

**DOI Secretarial Commission on  
Indian Trust Administration and Reform**

**Meeting 5**

**April 29, 2013**

**Nashville, TN**

**Meeting Summary**

## Table of Contents

Executive Summary .....	3
Monday, April 29, 2013 .....	5
Opening Remarks .....	5
Honorable Oren Lyons – UN Declaration on the Rights of Indigenous Peoples and International Trust Models.....	7
Panel Session 1: Vision of Trust Management Model, Responsibility, and Reform .....	13
Commission Questions Regarding USET Member Recommendations .....	22
Public Questions Regarding USET Member Recommendations .....	25
Commission Operations, Reports, and Decision Making .....	25
Update on Management Consultant Tasks from Grant Thornton .....	27
Update on Cobell Education Scholarship Fund .....	29
Trust Reform and Administration Panel.....	29
Commission Questions for Mr. Chambers .....	31
Commission Review and Discussion of Preliminary Recommendations.....	32
Commission Comments on Draft Statements .....	33
Public Comment on Draft Statements .....	33
Public Comments.....	36
Closing Remarks .....	38
Appendix A. List of Acronyms.....	40
Appendix B. Trust Commission Meeting Four Attendees .....	42
Appendix C. List of Documents Distributed and/or Presented at Commission Meeting.....	44
Appendix D. Summary of Commission Meeting Action Items .....	45
Appendix E. Public Comments Submitted to Commission .....	48

## **Secretarial Commission on Indian Trust Administration and Reform**

### **Executive Summary**

The fifth meeting of the Secretarial Commission on Indian Trust Administration and Reform was held April 29, in Nashville, TN at the One Century Place Conference Center. Fawn Sharp, Quinault Indian Nation, chaired the meeting. Sarah Palmer of the U.S. Institute for Environmental Conflict Resolution (U.S. Institute or USIECR) facilitated the meeting.

During the day-long public meeting the Commissioners heard from national experts and tribal leaders about strategies to improve the trust relationship and recommendations for strengthening self-determination and sovereignty. Members of the public encouraged the Commissioners to consider legislative recommendations that will have lasting impact for change and to consider recommendations on the implementation on the U.N. Declaration on the Rights of Indigenous Peoples.

Members of the Commission are:

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

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

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

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

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. Mr. Anderson worked as Associate Solicitor for Indian Affairs and as counselor to the Secretary of the Interior on Indian law and natural resources issues from 1995-2001.

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

The Commission will meet in-person at the following locations in 2013:

- June 5-7 in Oklahoma City, OK
- August 17-19 in Anchorage, AK

The Commission will hold administrative calls on May 13, July 16, September 10, and November 20. The time for the public webinar and agenda will be posted to the Commission website: <http://www.doi.gov/cobell/commission/index.cfm>.

## Monday, April 29, 2013

Chair Fawn Sharp invited Councilwoman Brenda Lintinger of the Tunica-Biloxi Tribe of Louisiana, to offer the opening prayer.

Chair Sharp opened the meeting by welcoming members of United South and Eastern Tribes (USET) to the fifth meeting of the Trust Commission. Chair Sharp asked the audience to offer introductions and reminded attendees that the Trust Commission welcomes comments at any time via the Commission website, <http://www.doi.gov/cobell/commission/index.cfm>. Chair Sharp reviewed the agenda and outlined the objectives for the meeting that included:

- Attend to operational activities of the Commission
- Gain insights and knowledge from invited speakers, and attendees about trust reform including other trust models and the trust relationship
- Discuss and make further refinements to recommendations
- Gain insights and perspectives from members of the public

### Opening Remarks

USET President Brian Patterson, Oneida, provided opening remarks to the Commission. He shared that the USET member tribes give thanks and gratitude and welcome the Commission to an ancient homeland and a sacred homeland and a footprint of the people. With sacredness we will make a better path for our children's children. As we stand with Indians from the West Coast we have an historic interaction with the Commission. The USET family of tribes has invested so much into thoughts on leadership. We strive to identify the needs, the dreams of our people, and how we interact. The culture and how the dreams were handed to us are important and this affects our children's children. We must advance the sacred duty. We must meet the needs of the people and work on a path to collaboration with one another; these are all integral parts that make us part of our people.

When traveling to Geneva for the draft on the United Nations Declaration, we were asked, "Do you have a land base, a community, and a language? We sat with the great chiefs and interacted. For the first time we felt as a sovereign and not a domestic dependent person. It's important to know that American Indian Country is firmly rooted in American Indian values. Indian Country is important for America. They like to see us when we are being Indians. We are just as relevant in our homelands today contributing to the fabric of America. The bones are firmly rooted and the dust of our ancestors is who we are today. One of the things that USET does well is stand in defense with our brothers and sisters in the protection of sacred sites.

If we were to go out, we could take you to the place where the Algonquin peoples greeted the first non-Indians as they came across the great salt waters. As we brought them to the shores we showed them the laws and customs sacred to the people. It was a meaningful consultation. Speaking of consultation, I was reminded that the executive order issued under President Clinton regarding government-to-government and consultation, that Indian Country was not in a position that was constructive or meaningful. I remember being in consultation and saying it needs to be meaningful. I'm not as naïve as I once was. I had the realization of relationship building. Relationships are paramount and everything else is derivative. We have a government-to-government relationship and it took me a while to understand that it is simply not enough; we must be disciplined to manage and leverage the relationship in a meaningful and constructive way. Where our moccasins go forward in USET, we move forward with collaborative relationships to advance paths for our children. Seven generations of Oneida ancestors loved me and made a place for me; I will do the same. We don't do this within our borders, within the external reservation boundary. We have a sacred responsibility. We have peace treaties from long ago.

I was in the middle of the Tohono O'odham and watched how they approached the sacred life on top of the saguaro cactus. They explained the approach and that the cacti are ancestors and related to the people. They said there was no more beautiful place in all the land than where we are standing. And as I stood there, I was reminded that home is where the heart is and their heart is alive where their home is. Two men I respect, Gerard Baker and Curly Bear from the Blackfeet Confederacy. Curly Bear says to me, we need to talk. He told me that in their caves they found one of our masks from our Oneida grandfathers, one of our false faces. Beyond our external boundaries we are connected. We are people of gratitude and homage – this resonates throughout Indian Country. This is a foundational concept that I speak of often. We have a teaching in our Confederacy that states "one bowl, one spoon."

There is another teaching from the peacemaker. When they unified the five warring nations under a message of peace, he took a single arrow and it broke with ease; he added more to the bundle, one by one, and when he reached five he could not break the bundle. This represents the strength in the unity of our people. One bowl and one spoon resonate loudly with our people today, if not more so than when it was given to us. From the great State of Washington to the lands of the Navajo, to the Mississippi tribes, to the purple mountain majesty of the Blackfeet, the work of the Commission and the opportunity before us is truly tremendous. If we do not own the sacredness of this moment, our children will suffer the consequences.

We are under attack on many fronts. Within our ancient homeland we are under attack by local citizens who wrap in the American flag and who preach one mindedness and solidarity and proactive separatism. When we face our issues in New York and do our best to realize we are part of larger community we have all these roadblocks and

different layers of hardships to overcome. Attacks begin on the local level in county government, state government, and into the federal government. Over ten years ago a New York State Representative in Washington, D.C. said to me, "What do you expect me to do? I have more constituencies in Manhattan than all of upstate New York." I told him, "I expect you to uphold the Constitution and represent our peoples."

*Commissioner Hall:* We have talked about intertribal trade and you made me think of that when you talk about the remains all around Turtle Island. Mainly the states want to hold us within our boundaries. Tribes met in Washington, D.C. last week to discuss reestablishing traditional tribal trade routes. When this becomes successful the states will want to tax tribes. It is important to have our representatives as an advocate. If goods or services produced on trust land, on a reservation, and transported to a nation on trust land and transported by an Indian company, the Secretary of the Interior needs to be able to protect us from taxation.

*President Patterson:* ATNI invited me over to speak at their annual conference regarding how to work more effectively together. We came to the conclusion that just because Congress disestablished the era of treaty making over 100 years ago, it does not mean we disavow from the cultural practice. USET proposed a treaty with ATNI and added an addendum to include trade and commerce within tribal nations. The treaty was approved before I finished presenting the platform. As I left I thought something is wrong. USET holds no fire, no sovereignty, this belongs to the people. What am I trying to do? An MOU? An MOA? What did my ancestors do? They formed sacred bonds of covenant and collaborated, held meaningful consultation, and formed sacred covenants. The ancient covenant chain of friendship from Britain was silver. We must keep relationships important and one bowl one spoon needs to be polished to keep the covenant strong. ATNI and USET meet periodically to talk about the topics important to our people. In the spirit of unity there is strength. We have formed an outreach from USET called the interorganizational tax initiative. We will keep it polished to maintain the bonds for our people. Unless we dare to dream our children will have no choice.

*Chair Sharp:* Thank you, President Patterson. Thanks for the message of unity and strength. I am incredibly honored to introduce Chief Oren Lyons. At our initial Commission meeting, Secretary Salazar told us to reach for the North Star. To do this we must go back to our traditional roots. Chief Lyons is a wisdom and faith keeper and we have asked him to bring to the Commission insights on how the UN Declaration can be implemented in support of tribes.

### **Honorable Oren Lyons – UN Declaration on the Rights of Indigenous Peoples and International Trust Models**

Chief Oren Lyons is a Faithkeeper of the Turtle Clan of the Onondaga Nation, and a Chief of the Onondaga Nation Council of Chiefs of the Six Nations of the Iroquois Confederacy, the Haudenosaunee or "People of the Long House." As Faithkeeper, Chief Lyons is entrusted to maintain the traditions, values and history of the Turtle Clan and uphold Gai Eneshah Go' Nah, the Great Law of Peace of the Iroquois. Chief Lyons was a featured speaker at the Global Forum of Spiritual Leaders for Human Survival held in Moscow, and in 1992 was invited to address the General Assembly of the United Nations and open the International Year of the World's Indigenous People at the United Nations Plaza in New York. His 1992 book, *Exiled in the Land of the Free: Democracy, the Iroquois and the Constitution*, co-edited with John Mohawk, details his belief that the emerging American colonies used the model of the Iroquois Confederacy as the basis for a democracy of united states. In 1982, he helped establish the Working Group on Indigenous Populations at the United Nations, and for more than 15 years, he has participated in the Indigenous Peoples Conference in Geneva, an international forum supported by the United Nations' Human Rights Commission. In 1990, Chief Lyons was awarded the Ellis Island Congressional Medal of Honor. A year later he organized a delegation from the Iroquois Confederacy to attend the United Nations Conference on Environment and Development in South America. He is also a key member of the Traditional Circle of Indian Elders, an annual council consisting of traditional members of the Aboriginal nations across North America. In his youth, Chief Lyons was an all-American lacrosse player and is now the Honorary Chairman of the Iroquois National Lacrosse Team. In 1993, he was elected to the Lacrosse National Hall of Fame. He was awarded an honorary Doctor of Laws degree from Syracuse University, and directs the Native American Studies Program as Professor of American Studies at the State University of New York at Buffalo. He is also a tireless advocate for American Indian causes and a teacher and mentor to future generations. Chief Lyons, on behalf of the Commission the floor is yours.

