

**FY 08**  
**FIRST QUARTERLY REPORT**  
**(October, November, December 2007)**

**OCTOBER 2007**

Modernization and Indian Energy Concerns

On October 11, ITMA attended the BIA "Modernization Initiative" meeting in Phoenix and discussed its possible effects on trust administration and trust reform efforts of OST. Of particular concern was the "Energy Right-of-Way" study mandated by Public Law 109-85, and the efforts of certain energy-related companies to secure the authority to condemn rights-of-way across tribal lands. In addition, there were questions raised about the surprising decision to take energy and mineral activities from the Office of Trust Responsibilities and lodge those program responsibilities into a new Office of Indian Energy and Economic Development within the Assistant Secretary's office. A great deal of discussion centered on concerns of tribal officials and individual Indians that too much responsibility and authority were being removed from local agencies and regional offices.

Annual Conference

ITMA conducted its Annual Conference from October 22-26 in Las Vegas, Nevada. Principal Deputy Special Trustee Donna Erwin and OST's ITMA Grant Monitor Pat Gerard were present to discuss OST initiatives and accomplishments, as well as the FY '08 ITMA grant from OST. Of particular concern for this discussion was the OST's earlier insistence that an otherwise across-the-board reduction in funds was not to be applied to an OST liaison position, and that the liaison position be funded at 31.7% of the entire ITMA FY'08 budget. Prior to the Annual Conference, OST agreed to reduce the amount demanded for this position to only 27% of the FY2008 grant award. The board of directors refused to agree to this budget until provided with an opportunity to discuss the matter with senior OST officials.

ITMA also conducted discussions with member tribes and representatives of other tribes in attendance on a wide range of subjects affecting trust administration, trust reform, and OST activities. These included, among other things:

### Inspector General Activities.

The Inspector General had indicated that there was at least the appearance of impropriety between certain OST officials and contractors with the office. The Principal Deputy Special Trustee indicated that OST had reviewed the report and, while not agreeing with the clear implications of impropriety, would nevertheless ensure that appropriate sanctions would be imposed, and that appropriate training would be required to guard against the possibility of any such allegations in the future.

Earlier, the Inspector General had issued a report on the Office of Special Trustee in which he acknowledged that "OST has implemented several key trust fund management reforms, but has not prepared a timetable for completing its remaining [objectives]." That report indicated that OST had estimated that virtually all reforms needed to develop an integrated trust fund management system would be completed by the first quarter of FY2008.

### Trust Fund Litigation

A good deal of time was devoted at the Annual Conference to discussing the raft of litigation arising from the government's administration of Indian trust funds. Among other things, the *Cobell* case was showing signs of approaching resolution, with a major trial in October 2007 on the issue of an accounting for the *Cobell* plaintiffs.

In addition, the government had filed a motion to dismiss some 37 cases pending before the same judge who was presiding over *Cobell*. These tribal cases were proceeding on much the same theory as *Cobell*, and the government was making much the same preliminary motions it had made in *Cobell*, including challenging the jurisdiction of the court to entertain the suits. The government had requested the court remand all the tribal claims to the Department of Interior for administrative action on demands for an accounting before entertaining any judicial challenge, and the judge had requested consolidated briefs from all the litigating tribes by October 1 on the government's motion.

Tribes continued to discuss the proposed class action on behalf of all non-litigating tribes by the *Nez Perce* and eleven other tribes represented by the Native American Rights Fund. NARF attorneys explained that the "limited" intrusion on tribal sovereignty represented by their lawsuit was amply justified by the importance of the case they had filed on behalf of all tribes who had not chosen to file suits on their own behalf for the same type of accounting the *Cobell* plaintiffs had been seeking in court for more than ten years. An additional element of the NART case was that the tribal plaintiffs there were mounting a direct assault on the Arthur Andersen reports that tribes had received back in the 1990's. The NARF suit requested a judicial determination that the AA reports did not constitute an accounting sufficient to accrue tribal claims subject to any statute of limitations.

### ITMA FY2008 Activities

The new ITMA Board of Directors, elected and seated on October 23, discussed the financial condition of ITMA, the FY2008 federal budgets for OST and the IG, and the listening conferences conducted throughout FY 2007, as well as plans for a more limited agenda for

listening conferences in '08. In addition, the board discussed the prospects for legislation to address trust reform initiatives, trust fund settlements, AIPRA implementation, and the effects on trust reform of the BIA's announced "Modernization Initiative," among other matters.

In October, ITMA also reviewed OST's publication entitled *Restoring Trust*.

## **November 2007**

### NCAI

In November 2007, ITMA was accepted an invitation to participate in and address the annual meeting of the National Conference of American Indians in Denver, CO. ITMA responded to questions regarding the IG reports on OST; on the Special Trustee's apparent inclination to recommend against the 'sunsetting' of the Office of Special Trustee, which had been created by the American Indian Trust Fund Management Reform Act of 1994; and on the apparent outsized budget requests for OST, compared to those for certain BIA trust-related activities.

This conference not only gave ITMA an opportunity to gather a wide cross-section of views and concerns from Indian country, but also gave ITMA staff and officers an opportunity to share the views and responses of OST regarding such matters as the proportion of money appropriated to OST that is actually passed through to the BIA and agencies actually providing local services, and to discuss the OST responses to the IG reports. In addition, ITMA discussed some of the OST accomplishments acknowledged by the IG, and explained the actual site visits ITMA had made in its monitoring capacity, including visits to the lockbox bank in Prescott, Arizona and to the American Indian Records Repository in Lenexa, Kansas. ITMA also discussed the beneficiary call center with individual account holders.

### CERT

ITMA also participated in an annual meeting of the Council of Energy Resource Tribes in San Diego in November. Here, too, ITMA discussed its monitoring role on behalf of tribes and described ITMA actual visits to the lockbox facility, to the Albuquerque office of OST where the lockbox utility was demonstrated in real time, to the AIRR in Lenexa, as well as the less favorable aspects of the IG's reports.

## **DECEMBER 2008**

In December, ITMA was invited to discuss trust reform issues with the organization of Large Land-Based Tribes in Las Vegas, NV. There, ITMA discussed the issues associated with the fractionation of Indian land and previous legislative efforts to deal with the issue, as well as the effects of the current Indian Land Consolidation Act and the American Indian Probate Reform Act.

In addition, ITMA discussed with the LLBT tribes initiatives for 2009 in which trust reform might once again be placed high on the agenda of Indian country and tribal organizations. In particular, ITMA suggested that the nationwide implementation of TAAMS would likely result in

much more efficient real estate services for all Indian landowners, and that the lease payment lockbox would result in much more efficient processing of trust fund receipts coming from the commercial or agricultural use of Indian lands.