

REPORT OF THE COMMISSION ON INDIAN TRUST
ADMINISTRATION AND REFORM

Department of the Interior
December 2013

TABLE OF CONTENTS

Executive Summary	1
Introduction to Full Report	5
Section I. History of Trust Reform Efforts	8
Section II. Defining the Federal Trust Responsibility	16
A. The Trust Relationship in General	17
B. Administrative Liability Standards	21
C. Recommendation No. 1: Review and Amendment of Federal Law	24
Section III. Conflicts of Interest and Tribal Consultation	25
A. Conflicts of Interest	25
B. Recommendation No. 2: Evaluate Tribal Consultation Policy	28
C. Consultation	28
D. Recommendation No. 3: Develop Uniform Consultation Policy	31
Section IV. Financial Administration and the Office of the Special Trustee	31
A. Recommendation No. 4: Trust Administration Re-Structuring	34
B. Recommendation No. 5: Improve the Management, Oversight, and Accountability of TAS Services and Trust Assets	41
C. Recommendation No. 6: Procedural Changes	44
Section V. Special Matters and Recommendations	53
A. Probate	53
B. Appraisals	55
C. Alaska	59

Appendix A: Invited Testimony and Written Public Comments Submitted to Commission

Appendix B: Grant Thornton Comprehensive Assessment

Appendix C: Grant Thornton Trust Audit Functions

Appendix D: Grant Thornton Final Trust Recommendations Report

EXECUTIVE SUMMARY

On December 8, 2009 Interior Secretary Ken Salazar established the Secretarial Commission on Indian Trust Administration and Reform by Secretarial Order No. 3292. The Secretary's action was part of the Administration's \$3.4 billion Cobell Settlement. Secretary Salazar signed the Commission Charter in July 2011 and kicked off a 30-day period for nominations on five individuals to serve as Commission members and public input on its proposed charter. Commission members were selected for their collective experience and expertise in trust management, financial management, asset management, natural resource management, and federal agency operations and budgets, as well as experience as Individual Indian Money (IIM) account holders in Indian Country. They were selected in accordance with the Federal Advisory Committee Act (FACA), and serve without compensation. Secretary Salazar's Order states that there needed to be:

a thorough evaluation of the existing management and administration of the trust administration system to support a reasoned and factually based set of options for potential management improvements. It also requires a review of the manner in which the Department audits the management of the trust administration system, including the possible need for audits of management of trust assets.

In addition, the Secretary encouraged the Commission at its first meeting to be creative and to review all aspects of the federal-tribal relationship and to suggest reforms by Congress or Administrative action. The Commission has completed its work and files this Report to guide improvement of the federal-tribal relationship and fulfillment of federal trust obligations. Of course, the Commission only makes recommendations and any follow-through on the part of Congress and the Administration must be done in concert and consultation with the affected tribes and individual trust beneficiaries.

Over the past two years, the Commission held a series of public hearings at various locations and also over the internet through "webinars." A tremendous

amount of information was collected through written and oral testimony, and the Secretary engaged a private contractor to review the day-to-day trust administration system (TAS) functions carried out through the Assistant Secretary – Indian Affairs, Office of the Special Trustee for American Indians (OST), Bureau of Indian Affairs, and other Interior agencies. Nearly every commentator had some level of criticism of the manner in which the federal government (including Congress) carries out federal trust obligations to Indian Nations and individual Indians. To be sure, many also praised individual programs and reform efforts that have been underway for some time.

The overall theme presented to the Commission is that the federal government as a whole needs more firm direction as to what the trust responsibility is, and that it is an obligation to be carried out by every federal agency exercising authority affecting Indian interests – not just the Bureau of Indian Affairs and the agencies within the Department of the Interior. There is a sense that some federal agencies are often doing the “bare minimum” through insincere or non-existent consultations to comply with existing Executive and Secretarial Orders associated with the United States trust obligations. This attitude within parts of the federal government appears to be premised on very narrow interpretations of the federal trust responsibility in some United States Supreme Court cases involving damages claims against the United States. The Commission agrees with the many commentators who pointed out that the fiduciary obligations of the United States should not be guided by the standards employed in the damages cases. Rather, when considering administrative actions that affect tribal interests, federal agencies should act in a manner that is respectful and protective of tribal interests in sovereignty and natural resources, as well as treaty rights. Section II expands on this discussion and makes recommendations regarding the definition of the trust responsibility and its enforcement. Sections III and V of the Report covers issues related to litigation and associated conflicts of interest.

The most particularized recommendations are contained in Section IV, Financial Administration and the Office of the Special Trustee. We briefly highlight

those recommendations because of the legislative requirement that the Secretary and Congress consider a recommendation regarding the sunset of the OST. Aside from the general nature of the trust responsibility, this is the area that received the most public attention. In keeping with the final report delivered to the Commission in September 2013 by Grant Thornton, the management consultant hired in accordance with Secretarial Order 3292, the Commission suggests sweeping reforms in the Trust Administration System (TAS)– some of which may only be carried out through congressional action.

The Office of Special Trustee (OST) is tasked with establishing management practices that carry out these responsibilities in a “unified manner,” and ensuring that “reforms of the policies, practices, procedures, and systems of [BIA, BLM, and ONRR], which carry out such trust responsibilities, are effective, consistent and integrated.” As discussed in the baseline and assessment phases of the *Comprehensive Assessment*, it is clear that while the inherent functions of OST must remain intact, TAS (including OST) struggles to provide trust services that are “effective, consistent, and integrated” across DOI bureaus/offices. To address this disparity in quality and effectiveness of services provided across regions, bureaus, and offices, the recommended future organization consolidates BIA Trust Services, OST, and trust-related responsibilities from AS-IA, BLM and ONRR into ITAC [an independent agency located within the Department of the Interior]. Consolidation of trust services under one independent commission centralizes management and administration of trust assets and operations.¹

The Commission is convinced that sweeping reforms are necessary. The final recommendations are presented as structural, managerial, or procedural fixes. Most sweeping is the proposal for the establishment of a five-member independent Commission housed within the Department of the Interior (DOI) to carry out all trust-related functions. This structural recommendation is in keeping with the spirit of the 1977 recommendation from the American Indian Policy Review Commission that called for a Cabinet level Department of Indian Affairs, which has yet to be realized. Meaningful independent stature for carrying out the trust responsibility of Indian affairs is key in avoiding repeated systematic problems that led to the formation of this and prior Commissions.

¹ Trust Administration System, Department of the Interior, Final Trust Recommendations Report, developed by Grant Thornton LLP, submitted to the Commission on September 6, 2013.

The Commission’s report includes procedural recommendations that would allow TAS to make process-level fixes within current areas of bureau/office-level ownership, and/or in the existing governance structure (e.g., funds management, information technology, land ownership and protection) without the need for congressional action. Many could be undertaken immediately and are described in a “Top 20 Recommendations” document attached to Report and dated November 7, 2013.

Section V of the Report covers somewhat unique features of probate, appraisals, and Alaska.

DRAFT

INTRODUCTION TO FULL REPORT

The Commission on Indian Trust Administration and Reform (hereafter, the Commission) was established in Secretarial Order 3292, issued December 8, 2009 in connection with the responsibilities of the Department of the Interior (DOI) under Section 2 of the Reorganization Plan No. 3 of 1950 (64 Stat. 1262), as amended, the American Indian Trust Fund Management Reform Act of 1994, 25 U.S.C. §§ 4001-4061, and the Claims Resolution Act of 2010, P.L. 111-291 and under the authority of the Federal Advisory Committee Act (5 U.S.C., App. 2). The Commission's job was to conduct a comprehensive evaluation of DOI's management and administration of the trust administration system including a review of the report of a management consultant hired in accordance with Secretarial Order 3292.

The Secretary of the Interior (Secretary) chartered the Commission to advise the Secretary on trust management and administration. The scope of the Commission duties as outlined in its charter are to:

- 1) Conduct a comprehensive evaluation of DOI's management and administration of the trust administration system including a review of the report of a management consultant hired in accordance with Secretarial Order 3292 (*Section 4c.(1)*);
 - Review the DOI provision of services to trust beneficiaries (*Section 4c.(2)*);
 - Receive input from the public, interested parties and trust beneficiaries, which should involve conducting a number of regional listening sessions (*Section 4c.(3)*);
 - Consider the nature and scope of necessary audits of the Department's trust administration systems (*Section 4c.(4)*);
 - Consider the provisions of the American Indian Trust Fund Management Reform Act of 1994 providing for the termination of the Office of the Special Trustee for American Indians (*Section 4c.(6)*)

- 2) Recommend options to the Secretary to improve the Department's management and administration of the trust administration system (*Section 4c.(5)*)

The Commission acts solely in an advisory capacity to DOI, and exercises no program management responsibility nor made decisions directly affecting matters on which it provided advice. The Commission Charter was officially filed November 28, 2011 and on September 6, 2012, Deputy Secretary David J. Hayes provided further elaboration on the needs of DOI vis-a-vis Commission recommendations.

The five member Commission, selected by the Secretary of the Interior is made up of the following individuals.

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.

Robert Anderson is an enrolled member of Minnesota Chippewa Tribe (Boise Fort Band), currently Professor of Law and Director of the Native American Law Center at the University of Washington. He also has a long-term appointment as the Oneida Indian Nation Visiting Professor of Law at Harvard Law School. 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.

Sarah Harris, Chief of Staff to the Assistant Secretary for Indian Affairs, Mr. Kevin Washburn DOI, serves as the Designated Federal Officer (DFO) for the Commission.

The Commission held in-person public meetings March, June, September 2012 and February, April, June, August, and November 2013. The Commission convened three public webinars in May, August, and November 2012 and individual Commissioners spoke at numerous meetings of tribal organizations during the Commission tenure. The Commission heard testimony from 55 individuals representing individual allottees and beneficiaries, tribal leaders, tribal organizations, DOI personnel, legal experts, academicians, and experts from the private sector; 85 individuals provided either written or verbal comment to the Commission; and 468 individuals attended Commission meetings. In addition, Grant Thornton conducted over 227 individual interviews and focus groups including 11 tribal representatives and 55 individual beneficiaries, across 10 regional/tribal site visits. Grant Thornton also solicited feedback from tribal representatives and individual beneficiaries at the Third Annual Tribal Land Staff National Conference (Las Vegas, NV), NCAI Midyear Conference (Reno, NV), and the 26th Annual Sovereignty Symposium (Oklahoma City, OK), and Commission public sessions (Nashville, TN, Oklahoma City, OK, and Anchorage, AK). In addition, Grant Thornton included a message on IIM account statements, soliciting feedback from beneficiaries and received over 35 letter and 14 email messages. See Appendix A for detailed information.

DOI undertook this effort with the assistance of the U.S. Institute for Environmental Conflict Resolution (USIECR) of the Udall Foundation. The Udall Foundation is an independent Federal agency and the USIECR provides impartial collaboration, consensus building and mediation services. USIECR assisted the Commission in planning, facilitation and management of Commission meetings and documents. USIECR staff are independent and neutral regarding their relationships with any of the involved parties, and impartial regarding issues under discussion.

The Commission agreed to use consensus decision making for its operations and decision making. Consensus decision-making was defined as a procedure by which a group makes a collective decision or agreement, without voting, that all members can accept. Reaching a consensus decision required that each group

member accept a proposal, decision or agreement as a whole. They did not have to equally support all of its component parts.

SECTION I. HISTORY OF TRUST REFORM EFFORTS

There is a long history of efforts at reform of the manner in which the federal trust obligations are carried out for Indian tribes and individuals. None have been completely successful, as the very existence of this Commission makes plain. Professor Eric Eberhard noted the length of time these issues have plagued the federal government.

In 1828, H. R. Schoolcraft (1793-1864), the explorer and traveler, who lived among Indian tribes for thirty years and is remembered for his work in recording Indian stories of Manabozho the Mischief-Maker and his adventures with the Wolf, the Woodpeckers and the Ducks, famously observed that: “The derangements in the fiscal affairs of the Indian department are in the extreme. One would think that appropriations had been handled with a pitch fork . . . there is a screw loose in the public machinery somewhere.” * * * Little attention was paid to the financial systems in BIA, including the trust funds, until 1928 when GAO investigated, as it did again in 1952, 1955 and 1982. In addition there were at least 30 Inspector General audits and investigations between 1982 and 1992. All of these investigations reached similar conclusions with respect to the problems that needed to be corrected: - Weak internal controls. - Inadequate systems for accounting and reporting trust fund balances. - Inadequate controls over receipts and disbursements.

The first 20th Century effort was embodied by the Indian Reorganization Act of 1934 (IRA), which followed on the heels of the Meriam Commission Report (Brookings Institution 1928).

The IRA was designed to improve the economic status of Indians by ending the alienation of tribal land and facilitating tribes’ acquisition of additional acreage and repurchase of former tribal domains. Native people were encouraged to organize or reorganize with tribal structures similar to modern business corporations. A federal financial credit system was created to help tribes reach their economic objective. Educational and technical training opportunities were offered, as were employment opportunities through federal Indian programs.

COHEN'S HANDBOOK OF FEDERAL INDIAN LAW § 1.05 (Newton, et al. 2012) (citations omitted).

A consequence of the IRA was continuation of the federal government's role as trustee to the Indian Nations, which includes a major role as the asset manager for Indian tribes and individual Indians. This responsibility is carried out through a complex web of statutes and regulations. See COHEN'S HANDBOOK OF FEDERAL INDIAN LAW § 5.03[3][b]. In addition to the administration of hard assets, Congress assigned the Department of the Interior responsibility for depositing and managing income received from leasing of tribal and individual trust lands for various development purposes. The quality of financial management has been the subject to criticism from the days of Henry Schoolcraft to the present.

After the disastrous termination era of the 1950s, the seeds of the modern self-determination policy were planted in the mid 1960s with President Johnson's "Great Society" programs, which included tribes and their communities. This included the Office of Economic Policy Act of 1964 and its Community Action Program, which made civil legal representation available in tribal communities. The Indian Civil Rights Act of 1968 (ICRA) imposed upon tribal governments many of the limitations found in the federal Bill of Rights. But the ICRA also contemplated a continuing role for tribal governments. It repealed § 7 of Public Law 280, a termination era statute, which had allowed states unilaterally to assume criminal and some civil jurisdiction over Indian country. After the ICRA passed, states were allowed to extend their jurisdiction over Indian country only with the consent of affected tribe, and the United States was authorized to accept retrocession of all or part of the criminal or civil jurisdiction acquired by a state. Consistent with the spirit of the self-determination message below, recent legislation has relaxed some of the limitations found in ICRA, and even restored a measure of criminal jurisdiction over certain classes of non-Indian offenses. The most significant change in the federal tribal relationship, however, was enabling Indian tribes to carry out federal programs and functions previously administered by federal agencies and employees.

The signature event delineating the modern era of Indian self-determination was President Nixon's message to Congress.

RICHARD M. NIXON, SPECIAL MESSAGE ON INDIAN AFFAIRS
(July 8, 1970)

To the Congress of the United States:

Self-Determination Without Termination

The first and most basic question that must be answered with respect to Indian policy concerns the historic and legal relationship between the Federal government and Indian communities. In the past, this relationship has oscillated between two equally harsh and unacceptable extremes.

On the one hand, it has — at various times during previous Administrations — been the stated policy objective of both the Executive and Legislative branches of the Federal government eventually to terminate the trusteeship relationship between the Federal government and the Indian people. As recently as August of 1953, in House Concurrent Resolution 108, the Congress declared that termination was the long-range goal of its Indian policies. ***

This policy of forced termination is wrong, in my judgment, for a number of reasons. First, the premises on which it rests are wrong. Termination implies that the Federal government has taken on a trusteeship responsibility for Indian communities as an act of generosity toward a disadvantaged people and that it can therefore discontinue this responsibility on a unilateral basis whenever it sees fit. But the unique status of Indian tribes does not rest on any premise such as this. *The special relationship between Indians and the Federal government is the result instead of solemn obligations which have been entered into by the United States Government. Down through the years, through written treaties and through formal and informal agreements, our government has made specific commitments to the Indian people. For their part, the Indians have often surrendered claims to vast tracts of land and have accepted life on government reservations. In exchange, the government has agreed to provide community services such as health, education and public safety, services which would presumably allow Indian communities to enjoy a standard of living comparable to that of other Americans.*

This goal, of course, has never been achieved. But the special relationship between the Indian tribes and the Federal government which arises from these agreements continues to carry immense moral and legal force. To terminate this relationship would be no more appropriate than to terminate the citizenship rights of any other American. * * *

Federal termination errs in one direction, Federal paternalism errs in the other. Only by clearly rejecting both of these extremes can we achieve a policy which truly serves the best interests of the Indian people. Self-determination among the Indian people can and must be encouraged without the threat of eventual termination. In my view, in fact, that is the only way that self-determination can effectively be fostered.

This, then, must be the goal of any new national policy toward the Indian people: to strengthen the Indian's sense of autonomy without threatening his sense of community. We must assure the Indian that he can assume control of his own life without being separated involuntarily from the tribal group. And we must make it clear that Indians can become independent of Federal control without being cut off from Federal concern and Federal support. My specific recommendations to the Congress are designed to carry out this policy.

President Nixon's message to Congress was followed by the formation of the American Indian Policy Review Commission (AIRPC) in 1975 to conduct a comprehensive review of federal Indian policy, and submitted a Final Report to Congress in 1977. The Commission's Final Report included 206 specific Recommendations – many of which were implemented in whole or in part in a host of legislation designed to enhance tribal control over tribal governance, resources and delivery of federal programs and services. AIRPC Final Report, Vol. 1, pp. 11-46 (May 17, 1977). Two items are especially noteworthy due to the extensive comment this Commission received from Indian country. The first is a recommendation that Congress affirm and direct all executive agencies to administer the trust responsibility as a legal obligation to protect and enhance Indian trust resources and tribal government. AIRPC Final Report at 11-12 (emphasis added). On the administration side, the AIRPC recommended that the President request congressional legislation creating a Department of Indian Affairs as a cabinet level agency to carry out all Indian programs and functions carried out by the Interior Department, Justice Department, and Indian Health Service. AIRPC Final Report at 22. More discussion of these issues is contained later in this Report.

While it is impossible to summarize the detail of the 624-page AIRPC Final Report, it did serve as the impetus for significant improvements in the federal-tribal relationship. Major congressional actions of the self-determination era include:

- Indian Self-Determination and Educational Assistance Act (ISDEA) of 1975. 25 U.S.C. § 450 *et seq.*, amended by the Tribal Self-Governance Acts of 1988, 1994, and 2000, 25 U.S.C. §§ 458aa-458aaa-18.
- Tribally Controlled Schools Act of 1988, 25 U.S.C. § 2501 *et seq.*
- Tribally Controlled Colleges and Universities Act of 1978, 25 U.S.C. § 1801 *et seq.*
- Native American Housing Assistance Self-Determination Act of 1996, 25 U.S.C. § 4101 *et seq.*
- Indian Financing Act of 1974, 25 U.S.C. § 1415 *et seq.*
- Indian Forest Resources Management Act, 25 U.S.C. §§ 3101-3120.
- Indian Mineral Development Act of 1982, 25 U.S.C. §§ 2101-2108,
- Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701-2721.
- Tribal Treatment as State under the Clean Air and Clean Water Acts, 42 U.S.C. § 7474(c) (Clean Air Act); 33 U.S.C. § 1377(e) (Clean Water Act).
- Indian Child Welfare Act of 1978, 25 U.S.C. §§ 1901-1931.
- American Indian Religious Freedom Act of 1978, 42 U.S.C. § 1996.
- Native American Languages Act of 1990, 25 U.S.C. §§ 2901-2906.
- Native American Grave Protection and Repatriation Act of 1990 (NAGPRA). 18 U.S.C. § 1170; 25 U.S.C. §§ 3001-3013.
- Tribal Law and Order Act of 2010 into law in July of 2010. Pub. Law 111-211, 111th Cong. 2d Sess., 124 Stat. 2258, 2261-2301.
- Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012, *amending* 25 U.S.C. § 415.
- Violence Against Women Reauthorization Act, Pub. L. 113-4, Title IX, § 904, 127 Stat. 120, on Mar. 7, 2013, 25 U.S.C. § 1304.

