

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

Meeting 4

February 11-13, 2013

Seattle, WA

Meeting Summary

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Secretarial Commission on Indian Trust Administration and Reform

Executive Summary

The fourth meeting of the Secretarial Commission on Indian Trust Administration and Reform was held February 12 and 13, in Seattle, WA at the University of Washington and Hilton Seattle Airport. Fawn Sharp, Quinault Indian Nation, chaired the meeting. Sarah Palmer of the U.S. Institute for Environmental Conflict Resolution (US Institute or USIECR) facilitated the meeting.

The evening of February 11, the Commission participated in a youth outreach event at the University of Washington campus. The students thanked the Commission for inviting them to participate and for asking their opinion on the matters before the Commission. The students encouraged Commissioners to consider alternative methods of social media to share the work of the Commission and to gather feedback on recommendations.

The Commission participated in a site visit on February 12, 2013 to the Nisqually Indian Tribe. Nisqually leaders provided insight into economic development opportunities provided through various types of partnerships and through self-determination. The summary of this session may be found in Appendix G.

During the two-day public meeting the Commissioners heard from national experts and leaders about strategies to improve the trust relationship; to capitalize on the successes of tribal self-governance through compacting and contracting. Members of the public encouraged the Commissioners to make bold recommendations to advance the self-determination of tribes and at the same time not forgetting about the Individual Indian Money holders.

The Commission came to agreement on several items, including:

- Approval of the September 2012 public meeting summary
- Approval of the November 2012 public webinar summary

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, 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:

- April 29-30 in Nashville, TN
- June 5-7 in Oklahoma City, OK
- August 17-19 in Anchorage, AK
- November 11-13 in California

The Commission will hold administrative calls on May 13, July 16, September 10, and November 20 and a webinar open to the public on October 7 . The time for the public webinar and agenda will be posted to the Commission website: <http://www.doi.gov/cobell/commission/index.cfm>.

Tuesday, February 12, 2013

Chair Fawn Sharp invited Carole Lankford, Vice-Chair of the Salish-Kootenai Tribe, to offer the opening prayer.

Chair Sharp opened the meeting by asking 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
- Discuss and make further refinements to recommendations
- Hear from invited speakers about management and administration of probate and real estate services administered through compacts and contracts.
- Hear from invited speakers about management and administration of natural resources held in trust.
- Gain insights and knowledge from invited speakers, and attendees about trust reform including other trust models and the trust relationship
- Gain insights and perspectives from members of the public
- Confirm future meeting topics, dates

Chair Sharp noted that the Commissioners had an opportunity the afternoon of February 11 to meet in executive session and discuss the products of the Commission. That evening, Chair Sharp met with Native youth from the University of Washington to get their feedback regarding topics of importance. There were several students in attendance and the Commission received a number of ideas from the students including ways to deliver Commission messages via new technologies. The summary from this meeting may be found in Appendix F.

Commission Operations Reports and Decision Making

The Commission approved the September 2012 Meeting and November 2012 Public Webinar summaries as revised.

Outreach activities

Commissioners provided updates on outreach activity since November 2012.

Commissioner Hall: There was a good turnout of Plains Tribes and from Montana and Wyoming Tribes at the Rapid City land buyback consultation [held week prior to February 2013 Commission meeting]. BIA Director Mike Black, Jim James from OST, and the entire leadership with the buyback program attended and explained the land buyback process. The region I come from, the Lakota people, have never accepted the Black Hills claim. This is the home of Sitting Bull, Crazy Horse, and the Wounded Knee Massacre and the people always fight for land issues with the U.S. government. A coalition called the

Coalition of Large Land Based Tribes (COLT), tribes with 100,000 acres or more, has formed. These tribes have done land buybacks for years on a regular basis and have a large understanding of tracts and fractionation. There was a suggestion at the buyback consultation that COLT could develop a template of a cooperative agreement that tribes may be able to utilize. Tribes would be able to determine if they or BIA would complete appraisals. The BIA seemed to embrace this idea and Larry Roberts seemed very interested.

The Tribal/Interior Budget Council (TIBC) met in conjunction with the buyback consultation. There is a TIBC meeting March 19-21 in Washington, D.C. and there is concern about the budget and what this Commission does. There is also discussion on TIBC regarding the impacts of sunseting OST and the potential impacts of sequestration. There is a lot of concern about the impacts and the need for better coordination. Tommy Thompson will be speaking with the Commission on Wednesday and his comments may assist the Commission as it discusses impacts on the BIA and DOI budgets. I will continue to work with COLT and Impact Week is in DC February 27-28 where work will continue with all tribes regarding trust responsibility and individual land owners. Helen Sanders is in audience and there are many allottees in the Northwest Region. There were reminders at the consultation in Rapid City not to forget the allottees. The Bureau of Indian Education (BIE) is not one of departments under review for the Commission and this is something that is clearly needed and trust responsibility for Indian education is important. Consultant contractor will be doing review of historical materials. BIE is something that needs to be considered after the consultant completes the first few tasks. I am pleased that we have the contractor on board [management consultant as described in Secretarial Order.....

Commissioner Leeds: My outreach efforts have been coordinated with Janie Hipp, now at the University of Arkansas Law School. Ms. Hipp is launching a tribal food and agriculture initiative and we are hosting tax clinics to assist with the Keepseagle distribution and the tax implications for the settlement. I continue to hear from individual allottees that have agriculture and rangeland management issues. In early January I worked with individuals in Oklahoma to begin preparations for the June Commission meeting.

Commissioner Zah: In the middle of January, after distribution money began going to claimants, I was called to meetings in Gallup with the Navajo and at the Gila River Indian Reservation. In Gallup they shared that there are notices that went out for the people who are missing and many of those people heard about payments coming to claimants and they showed up. These individuals didn't keep up with paperwork and were disappointed because they were not included in the distributions. The Gallup agency staff is working to ensure everything is under control and help tribal members with the documents they need for claims. OST has been working hard to address these issues and are making sure that notices go out on time and that radio and other methods are utilized to reach people. I don't know about other OST offices throughout Indian Country but on Navajo there is a unique problem where many of our people still don't speak English well and did not finish high school. It is hard for them to understand questionnaires and they could not fully comprehend the mail they were getting. More OST staff is needed to reach out to individuals. Almost the same thing was happening at Gila River because of the fractionation of lands. There have been disputes between families. At some point the

Commission needs to discuss some of these things to improve, better handle, and anticipate some of these things. In Gallup we are not talking about 10 or 12 people but hundreds of people showing up wanting to know why they were not compensated.

Chair Sharp: ATNI held a session last month and the General Assembly was advised that we have ability to provide interim recommendations. ATNI noted that there are currently several Congressional legislative proposals regarding trust reform and inquired how the Commission plans to engage in proposals to Congress. ATNI made a recommendation to the Commission that we adopt a set of principles in the short term that may help articulate the Commission's position of on the legislative proposals. As Commissioner Hall noted, there is need to discuss the Commission role with TIBC regarding recommendations on budget development and structure and financial recommendations and how the Commission will interface with TIBC. It is important for the Commission to ensure our recommendations are in line with budgetary proposals. The Commission has also discussed the federal trust responsibility required of all federal agencies. The Commission is focused on the relationship with tribes and DOI but the overall trust obligation is important. The Commission should consider how the responsibility within DOI translates to other issues where the Trustee should represent tribes.

DFO Marsters: The White House Tribal Nations Conference was a wonderful opportunity to expound on what the Commission has been doing. We provided a great overview of what the Commission has been working on and had important discussions afterward. There was also a TIBC presentation with Commissioner Hall regarding what the ITC has been doing and there is more opportunity to ensure that TIBC and the Commission are coordinated. There will be a Land Buyback Consultation on Thursday, February 14 at the DoubleTree in downtown Seattle and the public is invited. It is also important to note that Secretary Salazar is departing the Department of the Interior and Sally Jewell has been nominated as the new Secretary. The Trust Commission is still a high priority in the Department and Deputy Secretary Hayes and Assistant Secretary Washburn will continue to ensure it remains so. The Department will ensure that the Commission recommendations are considered with the gravity initiated at the opening meeting of the Commission.

Commission Review and Discussion of Preliminary Recommendations

Trust Responsibility Statement

The Commission reviewed the most recent draft of the Trust Responsibility statement and discussed potential edits.

Commissioner Hall: It is important to note that this is not a limiting trust. The first sentence mentions the trust responsibility of other agencies and the sovereign to sovereign relationship.

Commissioner Leeds: One of the suggestions to work into the document is on pages 4-5. There is need to add a paragraph describing the relationship between DOI and DOJ and to clarify the role of all agencies; that the trust obligation is ongoing and broader than just DOI. I think this document with minor changes is getting quite close to completion.

Chair Sharp: This statement came out of the early work of the Commission. The Commission recognizes there are many definitions of trust and thought it important to define trust to lay the foundation for recommendations. It is also important to examine the present day and historical relationship and to ensure that, going forward, recommendations and issues have the foundation of this trust definition. This document is open for public comment and if the public has anything to add the Commission would love to hear from you.

Commissioner Hall: Why has grazing been crossed out on page 3? Where I come from this is important. Grazing is appraised every year.

Commissioner Leeds: Commissioner Anderson and I thought grazing was included under land and we were trying to keep the statement broad.

Commissioner Hall: There could be different types of appraisal on fair market lands. As you and Janie are taking about getting land back in production that will enhance grazing; it is important to identify agriculture and grazing lands in the statement.

Commissioner Zah: In looking at the documents before the Commission we have a duty to share the statement with as many tribal organizations and leaders as possible. I don't know what other Commissioners have been receiving from those that have been evaluating the proposals and statements, but I think it is one of those things we were told is that this is one of the most important documents of the Commission. I urge Commission members to share this with as many tribal governments as possible to ensure they have opportunity to read and look at what is before the Commission before we attempt to adopt the statement.

Chair Sharp: I have been at ATNI and people have been asking about the status of the Commission and make reference to the website. Perhaps we should have copies [of the statement] when we go into various sessions to hand it to them and engage with the people directly and ask them to provide feedback.

Audience Comments on the Trust Responsibility Statement

Vanessa Ray-Hodge, DOI Office of the Solicitor: I have a point of clarification on the first bullet on Page 3, trust resources. DOI currently puts oil and gas in same category as mineral resources. Regarding grazing, it depends on what you are evaluating the lands for, if you want to be clear on what a tribal asset is. Breach of trust claims were submitted separately for grazing. It might make sense to adopt a broader definition for lands.

Audience: On the bottom of page 2, before economic self-sufficiency, I suggest adding 'Indian best interests'. There are many statutes, including mineral leasing and others, where consideration of best interest is noted. As a general matter I suggest looking at the materials from tab 11.1 to look at historical principles and current international law. Third sentence – strike out 'eventually' and 'has always been recognized'; there is relevance to tab 11.1 here. I also suggest looking at Title 1 of the proposed Indian Trust Reform Act currently under consideration. There are findings and a reaffirmation of policy and principles in this document.

Audience: 'In the best interest of Indians' may work better later in the statement. Find some way to incorporate when talking about leasing on page 3; take into consideration best interests in this leasing area.

Audience: Under the grazing bullet perhaps change language to read, 'tribal trust assets include water, land, and its resources.' Instead of grazing include agriculture.

Conflicts of Interest Statement

Commissioner Leeds: The most recent changes made were at the end of the summer when we added in the continued obligation to disclose throughout the life of a legal interaction. We mention the power of the Secretary to appoint an independent counsel but don't clarify beyond the Secretary of the Interior. Protocols extend to all areas of the federal government and need to ensure the scope is broader. This came from the Albuquerque meeting where we discussed the relationships and current law requirements. We hope this statement would come as a preliminary recommendation without the need for statutory approval.

Commissioner Hall: Page 2 under B – rights of parties upon disclosure – is this any party whether gov't tribe, etc.?

Commissioner Leeds: This is meant to address cases like complex water disputes where there may be 20 parties and multiple entities have the same rights to raise issues. This is in lieu of going to the solicitor.

Commissioner Hall: Is there a timeframe?

Commissioner Leeds: Within other departments when there is a request for independent counsel is there a timeframe? We intend to mirror what happens in other agencies.

Commissioner Hall: Somewhere, more like in investigation, there is a timeframe of one to two years and a possible renewal if it goes beyond the initial timeframe.

DFO Marsters will research the processes of other agencies and bring that information to the Commission at the April meeting.

Audience Comments on the Conflicts of Interest Protocols

Audience: I think it's helpful to consider the underlying issue and a reference to consider is the Indian Trust Council proposed by Nixon. This was established to address by MOU between DOI and DOJ, the conflict that arose in areas of litigation where DOJ was asserting different positions from DOI. Having a separate policy for DOI doesn't address the issue. When DOJ is representing the U.S., it is taking a position that is not in line with trust responsibility. DOJ has argued time and again denying that there is fiduciary trust responsibility yet there is staff identified as Fiduciary Trust Officers. The conflict of interest protocol needs to be interdepartmental. In Tab 4.2 there is a third set of comments regarding a trust oversight recommendation. Oversight should be separate from the organization. One of the points that the Commission should adopt as a preliminary recommendation is legislation for a permanent oversight committee.

Commissioner Hall: Do you recall in the 1994 Reform Act if an actual board was put in place?

Audience: There was a board established for OST but not an oversight board. There have been policy commissions that are temporary and various pieces of legislation that have temporary commissions largely similar to this Trust Commission. The concern is that there is nothing wrong with evaluating the Commission but there is time for ongoing oversight.

Commissioner Hall: We talked about this yesterday and we might consider the development of an oversight board.

Commissioner Zah: Can you discuss a little more about what the proposal is from President Shelly in terms of how this can be done? Among the Commissioners from what I can understand there is tremendous need for continual oversight. Not a policy review commission established by Nixon and subsequent administrations. We have 10 months of existence but there is need for something that is permanent. Can you describe the Navajo position as to what they foresee?

Audience: That proposal still has to go to the Navajo Nation Council. Historically it has been proposed as a board or commission comprised of one elected tribal representative from each BIA region and a representative of allottees so that beneficiaries have direct representation.

Audience: The job of the Special Trustee is to act as an independent representative of tribes. There is a provision in the 1994 Trust Reform Act to certify the adequacy of all trust budgets. The office is called the Office of American Indian Trust; their job was to review the budgets and they were absorbed into OST. What happened to the independent review when dealing with assets with other agencies? That function was eliminated when the office was taken over. That office had those functions assigned to them. One suggestion I have to add to the protocols in mandatory disclosure is that the when the U.S. is doing something and has a trust obligation, when the issue is in conflict with a federal priority or interest, there should be a separate function or mechanism to have independent review.

Chair Sharp: Thank you for your comments. These continue to be works in progress and we will work to incorporate your comments into the next drafts. Please feel free to provide comment via the Commission website.

Initial Observations and Comments from Public Regarding Commission Recommendations

Helen Sanders, Indian Land Working Group (ILWG): I apologize for giving you so much paper. I am kind of at a lost because I was born in the wrong generation and don't know the computer very well. I may get there some day as I am taking lessons. I don't get to read all the information because I haven't figured out how to put a computer on the tractor. ILWG that I work with, and have for many years, does represent people from time to time and we have limited resources for representation. Anyone is welcome to come and tell us what they think. "An untrue statement if repeated enough can be determined to be fact." The tribes have repeatedly said that OST diminished the budget. The report in the packet I submitted shows what happened to the budgets. It shows that is not a true statement.

Apparently Secretary of the Interior Salazar took it as trust because he spoke with NCAI and said the same statement. We also gave you a copy of the 1994 Act that states clearly the authorization of appropriations. It states specifically that there is to be authorized appropriate sums as may be necessary to meet the provisions of the Act. Funds came from the Act and not BIA. Indian trust asset reform proposal from ATNI introduces legislation to sunset OST. Tribes want to move operations to BIA and ILWG feels that is a mistake. Tribes want to compact and contract services. We support transporting tribal funds to tribes only, not individuals. We want employees subject to civil service and they are not permitted to civil service under the 1994 Act. I know there are a lot of things said about OST - they don't do this and that. They spent a lot of money setting up the machines and everything that is in that office in Albuquerque and you don't want to scatter that. There are never sufficient funds held back to operate remainder of operations in BIA and not enough staff to implement programs. Will they use the 5% rule like probate where consent is not required? The Albuquerque School Act interferes where permanent improvements are considered non-trust. Secretary needs to consider the interests of individual Indians when improvements are made. In fractionations if there are permanent improvements all owners own those improvements; the Secretary could change this. Haven't heard one word to change this language and that is detrimental. This has caused a disastrous effect on lease mortgages and probate and I have provided you with a sample. I see confusion with the Regional Office Board of Indian Appeals as they don't know or understand what to do with improvements. Owner builds a house and wife and children have a will. The BIA says that the wife has to lease the house and does the lease begin at time of death or when probate ends 7 years later? In the meantime they have paid over \$31,000 in lease payments while in probate. There has been much discussion if the home is trust or non-trust. If it is non-trust there has been no authorization to approve a lease with other co-owners not living in the house. I really want you to read that. I would like to comment on moving land from fee to trust. I have a parcel between two properties that I gave to my oldest grandson. The county has a proposal to put a road there. It is a skinny piece of property and the county never built a road. I bought it because it is between two larger pieces of property. The fee to trust process is still ongoing. I have written a letter to the county and the governor asking about taxes. I want this to be rewritten because they shouldn't have to go through a five year procedure to get fee to trust land.

Dan Rey-Bear, Nordhaus Law Firm, LLP: My comments go to some of your introductory comments regarding general thematic points in the preliminary recommendations in response to the Deputy Secretary. These comments are an elaboration on comments provided by President Shelly and previous comments I have made to the Commission. The Navajo Nation strongly encourages the Commission to make recommendations soon. It has been almost 40 years since the self-determination act. This is an apt period of time for there to be a new paradigm shift in federal Indian affairs. We have tired and need to take next step in moving forward. Think bold in policy statements and reviews. Consider what can be accomplished through legislation. Some of this is already reflected in the drafts. Reaffirm the historic trust principles. Implement meaningful tribal self-determination. It has come up in many discussions with the administrations over the years. Allow tribes to opt out of federal statutes. Tribal proposals for trust management would have to be approved. This is consistent with recent surface regulations for tribes that adopt trust management plans to preempt state taxation. Dual taxation has a huge impact on tribal resources. If tribes are taking on new roles there needs to be a tax base to support this. Recognize

differences as a matter of form – encourage elevation of federal Indian affairs within DOI. Rather than having duplicate federal bureaucracy, OST should be reintegrated and savings directed to regions or tribes. Recommend permanent Indian oversight.

Chris Stearns, Hobbs, Strauss, Dean, & Walker, LLP: In terms of things the Commission should look at, there should be consideration to reopening treaty making authority of the Senate. This recommendation first broached in the 20 Points in the early 1970s. Secondly, it is has been 45 years since first message of self-determination from Lyndon Johnson.

Commissioner Hall: We have heard about an oversight board from several attendees. The 1994 Act is limited to one individual and not board. The Commission should strongly consider a board as it moves forward. The Commission is letting a contractor do the work that is needed to do a review of the functions of OST and is a major business decision. We have discussed this early on but want to make sure the contractor is in place to do the necessary reviews of functions to ensure a business decision is made and that it is a seamless option so that funds are available when needed.

