

INTERTRIBAL MONITORING ASSOCIATION on Indian Trust Funds

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Report of the 4th ITMA LISTENING CONFERENCE

July 15-16, 2004



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**ITMA LISTENING CONFERENCE
July 15-16, 2004**

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LISTENING CONFERENCE SUMMARY REPORT

July 15, 2004

Introduction by Scott Russell, Crow Nation, ITMA Board of Directors

Invocation by Dr. Barney Old Coyote

Presentations:

Chief Jim Gray described the purpose and goals of the ITMA Listening Conferences, noting that ITMA works on behalf of Tribal and individual trust beneficiaries. He said that the intent of the conferences was to reach “some resolution to the long-standing problems in the day to day operations of the government’s trust responsibilities to tribes.”

Chief Gray described the presentations at ITMA’s first Listening Conference in Oklahoma, how “individuals came up one after another, telling stories that go back generations and it was very heartrending to hear these stories, why is the delay so long, why are their leases not being managed properly.” He stated that “we know that we have a broken system of trust,” and that it cannot be fixed without the help of all Indian people. At the end of the year ITMA will produce a “representative document” that highlights the major concerns raised at the Listening Conferences.

Scott Russell noted at on the Crow Reservation, there is a very big fractionalization problem. Ten percent of the fractionated lands in the United States are on the Crow reservation. The Crow Nation is hosting this Listening Conference to “try to find some solutions” to its fractionalization-related problems.

Dr. Barney Old Coyote presented next. He stated that he worked for the Bureau of Indian Affairs at the Standing Rock Agency, he found that “special deposit accounts” were “at the root of people’s financial problems.” He explained special deposit accounts as they related to leases of Indian land: they contained money owed to Indian landowners who could not receive it directly from the non-Indian lessee of the land. The BIA had to deposit the money in an account, and the Indian landowner would have to get the money from the BIA. Sometimes, for example, if an interest holder in the leased land died, and the probate was not completed, the money would go into a “special deposit” account and “it will be there until somebody has time to figure out each of the interests before money will go into the IIM accounts.”

Mr. Old Coyote worked on this issue for several months. He reviewed the special deposit accounts and found that a number of checks from the accounts were not delivered. Then, he said, “I would get into my detective mode” to find the account holders and delivered the checks to them. He stated that “one of the great failures of

the American system” was not keeping up on account holders’ address changes. He said the “detective work” he did required extraordinary diligence, but that it was the best way to solve the problem. He also described the old “yellow paper” system which allowed account holders who could not get their account money directly to receive a voucher (on yellow paper) which they could use as money in many local stores. He stated that trust-related problems are the U.S. government’s responsibility, and that the government will have to use “an extraordinary amount of diligence, and an extraordinary amount of resources to solve this problem.”

Geri Small, President, Northern Cheyenne Tribe, presented next. She stated that because this region is so rural, it is hard to get people, particularly elders, to make the long trip to the Listening Conference, and she has asked ITMA if she can set up a conference on her reservation “so we can get to our elders and others who need to be heard.”

She described her experience on a national Trust Reform Task Force, how the opinions and proposals of Indian people and Tribal leaders were ignored by the federal government. “Why don’t you ask us? We know what needs to be done and we are willing to help. She encouraged others to testify at the conference. She described a situation with an older man had \$70,000 in the special deposit account, but he didn’t even know it existed. “I am hopeful that those types of stories will be unheard of when this is done.”

Mary Zuni, executive director for ITMA then described the work of the association. ITMA is a national intertribal organization with 59 tribes as members with significant trust fund accounts. Its purpose is to monitor the activities of the OST and BIA and to assist Tribes and individuals related to trust fund accounts and other trust related issues. ITMA also may sponsor a national symposium on trust is working with the Department of Interior on a tribal trust funds settlement project. She explained how the conference would proceed, and that ITMA will issue reports on presentations at each conference.

John Berrey, Chairman of the Quapaw Tribe, presented next. He described the work of the “As Is/To Be” Re-engineering Process. The group responsible for developing the process toured all 12 BIA regions, visited several BIA agencies, met with several tribes, and representatives of numerous federal agencies including the Office of Special Trustee. “We wanted to document how the government did its work.” The group found very little standardization of processes from region to region. They looked at financial operations, how money is managed, collected, distributed, documented, found it was done a little differently in every region. They went to the Land Titles and Records Offices, at records on lands, conveyances, rights of way, etc., at how planning is managed and how lease management, compliance and enforcement was handled. “The problems were consistent throughout the United States. It wasn’t because the people in charge were bad guys. It was neglect by the US Congress that has created a lot of these problems. The Congress has never allocated the funds to meet the needs of the

Indians, not enough people to do the job. They duct tape and hold it together with bailing wire to get the checks out.”

