

Secretarial Commission on Indian Trust Administration and Reform
December 10, 2013
Webinar Call Summary

The Secretarial Commission on Indian Trust Administration and Reform held its final public webinar on December 10, 2013. Commission Chair Fawn Sharp chaired the webinar. Sarah Palmer, U.S. Institute for Environmental Conflict Resolution (USIECR) facilitated the meeting and Gail Brooks, USIECR, took notes. Approximately 133 individuals participated in the webinar. The webinar agenda and list of materials discussed during the webinar are in Appendix A. These materials are available on the Commission website: <http://www.doi.gov/cobell/commission/index.cfm>. The webinar attendees are listed in Appendix B.

Welcome, Introductions, Agenda Review

Chair Sharp welcomed everyone and thanked the Commissioners for their participation. Commissioners Robert Anderson, Tex Hall, Stacy Leeds, and Peterson Zah were on the call and introduced themselves to the webinar attendees. Chair Sharp reviewed the agenda and objectives for the meeting. The meeting objectives were:

- Review and approve Commission Report and Recommendations
- Discuss next steps, and
- Public comment

Sarah Palmer, USIECR, provided a brief explanation of how public comments will work on webinar

Chair Sharp then introduced the Commission's Designated Federal Official (DFO) Sarah Harris Chief of Staff for the Assistant Secretary of the Interior – Indian Affairs. Sarah Harris indicated that public comments that are submitted today in the webinar and subsequently, will be submitted to the Department of the Interior for consideration.

Chair Sharp introduced Commissioners Anderson and Leeds as the commissioners who have worked on the report, and called on them to present the Commission Report.

Commissioner Anderson stated that the report features several recommendations, with a multi-layered approach to their resolution. The Grant Thornton (management consultant hired per Secretarial Order 3292) report provides the critical recommendations; the most sweeping restructuring, as described in the Executive Summary of the Commission Report.

Commissioner Leeds stated that 25 recommendations were developed over the course of the work on the report, of which at least 20 could be implemented with existing Secretarial authority. The webinar presentation will focus on the key recommendations which may need additional procedural or legislative authority to be made.

Commissioner Anderson presented Commission Recommendations #1, #2, #3

RECOMMENDATION NO. 1

❖ REVIEW AND AMENDMENT OF FEDERAL LAW

- 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.”
- 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.

RECOMMENDATION NO. 2:

❖ EVALUATE TRIBAL CONSULTATION POLICY

- The independent counsel deserves further consideration by the federal government. The Commission recommends that the Secretary evaluate the options in this area in consultation with tribal leaders.
- Renewed emphasis on the United States’ fiduciary obligations could correct some of the issues with respect to ensuring that all federal agencies understand their obligations to abide by and enforce federal trust duties.

RECOMMENDATION NO. 3:

❖ DEVELOP UNIFORM CONSULTATION POLICY

- 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.