DFO Marsters provided a review of the role and tasks of the contracted management consultant and announced that Grant Thornton was awarded the contract. The presentation outlining the roles and tasks may be found on the Commission website.

Chair Sharp: When we discussed as a Commission the role of the management consultant, we kept talking about the Commission charge and the needs to discuss BIE and other treaty based commitments and obligations. This is an opportunity for independent evaluation to reach out and that comprehensive evaluation will not done in a vacuum in DOI but that tribal resolutions and documents will also be reviewed. This is an opportunity for Indian Country to interact and provide input.

Cris Stainbrook, Indian Land Tenure Foundation: I am reflecting on comments made already. Some of this comes from Rapid City last week [land consolidation consultations] and listening to tribal leaders discuss the land buyback program. One of points last week was that tribes are in very different places. I would suggest changing language to identify that the U.S. and Indian nations have a sovereign to sovereign relationship. There should be a statement between each tribe and federal government regarding the definition of the trust responsibility relationship. What has come to bear front and center with buyback is the tribal role in conflict of interest. In the trust relationship between tribe and individual there can be some amount of conflict and also conflict of interest between tribal members and individual land owners. This statement deals primarily with tribes and the federal government at a high level. Almost down pat of trying to avoid going to court but there are day to day conflicts in things like appraisals and whether appraising for optimal costs for landowners or reducing fractionation.

Danny Jordan, Hoopa Tribe: Defining the sovereign to sovereign relationship for the 21st Century is one of the jobs of the Commission. For thousands of years tribes survived. For some reason for last 150 years we got to the point of needing the Hearsh Act for appraisals. Look at trust government and resources in Indian Country. Indian people and tribal leaders look at trust issues much differently from the federal government. The federal government looks at it from liability standard and will suppress so no liability occurs. If you look at treaties, reservations are supposed to preserve life and allow Indian people to exist

under their own authority in perpetuity. Look at the 21st century relationship. There are documents about fixing the federal side but what about the tribal side? Have we gotten to the point where the U.S. is mature enough to not have a negative touch regarding the trust relationship? Gambling came from an exercise of sovereign tribal power. Trust improvements come from tribal engagements. Half of all trust resources are managed by tribes today. There hasn't been much done to improve policies. Can the Commission draft a new design of Indian policy where termination and limiting federal liability is not the primary goal of the federal government? Instead do things where Indian people have a life that is not the same as or better than outside societies? There is no reason for such high unemployment unless tribes must have approvals for all the processes they need to undertake. Something dramatically changed over the last 150 years where there is so much federal control. I don't think that reducing federal control is going to make improvements. The Commission is tribal and has an opportunity to reset the table on what was designed in the treaties. How did we get to the point of requiring BIA approval on everything? They have a responsibility to set with tribal governments and ask what they really want.

Natural Resources Assets Panel

The Commission invited John Gordon and Billy Frank, Jr. to offer lessons learned, perspectives, and recommendations from tribal organizations about improvements to the management and administration of natural resource trust assets, specifically forestry, and water resources.

Billy Frank Jr., Chairman, Northwest Indian Fisheries Commission: Good morning. I am Billy Frank Nisqually tribe and Chairman of the Northwest Indian Fish Commission. We settled all of this land on this side of Canada. Today I am here to talk about salmon, there is no more salmon. Puget Sound, the Salish Sea, is poisoned and salmon can't migrate out of the Nisqually River. Salmon can't migrate 20 miles down to the Puget in salt water. When they come out of the river, the Nisqually is in good shape, like coastal rivers. Twenty miles down [river] they die. I am also here to talk about the treaty rights at risk. The U.S. government ceded all this land to them - Seattle, UW, you see everything. They don't write about our 20 tribes. U.S. v. Washington, the U.S. government forgot about us, about you, all of you. We have 29 tribes in this state. We are the only ones, the tribes, our tribes are the only ones protecting, trying to protect the natural resources, trying to bring our salmon back to protect our animals, our medicines, and our way of life. The U.S. government has forgotten about us, about you, all you Indians. In the State of Washington, 1% of all tax money goes to natural resources, out of all tax money. They are not managing anything. So that is why we are all here. That is why I am so happy Chair Sharp is chairing this committee and that this committee is here. We have been working all our life for the natural resources, for our medicine, for everything we have. The U.S. government doesn't know when we say treaty rights are at risk, they don't know what we are talking about. What are you talking about when you say implement a management plan? They don't know how to do that. They are doctors of everything and don't know how to do these things. Don't know how to address water. That is life for all of us, our animals, our medicine, our culture, and our way of life. I want to talk about the quality of water in the northwest. We have been sitting with the State of Washington for two years, over two years, and they walked away from the table. The old governor walked way and now there is a new

governor. There were very important things on the table and they walked away. The new governor appointed one Indian assistant director for the Department of Ecology. She is married to a Makah Indian and that is a good sign. She is an Apache Indian and that is a very good sign. At least she knows who we are, us Indian people. She knows what the natural resource is and those are good signs. Thank you, Fawn. I'm here for you, all of you.

John Gordon, Co-Chair, Indian Forest Management Assessment Teams (IFMAT): It is a great challenge to speak after Billy Frank Jr. I am here to talk today about the process set in place by the National Indian Forest Resources Management Act (NIFRMA) that requires independent review of Indian forest lands every 10 years. This is supposed to help remedy some of the things Mr. Frank just talked about. We have gone through the process of the first two IFMAT reports and IFMAT III is still in progress. Mike Sterner, the coordinator of the project, was supposed to be here but his plane was delayed. We do have here Gary Morishima from the Intertribal Forest Council. Larry Mason, a member of IFMAT III, is also here.

This is the third time we have undertaken this process. Mr. John Sessions and I have co-chaired for each review. We are fortunate to have Indian students for the first time and hope they will carry into the future. NIFRMA is the only modern piece of forest policy management that we have and it would be better if all forests were managed in this way rather than the patchwork that currently exists. We have found some procedures and processes to remove in the process of the first two reviews and expect the same in the most recent. We had ideas from first IFMAT that bear directly and relate to question eight in the review. We have made recommendations for reforms and additional funding, as needed. On slide 7 we note additional issues to undertake. We have found that the contribution to surrounding community economies is considerable. Indian forestry would lead regionally to create opportunities to keep processing in the region and provide broad opportunity for landscape scale management across boundaries. We continue to be in touch with entities that can provide information regarding Indian forests and try to solicit opinions from tribal members who are not natural resource people.

The review team usually spends the first day gathering information from natural resources staff and a there is a day-long field trip to see things about forestry on the second day. The most significant findings in the first IFMAT are four big gaps: 1) There are extensive exercises to build a vision for tribes regarding forest visions for the future; 2) All Indian forestry more poorly funded per acre than the federal forests around them. Yet, the forests were as productive, if not more so, given the quality of the land, wood, and other ecological values; 3) There is not much help for coordination and not many tribes had good coordinated management plans. 4) This is at the heart of the Trust Commission – there is need to redefine the U.S. government role in Indian forest management. It came out of observation 20 years ago that Indian forestry was as good or better than other forestry but it was burdened by other regulations like trust responsibility and how it was or wasn't carried out.

In IFMAT II we developed six more recommendations, with some repeats. 1) Acre investment was brought to parity with other forests. 2) Effective trust oversight in implementing tribes and recommended visions of individual tribes. Vision difference and any trust oversight that depends on Indian initiatives must be specific to that tribe without breaking purview of trust oversight. 3) There is still concern about the level of technical service provided by BIA. 4) Particularly interested in integrated

resource management plans, fish, timber, cultural values, into one plan and basis for trust relationship with individual tribe. 6) Hope to have data gathering through 10 year periods, not just at snapshot periods.

The three most important trustee functions in relation to forests: is adequate recurring funding. Recurrence and assurance are key and the team has found the pattern that tribes are relying on scattered grant sources and the transaction costs are high. Grants are an uncertain, difficult, and expensive way to get money. It is important to increase the technical assistance to tribes through a variety of mechanisms. We must work to ensure good forest management plans which links directly to effective trust oversight and includes coordination among federal agencies. The review team only dimly sees their role as a concentrated source to support tribal forestry under trust responsibility. If functions are transferred to a fully private trustee, the tribes may love some of the flexibility required to meet needs of individual tribal goals. Forests are dynamic systems and you have to move with the times and changes; that is difficult to do with the standard model. The current model major flaw re: forests BIA tends to be de facto deliverer of trust activities and oversight of activities. I don't think that worked well in baseball and I don't think it works well in Indian Country. I heard suggestions for that this morning and I suggest the Commission considers this.

Commissioner Leeds: You would not support moving to a third party wholesale, but bits and pieces?

John Sessions: Calibration to individual tribes is necessary. There is definitely a role for private oversight, not delivery.

John Gordon: IFMAT 1 recommended an independent commission to review performance against individual probate plans (Slide 16 of the presentation). The idea is that the system would avoid huge deficits of trust responsibility delivery. This would continually provide mechanisms for protections and there are many options to do that. Our view from forests is that a permanent, independent body, a permanent IFMAT, could work with each tribe and make comments or recommendations. Could this be an independent agency like the Nuclear Regulatory Commission? This can be an issue as problems with Indian Country and tribes are longer and larger than that of NRC. Slide 17 offers a diagram with a suggested structure. This all depends on tribal vision plan and the need technical assistance to support and assist with development and implementation of plans. This might occur in a 10 year cycle and these plans would not be infinitely prescriptive but would be constitutional and set major directions. There is a need to retreat from the prescriptive management laws in the 1970s to one that gives flexibility to tribal governments to implement a vision for a forest. Several implications and one is that some reserve functions in BIA would go back to the tribal government including NEPA and ESA compliance and they would manage timber sales. One very knowledgeable person said that if you implemented this and the tribe followed the plan that the oversight commission did not catch and fix, you would have a major failure of the trust responsibility. If the tribe did not follow the plan, it would be tribal responsibility. This puts the management of the forest under the people who own the forest, as much as it can be, under trust responsibility.

What about allottees? Buy allottee lands through willing buyer/seller opportunities and this should be included in all phases of forest operations. Make a strong case that repatriation is part of trust responsibility. My top three recommendations for the Commission are: provide adequate and recurring funding geared to tribal goals under an improved trust system. This would go a long way to improving forestry as an enterprise in Indian Country. 2) The interagency concept is extremely important for forestry and the ability to access the whole range of agencies in a coordinated way is very important. 3) Implement the oversight recommendations in IFMAT 1 – works well now and can only work better.

Note: The full presentation from Mr. Gordon may be found on the Commission website.

Commission Questions on Natural Resource Assets:

Commissioner Leeds: Tribes are at very different places. How many tribes have capacity to take over service delivery of functions?

Mr. Gordon: I think it would be incremental because of resources needed to support a full-time staff. That is why we argue for increased tech support, particularly for small land-based tribes. Most of the category 1 forest tribes could begin; and some of the category 2.

Commissioner Hall: Do you believe that trust responsibility as currently held with BIA should be changed? If so, how much role should the tribes play?

Billy Frank, Jr.: There are twenty tribes in Puget Sound and on the coast that think there isn't enough money to manage our natural resource. If there isn't enough money to do what we have to do to bring our clean water, our salmon back, our forests back, it's all connected, to bring the balance back to our life, then we go to OMB every year 4-10 times with our tribes and we recommend funding. We tell our story over and over and will continue to do so. There is nobody in charge in this country for natural resource. The agencies are not in charge because they can't tell other agencies what to do. The White House, the President, has to deliver the money. It has to be accountable. It has to be charted out how it is spent and must be connected to what we talk about. We are just running on grants. We have money coming from federal government but we piecemeal funding together. The White House has got to assist and if there isn't enough money. They have to find it. This country is full of money but when it comes for the natural resource there isn't any money. When it comes to Indians there ain't no money. How do we get their attention? I'm down in Olympia this morning having breakfast with the Nature Conservancy. They are all white and get a lot of money. We are Indians and we are fighting for the natural resource of this country, wherever we are. Canada, Alaska, Natives, all of our people. They just arrested 34 eskimos for fishing conservation. The conservation starts when it gets in the river. It starts in the river; it doesn't start in the ocean. They need infrastructure. Subsistence fishing is very important to their life. People catch 10 chinook salmon and that don't last all year. The judge fines him. We have got to tell the world what our situation is. We are being poisoned by water. We can't stop that, it is regulated. They find a rate and determine how much poison can be put in the water. How many million will die? How can they poison us? We have got to wake up and start pounding the table and be like our leaders who are here today. We should be filling this dome up. We should have people pounding the table to change the U.S. government and it has to change. We have to have somebody in charge. We

can't tell the USACE to change, they only listen to courts. We don't want to go through that story again. We had fish when we started U.S. v. Washington and 30 years later we have no fish. Not unless we get a change, our forest is going to die; we are the only good managers there is, you heard it, our tribes. DOI doesn't have any money and they are one of our trustees. We have got to reorganize this country for us natural resource people. We depend on that medicine. That medicine is the salmon and our trees, medicine is all them animals that are flying and walk out there. The animals that swim, that's all medicine for us Indian people and they are getting rid of them. We are standing up to them now. We have lost a lot of our people. There are new ones coming up and we have to train them. We might have to be radical. I'm not radical, I'm 81 years old but I tell it like it is. Now don't be scared if somebody says we need a little radical going on here because this country has got us all covered, be careful what you are doing because you are an Indian; number 1 – you have always got to be careful.

John Gordon: You look for money but we have millions of acres of federal forest, particularly in the West that are not being managed well. In many cases there are authorities for this and Indian tribal management would be of great benefit to everybody. Tribal management is an example of true ecosystem management because they think of the whole, not pieces. I can see a program where the tribal forest protection act is more robustly implemented and enough wood is created to support business that is solidified in bureaucracy and courts.

Commissioner Zah: I wanted to revisit some times in our life with my friend Billy here, a brother. I remember in 1985 when I came here as I was chairing the American Indian Religious Freedom Act renewal. The co-chair was Pat Lefthand and we were meeting with Ruben Snake to talk about the Act. Our staff people were John Echohawk and Vine Deloria Jr from NARF. Billy said what a team! He is still the same way. In the southwest the family I belong to is in the jewelry making business. I told one of my family members I was going to be seeing Billy and they said they wanted me to give him this gift from us. As I listen to him it is the bolo tie talking. It is one of those situations where you have to rekindle your enthusiasm for what you are doing. The traditional people say that turquoise is for enthusiasm and reenergizing. This gift is to keep him going because we need him. Regarding another brother from Hoopa and all of that having to do with timber sales and how we get so involved with administrative paperwork is sometimes a dilemma in itself. People need to revisit some of the things that we do and forget the overall picture of what we do. We get so involved in little things and if that is the purpose then maybe we are missing the bigger picture of self-determination and what it really means. I would like to see our own people planning our own things and deciding what they want to do. What hurts is the resources they don't have. The Commission charge is to look at administrative things and be able to get rid of some things that keep coming back to difficulties. It is great to see brothers who advocate. He was always my inspiration.

Public Comment on Natural Resource Assets

Audience: In forestry you have suggested allotment owners for individuals that would like to sell to tribes. What are your recommendations for families practicing self-determination on their own lands and keeping them?

John Gordon: The only recommendation was finding a willing buyer and a willing seller. All allottees need to be taken into account for all management. Every allotment should have its own forest plan that can be coordinated with surrounding lands. Set asides for environmental protection becomes wasteful in terms of environmental protection and if you can do that in an aggregated way that would help.

Audience: Thank you to those that testified for your wisdom. What is seen is that land consolidation has a strong root in self-governance and determination. There is a termination component in all of this that the U.S. has been held accountable for when they turn over management of forest; tribes need the resources to do it the right way. We haven't done it the right way in a long time with the loss of resources. We know that self-governance and contracting has come to tribes without proper contract support. We ask Commissioners to bring to bear the true trust responsibilities to uphold resources that come with self-governance. Individual Indians are giving up rights when selling lands and there has to be some trust responsibility with individuals as well. I am a tribal chairman. We are land less. At one time we had 5000 square miles of the finest timber land in the world and now we don't have access to this. We have self-governance now and we are advocating for natural resources despite the lack of access. Don't forget we need for advocacy of trust responsibility but from budgetary standpoint there must be a component for advocacy of resources. Timber management can enhance salmon and fisheries recovery. We have to protect every bit of the resource.

Audience: I want to appreciate the elder and his comments on fish. Every spring people recognize the return of Chinook salmon with a feast. One of my elders said that the salmon I bring back is hatchery stock, not wild. What have we come to where we celebrate what man has made, not our creator? This is not God's creature anymore; this is what man has made. The salmon come from the hatchery genetically modified by man. I never thought we would see that. What will my grandchildren be eating? Comes back to respect for water as it is the life for everything in this world. In my tradition and religion we drink the water. We want you to keep this in mind. We have a sawmill and recently have seen dramatic declines. We are struggling and surviving. We talk about the ability of BIA to manage and they have not managed at all and we have criticized, talked, and recommended and if resources were adequate we would manage all BIA functions. When you look at lands management by Indian boys and girls you see a significant difference between tribal management and BIA managed lands. Take care of something for the children and grandchildren as time goes on. Don't fund BIA forestry at level it needs to be funding. We are 21 foresters short at Yakama. Our management plan calls for 141 million board feet annually. We are currently processing 70 million board feet now and there is no adjustment to the management plan. I have concern with laws of general applicability. We have spotted owls on the reservation and tracts are set aside for owls. Washington does not set lands aside for owls. We are providing habitat for everybody. This constitutes a taking from federal and/or state governments. We cannot harvest in these set aside circles. We used to harvest 50 million annually with timber harvest; now down to 4 million. What does this force leadership to do? We have to buy from the State of Washington and must pay tax and do so to keep tribal members in employment. BIA has misled elders, me, and have not lived up to their fiduciary responsibility. It is time to stand up and beat the desks. Something has to wake them up and we are becoming minorities on our own lands. The federal

government has developed social programs for Indian people would prefer that there are jobs for them rather than handouts.

Audience: At one time I was hardened by BIA and everything they did. In 1994 we compacted all BIA programs. We compacted forestry and we can do this by ourselves because we had the proper infrastructure to start. We had clean audits and were able to compact easily. We had stable tribal government and council. We have tribal staff who is consistent and tribal staff is now Indians. We compacted Indian Health Services. If you want to get away from Bureau you can but you have to have a model intact if you want to be successful. I respect the elders in the room and as tribes we can do it. We are a model and we can help. Please ask us how.

