

EMAIL RECEIVED AT ITMA 3/15/05 3:56p.m.

To: Mel Tonasket and Gene Joseph, Colville Tribes  
Darrell Hilaire and Jewel James, Lummi Nation  
Peal Capoeman-Baller, Quinault Nation  
Lyle Marshall and Danny Jordan, Hoopa Tribes

cc: Jackie Johnson, NCAI  
Mary Zuni Chalan, ITMA  
Eric Eberhard, Dorsey Whitney  
Dan Belcourt, Atty Chippewa Cree  
Aaron Thomas and Teresa Butler, Lummi Nation staff <<2005 Trust Reform Leg.3.301505.doc>>  
Jennifer Hughes, Hoopa Tribal Atty.

Fr: Alan Parker

Attached to this email please find a copy of draft legislation on Indian Trust Reform that was developed by the Tribal Trust Reform Coalition over the course of several meetings in Seattle following the adoption of the Colville resolution by the ATNI on Feb. 10. This draft, in an earlier version that is substantially identical to the attached, was also presented to the Senate Indian Affairs Committee during the March 9th hearing by Lummi Nation Chairman Darrell Hilaire on behalf of the Coalition. We understand that the NCAI-ITMA have created a task force on trust reform in response, in part, to Sen. McCain's urging and that Task Force is to meet next week, March 23-24, in Wash. DC. With the permission of the tribal leaders comprising the Trust Reform Coalition, this draft legislation is now being circulated to the NCAI - ITMA task force with the goal that this group would use this draft as a point of departure in their efforts to formulate a response to the Congress on this critically important matter.

The draft legislation is based on S. 1459, 108th Congress, a bill sponsored by Sen.'s McCain and Daschle in 2003. That bill was intended to address tribal concerns with the Norton/Swimmer administration of trust reform within the Dept. of Interior by establishing a Deputy Sec. for Indian Affairs in DOI in lieu of the Office of Special Trustee and placing the Deputy Sec. that would be under the oversight of a 3 year Commission for Review of Indian Trust Funds Management. In addition to these structural reforms, S. 1459 included a provision that adopted the Standards for the Administration of Indian Trust Management, including Indian trust lands, resources and treaty rights, that had been established by Secretarial Order in 2000 under Sec. Babbitt. Arguably, the adoption of these standards by Act of Congress is much more important and substantive than any structural or organizational changes in the Dept. of Interior.

The Tribal Coalition's bill keeps the two main provisions of the McCain/Daschle, the affirmation of Trust Standards by Congress and elevation of Indian Trust duties to a Deputy Sec. (while eliminating the OST), and adds a new provision that proposes to settle the Cobell case through binding arbitration. (see Sec. 8, pages 13-16 of the draft). If adopted the binding arbitration process would only apply to the Cobell case and would not address any "non-Cobell" tribal claims for trust funds accounting or for damages to trust assets. Thus, the Coalition bill includes a place holder (i.e., yet to be drafted) for addressing such tribal claims in Sec. 9 as well as place-holder sections on fractionated heirship issues (Sec. 10) and establishing an Independent Legal Counsel for the Trustee (Sec. 11).

The Hoopa Tribe is a member of the tribal coalition and in response to their interest in continuing the demonstration project in direct management of tribal trust resources authorized in the so-called "Sec. 139 provision" in the Int. 2004 Appropriation Act, (now sec 131 of the 2005 bill) the draft bill contains authority for a 5 year demonstration project. (see Sec. 7 of the draft)

Drafting services for the Tribal Coalition have been provided by Eric Eberhard with assistance of Alan Parker. We hope that this product accurately reflects the goals and purposes of the Tribal Coalition and

that the NCAI - ITMA task force concludes that this legislative proposal has merit and may serve as an effective starting point in their work with the Congress this session in addressing this vitally important matter.

---

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “**American Indian Trust Fund Management Reform Act Amendments Act of 2005**”.

