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SUMMARY REPORT

ITMA LISTENING CONFERENCE AT NEZ PERCE TRIBE

CLEARWATER RIVER CASINO & RESORT

Lewiston, Idaho

May 23-24, 2007

Wednesday, May 23, 2007

Day One

Opening Introductions

Samuel Penney, Chairman of the Nez Perce Tribal Executive Committee, welcomed everyone and began by explaining that this ITMA Listening Conference is not intended to be a consultation, but to give tribal members an opportunity to speak to the federal representatives who are responsible for managing their trust assets. He thanked the representatives from the BIA and OST and ITMA who are present today.

Chairman Penney stated that among the list of concerns are: how OST and BIA manage tribe's trust funds and other trust resources. There is concern about the backlog of appraisals in probate matters, how long that backlog can increase the length of time it takes to complete the probate process, the continuing lack of modern accounting and other recordkeeping systems at the BIA, and how the lack of technology at the BIA affects the quality of reports and other information received. There is also concern about the proposed new part twelve tribal trust fund accounting and appeals regulations.

Nez Perce Tribe submitted very detailed comments on these proposed regulations through the DOI on August 30, 2006, as did many other tribes. The revisions should reflect the United States trust responsibility to tribes and individuals and the revision should protect tribes' existing legal remedies for prior mismanagement of tribal trust accounts and other tribal trust assets.

Mr. Penney commented that they have concerns about James Cason's March 1, 2007 letter to tribal leaders advising them that the Department will not approve any of the probate codes that the tribes have spent months diligently drafting to meet the statutory deadlines only to be told that the department will draft its own model tribal probate code that all tribes must follow.

The Nez Perce Tribe appreciates that the United States has sent many of its top officials here today to hear from you directly regarding your individual land issues and that they will go away with a better understanding of your concerns as a landowner.

Intertribal Monitoring Association (ITMA) Executive Director Mary Zuni explained that the ITMA's primary purpose is to monitor the activities being conducted by the Office of Special Trustee on trust reform as well as working with tribal governments and the government on tribal trust fund settlement initiatives. Within ITMA there is an OST liaison position held by Majel Russell. Ms. Russell who is also an attorney meets with the ITMA Executive Director and OST top level staff on a regular basis to follow their activities and in turn report those activities to Indian Country.

The Executive Director introduced two ITMA Board members in attendance; Councilman Jim Malitar from the Salish & Kootenai Tribes in Montana, and Warm Springs Tribal Treasurer Jodi Calaca.

Majel Russell described her role as gathering information of all reform efforts that OST has undertaken after passage of the 1994 Trust Reform Act and assisting ITMA in developing reports to illustrate the efforts of the government to share with Indian Country.

Ms. Russell reported she and the Executive Director visited the OST headquarters in Albuquerque, NM and received a hands-on view of the computer system which houses the new Trust Account Asset Management System (TAMS), the national title system. The next visit was to the Call Center also housed at the OST Headquarters which responds to questions from beneficiaries about their accounts. OST reported the statistics of success on answering questions in the first call have been very high. Additionally, they have a new national training center located in Albuquerque where training is provided to all BIA and OST personnel. In the past, regions had different systems and processes so there was no consistency in how account management was being addressed. The new training center provides consistent training.

The TAMS title system is now complete nationwide and we can go to a computer and pull up a landowner's land inventory and receive specific information regarding that interest.

Another area that we looked into that Indian Country had concern about was the commercial lockbox to collect trust payments. Ms. Zuni and Ms. Russell went to Prescott, AZ to tour the facility. The reason for using the commercial lockbox is to streamline the process of accepting payments, processing payments and depositing them into the accounts and distributing the payment to the landowners. The previous process was very slow and in some instances could take up to eight months to a year. The lockbox was developed to address the delay in collection, processing and disbursement of those funds. The lockbox system has one post office box number for

every agency. The mandate that the lockbox system has to comply with is a one-day turnaround.

Another effort that OST has undertaken is to have a trust officer at the agency level, and almost every trust officer position has been filled. **Principal Deputy Special Trustee Donna Erwin** commented that 49 of 52 positions have been filled. The Trust Officer is available at the agency level to answer any questions for beneficiaries regarding their accounts without having to go to more than one area for their answer. Ms. Russell stated that she thinks from the 1994 Trust Reform Act, the OST has made serious efforts at reform. As a landowner she feels that the money management component of trust reform has made great strides in the last few years, the systems are in place, they're effective, they need to be utilized by the landowners and we need to give them a chance to work.

In closing, Ms. Russell mentioned one huge area that still needs to be worked on at the BIA, managing the trust assets at the ground level; that is, conservation practices, and enforcement of trespass. Efforts still need to be made at how we're protecting the trust asset on behalf of the beneficiary, and that will be addressed later.

Chairman Penney stated that a few years ago the US Department of Interior formed the Office of the Special Trustee. We also have the Bureau of Indian Affairs which is also under the Department of Interior. The role of the ITMA, as explained earlier, is we as tribes across the country monitor the activities of the Office of Special Trustee. Our role for hosting this conference for ITMA is to allow tribal individuals the opportunity to make comments.

Special Trustee for American Indians Ross Swimmer introduced Jeffrey Sayre with Senator Craig's Office; Mitchell Silvers with Senator Carpo's office; Donna Erwin, Principal Deputy Special Trustee, and the Deputy Special Trustee for field operations, Doug Lords.

Mr. Swimmer explained the process called conversion; where we've been and where we're going in reporting to individual Indian people. Statements show all information on ownership, what's leased out, what income comes in on those parcels of land, and what has been paid out to you so you can see everything you need to know about your individual trust. Mr. Swimmer also pointed out Rena Sanford, the Regional Appraiser and Deb Dumontier who is the Trust Officer at Salish and Kootenai Tribes and is currently acting BIA Superintendent over there.

Mr. Swimmer reported that in 1994 Congress enacted the American Indian Trust Reform Act and part of the Act created the Office of Special Trustee. In 1996, Congress further stated they wanted to move the financial side of the trust from BIA to the Office of the Special Trustee with the mandate of developing a new accounting system and a new computer system software. Congress wanted the Special Trustee to oversee all the other trust reforms, including probate, catching up on backlog of probate, and ensuring a land title and record office that was correct.

