "classification" of these documents until 2005 did not keep the claim from being time-barred. Consequently, you can see why my people have some skepticism that our claim will eventually be honored. I am here today as a testament to the faith and hope of my ancestors. I am asking the Commission to recommend the return of Fort Reno to its rightful owner. The Cheyenne and Arapaho people believe we can never be made whole until these sacred lands are returned. I want to thank each and every member of the Commission and especially Mr. Bob Anderson whose previous efforts on this

issue were key in the United States eventual recognition of our claim to Fort Reno. The full submission to the Commission can be reviewed on the Commission website, <http://www.doi.gov/cobell/commission/index.cfm>

Ryan Jackson, Hoopa Valley Tribe: The tribe has submitted written testimony that identifies seven issues. 1) The Special Trustee. There has been a push over the years to sunset OST, don't think it was meant to be permanent and there is confusion about the responsibilities of both. [Editor's note: Issues 2-4 were not clearly captured in the notes from the meeting and are therefore not included in the summary.] 5) This pertains to the Endangered Species Act and government-to-government consultation. 6) Provide copies of records to tribes through the government-to-government process rather than FOIA which delays the release of documents. 7) Allow direct mandatory compacting (TitleIV) This testimony may be reviewed on the Commission website, <http://www.doi.gov/cobell/commission/index.cfm>.

Ty Vicenti, Jicarilla Apache: In northern New Mexico our tribe has 800,000 acres. We are rich in resources and the most important is people who have become victim of trust responsibility by the federal government. Elderly and previous leaders described broken treaties; it seems like a broken record that we still face today. The government says "we will do this and that," but we all know what happened and we are still experiencing it today. The trust accounts are mismanaged and we asked who's responsible and who will be accountable for the mistakes? If a Native American makes a mistake they go to jail. If the federal government makes a mistake who goes to jail? It is difficult to experience this because there are many who continue in office and when there are new people in office they don't understand how the previous person ran the office. They have the John Wayne Indian in mind. Many come from New York and ask do we still live in teepees? If those people are thinking that way, how many in Congress or at the top levels think that way and deal with us in that way? This is a big deal in our tribe and the tribes in the USA. We are citizens of this great nation of the US and we do pay taxes, we live like everybody else. We have television, a roof over our heads, buy groceries, and the only difference may be color of our skin and the way we think. To remedy some of these problems as Native American people, the old people they talked about these issues straight across. The old people never sent cousins to sit at the table, likewise the other side. It was the people in charge negotiating and talking about these problems. In the old days it was the means of communications, in these days it is email and you can get response anywhere in the world. These issues are at hand and we have to implement them of course. I commend the Commission for getting together. Peterson Zah has a way with thoughts that I can relate to and understands issues that relate to Native American people. We have a way of living – what is in the future for us? We cannot cut the string of the BIA because Congress made it so. It's an agency that we were placed under as Native American people so they could help us and we are asking all those with us here today and as US citizens, we are all citizens, we need to help each other no matter where we're at. We have a lot in common. These issues, like trust, have been a thorn in the side for quite a while – how do we avoid these issues from here on out? Tribes have spent millions of dollars in courts to settle the issue of trust responsibility. How could it happen? Why did it happen? We ask questions and get "we will get back with you." What kind of answer is that? What if we turned the situation around on you? Say we mismanaged your money, your personal money, I'm working on it and you still have it. In the meantime I lost all of it and didn't have the guts to tell you, how would you feel? That is where we are coming from as a people about the federal government. That is where we are coming from in dealing with all these broken treaties. I think this is déjà vu to me. I am thankful to have the Commission to help deal with these issues.

Dana Bobroff, Navajo Nation: The tribe submitted comments which may be found on the Commission website. When responding we primarily focused on the first step of the Commission, as we believe the

number one priority is to reaffirm trust responsibility. We recommend DOI and DOJ promptly and honorably settle breach of trust cases. We are spending millions of dollars to pursue cases regarding breach of trust. It is a shame the money that could be spent in the community is going to pursue legal cases.

Joe Waters, White Mountain Apache: I suggest to you that the best way to improve the relationship is to figure out some mechanism for tribes to pursue a solution outside of the court system. Is there not some way to pursue grievance without adjudication? Figure out a way to get solutions without suing. Why can't we do it in a different way? I urge you to find a different system to adjudicate these issues.

Irene Cuch, Ute Tribe: We just settled; we didn't settle all of our claims, our water rights are still in litigation. Instead of spending money to take the US to court, it would be good to settle outside of court. One of the issues we are facing with our water, is that money from the water settlement is in OST accounts – 504 and 505 accounts are still there and 506 accounts have been withdrawn. The Department wants to take back the 504 monies because they are Secretarial funds not trust funds. To us this is wrong. You could say they changed their decision. The funds were classified as trust funds and the Department changed the mind to label them Secretarial funds. We believe that this is rightfully ours and should be considered trust, not Secretarial. We did not include it in the last settlement. If we want to go ahead with it we can handle this as a separate claim case. I hope that if we do bring it up with our water we hope to get the Commission support. That is the problem with the water situation with the Ute tribe right now. The US government wants to take back our monies.

Jeremy Patterson, Ute Tribe: One of the issues we experienced for the settlement negotiations is that we had a very large claim and a large number of funds were water funds. It was noted that these were Secretarial funds, not trust funds. They had been maintained as trust funds. We don't know how many others were Secretarial funds. In terms of lessons learned in settlement, the Commission might want to consider the classification of funds as either trust or Secretarial funds. Secretarial funds may be redistributed.

Chair Sharp: We have heard from two tribes with specific issues. We want to recognize the two tribes and how they have utilized their cases to give concrete examples of response to the Commission questions and how Commission can utilize these examples to develop recommendations for the Secretary. It is important to recognize we are an advisory commission and cannot make any recommendations regarding individual tribal issues to the Secretary.

Shenan Atcitty, attorney representing Jicarilla Apache Tribe: There are several major issues that have cost the tribe millions of dollars – one is the litigation mechanism. Once you disagree with an agency you get on the track for litigation. Once on this track you are very adversarial and there is little room to discuss how to work through these issues. It was an injustice when the DOI went to the Supreme Court with our case. They took that case up for precedent only and we had to absorb the expense to get a horrible defeat. Another problem we experience is on part of the Nation where we have split estate. 100% of surface lands are held in trust and if a developer wants to come in to drill for oil and gas, it is allowed [because the subsurface rights are not held in trust]. Split estate ignores consultation. If these rights were held in trust, the federal government needs to meet responsibilities for consultation. Royalty valuations are also an issue. All decisions are being made on basis of liability. It seems preferred to get sued by the tribe than by a company. President Bush signed into law in 2002 an authorization to direct the Secretary to rehabilitate water on the reservation. There is no sunset and \$45 million is authorized

to do this. However the tribes have only received ¼ of the appropriation and there needs to be a way to get projects done.

Commissioner Hall: Regarding the non-adversarial way. There are some agreements including binding arbitration in which parties must negotiate in good faith. Maybe this should be considered to avoid litigation. On the split estates I can see that being a major issue if you are a surface owner and don't own the mineral rights. Tribes have regulatory authority for development on the reservation. If there is no fair market tribes can do it on their own and have recommended development standards. These terms should be part of the lease. This is modern day times and not 1938. If you are going to protect the reservation tribes have to have regulatory authority to manage this.

Shenan Atcitty: Another issue is bankruptcy. When lessee goes into bankruptcy we need the trustee ready to coordinate with Solicitor and US attorney. This is another area for reform, accountability, and consistency.

Commissioner Zah: I want to thank all the people who have participated in the discussion. I think that is what we are looking for – the meat of the meeting is to get input and ideas based on tribal experience. I think these kinds of comments are really needed because I don't think the Commission will have impact if we reshuffle chairs. If there is a reform discussion in how the federal government works with Indian people there will be some saying how reform is needed and all we do is sit at a table and we just change the chairs and table and we say there is reform. That is not going to work, not this time around. If we take the same approach it's not going to work. We need to do something drastic. I've been reading in some of this testimony from the Senate and I want to thank people for testifying. It suggests that we do need a drastic action. Putting all of that together, maybe we never really had a role in the selection of the Secretary as Indian people. The President appoints the Secretary and then they select their people. Because we don't participate they do things their own ways. Jicarilla was hurt last year. Navajo really hurt on coal leases. I'm not a lawyer; I was never trained in law. I know what the hell is going on, on the ground. We have got to have a role in the selection of the Secretary. Maybe we create a committee of three to five Indian people, nation-wide, and if we are going to have a new President, we provide input to the selection of the Secretary. Before the Secretary is confirmed the board will have time to make comments on the candidate's knowledge of the trust relationship and make sure the candidate understands why we laid down our guns and we promised and they promised certain things. Because of that we ceded so much land in exchange for the word 'trust'. The lands we gave up are gone. They [the federal government] are fully evading their own responsibilities that come with word trust. It will diminish even more if we don't have meaningful role. If we do have participation and somebody is selected, two-years down the road the Commissioner's board would have a meeting with the Secretary to evaluate the Secretary action on trust relationship and all of the duties toward the Indian people. The Secretary would be accountable in some ways to the Indian Commission board. Maybe if we do things in that way, in their minds, maybe there is an idea that they are accountable to this board. Just an idea. We have got to do something like that, of that nature, to accomplish the things we need to accomplish. I think two other chairmen are suggesting the same kind of action. That is the only way it would work. If we did something like that as a Commission that places special trustees in these agencies, we will have done our work because we never have to question their trust to the Indian people. People would open their eyes to what we are trying to do. Otherwise it is only a reshuffle. Just an idea and I'm glad many of you are participating in this discussion. We listen to you all and I want to thank you for coming. Continue participating with us until we come up with a solution that will work. What I see now is not working and we all see that. It bothers me when someone like the banks show models representing managed assets and it is so simple and how come BIA never did that? It takes somebody else from outside to force them

to do those kinds of things. We are talking and reviewing papers and there is the question regarding the sun setting of OST. My judgment tells me it is needed. Maybe that is something that we make a quick interim recommendation on so that people know we mean business.