While these legislative actions resulted in many positive substantive and procedural changes in Indian affairs, a major weakness was revealed with respect to federal trust asset management – both in terms of financial management of tribal and individuals, as well as failures in the management of physical assets. These deficiencies were revealed in a variety of forums and led Congress to pass the

American Indian Trust Fund Management Reform Act of 1994. The Cobell litigation and the many tribal accounting cases focused attention on the financial side of necessary reform, and much has been done to that end.

Key efforts to improve trust asset management are summarized below.

1994

[H.R. 4833 \(103rd\): American Indian Trust Fund Management Reform Act of 1994](#)

- Title I: Recognition of Trust Responsibility
- Title II: Indian Trust Fund Management Program
- Title III: Special Trustee for American Indians
- Title IV: Authorization of Appropriations American Indian Trust Fund Management Reform Act of 1994

2000

[S. 1586 \(106th\): Indian Land Consolidation Act Amendments of 2000](#)

- Title I - Indian Land Consolidation
- Title II - Leases of Navajo Allotted Lands Indian Land Consolidation Act Amendments of 2000

[TRUST FUND ACCOUNTING SYSTEM \(TFAS\) RELEASE](#)

Enables automated production of accounting statements for individual Indians and Tribal account holders.

[PAY.GOV](#)

Offers remitters a faster, safer, more secure option to make lease payments online.

STRATAWEB RELEASE

Allows beneficiaries to access their TFAS accounts online, including investments, holdings and transactions for the accounts to which they are granted access.

2001

[CREATION OF THE OFFICE OF HISTORICAL TRUST ACCOUNTING, Secretarial Order 3231](#)

Establishes the Office of Historical Trust Accounting to plan, organize, direct, and execute the historical accounting of Individual Indian Money Trust accounts.

BITAM (BUREAU OF INDIAN TRUST ASSETS MANAGEMENT)

DOI examined multiple options for revising TAS governance and conducted extensive listening sessions with tribes. Study lasted from 2001-2002, and the eventual option selected was BITAM.

2003

AS-IS TRUST BUSINESS MODEL

First documentation of TAS operations, allowing foundation for continued improvement within trust management across DOI, and provided recommendations for reengineering these processes.

COMPREHENSIVE TRUST MANAGEMENT PLAN (CTMP)

First documentation of the vision, goals, and objectives of trust reform and operating the trust program.

REGIONAL TRUST ADMINISTRATOR (RTA) AND FIDUCIARY TRUST OFFICER (FTO) POSITIONS

Created means for OST to work closely with BIA personnel in the field and a way to provide direct service and primary points of contact for Indian beneficiary inquiries.

2004

FIDUCIARY TRUST MODEL (FTM)

Described how the DOI is to transform the then-current trust business processes into efficient, consistent and integrated practices that met the needs and priorities of beneficiaries.

TRUST BENEFICIARY CALL CENTER

Allows beneficiaries to access information concerning their trust assets, and acts as a tool to document requests from beneficiaries and track resolutions.

COMMERCIAL LOCKBOX PROGRAMS

Centralizes the collection of trust payments through a single remittance processing center thereby minimizing the risk of theft of loss.

AMERICAN INDIAN RECORDS REPOSITORY (AIRR)

Gives DOI the capability to properly store, catalog and preserve physical historical accounting records.

2006

TAAMS: TRUST ASSETS ACCOUNTING MANAGEMENT SYSTEM

Allows BIA to electronically track land ownership information, produce payment schedules, generate invoices, and produce reports for individual owners.

2007

PROTRAC

Allows BIA, OST, and OHA to electronically manage and track probate cases from initiation to closing.

2009

DEBIT CARD/DIRECT DEPOSIT PROGRAM

Provides a faster, more convenient method for IIM holders to have their funds provided to them electronically through automatic transfers, thereby eliminating the risks of lost or stolen checks.

2010

[OFFICE OF NATURAL RESOURCES REVENUE, Federal Register, Vol. 75, No. 191, Monday, October 4, 2010, Page 61051](#)

The Secretary separated the responsibilities previously performed by MMS and reassigned those responsibilities to three separate organizations: the Office of Natural Resources Revenue (ONRR); the Bureau of Ocean Energy Management (BOEM); and the Bureau of Safety and Environmental Enforcement (BSEE). The new ONRR will be responsible for the existing MRM royalty and revenue functions and is scheduled to transition to the Assistant Secretary—Policy, Management and Budget organization on October 1, 2010, the beginning of Fiscal Year 2011.

2011

[SECRETARIAL COMMISSION ON INDIAN TRUST ADMINISTRATION AND REFORM](#)

Provides advice and recommendations to the Secretary of the Interior regarding Indian trust management, including any legislative or regulatory changes needed to implement these recommendations.

2012

COBELL VS. SALAZAR SETTLEMENT

Paves the way for additional required reforms, including the revamp of several laws and regulations concerning trust management.

LEASING REGULATIONS (25 CFR 162) UPDATES

Establishes deadlines for BIA to process lease documents, with automatic approvals of amendments and subleases after a certain period of time.

These efforts have resulted in many improvements in Indian trust management and administration, but problems remain. The management responsibilities are daunting.

- On trust lands, the Department manages more than 109,000 leases. For fiscal year 2012, \$1.9 billion of funds from leases, use permits, land sales, royalties, settlements, and income from financial assets were collected for 384,000 open IIM accounts and 2,900 tribal accounts. Collectively, the United States holds approximately \$4.4 billion in trust funds.
- DOI is responsible for managing 56 million surface acres and 57 million acres of subsurface mineral estates for 384,000 IIM accounts and about 2,900 tribal accounts (for more than 250 federally recognized tribes). Tribal trust assets include land, water, timber, oil, gas, and mineral resources.
- There are currently 156,596 individual Indian land allotments, and one of the major challenges facing the administration with regard to these allotments is the increasing fractionation among individual owners of interests in the land. As of early 2012, there are over 4.7 million fractionated interests.

SECTION II. DEFINING THE FEDERAL TRUST RESPONSIBILITY

This section of the Commission's Report begins with a general discussion of the nature of the federal trust responsibility followed by several sections dealing with application of that responsibility in various contexts. While it is important to have a general or abstract statement or description of the responsibility, the many comments we obtained over the past two years from tribal governments and individuals led us to believe that the trust responsibility must also be considered in the context of particular factual and legal contexts. The Final Report of the AIPRC carefully evaluated the trust responsibility and described it as "a rather confusing legal concept with murky origins and inexact application."² Since the Policy Review Commission's lengthy consideration of the trust issues, dozens of federal statutes,

² American Indian Policy Review Commission, Final Report at 125 (U.S. GPO 1977).

administrative actions, and court decisions have given further meaning to the trust. Sometimes these actions have been generally considered positive, while in other cases the actions have been negative as far as the Indian Nations are concerned.

A recurring problem is that many federal agencies sometimes view the trust responsibility as the responsibility of the Bureau of Indian Affairs, or DOI, if the agency is outside of Interior. This is not the case. The trust obligations run to all agencies as they carry out activities that affect on and off reservation tribal rights, customs, religion and traditions. The Commission commends the many statements by Congress and the Executive declaring the application of the trust responsibility to all federal agencies, but notes that appropriate consultation regarding matters affecting tribes and the federal trust is lacking in many individual cases. Section III deals with consultation matters.

A. THE TRUST RELATIONSHIP IN GENERAL

The United States' trust responsibility has its roots in international law and treaties and agreements made between the United States and indigenous Nations. Now, Indian nations and the United States government have a sovereign-to-sovereign relationship evidenced by the Constitution, treaties, agreements, acts of Congress, and court decisions. European nations that explored and came to what is now the United States asserted exclusive rights to deal with the indigenous nations in matters related to land and intergovernmental relations. This assertion of authority was largely designed to resolve competition between the European Nations, and could not affect the status of Indian nations as pre-existing sovereigns. When the United States Constitution was adopted, the federal government assumed exclusive authority in all matters related to Indian affairs. Nearly fifty years later, Supreme Court Chief Justice John Marshall stated that the "Indian nations had always been considered as distinct, independent political communities, retaining their original natural rights, as the undisputed possessors of the soil, from time immemorial." The Supreme Court in 2004 noted that "at least during the first

century of America's national existence... Indian affairs were more an aspect of military and foreign policy than a subject of domestic or municipal law.”

While the earliest treaties reflected a desire for mutual peace and intergovernmental respect, as a practical matter the tribes were made subject to various federal laws without regard to tribal desires. This colonial treatment of indigenous peoples was geared toward the United States’ acquisition of land for westward expansion. In return, the United States provided compensation in various forms. Most important from the Indian perspective were the promises of permanent homelands, access to natural resources, and recognition of the right to continue to exist as distinct sovereign peoples. The Supreme Court noted that although the federal government and others had colonized the United States, the law of nations mandated that the Indian tribes were owed a duty of protection from incursions on tribal governmental authority and independence within the newly formed nation. These rights were to be safeguarded, *and supported*, by the United States, especially from interference by the states. The government-to-government relationship and these promises of political allegiance remain at the foundation of the federal trust responsibility despite vacillating federal policies that resulted in removal, allotment of tribal lands, and the associated loss of approximately 90 million acres of tribal land by 1934.

As set out in the leading Indian law treatise, COHEN’S HANDBOOK OF FEDERAL INDIAN LAW:

Understanding history is crucial to understanding doctrinal developments in the field of Indian law. For example, treaty-making with Indian tribes involved matters of immense scope: The transactions totaled more than two billion acres, and some individual treaties dealt with land concessions involving tens of millions of acres. At the same time, treaties included minutiae such as provision of scissors, sugar, needles, and hoes. Yet, out of the felt needs of the parties to the treaty negotiations there evolved comprehensive principles that have continued significance to this day. These include the sanctity of Indian title, the necessary preeminence of federal policy and action, the exclusion of state jurisdiction, the sovereign status of tribes, and the special trust relationship between Indian tribes and the United States. These principles endure beyond the four corners of negotiated

treaties. When Congress ended treaty making in 1871, these principles lived on in the “treaty substitutes” that followed in the form of agreements, executive orders, and statutes. Thus, what is seemingly background becomes the foreground—indeed the basis—for contemporary judgments.

Although federal policies changed over time from the allotment and assimilation era to outright termination of the federal-tribal relationship, since 1970 the federal policy is one of Indian self-determination without termination. This modern policy implements the federal government’s trust responsibility to protect and advance Indian nations status as governments with inherent sovereignty. President Nixon’s 1970 address rejecting the forced termination policy described the nature of the federal-tribal relationship.

The policy of forced termination is wrong in my judgment, for a number of reasons. First, the premises on which it rests are wrong. Termination implies that the Federal government has taken on a trusteeship for Indian communities as an act of generosity toward a disadvantaged people and that can therefore discontinue this responsibility on a unilateral basis whenever it sees fit. But the unique status of Indian tribes does not rest on any premise such as this. The special relationship between Indians and the federal government is the result of solemn obligations, which have been entered into by the United States Government. Down through the years, through written treaties and through formal and informal agreements, our government has made specific commitments to the Indian people. For their part, the Indians have often surrendered claims to vast tracts of land and have accepted life on government reservations. In exchange, the government has agreed to provide community services such as health, education and public safety, services that would presumably allow Indian communities to enjoy a standard of living comparable to that of other Americans.

The Supreme Court has concluded that the United States “has charged itself with moral obligations of the highest responsibility and trust.”³ This general principle is implemented through many federal statutes and programs that implement past promises and modern policy. These modern programs were developed largely in consultation with Indian tribes and are intended to promote economic self-sufficiency and the distinct sovereign status of Indian nations and their people.

³ The Court, however, has not always been faithful to that lofty statement. See Testimony from attorney Dan Rey-Bear on Behalf of the Navajo Nation.

The American Indian Policy Review Commission in 1977 noted that the National Tribal Chairman's Association categorized the trust responsibility as including 1) protection and proper management of Indian resources, properties and assets; 2) protections and support of tribal sovereignty; and 3) provision of community and social services to tribal members. AIPRC, Report on Trust Responsibilities and the Federal –Indian Relationship 47 (U.S. GPO 1976). Other commentators were in accord with that recommendation, and this Commission received similar comments.

At times in the past, the trust responsibility was viewed as a demeaning and paternalistic guardian-ward relationship. That model is unsuited for the modern self-determination era, but has not evolved as rapidly as the movement toward self-determination. Thus, the outmoded trust model still influences the performance of the federal government's obligations to Indian nations and people in some cases. For example, many federal statutes require federal approval of the leasing of tribal and individual Indian lands for most purposes. The exercise of this authority can sometimes be cumbersome if not implemented in a timely fashion. Congress's enactment of the HEARTH Act in 2012 is an example of a partial relaxation of federal oversight, but that relaxation is still subject to an initial federal approval. The federal responsibilities, however, can serve the valuable function of assisting to ensure the appropriate financial return to tribal and individual Indians from the use of trust assets. Again, the HEARTH Act provides a good example in the implementing regulations in that they announce the preemption of state taxing and regulatory power over Indian property leased to non-Indian entities under the Act. These tensions in the federal-tribal relationship persist in the modern era and the Commission believes that specific changes in the legal relationship are best left to negotiations between and Indian tribes and the United States Congress. One distinguished commentator noted that despite its best intentions, the government often fails in fulfilling its obligations and suggested legislative modification for greater enforcement of defined responsibilities.

Because of deficits in its institutional competence and because of its political nature, the federal executive, then, will often fall short of the fiduciary ideal of a disinterested trustee resolutely protecting Indian property and tribal self-government, competently and prudently investing and managing Indian funds and property. Of course, the fact that the government often fails to adhere to its trust duties might not *ipso facto* be upsetting. Governments – both federal and state – also frequently violate the United States Constitution as well. If the trust responsibility, like many constitutional principles, is seen as a kind of ideal standard to guide governmental behavior, then failure to achieve it in every situation might not be a cause for great concern, particularly if judicial remedies were readily available when failures occur.

Reid Chambers, Paper Prepared for the Rocky Mountain Mineral Law Foundation (September 25, 2005).

The Commission agrees that Congress should delineate the trust responsibility with more specificity, accompanied by robust judicial enforcement provisions. Legislation (S. 165) has been introduced to address these issues, and the Administration, Congress and Indian tribes should work to advance agreed-upon legislation.

In the meantime, however, much improvement could be made, however, in trust administration by the Executive Branch in particular subject matter areas. The next subsections describe proposed congressional and administrative actions.

B. ADMINISTRATIVE LIABILITY STANDARDS

It is useful to describe the general elements of private trusts in order to compare and contrast them to the complex relationship that is the federal-tribal relationship. A leading legal treatise describes a trust “as a fiduciary relationship in which one person holds a property interest, subject to an equitable obligation to keep or use that interest for the benefit of another.” Bogert & Hess, *Trusts and Trustees* Ch. 1, § 1 (3rd Edition 2007). The basic elements include: 1) trust property held for the benefit of another; 2) a settlor who creates the trust; 3) a trustee who holds the property for another; 4) a beneficiary for whom the property is managed; and 5) a trust instrument which defines the purpose of the trust and duties of the trustee and rights of the beneficiary. The trustee is a fiduciary in which the law

demands an unusually high standard of ethical or moral conduct with reference to the beneficiary. The trustee owes a duty to act solely in the interest of the beneficiary, and must not consider their own personal advantage. *Id.*

The concept of a private trustee cannot support the full realm of responsibilities embodied in federal trusteeship to Indian peoples. It can, however, provide appropriate guidance when the federal government is exercising management responsibilities for real property, and natural resources that it holds in trust for Indian tribes. It should also provide the legal standard for determining liability when the federal government mismanages tribal trust property or natural resources. Unfortunately, the Supreme Court has narrowly interpreted the federal trust responsibility when it evaluates federal monetary liability for the breach of trust obligations. Thus, in the case of *United States v. Navajo Nation*, 537 U.S. 488 (2003), the Court refused to award damages to the Nation even though the Secretary of the Interior privately met with the Peabody Coal Company over a lease approval and was persuaded to direct actions that resulted in a financial disadvantage to the Nation. The decision has been widely criticized and the narrow standard of liability employed by the Court should be changed by Congress.

A recent case in which individual Indians sought an accounting of trust funds provides another example of government conduct that is not appropriate for a trustee.

While the Supreme Court has said we may not employ traditional trust principles inconsistent with Congress's statutory directions, the Court has *also* said we *may* refer to traditional trust principles when those principles are consistent with the statute and help illuminate its meaning. *Jicarilla Apache Nation*, 131 S.Ct. at 2325. In the statute before us, Congress has chosen to invoke the concept of an accounting. That concept has a long known and particular meaning in background trust law. It means that "a beneficiary may initiate a proceeding to have the trustee's account reviewed and settled by the court." Alan Newman et al., *The Law of Trusts and Trustees* § 966 (3d ed. 2010). Indeed, "[t]he beneficiary of a trust can maintain a suit to compel the trustee to perform his duties as trustee," including his duty to account. *See* Restatement (Second) of Trusts § 199 cmt. a; *see also id.* § 172. So when Congress says the government may be called to account, we have some reason to think it means to allow the relevant Native American

beneficiaries to sue for an accounting, just as traditional trust beneficiaries are permitted to do. * * * While the Supreme Court has said we may not employ traditional trust principles inconsistent with Congress's statutory directions, the Court has *also* said we *may* refer to traditional trust principles when those principles are consistent with the statute and help illuminate its meaning. *Jicarilla Apache Nation*, 131 S.Ct. at 2325. In the statute before us, Congress has chosen to invoke the concept of an accounting. That concept has a long known and particular meaning in background trust law. It means that “a beneficiary may initiate a proceeding to have the trustee's account reviewed and settled by the court.” Alan Newman et al., *The Law of Trusts and Trustees* § 966 (3d ed.2010). Indeed, “[t]he beneficiary of a trust can maintain a suit to compel the trustee to perform his duties as trustee,” including his duty to account. *See* Restatement (Second) of Trusts § 199 cmt. a; *see also id.* § 172. So when Congress says the government may be called to account, we have some reason to think it means to allow the relevant Native American beneficiaries to sue for an accounting, just as traditional trust beneficiaries are permitted to do.

Fletcher v. U.S., 730 F.3d 1206 (10th Cir. 2013).

Even worse was the fact that the while the United States previously agreed to provide an accounting to the individual's tribe after litigation brought by the tribe, the settlement with the tribe purported to waive the rights of non-party, individual tribal citizens who had trust funds managed by the United States. This is a prime example of the Executive Branch, acting through the Justice Department and presumably with the Interior Department's approval, has taken what can only be characterized as a legal position completely at odds with its fiduciary obligations to individual Indians and tribes. The Commission does not mean to disparage individual career attorneys involved in this or any other case. Rather, the criticism is leveled at the highest level of Executive Branch officials who have either advanced these positions, or tolerated their development, over several Administrations through benign neglect. The Commission acknowledges that the United States must assert valid defenses to litigation brought by tribes and individual Indians, but the usual zealous defense should be tempered and informed by the federal-tribal trust. This is especially true in evaluating the application of the narrow standard announced by the Supreme Court in cases involving money damage claims against the federal government.