Audience: I know you didn't intend to do this but you need to look at allottee issues in a different light. I am disturbed by the buyout plan and not having a plan to deal with those that won't sell; it is a trust obligation to assist them. We need plans for family trusts – effective plans. APHRA did provide a mechanism for recognition of family trusts. Indian people have a right to own land like anyone else. The buyout doesn't deal with family trust. Along with that probates and getting that process integrated into family planning and independent judges fractionating lands is not helping solve problem or getting realistic management to allotments. As tribal governments there is an obligation the majority of allotments that will remain far after buyout complete. We have been talking about this stuff for years. In 1990 talked about these same things. We have got to get past the discussion and get to doing it. When we did self-governance, we could not trust reform design on category of tribes. Deal with all tribes as they are. The tribes don't make decisions and the federal government is not funded or staffed enough to bridge the gap. There is need to address direct service, self-determination, and self-governance. We cannot fix the federal problem, therefore we must privatize. Treaties were signed and just because it was inconvenient the U.S. gave land back and we will take care of it. They don't have right to say privatize. Fix this in a way that works in a sovereign relationship. We all have the reality of the federal deficit – several positions in agencies are being eliminated. The trust is owned by the US. Thinking that obligations are just with BIA is not appropriate. Like what TIBC says, look government-wide. We compact \$2.8 million from BIA and deliver a broad array of services. BIA needs to do its job but has to deliver on broader areas. Need stability in programs doing a tremendous job over than the federal government because tribes have more resources. Catastrophic failures are buzzwords to say, "Don't give tribes control." I have seen that when tribes participate and Indians participate, they participate in something that they have vested interest in making it work. One of best ways to look at catastrophic violations is to look at self-determination in the last 20 years for catastrophic failure. Look at breach of trust cases prior to 1990 and see a decline since then. Tribes are stepping up to manage because they are bringing in their own money. Get tribes involved. I think this is good and approaches the ATNI proposal. Don't look at it from standpoint of doing more, this is what treaties and co-management was about. This is not about waning authority of waning trust assets.

Real Estate Panel

The Commissioners invited representatives from area tribes to provide information regarding tribal real estate programs and processes including best practices from 638 programs and to offer lessons learned from tribes who compact/contract services, specifically what policies, procedures, regulations need to be in place to assist them in providing services.

Virginia Cross, Chairwoman, Muckleshoot Tribe: The Muckleshoot reservation was established in 1857 with a variety of services in Indian affairs. We now work with the agency offices located in Everett, WA. The intent of BIA at time was to wipe out the reservation. Many of people leased land and little land belonged to the tribe until 1973. I recall my mom signing 50-100 year leases for land. In 1973, the tribe started to manage its own affairs, had ¼ acre in trust for tribe priority of tribal council to buy back land that is lost. Land we are purchasing is land that we previously owned that the tribe owned or allottees owned. We are paying inflated prices. When my mother and her three sisters were signing leases and buying property they were happy to get a turkey and a jug of wine. Today when the tribe has the chance to contract for trust services we are happy to do so and have been since 1988. We have a four member staff now, up from one. This is much better for the tribe because we can determine land to be purchased and the price to purchase it for. My family's property is near our casino. One of the problems is that the land is undivided and the property has 120 heirs. Not all of us will agree on one specific solution to our land. It is difficult to get 10 people to agree, let alone 120. Most of the time the land is not being used and we do sell Christmas trees and fireworks. When the tribe started to contract for realty services our staff had very little assistance and that is still true today. We have to operate in a vacuum by ourselves. There is very little direction and assistance from the BIA area office in Portland. Maybe it is because staffing is so small. When the tribal trust properties are handled by the tribe it is difficult to get all the families to agree. Division of property is a major problem to deal with. Our staff has very little time or training and have to educate themselves. Education gained by reading regulations and dealing with problems. Staff problem solving is one of our bigger issues. They have taken on this issue and are getting well-trained in problem solving. All land transactions a little different. There are some recommendations we have had. The tribal TAAMS access has been a problem for the staff and tribe. TAAMS is not available and only one tribe has access. We have tried but we are still not allowed. Don't know why, but we aren't doing it. The regulations and policies don't trickle down from BIA. Our staff has to learn the issues themselves. They have to stay active and follow rules and regulations and do most of it on their own. Individual land owners have difficulty understanding rules and regulations and it is difficult for elders to understand. Probate – the elders have made decisions but it's not written down or divided. It's different than how it happens and elders are confused. Some probates have taken land out of trust because of marriages with non-Indians or Canadians. When some tribal members married non-Indians there is an issue with division of the property. Besides probate we are lucky our staff provide wills for those that need them. We need to help everybody decide how to handle property after their death. It is difficult enough for families and then to try to determine how to divide land is difficult.

Teresa Wall-McDonald, Acting Head Tribal Lands Department, Confederated Salish and Kootenai Tribes: I want to draw attention back to remarks from Carole Lankford. She has been a steady force on the tribal council for 20 years and is part of the reason our tribe has been somewhat successful with self-

governance efforts. She talked about attitude of “we can do it.” At Flathead we have a small staff – 20 in real estate. We manage title plans, have TAAMS access, and handle billing, receipting, and transactions. We are a large land-based tribe and work to get original portions of land base. Before the 1855 treaty our tribes used 20 million acres. In 1855 we agreed to a treaty that provided a land base of 1.3 million acres. The Kerr Dam provides rental income, leasing income from agriculture leases, range permits, business leasing, timber revenue, and we have two casinos. The BIA compact revenue is \$5.6 million annually. These are our base funds. We are very fortunate that the tribal council supplements BIA funds.

If tribes want to be successful in compacting and contracting, they need to have a passion for service and passion for reservations. The foundation upon which our tribal leadership is elected is to compact functions. There are two BIA persons on the reservation – the Superintendent and the administrative assistant. We have to be very organized when doing compacting and identify backlog issues when negotiating for realistic services. Tribes need to know and need to ask what training is available and which reports are mandatory or discretionary. I know the council is my boss; I am three minutes away from them and they know the services they are paying for and how they want them delivered. We respect and believe there is a relationship and partnership role with BIA and OST. Tribes cannot effect meaningful change without BIA and OST and tribal leadership. Tribes need to be flexible and recognize the importance of continued partnership. Some of the best outcomes achieved are when dialogue is open and there is a shared commitment to the goal.

Our top three recommendations are the forestry program cannot be developed without adequate, stable, and recurring funding. If the Forest Service receives more funding than BIA to manage similar trust services, clearly we have to assist in securing sufficient funding across the board. One of the challenges we face is adequate funding – we must be consistent because tribal resources and the health of communities is impacted by BIA funding levels. We hope the Commission does not ignore the probate cases still not heard. If probates are not heard there may be willing sellers that we are not able to reach. It is a missed opportunity. An overall review of probates and the BLM needs to be examined carefully and make recommendations to improve this relationship. Indian landowners are not able to make timely decisions about their own lands. We believe that many regulations and unnecessary steps can be reviewed and removed. This goes back to flexibility and to the point that not every tribe is the same.

The vision and mission statement we have shared is approved by our tribal council and governs everything we do. When we signed the treaty in 1855 the tribe was guaranteed 1.3 million acres. The Flathead allotment owned maybe 40% of land in 1930s. The tribe is trying to acquire as much land as possible with hard tribal dollars. The council has a process called the annual report and every department has to report on activities on an annual basis. This is part of transparency and member communications. When we began this process some asked, why? We want to disclose what we are doing with asset management. If you put the message out there and you are clear and consistent with expectations it helps build trust and relationships. The tribe had 500 agriculture leases and in 2011 we were able to complete 424 lease inspections. We track this digitally and verify the work is being completed. When talking about partnerships we have a unique partnership with a fatherhood program. We said it is important to create an obligation to the family and the land. We go out with younger

people to retool young tribal members in terms of transferable job skills and give them ownership of the land.

In 2011 we assisted with property tax legislation in Montana. Salish Kootenai property tax was landmark legislation and applies to all nations in the state. If a land owner wants to move land from fee to trust then Montana gives a tax exemption for the timeframe of the process with a 5 year time limit. Cities, counties, and states are on another level and the tribe asked for same treatment for essential government services. With the appraisal program we did 38 appraisal assignments and have an MOU with appraisal services. In 4 months tribal members will have passed USPAP and will help with land buyback appraisals. Probates are the one disappointment in this summary. When tribes compacted for real estate services in the late 1990s we didn't identify what cases were there since 1960, 1970, and 1980 and are struggling to perform with some old probates. We would like to do better if we have more resources. Most important service BIA provides is probates. The State of Oklahoma has the most mortgages but our tribe is second.

We lucked out with conservation planning several years ago when we entered into a partnership and were able to get a State of Montana NRCS person in our office. We are able to go directly to this individual for information about grants awards and timelines. We are proud to say Salish has the largest conservation reserve program in the State of Montana. It makes good sense for the resource. The stock association is doing most of the work and we charge 10% to pay for upkeep and monitoring costs. Tribal leaders expect us to achieve and seek partnerships. This is an illustration of the type of accountability that our council demands. We worked with the natural resources department that has a GIS component to develop a tribal land map and the report provided to the Commission is from a 2010 report that highlights areas that are taken from fee simple to trust.

If beige, the land was bought as fee simple - 70,000 acres in trust in 3 years. 95% has been funding from hard tribal dollars. We have aggressive land acquisition that will be convert land from fee to trust. The fastest time period to move land to trust is 23 months. We have a MOU with the BLM where the tribes put hard tribal dollars on deposit and we gather documentation, have the BLM completed a review, and then the tribe takes the next steps. When individuals want to put land into trust, first we utilize a BIA checklist to do a review and identify problems. So if there is a large woodpile, old shed, rusted oil barrels, etc. we deal with it because those are the types of challenges that we encounter when moving land to trust. We request that the tribal member put down a deposit of \$1,500 and then move forward as quickly as we can. The individual will have to pay taxes while the land is in the fee to trust process; tax exemption is for tribal lands only. Orange pieces are tribal allotments.

With land buy back we had the GIS program make a large map and we took the number from the first *Cobell* report and tried to determine what they identified as fractionated lands. We tried to circle every allotment and determine track validation to see if the DOI number was correct. We came to the conclusion that there were four natural zones on the reservation. We know for our purposes of land consolidation that zone 1 is prime agriculture land. Mass appraisal is done for this zone. We are very excited to do this work; it is nation building work and the tribe is working to restore all tribal lands to green. We hope in the long run with fee to trust if a transaction within the original boundary should be

mandatory transaction and switch to trust quickly. The staff is working hard. With the land buyback program the 50 tribes on the list have initial purchase ceilings designated and we hope that if willing sellers remain after the initial phase, the ceiling will be raised.

Commissioner Questions Regarding Real Estate Programs:

Commissioner Leeds: How does the development of the title plan progress and what type of planning is done? Is this just tribal member lands or fee lands as well? Are there duplicate systems – tribal and county?

Ms. Wall-McDonald: We utilize the 1998 tribal plans. I don't think that real estate services would be as functional without title plan tabs. When talking about using the system, we use a database that the tribe funded. We keep fee land records and asset management information. Fee lands system, LMS, is duplicated at the county level. It's a bit cumbersome but it is the best way to not lose track of land and to have a clear idea of when going from fee to trust. Title plan information is invaluable and to be able to get that information is wonderful customer service. In the non-Indian world the systems are that responsive.

Commissioner Leeds: Can the tribe do a title search on tract and grantee/grantor name search?

Ms. Wall-McDonald: Yes, in TAAMS on billing and collections. We can do billing and receipting but TAAMS doesn't have collections system and auto referral to treasury for bad debts. We could find ourselves in same situation as *Cobell* where we can't collect on debts because the system doesn't have an auto collection function. We buy lands with permanent tribal funds.

Commissioner Hall: I like your system and the tribe has lots of accountability and experienced staff to help you. What do you do with disputes between lessees? Do you follow Code of Federal Regulations (CFR) or have another mechanism?

Ms. Wall-McDonald: The tribal council expects us to talk to the lessee/allottee/individual if we are taking action and we must communicate clearly with the member. If we are in the middle of a dispute we invite everyone in, establish ground rules, have a note taker, identify what we can agree on and what we can't agree on, and if there are solutions. It is the way we approach it – customer friendly, face to face. There is a tribal committee if the initial process doesn't work and we offer them this option.

Commissioner Hall: What about trespass? If it is on allottee land but there is no money to pay a fine?

Ms. Wall-McDonald: With lease compliance there is a person assigned immediately and we get Fish and Game officer. We investigate, take pictures, and follow the CFR for assessing damages. If the trespass is a tribal employee we will take a payroll deduction. We would allow them to sign per capita over or initiate an action against them in tribal court.

Commissioner Hall: If an allottee lease is terminated for non-action, is there an appeal?

Ms. Wall-McDonald: Yes, but our records are clear. We take the responsibility to collect federal receipts very seriously. The record is clear. They can appeal but at the end of the day if the allottee is due money we take the final AST step and take action. Part of compacting is responsibility.

Commissioner Hall: Does the tribe have any *Cobell* class members?

Ms. Wall-McDonald: Yes, we did. We do all the legwork but the Superintendent signs the demand letter for assessing fine for trespass for federal claim. He reviews the file and there is accountability for the process.

Commissioner Zah: If you look at what has happened to Indian people and land historically we have dealt with the land in such a way that we end up selling and giving however to allow parties to get their hands on our land. Then we try to get lands back as a tribal asset for the government. On a larger scale Navajo went through this same process on the eastern side of the reservation. They were beginning to sell pieces that Navajo individuals owned and then new owners were moving into Navajo areas and this caused friction among the tribe. No more individual allotted lands could be given to families. Navajo is now in the process of doing what the Salish is doing so that it becomes tribal lands. The Navajo Nation has allocated monies each year to purchase lands. What I have heard and seen will probably act as a model for tribal groups that would like to regain some of their lands back. It is encouraging for the elderly that have made a mistake of giving up our land and now it is being bought back.

Public Comment on Real Estate:

Audience: CSKT compacted or took over an already existing BIA office. There was already an agency office. Muckleshoot didn't have an agency office and this is where the distinguishing factors lie. We don't have access to TAAMS; we have asked for 4 years and we don't have that ability. The problem with that is that we have to request reports and we can't do lease compliance because we don't have access to the system. When the draft plan for *Cobell* came out in order to participate you have to have access to TAAMS. Morongo has access to TAAMS. Access is the biggest issue for us and we don't get regular updates. We must be Facebook friends and Twitter follower to get direct information from DOI. Policy changes and directives have to come from DC, to the region, to the agency, and then to the tribe. This causes delays and missed opportunities. We operate in a vacuum and we have to rely on our own resources and networks because we don't know what we don't know. Two recommendations: TAAMS access should be given to tribes to actually allow them to be a partner and make sure lines of communication are open so tribes have access to opportunities.

Audience: In the OST reorganization plan we presented information on tribal processes. Our tribe, Hoopa, is the most consistent trust manager in the country. The OST plan ignored all the things tribes do. Look at the OST plan, it is lopsided. It focuses on only what the federal government does, not what tribes are doing. At ATNI last week we heard from tribes regarding all the things happening to try to put the land consolidation plan into best use. Had they worked with a few tribes, those that have experience, we would be in a different situation. As it is, more fractionations occurring today than there are money to buy. Why is fractionation happening? This is because of the 1910 partitioning law that is used as authority to fractionate lands from probate judges, without quantification of what it means.

Federal policy needs to be changed so that a probate allowing partitioning does not continue. The general allotment act default for probates is state law. Change that. Default is tribal law and resource planning. Check to see what local zoning standards are. Transfer responsibility to tribal governments. If the Secretary policy would change to say Indian probate judges cannot fractionate lands unless they consult tribal management plans. If this does not change there will continue to be land loss. Tribal court is a place where tribes can contract probate judges to get a handle on estate management. There are ways to effectively deal with the issue but more than what is in the land consolidation plan is needed.

Audience: Our tribe does 184 Loans for natives on and off the reservation. We have 10 years of experience to work with tribal members to get reports. Title status reports can take up to one year. On individual trust land the BIA will deny loans based on a 1997 memo that says they will not allow individuals to consolidate debt to pay off debt. If a tribal member has property and has a home, what are their options? There are not many options for rehabilitation. Individuals may use credit but many don't know about 184 Loans. What options are we providing for tribal members to rehabilitate their homes? BIA is denying some loans for those that own property.

Audience: One of the things mentioned previously about allottees is frustration with fractionation. When looking at trust reform going forward into future it is key we take into consideration the allottee side. It is about providing service. The Muckleshoot land consolidation has brought back some hope for allottees. Allotments may be prime residential property but infrastructure is not available to get a lease. Reaching out to allottees is so important.

Audience: Do the tribal members in the tribe view members [working in real estate] as first line trustees or part of the tribal structure? Does the compact address this in some fashion that limits this?

Ms. Wall-McDonald: I think the perception of the office and of the work we do depends on the particular issue and the individual on how we are viewed. Some say that the staff are the trustee and demand information. There is a constant effort to check yourself and reexamine what is being requested and how it fits into policies, rules, and regulations. The council has agreed to carry out under written memo and agreement. If work can/should be done in a different way can see if there is a federal waiver but first and foremost, we are carrying out the work of BIA and the tribal council at the same time. The council sets priorities and we look to see what we are funding. It is a serious obligation. Part of the professional obligation is to follow through and be aware of resources. We take responsibility for parts of regulations and try to figure it out.

The Commission adjourned for the day and participated in site visit to the Nisqually tribe in the evening. The summary from this visit may be found in Appendix G.

Tuesday, February 13, 2013

Commissioner Dr. Peterson Zah, Navajo Nation, provided the opening prayer.

Chair Sharp welcomed everyone and reviewed the amendments in the agenda for second day of the Commission's public session.

Commission Reflections from Day 1

Commissioner Leeds: We did a site visit last night that at the end of the day energized all of us to see good things happening on the ground. It reminded us to keep an eye on the big picture and be mindful of the federal government as whole and the importance of the interactions interagency wide when it comes to resources. We need to spend more time focusing on the mechanics of issues tribes face when taking on responsibilities. We would still like to hear what exactly it would take to move forward on some of those goals. If we don't have a good assessment of exactly what it would take big picture of what it would take to make these things happen we may drop ball on asking for the right resources.

DFO Marsters: The visit to Nisqually was incredible. We were given the historic perspective and learned that during the 1950s and 1960s the tribe was in isolation and with two economic opportunities they were able to grow and the current vision of the tribe is impressive. They have the ability to access a variety of resources and utilize USDA grants to grow. The tribe is building a new administrative building, have started shellfish operations, and the door of opportunity to a new wealth has opened. What is the mechanism and turning point that tribes need in order to make success and new opportunities happen? We also had a pretty incredible dinner with music and dancing and wonderful sentiments. Thanks to Nisqually for hosting.

Chair Sharp: How nice to hear so many concrete recommendations coming from individuals and tribal leaders and to see meaningful recommendations from tribes come to the Commission. These will help us guide the management consultant and the issues we need to be attuned to and what the issues and barriers may be. We will continue engaging with the public and identifying issues and solutions to deliver recommendations to the Secretary that are reflective of public sentiment. The Commission needs to look at the full picture including the federal family; flip side is the tribal side and need to also look at that. Currently, the Commission is focusing on the government operations and what we can do to make recommendations that will empower tribes and increase the power of sovereigns. We must always be mindful to the two sides of the relationship. Then from expert panels we are hearing questions about funding. Funding is lacking and I do not know what we can do but highlight this as a critical issue. Tribes are not only unable to provide basic services; there are also some inequities. What we saw at Nisqually was the cultural and economic opportunity. We had a lot of fun and talked about ways we can improve partnerships. During the youth meeting at the University of Washington one of the students made a statement that, "Just to be asked what we think means a lot." To reach out to future generations and to take work to implementers we need to find ways to consider their suggestions and get the work and message out to the public.