Commissioner Leeds presented Commission Recommendation #4

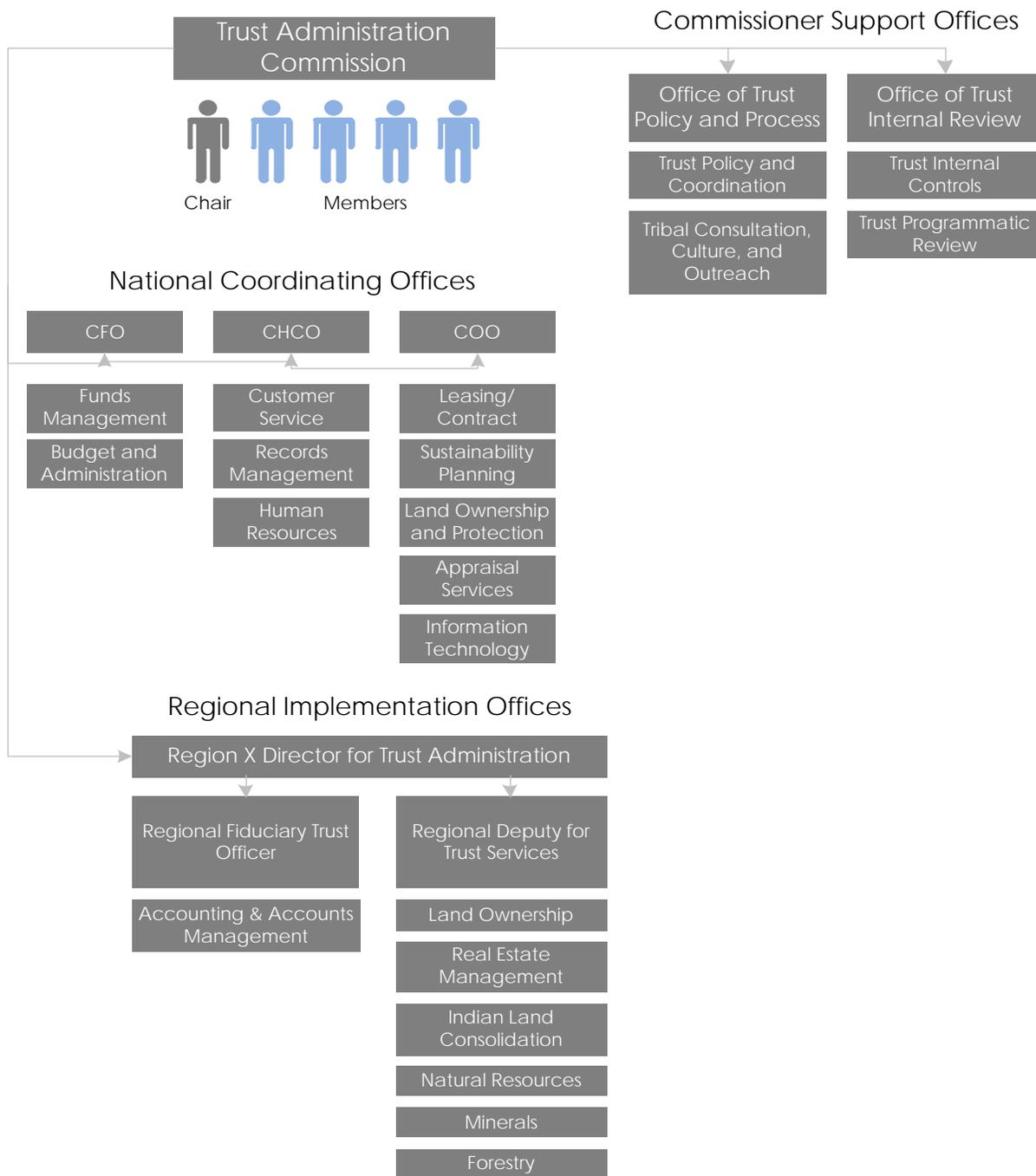
RECOMMENDATION NO. 4:

❖ TRUST ADMINISTRATION RE-STRUCTURING

- 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 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.