*Chief Oren Lyons, Turtle Clan of the Onondaga Nation:* Hello you are the best. Thank you for the introduction, thank you Brian. I have been thinking about this and writing and rewriting and thought I would just not write at all. I think that as they are talking about trade I just rewrote what I was going to say. Your discussion on trade is vitally important. President Clinton, before he left office, advised the U.S. that instead of shipping work overseas there are Indian nations here that are tax-free, why not use that arena? That is not followed up on but it is still there. The importance of supporting one another in trade – continue that discussion and follow that. It is becoming more and more important as we continue to build our nations. Taxes are always at the top. The Revolutionary War was about taxes. Taxes are how governments survive. My tribe is looking at building passive, green homes and we will need a lot of timber. We have been at other tribes inquiring about wood and these homes will be tax-free buildings, we are just doing it. We are also working on another enterprise, urban greenhouses. We are already building internationally and want to build here. These are designed for cities, for contemporary issues. The t-shirt says, "Why should a tomato fly?" Do you know how much it costs to fly a tomato? They should be grown at home.

We have one of the most traditional governments left in the U.S. Our leaders give a lifetime commitment and I am one of those leaders, 46 years now. I have seen a lot and been through a lot. We have to meet the issues of the day. We live in these times and the leaders here have to deal with issues of these times. The principles by which you function are what you are talking about and it has served us well. Our nations are old. Our histories are old and we have been interacting for a long time. We have a lot of experience and it hasn't been good for Indians and Turtle Island. Everything started with a mistake. Columbus landed here thinking he was in India so he called us Indians. We are not Indians. There are 565 different tribal names, that is who we are. Another explorer comes, Vespucci, and we become American Indians. This is wrong. We always knew who we were, we maintained that. The discussion has moved internationally now, to the United Nations.

Indigenous people thought that going to the United Nations is what it would be like going to Oz - here is the UN and they will now hear our problems and justice will prevail. This was not the case at all. The members were good old boy colonists that transferred from one arena to another. We were novices and had no help; we had to learn the hard way and we did. This spring, in June, we will be meeting in Norway to prepare a meeting in the fall in Geneva, the World Conference of Indigenous Peoples. There is a lot of history and we were involved all the way. How we got to Geneva is a long story as well. The 1940s, 1950s, and 1960s there is much history that many of you never knew about. There was a lot going on at that time. There were fishing fights in the Northwest on the Quinault, Nisqually, and the Columbia; you don't remember that. They were tough fights. There were fights over fish, over salmon, over the rights of our people to do what they have been doing forever. It is always the same - states and government against the Indians. Joe de La Cruz sued the federal government over timber that had gone down and was not salvaged. He said it was part of the trust responsibility to salvage the timber. We don't have the trust responsibility was the response from the government. Well, then what do we have? You have land, history, and who the people are.

In today's times in the very large picture of global warming and what's coming down now we have to get past the cowboys and Indians. You would think we could get past this. When Bin Laden was killed the code word was a very famous Indian man, a leader. Cowboys and Indians are not over. That is terrible, infantile, to hold on to that kind of thinking. I thought we had progressed at least beyond that. They defiled one of our most prominent, powerful leaders, and every person in the world knows that name. Wishful thinking, I think. We are still here; we are not conquered. We work together - as one coast - east coast/west coast. Our tribe has a treaty with the Lakota that we made in 1973 in Wounded Knee. I am making the treaty belt now. We made the agreement long ago for mutual support, peace, and friendship. Simple.

We are getting ready for the 400th anniversary of the meeting with the Dutch. We are battling historians and naysayers – it is reality, it is history. The Dutch came to us and they said we will make an agreement in trade. Amsterdam is the center of world trade in the 13<sup>th</sup> and 14<sup>th</sup> century. They were here in Mohawk country. They have a meeting and our leaders said at that time we have been watching you and it doesn't look like you are going home and more are coming. Let's establish relations and define how we call and interact with one another. The belt with two rows of purple wampum and a white field – a river of life – canoe and vessel side by side linked together with a covenant. Friendship is forever as long as the river flows and the grass is green.

It is pretty green down here. It is renewing, springtime, a time for celebration. Our next ceremony is planting – 6 days. We are renewing our agreements and respect for what sustains us. I think the reason that Seneca has lasted as long as it has is because we never gave up because we never gave up ceremonies and principles. The Clan mother chooses leaders and has the power of recall. She oversees my conduct. She holds that title. In our tribe the title is in the hands of women, they are powerful. In today's times we talk about democracy. I am a retired professor of American history. You can't tell me too much about history. I quit school in the 8<sup>th</sup> grade. I was in the woods for a long time. That was my teacher, which is where I learned everything. One dish, one spoon that was a philosophy after the peacemaker gave us a great confederation, this idea of unity, the power of great minds, peace, justice, and equity – it was all there. How should we tell our people? One dish, one spoon. Everyone is equal, everyone shares equally. We always look after everybody. There are other words that go with that and that is "nobody owns the woods but everybody is responsible." Put them together and that is a pretty good life.

Ideas from the Dutch were of commerce, capitalism, and socialism. We were who we were. We had our own ideas and structures that lasted a long time and continue to last because they are based on the principles of life and nature, natural law. It requires understanding and living with it. Supporting it, living it, protecting it, teaching children to be respectful, and take only what you need put back. Capitalism does not think that way – it is profit/loss/bottom line. I was once asked what my bottom line was. I couldn't answer and asked them to let me think about it. It took me a while. We don't have a bottom line because we operate in a cycle, spring/summer/fall/winter, and there is no bottom line. It's different. So when you got one foot in the canoe and one foot in the ship, it is a precarious place to be. We are where we are, whether we like it or not.

How would we call one another? They said we should call them father. Yes, a father is respectful and we respect fathers but he also has a duty, authority, and can chastise. Maybe we can call you brothers, because brothers are equal. We all agreed and agreed and call one another brother. That is what we do when we talk to the President of the US. Brother, we say. Not master or equal, one dish, one spoon. Let's get things back to where they need to be. We learned the hard way to be careful how we address ourselves and what we call each other. We learned in Geneva and it is not a good idea

to call one's self the member of a tribal government. Tribal is a pejorative term. Nation is a nation. We should insist to be addressed as a nation, not tribal nation, a nation, an equal. If you put a verb in front of something it changes. You can't be a member of a nation; you can be a citizen. This can be tough to understand, that is why they have lawyers. What the word says in one situation it doesn't mean in another. Get into a lot of trouble that way. Be careful what you sign. Be very careful.

There is a story in the northern Yukon, high-level Canada by the Arctic Circle. I was there talking about tradition, language, plants, and so forth. An old man speaking a very old language asked why we were there. I had to use two interpreters before I could hear what he was saying. He was over 90 years old. He told us he was a powerful young trapper, one of the best. At 23 years old he fell into the river in the winter. He was strong enough to get out and to get to his camp. He saw the fire and could not go any further and just fell over. He used his last effort to be in the position of death so they would know he did not panic and was in control of his death. He heard a voice that said get up. He was in a beautiful land and could smell berries. It was spring. He was told to take his clothes off, bathe in the spring, and put on new clothes. He was told he had a very close call and that his time is not complete and they explained what his mission was. There was a cross laid out and he could see the curve of the earth. He was told to walk out and step off. Three times he tried and they told him he had to step off because if not there is nothing we can do to save you. He stepped off and the cross disappeared. There would be a dam built on his land. The village would be moved and they showed him a lot of things and told him that as it came to evening he described grids of the city and the city blew up in an explosion. That is going to happen and your brother is coming with paper and pen and will take your land. Tell your people. He is coming with pen and paper and will take your land. Go back where you were and you will be fine. There he was and he sat up in the snow and it had been four days that he had been there. He got up, picked up the traps, the fire was out, and he ran all the way home. He had never told anyone except me that day. He told me he now knew why I was there. Should we tell them? He failed his mission, he didn't tell them. That is a story about the pen and the paper. Just think about that. Be careful what you sign, all the time.

When they couldn't find the leaders to sign, they would try to find anyone. Ben Franklin said the only way to get Indian land is rum. He was right, we lost our land. That is fraudulent. There were people that fought their way through from those times. The Alcatraz meeting was led by a young Mohawk man. We were in our third tour of the unity caravan when we ran in a circle four times – get back to land, get back to culture, and don't get lost. From that we went to Alcatraz, and stopped on Route 81 and John Lennon showed up and stood with us on the road. Those were amazing days, traveling all over the place. These names you don't remember, or have forgotten, there are many names. It was the mid-1970s by the time we went overseas and the discussion began then. We went with the Lakota and helped them have their ceremonies in 1976. In the Greasy Grass we were there. A lot of people died, including Lakota, and many Indians. In

1977 we gathered up to go to Geneva, 146 tribes from Central and South America. We didn't have money, didn't have anything, but we had a vision and we went.

What drove us there were all those past events and we were going to see the Wizard of Oz and he was going to fix everything. We were the munchkins. Thirty years we were there and fighting. We didn't understand that we were not recognized as human beings. Why aren't we included in the human rights? Why are we excluded? It was a conspiracy. Every year we would go and they would have to recognize these persistent indigenous people. The Working Group for Indigenous People was established in 1982. We thought that was great. We didn't understand we were labeled as populations and that we were not considered people. We fought to be included in the discussion in 1992 in Rio there was a huge meeting. It was a powerful meeting on environment. We got there, we were there. We did speak. We hoped we would be heard. Three special interests for the summit were women, children, and indigenous peoples. We got on the agenda which was a victory of sorts. We got to meet our neighbors, friends, and relatives in Central and South America. In some cases they were holding a truce 10 feet from each other but we stopped them. That went on and we went on and we were developing the Declaration on the Rights of Indigenous People because we didn't have one.

In 1992 it was the 500th anniversary of Columbus and we made a request to make it the year of indigenous people at the UN. It was declared in 1993. We did speak in December 1992. That year we defeated Columbus. In the public relations across the country he was hammered, he was done. When you go overseas, you cannot carry BIA baggage with you. You cannot. That is not what we are fighting for. You are talking sovereignty, not tribal sovereignty. Sovereignty. When you go over there you cannot be complicit in your own oppression. Those are old words. So it is serious business and a lot of lives were lost in that struggle. Take a lesson from the people who stood that ground all those years. It was so long that people lost the thread of the story. That is why I am here reminding you, it is important. We have gained a great deal. If you don't have a long perspective you won't see it because it is so hard and so little at a time. We are doing alright.

The next phase is going to be an international coalition of not just Indians, of all people because of global warming. It is the survival of the human species. There is no luxury of racism. You are going to have to give that up – both sides – we have tough people too. We must remember we are a human family and it will take everybody. It is a human problem that takes a human solution. It is coming; it is coming fast, and a whole lot faster than you are going to think. The Republicans had to shut down their convention because of a huge storm and the storm was denied, business as usual. We can't continue to do what we have been doing. Remembering that, remember all those people who fought their way through. Indigenous is all around the world. We weren't prepared for that either. When they asked us we said we are the indigenous peoples of the western hemisphere. Indigenous decided in Vancouver in 1975. We said we are indigenous and it was decided by us. As we move into the next arena it is critical. You

are sovereign nations, equal, no more, no less. Not better, just equal. The doctrine of discovery is coming; they tried to bury it. We are finally getting down to the crux.