Mr. Swimmer spoke of the TAMS accounting system put in place in 2004. The system gives a computerized system that works nationwide allowing OST to track title, leasing or encumbrances, right of way, sale of land, the distribution from probate. All those things are tracked in this system. This is an incredible job when you have close to five hundred thousand account holders.

OST was also asked to take the responsibility for appraisals from the BIA over to OST and its working. In closing Mr. Swimmer mentioned that they even have some of their Trust Officers acting in the capacity of superintendents. It's a partnership, it wasn't that way in the beginning, but it's getting closer everyday. It's everyone working together to make this trust work and we're committed to doing that.

Doug Lords, an enrolled member of the Chippewa Cree Tribe from Rocky Boy Reservation at Montana introduced other staff present: Tom Reynolds, Regional Fiduciary Trust Administrator; Deb Dumontier, Fiduciary Trust Officer; Frank Perniciaro, External Affairs Officer, Patricia Gerard; and, Dave Shaw Acting Superintendent and the FTO for the Northern Idaho Agency.

Mr. Lords gave the Call Center toll free number, 1-888-678-6836. The Call Center is open Monday through Friday, 7:00 a.m. to 6:00 p.m., and on Saturday from 8:00 a.m. until noon. His department is attempting to set up outreach meetings where OST goes out and discusses the statements and any problems. In an attempt to be accessible meetings will be held in the evenings and on the weekends.

Mr. Lords mentioned a major issue with "whereabouts unknown". Those are account holders for whatever reason have moved and have not updated their address with OST. There are thousands of accounts with millions of dollars in them and they can't distribute because they don't have a current address to distribute to. He encouraged everyone to go to the table and view the whereabouts unknown listing. There are also three brochures available, a guide for new account holders, where to go to request money, how it works, how the money is managed, etc. There is also information on Individual Indian Money Account Information, and general information regarding OST.

Donna Erwin, Principal Deputy Trustee addressed the audience and reiterated that OST is here for the beneficiaries, we're here to listen, and we're here to help with any problems that you have. She said OST and BIA are a team. BIA is taking care of the land, the leasing, social services and probates, and OST is working on the financial side and getting the statements out. She commented that they're not here to make things electronic and reduce staff.

A sample of a quarterly statement was distributed and Ms. Erwin provided a detailed review of the document stating if individuals do not receive a statements every quarter to please contact the call center. She went on to explain account numbers and how they are arrived at. The first three numbers reflect what agency you are with and what tribe you belong to. The next one indicates if you own the land or just have a per capita

account; the last six numbers could be an enrollment number or an allotment number. It depends on the agency how these numbers are assigned.

Ms. Erwin said after October 1, statements will contain more information. Once accounts reach \$15, you get a disbursement, if your account is unrestricted. There are several reasons why some accounts are restricted. If you're not getting your money and there's a balance in your account, it could be because there was a tribal credit loan, you could have pledged your income on a bank loan, you could be under a guardianship or you could be under "whereabouts unknown". If you're a minor statements would go to the parent, however, funds do not automatically go out to the parent, they must go in and talk to social services and set up a plan on how you'd like to use that money, if its money that can be released before the child is eighteen.

In the case of an overpayment, your account may be placed on hold, but we must notify you. If this was the case, you would have the ability to go talk to the superintendent and work out a repayment plan. Ms. Erwin encouraged everyone to look over their statements carefully and make sure that said transactions actually took place. She continued on defining the various definitions and what they represent.

In closing, Ms. Erwin strongly encouraged utilizing direct deposit as a means to deter theft and checks getting lost. She said replacement of lost government checks is a big and timely process.

Ms. Zuni stated that one of the things that we've learned from going to all these listening sessions across Indian country, this being the fourteenth session, is that there is a great misunderstanding at the local levels about the responsibilities or the activities of the Office of the Special Trustee and those of the BIA. The purpose of bringing these two groups together at these sessions is to clarify and bring an understanding of the different roles of these two organizations. Regarding the presentation by individuals regarding their issues, Ms. Zuni offered that if anyone has an concern and they do not wish to speak publicly, an accommodation can be to meet privately with government staff.

David Shaw, Acting BIA Superintendent, began by introducing Greg Argel, acting superintendent at the Plummer Agency for the Coeur d'Alene Tribe. Mr. Shaw explained the role of the BIA which includes oversight and protection of trust assets and providing services to tribal members and to the tribes. Many of the functions historically performed by the BIA have been contracted out to the tribes, however, he offered his assistance even if it is a function being performed by the tribe because BIA has an oversight responsibility.

He said there are two specific functions performed at the Agency level; probate and realty. Such as, land transfers, sales of land from trust to fee, fee to trust, and management of the land as an asset. One of the biggest challenges is fractionation of land ownership. There are properties with literally hundreds of landowners. Their responsibility is to participate with the landowners in the negotiation or completion of a

lease. They typically order an appraisal on the property through the Office of Appraisal Services which tells us the minimum we should be leasing that property for and that information is shared with the landowner. The landowner may ask us to put the property out for bid if they're not satisfied.

Mr. Shaw said there are about forty-six thousand "whereabouts unknown" with tens of millions of dollars. He has been Trust Officer over a year, and an exciting opportunity he's been able to do is to find these people. The "whereabouts unknown" can range anywhere from two hundred and seventy thousand dollars to twenty-seven cents, in any case the same amount of accounting function time is involved. He asks to please assist them with closing out of those small accounts.

An area of concern is in the probate backlog, which in his opinion, is more a BIA function than an OST function, although it is interrelated. Once the probate process is completed and the final probate order is issued, the documents are transferred from BIA to OST to see to the distribution. He very much wants to see that backlog reduced. Another area is the trespass issue on the reservation. He spoke about utilities that have transmission lines across the reservation. He said they have varying degrees of cooperation from some of the utility companies. He does not agree with the concept of someone using someone else's land or doing something to it without consent or compensation.

Greg Argel, Acting Superintendent at Coeur D'Alene Agency introduced himself saying he is also the realty officer for the Northwest Region. He introduced Elaine Doyle, Regional Probate Specialist. Mr. Argel reported that in the region they have been implementing the trust reforms that Mr. Swimmer and his staff have talked about. From January to April they have trained over a hundred people on the TAMS regarding realty, forestry, management overview and reporting.