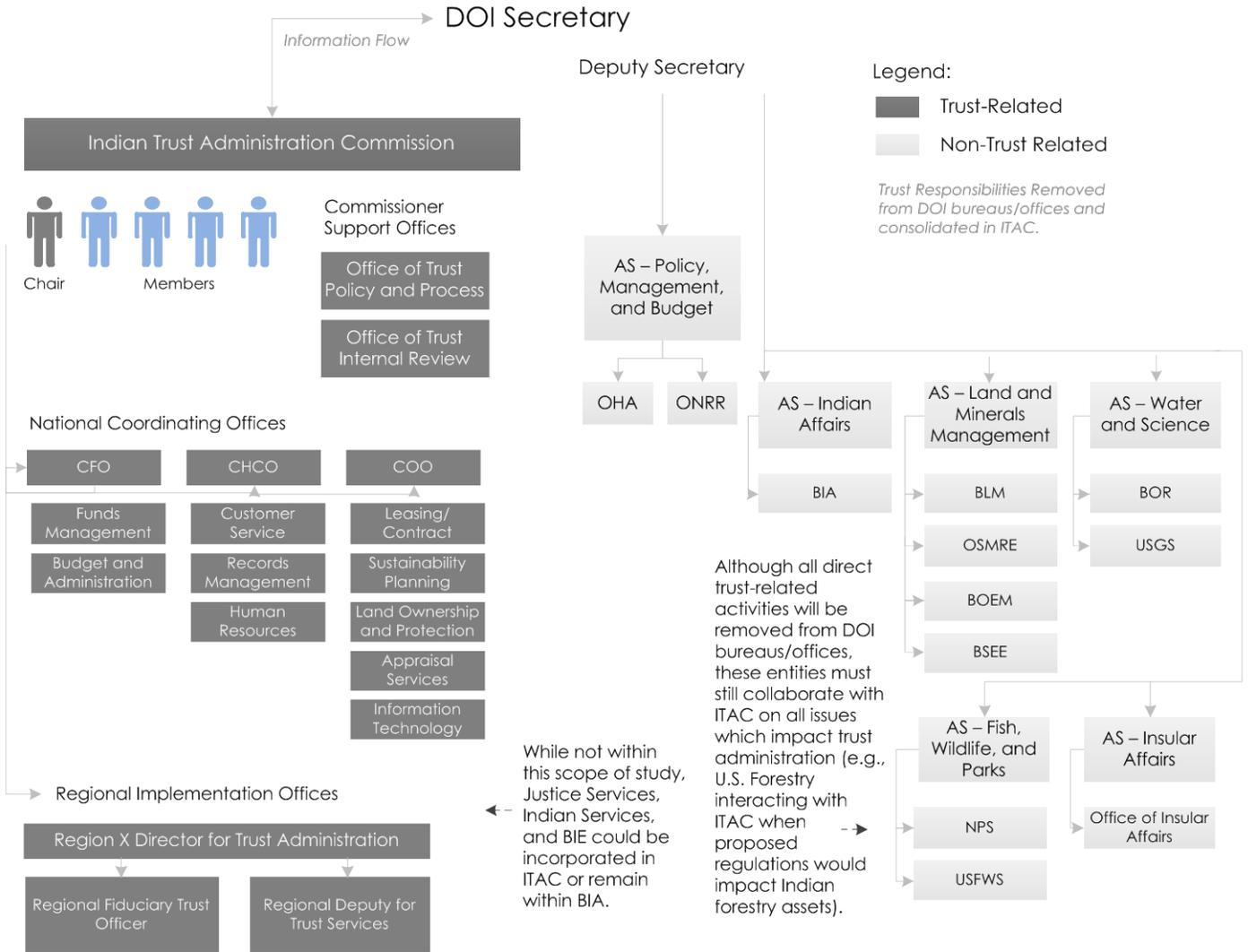
Commissioner Leeds discussed the proposed organizational structure of the recommended Indian Trust Administration Commission (ITAC) (see below and on page 36 of the Commission Report).

Indian Trust Administration Commission (ITAC)



Commissioner Leeds then presented the proposed structure of the Department of the Interior following establishment of ITAC, with the illustration of those services that would go to new Commission and those to remain in DOI. (See figure below and also pages 37 of the Commission Report.)

Indian Trust Administration Commission Summary Graphic



Commissioner Leeds presented Commission Recommendation #5, including a recommendation that auditing functions be not limited to just BIA but should include transfers from BLM and other bureaus.

RECOMMENDATION NO. 5:

- ❖ **IMPROVE THE MANAGEMENT, OVERSIGHT, AND ACCOUNTABILITY OF TAS SERVICES AND TRUST ASSETS**
 - **Create an Adequate Auditing System that Fulfills Trust Responsibility to Beneficiaries**

Commissioner Leeds then presented Commission Recommendation #6. (See slide below and also beginning on Page 44 of the Commission Report), including procedural recommendations that can take effect immediately.

RECOMMENDATION NO. 6:

- ✦ **PROCEDURAL CHANGES**
 - + TAS-WIDE RECOMMENDATIONS
 - + FUNDS MANAGEMENT RECOMMENDATIONS
 - + INFORMATION TECHNOLOGY RECOMMENDATIONS
 - + CUSTOMER SERVICE RECOMMENDATIONS

Commissioner Leeds also presented other system-wide Commission recommendations particular to Probate and Appraisal issues.

