



INTERTRIBAL MONITORING ASSOCIATION on Indian Trust Funds
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SUMMARY REPORT

ITMA LISTENING CONFERENCE AT TOHONO O'ODHAM NATION SELLS, ARIZONA

January 24-25, 2007

WEDNESDAY, JANUARY 24, 2007

Day One

Opening Introductions

VERLON JOSE, Chairman of the Tohono O'odham Legislative Council welcomed representatives with ITMA, OST, BIA and the local Regional BIA office to hear comments from individual landowners. Chairman Jose introduced Mary Zuni, ITMA Executive Director.

MARY ZUNI, Executive Director of ITMA, introduced herself and thanked the Nation for hosting the Listening Conference, the 16th conference conducted by ITMA across Indian country. Ms. Zuni provided an overview of the ITMA membership and stated that the objective of the organization is to monitor the Federal government and Congressional activities that pertain to the management of Indian trust assets. Ms. Zuni stated that the purpose of the listening conference is to provide an opportunity for the tribal government and individual Indians to speak directly with the representatives of the Federal Government regarding trust management issues including probate, leasing, and other trust services. Ms. Zuni clarified that the ongoing IIM account litigation is outside the scope of the listening conference. Ms. Zuni thanked the Federal Government representative present for their participation.

MS. VIVIAN JUAN-SAUNDERS, Chairwoman, Tohono O'odham Nation addressed the legislative council and audience in the Tohono O'odham language. Ms. Juan-Saunders, in English, greeted the Legislative Council, conference participants and those members of the Nation listening via radio broadcast and welcomed ITMA, OST staff, specifically Ross Swimmer, BIA representatives, landowners and the San Xavier Allottee Association.

Chairwoman Juan-Saunders stated that the Nation historically owned land communally and the people worked the land together to support the tribe. As a result of the Dawes Act, land was distributed to individual landowners and since then many trust responsibility issues have surfaced including questions regarding IIM accounts, payments to individual Indians, status of the TAMS (Trust Account Management System) data system and the need to ensure accountability to individual Indians.

The Nation has over 1200 individual landowners, most of them owning land in the San Xavier District near Tucson. The Nation has 11 political districts and the Nation occupies its aboriginal territory. Although the tribe was never forced to relocate, the original lands were significantly reduced; however, lands in Mexico are part of the original land base and include sacred sites. 110 culturally significant sites exist along the 75-mile international border and the safeguarding of these sites is of critical importance to the Nation.

The Nation has a three-branch government, with a Legislative Council that currently has 17 women; although the Nation is traditionally a patriarchal society.

Chairwoman Juan-Saunders cited a 1979 Department of Interior Solicitor's opinion that trust responsibility imposes the most exacting fiduciary standards. Ms. Juan-Saunders stated that federal representatives and the tribal council have attempted to comply with these standards. Further, Mr. Ross Swimmer, as Special Trustee, is aware of the needs of the Nation's people as they strive for self-sufficiency and self-determination. Ms. Juan-Saunders then called for the equitable and fair settlement of the IIM accountholder's litigation with sufficient dollars remaining in BIA to address law enforcement, public safety, roads, social services, and other needs of the Nation.

Ms. Juan-Saunders describes the following specific concerns due to shifting DOI policy and funding:

1. The BIA had assured Tribal leaders that no Tribal Priority Allocation funding would be redirected to fund the Office of the Special Trustee.
2. In FY2004, the Federal BIA Instructions provided that if 10% or less of the TPA was to be utilized by the BIA, there was no need to consult with the tribe. The Nation experienced a shortfall in TPA due to this instruction.
3. This past year, DOI attempted to tap into federal appropriations for Tribes to pay for DOI's legal fees. The Nation takes a strong position that, by law, federal appropriations for Tribes, cannot be utilized for DOI's legal fees.
4. Rather than an increase in funds to support the work to insure equitable accounting and fairness for IIM accountholders, there appears a shifting of funds from one place to another that has seriously impacted the members of the Nation. These impacts include:

- a. The misdirecting of an \$850,000 earmark for road improvements on the Nation from the Federal Highway Administration in FY2006. The funds came to the Western Regional Office but were returned due to non-action at the Regional Office. The Nation has arranged for a return of the funds and now the Nation needs to enter into an agreement with the Regional Office to spend the funds for the Nation's roads, rather than the current proposal to utilize the funds for BIA salaries in the Roads Department. These funds should not be shifted to fund Special Trustee responsibilities.
- b. The Nation's Realty Office is under funded. In 2001, the Nation entered into a P.L. 638 Contract to assume responsibility over the Nation's tribal trust lands with the BIA to retain responsibility for the individually owned lands. The first year, in TPA funding, the BIA provided \$41,000 to the Nation. While the BIA has experienced an increase in funding, sufficient to add personnel, the Nation's funding has declined and in FY2006 was only \$28,000. The Nation has had to heavily subsidize its Realty Office even though the BIA remains obligated to fulfill its trust responsibility. The Nation is unable to adequately manage lands at the current level of funding.
- c. The flooding of the Santa Cruz River critically affects Chui Chu and the Sif Oidak Districts. For more than 20 years, the Nation has been trying to coordinate with DOI to address the devastating flooding of Chui Chu in 1983, 1993, 2005 and 2006. The Nation has expended a great deal of expense to address the impacts of the flooding including damage to homes, the threat to livestock and humans as well. BIA and Bureau of Reclamation have been unwilling to fund studies to determine where to build an earthen diversion dam to divert the floodwaters.