He spoke briefly about fee to trust in the Northwest Region and reported that recently they conducted a survey of the last ten years with regard to that activity and they have taken into trust over a hundred and fifty thousand acres in the states of Montana, Idaho, Washington and Oregon. He said he thinks there's cause for concern about what the regulations are going to look like for off-reservation acquisitions.

LUNCH RECESS

PANEL #1

[Representatives of ITMA, OST and BIA met with Ms. Coy and Mr. Evans during lunch.]

Frances Coy introduced herself as an "advocate" for Blackfeet tribal member Patrick T. Evans who inherited an allotment, mineral property, from his father, Henry Evans. Ms. Coy proclaimed that because of the Homestead Act, the tribe now owns the mineral rights. She stated Mr. Evans was to inherit funds from his mother's probate, however, the tribe claimed due to a loan between mother and tribe there were no funds available.

Claimed mother was under heavy medication at time and would not have signed document giving money to Tribe.

Government officials committed to research the issue with the appropriate Blackfeet Agency individuals.

Ms. Coy expressed her overall dissatisfaction with regard to the handling of trust issues and audits, and the performance, or rather the lack of, by the Special Trustee and the Federal government.

Loretta Halfmoon introduced herself as a Nez Perce tribal member thanking the ITMA for putting on today's conference and expressing concern that more tribal members were not present at today's conference, they should have received personal invitations. She presented a written statement.

Her brother died on February 16, 2006 and among the concerns that Ms. Halfmoon raised is the manner in which the Trustee, and the BIA Northern Idaho Agency has failed in their responsibilities to actively seek closure on settling estates and establishing real property determination to heirs, and also an apparent change in the way IIM trust fund accounts are maintained. She asked when the procedure changed and if Congress made the policy changes?

She commented on the absence the Superintendent, who is to represent the interest of heirs when dealing with leases and rights of way. She spoke of a specific fifty-five year trespass lease situation she is encountering with a power company, Avista. She said at one time an individual called stating that he was familiar with this particular situation and would be handling it, and suddenly he just disappeared. Then last week they received notification, by word of mouth, that an Avista meeting was forthcoming. Only a few members were able to make the date called for, however the Avista representative never showed and gave no notification or explanation of his absence. They met with Mr. Shaw and the former superintendent, Mr. Picard, and were told that a meeting would be set up which has still not happened.

Her final concern relates to ownership of land vacated by an abandoned railroad. They were told at a briefing session by BIA officials that such land would revert back to the original ownership, in which case the vacated land belongs to Indian Country and the heirs to the original allottees. A local farmer is now harvesting hay from the land adjacent to the railroad which runs by and through Lapwai. Her question is; does this farmer have a duly negotiated lease to operate this land? Was equal opportunity afforded to other interested entities? And who does the proceeds of this lease agreement go to; the BIA, the tribal member or the Nez Perce Tribal Executive Committee?

Finally, she hoped other BIA staff would be here today because some of the questions and concerns relating to staff. She spoke to Mr. Shaw about this and he responded that

it was his decision to keep them at work working on the conversion and if they wished to come here, they would be required to take annual leave.

GOVERNMENT RESPONSES:

Mr. Shaw addressed issues raised. Loretta's idea of a personal invitation to the landowners was a good one. They have addresses for most landowners and in the future he will try to get individual letters out to everybody.

Mr. Shaw made a commitment to do everything he can do "within the walls of our agency" to make sure that we get the work done and processed out of our office as quickly as possible.

Elaine Doyle, Regional Probate Specialist, commented that they try and send those forms out to the family to get a better idea of the family history. They are mostly interested in birth dates, dates of death and addresses. She said if that information could be available, that helps get the probates done faster.

Mr. Shaw commented in response to the comment about realty personnel not being here today and said that was his call and he felt that their time would be better spent working on the TAMS system trying to get it up and running. He said he can fill in as the messenger and relay the concerns back to them.

Regarding the Avista meeting, he apologized for the mix up and said he's working on a ton of these at the same time and is attempting to get this meeting rescheduled, and rescheduled soon.

With regard to the rail road issue, he said he is aware that these trespass issues exist, but doesn't know exactly where they exist. He requested for those people concerned to come in and visit with him, and educate him on these issues.

In response to the comments made by Ms. McCoy, **Mr. Swimmer** stated that he doesn't know if she just doesn't like me or government employees in general, but it's true he's in a position by political appointment, however he's in that position and he will do everything he can to remain in the position and work hard for the people. He said there are a lot of things that have happened to improve the systems and how we've interacted with individuals.

He said there are a lot of people, and not just Indian people, who have oil wells on their lands, and they don't get any money from it. It could be because they sold the minerals, it could be because the well isn't pumping any longer, it could be that the landownership now is so highly fractionated that what income does come in is very, very little.

As far as audits, we do a comprehensive audit of Indian trust funds each year. These audits are done by an outside auditor. The trust fund account that owned by each individual Indian is audited, and the auditors look into the accuracy of that account. He

said he hasn't worked in this job since 1989, but he has worked at Interior since 2001 when we started a lot of the work that we're doing today. He said he's very pleased with what we've heard here today, that tremendous progress has been made on the accounting side for trust funds, such as getting money in quicker and getting it out quicker.

Ms. Erwin cleared up a little misconception wanting everyone to understand what they can and can't do with their account. She said if you have an unrestricted account and it reaches fifteen dollars, they pay it out, if that's what you want. There is something that's referred to as a voluntary hold, and you can have that and control that.

Ms. Halfmoon asked if you can purchase land from your IIM account. Is that the only money that the BIA will accept to buy property? Ms. Erwin responded, no. Ms. Halfmoon explained that was the reason why she had her account on hold. Because she wanted to accrue as much as she could in order to buy trust property.

Regarding Ms. Jackson's fence issue; Donna indicated BIA would send a letter to the farmer to replace the fence. Regarding the probate issue, it is over 30-years ago.

Rena Sanford said she has a listing of all the appraisals that are being appraised and anyone who is waiting on an appraisal can get with her after the meeting. She clarified that the comment made earlier about having to get an appraisal done your self is incorrect. You can fill out a request and get that appraisal processed.

Mr. Shaw regarding an earlier discussion that sounded like an issue of whether a house was built on or off trust property and the tribe contracting certain BIA activities. He requested that the individual come and see him, because this is an issue. He said the tribe has a lease compliance officer that goes out in the field to address issues like this.