OTHER RECOMMENDATIONS - PROBATE

- ❖ Promote the use of alternative strategies to probates
 - Legal mechanism, streamlined OHA requirements for probate files, revitalize Attorney Decision Maker programs, consider legislative authorization of local forums including tribal courts

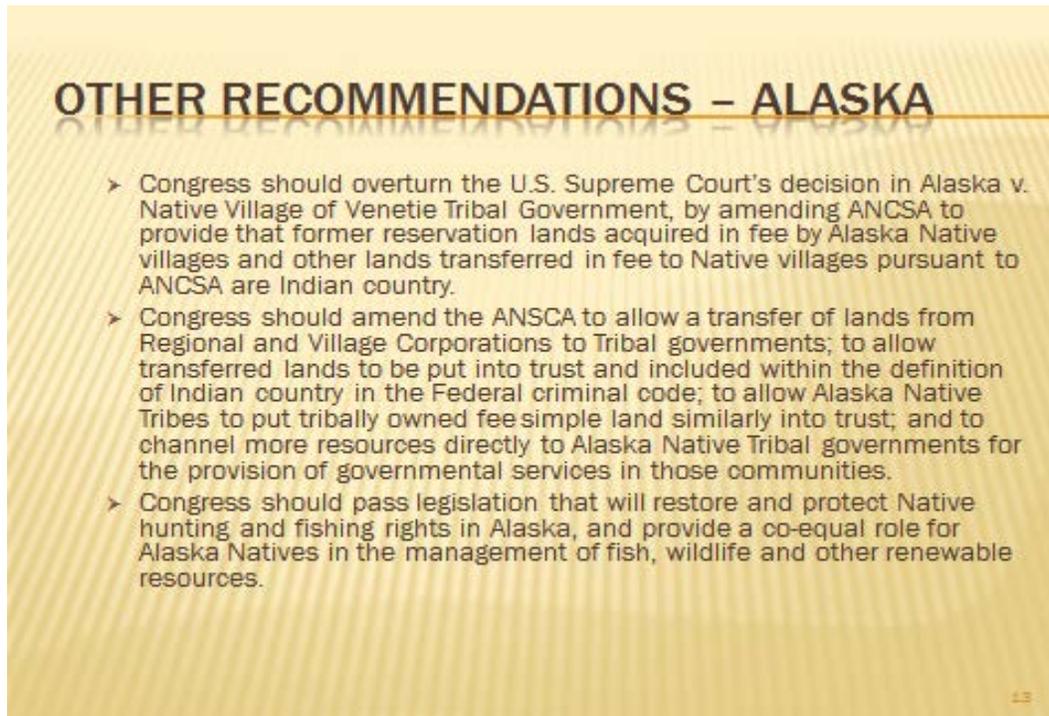
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OTHER RECOMMENDATIONS - APPRAISALS

- ❖ Expand the use of per-approved third-party vender solutions to effectuate a common, standard services on commercial timelines
- ❖ **A review of USDA appraisal methodology and policies**
- ❖ **Improvements to the Process of Procuring and Utilizing Mass Appraisals**
- ❖ **Expand Previously Approved Waiver Authority to All Tribes and All BIA Regions.**
- ❖ **Increase Authority to Waive Appraisal or Valuation Requirements for Transactions Involving Competitive Bids**

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Commissioner Anderson presented Commission Recommendations regarding Alaska, and noted that the first two recommendations echoed those of the Tribal Law and Order Commission's recent report issued this fall.



Commissioner Anderson then presented the concluding recommendations of the Commission that reflect important issues raised by Commissioner Zah and others regarding the importance of the Department to recruit and retain good people with the passion and commitment to carry out these trust responsibility functions, that the recommendations within the Commission's report rely on continuity of staffing and funding, and that trust functions be funded from nondiscretionary funding.

Commission Discussion of the Report, and Approval

Commissioner Hall stated his appreciation for the hard work of Commissioners Leeds and Anderson. He commented that the funding recommendations in the conclusion section of the report should be highlighted and raised earlier in the report; he has received many comments on these two topics. Commissioner Anderson will include these recommendations in the Executive Summary to make them more visible. Commissioner Leeds added that the funding statement could also be added to page 7-8 of the Introduction section of the Commission report.

