



INTERTRIBAL MONITORING ASSOCIATION on Indian Trust Funds

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INTERTRIBAL MONITORING ASSOCIATION ON INDIAN TRUST FUNDS POSITION STATEMENT FOR OBAMA ADMINISTRATION AND THE 111TH CONGRESS

The InterTribal Monitoring Association on Indian Trust Funds (“ITMA”) is an organization composed of 65 federally recognized Indian tribes. Tribal leaders organized ITMA in 1990 to monitor the efforts of the Department of the Interior (“DOI”) to manage Indian trust funds and trust resources. ITMA’s mission, among other things, is to monitor the United States’ trust reform efforts, provide a forum for tribal consultation, and empower Indian tribes and individual Indians to manage their own trust funds and assets.

In furtherance of its mission, ITMA has hosted 17 “Listening Conferences” throughout Indian Country that have allowed tribal officials and individual Indians to interact directly with decision-makers from the Office of the Special Trustee (“OST”) and the Bureau of Indian Affairs (“BIA”) to resolve trust issues. As noted below, ITMA has also participated in targeted projects and undertakings to address certain trust-related issues, including projects relating to fractionated ownership of Indian lands and the development of a methodology to assist in the resolution of tribal trust claims against the United States.

As the only national tribal organization working exclusively on trust issues for nearly 20 years, ITMA believes that it is well suited and qualified to work with the new Administration on issues pertaining to trust reform and trust resources. ITMA has identified the following trust reform and trust-related issues that it believes will be priorities during the next two years:

I. IMPLEMENTATION FOR PHASE II OF THE TRIBAL TRUST FUND SETTLEMENT PROJECT

One of ITMA’s notable achievements in 2008 was the completion of the Phase I methodology as part of the Tribal Trust Fund Settlement Project (“TTFSP”), a joint project between ITMA and the Office of Historical Trust Accounting (“OHTA”).

In May 2003, DOI approached ITMA to explore the possibility of entering into a cooperative undertaking that could assist in resolving tribal trust-related claims. Following 19 months of negotiation, ITMA and OHTA entered into a Cooperative Agreement to establish the TTFSP in December 2004. The Cooperative Agreement establishes two phases to the TTFSP. Phase I consists of developing a methodology for utilizing the information contained in the tribal trust fund

reconciliation project reports prepared by Arthur Andersen, LLP, in the 1990s for the tribes participating in the Project. In Phase II, the Phase I methodology will be made available for use by any interested Indian tribes on a voluntary basis. The Cooperative Agreement limited the scope of the Phase I methodology to 1972 through 1992—the years covered by the Arthur Andersen reports. It was understood, however, that the Phase I methodology could be adapted or extrapolated to cover other time periods or claims should the tribal participants so choose.

Seven federally recognized Indian tribes agreed to participate as “pilot project” tribes for the TTFSP.¹ The tribes were selected, in part, to ensure that the TTFSP included a geographically diverse range of Indian tribes with varying land bases, natural resources, and trust accounts to better ensure that any methodology would be as inclusive and representative of Indian tribes nationwide as possible.

After three years of negotiations, multiday work sessions and the collective efforts of tribal leaders and ITMA and OHTA staff and consultants, the Phase I methodology is now complete. The seven pilot tribes all have approved the methodology and the ITMA Board of Directors approved it in a July 30, 2008, resolution. In a September 29, 2008, letter to ITMA from Bert T. Edwards, Executive Director of OHTA, Mr. Edwards stated that “OHTA endorses the Phase I Methodology and believes that the Methodology can provide a useful framework for targeted information exchanges and cooperative settlement negotiations with specific Tribes.”

DOI has never committed to providing funding for Phase II of the TTFSP, despite the fact that the Cooperative Agreement explicitly contemplates Phase II. ITMA understands that OHTA has had to prioritize its resources to respond to document requests or to otherwise attend to the more than three dozen tribal trust lawsuits that are in active litigation. For those cases that are not in active litigation, however, ITMA believes that the DOI should commit funding for Phase II of the TTFSP. The parties undertook the TTFSP with the intent to develop a tool to assist in the resolution of tribal claims without the need for protracted litigation on the part of the tribes or the United States. Allocating funding for the continued development of the Phase I methodology through its application to willing tribes in Phase II would serve this purpose and, ultimately, conserve both the United States’ and the tribes’ resources in resolving pending claims.

II. CONTINUED EMPHASIS ON FRACTIONATED OWNERSHIP OF INDIAN LAND THROUGH ITMA PILOT PROJECT ON ESTATE PLANNING AND LAND CONSOLIDATION AGREEMENTS

In May 2008, ITMA initiated a project throughout Indian country to solicit comments and recommendations from Indian tribes and Indian landowners regarding the problems associated with the fractionated ownership of Indian lands. ITMA’s involvement in the project came at OST’s invitation, which was seeking new approaches to address fractionated ownership in response to

¹ These tribes included the Sac and Fox Nation (Oklahoma), Fort Belknap Indian Community (Montana), Pueblo of Picuris (New Mexico), Confederated Tribes and Bands of the Yakama Indian Nation of the Yakama Reservation (Washington), the Coeur d’Alene Tribe (Idaho), the Nez Perce Tribe (Idaho), and the Confederated Tribes of the Colville Reservation.

the Administration's elimination of the Indian Land Consolidation Program funding in the FY 2009 Budget Request. ITMA entered into a grant agreement with the OST for this project that provided for ITMA to present a written report to the Special Trustee setting forth findings and recommendations to address the problems of fractionation.