There will be fights and we have to be careful how we move forward. I wanted to remind people what this background was. I am an old man now and don't have much time left. I was on that council since 1965, with young Irv Powers. The whole council has turned but the younger generations have the language and are carrying it on. The next generation I am satisfied with. You can only go one generation at a time. Good to know your own history. Our alliances are still there, you have to remember them. We are great traders. I want to show you this book, *Basic Call to Consciousness*. The history is in here. A lot of the history I am talking about. It is published in Summertown. It has been revised. John Mohawk wrote it with me and the message we took to Geneva in 1977 is in here. It hasn't changed at all. Still there, still pushed in what we present. On the front is the chief of the Shenandoah, Muskogee from Oklahoma, and David Bayandi; he is over 100 years and he was in Geneva. Great unity there, we were all on the same page. We didn't know what was going to happen. Next year, 2014, is the Year of the Indigenous Peoples at the UN. In 1977 we were not on the screen so, yes, we have come far but don't lose it in the last round. Don't lose the principles. Don't take BIA baggage over there. The fight is sovereignty. We are prepared. Things change, partners change, battles change, and the issues remain the same. I have a really clear feeling about President Obama and where he is going with Keystone and that is a deal breaker. If he goes through with that, no matter what is done with global warming, it will not be enough. Business as usual, we have to move forward. Establish your trade routes, they are still there. On July 28 we start the journey down the Hudson River – two rows, Indians and boaters. August 9 end at UN, the day of indigenous people and then celebration the next day. That is the grandfather of all treaties.

*Chair Sharp:* Thank you. We will heed the instruction and advice and leave that baggage.

### **Panel Session 1: Vision of Trust Management Model, Responsibility, and Reform**

The Commission invited three speakers from tribes and members of USET to provide their top three recommendations that would improve or strengthen trust management and/or administration.

*President Patterson:* We have this opportunity, this sacred moment. We cannot speak it any louder. You cannot become complicit in your own oppression – that resonated deeply. The official voice of USET is represented through our leadership.

*Chief Anderson, Mississippi Choctaw:* I am honored to be here today to provide remarks and to propose recommendations to the Secretarial Commission on Indian Trust Administration and Reform on improving the administration and management of tribal trust assets and the trust relationship of the federal government and federally-

recognized tribes. I want to thank the Commission for the invitation and opportunity to speak on behalf of my tribe about ways to improve the trustee-beneficiary relationship between the U.S. Government and Indian tribes and to address issues of key importance in progressing and strengthening the tribal – federal relationship.

I have been asked to provide insight on the tribe's experiences with federal trust management and administration. There is no doubt we must find solutions and reform this relationship to provide better outcomes for the tribes. I have a vested interest in how my tribe is able to fully exercise its powers of self-government for the benefit of our tribal members and for the overall future and welfare of the tribe; further, I have a general concern about the lack of progress that tribes throughout Indian Country are facing when they have to constantly battle the federal government in order to achieve compliance with treaty-protected rights or statutory mandates that go ignored or unfulfilled.

Depending on who you talk to, there are various reasons that tribal leaders, such as myself, would refer to as the cause or reason why there are failings in the government-to-government relationship. Many tribes have common concerns with the way they are treated by the federal government, for example, not being able to receive adequate funding for social programs and critical services for Indian people. However, there are other issues that may be specific to a certain tribe or tribes, and so our dealings with the federal government must reflect that situation.

In other words, a true government-to-government relationship requires that each tribe's interests not simply be glossed over by the federal government and intertwined with all other tribes. Each tribe deserves to be heard and their concerns should be addressed individually.

Trust Responsibility is hard to define because it means something different to every tribe. You can no more blanket define federal trust responsibility than you can paint every tribe with one brush. Each tribe is unique with its spectrum of issues. The Trust Responsibility question is a sensitive one involving complex legal and political issues. This relationship gives enormous power in Congress over Indian Affairs and a corresponding obligation to exercise that power to facilitate the long-term betterment and survival of the Indian tribes as distinct peoples.

However, in light of the many historic abuses of the federal government's authority regarding Indian tribes, there clearly needs to be a balance achieved between federal authority and tribal sovereignty. The act of defining something automatically limits it; and, the term trust responsibility is so universal that its application differs greatly from case to case. Were the federal government to give a single definition of its responsibilities, it would be too ready an opportunity for the federal government to opt out of most of these responsibilities. Again, let me emphasize, a universal definition is inappropriate and ineffective because each tribe is unique.

With that said, I can tell you what it means to our tribe, the Mississippi Band of Choctaw Indians, but first let me give you a little background about who we are.

- Only federally recognized tribe in the State of Mississippi, Tribal Constitution ratified in 1945
- At our starting point in 1945:
  - 80% unemployment
  - Shortest life expectancy
  - Worst infant mortality rate
  - No access to high school education
- Today
  - Total population 10,500 enrolled members, half of which are under the age of 25
  - 8 formally recognized Choctaw tribal communities
  - 2 branches of government – Legislative and Executive
  - 1 Tribal Chief, 17-member tribal council
- Sophisticated tribal court system
- Total land base over 35,000 acres in Mississippi and Tennessee
- Fourth largest employer in the State of Mississippi with an estimated \$1.365 Billion impact on the state's economy
- Operate the Pearl River Resort, three casinos, three hotels, an array of fine dining establishments, a nationally ranked golf course, and award winning water theme park
- Opened 1<sup>st</sup> business in 1969; currently operate 15 business divisions
  - manufacturing, health care, laboratory services, construction, real estate development among others
- Customer base includes: McDonald's, Pepsi, NASA, Club Car, Department of Defense, among others

Based on my experience as Chief of the Mississippi Choctaws, and also taking into consideration the valuable experience I obtained in my years on the Choctaw Tribal Council, and also with spending time with other tribal leaders throughout Indian Country, it seems there are some consistent issues that emerge regarding the federal government's responsibilities as trustee. I would like share those thoughts today with the Commission.

The Department of the Interior is the primary agency charged with carrying out the United States Trust responsibility to the Indian Tribes. The Interior's focus in recent years – principally driven by the *Cobell* litigation and settlement-- has been on improving its trust functions as regards reservation lands, natural resources and the management of the tribal and allotment revenues derived from those resources.

The United States Trust responsibility to the Tribes is not limited to land and resource

protection. The United States also has trust responsibilities in regard to the performance of core government programs and services for Tribes and the facilitation of Tribal self-determination as tribes assume more and more operational responsibility over those government programs and services. Congress has expressly recognized the United States special obligation to the tribes in this regard in various forms of legislation intended to further these objectives.

The current allocation of responsibility and management over trust assets among multiple federal agencies has resulted in a complicated maze of government bureaucracy that results in high costs, inefficiencies, and lack of focus when dealing with the tribes. The Interior should look at ways of streamlining the allocation of management responsibility over trust assets.

Further, an allocation of responsibilities over trust assets among multiple federal agencies likely results in inadequately trained personnel involved in the process. This can cause problems. DOI employees in the field are usually the first to handle important tribe or tribal member records and documents, so these employees need to fully understand their role in this process.

Here is a real life example of the flaws in the system. The Tribe owned a Ford dealership in Carthage, Mississippi that was not profitable. We made it known that we wanted to sell. Ford sent one of their prize dealers to look at the operation and possibly buy the tribe out. We signed a purchase agreement on January 2, 2006, for \$1.21 million. A local bank approved the sale so the only thing we lacked was a BIA approval to transfer the property. It was more than a year later on January 8, 2007, when the BIA approved the deed.

We were in constant communication with the BIA yet juggled from office to office, person to person, which resulted in severe delays in the process. By the time the approval came through the buyer had lost its financing and we lost the sale. As a result we now have a building that has been vacant for a number of years in a very bad economic climate. We are currently renovating into a new business operation to package and distribute fresh produce grown on tribal farms.

It's very frustrating when these occurrences happen. Despite our efforts to streamline we are still met with obstacles. There has to be accountability on the BIA level.

Here are some solutions:

- DOI should establish an expectation of greater accountability at this level.
- Even if consolidation of the roles (and possible elimination of some) of the multiple federal agencies involved in the management of trust assets is not feasible in the short-term, there should definitely be ways to increase the training and provide more experience now for DOI personnel involved in this important process.
- Perhaps all DOI employees have to be trained in trust management issues

including the history and background of the government's trust responsibility.

- DOI could reach out to tribes to provide their own training sessions about certain roles and responsibilities exercised by DOI so the tribes would have a better knowledge about what the government is doing and how it is doing it. This might be done every so often when a tribal election cycle comes around in order for any new tribal official to participate. This is all about improved Nation-to-Nation communication and providing each other with necessary information.

We operate 8 tribal schools with over 2100 students. For years the BIE has required tribes to provide an unwarranted amount of reporting in regards to educational issues - reports that are not required by federal law. Through various forms of legislation such as the *The Indian Self-Determination and Education Assistance Act* and the *Tribally Controlled School Grants Act* Congress has expressly recognized the facilitation of tribal self-determination and operational responsibilities of the tribes yet the problem gets worse every year.

Let me give you some concrete examples:

There is no earthly reason why BIE should need to have or require a report from our tribally operated schools which details how many times a student has been sent to the principal's office or has failed to turn in their homework. I feel not only is it illegal for BIE to demand such reports – some of which are hundreds of pages long – they do not have any need for such information. They do not operate our schools and they do not act on these findings... we do. Congress has authorized us to operate our schools with a bare minimum of federal oversight.

Continuing BIA efforts to impose the detailed Native Star reporting system and the NWEA MAP system for No Child Left Behind Act reporting are prime instances. BIE has no authority to require that we submit these reports.

What is the solution? Frankly, BIE needs to accept this and stop fighting us on these issues. Again, through legislation I referenced earlier, Congress has given tribes the authority to operate our schools with a bare minimum of federal oversight.

Congress has declared its commitment to the maintenance of the federal government's unique and continuing trust relationship with and responsibility to the Indian people for the education of Indian Children through the establishment of a meaningful self-determination policy for education that will deter further continuation of federal control over programs. In these examples, clearly you can see neither Congress nor the Interior Department have lived up to these commitments.

This ties back into what I mentioned earlier about accountability. I want to start with two recent examples, Jackson County, MS and Henning County, TN.

The tribe has a 58-acre tract of land in Jackson County, Mississippi that is connected to a piece of property we already have in trust. The tribe's intentions were to develop it potentially into a gaming property. In 2005, the tribe applied for this parcel of land to be placed into trust. During that time period the coast was hit by Hurricane Katrina and the communities were rebuilding.

It was the right climate and conditions to start this project and there seemed to be little local opposition to the plan. However, there was a delay in our application with the BIA. The BIA claimed the tract of land was "remote" to our other trust lands when in fact it was connected to trust property that already had two tribal businesses successfully operating on it.

Seven years later in December 2012, the BIA finally approved that land into trust. However the business climate has changed and the delay has kept the tribe from reaping our full potential in Jackson County. During the 7 years it took for the BIA to place the land into trust, the opposition organized funded primarily by the big gaming organizations on the coast.

Another inefficiency that has occurred is in the Henning Community in Lauderdale County, Tennessee. The tribe has a small community in Henning situated on 168 acres of land. We applied for this land to be placed into trust in 1997. Not until 15 years later, in December 2012, did we finally get approval on our trust application! This delay is absolutely unacceptable. There are a number of economic opportunities the tribe could have implemented that would have provided more revenues for the tribal government, jobs for tribal members and measurable economic impacts for Lauderdale County, Tennessee.