Commissioner Hall: Self-determination. Yesterday we met with the Nisqually tribe and clearly they are doing well with off reservation acquisition for business and that convenience store will be a money maker. To see their thinking now and be aware of their disbelief that this could not happen a few years ago is amazing. Praise for the BIA office and the access that has been made available. Access makes the difference between success or not. Self-determination started in 1968 and as we evolve self-determination some tribes are very advanced, more than BIA. When advancing and having to slow down and wait for approvals, it hinders advancement. Reflect about self-determination and how it plays a role in trust reform. If budget cuts an impact on trust reform, there has to be more creativity. My tribe needs petroleum engineers because that is the business we are in. We have to have a discussion about budget concerns and self-determination. This has changed and we can't consider it the same way in trust. We must consider a new direction. Reflect on self-determination, what it means, what it should be going forward.

Commissioner Zah: All of the information that Commissioners are getting right now is really helpful for our thoughts in terms of where we want to be and where we want to go. As a Commissioner, I want to thank you for those that participate in the discussion. Everyone has really given us something to think about and when you look at tribes in different areas we all have individual area problems and some tribes are dealing with challenges and are resolving some of those issues. My thought has always been self-determination was here even before the coming of the white man. The 1971 Act was only a statement on paper saying this is the U.S. policy but it was already in the process with many tribes and in some ways, for those tribes that make progress toward self-determination it limits them because they have to do more paperwork. I've seen in the last several years a community who knows what they want to do, are self-determined, and when they go for different programs they are entitled to, it is the staffing at the middle management level in the federal agencies that hold many of those people back. Instead of encouraging them, they do everything they can to set up blocks. Nisqually did what they have to do to be successful. It is good to see young people continue to pick up the torch and finish out some of those activities that their tribal elders advise them to be involved in. As a Commission we have two major statements out and whenever we have the webinars we would like people to provide feedback on the statement and at some point make a decisions this is how we will move forward. I want to thank the staff for the work they are doing to get us the information to put us in a position to make decisions.

Remarks from Kevin Washburn, Assistant Secretary for Indian Affairs

Kevin Washburn, Assistant Secretary for Indian Affairs: Good morning, I am Kevin Washburn, member of the Chickasaw Nation. It is good to see members of the Commission, tribal leaders, and staff committed to moving recommendations forward. Thank you to Fawn Sharp for chairing the Commission. The work you are doing is exceedingly important. I want to let you know we have a new nominee for Secretary of the Interior and I ensure you the work [of the Commission] will remain a high priority when Sally Jewell is confirmed. DOI is very invested in the work you are doing and the time you are putting into this. We have Lizzie Marsters who is David Hayes right hand person and is attending as DFO; this signifies the importance of the Commission at the highest levels. I'm here to pledge support for Commission as well. I am anxious to see what you come up with and to implement the recommendations you have. Being in the Assistant Secretary for Indian Affairs hallway we tend to run from one urgent crisis to the next and

there is not a lot of time for pensive reflection for things we need to change and we need people to look carefully and give recommendations from people we trust. You are people and leaders we trust and we look forward to hearing your recommendations because they are good ones.

This Commission was created because of *Cobell* litigation. It is an achievement of President Obama to settle *Cobell*. The Claims Resolution Act that set forth the Commission charter and is about responding to *Cobell* and the issues identified. We are trying to settle the land consolidation plan and it is a challenging task on which we will be hearing more tomorrow during the Portland consultation session. It is a high priority from Secretary Salazar. He has made significant accomplishments in his time as Secretary. The Trust has grown substantially in the last four years – 200,000 acres have been added to the Trust. This is more than 1,000 applications and the heroes are the tribes and BIA staff who work to move land into trust. For the government to accomplish this task is a lot of work; and it is a vote of confidence for tribes and the BIA field officers that they were able to do so much. We are at a place to turn a positive corner in the trust relationship. You are key to that.

The tribal trust claims have been settled and we are moving forward on ways to administer the trust. Your recommendations are key. We are committed that the government will make constructive efforts to right the wrongs of the past. We need your help as a Commission to engage with all the stakeholders and I am impressed at your efforts to do that. The outreach campaign has been very broad and we are grateful for that. There was a letter from Chair Sharp that went out to the public outlining five questions for tribal response. The Commission has held listening sessions, offered a survey for employees, and has taken comprehensive approach for gathering input; this bodes well for the outcome. While the Commission is leading this effort, I want to offer thanks to the participants for their efforts. If no one was listening the Commission would have a more difficult time doing their job.

There was a day when my position was the leading position in Indian affairs and now every department has a consultation policy. This is a real plus. We have a responsibility to have a leadership role in my office and now that there are so many people we need more coordination. Communication is one of the hardest things we do. Thanks to the Udall Foundation for being involved. We desperately need the Commission's recommendations. We are responsible for managing the Indian trust on behalf of tribes and individual Indians. Management is a daunting task and it was too much of a task in the past. We need your help making it more sensible moving forward. We have had several efforts of reform over the years.

True we haven't achieved anything perfectly workable yet. We will never achieve perfection and hope to get something more to implement. When Secretary Salazar met he gave you no other guidelines than the North Star. The Commission's only task is to tell us what needs to be done and it is up to us to accomplish it. One of reasons we have an all-star cast is it is hard to say no to recommendations brought forward by you. It is really important that this is an independent Commission. Thank you to the tribal leaders and experts who have given good guidance and support. Thank you for all your time you have spent and for donating so much time. Thank you for all your work.

Commission Questions for Assistant Secretary Washburn

Commissioner Hall: Thank you Secretary. I appreciate your comments and the work you have done in this short time. You have hit the ground running and it is good to see a Secretary from Indian Country. We talked a little bit as a Commission about how the change in Secretary may impact things and appreciate the commitment comments you made. Will there be a transition to get the new secretary up to speed? It may be difficult for the current secretary to provide a transition. She will have to get up to speed on trust reform and review all the documents we have received. I hope that the staff will brief her and the continued commitment will be at that level as well.

Assistant Secretary Washburn: The handoff is happening. There is lots of conversation between Secretary Salazar and Secretarial Nominee Jewell. One of the most moving things for me is that she mentioned this is one of the most important things we do at the DOI and this will be carried forward. She has some experience working in Indian Country but she has had sporadic interaction. She has served as a banker for Alaska Native Corporation and has had other interactions; it is not foreign to her. She is from this part of the country [Northwest] and it is impossible not to be familiar with tribes of the Northwest. We are working hard to educate her. We have been preparing materials. I've been doing Indian law and policy for twenty years and still had to learn a lot. It's a daunting task to become educated and we will be working hard because this matter is a priority from President Obama on down because we have to do better going forward. We will maintain the commitment of the Secretary.

Commissioner Hall: Regarding stove piping and the budget. Tommy Thompson has the opportunity to work with entire DOI budget and implications of sequestration. If OST was sunsetted, what are those implications and when would that take effect? The notion of stove piping is not good because local authority is not there.

Assistant Secretary Washburn: The current way sequestration is scheduled to work is that it requires cuts to every account in equal amounts across all departments. Agencies can't take money from one department and give to another. Sequestration was calculated to cause maximum pain so it wouldn't happen. It will be difficult if it comes to fruition. We don't have an opportunity to deal with sequestration in what you are discussing. We are in the process of preparing the FY14 budget. We are having conversations across agencies about how we do right by Indian Country. We believe that we have a solemn mission that has to be met, even with belt tightening. Tommy Thompson will discuss this when he speaks with the Commission. We view OST as a partner. There is certainly a sense that OST will be sunsetted at some point. If you recommend it, we will consider it but OST is an integral part of DOI and we have no plans to sunset it immediately. We have a nominee for Special Trustee and are trying to get them confirmed. We are lucky to have a strong partner in OST. I suppose that some might like to consolidate into the Assistant Secretary's office. We have plenty of work and to have an office focus on trust issues is helpful to us. We have no imminent plans to sunset at this point.

Commissioner Leeds: Secretary Salazar thought could wrap up in 6 months but that was too big of a task. With the two year timeline we will have a report ready around Thanksgiving. You are dealing with a moving target. In your own vision, what kinds of things impact our work that you are moving forward on and what are you waiting for recommendations on?

Assistant Secretary Washburn: We are leaving the plate open for you as much as we can. We have lots to focus on. The land consolidation is important as the *Cobell* settlement gave \$1.9 billion to solve land fractionation problems nationwide. It seems crucial to the overall problem that caused *Cobell*. We are going to have to hire more and enter into agreements with tribes. We need tribal support to make this work. Anybody we have involved in this are just people in suits from the federal government and we need tribal leaders to give the message. We have a lot of things we are working on and one of the things that we need to address is the contract support cost issue. Some of this effects work at the margins but right now we are waiting and anticipating your recommendations so we can figure out how we move forward. Your work is so important. When you issue the report it will create focus on areas of recommendation and when the report comes out it will focus attention in terms of reform. We are very grateful for your willingness to do this.

Commissioner Zah: I know the job you are taking on is a tough one. You have at your disposal a lot of people out in the field who feel the same way you do. From the onset an issue we have been dealing with for over a year is the concept of the meaning of trust responsibility and sovereignty. As you know, at Navajo people many of our people don't have the education that many have the opportunity to get. There are lots of traditional people who have a different concept on education. The definition of the Navajo people on sovereignty and trust is a rainbow. The Navajo people refer to sovereignty and trust as a rainbow. The older people say it is a sacred thing and we need to continue to treat it as sacred. One should never try to put a rainbow down and walk on it. That is how important trust responsibility and sovereignty is. The job of many of our Indian people when they get into high positions with agencies whether DOI or the Department of Health, is to keep an eye on the Secretary and if they don't really know what the rainbow is all about, people like you from Indian Country need to education them so they don't try to put rainbow on ground to walk on because it is a sacred thing. The Navajo said what they said because we saw in the recent past where our sovereignty was stomped on and injustices were created because of it. We should encourage young Indian people in high positions that they are there for a purpose and the if the Secretary infringes on the rainbow then you have a sacred duty to go to the Secretary and try to educate them. If our own people are in the position with that kind of attitude to do that during last several years we wouldn't have much of the problems that the people are facing now. Second thing: laws are laws. My brother mentioned self-determination and in 1971 it became law. Laws are to be followed but what I see sometimes is that the staff, the middle management people in the federal government, doesn't follow the law. The Indian people know laws. The Ramah situation where the law was there but when they go to the federal government to implement the law, the middle management people try to tell the local people something other than what the law is. As a traditional person it reminds me when grandma and grandpa have a wagon – it takes two to pull a heavy load. With horses we put blinders on to not allow them look back or to the side, the mission is to go forward, and if they are not the carrying load, we need to use the whip. Or get another horse. I see many in middle management who are not carrying their load. They think their job is to frustrate the will of the people. You have a community that is striving and well versed on laws and want to carry them out. I wanted to give you that advice and am very encouraged you have accepted the challenge and I look forward to working with you and the staff over the next several years. I am hopeful today and my heart is happy.

Assistant Secretary Washburn: Thank you for good words and great advice. It's interesting listening to the beautiful imagery and it makes me think that the people in charge of making rainbows is one thing but we are mere human beings implementing sovereignty and trust responsibility. It is a sacred duty to work every day to try to do that. Thank you.

Public Comment for Assistant Secretary Washburn

Audience: I appreciate and respect the hard work you are doing with the *Cobell* settlement. I want to bring to your attention the concept of jurisdiction. We talk about rights and sovereignty of the Indian people. In 1958 some states took jurisdiction of tribal lands. Yakama has a petition hung up on the Governor's desk to get to your [ASIA] office. We are requesting civil and criminal jurisdiction be returned to the Indian tribe. We would appreciate it if you can give good attention to that.

Assistant Secretary Washburn: I read Commissioner Anderson's article and this is a real success story. I look forward to seeing this on my desk.

Trust Reform and Administration Panel Session

Chairman John Berry, Quapaw Tribe; John Dossett, NCAI; and Eric Eberhard, Distinguished Indian Law Practitioner in Residence at the Law School at Seattle University, were asked to address the following questions for the Commission:

- Do you have any recommendations to improve or streamline delivery of services to trust beneficiaries?
- What are your top three recommendations that you think would improve or strengthen trust management and/or administration for the Commission to consider?
- Do panelists have any suggestion of other trust administration models the ITC should examine as it looks towards improving the DOI trust administration and management?

Eric Eberhard: I appreciate the opportunity and time and effort put into this. I serve on two boards as a volunteer and understand how much time and effort it takes. What's in the PowerPoint is solely my view. I serve as the Board of Trustees Chair of the Udall Foundation but this is not a reflection of views of the Foundation. I want to thank my dear friend and mentor from DNA Legal Services, Dr. Zah. He had 30 non-Indian lawyers from across the U.S. at the Navajo reservation and they were not always welcome in the communities and he had to ease the work they were doing in the communities. He inspired all of us to learn Indian law and we taught ourselves. It was a process of educating each other and he insisted we do that. This is best exemplified by an early discussion we had in which he told me that I was not brought here to tell him we can't do things. We brought you here to help us figure out how to do the things we want to do, legally.

I am going to talk a bit about history. Self-determination and self-governance are the answers to your three questions. I realize there are many who have not embraced these ideas. It is the Department's obligation to ensure that trust is carried out. I think the trust is part of self-governance and self-determination and they are part of the trust. When looking at OST and their valuable job, look in a

detailed way what OST is doing and what they are and should be doing for tribes. Look at the amount of contracting and consider an open door for tribes to contract and compact the functions of the special trustee. It has been 180 years since BIA began keeping money for individuals and tribes. In 1820 BIA started collecting money for tribes and individual Indians. In 1828, H.R. Schoolcraft, noted, "The derangements in the fiscal affairs of the Indian department are in the extreme. One would think that appropriations had been handled with a pitch fork . . . there is a screw loose in the public machinery somewhere." It took a long time for the federal government to realize this was right.

In 1928, the GAO looked at trust accounts and in the early 1950s the investigations gained momentum, with numerous GAO audits and 30 Inspector General Audits in 10 years. They found many issues including:

- Weak internal controls.
- Inadequate systems for accounting and reporting trust fund balances.
- Inadequate controls over receipts and disbursements.
- Inability to determine accurate cash balances.
- Failure to consistently and prudently invest trust funds and pay interest to account holders.
- Inability to provide account holders with periodic statements.
- Absence of consistent written policies and procedures for trust fund management and accounting.
- No centralized management of IIM accounts.
- Oil and gas royalties and interest payments were either not distributed in a timely way or were not distributed at all.
- Delinquent lease rentals were not collected and were not allocated to the correct trust accounts.
- Expired leases were not renewed.

The BIA had no accounts receivable ledger for trust funds, they could not say what cash balances were or where they were held, and there were no written policies to direct employees on how to handle funds. I remember in the 1970s going to the IIM account office in Crownpoint, NM which is likely like many offices across country. The account record for the lady I represented was a stack of paper that was bound by rubber band and they could only add up what has been deposited and there was no account of what was being taken out. In 1984 Price Waterhouse conducted an audit and identified the same problems identified in 1920 and in the 1950s. When Ross Swimmer became Assistant Secretary he took a look at what was going on and entered into contracts with Mellon Bank and Security Pacific Bank to advise on how to deal with the trust fund mess he inherited. He wanted an accounts receivable system and a way to keep record of what was dispersed. These were only two important pieces and not the full range of what needed to be addressed. The Chairman of the House Committee prohibited BIA spending money on the contracts and Ross proceeded anyway. In 1988 they hired Arthur Anderson to do a full audit and accounting but they couldn't because the records didn't exist. In 1989 OMB sat down with the Secretary and Assistant Secretary and advised them that the President, as a matter of policy, had

determined that BIA was a high risk federal agency and directed them to put together a strategic plan to deal with trust funds. In 1992, BIA put together a plan with Arthur Anderson.

There was no way to keep track of what was happening on Indian land. The Department had no central direction and no trained staff. Chairman Synar of the Subcommittee on Environment, Energy and Natural Resources of the Committee on Government Operations undertook several investigations of BIA and much of the report from this Committee forms the basis for the issues the Commission is dealing with today. The Committee took the Integrated Resource Management System (IRMS) apart. The BIA could not account for IIM or tribal accounts and the Synar report provided the best accounting for the numbers. IRMS was broken and ineffectual. The Committee was also the first to identify the extent of the fractionation problem. The Synar report put it all together in a way policy makers could understand. He determined that even though BIA was ordered to put a plan together they had not done so. The recommendations from the Synar Committee included:

- Reduce and eliminate fractionation.
- Develop a system for maintaining accurate and up-to-date tribal and individual land ownership records.
- Develop an accounts receivable system.
- Provide for prompt collection and accurate distribution of revenues.
- Produce accurate periodic account statements.
- Develop written policies and procedures for trust fund management and accounting.
- Provide for regular account audits.
- Provide adequate staff with proper supervision and training.
- The House and Senate should pass legislation to provide for greater tribal control in the administration of trust funds and clarify the duties of the Secretary as the trustee including providing an accurate accounting and maximizing trust income through investment. (Emphasis Added)
- If the BIA failed to act to implement the recommendations within 6 to 9 months, consider transferring the administration and control of the trust funds to the Federal Reserve Board.

Those familiar with OST know much of what was recommended is now done there and TAAMS was developed as the system to maintain accurate records. In November 1992, BIA set up the Office of Special Projects. Synar introduced legislation in 1993 that ultimately became the 1994 Trust Reform Act. In the original bill was a demonstration project that would authorize tribes to administer trust funds. Specific duties were outlined for the Secretary and there was authorization for tribes to develop systems and training to administer trust funds. The legislation did not include OST. Six months after the bills were introduced Elouise Cobell testifies for ITMA and recommended that there be a special master appointed with private trust fund expertise and a board of directors and financial experts to manage the trust fund. This was the first time discussion of this type occurred. Cobell explained that the special master would: provide overall management, direction and guidance on all trust fund matters; be responsible for the reconciliation, day-to-day management and improvement of OTFM; report directly to the Secretary and have a budget line separate from the BIA; be authorized to contract for specific

functions, hire consultants and enter into contracts for personal services in order to avoid creating a new bureaucracy and becoming entrenched. The 1994 Reform Act embraced the development of OST but did not include the demonstration project provisions. The only way a tribe can administer funds today is to take the funds out of trust. The second provision was for the Office of the Special Trustee “to provide for more effective management of and accountability for the discharge of the Secretary’s trust responsibilities to tribes and individuals...” If this is to go back to Congress does the Department have a means to manage the trust funds consistent with the Department’s duties other than in the Office of the Special Trustee? At a minimum Congress should look at the situation in a contemporary context to see if the provisions of the act have been met. Appropriations: for an office that was intended to not necessarily be permanent it is amazing how permanent it has become. At its peak the budget for OST was \$165 million and is now \$146 million. There are annual audits and regular reports on account balance to account holders. There has been substantial and positive change on administration of trust accounts. Office of Historical Accounting was moved to OST. There has been substantial work through that activity to try to reconcile those accounts. TAAMS is also now in place.

Commissioner Hall: The Great Sioux Nation fund is \$100 billion; I believe that is part of the overall numbers.