Chair Sharp: I would like to follow up on a key point that Commissioner Hall also recognized - the need to get away from an adversarial relationship. We discussed this idea of looking outside the US and models of the government-to-government relationship. We sit down to consult with tribes, we check the box, and continue to move forward. Whereby if there is conflict or dispute we look at a framework for US interactions with other countries there is a relationship based on equality – the sovereigns sit together at the table as equals in good faith and there is a way of resolving disputes.

Commissioner Leeds: We heard several times today about the conflict of interest. There are plenty of models in the federal system that there is conflict of interest. It is important for DOI staff to see how this is done in other contexts and there should be concrete steps for taking care of conflicts of interest. Rather than waiting for the end of two years with a single report, we can work on interim recommendations – September agenda addition and make quick steps on something.

Commissioner Anderson: I echo that. It would be useful if we could have interim recommendations and give people more to react to. I still want response from tribal interests and Department reactions. I have been getting information from individuals and groups of tribes and we need that information. We aren't federal employees and we can't fix these but we need the information so that when we make recommendations we have something concrete to base these recommendations on.

Question 2 - Are there any other trust administration models the Commission should examine as it looks towards improving the Department of the Interior's trust administration and management?

Chair Sharp: Think of other ways, other components of trust models that can be vetted through the subcommittee that could be incorporated into a recommendation.

Audience: I would like to ask that whatever the Commission does we would like to have a timeline on what you are doing and know what the Commission is doing. In the past we have been left in the dark. Have respect for the tribes and have information out as soon as possible.

Chair Sharp: We will be sure to develop pieces from today into the work plan, to put timelines on those products and to put the work plan on the website. There is an opportunity for tribes to comment and provide preliminary reports in September and December. What about privatization, any reactions?

Commissioner Leeds: Commissioner Hall raised the issue of tribes that have in-house trust management. I would like to hear from any tribes that have internal management systems.

Commissioner Hall: Two comments. It would be important if we asked federal employees and they said a new authority is needed. We should look at existing authorities that we could utilize to move forward on some of these items. If there is something existing we won't have to seek legislative solutions. We need to identify existing statutes.

Commissioner Anderson: The Solicitors Office has written memos about the 1994 trust. If there is something more current or outlines existing statutes that would be good to have.

Jeremy Patterson, Cheyenne River Sioux, Ute counsel: Delineate and identify the specific duties of the trustee. In our discussions they often point to the 1994 Trust Reform Act as the statutory basis for trust. It does not do that. It identifies elements of how the duty will be formed. One of the glaring difficulties for Indian trust is that there is not a governing document spelling out principles. There is a document that guides trust management and if it doesn't meet the standards and responsibilities the trust is dissolved. Court decisions are across the board and a starting point is to create identifiable standards based on regulations and legislation to set out corners of the trust and trust standards. Privatization – administration of the trust is well-suited to be deferred to private management and perhaps more cost effective. There are core functions that cannot be outsourced because they relate to essential government services. Which services can be privatized and not? In relation to tribes that don't want to continue to operate under the trust relationship. Some tribes are sophisticated in maintaining systems and have the resources available to manage their own resources. One model is a self-governance compact. There is a self-governance compact for the Sac and Fox Nation in Oklahoma. Allow the tribe to assume functions the tribe chooses to do so.

Commissioner Leeds: At what point does this put in a hold harmless provision?

Jeremy Patterson, Cheyenne River Sioux, Ute counsel: it would absolve the Secretary of responsibility. We can't have our cake and eat it too. If the tribe chooses that route, it has to assume responsibility.

Commissioner Zah: Going along with what was said by recent folks, a set of standards of behavior for the Secretary/Secretaries. If you look at the current session of the Supreme Court it seems like DOJ will one week take a position on certain kinds of issue against a tribe for doing certain things and then take a different position the next week. I am interested in knowing how many cases are being entertained right now at DOJ. They don't really have a standard that they go by and they are across the map as to who/what issue they represent nationwide. I would like, at one of our meetings to have this be part of what we are talking about. Let's revisit what the Secretary said at the first Commission meeting – we have two years but we may be able to finish some of these recommendations before then. If this is how he feels we should have some interim recommendations we can give him. The OST, some of these behavioral conducts, these may be interim recommendations. What kind of standards does DOJ have when selecting cases? (Sarah Palmer clarified – is this DOI and DOJ? Commissioner Zah responded that it is mainly with DOJ trying to determine when they take a case and when they don't. Sometimes they have a tendency to say the DOI is their client and that DOJ doesn't have an obligation to Native American communities.)

Audience: The standards of conduct don't need to be just DOJ, there needs to be consistency across the federal government. One of the things I would like to see the Commission do is define trust responsibility for all federal agencies and how they carry out trust responsibility. Take it to a different level to all federal agencies for common standard they can all use.

Chair Sharp: There is not only a relationship that agencies have to tribes; we have encountered situations that agencies get on the same page before going to the tribe. If agencies talk amongst themselves [about an issue affecting a tribe] there should be tribal presence.

Jim Parris: Have you considered recommendations from the Price Water House report in 1984? It explored various options for trust responsibility and investment management. There are also the EDS report, Tiger Team report, and Chino/Brown meetings in the early '90s. You are rehashing a lot of things

that have been discussed. Look at lessons from options of Melon Bank and Securities Pacific that have not gone forward.

Gay Kingman, Great Plains Tribal Chairman's Association: I was thinking about what Sam DeLoria said this morning about holding the feet to the fire of DOI. Executive Order 13175 regarding the consultation policy with tribes really has not been implemented. We are talking about someone who works on the ground with tribal people all the time. What happens in DC does not get translated and shared to the tribal people. We have such remote areas in the Great Plains and communication is really hard. I am sitting next to Sid Mills, former area director, why isn't the BIA here? If they were working together with the Commission all the Departments should be here. One of the resources we have in the region is the agency superintendents. The regional directors and superintendents share the information. BIA has the history. As we look at this, BIA should be here partnering. We are all in this for tribal people. I am hopeful that at the next meeting we can have a good turnout, good communication, and all people working with us as trustee will be at the meeting.

Dan Rey-Bear, Nordhaus Law Firm, LLP: Something different needs to be done this time. Part of it would be helpful for there to be legislation, regulation is not sufficient. An accountability or trust board (like Social Security) needs to be actual board to which the Secretary of the Interior and Attorney General are accountable. Some status that should come out of this can't be explicit to all trust duties. It is simply a recognition that it is a true and meaningful fiduciary relationship. The problem is when there is a conflict of interest or perceived conflict of interest. As we saw in the Peabody case, the US will assert any argument without documentation. It is important to see that these issues come up and are very political. There needs to be reaffirmation by Congress so that when push comes to shove, so that at meetings at the DOI, the DOJ and Solicitor are accountable to someone who will hold them accountable. On the issue of pooling it was noted that it is legal and proper and there are no limitations for it. June 1, the US filed a petition in a tribal breach of trust case. This tribe wasn't federally recognized for many years and the tribe is seeking judgment on breach of trust. Damage remedy is not included in statutes. This is not what tribes understood when signing treaties and this is not what the DOI agreed to when taking on fiduciary responsibilities.

Irene Cuch, Ute Tribe: The government should increase the efficiency for its management of tribal assets by consolidating services back into the BIA. Government should reaffirm its obligation to reaffirm lands. The BLM is saying reservations are public lands. I believe that we are talking about the central office; where it counts is the local level in the area with day-to-day operations rather than waiting for the area office. To me it should be at the agency level – more staff funding at the agency level as they deal with us on a daily basis. Provide more authority and decision making to the superintendent. The experience and skills needed are at the local level. We need to put more at the agency level, not at the area level.

Mary Zuni, Intertribal Monitoring Association: Thank you for inviting ITMA to participate in the panel tomorrow. ITMA has never taken a position on sun setting OST, however many of our tribes have serious concerns about having two entities and their strong position is that OST sunset. They recognize that great things have been accomplished in the financial area and want these things to be protected and moved forward. There are concerns about tribes not being consulted in the future of streamlining and combining. ITMA was not refunded for tribal outreach by OST. We do have plans to have a training session on fractionated lands from the Cobell settlement. We are being asked by tribes to do a session on the Commission and how they will reach out to tribes. We are still lacking in getting tribal input. We would like to be helpful in that way. We have 56 tribal members by resolution and are very active in trust funds area. We hope that when we have a training regarding the Commission that you are able to

participate. There will be training following NCAI. It is an excellent idea to reach out to OST employees to get comments and suggestions to get feedback from those that are instrumental in getting things in place.

Commissioner Reflections on Day 1

The Commission noted that action items and timelines would be included in the work plan. The Commissioners requested input from employees of OST. A mechanism for capturing this information will be determined and implemented. It was also noted that momentum was needed on the hiring of the management consultant.

Tuesday, June 12, 2012

Invocation

Chairwoman Irene Cuch of the Ute Tribe provided the invocation.

Review of Day's Agenda

Chair Sharp welcomed everyone to the second day of the second meeting of the Secretarial Commission on Indian Trust Administration and Reform and reviewed the agenda for the day. The agenda may be viewed on the Commission [website](#). Chair Sharp noted that there is a nice mix of tribal leadership, federal staff, and individual allottees in attendance. She thanked the tribal leaders in the Southwest for inviting the Commission to their lands and allowing the Commission to share this opportunity.

Status Update on BIA Consultations

Mike Black, Director of the BIA, provided background on what has happened during the streamlining consultation process. The BIA held seven separate consultations around the country and there was an excellent turnout with many comments. The due date for written comments regarding the streamlining was Friday, June 1. The BIA staff are currently assessing comments and determining how they will apply them to the administrative assessment review. In 2004-2005 the Administration made a determination to realign the BIA administrative programs including property, accounting, finance, and facilities management, stove piping each of those functions to someone in the central office in DC. This has been a point of contention and impacts how the BIA deals with issues that come up. When considering streamlining efforts, the BIA will take into account regional tribal differences and how they apply to tribes. They are looking at options that will provide for seamless changes that are perceived as being easier, topics that emerged during the consultations include: IT transformation (being led by the Department right now), interaction and teamwork, OST and the need to address issues there, Indian preference and how it is applied at BIA, policy development, and updates to ensure operations are effective. The 2013 President's budget prompted streamlining – there is a need to save \$14 million in administrative costs. Mr. Black noted that there are a certain amount of positions that are expendable and that across the board cuts may be an option for streamlining. The BIA does not want to make mistakes similar to those in made in 1996. They want to ensure a capable and experienced staff and will include law enforcement as part of this process. The BIA will ask for further comments on any plan that is developed.