In order to achieve true reform, the federal government must address the unclear, or lack of defined, standards regarding the duties to be performed by the federal government in its role as administrator and manager of Indian trust assets. Inefficiencies are a counter product of a lack of accountability at DOI.

The solutions may involve both structural and procedural changes. If the Commission finds that more than one DOI bureau or office is fulfilling the same role or if there is widespread repetitious activity, then there is some streamlining to be done. Procedural changes when dealing with DOI employees could include better internal controls, mechanism for addressing grievances by employees and for reporting possible mismanagement of trust assets, proper training, and a code of ethics for DOI employees, etc.

The complex federal bureaucracy that is involved with the management of trust assets is no doubt a primary cause for gross inefficiencies, lack of accountability and unnecessary costs. The United States Trust responsibility to the Tribes is not limited to land and resource protection.

The United States also has trust responsibilities in regard to the performance of core government programs and services for Tribes and the facilitation of Tribal self-determination as tribes assume more and more operational responsibility over those government programs and services. Congress has expressly recognized the United States special obligation to the tribes in this regard in various forms of legislation intended to further these objectives.

Despite the problems we have faced, it's important that I state we do not view the BIA as our foe. There are many, many hard-working people at the agencies that want to see good happen for the tribes. It is the system that is dysfunctional and we have to work together as one group toward one goal to correct the problems that face us.

We acknowledge it's hard to do this job because there are 566 different federally recognized tribes, but the federal government must fix these issues. In the end we all are a part of a bigger family, we are American Indians – diverse yet unified people; diverse in our leadership, customs and traditions yet unified in our heritage and legacy as the very First Americans.

We understand there are rules and procedures that should be in place as is only right in any successful organization BUT those rules should not hinder our progress in Indian self-determination. That is the trust responsibility of the federal government.

Thank you for allowing comments today, I hope this provides insight to you on the tribal federal trust relationship. Working together as one there are so many things we can accomplish. There is so much we want for our tribal members. Education is very important to get to know tribes and invite them to come see you. Bring people down to see who we are and what we are doing. Thank you again, I appreciate being there.

*President Patterson:* Chief Anderson was the first woman chief of Mississippi and we are very appreciative of her leadership as founding member of USET.

*Councilwoman Lintinger, Tunica-Biloxi Tribe of Louisiana:* I am humbled to speak before the Commission and tribal leaders today. USET, in this book you were handed, has a position paper that touches on many topics that the organization is supporting and I would like to touch on three of these in my comments today. First, is the taxing issue on tribal lands. We developed four Burger King Restaurants on our lands. The State taxing office wanted to charge taxes and we were adamant that they didn't have the right to tax. This land was adjacent to reservation but not in trust yet. There are precedent laws saying both options are okay. We placed taxes in escrow until we had a formal legal opinion and land was officially in trust. In addition to that the State pressured us by pressuring our vendors at the casino. It was a difficult situation; ultimately we got the legal opinion that taxes should be paid. We sold businesses years later and one is on trust land and the building is leased. Now we are in negotiations with the local

municipality regarding taxes. The tribe should be collecting taxes. We cannot see the right of the local municipality to collect taxes on our federal tribal lands.

In the words of Elder Lyons, be careful what you sign. In the Supreme Court decisions are being made that negatively impact tribes across the U.S. Now we must all live with bad policy. Does the tribe pick up our weapons and fight battles? This isn't necessarily the time to carry out the battles. This hinders the tribe in every direction and complicates battles that are singular because of national impacts. There are some that are supportive of things we want to change but there are not many willing to change legislation to wave the banner. We must be vocal and vigilant to stay at the forefront. We can't be reluctant to fight the battles. Today's weapons are words and the legal system. We have the right to have a tribal delegate in Congress. We need to have our voice in those halls. We are citizens of these United States, in addition to the roles we have in tribal communities. There is no reason not to. It is time to push as hard as we ever have.

My great grandfather rode in a Model T Ford from Louisiana to Washington, D.C. in the 1930s to ask for medical help for our people. No one was there to hear him. What a journey they made, how hard it was for them. It did trigger a BIA representative visit years later. Our journeys are no less cumbersome and burdensome than in the past. We support a tribal federal commission to rally the issues that we face today. Commissions have often triggered significant legislation in the past. This is the time that we should push this. We need Congress to pass more pro-tribal legislation to recognize policies that result in full realization of our sovereign nation rights. Tribes are subject to more policies and procedures which impact economic development. There are friends, but not enough. If we do not speak for ourselves, who will speak for us?

*President Brian Patterson:* It is right to give thanksgiving for this day and the opportunity we have and to hear the opening frame from a man who has touched my life, my entire being. That is the love in my heart from nephew to uncle. I left out my name in the introduction. The last official act of the tribal woman in our longhouse was to place a name on me – Big Fire Lead Warrior. There was tremendous vision to place a name on me. My previous name is One Who Makes Something Better for Himself. It took many years to bring honor and integrity to that name. I want to reiterate that no one knows the words but everyone is responsible. We are responsible for the ownership of the message. Often times we speak of trust responsibility. Chief justice Marshall defined us as dependent domestic sovereigns. There is no definition of trust responsibility there. What is the definition? Are we going to allow the federal government to define this for us? Or find courage to stand and spread our vision? We have a vision of what trust responsibility should entail and we owe it to ourselves to have the conversation. Ben Franklin came to our councils and sat with us. He said if five savage warring nations could come in peace so can we the thirteen colonies. Franklin's comments regarding the rum, what is the rum of today? In order for us to not be complicit in our own oppression it is the sacred moments we must own. The DOI trust reform effort holds opportunity.

As I sat with DOI in Indian Country regarding the implementation of the consultation policy, I realized that their view differed greatly from my perspective. The perspective throughout Indian Country is greatly different. The federal government feels there must be some asset to manage or leverage. The Indian exchange for land, water, and resources was a sacred obligation for Indian people but as a broader holistic viewpoint, rather than the federal government asset viewpoint. I recognize and rely on words spoken by Kevin Gover, a Pawnee and Director of the National Museum of the American Indian. Currently, the trust model is based on two principles: one, that we are unable to manage our own affairs and two, we need to assimilate. Both platforms have proven to be false and the current model is antiquated, flawed, and weak at the core.

Chief Anderson mentioned the system is dysfunctional. We view and use this Commission as an opportunity to put forward national rebuilding efforts across Indian Country in order to get true self-sufficiency. One view of the trust responsibility stems from the American Indian Policy Review Report of 1978. I would like to reflect on that commission report for several reasons. The founding fathers recognized the Iroquois Confederacy as a model for forming a country and again it is referenced as an American value as recently as 1977 on the end of President Nixon's efforts for self-determination. It is a unique relationship we enjoy. In advancing the trust responsibility we need to embrace bold concepts for a fair and more prosperous future for tribal sovereignty. There are ancient principles relevant today. As reflected throughout the document we have challenged our leaders by asking, what should tribal sovereignty look like? Should it expand beyond the control of federal dollars?

It should include the right to taxation and other issues, jurisdictional authority, recent efforts to advance protection of our women, and the exclusion of other sovereign authorities. That is something we need to be very cognizant of as we move forward. We ask leadership, what should trust responsibility look like? Federal funding for Indian programs should meet actual need. We hear many accomplishments that impact families across Turtle Island but funding does not reflect actual need. Is need determined from our people or priorities established beyond our influence? The needs of people are sacred promises given to Indian Country and there is an obligation of the U.S. to meet that. Indian programming should be a mandatory entitlement. Sacred obligations should not be discretionary. Tribes should be able to contract or compact functions and it should not depend on the economic standing of the tribe. Each nation should be empowered to negotiate that which best meets the needs of the tribal nation in a true government-to-government relationship.

There should be a tribal congressional delegate. We know that a number of treaties reflect designation of a congressional delegate. We think we should strengthen that position. Strengthen the platform found in treaties. There should be full implementation of the UN Declaration. Limit state involvement to consultation. Move ASIA to a cabinet level position. There are many conflicts of interest. BIA is not the fight. Tribes should

have not just consultation rights but approval rights on issues that are impacting tribes. The cultural patrimony of this land is a sacred landscape. USET has included a platform on how to advance these issues. We support the formation of a joint tribal/federal commission. The work of this Commission and the reports to come, present a tremendous opportunity. The outcome should secure advancement and branding of the moment. Indian Country is in a post-self determination era. These discussions on reform offer opportunity to explore what post-self determination may provide. There needs to be a new policy era to meet the needs of the 21<sup>st</sup> century and beyond.

There is a sacredness of duty and impacts on generations yet to come. There is not time for idle moments and we need to be aggressive. The alternative is too detrimental to consider. If we don't own and shape policy and relationships, it will be defined for us. This is happening now in the Supreme Court and Congress as they disavow from the sacred commitment of the treaty. We have a vision. We cannot talk about self-sufficiency and determination without economics. There is a relationship between economics and tribal sovereignty. Strengthening our nation economies is the key to the federal tribal obligation. With the stress on federal budget tribal tax right becomes even more important. Federal recognition is limiting sovereignty powers. We are not economically developed and that is a bitter compromise to our homelands. Implementing the UN Declaration on Indigenous Peoples is another important aspect of trust responsibility. This is a key platform for USET. We have worked in collaboration throughout Indian Country to hold the U.S. responsible for implementing the Declaration. The Commission should call on executive agencies to be fully aware of the Declaration and the sphere of responsibility it entails. There should be a tribal federal commission established for implementation.

### **Commission Questions Regarding USET Member Recommendations**

*Commissioner Hall:* The commission is a very good idea. Can you shed more light on the development of the commission? I would like to see a permanent committee. Chief Anderson, it is terrible that a fee to trust application took 7 years or 15 years, what do you recommend is a good timeline for turnaround? It is unfortunate that tribes are dealing with taxation from states.

*Chairwoman Lintinger:* The local government is attempting to tax the non-tribal owner of the business, not the tribe. We feel the tribal government, if truly sovereign, should have the right to tax those businesses on tribal lands. There is no reason for the local municipality to tax on federal tribal lands that they have no jurisdiction over.

*Commissioner Hall:* Have you brought this up with BIA?

*Chairwoman Lintinger:* Yes, there has been conversation but no support or communication with local authorities. We had attempted to expand our entertainment

property. The State of Louisiana was devastated and governments were handicapped and disorganized after Hurricane Katrina. At a time when you think the State would want development, the deal was delayed because we had to renegotiate the contract with the State for the transaction to take place. The State wanted bondholders to be licensed; this is not required of others. There are procedures in place that other businesses don't have to follow but we have these burdens and it impedes our economic development.

*Chief Anderson:* The fee-to-trust should not take as long. One of the things to help is that we have a checklist that is required for applications. Most of the items necessary for DOI are done at the tribal level. We prepare the deed and send it to them. One of the things that needs to be done by the DOI is that they have a checklist so they can be in constant communication and if they need the appraisal or a certified document, we can provide that to them. I believe that if the DOI would take the necessary steps to create a checklist for what is really required and provide them, it would help us work with better communication. Don't put our applications to the side and not answer us. If there are items missing, then let us know. We have a checklist so we pretty much know. Lack of communication and the time it takes for processing are the big issues. Once we have all the documents in place it shouldn't take long because we send the deed. Constant communication with the realty office would be something to help the situation.