Commissioner Hall also commented regarding mass appraisals for oil and gas, that reservations can have different formations or pools of land and that mass appraisals should allow flexibility to appraise those differently.

Commissioner Leeds responded that it should be recognized that a value needs to be arrived at that protects the landowners and that mass appraisals should give flexibility to account for the differences in types of land; both mass appraisals and competitive appraisals should be used to reflect these differences.

Commissioner Hall recommended that the Commission should recommend to the Secretary a more definitive timeline for the sunseting of OST, and suggested 2 years. He supports the language regarding maintenance of services and functions during the transfer/restructuring; however, he felt that a timeline should be established or nothing will be done. Commissioner Zah supported the recommendation of a timeline.

Commissioners Anderson and Leeds agreed to modify the language on in the second paragraph in the Section IV, part 3 on OST on Page 38 of the Commission Report to recommend a 2-yr timeline.

Chair Sharp agreed that both these revisions should be included in the final report to the Secretary.

Chair Sharp called for a motion to approve the report, with the suggested changes. The motion, was moved by Commissioner Anderson and seconded by Commissioner Zah.

Mark Davis (DOI) asked that the motion include allowing for non-substantive (edits, grammar, etc), technical corrections after approval of report by the Commission, up to the point of transmission to the Secretary.

The motion was approved with none opposed, no abstentions.

Sarah Palmer (USIECR) will work to make final approved edits so that a final report can be posted on the DOI website either by late December 10 or early December 11.

Sarah Harris (DFO) thanked the Commission for their hard work and looks forward to working with the Tribes on consultations about the Commission's Recommendations.

Public Comment

The following comments were received either in written form or by telephone during the webinar.

Q: Will today's PowerPoint Presentation be available on the DOI website? [Dan Rey-Bear]

A: Yes, they will be posted to the DOI website, including the diagrams. [Sarah Palmer]

Q: Will slides be available after the webinar?[Lew Hastings]

A: I believe the slides will be posted to the website but will verify.[Sarah Palmer]

Q: Is the graphic being talked about available on screen? [James Barham]

A: I will pull up the diagram momentarily. [Sarah Palmer]

Q: Please put those structures on slide presentation.[Liz Dykstra]

A: The diagrams are included in the ppt, just easier to see on line in this format. [Sarah Palmer]

Q: In the appraisal process, more tribal involvement in the process [Paula Antoine]

Q: Does the Report address new trust obligations? Examples might be potential new obligations that could arise as part of a tribal water rights settlement or acquisitions of new lands into trust, and how the US should approach the possibility of additional obligations. There appears to be some reticence within DOI to undertake new obligations.[Kate Hoover]

Q: The DFO referred to the report as being final and the SCITAR Chair referred to it as being a draft. Please clarify. Thank you.[Dan Rey-Bear]

A: The report is draft, this is the final webinar. So Commissioners need to approve their report today. [Sarah Palmer]

Q: Would it be possible for public comments to be made before Commission approves the report?[Dan Rey-Bear]

A: The Commission has to finish their work today so the public comments will go to DOI. [Sarah Palmer]

Q: Chair Sharp, as Co-Chair, Trust Reform Committee, Affiliated Tribes of Northwest Indians, the Trust Reform committee will require adequate time to review the recommendations. We support the recommendations of Commissioner Hall on the timeline for "sunsetting of OST." [Cheryl Lohman]

Q: When will the final approved report with discussed amendments be available online?[Dan Rey-Bear]

A: By December 11th at the latest. [Sarah Palmer]

Q: The Commission's reach out to Indian Country can be viewed as listening sessions. We are now just viewing the full report with its release. Why is there no opportunity to review and comment on final draft prior to its submission to the Secretary?[Kitcki Carroll]

A: Chair Sharp responded: the Intent of the Commission was to go out to the public with a draft for comment. When they received the Phase I report from Grant Thornton, it was weighted heavily towards DOI comments. It was felt that more information was needed from Indian country and beneficiaries and allottees. Grant Thornton then went out again to gather those comments, interviewing more individuals, which pushed the timeline back another two months. Although the Commission got an extension of time on the Commission report, they ran into issues with the government shutdown and the sequestration. It is the Commission's understanding that the Secretary will solicit additional comments prior to finalizing the recommendations. The Commission officially sunsets in a few days.