The federal government has rested on this narrow standard from the damages cases to refuse to act to protect tribal resources from prospective harm, and to resist tribal efforts to compel agency action. As one respected commentator noted, “The trust responsibility should play a role in protecting tribal lands and resources, but the trust doctrine stands in potential jeopardy today as courts collapse protective trust requirements into statutory standards.” Mary C. Wood, *The Federal Trust Responsibility” Protecting Tribal Lands and Resources Through Claims of Injunctive Relief against Federal Agencies*, 39 Tulsa L. Rev. 355 (2003-2004). Professor Wood’s arguments are persuasive and consistent with testimony heard by the Commission. While congressional legislation revoking the narrow damages standard altogether is the recommended course of action, the Secretary could direct the Department to employ a mode of analysis more favorable to tribal interests in all non-damages cases. For example, the Department imposed the Bennett Freeze on 1.5 million acres of land in the western portion of the Navajo Nation in the 1960’s to achieve policy goals in the Navajo and Hopi land disputes. The freeze inflicted well-documented hardships on about 20,000 Navajo tribal citizens. Long after the Department’s policy goals were met and the land interests of both tribes in the affected area were settled, the Navajos who were most adversely affected by the freeze continue to suffer from its effects. In cases such as these, the Department should affirmatively reach out to remedy past harms. It should not require a lawsuit to enforce the trust responsibility.

C. RECOMMENDATION NO. 1: REVIEW AND AMENDMENT OF FEDERAL LAW

- 1) Because the Supreme Court has narrowly construed the trust responsibility in the damages cases, Congress should amend federal law to provide a damages remedy for harm caused when the following standard is breached: “The trustee is a fiduciary in which the law demands an unusually high standard of ethical or moral conduct with reference to the beneficiary. The trustee owes a duty to act solely in the interest of the beneficiary, and must not consider their own personal advantage.”

- 2) The Justice Department and the Solicitor's Office of DOI should conduct a litigation review to identify cases in which the federal government's litigation position is inconsistent with the foregoing principle and modify their position accordingly. The United States should not import the narrow definition of the trust obligation that has been employed by the Supreme Court in some damages cases into cases involving Indian claims for prospective relief.

SECTION III. CONFLICTS OF INTEREST AND TRIBAL CONSULTATION

A. CONFLICTS OF INTEREST

The United States litigates cases as trustee for Indian tribes and also defends lawsuits brought by Indian tribes against the federal government and various agencies. This has long presented problems as noted in the 1977 American Indian Policy Review Commission Report, which recommended establishing an Office of Indian Rights Protection to be responsible for all litigation and to protect and enforce Indian trust rights. AIPRC, Final Report at 137-38. It would have had independent litigating authority to enforce the trust responsibility upon the request of tribes, but would also be authorized to refer matters to the Justice Department. It bears emphasizing that this problem was also identified by President Richard M. Nixon in 1970:

The United States Government acts as a legal trustee for the land and water rights of American Indians. These rights are often of critical economic importance to the Indian people; frequently they are also the subject of extensive legal dispute. In many of these legal confrontations, the Federal government is faced with an inherent conflict of interest. The Secretary of the Interior and the Attorney General must at the same time advance both the national interest in the use of land and water rights and the private interests of Indians in land which the government holds as trustee.

Every trustee has a legal obligation to advance the interests of the beneficiaries of the trust without reservation and with the highest degree of diligence and skill. Under present conditions, it is often difficult for the Department of the Interior and the Department of

Justice to fulfill this obligation. No self-respecting law firm would ever allow itself to represent two opposing clients in one dispute; yet the Federal government has frequently found itself in precisely that position. There is considerable evidence that the Indians are the losers when such situations arise. More than that, the credibility of the Federal government is damaged whenever it appears that such a conflict of interest exists.

H.R. Doc. No. 91-363 at 9-10.

It is unacceptable to say that the United States Supreme Court has relaxed the extent of the federal government's liability to pay money damages in some cases, and that that line of cases reflects the United States' duties. Rather, the United States must strive to reach a higher standard. The independent counsel concept has been around for a long time and deserves further consideration by the federal government. The Commission recommends that the Secretary evaluate the options in this area.

There has been a particular problem in the water rights litigation and settlement context as documented in Professor Ann Juliano's article, *Conflicted Justice: The Department of Justice's Conflict of Interest in Representing Native American Tribes*, 37 GA. L. Rev. 1307, 1362-64 (2003). There have been over twenty-five Indian water rights settlements approved by Congress since the 1970s and there are many more cases in various stages of negotiation and litigation. When it acts, the Justice Department and Solicitor's office generally do a good job, but the reluctance of the Office of Management and Budget (OMB) to authorize adequate funding is notorious within Indian country. What seems to be lost in the analysis of these settlements at OMB is the fact that these are modern day treaty substitutes that give meaning to implied promises made by the United States in past treaties, agreements, and executive orders. As such, the Northwest Ordinance's command that the United States employ the "utmost good faith" in its dealings with Indian tribes should guide the federal position. Northwest Ordinance of 1787 ("The utmost good faith shall always be observed towards the Indians; their lands and property shall never be taken from them without their consent;").

The Commission heard considerable testimony regarding tribal waivers of prospective damages claims against the federal government for actions related to approval of a given negotiated settlement. Limited waivers in that context might be appropriate, but in some cases we heard of insistence on waivers of claims for future claims to water against non-parties when a final settlement was not contemplated as part of a particular negotiation. The Commission is not in a position to referee disputes between particular Indian tribes and the United States, but the correspondence we reviewed regarding the San Luis Rey Indian Water Rights Settlement indicates a federal attitude geared more toward shedding responsibility to Indian tribes than the vigorous enforcement expected of a trustee. See Correspondence between Seth Waxman on behalf of San Luis Rey River Water Authority and the United States (June-August 2012). The Commission suggests that the federal government, as trustee, should generously interpret treaties and statutes affecting Indian water rights and defer to tribal claims whenever plausible arguments are presented.

Similar problems arise when tribal claims conflict with the claims and regulatory functions of other federal agencies. These most often occur when tribal instream flow claims conflict with the Bureau of Reclamation's desire to fulfill contract delivery obligations, or when Endangered Species Act concerns run up against tribal consumptive use rights. Again, resolution of particular disputes is not within the Commission's purview but a mindful consideration of the trust responsibility should result in outcomes that favor tribal interests in close cases.

In addition, the Commission heard from numerous tribes about lengthy delays in the processing of litigation requests for water rights claims. The Commission understands the budgetary and personnel constraints within the Justice and Interior Departments, but notes that many believe that the longer Indian water rights remain unquantified, the more courts may be inclined to narrowly interpret Indian reserved rights. The Departments should consider ways to streamline the existing process. Alternatively, if a trust counsel option

were more fully explored as recommended in the 1977 AIPRC Report and in the Nixon address, litigation might be brought more promptly on behalf of Indian tribes.

B. RECOMMENDATION NO. 2: EVALUATE TRIBAL CONSULTATION POLICY

- 1) The independent counsel concept has been around for a long time and deserves further consideration by the federal government. The Commission recommends that the Secretary evaluate the options in this area in consultation with tribal leaders. In the meantime, renewed emphasis on the United States' fiduciary obligations could correct some of the issues addressed above, especially with respect to ensuring that all federal agencies understand their obligations to abide by and enforce federal trust duties.

C. CONSULTATION

When federal agencies prepare to take action that may affect the rights of Indian tribes or their members, they must consult with the affected tribe or tribal citizens to inform their decision. Recent scholarship, Colette Routel & Jeffrey Holth, *Toward Genuine Tribal Consultation in the 21st Century*, 46 *University of Michigan Journal of Law Reform* 417 (2012) (Routel & Holth), identified myriad consultation policies and directives within the Executive Branch. Congress enacted a series of statutes requiring consultation for federal activities that impact Indian historic, cultural, and religious sites. *See, e.g.*, Pub. L. No. 103-104, 107 Stat. 1025, 1026 (1993) (establishing the Jemez National Recreation Area and requiring the Secretary of Agriculture to, “in consultation with local tribal leaders, ensure the protection of religious and cultural sites” within that area). Consultation provisions were included the Archeological Resources Protection Act of 1979, Archeological Resources Protection Act of 1979 (ARPA), Pub. L. No. 96-95, 93 Stat. 721 (1979); the Native American Graves Protection and Repatriation Act of 1990, Native American Graves Protection

and Repatriation Act of 1990 (NAGPRA), Pub. L. No. 101-601, 104 Stat. 3048 (1990) (codified at 25 U.S.C. §§ 3001–3013, the 1992 Amendments to the National Historic Preservation Act. Pub. L. No. 102-575, § 4006(a), 106 Stat. 4600, 4757 (1992). Federal courts interpreted similar statutes, such as the American Indian Religious Freedom Act, 42 U.S.C. § 1996, to implicitly include a tribal consultation right, *Wilson v. Block*, 708 F.2d 735, 746 (D.C. Cir. 1983) (holding that under the AIRFA, the federal government “should consult Indian leaders before approving a project likely to affect religious practices”). On November 5, 2009, President Obama issued a memorandum to the heads of executive departments and agencies. That memorandum formally adopted President Clinton’s Executive Order 13175, and it reminded federal officials that they “are charged with engaging in regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications.” Routel & Holth, *supra*, at 439-441 (the information in the preceding paragraph is drawn from this excellent article).

There have been good efforts and some progress in deploying consultation as a tool for implementing the federal trust responsibility. For example, tribal realty employees possess a wealth of operational and cultural knowledge to federal employees because of the nature of their duties in Indian country. Their expertise should be relied on and information shared more freely with other federal agencies to accommodate meaningful consultation on the ground. In addition, many federal agencies have developed training seminars and brought in outside consultants to help senior management understand basic aspects of federal Indian law and the nature of the trust responsibility. These agency personnel would benefit by learning from the experience of tribal realty staff.

The Commission also learned of significant problems regarding timely notice and consultation with Tribes. Unfortunately, there are many situations where Indian interests are not adequately considered and requests by individual Indian nations and individuals for action or information are not accepted. In some cases,

this may be due to conflicting obligations imposed on the federal administration by Congress, or due to Supreme Court rulings that allow the United States to escape liability for alleged mismanagement of tribal trust resources. In some cases the United States is more concerned about protecting itself from future liability than in effectively executing its trust duties to Indian nations and people. Northwest Indian Fisheries Commission Chairman Billy Frank wrote to the Commission in October with substantive and procedural concerns.

As noted in the “Treaty Rights At Risk” paper prepared by the NWIFC, the laws and regulations of the various federal agencies often conflict, work at cross purposes, and suffer from the lack of enforcement. Unfortunately, the net effect of inadequate collaboration and coordination among federal agencies in environmental protection is the transfer of the burden of conservation onto Tribes. * * * Today, NOAA is refusing to take enforcement action against a Corps of Engineers dam and fish trap on the White River that is shown to be killing ESA listed salmon and reducing the number of fish escaping to spawn upriver in direct conflict with a NOAA Biological Opinion while at the same time demanding that the Tribes reduce their harvest on ESA listed salmon to allow more spawning escapement.

The Fisheries Commission had two recommendation related to consultation:

- Provide a means for tribal rights and interests to be explicitly and adequately represented so they receive full and active consideration in agency decisions.
- Provide the means for tribes to substantively engage in deliberations regarding the development and implementation of policies and programs of the United States, which affect Tribal rights and interests. This extends beyond requirements for “consultation” to government-to-government dialogue to identify and resolve differences between sovereigns. There is a need for an effective advocate for protection of tribal rights and interests in federal decision processes. The inherent conflict of interest within the operations of the federal government between agency missions and the special duties and obligations owed to Indians must be overcome.

The Commission finds these arguments persuasive and consistent with other testimony presented to it. Federal officials must establish clear protocols for disclosing and minimizing conflicts of interest, which should be implemented after full consultation with Indian nations. This must go beyond conflicts that meet minimal legal standards applicable to non-fiduciary relationships and extend to

appearances of conflicts of interest that affect tribal and individual Indian interests in any transaction or actions related to trust assets, or the government-to-government relationship.

It is critical that the United States continue to acknowledge its historic legal and moral obligations to Indian nations to further the sovereign-to-sovereign relationship at the foundation of the many complex dealings that occur on a regular basis. It must be remembered that the United States would not exist but for the acquisition of tribal territories that were given in exchange for the continued support and respect of the federal government. The promises of permanent homelands and recognition of the right to continue to exist as distinct sovereign peoples impose solemn obligations on all branches of the federal government. Similarly, the United States must work diligently to fulfill the trust relationship initiated with individual Indians through the allotment process.

D. RECOMMENDATION NO. 3: DEVELOP UNIFORM CONSULTATION POLICY

- 1) The Commission recommends that the Administration work with Indian Nations and individuals to develop a judicially enforceable, uniform consultation policy that would be codified in a federal statute.

SECTION IV. FINANCIAL ADMINISTRATION AND THE OFFICE OF THE SPECIAL TRUSTEE

The Commission received a great deal of comment around the issues of organization in general, and the particular question of “sunsetting” the Office of the Special Trustee. The latter issue was a particularly sensitive one. There is no doubt that OST has vastly improved the performance of the financial management functions. The Commission greatly appreciated the professional manner in which the OST provided information and aided the Commission in understanding this extremely complex manner. The functions of the OST and the personnel carrying

out those functions are essential to the federal government's ability to fulfill its obligations to tribal and individual trust beneficiaries. Based on the testimony received, the Commission recommends that the functions of the OST be reintegrated with the Bureau of Indian Affairs. This could occur under the auspices of the current administrative structure so that it would be under the authority of the Assistant Secretary – Indian Affairs, or as an Indian Trust Administration Commission (ITAC) as recommended in the Grant Thornton Report.

A sampling of the testimony follows.

It is my position that any legislation must reaffirm foundational history and principles; provide true tribal self-determination over trust asset management and eliminate federal and state barriers; elevate the Assistant Secretary for Indian Affairs ("ASIA") to a Deputy Secretary to reintegrate and improve federal trust asset management; and establish a permanent Indian Trust Oversight Commission to ensure greater accountability. Legislation already has been introduced in the current Congress that would accomplish much of these goals, namely, H.R. 409 and S. 165, the Indian Trust Asset Reform Act ("ITARA"). While that proposed legislation provides an excellent foundation there are number of provisions that could be beneficial to trust reform: (1) reinforce existing provisions that reaffirm the trust responsibility and reorganize the Department of the Interior; (2) allow tribes to opt out of onerous federal statutory regimes; (3) preempt state and local taxes for federally approved tribal trust asset management plans; and (4) establish the oversight commission noted above. [*Letter from Navajo Nation President Ben Shelly, February 8, 2013.*]

The OST and the OTFM have diverted resources from management of tribal trust assets. The salaries now dedicated to OST could be used to hire personnel involved in the day-to-day management of both monetary and non-monetary tribal trust assets. The OST is due to sunset and the management of trust funds can be accomplished largely through electronic means. The Government should: allow OST to sunset, re-consolidate management of Tribal trust funds in BIA, convert management of Tribal trust funds to electronic or automatic means where feasible and efficient, and focus resources on hiring personnel needed for daily, hands-on management functions, such as auditors, investment analysts, and financial advisors. Finally, restore as Indian preference positions all positions that were BIA-Indian preference positions that were transferred to the Department of [the] Interior and/or other agencies within Interior and the positions were no longer Indian preference positions. [*Testimony from Great Plains Tribal Chairman's Association, September 13, 2012.*]

Do not sunset OST. You are in Albuquerque now. A visit to OST and the methods used to handle IIM is efficient. You must then, as the Commission group, all visit Portland Regional Office/unannounced and ask yourself if OST operations should be turned over to BIA. The establishment of OST made the management better because they were not required to follow civil service personnel - to hire recycled employees. There are a few of the Trust Officers that are good to inform OST of whereabouts of unknown and update address information of IIM account holders. A suggestion may be to use half (1/2) the budget for Trust Officers and hire Realty specialists into each area of the BIA. The other half (1/2) of the budget should be to hire Realty Specialists that would not be stationary but would visit each agency to update information . . . such as final Probate information - Realty ownership records to cure the illness in TAMMS. If they are not current information, there is no way tracking fractional interests can be accomplished. [*Testimony from Indian Land Tenure Group June 2012*]

The OST continues to provide a specific service to both the tribes and many individual Indians throughout Indian Country and should continue into the future. The Cobell settlement demonstrates that there are approximately 500,000 individual Indians with trust assets that rely upon the OST for the distribution of funds. The 500+ tribes have the option of either contracting with the BIA through the PL 93-638 process or for some, the Self-Governance Compacts. However, the federal trust obligations to the individual Indians remains and the valuable service through the OST should remain intact. [*Testimony from Helen Sanders, February, 2013*]

My first suggestion regarding delivery of services is to retain the Office of the Special Trustee (OST) as a permanent Office together with the functions it now operates. It could be an Office within the Deputy Secretary of the Interior, Office of Policy, Management and Budget or even within the Assistant Secretary-Indian Affairs. However, it is absolutely essential that the fiduciary trust function of Indian Affairs be maintained separately from the programmatic functions of the BIA – financial as well as all other trust assets. As long as the trust exists with assets to manage and beneficiaries who are owed a fiduciary trust duty, it is critical to have a trustee and staff with the knowledge, experience and background administering the trust. This position was never part of the BIA at anytime in its history and this is, at least, part of the reason for the Cobell and tribal lawsuits that now are costing the government billions of dollars in claims. [*Testimony from Ross Swimmer, June 2012*]

A. RECOMMENDATION NO. 4: TRUST ADMINISTRATION RE-STRUCTURING

- 1) Modeled on the Federal Energy Regulation Commission (FERC) and its relationship with the Department of Energy (DOE), Congress should establish a fully independent Indian Trust Administration Commission (ITAC) located within the Department of the Interior (DOI).

The Grant Thornton team concluded that an independent commission within the Department of the Interior is the optimal organizational structure for DOI TAS.

This conclusion was based on several considerations:

- An independent commission centralizes management of DOI trust functions and withdraws trust responsibilities from DOI bureaus/offices. By establishing a single point of accountability, Indian Trust Administration Commission (ITAC) will dramatically improve coordination and the efficiency of services provided to tribes and beneficiaries.
- Significant and relevant legislative precedent exists for establishing independent commissions to manage politically sensitive and important governmental functions.
- The independent commission would benefit from functional and budget autonomy from DOI, thus mitigating tribal/beneficiary concerns about conflicts of priorities.
- The proposed commission would maintain cabinet-level advocacy through the Secretary of the Interior by virtue of its continued relationship with DOI.

Specific recommendations were also presented as structural, managerial, or procedural fixes.