*President Patterson:* USET will work on detailed response to your question Commissioner Hall. Development of a joint federal tribal commission would head off a number of potential conflicts and advance a number of platforms. Indian Country should be an American value. We are stewards and have a rightful place in our homelands. Trust is evolving or else why have different eras? Why did founding fathers place Indian Country in the War Department? There have been a number of instances where such a commission would have merit. It would provide a proactive role for pro-tribal law. It would help meet today's effort to advance and address the role of trusteeship. The current model symbolizes guardianship. When the Dutch prefaced their treaty they indicated we would be like children – no we will be equals. In that mindset, what does the trust relationship entail? Does it require a detailed definition that is accountable and transparent in agencies and courts? Any interpretation of trust responsibility should include recognition of efforts like the UN Declaration.

*Commissioner Leeds:* Regarding the fee-to-trust delays. If the realty office does some of the work is the breakdown in communications or are there other bottlenecks?

*Chief Anderson:* One of the main things is the inability to keep employees at the BIA realty office. Because of the backlog they have, I believe employees at the realty level find it so hard to come in and battle something already in place and neglected for years. They have a difficult time catching up. What is our status here? How much longer will it be? When new people come in they are already backlogged. One thing that hurts is that

it's leases, permits, rights of ways to record, not just realty. Fee-to-trust is not just hard for us but also for the people trying to make this happen. They need additional staff so that while they are working on the backlog other staff can work on issues at hand. It is frustrating to know that documents are lost. Even though documents are recorded, it is hard to get copies. Without really knowing all the reasons why, because a lot of the documents are done at the tribal level. Appraisal, maps identifying fee and trust lands, legal descriptions of land, FONZI, environmental review, post for comment, lots of legwork is done by the tribe. I believe one of the things so hard for many tribes, is the backlog. A lot documents are put to side or lost and we have to resubmit applications. I would encourage the hiring of more staff to deal with the backlog and allow current staff to deal with current, pressing matters.

*Chief Lyons:* We tried to get a commission and were stymied at every turn because one thing you need to be sure of is who is on the commission. If the selections are made by the federal government you are just spinning your wheels again. You need to have more discussion amongst yourselves and begin the discussion to clarify the issues you want to talk about and who should be on the commission and know all of this ahead of time. If they make up the commission, you are back at zero. BIA functions very well and is not there on your behalf. They are doing very well to stymie every effort. At the same time every safeguard for extractive companies is removing and they are allowed to run loose and then BIA turns to Indian nations to ask for paperwork. Take independent action. What is the use of asking? You have the right to do what you want to do. Think of different terms. This is difficult, I know. The commission needs to be there and Indian policy has to be reviewed on a fair basis. If you allow it to be developed without input, it is just another step for abuse. The New York State 1924 Citizenship Act tried to force us into citizenship. We responded in letter and telegram saying no thanks. There is a 1925 NY Times picture of Jesse Lyons explaining who we are – the Seneca and the Mohawk nations. The issue with passports is simple. If we accept a U.S. passport we say we are citizens – how can a U.S. citizen have a treaty with himself? Assimilation is working right now and hasn't been changed. At some point they said we made these treaties and we shouldn't have and we are stuck with them. It is easier to change people than treaties. Don't be complicit in your own oppression; you are who you are. Treaties are very substantial. They are there, they are ours. I think the idea of a commission is correct, decide who and what you want to talk about.

*Chairwoman Lintinger:* The lack of resources and personnel to process applications is an issue. Strategic partnerships with universities might play a role for them to process and get caught up on paperwork. Might help create full time jobs and look for projects for upper-level students. There may also be support from major corporations with social responsibility policies. There has to be more resources in order to be caught up. I don't know where the government will come up with these resources.

## **Public Questions Regarding USET Member Recommendations**

*Audience Member:* We oftentimes overcomplicate things. The role of trustee as defined is, for the most part, not being fully executed. The trustee is to carry out the express terms of the trust instrument and defend the trust. Our trustee is not defending. The trustee is to prudently invest trust assets. They are to be impartial among beneficiaries. They are to be loyal. The trustee is not to delegate authority and in many Section 106 situations they are delegating authority to a non-federal entity. The trustee is to not profit from the trust. They are to not be in a position of conflict of interest. They are to administer the trust in the best interests of the beneficiaries. This is what a trustee is to do in general and paints a picture of where the current structure falls short.

*Audience Member:* I am looking at the USET section regarding land reform. There is a need and periodically the issue comes up on money for repurchasing of lands to be added to the reservation. Any thought how to request money to repurchase lands to add to reservation lands?

*President Patterson:* USET's main platform in every issue ties back to the trust relationship and is tied to the ability to safeguard and promote the betterment of homelands. We have not gotten into the specifics of funding for acquisition of homelands. There are intrusions into our home territories from state and local governments. This would fit into the platform but specifics for funding of homelands have not been done. The platform should be adjustable to include that. We are always fighting off instructions from state and local governments. There is a lot to be said on the conflict of interest and its implementation opportunity in Indian Country to reexamine the trust relationship.

## **Commission Operations, Reports, and Decision Making**

Commissioner Leeds made a motion to approve the minutes and Commissioner Hall seconded the motion. The Commission approved the minutes from the February 2013 meeting in Seattle, WA. The final minutes will be posted on the Commission website.

### **Outreach Activities**

Commissioner Leeds: In March, I made a site visit for a conference with the Coushatta Tribe of Louisiana regarding their agricultural production program. In the time since the Seattle meeting I have been preparing for two upcoming meetings in Oklahoma. May 9 I will give a presentation for the Muskogee (Creek) Nation on doing business in Indian Country and preparing for details of the June meeting in Oklahoma City.

*Commissioner Hall:* March 25 there was a meeting of the Coalition of Large Tribes (COLT) in Phoenix, Arizona. There were a number of initiatives, including budget. Budget cuts and sequestration would have an impact. Road maintenance dollars reduced, furloughs, Housing Improvement Program removed. These implications are severe and it is going to be harder to do business at the agency level. Even though tribes were not supportive of elimination of programs it happened anyway. TIBC met last week and there was an even bleaker picture painted if Congress does not approve the 2014 budget. Congress has not shown willingness to work together. COLT supports the exemption of Indian programs from sequestration and budget cuts. It is hard to exempt just BIA or IHS. There is some progress moving forward but tribes need to separate the environment from DOI budgets; if we don't, we will be affected. At the COLT meeting, we discussed the Office of Interior Energy and Economic Development. Recommended this get pulled back into BIA; it is currently under Indian Affairs. About 52 tribes will be affected under a pending Solicitor opinion that doesn't allow contracting and grants to be contracted to the tribes. The Trust Commission will continue to work on the UN Declaration and try to get a recommendation on how it can be implemented and be more helpful.

COLT has a meeting with the National Indian Energy conference in Albuquerque. The [energy] regulations are from 1908 or 1938 and these regulations don't fit what is currently happening. Tribes cannot keep up with the [energy] boom and we need to streamline those regulations and energy regulations and land transactions. We need permits, rights of way, and easements. We need to include BLM, EPA, ONRR, and five other federal agencies need to be included. There is a big lift to get all the permissions for energy development. I am glad Secretary Jewell and Assistant Secretary Washburn are in place. Seven tribal leaders had a meeting with OMB last Friday. Charlie Galbraith and Jodi Gillette assembled the leaders. OMB noted it could have been a lot worse with sequestration. We heard from tribal leaders like those at Oglala Sioux that cutting the Housing Improvement Program will prevent 10 homes from being built. People are going to die [without adequate housing]. Tribes don't have all their allocated funds because of the continuing resolution [in Congress]. How can tribes be accountable under the Government Performance and Results Act when not all funds have been distributed? We don't want to have a continuing resolution because then tribal dollars are subsidizing federal government responsibility.

*Chair Sharp:* Following the last Commission meeting I attended the buyback consultation and was at Tulalip for the ATNI summit. In the session I provided a fresh update on the Commission and we discussed that every president since Nixon has had an Indian policy and statement. Obama reconfirmed Clinton's Executive Order. ATNI has considered proposing a comprehensive set of principles and policy statements that the President could adopt. We are elevating budget issues from agencies directly to OMB. There was an Indian witness before the budget committee 20 years ago but there is no longer. The [Trust] Commission is considering legislative proposals that could be made – like the budgetary and funding issue from Chief Anderson. We lose the ability to effectively

advocate for budget when there is no decision making at low levels. At NCAI in March, I provided an update on the Commission and also attended the North American preparatory conference. We talked about prior and informed consent. We will be taking those issues to Norway to set the world agenda. We will delve into the trust relationship and identify what are the fundamental principles that transcend the borders.

*DFO Marsters:* Michele Singer, Principal Deputy Special Trustee, and I attended COLT in conjunction with the buyback program. The DOI team is working with the management consultant to gather research to assist the Commission in developing recommendations. The management consultant tasks are tailored to the charter. The consultants have met in several regions and have looked at increasing efficiencies in processing. The management consultant is also looking at processes across the federal government to examine streamlining.

#### **Update on Management Consultant Tasks from Grant Thornton**

The representatives from Grant Thornton reviewed the timeline for their assessment work. The baseline assessment of current systems is the first task. They are making progress and working to not recreate past studies. They are looking at the documented processes to see how things are working and where the challenges are. Task two will begin deep analysis into problem areas, the to-be model. Grant Thornton will provide the [Commission and DOI] high priority areas to focus on more immediately. Task three will be to determine the adequacy of the Department's current trust administration system audit functions and recommend options for improvements. Task four will be the final presentation of findings. Task five will help refine anything remaining.

As-is, where is trust today? First Grant Thornton examined the 1994 Reform Act and additional policies since then. From that came reform efforts, like the lock-box. GAO issued a report in 2007 and provided an additional 30 reforms. Since then the trust ownership system has been updated. OST had another assessment recently and many of these assessments were reviewed before moving forward. Looked at each program /organization to determine what the trust is, the vision they have, services they offer, and the systems they have to do their day-to-day jobs. Once this was examined, Grant Thornton began conducting interviews in regions. Some agencies are more trust focused than others.

175 interviews conducted and additional comments being accepted and requested. Grant Thornton is following processes to understand what is happening at which office and how the information is collected and processed. They are considering: is there a better way to share information and documents? If you pick up the lease at the point of initiation can it be shared to other agencies? What is a trust record and how long do you have to keep it? Grant Thornton is also examining input on customer service and tracking through the process the customer issues and how they are handled. Human resources – how to get and maintain the best people in these positions? Culture –

greater understanding between field and DC – are you meeting all the needs of your customers? Self-governance – some of these tribes are best practice and they don't seem to have backlogs. How do you encourage self-governance, compacting and contracting? Is there a menu of services tribes can take over? Will they get the systems and training they need? Are they getting paid enough to perform these duties? Land consolidation – some tribes are doing fee to trust and they are doing on and off reservation acquisitions. There might be outdated CFRs or interpretations that need to be updated. Sensitivity set for the federal or protecting the sovereign rights of the tribes?

Task 1 assessment is not an internal review only and we want to make sure we get out identifying issues that may be out there. The consulting team is trying to make participation as great as possible. If the public has feedback they would like to share they may email Grant Thornton at: [Trust.commission@us.gt.com](mailto:Trust.commission@us.gt.com)

*Commissioner Hall:* FYI when looking at oil and gas – got it right that it starts at BIA but then there are different lease numbers at different agencies. When they ask about the status of a lease or permit, not one of the agencies can tell the customer what the status of lease is. This information needs to be available at all the agencies and the backlog needs to be identified as well. If there is a backlog, you won't always see this. Include these items so when a customer calls they get accurate information regarding status. When a customer calls, not one agency can tell you the status of the lease.