Q: Indian Land Working Group (ILWG) needs to review the report for further comments. Allottees in general believe there was extremely inadequate outreach to allottees. Representatives who tried to meet with allottees were not able to meet with more than 1 or 2 at each meeting. Oil and gas appraisals, probate, and permanent improvement issues were not addressed. Representatives from the trust commission who were contracted to come to Indian Country were not familiar with the differences among allottees, particularly in eastern Oklahoma. ILWG cannot support the sunset of OST at this time because of allottee concerns. [Marcella Giles]

Q: In terms of litigation (& conflicts of interest), please stress the importance of utilizing the UNDRIP (United Nations Declaration on the Rights of Indigenous Peoples) in order for tribal nations treaty rights to be recognized and enforced. [Valerie Olaizola]

Q: ILWG particularly thanks Chairwoman Sharp for her time she made selflessly to our association or our representatives. The work and contribution of the Commissioners is appreciated.[Marcella Giles]

Commissioner Hall: when is the report "public"?

A: The version we will distribute tomorrow morning (December 11th) will be the "official" public report because it will have the edits and corrections

Q: Seems like the way this thing is being handled is totally the white man's way. No input from reservations as to what's going on or how we can spend the money. I have no idea who this commission is or its make-up; have no commissioners from my area. Rosebud is biggest holder of IIM account but they only came out once and told them they had 18 months to spend the monies; have an existing program where they buy fractionated lands and can't buy fee lands to expand their reservation [Jacob Antione]

A: Commissioner Hall responded: This is a five-member Commission, we are members of federally recognized tribes and include representatives from the Southwest, Oklahoma, Pacific NW, Great Plains. The Commission includes experts in Indian Law and have good experience as well. Some of the Commissioners are themselves allottees. We tried as best we could to bring the tribal perspective to our work; traveled extensively in the two years of our work, reached out to a lot of people, including young people and people in different regions. Wished they could have had more time to interview smaller communities. The Commission did a lot of work; they are all representative of tribal communities. I, (Commissioner Hall) am a tribal chairman, a rancher, an allottee. I grew up poor and subject to waiting for monies to show up. The Commission is making good recommendations to improve the system. The Commission spent two years getting input; the contractor [Grant Thornton] also went out several times. This report recommends improvement of a lot of trust administration to make it better for the allottees and the tribes. These are recommendations to the Secretary. If Indian country wants to make more recommendations, they are free to as well.

Q: Why did you set up this comment event two days before you have to submit to the Secretary. This is upsetting because it appears to be pushing and dictating to the tribes. Why is this so sudden? [Jacob Antione].

Commissioner Zah addressed Jacob Antione's comments by saying that none of the Commissioners "campaigned" for their position, they were asked to devote their time. None of the Commissioners were paid, this was a volunteer effort on their part. Please consider the report as an inspiration to some of the young Indian people to help them to try to figure out their own place in America. The report is a guide to suggest how to address problems in their community: listen to your community, your elders; as a young person, pick up your tools and help build a better society for American Indians. Use the report as an inspiration. This report should inspire not only young Indians, but also Congress and federal agency staff. Thanks to Commissioners Anderson and Leeds for putting the report together.

Q: Congratulations to everyone for an excellent piece of work on the report. Is there a game plan for briefing the Congressionals and moving forward on the legislative effort or is that Secretary Jewell's job?

A: Sarah Harris, DFO, responded: these questions will be addressed by the Secretary in consultation with tribes to see what the best possible way of moving forward is.

Commissioner Hall suggested that each commissioner should prepare to give presentations about the report. The powerpoint presentation would be an efficient way to address the presentation requests.

Adjourn –Chair Sharp

Chair Sharp thanked the Commission, support staff, and the public, who provided valuable input to the report and helped the commission to deliver a great work product to deliver to the Secretary.

Chair Sharp then adjourned the meeting at 10:00 a.m. Pacific.

