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TRIBAL CONSULTATION AND LISTENING SESSIONS

**TAKEN ON
MONDAY, AUGUST 12, 2016
8:35 A.M.**

**HENRY M. JACKSON FEDERAL BUILDING
915 SECOND AVENUE
SEATTLE, WASHINGTON 98104**

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1 **APPEARANCES**

2

3 **UNITED STATES DEPARTMENT OF THE INTERIOR:**

4 JOHN WHITE, DEPUTY SPECIAL TRUSTEE - PROGRAM MANAGEMENT

5 DEB DUMONTIER, DEPUTY SPECIAL TRUSTEE

6 MICHAEL CONNOR, DEPUTY SECRETARY

7 ROBERT WINTER, DIRECTOR, TRUST OPERATIONS

8 TRUST SERVICES

9 CLINT HASTINGS, ADVISOR TO THE ASSISTANT SECRETARY

10 ELDRED LESANSEE, DIRECTOR OFFICE OF APPRAISAL SERVICES

11 ERIC SHEPARD, ASSOCIATE SOLICITOR

12 DOUGLAS LORDS, DEPUTY SPECIAL TRUSTEE - TRUST SERVICES

13

14 **AUDIENCE MEMBERS:**

15 ERIC SHEPARD, DOI, SOC

16 DANIEL JORDAN, HOOPA VALLEY TRIBE

17 GLEN GOBIN, TULALIP TRIBES

18 CODY DESAUTEL, COLVILLE TRIBE

19 CHARLOTTE NILSON, COEUR D'ALENE TRIBE

20 JEFF WARNKE, CHEHALIS TRIBE

21 DEBRA LEKANOF, SWINOMISH TRIBE

22 KAREN FIENO, AK-CHIN INDIAN COMMUNITY

23 MARIANNE JONES, OST

24 CHRIS HOWELL, PAWNEE NATION

25 MIKE ORCUTT, HOOPA VALLEY TRIBE

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APPEARANCES CONTINUED

- DAN REY-BEAR, NORDHAUS LAW FIRM, LLP
- BRIAN CLADOOSBY, SWINOMISH TRIBE
- GARY MORISHIMA, QUINAULT NATIONS
- LISA KOOP, TULALIP TRIBES
- BRIAN GUNN, COLVILLE, CHELAN, CDA
- TYREL STEVENSON, COEUR D'ALENE TRIBE
- HELO HANCOCK
- ROSS BRAINE, APSAALOOKE NATION

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6 **MS. DUMONTIER:** This is the Indian Trust Asset
7 Reform Act consultation session. We have asked President
8 Cladoosby to give an opening for us.

9 **PRESIDENT CLADOOSBY:** First of all, welcome to the
10 Pacific Northwest, God's country. And for those of you that
11 are visiting, I hope you had a great trip out here. And I
12 just want to see my trustees. Federal employees and
13 trustees, raise your hands. Great. Great.

14 Thank you very much for the work you do, working
15 under the greatest administration in the history of Indian
16 country. I hope you feel the same way I do.

17 Pray in your own way. Creator, God, Heavenly
18 Father, we thank you for choosing us for this day. We thank
19 you for choosing us for our positions. I pray, Lord, that
20 as we gather here together, that we feel that our jobs are
21 of the utmost importance, not only a benefit to us, but the
22 work that we do for our children, our grandchildren and the
23 seventh generation. I thank you for our trustees here, for
24 the work they do, for their sacrifice, their dedication,
25 them also trying to make Indian country a better place one

1 generation at a time.

2 I just pray that you bless our time together,
3 bless our conversations, help us to be open and honest but
4 also respectful of positions that we might not always agree
5 with. Lord, let us sometimes agree to disagree, and at the
6 end of the day, still walk away with a handshake or a hug.
7 In Jesus' name we pray, amen. Thank you.

8 **MR. CONNOR:** Good morning, everybody. I hope you
9 can hear me. Thank you very much, Brian, for that
10 inception. I welcome all of you to the consultation session
11 on the Indian Trust Reform -- Asset Reform, ITARA, which I
12 try not to confuse with another initiative we have on the
13 Indian technology site called FITARA. So this is the ITARA
14 consultation session.

15 And I would just say, Brian, I appreciate your
16 comments related to President Obama. And it is with great
17 pride and appreciation that those of us who are appointees
18 in the administration, who care about these issues greatly,
19 get to work on them, quite frankly, under the president's
20 leadership and under Secretary Jewel's [phonetic]
21 leadership.

22 We feel like we have a license to take the trust
23 responsibility farther than it's been taken. It has its
24 fundamental legal requirements, but, really, what it is is
25 it allows us, from the policy perspective, to do as much and

1 empower Indian country as much as possible in consultation
2 and working closely with tribal leaders and individual
3 Indians. And I don't profess that we make all of the right
4 decisions all the time, but we have greatly improved in
5 that, and we've greatly improved in our ability to listen,
6 and that's what today is all about.

7 So I'm honored to be part of this consultation
8 today here in Seattle, which I do not get enough -- up to
9 enough, quite frankly. I spend too much of my time in
10 California with water issues, apparently.

11 As you're aware, ITARA was signed into law by the
12 president in June. The law has several discrete components,
13 some of which we will be consulting on today. I would note,
14 there was a lot of dialogue through the legislative process
15 about ITARA and the law. And we certainly appreciate, at
16 the end of the day, the changes that were made during the
17 course of those discussions as well as the changes that were
18 made at the end. And our goal is to vigorously implement
19 the bill at this point in time.

20 So we're holding numerous ITARA consultation
21 sessions across the country. I think there's eight in
22 total, and one listening session, so we are right in the
23 middle of that conversation at this point in time. We
24 welcome your comments here as well as your written comments.
25 And just for the record, the consultation period is open

1 until September 30th, 2016. That's when we're taking
2 written comments.

3 The legislation is another step in our commitment
4 to strengthen tribal sovereignty, decision-making, and
5 tribal self-governance and self-determination. As part of
6 that process, it gives us a healthy opportunity to evaluate
7 its work and what can be improved within the systems and
8 processes implemented as part of the creation of the Office
9 of Special Trustee. You and everybody else attending these
10 consultations, your comments are critical to that process.

11 As I mentioned, the bill has three separate
12 titles. We're going to focus primarily on Title 3 of the
13 legislation, which involves improving efficiency and
14 streamlining processes associated with the Office of Special
15 Trustee.

16 The law provides that the secretary will identify
17 all nonmonetary management functions currently being
18 conducted by the Office of Special Trustee. Therefore, we
19 are here to present these functions and consult with you on
20 where these functions might be transferred to, other
21 entities within the Interior Department, or if these
22 functions should remain where they are in their current
23 location.

24 I want to be clear, we know these are valuable
25 functions that have worked well for Indian country,

1 particularly as of late. And it is not the intention of the
2 department for any of these functions to be eliminated or a
3 pullback of our trust responsibility. That was a big part
4 of the dialogue during the legislative process.

5 Now we are simply looking to see if processes can
6 be streamlined and if the organizational structure can be
7 improved for the benefit of tribes and individual Indian
8 beneficiaries.

9 It also provides that within 18 months the
10 secretary must ensure that Indian trust property appraisals
11 and valuations are administered by a single entity within
12 the department. So today we are also seeking feedback on
13 that transition.

14 We have an informative PowerPoint presentation and
15 some suggestions on how this might be accomplished. But
16 these are ideas that we want to put on the table and get
17 some dialogue going, and we look forward to hearing your
18 feedback on those ideas.

19 We also have a short presentation on draft
20 [inaudible] qualification for individuals to prepare
21 appraisals and valuations of Indian trust property. When an
22 appraiser meeting these minimum qualifications prepares an
23 appraisal of Indian property and the user of the appraisal
24 intends to forgo departmental review, the department will be
25 able to rely on that appraisal without further review.

1 So we want standards, we want self-determination
2 as to whether those standards are sufficient from the Indian
3 perspective there, and if so, this can allow for some
4 streamlining of our processes.

5 We're developing a proposal that establishes the
6 minimum qualifications and are interested in your views on
7 those qualifications. We are also interested in reviews on
8 the process by which the department would verify that an
9 appraiser meets those qualifications. And those are going
10 to be the questions that we are presenting before you today.

11 Finally, we are interested in your views on the
12 establishment of an undersecretary for Indian Affairs. ITARA
13 provides that the secretary may establish an undersecretary
14 position who would report directly to the secretary. So we
15 want to hear your thoughts on this position, too. That is
16 not something that we're going to be able to carry out
17 within this administration, but it is part of the wrap-up
18 report that the department intends to issue before the end
19 of this administration.

20 I am joined here today by Clint Hastings from the
21 assistant secretary for Indian Affairs, who is going to be
22 emceeding, quarterbacking -- whatever the appropriate term is
23 -- it's quarterbacking at this time of year -- today's
24 event. Deb DuMontier, John White from OST, will also be
25 making a presentation. Mike Black, the director of Bureau

1 of Indian Affairs is here, and Eric Shepard from our
2 solicitor's office, and we also have a team from OST who
3 have been participating in these consultations that will be
4 doing a lot of legwork as we take in the information, see
5 what kind of themes come across, organize it and determine
6 how we want to go with respect to recommendations that are
7 asked for, required under the law itself.

8 So we are anxious to receive your thoughts. As I
9 mentioned before, listening is, I think, preeminent to how
10 we move forward. We do have some presentations to set the
11 groundwork for that foundation, for that discussion, and
12 then we'll look forward to hearing from you directly.

13 So I appreciate your time. Thank you again for
14 the opportunity. Thank you again for the great
15 introduction, Brian. And with that, I think, Deb, you're
16 going to be up next to start the presentations.

17 **MS. DUMONTIER:** Thank you, Mr. Connor. I, too, am
18 honored to be a part of this consultation session today in
19 Seattle. My name is Deb DuMontier. I'm the deputy special
20 trustee of the Office of the Special Trustee for American
21 Indians. My tribal affiliation is the Confederated Salish
22 and Kootenai Tribes of the Flathead Nation, a large land-
23 based tribe, as some of you know, located in Northwest
24 Montana, a tribe fully exercising self-determination and
25 exercising self-governance, and one of the ten demonstration

1 tribes in 1988 under the Indian Self-Determination and
2 Education Assistance Act.

3 I was legal counsel for CSKT for ten years, and
4 also I'm a licensed attorney with the State of Montana. For
5 the past 11 years, I've been working with OST implementing
6 and [inaudible] trust reform, first as a fiduciary trust
7 officer, next as a litigation coordinator. And it is very
8 exciting to see that this administration has settled nearly,
9 if not more than 100 tribal litigation cases. And now,
10 currently, in my present role, for over a year, as a direct
11 report to the special trustee, politically appointed,
12 confirmed position by the Senate.

13 On behalf of OST, the staff here today, and those
14 working throughout Indian country, it is a privilege to
15 serve you and to be a partner in the government-to-
16 government relationship, a relationship envisioned by our
17 ancestors who taught us to protect what was passed on to us.

18 We appreciate the attendance by the tribal
19 leadership today, the representatives, and the tribal
20 members. We also appreciate the attendance by our federal
21 partners as well as our OST staff who are regionally located
22 here. We'll introduce them. You'll have an opportunity to
23 visit with them if you have any questions.

24 I don't see any, currently, media. However, if
25 there is media here today, the press is welcome. This is an

1 open meeting. We just respectfully request that you not
2 disturb the tribal consultation, and any questions by the
3 media be reserved until after the conclusion of this
4 session. And also, we have a court reporter today taking
5 official comments. So when you come up to present your
6 comments, please state your name.

