

**FY 08
THIRD QUARTERLY REPORT
(APRIL, MAY, JUNE 2008)**

April 2008

ITMA hosted a national meeting in April and more than fifty tribes from throughout the country were represented in attendance. The meeting, which focused on trust reform initiatives and fractionation issues, featured prepared presentations as well as round table discussions and Q & A sessions with top-level officials from OST and DOI.

ITMA explained the series of listening conferences ITMA has hosted in recent years with active participation of both Special Trustee Ross Swimmer and his Principal Deputy Special Trustee Donna Erwin. ITMA Executive Director Mary Zuni-Chalan explained the recent agreement of ITMA to undertake a national outreach and consultation initiative to address specifically the issue of Indian land ownership fractionation, and to provide a report and recommendations to OST by the end of FY2008.

The ITMA Board passed a resolution endorsing the continued funding for the Indian Land Consolidation Center and the Office of Minerals Evaluation.

Indian Land Consolidation Program and Fractionation Initiative

Special Trustee Swimmer provided a report on the activities, initiatives, and accomplishments of the Office of Special Trustee. Responding to questions from ITMA and meeting participants, Mr. Swimmer explained the deliberations that resulted in the elimination of requested funds for the Indian Land Consolidation Program in FY2009. In short, he explained that programmatic review had concluded the program was simply not making sufficient headway in addressing the underlying problem, that land was being fractionated through inheritance faster than it was being consolidated through purchase by the ILCP.

Mr. Swimmer advised that he was instructed to make a recommendation to the Office of Management and Budget by the end of FY2008 for an approach to deal with Indian land fractionation in a comprehensive manner. Mr. Swimmer and ITMA Executive Director advised the meeting that ITMA had agreed to conduct an outreach program on behalf of OST to solicit recommendations from Indian country for his consideration in fashioning his response to OMB.

Brian Gunn Announced as OST Liaison for ITMA

ITMA Executive Director Mary Zuni introduced Brian Gunn to the national audience as the liaison person between ITMA and OST. Mr. Gunn, a member of the Confederated Tribes of the Colville Reservation, is an attorney with the law firm of Drinker, Biddle & Reath in Washington, D.C. Mr. Gunn was later provided with a tour of the OST facilities in Albuquerque by Special Trustee Swimmer and Principal Deputy Special Trustee Erwin, and introduced to key OST officers. He met, among others, Special Deputy Trustee for Field Operations Doug Lords, Acting Special Deputy Trustee for Trust Services Jeff Lords, and Division Chief of Trust Fund Investment Charles Evans.

MAY 2008

Indian Preference Decision

On March 31, 2008, the U.S. District Court for the District of Columbia issued an opinion in *Indian Educators Federation v. Kempthorne* that Indian preference in employment applies to “all positions in the Interior Department that directly and primarily relate to the provision of services to Indians.” ITMA was besieged by calls asking what ITMA or Indian country was going to do about this decision in light of the Special Trustee’s previously announced decision that Indian preference was not a required policy within OST. These questions concerned not only the immediate office of the Special Trustee, but also the Office of Historical Accounting, the Office of Trust Funds Management, the Office of Appraisal Services, and the Office of Trust Records. ITMA agreed to raise this issue with OST at the first opportunity.

ITMA participated in the Mid Year Conference of the Affiliated Tribes of Northwest Indians (ATNI) May 13-14, 2008 general assembly agenda providing an update of the April Tribal Leaders meeting and the OST Fractionation Project. A special meeting was conducted following the conference. Approximately 15 individuals attended.

JUNE 2008

AIPRA Regulations

ITMA discussed with OST the publication of final regulations to implement the American Indian Probate Reform Act. This final rule will add new regulations regarding the federal approval of tribal probate codes to supplant the new federal Indian probate code contained in AIPRA for tribes who choose to adopt their own codes. Complicated issues to be addressed in these regulations include the rights and responsibilities of life

tenants, whether to abrogate the common law open mine rule, and otherwise address the allocation of income and rights of life tenants and remaindermen.

NCAI

ITMA participated in the NCAI Natural Resources Committee meeting and took the opportunity to advise tribes of the proposed Fractionation Project. Several tribal leaders spoke in support of the work ITMA has done and urged tribes to participate.

ITMA provided an update of the April Tribal Leader's meeting.

Cobell Trial on Recovery of Money

A two and one-half week trial in the *Cobell* case was held in June, and the judge indicated that he intends to enter a judgment in favor of plaintiffs in a nine-digit amount.

Crop Share Leases and Revenue

ITMA discussed with OST an issue similar in nature to the "direct pay" issue, namely of how to permit OST to maintain an audit trail of obligations and payments to Indian landowners, while respecting their right to structure their commercial transactions in a way that permits them to maximize the return from the use of disposition of their trust resources.

At the April meeting, tribal leaders had indicated their tribal leases and some of their members' individual leases were receiving less money from crop share arrangements than they would otherwise receive, were it not for OST's insistence on early but untimely payment simply in order to simplify the recordkeeping and accounting duties of OST. In other words, crop normally market in December, but harvested in September, is required to be paid upon September prices, then the landowner loses the benefit of retaining an interest in the crop for December sale. OST indicated understanding of the problem and further indicated OST will resolve the matter in the same spirit it has already addressed the direct pay issue.