- Structural recommendations are generally long-term, and aim to improve overarching TAS coordination problems addressed in the baseline and assessment phases of this study. Structural recommendations include the

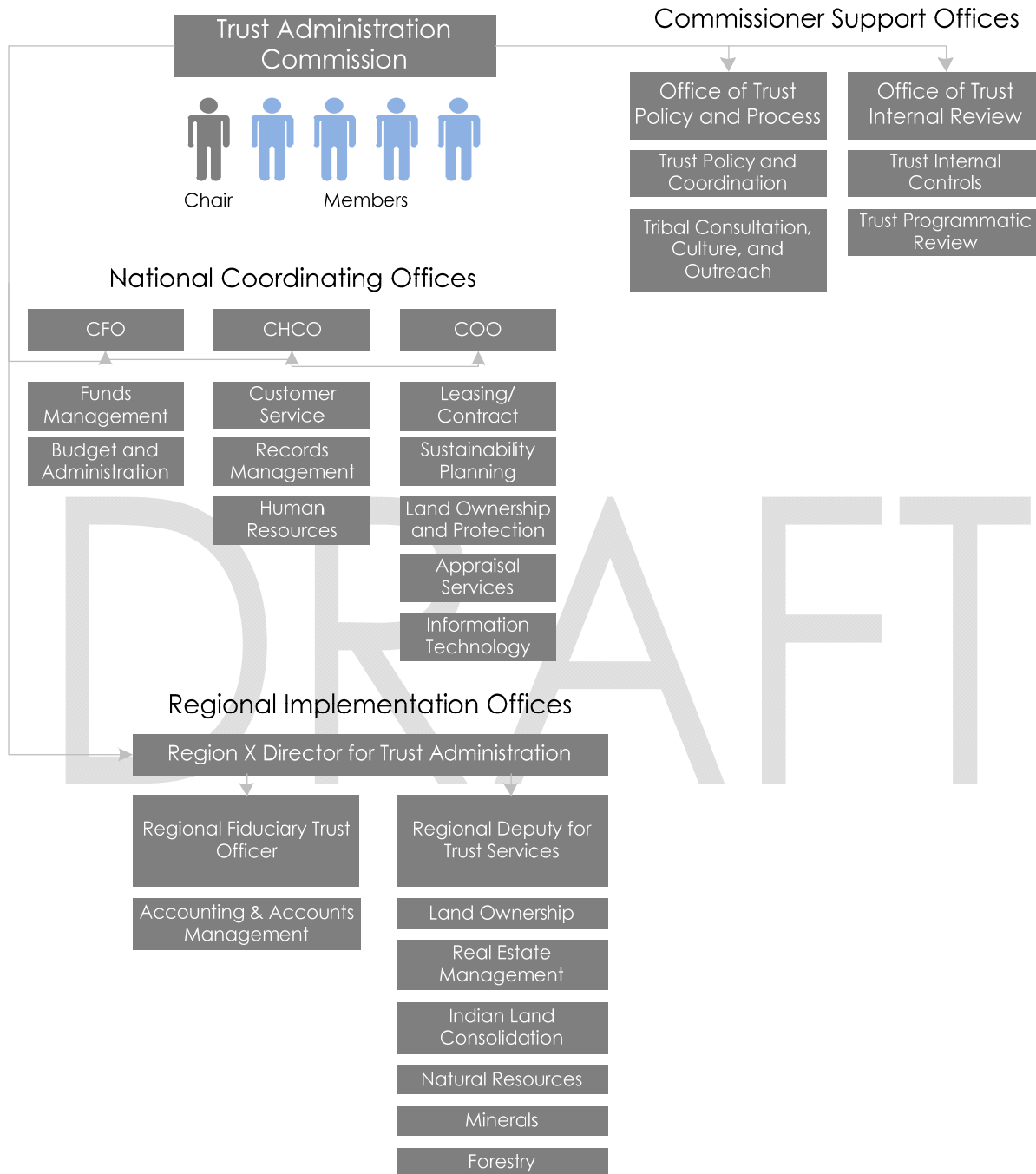
establishment of ITAC; definition of roles and responsibilities across national coordinating offices; and realignment of regional implementation offices.

- Managerial recommendations provide the necessary foundation to implement larger-scale, structural changes needed to improve the delivery of trust services. These recommendations unify disparate trust management strategies and support the consistent and collaborative delivery of service, including ITAC-wide strategic and operational planning; change management and communication planning; standardization of trust management policies, procedures, and information technology systems; information technology requirements analysis; performance measure development and monitoring; and human capital planning.
- Procedural recommendations allow TAS to make process-level fixes within current areas of bureau/office-level ownership, and/or in the proposed ITAC governance structure (e.g., funds management, information technology, land ownership and protection).

The Grant Thornton recommendations would leave the Indian Education and Indian Services functions within the BIA and under the direction of the current Assistant Secretary – Indian Affairs. The Commission believes that if Congress were to restructure the Interior Department in such a striking way, it should move all Indian affairs functions to the new entity.

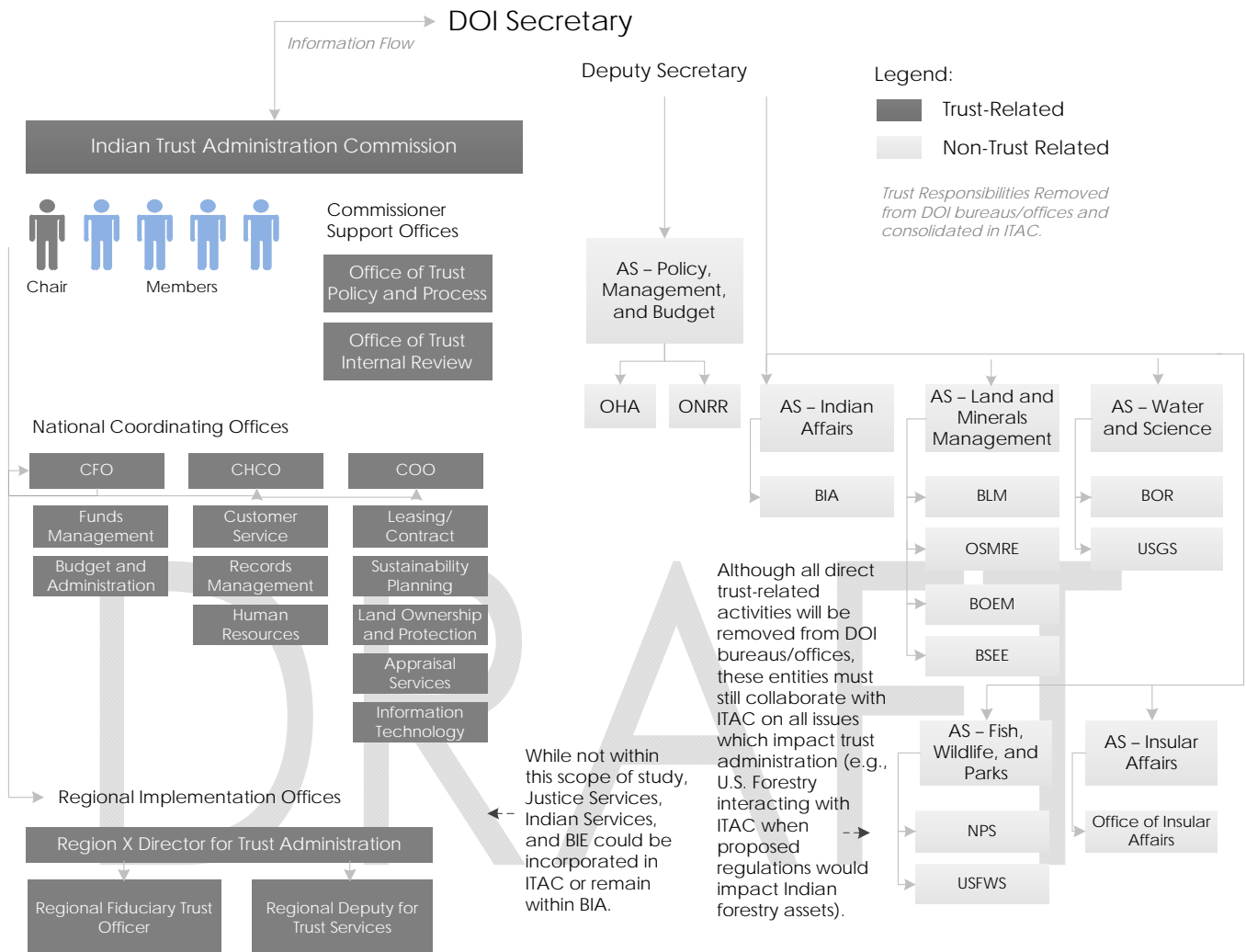
The ITAC would maintain cabinet-level advocacy through the Secretary of the Interior by virtue of its continued relationship with DOI, but an independent commission within DOI will ensure trust administration that is fair and objective and designed to deliver efficient and competent services to beneficiaries. The proposed organizational chart for the ITAC is available in Appendix A of this document.

Indian Trust Administration Commission (ITAC)



Source: Figure 3 Indian Trust Administration Commission (ITAC) Proposed Organizational Structure found on page 4 in Grant Thornton Final Recommendations Report

Indian Trust Administration Commission Summary Graphic



Source: Figure 2 ITAC Summary Graphic and Depiction of Post-ITAC DOI found on page 3 in Grant Thornton Final Recommendations Report

1. INDEPENDENCE AND AUTONOMY

ITAC must be functionally independent from DOI. To ensure ITAC's success we recommend legislation establishing an independent commission with structural, reporting, and funding autonomy from DOI. The legislation should require that the performance of ITAC's functions and ITAC's personnel at all levels are not responsible for or subject to the direct supervision of any other part of DOI. Because the autonomy of any independent commission is dependent on a funding

mechanism that mitigates the impact of partisanship and political pressure, ITAC should submit budget requests and budget justifications concurrently to both OMB and Congress. ITAC will remain housed in DOI, similar to how FERC is part of DOE, but the relationship between ITAC and DOI should be limited to cabinet-level advocacy and general information sharing, with information flow between the ITAC chair and the Secretary of the Interior.

2. APPOINTMENTS

Similar to the FERC model, up to five ITAC Commissioners should be appointed by the President with the advice and consent of the Senate. The appointment of more than one Commissioner will better represent the diverse responsibilities and tribal and individual trustee interests within the trust. Staggered terms and initial five year appointments is advised.

3. THE OFFICE OF THE SPECIAL TRUSTEE TO SUNSET

The Office of Special the Trustee (OST) was established as a temporary entity by the Trust Fund Management Reform Act of 1994 charged to oversee and coordinate DOI's implementation of trust fund management reform, including strategic planning. Although no formal date for enacting the sunset provision has been established, a 2006 GAO report noted that OST's estimated completion dates for trust reforms was November 2007. In the period since November 2007, OST has continued its role in implementing trust reforms and monitoring tribal accounts, as well as providing services to beneficiaries.

Full implementation, funding and deployment of ITAC will likely take several years, during which OST's financial functions will continue to be needed. To hasten the migration of these financial functions, DOI should examine its option for "sunsetting" OST. A temporary transfer of OST functions to the Assistant Secretary - Indian Affairs (AS-IA) pending creation of ITAC is strongly encouraged. This recommendation notes that the conflicting priorities and conflicts of interest problems outlined herein cannot be adequately remedied until ITAC is implemented,

such a transfer would be an acceptable interim solution for consolidating trust responsibilities, increasing accountability, and fostering process improvements recommended in the Procedural Changes section of this report.

4. STRUCTURE AND RULE-MAKING AUTHORITY

ITAC would be responsible for carrying out the trust responsibilities that have been enumerated several times in the past, including the Act of June 24, 1938 and reinforced by the American Indian Trust Fund Reform Act of 1994:

1. Provide adequate systems for accounting for and reporting trust fund balances.
2. Providing adequate controls over receipts and disbursements.
3. Providing periodic, timely reconciliations to assure accuracy of accounts.
4. Determining accurate account balances.
5. Preparing and supplying account holders with periodic statements of their account performance, and balances available on a daily basis.
6. Establishing consistent, written policies and procedures for trust fund management and accounting.
7. Providing adequate staffing, supervision, and training for trust fund management and accounting.
8. Appropriately manage the national resources located within the boundaries of Indian reservations and trust lands.

Because it is increasingly challenging to deliver trust services that are “effective, consistent, and integrated” across DOI bureaus/offices, there should be a consolidation of all BIA Trust Services, OST, and trust-related responsibilities from AS-IA, BLM and ONRR into ITAC. Consolidation of trust services under one independent commission will centralize management and administration of trust assets and operations and create a much more efficient delivery of services to beneficiaries.

ITAC requires the ability to issue regulations to provide consistent, effective trust administration services. For example, regulation is required to standardize thresholds and methods for funds disbursement to IIM accountholders. The authority to issue regulations would derive from an agency's authorizing legislation. The scope and subject matter of ITAC's rulemaking powers is a critical input to the founding of the ITAC. Before drafting the ITAC authorizing legislation, DOI and DOJ legal counsel should be consulted to help define the scope of ITAC's rulemaking authority.

Once the scope of ITAC's rulemaking authority is determined, the agency should prioritize which areas of trust administration are most in need of regulation. The following inputs should be considered when developing the regulation plan:

1. New technologies, performance data, and emerging trends
2. Concerns arising from highly publicized examples of poor performance
3. Recommendations from Congressional or other federal advisory committees
4. Petitions from beneficiaries, the public, or other interest/stakeholder groups
5. Presidential directives
6. Pending lawsuits
7. Studies and recommendations of agency staff
8. Recommendations by the Office of Management and Budget (or the U.S. Government Accountability Office)

Definition of roles and responsibilities across national coordinating offices and realignment of implementation offices

The ITAC model addresses a challenge identified during the assessment of the trust administration regarding insufficient coordination between DOI bureaus/offices. First, it proposes national coordinating offices to develop and deploy guidance to regional offices in several discrete functional areas (e.g., funds management and information technology). Second, the model proposes national-level Commissioner Support Offices. These entities will provide guidance in areas that cut across the functional areas governed by the coordinating offices.

B. RECOMMENDATION NO. 5: IMPROVE THE MANAGEMENT, OVERSIGHT, AND ACCOUNTABILITY OF TAS SERVICES AND TRUST ASSETS

1) Create an Adequate Auditing System that Fulfills Trust Responsibility to Beneficiaries

The 1994 Reform Act required an annual audit of all funds held in trust by the United States for the benefit of an Indian tribe or individual. The annual financial statement audit for trust funds is currently outsourced to an independent accounting firm with oversight provided by the OIG. The audit does not, however, encompass all trust assets. The audit is limited to trust funds managed and held by OST in its seven Treasury accounts and the independent accounting firm was unable to opine on the fairness of trust fund balances due to the limited scope of the audit. Further, financial statements were compiled using cash or modified cash basis of accounting rather than an accrual basis as required Statement of Federal Financial Accounting Standards No. 31.

Although DOI has established an Internal Control Program (ICP) in alignment with OMB Circular A-123, the execution of the ICP for trust administration and trust services has created a “silo” effect that negatively impacts coordination among bureau/offices. Under this structure, each bureau/office follows DOI protocols and performs its internal testing with result reported to DOI. No direct oversight exists for internal controls to be reported and information shared across the entire trust administration and services system. As such, management may not have an accurate or complete assessment of internal controls that unsure that all trust assets are managed appropriately. The same is true for programmatic reviews. Each bureau/office is responsible for reviewing its compliance with trust responsibilities that will include reviews that their program is administered effectively, efficiently, and in accordance with applicable laws and regulations. However, DOI lacks formally documented processes and criteria for reviewing the administration of the

trust as a whole, which may lead to management lacking an accurate and comprehensive account of the program execution.

For example, OST audits cover Individual Indian Monies accounts. The trust financial statements do not include the funds from other office or organizations within DOI that are trust-related transactions. When the BIA collects monies resulting from their management of Indian lands and natural resources, there can be significant lag time before monies are transferred between departments and show on the books of OST. Only upon receipt will OST records reflect the deposit of trust funds into a trust account for a beneficiary. Further, ONRR, the entity charged with collection of royalty payments on mineral rights, initially records payments received in a People Soft system and deposits royalties into ONRR Treasury Accounts and then at a later date transfers those royalty payments to OST Treasury Accounts. Monies received from BIA and ONRR are not included in the scope of the trust fund audit until the money is transferred to OST accounts.

DOI does not have visibility into an uncertain amounts of revenue paid directly to beneficiaries and not processed through DOI and the lockbox process. Many of the largest oil and gas tribes rely on BIA, BLM and ONRR to lease, bill, collect and ensure compliance for oil and gas leases but those funds are not processed or accounted for in trust funds held by OST. It is impossible for DOI to have complete visibility and knowledge of the total liability facing DOI in regards to Indian trust assets, which makes it equally impossible to provide beneficiaries information on proper management and accounting of trust funds and assets.

In addition, the trust financial statements do not present other Indian trust assets, including but not limited to Indian lands, buildings, and other non-monetary assets managed by various DOI bureaus and offices. The BIA is responsible for optimizing and sustaining trust land assets totaling almost 55 million surface acres and 57 million acres of mineral estates for their various beneficiaries, but this information is not included in trust statements and instead, is presented in the financial statements of the DOI.

The Commission recommends the establishment of an Office of Trust Internal Review to provide the most confidence to the beneficiaries that trust assets are properly managed and accounted for as a single point of accountability. The Office of Trust Internal Review would report directly to the ITAC. The Office would develop and implement a trust-specific A-123 Program that would ensure that DOI is properly identifying and assessing internal controls system-wide and would align with OMB Circular A-123, Management's Responsibility for Internal Controls and the DOI's Internal Control Program, and specifically focus on internal controls around trust assets. The Office of Trust Internal Review would also develop and implement a trust programmatic review program that would assure DOI management and trust beneficiaries that the DOI's trust responsibility is being successfully met.

This Commission was charged with reviewing the oversight and processes employed by DOI to ensure the department fulfills its trust responsibilities to Indian beneficiaries. We conclude that the effectiveness of existing review processes is negatively impacted by poor coordination among DOI bureaus/offices. For example, DOI has established an Internal Control Program (ICP) that is implemented on a per bureau/office basis. There is no entity in existence to conduct internal controls testing across the system and DOI management lacks an accurate, objective assessment of whether trust assets are appropriately managed system-wide.

We recommend the creation of The Office of Trust Internal Review within ITAC with the tools to mitigate the challenges identified in the Grant Thornton Phase 4 report (Appendix B). The Office of Trust Internal Review within ITAC will include two separate sub-offices, the Trust Internal Controls Division and the Trust Programmatic Review Division. These divisions will be responsible for ensuring system-wide compliance with applicable laws, regulations, and treaties, as well as providing objective monitoring and compliance with the fulfillment of DOI trust responsibilities.

Most importantly, the new structure will ensure compliance with Federal Managers Financial Integrity Act (FMFIA) and OMB Circular A-123, Management's Responsibility for Internal Controls requirements.

C. RECOMMENDATION NO. 6: PROCEDURAL CHANGES

This section contains a list of procedural recommendations that aim to 1) improve existing TAS operations under the current bureau/office-level ownership structure; and 2) support the future implementation of the proposed ITAC governance structure under the recommended trust service taxonomy. In contrast to the structural and managerial recommendations, these procedural fixes are intended to impact trust service delivery in the shorter term. These recommendations were developed by researching best practices from the public and private sector, international organizations with indigenous affairs missions, and other federal trust-related service providers that address the issues noted during our Baseline and Assessment phases. Each recommendation is structured as a specific action that DOI can take and contains an example best practice to substantiate how the recommendation will improve service delivery.

1. TAS-WIDE RECOMMENDATIONS

- Maximize the sharing of recommendations between BIA and Tribal Realty employees to identify possibilities for improvement of outreach, coordination and customer service activities. Tribal Realty employees can provide a wealth of operational and cultural knowledge to federal employees when performing their duties. This joint team can provide meaningful improvements for how to address the administrative burdens placed on individual beneficiaries, such as the need to provide multiple agencies (including the tribal office and OHA) with copies of marriage and divorce decrees for probate documentation. This team can provide meaningful ways to centralize records management processes related to probate; modernize processes including data collection and sharing between BIA and Tribal Realty Offices; and encourage the use of MOUs between BIA and Tribal Realty Offices to explicitly define roles and responsibilities.

- At the regional-level, separate and further distinguish the role of the BIA Superintendents and agency staff with that of the Fiduciary Trust Officers (FTOs) to reduce beneficiary confusion about their roles and responsibilities. This can be accomplished by increasing the marketing of the FTO's offered services (via messages on account statements, website messages, etc.).