7 Mr. Connor mentioned my presentation is on Title
8 3, Section 304 of the Indian Trust Asset Reform Act,
9 improving efficiency and streamlining processes. But first,
10 in addition to John White, who will be presenting the next
11 document after me, I would like to acknowledge our OST
12 leadership here. Mr. Doug Lords, our deputy special trustee
13 acting for [inaudible]; Mr. Rob Winter, our director of
14 trust services and also our acting deputy special trustee
15 for trust services; Eldred Lesensee, our director of
16 appraisal services, and Lee Fraiser [phonetic] with
17 [inaudible]; Tom Reynolds, our regional trust administrator
18 of this region; Jennifer Jojola, also our regional
19 administrator; Janie VanDosen, our fiduciary trust officer,
20 a new addition to our team; Mariann Jones, working with our
21 land viaduct program; and Jeremy Rogers, project coordinator
22 for this program. I think I've got everybody. Thank you.

23 My presentation is in your notebook on Tab 5.
24 Section 304 requires the secretary of interior to identify
25 nonmonetary functions that OST performs, which is an

1 opportunity for us to reflect upon our current practices and
2 to hear your recommendations regarding this section of the
3 act as we chart the path forward together with Indian
4 country. It's also an opportunity to reflect on the
5 department's progress in trust reform. And the next few
6 slides will provide a brief overview and some context of the
7 Office of Special Trustee.

8 Why was OST created? The American Indian Trust
9 Fund Reform Management Act of 1994 created OST in response
10 to trying to manage for accountability and transparency for
11 Indian trust funds. The primary purpose of OST was to
12 improve management of the Indian Trust Fund's assets held in
13 trust by overseeing and coordinating trust reforms within
14 the department.

15 However, our role was expanded. In 1996, OST's
16 role expanded by secretary order to include operational
17 responsibility for financial trust management, including
18 accounting, investing, and disbursing individual Indian and
19 tribal beneficiaries. OST was later delegated the functions
20 of appraisal of Indian trust land and historical trust
21 accounting.

22 Now, this next slide demonstrates the complexity
23 of our work, not only in the trust funds managed, but the
24 number of accounts managed. Implementing a modern,
25 centralized fiduciary trust accounting system, OST currently

1 manages \$5 billion. OST receives and disburses 1.7 billion
2 each year. With a 99.99 percent accuracy rate, OST
3 processes, on average, more than 40,000 financial
4 transactions each day, totaling more than 10 million
5 transactions annually.

6 And as the pie charts illustrate, the greatest
7 balance, over 80 percent, is held in 3,300 trust accounts
8 for 250 tribes, invested in individual portfolios to meet
9 cash flow objectives of the expected tribe. Approximately
10 \$845 million, or 17 percent of the trust fund, is invested
11 in a pooled account for over 400,000 IIM account holders, or
12 99 percent of the total of the accounts that we manage.

13 Since the settlement of Colville, OST has received
14 an unmodified payment on IIM financial statements conducted
15 by an independent major accounting firm for three
16 consecutive years. In addition, OST has developed a strong
17 focus on beneficiary services to ensure that our tribes and
18 individual beneficiaries receive the customer service
19 necessary to empower them with the knowledge to make
20 informed decisions about their trust assets. So this is
21 what we manage.

22 Congress requested identification of all functions
23 other than collection, management, and investment of Indian
24 trust funds that OST performs; specifically, those functions
25 that affect or relate to management of the nonmonetary trust

1 resources, which is our appraisal services. But really, to
2 get there, we had to look at what we -- what fully our
3 functions are, and we also looked at the management,
4 collection, and investment of the Indian trust funds. And
5 this diagram illustrates an investing, accounting,
6 receiving, et cetera. The collection is, technically,
7 assigned by BIA to do the receiving. However, we notice
8 that we do manage the lockbox management.

9 And also, we identified interrelated functions.
10 And all of this is based on our budget justifications for
11 our programs. And many of these interrelated functions were
12 developed -- kind of a comprehensive fiduciary trust model
13 to enhance beneficiary services, in addition to accurately
14 accounting for trust funds, the [inaudible] functions that
15 impact other Department of Interior offices, bureaus, and
16 tribes. And you'll find a description of all of these
17 functions provided in your notebook.

18 In addition to the improved financial systems,
19 which I mentioned the modern centralized fiduciary
20 accounting system, the same system used by the banks and
21 also the centralized one-day collection lockbox, expedited
22 disbursements through direct deposit; about 74 percent of
23 our disbursements are done electronically now.

24 OST also operates the Office of Trust records and
25 the American Indian Records Repository, AIRR. AIRR is

1 located in Lenexa, Kansas in a dedicated underground storage
2 facility used for the proper safeguarding and storage of
3 fiduciary trust records.

4 This a major achievement. AIRR has specially
5 trained staff dedicated to protecting very important
6 documents in Indian country. And for the tribal leaders
7 here today, if you are interested in visiting that facility,
8 please let us know so we can make those arrangements.

9 OST has enhanced beneficiary services with our
10 fiduciary trust officers and staff available to assist
11 beneficiaries either on tribal lands or in close proximity
12 with those lands to partner with the Bureau of Indian
13 Affairs, the Office of Natural Resources Revenue, Bureau of
14 Land Management, other federal and state agencies and/or
15 tribes in addressing Indian trust management on a regional
16 and local level.

17 OST also operates a toll-free trust beneficiary
18 call center with expanded hours of service in direct support
19 of beneficiary calls and inquiries, providing consistent,
20 timely, and accurate information. The TBCC has responded to
21 more than 1.8 million calls since 2004, with a first-line
22 resolution rate of 94 percent. And the standard in the
23 industry is less than 50 percent.

24 The OST field operation's dedicated and direct
25 service to beneficiaries complements the work of our federal

1 and tribal struggles so they may remain focused on the
2 mission and important stewardship of the natural resource
3 and land.

4 In addition, our field staff aggressively look for
5 account holders with unknown addresses through outreaches
6 and our agency collaboration and searches of over 7,000
7 [inaudible] data bases. So far we have found more than
8 330,000 account holders and distributed more than \$386
9 million. The success stories are awesome, and in some
10 cases, drastically changing lives. This work has also
11 helped the land viaduct program for tribalization in getting
12 our purchase offers to tens of thousands of Indian owners of
13 land.

14 Our fiduciary trust officers and regional trust
15 administrators, some of the important work they do, some of
16 that includes providing financial empowerment and training
17 to promote economic self-sufficiency.

18 And lastly, OST provides beneficiaries with
19 statements of their accounts, including funds, activity, and
20 real property access to help increase financial awareness
21 and to inform individuals and tribes of their interest. And
22 when we think about some of these accomplishments -- OST has
23 been operating for about 20 years, so really within the last
24 ten years, we've really seen an improvement to the services
25 to our beneficiaries. Where, with our universal success, no

1 matter where the beneficiary may own interest or what agency
2 they may go to, or even if they call the call center,
3 they're able to get information on trust assets.

4 OST's ongoing initiatives to streamline and
5 automate processes are based on best practices and lessons
6 we have learned from our close work with tribal leaders and
7 communities. Trust resource and asset management in Indian
8 country must not be stagnant, and trust reform is always a
9 work in progress.

10 OST is developing 21st-century tools to enhance
11 services such as online banking for IIM accounts. We're
12 enhancing the [inaudible], which is currently how tribes
13 access their account information.

14 OST continues to work on probate reform
15 initiatives and provide support for Indian estate planning
16 services to assist Indian landowners with understanding
17 American Indian Probate Reform Act.

18 We are reducing our carbon footprint and promoting
19 cost-effective efficiencies with automated processes and
20 digitizing trust records.

21 OST will continue to support the Colville
22 settlement and the land viaduct program with their expertise
23 in innovation with appraisal evaluations, outreach, and
24 account services.

25 And of interest for some of the compact trust

1 programs, the tribal compact programs, OST has recently
2 developed, with the assistance of nine pilot tribes and
3 consortiums, an online evaluation tool to streamline the
4 evaluation process that is less burdensome on tribes than
5 the current evaluation process.

6 Currently, we had a video -- we didn't have the
7 speaker turned up, but we have a video regarding that
8 project we refer to as the tribal methodology project. And
9 it may very well meet some of the Title 2 requirements of
10 evaluation. Exciting to see.

11 Benefits to the separation of duties: We know
12 that OST's value does not come from the position within a
13 particular office at this time, but rather its position is a
14 singular focus and discrete duties related to the fiduciary
15 trust responsibility. Moreover, these duties must continue,
16 no matter which office these functions are located, to
17 maintain the level of service that the Indian country
18 deserves.

19 The core trust accounting functions providing
20 direct beneficiary service and maintaining internal controls
21 was created and established separately with the intention of
22 operating independently of the general trust operation. This
23 structure was created to avoid conflicts of interest,
24 commingling of resources, redirection or re-prioritizing of
25 other interests to ensure accountability and delivery of

1 services. Separation provides a dedicated approach to
2 managing Indian financial trust assets in accordance with
3 sound fiduciary trust principles.

4 So in conclusion, that was a very quick overview
5 of OST. We've identified our functions. There's an
6 accomplishments brochure that's also available. We really
7 do look forward to working with all of you to implement the
8 2016 Indian Trust Asset Reform Act, and welcome the
9 opportunity to dialogue with you to develop a strong plan to
10 serve Indian country.

11 The handouts provided today are on -- posted on
12 the ITARA website. We've also provided links to various
13 documents and reports, such as our annual audit and other
14 background information for your reference.

15 In the meantime, OST staff continue to work hard
16 to serve Indian country and remain focused on our mission to
17 honor our trust responsibility with a beneficiary focus and
18 participation, while providing superior stewardship of the
19 trust [inaudible] with the proper discharge of the
20 secretary's trust responsibility.

21 So with that, I'm going to turn it over to John
22 White, who is going to present a PowerPoint on Appraisal
23 Section 305 (a). I thank you for your time and attention.

24 **MR. WHITE:** Thank you, Deb.

25 Good morning. Again, my name is John White. I'm

1 the deputy special trustee for program management. I'm an
2 enrolled member of the Sisseton Wahpeton Oyate located on
3 the Lake Traverse Indian Reservation in Northeast South
4 Dakota. I've been with the federal government for 26 years.
5 The first 12 of those years, I was with the Bureau of Indian
6 Affairs. I was the superintendent at the Northern Cheyenne
7 agency in Montana for six years. Then I came to the Office
8 of the Special Trustee, and it's been the last four years
9 I've been in my current position. It has been the last two
10 years that I've had the opportunity to work with and lead
11 the Office of Appraisal Services with Mr. Rosanten.

12 Section 305 (a) requires that appraisals and
13 valuations of Indian trust property be administered by a
14 single bureau, agency, or other administrative entity within
15 the department.

16 I want to give a little background on appraisal
17 services, because it has moved around some in the
18 department. In 2002, it was transferred from the Bureau of
19 Indian Affairs to the Office of the Special Trustee. And
20 then in 2000- -- from 2005 to 2009, the Office of Appraisal
21 Services -- or the appraisal services program was
22 administered by what was called the Appraisal Services
23 Directives, the office of evaluation services. Then in
24 2010, appraisal services came back to OST, and that's where
25 it's been ever since.