He said in addition to a lack of clear standards and consistent processes, people did not have the tools, the computers, software, and training, needed to do their jobs. not handed the tools they needed to do their job. These problems have created a huge backlog of probates—23,000 probates that are thirty or forty or even seventy years old. About 4700 Indians that pass away each year and there aren't enough employees in the probate operations to handle even the current cases. This is what the “As Is” report found, “and it's a bad picture.”

He explained that the “To Be” is a model of how these problems can be addressed. The Secretary of Interior has approved the implementation of the model, so now the group is called the “CTM To Be Implementation Team.” The team has been given the instructions to implement all these changes. He stated that it will take a few years, but once implementation is complete many of the problems with probates, leases, etc. will be addressed. He said OST trust officers placed at various BIA offices are going to help Indian people by “making sure if you have a question you will get an answer to the question.” Trust Officers will be able to help pinpoint where problems are in agencies. “We always remind people that this is about individual Indians and we want you to be served properly.”

Marcella Giles, Esq. and ITMA Board Member, presented next. She stated that many allottees have difficulty getting their documents together, documents that show where their land is located, give its legal description, track what happened to money in IIM accounts. She said allottees associations can be very helpful to individual Indians with these problems, and that the Indian Land Working Group is a national organization that can help. Their goal is to help all Indians keep land in Indian ownership and to make sure that the land is used and managed properly.

She said that there is no standardization of probates from state to state, and that S 1721, a bill pending in Congress should help solve this problem. She stated that she has received calls from people who have problems because they have land from different reservations. The pending legislation would allow families to get together and negotiate land management and land ownership issues. The goal of the legislation is to help tribes write their probate codes and to set up grants to assist tribes.

Keith Beartusk of the BIA presented next. He introduced his staff. He said the [Eloise] Cobell case has brought attention to trust-related problems: “it has made us focus on trust and that is what trust reform is all about. We now have a greatly expanded OST and Congress has seen fit to put a lot more money in OST. The OST is focused on the Indian beneficiary and allotment owners. We have had more funding as a result in our realty programs.”

He said that a reorganization of the BIA which separates “trust functions” from administrative or “Indian services” programs has been completed and now “there is new staff dealing with trust issues. We were directed to develop a division of trust, to separate those functions out so the staff could focus on the trust issues.” He explained that the reorganization includes the new position of Deputy Superintendents for Trust who will focus on servicing Tribes and individual Indians. Other new staff, the OST trust officers at the agency level, will be available to address those concerns that individual Indians have. He predicted that the federal government “will provide better service as a result” of these changes. He explained. He said the reorganization process is about seventy-five percent completed. Probates have been taken out of realty offices, and the probate officer will report directly to the OST Deputy Regional Director for Trust. He described a probate at Northern Cheyenne where an original allottee passed away, without a will, and when he died, his estate went from one owner to 300 owners. He said that the first time ever the BIA will have one database common to both realty and title.

Nationwide there are 275,000 individual Indians who own trust lands and 3 million owner interests. On the Crow reservation alone, the average member of the Crow tribe owns interests in 80 different pieces of land. He said the BIA is just beginning to implement the Indian Land Consolidation Act in this region. There have been pilot ILCA programs, but for the first time his agency has received ILCA funding is authorized to set up an office. We have recommended that we be able to purchase lands at six reservations. We are planning to set up a staff at Billings and begin to buy fractionated lands this year. He said he hopes to see the land acquisition budget grow to \$145 million in 2007. “We will look at highly fractionated lands and offer owners money for all of their land. Then the land would be held in trust for the Tribe.” In the Midwest we have managed to purchase 70,000 owner interests but at the same time 80,000 interests have been added to the list.

He said it was important that Indian people write their own wills, and that part of the probate project will help them do this. The intent is that land would go from multiple owners to one owner or to the Tribe, and the result would be that there will be more land owned by the Tribe

Pat Gerrard of OST presented next. She said that the Listening Conferences will be helpful in solving trust related issues, and introduced her staff: Robert Upton, Regional Trust administrator for Rocky Mountain Region. Bruce Laudermilk, Acting Trust Administrator, Lisa Bullshoe, a new trust officer at the Blackfeet Agency.