The next issue is regarding the farmer who took the fence down; this issue is being addressed as of yesterday. The fence should not have been taken down and Mr. Shaw has drafted a letter to the farmer informing him of such. The farmer has allotment land and tribal land, and he's farming the whole thing as one parcel. That's inappropriate and they'll make him put it back up.

Panel #2:

Charlotte Waters expressed concerns with probate and timeliness; her father and sister have been deceased for about five or six years now and probate still has not been settled. The issue was about having the allotment numbers being sent in with the payment; why isn't this being recorded properly to where each individual allotment payment is sent in whenever payments are made. This would expedite getting probates done sooner. She said her father willed her the land and then one day she was told by a person in realty that her father had sold it.

Patricia Gendreau, reported trespassing by non-Indians, not only on a railroad but on a grain-growers tower. On one of her allotments, there's been trespass for two years. They've gone to the superintendent, the land commission, the Nez Perce NPTEC, to tribal court and back to David Shaw. She said her sister has approached Mr. Shaw to inform him that somebody has a business up there with cars and ruining their natural spring. A farmer has put a road in there that wasn't approved by her, her brothers or sisters. They did a consultation thing for the environment and wanted to sue the farmer, but the tribe told them they couldn't. There's also a trailer court coming onto one of the allotments, they've requested a survey be done on that and at the time the man in leasing handling their affairs told her brother that if they proceeded with that he would fire him or get him fired; he did work for BIA.

There was also a situation with a flood last year. A lot of things from the farmer up above came into the yard. She's the only Indian owner in that area and she didn't get any help from FEMA.

Joanna Marek, an individual landowner, said her family has many times requested that their allotments go out for bid, they do not accept cash rent payments because they are below fair market value.

Another concern to her and other landowners is they're being told they have to pay insurance on their interest and if they don't do so, they will not receive a crop payment. It's her understanding that if a farmer is to be bonded and insured, and through those bonds and insurances that protects their one-third crop payment; why then would they as individual landowners also have to do that? Isn't that fraudulent activity by the insurance company? Whose trust responsibility is it to see that we're not being impacted that way?

It's also her understanding that at one time there was money allocated for individual landowners to buy out co-owners who are interested in selling their interests in allotments, and the bureau has taken that away. It's also been stated here today that wills are being changed. She's been chairing a landowner committee since 2000 and four families have come and reported to her that their wills have been changed after their loved ones passed on. What recourse do they have?

The fiduciary trust responsibility needs to be implemented and stood by. There's a lot of conflict of interest, and although she has no disrespect for Mr. Shaw, she believes his being an OST employee and then being given the responsibility of acting as superintendent is a direct conflict of interest.

Ms. Marek addressed Mr. Swimmer commenting that about a year and a half to two years ago she faxed him a packet of information of several violations happening to her families land, to date she has not received any follow up.

GOVERNMENT RESPONSES:

Mr. Shaw responded to Ms. Waters, whose family members died and owned a number of different allotments on a number of different reservations and the allotments were left to different people; the way the system works is we have to be able to track the income during the estate administration process so that the income follows the land. Mr. Shaw stated he needed to sort this out with the Colville Agency and determine which allotment that range unit payment came in for. He said this particular issue is a very complex one, but this is the last piece of the puzzle to solve that particular problem. He went on to say that from the standpoint of why it took so long for the probate of the estate, he can't answer that because he hasn't been around long enough, he doesn't know. He apologized and said however, he is prepared to sit down, look at the file, talk and get the estate closed.

With regard to Pat's issue with the cars, Mr. Shaw has sent a letter of trespass out and will continue to do whatever is within our power to see that the property is cleaned up and the cars removed. We may have to get the police and the courts involved.

Greg Argel responded to Ms. Gendreau regarding the request for survey. He stated the requests take a long time if they go into what's called the Cadastral Automated Request System (CARS). He said if Doug could do an estimate of the survey, they could take a look at the funding in realty to see if it can be funded or not. But if it goes into the CARS system, you're looking at a long time because they've just reviewed the '08 projects and they won't be looking at '09 projects until May of '09.

After discussion back and forth regarding time frames, Mr. Argel agreed that it would be looked at in realty. Ms. Doyle commented because it will come out of the realty budget and not out of anything else, if he has it.

Mr. Shaw said with regard to the culvert, he also knows Mr. Poole from the County and they'll get together to do whatever remediation is necessary to prevent any damage to the property.

Regarding Ms. Merek's concern for allotments going out to bid, he said if the majority of the owners in that property want to go out to bid, that's not a problem. Ms. Merek requested this in writing, to which Mr. Shaw agreed.

Ms. Sanford stated that she's not sure where this insurance issue is coming from unless that's something the farmers worked out. She said with the cash rent versus a crop-share rent, with cash rent, you're getting it up front. The farmers taking all the risk, that's why you're going to receive lower rent than a crop-share rent. Crop share rent you get at the end of the lease when the crops are harvested. The insurance portion, she's not sure about.

Mr. Shaw requested time to explain about how the process is supposed to work. He said typically we enter into a five-year agricultural lease. We do not enter into a lease unless we have concurrence of more than fifty percent.

For allotment property, before property goes out to lease we send out a request for appraisal. They send us an appraisal and tell us what the minimum amount we as BIA can lease for. That information is provided to the landowners and they choose to and frequently do choose to negotiate with the farmers. Once they agree, and more than fifty percent do agree, then we sign off on a lease. When the leases come up for renewal, typically it's on a five year basis, we request another appraisal from OAS's offices to determine what the farm lands worth for the next five year period. Mr. Shaw said they rely on appraisers.

Ms. Marek commented right now there's staff in the Bureau working with you and the realty staff where leases aren't even signed and we can't even get copies of our current leases to see how long we've been approved for. You say five years, we know its five years, but some of these farmers are going on ten and twenty years. If they haven't been signed in the last five years, aren't they null and void? She requested that the eighteen boxes of unsigned leases be resent out so that they can negotiate with new farmers.

Mr. Shaw referred the next issue, of money being available for co-owners to buy out other co-owners, to the OST staff.

Mr. Swimmer responded saying that they don't have and have not had any money available for individuals to buy out the co-owners. There's never been any BIA money available through the Indian Land Consolidation Act for that purpose. There was money available to purchase individual Indian interests and convey them to the tribe, but this was just for sales directly from individuals to their tribe. That money is very limited and it's been targeted at those reservations that have the greatest fractionation.