Commission Questions Regarding BIA Streamlining Consultations

Commissioner Zah: There was a recent session over at NAU with an agenda about BIA consultation with local leaders and many of the local leaders went over and some of the things they were talking about were subjects you were talking about and they thought it was too short. I don't know the definition of consultation and the BIA definition seems to be to tell Indians what to do, period. That is not consultation. Consultation is where we talk and discuss and we listen to one another and it takes longer than two to three hours. Here we are all the tribal leaders, 21 tribes, and if you give each one a chance to say something we have very little time. I was invited to be there but I couldn't stay. The way the consultation was being programmed by the government caused concern.

Mr. Black: That consultation was not one of BIA's. All the streamlining consultations were a full day. I understand the concern and the past history is not always the greatest. We made a real effort to get out there and lay out basics to explain what we were trying to do and incorporate all the comments and recommendations to the best of our ability.

Chair Sharp: With the planning that is underway with streamlining, what efforts are underway to deal with land consolidations and the Cobell settlement?

Mr. Black: That is an entirely separate initiative and can only be used for Indian Land Consolidation Programs under Cobell and we can't take those funds to make up for reductions.

Chair Sharp: BIA is planning for a reduction of \$14 million and we need to consider planning for potential increases. Through the land consolidation consultation there is potential for tribes to enter into collaborative agreements to deal with efforts locally. Knowing the settlement is coming to a close what planning can we expect?

Mr. Black: We did a number of consultations based on land consolidation. There is a draft plan under revision and cooperative agreements are a large part of the program. To administer the program over the ten-year designated period, we must be fiscally prudent and develop cooperative agreements.

Commissioner Hall: In the Great Plains consultation in Rapid City, most of the comments centered on proposed reprogramming and streamlining to the Central Office. We have need for more staffing at the local agency level versus the central office. We know there are going to be cuts and that's having an effect on the streamlining. How real is the consultation going to be? Will regions be able to comment again?

Mr. Black: There are two parallel efforts, administration and streamlining. We need to get more of the authority out to the lowest level possible, that's what was really driving this effort. Local coordination and accountability is not currently at the local offices. If we can realign administrative programs this could assist. We are cognizant of the streamlining and want to make the Central Office the area for policy and oversight, not implementation.

Audience Questions Regarding BIA Streamlining Consultations

Audience: Education is now no longer under BIA and I think that's the problem in the field – there are so many consultations going on it is difficult to keep them straight – a master list would be helpful.

Mr. Black: We are starting to realize that and it seems to be a little overwhelming now.

Audience: I know there is need for realty offices to have increases – especially oil and gas. There is also need for more funding on law enforcement because the tribe has to supplement and there is a dire need for more money there. We need more of the decision making at the agency level rather than area office level. On some issues they have to call the area office and there is no supervisory level at the local office. That is where it counts – agency level working with the tribal council. There might be other offices too that need more funding. We need better coordination with the energy and minerals realty office and the tribal energy office.

Mr. Black: With the development of oil and gas there are lots of efforts going on and we need to think outside the box and use sister agencies to help develop some of the programs. We are trying to bring everyone together to better coordinate and bring them to all bureaus and agencies.

Office of the Special Trustee Trust Administration Follow-Up Discussion

Chuck Evans, OST, provided an overview of the current process for managing the trust accounts at the Office of the Special Trustee. The current total assets are \$4.5 billion. There are two segments; the largest is the trust with \$3.8 billion in 2,907 accounts and 250 tribes and the IIM accounts with \$590 million and [approximately] 384,000 account holders. We specialize in fixed income because that is all we can invest in, government securities. How we invest is in terms of restrictions and we can invest only in US government securities and that is it, we cannot invest in other types of securities. We are also limited to the kinds of returns we can get. We apply OST investment policies and define accounts by objectives, what are the liquidity needs. We don't have credit risk and we do have interest rate risk. When we talk to tribal account holders they are most interested in needs for liquidity – when they withdraw funds. We have cash management accounts (CMA) accounts and we need to keep short term investments. Some accounts are income dependent and the requirement is to maintain principle in real numbers (not purchasing). We try to generate as much income as we can for tribes because they use the money for budgets. We have some accounts where they are not likely to take the funds. If you hire a consultant they will tell you to privatize, pool, and use index funds. When I came here I thought that is exactly what we would do too; that is the way to effectively and efficiently manage large pools. We put together a program and what I found is that it doesn't work. The idea of privatization makes sense but doesn't work in this circumstance because of the uniqueness of the funds. Maintaining principle (raw number) is important. We don't do the total return because there is an income requirement and if you go to a private organization they won't understand what that is all about. Allianz Capital managed the IIM fund about five years ago and it wasn't very successful because they didn't fully understand the needs. The basic difference is that as a private manager you don't have the same understanding of the account needs. We have an advantage, we have four portfolio managers who deal with the tribes and know what their, the tribes, needs are. A lot of their time is trying to understand what the needs and objectives are. That combination of portfolio manager and Trust Officer is key. You can't outsource customer service and that is the major problem with this concept. The overnighter is the US government money market fund used to invest overnight funds which can be withdrawn the next day – there is no risk. Short term interest rates are very low right now. The overnighter occurs in a couple of ways – there are transaction balances and a large portion of funds are held short and kept liquid. If you invest longer-term you can lose principle if the rates change. There is purpose and value to the overnighter. One alternative for investment is par specials and these are issued by Treasury to the Thrift Savings Plan (TSP) and Social Security (SS). These are super money market funds. Money is held with no risk and that fund pays a blended rate and gives long term rates with no risk. That doesn't exist in the private world. We have gone to Treasury four times and asked for this opportunity and they have turned us down because the trust is viewed as a subsidy. I would suggest that if this option was recommended by the Commission there may be opportunity available.

Commission Questions Regarding OST Investment

Commissioner Leeds: Can you discuss the history of the interpretation of pooling?

Mr. Evans: Pooling is not statutory. Investment in overnight is pooling and par specials are pooled funds. There are historical issues regarding mixing various objectives of individual accounts and losing individuality - that is a significant loss. A professional manager gets vested results. Tribes have also been opposed to pooling in the past. Can you meet individual needs by pooling? The intent is to use index funds when pooling to try to replicate the fixed income bench mark. There is no passive fund that can replicate securities in which we invest. We cannot invest in short-term investments. The concept is great but doesn't work.

Commissioner Hall: Our tribe has a couple of funds invested and has lost 25% for interest on principal in the last few years. At one point in time does the investment policy say if those rates of return are so low that you can no longer try to budget interest income?

Mr. Evans: This is a major challenge. I think, frankly, we do a pretty good job. The IIM fund is currently at 3.5%. We can't do what an outside fund can do in other areas. Being limited to fixed income treasuries there is a provision that tribes can take money out and one tribe did a large withdrawal and didn't select a great manager and had problems. The tribe found out the investment manager was being indicted. It is difficult for tribes to have resources to figure out who is good and who is bad. Investment policy takes fixed income, narrows it, and describes that we will pay by objective. You may be talking about strategy for each account to meet objectives. How do policies and strategies apply to your accounts? We consider your needs, income needs, and withdrawal likelihood.

Commissioner Leeds: Looking at the 162A provisions regarding the consent of the tribe for diversity with investment management companies and how that can happen, is it only when tribes request?

Mr. Evans: That is a mutual fund provision at the request of tribes to invest in mutual funds on their behalf. There are no mutual funds that meet the rest of the requirements of 162A. We cannot buy repos, there are derivatives, etc. and unless fund can meet other requirements, it doesn't work. We are looking at better yield on short term money. It would not be a registered mutual fund but could pool money to get income.

Trust Management and Administration Panel Session Presentation and Discussion

The Commission heard from Vice Chairman Suppah, Intertribal Monitoring Association (ITMA); Melody McCoy, Native American Rights Fund (NARF); and Ross Swimmer, Swimmer Group, LLC. The panel was asked to respond to the following questions:

- A. 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.
- B. Recommendations to improve or strengthen trust management and/or administration based on lessons learned in the course of litigation and settlement of the recent tribal breach of trust cases.
- C. What solutions do they think would improve trust management and administration?

Vice Chairman Suppah began the panel session. His remarks are summarized here but are not a verbatim transcript. Good morning again. I would like to qualify my statement that a portion will be coming from an ITMA discussion paper distributed to the Commission. [The statement can be found on the Commission website.] I would like to state that I will request the assistance on some of the responses and call on others, if needed. A lot of this stuff is done through the eyes of legal analysis and I would like to make personal comments as I was having nightmares about what I was going to say. I think the Commission should scrutinize OST's past decision. The Special Trustee zeroed out the training budget. Any plan for reformation should include training, educating people working on the trust administration – don't throw out a tool that could be very valuable in the future and meets the interests of all. Special trustee reduced approximately \$5 million for trust accountability.

Along the lines of risk management, take a closer look at that as we move forward to accomplish tasks. We have to turn over stones not being looked at. I think in defining trust and fiduciary responsibility it

should be made clear that BIA and OST have responsibility to manage trust benefits. Resources are to be protected by the federal government. One of the most critical issues is the attack by the US Treasury and the IRS upon trust income generated by trust resources and the assertion that those are taxable. Look at the job description of DOI and ASIA and make some hard decisions about the trust responsibility and apply it to the federal government to protect benefits and interests. As we look into our somewhat murky crystal ball and look down the road, we see an exit by federal employees. Echo Hawk is gone, Laverdure is gone by Dec 31, and Jodi Gillette is appointed to the White House. My basic concern is that as these personnel are shifted and moved, BIA and ASIA should have a transition plan in place that will address in interim what the plan is. I think one of the questions that the Commission is facing is determined in the fate of OST. When or if the Trust Reform Commission recommends to sunset OST they should be privy to the transition plan for melding OST functions back into ASIA. If a plan has been developed, in order for this Commission to make the right decision they should have access to that plan and comment appropriately.