Robert Upton of OST presented next. He said that “OST in my mind is the overtime that Dr. Old Coyote said was needed. We are trying to be the employee that takes the individual’s questions and follows it through to a satisfactory answer.” He said the complexities of trust problems “are almost overwhelming when you think of the meaningful change that has to be made.” He is responsible for the Rocky Mountain and Midwest Regions, and his primary focus is to get trust officers hired for nine of these

locations. To date only three have been hired because it is difficult to find people that are qualified and willing to live in more remote areas. We are re-advertising for the other positions. OST has just this calendar year put six regional trust administrators in place. They determined where to place the positions based on the number of IIM account holders, and the business activity that would be required in a region. He said 25 officers have been hired nationwide and 25 more positions need to be filled. The OST is looking for trust officer candidates with bank trust experience, lawyers, trust related expertise, In response to questions from Marcella Giles and John Berrey, he said that OST has 600 people in the entire country, while the BIA has 10,000 employees in just Montana. He said the difference between OST and a commercial bank is that “Indians can’t go down the street to another commercial bank,” but emphasized that “the US government has a tremendous fiduciary responsibility to Indian people.”

Lunch Recess

Panels and Responses

Richard Sangrey of the Chippewa Cree Tribe presented next. He said that on his reservation, “we have a number of people that have ownership in land on other reservations, more than 300 whereabouts unknown with IIM accounts. Our Tribe is very interested in what is progressing with OST.” He said his Tribe is a compact Tribe, and this year is the first year that the Tribe has to negotiate with the OST for some of the programs that it has assumed, including appraisals.

Keith Beartusk stated that Public Law 96-638 recognizes that Tribes are fully capable of managing their own programs.

Andrew Old Elk of the Crow Tribe presented next. He stated that the Crow Tribe wants the federal government to live up to its trust responsibilities. He said about 16,000 acres of trust land on Crow is considered “idle” but it isn’t—“there is grazing going on out there and we would like to know more about that.” He more money is needed to address the needs of the BIA and its trust responsibilities.

Robert Upton stated that efforts are underway now to hire staff and properly train the OST employees. “There is a considerable effort being made to upgrade their knowledge of fiduciary duties. This is also done at BIA.” Employees are taking course offered to trust officers in the private sector. The agency is developing programs so employees can take courses and become certified as an Indian trust officer. “We have a heavy emphasis on education and training.”

Keith Beartusk stated, regarding “idle lands” that the Crow Reservation includes 2.5 million acres and there is a “ceded strip” running to the Yellowstone. The Bureau is not required nor compelled to lease land. If we have it under lease we know that it is not being trespassed, it is being grazed or farmed. Our preference would be to lease it. In

the ceded strip where we have isolate tracts of trust land, surrounded by fee land, and this landlocks the trust land. He said that if trespass is occurring on these lands “we can’t get to it and we don’t have the resources to go out and check it on a daily basis.” If there was a grazing lease on the land they would be required to “go out every day and count the cattle on it,” but the BIA just doesn’t have the funding to have a staff to do this, or count stumps on alleged trespass on timber lands. “We just don’t have enough people to do the job.” In comparison to other federal agencies, such as the Bureau of Land Management, the BIA is staffed at a ratio of about 1 to 5. There is a similar staffing ratio difference when the BIA is compared with the Forest Service.

Allison Sage of the Arapahoe Tribe of Wyoming presented next. He said that his tribe has a reservation of 2.2 million acres shared with the Eastern Shoshone. For this large land base there is very few staff to take care of trust resources.

He described a water rights issue with the state of Wyoming. His tribe finally won the right to 500 acre-feet of water, but the BIA irrigation system is not adequately developed to provide the water. The Tribe has its own water board and water code and the BIA is will not recognize the Tribal water code. He would like the BIA to cooperate on this. He said the Tribe has about 100,000 acres that was taken in reclamation, but the Bureau of Reclamation said that the land is not useful to them, and the law says this land should go back to the Tribe. They have not been successful in getting the land back into Tribal ownership. “There are non-Indians who live there and graze their cattle there and that may be why nothing has been done.”

He described problems with probate backlogs and acquiring rights of way to improve a dangerous highway on the reservation. He said that some oil and gas leases negotiated by the BIA have been undervalued and yet have 10-15 year terms, with “no provision to renegotiate and get more money when the price of oil and gas rises.”

He said there also is a lot of trespass on trust lands on his reservation. “We have a lot of cattlemen in Fremont County whose cattle trespass and the BIA doesn’t do anything and when we try to remove the cattle, then we get into trouble.” He noted that it’s bad for the reservation to have this land overgrazed.

He described problems with sand and gravel pits on the reservation and underpayments to the Tribe for this resource. One sand and gravel case has been settled, but there are ten pits on our reservation and “no security on them, people can just go in there and get gravel.” He said there is a shortage of law enforcement; it takes 45 minutes for an officer to get to an emergency, plus there is an influx of drug trafficking on our reservation and it’s unabated right now.