**SEC. 2. DEFINITIONS.**

Section 2 of the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001) is amended—

(1) by redesignating paragraphs (1), (2), (3), (4), (5), and (6) as paragraphs (7), (4), (6), (5), (2), and (3), respectively, and moving those paragraphs so as to appear in numerical order;

(2) by inserting before paragraph (2) (as redesignated by paragraph (1)) the following:

“(1) **AUDIT.**—The term ‘audit’ means an audit using accounting procedures that conform to generally accepted accounting principles and auditing procedures that conform to chapter 75 of title 31, United States Code (commonly known as the ‘Single Audit Act of 1984’).”; and

(3) by adding at the end the following:

“(8) **TRIBAL GOVERNMENT**—The term ‘tribal government’ means the governing body of an Indian tribe.

“(9) **TRUST ASSET.**—The term ‘trust asset’ means any tangible property (such as land, a mineral, coal, oil or gas, a forest resource, an agricultural resource, water, a water source, fish, or wildlife) held by the Secretary for the benefit of an Indian tribe or an individual member of an Indian tribe in accordance with Federal law.

“(10) **TRUST FUNDS.**—The term ‘trust funds’ means—

“(A) all monies or proceeds derived from trust assets; and

“(B) all funds held by the Secretary for the benefit of an Indian tribe or an individual member of an Indian tribe in accordance with Federal law.

“(11) TRUSTEE.—The term ‘trustee’ means the Secretary or any other person that is authorized to act as a trustee for trust assets and trust funds.”.

**SEC. 3. RESPONSIBILITIES OF SECRETARY.**

Section 102 of the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4011) is amended to read as follows:

**“SEC. 102. RESPONSIBILITIES OF SECRETARY.**

“(a) —ADMINISTRATION AND MANAGEMENT. - The responsibilities of the Secretary in carrying out the trust responsibility of the United States include, but are not limited to—

“(1) providing for adequate systems for accounting for and reporting trust fund balances;

“(2) providing for adequate controls over receipts and disbursements;

“(3) providing for periodic, timely reconciliations of financial records to ensure the accuracy of account information;

“(4) determining accurate cash balances;

“(5) preparing and supplying to account holders periodic account statements;

“(6) establishing and publishing in the Federal Register consistent policies and procedures for trust fund management and accounting;

“(7) providing adequate staffing, supervision, and training for trust fund management and accounting; and

“(8) managing natural resources located within the boundaries of Indian reservations and trust land.”.

(b) ACCOUNTING FOR DAILY AND ANNUAL BALANCES OF INDIAN TRUST FUNDS.—

“(1) IN GENERAL.—The Secretary shall account for the daily and annual balances of all trust funds.

“(2) PERIODIC STATEMENT OF PERFORMANCE.—

“(A) IN GENERAL.—Not later than 20 business days after the close of the second calendar quarter after the date of enactment of this paragraph, and not later than 20 business days after the close of each calendar quarter thereafter, the

Secretary shall provide to each Indian tribe and individual Indian for whom the Secretary manages trust funds a statement of performance for the trust funds.

“(B) REQUIREMENTS.—Each statement under subparagraph (A) shall identify, with respect to the period covered by the statement—

“(i) the source, type, and status of the funds;

“(ii) the beginning balance of the funds;

“(iii) the gains and losses of the funds;

“(iv) receipts and disbursements of the funds; and

“(v) the ending balance of the funds.

“(3) AUDITS.—With respect to each account containing trust funds, the Secretary shall—

“(A) for accounts with less than \$1,000, group accounts separately to allow for statistical sampling audit procedures;

“(B) for accounts containing more than \$1,000 at any time during a given fiscal year—

“(i) conduct, for each fiscal year, an audit of all trust funds; and

“(ii) include, in the first statement of performance after completion of the audit, a letter describing the results of the audit.