I don't want to rain on anyone's parade with personal comments but we have a concern about the protocol and independence of the Trust Reform Commission. As we listened yesterday something stood out immediately and that was the gag order from Cobell applies to the Commission. From our perspective that has implications as far as this Commission to independently make the right decision. If your boss is the Secretary then how much authority do you really have and how meaningful will your recommendations really be and what consideration will those bring? With this being an election year when the dust clears and there is a new regime in place then we are somewhat concerned, will all of the work to date transition over into this new regime? I guess as you guys work through your work plan you are going to have X amount of things to do. As you accomplish these tasks sometimes it makes sense that as you guys are still sitting there representing and putting in these recommendations to move forward rather than waiting for the clock to expire and waiting for 11th hour for the Secretary to implement, whoever that may be at that point. Last comment would be that ITMA does recognize the Trust Reform Commission must exercise care and are restricted by budget constraints and must work with experts and consultants to work on issues facing them. Two organizations stick out as leaders: ITMA – heavily involved in all of the discussions and the other is the Indian Land Tenure Group (ILTG). Their records that have been developed can be useful to the Commission when they have to make the decision.

Melody McCoy, staff attorney at NARF in Boulder, continued the panel discussion. NARF appreciates the invitation to make a presentation here today. NARF has been representing over 40 tribes in their breach of trust cases for over 20 years. I have served as the lead attorney on all of these cases. NARF does not take institutional positions and can fully support the work of the Commission in the interests of Indian country as well as the federal government serving as trustee. Before coming here I had to reach out to all of my clients and the experts we retained in our court cases and we tried to promote informationally the work of the Commission coming into this. We also consulted with other attorneys who worked on this issue as well.

After consultations there were a lot of people who wanted to talk about asset management and investment issues, accountings. People said to tell the Commission to find out whether or not the government is providing, and the beneficiaries are getting, adequate and proper accountings. The cases came on the heels of 30 years of Congress trying to see that tribes got the historical trust accountings that a trustee might provide to tribes. In the early '80s a series of reports from the GAO, Price Waterhouse, and Arthur Anderson were critical of accounting in government accounting of tribal trust funds. Congress stepped in in 1987-95 and passed laws that prohibited contracting out by BIA of future

accounting for and accounting of trust funds, unless and until historical accountings were given. In 1990 the six year statute of limitations for claims by tribes and individuals to losses does not begin until provided accountings determine if there has been a loss (tolling). In 1994 Congress passed the Trust Reform Act and has specific provisions regarding accounting and reporting. There was a contract of the Arthur Anderson firm to deliver reports on accountings and Congress deemed them received in December 1999 trying to see if there was anything that could be done re: historical accountings.

After a 25-30 year time period declined to address the matter further, over 112 tribes filed lawsuit seeking accountings. This was the largest group of tribes to ever be in court against the government. In some cases they were seeking money damages and seeking to have answers and have historical accountings. 70 cases are still pending (109 tribes). There are settlements in over 40 of these cases and we still have over 50 cases with 67 tribes. To this day no Indian tribe has ever received a full and accurate historical accounting of each and every account the government held or holds for tribes. There is no decision from courts regarding what historical accountings are due, what must be provided, if they can be provided, and what is the government obligation to do so. Some would say that the best shot ever given to historical accounting is the Arthur Anderson accounting. This was done in the '90s for all tribal accounts from inception and Arthur Anderson determined that it would take over \$280 million dollars to do a review on individual money accounts. When nothing was done to provide the \$280 million for the review, the Cobell case was filed. Arthur Anderson looked at July 1972-Sept 1993 primarily because that time period had the most records for all tribes readily available. With records, time, and systems issues they could not do full accounting or reconciliations. They came up with procedures to review and test virtually every tribal account of two main types of judgments and proceeds of labor. The report did not look at IIM accounts, or special deposit accounts or performance bonds accounts and a host of others for time period because data was not there. The records for most of the tribal accounts kicked in in 1972. They looked at those but did not do full accountings or reconciliation and only some tribal accounts were reviewed. I understand there are a lot of reasons why and it was quite an issue.

There are questions about standards and scope differences because the trustee is the federal government. Are the records there, lost, destroyed, or ever kept? To this day a tribe can't come to the Trustee and ask for a full record of leases and agreements in place and every transaction that ties to those leases. There is enormous cost and time to deal with historical records because of time passed and poor records systems. If the government is not willing to invest we are still at square one or there has to be some way of addressing at the national and tribal level historic record breach of trust accounting issues. The 1994 Trust Reform Act (1994 Act) is probably the most specific statement of Congress. The Trustee is to account for daily and annual balances of each and every account. Statements of Performance are required and tribes may have the option to ask for monthly statements. It requires annual audits of the aggregate tribal funds. OST has specific accounting duties and monitors BIA reconciliations and consulted on the Arthur Anderson reports of the mid '90s. In recent settlements there are specifics about the accounting and these are public documents. The Settlement Proposal to the Obama Administration (SPOA) includes waivers and releases of historical accounting claims, had to attest to balances that were part of exhibit to settlement and had to agree that they met 1994 requirements for accounting and reporting. As long as the government provides personal statements and annual aggregate audits, in general the 1994 requirements are met if these things continue. There is a provision for future contesting of report accuracy with notice, 60 day response period, and they can't file any pre-response legal or equitable claims unless grounds for fraud or gross negligence.

There are remaining issues. Historical accounting claims – there are still dozens of cases pending, about 200 tribes that have yet to file their claims. There is need to sort out the 1994 Act and questions of sufficiency – not a lot of scholarly writing about the 1994 Sufficiency Act. Practitioners and the private sector have views and there are not any court interpretations of the 1994 Act. New single point of accounting provisions has a three tiered approach on issues. Bottom line is that how do we know that the Trustee is providing and the beneficiaries are getting reports and accounting that are of use, how does one figure that out? How does one answer that? My sense is that at the national level the annual reports done by the audit group for OST still provides qualifying statements because of the balance issue. There are still hundreds of tribes and thousands of accounts that are not in order. This is very complicated because of the resource issues and the historical situation and a bit about the fiduciary relationship is heightened. This US is sovereign, tribes are sovereign. What is the answer on this basic duty to account, historically, transaction by transaction at the basic level? Some people have suggested that it is time to do an impending audit and accounting of larger tribes that have multiple resource bases. How many, how often, who commissions, reviews, and pays? With all of these “time will tell.” We can look at preventative care to try to understand from the Cobell case – everyone is wildly happy after Cobell, after phase one where the government is liable. When asked for lessons learned from recent cases my answer is that these issues can be worked out at the government-to-government level. Most of these SPOA tribes did this with own experts and own attorneys, not third party neutrals. Some did utilize mediators. Important thing is that these SPOA settlements would not have worked without providing data. We had to be on the same page as far as data. The government had to provide data. There was a \$25 million budget for data support in these cases. These should be joint federal/tribal decisions regarding what to do.

Ross Swimmer completed the panel presentations. I appreciate the opportunity to appear and be with former colleagues from OST and BIA. Between Forrest Gerard and myself there is about 45 years of experience in the room. Given 45 years has passed, not a lot has changed. I don't know if it bodes well or not. There is a limit to what can be done. Some will say I exaggerate with purpose to make a point. I will attempt an overview from where I think we are and where I came from. In 1985 as Assistant Secretary we had no trust management. We had accounting in Albuquerque trying to keep track of the volume of information. That was difficult to do and we didn't have the systems and people and concept of trust duties required. These had never been set forth. In any event, by 1987 or 1988 I proposed we look outside and bring in an outside accounting firm to handle accounts and investments and the Bureau of Indian Affairs handled assets. The FDIC said we know where the next failed bank would be because that is where BIA would invest funds because they gave the highest rates. That is not a trustworthy way to invest funds. It was difficult to get statements out because there were antiquated systems and no budget to improve the systems. We wanted to outsource but Congress limited this because they wanted historical accountings. In the future let's do this the right way and we can work with other firms to get this done. It did happen with the impetus of the Trust Reform Act. The hiring of an individual with trust experience that understands the functions that are going on is helpful to understanding the regulations and making the process more seamless. We did, as a result of the Act, outsource the accounting. SEI is doing the accounting and reconciliation and disbursement and made a difference going forward. One of the reasons you won't find a private entity to do this business is because of the nature of the trust. We had twelve interested companies. Their initial comment, when we explained the trust was 400,000 people with land and money and that the same fiduciary duty is required for \$1 or \$1 million, the recommendation would be to close the trust. That would require the payment for the management of trust to come from revenue.

First suggestion, keep what is here in some form or fashion. OST is the first time that the DOI has actually executed trust duties re: Indian trust and has made enormous progress. Everything from the call center to trust offices to systems to audits to work being done now is night and day. OST should remain. Having a trust without a trustee is an oxymoron. A trustee can report to anyone but you must have a trustee that has no other duty but to administer the trust. The structure of OST was set up to mimic the private sector trust department. The trust department generates income only and does not make money off of investments. The banking/investment and trust in private sector are different functions. Trust officers are essential to getting out with the BIA agencies to provide trustee responsibility at the local level. As far as I know the trust officers work fairly well with local superintendents. That function of the trust officer is there to protect assets of individuals and tribes and mediate disputes between individuals and tribes. There are issues that develop and they need to be mediated by trust guidelines. Streamline to help beneficiaries in leasing. There have been significant improvements in leasing regulations that will come out as final in the next month. The way the lease regulations worked in the past with BIA is one size fits all. Those kinds of issues have to be changed and recent changes go a long way to increasing flexibility in leasing of tribal lands. Allow flexibility in how tribes interact with the Bureau to manage lands. One thing that complicates Indian Country is that any time anything is done on tribal lands it is a federal action. This can be changed by legislative authority. The rules and regulations should be tribal based not federal based. Have tribes write rules with the Bureau and determine the type of leasing needed. There are 40 steps to getting to a lease option. Why do we make it so complicated in Indian country to use the assets that are there and belong to tribes?