Keith Beartusk responded that, regarding the irrigation issues raised, he is “willing to bring some staff down and arrange for a meeting with your joint business council. We will listen and if there are issues we will deal with that.” As to the reclamation land issue, the Bureau of Reclamation agrees that the land should go back to Tribal ownership, but

“the ranchers that are using it are putting pressure on their elected representatives. The last time we visited with your attorneys we thought they said they had something in mind. If not, we will work for you.” Regarding the road rights of way, “I will do some more research and get back to you.”

Robert Upton stated that “we are late on this, but with the placement of Trust Officers in the field that will live at the agency and be part of the everyday life that goes on there it would be our hope that they would help to solve problems.” He said OST has “not had time to be a part of the solution. We are asking Indian country to give us time to get this in place. We know that OST is not the magic solution, but one more agency to help with the problems on the reservation. I hope this doesn’t come across as a cop-out answer but the transition is underway.” He said he hopes that by next year OST administration and staff will work out solutions to the problems described by Alison Sage.

He said the BIA agency superintendent is the ranking government official at the agency. The Trust Officer is to work closely with the superintendent. It is supposed to be a cooperative effort and I have said to my OST staff that “the Trust Reform Act of 1994 has provisions in it that the OST will someday go away.” He said all of OST functions, are concentrated to working towards the solutions on the financial transactions because that is where the criticisms have been but “over time, making the assumption that the large sums of money thrown at this problem are successful, then the need for oversight should diminish and the spirit of that law is that the need won’t be there and the office will go away, and the OST people will be folded back into BIA.” He said that “long term we are one, an agency to carry out the fiduciary responsibilities of the US government to the Indian people. OST is a temporary fix to a major problem and it will fold back into the BIA back into the future.”

Keith Beartusk, in response to a question, said appraisals have moved to OST and will be transferred to OST, under Doug Lord.

Mr. Old Elk asked about the future of the irrigation program. The irrigation canal was turned over to the BIA at the turn of the century and it has become dilapidated and the irrigation system needs to be improved.

Keith Beartusk acknowledged that the irrigation program is one additional program that is not well funded; the BIA gets only \$10 million bureau wide to do this. The other source of funds for the program is “O and M” monies, the fees the BIA assesses. But those fees have not been raised and as a result “these programs have just slid down hill.” He said Congress has indicated that the answer is not more appropriated money.

Amanda Wilbur from the United Sioux Tribes Economic Development program presented next. She said the Tribes are concerned about the continued outsourcing from the BIA. The Tribes have to be consulted when any contract is awarded. She

asked about putting more emphasis and resources into economic development programs.

Keith Beartusk said that outsourcing “is one of this administration’s positions so there isn’t a lot we can do on that.” He said that the new head of the BIA Dave Anderson is very interested in economic development, that he wants to take this program, which is now just a credit program, and make it a real feature program of the BIA. This initiative to make economic development a priority in the Bureau falls right in line with the Tribes’ priorities. “Our economic development program has been reduced to one program, the guaranteed loan program; it is Mr. Anderson’s intent to build that back up so it is not just the loan program.”

A question from the audience, directed to Mr. Beartusk, was whether Tribes could exchange idle tribal lands for other federal lands.

Keith Beartusk stated that of the “idle” land is allotted, not Tribal, so the BIA would have to be requested to do this by the allottees, but if a request is made “we would be willing to do this.” He added that there is not much incentive for the other federal agencies to own this land either because it is landlocked. “The non-Indian] landowner who owns the surrounding land has free run of it as it is, and doesn’t have any incentive to do this.” He said the land might qualify for an ILCA purchase, and then the Tribe would be owner of the land and “we could work with the Tribe to get some kind of consolidation, to put the Tribe in the driver’s seat.”

Scott Russell asked if there was some way to simplify and streamline the fee to trust process, or to stop trust lands from going into fee.

Keith Beartusk said that the individual trust land owner has the right to put his land into fee. “The Tribe can’t control this and neither can the Bureau.” He said “what we can do is try to make it easier to put fee into trust. But any fee land that is going to be used for gaming, moving that into trust, is frowned upon by the BIA.”

Break

Panel and Responses

Doreen Bell, a Councilwoman from Fort Belknap, presented next. She said that hers is a large land based tribe and with 2 to 3 percent of land in fee. There are a now only a few original allottees, the elders, still living. They are very poor and have trouble getting to meetings like these. She said that OST should come out to their reservation at Fort Belknap, that OST needs to improve communications, and should at least introduce themselves to the Tribal Council, and explain the organization of the agency

She also stated her concerns about the irrigation system, “and I will echo what was said earlier, the O and M charges, I don’t know why the allottees are still being charged this,

nobody knows what O and M is, this is the BIA's fiduciary responsibility." She said probates are very slow to close and there is a back log.