Regarding a comment made about Secretary Kempthorne's predecessors destroying records, that didn't happen. We now have a state of art record center in Lenexa, KS, where we have accumulated over five hundred million pages of records dealing with BIA individual Indian and tribal issues. Some of them go as far back as the 1700's. They're records that deal with Indian trusts and they're records that deal with BIA projects.

The problem was not that they were destroyed; the problem was that they were scattered out over three hundred reservations. They were scattered in BIA offices, in tribal offices and stored in warehouses. Over the past five years we've gone out and at a great expense collected those records. A lot of those records are on an electronic system and are now available for use by researchers and individuals. We can now go to Lenexa through the box index search system and locate the record for someone's account or property.

This facility is managed by the National Archives and Records Administration. It is the best record storage that there is in the United States today.

Mr. Lords addressed the conflict of interest statement previously made and directed at Mr. Shaw as acting superintendent for BIA. He said Tom Reynolds has designated Deb Dumontier as acting FTO for the Nez Perce Agency, in an attempt to diminish any conflict.

He went on to say he's attended many of these sessions and the consistent message that he hears is not to trust us. He agrees, saying that's correct; don't trust us, but rather judge us on our actions or inactions. What are offered today are just words, either we follow up on those words or we don't. That's what he wants to be judged on.

He pointed out some of the positive changes that have been implemented such as; a standardized accounting system for trust funds and assets, we're working on the module for leasing, we have a probate code, a records center, a lockbox for cash management, a call center, and we have surveyors in each of the regions. He again requested to be judged on their actions or inactions.

Ms. Erwin wished to respond to an earlier comment made that they're pitting tribes versus individuals. She said there's a difference in that they're trustee to both, both are beneficiaries and sometimes it may appear that they're not tribal friendly, but they have took look at it from both sides.

There was a brief recess and the meeting then continued.

Panel #3:

Jacqueline Wapato began by introducing herself as a sixty year old Nez Perce tribal member. She began by talking about various attempts she's made trying to change her name to no avail.

She also talked about an issue back when she was twenty-one years old attending college at Haskell. She said she called her agency and requested money from her trust and received only about thirty-five dollars when everyone else her age was receiving about eighteen hundred to two thousand dollars. Every time she would write a letter asking for a scholarship she didn't get anything back except a check. She finally came to realize that she was getting all her own money; she was basically paying her own way to go to college at Haskell.

She also talked about an issue regarding the Snake River Basin adjudication to which she is an heir to the allotted land. She said the tribe is getting all the money and the tribe has no plan and there's no notice from OST on how they're going to protect the individual landowners if there's any funds to be distributed.

Susan Weaskus talked about trespass on her land by farmers and cows. She said the Nez Perce Tribe has no jurisdiction over Soyapos who trespass and Nez Perce County won't do anything to those people who continuously trespass.

Another issue she has is that there are no home ownership federal regulations to assist tribal members to have a home built on their allotment. They have multiple family members on one allotment, some are in disagreement, but the majority is in agreement that they need help to get their homes built. One person owns five acres and she believes HUD regulations say they need less than two acres to build a house. They also need easier access to transferring shares of siblings. She has a sister who has not had water or electricity for about twelve years now.

She also feels there needs to be stricter policies within OST and the Bureau to protect privacy and their rights. She said this past year an OST employee, Joel Walker, faxed names and addresses of allottees and a document of conflict from tribal forestry to Clearwater Power Company telling them not to grant water to her sister. That's a violation of our rights.

For three or four years she has been corresponding with the Umatilla Indian Agency to sell shares of her allotment. She said every year she receives a thirty-two cent check from the agency and she would like to get rid of this land and have these checks stopped. She has signed papers and nothing has been done with the Umatilla Agency. Now she's started receiving letters saying the farmer won't pay on these allotments.

Her final issue is regarding the signing bonuses. This issue involves her sister who works at the BIA and she feels is abusing her position. She was told by a farmer that he was instructed to give all cash bonuses to her at the BIA. She said there are nine siblings, and six siblings have never received bonuses. She would like this matter cleared up.

Dale White, a new landowner, comment that he has never felt that the BIA ever represented individual tribal members in a good way. It appears to him that there's more emphasis on tribal governments rather than tribal members. He spoke about a flooding incident on Lapwai Creek and their attempt to prepare for the flood with no assistance prior to or after the flood which washed away the creek bed. He said there's a railroad on the west side of their property and because there was a flood there before, they fixed up it up real good with big bank berms and big rocks, but nothing was done on their side.

He said he wished more tribal members were here today, but they didn't come because they're frustrated and didn't feel anything would be done anyway. He talked about appraisals and said he doesn't know how the bureau does appraisals for real estate, but when they're done, it always seems like they get the lower end of the scale.

GOVERNMENT RESPONSES:

Mr. Shaw assured Ms. Wapato that they will handle her name change. Regarding the bonuses, he said if some people received them and others didn't, we need to go back to the farmers and tell them to treat everyone equally; and he will do that.

Responding to a comment about being cheated out of property, Mr. Shaw said there was a provision of ILCA passed sometime back in the '80's, but it was eventually declared unconstitutional. Right now they have a woman at their office doing contract work because there were portions of property that were cheated from tribes, and the US Supreme Court said you can't do that without compensation. So they've been going back and undoing those transactions and getting those properties and/or money back to the tribal people.

Ms. Sanford addressed the appraisal issue saying that when they go out to appraise a piece of property, they apply four tests to the land at issue; is it legally permissible, financially, feasibly possible and maximum reproduction. She said the land has to pass for highest and best use to determine what the highest and best use is for that property. That's just one part of the appraisal. They also go out and look at the surrounding property within the vicinity and verify comparable sales of such property. They appraise the property, it's reviewed, and its written either in-house or sometimes contracted out. Those are the steps taken to provide an appraisal for fair market value.

Ms. Sanford was asked to repeat the four steps that were used in order to determine an appraisal, to which she responded; there are physically possible, legally permissible, financially feasible and maximally productive; those are the four tests of the highest and best use.

In response to the question asked if these are written in a CFR or somewhere where they can be used while negotiating, Ms. Sanford replied those are the four tests used to determine what the property should be appraised for and yes, they would be in your uniform standards of appraisal. Uniform standards of professional appraisal practices are the guidelines that we use as appraisers to determine the fair market value of property. That particular book is available here today, if you'd like to take a look.