1 Another item I think is important is that we, at
2 least, have a fundamental understanding of what the
3 appraisal process is for appraisals on Indian trust
4 property. We developed a five-step linear diagram to
5 demonstrate what the appraisal process looks like. It's
6 important to note that, although it's the appraisal process,
7 not all the process is actually carried out by the Office of
8 Appraisal Services.

9 Steps 1 and 2 is the requester. The requester
10 could be a tribe or it could be [inaudible]. How I always
11 look at it is predominantly who manages the real estate
12 services program. They request an appraisal from the Office
13 of Appraisal Services, they prepare what we call an
14 appraisal request package. The Office of Appraisal Services
15 then completes the appraisal report or the tribe. It could
16 be a tribe also if the tribe is contracted or contacted that
17 way.

18 Either one, once the report is completed, there's
19 a technical evaluation that's completed by the Office of
20 Appraisal Services. If that's satisfactory, the appraisal
21 report comes back to the requester or goes back to the
22 requester so that the requester can complete that trust
23 transaction that required the appraisal report in the first
24 place. So we have -- it's a five-step process. And
25 obviously, it's more complex than that, but it gives you a

1 fundamental understanding of what that process looks like.

2 Now, although the Office of Appraisal Services --
3 right now, they're responsible for all the -- for completing
4 appraisal reports on Indian trust property. But there are
5 occasions where we have to reach out and get information
6 from other entities within the department. If there's a
7 mineral estate involved, we go through the Division of
8 Minerals Evaluation, or DME, which is under the assistant
9 secretary for policy management and budget, and then, again,
10 under the Office of Valuation Services, to get a mineral
11 appraisal, which is provided to the Office of Appraisal
12 Services.

13 Or if there's timber involved, we go to the Bureau
14 of Indian Affairs, the branch of forestry, generally at the
15 agency level, for the timber appraisals. That information
16 is then provided to the Office of Appraisal Services. So --
17 but what you want to take out of this is the information is
18 given to the Office of Appraisal Services to complete the
19 report, so Appraisal Services -- because Appraisal Services
20 is responsible for that activity on all Indian trust land.

21 The reason for the organization structure -- I
22 mean, we do have to cross organizational boundaries to get
23 this information. Does that make it more complex? Not
24 necessarily, but nonetheless, we still have to cross
25 organizational boundaries to get this information.

1 This is some fiscal year 2015 information, I think
2 is very informative to put in context the volume of work
3 that we currently do. Items I would like to point out -- I
4 think that Bullet 3 is more the -- what I call the norm, the
5 norm in how we -- where we completed 3,099 appraisal
6 requests in FY 2015. That's the norm in the context where,
7 when you think about the bureau or the tribe, if they want
8 you to complete a land sale or exchange or right of way or
9 maybe a partitionment, those items that require an
10 appraisal, that's that activity, is Bullet 3.

11 Bullet 4, that's more in terms of the land buyback
12 program, and that's -- that's under the Office of Appraisal
13 Services as well. I think sometimes that gets lost in the
14 mix, where we think land buyback programs is not part of the
15 Office of Appraisal Services. That's all under the
16 direction and leadership of Mr. Rosanten.

17 If you'll notice that in the instances of land
18 buyback, we have to reach out to DME to get the mineral
19 appraisals 60 percent of the time, and forestry, 10 percent
20 of the time to get the timber appraisals.

21 Why is that higher than Bullet 3? Why is that
22 percentage so much different? It's predominantly different
23 just because of the very nature of the land buyback program.
24 It's responsible for providing the fractionated interest,
25 all the fractionated interest, if they can, wherever they're

1 located. So a lot of times they're trying to purchase the
2 mineral estate, and a lot of times the timber -- or the
3 surface that they are purchasing, there's timber involved
4 also. So that's why we have to -- that's why those figures
5 look so different.

6 This is -- what I'm demonstrating here leads into
7 the single-entity discussion. And what I want to point out
8 is, in 2015, if you recall from this diagram, we did 3,099
9 appraisal requests, Bullet 3. 2,850 of those, the Office of
10 Appraisal Services could do without having to reach out to
11 DME or BIA enforcement. Two percent of the time we had to
12 contact BIA or forestry for timber appraisal. Six percent
13 of the time we had to reach out to DME to get the mineral
14 estate appraisal.

15 But the thing to remember is, the reports were all
16 completed by the Office of Appraisal Services. We get that
17 information from those entities. But the Office of
18 Appraisal Services is actually the entity that completes the
19 appraisal report.

20 Now, when we talk about the single entity, the way
21 we envisioned it was the authorities of the Division of
22 Minerals Evaluation and BIA and forestry provide that
23 information to carry out that function that they currently
24 do. Under the norm, what we have right now, those
25 authorities would be transitioned to one office with the

1 Office of Appraisal Services. Instead of calling it "single
2 entity," we titled it "Indian Land Evaluations Office." That
3 doesn't necessarily mean that will be the title, but instead
4 of calling it "single entity, single entity, single entity,"
5 we decided, for purposes of consultation, to call it "Indian
6 Land Evaluations Office."

7 Now, who should administer this office? We came
8 up with seven options. None of them are really in any
9 priority order. We labeled them Option 1 through 7. But
10 that's just, again, more for the discussion purposes of the
11 consultation.

12 Option 1 we have as the Office of the Secretary.
13 Option 2 is the Office of the Special Trustee. Option 3 is
14 the Assistant Secretary for Policy Management and Budget,
15 and that's who administers the Office of Valuation Services.
16 The Office of Valuation Services, Option 4. And then Option
17 5 is the Assistant Secretary of Indian Affairs, which is --
18 when we think of Asia, we think -- it's more than the Bureau
19 of Indian Affairs. There's multiple entities under the
20 Assistant Secretary of Indian Affairs.

21 It could be the Bureau of Indian Affairs, where
22 the appraisal program resided prior to 2002. And then we
23 put an Option 7, and that's more for -- if you're familiar
24 with the departmental organizational structure, if there's
25 any other entities that you believe could administer the

1 Indian Land Valuations Office, you're free to provide your
2 input on that also.

3 So I know that was a very brief overview of
4 Section 305 (a) and how we envision it would be, but we need
5 to receive feedback and input on it from you. What I would
6 like to say to you, I gave you three primary things: I gave
7 you a history of what OAS, the Office of Appraisal Services
8 do, where it's resided in the department since 2002. I also
9 went over the current processes so that we have an
10 understanding of what exactly we're talking about when we
11 talk about appraisal services, and where this activity
12 should reside. And then I gave you an overview of what we
13 envision the single entity, how that would be implemented,
14 and what we need input on and where you believe this single
15 entity could be administered.

16 That concludes my part of the presentation. At
17 the conclusion of all the presentations today, we'll gladly
18 take your questions. And if I can't answer them, I'm sure
19 the director of Office of Appraisal Services will be able
20 to.

21 Clint.

22 **MR. HASTINGS:** Good morning. My name is Clint
23 Hastings. I'm an advisor to the assistant secretary of
24 Indian Affairs. I'm in about my ninth month in the
25 assistant secretary's office. Before that, I spent five

1 years working in the government for the Cherokee Nation, a
2 couple years in Washington D.C. in government relations, and
3 then three years back at our tribal capital in North Fork,
4 Oklahoma working in the Office of Self-Governance.

5 I've been asked to present on a couple of
6 different sections in the act. First is Section 305 (b),
7 "Minimum Qualifications for Appraisers." First we're going
8 to take a look at what the act instructs the department to
9 do.

10 It states that "The secretary shall establish and
11 publish in the Federal Register minimum qualifications
12 significant to prepare appraisals and valuations of Indian
13 trust property. In any case in which the Indian tribe or
14 Indian beneficiary submits to the secretary an appraisal or
15 valuation that satisfies the minimum qualifications
16 described in the previous subsection and that submission
17 acknowledges the intent of the Indian tribe or beneficiary
18 to have the appraisal or valuation considered under the
19 inspection, the appraisal or valuation shall not require any
20 additional review or approval by the secretary and shall be
21 considered final for purposes of effectuating the
22 transaction for which the appraisal or valuation is
23 required."

24 So let's look at the -- what the act says. Let's
25 move to our proposed draft proposal. It will be under

1 Section 43, CFR 100. It applies to anyone preparing or
2 relying upon an appraisal of Indian property.

3 So first, "What are the minimum qualifications for
4 qualified appraisers under this proposed rule? A) the
5 appraiser must hold a current certified general appraisal
6 license in the state in which the property appraised is
7 located."

8 And I've got a -- kind of follow-up question on
9 that part. We're interested to know if any tribes currently
10 have a licensing system for appraisers. That's kind of been
11 inspired by President Cladoosby's tribe and their licensing
12 of dental therapists, I believe it is. "B) the appraiser
13 must be in good standing with the appraisal regulatory
14 agency in the state in which the property appraised is
15 located; and C) the appraiser must comply with the uniform
16 standards, professional appraisal practices rules and
17 provisions applicable to appraisers."

18 Next, "Must appraisals be submitted to the
19 department? Yes. You must submit appraisals for
20 transactions that require secretarial approval under other
21 parts of Title 25 and Title 43 of the CFR."

22 Next, "Will the department review and approve the
23 appraisal? No, if, one, the submission acknowledges the
24 intent of the tribe or individual Indian to not require
25 department" -- "departmental review and approval. Two, the

1 appraisal was completed by a qualified appraiser meeting the
2 rule requirements. And three, if no owner of any addressed
3 and immediate property objects to use of the appraisal
4 without departmental review and approval. "The appraisal
5 will be reviewed and approved by the department if any of
6 the criteria, however, are not met or, two, the appraisal
7 was submitted for purchase and probate under 43 CFR 30, the
8 land buyback program for tribal nations, or if there's
9 legislation requiring the department to review and approve
10 an appraisal."

11 Next, "What happens if the Indian tribe or
12 individual Indian does not agree with the submitted
13 appraisal? If the tribe or individual does not agree with
14 the submitted appraisal, the tribe or individual may choose
15 to not use the appraisal conclusions or findings and request
16 that the department perform an appraisal or valuation."

17 So "Is the department liable if there approves a
18 transaction for Indian property based on an appraisal
19 submitted by a qualified appraiser? The department is not
20 liable for any deficient or inaccurate appraisal or
21 valuation it did not review or approve even if the
22 department approved a transaction for Indian property based
23 on an appraisal prepared by a qualified appraiser. "So
24 having reviewed the basic parts of the proposed rule, here
25 are a few questions that we have that we would like you to

1 consider. As already mentioned, the Indian tribe certified
2 general appraisal license is similar to those granted by
3 states. Two, are minimum qualifications appropriate for
4 appraisals and valuations of timber, minerals, or other
5 properties separate from appraisals and valuations of real
6 property? And three, is there a way to allow for the
7 department to verify an appraiser's qualifications without
8 requiring qualifications to be submitted with each
9 appraisal?"

10 So that was Section 305 (b) of the act. Next
11 we're going to move to Section 303, which considers the
12 creation of an undersecretary for Indian Affairs for the
13 Department of Interior.

14 Section 303 states that "The secretary may
15 establish, in the department, a position of undersecretary
16 for Indian Affairs which will report directly to the
17 secretary. This position will be appointed by the
18 president, by and with the advice and consent of the
19 Senate."

