



INTERTRIBAL MONITORING ASSOCIATION on Indian Trust Funds
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ITMA FY 2008 SEMI-ANNUAL REPORT (October 1, 2007 – March 31, 2008)

As a means of carrying out ITMA's outreach and education mandate, ITMA is invited to, and participates on the agenda for various resource-related national Indian organizations, such as the National Congress of American Indians, the Large Land Based Tribes, the Council of Energy Resource Tribes, etc., to report on trust issues. In addition, ITMA visits with regional and local tribal communities which includes audiences of tribal leaders, individual account holders and landowners, to report on ITMA's activities and bring to the attention of the tribes and individuals initiatives of the government.

Readers of this report can find more detail of many of the matters discussed in this report and in ITMA's newsletters which are sent to all federally recognized tribes on a regular basis, on ITMA's web site, and in the 2-inch binders provided to all attendees at ITMA's regular and special meetings. Copies of the materials in the meeting binders may be requested by individuals or tribes to ITMA at the address above

The Intertribal Monitoring Association Leadership

Sixty-five tribes from across Indian Country, all of whom have a significant investment in trust funds and resources are official members of ITMA, by means of a tribal council resolution. All ITMA activities and meetings involve not only its membership, but encourages the participation of every tribe and Indian organization from across Indian country.

The ITMA membership selected officers to fill positions expiring in October. The new board and officers are: Chairman Mervin Packineau, a councilman of the Three Affiliated Tribes of Fort Berthold; Vice Chairman Bill Martin, who is President of the Central Council of Tglingit and Haida Tribes of Alaska; Secretary Melinda Danforth, who is a councilwoman from the Oneida Tribe of Wisconsin; and ITMA Treasurer Jody Caleca, who is the Warm Springs Tribes Secretary-Treasurer.

Other ITMA board members are Michael Marchand, Chairman of the Confederated Tribes of the Colville Reservation; Jim Gray, Principal Chief of the Osage Nation; Scott Russell, Crow Tribal Council Secretary; Betty Cooper, Blackfeet Tribal Councilwoman; Floyd Kirk, Councilman from Sisseton-Wahpeton Oyate; Jim Malatare, Treasurer of Salish & Kootenai Tribes; Richard Sangrey, Chippewa Cree Representative; and Sam Penney, chairman of the Nez Perce Tribe.

BIA Modernization Initiative

Early in the first month of FY'08 Assistant Secretary Carl Artman announced an initiative to plan for the "modernization" of the Bureau of Indian Affairs. ITMA was approached and asked to assist in the effort and coordinated several sessions across Indian country.

ITMA applauded the initiative reflected in the analysis that revealed an astonishing proportion of Bureau employees will be eligible for retirement in the next five years. On the other hand, ITMA tribes expressed concern that the consultation process instituted to address the matter was launched more like an ambush than an invitation to serious deliberation. Many tribes objected to the compressed schedule with virtually no lead time for tribal discussions prior to the open meetings. Several said the meetings seemed to be high-pressure sales pitches for increased contracting and compacting, with little attention being given to preparing the BIA to be an efficient and effective provider of services and a competent steward of trust resources.

ITMA Annual Conference

At the end of October, ITMA held its annual conference in Las Vegas, and the agenda was crammed with discussions of up-to-the-minute issues, including:

- the opening of a new fiscal year with no appropriations;
- the ten-day trial in October of ten-year old *Cobell* claim for accounting;
- the collapse of the nation's financial markets with some short-term investments actually earning nothing in weeks leading up to the conference;
- the virtual failure of Fannie Mae and Freddie Mac and Congressional intervention to protect investments in those "agencies" debt instruments;
- the government motion to dismiss or remand to DOI all 37 tribal trust cases pending in the *Cobell* court, *i.e.*, the federal district court in D.C.;

- the explanation by NARF that imposition on tribal sovereignty is outweighed by need by all tribes to demand an accounting in class action;
- the proposed closing of the Bureau's Land Consolidation Office, with its counterpart Office of Minerals Evaluation;
- the implementation of the American Indian Probate Reform Act and latest amendments to the Indian Land Consolidation Act.

Fannie Mae and Freddie Mac Investments

In July 2008 ITMA had questioned Special Trustee Swimmer and Principal Deputy Trustee Erwin whether their risk management strategies had sufficiently considered the market risk exposure of investments in Fannie Mae and Freddie Mac. Special Trustee Swimmer responded they were backed by the full faith and credit of the United States.

By the time of the annual conference in October, ITMA was able to report that Congress had acted to ensure no losses would befall investors in those agencies' debt securities.