Ms. Wapato asked when they will to be current with Northern Idaho. Ms. Sanford responded that if they have a request for an appraisal, she has the listing of all the appraisal requests for the Northern Idaho Agency and as far as she can tell, they are current.

Ms. Wapato asked if, as our trustee, it is their responsibility to contact them and say they need an appraisal because the lease is due, or in the system do they know the lease is due and it is the ninety day period and the individual needs an appraisal to them. Does she have to write a letter and say this is my ninety day period and I need an appraisal, or do you, as our trustee, take care of that?

Ms. Sanford replied that they receive appraisal requests from the real estate office.

Mr. Shaw added that's our job- his department.

Ms. Wapato replied Ms. Sanford says they are current, and Ida Ann is saying we'll get it out to you as soon as we can. Talk about a forked tongue here.

Mr. Shaw explained you are dealing with two different agencies. The Northern Idaho Agency is not current; we are not current in getting our appraisal requests out. When Ms. Sanford says she's current, that means she's within her guidelines for processing appraisal requests. We are Northern Idaho, and we are not current in getting our appraisal requests out to the appraisers.

Ms. Wapato asked what the turnaround time is.

Ms. Sanford answered that it depends on what type of appraisal it is and what type of workload we have in the office at the time. So it does vary. Typically it could be three to six months. They provide appraisal services for forty-four tribes. The Northwest Regional office covers areas in Oregon, Washington, Idaho, Montana and Alaska.

Ms. Wapato said we read on the web sites about all this money the BIA is giving to repair OST then we get this story from you, where's all this money going if don't have adequate staff or you still have adequate staff and still not getting it done?

Ms. Erwin, Principal Deputy of OST, stated that she agrees with Ms. Wapato's comments, concurring that OST is getting money to help BIA. She said Nez Perce and most of the Northwest will be converting in August or September. After that individuals should be seeing all of that information on their statements. There's a huge work plan to go through for conversion to the leasing system so it will work seamlessly so when we get a check in it will process immediately. The leases need to be renewed prior to, and it's important that we get that information in there and current before we convert.

Ms. Wapato asked if that would include back to 1967 when that restricted money was taken out that was in a restricted account? Ms. Erwin responded, yes, that we can go back and look at what happened and who authorized it.

Mr. Swimmer added that, for example, if a minor is accumulating money in their IIM account and social services at BIA agree that some of the money is needed for their support, because the family can't support them otherwise, they can use that money out of the minor's account to help support the minor. And it can also be used for educational benefits, health benefits and other things. So it's not automatic that the money will be there until a child turns eighteen. The same would go for someone who is incapacitated. Whatever the case, it does have to be approved; it normally has to be approved through BIA social services.

Another area Mr. Swimmer wanted to address was the validity of a lease that hasn't been signed and the enforceability of that lease. As he understands it, when a lease is negotiated on a property, the terms of that lease are then included in what's called an award letter to the farmer or rancher. Even though the lease isn't signed, the fact that the farmer is going onto the property and using it, in accordance with that award letter is a binding contract. They can be held accountable whether it's a crop share or whether it's a cash lease, or whatever it is; if they agreed to do fencing, if they agreed to do

maintenance on it; they're still responsible for that lease even though it might not have been signed by the farmer. They have received consideration; they're taking advantage of using the land, so they're obligated just as though the lease were signed. So if you have a lessee that is violating what you believe to be the terms of that lease, it can be enforced.

Ms. Wapato talked about an issue with the granary not paying the correct percentage of money owed. She asked whose responsibility it is to audit the granary or the farmer to see that we're getting paid correctly.

Ms. Erwin asked if she receives direct pay or through the Bureau. Because she said there's a difference. If you're getting direct pay and the farmer is paying you directly, then that becomes your responsibility. If you're coming through the Bureau, it's their responsibility.

If you want the farmer to pay you direct pay, then what we do is when we send the invoice, it will say this much money is due to the agency. If you have a problem you come to us and say you have a problem, then we can step in and help. Again, the new system we've talked about should help.

Mr. White asked a question regarding landlocked land. He said he inquired from a local trustee why only certain land is landlocked and the rest of them on the tribe have ingress and rights of way through the property. They told him that this happened a long time ago and some pieces of property was overlooked and they just never got a right of way to your property and I don't know what we can do.

Mr. Argel agreed and said that happened on a lot of reservations, some reservations are landlocked. He also said we need to look at all the facts surrounding your situation, because there are some cases where you can find implied easements. Otherwise, he does not feel it is the responsibility of the agency to try and get you an easement for your property.

Mr. Shaw responded that he's currently dealing with the same issue and it may be one that Mr. White has an interest in. He invited him to come and see him.

Ms. Weaskus, having been a former social worker for the Colville Tribe in Washington, referred back to a previous discussion regarding IIM accounts being used for minors in need of care. She asked if the process was still the same that if you had a minor in need of care, a social worker is assigned to the case who develops a distribution plan which is signed off by the client or the client's guardian, the superintendent and the case worker. It's processed and receipts are required for the file. As a previous social worker she feels there are a lot of people at northern Idaho who fall through the cracks.

She said while she worked at the Colville Tribe, they could not recognize power of attorney at the BIA level, but yet Northern Idaho recognizes power of attorney.

Ms. Erwin responded the issue is currently being audited to ensure social services has a spending plan. In the last few years when we put all the encoding together, it was a requirement that they have a plan in place. It's developed by the social services group and approved by the superintendent and then sent onto OST. The social worker must sit down with the parent or guardian. If there's an individual who has a power of attorney, we do recognize power of attorneys in accordance with state statutes and regulations, and these are recognized by BIA. Even though you give someone power of attorney doesn't mean that you can't walk in and talk about your account.

Today's proceedings adjourned at 4:50 p.m. and will reconvene tomorrow morning at 9:00 a.m.

Thursday, May 24, 2007
Day Two

Chairman Penney welcomed everyone back to the second day of the listening session at 9:30 a.m.

Ms. Vera Sonneck, Director of the Cultural Resource Program delivered an invocation.

Ms. Zuni welcomed the participants and began the proceedings. The first presenter, Marian Painter, was introduced.

Ms. Painter referenced a discussion from yesterday regarding power poles, power lines and substations. She said many years ago her grandmother's sister had two or three power poles and a substation put on her property and she was to be compensated for that which she never was. She also has a concern regarding their cemetery; she said there are people that aren't family members and even white people going and burying people there.