*Commissioner Leeds:* What is your methodology of getting information from account holders and allottees? How are they identified?

*Grant Thornton:* More outreach will be done in the next phase. The primary means has been working with the collective team and with as you are available. Hope to do more specific outreach as we move forward.

*Chair Sharp:* My tribe had some representatives at the session in Portland and they had some very specific questions regarding resources. They reported they had to come at the issue several times because there was a prescriptive set of issues and questions from the management consultant. They wanted to know if there was another opportunity to provide information for the as-is. We have this as-is from the organizational perspective and it is needed from the beneficiary side. It is imperative that the baseline has the individual allottee and tribal perspective. We need to figure out how to do outreach to these perspectives before Task 2. We have a lot of the nuts and bolts but what we are hearing is that there are larger issues with the problems of the relationship, including the conflicts of interest. This is outside the bureaucratic function and system – how will Grant Thornton examine these? These are fundamental where the trustee may not be executing the trust responsibility fully and may be insulating the US government. They may not be sitting with us and may actually be sitting across the table from us. We have heard many times we have to figure out the role of the trustee

in a new relationship. What is the dispute resolution process? How can we evaluate the shortcomings, quantify it, and put in report so the initial report encompasses the 30,000-foot issues?

*Grant Thornton:* Conflict of interest is an issue. *Cobell* had everyone's hands tied for years and in speaking with the Solicitor the trust would like to be more transparent and this will be something we drill down at the next level. When you start considering restructuring and some of these other issues, they have been on the table for a long time. Right now is an examination of the systems and processes today. The issues are not right there and it will take retooling.

#### **Update on Cobell Education Scholarship Fund**

*DFO Marsters:* There are three components to the Cobell Education Scholarship Fund and they stemmed from a conversation between Elouise Cobell and Secretary Salazar in which they discussed there was a need to make something positive from the *Cobell* case for future generations. This scholarship fund will provide an opportunity for future generations to attend college. The first step was the selection of an organization to manage the fund. The American Indian Graduate Fund will manage 1/5 of the fund. The second step is to identify a Board of Trustees. The five-member board will oversee the fund and all American Indian College Fund activities will be approved by the trustees. The trustees will be Turk Cobell, Alex Pearl, the Secretary will choose two members after written consultation with tribes, and the American Indian College Fund has one member. The Board will need to create a charter, outline roles and responsibilities, and will serve without compensation. We hope to have the Board in place by the end of the year. The third step is the sources of funding. One piece is an incentive program for tribes to participate in land buyback. For every land sale there is a certain amount of money that will go into the scholarship fund. The Department is trying to staff up and figuring out how to manage the buyback program. Hope to have land sales by the end of this year. Other sources are any of the administration fees left over from the settlement process and any Whereabouts Unknown funds remaining from *Cobell* will be placed in the fund. The Department is still accepting nominations for the Board of Trustees and look forward to your support.

#### **Trust Reform and Administration Panel**

Reid Chambers was asked by the Commission to respond to the following questions:

1. Do you have any recommendations to improve or streamline delivery of services to trust beneficiaries?
2. What are your top three recommendations that you think would improve or strengthen trust management and/or administration for the Commission to consider?

3. Do you have any suggestion of other trust administration models the ITC should examine as it looks towards improving the DOI trust administration and management?

Mr. Chambers served from 1973-1976 as the Associate Solicitor for Indian Affairs at the U.S. Department of the Interior. He has also served as the chief legal representative for tribes and Alaskan native groups in negotiations or litigation involving land and water rights, hunting and fishing rights, Indian taxation, oil and gas rights, and welfare matters.

*Reid Chambers:* I focused my presentation on the draft statement of trust responsibility prepared by the Commission. You really begin, as you should, with the Marshall decisions. That is really where the concept of guardian/ward got started. You have summarized the relationship between tribes and the federal government. I think you should tie it more though to the purpose of the trust responsibility being to encourage and protect tribal self-governing functions. Tribes operate as distinct political societies. Cherokee cases tribes operate free of any state jurisdiction. The U.S. government and the British and European colonial powers have never interfered with tribal self-governance. I don't see the issue as being about self-governance and self-determination. It should be about respecting and projecting tribal sovereignty. You are entirely right to point out it's hard to get a consistent statement of trust responsibility and reference various policies over time.

I have given up on trying to give an articulation of trust responsibility that fits all. The most demeaning conception of the term was at turn of 19<sup>th</sup> century. The Supreme Court came down with Sandoval case that was a racist conception with no basis then and no basis now. The Marshallian trust responsibility and modern concepts of trust responsibility you are addressing. You are right to anchor this to Nixon's message. This is right because Nixon's message was the first time, I think, where a President set adherence to trust responsibility as a central goal of his administration and linked this to self-determination. The concept is that you cannot terminate trust responsibility without informed consent. The Nixon message does set the gold standard of federal Indian policy. Every administration since Nixon has embraced the concept of embracing trust responsibility. As Associate Solicitor in Indian Affairs I was charged with implementing the trust responsibility. I think it does serve as a basis for recommendations. Solicitor Frizzell said I had no responsibility except to serve as an advocate for reasonable Indian issues. That I had no responsibility to defend for cases of breach of trust and this has served as a model and has been followed by subsequent solicitors. This has become pretty common for the Indian division of the Solicitor's office.

I want to reaffirm that the trust responsibility should be an adopted policy and that the role of upholding this should be in the SOL, OST, and ASIA. Institutionalize that whatever the conflict of interest of those institutions, they should and can function as a trustee. They should be able to get support for reasonable claims. Largely that is true –

sometimes more robustly than other times. This is a basic institutional practice and some areas in the Department of Justice serve the same role. Institutionalize and recommend that common law fiduciary duties pertain to these institutions. The best articulations are basic fiduciary duties and models. Duties are basically for the purpose of protecting tribal self-governance. So that if the U.S. is protecting its water rights, rights to hunt and fish, its boundaries, rights to land, those are essential for self governance to function. I think the Commission should enumerate the common law fiduciary trust laws and Secretary issued orders or Presidential executive order shouldn't be able to change these.

This is an important landmark for the Commission. One thing that has happened in the last 15-20 years is, I think, the *Cobell* litigation got parts of the government into bad habits. One is the reluctance to take lands into trust. This is the aftermath of *Cobell*. Some in the government believe that if they assume trust duties they could be libel in the future. I think there is a reluctance of taking funds into trust. They ought to be able to do it right. I certainly think that is a misfortune. Another misfortune has been the Department breach of trust cases with a scorched earth defense and now the law is twisted and difficult to understand. Recommend that Congress enter into an act of statute that provides all federal agencies shall adhere to the common law duties of a fiduciary trustee. I think given the outcome and the aftermath of the *Cobell* case, Congress should step in and make clear the U.S. is libel when it fails to adhere to the trust responsibility. In the *Mitchell* cases if the government is not libel then there is little incentive to comply. The courts remedy executive actions in court all the time. OMB and Justice will scream; if the Commission recommends this change it will be a good thing for Indian people and trust responsibility. Identify specific standards that give teeth for trust responsibility. ASIA, OST, DOJ, and SOL all have arms that are charged with being trustees for tribes.

### **Commission Questions for Mr. Chambers**

*Commissioner Leeds:* Any common law has duties of loyalty. During our last four meetings we have discussed whether we can come up with protocols for DOI to implement short of legislation or regulation. Thoughts on how to get something like that adopted short of getting recommendations through Congress?

*Mr. Chambers:* Recommendation for the Associate SOL and ASIA – they should have duty of loyalty and that can be done without legislation. The concept of protocols and the idea of special counsel if there is a conflict of interest have not worked well so far. There have been some cases but they don't pay at the rate that most private lawyers ask for. The government never has enough money so this kind of thing is cut. In trust responsibilities piece the idea of an Indian Trust Council to represent tribes rather than DOI or DOJ. I think from my experience it is useful to be in the belly of the beast to understand in ways you cannot if not located in the Department. Reforms in Nixon and Ford administration, I thought those might be better than an Indian Trust Council. I do

think it is reasonable to think otherwise. The conflict of interest somehow doesn't seem as formidable as it did in the 1970s. When I look at the Bureau of Reclamation, it is run by a member of the Taos pueblo who is a strong advocate for Indian water rights. That is a big change from past decades. Conflicts are going to arise and ultimately resolved by top people but I think that tribes are so much more effective politically that the Solicitor for the Department is a Navajo. Conflict of interest as much a problem as not having clear fiduciary standards and waiver of immunity to have suits when there are breaches. It was an honor to appear. I commend you for your charge and work.

### **Commission Review and Discussion of Preliminary Recommendations**

*Commissioner Leeds:* This is a newer, improved version and addresses specific items and also a lot more critical of the current trust model and how that model is out of date because of ineffective consultation and what seems to be consensus that we are hearing that federal officials seem to be very concerned with doing anything as a trustee that may implicate future liability. We do address the international law or law of nations origin of trust responsibility. The draft document states in the second paragraph, "The Supreme Court noted that although the federal government and other 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." It reminded me of the first panel on taxation issues. Once those conflicts are identified there is a duty to respond for tribal governing authority itself.

Bottom of page 3 it starts down the path of talking about how the trust model has to be a new and improved version of what we have now. The Supreme Court has charged itself with moral responsibility. Page 4 by taking on responsibility invokes the same common law trust duties. Specific obligations that we know to be true are the six bullet points. We talked about whether to be more elaborate decided that we leave at the broader categories. What do we do to make sure government accountable to individual landowners? Bottom page 4 the statement now, less sugar coated, says we are operating under outdated trust model.

In the next section on consultation, all presidential administrations mention idea of extensive consultation but Indian people say those consultations are not as elaborate and encompassing as they should be. Need for clear protocols for conflict of interest. We are more concerned about future liability than effectively carrying out trust duties. Instead of *Cobell* effectively addressing trust duties, the federal government is afraid of making decisions that will lead to another *Cobell*. Now there is great concern about breach of trust. Page 6 suggests the U.S. reaches for a higher standard. Attached are recommendations that came from Indian Trust Responsibility Commission. It breaks

down the difference between wardship vs. trusteeship and talks about conflict of interest and when it has to be disclosed.

### **Commission Comments on Draft Statements**

*Commissioner Hall:* The conflict of interest piece it looks like page 6 has reference to this. Are there any more definitive procedures in place? If there is a project that is for tribal land or public land there should be definitive steps toward disclosure since the treaty deals with tribal lands and first and foremost should be disclosed before any type of project is continued.

*Commissioner Leeds:* That bleeds into the protocols. There are some challenges with the protocols being implemented at the Department or bureau level. There is no specific regulation, rather a standard of conduct. If they follow the draft now, a party communication, if there is appearance of impropriety, would have to be disclosed to the tribe or allottee. Some push back is that attorneys are always bound by conflict of interest and those same levels of disclosures by the American Bar – these are not the type of things that filter to the field office. There may be a Bar complaint if there is a breach. There is not a culture at the level of communications these are taking place. Who will be bound? At what level? We are talking about the appointment of special counsel and this is taking place in places higher than the conversation.