Mr. Eberhard: At Navajo we set up permanent funds and took claims judgments and invested them in the permanent fund. The tribal permanent fund is now a few billion in principle and now the tribe does not have to borrow money to build. This is all managed by the tribe. The difference is because it is in private markets it earns optimum rates of interest. If the Sioux nation judgment had been invested privately it would be many billion.

Commissioner Hall: Our tribes have the 1992 Equitable Compensation Plan for the hydroelectric dams. That number should be higher.

Mr. Eberhard: It should be but OST can only invest at the rate legislated. I think the tribes are being short changed but the tradeoff is that there is almost no risk but you are also not earning much over time. If the Sioux judgment fund was taken out of Treasury to directly invest you would have enough money in a short time to buy back everything. They could conceive a financial plan to restore the Black Hills.

Commissioner Hall: Why not take the funds out?

Mr. Eberhard: It goes to the heart of what we know about self-determination and self-governance. President Nixon testified to Congress in 1970, “The time has come to break decisively with the past and to create the conditions for a new era in which the Indian future is determined by Indian acts and Indian decisions. . . . We must assure the Indian that he can assume control of his own life without being separated involuntarily from the tribal group. And we must make it clear that Indians can become independent of Federal control without being cut off from Federal concern and Federal support. . . . [We must] affirm that the historic relationship between the Federal government and the Indian communities cannot be abridged without the consent of the Indians. . . . In my judgment, it should be up to the Indian tribe to determine whether it is willing and able to assume administrative responsibility for

a service program which is presently administered by a federal agency.” Part of the reason I included Nixon’s message to Congress is, he nailed it.

We cannot terminate the trust and expect tribes to embrace that. You need to assure tribes the trust remains but it can be terminated with consent. Tribes can still administer trust. In 1994 Act the worst thing we did was the provision to take money out of the trust to administer it. We should have taken that out. My personal view is that we made a mistake and I believe that today. Good things came but to terminate trust for tribes to administer the trust is inconsistent with the very essence with self-determination and self-governance, and with the U.N. Declaration. We have put \$3.9 billion into implementing the 1994 Act. That is more than the *Cobell* settlement and recent settlements. It is important because Ross said to me that the importance of OST is important for the Commission to consider. Ross said he has been Assistant Secretary and Special Trustee and he knows the way this place works. If we don’t wall off the funding for the administration of trust it will be raided and we won’t have the resources needed to administer the trust. Take him at his word. This is a fact the Commission has to consider. If you were to open up the OST as is suggested in legislation currently in Congress would that become an issue? Could there be a merger without issue? It is clear that even if you start examining what the OST is doing in self-governance and self-determination and there is more contracting and compacting, there will be tribes that don’t want to go down that road. What is the capacity and structure that ensures gains made are not lost?

There is a serious bundle of issues to look at. I hope the Commission has the time and resources to do that. How do you get contracting to tribes? Change the requirement to take money out of trust to administer and tribes never need BIA approval to take money that doesn’t go into trust and do with as they please, including investment in permanent funds. What would change if you start with the lense of what are the rights of tribes? This is different than looking form point of view of how to clean mess up and carry out trust responsibility. The Department can do both and I have great confidence that tribes can manage funds. No one who will do a better management job than the tribes. Self-determination and self-governance analysis is all about this and it shows. Self-determination and self-governance are as powerful an engine for reform and change as gaming has been in raising living conditions of tribes – almost dollar for dollar. Tribes that don’t have access to gaming revenue but are self-determined and self-governed have had the same gains. This should be the Department’s number one trust responsibility. The focus is not solely on land, money, or hard resources. Bring all the administration home to the tribes. It is hard to hold D.C. accountable and tribal council is much easier to hold accountable if that is where the money is.

Chairman John Berry: I am the Quapaw Tribe Chairman in my 11th year. My tribe has gone from a direct service tribe to a 638 tribe that compacts all functions except IIM accounts. We are the largest first responder service in our county. Our trust lands expand Oklahoma to Kansas. Our current budget is over \$100 million due to our ability to make decisions and determine how to best forward. The money held by the trust in OST is proceeds of a labor account derived from Indian children in Catholic schools making shoes for prisoners. Sovereign immunity does that. I talked to Helen Sanders and we cannot

leave individual off the table and we need to remember not every tribe works the same way or is treated the same way.

My background started with the trust reform task force. I had to sell cattle to go to trust reform meetings. I learned how to deliver trust services. We went to agencies, spent time talking to allottees, and learned how they did processes across the country. We spent time drawing out a model of how trust services could be delivered. A lot of those things were fixed. I would encourage the Commission to look at recommendations based on information from stakeholders. We have to restate who we are as Indian people because people forget everyday why we are who we are and I hope you restate it in way it was meant to be stated. I hope you remind people that we have rights and there is a reason for those rights. I'm really glad you are doing this. Don't get sidetracked. A lot of quality work has been done previously and we are still talking about some of the same things we have been talking about for years. Does OST or BIA care more about Indians?

Give us tools. Save TAAMS. It is stupid to rebuild systems, let tribes have access to it. Let us govern reality. We buy land every day when we had money we gave bonuses to buy back. We need handbooks with updated regulations and processes. People need to be trained and taught and retrained. We need to empower people to make decisions. Decisions are made on fear and liability and lawsuits. Inspiring Indians is what we should do. Why can't we all work together to make it better? We have to give them tools on how to use the land and get support to capitalize on economic development. There are so many processes and approvals. If an appraisal is licensed, why need we need federal approval? We have to have tools, training, and development for the tribes. Tribes care for people and tribes are important because we have the culture, songs, and stories. Individuals don't make tribes but individuals need help to manage fractionation. Tools, training, tribes – these are the things we need to focus on.

You have to restate the trust but give the tribes, OST, BIA, the tools to make decisions. At Quapaw we make decisions based on what is best for the tribe to keep moving forward, not on liability. We are currently working with an archaic system that is fixable, manageable, and doable. We have to have faith. Commissioner Zah said something about middle management trying to stop stuff and that is not true; they don't have authority to make decisions. Bill Gates wouldn't build Microsoft if he was worried about getting sued. Agency people need to make decisions. They need tools and training to help train people. Where is compliance? This is where the rubber hits the road. Compliance to lease is what brings the funds that we are looking for. It comes down to one simple thing - if we are all in the business of making the American Indian dream come true to every member of a federally recognized tribe, it is easy – stop worrying about liability and we need to stop suing.

The reality is that the DOJ people have no idea why I am there. They don't understand the agency doesn't have the money or good training or handbooks. We sue about things long before we were born. We have made money but didn't fix anything but we have money to buy land. I don't need consultants. 55% of the money given previously for land buyback was used to buy equipment. Restate the trust responsibility and send copies to everyone. It is embarrassing that there is a state with 39 tribes and treats us like feeble minded people. We are generating economies, protecting the environment, and providing first responders. We are in business of giving people lives and hope. Provide opportunity and

give tools to help Indians do better. Save TAAMS. Train realty officers to understand the rules, give us TAAMS. It is our land and we need access. We know what we are doing. Our tribal members are BIA employees but we don't have ways for them to make decisions. We have to change the dynamic. We need tools and authority to make decisions. We need to inspire the American Indian dream. It's not OST holding my couple thousand dollars that makes me a tribe. It is a sovereign immunity and a bunch of laws and lawsuits that gave us a government. I don't have a problem with OST giving help but they need to move closer to BIA to get decisions made more quickly. We can't have delayed decisions impeding investment decisions. All you are hurting are Indians from using their resources to create hope and dreams. We are stifled with slow archaic decision making. We have to let a tribal realty agent go to the superintendent office to get something signed because we work and train together. We are still saying the same things. Please restate trust responsibility. My job is to let them understand how their views are inconsistent with the views of people who have to protect their people from injury.

John Dossett, NCAI General Counsel: I have experience with trust reform issues under Tex Hall, former NCAI President, and through the trust reform task force. I have worked on legislation like *Hearth* and *Land Consolidation* and other regulations. I will talk generally about NCAI recommendations that have been handed down over the years and what might be relevant to the Commission. I think Eric Eberhard's presentation illustrates you are midstream in a project that has gone on for some time. Much progress has been made and sometimes we think we have to reinvent what has been done but much work is already done. I served on the Trust Reform Task Force in 2002 and John Berry would collect notes regarding trust systems and he knows a lot. Everybody wants to think outside the box and nobody wants to look inside the box and there are a lot of tools in the box. CFR 25 has a lot there. The story about how the logging at Quinault was destructive and destroying riparian areas and they drove a truck to the bridge and wouldn't let trucks on the reservation. This illustrates the tribes taking control over their own reservations, which could be referred to as little self-determination.

NCAI offered a transition plan to President Obama and they are midstream on these recommendations. Assistant Secretary Washburn used the word daunting but it is not as hard as all that. The first thing tribal leaders asked for are settlements on pending litigation. Second, the *Hearth Act* allows tribes under 25 USC 415 to approve their own leases with their own regulations on surface leasing. This is not yet implemented but there is movement in the direction to allow tribes to make decisions on their own land. \$1.9 billion has been devoted to land consolidation. *Cobell* sets the stage for making progress in the near future. Every time you talk to the Department you saw lawsuits. This is in part due to restricted conversation with the Department. You can't talk about trust responsibility without the waiver attached. Obama called for a smarter government on February 12, 2013.

Trust reform was really confusing when we first started working on it. The Trust Reform Task Force put together a chart to illustrate how the system works. It is a pretty simple cycle and there is a lot of management along the way. We show this to interns at NCAI and they don't know what we are talking about and we try to demonstrate what we are talking about. If you can simplify this chart and show how trust administration works, you can illustrate what are the next steps and how it can be done. There are current steps underway. The best thing the administration is doing is supporting land acquisition for

tribes. If in the long run the idea is that lands generate revenue to support the community, they need to address the checkerboard and make a more productive tribal land base. The administration is very interested in pushing economic development. If the Commission can ask DOI to share more data on land consolidation, this will help people understand the issues.

About 1/3 of allotments are in single ownership – about 39%. One of the things that the last administration did was stopping estate planning. If so many lands are not fractionated why are we not helping with focused estate planning? This would save trouble down the road. 1/3 of allotments have 2-10 owners who may be family and can work to manage the land. We hope that some thought is given to those allotments not fractionated or not heavily fractionated. When John Berry was doing the As-Is-To-Be they pointed out that there were bottle necks in the system and transactions were hung up – appraisals is one of those. Allow more waivers of appraisals – this is new in the leasing regulations. For instance, like allotments that are transferred among family members – if mom is giving land to children why require appraisal? It would save a lot of extra time and getting appraisals done more quickly is important. Tribes can't get title status reports. Give tribes direct access to TAAMS. If you go out to CKST they have access and can just generate reports. Some tribes wait months or years to get a title report. Check on probate. There is a backlog in the system and you can't process transactions on land when you don't know who owner is. Having a status update on probate would be helpful.

Training and handbooks are important and will help alleviate bottlenecks. This is not hard to do. There have been lots of NCAI resolutions to sunset OST. Nobody reads the resolutions and everybody recognizes the Office of Trust Fund Management is not going anywhere. Reintegrate OST into the BIA system to allow decisions to be made more quickly at the local level and is more closely integrated with the land management function. Appoint a Deputy Secretary for Indian Affairs to help manage trust functions in other agencies. Create a management structure integrated with all management functions in DOI. One of the most interesting things is that direct services tribes are most interested in are a planning system. They want the ability to see how resources are managed and spent. Prairie dogs are huge problems in tribes and the tribes wanted a planning process to be involved in this management. More economic development will come with land consolidation and how do you plan for this is really important. Consider more focused funding at the reservation level. Expand self-governance and implement new policies. There are many legislative proposals and the Commission could consider some recommendations to Congress as well. Put together a draft plan and then get to tribes for input. This is when the fun begins. Leave space for the tribes to develop dialogue. Tribes are not the same from region to region and it is important to acknowledge different parts of the country and how this may function and systems are managed. Don't waste a lot of time writing a perfect plan. Tribes want you to put out a plan where they can tell you what they want. There is need for tribal engagement and they want to provide input. Written documents help with getting feedback. Tribes will get excited.

Commission Questions for the Trust Reform Panel

Commissioner Hall: What is your view of the prudent investment standard used in tribal self-governance compacts?

Mr. Eberhard: I actually have not talked to tribes about that issue but know where I would start looking for that answer. The example of the Navajo permanent fund is reason for that. No one but Navajo imposed the statement there. I can't say the prudent investment rule would work. The essence of self-determination is the right to choose. I would try to create a flexible system that leaves choice at the tribal level.

Commissioner Hall: How do you view of the types of enforcement actions for breach of trust?

Chairman Berry: We have litigation. We have to come to some sort of effort that is more working together as a group as opposed to different groups. If a breach takes place work with the local agency or region. If there is the resource management breach work with the SOL. How do we fix to move on and not let it happen again? Compensate for necessary damages. We need to work with those you work with daily and should encourage a collaborative process with everyone involved. At the end of the day it is about making lives better and providing opportunity and hope makes some things go away.

Mr. Dossett: Working on leasing regulations, we would like more support from BIA on lease enforcement and compliance –there are issues routing trespass all the time. It is almost like no one is watching what is going on. Tribes would like to monitor what is going on with leases. There is water wheel litigation from the 9th circuit regarding a lessee who overstayed and refused to leave. BIA did not help because he was in California and PL280 does not allow BIA authority. The tribe filed an action in tribal court and then the action for damages. The lessee wasn't paying and it was mounting. The 9th Circuit said tribes have jurisdiction and the tribal court can address and enforce damages. If lessees are not following mandates, take them to tribal court.

Commissioner Zah: When you start working with agencies you get people who are in positions who are not trainable. They can have all the training you want and if they still don't get it and they don't have the heart enthusiasm for people and the work they are doing, those are still not the right people. We need the right people in the field who are passionate. We are also talking about tools. If you are building a house and don't know how to use the tools and try to use them anyway, that is not productive. Tools are needed but also need passion in learning how to use the tools. So you can give them all the tools needed and they are not trainable. Those are the people we are thinking about. Chairman Berry is lucky he is in Oklahoma and they have dedicated people. This is not so in every region. Take a hard look at the people in the field because you don't see them every day. We talk to them every day. There are plenty of people in Albuquerque because I have seen and talked to them.

Public Comment on Trust Reform Panel

Audience: I have been waiting since 1997 when the first OST was appointed for this discussion. Look at OST history and what others went through not once did the plan fix basic issues the tribes were talking about before 1997. I admire in this room the tribal leadership, those that sat through hundreds of hours of task force discussion, others and past directors of committees, and technical staff. If we can't fix trust reform with this group then it can't be done. What is ironic is the *Hearth Act* example. Both Johns put a finger on it. We don't need new laws. What we need is a trustee that is willing to look at things. Don't have to waive the trust responsibility or U.S. obligations to partner to meet what treaties promised.

Tribes ceded land but retained authority as a sovereign to rein authority. It is ironic to have the *Hearth* to manage leases. At Hoopa we adopted a land ordinance in 1990 to eliminate the backlog of leases. With *Hearth* we may have to get permission to do what we have been doing. The point is that treaties did not extinguish tribal authority it was really an intrusion on Indian Affairs – look what we have to dig out of. Look at what tribes would be able to do if they were able to make decisions. Why do we have to go through permission to get an agreement from the state or county to get lands back to trust? OST was created to fix the problems of trust. There are two parts of OST – one is financing and there has been tremendous improvement in federal financial mgmt. No one is talking about getting rid of that. The other part that began in 1997 and continued on is that when they stepped over the line into trust asset management they stepped on tribal sovereignty. They don't want to talk about the fact that OST was created to fix trust and then got internally corrupt. There is a conflict of interest with other agencies. There were two ethics reports that identified one ethics violation per month for eight years in the Office of Edit and Evaluation. We are chasing federal plans. Look at what tribes are doing. Look at the growth in Indian Country over the last 20 years. When sovereignty is strong, there are good economic models. Take gaming investment return on investment to Wall Street and it would be worth what is being traded. We have to get out of the way to allow tribes to exercise sovereignty. If we get to the point when the U.S. is mature enough to allow reform, what would happen if we give tribes the inherent authority to manage resources as they wish? When tribes are asked if they deliver on progressive movement and really what we are missing is the willingness of government to say tribes have retained sovereign authority. This is all possible. I don't know whether the ATNI bill is actually needed to do what we want to do. We have self-governance authority. Our tribal sovereignty is still retained.

Audience: I would like to thank the Commission for recognizing individuals Indians on page 4 of the document. Thank you for allowing us to participate in this process. There was a recommendation yesterday for an oversight group to oversee everything; this is a good idea. I would suggest a knowledgeable person, experts in realty tribal jurisdiction, individual landowners, probate, BIA processes, natural resources, and oil and gas. Have a team to review APRA, the single air rule, purchase at probate, 5% rule that doesn't require consent of the land owner. Hire some young people who know technologies. We need education of landowners so they understand the rules. Use technology to keep track of landowners. Education is important. Fractionation is a buzzword. The only thing we heard about fractionation is for DOI to lease land. If money is generated we have to determine who gets what share. When Mr. Dossett said many individuals still own allotments it's not hard to do but that's where to look to stop fractionation.

Audience: I really appreciate you coming to the northwest. We hope the Commission heeds recommendations from the panel. I want to expand on points of giving inherent power to the tribes. Trespassing – lots of issues on reservation and it's pretty rare that BIA assists and helps and meets responsibility to protect land. It is really unfortunate that that is a need for constant request for BIA to step up and meet their obligation. We depend on natural resources in the Northwest and they are closely tied to our culture. The big mission is protecting treaty rights to fish, hunt, and harvest resources. This is a huge function we depend on and there have been repeated requests for our trustee to step up to fight for us when trying to protect diminishing resources. We are talking about an era of scarcity and

having to fight and we need the trustee by us. Communication is a big piece. Agree that more information to the individual is needed. We have held landowners meetings funded by tribes. We need BIA to communicate better to individual land owners regarding complicated issues. We have our local agency across the street from the government office and sometimes it seems like they are far away. It depends on who the superintendent is. There needs to be some way to establish guidelines and requirements for specific positions like the superintendent and it would go a long way. The superintendent communication on government to government level with the council is not there. I would address disagreements early on. Regarding OST, I agree that progress has been made and I don't want to take steps back with what is right but some other responsibilities like appraisal streamlining, there are still issues. We haven't contracted that. Some results are arbitrary and unpredictable and drives wedge between the tribe and OST and tribal members. It really creates dysfunction and disagreement and tribal members are at a disadvantage. This is going to play a huge part in the buyback and really needs to be considered – time at a premium. OST and BIA need to find a relatively effective way to transition duty of appraisal to the tribe. I do agree that more access to TAAMS is needed. We generate a lot of data but it seems to be that the missing piece to the puzzle in decisions is access to TAAMS. This delays many decisions. Money is only there for a short time and then money passes and we miss opportunities. I would greatly appreciate allowing tribes to administer duties and responsibilities.

Mr. Dossett: There is lots of concern about trespass recently. The U.S. attorney is required to defend rights of Indian lands. What does BIA do when this occurs? We just need basic forms to enforce regulation.

Audience: Individual appraisals are extremely expensive and not affordable. If there were appraisers in the Bureau that were realty appraisers then it could be more economical; or even if they were in self-governance tribes.