Mr. Shaw responded saying that he would like to talk to Ms. Painter about the power line and the substation, although he thinks that was already addressed he wants to talk to her about her historical knowledge of what occurred on that property. He's not sure that he has a role with regard to the cemetery issue, that sounds more like a tribal issue, but they can look into that.

Shirley Bisbee, a landowner, said she has two utility companies that have been trespassing on their property since 1955; through two generations of family members. She said her grandmother received three hundred and fifty dollars from Avista utilities for fifty years, then a year later Clearwater Power moved into the substation and paid nothing. She said they have an illegal license agreement with Avista. She said she's been working on this since 2003 when Avista knew their lease of three hundred and fifty dollars was going to be up. Avista assumed they were going to come in and get another fifty-year lease.

Ms. Bisbee said everyone talks about fair market value, but this is not fair market value, this is deliberate trespass and what she calls stealing. She's written a letter to Ross Swimmer and Gale Norton and now they're working with Dirk Kempthorne. She's also written to Mryon Durkan, John McCain and to the Idaho state senator. Her letter to Ross Swimmer was forwarded to Tom Reynolds in Albuquerque because Mr. Reynolds wrote her and said they were going to get a fiduciary officer to come out to the reservation, that hasn't happened and that was almost two years ago.

She's gone through two general managers at Clearwater Power Company and four or five superintendents at BIA. She's learned all about the CFR's with regard to trespass, she said she knew more than the past superintendent did. She's talked to the reporters from the Lewiston Tribune and all that she's sharing here today will probably be in the news. She's been accused of harassment by the fiduciary officer for going into his and the superintendent's office on a daily basis and asking what's being done about this. The last time she spoke to him he said he was going to get the paperwork to the solicitor's office in Portland. She knows how they work too, because she has letters from them also.

In closing Ms. Bisbee expressed her anger with the representatives here today and the others not present for their lack of performance regarding these issues that she's been bringing to their attention for years and years.

Mr. Swimmer requested clarification on exactly what it is Ms. Bisbee wants; is it a settlement, to get paid for the right of way, to get the right of way removed, to move the power line - what? He said if you've read the CFR's, you know there is a requirement that a right of way be valued or appraised at fair market value. And when you're assessing the value to someone else that has rights to a right of way or a public utility, they're entitled to use that right of way, but they have to pay for it. He's said he is unclear of what she's wanting because the initial statement was that that was not enough money and he's not sure that they can address how much more that might be. There could be negotiations with the company to get more.

Mr. Shaw stated that first he wants to make clear that these are two different utilities here that Ms. Bisbee has been dealing with. One is Avista and they are the ones that entered into a lease with her grandmother some fifty years ago for three hundred fifty dollars for t fifty-year period. That issue has been settled and a settlement agreement has been entered into. Then, another new lease has also been entered into with Avista.

Ms. Bisbee interjected saying that everyone needs to know that she did the negotiations for the settlement, not him or the superintendent or anybody else.

To which Mr. Shaw commented that she did an excellent job and he's told her so numerous times. He also added that there was a substation on the property and as part of the settlement, Avista removed the substation and entered into a sublease agreement with Clearwater utilities some years ago. Although they've never found any

evidence that they obtained secretarial consent for that sublease and that, he considers a trespass.

He has written a letter to Clearwater declaring them in trespass, and along with Ms. Bisbee, they've made a settlement offer to them which they have declined. His next step is to assemble a packet of information to submit to the solicitor's office, because it is the solicitor who has the authority to pursue the trespass.

Vera Slickpoo-Sonneck, a landowner and tribal member, was next to address the audience. One of her concerns is that she had a brother who passed on in 2003 and his estate has still not been probated yet. His daughter is present today and she's been waiting and checking with the agency and they haven't given a time as to when it will be probated.

Another concern is with the Slickpoo Mission that's located near Jackspur, Idaho. Back in the 1900's there was a small church, a school; kind of like an orphanage that was established there. Her family along with two or three other families donated portions of land for that purpose. Then in the early '60's the school stopped functioning. It was mentioned earlier today that a cemetery is there now where both Nez Perce and non Indians are buried.

But back in the early 60's the land was sold, and if this land was given to them which is Indian property, for that purpose, why didn't it revert back to the families? She's done some research but she feels she's now come to a standstill.

Also she and her husband have been waiting since 1982, early 80's, for their land to be surveyed. They told her husband it's done on a priority basis. If you just want to find out where the stakes are and the boundary lines, that's not a priority.

GOVERNMENT RESPONSES

Mr. Shaw requested that she come see him regarding the probate and the Slickapoo Mission. He said he did get involved in that one (Slickapoo Mission) in a different way, and he's not familiar with the title issue. He said there was a right of way issue up there about a year ago when there was a funeral up there and he had to deal with the adjacent farmer. He's like to talk to her about the history of that land and see what they can do. And he also requested her husband to come and talk to him about the survey.

Charlotte Waters shared a concern she has regarding some land that her aunt, who passed away in the early 90's, left for a longhouse to be built which to this day has not been done. She wants to know where the money is that's been accruing for the longhouse and why hasn't her will been closed? She wants the longhouse to be built because its part of their tribal culture and tradition.

Mr. Shaw responded yes, this has been talked about in general council. He's working not only on that but also on the scholarship fund that she set up. The issue is he has to

get with the tribe because it's the tribe under her will that oversees the direction and implementation of both. There is an issue on the scholarship fund about where the funds were deposited whether it was with the University of Idaho or with OST. He will sit down with the tribe and get back to her with an answer.

Sarah Moffet-Sedgwick lives in the town of Kooskia which is located on the reservation in the County of Idaho told of a situation she has with regard to having to pay back taxes on property. She said the county took the deed away from her for her house and they've given her a year to catch up on her taxes, if not they're going to sell her house.

She's gone to the tribe and they told her that they don't handle individual cases, their office of legal counsel said they cannot help because it doesn't involve the tribe. It's her understanding that all property, not just trust property is exempt from paying taxes. She said she has not talked to Mr. Shaw about this but she has talked to Mr. Picard, the past superintendent.

Mr. Shaw responded that she should come in and see him. He explained that different counties in Idaho do things differently which is not appropriate. He said there needs to be a uniform rule. He added that she's not the first person who's run into this issue. He hasn't addressed it in Idaho County yet but he has in Lewis County.