*Commissioner Hall:* Our tribe was flooded by a dam in 1948. 156,000 acres were flooded. Pick Sloan – 1944 Flood Control Act. They dammed the Missouri River and took tribal land. There was a conflict and the DOI Secretary did not stand with the tribes. We tried to get a land trade and it was forced condemnation. Protections for the future so there is not any forced condemnation in the future.

### **Public Comment on Draft Statements**

*Audience Member:* This is a comment on the draft trust responsibility statement. It is a classic piece defined as how the responsibility is viewed today. Contrast that with what USET is putting out about advancing trust responsibility. The Commission focus is on natural resources and financial accounts. The USET statement is trying to expand the notion of what is encompassed - expanded tribal jurisdiction and budget obligation. Is this appropriate for your document framing responsibility? Some treaties note congressional representation. There is a very strong hook there to trust responsibility. Tribal sovereignty includes culture, native languages – defend and protect native languages. Education of students, tribes have sovereignty over this. Expand this notion and put it in public documents. Protection of tribal sacred sites is important. There are complex issues with private property. USET in concept of advancing trust responsibility is going beyond the standard and consider what the appropriate place of these ideas is. If we are going to get them in the debate, we need them debated.

*Audience Member:* I don't disagree with anything said already. Navajo has specific provisions in its treaty regarding education and it goes beyond physical assets and money. Earlier today a lot of the issues addressed by the Commission are issues that go beyond DOI. There are certain things that need to be done in legislation. At the first meeting it was recognized that if we don't reaffirm what we are talking about and the basis of the relationship it doesn't matter. Only Congress can change that. The narrative is extremely valuable and we strongly recommend specific bullet points that are appropriate for legislation. Consider these sources: Title 1 of Trust Reform Act – S 165 and 303 DM 2.7 in the Department Manual. Page one of the protocols – 1B there are references to all parties waiving right to conflicts of interest – relevant individual Indians or 2A. Communication should be...Can do better than 30 days, maybe 1 week. Page 8 effected Indian tribe or individual Indian. Section B, Powers of Secretary. It is noted that the Secretary is free to make determination if such an appointment is not warranted. What is power if this can be waived at convenience of the Secretary? This is not necessarily just within DOI. If there is an issue between DOI and USDA who would be implementing this? Issues regarding conflicts might be addressed administratively within an agency, for true reform it must be addressed by Congress. An effective way to do it would be through a permanent Indian oversight commission. Not just a policy commission that writes a long reports but rather simply representatives of beneficiaries who can be there to raise issues when they first noted and to raise issues to be resolved before litigation.

*Audience Member:* If the trust responsibility statement is not adopted as regulation is the Commission confident staff can be held responsible?

*Commissioner Leeds:* I think the early discussion was that regulation needs to be truly enforceable but this is a first step in that direction.

*Commissioner Hall:* Page 134 of the trust responsibility chapter 4 – notion that tribal lands are treated as public lands. It does not appear there is legislation there if you look at paragraph 4 (A4) – how did Indian land become treated as public land? This issue should be clarified now. BLM and EPA are treating tribal land as public land. I don't know if this should be congressional or decided administratively right now. Research shows no Congressional law backing this.

*Commissioner Leeds:* One of the specific requests to the management consultant [Grant Thornton] was an inventory of regulations and the sources of law from which they come. Additional checklists have been created that have become administrative fiat without a source of law.

*Chair Sharp:* I don't know if the management consultants have benefit of earlier discussions. There was a discussion of the 1934 Act that at that point tribes with authority took land into trust. There was a BIA signatory requirement that was an

administrative evolution, not a source of law. 1933 Tennessee Valley Authority had a similar statute to IRA and to this day land taken into trust and is held under TVA. This authority has more power than sovereign nations.

*Audience Member:* Warm Springs Treaty of 1855 had language in it that the treaty set aside for exclusive use and occupancy of Indians, meaning tribal members. No outsiders are allowed on the reservation without the tribe's permission. We already have things in our treaties that lay out that issue and address that.

*Grant Thornton:* Relative to laws and regulations and those that surrounds Indian trust. We need to define what we are defining as trust. Our baseline was trust in the monetary and non-monetary basis. Some of these broader issues are not in the CFR 25 and 41 that we are reviewing. We will have to meet with the Commission to get your thoughts and need to look at the draft on how trust is today. All laws and regulations in as-is and to-be. We have talked about high level of what trust is today. We need to better define what your expectations are with us regarding what trust is and where you would like to go with the trust. Need time to go through this. We can define all laws and regulations defined in 2002 and 2003. Some laws and regulations are process oriented and treaties are more detail.

*Commissioner Hall:* What authority declared tribal lands as public lands? For those actions that need Congressional action that is where public lands issue is at. Is that Congressional or administrative?

*DFO Marsters:* One of the things that will forever be a challenge is the charter sets out the comprehensive evaluation of the fiduciary trust system in DOI. Secretary Salazar opened it up to be much broader.

*Commissioner Hall:* On the notion of the conflict of interest, page 1. I'm sure they won't come across an example where the government has disclosed there is a conflict of interest. Clearly that is a loose end. If we don't address it, it will continue to be a loose end. This is an area to zero in on. To-be is to establish an office where the tribe can say DOI has notified through the conflict of interest office that there is a conflict. Otherwise how do you disclose there is a conflict of interest?

*Commissioner Leeds:* The Commission talks about how we need to think big and structurally about what we recommend and we continue to get into smaller detail. If there has never been a hearing in 20 or 30 years, there is no disclosure. We don't want to overlook the big picture recommendations like something shouldn't be in DOI. Don't want to be too narrow in recommendations because we want to make impactful recommendations to change the system.

**Public Comments**

*Chairman Ron Suppah, Warm Springs:* Good afternoon my comments will be fragmented as sitting back some things come to my attention. Thanks for the great job you are doing and the great deal of work to consider. Pretty easy for us to look into a glass house and criticize. Hopefully my comments make sense. This morning you talked about intertribal trade and abilities by outsiders to attempt to assert taxation by what we consider Indian goods. Whether that is salmon, juniper posts, teepee poles, buffalo meat that we choose to trade between Indian nations. It is important to draw line at some point and start figuring out tribal tax situation. Look at the national level. I really think there needs to be development of comprehensive tribal tax law or act. In order for us to do that we have to start going through a forum such as this to identify key tax issues Indian nations face. Consultation and looking back at the existing laws and federal laws. Sometimes the state's rule has got to be better defined and outlined and clarified in many instances if we are doing a project public notification for public comment. State assumes they have some sort of veto authority. I would like to make sure that for projects that are being built on Indian trust land the authority should be with tribes as sovereigns.

Comments on OMB. It bothers me that due to sequestration there is reform that is already happening administratively and will have deep impact on Indian nations. Whether it comes down in reductions-in-force, furloughs, program cuts, program elimination, retirement, or payroll cuts. There will be a national loss of 900 jobs. About 1/3 of jobs will be in the form of retirement. Sometimes that is good because the old guard is out there with philosophy of do it my way because I know best. We have to look from the other side of the table. Because many are excellent employees and loss of employees will have an effect. Loss from realty services will have a bad effect because the staff is already small and this will have a negative impact to land. Treaty tribes, our government-to-government, and government are based on land. Land needs to be a priority in discussion of the Commission. Leasing regulations – Tribal Energy Resource Agreement (TERA) or leasing in general it appears the federal government is trying to get out of the Indian business. This is scary because they are saying tribes can administer but there is not enough money to take care of it. The contract support dollars are missing.

If the tribe wants to consider taking lease for tribal energy projects they have to have a public review process. This infringes on tribal sovereignty. If you decide to take this TERA it still requires that the agreement is approved by the Secretary. What advantage is obtained by taking this lease responsibility? It is an Issue of the government protecting its own tail and afraid anything they do there is a liability and consequence, potentially. If they have a choice they will take the not being sued avenue. The land buyback program is a somewhat complicated process. Eventually that liability issue may raise heads again because a lot of the tribes already have large expenditures of tribal money to buyback trust lands from willing sellers. In the case of Warm Springs we have

had a program in place since the 1960s – started at \$650,000 every year. Warm Springs is ahead of curve and we have spent millions of dollars and we feel like the federal government should consider reimbursing us for doing the trust responsibility job we have accomplished. Over 99% of Warm Springs Reservation held in trust by the U.S. government.

If you look at something like IHS budget and the impacts from sequestration and look historically at the efforts when sequestration hit in 1982 during the Gramm-Rudman Act that put in place a way to limit or protect cut to 2% level. As we look to future we would like to go back in history and get the Graham Redman language to protect, limit, or waive the cut. Maybe that is the element that we need to focus in now and OMB needs to do a better job of implementing GPRA. If change and effects on programs, need good rationale and validity to do that. *Cobell*, I have experienced it since phase one. One of my siblings received payment and the rest of us were left out even though we have the same eligibility. When trying to talk to the Garden City Group I get the run around and the regional Trust Officer is also not helpful. Looking into our murky crystal ball this may be grounds for a future lawsuit. Phase two is coming down the road and they hired another consultant to do this. Problem with this is that they shuffle trust responsibility to contractors who do not have responsibility.

Recommendations of formation of a permanent commission to look at trust responsibility and accountability. Recommendation might be instead of reinventing the wheel and having a congressional act to get the commission in place, why not some consideration to keeping the trust reform commission in place for some additional time at least until their recommendations hit the new Secretary's desk and the Secretary begins consideration of implementation. The Commission has gone through the exercise of developing recommendations, who better to see the implementation?

*Dan Rey Bear, Nordhaus Law Firm, LLP*: My comments are on a document to be put up on the screen. I am responding to the request for comments on the top three recommendations for the Commission. These track and distill comments I have made previously. The four R's. All of these we recommend should be done through trust reform legislation.

- Reaffirm the basis and scope of the federal trust responsibility.
- Reintegrate federal managers and recognize greater tribal sovereignty. Reaffirm: the essential baseline for everything. This should not be considered as something limiting the trust responsibility. There is some concern about putting things in writing because that would be all it is. Some tribes have treaties and the U.S. and some tribes may want to negotiate specific agreements. There is specific language as in Title I of S. 165 in addition to longer narrative.
- Reintegrate federal management and recognize greater tribal sovereignty. Self-determination was a full generation ago; time to take things to the next level. Talk about it for years; there is not a conflict between trust responsibility and

self-determination. Tribes can and should take on the administration – not just administer but develop and integrate.

- Reintegration with appropriate protections should increase federal efficiency and effectiveness and must assure greater tribal self-determination funding. Require meaningful Indian oversight via a permanent commission. Federal agencies cannot provide sufficient or interagency accountability. Ongoing oversight not to administer in that regard – address issues early on. Address federal conflicts of interest with and among tribes and individuals.

### **Closing Remarks**

*President Patterson:* This was good time spent with the Commission as we cover so much ground. There is now a greater depth of knowledge. I offer a big heartfelt thank you. I would like to ask for Councilwoman Lintinger to provide any thoughts from USET.

*Councilwoman Lintinger:* The reluctance of agencies to put things down for fear of liability is not acceptable; we are holding them accountable. If we are holding teachers accountable, why not hold the federal government accountable?