#### **SEC. 4. AFFIRMATION OF STANDARDS.**

Title I of the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4011 et seq.) is amended by adding at the end the following:

#### **“SEC. 105. AFFIRMATION OF STANDARDS.**

“Congress affirms that the proper discharge of trust responsibility of the United States requires, without limitation, that the trustee, using the highest degree of care, skill, and loyalty—

“(1) protect and preserve Indian trust assets from loss, damage, unlawful alienation, waste, and depletion;

“(2) ensure that any management of Indian trust assets required to be carried out by the Secretary—

“(A) promotes the interest of the beneficial owner; and

“(B) supports, to the maximum extent practicable in accordance with the trust responsibility of the Secretary, the beneficial owner’s intended use of the

assets;

“(3) (A) enforce the terms of all leases or other agreements that provide for the use of trust assets; and

(B) take appropriate steps to remedy trespass on trust or restricted land;

“(4) promote tribal control and self-determination over tribal trust land and resources without diminishing the trust responsibility of the Secretary;

“(5) select and oversee persons that manage Indian trust assets;

“(6) confirm that Indian tribes that manage Indian trust assets in accordance with contracts and compacts authorized by the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) protect and prudently manage those Indian trust assets;

“(7) provide oversight and review of the performance of the trust responsibility of the Secretary, including Indian trust asset and investment management programs, operational systems, and information systems;

“(8) account for and identify, collect, deposit, invest, and distribute, in a timely manner, income due or held on behalf of tribal and individual Indian account holders;

“(9) maintain a verifiable system of records that, at a minimum, is capable of identifying, with respect to a trust asset—

“(A) the location of the trust asset;

“(B) the beneficial owners of the trust asset;

“(C) any legal encumbrances (such as leases or permits) applicable to the trust asset;

“(D) the user of the trust asset;

“(E) any rent or other payments made;

“(F) the value of trust or restricted land and resources associated with the trust asset;

“(G) dates of—

“(i) collections;

“(ii) deposits;

“(iii) transfers;

“(iv) disbursements;

“(v) imposition of third-party obligations (such as court-ordered child support or judgments);

“(vi) statements of earnings;

“(vii) investment instruments; and

“(viii) closure of all trust fund accounts relating to the trust fund asset;

“(H) documents pertaining to actions taken to prevent or compensate for any, diminishment of the Indian trust asset; and

“(I) documents that evidence the actions of the Secretary regarding the management and disposition of the Indian trust asset;

“(10) establish and maintain a system of records that—

“(A) permits beneficial owners to obtain information regarding Indian trust assets in a, timely manner; and

“(B) protects the privacy of that information;

“(11) invest tribal and individual Indian trust funds to ensure that the trust account remains reasonably productive for the beneficial owner consistent with market conditions existing at the time at which investment is made;

“(12) communicate with beneficial owners regarding the management and administration of Indian trust assets; and

“(13) protect treaty-based fishing, hunting, gathering, and similar rights-of-access and resource use on traditional tribal land.”.

## **SEC. 5. INDIAN PARTICIPATION IN TRUST FUND ACTIVITIES.**

Section 202 of the American Indian Thrust Fund Management Reform Act of 1994 (25 U.S.C. 4022) is amended by striking subsection (c) and inserting the following:

“(c) MANAGEMENT THROUGH SELF-DETERMINATION AUTHORITY.—

“(1) IN GENERAL.—An Indian tribe may use authority granted to the Indian tribe under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) to manage Indian trust funds and trust assets without terminating—

“(A) the trust responsibility of the Secretary; or

“(B) the trust status of the funds and assets.

“(2) NO EFFECT ON TRUST RESPONSIBILITY.—Nothing in this subsection diminishes or otherwise impairs the trust responsibility of the United States with respect to the Indian people.”.