20 Here's a little area where we may need your help.
21 The duties of this position are outlined right here in the
22 act, but we're interested if the tribes are -- would like to
23 see this position that's created performing any other
24 duties. "First, the undersecretary shall coordinate with OST
25 to ensure an orderly transition of the functions or more

1 appropriate agencies, offices or the bureau within the
2 department. Second, to the maximum extent practicable, the
3 undersecretary will supervise and coordinate activities and
4 policies of the BIA with the activities and policies of the
5 Bureau of Reclamation, Bureau of Land Management, Office of
6 Natural Resources Revenue, National Park Service, and Fish
7 and Wildlife Service. And three, provide for regular
8 consultation with Indians and Indian tribes that own
9 interest in trust resources and trust fund accounts."

10 This second slide just considers appointments and
11 compensation for staff that may be necessary as the
12 undersecretary is determined, and then simply states that
13 anyone hired under this provision would be subject to Indian
14 preference.

15 Here's a current organization chart of the
16 department. You can see the assistant secretaries towards
17 the bottom of the slide. And we sort of put this up here
18 for reference, because you'll note the undersecretary has
19 created a report directly to the secretary. So we'd like
20 some feedback on how that might look in a future
21 organization chart.

22 So with that said, I think we're going to open it
23 up to comments from individuals and tribes. Thank you.

24 Sure. We are just going to open it up right now
25 for any general comments that tribal leaders may have. It's

1 our understanding that a couple of you all might have to
2 leave a little bit early, so please go ahead and -- there's
3 a mic right behind you.

4 **MR. CLACLOOSBY:** Once again, thank you for doing
5 this here in Seattle for us here in the Northwest. I think
6 -- I think Mike Connor said it correct when he started his
7 opening that basically what we're here to do is to empower
8 Indian country. That was my biggest takeaway when he said
9 to empower Indian country.

10 And I think, once again, coming into my position -
11 - my name is Brian Cladoosby, for the record. Swinomish.
12 I'm chairman of the Swinomish Tribe. I've been the chairman
13 for 20 years now. I'm in the third year as president of the
14 National Congress of the American Indians. Also my 32nd year
15 on tribal council.

16 But once again, you know, I think all of our goals
17 in this room -- we don't have much time with this
18 administration, and we're not sure who the next president is
19 going to be, whoever she may be. Thank you.

20 But, you know, we have a short time here with this
21 administration. And like I said, this administration, as I
22 look back, empowering Indian country. And as I look back at
23 the Violence Against Women Act, empowering Indian country;
24 the General Welfare Exclusion Act, empowering Indian
25 country; the Tribal Law and Order Act, empowering Indian

1 country. The [inaudible] Act, empowering Indian country.

2 Now we have a Trust Reform Act, empowering Indian country.

3 And, you know, looking at that low-hanging fruit,
4 and as many of you in here know -- and I'm speaking to the
5 choir -- I love to speak to the choir -- for 200 years we've
6 all lived in this room under paternalistic rules, every one
7 of us, no matter what tribe we come from. Every one of us
8 has paternalistic rules. And my dad is 83 years old now. He
9 just celebrated his birthday. He still goes and exercises
10 his treaty rights and fishes out on the waters. And he's a
11 great-grandfather to my grandchildren. And my grandchildren
12 are of the seventh generation from signing a treaty 161
13 years ago. And my dad [inaudible], and his great-
14 grandfather. So he's the great-grandfather to my
15 grandchildren. His great-grandfather was also [inaudible],
16 who signed the [inaudible] treaty in 1885.

17 So his great-grandfather signed the treaty for our
18 tribe. He's still alive, and he's looking out for his
19 great-grandchildren, my dad. It's pretty cool that there
20 was one line in our treaty language, many of us here
21 [inaudible] the treaty describes. And one line that says,
22 "We're going to take this document back to the Great White
23 Father." And I think that set the stage for how our
24 relationship would evolve over the next 161 years, looking
25 at it from a paternalistic point of view, bringing it back

1 to the Great White Father.

2 And so when I look at these outdated rules and
3 regulations and I ask all our trustees here, you know, what
4 is that low-hanging fruit that we can look at? And, you
5 know, once again, we don't have a lot of time. But I
6 believe what we have witnessed here, the Trust Reform Act,
7 the latest bill that the president signed, I believe in June
8 of this year, another great milestone accomplishment for the
9 tribes. And I look at the possibility of the undersecretary
10 for Indian Affairs, another step in the right direction.

11 And once again, you might hear the same thing over
12 and over here from the tribal leaders, but that's okay. We
13 need to be repetitious, we need to say the same thing over
14 and over and over again. An elder gentleman told me, "When
15 I come and speak with my trustees, bring a roll of duct
16 tape." How many of you have heard that story, the duct tape
17 story?

18 So the elder told me, "When you go and speak to
19 your trustee, bring a roll of duct tape and tear a piece off
20 and put it on one of their ears so what you say doesn't go
21 in one ear and out the other." That didn't turn out too
22 well in D.C. when I told that. Everybody up on the stage,
23 every agency was there like (indicating). Sometimes it
24 works, sometimes it doesn't.

25 So you might hear the same thing over -- there you

1 go. There you go, Mike. You know, you might hear the same
2 thing said here today, but it's very, very important that we
3 say it, and we say it over and over and over and over again.
4 Billy Frank, Jr. was one of our greatest (inaudible) friends
5 in the Northwest. And he told us, "Tell your story. Tell
6 your story. Tell your story continually."

7 So when I look at what was taking place here,
8 and I look at the undersecretary for Indian Affairs, another
9 step in the right direction.

10 We here, in this room, you know, we work with DOI
11 agencies, BIA, more than any others. But there's a lot of
12 non-BIA agencies, BLM, BOR [inaudible], many of you know
13 those acronyms. And once again, it's not always the best
14 working relationship all the time with some of these
15 agencies, and so if we have an undersecretary who might be
16 in a position to be able to set the agenda for these
17 agencies, let them know how important this trust
18 relationship is for tribes.

19 And once again, we get along really well with a
20 lot of these agencies, but every once in a while we do have
21 issues, and sometimes the agencies feel that they're doing
22 the right thing, sometimes they just do it the wrong way,
23 and then hear us loud and clear when that happens. Sometimes
24 -- I believe that this undersecretary will be of great value
25 and great help to Indian country in setting the agenda,

1 helping us, working with us to set the agenda of these other
2 agencies.

3 And, you know, I believe that -- one thing that
4 was interesting in the OST slide presentation that we just
5 seen, one slide that wasn't on there was the sunset clause
6 in the original language that OST was to be sunsetted. And
7 I didn't see that in there. And, you know, that didn't
8 happen, of course, and they're still here, but I believe,
9 you know, we need to keep most of OST's core fiduciary
10 accounting and investment functions intact. I think that's
11 very, very important. But I believe that a good move would
12 be to put this under the -- the new undersecretary. That
13 would be my recommendations.

14 And, you know, you just gave a great example of
15 OAS, great example of where their function is very
16 important. But I think we can eliminate, as we've shown in
17 the slides, how much work they do, and this is a very, very
18 small percentage of that in dealing with the other two
19 entities, that it would be, probably, more feasible to just
20 create one single agency that would either be separate or a
21 part of OST. And so I concur and I agree with you that that
22 would probably be a step in the right direction.

23 We will -- I will have more comments that I will
24 be sending to you on the minimum qualifications for
25 appraisals. I will be sending more on that.

1 But I think, just in closing, you know, on looking
2 at low-hanging fruit, an example is something that Mr. Black
3 just recently did here in the Northwest when it came to --
4 in June, it was brought to his attention -- and some of you
5 were in that consultation meeting in Spokane, and basically,
6 it was an issue dealing with the Portland area and our
7 region having to jump through more hoops than any other
8 region before we could put in the deed of trust application.
9 And I think it was Coeur d'Alene that says, "Why don't you
10 just do it." He stood up and says, "It's going to be done."
11 And it was done.

12 And those are some of the things that we can look
13 at as low-hanging fruit to make our lives on the ground much
14 easier. And just that little change that Mike instructed
15 Portland to do is going to make a big difference for tribes
16 in the Northwest submitting deed of trust applications and
17 getting us closer to that half-million acres in the trust.

18 So thank you very much.

19 **MR. MORISHIMA:** Good morning. My name is Gary
20 Morishima, technical advisor and president of the Quinault
21 Indian Nation. I'm here on behalf of the president who was
22 taken ill over the weekend, and so she asked me to come here
23 and make a few comments.

24 I want to touch upon all of the aspects of the
25 presentation this morning and shed some light in terms of

1 the context in which we have to think about restructuring,
2 streamlining and those kinds of things. We're all aware of
3 the fiscal limitations and fiscal constraints that the
4 tribes and the federal agencies are facing.

5 What that means, though, is that all of these
6 kinds of administrative procedures and functions have to be
7 paid for in some way. And unfortunately, the history has
8 been that the funding to support many administrative
9 improvements for the Office of Special Trustee, the
10 modernization efforts and those sorts of things really come
11 at the expense of the ability to provide good services to
12 tribal communities.

13 The Quinault Nation does support sunseting of the
14 Office of Special Trustee, as Brian Cladoosby mentioned just
15 a few moments ago. The original legislation provided that
16 the Office of Special Trustee was supposed to go away once
17 the responsibilities for trust administration had been taken
18 care of. That has not happened.

19 The general accounting office indicated a number
20 of years ago that they expected that process to be completed
21 in 2007, and that hasn't happened either. We heard today
22 about a number of new initiatives as well. So it appears
23 that there is no real end in sight. So what has to happen
24 today is that time-certain needs be established in terms of
25 when these obligations and responsibilities are to be deemed

1 to be sufficient. It's also important that these should not
2 be unilateral decisions but they should be done in
3 consultation and collaboration with tribal governments.

4 Secondly, in terms of the functions of -- the
5 functions that are presently in the Office of Special
6 Trustee, I think that they should be transferred, to the
7 greatest extent possible, to the local offices of the Bureau
8 of Indian Affairs except for the inherent governmental
9 functions. And it's important that those governmental
10 functions be clearly defined so that there is no
11 misunderstanding.

12 I'd also recommend that -- consider making all of
13 those functions available for self-determination contracting
14 or self-governing contracting. The Quinault Nation supports
15 the establishment of the undersecretary for Indian Affairs.
16 The Indian Trust Asset Reform Act provided those three
17 functions that that undersecretary fulfills. One of them is
18 to work at the Office of Special Trustee to ensure an
19 orderly transition for functions and responsibilities within
20 the department. And secondly is to support, to the maximum
21 extent possible, coordination across all departments and
22 agencies within the Department of Interior.

23 But the third function, I think, is extremely
24 important as well, and that's to provide for regular
25 consultation with tribal governments and Indians to ensure

1 that the services that are provided are meeting their needs.

2 We also recommend that those functions be
3 integrated into the BIA under the authority of [inaudible]
4 deputy, as recommended by the trust reform commissions,
5 secretary of commission on trust administration and reform.
6 But a number of recommendations that have been materialized
7 and embodied in ITARA are actually reflected in some of the
8 recommendations in the 181-page report. I believe it was
9 done in 2013. So I think it's important that we recognize
10 that.

11 As for appraisals, the lack of qualified
12 appraisals has had severe consequences for Quinault.
13 Quinault is a totally allotted reservation. It is dependent
14 upon timber resources. The lack of qualified appraisers has
15 some very severe consequences to the ability of the Quinault
16 Nation and the individuals, Quinaulties, to benefit from the
17 resources that are entrusted in their care.