Chairwoman Juan-Saunders concluded her remarks by stating they supported the concerns of the individual landowners and the efforts of the landowner association, that the Nation does not support any attempt to divert TPA funds to fund OST, and that the Office of Special Trustee is obligated to advocate for additional resources to address financial shortfalls. Finally, the proposed reductions recommended by OMB will have devastating results and that DOI, specifically Jim Cason, has an obligation to ask for the necessary appropriations to address basic and necessary needs from Congress.

ROSS SWIMMER, Special Trustee then responded to issues raised by Chairwoman Juan-Saunders. First, Mr. Swimmer extended his appreciation for being invited to the Nation for the Conference.

Mr. Swimmer responded that he agreed with the fiduciary duties owed Tribes and individual Indians by the Federal Government supported by case law and statutory law. He stated he believes the work of the Office of Special Trustee is in furtherance of the fiduciary duty, particularly in the financial arena of the trust and the sole

purpose of the Special Trustee's Office is to administer the trust on behalf of the beneficiaries of the trust, which are the tribes and the individual allottees. Mr. Swimmer stated that no funds are coming out of the BIA budget that supports the Office of the Special Trustee. The money appropriated for OST by Congress is separate from the money requested by the Administration for BIA. However, when the budget is reduced for agencies and OST receives its requested budget, it appears as though monies are being shifted. OST's appropriation is given back to BIA in the form of services including the support of work to address the probate backlog.

OST's budget is also being reduced; the instruction from OMB is to reduce the budget by 2 to 4%. However, opportunities exist with Congress to impact the budget. Mr. Swimmer then provided information on the current status of the budget; that Congress did not appropriate funds for 2007 and current spending is at the FY2006 levels.

Mr. Swimmer commended the Tribe for increasing self-governance but said he understood that contract funds were often inadequate to cover the operating costs of a program. The realty issue is a BIA issue and he deferred the issue to the BIA representatives. Mr. Swimmer also deferred the earmark for the Nation's roads to the BIA.

Mr. Swimmer discussed efforts to address fractionation as part of last year's proposal to settle the Cobell litigation. Mr. Swimmer stated the Administration recognizes fractionation as a serious issue that renders some land worthless and deprives owners of management decisions. Mr. Swimmer stated that only \$34 million a year has been budgeted to purchase fractionated interests and this amount was not enough to keep up with the rate of fractionation.

MR. ANSPACH, Regional Director of the BIA Western Region was asked to address the specific issues raised by Chairwoman Juan-Saunders.

Regarding the issue of the earmark for the Nation's roads, the money is now back on the BIA books from the Federal Highways and an agreement between the BIA and the Nation needs to be developed to get the funds applied to the intended purpose.

On the realty contract, the initial contract funding was insufficient but the Nation agreed to proceed to contract realty functions for the tribal lands with an understanding that the Nation would supplement the budget. Since that time, the budget process has not allowed for any additional funds. This is a harsh reality of the current budget both for the BIA and the current 638 contracts with the Nation.

The Nation has contracted the Natural Resources Program at the BIA that previously did some work on the flooding issue. Mr. Anspach agreed to coordinate with the tribe to address the issue of the necessary studies.

MARY ZUNI then provided a brief instruction of the listening conference format for questions/statements and responses. She then introduced Betty Cooper.

BETTY COOPER, ITMA Board member, greeted attendees and thanked the Nation for hosting the Listening Conference and explained that this Conference is an opportune time for the tribal members to address trust issues. Ms. Cooper stated the Blackfeet Nation had previously held a listening conference. Further, the Blackfeet Nation has several representatives present to coordinate with the Tohono O'odham Nation on homeland security efforts.

Ms. Cooper reminded all attendees that the Listening Conference was being recorded and that the transcript could be a useful document for interaction with federal, state and local governments. Ms. Cooper stated to OST and BIA those Tribes were not only looking for dollars to address trust mismanagement but also to reacquire lands.

OST LIAISON REPORT

MAJEL RUSSELL, ITMA Legal Consultant and OST Liaison. Ms. Russell greeted all attendees and thanked the Nation for their hospitality. Ms. Russell discussed her experience working in the trust reform arena and her liaison role between ITMA and OST. Ms. Russell then summarized activities ITMA has undertaken in their role to monitor trust reform activities. First, ITMA representatives have visited the OST Headquarters in Albuquerque, New Mexico and have received an orientation on the status of the Trust Asset Accounting Management System (TAAMS). Presently, the component of TAAMS that tracks title to trust lands has been completed on a nationwide basis. Thus, the long awaited national title system has been fully implemented and individual landowners now receive land inventory statements that provide their ownership interests in each parcel. The second component to the TAAMS system is an accounts receivable component that will incorporate leases and encumbrances on the trust lands. This second component provides an individual landowner with information on what leases exist on their trust lands, what amounts are due and when the amounts are due.

Ms. Russell then discussed the Beneficiary Call Center, also located at the OST Albuquerque headquarters. The Call Center was created to address beneficiary questions regarding trust payments or other trust management questions. Last May 2006, the beneficiary call center had received approximately 114,000 calls since opening on 12/30/04. Approximately 89% of the calls were addressed in the initial call. The call center appears an effective means to resolve beneficiary questions.

Ms. Russell then discussed the utilization of a commercial lock box for all trust land payments to allow for payments to be expeditiously processed and deposited into IIM accounts. The lockbox system was implemented after many complaints about the length of time to process payments within the BIA before actual deposit into beneficiary accounts. The system now allows for same day deposit for trust payments.