**SEC. 6. DEPUTY SECRETARY FOR INDIAN AFFAIRS.**

(a) IN GENERAL.—Section 302 of the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4042) is amended to read as follows:

**“SEC. 302. DEPUTY SECRETARY FOR INDIAN AFFAIRS.**

“(a) ESTABLISHMENT.—

“(1) IN GENERAL.—There is established within the Department the position of Deputy Secretary for Indian Affairs (referred to in this section as the ‘Deputy Secretary’), who shall report directly to the Secretary.

“(2) APPOINTMENT.—The Deputy Secretary shall be appointed by the President, by and with the advice and consent of the Senate.

“(b) DUTIES.—

“(1) IN GENERAL.—The Deputy Secretary shall—

“(A) oversee the Bureau of Indian Affairs;

“(B) be responsible for carrying out all duties assigned to the Assistant Secretary for Indian Affairs as of the day before the date of enactment of the American Indian Trust Fund Management Reform Act Amendments Act of 2005;

“(C) oversee all trust fund and trust asset matters of the Department, including—

“(i) administration and management;

“(ii) financial and human resource matters; and

“(iii) all duties relating to trust fund and trust asset matters;

“(D) engage in appropriate government-to-government relations and consultations with Indian tribes and individual trust asset and trust fund account holders on matters involving trust asset and trust fund management and reform within the Department; and

“(E) carry out such other duties relating to Indian affairs as the Secretary may assign.

“(2) TRANSFER OF DUTIES.

(A) ASSISTANT SECRETARY FOR INDIAN AFFAIRS.—As of the date of enactment of the American Indian Trust Fund Management Reform Act Amendments Act of 2005, all duties, functions and funding assigned to the Assistant Secretary for Indian Affairs shall be transferred to, and become the responsibility of, the Deputy Secretary.

(B) SPECIAL TRUSTEE. The Office of Special Trustee is hereby terminated. As of the date of enactment of the American Indian Trust Management and Reform Act Amendments of 2005, all duties, functions, and funding assigned to the Special Trustee shall be transferred to, and become the responsibility of, the Deputy Secretary.

“(3) SUCCESSION.—Any official who is serving as Assistant Secretary for Indian Affairs on the date of enactment of the American Indian Trust Fund Management Reform Act Amendments Act of 2005 and who was appointed by the President, by and with the advice and consent of the Senate, shall not be required to be reappointed under subsection (a) to the successor position authorized under subsection (a) if the Secretary approves the occupation by the official of the position by the date that is 180 days after the date of enactment of the American Indian Trust Fund Management Reform Act Amendments Act of 2005 (or such later date determined by the Secretary if litigation delay’s rapid succession).

“(c) STAFF.—In carrying out this section, the Deputy Secretary may hire such staff having expertise in trust asset and trust fund management, financial organization and management, and Federal Indian law and policy as the Deputy Secretary determines is necessary to carry out this title.

“(d) ASSUMPTION BY TRIBES. All funds and functions of the Deputy Secretary, including those transferred from the Office of Special Trustee, are available for assumption by an Indian tribe in the same manner as any other Indian program, services, functions, or activities.

(e) EFFECT ON DUTIES OF OTHER OFFICIALS.—

“(1) IN GENERAL.—Except as provided in subsection (c) and paragraph (2), nothing in this section diminishes any responsibility or duty of the Deputy Secretary of the Interior appointed under the Act of May 9, 1935 (43 U.S.C. 1452), or any other Federal official, relating to any duty established under this Act or any other provision of law.

“(2) TRUST ASSET AND TRUST FUND MANAGEMENT AND REFORM.— Notwithstanding any other provision of law, the Deputy Secretary shall have overall management and oversight authority on matters of the Department relating to trust asset and trust fund management and reform (including matters that, as of the day before the date of enactment of the Indian Trust Asset and Trust Fund Management and Reform Act of 2003, were carried out by the Commissioner of Indian Affairs).

“(f) TRUST IMPLEMENTATION AND OVERSIGHT.—

“(1) ESTABLISHMENT.—There is established within the Office of the Deputy Secretary responsibility for Trust Implementation and Oversight.