18 As far as qualifications go, interested to see
19 some of the qualifications that were listed in the -- in the
20 slide, but there are three additional ones that I think need
21 to be taken into account. The first is, they need to be
22 knowledgeable of the responsibilities to adhere to tribal
23 laws and regulations. That's an important aspect that's
24 often ignored and needs to be explicitly recognized.
25 Secondly, there needs to be a general understanding of

1 federal Indian law and special obligations under tribe-
2 specific relationships.

3 And lastly, qualified appraisers must have
4 expertise to be able to put valuations on the resources that
5 are involved, whether it's mineral or timber or water or
6 whatever it is; that unless those kinds of expertise, that
7 kind of expertise is readily available, the appraisal isn't
8 going to do very much.

9 In addition to these minimum qualifications, I
10 would request that you look at a number of other options
11 that are available. For example, the development and use of
12 mass appraisal systems; for example, being used in range and
13 agriculture lands. There are abilities and procedures that
14 could be applied to timber resources and mineral resources,
15 those kinds of things. And also, if we look at
16 qualifications for third-party appraisals and determination
17 of who ought to make those.

18 There is a question with respect to how to
19 determine those qualifications. There are some --
20 obviously, some problems in terms of how to determine
21 whether the individual that's providing you with the
22 appraisal is well qualified. But there seems to be a
23 fundamental misunderstanding as to what an appraisal is. An
24 appraisal is not value. It's an opinion. It's an expert
25 opinion. And it is there to inform the owners, the

1 beneficiary, and the trustee as to what somebody's opinion
2 of fair market value is.

3 And that concludes my statement. Thank you.

4 **MR. GOBIN:** Good morning. My name is Glen Gobin,
5 and I'm a tribal council member from Tulalip Tribes. And I
6 thank you for the opportunity to be here to express some of
7 our concerns in support of certain actions within the bill
8 here.

9 The -- and just a little history just to remind us
10 of where we come from. And remembering that in the late
11 1700s, tribes were underneath the war department. And the
12 reason we were placed under the war department is we were
13 sovereign nations at that time, and still are today. We
14 were there for probably the next 50 years, thereabouts, and
15 then placed under the Department of Interior. The names
16 kind of changed, whether it was the Department of Indian
17 Management, or it eventually grew into BIA, Bureau of Indian
18 Affairs. And we're still there today.

19 And today, when tribes look at Department of
20 Interior, we look at that as our department, our lead
21 connection with the federal government that ensures treaty
22 and trust obligations to tribes. And so through the years,
23 when we go to -- to the department, we've had much luck in
24 securing things through the Bureau of Indian Affairs. But
25 the other agencies within the department, those treaty and

1 trust obligations, I'm sorry to say, are often ignored.

2 And tribes for many years have been requesting a
3 position with somebody that could oversee all of these
4 agencies and have authority with these agencies to ensure
5 that those treaty and trust obligations are implemented
6 across all of the agencies. And we are struggling to get
7 there.

8 This bill gives that opportunity for it to
9 actually take place. We believe that the undersecretary
10 position needs to be implemented, needs to be created, and
11 would ask that in 2018 that it be included in the budget
12 funding, and start to implement and move this forward in the
13 manner that tribes have been asking for for a number of
14 years at numerous consultations. And it's created here and
15 the avenue is here, and we believe that it should be moving
16 forward in that manner.

17 Oftentimes, the Bureau of Land Management makes
18 decisions that directly impact treaty and trust obligations,
19 directly impact with no consultation to tribes, and it's
20 always coming through the back door and trying to correct
21 the actions that were done when the consultation should have
22 taken place beforehand.

23 The National Park Service, we deal with that all
24 the time, where we're often ignored through the National
25 Park Service. We still have treaty hunting and fishing

1 obligations that extend far beyond reservation borders,
2 secured by treaties. But yet, when it comes to the National
3 Park Service, there's not much consultation. There's really
4 no relationship with tribes again and are often ignored, and
5 so actions are made oftentimes excluding us from those areas
6 or impeding our ability to gather or exercise religious
7 purposes in what were historic areas. And so we believe
8 that this undersecretary position could give a uniform
9 implementation, protecting treaty and trust obligations.

10 We also believe that the OST office was -- and
11 rightly so, was originally established to do fiduciary
12 reform responsibilities that needed to take place. I don't
13 believe it was ever intended to be a permanent agency.
14 That's not to say that fiduciary responsibilities need to go
15 away. They still need to be there. But the other functions
16 that OST has taken on since that time, from some process,
17 they need to go back to other agencies. And many of them
18 need to go back to BIA to be implemented.

19 The appraisal process is highly frustrating for
20 tribes; the red tape and the time frame that it takes to get
21 appraisals, to get reviews. When the tribes are looking for
22 resources or to manage dollars, you can't do that
23 effectively if you're bogged down in time. Conditions
24 change again, market conditions change. Whatever it may be,
25 you cannot manage business or financial responsibility if

1 you can't make decisions in a timely manner. We believe
2 that the appraisal process also could go back to the BIA,
3 streamline that process again, do away with the red tape
4 that's involved.

5 All of these comments have been made for years and
6 years about the frustrations that we have. The
7 implementation of this bill creates opportunities to correct
8 and address many of the concerns that tribes have had for a
9 number of years, and issues that have been raised forward,
10 and this is the opportunity.

11 Again, we would ask that this undersecretary
12 position be established and request that funding be in the
13 2018 budgeting process, setting up for the next
14 administration to make appointments and go through the
15 secretarial -- or the Senate confirmation process.

16 I thank you for the opportunity to stand here
17 today to raise the concerns and for you to travel out in our
18 territory here to be with us and partake in what we have to
19 offer here.

20 **MR. HASTINGS:** Thank you for those comments. I
21 know we particularly appreciate your comments on the budget
22 request, because that's something we've had several tribes
23 ask us about, and how the undersecretary may be funded. So
24 any written comments that tribes want to submit, we would
25 love to have your ideas. Thank you very much.

1 **MR. JORDAN:** Good morning. I'm Daniel Jordan,
2 [inaudible] for the Hoopla Valley Tribe.

3 I want to make sure it's understood. I don't know
4 why just certain sections of this bill have been carved out
5 for this presentation. The bill is designed as a trust
6 reform package. The Office of Special Trustee, when it was
7 created, never intended it to be an administrative program.
8 It was intended to be a monitoring component. But when it
9 began taking over the programs, it created two different
10 perfect storms of conflict of interest.

11 Internally, it had no checks and balances. And
12 because the law created the Office of Special Trustee as a
13 checks and balances for the Indian trust, when they began
14 taking these things over, there was nobody to monitor that.
15 And we know that there are two different inspector general
16 investigations that reported that there were 96 ethics
17 violations over an eight-year period. That's one ethics
18 violation by the Office of Special Trustee senior management
19 people over an eight-year period, and it demonstrates that
20 the Office of Special Trustee didn't have the kind of checks
21 and balances that it was even supposed to perform for Indian
22 country.

23 The second perfect storm that they created is that
24 they took over these trust evaluation things up on the
25 screen. They took over the Office of American Indian Trust.

1 One of the functions of the Office of American Indian Trust
2 was to look at the trust obligations being performed or not
3 being performed by other agencies. It was a checks and
4 balances for the federal trusteeship. When the Office of
5 Special Trustee took that over, it threw out the review on
6 all the other agencies, which was a critical component of
7 why that office even existed.

8 So -- and again, trust evaluation became a
9 mechanism to monitor Indian tribes, but they completely
10 ignored things like -- when we look at the tribe, when we
11 look at the trust, we don't look at the cubbyhole of the
12 Office of American Indian Trust or the cubbyhole of the
13 National Service or the cubbyhole of the Bureau of
14 Reclamation. We look at the treaty obligations and what
15 those obligations are held by the entire United States. But
16 by cubbyholing all this stuff, we're completely ignoring the
17 United States' trust responsibilities in carrying out the
18 total function.

19 We have -- and we're partly doing it with this law
20 itself. Even this -- this law that pertains to Department
21 of the Interior programs, for recommendation of Fish and
22 Wildlife Service. But what about the U.S. Forest Service
23 who manages spotted owl, that directly impact endangered
24 species on our land and what we're regulated by. What about
25 the National Fishery Service that has a direct input and

1 control over the water and fish species and dams and
2 diversions and those kinds of things.

3 And when we cubbyhole this stuff to the point
4 where we continue this perfect storm of breaches in trust,
5 both within the Office of Special Trustee and as well as the
6 special trustee's obligation to make sure that the trust is
7 carried out, Indian tribes lose. And we see it happening
8 over and over and over again. We have more conflicts of
9 interest today in treaty obligations than we've ever seen in
10 water issues, fishery issues, diversions, all those things
11 that impact us every day, and they are treaty obligations
12 that must be performed, and yet we dismantled the whole
13 operation of trust.

14 So it's not a matter of just picking out one
15 office and say, "Let's just look at appraisals with any
16 special trustee." Let's get back and look at what that
17 title is. Office of Special Trustee for American Indians.
18 It doesn't say within OST. It says the Office of American -
19 - Special Trustee for American Indians.

20 OST has compromised its entire value for Indian
21 country by ethics violations, by -- and this seems to have
22 gone from the top management clear to the middle management
23 and lower-level management because nobody had any checks and
24 balances. So -- and then, if you look at -- how they've now
25 taken the trusted valuations and just made them purely a

1 tool to control tribes. What about the trust? We're
2 supposed to be the beneficiary of the trust. We're not
3 supposed to be the one that is regulated by the trustee. The
4 trustee is supposed to protect our interest and they're not
5 doing that.

6 One thing -- we've heard about the budgets. One
7 of the things that was included in a 1994 law that created
8 the Office of Special Trustee was a requirement to certify
9 the adequacy of trust budgets. It's in the law. That's
10 never been performed by the Office of Special Trustee. And
11 it's the very thing that everybody has been talking about,
12 how do we get the trust functions properly funded. And yet
13 we've had a special trustee who has had a statutory
14 obligation to certify this budget. It's not just BIA, but,
15 in fact, the Bureau of Reclamation, Fish and Wildlife
16 Services. Every agency that administers the trust is
17 supposed to have some kind of an oversight function, and
18 just simply didn't have it.

19 So the Office of Special Trustee, we support the
20 function of the Office of the Trust Funds Management. We
21 don't think it can be the Office of Special Trustee because
22 the Office of Special Trustee has compromised the entire
23 value system. Another part -- and it's just kind of ironic
24 that the Office of Special Trustee was used -- used their
25 status as a weapon in Indian country in a day that tribes

1 were building capability, getting self-determination,
2 getting self-governance, tribal self-governance.

3 We see more increase in tribal capability in the
4 last 20 years than we've seen any other time. Why? Because
5 there's laws that recognize that the status and partnership
6 with Indian tribes. The Office of Special Trustee does not
7 have partnerships with tribes. The trust records -- we
8 don't even have trust records programs. Put all the slides
9 that you want about the federal trust record systems, the
10 fact is they don't reach the Indian country. They don't
11 reach where most of the trust functions are being carried
12 out, which is by the Indian tribes. And yet OST doesn't
13 have a partnership with Indian tribes on trust records, and
14 yet we're controlling most of those documents.

15 So don't overlook the rest of the law.
16 Demonstration projects are partnerships. They can create
17 mechanisms. You know, one of the things that, when you look
18 at all these -- the Colville or look at everything else, it
19 was the design of the trusteeship and the regulations. One
20 of the things that the administration project provided for
21 is to work for -- for the United States to work with the
22 Indian tribe to design management programs and determine how
23 that regulation would apply to that specific reservation. We
24 purposely designed a law to allow for that kind of
25 flexibility.