*Kitcki Carroll:* I would like to express appreciation to the Commission for coming east to hear our perspective. There have been many conversations and I am happy to hear the broader conversation today. Not so long ago I was in a meeting with federal officials and the comment was made to don't ever expect trust to be defined because it holds the federal government too accountable. There is a very loose in interpretation right now and defining it does not limit the scope. This should be considered minimum standards that apply to all. Tribes of USET firmly believe in the ability of a tribe or nation to individually negotiate terms of its own relationship to the federal government. We understand that all tribes are not sophisticated enough to do that. So having minimum standards in place will help avoid that so if a tribe is not at the point of evolution they will not be taken advantage of. Discussion of trust and what it means. All we are asking for is that you trust in us and that we know our communities and what is best for them. Shift in midst where we know ourselves and trust in us.

*President Patterson:* We are especially grateful to welcome the Commission into the USET homeland. Nashville is closely shared with the Choctaw and the land is a footprint for the Cherokee. This land is ancient and our people are ancient. When dealing with issues of trust responsibility in contemporary setting it is hard not to engage in discussion of ancient footprint of the land. The Shinnecock Nation had ancestral bones unearthed from Hurricane Sandy. They were very concerned in the conversation with FEMA that they were going to send in a representative that has not effectively worked with tribal nations. And yet here was a tribe with over 400 years of interaction with people in their homeland. We have a devastating impact to all of Indian Country in the form of Supreme Court decisions. I thank this Commission for allowing a broader, fundamental platform. Trust responsibility is a leadoff platform for USET. We are still

establishing what tribal sovereignty should look like. There are two classes of citizenry in Indian Country. The Restricted Settlement Act created this second class citizenry. These are people with the longest standing relationship. What should trust responsibility look like? What are the minimum standards? The federal government needs to realize fully that the relationship is not discretionary but mandatory. Be loyal to your beliefs and pursuits. I have heard tribal leaders say to not make apologies for defending sovereignty. We need protection to limit state and local government intrusion into our territories. We need to address the economic disparity that is found in our USET nations. What is the opportunity that exists for Indian Country to meet the U.S. requirement for basic health and welfare of a people? We are grateful for the information. Safe travels to your homelands and peoples and to Washington, D.C. We look forward to the next steps of the Commission.

*Chair Sharp:* It truly has been an experience. We are next going to Oklahoma and Alaska – hitting all directions. It was an honor to be here and have a highly interactive session. Thank you for your interaction. This is a beautiful part of the country. Thank you.

President Patterson closed the meeting in prayer.

**Appendix A. List of Acronyms**

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

OTRA	Office of Trust Review and Audit
PSA	Public Service Announcement
RACA	Office of Regulatory Affairs and Collaborative Action (IA)
SOL	Office of the Solicitor
TAAMS	Trust Asset Accounting Management System
TEK	Traditional Ecological Knowledge
TFAS	Trust Fund Accounting System
TIBC	Tribal/Interior Budget Council
USET	United South and Eastern Tribes Incorporated
USIECR	U.S. Institute for Environmental Conflict Resolution
USGS	U.S. Geological Survey

**Appendix B. Trust Commission Meeting Four Attendees**

<b>Name</b>	<b>Affiliation</b>	<b>Monday, April 29</b>
<b>Commission</b>		
Tex Hall	Commissioner	X
Stacy Leeds	Commissioner	X
Lizzie Marsters	DFO	X
Fawn Sharp	Chair	X
<b>Commission Support Staff</b>		
Bodie Shaw	BIA	X
Bridget Radcliff	USIECR Facilitator	X
Mark Davis	OST	X
Patricia Gerard	OST	X
Regina Gilbert	BIA	X
Sarah Palmer	USIECR Facilitator	X
Tiffany Taylor	OST	X
<b>Public Attendees</b>		
Albert Bender	News from Indian Country	X
Allen Belle		X
Annie Bell	Mississippi Choctaw Indians	X
Aurora Lehr	Native Federation	X
Bella Sewall Wolitz	Office of the Solicitor	X
Boyd Samson		X
Brandon Stephen	Development Director, USET	X
Brandy Sue Venuti	Special Projects, USET	X
Brenda Lintinger	Tunica-Biloxi Tribe of Louisiana	X
Brian Patterson	President, USET	X
Brian Ross	OST	X
Cara Hall		X
Charlotte Hicks	Upper Mohawk	X
Chief Oren Lyons	Onondaga and Seneca Nations of the Iroquois Confederacy	X
Chief Phyllis Anderson	Mississippi Choctaw Indians	X
Courtney Shea	Office of the Solicitor	X
Cris Stainbrook	Indian Land Tenure Foundation	X
Dan Rey-Bear	Nordhaus Law Firm, LLP	X
Donald Kilgore	Attorney General, Mississippi Band of Choctaw Indians	X
Earline Hickman	Mississippi Band of Choctaw Indians	X

Franklin Keel	Director, East Region, BIA	X
Gabe Moreno	Grant Thornton	X
Gregory Smith	Hobbs, Straus, Dean & Walker, LLP	X
Harold Pierite	Councilman, Tunica-Biloxi Tribe of Louisiana	X
Helen Sanders	Allottee	X
Janet Thomas	United Tribal Technical College	X
Jeremy Brave-Heart	Hobbs, Straus, Dean & Walker, LLP	X
Jim Thompson	Grant Thornton	X
Kareen Lewis		X
Kitcki Carroll	Executive Director, USET	X
Lee Vest		X
Marshall Pierite	Vice Chairman, Tunica-Biloxi Tribe of Louisiana	X
Melanie Bender	IIM Account Holder	X
Michelle Davidson	OST	X
Natasha Willis	Mississippi Choctaw Indians	X
Paul Galley	Grant Thornton	X
Reid Chambers		X
Reuben Henry, Sr.	Warm Springs	X
Robert Craff	OST	X
Ronald Suppah	Warm Springs	X
Teresa Wall-McDonald	Confederated Salish Kootenai Tribes	X
Tom Schlosser		X
Wanda Janes	Deputy Director, USET	X
Yvonne Iverson		X

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

- Agenda
- USET Advancing Trust Responsibility
- February Meeting Summary
- Draft Trust Responsibility Statement
- Draft Conflict of Interest Protocols
- Reid Chambers Comments
- Chief Anderson Presentation
- Grant Thornton Assessment Update

**Appendix D. Summary of Commission Meeting Action Items**

TASKS	LEADS	COMPLETE BY
<b>Post April Meeting Follow up</b>		
<p>Items Raised in Public Session</p> <ul style="list-style-type: none"> <li>• Question re implementation of UNDRIP- include in mtg summary and email to individual with question.</li> <li>• Follow up with USET re their response to Commissioner Hall’s question regarding structure of independent oversight entity</li> </ul> <p>Items Raised at Work Session</p> <p>A. Exceptions to hiring freeze</p> <p>B. Bureau coordination re energy issues in Great Plains (DOI convo w David Hayes &amp; others)</p> <p>C. 2013 operating plans- check w Tommy Thompson</p>	<p>Bodie, Bella, Lizzie?, Bridget-for mtg summary</p> <p>Pat</p> <p>A &amp; C. Pam Haze with Tiffany</p> <p>B. Lizzie</p>	<p>May 10</p> <p>June 5 (to have something from USET?)</p> <p>Underway</p>
<p>Management Consultant</p> <ul style="list-style-type: none"> <li>• COR and DOI discuss w mgmt. consultant approach to methodology to reach beneficiaries</li> <li>• Report out on May 13 ITC ADMIN call</li> <li>• Prep for June ITC meeting</li> </ul>	<p>Genevieve G., Mark, Tiffany, Lizzie</p> <p>Lizzie Marsters and Marc Hebert (Grant Thornton project manager)</p> <p>Genevieve, Lizzie</p>	<p>Underway</p> <p>May 13</p> <p>June 5</p>
<p>April Meeting Materials &amp; Web Posting</p> <ul style="list-style-type: none"> <li>• Prepare draft summary of Commission meeting (April 29), circulate draft to ITC and DOI for comment</li> <li>• Send Regina approved Feb summary to post to website</li> </ul>	<p>Bridget</p> <p>Bridget</p>	<p>May 10</p> <p>ASAP</p>

TASKS	LEADS	COMPLETE BY
<ul style="list-style-type: none"> <li>Post ppts, testimony to ITC website</li> </ul>	Regina	
<p>Draft Recommendations for June Meeting</p> <ul style="list-style-type: none"> <li>Draft language re 1) budget resources/floor, 10 yr time frame for planning ; 2) empowering DOI staff on daily little 'd' decisions. Circulate to Commission &amp; DFO for feedback.</li> <li>Revise draft Federal trust responsibility statement and conflicts of interest protocols. Draft principles related to federal trust. Release updated drafts at next meeting</li> <li>Send Commission compilation of comments, testimony categorized by topic.</li> <li>Conference call draft conflict of interest protocols (and discuss other federal agency disclosure policies and timeframe for requests for independent counsel.)</li> </ul>	<p>Sarah</p> <p>Comm Anderson and Leeds</p> <p>Sarah</p> <p>Lizzie and Comm Leeds</p>	<p>May 10</p> <p>May 24</p> <p>May 24</p> <p>Ongoing- complete by Jun 5</p>
<ul style="list-style-type: none"> <li>Circulate revised drafts to Indian Country in June                             <ul style="list-style-type: none"> <li>Include in Commission outreach materials</li> <li>Post on website for comment</li> <li>Mailing to tribal leaders? With request for comment by xx date certain.</li> <li>Make use of social media to get information out (Nedra for guidance)</li> <li>Look to tribal organizations, NCAI to disseminate</li> </ul> </li> </ul>	Commissioners and DOI Team with IECR assist	June 14
<b>June Meeting Preparations</b>		
Meeting location options	Regina Gilbert	Underway
<p>June Meeting Agendas</p> <p>A. Circulate draft agendas to ITC &amp; DOI; Contact confirmed speakers re dates, materials deadlines</p>	<p>A. Sarah Palmer</p> <p>B. Tiffany, Lizzie</p>	Underway

<b>TASKS</b>	<b>LEADS</b>	<b>COMPLETE BY</b>
B. Confirm DOI speakers C. Commission and DFO review, comment D. Revise draft agenda, confirm speakers etc	C. Commissioners, DFO D. Lizzie, Chair Sharp, Comm Leeds, Sarah Palmer	

### **Appendix E. Public Comments Submitted to Commission**

All statements submitted to the Commission may be viewed on the Commission website at: <http://www.doi.gov/cobell/commission/index.cfm>. The list below is a running total of comments submitted.

- 1) Cheyenne and Arapaho Tribes
- 2) Navajo Nation – June 2012
- 3) Indian Land Tenure Working Group
- 4) Forrest Gerard
- 5) Ute Indian Tribe
- 6) Oglala Sioux Tribe
- 7) The Confederated Salish and Kootenai Tribes of the Flathead Nation
- 8) Kaw Nation
- 9) Intertribal Timber Council
- 10) Affiliated Tribes of the NW Indians
- 11) Inter Tribal Monitoring Association
- 12) Beverly Grey Bull Huber
- 13) Charlene Ramirez
- 14) The Great Plains Tribal Chairman's Association
- 15) Helen Sanders – September 2012
- 16) Karen Rabbithead
- 17) Navajo Nation – September 2012
- 18) Oglala Lakota Nation
- 19) Makah Tribe
- 20) Hoopa Tribe
- 21) Helen Sanders – February 2013
- 22) Navajo Nation – February 2013
- 23) Navajo Nation Recommendations for Trust Reform Legislation to Improve Trust Management