“(2) DUTIES.—The Deputy Secretary shall—

“(A) provide direct oversight of the day-to-day activities of all Department of Interior agencies to the extent that such agencies administer or manage any Indian trust assets or funds;

“(B) administer, in accordance with title II, all trust properties, funds, and other assets held by the United States for the benefit of Indian tribes and individual members of Indian tribes;

“(C) require the development and maintenance of an accurate inventory of all trust funds and trust assets;

“(D) ensure the prompt posting of revenue derived from a trust fund or trust asset for the benefit of each Indian tribe (or individual member of each Indian tribe) that owns a beneficial interest in the trust fund or trust asset;

“(E) ensure that all trust fund accounts are audited at least annually, and more frequently as determined to be necessary by the Deputy Secretary;

“(F) ensure that the Deputy Secretary, the Director of the Bureau of Land Management, the Commissioner of Reclamation, and the Director of the Minerals Management Service provide to the Secretary current and accurate information relating to the administration and management of trust funds and trust assets;

“(G) provide for regular consultation with trust fund account holders on the administration of trust funds and trust assets to ensure, to the maximum extent practicable in accordance with applicable law and a Plan approved under section 202, the greatest return on those funds and assets for the trust fund account

holders consistent with the beneficial owners' intended uses for the trust funds;  
and

(H) oversee and coordinate the management of trust assets by Department of Interior agencies.

“(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this section.”.

(b) CONFORMING AMENDMENTS.—

(1) IN GENERAL.—

(A) Section 5313 of title 5, United States Code, is amended by inserting “Deputy Secretary of the Interior for Indian Affairs” after “Deputy Secretary of the Interior”.

(B) Section 5315 of title 5, United States Code, is amended by striking “Assistant Secretaries of the Interior (6)” and inserting “Assistant Secretaries of the Interior (5)”.

(C) Title III of the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4041 et seq.) is amended by striking the title reading and inserting the following:

**“TITLE III—REFORMS RELATING TO TRUST RESPONSIBILITY”.**

(D) Section 301(1) of the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4041(1)) is amended by striking “by establishing in the Department of the Interior an Office of Special Trustee for American Indians” and inserting “by directing the Deputy Secretary .

(E) Section 303 of the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4043) is amended—

(i) by striking the section heading and inserting the following:

**“SEC. 303. ADDITIONAL AUTHORITIES AND FUNCTIONS OF THE DEPUTY SECRETARY.”;**

(ii) in subsection (a) (1), by striking “section 302(b) of this title” and inserting “section 302(a)(2)”;

(iii) in subsection (e)—

(I) by striking the subsection heading and inserting the following:

“(e) ACCESS OF DEPUTY SECRETARY.—”; and

(II) by striking “of his duties” and inserting “of the duties of the Deputy Secretary”; and

(iv) by striking “Special Trustee” each place it appears and inserting “Deputy Secretary”.

(F) Sections 304 and 305 of the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4044, 4045) are amended by striking “Special Trustee” each place it appears and inserting “Deputy Secretary”.

(G) The first section of Public Law 92-22 (43 U.S.C. 1453x) is repealed.

(H) Any reference in a law, map, regulation, document, paper, or other record of the United States to the Assistant Secretary of the Interior for Indian Affairs shall be deemed to be a reference to the Deputy Secretary of the Interior for Indian Affairs.

(2) EFFECTIVE DATE.—The amendments made by this subsection take effect on the date on which a Deputy Secretary for Indian Affairs is appointed under section 302 of the American Indian Trust Fund Management Reform Act (as amended by subsection (a)).