1 But again, if we just simply cubbyhole this, and
2 we're only going to talk about Section 303, 304, and 305,
3 what about the rest of it? Because we live with the rest of
4 it. We live with endangered species, we live with water
5 diversion, we live with spotted owl, we live with partners
6 of the Forest Service, which are sitting right outside of
7 our border, who are better funded for endangered species
8 management yet they do less work because we're the ones who
9 actually have to carry out the jobs in order to make our
10 jobs, our timber sales, all these activities on reservations
11 actually work.

12 That's kind of what I had. This is a good bill.
13 This is the next step in partnerships with -- between the
14 United States and Indian tribes. Really, it is the very
15 framework of the treaties themselves. The treaties were not
16 supposed to create Office of Special Trustees to go out and
17 control tribes, but, in fact, the treaties were reserves,
18 and reserves was to maintain the interest of the tribes and
19 native people. We've got it turned upside down.

20 We've got to get back to the real basics, and we
21 have tribal governments today that have more capability than
22 the federal agencies that partner with them. One of the
23 things -- when OST was trying to shut us down in 2001, we
24 went back and looked at what the Hoopa Valley tribe was
25 contracting from the BIA. And in 2001, we were contracting

1 \$1.6 million in trust program activities. And exactly the
2 same year, we went back and looked at what are we actually
3 spending as a tribe. We're spending \$4.6 million exactly
4 the same year. We only got 1.6 million from the Bureau
5 Indian of Affairs.

6 We did the same exercise in 2003. Our trust
7 functions that we were contracting through the Bureau of
8 Indian Affairs was 2.8 million. We were spending \$14
9 million. That's why we're doing better in Indian country,
10 because BIA has a single-line appropriation. We are not
11 controlled by a single-line appropriation, so we can merge
12 funding from Bureau of Reformation, from National Fishery
13 Service, from other agencies, and build a trust program that
14 actually does work. But we do have to have partnerships
15 with the Indian administration.

16 **MR. HASTINGS:** Thanks for those comments.

17 Would anyone else like to make comments at this
18 time?

19 **AUDIENCE MEMBER:** My name is [inaudible], resource
20 director for the Colville Tribe. Just a couple brief
21 comments. [Inaudible] deputy secretary position, we
22 understand the difficulty for the BIA moving agendas up in
23 the Department of Interior. Worked closely with Mr. Black
24 on a number of different things [inaudible] revaluation
25 funding, BIA partners through the Department of Interior,

1 but that request didn't go past the Department of Interior
2 to the appropriation folks. So it is critical that position
3 is created that helps balance that staff or, I guess, the
4 lack of equities in staff, knowing what it looks like
5 [inaudible] a handful of BIA folks and go to the next office
6 around the corner and BLM offices. Good to have a position
7 in [inaudible] there.

8 And from the appraisal side and as a deputy
9 director [inaudible] staff, appraisals are very difficult
10 for us to manage. We see the appraisals in the regional
11 office once or twice a year. So it's very, very difficult
12 [inaudible] 4.1 million-acre reservation in a timely manner.
13 We see a lot of frustration with [inaudible] pass along to
14 our tribal council is very difficult for the administration
15 to carry out our day-to-day functions, and ultimately, it
16 causes delays and causes future management problems a lot of
17 times when appraisals don't get done in a timely manner. A
18 lot of times they are requested by elders because they have
19 some health problem or something and know the end is near.
20 And so what happens is they don't get done in time, things
21 go through probate, things are further divided, which makes
22 our job even more difficult.

23 So we think it's important that -- I'm not sure if
24 a mass land appraisal, like, was implemented with
25 [inaudible] buyback is good policy. We have a lot of

1 appraisals done really, really fast. The standards are a
2 little different than what we typically have to use for our
3 appraisals during the typical BIA process. It would be good
4 if we had that [inaudible] and, I think, additional
5 consultation of the appraisal process and what we need to
6 find as a certified appraiser. I'm not sure the state
7 system, necessarily, is the best fit for Indian [inaudible].
8 Thank you.

9 **MR. GUNN:** Well, I will say a few words here. My
10 name is Brian Gunn. I'm an attorney here, and I represent
11 some of the tribes here in this room. [Inaudible] Colville.
12 I have some comments just in my personal capacity, though. I
13 worked with some of the folks here in this room in actually
14 writing this law, the main lobbyist, if you will, who worked
15 on getting it through. So I know that this is a difficult
16 issue the department is navigating on various levels.

17 I just want to get my perspective on what was
18 intended by some of the provisions. And I know some folks
19 in this room have heard me say this in other presentations,
20 but just for the record, I think it might be helpful.

21 First, with the undersecretary position, I think
22 the tribal leaders who spoke here gave a good summary of
23 what that was intended to do. It was really intended to be
24 an advocate for the department that had, actually, line
25 authority over some of the other land management agencies

1 with the Interior. As Mr. Desautel mentioned, you know, in
2 Colville, we had an issue just with the wildfire season last
3 year, which was really devastating, to try to get additional
4 emergency resources for that wildfire restoration and bar
5 and such. And I will say that the BIA folks, forestry did a
6 terrific job in packaging the information up, getting what
7 they needed sent up to the department.

8 But once it got to the department, it became sort
9 of a black hole, and we didn't really know what happened. We
10 knew that there was no one from the department that was
11 advocating with the appropriators when the [inaudible] was
12 being put together on this. They weren't talking to them at
13 all. So, you know, what we suspect is that, you know,
14 politically priorities for [inaudible] for precedence over
15 this issue.

16 And so, you know, to have an advocate that could,
17 you know, work with BLM, work across the department and
18 bring these types of issues to the forefront, that's kind of
19 a concrete example of what we're thinking in having this
20 undersecretary position.

21 With the report on Congress on OST in Section -- I
22 believe it's 304. And again, I apologize for folks who have
23 heard this before. The way the report required by that
24 provision was intended to be a -- essentially, a compromise.
25 We knew there were some folks, tribal leaders who wanted to

1 get rid of OST yesterday, and there were others who thought
2 that the fiduciary functions of these need to remain intact
3 and continue operating in their current form, you know,
4 perhaps located someplace else in the department.

5 So the thought was to have a report, essentially
6 kind of a dry run of what a transition would look like, and
7 focused discussion with tribal leaders on this issue so they
8 could have input. And we've heard some really good input
9 today. But that's why that provision came to be. We, on
10 our own, included provisions to make sure that report
11 couldn't be construed as terminating the office under the
12 '94 act, and we also made sure that it didn't interfere with
13 any of the existing provisions of the '94 act.

14 I think, as most folks know, the '94 act that is
15 on the books right now, allows for the special trustee to
16 certify to Congress -- submit a report to Congress that
17 certifies that the major reforms get implemented, and once
18 that happens, that triggers a wind down of the office within
19 six months. We wanted to make sure that that process
20 remained intact, but essentially, focused discussion and
21 have a written document what a transition might look like
22 for one to occur.

23 A couple of things just on the appraisals
24 provision. Section 305 A, I think there's, maybe, been some
25 -- maybe overthinking it a little bit, at least from what we

1 were thinking. That was intended to make sure that one
2 entity would actually receive an appraisal request and then
3 be responsible for doing the work or procuring it getting
4 done. When we wrote it, we knew that office of, you know,
5 OMD and BIA handled certain appraisal aspects on an as-
6 needed basis. It was never intended to kind of reshuffle
7 the deck and the various components within the department
8 that handle appraisals. It was really just intended to make
9 sure that one entity received the request and was
10 responsible for doing the appraisal. But I think, as most
11 folks know right now, and we've seen this in the Northwest
12 region, you know, the BIA superintendent's office, they
13 could have a whole lot on their plate with any given day,
14 especially, you know, many of them around here serve
15 multiple tribes, have limited staff. So getting an
16 appraisal request put together and, you know, have it sent
17 over to OAS, you know, sometimes it just doesn't happen as
18 timely as we would like. And then when we have
19 beneficiaries who call our tribes, who call OAS and say,
20 "Where is my appraisal at?" You know, oftentimes -- or
21 sometimes the response is, "Well, we never received the
22 request, so you've got to talk to BIA."

23 And that scenario has played itself out over the
24 last decade in different agencies. So really, that 305 A is
25 intended just to unify, to make sure that there's one entity

1 that's quarterbacking the process. It's not really meant to
2 move the pieces around and, you know, cause a -- you know,
3 generate lot of [inaudible] and such.

4 You know, finally, on the minimum qualifications
5 for appraisers, you know, that came about just -- a lot of
6 the westside tribes and other tribes generally were having
7 issues with the review of appraisal function. It's really
8 intended to voluntarily allow tribes and beneficiaries to
9 obtain appraisals under minimum standards and essentially,
10 bypass the review of appraisal function.

11 You know, I think when we talk to folks in the
12 room here who have different experiences, I think you'll see
13 sometimes the review appraisals aren't all that -- you know,
14 they may approve them with having, you know, issues with
15 them, so there's not really much value, I don't think. I
16 don't know where review appraisals have pulled things back
17 or maybe things get redone on a wholesale basis. [inaudible]
18 a lot of delay.

19 One of the examples that went into this provision
20 -- background was a beneficiary that I was talking to from
21 Quinault in the late -- 2010, who was an individual who was
22 trying to -- they were trying to sell their land and the
23 tribe had timber on it. They were told early on because of
24 the workload demands that they, essentially, should just go
25 out and hire their own appraiser, which they did. They

1 talked to OAS and made sure that they had -- they were using
2 somebody whose work they would use, paid \$500 to get the
3 appraisal. It actually was more than that. But I can't
4 remember the amount, but it was more than that. So they
5 paid for it, and what ended up happening is they couldn't
6 get the appraisal reviewed in any kind of timely manner. And
7 so six months went by, and in the time they were trying to
8 sell, the price of timber was dropping precipitously. It
9 was around the housing crash of 2009, and so they were not
10 able to get the appraisal reviews to contemplate -- to
11 complete the sale. I understand because of the loss of
12 value with timber, the tribe was no longer interested in
13 purchasing. And at the time, when I last left it, they were
14 unable to sell the land.

15 So, I mean, that's kind of a concrete example of
16 the review function, essentially, you know, taking more time
17 to get these transactions done than is needed. So that's
18 what I intended to address.

19 Just a couple of technical things. You may see
20 these in other written comments, but they're my own comments
21 for the time being. In the draft rule for minimum
22 qualifications, I heard this in the Indian land working
23 group meeting. But there seems to be kind of a consensus
24 that tribes and beneficiaries would like to have access to
25 the work papers and appraisal reports. So apparently,

1 administratively, that shouldn't be able to happen right
2 now, but it sounds like it's spotty depending on what region
3 you're in. So a provision that's in the rule that would
4 just ensure that individuals who make a request to get the
5 work papers in their appraisal reports, if you want to see
6 them, I think it would be good.

7 One other very technical thing, in the house
8 report for HRA 12, there's some language that would go
9 through the section, by section. There's some language on
10 the -- in Section 305 that talks about how, you know, these
11 appraisers submit it, they'll be considered final. And
12 there's some additional language that says that they're
13 considered final even if they would otherwise expire.