Whereabouts unknown are an issue and a legacy of BIA practices over the years. It is the responsibility under trust law to stay in contact with the trustee. East of the Mississippi there are Indians who own low percentages of land and don't know it. If someone is whereabouts unknown for more than five years, cash them out and set up an unclaimed property account to be held so the interest can be used for whatever tribes and Congress decides. Someone can also claim these funds again in the future. Debit cards for distribution of funds are a great idea. Debit or direct deposit is a good direction and I think we should continue to expand and use the savings to offset costs that would impact the user. On the other side we have a number of lessees who make big payments to BIA to lease private and individual lands. Sometimes they send a check to OST for \$25,000 and they forgot to sign it. We need to change those payments to electronic payments from lessees. Most that are leasing have the wherewithal to make electronic payments. Offers to lease have to be given to the owners of a tract of land. It's not unusual to have 100 owners and every time an offer comes in, a letter is sent to owners of the tract. It is not too unusual to not get a response. The BIA then puts up the land for competitive bid. The sheer work of sending letters is silly. If there are fractionated lands OST should act as trustee in the best interest of the owners.

What I am seeing lately, over the years the Assistant Secretary and the BIA have been bifurcated – we need a merger. We need the Assistant Secretaries to manage a policy office of the Bureau and work needs to be done at the agency level. If you don't have confidence in people in the field they should go away. This means accountability and there has to be more accountability in BIA, DOI, and OST. The work should be at the local level where actions can take place without need for multiple reviews up and down the line. Observation: You will hear a lot of grievances and I caution you that you will hear a lot of anecdotal information, ferret out facts as it's not all exactly as portrayed. The changes that I encourage and have been enacted in OST include the outsourcing of accounting, disbursement, investment in-house with a single objective that is government securities. I suggest that as you get into this you might ask Price Waterhouse Coopers to look at performance audits of all agencies that deal with Indian Affairs to see if they are doing what they say they are supposed to do. Strengthen trust management and if the

tribe desires more input it should withdraw funds and hire a private investor. This is the opportunity for tribes and they should look carefully at outside investors. Chuck Evans raises a good point that there are highly qualified individuals and maybe a function of the OST investment group is to offer to tribes to vet RFP responses to ensure the outside investors have a history showing they have done what they said they will do. OST could also engage a third party to vet advisors. You are going to earn the lowest possible amount of money with the way the law is. You are not losing principle but you are losing money because of the low interest rates. Case law and even the statute have the word maximize. There is such a thing as the prudent investor rule and that doesn't exist in Indian Country. It is impossible to maximize your return. A number of lawsuits have the look back theory. Looking back at 1985, interest rates were very high and if you had invested my funding for a few more years I would have made more money. OST can only use the best available information at the time and cannot forecast what will happen to rates. Appraisals are a problem. It's a problem that should be solved easily by regulation or statute. There is no fair market value of 1% interest in a piece of land. We are paying \$3,000 for full appraisal and this is false because there is not really a fair market value for these small increments. For instance, you have 1,000 owners for 6 acres and to come up with a formula to have enough money to encourage someone to sell is difficult. There is no incentive to sign off when there is such a small interest. Fractionated lands will continue to be an issue. Define how much land is worth and no matter how small an interest it is worth X amount. Get regulation or statute to set fair market value for tiny interests.

Trust training is important and needs to continue in some form or fashion. Whatever it is trust training is important. Title system – TAAMS is working and provided Indian Affairs with title system that works. The implementation doesn't always work. If you had four different plots you would get four different titles and it could be recorded as one. Review all plans and determine where they are. A call center is going to be extremely important particularly with fractionation. Need to implement unclaimed property law to deal with whereabouts unknown. OHTA has been successful in locating records and putting them in the cave. Probate is outrageously expensive and as long as we are doing full blown probates on \$2 estates you will go broke. 5000 a year and ¾ have value of less than \$1,000 and have to be affidavit probates, don't worry about finding last heir and have them sign affidavit and give each their share but don't spend \$5000 to do that. Probate needs serious overhaul. Final comment is not meant to be an assault on administration but we have gone almost four years with no Special Trustee. I'm not the only person qualified for this job. The DOI is very competitive and we constantly do battle with other agencies. That person has to have the authority to go in and say no, that cannot happen. Assistant Secretary Trustee must be able to insist that the authority is given to represent tribes and individuals. In the meantime keep continuity.

Commission Questions for the Trust Administration and Reform Panel

Commissioner Zah: Make one thing clear based on some of the discussion we had with the presenters this morning and suggestion pursuant to some presentations made, is the idea of having the DOI using their own programs to invest tribes' money. As I understand it there are really constraints in so many ways by the federal law in terms of what they can and can't do. There are some tribes that have pulled their money out to have it invested privately by others. Southern Ute is getting huge return by pulling money out. Navajo Nation also did the same thing. The investment that the Bureau does gets a very low return. My question to Ross, in that area has there been any type of analysis on the return for trust money vs. tribal investment? If the answer is so clear and the tribes are doing better why haven't more pulled out funds? Two, I heard you talk about the trustee and the role of the trustee with the tribes. When you were Assistant Secretary and you know down the hallway Odell was talking with all the Peabody guys, did you ever think I am the Indian peoples' advocate and guard and need to make sure

their interest is given due consideration? Did you ever think of walking to the end of the line to his office and say hey we shouldn't be having these conversation without the tribal peoples? If I was the Assistant Secretary I would follow them down the hall. Were you locked out of the door to not allow suggestions? Some of these things happened during your tenure.

Mr. Swimmer: Yes, it did Chairman. We finally settled that case. I wasn't aware of the Secretary's interest at that time, I was looking at myself and I was very intent on doing what the tribe wanted me to do. I tried to listen to the tribes and push as much decision making as I could to the tribes and their counsel. The tribe wanted to do this particular transaction the way it was being done and I was asked by tribal counsel to get out of the way and approve because the Department didn't need to be involved. As the Assistant Secretary I have fought many battles – the trustee is important because there are battles to fight. I did not defer that decision to the Secretary, he was willing to make that decision and sign the settlement. I'm not aware of any study that has been done regarding tribal funds investment returns compared to what the Department receives on those funds. I would say that it would be common for a tribe to receive more income on its trust funds when having them invested privately. The risk you take is that you don't have the Secretary backing if those funds are lost. I think that is why many have not removed funds. You have a guarantee of no loss of principle. I strongly recommend the tribes look at private investment advisors. Those are a fiduciary duty that is not your broker that is a fee based investment advisor who has only one duty to recommend the investment. The investment advisors have to be vetted just like any other contractor that you hire. I think that's the real reason why tribes continue in spite of the Trust Reform Act because they feel the risk is more than what they want to do. Tribes invest their own gaming funds and they still have money in tribal trust.

Ms. McCoy: Of course the Indian self-determination act allows tribes to contract certain functions and in the late 1990s we have self-governance and there are tribes that compact functions. The 1994 Act was the first time that says tribes can take all or some of funds from trust. In Section C it says that once the tribe takes funds, any trust responsibility or liability to the US shall cease. Until historical accounting is complete it is difficult for tribes to take out funds. They are being asked to give up historical claims for any liability against government. As tribal economies evolve some of that might change. Many tribes are dealing with more revenues than they have in the past. I'm glad this option is available. It is asking a lot to give up historical liability. These personal statements and accountings and reports might be of use to both sides to implement reporting requirements on the investments that doesn't just show gains and losses and doesn't require measure of performance against something. It might be of use in the future for tribes to make informed decisions. Mr. Evans provided mini investment seminars. Recommend decision be made about performance. In this day and age with data and information out there it seems like it should be considered.

Mr. Swimmer: I don't believe you give up your historic claim by executing the exception and if true, it should be changed and tribes allowed to keep historic claims. There is benchmarking against government securities index.

Commissioner Zah: I wanted to make an additional comment particularly on the first question. If you are on the other side representing a tribe as an elected leader you are always strapped for money. Money that you have to use to serve your people is always not enough. What happens in these cases is you have to hire outside consultants to make these people carry out their duties. You have laws that say Indian self-determination can do certain things. Why do we have to sue them to make them do their job? Why do we have to spend so much money of tribal funds? Peabody probably cost about \$18 million or close to \$30 million for the federal government to do their job. For me that is unacceptable. That is what happened in this case. They caused all of this to happen. It is a crying shame that we as American Indian people, that when we are appointed in a position we lose what our responsibility is to our own Indian people. Secretary Odell didn't know much about Indian people. Indian people around him should

have said this is a no because if you don't carry out responsibilities the tribes will sue and all that money goes to counsel instead of serving the grandma who needs running water, electricity, better roads. Because of inaction of own Indian people who get in these positions, that continues to happen. This bugs me and it's why I'm raising this issue and question. It's just something I wanted to say because of what it does to Indian people and tribes out there.

Chair Sharp: It seems some of the things that Mr. Deloria recommended yesterday –look at administrative short term gains, ensure basic state of standards are met, administrative vigilance – what does it mean? It could be something we desperately need in DOI and other agencies that effect tribal affairs. Until we do, it is going to continue to cost millions and millions of dollars.

Commissioner Leeds: Regarding yesterday's discussion around conflicts of interest and what to do in the immediate to streamline processes. We could come up with an arbitration based or ADR model so that first time breach of trust doesn't take us to litigation. What would that model look like? In the course of two meetings we have discussed whether OST should be sun-setted or preserved.

Ms. McCoy: Good questions bordering on institutional position that NARF can't take. My thoughts on an arbitration system are that if tribes want that, I'm all for it. The federal courts, from my perspective, have not been helpful or favorable to some of the historical tribal breach of trust claims. Indians are not a sympathetic plaintiff. When claims are brought there is a lot that happens. The government vigorously defends against liability. It takes about 10 years before you get to trial on merits, if you can get there. Wind River has been the longest running breach of trust filed in 1978. The court of federal claims just tired of them; district courts don't want them because of damages; and federal courts don't want to because of accounting to determine damages. I am all for tribes who have chosen to litigate. On the other hand look at Osage -\$330 million at trial and settled at \$380 million. That says that if the government defenses against historical claims are as strong as what the government says, the recent settlements are more extraordinary because they didn't have to happen. I think everyone in this country has a lot to be proud of. I know that they are not perfect but you will not find another Indian claims commission where the government says we cheated tribes and owe them. You will not find another President willing to settle for such sums. There are other things too; you will not find another country with OST – not perfect but better than any other on the planet. On the arbitration idea, the jury is out. There are some tribes who have gone through federal claims court with ADR and had good outcomes. Several historical cases are in process now. At some point we will see the fruits of the labor. If tribes really want it, I think it should be available. I think some tribes are using arbitration and mediation successfully on these. It is a bit of a learning curve because there is no comparable. There was a time when Congress could do something and I don't think we have that now. I don't have anything against OST and concerns that it has taken over funds for BIA doesn't sway me. Allow tribal leaders to speak on this.