Keith Beartusk said that "within the BIA carryover is a thing of the past. The new positions are being funded by carryover. I wish it weren't so, I do think the Tribes have the right to look over our shoulder and get the carryover money but until we get the reorganization funded there just isn't going to be any carryover money."

He said that landowners will be billed "O and M" irrigation system fees if their land is determined to be irrigable. He said that grazing lease appraisals are done using "a comparable sales approach," looking at the recent leases, and "we tossed out the lowest and the highest" to determine what the right AUM amount should be.

Robert Upton said that OST has met with Assiniboine Treaty Committee. He said it is a good idea to get some type of monthly report to the Tribal Councils, and OST has hired a technician to work on these communications efforts.

Bruce Laudermilk said that getting fiduciary trust officers out on board will help answer many of the questions that the tribal members have.

Robert Upton stated that trust administrators must have their first outreach meeting within eight months of being placed in a region, "and it will be a miniature meeting such as this, a forum for individuals to come with their problems, held in the evenings or on weekends so working people can attend, plus training to help people to understand fiduciary responsibilities, estate planning, training in financial matters, laws of descent and distribution, wills." He said this is a stated objective in the total package of what trust officers are supposed to do.

Bruce Laudermilk said the OST has a suggestion box, and "we will try to use the ones that we thought would be a good idea." One of the suggestions had to do with doing flyers about IIM accounts to help communicate to Indian people and heirs about IIM accounts.

Dean Curtis Bearclaw from the Crow Tribe presented next. He said he is a member of the Crow Oil and Gas Committee. The effort of the committee is to develop our oil, coal and gas. The committee is looking at the Ash Creek exploration, which produced about 8-10 million barrels of crude oil, but no payments were ever made to the Crow Tribe. He said the committee has reason to believe that forced migration of oil through water injection was conducted on this site. He asked the OST to "release any and all information on this issue so we can continue in this investigation." The Crow Oil and Gas committee wants access to coal and oil development files.

Keith Beartusk said this is the first time he had heard of this issue, but a BIA staff person said that issue was brought to us about a year ago, and "we did research on it and contacted the BLM office in Wyoming, and the BLM office did provide

us with information and we provided everything to the Tribal Chairman, and we also advised him that if he wished to have BLM involved we would contact him.” Keith Beartusk then said that “if there is additional follow up, we will get this written report to you.”

Gladys Yellowrobe of the Northern Cheyenne Tribe described problems she was having with BIA Social Services and her guardianship of her mother. “The BIA doesn’t need to be involved.” She asked why it takes so long to get money from IIM accounts. She had requested emergency funds for her mother and instead had to take money out of her daughter’s savings account. “They told me I had to go the BIA in another state.”

Keith Beartusk said that he would have more questions than answers on this particular issue, but the BIA social service system is set up as a safety net, and is intended to assist people who aren’t eligible for services from county or state. He said he would look in this and respond.

Robert Upton said the funds requested were sent in a check cut on June 30, one day after the request was made. “I don’t know why those checks were not delivered but that is why we encourage the use of bank accounts for automatic deposit. Any time the check is mailed we don’t have control of it.” He said that the check was received July 10.

Keith Beartusk, in response to a follow up question about why the BIA would be involved at all, said that the BIA’s responsibility is to make sure that unscrupulous individuals don’t take advantage of elderly people. “Those safeguards are there for a good reason...The rules are there to protect individuals, the young or the very old.”

Dean Bear Claw said that in 1851, the Crows claimed a territory of 38 million acres of land and now the reservation is 2.3 million acres. In the early 1800 there were 8,000 Crows, this population dropped to 800 although it has increased. In the year 1900 the language proficiency level among the Crows was 100%; now among the children it is 6%. The Crows have lost many cultural practices and sites. He said he hopes that this pattern of loss will be changed to pattern of positive gain, so there will be hope for the members of the Crow nation.

Recess for the day

July 16, 2004

Opening remarks by Scott Russell, Crow Nation, ITMA Board of Directors

Invocation by Lanny Real Bird

Panels and Responses

Dr. Vernon Hill, Chairman of Shoshone Business Council for the Eastern Shoshone Tribe, was the first presenter. He described the background of Tribe, the treaties which, beginning in 1863, established a permanent homeland for the Tribe. In 1863 the Fort Bridger Treaty reserved 45 million acres for the Tribe, but in 1868 this was reduced to 2.2 million acres. In 1878, the federal government relocated the Northern Arapaho Tribe to reservation, and gave the Northern Arapahos undivided interests in reservation land. The Eastern Shoshones were compensated for this. The Allotment Act and policy were implemented here in 1890s.