## **SEC. 7. TRIBAL MANAGEMENT OF TRUST ASSETS DEMONSTRATION PROJECT**

(a) IN GENERAL - The American Indian Trust Fund Management Reform Act is amended to add a new Section 307 as follows:

### **SEC. 307 - ESTABLISHMENT OF THE TRIBAL MANAGEMENT OF TRUST ASSETS DEMONSTRATION PROJECT**

(a). PURPOSE. The Tribal Management of Trust Assets Demonstration Project (“Project”) is intended to - :

(1). Enhance the working relationship between the participating tribes and Department of the Interior for trust management activities by establishing mutually acceptable methods for addressing trust issues in a manner that is consistent with tribal priorities and applicable federal laws;

(2). Maintain a standard of good faith in the administration of federal trust responsibilities to Indian tribes, the right of tribal self-determination and self-governance, the

government-to-government relationship between the Indian tribes and the United States, and provide a meaningful working relationship with participating tribes.

(3). Establish a process for the full implementation of the Project and further the continuation of meaningful partnerships between the participating tribes and the Secretary;

(4). Recognize and utilize tribal expertise and systems to accomplish appropriate management of trust resources, use those opportunities to explore the development of effective working models relating to the management of trust resources, and develop meaningful and measurable means of quantifying the respective values, standards and priorities of the participating tribes and the Department.

(5). Identify ways of resolving conflicting management prescriptions between tribal and federal standards, priorities and values in non-litigation and cooperative government-to-government forums, and memorialize those conflict resolution methodologies in a participating tribe's funding agreement.

(b). **AUTHORITY.** The Secretary of the Interior shall, for a period not to exceed five years following enactment of this section, administer a demonstration project to be known as the Tribal Management of Trust Assets Demonstration Project according to the provisions of this title. The Project shall provide for the direct Tribal administration and management of trust resources and trust assets, including the administration of any funds appropriated by Congress for the management of Indian assets and funds, which also includes such funds intended for trust improvement activities.

(c). **TRIBAL PARTICIPATION**

(1). Any tribe that has entered into an agreement with the Secretary for the management and/or improvement of trust resources shall be eligible for inclusion as a participating tribe in the Project. Each tribe must first submit a formal request to the Secretary to be included in the demonstration project.

(2) The Secretary shall negotiate and enter into agreements with tribes to implement the purposes of this section.

(3). A participating tribe may withdraw from the project at any time.

(d). **STANDARD TRUST MANAGEMENT PRINCIPLES AND PROCEDURES.** - Management standards for trust resources that have been developed and adopted by tribes, and approved by the Secretary, shall be the applicable standards under the Project. The Secretary shall interpret Federal laws and regulations in a manner that facilitates approval of a Tribe's

management standards. The Secretary may only refuse to accept Tribal standards that are inconsistent with applicable Federal treaties, statutes, case law or regulations not waived, governing the performance of trust functions. In the event that the Secretary declines to accept a tribe's management standards, the Secretarial shall inform the tribe in writing of the specific ways in which the Tribe's management standards fail to meet the standards and principles of the applicable Federal law governing the performance of trust functions. The Secretary may propose additional standards to a tribe for its consideration if the Secretary believes such standards will assist in promoting the Tribe's participation in the Project and managing the trust resources in a prudent manner. Tribal management standards may be in any format, including law, plans, procedures, and policies; provided that:

(1). The standards are formally approved by the tribe in a manner consistent with the tribe's constitution or other governing law of the tribe.

(2). The standards are established in a manner that allows the tribe and the Secretary to readily compute the amount of revenues that are expected to be received from each trust transaction(s).

(3). The standards must describe in measurable and/or quantifiable terms the expected goals and/or intended results from application of the standards.

(4) The standards provide methods for resolving disputes between tribes, individual Indians and the Federal Government.

(5). The standards include a process whereby the Tribe and the Secretary can conduct mutually acceptable annual evaluations of the management of trust resources.