Commissioner Hall: Did ITMA take a position on sun setting OST? Ross, on historical accounting you took a position in the '80s and that hasn't been done. It appears that we have the technology to index the records for the tribes. Should that be done and don't we have expertise? Melody, are tribes extinguishing any future claim in settlement and paying taxes on settlements?

Vice-Chairman Suppah: ITMA has not taken a position on sun setting OST, as an organization. There has been general discussion and discussing the merits of that option. I guess OST was a derivative of the Indian Trust Reform Act and basically has probably been the only thing that really came out in reform over all these years that we have tried to figure out how to make a more efficient and effective government. Part of the discussion went along lines of does the Bureau of Indian affairs have the appropriate abilities and skills and expertise to do the job if OST was sun-setted? The answer was no in

general discussions. In the Trust Reform Act it identified certain problems in BIA - appraisals, accounting transactions, probate, whatever it happened to be they devised the OST organization chart to somewhat address that. Basically now if we have to consider what is best for Indian nations then I think that is going to be a very hard question to resolve. Simply because we are spending X amount dollars to fund OST and if we decide to eliminate and meld back into BIA then I think it's going to cost a lot of money to do that too. If we look at products and outcomes are they going to be close to what we have today?

Mr. Swimmer: Historical trust accounting is not complete under the description that Melody gave, it will never be complete and tribes have opted for money rather than accounting. We did a proposal based on the order of the court that every account has to be accounted for. We asked forensic accountants to look at this. There has been about \$13 billion put into trust over 100 years. The number we got for the cost to do the accounting of the trust was right at \$13 billion to account for the \$13 billion. Are there any records? In Cobell I believe there were not any records. There are some 450 million or 600 million pages dating back to the 1800s. Is every transaction covered? I don't think so. There were some papers going back trying to account for every action in an account and some cases where documentation is not present and could not sign off on the account. There will not be historical accounting for every tribe if it is to begin at day one over 100 years. In the private sector there are statutes of limitation. I think Melody is right and no other government that has treated people as well as we have and have not spent the amount of money our government has. What I want to see happening is that I don't want to see another Cobell. I don't believe it is the DNA for BIA to be a trustee. They have so much more on their plate. It is like asking them to invest while holding fiduciary responsibility at the same time. Keep the operations that are in OST together. If you break it up and eliminate the Trustee there will be a Cobell 2, 3, and 4.

Ms. McCoy: I'm not sure what the answer is regarding historical accountings. I understand the issues of impossibility due to lack of resources or lack of documents to address that in a seemingly proper way. What I don't like is that one lesson from Cobell is that the more government screws up and the more it costs to fix it, the more they are off the hook. Even if they screw up and it costs a lot there needs to be some type of closure. Otherwise it is just going to be a problem that resurfaces. Tribes extinguish historical claims, not future claims and retain all these rights. Tribes have to give notice to allow for DOI to respond before contesting accuracy. There was no deal struck on waiving future liability.

Vice-Chairman Suppah: I think that when the tribes eventually get to the point of settlement there is a certain level of process, administrative process, that they have to go through in order for them to receive their payment. The Commission should look at timeliness for the processes and timeline between settlement and actually receiving the money. The second part that catches my attention is that federal regulations and policies are an expenditure of trust claim funds requires a distribution or allocation plan, a public hearing, scrutiny by the Secretary to approve the expenditure plan and then money gets to tribal accounts. If part of the plan declares the tribe pays a dividend out of proceeds or claim from the IRS perspective up to a certain level on allocation of dividend, it is deemed taxable. On one side you won a case, on the other you are being penalized and taxed.

Mr. Swimmer: Indexing. While there are records they have not been indexed. Those records are important to litigation have been indexed. Indexing is a money issue but is something that needs to be done because it makes it electronically available to everyone. It is a money issue.

Ms. McCoy: Settlement payments with political settlements are generally payments to tribes and not trust funds. It is paid to the tribe in a private institution. They are not taxable to the tribe and if the tribe makes a distribution to the tribal members then at some level they are taxable.

Vice-Chairman Suppah: I hate to disagree but I guess as an example the Warm Springs settlement was two phases. The accounting which was relatively easy because we hired a forensic accountant even though we didn't agree with the statute of limitations regarding elements could be considered. Second part is mismanagement of natural resources. This is harder because everyone has an option. In

settlement agreement there was a discretionary settlement that was bound by what we were allowed to do and another non-discretionary fund. The question we had was in our settlement, at what point did the settlement money convert from being trust funds to being non-trust? We disputed that because we felt that they were taking advantage of us.

Commissioner Anderson: Melody, there were 200 tribes that did not file and another 40 will continue to litigate. Of those 200, any opinion about the statute of limitations? Do they not have claims?

Ms. McCoy: Those are definitely going to be litigated. There are a lot of tribes out there.

Mr. Swimmer: OST has a very discreet financial trust obligations and those functions should be separate from BIA or to be moved outside or over to Treasury or Executive Branch. It is different than what the BIA does generally. While BIA did manage accounts and money it was not done according to fiduciary trust duty. Under requirements of trust duty there are a series of trust duties in the private sector that you should consider that need to be carried out some place. That trustee needs to be responsible to some official. It could be ASIA. Can't give up operational work that is done here. I want to be able to communicate what is going on with my money. The Chief at Cherokee pipeline wanted to lease land on riverbed. I dealt with the company and we will sell your right for \$12,000. BIA said we had to appraise this and it is worth \$4,500 and you can only get the appraised value for this. We got out \$12,000. I've seen it in competitive bidding – there must be more than one bidder to consider competitive bids. It was just easier with one bidder, didn't get appraised price and could continue to get bids. Told by people in Bureau that the appraised value is all we have to do. No that is not right, appraised value is the minimum. At that point do what's in best value for beneficiaries. Trust office oversees to ensure competitiveness. Trust operation distinct from everything else Bureau does. As opposed to everything else I said about the Bureau those pieces at Secretary's level need to be brought to local level.

Commissioner Anderson: Vice-Chairman Suppah, the idea that OST get rid of small accounts with low value. Can you give thoughts on that approach?

Vice-Chairman Suppah: David Harrison was asked to assist. With regard to the earlier questions we didn't get everything we wanted but got some important ones. In regard to historic accounting, neither tribe nor Secretary is held to the accuracy of the balances if the tribe decides to take money out. Both Secretary and tribe can fight over what it should be but tribe can take out what is in account. Sun setting, the statue also says even if Special Trustee recommends sun setting must keep office open until all reforms stated are taken. We had noted that OST pointed out in quarterly reports over 10,000 have less than \$15. In fact with 107,000 accounts with less than \$15,000 the average is \$0.47. All the cost of reporting, calculation, and posting is a major issue. A lot of those are probates or fractional interests in land. Fund the program that Congress created to buy those lands. The program Congress created under land consolidation that appropriated funds can be used to buy these lands subject to a lien. It keeps the same set of books and lands are held in trust. Human nature in the equation and the government spends more time and money to keep own books. Fund program and pay the willing owner what the land is worth. Since last year it got more complicated the Department now says that the Department does not regard permanent improvement to trust land as subject to realty. If the government gets \$2 billion to buy land and they don't pay for permanent improvements, we are making a significant investment in Cobell 2. It is suggested government needs to revisit this suggestion. We are willing to consider reasonable accommodation because we agree government should not be liable for home improvements that cause injury. Another possibility that we have pointed out is that some of you deal with the mining law. Mining claims 100 years old, until quite recently, burdened public lands all over the country. Congress finally passed a lapse statute that said that without some indication of ownership by the mineral entry owners those permits can lapse over time and return to the state from which it was severed. We know Congress tried a couple of times to make involuntary transfers of individually owned

land. Funding the purchase avoided a costly scenario and it would be cheaper than cost of the records. Get rid of liens and pay for improvements. The Secretary has authority under the act to waive lien and other actions as seemed appropriate.

Audience Comment on Trust Reform and Administration

Audience: I wanted to expand on what Commissioner Hall asked about ITMA. ITMA has not taken a position on the sun setting of OST to date but not because tribal leaders or board of directors has not debated. Legal consultants and executive officers were encouraged to meet to do an assessment to determine whether or not BIA was able to take over OST activities. We spent two days with staff and reviewed many documents and reviewed budget, funding, and staffing. We wanted to meet with BIA and have not yet been able to. That is a task that was never accomplished because of scheduling. We did not take a position because our board did not feel they could without facts.

Chair Sharp thanked the panel for their invaluable contributions to the Commission work.

Audience Round Robin Questions 3, 4, and 5

The Commission sent an outreach letter to Tribal leaders and organizations asking for feedback regarding the Commission tasks and perspectives regarding trust management and administration. During the meeting the Commission provided time for Tribal leaders, organizations, and individuals to provide perspectives regarding the discussion from earlier in the meeting and to two of the questions addressed in the outreach letter:

3. 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.
4. 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.
5. 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 operational duties, should the Commission recommend sun setting the OST?
- 6.

Tribes, organizations, and individuals were also able to submit statements to the Commission, by mail, email, or at the meeting. Statements that were submitted are part of the public record and can be found on the Commission website (<http://www.doi.gov/cobell/commission/index.cfm>) and a list of the statements submitted to date may be found in Appendix E.