There are now about 3500 enrolled Eastern Shoshone Tribal members. Approximately 40,000 acres of reservation land is used for agricultural and ranching operations. There are 1100 miles of streams and 360 miles of rivers. Both Tribes operate businesses on the reservation. Unemployment rates exceed 60 percent and 25% of those who are employed earn less than 4k annually.

He stated that "we need commitment and support of federal government. We keep hitting a brick wall and we work with Congressional delegation and they are just as frustrated with the Department's lack of response. We need action from the federal government."

He said that in the Landry area, individual and Tribes have oil and gas holdings and the Tribe was successful in raising royalty rates on the leases but individuals have not been able to do so. He said that the OST should make sure that the individuals get increased royalties.

He said the DOI must resolve the Cobell case in a fair and honorable manner. Many individuals use their oil and gas money to survive and they need the Cobell settlement money. The Tribes and individual tribal members should be kept informed on the status of Cobell negotiations.

He described challenges with Wind River irrigation project; Congress authorized the project as a treaty obligation in exchange for 1.5 million acres of reservation land. The objective of building the irrigation system was to develop agriculture. Now the project has fallen into such disrepair it needs about \$55 million to fix it. The Tribal members are supposed to pay for improvements, the users are assessed fees for its operation. To assess fees breaks a treaty promise, and the DOI needs to make a commitment and financial support to address this.

He said the BIA should update its regulations to be consistent with Tribal policies and laws. Appraisals must be conducted fair and consistently. He said that both the Eastern Shoshone and Northern Arapaho Tribes opposed the DOI's trust reorganization plan, which was implemented with no consultation with Tribes. He said that

reorganization “won’t change the most pressing problems, but it created additional bureaucracy that would be funded at cost of programs, gave too much authority to OST, placed Indian preference at risk, and resulted in diminishment of federal resources available to tribes.” He said that the DOI, OST and BIA must keep Tribes informed and give them “a true consultation role, a seat at the table.”

He said that If US can find money for reconstruction of Iraq, it can find the money for Tribes. Tribes need help in trust processes management and economic development support. When Neal McCaleb was named Assistant Secretary, he said economic development was an important issue but the government has not followed up on his commitments.

Keith Beartusk responded that economic development was an initiative of Neal McCaleb, but it wasn’t followed up on during his term in office. He said that current Assistant Secretary David Anderson is very much interested in economic development and is pushing this as his primary initiative, make it more than just a credit program.

As to the reorganization of the BIA, he said he understands Tribes’ concerns, but “we have been given our marching orders and the reorganization is about 90 percent complete. We are in one of the last stages of the reorganization. Let’s make the best of this to improve the system and delivery of services to Indian people.”

He agreed that the irrigation system, the system on the Wind River Reservation is in considerable disrepair, but Congress does not want to provide additional appropriated funds “and when we raise the O and M funds, the users complain.” He said that if there is a theft of Tribal oil, his agency needs something in writing. Because there are three agencies involved, the BIA, BLM, MMS, this causes confusion.

Clark Madison of the BIA responded. He said that until 1948, the DOI Secretary could grant easements without consent of landowners. He acknowledged that “there are roads on the reservation for which we can’t find a valid easement.” He said the “Indian Ag Bill,” passed in early 1990s, allows Tribes to have authority over leasing on allotted lands, set the rates, and determine who will be the lessee. Tribes can exercise Indian preference on leases and issues bonds for an economic development project. If a Tribe enacts a bonding resolution dealing with allotted lands, and if 50% of the allottees object the resolution, they will be able to opt out of it.

He said the Wind River Reservation has 100,000 acres of allotted land but there are more owners per tract than any other Tribe. There are 100,000 owner interests on the reservation, with some tracts owned by 600 or 700 people, and “obviously that is an awkward problem.”

He said that if there is a specific instance where there is impropriety going on with oil and gas leases, his agency needs to know what it is “and we will follow up and see what we can do about it.”

Robert Upton stated that the focus and emphasis of OST has been on financial transactions and record keeping and “that is just a small part of what needs fixing.” He said that as OST meets with success with Trust Officers, better systems, more training, we expect that the results from that will greatly clear up the accounting problems that have occurred.

He said that the BIA has primary focus on management of natural resources. OST is not to be the manager of those resources. OST’s focus is fund management. “This is an evolutionary process and there is a recognition that there are problems that need solving. OST wants to broaden its role in finding solutions to these problems.”