Cobell Lawsuit

In January, the judge entered a very lengthy opinion in the *Cobell* case in which he found that the accounting demanded by the plaintiffs was, in fact, owed to them and further was impossible to produce at any level of funding approved by Congress. He, therefore, ordered his clerk to set a date for further proceedings to determine what relief he would order for the plaintiffs. The judge made it clear that he might be overruled on appeal, but he is going to put an end to the lawsuit which saw its twelfth anniversary in 2008.

Trustee Advisory Board's Recommendations

ITMA was somewhat surprised in January when the Advisory Board of the Office of Special Trustee announced it had passed two resolutions that go far beyond the previous scope of Advisory Board deliberations. In one of these, the Advisory Board resolved to direct the Special Trustee to develop a "solution" to the problem of land fractionation and further recommended the Rosebud Sioux Tribal Land Enterprise as a model for addressing the issue.

ITMA was swamped with calls and questions whether ITMA had endorsed the Rosebud TLE model as a national recipe for addressing land fractionation on reservations throughout the country. The answer, of course, was no, but the

matter did not stop there. The Special Trustee approached ITMA requesting their assistance in conducting outreach to Indian Tribes to hear from tribes on suggestions for dealing with the fractionation problems. ITMA undertook the task of bringing the issue of land fractionation to Indian country through a series of regional meetings around the country and agreed to provide a detailed report with recommendations back to OST.

In this effort, recognizing that the Bureau of Indian Affairs played a crucial role in the issue, ITMA engaged their participation in all sessions conducted and they played a key role in the project.

As of the second quarter of FY 2008, the ITMA Board was considering that suggestion and attempting to clarify the scope of any engagement ITMA might undertake and to make sure that any effort would be free of pre-conceived conclusions that ITMA would be expected to produce. OST continues to work closely with ITMA on the matter of land fractionation, as it remains the biggest unproductive expense and potential liability associated with trust reform, and to defend its decision to eliminate funding for the only federal program that addresses the problem.

Tribal Trust Litigation

The government and litigating tribes continued through the first half of FY'08 to exchange information in discovery, to move toward settlements or partial settlements in some cases, and to dispute basic premises in the district court litigation. The NARF proposed class action case will propel every tribe, even those not already litigating their own cases, into litigation if the proposed class is certified by the court. The NARF case, as well as 37 other tribal lawsuits in the federal district court for the District of Columbia, has all been assigned to the same judge who presides over the *Cobell* case.

The NARF lawsuit seeks a determination by the court that the reports prepared by Arthur Andersen for all tribes in 1986 do not constitute the accounting required by the Indian Trust Funds Management Reform Act of 1994. The government opposes class certification, but will still have to face that question in the case remaining for the named plaintiffs in that action.

The government's motion to remand all the pending tribal cases in the D.C. federal district court would avoid the Arthur Andersen issue in those cases. Presumably, the NARF case as well would be remanded to the Department if the government's motion is granted. The court's January decision in *Cobell* that an accounting is impossible in that case will not likely affect the tribal cases, and all tribes await the court's ruling on the government motion on the 37 tribal cases.

Through a Cooperative Agreement with the DOI Office of Historical Trust Accounting, ITMA working with seven tribes from across Indian Country nears the conclusion of a three-year project to develop a Tribal Trust Fund Settlement Methodology that tribes could choose to utilize to guide negotiated settlements rather than going through a costly lawsuit. ITMA continues to stress that the Methodology is extremely complicated and would require Tribes to have expert advice as it proceeds. Utilization of the project is strictly on a volunteer basis.

ITMA Monitoring Issues

In addition to the issues contained in this report, ITMA continues monthly 'monitoring' meetings with top level OST staff to obtain the latest information on the government's efforts regarding trust reform. During these sessions, tribal specific issues are raised on behalf of tribes who contact ITMA for assistance. Reports of these sessions are available on the ITMA website.

The issues regarding the safety of Fannie Mae and Freddie Mac investments have been resolved. Others, however, remain open at the second quarter of FY 2008. OST had previously reported, for instance, that oil and gas revenues would be transferred to the TAAMS system by the end of calendar year 2008, but that date was not met. OST reports that this addition to the TAAMS system is now expected to be completed during the first half of calendar year 2009.

OST reports that the automated systems have now been configured to accommodate direct pay to Indian lessors. The issue of crop share leases remains has not been similarly accommodated, but OST has assured ITMA that the systems will be made to accommodate standard business practices for crop share leases. The current systems effectively require crop share lessees to conform their business practices to accommodate the reporting systems, with the result that Indian lease payments are reduced because sales their lessees are forced to market their crop shares too early simply to meet the reporting requirements of OST automated systems.

ITMA will continue to monitor and report on these and other continuing trust reform efforts at OST.