In addition to a review of the lockbox process, ITMA also visited the National Training Center to train OST and BIA personnel on the new TAAMS system. ITMA now intends to visit the Lenexa, KS records repository. Ms. Russell concluded her remarks by stating that effective reforms have been accomplished in the arena of managing trust funds. However, reforms in trust resource management, including effective lease negotiation, lease compliance, conservation efforts for trust lands and prosecutions for trespass still remain to be implemented.

OFFICE OF SPECIAL TRUSTEE REPORT & OPEN DISCUSSION

ROSS SWIMMER, Special Trustee, restated that the purpose of the conference to listen to allottees and the Tribe to gain insight about issues at the Nation. Mr. Swimmer introduced other OST staff present including Donna Erwin, Deputy Principal Special Trustee; Doug Lords, Deputy Special Trustee for Field Operations; Rob Craff, Trust Administrator; Seven Loveless, Trust Officer; Pat Gerard, Mark Treadway, with the Office of the Deputy Special Trustee; Jerry Chavez, Office of External Affairs.

Mr. Swimmer provided background on the Office of the Special Trustee; created in 1994 out of the perceived need by Congress to address the financial side of the trust. Since the '70s and '80s, GAO and IG reports addressed the need to reform the trust and provide up-to-date information to allottees and tribes on their financial interests, land interests, resources interests. Congress enacted the Indian Trust Reform Act of 1994 for the purpose of moving forward in a comprehensive manner to do trust reform. The statute provided there would be an Office of Special Trustee to oversee the trust reforms in BIA, BLM and MMS. Mr. Swimmer is the third person to serve as Special Trustee. The budget is largely from those operations that were transferred to the Office of Special Trustee. For instance, Congress directed that the OST take over the function of what was then called the Office of Trust Funds Management. OST also includes the Office of Historical Accounting that was set up to begin the accounting that was required by Judge Lamberth in the Cobell lawsuit. The OHTA has received about \$54 million a year for this function.

Congress also adopted the Indian Land Consolidation Act in 1984 that has gone through several iterations due to court cases. This effort has a budget of approximately \$34 million per year. OST also provides funding to the Office of Hearings and Appeals to support probate work at a level of about \$10 million per year. The other large component of the OST budget is the Office of Trust Accountability to reform the financial side of the trust. The creation of the national title system illustrates the tremendous progress of the OTA. Prior to this system, ensuring trust land title accuracy was problematic due to different title systems being utilized by different regions. A major effort of OST has been to validate title in coordination with the BIA. In addition to the national title system, OST is converting to a system that provide a statement to beneficiaries that will include encumbrances on land, payments due and payments received. Income information will inform an

allottee about the production values of trust land and has been a critical component of reforming the financial side of the trust.

Mr. Swimmer then discussed briefly the role of trust officers, similar to a trust officer you would have to oversee financial transactions in the private sector. The trust officers are available to provide information to beneficiaries regarding their accounts and assets. OST works daily with BIA, MMS and BLM to insure correct information is provided to beneficiaries. In the next few years, OST is expecting significant budget reductions and they intend to move money into other programs like realty, probate and other areas that need support. The 1994 Act does not necessarily say that OST will go out of business but OST will make a recommendation to Congress on whether it should continue as a separate bureau or have a different organization for the trust.

REPORT OF THE PRINCIPAL DEPUTY SPECIAL TRUSTEE

DONNA ERWIN, Principal Deputy Special Trustee, greeted attendees and began discussing a handout and power point presentation on the differing responsibilities of BIA and OST. She also provided an overview of the duties of the Office of Hearings and Appeals. Basically, OST handles money, BIA takes care of the resources and then OHA determines heirs through probate proceedings. On the OST side of the box, Ms. Erwin indicated that 12 surveyors and 10 lockbox liaisons have been retained. The beneficiary call center was in direct response to the concerns raised by beneficiaries of wanting to speak with someone regarding trust account questions without a long distance call expense. Further, the BIA indicated that they were spending lots of time addressing beneficiary questions regarding payments, address changes. The call center provides beneficiaries with answers while allowing the BIA to focus on service responsibilities.

Other concerns heard from beneficiaries included a concern that checks/payments should not be handled by realty staff, checks should be expeditiously processed and numerous unrelated title systems existed for trust lands. These concerns were addressed in the re-engineering process and resulted in the development of the beneficiary call center and the national title system.

However, we remain concerned about the dwindling budget. We now have to work smarter, not harder. We are now trying to use automation so that we don't have as many people doing manual tasks. With the call center, we allow realty staff more time to focus on realty functions and address lease compliance issues. With the lock-box, the realty staff is not pressed to process payments during the October to March period of time when the majority of lease and royalty payments are received. Finally, the national title system will allow realty staff to spend less time searching through different systems for ownership information.

BIA and OST have separate duties to address the previous audit concerns about one person accepting/processing money and addressing lease compliance issues. BIA, and to some extent, BLM, do lease compliance and MMS collects the royalties for oil

and gas. BIA, however, does the planning for resource usages. BIA also manages acquisitions and disposals and they establish leasing relationships. The automated system allows lease information to be entered into the title system without searching for ownership information. The system will then generate a receivable for the lease income and send an invoice within 45 days before the payment is due. The invoice includes a coupon and envelope and upon mailing the envelope, the automated system is accessed.

BIA further corrects trespasses, addresses lease compliance issues, and administers probates including finding heirs, gathering assets and moving cases to the Office of Hearings and Appeals. Further, BIA manages social services for the supervised accounts, helps locate whereabouts unknown and develops plans for supervised accounts. BIA can also initiate appraisal requests, survey requests or environmental requests. Once a probate package has been completed, it is sent to the Office of Hearings and Appeals to make a determination on the heirs. After a determination of the heirs, the package goes back to BIA for a change in the ownership and title.