Appendix A

Webinar Call of the Secretarial Commission on Indian Trust Administration and Reform

December 10, 2013

8.00-10.00 AM Pacific / 9.00-11.00 AM Mountain / 10.00 AM -12.00 PM Central / 11.00 AM -1.00 PM Eastern

Phone: 888-989-8135

Public Access Code: 4695231

Register in advance of the webinar at:

<https://www1.gotomeeting.com/register/704255144>

Objectives

- Review and approve Commission Report
- Discuss next steps, and
- Public comment

Agenda (Times listed in Pacific)

- 8:00 – 8:15 Welcome, Introductions, Agenda Review –Chair Sharp
- Brief explanation of how public comments will work on webinar. – Sarah Palmer (facilitator)
- 8:15 – 9:30 Review, Discuss Commission Report, and Approve – Commission and DFO Harris
- 9:30 – 10:00 Public Comment
- 10:00 Adjourn –Chair Sharp

Commission Materials for this Call:

- Trust Commission Draft Report (available on Commission website: <http://www.doi.gov/cobell/commission/index.cfm>)

Appendix B – Webinar Participants

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|-----------------------|--------------------|
| Nina Adams | James Greenleaf |
| Acee Agoyo | Marshea Halterman |
| Aarie Alderete | James Hammond |
| Frederick Alt | Nicole Hanna |
| Jacob Antione | Sarah Harris |
| Paula Antoine | Lew Hastings |
| Patricia Appl | Dub Hawley |
| Marlys Appleton | Marc Hebert |
| Russell Attebery | Justin Heminger |
| Phil Baird | Charlotte Hicks |
| Rhonda Baker | Kate Hoover |
| James Barham | Marcia Hurd |
| Billie Barlow | Margie Hutchinson |
| Arlene Begay | Linnea Jackson |
| Cheryl Belcourt | Jeanne Jacobs |
| Gayla Bennett | Kevin Jones |
| Joanne Bill | Marianne Jones |
| Stacy Black Bear | Angela Karst |
| Brian Bloch | Matthew Kelly |
| Beatrice Boismenu | Gus Kerndt |
| Gail Brooks | Norman King |
| Melvin Burch | A Gay Kingman |
| Linda Burhans | Akilah Kinnison |
| Kitcki Carroll | Neal T. Kramer Sr. |
| Loretta Carter | Ken LaDeaux |
| Stacey Chados | Florence Laducer |
| Stephen Coit | Deanna Lalsey |
| Robert Craff | Joy Ledbetter |
| Sarah Crespin | Dawn Leftwich |
| Mark Davis | Cheryl Lohman |
| Teresa Dettling Logan | Cynthia Loney |
| Louise Dixey | Douglas Lords |
| Deb DuMontier | Patricia Marks |
| Liz Dykstra | Patricia Mattingly |
| Joshua Edelstein | Jay McCray |
| Kathleen Emery | Shelly McDonald |
| Charles Evans | Michael Mcdonough |
| Sheela Farmer | Robert McKenna |
| Keith Field | William Micklin |
| Judy Fink | Lavina Milk |
| Tom Fredericks | Paul Moorehead |
| Debu Gandhi | Ginger Morris |
| Ernest Garcia | Rick Nordwall |
| Amber Garib | Austin Nunez |
| Rick Geiger | Valerie Olaizola |
| Patricia Gerard | Timothy Overdier |
| Regina Gilbert | Debby Pafel |
| Marcella Giles | Sarah Palmer |

Phil Parker
Jeremy Patterson
Jessika Peltz
Janel Perry
Yahudah Shem'Yahudah. Prince
Shane Red Hawk
Chris Redman
Dan Rey-Bear
Thomas Reynolds
Helen Riggs
Brian Ross
Wayne Scribner
Zach Scribner
Chris Shar[
Bodie Shaw
Noel Smith
Sacheen Smith
Faith Spotted Eagle
John Spotted Tail

Lamont Stable
Teresa Stella
Marcia Strickland
Dereth Tahkofper
Angela Tate
Tiffany Taylor
Vanessa Taylor
Carolee Toby
Mark Van Norman
Anthony Vicari
Teresa Wall-McDonald
Vi Waln
Henry Ware
Daniel Watts
Monica Whiting
Caren Williams
Robert Winter
Royal Yellowhawk