Chairman Berry: Contract the appraisals. These are certified appraisals but we still have to get approval in Albuquerque. Why when it is a licensed appraisal? This is a bureaucratic process that delays decision making.

Audience: Trespass is decades old. The simple fix would be that OHA has the authority to enforce federal regulations. DOI contracts with tribes to have a tribal judge cross-deputized as an administrative judge then this would assist with the issues of backlog and processing. If we were to do just that and DOI would contract with tribal courts to enforce trespass, then all these things and problems would go away. These are all things within the box. What is missing is the attitude of connecting them up. When there are tribal resources out there it goes a long way to increase trust.

Audience: It is very interesting that trespass has come up twice. We are a self-governance tribe and have Fish and Game officers who are representatives and know where leases are and the turnout dates. In advance of the turnout dates we email Fish and Game and ask them if you see anything please let us know. We have lease compliance out there as well. In trespass we generate the initial warning/notice letter under my signature. We make the individual contact and then we generate the letter for the superintendent. We have taken animals into custody. If the owner comes for collection, the payment of

damages comes to us. We attack it in that manner with the involvement of law enforcement and advice and guidance of the superintendent.

Mike Black, BIA: There are no standardized forms that we use for the trespass process. One of the problems we have are the regulations are weak when it comes to trespass enforcement. This may be the next step in addressing the regulations. It comes down to resources. We don't have strong trespass regulation governed by leasing regulations. We don't have a lot of teeth in enforcement of assessing fines. We have confiscated animals but there is not strength in the regulations. BIA has reviewed this in the past but it is something to move forward on this year.

Commissioner Hall: Is it possible to work with the tribe if they have their own trespass regulations?

Mr. Black: Yes, if the tribe has resources. The tribe could develop trespass regulations in the leasing regulations.

Chairman Berry: We put up concrete blocks to stop access. We exercise self-governance to empower the marshals to stop trespass.

Audience: The trust reform bill originated from ATNI. Has it been reviewed by the commission? It has been mentioned and I would like to hear the Commission's opinion. Will you take this into account in your report?

Chair Sharp: In our work session Monday we discussed this. We suggested perhaps we adopt a set of principles that would speak to legislations and we could use this in hearings on trust reform. We don't want to be premature on something that is under review. We recognize fundamental principles should be able to activate the Commission voice on current issues. We will take any proposals and look at ways we can provide an interim voice.

Audience: There is Indian energy legislation pending that authorizes bilateral agreements without review and approval of the Secretary. It's a good idea to have interim principle recommendations. They will try to get these bills done this calendar year.

Michele Singer, OST: Regarding the restructuring of OST, one of the things interesting in your slides is the realignment or closer alignment of management functions and the opportunity to look at the redundancy of operations. One of the things that is important to consider is that the former Special Trustee said he felt strongly that management of money did need to remain separate. If this is under same the management chain there is risk of the same issues we saw in the past. When the operations were separated out and certain resources were devoted to reform and improvement that is when improvement happened. Do you want to take the risk of returning to the challenges? Do I think that the offices BIA and OST work better together than at inception? Yes. Is there is greater opportunity for some sort of management realignment? Yes. I don't want to continually come back to the same conversation over again. OST looks out for individual allottees. Look at those regional offices where tribes can get same day deposits. The trust officer at Navajo who speaks the language and deals directly with the accounts and knows which individuals are owed and can payment can be received on site. Do we want

to lose that service? It is more than trust fund management; it is the one on one interaction in the field to individuals and to tribes.

Chairman Berry: Move OST to the tribal level. Decision making process and delays create inertia and delays in planning and funding. There is a better way to communicate and make decisions. I want Helen Sanders to be protected and have the special oversight that BIA may not offer. The real thing we have to take care of is that even with individuals we have to let tribes take care of that stuff. We have elections that take care of oversight. Tribal members have hired me to do that. At a certain point it has to go back to the tribe if it is going to succeed. Individuals have power through the tribe. It scares me and causes me aggravation that OST has to be there to protect individuals because they are trying to get protection from the tribe and that makes me crazy.

Ms. Singer: I agree. As long as we hold the accounts there is a relationship. There is the underlying tension. The fear of liability and lawsuits and the friction that creates is horrifying. When you look at things that are federal like appraisals then we have to follow the law. Do I think it's a benefit because it can catch errors? Yes. Does it take too much time and money? Yes. Sometimes I have to do expensive and time consuming and duplicative things and I have to manage that. That is where tremendous opportunity for change lies. That is not the current legal framework.

Mr. Dossett: Why is appraisal an inherently federal function especially with the *Hearth Act*? Some laws seem to be in place because of litigation and perhaps now is the opportunity for roadblocks to be taken away.

Commissioner Hall: Utilize the graph to identify duplications of management functions. What does BIA do to get a lease approved? Illustrate this to identify issues. What is the management process? Identify duplications.

Dr. Rudolph Ryser International Trust Models

Dr. Ryser: Thank you for the invitation to speak with the Commission. I am going to speak to the question of the origins of trusteeship in the international arena and how ultimately this influences what is happening in the U.S. Trusteeship is a fairly recent concept in international political relations. Trusteeships involve a legal relationship. Historically it is a political relationship. There are different applications in the world. The relationship as we know it has roots in Europe. There are examples of other arrangements between peoples, kingdoms, and empires where one entity assumes power over another power. There are various other models that have existed and continue to exist. The relationship is broadly referred to as one of the greater power assuming responsibility for a lesser power. As many will see, that kind of concept has been applied in the U.S. What is assumed, in a very curious way, is that the greater power always thought the lesser power was unable to perform on their own.

Occupied territories throughout the world are asking not to be occupied or are attempting to petition a change in the political relationship with the occupying power. In the case of Andora it sits astride the

boundary between France and Spain and had been controlled by the princes and princesses of Spain and France. This model continues. It assumes Andora was partly the responsibility of both countries. There was confusion over the boundary between the two countries and Andorans were caught in middle. The compromise had nothing to do with Andora but with France and Spain. Over and over again the greater power claims territory to stop another country from seizing the territory. That responsibility is considered to be permanent. In the case of Andora, the Andorans didn't think it was permanent. Only in recent history has Andora set about changing the relationship. Both countries found this uncomfortable when it was a republic. Negotiating resulted in Andora becoming an independent entity but with two princes on the books. They have become half-sovereign.

The U.S. has, along with many other U.N. Security Council members, developed principles for controlling trusteeship. After World War II it was determined that there were winning countries and since this was the case, there were other countries that would lose territory. This is how the assumption of responsibility of the U.S. for Micronesia came about. Micronesia was under the control of Germany and Japan. The U.S., as an administrator through DOI, assumed responsibility to administer the territory. Many of you will recognize that the experience of Micronesia from 1945 to 1983 was virtually the same as tribes. Administration was the same. What Micronesia found most upsetting was the U.S. control of the land and the imposing of land systems. As has been the case with greater power relationships the controlling country gains great assets when administering a territory. As a matter of practice, states as administrators had less interest in the people and more interest in the land. The rules and regulations had to do with land administration. This is a bone of contention.

They found their old land tenure system was being changed into a system they did not recognize into one of individual ownership. Many extended family patterns were impacted and had an adverse effect on cultures. The basis for Micronesians to change political relationship with the U.S. began in the 1960s. The advantage not existent in the interior U.S. was namely they had a trusteeship council as the supervisor of the relationship, a third party was involved in the relationship. This was the foundation for it to be possible for change in political status – the trustee responsibility for the beneficiary trust to political sovereign equality. This is not done with respect to land size, population, wealth or other factors. When Micronesians argued they had power and the capacity to choose it and it was not necessary for the U.S. to regulate the land. They saw it necessary to regulate other aspects and sought relationship initially with a governing council. You may recognize that is like a business council for the U.S. to contract to produce revenues to go to the Micronesians. The Secretary of the Interior retained absolute authority of the council and the Micronesians thought true self-governance allowed them to choose the council without interference. The combination of land management and self-governance were strong influences to negotiate with the U.S. The agreement that came from the status negotiations required that both parties take 15 years for transition and that only Micronesians could back out of the agreement and the U.S. could not. This left the Micronesians under the trusteeship the power to determine what they wanted out of the relationship. The U.S. only wanted an air and navy base for the support bases needed for the Asian war in the 1960s and 1970s.

We have a number of other examples, one of which is in Africa. Can an independent nation occur in sovereign state? Swaziland is an independent in a sovereign state. There has been both regulated and controlled priori to ascension as an independent state. The process by which populations seek to act on their own consent as politically identified states is a consequence of negotiations ongoing for some time. The greater power has been in control of the lesser power for at least 1000 years. This rises from the assertion that one power has greater power over another. The great power assumes certain benefits as consequence of the relationship. I want to point out that there have been efforts to change the relationship when people figure out they can exercise their own consent. Other political struggles are between administrative powers over land and resources. People have recognized that the greater power has not always persevered to preserve and guarantee protection. The greater power becomes the beneficiary of the natural resources. The lesser powers absorb the populations. A good example is in New Caledonia.

The country is in territory that the French claimed in 1952 and they sought trustee council supervision. Members of the Security Council objected. They did not want a relationship under the trusteeship council because they did not want to be responsible for international rules. Because they were a member of the Security Council they could way the trustee council. What precipitated this is that the French would send citizens to New Caledonia even though it was against international rules. The governing party cannot increase their number in an already occupied territory with their own population in greater numbers. Now there is in excess of 500,000 French people in the territory. If there was a question about territorial independence it would favor France and this is why they can't increase the population. France as a Security Council member proceeded. New Caledonia wanted to be a part of France and is now a state of France. The process took 50 years and succeeded. Why is this important? New Caledonia is one of three places that produce cobalt that is used in high tech materials. The motive appears good but really the motive is economic and strategic. As the Commission may note the background and examples given do not provide the picture of a good relationship. The clearest conclusion is that the trust relationship has proven to mean the same as absorbing without consent. In the U.N. Declaration free, prior, and informed consent is essential to the trust relationship. The only way to change the environment is to redefine the trusteeship council to promote open and transparent relationships for each independent nation on an intergovernmental basis that is dynamic.

Commission Questions on International Trust Models

Commissioner Zah: I kind of like this. At these meetings I hardly ever talk much but I'm alone today so I hope you give me all the time. I want to commend Dr. Ryser for coming forth with a completely different idea. That is interesting. Sometimes we look at the arrangement we have with Indian nations and we each have treaties and are governed by certain principles. Sometimes when you have so many problems with the arrangement you have to look at other arrangements. If you have arrangements like Puerto Rico they have representation in Congress. One has to explore those options that are available to them. Dr. Ryser is coming in with a totally fresh idea and according to him that seems to be working and that is something the Indian people and younger generations will begin looking at. The only negative thing I see immediately is having individual compacts, 550 tribal nations would that mean 550 compacts that are almost similar and then negotiations of compacts not in duress is something interesting. We all have

treaties and they are similar but we have to look back and see how that was done between the U.S. and Indian tribes. We have to negotiate and sign treaties. For Navajo we were in prison on the negotiation process with the U.S. because we were forced. How do you view individual tribal compacts?

Dr. Ryser: Trust compacts are the suggested method by which Indian nations and communities utilize to change the political relationship with the U.S. Talking about Indian governments who have chosen to make change and have the capacity to make change. We are probably only looking at a few that would want to do this. May be talking about a political status of Indian nations being autonomous nations are in the U.S. This is much like Catalonia in Spain. There have been remarkable changes in Europe between indigenous nations and they are rapidly moving toward changing the relationship with the countries around them. Scotland itself is seeking to change its relationship with England. In 1945 when decolonization was agreed to it was argued that there were too many different political entities. In Europe these will be separate sovereign entities and they are part of the 193 members of the U.N. People are beginning to realize that the expression of free will should provide indigenous nations the opportunity to choose for themselves.

DFO Marsters: The trust relationship is here because of individuals and tribes. What about individuals and what political options are before them?

Dr. Ryser: That is a complication and those of you studying the DOI know that when the Termination Era was afoot in the 1950s and 1960s, Stewart Udall faced the same question. The consequence of the question is we can't terminate them. Termination came to an end because of the Dawes Act. The way some nations have dealt with this is to spend the time building and creating a land rights element into the compact that required the new state would have a responsibility for taking over supervision of land ownership. This would change the administrator.

Commissioner Zah: I don't know if people throughout Indian Country would feel about arrangements like this but this is something that is new and fresh and on Navajo we have a big huge reservation with all of its problems. There are some younger people who say I don't know about holding land in trust in common by people because that restricts individual and family opportunity to use land the way they see fit. If you go out on the Navajo reservation we don't have all kinds of development like you see elsewhere. The situation where you have grazing permits that Navajo families have for all these generations because the whole economy was on sheep and cattle grazing and to do that you had to have grazing permits. Grazing permits were issued by the tribal government without boundary and gave the family a permit and the family took possession of the land. When someone from a younger generation comes in and they have ideas that increase business, the grazing permittees are now saying no because they have a permit for the land. There are conflicts between groups on the Navajo Nation because of the interest in hanging on to the land. This stifles economic development on the Navajo Nation and therefore we don't see entrepreneurs. That really frustrates young people. Recently we have been hearing from them and they say we should have ownership of land movement through Navajo and own as a family land that is assigned to us. The young ones are exploring the idea of having a state, of turning the Navajo nation into a state.

Public Comment on International Models

Audience: Can you talk about Puerto Rico?

Dr. Ryser: There are choices but the plebiscite chooses that. You know there is a strong movement in Puerto Rico for independence. There are questions about whether or not to absorb into another state or become independent or have a split arrangement that bears to question how much you get from economic benefit? With the Reagan administration there was a quick move to remove tax burdens from pharmacies if they move to Puerto Rico to ensure they stay a commonwealth. If this had not occurred at that point Puerto Rico would have become independent. Economics is big in that question.

Insights and Conclusion from Discussion for Incorporation into Draft Recommendations

Sarah Palmer, USIECR Facilitator, reviewed the updated graph of possible recommendations the Commission has considered.

Commissioner Zah: We reiterated yesterday that we have two really important statements and every meeting we go to we give it to people and they are bringing their ideas and thoughts for the statements. I would like to suggest that maybe the Commission would be able to speed that up a little. I don't like to be put in a situation that at the end of the term in December we have a list of decisions we recommend and that becomes a huge document and these are released in sequence, two or three decisions to release then it is out there and we do so at every meeting. Then when we need help from consultants for recommendations that require more time and maybe more documentation and we can put those toward the end and then make those decisions. My reasoning is that we were put in this position because we know and have dealt with these positions most of our life and we don't need extra paperwork to become a group seeking additional evidence to support, we already know. We ought to just say this is what we decide and put it out for comment. I like to think that way because we have the experience and dedication to the cause. People have already told us what they are looking for.

DFO Marsters: We keep hearing self-determination and it needs to be explicit that tribes have the opportunity for self-determination and it is a different relationship and it is important that we are explicit about what the change to the relationship can be.

Chair Sharp: We tend to look at the federal side and need to consider the tribal side with their own resources. There has been discussion about the other aspect of the trustee role if there are exterior conflicts with other agencies. There has also been discussion about the idea of oversight. There may be issues for which oversight is a good mechanism to ensure accountability to uphold trust.

Commissioner Anderson: Commissioner Leeds will take the lead on the conflict of interest protocols. We need more of a working session so we can go through specific comments and discuss what to incorporate. We may want to do it in public session and get recommendations from tribes and agencies.

DFO Marsters: We heard some things during break and we need make a point of clarification. The recommendations will be sent to the Secretary who will evaluate and move forward on those pieces. We

need to strengthen communications, clarify who and how – individuals, tribes, and within and between DOI and other agencies.

Chair Sharp: We need to look inside the tool box and use existing tools to encourage self-determination – what are the things in which existing law supports self-determination? What are those areas where it is utilized and a great success? In the presentations of various witnesses and discussion we have good examples where tribes are leveraging laws and rules to their advantage. We need to assess the baseline to identify areas of strengthen and pull this together as part of the report and findings. The management consultant can help with that and DOI can provide a baseline to react to.

Commissioner Anderson: We can ask the consultant to look at specific examples of people we have heard from. Like the *Hearth Act* regulations that seem to be going well. We should highlight good examples and examine why these were well received. We also need to look at public statements we have received.

Public Comment

Ryan Jackson, Hoopa Tribal Council: As we went through the process we were sort of laying out suggestions based on four categories we have identified. The documents you see there are the categories. The tribal government makes decisions based on electorate. There is not a suggestion to change that. The second circle includes agencies and the third category is the same agencies in the role of carrying out obligations. There are non-tribal and political issues. The fourth category is other agencies that can provide economic and social development resources which we currently don't have a lot of access to. In each category we have suggested reforms. We do suggest the sunset of OST. We don't want to see funding go away but a merger of the administrative and financial support. We recommend adequate funding for trust programs. The functions carried out by tribes and federal agencies should receive equivalent funding. For example the Forest Service receives \$7.50 per acre to manage forest lands and the tribe receives \$3.79. We are asking for adequate funding for comparable requirements. There needs to be improved accounting for real assets. There were a lot of errors specifically with real property assets, including lands leased to tribal members. Yakama indicated that in the management of their forest the spotted owl would flock to the reservation because of the access to habitat. It seems that outside of the reservation laws and regulations regarding resource management are applied differently. It has taken over two years and our forest management plan is still not approved. There are no goals that are clear and yet we still have to follow rules and regulations. We have the spotted owl and coho salmon, 6/10 of 1% of coho salmon, and have been delayed by NMFS and they won't approve the forest management plan that enhances habitat and creates more suitable habitat for the spotted owl. We are asking to institute a tribal resources analysis requirement that would require the federal government to assess impacts of federal policy impacts on tribal resources, specifically. We need to protect treaty resources and take authorizations. We are asking for copies of records provided as part of the government to government process instead of having to utilize FOIA. We are asking to amend Public Law 63 that requires mandatory compacting for programs that are non-BIA bureaus. We are also asking for the U.S. to direct each agency to work with tribes to expand access to other funding to allow for additional resources to enhance economic development. When given the

opportunity and funding is provided economic development occurs. For every dollar our tribe was given we were able to make two dollars. We have a sacred obligation to resources and will manage according to this sacred trust. Given the opportunity and funding tribes are likely to produce results.

Commissioner Anderson: There is a lot of concern raised about how NMFS and USFWS draft opinions and take a long time. Congress would have to amend ESA to exempt tribes. Federal actions are being done to prevent tribal take and timber sales that actions not required to fall under ESA.

Mr. Jackson: Yes, testimony includes this.

Danny Jordan, Hoopa Tribe: There are no recovery plans. It is subjective so it leads to delays. Bureaucrats make decisions that cause delays but they are approving other federal agency requests more quickly. Realign this based on the sovereign to sovereign relationship. It is the policy of the U.S. to incorporate the treaty obligations into the policy administration in ESA and would create a level playing field. We don't have anything larger than reservation land base. We can't swap land like other entities can. They can play against tribal lands to meet ESA requirements.

Commissioner Anderson: Agencies have to be directed to do this – policy statements can't do this. It has to be something more. U.S. v. Washington standard might be something that could be useful.

Thomas Thompson, Acting Deputy Assistant Secretary for Management, Indian Affairs, DOI

Mr. Thompson provided an overview of the Bureau of Indian Affairs budget process and how the sequestration and budget reductions may impact the budget for tribal resources.