REGIONAL TRUST ADMINISTRATOR REPORT

ROB CRAFF, Regional Trust Administrator, thanked the Nation for inviting the federal representatives. Mr. Craff indicated he would address OST responsibilities and stated he believed OST was making a difference in Indian Country. The first area of discussion was OST's efforts to provide a beneficiary contact at the agency level. Trust officers have been retained and serve as a primary point of contact for beneficiaries for trust related matters including financial information and resource questions. This service has not been available in the past for beneficiaries across Indian Country. Presently, 52 trust officers have been hired and placed throughout Indian Country.

Mr. Craff then provided information on the beneficiary call center; a nationwide toll free number for individuals to call in with questions; 90% of which are resolved in the initial call. If the question is not answered in the initial call, a referral is made to the trust officer at the field agency with deadlines for response.

Third, Mr. Craff discussed the commercial lockbox located in Prescott, Arizona that receives all trust-related funds. The lockbox service has streamlined the process for trust payments and relieves the field agency from the time-consuming tasks of tracking checks, handling receipts, logging payments and forwarding for deposit.

Additionally, trust officers serve as liaisons between the local agency and Albuquerque headquarters for trust funds accounting activities and also manage lease receivables. Further, OST provides beneficiary statements that list assets, encumbrances on the assets and receipts and disbursements.

OST also insures timely distribution of trust funds and makes efforts to locate whereabouts unknown accountholders, in coordination with the BIA. A list of

persons who's whereabouts are unknown is listed on the OST website but efforts at the local level are necessary. The local outreach by the trust officer to locate these people is a very important task.

OST also is responsible for distributing estate funds. The Office of Hearings and Appeals determines who receives land and funds and OST distributes funds. Additionally, OST provides appraisal services, financial counseling to beneficiaries and assists with withdrawals of trust funds.

REPORT OF THE DEPUTY SPECIAL TRUSTEE – FIELD OPERATIONS

DOUG LORDS, Deputy Special Trustee, Field Operations greeted the Council and Tribal members and stated he is a member of the Chippewa-Cree Tribe of the Rocky Boy's Reservation in Montana. Mr. Lords stated he would discuss what the results of the OST reforms must mean. He stated that the OST exists for the beneficiaries and he understands that the beneficiaries have no other options for trust services. Mr. Lords stated that productive use of land means a partnership developed with the extensive beneficiary input that is not maximizing but optimizing. OST must balance beneficiary desires with their fiduciary responsibilities.

OST works for timely distribution of funds as has been described by other speakers, assists with local decision-making, problem resolution, provides staff trained at the National Training Center on standardized systems including the Trust Fund Accounting System (TFAS) and the Trust Assets Accounting Management System (TAAMS). We strive for decreased interruption in operations an increased capacity of managing the Indian trusts. The bottom line is that we now have a transparent organization between the OST and BIA. Mr. Lord concluded his remarks by introducing all OST staff at the Tohono O'odham Nation and indicated they were all available to address beneficiary issues if people were uncomfortable to testify at this conference.

REPORT OF FIDUCIARY TRUST OFFICER

STEVEN LOVELESS, Fiduciary Trust Officer provided a detailed review of the accountholder statements. In the past, only receipts and disbursements were reflected in statements. The new statements include a list of assets and encumbrances, leases and rights-of-ways. Mr. Loveless explained the various forms of information on the statement including the tract ID, tract description, and total number of acres in the parcel, location of the parcel and ownership classification. He also described the encumbrance portion of the statement. The final page of the statement includes a legend to help the accountholder understand the statement.

Mr. Loveless concluded his presentation by stating he was available at the BIA Office in Sells to assist accountholders with questions or concerns regarding accounts or

the account statements. He stated is will make home visits to beneficiaries who are unable to come to his office as is typical in the private sector.

Ms. Erwin concluded OST's presentation with a reiteration to beneficiaries to utilize the Beneficiary Call Center and also encouraged utilizing direct deposit for receipt of IIM account funds. Ms. Erwin also stated that for tribe's who have self-governance compacts, re-engineering staff is available to assist the tribe with streamlining internal systems.

Chairwoman Juan-Saunders stated that the OST staff in Sells has done public service announcements in the Tohono O'odham language to assist beneficiaries. She stated the Tribe has met with local BIA staff on issues and she suggested that OST provide an annual report on the success rate of identifying accountholders.

Mr. Lords stated that the Whereabouts Unknown Project has a special group that utilizes Transunion and other Internet engines to find beneficiaries. Further, he committed to providing monthly reports to show successes in locating beneficiaries.

Before breaking for lunch, Ms. Zuni asked if there were any questions from attendees to the OST panel.

Ms. Russell asked whether the new accountholder statements, that list encumbrances, included rights of way payment information in light of the present controversy surrounding rights of ways in Indian Country.

Mr. Swimmer stated that if a statement includes a right of way, the accountholder should call the Beneficiary Call Center and inquire about whether or not they were paid for the right of way as well as other relevant details. Mr. Swimmer agreed that rights of ways were a serious concern in Indian Country and that accountholders may not have been compensated. Thus, it is important for accountholders to review statements and ask questions regarding any encumbrances to determine if payment was made for the encumbrance.

Mr. Greg Lantz, Esq., Barassi & Curl Law Office, stated that a pilot project was discussed in the Native American Probate Reform Act regarding whether entities may be holders of allotted interests. Mr. Lantz asked the status of the pilot project and nominated the Nation, specifically the San Xavier district, as a pilot project location.