Richard Parker Jr., Chippewa Cree Tribe, Business Council member, presented next. He stated that his reservation includes 130,000 acres of timberlands. The Tribe is totally self governance and has about 6500 enrolled members. All reservation lands are held in trust by the US for the Tribe, so it doesn’t have the fractionalization problems many other Tribes face.

He said that his Tribe “went to Congress and got some legislation passed where we are not going to be involved with the whole reorganization process and I know that there are some other tribes trying to make the move that we made.”

He said there is a trust responsibility for education, law and order, social services, what are now considered “non trust” programs and “are being put on the back burner and there is no emphasis being put on them.”

He said the Cobell lawsuit has put individuals’ concerns above tribal governments. “I would hate to see individuals come in and trump Tribal Government actions as to how we do business.”

He stated that there has been a no real consultation on the reorganization. “I sat on trust reform work groups, at some point OST went out on their own and I still have a lot of bad feelings about that.” He said many problems come from the lack of resources available at the agency level. There are too many paper appraisals because there isn’t enough money for on-the-ground appraisals.

Robert Upton responded that funding is a big part of this problem and we have heard a lot of comments on this, and will submit your comments to OST Special Trustee Ross Swimmer and Principal Deputy Donna Erwin. He said the OST is “trying to address where the greatest hurt is first and getting information systems in place first has been the focus for the last several years.” The OST will try to address other needs. He said that the US is making huge amounts of money available to foreign countries and not making money available to Tribal people. “We have to get these issues properly presented to our Congress.”

Keith Beartusk stated that the Chippewa Cree have been very successful in self-governance, very professional and businesslike. He said Mr. Parker's comments that the non-trust programs are suffering and "is a point well made." If the "non trust" programs have not seen actual budget cuts, they have, at best, remained flat.

Robert Upton stated that there has been "a great deal of thought given to the qualifications of trust officers." He said candidates may be trained in trust matters but not familiar with the ways of government, the laws and Indian country and all the issues that go with it. "We are trying to compromise and bring people in from Indian country and teach them fiduciary trust principles and banking world people and teach them about Indian country." He said the president of a bank who has never worked in Indian country will need at least two years before he would be "functional." On the other hand "we can take a person that has worked in BIA and teach them fiduciary law and it will take two years to get them up to speed." He said that OST is making an ongoing effort to solve these problems and we are doing the best we can.

William Walks Along of the Northern Cheyenne Tribe presented next.

He stated that treaties are a sacred obligation of the U.S. government He said his mother receives payments from Pine Ridge and Oklahoma, because of some of her people settled in there, but he has never seen an activity report on how she received those payments, the lease payments and royalty payments. She recently found out that her land was near the Prairie Wind Casino. He said a lot of people are not even aware of where their payments are coming from.

He said the BIA local superintendent allowed a road to go across some tribal elders' land and did not have the consent of the 67 owners who had an interest in that 40-acre tract. He was told this was handled legally but "we did an aerial survey and sure enough they were crossing that allotted land without an agreement. To this day there has been no compensation for those landowners. And I often wonder how many other times that has occurred."

He said that appraisals are so backlogged, that there are cases where people died waiting for appraisals of their land. He recalled that a man built a sawmill on his father's land and gave his father a document from the BIA, that said they had every right to shoot him for trespassing on his leased land. "So we had to go way around to get to our hayfield. The BIA man would go down and drink with the man who owned the sawmill. I am talking about this because it is my experience and affected my perceptions."

He said BIA does not have a system in place to appraise water. This is an issue because some of the ranchers on the Tongue River were fighting over the water. and the Cheyenne had water rights in that river system. The Tribe wanted to realize a benefit from that Trust asset.

The Tribe has a “Treatment as a State” application with EPA office in Denver the TAS application has been held up for two years and is still sitting in the General Counsel’s Office in Washington. The BIA did not support the application for TAS. Montana and Wyoming have both opposed that (TAS) capability to have tribal water quality standards enforced.

He said that federal bureaucrats “have the capability to give us answers that have no meaning. . . it is up to us as tribal leaders to convey this to you...so that there is a common understanding that you know we mean business.”

Keith Beartusk responded that “we will follow up on the rights of way/trespass issue and to make sure that the allottees receive compensation.” He said that the BIA should “never say that anyone had the right to shoot an Indian landowner.” He apologized for that if it did happen.

He said that one of the problems with the proposed TAS is “we have conflicting opinions by two tribes, in this case the Northern Cheyenne and Crow, and it puts us in a difficult position. . . we felt we should stay silent and let this be an EPA issue so we are not hurting one tribe at the expense of another.”