2. FUNDS MANAGEMENT RECOMMENDATIONS

- Establish a resource sharing agreement or MOU with the IRS, SSA, HUD and/or VA to help expand the search capabilities for whereabouts unknown. The IRS, for instance, has a Locator Services program⁴ that OST could leverage to locate beneficiaries and heirs. In addition, standardize the efforts across all regions to use tribal enrollment offices to find whereabouts unknown (WAU).
- Establish an electronic, mobile database of WAU names for use at conferences and public meetings, versus the use of physical binders. This would aid in the effectiveness and efficiency of WAU searches. In addition, reference the current website used to find WAUs at these events (<http://www.doi.gov/ost/wau.index.cfm>).
- Enhance the current online WAU list (see website link above) by including last known address, contact information, and tribal affiliation, and a link that allows the beneficiary to contact OST if he/she finds his/her name on the WAU list and wishes to be contacted by OST. In addition, this page should be enhanced by supplementing the "Information Needed to Request OST Forms" section by adding information about what forms beneficiaries can request and for what purpose, and a link to those actual forms.
- For WAU cases, establish an investigation time period, after which the following options may commence for managing these accounts. The Department of Veterans Affairs, as an example, pays benefits to an heir of a missing beneficiary if his/her whereabouts remain unknown for a period of 90 days.⁵ In addition, an

⁴ Yarborough, Gerald. "How Does the IRS Find People?." *Blog Spot*. BlogSpot, August 29, 2012. Accessed June 10, 2013. Electronic. <http://geraldyarboroughcpa.blogspot.com/2012/08/how-does-irs-find-people.html>

⁵ Department of Veterans Affairs, M21-1MR, Part III, Subpart vi, Chapter 8, Subchapter 3: *Payments to Dependents Upon the Disappearance of a Veteran*

option for managing small accounts⁶ may include pooling the amounts in an interest bearing account, thereby eliminating the maintenance of multiple small accounts, e.g., there are approximately 18,000 WAU accounts with less than \$1. If the WAU is subsequently found, disburse the principal with the corresponding interest to the beneficiary.

- Allow holders of adult unrestricted IIM accounts to personally perform transfers of funds between their IIM account and an outside account of his/her designation. Currently, the process requires beneficiaries to notify OST where and when to make the transfer, on their behalf, via OST Form 01-004. Once online account access is granted to individual beneficiaries (see Information Technology recommendations below), functionality of the online application (StrataWeb) into TFAS should be incorporated so individuals can personally perform account transfers online, similar to a funds transfer request completed online through a commercial bank. Adequate promotion of this functionality helps achieve one of the true intents of the Reform Act, providing beneficiaries with adequate resources and tools to manage their own trust funds.
- Establish policies and processes necessary to ensure all funds processed for Indian trust land are reported through TFAS. For instance, the seven largest oil and gas revenue-generating tribes rely on BIA, BLM and ONRR to lease, bill and ensure compliance for their oil and gas revenues. These funds are deposited directly into the tribes' bank accounts (Direct-Pay), rather than trust funds held by OST and accounted in TFAS. Processes and policies should ensure that funds that benefit these Direct-Pay tribes and the Osage tribe (which has its own CFR sections, and BIA manages a separate IT system to track Osage oil and gas funds) flow through TFAS. This will ensure that OST has complete visibility into the total liability facing the government regarding Indian trust assets and can be accomplished by posting a flow through journal entry into TFAS as BIA confirms receipt of funds by the tribe.

⁶ OST has established a minimum threshold of \$15 (\$5 minimum for oil and gas royalty payments) for distributing IIM account funds to beneficiaries. This same threshold should define the "small" WAU accounts.

3. INFORMATION TECHNOLOGY RECOMMENDATIONS

- Automate manual work processes such as work ticket processing and approval. Current efforts to automate accounting/general ledger work ticket processing include the use of scanners at some agencies to submit work tickets to OST (Albuquerque office), rather than fax machines; this has reduced the workload of OST field operations personnel such that they do not have to re-key the accounting information into TFAS. Further efforts to automate this process may include an update to TFAS that allows agency personnel to input work ticket information directly into the system.
- Perform a cost-benefit analysis on the use of electronic oil/gas well monitoring. Electronic monitors on oil and natural gas wells can facilitate real-time data on production, and lead to more efficient and timely reporting of information. Data from these monitors should be accessible by landowners/lessors online. An example solution/provider of electronic well monitoring systems is Baker Hughes.⁷
- Promote and expand the use of automated payment options for beneficiaries, including direct deposit and pre-paid debit cards for those IIM account holders that do not live close to a commercial bank (versus the use of paper checks for accounts that reach a minimum threshold of \$15). This will align ITAC business processes with other agencies such as the Social Security Administration, who no longer mails paper checks to its beneficiaries.⁸
- Collaborate with DOI's current task force, which is reviewing the possibility to combine revenue system needs across DOI bureaus/offices into a single or integrated system. The task force is expected to develop a roadmap to implementation in September 2013. TAS should collaborate with this task force relative to trust management and administration needs and evaluate options to enhance existing revenue systems that manage Indian oil and gas revenues, which include People Soft (ONRR), TAAMS (BIA), NIOGEMS (BIA Office of Indian

⁷ Baker Hughes Incorporated. *Well Monitoring Services*. Baker Hughes Incorporated. 2013. Accessed August 1, 2013.

<http://www.bakerhughes.com/products-and-services/production/intelligent-production-systems/well-monitoring-services>

⁸ Effective May 1, 2011, applicants filing for Social Security and Supplemental Security Income (SSI) benefit payments must choose either direct deposit or the Direct Express® debit card. Social Security Administration. "Frequently Asked Questions." Official Social Security Website. <http://www.ssa.gov/deposit/DDFAQ898.htm#a0=1>

Energy and Economic Development (IEED)), Osage Suite (BIA), TFAS (OST) and AFMSS/WIS (BLM). These existing systems function in largely independent environments, with many overlapping data and document needs between agencies. Resources required to support current information systems are critical to the management of the Indian trusts' oil and gas resources, but some of these existing systems are inefficient, duplicative and are prone to data inconsistencies (e.g., multiple lease number systems) among the agencies requirements to share, store, manage and retain document data and legal documents. Additionally, each agency's system is in a different stage of its life cycle; with development, maintenance and upkeep of the systems the independent responsibility of each agency. Creating a comprehensive, integrated system would require agencies to perform additional system cost-benefit and functional/program/customer needs assessments, as well as obtaining funding and establishing interagency agreements/MOUs. It is acknowledged and understood among the agencies that each data element has a primary "owner" (i.e., the originator of the data element, such as a lease number and corresponding legal property description), and that efficiency is defined by the original "data owner" being responsible for the validity of this data element in all agencies' systems. This approach would require planning to ensure that the data needs of each agency are captured, clear lines of responsibility are established to ensure proper system and data maintenance, and limitations placed on what data agencies can update or view. For example, under this approach the initiator of a document should be the one responsible to input key information onto the system, image the original source document onto the system, and audit the data and document. Once on the system all agencies would be able to view the source data and documents for their functional needs, but would no longer have to input or interface that information onto their current system or request a copy of the document.

- Implement an integrated system that can track backlogs of Communitization Agreements (CA) and Applications for Permit to Drill (APD). With the improved technology, the oil and gas industry is booming and leasing on Indian trust land has accelerated at an alarming rate. The agencies have lacked adequate

resources to meet the expanded leasing demand. A tracking system similar to what agencies use to track probates and appraisals (e.g. ProTrac) may help identify how to better monitor and track these backlogs. Additionally, this tracking system should also identify and track moneys held in escrow by Payors who are pending final approval. In the current TAS environment, backlog workarounds in North Dakota consist of an agreed-upon informal pre-CA process where an unsigned CA receives a cursory review by BLM then production is started and payments are processed to beneficiaries. This pre-CA process needs to be further explored and formal policies and procedures need to be established to help reduce backlogs.

REGULATORY/LEGISLATIVE/POLICY CONSIDERATIONS

- In the assessment of a comprehensive, integrated oil and gas system, special consideration must be given to those tribes who have additional specific MOUs or CFR sections relative to them. For example, BIA currently provides all oil and gas services that are typically performed by ONRR and BLM relative to the Osage Tribe's oil and gas activities, via an in-house system (Osage Suite). The Osage Suite may not fully meet the needs of the agency to properly execute their fiduciary trust duties and additional consideration must be given as to how best upgrade, replace or integrate this system.

4. CUSTOMER SERVICE RECOMMENDATIONS

- Conduct more training sessions to individuals about how to read statements, and provide written guidance on how to read statements with the mailed statement. This training needs to be presented in a consistent, reliable format, and available in multiple languages (e.g., English, Navajo). Although an explanation of the IIM and trust asset statement is provided on OST's website⁹, the guidance is not sufficiently explanatory. Teachers Insurance and Annuity Association–College Retirement Equities Fund Financial Services provides a more robust example of

⁹ Office of the Special Trustee for American Indians. "Explaining Your Trust Account Statement." U.S. Department of the Interior. Electronic. http://www.doi.gov/ost/individual_beneficiaries/statement.cfm

how the user can be guided through their statement.¹⁰ During the training sessions, a similar document can support a guided walkthrough of a beneficiaries' account statement.

- Provide an explanation of ownership interest/type (as it is currently codified in the account number) in a free-form description field on the statement itself, rather than having beneficiaries translate their account number into their ownership type. As presented on OST's website, lengthy explanations of the IIM account number may not be necessary.
- Establish a formal survey mechanism to generate feedback from tribal and individual beneficiaries concerning the quality and level of service they receive. For example, a permanent link and/or phone number on the quarterly account statement or website to direct beneficiaries to a survey, allowing them to provide specific feedback concerning the services they receive. Conduct survey and outreach efforts as a part of an overall customer service strategy that encourages proactive, rather than reactive, government outreach efforts. It should be noted that the majority of responses to the beneficiary outreach efforts during this study (e.g., a Trust Commission email address, formal online survey, and quarterly account statement notifications requesting feedback) were not directed at the improvement of TAS, but included specific questions about an account, probate case and/or land allotment. This indicates that beneficiaries are currently unaware of existing customer service channels or are willing to use any available route to seek resolution to their specific inquiry.
- Provide a more user-friendly transaction activity section of the IIM account statement.
- To reduce the administrative burden of administering checks for small amounts (for those accounts without direct deposit or debit card), reduce or eliminate the use of mailed checks to unrestricted IIM account holders unless specifically requested by the individual to receive mailed checks. This would require that the

¹⁰ TIAA-CREF. "How to read your Brokerage Account Statement." TIAA-CREF Brokerage Services. 2011. Electronic. <https://www.tiaa-cref.org/public/pdf/brokerage/52368.pdf>

funds are kept in the IIM account indefinitely; much like how a common deposit account at a commercial bank operates.

- To reduce the use of mailed paper IIM account statements, continue piloting the StrataWeb application which allows individual beneficiaries to view their financial activity (current balance and transaction history) in TFAS. Continuation and expansion of this program should include the invitation of additional beneficiaries to participate in the pilot (currently 400 beneficiaries were invited to participate, of which 100 responded positively), and ultimately expanding functionality so users can view asset information from TAAMS. In reviewing the results of the initial pilot, the government needs to address why only 25% of the beneficiaries responded positively and integrate that feedback into improving the next iteration of StrataWeb. For those that own smartphones but do not have home internet access, establish a mobile platform/application that allows beneficiaries to view account balances via their phone or mobile device. Electronic statements would reduce the burden on the current OST staff and reduce paper costs. OST currently uses a full pallet of paper, 75 cases to one pallet, for one statement cycle. Allowing beneficiaries to opt-in for electronic statements helps reduce special printing, envelope, labeling, and postal costs. Since IIM account updates are run on a nightly basis through TFAS, the legal requirement to provide daily account balances¹¹ can still be met with online account access.
- Establish a single, centralized customer service call center that employs skillsets currently in place at all current TAS agencies (BLM, ONRR, BIA, OST). Currently, beneficiaries have the option of calling the TBCC, FIMO (if they are in the Navajo region and are asking about mineral estates and rights) and/or their local agency superintendents. Beneficiaries have expressed confusion as to who to contact for resolution to their specific issue. In the establishment of this centralized call center, employ the same business processes and skills currently in place at the TBCC, which has a 95% first line resolution rate.

¹¹ American Indian Trust Fund Management Reform Act, PL 103-412 Section 102 (b). Electronic. http://www.justice.gov/jmd/ls/legislative_histories/pl103-412/act-pl103-412.pdf

- Supplement the centralized call center with a single CRM system, such as the existing TBCC Tracker, that provides integrated case management. Features should include automated case assignment and routing, status updating, and performance tracking. Additionally, create a central menu of trust services (e.g., online, telephonic) that provides beneficiaries a roadmap to obtaining requested services and/or issue resolution (e.g., available services, points of contact, associated data requirements (forms)). Provide this latter capability as an online feature on ITAC's website. All offices, bureaus, and current TAS regions must have access to the CRM system, and the system must be well integrated with TFAS so that call center representatives no longer have to separately access TFAS to answer questions about an individual's account.

In the near-term, expand the availability of the TBCC Tracker so existing BIA Trust Services personnel have access to its database. This will streamline customer service processes by allowing BIA personnel to access and update service records directly. Currently, select BIA Social Services employees have access to the TBCC Tracker.

- Ensure that beneficiaries are better aware of the resources available to them, such as the contact center and the Fiduciary Trust Officers, through announcements and advertisements that better stand out. Examples of these announcements can include Fiduciary Trust Officer contact information on the quarterly account statement or online account, providing contact information at the BIA and Tribal offices (for walk-ins), and including a "who do I contact" question on an FAQ page/link (also to be included on the quarterly statement and online account).

Currently, the only mention of the TBCC resource is at:

http://www.doi.gov/ost/individual_beneficiaries/callcenter.cfm. The mention of the TBCC phone number should be more prominent on OST's current website, and the link to the Fiduciary Trust Officer contacts should be more apparent. An

example is provided by State Farm, which is depicted below in comparison to the OST's current website.

SECTION V. SPECIAL MATTERS AND RECOMMENDATIONS

A. PROBATE

Like the other areas of trust management – probate has seen many changes and attempts at reform over the years. Yet it is often characterized as a system with unnecessary delays that is inefficient largely due to being significantly behind in staffing and technology that can provide access of information to all interested parties.

The primary recommendation of the Commission, in lieu of conducting probates, is to promote the use of alternative strategies such as use of transfer on death or gift deeds, living trusts, affidavits, or wills. Although the BIA Superintendents, under the current administrative structure would still need to review and approve the cases, alternative strategies would help reduce the probate backlog and workload of the BIA Division of Probate and OHA administrative law judges.

A gift deed would not require the beneficiary to provide, or the BIA to search for an original death certificate, thereby expediting the asset transfer process that would otherwise occurred through probate. These alternatives must be incorporated into the broader customer education and relationship management programs.

Other considerations should include:

1. Compare the requirements imposed on OHA as defined in 25 CFR 15.104 and 15.203 to other entities with the amount and type of paperwork required in a probate package. 25 CFR lists the documentation necessary to prepare a probate case file, and this level of documentation is a major cause of delay in Indian

probates. This documentation includes a death certificate, a will or evidence of the existence of a will, social security numbers of decedents, tribal enrollment numbers of the decedent and heirs, current names and addresses of decedents and heirs, sworn statements on matters such as paternity/maternity and interest renouncements, claims and addresses of any known creditors of the decedent, marriage and divorce documents, adoption and guardianship records, names changes, and child/spousal support orders.

Since the current probate process begins at the agency level with the probate clerk, steps must be taken to make the probate clerk's job more efficient. Elimination or reduction of unnecessary and additional duties will speed up the completion of the probate file.

2. A return to or revitalization of the Attorney Decision-Makers (ADM) program to adjudicate Indian probates within the Bureau of Indian Affairs (BIA) system. The agency authority is present in the Agency Superintendents to determine heirship not previously adjudicated in another forum. See RS 2478, as amended, 43 USC §1201, 43 CFR §4.271, Solicitors Opinion of November 30, 1999 – Establishment of Attorney Decision-makers Position in the Bureau of Indian Affairs). Re-establishing this program, or an improved construct, would streamline process and address backlog.

In reconsidering or re-implementing the 2001 ADM rules with regard to probate hearings, maximum flexibility to allow informal hearings should be pursued. The ADM could quickly resolve cases where there is no contest to the probate hearing, or where the case involves matters that could be addressed outside the formal process. Informality should translate to the physical forum for holding hearing such as a tribal realty office, conference room, community center, tribal courtroom or a forum most convenient for the parties. Only where there are material disagreements, objections or contests to a will might a file be referred to OHA.

3. The Commission only calls upon Congress to consider probate reform that is consistent with tribal self-governance. Many tribes have fully functioning courts of

general jurisdiction that could absorb much of the probate caseload within their jurisdiction, thereby, leaving only the carry-over for OHA or the ADM process if re-implemented.

In a very simple and straightforward fashion, a federal statute could authorize tribes to adjudicate probates pursuant to 25 USC and rules and regulations set forth in 25 CFR. Many tribal courts hear probate matters as it relates to non-trust property, timely resolving family matters and personal property in a tribal court probate filing, only to have the case bifurcated and the real property portion of the case languish for years for a final BIA/OHA probate conclusion.

Although a piece of termination era legislation with an on-going negative outcome for tribal self-governance, there is precedent for Congress to shift probate jurisdiction to other courts or forums rather than having all probate matters handled federally. In the 1947 Act (61 Stat. 731, Aug. 4, 1947) that impacts a few tribes in Oklahoma, Congress provide for state court jurisdiction over Indian probate matters. In the state court process of Indian probate today, there are expedited probate procedures such as the use of affidavits in lieu of probate hearings for small estates. Although an ultimate failure of the United States' trust responsibility to subject individual Indian and tribes to state court jurisdiction that we recommend be reconsidered and reversed, the practical effect of the 1947 Act is that probate backlogs for the affected tribes do not appear to rival the problems that plague the Indian probate system at the federal level.

It would follow, that if probates were handled in a more localized fashion, either by properly authorizing tribal court jurisdiction, or by taking advantage of an ADM program with the direct assistant of tribal realty offices, probate matters may be more easily streamlined.

B. APPRAISALS

Over the course of the two-year inquiry, the Commission heard dissatisfaction with the appraisal process, which touches probate, real estate

transactions and leasing and the land-into-trust process. There is consensus that a more stream-lined process for appraisals be implemented, one that is not overly cumbersome but one that provides more accurate and consistent values for trust property, including permanent improvements to trust land.

The primary recommendation of the Commission with respect to appraisal services is to expand the use of third-party vender solutions to effectuate a common, standard service (e.g. appraisals and other readily available capabilities within commercial markets) both by tribal and individual beneficiaries and DOI. This recommendation includes the development of a “pre-certified” or “pre-approved” listing of vendors with corresponding price schedule for use by both DOI and beneficiaries. This could be implemented in short form at the agency level and drastically reduce time constraints in appraisals.

The Commission also recommends revising the current definitions of appraisal backlogs within OST so that the entire appraisal process cycle time is in line with commercial standards. Commercial mortgage providers typically received completed appraisals within one to three weeks of request compared to the current standard of 60 days between the appraisal request receipt and submission to the OAS Supervisory Appraiser for review. Ultimately, this measure should be removed from the process as the use of third party appraisals, without the need for subsequent review by regional supervisory appraisers should take effect.

Key to efficient delivery of trust services is the production of timely appraisals and the application of consistent appraisal standards. Although real estate management requires improvements in timeliness for surveys and more efficient and accessible land records management, appraisals warrant special treatment in our discussion, particularly because it highlights the need for inter-agency cooperation and consistency.

At minimum, the Commission also recommends:

➤ **A review of USDA appraisal methodology and policies**

Due to increasing frustration regarding the difference of appraisal methodology between Department of the Interior and USDA, the Commission recommends a full review of USDA appraisal methodology and policy as it relates to Indian country. Not only are there difference in DOI and USDA methods, but USDA appraisals differ internally depending upon the program at issue, such as Guaranteed Lending, Direct Lending, Foreclosure, Subsidy Recapture and etc. It is critical that a thorough comparison between USDA and DOI be performed.

➤ **Improvements to the Process of Procuring and Utilizing Mass Appraisals**

On October 27, 2004, the American Indian Probate Reform Act of 2004 (Public Law 108-374) addressed the problems caused by increasingly complex ownership of allotments. Several provisions of the Act enhanced the ability to prevent further fractionation and promote land consolidation, at least theory. The practical effects are not being seen at a timely manner because the Act imposed an enormous and perhaps unmanageable requirement to appraise property interests for implementation.

For timberland, that appraisal currently involves securing a timber cruise and establishing a fair market value for each property involved in a probate proceeding. This has not only proven to be extremely costly but is also so time-consuming that delays in completion of probates and impeding expeditious transfer of title are inevitable.