Charles Jody Calica, introduced himself as the secretary/treasurer for the Confederated Tribes of Warm Springs and also a board representative for the Intertribal Monitoring Association. He was formerly the superintendent for the northern Idaho Agency. He said some of the issues and concerns expressed here today are real valid concerns. 1) crop share insurance being was forced because leases are not being updated on a timely basis and the landowners are suffering as a result. And with practically every allotment here on this reservation, there's a trespass problem; he cited several examples.

He said they tried to work on some of those trespass issues and were stopped by the regional office, the office of the regional solicitor. And to the extent that they're not getting the kind of support from the technical level to the professional level and the policy level is hard to understand. He said he just wanted to validate the kinds of issues that are being addressed.

He said his last comment would be regarding the probates. He has brought to Ms. Erwin's attention the fact that with some of the allotments they're dealing with fractionated interest with the lowest common denominator. He said the denominator is in the trillions and with some of those parcels; we're dealing with UP interest. And those unresolved UP interests, he knows are on some sort of sidetrack, but we're dealing with second and third generations from those UP interests that have not been resolved and if those aren't resolved, then you don't have accurate TSR's to be able to feed the system that you've described.

Mr. Shaw responded saying that he agrees with about everything Mr. Calica has said. He welcomes his historical and institutional knowledge and any particulars he can offer to address these issues. Mr. Shaw stated and he knows he's said it before and will say again that he will do the best he can and push his staff to do the best we can to address these issues. He knows these issues have been around for years.

Vivian Wilson has a question regarding the cemetery that was discussed earlier. It was stated that this is a tribal issue and not necessarily a BIA issue for people that are burying there that aren't part of the family or even tribal members. And regarding the fair market value of property, who places the value of fair market value, and if you're waiting for somebody to come and appraise it in order to determine fair market value, how long does someone have to wait for an appraisal and who places the fair market value?

Mr. Shaw responding to a previously discussed cemetery issue was informed that this was a different case.

Ms. Wilson clarified that she's speaking of a private cemetery located on Webb Road right outside of Sweetwater on allotment 342-B.

Mr. Shaw responded it is trust property.

Ms. Sanford commented with regard to fair market value, that the appraisal will indicate what the fair market value of property is. It's a tool to use for negotiations. If anyone needs an appraisal they need to speak to Mr. Shaw or the realty officer and they'll request an appraisal which will then be sent to our office for processing. Also it depends on what type of appraisal, if it's in house or outsourced. Typically it could be three to six months to get an appraisal completed.

Julia Davis-Wheeler stated she's here twofold, as a landowner and as a tribal leader. She said as a landowner many of us inherit land and don't know the right protocol on how to deal with leases. We go along with all the other lessees that sign and don't know if it's good or bad; some say crop share, one-third, or cash only. She feels there's a lot of confusion as landowners because we don't have the expertise or knowledge as to what is best for the land.

She said there are probably others who are just as confused as to which lease is the best one to sign and how much to ask for. It was stated that these appraisals could be used for negotiating, if we had known that before, we could have used that. Some of the leases entered into are for five or seven years and after a while the farmers feel like it's an automatic. There's a lot of pressure on the landowner. In the meantime, there's a whole lot of backlog of leases, not just individual leases but tribal leases too.

Regarding trespass, she said there are non-Indian landowners that have encroached upon our land because we're not out there everyday to watch over it. She said she was over at BIA yesterday and she went over to the realty side, and they have a firm there helping them to catch up but they're overwhelmed just as was mentioned earlier, they

had papers stacked up high. She doesn't know if they will be able to make the deadline. She said she's just expressing herself as an individual member that there has to be a way that as a trust responsibility for the Office of Trust Management and the Department of Interior to make sure the tribes get help. We're going into a new system and there's a lot of mistrust here. The Bureau needs to step up. She requested that if in anyway possible to take this message back to the people that you meet with and tell them that the tribes need help.

Ms. Erwin, in response, stated that she and Mr. Shaw had a conversation last evening regarding what we need to do to get caught up and we're looking at bringing in additional contractors to help. If we get caught up and onto the new system, then we can concentrate on new leases coming up and renewing new leases rather than constantly working on backlog.

Ms. Erwin spoke briefly about the Data Quality and Integrity Group, (DQ&I). What they do is actually look at the information, get the title and compares it to the probates last certified title. DQ&i looks at leases and makes sure there aren't any exceptions or differences in the information that's on the hardcopy leases, titles or probates. Prior to the conversion this will be done for accuracy. Also they will work with the agency and the title plant to do something called post-quality assurance.

Mr. Shaw added that he's made a commitment to the regional office, to himself and OST that we'll be caught up by the end of the fiscal year. Not only to be able to implement the TAMS program but because it's what we need to do; it's our obligation. Another thing Mr. Shaw said he would like to do again that they did last year in concert with BIA was to have a landowners meeting so they know exactly what their rights are. They had one in Kamiah last year and one in Lapwai.

In closing, **Mr. Swimmer** thanked everyone for attending and giving testimony over the last two days. He said this is an opportunity for us to hear the real concerns out here in the field. We've heard common themes, backlogs in the bureau, probate, leases, and process. Regarding the trespass issue, he will be talking to the Bureau of Land Management to see what resources they may have for surveys. They will also work in concert with tribal governments; they have a lot of influence in Washington and at the regional office.

He said sometimes Tribal government is important for us to work through on many of these issues. Some issues actually go as far as congress. We are dealing with regulations and that is the law, and sometimes the law needs to be changed. When we see that need, we have to go along with you or on your behalf to congress to get those changed.

A major change that happened just a few years ago was the American Indian Probate Reform Act. It has a lot of change in how probates from now on are going to be done and different requirements than you've seen before and that's going to take a lot of

education. There are many instances he's seen on other reservations where the farmers think they own the land.

Chairman Penney thanked everyone, Mr. Swimmer, people from OST, BIA and the Intertribal Monitoring Association for attending this listening session and reminded them that this afternoon from 1:30 to 3:30, there will be a training by Seattle University regarding will writing and the American Indian Probate Reform Act.

In about ten to fifteen days we will have a transcript of this meeting and you can contact the NPTEC office and we can make that available to you.

Chaplain Julia Davis gave a closing prayer.