Clark Madison responded that the BIA can’t approve a land sale without knowing what the fair market value of the land is and they can’t know that without an appraisal. He said that when individuals get payments, they need to know what they are paid for and why, what land they own, what leases and other encumbrances are on their land.

He said that Indians with interests in land on other reservations are “Foreign Indians”—“it is the classic oxymoron.” He said some Northern Cheyenne members own land on other reservations, and the least that generates the money gets credited to the account at Northern Cheyenne, and it is “an issue we have been trying to deal with, it affects lease payments, consents, notices and probates.” The BIA needs to have an inventory of what property people own not only on their reservations but what they have acquired on other reservations.

Robert Upton responded that is important in forums like this to restate [the terrible history] of the treatment of Indians and it is needed to raise awareness of this. “And I will do what I can to address the issue, for me to say more is to give excuses and I have none.”

Bruce Laudermilk of OST responded that he has worked on the Tongue River dam project. He said that water appraisals are now under Doug Lords of the OST. “So I will take this to him.”

John Berrey, Chairman of the Quapaw Tribe, presented next. He said that “fee to trust in eastern Oklahoma is a nightmare because there is a lack of processes and policies on this. Every time we send in an application which is just like the last application which

was approved, it's sent back to us. We are extremely frustrated that there is no standardization and consistency in policies.”

He said there is a problem of enforcement of leases, lessees over 30 years in arrears in payments, trespass, and theft of trust assets, the excuse when we make a complaint is always “we don't have the resources.” He said “we are actually looking forward to getting a trust officer in our region to get some of these issues taken care of.”

He described problems that occur in the federal agencies because of not training of new employees. “I have a superintendent at my agency who doesn't know anything about land conveyances. It is kind of frustrating when you have the beneficiary advising the trustee on things like conveyances.”

He said it is frustrating that although tribal governments own 70% of the trust corpus and the OST is placing trust officers on the basis of the number IIM accounts, IIM trust dollars at any one reservation. “We believe that the Tribal government is and should be a priority as a beneficiary. Even though we believe the OST is becoming beneficiary centered we need to remind the OST that one of the beneficiaries is Tribal governments.” He said that trust officers have not met with tribal governments, and “that is extremely insulting me/ The first people those trust officers ought to meet with is the Tribal governments. . .I would strongly recommend to you, Mr. Upton, that your trust officers would meet with the Tribal Governments here in the Rocky Mountain Region.”

He said that advertising for trust officers in the *Wall Street Journal* will not get the word out to potential employees on the reservations, Indian people on the reservations are more likely to be the best people to fill the to positions. “They may not be experts in the fiduciary duties, but they are experts in the wacky world we call Indian trust. Bankers in the outside world have no idea what the Indian trust is about. Indian people communicate differently.”

He said that there has been no real effort by OST or BIA to outsource contracts to Indian companies. There isn't an emphasis to do outreach in Indian country, to look at them and help them develop the capacities to meet these needs.

Robert Upton responded that advertising has been placed in many newspapers, not just the *Wall Street Journal*—I was responding to the criticism that we haven't brought proper expertise to address some of these problems and I know the Special Trustee wants new blood and expertise to give us a balance that we have not had.” He said he “very definitely wrote down in great big letters—that it is very important to bring trust officers to tribal governments.”

Clark Madison agreed that there is a need for consistent processes in fee to trust transactions, and enforcing against trespass, but “compliance funding has dropped, not enough resources for compliance officers in trespass situations.”

Panel 4

Donita Moran (King) of the Crow Nation presented next. She talked about personal trust problems with regard to her children and the fraudulent use of their names.

Keith Beartusk stated that he will address any specifics on fraud and mismanagement that Donita can provide. He said that Mr. Madison is familiar with this situation and “if you will address the Bureau in writing we will respond.”

Don Amee, a member of the Hopi Tribe, presented next. He said he spoke for his wife, Holly, who has inherited land holdings from Concho, Fort Berthold, and has experienced difficulties in finding out what has happened with these, where the land is located, who is on the property list with her and so on. He described problems with BIA management of this property.

Clark Madison responded that Mr. Amee would need to contact the agency where his wife is enrolled.

Amanda Wilbur then announced that she has heard from Paul Morehead, that S 1721 is about to pass the House and go to the President, and the main focus of the committee is to get more money to fund the land acquisition, and more appropriations for programs, and settlement of *Cobell*.

Richard Sangrey concluded and thanked all participants and federal representatives for attending. He said that any written statements for the record should be addressed to ITMA and Mary Zuni.

Session concludes