A mass appraisal system should be implemented. This can be done in a manner that both protects the interests of the property owners by providing defensible estimates of fair market value and enables the United States to fulfill its trust responsibilities. This type of reform would greatly enhance the practical capacity of land consolidation both among co-owners and at the tribal level by expediting the completion of real estate transactions. Such reform would also substantially reducing administrative costs of the federal government.

➤ **Expand Previously Approved Waiver Authority to All Tribes and All BIA Regions.**

In the past, the Secretary has waived appraisal and valuation requirements on several occasions. Both BIA regional office and specific Indian tribes have used this general regulatory waiver authority in 25 C.F.R. § 1.2. For example, in 2007, the Secretary waived the regulatory requirement for appraisals for rights-of-way for the Navajo Nation and Navajo landowners in certain instances:

The appraisal requirement in 25 C.F.R. § 169.12 is deemed waived when the landowner upon which the right-of-way will be located waives compensatory consideration and the right to be provided with information as to the fair market value of the right-of-way.

➤ **Expand the Directive Implementing Section 2214 of ILCA**

Unlike leases, rights-of-ways, or other conveyances of Indian trust property, a federal statute, ILCA, requires a determination of fair market value prior to the sale, exchange and other transfer of title of Indian land. Section 2214 of the ILCA grants the Secretary authority to develop a system for establishing fair market value for Indian land and improvements. As originally enacted in 2000, this provision applied only to the Indian Land Consolidation program under section 2212 of the Act. With the passage of AIPRA; however, Congress eliminated this restriction and made the provision applicable to the ILCA as a whole.

With this authority, there is significant flexibility for developing appraisal systems that are more streamlined than the current model.

➤ **Increase Authority to Waive Appraisal or Valuation Requirements for Transactions Involving Competitive Bids**

One tribal land official, in a tribal realty office that generates approximately 60 appraisal requests annually, noted that where a lease is advertised for competitive bid, the winning bid, for practical purposes, establishes the market

value. The preparation of an appraisal, which in the official's experience typically occurred after the high bidder was selected, was simply superfluous and caused undue delay. Several tribes and individual owners reported that such delays have had a direct negative impact on economic development within their community, where willing purchasers or lessees eventually walk away from a lease or other agreement because the appraisal process was in excess of two years despite that fact that there were willing buyers/sellers or lessors/lessees arriving at a reasonable price relevant to the market.

It should certainly be the role of the United States, as trustee, to conduct accurate appraisals to ensure Indian assets are efficiently used and competitive on the relevant market. Generally, the Government appraises Indian rangeland and sets grazing rates accordingly. As part of its duties to appraise rangeland and set grazing rates, the Government should ensure accurate, fair and competitive grazing rates by conducting appraisals that assess the actual economic inputs and forage quality associated with a particular permit or groups of permits in specific areas with similar characteristics.

This can be accomplished by ensuring that appraisals contain site-specific information about infrastructure, that the costs for such infrastructure are properly allocated between permittee and landowner, that appraisals account for differences in forage quality and quantity, and that a uniform valuation methodology be applied.

C. ALASKA

BACKGROUND

The Commission traveled to Anchorage in August of 2013 for a one-day hearing and a trip to visit the Native Village of Eklutna, as well as the Village Corporation formed for the Eklutna pursuant to the Alaska Native Claims Settlement Act (ANCSA). ANCSA was passed to settle Native claims to aboriginal title that had persisted since 1867, and which led to intense controversy after Statehood in 1959. The Statehood Act, Act of July 7, 1958, Pub L. No. 85-508, § 4, 72 Stat. 339, provided

the new state with the right to select approximately 103 million acres of land that was “vacant, unappropriated and unreserved at the time of their selection.” *Id.* § 6(b). As the state commenced its selections, Alaska Native tribes filed protests with the Bureau of Land Management (BLM) within DOI. The protests asserted that selected land was not “vacant” because it was subject to Native aboriginal title. In 1966, Secretary of the Interior Stewart Udall stopped processing state land selections and conveyances to the state and a formal “land freeze” was put in place in 1969. *See Alaska v. Udall*, 420 F.2d 938 (9th Cir. 1969). The discovery of oil at Prudhoe Bay led to more intense pressure to extinguish aboriginal title in Alaska in order that a trans-Alaska pipeline might be built to transport the anticipated oil from Alaska’s North Slope to the port at Valdez. Together, pressure from oil interests, the state and Alaska Native tribes and organizations resulted in the Settlement.

In exchange for the extinguishment of aboriginal title, Alaska Natives alive on December 18, 1971, were permitted to enroll and be issued 100 shares of stock in one of thirteen regional corporations, according to their place of residence or origin. The State was divided in twelve regions largely based on existing Native associations, “with each region composed as far as practicable of Natives having a common heritage and sharing common interests.” 43 U.S.C. § 1606. A thirteenth region was established for Alaska Natives who were not residing in Alaska at the time of the Settlement. The corporations were entitled to approximately 40 million acres of land and nearly a billion dollars from an “Alaska Native Fund” to be funded in nearly equal shares from congressional appropriations and royalties from mineral leasing activity in Alaska. 43 U.S.C. §§ 1605 & 1608. Another section, 43 U.S.C. § 1610(b)(1), identified over 200 Native Villages with populations of twenty-five or more residents. These Village corporations hold title to over 22 million acres of the surface estate, while the Regional corporations hold the subsurface. Regional Corporations received surface and subsurface title to an additional 16 million acres according to a formula designed to provide regions with larger land claims with more land. David Case & David Voluck, *Alaska Natives and American Laws*, at 171-72 (3d ed. 2012). Since the tribes on large former reservations exercised their

option to take their entire reservation in fee simple, Alaska Natives ended up with approximately 45,000,000 acres of land. In addition, individual Alaska Natives received approximately one million acres pursuant to the Alaska Native Allotment Act, Act of May 17, 1906, 34 Stat. 197. *Id.*

TESTIMONY AND KEY ISSUES

While some aspects of ANCSA have been beneficial as we learned in our meeting with the Eklutna Native Corporation, the Commission also learned of significant dissatisfaction from the Eklutna tribal government, and other witnesses. The central issues had to do with 1) hunting, fishing and gathering rights, and 2) the scope of tribal sovereignty. The issues in Alaska are complex due in part to the manner in which Native aboriginal claims were settled in 1971, and ANCSA left undisturbed the status of Alaska Native tribes. Set out below is testimony reflecting carefully thought our positions from the Alaska Native community. The hunting, fishing and gathering issues are best dealt with through congressional action, and the Commission recommends that the Executive Branch fulfill its trust responsibilities by supporting federal legislation restoring aboriginal rights. On the other hand, a recent court decision has clarified that the Secretary of the Interior has authority to take land in trust for Native tribes in Alaska, which would establish such land as Indian country subject to tribal authority under 18 U.S.C. § 1151.

TESTIMONY

Julie Kitka, President, Alaska Federation of Natives (August, 2013).

Today, it is estimated that well over one million acres of fee land in Alaska is tribally owned. Some of these lands were transferred to Alaska's tribes by village corporations in the years following the 1971 Settlement Act, some were acquired through the Alaska Native Townsite Act, and others by gift or purchase. These fee lands in tribal or Native ownership lack even the basic protections afforded undeveloped ANCSA lands held by ANCSA village or regional corporations under the provisions of the automatic land bank established by ANCSA. These lands are thus subject to loss. Alaska's tribes believe that the most secure means of ensuring these lands stay in Alaska

Native ownership is through the federal land into trust process. It is for that reason, that AFN has historically supported allowing Alaska's tribes and individual Native land owners to petition the Secretary of the Interior to acquire and hold their lands in trust. * * *

Alaska Native Hunting and Fishing Rights (Subsistence): Protection of Native hunting, fishing, and gathering rights is a part of federal law throughout the United States. Nowhere is it more important than in Alaska. What we call subsistence is not a relic from the past. It continues to be the foundation of Alaska Native society and culture. A vast majority of Alaska's 120,000 Native people (nearly 20% of the population of Alaska) still participate in hunting, fishing and gathering for food during the year. Subsistence resources remain central to the nutrition, economies and traditional of Alaska Native villages. The ability of Alaska Natives to continue to pursue their subsistence activities is closely linked to their food security. The average harvest of subsistence resources in pounds per person in rural Alaska is estimated at 544 pounds, equivalent to 50% of the average daily caloric requirement. The economic significance of subsistence in rural Alaska is best appreciated in light of one study that suggested that replacing subsistence foods would range between \$98 and \$164 million, or about \$2,000-\$3,000 per person. Alaska Natives remain dependent on subsistence hunting and fishing for their economic and cultural survival.

Unfortunately the legal framework in Alaska significantly hampers the ability of Alaska Natives to access their traditional foods. Native leaders sought protection of their hunting and fishing rights in the settlement of their aboriginal land claims, but instead the Alaska Native Claims Settlement Act (ANCSA) extinguished those rights. Instead of explicit protection of Native hunting and fishing rights, Congress expected the State of Alaska and the Secretary of the Interior "to take any action necessary to protect the subsistence needs of Alaska Natives."

Neither the Secretary nor the State fulfilled that expectation. As a result, Congress enacted Title VIII of the Alaska National Interest Land Conservation Act (ANILCA) in 1980. ANILCA's scheme envisioned state implementation of the federal priority on all lands and waters in Alaska through a state law implementing the priority. Again, Native leaders sought explicit protection for "Native" hunting and fishing rights, but the State objected. Ultimately, the law was crafted to provide a subsistence priority for "rural residents" with the expectation that the State would enact laws that conformed to federal requirements. That system operated for less than a decade before the Alaska Supreme Court ruled that the State Constitution precluded State participation in the program. Consequently, the State lost regulatory authority over subsistence uses on federal lands.

Today, after more than 20 years of dual federal and state management, it has become abundantly clear that the State will not do what is required to regain management authority over subsistence uses on federal lands and waters. The State subsistence law has been effectively gutted – large areas of the state have been classified as “nonsubsistence use areas,” where subsistence users receive no priority, and “all Alaskans” have been declared eligible for the subsistence priority on all remaining state lands. Rather than simply defending and repairing a broken system that no longer serves its intended purpose, it is time to consider options that reach back to Congress’s original expectation that Alaska Native hunting, fishing and gathering rights be protected. Congress should introduce and pass legislation that will restore and protect Native hunting and fishing rights in Alaska, and provide a co-equal role for Alaska Natives in the management of fish, wildlife and other renewable resources that Alaska Natives rely upon for their economic and cultural existence.

Congress has the authority to enact legislation that ensures a “Native” or “tribal” subsistence preference on all lands and waters in Alaska, and to provide a co-management role for Alaska Natives. It has done so in the enactment of numerous other federal laws that provide explicit protection for Native hunting and fishing rights in Alaska.

Heather Kendall, Senior Staff Attorney, Native American Rights Fund (August, 2013)

Prior to enactment of ANCSA, Congress adopted statutes that imposed trust responsibilities on the Secretary over lands in Alaska for Alaska Natives, including statutory obligations over Alaska Native allotments, fiduciary responsibilities over restricted Native town sites, general trust authority over Indian Reorganization Act (IRA) tribal reserves, and specific responsibilities related to leases on executive order reserves.

In 1934, as part of the Indian Reorganization Act of 1934, Congress in section 5 authorized the Secretary of the Interior to take real property into trust on behalf of Tribes and individual Indians; and in section 7 empowered the Secretary to declare newly acquired lands Indian reservations or to add them to existing reservations.

In 1936, the IRA was amended to facilitate application to the Territory of Alaska. Section 1 of the 1936 amendments extended sections 1, 5, 7, 8, 15, and 19 of the IRA to Alaska. Section 2 of the 1936 amendments gave the Secretary authority to designate certain lands in Alaska as reservations but placed special conditions on Secretarial creation of any new reservations in Alaska. A total of six reservations were created in Alaska pursuant to the Act. Among those was the 1.8 million acre reserve set aside for the Neet'sai Gwichin of Arctic Village and Venetie.

In 1971, Congress enacted the Alaska Native Claims Settlement Act revoking all existing reservations in Alaska (except for the Metlakatla Reserve). Importantly, however, ANCSA did not repeal any portion of the IRA, nor any portion of the 1936 amendments. * * *

The briefing in the Akiachak case shows that the Department of the Interior is more concerned about avoiding the task of taking on difficult issues and instead falls back on its institutional bureaucratic lethargy. This avoidance, or let the courts figure it out attitude, is antithetical to the trust relationship. Thus, the Commission should recommend that the Department of the Interior engage in a curative rule-making that develops a process through notice and comment for taking lands into trust in Alaska.

Second, this Commission should make clear that the federal government's trust responsibility extends to Tribes *even when trust assets are not at issue*. The trust responsibility should extend to government to government consultation on issues like climate change impacts. The number of tribal communities in Alaska that are facing relocation due to erosion and climate change are staggering. They need the help of the federal government in facing this challenge.

Mike Williams, Akiak Native Community (August, 2013)

First of all, I applaud the Judge's decision on the Akiachak Native Community vs. Salazar [case] which is long overdue in Alaska. It is not right to deny putting lands into trust in Alaska because of the passage of the Alaska Native Claims Settlement Act of 1971. Prohibiting putting lands into trust has caused irreparable harm to all of our Tribes, being with no land and no Indian Country to have jurisdiction to protect our lands, women, children and waters. The lands that are put are in fee simple title and lands in Alaska are vulnerable for loss in the future. That law extinguished the aboriginal title we held on to our ancestral lands and gave them to the State Chartered for profit corporations of its own making. It left our Tribes and Children landless and in utter poverty and poured out inheritance into corporations it had made. It has divided our People and we are witnesses to that, but we do not blame our relatives who manage these corporations, they are implementing what was planned for them, by the framers of ANCSA.

Getting back to the lands into trust, in Haines, Alaska, the Chilkoot Native Association has applied for 72 acres of land that they were denied the petition stating that ANCSA prohibited putting lands into trust for Alaskan Tribes.

Our President of the United States, Barack Obama made a statement at his summit with the Tribal Nations in November, 2010, which I attended, his desire to allow "all Federally Recognized Tribes to put lands into Trust

which will protect it for future generations with the establishment of “Indian Country” in our traditional lands is necessary. We have been unable to put them until now. I would recommend that the Department of the Interior quickly implement in reviewing and approving the applications that the Federally Recognized Tribes had made, to protect our land holdings for future generations of our Tribes with no impacts on pending applications for the Federally Recognized Tribes.

I have three recommendations for land acquisitions for land transfer into trust:

- 1) Amend 25 Code of Federal Regulations part 151, land acquisitions, to include Alaska;
- 2) Provide Funding for boundary surveys for Tribes that acquire Lands into Trust;
- 3) Provide direct Consultations with Tribal Governments on issues related to Land Acquisitions of Trust Lands.

As the Trust Commission was writing this Report, the Indian Law and Order Commission produced its final report -- *A Roadmap For Making Native America Safer* (November 2013). In the Tribal Law and Order Act of 2010, Public Law 111-211 (TLOA), Congress established a Commission (with staff and funding) to investigate justice services in Indian country. The Commission explained the purpose of the federal law and the objectives of its Report.

TLOA has three basic purposes. First, the Act was intended to make Federal departments and agencies more accountable for serving Native people and lands. Second, TLOA was designed to provide greater freedom for Indian Tribes and nations to design and run their own justice systems. This includes Tribal court systems generally, along with those communities that are subject to full or partial State criminal jurisdiction under 83-280. Third, the Act sought to enhance cooperation among Tribal, Federal, and State officials in key areas such as law enforcement training, interoperability, and access to criminal justice information.

*** In addition to assessing the Act’s effectiveness, this Roadmap recommends long-term improvements to the structure of the justice system in Indian country. This includes changes to the basic division of responsibility among Federal, Tribal, and State officials and institutions. The theme here is to provide for greater local control and accountability while respecting the Federal constitutional rights of all U.S. citizens.

The Commission's Report devoted Chapter 2 to Alaska matters and recommended that DOI take land into trust to establish Indian country and thus tribal jurisdiction. These suggestions are consistent with what the Trust Commission learned on its visit to Alaska and we endorse both of them, and add a third related to hunting and fishing rights.

RECOMMENDATIONS FOR ALASKA

- 1) Congress should overturn the U.S. Supreme Court's decision in *Alaska v. Native Village of Venetie Tribal Government*, by amending ANCSA to provide that former reservation lands acquired in fee by Alaska Native villages and other lands transferred in fee to Native villages pursuant to ANCSA are Indian country.
- 2) Congress should amend the Alaska Native Claims Settlement Act to allow a transfer of lands from Regional and Village Corporations to Tribal governments; to allow transferred lands to be put into trust and included within the definition of Indian country in the Federal criminal code; to allow Alaska Native Tribes to put tribally owned fee simple land similarly into trust; and to channel more resources directly to Alaska Native Tribal governments for the provision of governmental services in those communities.
- 3) In addition, we believe that Congress should introduce and pass legislation that will restore and protect Native hunting and fishing rights in Alaska, and provide a co-equal role for Alaska Natives in the management of fish, wildlife and other renewable resources that Alaska Natives rely upon for their economic and cultural existence. The Secretary of the Interior and Administration should support this effort.

CONCLUSION

The Commission encourages the Department to carefully study this Report and engage in consultation with Indian tribes regarding the issues raised and the recommendations. There are two overarching matters that are critical to implementation of the recommendations made in this Report. First, any system is only as good as the people who carry out its functions, and we have met with many

great employees within the Department who are committed to fulfilling the federal government's trust obligations to Indian tribes and people. It is critical that the Department work to retain these employees and recruit a new generation of dedicated staff to carry out the Department's obligations. Second, great employees and great ideas are not enough. Many of the problems the Commission learned of were not the result of bad intentions or bad policies. Rather, they were the product of inadequate staffing, which in turn was caused by inadequate funding. The Commission believes that many of the trust functions are so critical that funding should be moved from the discretionary category to nondiscretionary. There is never an easy time to undertake such a task but the Commission believes that the Administration should consult with Indian country on a gradual shift in the direction of nondiscretionary allocation of funds for trust management obligations.

DRAFT

APPENDIX A: INVITED TESTIMONY AND WRITTEN PUBLIC COMMENTS SUBMITTED TO COMMISSION

The list below represents individuals, tribal leaders, tribal organizations, academicians, legal scholars, private sector experts, DOI staff, and other federal representatives who testified before the Commission. Where available written statements submitted to the Commission may be viewed on the Commission website at: <http://www.doi.gov/cobell/commission/index.cfm>.