(e). **JOINT EVALUATION CRITERIA AND PROCEDURES/REPORTING** - Each participating tribe and the Secretary will develop joint reporting requirements, which are consistent with the annual trust evaluation requirements. Based on a mutually acceptable reporting format, the report will include methods for determining that trust transactions are carried out consistent with the requirements contained in trust resource management prescriptions and can be easily reconciled with trust fund accounts. The Secretary may conduct additional trust evaluations if sufficient information exists from credible sources that the Tribe is not operating consistently with the approved Tribal/Federal management standards.

(f). **GRIEVANCE AND DISPUTE RESOLUTION PROCEDURES** - Each tribe participating in the Trust Reform Pilot Project will develop and maintain with the Secretary non-

litigation grievance and dispute resolution procedures that shall be incorporated into the tribes' funding agreement.

## **SEC. 8. MEDIATOR.**

The American Indian Trust Fund Management Reform Act is amended by adding at the end of the Act a new Title IV, as follows:

### **SEC. 401 MEDIATOR**

(a) APPOINTMENT; DUTIES; QUALIFICATIONS; TERMINATION OF DUTIES - Within thirty days after the date of enactment of this Act, the Director of the Federal Mediation and Conciliation Service shall appoint a Mediator hereinafter referred to as the "Mediator") who shall assist in negotiations for the settlement of the rights and interests of the parties in the case of Cobell v. Norton, Civ No. 96-1285 (RCL). The Mediator Shall not have any interest, direct or indirect, in the settlement of the interests and rights of the parties to the litigation. The duties of the Mediator shall cease upon the entering of a full agreement into the records of the District Court or the submission of a report to the District Court after a default in negotiations or a partial agreement among the parties.

(b) NATURE OF PROCEEDINGS - The proceedings in which the Mediator shall be acting shall be those in the Cobell case now pending in the United States District Court for the District of Washington, D.C. (hereinafter referred to as "the District Court").

(c) ASSISTANCE FOR MEDIATOR - The Mediator is authorized to request from any department, agency, or independent instrumentality of the Federal Government any information, personnel, service, or materials he deems necessary to carry out his responsibilities under the provisions of this Title. Each such department, agency, or instrumentality is authorized to cooperate with the Mediator and to comply with such requests to the extent permitted by law, on a reimbursable or nonreimbursable basis.

(d) STAFF ASSISTANTS AND CONSULTANTS - The mediator may retain the services of such staff assistants and consultants as he shall deem necessary, subject to the approval of the Director of the Federal Mediation and Conciliation Service.

### **SEC. 402 NEGOTIATING TEAMS**

(a) APPOINTMENT; TIME; MEMBERSHIP; NATURE OF AUTHORITY - Within thirty days after the appointment of the mediator by the Director of the Federal Mediation and Conciliation Service, the mediator shall communicate in writing with the parties directing them

to appoint a negotiating team to represent each party. Each negotiating team shall be composed of not more than five members. Each party shall promptly fill any vacancies which may occur on its negotiating team. Notwithstanding any other provision of law, each negotiating team, when appointed, shall have full authority to bind its principals with respect to any matter concerning the Cobell litigation.

(b) FAILURE TO SELECT AND CERTIFY - In the event either or both of the parties fail to select and certify a negotiating team within thirty days after the mediator communicates with the them under subsection (a) of this section or to select and a replacement member within thirty days of the occurrence of a vacancy, the provisions of section 404 of this title shall become effective.

(c) FIRST NEGOTIATING SESSION; TIME AND PLACE; CHAIRMAN; SUGGESTIONS FOR PROCEDURE, AGENDA, AND RESOLUTION OF ISSUES IN CONTROVERSY - Within fifteen days after the designation of both negotiating teams, the Mediator shall schedule the first negotiating session at such time and place as he deems appropriate. The negotiating sessions, which shall be chaired by the Mediator, shall be held at such times and places as the Mediator deems appropriate. At such sessions, the Mediator may, if he deems it appropriate, put forward his own suggestions for procedure, the agenda, and the resolution of the issues in controversy.