Mr. Swimmer responded that the infrastructure is not yet developed to facilitate family trusts or corporate ownerships of allotted lands. The regulatory framework is still in development phases. However, Mr. Swimmer agreed that the Nation would be an excellent area to try these proposals due the extreme fractionation of valuable land.

Chairman Jose asked if OST could briefly describe the TAAMS data system.

Mr. Swimmer stated that after allotment of reservation lands to individual Indians, the BIA agencies developed systems to manage land titles, track ownership after probate and track revenues. In the 60's and 70's, with the arrival of computers, BIA offices developed software to manage the information electronically. Over the years, there were literally dozens of these homegrown systems to manage title information, leasing information and financial information that were not compatible with one another.

In the late 1990's BIA acquired a software system, TAAMS, to replace the various regional management systems. The first glitch was that some of the regions liked their systems and were not amenable to change and the project to develop a national title system was placed on hold. In 2003, OST conducted that As-Is study to review how the BIA was conducting business. Upon completion of that process, in 2004, OST developed a model on how business should be conducted called the Fiduciary Trust Model (FTM). Included in the FTM was the need for a single nationwide title system to allow landowners to determine land ownership at any BIA agency, not just the agency where the property is located. This system is now finalized and all the old title management systems have been converted into one nationwide system. Now OST is in the process of sending teams out to validate the title entered into the system; basically to compare paper records with electronic records. Upon completion of the title management system, the Trust Fund Accounting System (TFAS) was developed to manage the funds generated from the trust funds. This system had to interface with the title management system. Upon completion of TFAS, the third component was the leasing component to track leases and encumbrances on the trust lands. The TAAMS leasing system talks to the TAAMS title system and the TFAS system so all three systems act as an integrated software process that is universal throughout BIA and OST.

LUNCH BREAK

Mary Zuni directed the BIA staff to be seated facing the first panel of witnesses.

PRESENTATION BY BIA REGIONAL DIRECTOR

MR. GREG ANSPACH stated he was glad to have the opportunity to provide firsthand input to trust-related questions and trust asset management questions and introduced other BIA representatives; Nina Siquieros, Agency Superintendent and Stan Webb, Western Regional Realty Officer. Mr. Anspach stated he and his staff were available to address any specific questions.

Ms. Zuni provided instructions to the first witness panel regarding time limitations for testimony.

TRIBAL & INDIVIDUAL TESTIMONIALS

PANEL #1

PHILBERT BAILEY stated he owned seven allotments in the San Xavier District. He provided some history on the San Xavier District: created by Executive Order in 1874 by President Grant; includes 72,000 acres; under Dawes Act, 41,000 acres was allotted to individual members with remaining acres as district lands. In 1991, the San Xavier Allottee Association, Inc. was established and has over 1200 members scattered all over U.S. Only the San Xavier district was allotted. Mr. Bailey asked:

- whether lands escheated in accordance with the Indian Land Consolidation Act in 1984 had been given back to the allottees,
- if leases could have a five-year term rather than the current 25-year term leases,
- if the account statements to individuals could accompany royalty checks,
- if a breakdown of the total amount of the lease for the entire tract could be provided including information on how much each individual receives,
- why BIA negotiated a business lease rather a mining lease for the Asarco,

Further . He expressed concern about the mining impacts on the land including tailings and contamination. Further, MMS was to provide landowners with audits of the mining and they have received no audit information since 2001 and Asarco is currently in bankruptcy.

MS. PHYLESS PACHORA stated she wished more people were present and stated the notice for the conference was short. Also she said that transportation from the outlying districts should have been provided. Her main concern was a lack of communication between all the parties; BIA and allottees and she requested that information on the statements and other forms be provided in layman's terms.

MICHEAL RIOS stated he had five allotments in the San Xavier District and is an Allottees Association board member. He mentioned that some allottees live in Mexico and they go down to meet with them. Mr. Rios:

- asked if BIA approval was still necessary for leases,
- expressed concern about allottees signing documents they don't understand,
- stated that fractionated land ownership was a major problem,
- expressed concerns about escheated lands,
- stated that the new lease with Asarco in 1995 resulted in little increase in income for the allottees,
- expressed concerns about one-time payments for a power line lease and requested more information on the lease,
- stated he would like to access all allottee data to take measures to prevent further fractionation.

ELENORE HUNTER stated she is an allottee and she asked if she could leave her lands to more than one beneficiary upon death.

OST/BIA RESPONSES

STAN WEBB: In regards to rights of ways, limited terms of easements can be negotiated and periodic payments can be negotiated. However, allotments are subject to condemnation and land can be condemned in perpetuity with payment based on appraised value. Pipeline rights of way have been more apt to be negotiated for a limited term and periodic payments. In terms of escheated lands, those interests have been revested in the heirs as required by the Supreme Court in most cases although some work continues as probates are finalized. With the Asarco issues, BLM and the solicitor's office have been involved but the monthly versus annual payments issue is likely a negotiable item. I haven't been involved in the MMS audit process.

On the lease approval issue, BIA approval is still necessary except for agricultural purposes if the owners take over management. The Administration proposed a removal of BIA lease approval and a reduction of landowners to ten for each tract in the Cobell litigation settlement discussions. The agriculture leasing statute is 25 U.S. Code 2218. The new law on probate allows a landowner to obtain information on co-owners. Mr. Webb stated that the laws have changed and allow an Indian to will land to basically anyone, including a non-Indian spouse.