	March 2012	Forum
	Secretary Ken Salazar, DOI	Public Meeting
	Deputy Secretary David J. Hayes, DOI	Public Meeting
	Solicitor Hilary Tompkins, DOI	Public Meeting
	Tim Murphy, DOI Solicitor's Office	Public Meeting
	Pam Haze, Deputy Assistant Secretary -Budget, Finance, Performance and Acquisition DOI	Public Meeting
	Michele Singer, Acting Principal Deputy Special Trustee	Public Meeting
	Mike Black, Director BIA	Public Meeting
	Bryan Rice, Deputy Bureau Director, Trust Services BIA	Public Meeting
	June 2012	
	Sam Deloria, American Indian Graduate Center, UNM	Public Meeting
	Lee Stephens, Bank of New York Mellon	Public Meeting
	Dan D'Ambrosio, Bank of New York Mellon	Public Meeting
	Hugh McGill, Northern Trust	Public Meeting
	Ron Suppah, Intertribal Monitoring Association	Public Meeting
	Melody McCoy, Native American Rights Fund	Public Meeting
	Ross Swimmer, Swimmer Group	Public Meeting
	September 2012	
	Jeanne Whiteing, Whiteing and Smith	Public Meeting
	Thomas Fredericks, Fredericks, Peebles & Morgan LLP	Public Meeting
	Helen Sanders, Indian Land Working Group	Public Meeting
	Mario Gonzalez	Public Meeting
	Janie Hipp, USDA	Public Meeting
	Three Affiliated Tribes	Site Visit
	Fort Berthold Agency Office	Site Visit
	February 2013	
	John Gordon and John Sessions, Co-Chair, Indian Forest Management Assessment Teams	Public Meeting
	Billy Frank Jr., Chairman, Northwest Indian Fisheries	Public Meeting
	Gary Morishima, Intertribal Timber Council	Admin Session
	Teresa Wall-McDonald, Acting Head Tribal Lands Department, Confederated Salish and Kootenai Tribes	Public Meeting
	Chairwoman Virginia Cross, Muckleshoot	Public Meeting
	Chairman John Berrey, Quapaw Tribe	Public Meeting
	Eric D. Eberhard, Seattle University School of Law	Public Meeting
	John Dossett, NCAI	Public Meeting
	Dr. Rudolph Ryser	Public Meeting
	Kevin Washburn, Assistant Sec. for Indian Affairs	Public Meeting
	Tommy Thompson, DOI	Public Meeting

Nisqually Tribe

Site Visit

April 2013

Brian Patterson United South and Eastern Tribes
Chief Oren Lyons, Onondoga and Seneca Nations of the Iroquois Confederacy
Chief Phyllis Anderson, Mississippi Choctaw Indians
Brenda Lintinger, Tunica-Biloxi Tribe of Louisiana
Reid Chambers
Pam Haze, DOI

Public Meeting
Public Meeting
Public Meeting
Public Meeting
Public Meeting
Admin Session

June 2013

Charlene Toledo, BIA
Donovan Vicente, OST
Jim D. James, OST
Earl Waits, OHA
Marvin Stepson Osage Nation Tribal Court
Jeff Fife, Muscogee (Creek) Nation
Ken Bellmard, Kaw Nation
Liz Brown, Adair County
Jodi Gillette, Senior Policy Advisor for Native American Affairs, White House
Jefferson Keel, President National Congress of American Indians
G. William Rice, University of Tulsa
Judith Roysters, University of Tulsa
Mike Black, BIA

Admin Session
Admin Session
Admin Session
Admin Session
Admin Session
Admin Session
Admin Session
Admin Session
Sovereignty Symposium
Sovereignty Symposium
Public Meeting
Public Meeting
Public Meeting

July 2013

William Mendoza, White House Initiative for American Indian and Alaska
Native Education

Admin Session

August 2013

Mike Williams, NCAI Alaska Region
Heather Kendall- Miller, NARF Alaska
Julie Kitka, Alaska Federation of Natives
Eklutna Village
Eklutna Corporation

Public Meeting
Public Meeting
Public Meeting
Site Visit
Site Visit

Individuals who made Public Comments at Commission Meetings and Webinars.

(Note: The individuals below spoke during the official public comment sessions at Trust Commission meetings and/or webinars. The public meeting format allowed for audience comment after each presentation to the Commission, however the individuals listed below are those who commented during the designated public comment sessions.)

Name, Affiliation (if provided)	March 1- 2, 2012	May 16, 2013 <i>(webinar)</i>	June 5-6, 2012	Aug. 13, 2012 <i>(webinar)</i>	Sept. 13- 14, 2012	Nov. 7, 2012 <i>(webinar)</i>	Feb. 12- 13, 2013	April 29, 2013	June 7, 2013	Aug. 19, 2013
Allene Couttier, Oglala Sioux Tribe	X				X					
Daniel Jordan, Hoopa Valley Tribe	X						X			
A. Gay Kingman, Great Plains Tribal Chairman's Association	X	X	X							
Alan Parker, Evergreen State College	X									
Helen Sanders, Indian Lands Working Group	X		X		X		X		X	
Eric Solis, representing Seneca-Cayuga Tribes of Oklahoma	X									
Cris Stainbrook, Indian Land Tenure Foundation	X				X		X			
Kitcki Carroll, United South and Eastern Tribes		X			X					
Mathew Kelly, Fredericks, Peebles & Morgan		X								

Name, Affiliation (if provided)	March 1- 2, 2012	May 16, 2013 <i>(webinar)</i>	June 5-6, 2012	Aug. 13, 2012 <i>(webinar)</i>	Sept. 13- 14, 2012	Nov. 7, 2012 <i>(webinar)</i>	Feb. 12- 13, 2013	April 29, 2013	June 7, 2013	Aug. 19, 2013
Patricia Marks, Fredericks, Peebles & Morgan		X		X		X				
Harry Antonio Jr., First Lt. Governor, Laguna Pueblo			X							
Shenan Atcity, Jicarilla Apache			X							
Dana Bobroff, Navajo Nation			X							
Janice Prairie-Chief Boswell, Governor, Cheyenne and Arapaho Tribes of Oklahoma			X							
Dan Rey-Bear, Nordhaus LLP			X			X	X	X	X	
Irene Cuch, Ute Tribe			X							
Richard Grellner, Attny, Cheyenne and Arapaho Tribes of Oklahoma			X							
Ryan Jackson, Hoopa Valley Tribe			X				X			
Jim Parris, CPA			X							
Jeremy Patterson			X							

Name, Affiliation (if provided)	March 1- 2, 2012	May 16, 2013 <i>(webinar)</i>	June 5-6, 2012	Aug. 13, 2012 <i>(webinar)</i>	Sept. 13- 14, 2012	Nov. 7, 2012 <i>(webinar)</i>	Feb. 12- 13, 2013	April 29, 2013	June 7, 2013	Aug. 19, 2013
Ty Vicente, Jicarilla Apache			X							
Joe Waters, White Mountain Apache Tribe			X							
Mary Zuni, Intertribal Monitoring Association			X							
John Dossett, NCAI				X		X				
Robert McKenna				X						
Rudolph Ryser, Center for World Indigenous Studies				X		X				
Donovan Archambault, Ft. Belknap Tribes					X					
Phil Baird, United Tribes Technical College					X					
Beverly Greybull Huber, President Crow Nation					X					
Chris Linblad, Standing Rock Sioux					X					
Denise Mesteth, Oglala Sioux Tribe					X					

DRAFT

Name, Affiliation (if provided)	March 1- 2, 2012	May 16, 2013 <i>(webinar)</i>	June 5-6, 2012	Aug. 13, 2012 <i>(webinar)</i>	Sept. 13- 14, 2012	Nov. 7, 2012 <i>(webinar)</i>	Feb. 12- 13, 2013	April 29, 2013	June 7, 2013	Aug. 19, 2013
Charles Murphy, Standing Rock Sioux Tribe					X					
John Yellowbird Steele, Chairman, Oglala Sioux Tribe					X					
Donna Solomon, Oglala Sioux Tribe					X					
Susan Whiteshirt, Crow Nation					X					
Phyllis Young, Standing Rock Sioux Tribe					X					
Arthur Fischer, BIA							X			
Thomas John, Chickasaw Nation Industries							X			
Valerie Olaizola, OST							X			
Juliett Pittman							X			
Tom Schlosser, MSJS							X			
Judge Sally Willet, ret. Indian Lands Working Group							X			

DRAFT

Name, Affiliation (if provided)	March 1- 2, 2012	May 16, 2013 <i>(webinar)</i>	June 5-6, 2012	Aug. 13, 2012 <i>(webinar)</i>	Sept. 13- 14, 2012	Nov. 7, 2012 <i>(webinar)</i>	Feb. 12- 13, 2013	April 29, 2013	June 7, 2013	Aug. 19, 2013
Chris Stearns, Hobbs, Strauss, Dean & Walker LLP							X			
Ron Suppah, Chairman, Warm Springs Tribe								X		
Ted Isham, Musckogee Creek Nation									X	
Marshea Halterman, Realty Cherokee Tribe									X	
Colleen Keeley, Oklahoma Legal Services									X	
Carla Knife Chief, Council Member, Pawnee Nation									X	
Leslie Standing, Wichita Tribe of Oklahoma									X	
Katherine Ware-Perosi, Kiowa Tribe of Oklahoma									X	
Gary Harrison, Chief, Chickaloon Village Traditional Council										X
Rick Harrison, Chickaloon Village Traditional Council										X
Sarah Obed (for Robin Renfrow), Doyon Limited										X

Individuals, Tribes, and Tribal Organizations that Submitted Written Comments to the Commission.

- 1 Affiliated Tribes of NW Indians
- 2 Alan Parker, Evergreen State University
- 3 Beverly Grey Bull Huber
- 4 Bobby Crow Feather
- 5 Candice Odom
- 6 Charlene Ramirez
- 7 Cheyenne and Arapaho Tribes
- 8 Coquille Indian Tribe
- 9 Cris Stainbrook
- 10 Delaware Tribe of Indians
- 11 Forrest Gerard
- 12 Great Plains Tribal Chairman's Association
- 13 Hoopa Tribe
- 14 Indian Land Tenure Working Group
- 15 Intertribal Timber Council
- 16 Jicarilla Apache Nation
- 17 Jim Campbell, Makah Forestry
- 18 Joe Membrino
- 19 Joyce Lambert-Patterson
- 20 Karen Rabbithead
- 21 Kaw Nation
- 22 Koko Hufford
- 23 Lucille Suppach
- 24 Makah Tribe
- 25 Navajo Nation
- 26 Navajo Nation – February 2013
- 27 Navajo Nation – September 2012
Navajo Nation Recommendations for Trust Reform Legislation to Improve
- 28 Trust Management
- 29 Norma Miller-Heath, Warm Springs Tribe
- 30 Oglala Lakota Nation
- 31 Oglala Sioux Tribe
- 32 Patricia Marks
- 33 Paul Moorehead
- 34 Rick Harrison, Chickaloon Traditional Village Council
- 35 Scott Sucher
- 36 Stan Webb
- 37 Teresa Wall-McDonald, Confederated Salish and Kootenai Tribes
- 38 Ute Indian Tribe

Tribal Elders, Tribal Leaders, Individuals, Tribal Organizations, Scholars, Experts and Federal Employees who attended Commission meetings March 2012 – August 2013. These lists are based on the sign-in sheets and webinar logs for each public session.

A. Trust Commission Meeting 1 Attendees, March 1-2, 2012

Name	Affiliation	Thursday March 1	Friday March 2
Commission			
Fawn Sharp	Chair	X	X
Peterson Zah	Commissioner	X	X
Robert Anderson	Commissioner	X	X
Stacy Leeds	Commissioner	X	X
Jodi Gillette	Designated Federal Officer	X	X
Public Attendees			
A. Gay Kingman	Great Plains Tribal Chairman's Association	X	X
Alan Parker			X
Alec Agoyo	Indianz.com	X	
Allene Cottier	Oglala Lakota	X	
Anthony Morgan Rodman	OST		X
Anthony Walters	DOI ASIA	X	X
Brian Block	OST		X
Caroline Mayhew	Hobbs Straus Dean & Walker LLP	X	X
Charlotte Hicks	Upper Mohawk, Inc	X	X
Cris Stainbrook	Indian Land Tenure Foundation		X
Crucita Grover			X
Daniel Jordan	Hoopa Tribe	X	X
David Harrison	Osage/ITMA/ILWG	X	
David Hayes	Deputy Secretary of the Interior	X	
Debby Pafel	OST		X
Don Grove	Nordhaus Law Firm	X	X
Donna Erwin	OST	X	X
Ed Holland		X	X
Ed McDonnell	DOI Solicitor's Office	X	
Elena Gonzalez	DOI CADR Facilitator	X	
Elizabeth Appel	Acting Director, Office of Regulatory Affairs and Collaborative Action, Indian Affairs	X	
Eric Solis	Seneca/MicroTA	X	X
Helen Sanders	ILWG	X	X
Hilary Tompkins	DOI Solicitor	X	
Jason Bruno	OST	X	X
John McClanahan	OST	X	X
Karla General	Indian Law Resource Center	X	
Kristen Wright	DOI Office of Budget		X
Lee Frazier	OST		X
Leroy Jackson	Hoopa Valley Tribe	X	X
Levi Rickers	Native News Network		X
Marcella Burgess Giles	ILWG	X	
Mary Zuni	ITMA	X	
Matthew Kelly	Fredericks Peebles & Morgan	X	X
Nick Kryloff			X
Pamela Haze	DOI Deputy Assistant Secretary PMB	X	

Name	Affiliation	Thursday March 1	Friday March 2
Patricia Marks	Fredericks Peebles & Morgan/MHA/Ute	X	X
Paul Moorehead	Various Tribes & Tribal Organizations	X	
Ron Suppah	Vice Chair, Confederated Tribes of Warm Springs	X	X
Ross Swimmer	Swimmer Group, LLC	X	X
Secretary Salazar	DOI	X	
Tim Murphy	DOI Solicitor's Office	X	
Commission Support Staff			
Bridget Radcliff	USIECR Facilitator	X	X
Bryan Rice	BIA		X
Helen Riggs	OST	X	X
Kallie Hanley	Special Assistant to the Secretary	X	
Lizzie Marsters	Chief of Staff for Deputy Secretary Hayes	X	X
Mark Davis	Counselor to the Action PDST, OST	X	X
Michael Black	Director, BIA	X	X
Michele Singer	Acting Principal Deputy Special Trustee, OST	X	X
Patricia Gerard	OST	X	X
Regina Gilbert	AS-IA/RACA	X	X
Saman Hussain	DOI CADR Facilitator	X	X
Sarah Palmer	USIECR Facilitator	X	X
Tiffany Taylor	Chief of Staff, Deputy Assistant Secretary Management, Indian Affairs	X	X

DRAFT

B. Trust Commission Meeting 2, June 11-12, 2012 Attendees

Name	Affiliation	Monday June 11	Tuesday June 12
Commission			
Fawn Sharp	Chair	X	X
Peterson Zah	Commissioner	X	X
Robert Anderson	Commissioner	X	X
Tex Hall	Commissioner	X	X
Stacy Leeds	Commissioner	X	X
Lizzie Marsters	DFO	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

Name	Affiliation	Monday June 11	Tuesday June 12
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

Name	Affiliation	Monday June 11	Tuesday June 12
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	
Commission Support Staff			
Annette Romero	RACA	X	X
Bridget Radcliff	USIECR Facilitator	X	X
Helen Riggs	OST	X	X
James Ferguson	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
Tiffany Taylor	BIA	X	X
Vanessa Ray-Hodge	DOI Solicitor	X	X

DRAFT

C. Trust Commission Meeting 3, September 13-14, 2012 Attendees

Name	Affiliation	Thursday September 13	Friday September 14
Commission			
Fawn Sharp	Chair	X	X
Peterson Zah	Commissioner	X	X
Robert Anderson	Commissioner	X	X
Stacy Leeds	Commissioner	X	
Tex Hall	Commissioner	X	X
Lizzie Marsters	DFO	X	X
Public Attendees			
A. Gay Kingman	Great Plains Tribal Chairman's Association	X	X
Allene Cottler	Indigenous World Association	X	X
Austin Gillette	OST	X	
Ben Harrison	Standing Rock Sioux	X	
Beverly Grey Bull Huber	Crow Nation Enrolled Allottee Association	X	
Bill Patrie	Common Enterprise Development Corporation		X
Charles Murphy	Standing Rock Sioux	X	
Chris Lindblad	Standing Rock Sioux	X	X
Cris Stainbrook	Indian Land Tenure Foundation	X	X
Dana Yellow Fat	Standing Rock Sioux	X	
David Gipp	UTTC	X	X
Delvin Rabbit Head, Sr	Three Affiliated Tribes	X	
Denise Mesteth	OST	X	X
Donna Salomon	Oglala Sioux	X	X
Donovan Archambault	Fort Belknap Tribes	X	X
Ed Hall			X
Everett J. Iron Eyes, Sr	Standing Rock Sioux	X	
Frank White Bull	Standing Rock Sioux	X	
Helen Sanders	Indian Land Working Group	X	X
James Serfoss	CNI-Aberdeen	X	X
Jamie Thorton	Three Affiliated Tribes		X
Janet Thomas	UTTC	X	X
Janie Hipp	USDA	X	X
Jeff Hunt	BIA	X	X
Jeremy Brave-Heart	Hobbs Strauss Dean and Walker, LLP	X	X
Jessica Beheler	UTTC	X	
Jim Geffre	BIA	X	X
John Yellow Bird Steele	Oglala Sioux	X	
Karen Rabbithead	Three Affiliated Tribes		X
Katherine Martinez	ONRR	X	X
Kitcki Carroll	USET	X	X
Loren Lewis			X
Lydale Yazzie	UTTC		X
Mario Gonzalez	Oglala Sioux Tribe		X
Melvin Burch	OST	X	X
Merle F. Botone	State of North Dakota	X	X
Mike Faith	Standing Rock Sioux	X	
Phil Baird	UTTC		X
Philip Good Crow	Oglala Sioux	X	
Phyllis Howard	State of North Dakota	X	

Name	Affiliation	Thursday September 13	Friday September 14
Phyllis Young	Standing Rock Sioux	X	X
Roger Yankton, Sr	Spirit Lake		X
Scott Sucher		X	X
Sharon Two Bears	Standing Rock Sioux	X	X
Susan White Shirt		X	
Thomas W. Fredericks	Fredericks Peebles & Morgan, LLP	X	X
Tom Wells	BIA	X	X
Wilbur Wilkinson	Spotted Tail & Associates	X	X
Commission Support Staff			
Annette Romero	RACA	X	X
Bridget Radcliff	USIECR Facilitator	X	X
Bryan Rice	BIA	X	X
Helen Riggs	OST	X	X
James Ferguson	DOI Solicitor	X	X
Mark Davis	OST	X	X
Michele Singer	OST	X	X
Regina Gilbert	RACA	X	X
Sarah Palmer	USIECR Facilitator	X	X
Tiffany Taylor	BIA	X	X

DRAFT

D. Trust Commission Meeting 4, February 12-13, 2013 Attendees

Name	Affiliation	Tuesday February 12	Wednesday February 13
Commission			
Fawn Sharp	Chair	X	X
Peterson Zah	Commissioner	X	X
Robert Anderson	Commissioner		X
Stacy Leeds	Commissioner	X	X
Tex Hall	Commissioner	X	X
Lizzie Marsters	DFO	X	X
Public Attendees			
Alida Gulley	BIA	X	X
Bill Iyall	Cowlits Indian Tribe	X	
Carole Lankford	Confederated Salish and Kootenai Tribes	X	X
Cathy Ruger	OST	X	
Chet Kaviotne		X	X
Chris Stearns	Hobbs Straus Dean and Walker	X	
Cris Stainbrook	Indian Land Tenure Foundation	X	X
Dale Denney	Makah Tribe	X	X
Dan Rey-Bear	Nordhaus Law Firm, LLP	X	X
Daniel Jordan	Hoopa Tribe	X	X
Dave Babcock	Squaxin Island Tribe	X	X
David Shaw	OST	X	X
Don Chambellan	BIA	X	X
Eric Eberhard	Seattle University School of Law		X
Gary Morishima	Quinault Nation	X	
Helen Sanders	Allottee	X	X
Henry Smiska	Yakama	X	X
Jim James	OST	X	X
Joel Moffett	Nez Perce Tribe		X
John Berrey	Quapaw Tribe	X	X
John Gordon	IFMAT III	X	
John McClanahan	DOI Solicitor's Office		X
John Sirois	Confederated Colville Tribes		X
Judy Joseph	BIA	X	X
Kathy Fabanan	Quinault Nation	X	X
Kevin Lenon	Sauk-Suiabble Tribe	X	
Kevin Washburn	Assistant Secretary for Indian Affairs		X
Larry Mason	IFMAT	X	
Marianne Jones	OST	X	X
Meredith Parker	Makah		X
Michelle Montgomery	Haliwa Saponi/Eastern Band Cherokee		X
Norma Corwin	Muckleshoot Tribe	X	X
Paul Moorehead	Drinker Biddle-Quapaw Tribe	X	
Ray Peters	Squaxin Tribe	X	X
Rebecca Jones	Morrisett, Schlosser, Jozwiak, and Somerville	X	
Rudolph Ryser	Center for World Indigenous Studies		X
Ryan Jackson	Hoopa Tribe	X	X
Sarah Crespin	Chickasaw Nation Industries	X	
Sarah Lawson	Muckleshoot Tribe	X	
Stan Speaks	BIA		X