In December 2008, ITMA provided OST with its final written report. The report identified 15 specific recommendations for the new Administration and the 111th Congress to consider in addressing fractionation. These recommendations addressed issues relating to education and technical assistance in utilizing existing land consolidation laws, involuntary conveyances, and streamlining land purchases, among others.

It is widely expected that the 111th Congress will enact economic stimulus legislation in early 2009 to address the nation's economic situation that could, by some reports, exceed \$850 billion in new federal spending. Against this backdrop, the ITMA report also recommends that any such legislation contain some provisions or funding to address fractionation. We seek your support to include a \$500 million investment in the Economic Stimulus package to ensure the economic viability of Indian lands that have fractioned over generations due to a legacy of failed federal policies and legislation. This investment would provide an immediate economic stimulus by returning fractionated lands to full productivity, and tribal governments could immediately implement the land purchases, returning these Indian trust lands to productivity within 90 days. In addition, the consolidation of these lands will result in savings of millions of dollars of administrative costs and would pay for itself over time.

The costs and burdens associated with the continued fractionated ownership of Indian lands will once again be an issue for Indian country in the next Administration and the 111th Congress. As a component of ITMA's effort to facilitate solutions for fractionation, in October 2008, ITMA proposed to the BIA a pilot project to implement several available mechanisms to address fractionation. Specifically, the ITMA proposal would utilize existing authorities, including the Indian Land Consolidation Act and the American Indian Probate Reform Act ("AIPRA"), to:

- Coordinate with the BIA to assist individual Indian landowners with developing consolidation plans utilizing the current gift deed and trust land exchange regulations (utilizing existing statutory authority and coordinating regulations);
- Coordinate with the DOI's Office of Hearings and Appeals to assist individual Indian landowners with developing consolidation agreements during the pendency of a probate (AIPRA-created mechanism); and
- Coordinate with the BIA to identify large acreage landowners who could benefit from a concentrated will drafting effort (facilitating estate planning provisions of AIPRA).

ITMA would provide this pilot project in the BIA's Rocky Mountain region to ascertain the success of these efforts in reducing fractionation and whether they could be duplicated on a national scale. ITMA believes that this pilot project will provide a cost-effective vehicle for implementing several of the recommendations in its written report.

III. TRUST REFORM ACCOUNTABILITY INITIATIVES

ITMA is offering its assistance to work with the new Administration on future trust-related issues. As the only national organization working specifically on trust funds and resources and related issues for nineteen years, ITMA offers exceptional expertise and knowledge in the area.

Congressional committees, the Department of the Interior and tribes have relied on ITMA to offer expert advice and to lead national efforts to bring to the table the positions and concerns of Indian tribes and Indian organizations. ITMA was instrumental in bringing forth the 1994 Trust Reform Act and as co-Chair. At the request of the Senate Committee on Indian Affairs and the House Resources Committee, ITMA led a bi-partisan national outreach to work with a number of Indian tribes, Indian organizations and congressional staff to develop a legislative draft for S.1439.

ITMA and its membership remain concerned about the trust mismanagement and reform initiatives and the budget implications they have had on Indian tribes. ITMA believes that the future of the OST will once again be of primary interest to Indian country in the next Administration. In recent years, many Indian tribes and Indian organizations have expressed the view that OST should be merged into BIA in some form or eliminated entirely.

ITMA has had some discussion regarding the possibility of transferring or merging certain OST functions into the BIA through the use of a Secretarial Order or some other administrative means short of congressional action. Indian tribes should be directly involved in formulating any plan to merge OST functions into the BIA. To the extent that ITMA's membership is agreeable to exploring such a proposal, ITMA should take the lead in facilitating the dialogue between tribal leaders and OST to identify those OST functions that could and should be merged and develop plans for effectuating the merger. ITMA expects that this dialogue would involve tribal leaders, the OST or BIA officials.

ITMA is aware of the recent Court decision that determined positions within the office of the Assistant Secretary of Indian Affairs, the Office of Special Trustee and the Bureau of Indian Affairs must comply with Indian preference. ITMA recommends that the new Administration insure that Indian Preference is applied to the fullest extent and that no attempts to circumvent the intent of the Court's ruling are allowed. Further, ITMA recommends that recent revisions of the Department manual to create new positions and convert politically appointed positions to career positions be reviewed. Finally, ITMA recommends that the new Administration consider the following criteria when filling key positions that will serve Indian Country: experience living/working in Indian Country, being an enrolled member of a federally recognized Tribe, meeting educational requirements for similar positions in other federal agencies, and having a broad base of experience with Indian Tribes and issues