(d) FAILURE TO ATTEND TWO CONSECUTIVE SESSIONS OR BARGAIN IN GOOD FAITH - In the event either negotiating team fails to attend two consecutive sessions or, in the opinion of the Mediator, either negotiating team fails to bargain in good faith or an impasse is reached, the provisions of section 404 of this title shall become effective.

(e) DISAGREEMENTS WITHIN TEAM - In the event of a disagreement within a negotiating team the majority of the members of the team shall prevail and act on behalf of the team

#### SEC.403 IMPLEMENTATION OF AGREEMENTS

(a) FULL AGREEMENT - If, within one hundred and eighty days after the first session scheduled by the Mediator under section 402 of this title, full agreement is reached, such agreement shall be put in such form as the Mediator determines best expresses the intent of the parties. The agreement shall be reviewed by each negotiating team and the mediator shall consider their comments, if any, thereon. The mediator shall then put the agreement in final form and it shall signed by the members of negotiating teams and the Mediator. The Mediator

shall then cause the agreement to be entered into the records of the proceedings in the Cobell case. The provisions of the agreement shall be adopted by the District Court and put into effect immediately thereafter.

(b) PARTIAL AGREEMENT - If, within the one hundred and eighty-day period referred to in subsection (a) of this section, a partial agreement has been reached between the parties and they wish such partial agreement to go into effect, they shall follow the procedure set forth in subsection (a) of this section. The partial agreement shall then be considered by the Mediator in preparing his report, and the District Court in making a final adjudication, pursuant to section 404 of this title.

(c) CONSISTENCY WITH EXISTING LAW - For the purpose of this section, the negotiating teams may make any provision in the agreement or partial agreement not inconsistent with existing law. No such agreement or any provision in it shall result in a taking by the United States of private property compensable under the Fifth Amendment of the Constitution of the United States.

SEC. 404 DEFAULT OR FAILURE TO REACH AGREEMENT; RECOMMENDATIONS TO DISTRICT COURT; FINAL ADJUDICATION - If the negotiating teams fail to reach full agreement within the time period allowed in section 403 of this title or if one or both of the parties are in default under the provisions of section 402(b) or (d) of this title, the Mediator, within ninety days thereafter, shall prepare and submit to the District Court a report containing his recommendations for the settlement of the interests and rights set out in section 401(a) of this title which shall be most reasonable and suitable in light of the law and circumstances and consistent with the provisions of this subchapter. Following the District Court's review of the report and recommendations and any further proceedings which the District Court may schedule, the District Court is authorized to make a final adjudication and enter judgment in the Cobell case consistent with the report and recommendations of the Mediator, and the District Court shall do so no later than 180 days after receipt of the Mediator's report and recommendations.

## **Sec. 9. RESOLUTION OF TRIBAL CLAIMS**

There shall be a process for resolving tribal claims against the United States for the mismanagement of trust assets and funds, including the possibility of a tribal claims commission. [detailed language needed.]

**Sec. 10. FRACTIONATED HEIRSHIPS AND HEIRSHIP**

Enacted tribal laws governing heirship and probate, shall be the prevailing law governing such issues. [detailed language needed].

**Sec. 11. INDEPENDENT LEGAL COUNSEL FOR TRUST ISSUES**

The Deputy Secretary shall have independent legal counsel to resolve conflicts involving trust matters.

**SEC. 12. REGULATIONS.**

The Secretary of the Interior, in consultation with interested Indian tribes, shall promulgate such regulations as are necessary to carry out this Act and amendments made by this Act.

**SEC. 13. MISCELLANEOUS SAVINGS PROVISION**

Nothing in this Act diminishes or otherwise impairs the:

- (A) trust responsibility of the United States with respect to the Indian people, or
- (B) The rights pursuant to the Indian Self-Determination Education and Assistance Act, 25 U.S.C. Sec. 450 et seq.. All agreements entered into pursuant to such law shall remain in full force and effect.