Tommy Thompson: I apologize for not being present and thank you for accommodating my schedule. I would like to go through the issues and discuss the major challenges facing us in the next 45 days and shedding as much light as possible on the situation. Budget overview: this is the 2013 President's budget request submitted last February. House appropriations took this up but it did not make it to the full floor and the Senate did not take it up. There are twelve major categories in the budget. Major one for tribes is the tribal government category but the name is not indicative of what it is. There is a provision guiding appropriation that allows tribes in self-governance to repurpose money to meet current needs. We look at the budget in totality as it is a historical document and that has not changed. The long-term approach is one size fits all. Tribes can take funds, reprogram, and meet local needs. Human services are a safety net to ensure there is welfare assistance and social service programs. 70 or 80 priorities and in actuality there are that many priorities because priorities are not the same regionally. Somehow we have to fix budgeting so it supports what local priorities and needs are. One size does not fit all. Construction is pretty flat outside of operations. For most part the funding for this category has to compete with priorities across Indian Country.

Commissioner Anderson: What is status of funding included in 2009 Water Rights Settlement package fund from off shore oil and gas leasing – reclamation fund. Is that part of the budget or a separate source?

Mr. Thompson: That is a separate source. At Fort Peck they are putting in a water system and addressing water issues.

Tiffany Taylor, OST: The Act was part of the Public Lands Act and they are planning ten years out for funding of permanent projects. Priority is based on other needs and most is going to the Navajo/Gallup settlement.

Commissioner Anderson: As I understand it any breach of trust cases aside from *Cobell* and accounting cases come from the DOJ Judgment fund. Do other settlements come from BIA funding per DOJ request?

Mr. Thompson: They send a bill periodically and occasionally ask for it from OMB.

Ms. Taylor: Anything under the Contract Disputes Act we get a bill for; tribal trust is not added to the bill. DOI gets a bill every year and we are supposed to budget for it.

Mr. Thompson: We submit this as part of the over target budget.

Audience: Assistant Secretary Washburn mentioned the impact to the quality and delivery of services. Can you explain why there is a delay in funding for 638 contracts and compacts? The tribal government has to front all projects and we are also on the settlement list as well and the last installment is \$9 million and we are hoping to get ½ of that. 2.5 years ago we filed to take the money out of trust and we were able to generate over \$12 million with installments already received. This money goes to conservation and preservation of habitat and species.

Mr. Thompson: I wish I had a general answer without going to the regional office. We implemented a new accounting system in November and there are training issues with the staff. I will follow up with Northwest region staff and follow up on specific circumstances because funds should have been distributed. Conversion to new system should help streamline as we are getting all tribes lined up in a uniform manner and switching to electronic funds transfer to make it easier.

Self-determination gives the tribes the opportunity to give tribe to do many things and removes impediments to direct funding to local needs, establish internal policies to meet needs of citizens, and to redesign programs, reallocate resources, and manage more effectively and efficiently. We intend to support the tribe's ability to go to self-governance or self-determination. We have a fiduciary responsibility to provide services for them. We need to improve awareness for resources and services. How do we take these resources from BIA to leverage with other bureaus and agencies? We still have trust issues and need to maintain support and management of resources. We are looking at programs to streamline contracting and compacting processes. We are looking at ways to address tribal payments. At present we are not pleased with the internal mechanism to get resources to tribes in a timely manner. We are looking to restructure our processes to get funds out in a timely manner. We need to be good stewards in getting resources to tribes. How do we support tribes and bring awareness to other DOI bureaus and support 477 initiatives where Indian Affairs is the lead agency and the conduit for other resources as well as education resources? We have to look to co-sponsor projects and it is important to

be good stewards. We need to improve awareness and available resources as part of the self-determination initiative. There are two issues. In order for tribes to trust us if we enter into contract or compact they need to know what they are getting. One of the provisions in the budget is tribal priority allocations and this allows tribes to reprogram funds to meet local needs as it moved forward. There are initiatives through self-determination to streamline and determine how to move forward with tribes and work on reporting requirements. This is more of a government to government priority than a contract relationship. BIA trust services approve leases and 17,383 documents were approved in FY12. This is the productivity of the current workload. How effective are we with the resources we have to operate?

Commissioner Anderson: Does this include approvals of restricted fee allotments and trust?

Mr. Thompson: Yes, anything that requires BIA approval. Trust collections can see remittances, funds received by OST to put in IIM accounts, a total of \$515 million in FY12. We will use this data to develop baselines.

Audience: When will the administration be transferred from the Northwest region to Virginia? With the budget situation we don't manage the budget staff at this point in time in the Northwest. The budget system is slowing processes down.

Mr. Thompson: In the 2013 budget there was an initiative to support local operations of regional offices. The objective of the streamlining was to change the landscape from a federal operation to a tribal operation. Within the 2013 budget there is an increase for tribal initiatives. Part of streamlining understands how to effectively operate programs and how we limit our footprint. If we look at operations we have really similar structures for the past 40 years. Tribal operations have taken on greater part of the trust responsibility and we need to step back and say what do we need to do? Streamlining is one initiative laid out to address moving forward. In the same time period was an administrative assessment to determine how to improve the efficiency of regional offices. We need to determine if we should move part of the operation back to local control. Part of the history started in 1995 with severe budget cut. The quick fix is administrative consolidation. Since 2004 we settled *Cobell*, integrated the computer systems, developed a new financial management system, and now it is time to move forward on other processes. Streamlining will be complete by July 1 to move operations back to regional offices. Misconceptions: I was under the impression as a superintendent that OST took all my money until I became a budget officer and prepared information for TIBC. OST has had no impact on the BIA budget. OST topped out with the historical accounting initiative in about 2005. BIA numbers have increased. The increase is because tribes are contracting services.

Audience: if we are just talking BIA and OST that is not all the Indian trust functions and I don't know that is all factored in; we must look at trust functions in all agencies.

Mr. Thompson: This is true. This is only a picture of Indian Affairs.

Commissioner Anderson: When BLM or ONRR carries out functions for BIA does BIA pay or is it budgeted to the other agency?

Mr. Thompson: The agency that offers the service receives the funding.

Ms. Taylor: The only caveat is BLM surveys; BIA gets money and then it is given to BLM.

Commissioner Anderson: Does ONRR monitor what is coming from the ground or BIA?

Ms. Taylor: BIA monitors wells and ONRR gets money.

Audience: In the as-is model there was money that went to BIA for administrative surveys and money was transferred to the BLM. Those admin surveys are economic development projects. BLM now charges for this. This used to be a BIA function.

Ms. Taylor: Similar things are happening with cadastral surveys.

Mr. Thompson: Under continuing resolution (CR) we set up systems based on previous appropriation. The last year the federal government had an appropriations bill was 1954. How do we operate on CRs? It is not the most efficient or effective way to work. Our current CR expires near the end of March and we are funded on a fractional rate with the CR. We need to make part of operations how we work on CRs because this seems to be how we will operate. The federal government and tribes face challenges with this funding model. The budget control act is looking at 5% across the board cuts if it stands as currently proposed. We are very cognizant that this will have major impacts on direct services. We are trying to determine how to support tribes with information but tribes have better information on potential actions than we do. We need to address how we will go forward if sequestration and the continuing resolution remain issues. Tribes would lose almost \$130 million in funding from DOI if the sequester occurs. This affects everything in a negative way. We can plan for it and hope it doesn't occur. Not the best way for us to run business and doesn't add value to tribal operations, knowing they are withholding funds as well.

DFO Marsters: In our working session Monday it was asked how the BIA budget operates in terms of the larger DOI operations. How do you work with whole Department to get the budget?

Mr. Thompson: I think first there has to be general knowledge that the budget starts outside of the Department and the target is set by the House. The 2014 target is already set and then this is sent through OMB and through the Department we are given a target budget for BIA. Regional offices meet with tribes, identify priorities, in March we will review the priorities, and the leadership of TIBC can work with BIA and OMB to highlight priorities. We collect data and issues from across regions and will compile this into a document. There are internal processes with the Department and the TIBC budget subcommittee before the plan is submitted to the Department. We will submit information to the tribes regarding broad spectrum of tribal priorities and begin the process of negotiations to meet targets and indicate how performance indicators help justify programs. We work with the Senate and House to give them information on the President's budget justification. In many places we advocate for tribes for as many resources as we can get from the system. The tribe's priorities are what we are advocating for. We change the formulation process a bit to gather information on tribal priority basis and budget basis. We

are taking a proactive approach to the budget formulation by starting with local agency and regional tribes coming together to set priorities and put that out with national priorities.

Audience: We have had healthy discussions at TIBC meetings and we are starting to reformat and improve that process. The conclusion I come to is we can only do so much by getting regional priorities. Congress gets the budget and then control is lost. The issues are now heightened. It feels like tribes and the Department has less and less control over destiny. In the Commission charter and responsibility of the Secretary I didn't see anything in initial discussion that talks about the budget. If the trust relationship is not backed up with money it is less effective. Analogy: we have the right to hunt, fish, pasture, and gather but if there are no fish, etc. then the treaty right is useless. Similarly, we can have good recommendations regarding streamlining but if Congress keeps cutting us off, that can't be accomplished. How can the Commission incorporate these principles into its mission? Departments can't lobby so how does DOI as the trustee step up and make the argument and provide data that tribes are underfunded? There are severely unmet needs. There will never be enough to fully carry out the trust responsibility. How do we make that case to the President? How does the Commission deal with that questions and emphasize this in a recommendation to the Secretary?

Mr. Thompson: Obviously our first hurdle is that it is very difficult to go to Congress or the Department or OMB with the 90 some priorities in the budget. If you look at any local government with comparable statistics, they would have multiple revenue streams that they can draw upon. Unfortunately the reservation economy doesn't have all the various avenues like taxation that local or county government would have. As a fiduciary or good steward of resources, as an agency we have not done a good job of telling story. Part of the moving back to allow tribes to submit needs based budget is that we really want to hear from tribes on the priorities from across country. Start marketing and we need something to tell the story in a more succinct way than just numbers. If we look at more ways to contract and compact there are a number of opportunities to change the model. The models we used for years will not get us to the robust step forward we need. Look at the priorities, provide a strategic plan, and note that trust is the first step because it is sustainability for all things and is the economic front. I hope we can look at different approaches and how we move forward with priorities and create a planning document that allows tribes to say these are the priorities. Law enforcement is one area where this has been done. This doesn't meet the need but is a step out and can be done for other areas as well. As we go forward we need to look at the formulation process and do a better job of telling the story across Indian Country.

Chair Sharp: This is an excellent opportunity to make recommendations around equity issues in terms of time and money. In IFMAT reports, the per-acre investment is way off scale from state and federal counterparts. The Commission can characterize and make a compelling case. Experts highlighted issues of delays and the importance of funding. There are foregone opportunities and many ways to take information from the administrative perspective to highlight inequities. One way is to include some legislative recommendations and allow oversight hearings to draw out information. This is a comprehensive evaluation of trust. Strategic financial planning can be part of the recommendations. When tribes are empowered there is a rise in their ability to generate revenues. In a very complex revenue engine we can provide some recommendations.

Commissioner Zah: I think you are so right in terms of exploring some possibilities. As Commissioners we set up an agenda and we hardly have any time to deliberate and sit down without structure to talk about some of these things and discuss programs to promote publicly. I would like to see the Commission do that and just explore things that were suggested that may be recommendations. Particularly today with Mr. Eberhard and the trust fund and investment possibilities; revenue generating ideas that may be able to help tribes is something I think we really need to do and refine. I also feel the same about a permanent oversight committee and would like to float that as one of recommendations.

Commissioner Anderson: All these funds that DOI gets for BIA, are they discretionary?

Mr. Thompson: Yes, they are.

Ms. Taylor: It is a goal of the current administration to expand the role of TIBC. If there are ideas we can get to those points. Every other bureau has funding that impacts Indian Country.

Audience: Tribes are eligible for non-BIA programs. There is no doubt that BIA is a dumping ground for trust problems from any agency. When we look at Title 4 amendments there are non-BIA agencies that have trust obligations and don't want to participate. Everyone needs to be required to participate. Between 2001 and 2013 the BIA trust budgets increased by \$100,000 a year. Tribal activities are not eligible for this funding because they are not in line with the budget appropriations. Tribal income increased by about \$1 million over the same time period. The increases are not enough to meet the need. Look at trust reform for other agencies that have to carry out trust reform. Look at reform not just from the BIA stovepipe and make other agencies pony up funds as well.

Audience: Are these funds discretionary or not? At TIBC we have been strong and vocal that all Indian programs should not be discretionary. Agreements were made in treaties and executive orders. Determination made by Congress but a recommendation from the Commission to the Secretary to make policy statement that Indian programs are non-discretionary would reinforce treaties are a solemn agreement that you can't get out of.

Ms. Taylor: It is very difficult and something that the President can propose but Congress has to approve.

Commissioner Anderson: If the funds are non-discretionary and Congress doesn't appropriate funds is there cause of action for claims?

Ms. Taylor: If the funds are not discretionary you don't have to ask for funding every year and you have access to the Treasury to get funds. There can be limits per year on funds available for a program. There is a base amount and then an index increase each year for the maximum cap.

Topics for next Commission Public Webinar and In-Person Meetings

Sarah Palmer reviewed the topics list and asked the Commission to consider how they would like to spend time in upcoming in-person meetings and during administrative conference calls.

Commissioner Zah: If you look at this list of topics we will be consumed with information. We need to say we have enough information and now we need to get to work to improve the lives of people. People put us in these chairs because of our experience, they trust us, and we are the Commission in charge of continuing the legacy we build. We should have two major decisions we have already made and I would like to see more at each meeting. I feel like we are stuck in the mud and not going anywhere.

Commissioner Anderson: I have been thinking about the OST functions and I think we are not ready to talk about that yet but maybe at the June meeting. What about making the Tennessee meeting more about work? If we can fix appraisals in realty, that would be a significant improvement. Let's tease out three of four things we can work on and improve situations. Fee to trust and appraisals are at least two. We can also consider trust responsibility, legal standard for liability of government mismanagement, probate, and title.

Chair Sharp: Legislative principles are one priority. Trust responsibility, conflict of interests, code of conduct, legislative principles – include some of the DOJ legal representation and if parties can't get disputes resolved need to get proper voices before the court. We need to add to conflicts of interest – another dimension of sovereign to sovereign is based on international law. What processes are considered in dispute resolution of these issues?

The Commission agreed to accept the request of USET to have the next meeting in Nashville, Tennessee.

Reflections and action items

The Commission will establish a deadline for tribal leaders, individuals, and organizations to respond to draft recommendations. They will also consider how information is disseminated to Indian Country and work to ensure information is shared as broadly as possible.

The Commission will work to have final recommendations prepared by mid-October to allow time for the public to comment prior to submission to the Secretary.

Carole Lankford, Vice-Chair of the Salish-Kootenai Tribe, closed the meeting with a 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

Name	Affiliation	Tuesday February 12	Wednesday February 13
Commission			
Robert Anderson	Commissioner		X
Tex Hall	Commissioner	X	X
Stacy Leeds	Commissioner	X	X
Lizzie Marsters	DFO	X	X
Fawn Sharp	Chair	X	X
Peterson Zah	Commissioner	X	X
Commission Support Staff			
Bodie Shaw	BIA	X	X
Bridget Radcliff	USIECR Facilitator	X	X
Helen Riggs	OST	X	X
James Ferguson	DOI Solicitor	X	X
Michele Singer	OST		X
Patricia Gerard	OST	X	X
Sarah Palmer	USIECR Facilitator	X	X
Tiffany Taylor	BIA	X	X
Public Attendees			
Alida Gulley	BIA	X	X
Bill Iyall	Cowlits Indian Tribe	X	
Carole Lankford	Confederated Salish and Kootenai Tribes	X	X
Cathy Ruger	OST	X	
Chet Kaviotne		X	X
Chris Stearns	Hobbs Straus Dean and Walker	X	
Cris Stainbrook	Indian Land Tenure Foundation	X	X
Dale Denney	Makah Tribe	X	X
Dan Rey-Bear	Nordhaus Law Firm, LLP	X	X
Daniel Jordan	Hoopa Tribe	X	X
Dave Babcock	Squaxin Island Tribe	X	
Dave Babcock			X
David Shaw	OST	X	X
Don Chambellan	BIA	X	X
Eric Eberhard	Seattle University School of Law		X
Gary Morishima	Quinault Nation	X	
Helen Sanders	Allottee	X	X
Henry Smiska	Yakama	X	X
Jim James	OST	X	X
Joel Moffett	Nez Perce Tribe		X
John Berry	Quapaw Tribe	X	X

John Gordon	IFMAT III	X	
John McClanahan	DOI Solicitor's Office		X
John Sirois	Confederated Colville Tribes		X
Judy Joseph	BIA	X	X
Kathy Fabanan	Quinault Nation	X	X
Kevin Lenon	Sauk-Suiabbe Tribe	X	
Kevin Washburn	Assistant Secretary for Indian Affairs		X
Larry Mason	IFMAT	X	
Marianne Jones	OST	X	X
Meredith Parker	Makah		X
Michelle Montgomery	Haliwa Saponi/Eastern Band Cherokee		X
Norma Corwin	Muckleshoot Tribe	X	X
Paul Moosehead	Drinker Biddle-Quapaw Tribe	X	
Ray Peters	Squaxin Tribe	X	X
Rebecca Jones	Morrisett, Schlosser, Jozwiak, and Somerville	X	
Rudolph Ryser	Center for World Indigenous Studies		X
Ryan Jackson	Hoopa Tribe	X	X
Sarah Crespin	Chickasaw Nation Industries	X	
Sarah Lawson	Muckleshoot Tribe	X	
Stan Speaks	BIA		X
T.J. Greene	Makah Tribe	X	
Teresa Wall-McDonald	Confederated Salish and Kootenai Tribes	X	X
Tony Walters	BIA		X

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

- Agenda
- September Meeting Summary
- November Webinar Summary
- Draft Trust Responsibility Statement
- Draft Conflict of Interest Protocols
- Gordon Sessions Presentation 012813 final
- Morishima Briefing Feb2013
- Morishima PowerPoint
- Wall-McDonald Briefing
- Nisqually Site Visit Agenda
- 2013 Nisqually Community Vision Plan
- Eberhard Presentation
- Ryser Remarks
- Thompson Presentation