Name	Affiliation	Tuesday February 12	Wednesday February 13
T.J. Greene	Makah Tribe	X	
Teresa Wall-McDonald	Confederated Salish and Kootenai Tribes	X	X
Tony Walters	BIA		X
Commission Support Staff			
Bodie Shaw	BIA	X	X
Bridget Radcliff	USIECR Facilitator	X	X
Helen Riggs	OST	X	X
James Ferguson	DOI Solicitor	X	X
Michele Singer	OST		X
Patricia Gerard	OST	X	X
Sarah Palmer	USIECR Facilitator	X	X
Tiffany Taylor	BIA	X	X

DRAFT

E. Trust Commission Meeting 5, April 29, 2013 Attendees

Name	Affiliation
Commission	
Fawn Sharp	Chair
Stacy Leeds	Commissioner
Tex Hall	Commissioner
Lizzie Marsters	DFO
Public Attendees	
Albert Bender	News from Indian Country
Allen Belle	
Annie Bell	Mississippi Choctaw Indians
Aurora Lehr	Native Federation
Bella Sewall Wolitz	Office of the Solicitor
Boyd Samson	
Brandon Stephen	Development Director, USET
Brandy Sue Venuti	Special Projects, USET
Brenda Lintinger	Tunica-Biloxi Tribe of Louisiana
Brian Patterson	President, USET
Brian Ross	OST
Cara Hall	
Charlotte Hicks	Upper Mohawk
Chief Oren Lyons	Onondaga and Seneca Nations of the Iroquois Confederacy
Chief Phyllis Anderson	Mississippi Choctaw Indians
Courtney Shea	Office of the Solicitor
Cris Stainbrook	Indian Land Tenure Foundation
Dan Rey-Bear	Nordhaus Law Firm, LLP
Donald Kilgore	Attorney General, Mississippi Band of Choctaw Indians
Earline Hickman	Mississippi Band of Choctaw Indians
Franklin Keel	Director, East Region, BIA
Gabe Moreno	Grant Thornton
Gregory Smith	Hobbs, Straus, Dean & Walker, LLP
Harold Pierite	Councilman, Tunica-Biloxi Tribe of Louisiana
Helen Sanders	Allottee
Janet Thomas	United Tribal Technical College
Jeremy Brave-Heart	Hobbs, Straus, Dean & Walker, LLP
Jim Thompson	Grant Thornton
Kareen Lewis	
Kitcki Carroll	Executive Director, USET
Lee Vest	
Marshall Pierite	Vice Chairman, Tunica-Biloxi Tribe of Louisiana
Melanie Bender	IIM Account Holder
Michelle Davidson	OST
Natasha Willis	Mississippi Choctaw Indians
Paul Galley	Grant Thornton
Reid Chambers	
Reuben Henry, Sr.	Warm Springs
Robert Craff	OST
Ronald Suppah	Warm Springs
Teresa Wall- McDonald	Confederated Salish Kootenai Tribes
Tom Schlosser	

Name

Wanda Janes
Yvonne Iverson

Affiliation

Deputy Director, USET

Commission Support Staff

Bodie Shaw
Bridget Radcliff
Mark Davis
Patricia Gerard
Regina Gilbert
Sarah Palmer
Tiffany Taylor

BIA
USIECR Facilitator
OST
OST
BIA
USIECR Facilitator
OST

DRAFT

F. Trust Commission Meeting 6, June 7, 2013 Attendees

Name	Affiliation
Commission	
Stacy Leeds	Commissioner
Lizzie Marsters	DFO
Public Attendees	
Ayanna Najuma	
Betty Tippeconne	Comanche
Brenda Gabbart	Choctaw Nation
Brent Harjo-Moffer	
Brian Ross	OST
Charles Meloy	Citizen Potawatomi Nation
Chet Brooks	Delaware Tribe of Indians
Chris Redman	Chickasaw Nation
Curtis Zunigha	Delaware Tribe of Indians
Dan Rey-Bear	Nordhaus Law Firm, LLP
Darneel Day	OST
Deidre Bigheart	Osage
Donna Loper	Choctaw Nation
Eddie LaGrone	Muscogee Creek Nation
G. William Rice	University of Tulsa
Gail Jackson	Muscogee Creek Nation
GS Cusler	Absentee Shawnee Tribe
Helen Sanders	Allottee
Henry Ware	OST
Janel Perry	Cherokee Nation
Jeff Fife	Muscogee Creek Nation
John Berrey	Quapaw Tribe
Judy Royster	University of Tulsa
Karla Knife Chief	Pawnee Nation
Kathy Perosi	ICLS
Kirke Kickingbird	Hobbs Strauss
Lenzy Krehbiel-Burton	Native Times
Leslie Standing	Wichita Tribe
Lisa Impson	Chickasaw Nation
Loretta Carter	OST
Louetta Partridge	Wichita Tribe
Marcella Giles	
Marshea Halterman	Cherokee Nation
Michael Black	BIA
Mitchell Stephenson	OST
Patricia Appl	OST
Randy Henning	Chickasaw Nation
Raymond Campbell	Hobbs Strauss Dean & Walker
Raymond Perosi	ICLS
Robert Tippeconne	Comanche
Ron Graham	OST
Ron Harp	Upper Mohawk Inc.
Ross Swimmer	Swimmer Group, LLC
Sonya Lytch	Muscogee Creek Nation
Stephen Colt	OST
Ted Isham	Muscogee Creek Nation

Name

Thomas L. John
Todd York
Traci Umsted
Vanessa Vance
Verna Crawford
Warren Austin
William Norman
Yolanda Reyna
Zach Scribner

Affiliation

Chickasaw Nation
Indianz.com
Choctaw Nation

Delaware Tribe of Indians
OST
Hobbs Strauss
Apache
Chickasaw Nation

Commission Support Staff

Bridget Radcliff
Genevieve Giaccardo
Mark Davis
Regina Gilbert
Sarah Palmer
Tiffany Taylor

USIECR Facilitator
OST
OST
BIA
USIECR Facilitator
OST

DRAFT

G. Trust Commission Meeting 7, August 19, 2013 Attendees

Name	Affiliation
Commission	
Fawn Sharp	Chair
Robert Anderson	Commissioner
Tex Hall	Commissioner
Sarah Harris	DFO
Public Attendees	
Adam Bailey	Hobbs, Strauss, Walker
Amber Garib	Grant Thornton
Amy Sparck Dobmeier	North Star Group
Bill Holway	Muckelshoot Tribes
Bonita Nipper	BIA
Brenda Golden	
Brenda Lintinger	Tunica-Biloxi Tribe of LA
Carol Daniel	AFN
Chad Hutchinson	Alaska Legislature
Charlotte Hicks	Upper Mohawk Inc
Christina Tippin	Tikigaq
Cody Halterman	BIA
Dan Rey-Bear	Nordhaus Law
Desiree Duncan	CCTHITA - NLR Realty
Ginger Morris	OST
Jody Cummings	Office of the Solicitor
Julie Kitka	Alaska Federation of Natives
Melvin E. Burch	OST
Eileen Grant	Tanana Chiefs Conference
Elizabeth Gobeski	Office of the Solicitor, DOI
Eric Larsen	Land Management Services
Gary Harrison, Chief	Chickaloon Village Traditional Council
Gina R. Douville	Association of Village Council Presidents
Glenda Miller	OST
H. F. Katuk Pebley	Inupiat Community of the Arctic Slope
Heather Kendall Miller	Native American Rights Fund
Ida Ekamrak	ANC
Jacquelin Schafer	State of Alaska
Jeremy Geffre	BIA
Kate Wolgemuth	Office of the Governor - Alaska
Marc Hebert	Grant Thornton
Maribeth McCarthy	Mastercard
Melanie Kasayulie	Akiachak Native Community
Melodie Rothwell	HHS
Michele Saranovich	Accenture
Mike Smith	BIA
Mike Williams	NCAI - Alaska Region
Mildred Evan	Akiachak Native Community
Paul Mayo	Tanana Chiefs Conference
Rick Harrison	Chickaloon Village Traditional Council
Roberta Wolfe	CCTHITA - NLR Realty
Roger L. Hudson	Office of the Solicitor, DOI

Name

Sarah E. Obed
Tamara Dietrich
Tammy Buffone
Ted Wright
Teresa Gaudette
Thomas Leonard
Tom Hoseth
Tracy Greene
Violet Bowling
William White

Affiliation

Doyon, Limited
Alaska Native Tribal Health Consortium
OST
Sitka Tribes
Kake First Nations
Celist Corporation
Bristol Bay Native Services
Grant Thornton
OST
Deloitte

Commission Support Staff

Bryan Rice
Genevieve Giaccardo
Helen Riggs
Joshua Edelstein
Mark Davis
Patricia Gerard (on-line)
Paula Randler
Regina Gilbert
Sarah Palmer
Tiffany Taylor

BIA
OST
OST
SOL
OST
OST
USIECR Facilitator
BIA
USIECR Facilitator
OST

DRAFT

H. Trust Commission Webinar 1, May 16, 2012 Attendees

Name	Affiliation
Commission Members	
Peterson Zah	Commissioner
Robert Anderson	Commissioner
Stacy Leeds	Commissioner
Lizzie Marsters	Designated Federal Official
Members of the Public	
A. Gay Kingman	Great Plains Tribal Chairman's Association
Alison Freese	Institute of Museum and Library Services
Angela Karst	Table Mountain Rancheria
Brenda Wallhoyd	Land Consolidation, ILCP
Brian Patterson	Oneida Indian Nation
Charlotte Hicks	Upper Mohawk, Inc.
Chief E. Skyye Vereen	PeeDee Indian Nation of Beaver Creek
Cris Stainbrook	Indian Land Tenure Foundation
Cynthia Toop	Native Village of Barrow
Daniel Rey-Bear	Nordhaus Law Firm LLP
Daniel Watts	Nez Perce Tribe
Denise Desiderio	Senate Committee on Indian Affairs
Don Grove	Nordhaus Law Firm
Erin Shirl	University of Arkansas School of Law
Ginger Morris	OST
Gretchen Gordon	Indian Law Resource Center
Hedi Bogda	Leech Lake Band of Ojibwe
James Cordry	OST
Jeremy Brave-Heart	Hobbs Straus Dean & Walker LLP
Karen Blakslee	
Karla General	Indian Law Resource Center
Kitcki Carroll	United South and Eastern Tribes, Inc
Leita Yazzie	OST
Leon Craig	OST
Liz Dykstra	Tribal Member
Liz Gunsaulis	University of Arkansas School of Law
Martin Earl	BIA
Matthew Kelly	Frederick Peebles & Morgan LLP
Melody McCoy	NARF
Phillip Graf	OST
Phyllis Attocknie	Comanche Nation
Richard Meyers	Office of the Assistant Secretary for Indian Affairs
Steve Beleu	Oklahoma Dept. of Libraries/Fed Gov't Information Division
Valerie Olaizola	OST
William Gollnick	Tejon Tribe
Zo Devine	Center for Indian Community Development HSU
Commission Support Staff	
Bridget Radcliff	USIECR
Mark Davis	Counselor to the Acting PDST, OST
Michael Black	Director, BIA
Michele Singer	Acting Principal Deputy Special Trustee, OST
Patricia Gerard	OST

Name

Regina Gilbert
Sarah Palmer
Tiffany Taylor

Affiliation

AS-IA/RACA
USIECR
Chief of Staff, Deputy Assistant Secretary Management,
Indian Affairs

DRAFT

I. Trust Commission Webinar 2, August 13, 2012 Attendees

Name	Affiliation
Commission	
Fawn Sharp	Chair
Peterson Zah	Commissioner
Robert Anderson	Commissioner
Stacy Leeds	Commissioner
Tex Hall	Commissioner
Lizzie Marsters	Designated Federal Official
Members of the Public	
Acee Agoyo	Indianz.com
Candace Odom	CMO Designs, LLC
Charlene Ramirez	IIM account holder
Charlotte Hicks	Upper Mohawk, Inc.
Cris Stainbrook	Indian Land Tenure Foundation
Daniel Rey-Bear	Nordhaus Law Firm
Daniel Watts	Nez Perce Tribe
David House	Berkey Williams LLP
Debby Pafel	OST
Debra DuMontier	OST
Derrick Beetso	NCAI
Devadatta Gandhi	George Waters Consulting Service
Dr. Rudolph Ryser	Center for World Indigenous Studies
Elizabeth Sparks	OST
Erin Shirl	Trust Model and Research Subcommittee Member
Francesca Hillery	Tulalip Tribes of Washington State
Gary Dorr	Gary F. Dorr Consulting and Individual Indian Land Owner
Gary Sloan	BIA
Ginger Morris	OST
Henry M Buffalo, JR	JBMAH
Jeremy Gravier	Round Valley tribal member
John Dossett	NCAI
Joshua Standing Horse	CRIHB
Kareen Lewis	Little River Band of Ottawa Indians
Katherine Martinez	DOI Office of Natural Resources Revenue
Lenzy Krehbiel-Burton	Native American Times
Leonard Weaskus	Individual Indian
Levi Ricket	Native News Network
Luke Williams	Hattie Pickens Foundation
Matt Volz	Associated Press
Melody McCoy	NARF
Pamela Pilarcik	Tribal organization representative
Patricia Marks	Ute Tribe of U & O
Rob Capriccioso	Indian Country Today
Robert McKenna	Retired Federal Employee
Robert Sally	Chinook Nation
Ross Swimmer	Swimmer Group, LLC
Sarah Crespin	Chickasaw Nation Industries
Scott Mannakee	Stillaguamish Tribe of Indians
Scott Sucher	Keres Consulting
Sue Anne Athens	CNI
Teresa Wall McDonald	Confederated Salish-Kootenai Tribes

Name

Theresa Rosier
Thomas Fredericks
Tom Schlosser
Travis Lane

Affiliation

Salt River Pima-Maricopa Indian Community
Fredericks Peebles Morgan
MSJS
Intertribal Council of Arizona

Commission Support Staff

Bodie Shaw
Bridget Radcliff
Charles Evans
Helen Riggs
Mark Davis
Michele Singer
Regina Gilbert
Sarah Palmer
Tiffany Taylor

BIA
USIECR, Facilitator
OST
OST
Counselor to the Acting PDST, OST
Acting Principal Deputy Special Trustee, OST
AS-IA/RACA
USIECR, Facilitator
Chief of Staff, Deputy Assistant Secretary Management,
Indian Affairs

DRAFT

J. Trust Commission Webinar 3, November 7, 2012 Participants

Commission

Fawn Sharp	Chair
Peterson Zah	Commissioner
Robert Anderson	Commissioner
Lizzie Marsters	Designated Federal Official

Members of Public

A. Gay Kingman
Alan Parker
Allene Cottier
Anthony Rodman
Arlen Begay
Arthur Fisher
Aurene Martin
Beverly Victor
Bonnie Huddell
Brenda Walhovd
Brett Kenney
C. Juliet Pittman
Candace Odom
Catherine Rugen
Cecelia Henry
Charlotte Hicks
Chet Kaviratne
Clifton Hill
Daniel Merhalski
Daniel Rey-Bear
Daniel Watts
Dawn Boley
Deb DuMontier
Debu Gandhi
Diddy Nelson
Dustina Gill
Ed Brown
Eric Larsen
Evonne Hight
George Abe
Ginger Morris
Jacquelyn Kelly
James Campbell
Janet Thomas
Jeffrey Hamley
Jennifer McLaughlin
Jessica Imotichey
Jessica Wiles
Joe Caggiano
John Berrey
John Bioff
John Dossett
Jolene Henry
Kareen Lewis
Kyle Lolar
Kyle Smith

Affiliation

GPTCA
Evergreen State College
Indigenous World Association
DOI-OST
DOI-OST
DOI-BIA
Spirit Rock Consulting
CohnReznick
Native Village of Barrow
DOI-BIA (land consolidation program)
Coquille Tribe
Self-Governance Communication and Education
CMO DESIGNS
DOI-OST
DOI-OST
Upper Mohawk, Inc.
Chickasaw Nation Industries
Makah Tribe
Wampanoag Tribe
Nordhaus Law Firm
Nez Perce Tribe
Quinault Tribe
DOI-OST
George Waters Consulting
OKC Area Inter-Tribal Health Board
Sisseton-Wahpeto Oyate
Nez Perce Tribe
Kawerak, Inc.
DOI-OST
Abe Consulting LLC
DOI-OST
DOI-BIA
Makah Tribe, Forestry
UTTC
DOI-BIE
Jamestown Sklallam Tribe
Chickasaw Nation
Jamestown Sklallam Tribe
Cohn Reznick
Quapaw Tribe
Kawerak, Inc.
NCAI
Pyramid Lake Paiute Tribe
Little River Band of Ottawa Indians
Penobscot Nation Teen Center
RedWind Group

Lenzy Krehbiel-Burton
Levi Rickert
Linda Denison
Liz Dykstra
Lynn Malerba
Lynnette Verlanic
Marcella Giles
Margie Hutchinson
Marianne Jones
Marie Alderete
Meghan Starling
Melissa Kookesh
Michael Devlin
Natasha Seaforth
Patricia Marks
Paul Moorehead
Phil Parker
Philip Baker-Shenk
Raymond Peters
Raymond Smartlowit
Rhonda Baker
Rob Capriccioso
Robert Betancourt
Robert Weaver
Roger Heger
Ronald Suppah
Ross Swimmer
Rudolph Ryser
Judge Sally Willett (Ret.)
Sarah Crespin
Scott Sucher
Shalee Cook
Shenan Atcitty
Stan Webb
Sue Anne Athens
Teresa Dettling
Teresa Wall McDonald
Terry Beckwith
Theodora Bird Bear
Thomas John
Tom Schlosser
Valerie Olaizola
Vince Logan
Wendy Jourdain
Yvonne Oberly

Commission Support Staff

Bodie Shaw
Bridget Radcliff
Bryan Rice
Charles Evans
Helen Riggs
Mark Davis
Regina Gilbert
Sarah Palmer
Tiffany Taylor

Native American Times
Native News Network
DOI-OST
Little River Band of Ottawa Indians
Mohegan Tribe
DOI-OST
ILWG
DOI-OST
DOI-OST
Chickasaw Nation Industries
Sault Ste. Marie Tribe of Chippewa Indians
CCTHITA
DOI-OST
SENSE Incorporated
Ute Tribe
Drinker Biddle & Reath
federal employee
Holland & Knight LLP
Squaxin Island Tribe
Yakama Nation
DOI-OST
Indian Country Today
Indian Voices
Quapaw Tribe
DOI-OST
Confederated Tribes of Warm Springs
Swimmer Group, LLC
Center for World Indigenous Studies
Indian Land Working Group
Chickasaw Nation Industries
Keres Consulting
Muscogee (Creek) Nation
Holland & Knight LLP
DOI-BIA
Chickasaw Nation Industries
DOI-OST -OTR
Confederated Salish and Kootenai Tribes
ICC Indian Enterprises
land owners association
Chickasaw Nation
MSJS
DOI-OST
The Nations Group
UTTTC Student
Skokomish Tribe

BIA
USIECR, Facilitator
BIA
OST
OST
OST
AS-IA/RACA
USIECR, Facilitator
OST, AS-IA

APPENDIX B: GRANT THORNTON COMPREHENSIVE
ASSESSMENT

DRAFT

APPENDIX C: GRANT THORNTON TRUST AUDIT FUNCTIONS

DRAFT

APPENDIX D: GRANT THORNTON FINAL TRUST
RECOMMENDATIONS REPORT

DRAFT