14 So it would be good, I think, in the rule, to
15 clarify that finality means that they would otherwise expire
16 as well. Because we've heard from a lot of folks that --
17 you know, they'll get an appraisal done, and after six
18 months goes by, some other aspect of the transaction isn't
19 completed. They have to then pay to get it done again.

20 So again, you may see that reflected in comments.
21 But I hope this was useful to you all. And I'll turn it
22 back over to the tribal leaders. Thank you.

23 **MR. HASTINGS:** Thank you for those remarks. I
24 know I was virtually hoping you would be here, one of the
25 primary kind of authors of this act. I don't know if you

1 remember this: We met at a meeting in D.C. with the State
2 Department.

3 **MR. GUNN:** [Inaudible.]

4 **MR. HASTINGS:** So [inaudible] secretary, thanks.
5 You kind of helped me out with some language that I was
6 working on. I didn't realize it at the time, but I guess it
7 was this act, right?

8 **MR. GUNN:** My memory is a little foggy, but it
9 certainly could have been.

10 **MR. HASTINGS:** Anyways, thank you for your
11 comments.

12 **MR. CONNOR:** I don't know if we have any more
13 comments. Oh, we do. All right.

14 **MS. NILSON:** My name is Charlotte Nilson. I'm
15 with the Coeur d'Alene tribe, and I'll be short and sweet.

16 The Coeur d'Alene tribe actually would like to
17 support the undersecretary. We face many problems dealing
18 with our BIA agency that we believe that the undersecretary
19 would be a great service to the tribe.

20 Our tribal members do experience the same issues
21 and problems that we -- in dealing with the appraisals in
22 timely matters, and so this -- doing the appraisals would
23 definitely help our tribal members. We experience the same
24 situations as Brian explained about timely manner in
25 appraisals. We have a couple [inaudible] exchanges where

1 tribal members are trying to do with the tribe and because
2 of the extenuating, lengthy delays, our tribal members
3 weren't able to process those. So I think that the
4 appraisals would definitely be helpful as well. Coeur
5 d'Alene tribal faculty would like to support an
6 undersecretary for tribal nations.

7 We also deal with problems, and some of our
8 problems -- it's not, you know, the people of OST, it's
9 regulations and the implementations that hold us back. Some
10 of the issues that would help us would be having the
11 qualifications for appraisals to be -- well, the minimum
12 standards to be, you know, provided to where we can have an
13 input on that also.

14 The appraisals for -- the appraisals are
15 definitely just an opinion for the fair market value. But
16 us, in each nation, is different within the tribe, so I
17 guess, that's where I was kind of going with the appraisals.
18 We also will be sending some written responses as well.
19 Thank you.

20 **MR. CONNOR:** I appreciate everybody's comments
21 here today and I thought I would get a little bit of
22 feedback on what we heard. And, of course, if anyone else
23 wants to come up and speak, we have got a little bit of
24 time, so just let us know.

25 I realize that when I stood up and made the

1 initial comments, I think I failed to introduce myself. I
2 know many of you, and so I kind of skipped that part, but I
3 don't know everybody.

4 So I'm Mike Connor. I'm the deputy secretary at
5 the Department of Interior, which is particularly relevant
6 here because, organizationally and institutionally the
7 Office of Special Trustee reports to the deputy secretary,
8 and all the assistant secretaries report to the deputy
9 secretary position.

10 And so the structure at this point in time is most
11 of the interagency issues that come up get resolved in the
12 deputy secretary's office, and so I think that has
13 particularly some relevance given the discussion that we've
14 heard today. And I want to touch on that a little bit.

15 You know, I very much agree with Brian's comments,
16 to kick off, about this bill, the consultation and the
17 actions undertaken under the bill are all about empowering
18 Indian country. And that's an ongoing dialogue whether it's
19 in context of implementing ITARA or other actions that we're
20 taking. That's been a lot of the discussion within the
21 administration over the last several years. And empowering
22 Indian country means creating opportunities to consult,
23 listen, partner, and transition decisions and responsibility
24 back to Indian country from a very paternalistic history, as
25 Brian laid out. But it also means not walking away from

1 those responsibilities that we have as a federal government
2 as a trustee.

3 So it's a transition, it's an evolving process,
4 it's one where we need to be supportive of resources, and
5 we're very proud with respect to the administration where
6 we've come with respect to our budget, and there's more,
7 obviously, that folks would like to see in that regard. But
8 resources have increased not only from the administration's
9 budget request but also in congressional response and action
10 in association with those requests.

11 We're also very cognizant, as this process is
12 undertaken, that tribes have many different situations
13 amongst these 566 recognized tribes. Some are incredibly
14 sophisticated with incredible capabilities, who are
15 obviously carrying out a number of programs with great
16 success. Others are in that process, and so as part of this
17 empowering process, we need support resources, but also, you
18 know, technical support, all with the idea of capacity
19 building.

20 So that's the overall theme that I think we've
21 been approaching, and that brings me to the discussion about
22 the -- what's been the focus of the discussion today, the
23 undersecretary position. And I just want to give you a
24 little bit of flavor. I'm listening intently to the
25 dialogue and to the recommendations and the support for that

1 position. And I think the comments are very thoughtful in
2 advocating for that position. I certainly haven't heard
3 anybody not be supportive of that position.

4 And that's one of the ideas in this whole process
5 of trying to empower tribal communities, enhance
6 sovereignties, self-tradition, self-governments. One of the
7 ongoing discussions, whether it be in this context -- it
8 will come up in this context. But there's other situations
9 of this. We want to broaden, and, Andy, your comments spoke
10 to this point. We need to broaden the trust responsibility
11 as is carried out, not just within the Department of
12 Interior but across the federal government as a whole. That
13 has been a priority and a strategy from the White house
14 perspective in creating the White House Council on Native
15 American Affairs, which is to ensure that everybody is
16 sensitive to those responsibilities and everybody is using
17 their resources, their capabilities to try and bring
18 something to the table with respect to Indian country.

19 And from that standpoint, you know, there's been
20 proposals in the past about, should there be a Department of
21 Indian Affairs, should there be, you know, a secretary of
22 Indian affairs. Part of the discussion internally amongst
23 those of us with decision-making responsibilities in
24 administration is, no, the best way to, you know, enhance
25 and broaden the trust responsibility is to give -- make that

1 responsibility upon everybody, not just, you know, how
2 [inaudible] Department of Indian Affairs. Of course, that
3 depends on who is sitting in the White House and the various
4 cabinet leaders. And we're very fortunate, as I mentioned
5 earlier, for a president and a secretary of the interior,
6 Sally Jewel, who have been very active in making sure that
7 all members of the cabinet across the board are cognizant of
8 their responsibility in trying to bring to the table, and
9 they've been very responsive.

10 So that larger discussion, I think, plays into how
11 we're assessing the undersecretary [inaudible] position. So
12 I just mention that as a way I see how you all see there's
13 value to that position, and certainly it can be, and
14 obviously institutionalizing responsibilities as opposed to,
15 you know, having to rely on the knowledge and the priority
16 that certain individuals get in these positions is something
17 to think about as you make your comments more formalized,
18 your written comments.

19 But I just thought it was an interesting
20 discussion because it plays into a lot of those policy
21 discussions that we've been having over the last several
22 years.

23 I was very encouraged during discussions that
24 people do see the value, particularly the fiduciary value is
25 carried out by the Office of Special Trustee. As you can

1 see from the presentations that was made earlier, there are
2 the fundamental core responsibilities carried out by the
3 Office of Special Trustee with respect to collection and
4 managing and disbursement of trust funds. And there are a
5 lot of activities and services that are carried out that are
6 associated with those core responsibilities. And then there
7 are some other responsibilities that have been turned over
8 to OST over time. So I appreciated the dialogue that we've
9 had today about that. And once again, thoughtful
10 presentations that were made.

11 The last -- the third area I just wanted to
12 comment on quickly is, ITARA is a broad bill. We have
13 identified those functions in Title 3, those provisions in
14 Title 3, specifically those that we wanted to talk about
15 today. That's not to say we're not going to be consulting
16 on those Title 2 provisions related to the demonstration act
17 that's being called for. So of course, you know, any input
18 on that is always welcome. But it was not -- this
19 consultation is moving forward with certain actions and
20 certain reporting requirements, recommendations that the
21 secretary is charged with as part of that process.

22 There is still an ongoing dialogue about how to
23 approach the breadth of the provision in Title 2. And so as
24 those start to play out, particularly within the assistant
25 secretary affairs office, there will be more opportunity to

1 comment and consult on those provisions as they get laid
2 out. So it's not as if we thought only Title 3 deserves
3 consultation. That's not the case in any way, shape, or
4 form.

5 So those are kind of three areas that I wanted to
6 provide some feedback on. And from that standpoint, if my
7 thoughts resulted in any additional thinking or anybody else
8 has any additional comments, welcome to it. If not, I will
9 turn to my colleagues also to see if anybody else has any
10 initial thoughts related to today's consultation.

11 **MR. JORDAN:** Can I make one more comment?

12 **MR. CONNOR:** Yeah.

13 **MR. JORDAN:** With respect to -- again, Daniel
14 Jordan. With respect to probates, the department -- the
15 United States needs to join in partnership with tribes on
16 probates, and there's no reason why that we're chasing a
17 bunch of federal judges, federal probate judges, when we
18 have tribal courts with judges, there's no reason why
19 [inaudible] whatever, but it will broaden the whole
20 management system for probates. Because the way it is
21 working today, we're going to continue to fall behind and
22 not being able to keep up with that.

23 The federal government treats the probate part as
24 only the trust. We, as tribes in the Indian communities,
25 have to deal with the rest of it. We have to be figuring

1 out how to pull it all together. And there's a [inaudible].
2 There's no reason why we don't have all probates being
3 managed by tribal courts. Tribal judges could deal with all
4 the non-trust assets and cross-deputize, for lack of a
5 better term. A tribal court judge could deal with exactly
6 the same proceedings with the trust assets. And we could
7 have all the evaluation processes or monitoring, whatever,
8 then we've got to consolidate probates into a single forum
9 to where we add a state management with that. If we don't
10 fix that, we're going to continue to just simply have
11 backlogs in probates.

12 **MR. GUNN:** I just had a question, Mr. Connor.
13 Again, Brian Gunn. You know, when the bill -- when the then
14 bill was making its way through the process, you know, the
15 department, we understood, was not supportive or even
16 opposed to the undersecretary provision. And I guess I was
17 wondering if you could shed some light on what that position
18 was or what those concerns were, just -- you know, because I
19 think it would help inform this consultation.

20 **MR. CONNOR:** Well, I don't know that the
21 department was opposed to -- I don't know that the
22 department was opposed to the undersecretary position. I
23 think we've always -- in the discussions that I've
24 participated in, you know, wondered how to restructure --
25 how it would be -- institutionalizes the other agencies, and

1 that's always been a discussion. But the letters that were
2 sent out in my signature, the letters that I wrote with
3 respect to expressing concerns with the legislation, were
4 focused on what we felt at the time, or what I felt was
5 directly calling for the termination of the Office of
6 Special Trustee. That was the focus of our objections. And
7 then when we saw the changes, I think, as you presented, the
8 consultation, the dialogue, the tribal leaders about the
9 functions of the Office of Special Trustee and how the final
10 bill was developed, that addressed our concerns. But it
11 wasn't focused on the undersecretary position. There wasn't
12 a whole lot of discussion about that, actually, as we were
13 considering, at my level at least, the provisions of the
14 bill. It was mostly focused on the OST provisions
15 themselves.

