



INTERTRIBAL MONITORING ASSOCIATION on Indian Trust Funds
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FY 08 FOURTH QUARTERLY REPORT (JULY, AUGUST, SEPTEMBER 2008)

July 2008

Much of the month was spent finalizing the approval process of the Tribal Trust Fund Settlement Project seven participating tribes. While this may not be directly relevant to 'trust reform' it is connected in that OHTA is a project of OST and it addressed trust funds.

On July 30, 2008 the ITMA Board of Directors met in a full quorum with the tribal representatives of the TTFS and unanimously approved the TTFS Methodology from 8:30 a.m. to 12:00 noon. From 1:00 p.m. to 5:00 p.m. through noon July 31, the Board met on trust reform related issues. The OST Special Trustee, Principal Deputy Special Trustee and ITMA Contract Monitor participated in the July 31 meeting.

Special Trustee provided a very detailed review of OST activities for FY2008 obtaining the feedback of the Board on issues such as the backlog of appraisals, status of DOI Regulatory Initiative, Fractionation problems and outreach to ITMA to assist in the effort. The Special Trustee was asked about the recent OIG Report pertaining to contracting issues and improprieties of certain OST staff. Mr. Swimmer indicated he would get back to the board upon completing his review of the matter and provide a copy of his written response.

The status of the Indian Preference Issue was discussed.

August 2008

The ITMA Executive Director was invited to present an ITMA Report of Activities at the August 5, 2008 Council of Energy Resources Tribes Annual Conference. CERT remains a very supportive organization to the efforts of ITMA and shares reports and ITMA positions with their membership.

On August 6, 2008 the Director and ITMA Legal Counsel met with Jim Cason of DOI regarding his views of the fractionation problem and presented ideas about estate

planning. During the trip ITMA also met with the Director and Deputy Director of the Indian Land Consolidation Center to obtain information and statistics on their project efforts.

A Fractionation meeting was conducted on August 13-14 at the Crow Reservation. The meeting was held in conjunction with Crow Native Days. Eight tribes were represented at the meeting. ITMA presented a power point outlining the history of the fractionation issue and solicited input from tribes.

The Confederated Tribes of the Yakama Nation hosted an ITMA listening conference on August 20 and 21 at the Yakama Cultural Heritage Theater Center in Toppenish, Washington. Representatives from the Office of the Special Trustee and the central, regional and agency offices of the Bureau of Indian Affairs gave presentations and answered questions. In addition to hearing about trust reform related issues, ITMA staff presented the history of fractionation of Indian lands discussing the genesis of fractionation through efforts to address the issue with the Indian Land Consolidation Act and, most recently, the American Indian Probate Reform Act. It was noted that nearly half of the BIA's realty budget is devoted to managing a small number of highly fractionated interests.

Special Trustee Ross Swimmer provided an overview of the circumstances leading to passage of the 1994 American Indian Trust Reform Act and the creation of the Office of the Special Trustee. Mr. Swimmer reported on the new accounting system that replaces the BIA accounting system, the new files storage facility, and the National Archives and Records Administration facility in Lenexa, Kansas. Today NARA serves a central repository for many Indian trust records holding 180,000 cubic feet of documents, representing three to four hundred million pages of records.

Yakama Nation focused on fractionation stating the government should fund low-interest loans to tribal members to consolidate their interests and then institute a process which would allow for "timely partitionment of the allotments." This process would "include funding for staffing, surveys, appraisals, and allow forced partitionments upon application of the majority shareholder." Other issues presented were on-going delays with the fee-to-trust process attributable to requirements for containment surveys which are required for fee-to-trust application; qualifications for individuals who prepare the surveys are so stringent tribes are being required to pay consultants to prepare the surveys; fee-to-trust delays and staffing shortages for probates, issues related to payments; land consolidation and probate matters, and communication issues and delays associated with various land transactions and probate proceedings

ITMA Staff met with the Salish & Kootenai Tribal Chairman, several Councilmen and the Lands Office staff regarding trust reform issues as well as the Tribe's specific fractionation issues. The program staff discussed their take on the Indian Land Consolidation Project efforts, and they were not necessarily supportive of project. Other issues will be presented within the Final Report of the Fractionation Project due to OST in December 2008.

September 2008

The Osage Tribe hosted the 17th ITMA “Listening Conference” at Pawhuska, Oklahoma on September 9, 2008. Chief of the Osage Tribe raised numerous issues critical to the Osage Nation including: the fee to trust process, the necessity of developing solutions to fractionated land ownership to rebuild tribal land bases decimated by the federal allotment policy, and, the proper management of the tribal trust assets, particularly the Osage Mineral Estate. He also also requested the federal representatives clarify whether they recognize the new Osage Constitution or conflicting federal regulations relating to Osage membership, and expressed concern about the Osage Agency’s recent decision to discontinue paying property taxes owed by individual Indians out of individual trust funds.

Osage Tribal members provided testimony and discussed a variety of issues including:

- Concerns about individual Tribal members losing ‘headrights’ if the tribal administration assumes management of IIM accounts;
- Preservation of the Nation to Nation relationship;
- Clarification of which agency actually serves as the fiduciary trustee of the Osage Minerals Trust and who are the proper beneficiaries of the federally created Osage Minerals Trust;
- Concerns about the accuracy of Osage land records due to instances where restricted lands were not included in land inventories;
- Concerns that BIA records did not have accurate addresses despite persons being easily locatable in the local community;
- Concerns that the non-payment of taxes on restricted lands out of individual trust funds could result in a loss of lands for some individuals;
- Concern that BIA provides little assistance to landowners to negotiate beneficial leases for grazing;
- Concerns about BIA’s failure to consult with Tribal members prior key decisions impacting landowners;
- Concerns that the BIA Superintendent and the Tribal Chief need to develop a better working relationship;
- Concerns that funds paid into DOI by lessees do not go into interest-bearing accounts during prior to approval of the lease;
- Concerns that the Osage Agency realty office is inadequately funded and has a shortage in staff;
- Concerns with backlog of appraisal requests;
- Concerned that only property on the individual landowner’s land inventory is income generating property;

- Questions about the definition of a 'competent' Osage member and who makes the determination;

Representatives from eight tribes attended the session, along with approximately 100 individuals.

ITMA staff spent a significant amount of time preparing the agenda and presentations for the FY2008 Annual Conference scheduled for October 1-3, 2008. Several telephone conference calls were made between staff, ITMA consultants and Board members finalizing the Agenda, positions, and documents for presentation at the Conference. A detailed report will be provided on the FY2009 1st Quarterly Report.