Mr. Rios stated he would like to reply about Asarco – the company simply sent out a notice they were renewing the lease and landowners had no opportunity to negotiate or even comment. The old lease stated that notice would be provided prior to expiration to allow negotiation. Now Asarco has a second 25-year term.

Mr. Webb said he did not recall the renewal provisions on the Asarco business lease but would get back to Mr. Rios on that issue.

ROSS SWIMMER: Thanked the BIA for their presence and response to questions as they were responsible for resource management. In regards to escheatment, DOI is working to get the escheated interests in land revested back to the heirs. The project is complex, all the interests are less than 2 % of tracts, and most of them are "literally worthless". Since the escheatment, many heirs have died and the revesting process involves two generations of heirs. The ILCA project has been making offers to the owners of the escheated interests to avoid the complex title work of revesting. Also, some owners are willing to convey the interests to Tribes.

A second point pertains to leases and rights of ways. Both can be negotiated up to a point, but if an impasse results, a condemnation can be forced upon the landowner, primarily when a public interest is involved.

I agree with the request that payments made to landowners from mining leases should include an explanation of the payment. Further, I will work with MMS on the status of the audit of Asarco.

Mr. Swimmer then explained the recent proposal by the government to settle the Cobell litigation. He stated that if the government was going to put a large sum of funds on the table, the funds should be used to resolve part of the cause of the problem – fractionated land holdings. Mr. Swimmer discussed the Allotment Era as the commencement of the trust system. The trust status of lands was meant to last 25 years, Indian landowners would then manage their lands. However, the trust has continued for many years. Mr. Swimmer also discussed the proposal to reduce trust landowners to 10 within 10 years as a means to achieve more effective owner management. Mr. Swimmer did express a concern that legislation to resolve Cobell may not occur this year.

Mr. Rios then stated that he was optimistic when news of a Cobell settlement with money for individuals was released in a news article. He said he was not surprised when Senator McCain stalled movement on the proposal. Mr. Rios also raised a concern with MMS doing the audit since they are under investigation. He stated that he agreed with the proposal to allow landowners more management authority over lands and that landowners should know where their lands are. Mr. Rios stated he agreed with the ILCA efforts to purchase small land interests.

Mr. Swimmer responded that S.1439, the Cobell settlement legislation, was a good effort but Senators McCain and Dorgan were unwilling to move it unless all parties, including the Plaintiffs, were in agreement and that was not the case. Mr. Swimmer explained the Cobell lawsuit is about an accounting and the DOI is doing the accounting as the Court has ordered.

Ms. Erwin addressed the concern about little information attached to oil and gas payments. She stated that they are discussing a replacement system for the current oil and gas system. Ms. Erwin also stated that revesting the escheated “Youpee” interests was necessary to accurately complete conversion of the accounts to the automated accounts receivable system. Ms. Erwin then introduced Doug Lords to discuss outreach efforts.

Doug Lords discussed several outreach efforts including PSA announcements, PSA’s in native languages, hosting public events. He stated that allottees in Mexico presented a challenge in terms of outreach but he committed to attempt mailings to them and offered to send the local Trust Officer to Mexico.

Mr. Webb then provided a clarification of earlier remarks regarding changes in the law regarding who can take (assume ownership) of trust land. He stated that a person with Indian blood can take trust land by will but a person must be enrolled somewhere to take trust land by deed. He also discussed the definition of an “Indian” for purposes of inheritance of trust land and the life estate provisions of

AIPRA. Mr. Webb stated that on an IRA Reservation, a person must be an heir or lineal descendant in order to take by will.

PANEL #2

MR. EDWARD ENCINAS – a landowner at San Xavier. He stated:

- He was 12 years old when his relatives signed leases with the mine and received money.
- Today he is opposed to the mine due to the harmful effects of the mine tailings on vegetation.
- Payments to allottees from the mine are often seriously delayed and on some occasions, the mine states it overpaid in the last payment and nothing is currently due; no way to verify a legitimate overpayment.

MR. TONY ENCINAS – a landowner at San Xavier and board member of the allottee association. He stated:

- Asked if the listening conference was a consultation and what the information obtained would be used for.
- Expressed concern about the lasting impacts of the allotment act.

MS. ZUNI responded to Mr. Tony Encinas – she stated this listening conference is the 16th one conducted by ITMA. The session is an outreach effort to bring high-level federal officials to Indian communities to respond directly to trust management concerns. The sessions are recorded to insure follow-up. The presentations by federal officials allow information about available services and benefits. Further ITMA is often called upon by Congress to address trust issues and the information obtained at the session is for that purpose. The session is not a tribal consultation.

Chairwoman Saunders asked whether the Nation is also a beneficiary.

Ms. Erwin responded that the Nation is a beneficiary for the lands the Tribe owns.

Ms. Saunders then stated that the settlement of Cobell should be a priority for the 40 days left of this Congressional session.

Ms. Zuni stated that the SCIA stated it had not yet developed priorities for this session other than the Health Care Bill.

PANEL #3

ANTHONY RIOS – allottee and former board member.

- Expressed sadness for losing a home site.

- Concerned about the flood two years ago
- Asked how his sister's estate would be distributed (died in 1994), will it go to the oldest heir?

Mr. Webb addressed the single heir rule of AIPRA – if no will, and the interest is less than 5% of the tract, it will go to the oldest child.

PRESENTATIONS BY TRIBAL COUNCIL MEMBERS

COUNCILWOMAN RAMIREZ – asked

1. Did the 1994 Act require OST to produce a strategic plan and if so was there Tribal input?
2. What are time frames for implementing a strategic plan and will you report back to Tribes?
3. What is the difference between historical accounting efforts and implementation of the strategic plan?
4. Is it possible or appropriate for a Tribe to undertake some of the auditing responsibilities of the fed government?