Helen Sanders, Indian Land Working Group: First I would like to thank the Commission very much for serving on the Commission. I was kind of pleased to hear some of the Commission members that they are allottees. In Commissioner Zah's statement about the Trustee to serve as beneficiary, I think this is an excellent idea. The Trustee serves in capacity in helping the beneficiary and Sam Deloria is the person to do that. Land that is on property that is considered non trust, I think you really need to look at the Albuquerque Indian School Act. Doesn't apply to allotted land but it does apply. To me when I read the Albuquerque School Act it says that it is non-trust, I disagree with that. This will impact tribes also

because individuals have not operated in outside world so they don't know what to do with that tax statement. They have no jurisdiction to do anything about it because it is trust property. Some that don't know will pay the bill or will sell and pay allotment. As far as OST goes it should not be sunset. Review it and tweak it to what will work better. If that should go to the BIA, which is suggested, it would be disaster. OST is working well and should be left alone. Fractionation is a big subject. BIA is not looking at consolidation in individual families. I have a chart which I hope to share at the next meeting. In our family we have four families who have inherited several allotments. We would give deed and exchange among family regardless of price. That is not allowed under some statutes. If this is done by the Bureau then each family would have allotments without having to share with cousins. It is a program that needs to be looked into as far as fractionation goes. On these accounts that are worth \$0.18-\$0.25 I have thought a lot about that. Something to consider might be give the list to tribe and the tribe could get a bank account for this funding to disperse money going to the correct people. Direct deposit to the tribe's account and then the tribe can distribute to those on the reservation. I appreciate the open discussion and that our word would never be heard otherwise. I can see that a lot of you do have that knowledge and commitment to hear and I thank you for the opportunity to speak.

Gay Kingman, Great Plains Tribal Chairman's Association: I wasn't really prepared for this statement but I feel I have to say something here. Everyone is talking about sun setting or what's happening. I think we have to look at the large picture in DOI. The trust lands are with all of government but BIA follows through. What happens at BIA is not good. Dismantling is not good. All of these consultations are going on and I have read most of the materials. This started several years ago that BIA dismantled and began moving functions, services, and authorities out of the Bureau. We noticed this at the superintendent level. Law enforcement was taken out of the Bureau. It used to be that we could walk across the street to the superintendent and could get responses. Now in DC it took 3 months and school is out. If you look at organizational chart all stovepipe equal and separate to BIA including OST, Education, all were at agency level. Now we have to go to DC or who knows where. It is costly to us. BIA gets blamed but they get blamed because the functions are taking longer. There is responsibility between BIA and OST and there needs to be more collaboration. At the local level we are the recipient of the lack of the best collaboration. Loan guarantees used to be at local level and now it's in Albuquerque. Councilmen drew stick man with us on a map wondering where to go. Who made this major decision re: stovepipe? Now we have hard time finding where to go. I don't know the full answer but do know that we will fight to make sure treaties upheld and trust responsibility held. When agencies pulled from BIA there was no Indian preference and employees were given ultimatum to move to DC. There are grievances and violations filed because we have tribal members in this area and we encourage the Commission to look at it. I applaud the Commission for taking on this job. You have to look at who comprehensive situation at DOI and USDA, HHS and everything. That's where we are coming from in the Great Plains - that trust be upheld and Indian preference be upheld and that BIA not get gutted or blamed for issues in other departments.

Harry Antonio Jr., First Lieutenant Governor of Laguna: It is refreshing to hear current and recent OST officials recognize that the US did not previously act as a true fiduciary and that it should do so now, since that is not what the Department of Justice argues in tribal trust cases. It would be helpful for the Commission to recommend that Congress ensure that the entire federal government always recognizes its fiduciary duties to the Indigenous Peoples of this great country of ours. These solemn historical and ongoing commitments should not be ignored. I appreciate Commission sitting at the table; it is good to see Natives. We see on national TV the bailout of the banks and nobody is held accountable and is difficult for us to stomach all of this. How do we trust the federal government again? I attended the formal hearing regarding BIE as we have been fighting for new elementary school for 35 years. Do

whatever is necessary and that this is not a smokescreen and hope something comes of this. All of you have a stake all together and we all move forward or we move back, however it may be.

Suggested Topics for Next Commission Meeting

The Commission discussed topics to include on the agenda for the August webinar and the September meeting in North Dakota. They would like to increase outreach and solicit opinions from a wider range of people in Indian Country. They will undertake a number of outreach efforts through the rest of the year. The outreach calendar can be viewed on the Commission website, <http://www.doi.gov/cobell/commission/index.cfm>. The Commission would like to hear innovative ideas regarding trust reform and administration and would like to have a draft statement on trust responsibility. The Commission would also like to reach out to OST, BIA, and Indian Affairs employees to solicit their opinions regarding reform and administration.

The Commission extended a note of appreciation to OST for the tour of the facility and the use of the meeting facility for the Commission meeting. The Commission also thanks the Southwest tribes for hosting the meeting and expressed appreciation for the multitude of voices and views and for visiting this beautiful homeland.

Sarah Palmer reviewed the action items. (Appendix D).

Commissioner Zah closed the meeting with a prayer and Chair Sharp adjourned the meeting.

Appendix A. List of Acronyms

ArcGIS	GIS Mapping Software
ASIA	Assistant Secretary for Indian Affairs (DOI)
ATNI	Affiliated Tribes of Northwest Indians
BIA	Bureau of Indian Affairs
BOR	Bureau of Reclamation
CADR	Office of Collaborative Action and Dispute Resolution (DOI)
CTMP	Comprehensive Trust Management Plan
DFO	Designated Federal Officer
DOI	Department of the Interior
DOJ	Department of Justice
EOP	Explanation of Payment
ESRI	Technology Company Developing GIS Tools
FACA	Federal Advisory Committee Act
FOIA	Freedom of Information Act
FTM	Fiduciary Trust Model
GIS	Geographic Information System
GPTCA	Great Plains Tribal Chairman's Association
HLIP	High-level Implementation Plan
IA	Indian Affairs (DOI)
IIM	Individual Indian Money
ILWG	Indian Land Working Group
ITMA	Intertribal Monitoring Association on Indian Trust Funds
ITT	Information Technology Trust
LCC	Landscape Conservation Cooperative
LTRO	Land Titles and Records Office
MOU	Memorandum of Understanding
NARF	Native American Rights Fund
NCAI	National Congress of American Indians
NCLB	No Child Left Behind
NIFRMA	National Indian Forest Resource Management Act
NRCS	Natural Resources Conservation System
NRDAR	Natural Resource Damage and Assessment Restoration
OEA	Office of External Affairs (OST)
OHTA	Office of Historical Trust Accounting
OITT	Office of Indian Trust Transition
OMB	Office of Management and Budget
ONRR	Office of Natural Resources Revenue
OST	Office of the Special Trustee for American Indians
OTRA	Office of Trust Review and Audit
PSA	Public Service Announcement
RACA	Office of Regulatory Affairs and Collaborative Action (IA)
SOL	Office of the Solicitor
TAAMS	Trust Asset Accounting Management System
TEK	Traditional Ecological Knowledge
TFAS	Trust Fund Accounting System

USET	United South and Eastern Tribes Incorporated
USIECR	U.S. Institute for Environmental Conflict Resolution
USGS	U.S. Geological Survey

Appendix B. Trust Commission Meeting 2 Attendees

Name	Affiliation	Monday June 11	Tuesday June 12
Commission			
Robert Anderson	Commissioner	X	X
Tex Hall	Commissioner	X	X
Stacy Leeds	Commissioner	X	X
Lizzie Marsters	DFO	X	X
Fawn Sharp	Chair	X	X
Peterson Zah	Commissioner	X	X
Commission Support Staff			
James Anderson	DOI Solicitor	X	X
Mark Davis	OST	X	X
Pat Gerard	OST	X	X
Regina Gilbert	RACA	X	X
Sarah Palmer	USIECR Facilitator	X	X
Bridget Radcliff	USIECR Facilitator	X	X
Vanessa Ray-Hodge	DOI Solicitor	X	X
Helen Riggs	OST	X	X
Annette Romero	RACA	X	X
Tiffany Taylor	BIA	X	X
Public Attendees			
A. Gay Kingman	Great Plains Tribal Chairman's Association	X	X
Allison Thompson		X	
Amber Bighorse	Cheyenne Arapaho Tribes	X	X
Angela Askan	OST	X	X
Archie Hoffman	Cheyenne/Arapaho	X	
Arlene Begay	OST		X
Bernadette Lorenzo	OST		X
Bob McKenna		X	
Brian Block	OST	X	X
Bryan Otero	DOI Solicitor	X	X
Cal Curley	U.S. Senator Tom Udall	X	
Carlos Torres Soler	OST		X
Cathy Rugen	OST		X
Christine Landevazo	Senator Jeff Bingaman	X	
Clinton Kessay, JR	White Mountain Apache Tribe	X	
Cris Stainbrook	Indian Land Tenure Foundation		X
Dale Denney	Realty Officer	X	
Dan Rey-Bear	Nordhaus Law Firm, LLP	X	X
Dania Bobroff	Navajo Nation	X	
Daniel D'Ambrosio	BNY Mellon	X	

Darlene Lesansee			X
David Harrison	Osage/ITMA/ILWG	X	X
Diane Schmidt	Navajo Times	X	
Dianne Moran	OST	X	X
Donna Erwin	OST	X	X
Donna Bobroff	NNDOJ		X
Dorothy Graham	OST		X
Earl Johnson	OST		X
Edward Sleuth	OST		X
Eldred Lesansee	OST	X	X
Eric Nemeth	GIS Team Leader		X
Erin Tremain	DOI Solicitor	X	
Ernest Petagu	Jicarilla Apache Nation	X	X
Evonne Wilson-Hight	OST		X
Florie Estate-Sandoval	OST		X
Forrest Gerard		X	X
Francine Bivens	OST		X
Harry Antonio	Pueblo of Laguna	X	
Helen Sanders	ILWG	X	X
Hugh Magill	Northern Trust	X	
Irene C. Cuch	Ute Tribe	X	X
Iris Crisman	OST	X	
Janelle Frederick	Senator Jeff Bingaman		X
Janice Prairie-Chief Boswell	Governor, Cheyenne and Arapaho	X	X
Jeannie Sheppard	OST	X	X
Jeremy Patterson	Ute Tribe	X	X
Jim Howard	OST	X	
Jim James	OST	X	X
Jim Parris	Jim R. Parris, CPA	X	X
Joe Waters	White Mountain Apache Tribe	X	
John Stroud	BNY Mellon	X	
John White	OST	X	X
Joseph Moses	Warm Springs	X	X
Joyce Wood	Cheyenne and Arapaho	X	X
Karen Foster	St. Regis Mohawk/OST	X	X
Ladonna Harris	Comanche	X	
LaVern Sam	OST	X	
Lee Stephens	BNY Mellon	X	
Leila Yepa	OST		X
Lori Sorensen	OST		X
Weldon Loudermilk	DASM		X
Lucille Esplain	OST	X	
Margaret Williams	OST		X
Margie Creel	OST	X	X
Marian Medina	OST	X	
Marie Alderete	Chickasaw Nation Industries	X	X
Mary Zuni	ITMA	X	X