16 **MR. HASTINGS:** Do we have any more comments? And
17 ask Deb and John, if you all would like to add anything.

18 **MS. DUMONTIER:** I would just like to thank
19 everyone for attending today and really looking at the
20 diagram of our functions and the descriptions. We really
21 appreciate your comments, where should these functions go. I
22 think we've heard they are important functions. We don't
23 want them -- we don't want to diminish our functions, but
24 where would they be appropriately administered.

25 Again, really appreciate the participation. And

1 if there's any questions afterwards, please let us know.

2 Doug?

3 **MR. LORDS:** Again, my name is Doug Lords. I'm the
4 deputy special trustee acting for field operations. And
5 thanks to all the tribal leaders and tribal representatives
6 for your comments. Obviously, we might think we know it
7 all. We don't. We need your input, and we appreciate that.

8 And I think the other thing that I'd like to
9 advocate [inaudible] I think Mr. Gunn did it as an
10 individual beneficiary. We've got two games in town, if you
11 will. We have the tribal and the individual. So obviously,
12 if there are any individuals here that are hesitant, I would
13 really appreciate your comments. Where should we go, what
14 can we do better. Because I think in order to have a
15 comprehensive plan or draft plan, that we need those types
16 of input, too. Because we do serve you as beneficiaries,
17 too.

18 So again, thank you for coming, and thank you for
19 your comments.

20 **MR. WINTER:** How are you doing? Rob Winter. I
21 oversee all of the accounting functions. I just wanted to
22 say it's been an honor for the last 18 years I've been
23 associated with OST to really bring forth the trust
24 accountability. When I first arrived at OST, there was a
25 lot of work to be done. We still do have a lot of work to

1 be done. But we have made tremendous strides over the time
2 period that I have been here.

3 We started off with annual audits back in 1996.
4 They identified 60 deficiencies within the management of
5 trust funds. As of 2013, those deficiencies are zero. So
6 we believe we've done a lot of work and continue to want to
7 do that work for the Indian tribes and individual
8 beneficiaries.

9 And thank you, each and every one of you, for
10 taking your time to be here to provide your insightful
11 comments. Thank you.

12 **MR. LESANSEE:** Good morning. My name is Eldred
13 Lesansee. I'm director for the Office of Appraisal
14 Services. I thank you for the comments, and it helps me,
15 positive or negatively [inaudible] how we are doing in
16 Indian country. Because sometimes communication doesn't
17 come up to the highest levels in the programs. But it's
18 good for me to know that there are some issues out there.
19 And we have, over the years since I'm director, been a
20 director, worked real hard to eliminate backlog [inaudible].
21 In fact, in [inaudible] we had a -- starting in fiscal year
22 2016, we had about close to 600 appraisals requests in
23 backlog. We're down to -- we're getting close to
24 eliminating. We're at about 50 right now. And in the
25 Northwest in particular, we had some focused attention in

1 Colville when I first got the job. And I think we
2 eliminated the backlog at one point. With regional
3 supervisors and appraisers helping, we are caught up with
4 all the evaluations here in the Northwest. But I will take
5 particular look if there's anything there that I'm not
6 seeing that's not being reported to me.

7 And you said -- such as the lady that mentioned
8 that line of exchange and the lost opportunity. Those are
9 big concerns for me, and we're not getting the job done and
10 not meeting customer service, and I like to hear those kinds
11 of issues that will help the tribes.

12 About 66 percent -- or 66 appraisers of the total
13 -- of total staff and about 110. That includes the division
14 of regional operations, the division of land buyback program
15 are [inaudible] appraisers that are very committed to doing
16 a good job, meeting national standards, meeting your time
17 lines and so forth. They have grandmothers, grandfathers,
18 brothers and sisters who own land. They know the value of
19 land, or how we look at land as far as [inaudible]. And
20 they take special care, I think, to come up with defensible,
21 credible valuations.

22 And I think the review function as a profession,
23 in general, serves as a checks and balances, and we're not
24 doing that. If we're not serving that function or meeting
25 that function, then we need to tighten up. I've got a

1 quality assurance inspector that's primary responsibility is
2 to the value of the core products that we produce are sound
3 and meet national standards.

4 As far as overall minimum qualifications, these
5 minimum qualifications are set forth in the proposal.
6 They're at the basic level of qualifications for all the
7 appraisers across the country, set by the appraisal
8 foundation who reports to the appraisal self-committee, and
9 they set national standards.

10 As far as tribal certification is concerned, of
11 course, I'd be happy to work with you and see what we can do
12 to see if there's an opportunity there as well. I just also
13 want to report, too, is that of the 66 appraisers that we
14 have in OST, we completed over 14,000 appraisals last year,
15 the equivalent to about \$27 million of that. So -- and
16 that's the highest leading federal agency in the federal
17 government. So we have hardworking people who are dedicated
18 to doing a good job.

19 It looks like we have some work to do to fix our
20 problems, but we're committed to it very much.

21 **MR. DESAUTEL:** Just a follow-up on that. Not all
22 of the issues we have are just with the review of the
23 appraisals. There's a lot of on-ground activity that goes
24 into submitting the data for review. Very short on staff, a
25 lot of different priorities that we're trying to work

1 through. So a lot of times the lack of a timely response
2 isn't necessarily the review process, but some of these
3 [inaudible] cut corners and we've got to establish the
4 boundaries for [inaudible] and we've go out and [inaudible].
5 So there's a lot of work that goes into getting, I guess,
6 the package together to even go down.

7 So there's some other needs there besides just a
8 review process, and it might take a second look at what on-
9 ground operations are associated with an appraisal.

10 **MR. HASTINGS:** Do we have any more comments before
11 we close out this morning?

12 **MR. BRAINE:** I'm bringing all my technology to the
13 floor. [Inaudible.] I'm a citizen of the Apsaalooke Nation
14 of Southeast Montana, plus an individual landowner, so this
15 is really interesting for us to see. And also the tribal
16 liaison for the University of Washington.

17 And so some of the things that we're focusing on
18 are technology, technology used in all those type of ways.
19 And I was trying to look at the website just now, and so
20 [inaudible] it seems like my mom and I were just selling our
21 land a couple of months ago. And so the fact is, you know,
22 he was right, it's correct, it's hard for us to get somebody
23 out there to find out where the boundaries are and have
24 somebody cruise your timber and then to have somebody come
25 and talk about your minerals.

1 I was just looking at our website there for OST,
2 and it seems like the simple solution that I would suggest
3 would be to have an online, almost like a real estate site,
4 that has -- does land, marked off a value on it and who owns
5 it. Because the fact is, by the time we try to find who the
6 person is that owns the land next to you [inaudible], you
7 know, they may have passed away, and so then they don't know
8 where the land is. We all know those are the kind of issues
9 that we're running into.

10 But it would be awesome if we could just go onto a
11 website, click on it, like, here's exactly where our land is
12 and here's what our value is. I don't know what the laws
13 are behind that. Maybe I'm just talking out of my butt. But
14 the fact is, that seems like a solution that we would come
15 up with.

16 Some other things that I've learned from the Warm
17 Springs Tribe, or the Confederated Tribes of Warm Springs,
18 is that they use drones to do these measurements. So these
19 ways of measuring are not impossible. We don't have to have
20 boots on the ground to actually do the survey of these lands
21 and these properties, but we do need more mineral exchange-
22 type stuff.

23 Also, we're -- what I was thinking about when we
24 were talking about there's 66 appraisers, that's 1.2 percent
25 of an appraiser per tribe. That's very insufficient, right?

1 I mean, that's 1.2 percent. That's basically the population
2 of our peoples in the United States. And so the fact is,
3 that that kind service deficit is going to affect us all.
4 And so what I would recommend would be to have an online
5 training program. Again, I work at the University of
6 Washington, so we're used to having these online education
7 programs, and so that would be something that I'm sure our
8 team would love to partner on, talk to you all about.
9 Because it seems like we're moving more towards an Internet
10 connectivity-based community here.

11 While I do know there are some additional divides
12 on reservations because that's what my research is on, there
13 is a way for us to help those tribes as well, to get to that
14 Internet connectivity. But those are the two things, a site
15 -- a central site for the value of the ownership of the
16 land, and the history of it, perhaps, because we all -- like
17 we were saying, we know what the value of our land is worth.
18 But we know the fact that the [inaudible] of our land at
19 this certain time of the year, and that's very important for
20 some -- you know, it is important to us.

21 And then, finally, an online training program for
22 appraisers. It's not impossible when you can give away
23 higher education degrees that way. So I think OST could use
24 that as well. Thank you.

25 **MR. HASTINGS:** All right. If we don't have any

1 further comments, I want to encourage everyone to submit
2 their written comments by the end of September. I think
3 tribes and individuals have a tremendous opportunity to
4 assist the department in how we implement this act.

5 And I just want to say thank you to everyone who
6 provided comments today.

7 **MR. GUNN:** I just have one more quick comment. On
8 the deadline for submission of comments, I mean, September
9 30th is, you know, kind of tough for a lot of folks who are
10 on vacation and occupied with other things. Is there -- I'm
11 just curious, would there be flexibility to extend the
12 comment period if certain folks are wanting to -- were
13 wanting a little bit more time? I'm not asking. I'm just
14 wondering that -- why -- you know, it seems like a fairly
15 short comment period for written comments.

16 **MR. CONNOR:** Our goal is to complete and report
17 our recommendations by the end of the administration, so I
18 think if people -- I think, obviously, we will consider it
19 if there are requests made to extend that comment period.
20 But our preference, of course, would be to keep it the same.
21 But we will consider, obviously, formal requests along those
22 lines.

23 **MR. GUNN:** Do you have a date certain for when you
24 want to submit the report to Congress, or a target time
25 frame?

1 **MR. CONNOR:** Oh, we definitely have a target time
2 frame.

3 **MR. GUNN:** Before the end of January, before the
4 end of the year?

5 **MR. CONNOR:** Our goal is to -- you know, we've got
6 to do a draft, get it reviewed and everything. So we're
7 shooting to wrap this up by the end of the calendar year,
8 which gives us a little bit of flexibility, without a doubt.

9 **MR. GUNN:** Thank you.

10 **MR. HASTINGS:** All right. Anyone else?

11 Well, thanks everyone for coming, and I think all
12 the federal officials will be sticking around for a little
13 while. We're scheduled to be here until 12:30. So if you
14 want to catch us afterwards, please do so. Thanks.

15 **(WHEREUPON, the Tribal Consultation and Listening**
16 **Session concluded at 10:39 a.m.)**

1 CERTIFICATE

2
3 I, Johanna M. Rau, do hereby certify that I
4 reported all proceedings adduced in the foregoing matter
5 and that the foregoing transcript pages constitutes a
6 full, true and accurate record of said proceedings to the
7 best of my ability.

8
9 I further certify that I am neither related
10 to counsel or any party to the proceedings nor have any
11 interest in the outcome of the proceedings.

12
13 IN WITNESS HEREOF, I have hereunto set my
14 hand this 13th day of September, 2016.

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17 *Johanna Rau*
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19 _____
20 Johanna M. Rau
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DECLARATION

Transcript of: Public Meeting Date: 08/29/16

Regarding: Tribal Consultation Listening Sessions

Transcriber: Rau

I declare under penalty of perjury the following to
be true:

I have read the transcript and the same is true and
accurate save and except for any corrections as made
by me on the Correction Page herein.

Signed at _____, _____

on the _____ day of _____, 2016.

Print Name _____

Signature _____

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