Mr. Swimmer responded to the above questions as follows:

The first plan developed by the first Special Trustee called for taking trust management out of the Department of Interior in accordance with a High Level Implementation Plan that consisted of fixing certain parts of the trust. In 2003, a subsequent plan was developed called the Comprehensive Trust Management Plan that describes how the trust would be operated between and with the BIA, the Special Trustee, MMS, BLM, the Secretary of Interior's Office, the Solicitor's Office and the Office of Hearings and Appeals. The plan addresses management of assets through distribution of funds coming into the trust. Following the Comprehensive Trust Management Plan, the "As-is" and "To-be" process commenced which started implementation of the plan. The Fiduciary Trust Model, developed in 2004, provides specific steps to implement the Plan. The plan is available on the DOI.gov website.

Tribal input was obtained through the year long Task Force on Trust Reform that met monthly in 2002. In addition, direction came from the Court and from Congress. We are aggressively implementing the plan and project full implementation by '09. We hope to have a graphical information system that will allow a landowner to physically locate property also implemented by '09. We are also looking at new survey tools for the BLM.

The projected timeframes include '09 for full implementation of the reform efforts. At that time, the DOI will evaluate whether the financial side of the trust will continue as a separate entity from the BIA. Congress may determine this issue as S1439 had proposed a single structure. Historical accounting, under the direction of the Office of Historical Trust Accounting, has cost approximately \$300 million and is currently budgeted at \$56 million per year. The accounting may likely be completed in three to

five years depending on Congress and the Court. If the new judge in the case specifically determines what will constitute an accounting, it may occur sooner.

Historical accounting is on a separate tract than current reform events. The accounting is on going, is a process that is historical and focuses on the accounts. The current reform efforts are to ensure that the trust systems are accurate and meet the duty of a fiduciary.

Presently, tribal auditors have access to tribal trust records. The audits are actually managed by the Office of Inspector General, which is independent from the OST. Since 1995, a complete financial audit has been performed annually on the financial trust and is available to the public.

COUNCILWOMAN ANDREW reiterated earlier concerns expressed by various speakers about flooding in the Chui Chu community.

COUNCILMAN FLORES asked whether ITMA was independent of the OST since ITMA received OST funding; further, did ITMA receive other funding? Also, is ITMA limited to do only what OST provides funding for?

Mary Zuni responded that ITMA is an independent Tribal organization with 56 federally recognized Tribes as members, organized 17 years ago, due to concerns with the federal government's management of trust fund accounts. Tribes approached Congress for assistance with this task and received initial funding from the BIA. ITMA received funding from OST after it was organized in 1994. ITMA has annual elections for a board of directors that establish ITMA activities. ITMA has a relationship with not only OST but with BIA due to reform efforts that involve BIA. ITMA also works on trust reform related legislation and testifies regularly before Congress. The primary mandate is to work for tribal governments.

Ms. Zuni stated ITMA does not have other funding sources and that activities are limited by the amount of OST funding. However, Tribes contribute by assuming travel costs and providing other services.

Councilman Flores concluded with a statement that he was not convinced ITMA was independent of OST and BIA and questioned whether ITMA could truly address trust responsibilities of the U.S. Government.

COUNCILWOMAN NUNEZ stated most of her concerns had been addressed but she has three issues:

- reclamation efforts at the Asarco Mine,
- where should tribal members go for wills now that the BIA has discontinued this service,
- could the San Xavier district be reimbursed for all monies spent doing surveys.

Mr. Webb responded that the reclamation obligations have been in contention for many years. The original lease, dated 1959, did not have a mine plan or a reclamation plan. The BIA is now close to finalizing a reclamation plan and part of the current on-going negotiations will include financial assurance that the reclamation work will be done. Either Asarco will do the reclamation or put the funds in escrow. The BIA and BLM have surveyors; thus, reimbursement of tribal efforts has not been built into the on-going surveying program. Mr. Webb confirmed that the BIA adopted a policy to discontinue will drafting in '05. However, federal funding is available for certain entities for some estate planning efforts.

Mr. Craff stated that he is exploring a partnership with the State Bar of Arizona Young Lawyers Division that maybe able to draft wills for tribal members at no cost.

COUNCILWOMAN ANTONE expressed the following concerns:

- A mining plan for Asarco that addresses environmental concerns is critical;
- Funding is insufficient for the Tribal Realty program and for the Road Department with the vast number of miles of road on the Reservation;
- The \$850,000 earmark that the Nation successfully secured from Congress for roads must be returned for use at the Nation.

COUNCILMAN FAYUANT made the following comments:

- Expressed gladness that Councilman Jose approved this Listening Conference to host OST and BIA and give the Allottees Association an opportunity to hear all the information presented and to express their concerns.
- The information presented allows the Council to better understand the trust issues.
- The Tribe should undertake more positive efforts to address trust issues including preventing further fractionation of lands through estate planning.

CHAIRMAN JOSE asked the following questions and made the following comments:

- This session is not a consultation, is that correct?
- Stated he was honored and grateful for everyone who came to the Nation for the Listening Conference.
- Appears that the while the creation of the OST is to manage funds, trust responsibilities go much further.
- Tribes have a fiduciary responsibility to their members and all have a duty to the Creator to protect the earth.
- Better communication between the Tribes and federal government would address lots of issues.

THURSDAY, JANUARY 25, 2007

Day Two

Chairman Jose recognized Betty Cooper, ITMA Board Member from the Blackfeet Tribe, to address an event that occurred at the Blackfeet Reservation yesterday.