Appendix D. Summary of Commission Meeting Action Items

TASKS	LEADS	COMPLETE BY
Post Feb Meeting Follow up		
<p>Management Consultant</p> <ul style="list-style-type: none"> Day and time for standing calls, (possibly Tues 1.00-2.00 E starting March 12. Circulate to confirmed day/time to Commission and IECR Alert Commission about DOI determination regarding inclusion of BIE as a part of Task 1 as a subset of BIA; confirm timing to complete Task 1. Check with Ethics Office, others as appropriate re Commissioner Leeds role as chair of Cherokee Nation Gaming Commission, which is under the Cherokee Nation Enterprises (a partner to Grant Thornton) Post mgmt consultant tasks, timeline, deliverables to Commission website 	<p>Genevieve G.</p> <p>Lizzie Marsters</p> <p>Lizzie Marsters</p> <p>Mark to confirm with Genevieve if SOW can be shared coordinate with Regina to post to website</p>	<p>Completed</p> <p>Completed</p> <p>ASAP</p> <p>Completed</p>
<p>February Meeting Materials & Web Posting</p> <ul style="list-style-type: none"> Prepare draft summary of youth outreach; Commission meeting (Feb 12-13), circulate draft to ITC and DOI for comment Confirm availability of Nisqually Community Vision plan with Joe Cushman; alert Regina and confirm correct electronic version. Confirm availability of final presentation from Tommy Thompson; alert Regina and confirm correct electronic version. 	<p>Bridget Radcliff</p> <p>Bodie Shaw</p> <p>Tiffany Taylor</p>	<p>Completed</p> <p>Completed</p> <p>Completed</p>
<p>Draft Recommendations for April 29-30 Meeting</p> <ul style="list-style-type: none"> Revise draft Federal trust responsibility statement and conflicts of interest protocols. Draft principles related to federal trust. Release updated drafts at next meeting (April 29-30) – Send Commission the edits on documents and in meeting notes; materials submitted from 	<p>Comm Anderson and Leeds</p>	<p>April 22</p>

TASKS	LEADS	COMPLETE BY
<p>public comments; compile comments re trust responsibility and conflict of interest from past meetings</p> <p>– Send Comm Leads information on other federal agency disclosure policies and timeframe for requests for independent counsel.</p>	<p>Sarah Palmer and Bridget Radcliff</p> <p>Lizzie Marsters</p>	<p>ASAP</p> <p>ASAP</p>
<ul style="list-style-type: none"> • Circulate revised drafts to Indian Country in May <ul style="list-style-type: none"> - Include in Commission outreach materials - Post on website for comment - Mailing to tribal leaders? With request for comment by xx date certain. - Make use of social media to get information out (Nedra for guidance) - Look to tribal organizations, NCAI to disseminate 	<p>Commissioners and DOI Team with IECR assist</p>	<p>May 1-June1</p>
Commission Outreach		
<p>Confirm Commission representation at youth empowerment summit (Note: student run event – don't have an agenda for Haskell).</p> <p>Update outreach calendar based on Commission reports at Feb meeting</p> <p>Send dates for ITMA meeting to IECR</p>	<p>Bridget Radcliff</p> <p>Sarah Palmer</p> <p>Chair Sharp</p>	<p>Completed</p> <p>Underway</p> <p>Underway</p>
<p>Update Commission outreach materials?</p> <ul style="list-style-type: none"> - PPT and Talking points 	<p>Helen to update IIM numbers and money Nedra to review</p>	<p>Underway</p>
<p>Circulate outreach calendar</p>	<p>Sarah Palmer</p>	<p>Underway</p>
April Meeting Preparations		
<p>Reach out to points of contact at USET re meeting location options</p>	<p>Regina Gilbert</p>	<p>Completed</p>
<p>Planning for April meeting</p> <ul style="list-style-type: none"> A. Prepare list of agenda topics and agenda sketch options B. Commission and DFO review, comment C. Revise draft agenda, confirm speakers etc 	<ul style="list-style-type: none"> A. Sarah Palmer B. Commissioners, DFO C. Lizzie, Chair Sharp, Sarah Palmer 	<p>Uunderway</p>

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

Appendix F. Summary from Evening Youth Outreach Event – Monday, February 11, 2013

Ross Brain, Tribal Liaison for the University of Washington, welcomed and introduced the Trust Commission. Mr. Brain noted that the land the meeting was held on was supposed to be returned to tribal nations 100 years ago. He thanked the people whose land we stand on and noted that the group appreciated them allowing us here. Mr. Brain thanked the Quinault Nation for donating the logs for the longhouse, the intellectual house.

Chair Sharp noted that she was very happy to be here with the students. The work of the Commission has been building and that we are working on cutting edge issues and the topic of the trust relationship with the U.S. government. Chair Sharp noted that this generation is on the forefront of implementing reforms. The Commission is coming up on a year of existence and needs to reach out to all tribal groups. The Commission is very committed to hearing the voice of students. Chair Sharp noted that the Commission had been to United Tribal Technical College and the students provided amazing recommendations for the Commission to consider.

Jim James, OST, offered comments regarding the Commission and the work of OST. The Commission is in my memory only the second time that the federal government has looked at the relationship of tribes to the federal government. There was another Commission in the mid-1970s but this Commission is contemporary. You will inherit the work of the government and the tribes. The work we do at OST is derived from statute created in the mid-1990s. OST provides accounting for individual Indians for funds to provide trust resources. It was brought to the attention of government officials that there was mismanagement at the BIA and perhaps there was oversight needed. OST has done automation of accounting and comprehensive evaluation of assets. At some point you will become Indian trust land owners. It is good to know about your responsibilities and what you can do to become involved in the management of resources. OST tries to provide as much information as we can to individuals and tribes about what OST does. One thing lacking in trust management is the involvement from the land owner. You should know what you own and what you can do with it, what kinds of leases occur, etc. Try to connect folks with Estate Planning Services. We try to make sure that people have as many tools as possible so they know about resources and who is doing what with it so that you know what you can do when you get the money. When you go to school there are short term goals, but then what do you want to do down the road? In the financial empowerment program we want to make sure that folks have the tools to make sure they understand what to do with grants, scholarships, income and we have partnered with the First Nations Institute and educational programs throughout country to help provide resources for individuals. It is important for you to understand how to develop financial plans.

Chair Sharp then opened the floor to the students in attendance to ask questions about the work of the Commission.

Student: Is there a youth commission?

Chair Sharp: We made the offer at UTTC to students to provide written comments and perspective on work products. We welcome all students to provide comment and written statements regarding models and other suggestions and you may submit comments on the Commission website.

Helen Riggs, OST: We hold public webinars for the Commission and everyone is welcome to participate in these meetings. You can get the information online at the Commission website. This is also an opportunity to provide feedback and recommendations.

Mr. James: The consolidation consultation this week is a result of what has happened with the land and the settlements that have come up recently. Hopefully it will help with the fractionation of lands. During the allotment era folks didn't know what allotment was, there was opportunity for abuse and misuse of individuals who owned lands. The land buyback program is an effort to consolidate lands on behalf of the tribe to make viable pieces of land. Through estate planning efforts we make every effort to help people understand the process and the history. Take every opportunity to make land more economically productive and viable for your family. All these new acts touch on issues; problems existed for many years and Congress has made many efforts to try to address it. This is a real opportunity to think about what has been done in the past and what can we do in future to ensure this doesn't happen again. How do we put the pieces back together? Come up with ideas and at some point you will all be working on these issues.

Chair Sharp: The Commission is trying to get a scope on what are the issues we can improve? What are some of the weaknesses your families have mentioned?

Student: My mom deals with this a lot because we are enrolled in one tribe and there are lands inherited in other reservation and she is not aware of the land they are talking about when corresponding with DOI – it is hard to keep track of land at different reservations.

Student: There are differences for urban natives and tribal natives – some are recognized and some are not. How does this Commission integrate with the non-federally recognized tribes?

Student: How do the tribes who are not federally recognized receive help from the Trust Commission?

Chair Sharp: BIA and DOI work is defined by statues and laws and for the most part these applicable to federally recognized tribes. There is a whole process for recognition. There is a movement in Indian Country to assist non-recognized tribes. We want to define trust and the relationship between tribes and U.S. This is a good question, federally recognized tribes or tribes with a historical relationship.

Student: I really like fact sheets. You talk about public webinars and this is really complex. Are there fact sheets? What level is it at? I would like to see fact sheets written at the 8th grade level. How does this affect Alaska nations?

Chair Sharp: That is an excellent point. We will go back and look at the information and make sure it is accessible to all audiences. There are work plans, work products in the process of getting input. There is a great deal of information on the website. We will have a field hearing in Alaska in August. We are going to all areas of the country to get feedback from all tribal regions. Trust responsibility is not only complex but very diverse. We are looking at treaties and fisheries in the Northwest. We had a chance to

look at oil and drilling in North Dakota. We are very hands on and trying to be as responsive as we can to as many diverse perspectives as we can.

Student: What have been the most common topics?

Chair Sharp: We are trying to wrap minds around comprehensive evaluation. The Commission for the last year has been hearing a lot of presenters who have been looking at trust reform for 20 years or more. The end product and the quality of it is how well we understand the issues and scope out the evaluation. The two work products we are working on are a conflict of interest policy and the definition of trust responsibility. Leaders have made the point that if they have dispute, what is the DOI role and how do we resolve disputes outside of litigation. More readily enforce trust responsibility. We are looking at trust models and the definition of trust responsibility. We are also looking outside the U.S., internationally, to examine the trust relationship. Historically the relationship has been one of ward/guardian and we want to elevate the relationship to government to government. We will be looking at the U.N. Declaration. Oren Lyons is an elder that has been very engaged in the U.N. process. We look to leaders that have been engaged for many years – they will be advising us.

Student: What is the current definition of trust?

Chair Sharp: Fundamentally it is characterized as a relationship of equality. When you look at the definition it is administratively focused right now. We want an administrative definition but this is a real relationship of equality. We need to understand what the definition was historically and what the tribal cultural interest was when they entered into treaties.

Student: Is there anything that hasn't been mentioned but that is a bookmark question?

Chair Sharp: When we were in the Southwest we had a briefing from Sam DeLoria and he mentioned that some work of the Commission is long term and there are those low-hanging fruit recommendations that can be made to have a lasting impact. What are those immediate gains that won't take legislative action? Commissioner Hall is talking about long processes and we are looking at streamlining. These are administrative and may be easier than legislation. At another session in North Dakota we heard from elders that we needed to do more outreach in tribal papers and increase outreach in social media like Facebook.

Ross Brain: In environmental science and resource management we study the best practices of the Yakama Nation and we are starting to use practices of tribal communities for resource management. We are learning from this and moving forward with indigenous ways of knowing and learning.

Chair Sharp: What is the connection with climate change. We talk about future practices and there are many discussions about climate change. How do you appraise timber sales with carbon based assets like sequestering CO2? Appraisal is already a long process. Is clean air a trust asset or is our air, our air? We are looking at best practices and how in the future tribes can be more involved. You can be leaders in some of these emerging areas.

Student: Talking about things effecting the climate and cycles. There is a lot to know.

Student: International communication, how does it work with tribes that go across the borders? Are Native Hawaiians considered?

Chair Sharp: In the U.N. Declaration there are 4 countries that held out – Canada, U.S., Australia, and New Zealand. Our work is to look at different components of the declaration and work domestically to include those principles. We are asked to speak to legislative proposals – what are foundation principles that transcends borders – started to list universal pieces of relationship. In 2014 there will be a world congress. All the other regions are organizing and we are putting together an agenda. When looking at domestic issues we are trying to hear from tribal leaders on principles and the foundation of the trust relationship. Doesn't matter what the year is there are principles that span time.

DFO Marsters: Native Hawaiians are not currently part of this trust responsibility.

Student: A lot of work described earlier is outreach. Reservation areas seem to be the focus. What are you doing to educate urban Indians?

OST Staff Member: Once upon a time we had urban offices to deal with non-reservation members and budget cuts have forced us to not have them anymore. We are working with the Native Cultural Center who works with urban natives. OST is willing and able to work with urban populations; we just need to know what we can do. In terms of financial education and other areas of well, we can do forums to provide education. We encourage you to reach out to local OST offices for specific information sessions. At Seattle University we have a great interface and are able to be involved.

Chair Sharp: Outreach of Commission has gone to populations of urban areas. We want to open public engagement as much as possible. Generally we have a public comment period at each session and there is opportunity to comment regarding panel topics. We wanted to provide equal opportunity for all populations during in person meetings, webinars, etc. We are mindful of different populations and try to be as inclusive as possible.

Student: Webinars for community outreach. The closest city to my reservation is two hours and many don't have access to technology. Lots of information is posted in a newsletter at tribal halls and clinics with places to provide more information. Create a Facebook page to be as transparent as possible. This is how we organize.

Chair Sharp: We have looked at old technology as well. There has been radio programming on Native American Calling.

Student: The youth are using social media. Consider creating phone apps for frequently asked questions.

Chair Sharp: We were talking about a short timeline this afternoon and we are challenged about how to get these recommendations out to Indian Country and get feedback in a short period of time. This is our opportunity to deliver a good product. We would love to have your voice be part of it. We did talk today about coordination of federal trust, within DOI and other federal agencies, and understanding the

importance of coordination. The President asked for a consultation and coordination policy we need to link this to the Commission's effort in trust responsibility. Commissioner Zah brought up the point of education and our charge is a comprehensive evaluation that includes other important relationships. Basic trust responsibility is health care and education. We put out the challenge to think about recommendations and submit those in writing. Take advantage of the opportunity.

Audience: Oil and gas leases, I don't understand the process of approval. Do you look at fair value? I have never known the oversight to assure what the level of the lease is in terms of what the value of the lease is.

DFO Marsters: One of the challenges is that as a trustee we have to determine fair market value. That can take a significant amount of time. It depends on where you are as to the value. It takes time to lease on lands. Commissioner Hall is aware of this and is helping the Commission form recommendations to streamline processes. There are new energy leasing regulations in tandem with the *Hearth Act*.

Mr. James: Indian Energy and Mineral leasing committee. BIA, BLM, ONRR, OST disperses. It is a complex process. The purpose of the committee is to identify issues identified by those that have production and have questions. We have developed a presentation that we can share. Trust work is very complicated. It seems simple but it is complex. All of us can play a role in helping the Commission.

Final Thoughts were shared by all in attendance.

In addition to questions, education is my career and your point about students dropping out of school because of financial issues is really important. I understand that through *Cobell* there is money for education and that is important because that is for first need students. They are always looking for funding and some programs have more resources than others. That is important and what it means for the tribes is for people to become educated. The students I know all go back and give in some way whether they work on the reservation or focus on native issues.

I want to thank everyone for allowing me to be here and say a few words. The future of the world is in good hands. Good luck and if there is anything that OST can answer for you or want more information, please let us know.

OST does have a website. You can contact us through the website or the 800 number. If you have questions that you might raise feel free to contact us – we are here to serve you.

One thing struck me and I will go home and think of two things: you are the future of Indian Country and there are no bad ideas. Sometimes we are so close to the situation and so steeped in the process we have a hard time seeing alternatives. Pass on your ideas. The worst thing to happen is that a good idea goes unvoiced.

This is a great opportunity to have input to a process so important to Indian Country. Look on the website, learn about the Commission.

Thank you for coming here and for Ross for putting this together. We appreciate having our opinions asked. We are an opinionated bunch and don't get to share often. We want to talk more and will get back to you.

I think you talked about a great subject education wise and elders believe that youngsters are the future. In order for us to do better for the nation, tribe, and people we need education to carry on. I want to learn more and see what you do.

Thank you for coming. I appreciate it and hope you learned a lot from us. This was a catalyst to get the ball rolling and I will call my tribal chairman to give input.

Thanks to Ross for working with us to help organize and thank you for sharing your evening with us. Don't forget public service, it is a great opportunity to give back and see the big picture. You have very impressive academic studies to get into federal service.

I'm glad you all came. There are internship opportunities regionally and in DC so if you have interest please consider it.

Chair Sharp offered the final comments of the evening. It was an honor to be here with you. I see future teachers, doctors, and tribal leaders. The commitment you are making at the university is to better yourselves and your communities. Who you represent is the voice of tribal ancestors. When driving in I was thinking about my college years and the work you are doing is helping to shape and mold. This is the time for you to intersect and bring fresh perspective. We all have a place and responsibility. Thank you all for being here and I am honored to share this time with you. We want to continue this. The comment was made earlier that this is a daunting task. The only way to do this is to reach out to Indian Country and bring together voices for a better tomorrow. Not only today and as you take information with you but for your future path. Remember what you heard and do your part moving this forward.

Appendix G. Summary from the Commission Outreach Session to the Nisqually Tribe – Tuesday, February 12, 2013

The afternoon and evening of February 12, the Commission participated in an outreach session to the Nisqually tribal lands. The Nisqually Tribe has identified as a tribal priority the acquisition of off-reservation lands suitable for economic and community development within the Tribe's near reservation area. Tribal efforts for economic and community development have to date been limited to the on-reservation area along the State Highway 510 corridor in Section 34. Further, expansion in this on-reservation area is limited due to the present of military properties on three sides of the reservation. By acquiring commercially zoned lands in the Nisqually off/reservation tribal service area (Thurston and Pierce Counties), the Tribe will be able to diversity its economic base, provide needed services to the community, and move closer to its longer term goal of self-sufficiency.

The Tribe has completed several off reservation fee to trust transfers within the past several years that support the above initiative. The outreach session provided an opportunity for the Commission to visit some of the off-reservation sites as well as on-reservations sites to highlight the economic development of the tribe.

The first stop was in the City of Lakewood where the tribe has a commercial property. The Tribe in 2012 completed acquisition and conversion to trust status of a one acre commercial parcel within the City of Lakewood (approximately 14 miles from the reservation). The parcel includes an existing gas station and convenience store. The Tribe is currently remodeling the store, with a projected date of April 2013. The Tribe worked closely with the City of Lakewood on the fee to trust process. The Tribe met with City official to review tribal plans for the property and jointly developed an MOA addressing city issues, including fire protection, police services, building code compliance, and ongoing consultation. The group toured the site and met with the tribal commercial development staff and the Lakewood Assistant City Manager.

The second stop was at the Braget Farm Sa-Da-Dub. The Tribe acquired the 400 acre Sa-Da-Dub property (Braget Farm) at the mouth of the Nisqually River in 2000. The Tribe currently operates a range of cultural programs and activities on the site, as well as a community garden. The lowland portion of the property is leased to U.S. Fish and Wildlife Service, and is managed under a tribal salmon habitat restoration program. The Tribe is currently preparing documentation for conversion of the 400 acre farm to trust status. This will also include a reservation boundary extension proclamation request.

The third stop was the Nisqually Public Safety Complex. The Nisqually Tribe in 2010 completed a land exchange the Department of Defense for 170 acres of community development property adjacent to the Nisqually reservation. The land exchange took ten years to complete, and required federal legislation, as well as partnerships with the Bonneville Power Administration, Fore Lewis (now JBLM), Thurston County, and BIA. The Commission met with Tribal Police Chief Joe Kautz. The property is currently being developed under a master planning process for tribal housing, a wastewater treatment facility, an expanded water system, additional tribal retail sites, and a new tribal public safety complex.

The fourth stop was the Nisqually Administration Building. This building is currently being built. Tony Berkson, Public Works Director for Nisqually, discussed the concept of the building and related infrastructure projects.

The final stop of the outreach session was at the Nisqually Youth and Community Center. Chairwoman Cynthia Iyall welcomed the Commission to Nisqually. The Commission learned about the Tribal Youth and Community Center and a community group performed traditional song and dance for the Commission. The Commission also learned about a new shellfish farm initiative that the Tribe has undertaken and includes 122 acres of oyster and clam aquaculture. This initiative improves water quality and the farm is in historic tribal lands.

The Commission was very appreciative of the opportunity to learn about the many opportunities of tribal economic development. Chair Sharp thanked the tribe for providing real examples of what success looks like with tribal self-determination.