Melody McCoy	NARF		X
Melvin Burch	OST	X	
Michael Black	Director, BIA		X
Michele Singer	Acting Principal Deputy Special Trustee, OST	X	X
Myron Pourier	Oglala Sioux Tribe		X
Nadine Clah	Navajo Nation		X
Nadine Patten	San Carlos Apache Tribe	X	X
Neaita Eagletail-Simons	OST	X	X
Nolan Solomon	OST	X	X
Philbert Vigil	Jicarilla Apache Nation	X	
Phillip Chimburas	Ute Indian Tribe	X	
Reuben Henry, Sr.		X	X
Rhonda Baker	OST	X	X
Richard Grellner	Cheyenne Arapaho	X	X
Robert Hall	DOI Solicitor	X	
Ron Suppah	Vice Chair, Confederated Tribes of Warm Springs	X	X
Rosalind Zah	Navajo Nation	X	
Ross Swimmer	Swimmer Group, LLC	X	X
Ryan Jackson	Hoopa Valley Tribe	X	
Sam Deloria	AIGC	X	
Santee Lewis	DOI Solicitor	X	
Shenan Atcitty	Holland and Knight, LLP	X	X
Sid Mills		X	X
Stan Pettengill		X	
Steve Graham	BIA	X	X
Sin Wing Gohard	OST	X	X
Tammi Lambert	Pueblo of Laguna	X	X
Tammy Harris	BIA	X	X
Tom Reynolds	OST	X	X
Ty Vicenti	Jicarilla Apache	X	X
Valerie Sandoval	OST	X	
Veronica Tiller			X
Yvette Sandoval	OST	X	

Appendix C. Documents Distributed and/or Presented at Commission Meeting

- Agenda
- Commission Outreach and Communications Plan
- Trust Models Subcommittee Report
- Memorandum on Examining Public Programs as Trust Models
- BNY Mellon Trust Capabilities and Best Practices presentation
- Northern Trust Company presentation
- OST – Office of Trust Funds Investments presentation
- Commission Outreach Letter Summary
- Native American Rights Fund presentation and statement
- Draft Commission work plan (version 5)
- Draft Commission work plan – chart as of 6/7/12

TASKS	LEADS	COMPLETE BY
<p>Implement outreach strategies to elicit comments and insights of DOI employees regarding the Commission outreach questions. Two approaches:</p> <p>1. OST will utilize its confidential/anonymous email and invite feedback to US Institute.</p> <p>2. For BIA, AS-IA, ALL Indian Affairs BIA, OST; BIE; Realty etc; PMB US Institute prepare survey monkey with outreach questions. Survey is a weblink and responses come directly to US Institute not DOI. Coordinate with Nedra to disseminate to IA ; PMB;</p> <p>Compile feedback, summarize share with Commissioners and DFO.</p>	<p>1. Pat Gerard, OST</p> <p>2. Sarah Palmer- Institute – draft survey cover email Lizzie review, Coordinate distribution with Nedra Darling</p>	<p>June 25</p> <p>Send to DOI employees week of June 25</p> <p>July 9-13</p>
<p>Prepare June Meeting summary, circulate draft to ITC and DOI for comment Review and approval</p>	<p>Bridget Radcliff Commissioners, DOI</p>	<p>July 2 August webinar</p>
Commission Outreach		
<p>Prepare radio announcement for dissemination to tribal radio stations (Gay Kingman to provide ND, SD radio station contacts) Determine logistics and let Chair and Commission know</p>	<p>Chair Sharp, Commissioner Zah, Nedra Darling DOI, others</p>	<p>ASAP</p>
<p>Update Commission outreach materials for NCAI:</p> <ul style="list-style-type: none"> - PPT and Talking points - Update Commission outreach letter of May 4, removing dates. 	<p>Nedra Darling Regina Gilbert</p>	<p>Completed ASAP</p>
<p>Circulate outreach calendar</p> <p>Contact organizations identify to determine if time is available on the agenda.</p> <p>Outreach to AITC; AIPC for Comm Zah</p>	<p>Bridget Radcliff/Sarah Palmer Regina Gilbert Regina Gilbert</p>	<p>June 22 Underway Underway</p>
<p>Publish notice for Commission listening sessions in the Federal Register</p>	<p>Regina Gilbert</p>	<p>As dates and locations are scheduled. At least 30-day Notice</p>
<p>Reach out to constituents to invite responses to May Commission outreach letter</p>	<p>Commissioners</p>	<p>June-August 1</p>
<p>Prepare second outreach letter focused on hard assets.</p>		<p>June/July</p>

TASKS	LEADS	COMPLETE BY
<ul style="list-style-type: none"> - Contact Gary Morishima re types of questions to ask about timber asset mgmt - Perspective from litigation related to the ‘collection of funds’: <ul style="list-style-type: none"> a. Contact Tom Fredericks for possible questions b. Comm Anderson to check w his brother re other speakers Henry Buffalo, Kirkpatrick Law - Contact ONRR, BLM, BIA perspectives of current approach to resource and lease management, interest in possible panel in August <p>Prepare outreach letter, disseminate to tribal leaders and tribal organizations.</p> <ul style="list-style-type: none"> - Consider combining with existing outreach letter - Include in Federal Register notice for Aug Webinar 	<p>Chair Sharp and Comm Anderson</p> <p>Comm Anderson</p> <p>Lizzie coordinate with DC Directors; Mike Black and Darryl LaCounte</p> <p>Commission discuss on July Admin call</p>	<p>Underway</p> <p>Underway</p> <p>Admin call July 9</p> <p>Signature by July 10 for FR</p>
July Administrative Call Topics JULY 9 time 1.00-2.30 Central		
<p>Subcommittee products</p> <p>“Hard asset models” outreach letter</p> <p>Other topics?</p>		<p>July 6 to email to Commissioners for July 9 call.</p>
<p>Role of technical experts, management consultant scope of work – discuss what expertise is needed.</p>	<p>DFO, Commissioners</p>	
<p>Guidance for individuals, tribes, organizations re: making comments to Commission for posting to web.</p>	<p>Further discussion?</p>	
August Webinar Topics		
<p>Organize Alternative Dispute Resolution presentation on August Webinar (or before as standalone webinar). Include speakers from DOI-CADR; AS-IA RACA; DOJ; other fed agencies; review elements of UN declaration for principles of nation to nation engagement</p>	<p>Commission; DOI; Facilitation team</p>	<p>August webinar</p>
<p>Identify preliminary recommendations for administrative action (e.g., ethical standards) and implementation for sharing and comment on</p>	<p>Address through subcommittees</p>	<p>August webinar</p>

TASKS	LEADS	COMPLETE BY
webinar and then discussion at Sept meeting		
Draft of trust responsibility principles	Trust responsibility and models subcommittees	August webinar
Organize Hard Asset Models presentation in August or as standalone webinar	Commission; DOI; Facilitation team	August webinar
September Meeting Preparations		
Reach out to points of contact identified by Commissioner Hall to schedule Sept 12 tour and outreach session at Ft. Berthold agency office and afternoon session at tribal chambers. Provide information to Commission.	Patricia Gerard, Helen Riggs	Underway
Planning for September meeting A. Prepare list of agenda topics B. Commission and DFO review, comment C. Revise draft agenda, confirm speakers etc	A. Sarah B. Commissioners, DFO C. Lizzie, Chair Sharp, Sarah	See milestones doc for schedule

Appendix E. Public Comments Submitted to Commission

All statements submitted to the Commission may be viewed on the Commission website at:
<http://www.doi.gov/cobell/commission/index.cfm>

- 1) Cheyenne and Arapaho Tribes
- 2) Navajo Nation
- 3) Indian Land Tenure Working Group
- 4) Forrest Gerard
- 5) Ute Indian Tribe
- 6) Oglala Sioux Tribe
- 7) The Confederated Salish and Kootenai Tribes of the Flathead Nation
- 8) Kaw Nation
- 9) Intertribal Timber Council
- 10) Affiliated Tribes of the NW Indians
- 11) Inter Tribal Monitoring Association

Appendix F. Summary from Evening Youth Outreach Event – Monday, June 11, 2012

Monday, June 12, 2012

Evening Session – Youth Outreach Event
Indian Pueblo Cultural Center
2401 12th Street NW, Albuquerque, NM

The Commission held an evening reception at the Indian Pueblo Cultural Center to meet with local youth and provide an opportunity for public comment regarding youth outreach.

There was discussion regarding upcoming Indian youth events that would be appropriate for Commission attendance and included:

- UNITY Conference – Phoenix, AZ
- NCAI – Lincoln, NE
- NIEA – Oklahoma City, OK
- American Indians in Science and Engineering annual meeting
- Regional Tribal meetings, including Tribal Colleges

It was also suggested that a social media outreach strategy be developed to reach out to young Indians. The Commission could consider a Facebook page and enhancing the target audience for webinars (including potentially reaching out to high school leadership courses).

Outreach to Tribal colleges, including particular programs with an emphasis on Native Leadership was discussed. It was also suggested that the Commission consider reaching out to programs like Upward Bound and Urban Indian Centers that gear programs to youth, such as those in Dallas, Chicago, and Phoenix.

The Commission will work to create a youth outreach event around the September meeting and will work with Dr. David Gipp to plan this event.

Chair Sharp thanked everyone for taking the time to come to the session. She noted there were several good takeaways from the evening and that the Commission was more determined to reach out to the young people. The youth component to the final report will enhance it and make it much better.