Ms. Cooper discussed a scare at the Tribal office in Browning, Montana due to a white substance in the mail that resulted in evacuating the office. The substance was tested and determined harmless but the incident tested their emergency response processes.

Mr. Mark Keller of the Blackfeet Tribe discussed his work at the Office of Disaster and Emergency Services at Homeland Security.

Mr. Robert DeRosier of the Blackfeet Tribe introduced himself and stated yesterday's threat was a serious issue for the Tribe but the Tribe was prepared to address it and the situation was handled well and the emergency abated.

Ms. Zuni called a final panel of witnesses.

PANEL #4

AUSTIN NUNEZ, Chairman of the San Xavier District accompanied by attorney, Mr. Louis Barassi, asked and stated the following:

- In the beginning our people did not grasp owning land individually since land was owned in common by the people.
- When the Tribe began dealing with water issues, we tried to educate ourselves about the responsibilities of land ownership.
- Expressed concern about the status of the "Youpee" interests.
- Expressed concern about the probate backlog.
- Concerned with the implementation of the Water Rights Settlement Act of 2004 in regards to the rights of individuals.
- Stated the Federal Government has an obligation to the allottees with regard to natural resources and protecting trust assets.
- A program to provide allottees with funds to purchase co-owners of trust lands should be developed.
- Expressed a concern about the lack of appraisers for the purpose of renegotiating rights of ways.

MR. LOUIS BARASSI, general counsel for the San Xavier District for over 20 years, provided the following:

- observed the hardships of the Nation's people due to inadequacy of the BIA,

- the lack of restrictions on release of significant funds to young adults has had tragic outcomes necessitating the need to develop restrictions,
- has observed the effectiveness of trusts in a private bank to manage money and Indians should have same opportunity for this type of service,
- The delay in probates prevents families from accessing critically needed funds,
- Developing regulations to allow corporations to hold land in trust would help address fractionation.

RESPONSES

MS. NINA SIQUIEROS, local Papago BIA Agency, stated that the fractionation problem is due to the poor estate planning training and services. Further, the allotment system is foreign to the cultural practice of sharing lands and this has resulted in Indians being poor landowners. Efforts are underway to educate landowners on estate planning and managing lands.

Ms. Siquieros further stated that the BIA has Social Services but Tribal members often do not utilize these services. The BIA remains very resource short with many positions vacant.

MR. SWIMMER stated that virtually all of the “Youpee” interests have been reconveyed or revested to the heirs of original owners. Further, Mr. Swimmer encouraged a close review of the new statements that will show the interests owned by the individual that should now list Youpee interests. He stated the Indian Land Consolidation Project has purchased small interests, including “Youpee” interests from willing sellers in other regions. DOI is attempting to address the probate backlog and has made significant efforts although much more work is necessary. A process exists to allow family members to access IIM funds for expenses; however a questions remains whether the funds can be accessed before the probate package is complete.

Mr. Swimmer further stated OST has taken over the appraisal process and has made significant progress in reducing backlogs.

The AIPRA has a provision allowing demonstration projects for family partnerships to allow multiple owners to create a family trust. San Xavier would be a prime location for a pilot project. Mr. Swimmer stated he was aware of the right of way issues and the requirement for appraisals and he will follow up on addressing the concern of delay and backlog. Private appraisals are useful but must be reviewed by OST and certified for effective conveyance. Also gift deeds are a useful mechanism to address fractionation.

Mr. Swimmer stated the issue of transferring funds to individuals upon turning 18 is controversial and extremely difficult. While Tribes can set up restrictions, the fed government has no ability to hold funds for individuals over the age of 18. Many

Tribes have not developed restrictions and if no BIA hold exists, the OST has no alternative but to release the funds.

MS. ERWIN stated that if an individual has problems and should be restricted from accessing all trust funds, the BIA Social Services has mechanisms to provide counseling or effectuate a temporary hold on the funds.

Witness Benjamin Romero, who had signed up was not present.

CLOSING REMARKS

CHAIRWOMAN SAUNDERS made closing remarks thanking Special Trustee, Ross Swimmer, and his staff, the BIA and OST staff from Sells and ITMA for coming to the Nation. She stated the Listening Conference was fruitful and worthwhile for everyone. Ms. Saunders reiterated earlier requests for additional funding for appraisals. Further, she stated that the Special Trustee should advocate that funds budgeted for litigation support and historical accounting should remain within Indian programs to address needs in law enforcement, public safety, roads, social services and other critical needs.

Ms. Saunders commended the Blackfeet Tribe for their response to yesterday's threat against the Tribal office and discussed efforts of the Nation to address flooding last year at Chui Chu.

MS. COOPER thanked the Nation for hosting the Conference and OST for reform efforts. She stated the BIA is the most "beat up" agency in Government and she commends them for coming and responding to issues. Ms. Cooper commended the allottees for their statements and discussed at length her participation in other ITMA Listening Conferences.

CHAIRMAN JOSE thanked all participants and stated all could leave with refreshed thoughts. He expressed deep honor for Tribal members working with the local BIA and OST and that everyone needs to communicate and come together to avoid confusion and assumptions. He thanked the Blackfeet Nation for coming to Tohono O'odham.

MS. ZUNI also extended a thank you to the Tribal Council for hosting the session, with special recognition of former ITMA Board Member, Councilman Gerald Fayuant. She acknowledged former ITMA Board member, Evelyn Juan, and ITMA Tribal Representative, Gloria Rameriz.

The Tohono O'odham Listening Conference concluded at 11:38 a.m.