



INTERTRIBAL MONITORING ASSOCIATION on Indian Trust Funds

ITMA 16th Annual Conference Report

The 16th Annual Conference of the Intertribal Monitoring Association on Indian Trust Funds (ITMA) was held October 25-27, 2006 at the Golden Nugget Hotel & Casino in Las Vegas, Nevada.

Election of ITMA Board of Directors & Officers - Chairman Carl Venne of the Crow Tribe was elected ITMA Chairman replacing out-going Chief Jim Gray of the Osage Tribe. Councilman Mervin Packineau was re-elected to the Vice Chairman post, and new members to the Board are Councilwoman Melinda Danforth of the Oneida Tribe, and Warm Springs Tribal Treasurer Charles 'Jody' Calica as ITMA's Treasurer.

Newly elected FY'07 Tribes elected to the Board include Sisseton Wahpeton Oyate, Salish & Kootenai Tribe, and Tlingit & Haida Tribes. Outgoing tribal representation includes Standing Rock Sioux Tribe, Tohono O'odham Nation, and the Shoshone Bannock Tribes.

ITMA Tribal Membership Addresses the Administration's Concepts and Theories on

The Senate Committee on Indian Affairs (SCIA) Majority Counsel David Mullon and Minority Counsel Allison Binney presented a Concept Paper that theories on S.1439. Following lengthy discussion about the concepts, the ITMA membership present unanimously adopted **ITMA Resolution #07ITMA01**. The Resolution rejected the concepts to revise S.1439 as a complete package, but agreed to consider some of the proposed concepts separately. Because of the fact that the concepts are fairly radical with few details on how they will be implemented, the ITMA membership expressed concern about any fast track effort to address the concepts. The concepts, if incorporated into the draft legislation, will alter the long-standing trust responsibility of the federal government to tribes and individuals.

Such drastic proposals to reform Indian policy, including the details of implementation, must be circulated to Indian Country to allow for meaningful analysis. ITMA's membership presented the following comments to the Administration concepts:

Land Fractionation - The ITMA membership fully recognizes and appreciates the management problems associated with fractionated land ownership throughout Indian Country. However, the membership is concerned about expanding involuntary purchase options currently included in the American Indian Probate Reform Act. ITMA believed alternatives including expansion of the family trust concept should be fully explored prior to taking such drastic measures. Additionally, the ITMA membership was adamantly opposed to redirecting the currently proposed settlement funds in the amount of \$8 billion dollars toward fractionated land purchases. (Continued on page 2)



ITMA Chairman Carl Venne addressing the meeting participants of the 16th Annual ITMA Conference in Las Vegas, Nevada.

ITMA Tribal Membership Addresses the Administration's Concepts and Theories on S.1439

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Instead, ITMA proposed that the amount of the settlement be increased to accommodate addressing fractionated lands and that identified funds not result in harm to current Indian programs.

Beneficiary Managed Trust - ITMA is willing to consider details of a beneficiary managed trust only if this concept includes an expansion/restoration of tribal jurisdiction to insure the tribe and individuals of adequate legal remedies. ITMA also believes a beneficiary managed trust should not be forced upon individuals or tribes but should be available for those beneficiaries that choose to assume management. Further, the membership expressed a concern that title to trust lands must be accurate before an assumption of management.

Resolution of Tribal Claims - The ITMA membership objected to being "blindsided" by the concept to address tribal claims in S.1439. Indian Country has not ever endorsed including tribal claims in legislation to settle individual trust fund claims. Further, ITMA has been engaged in the Tribal Trust Settlement Project with the Administration for the last three years to develop a process for tribal settlements. While the progress of the project has been stalled over the last several months, ITMA did not feel that the Administration was taking active efforts to undermine the project and instead proposed an alternative process in the legislation. That being said, some of the ITMA membership stated that a tribal settlement provision must include an "opt-out" provision, must not foreclose the rights of tribes to litigate, must maintain recently negotiated tribal settlements and insure funding of judgments. Further, inclusion of tribal claims must insure additional funding to the initially proposed \$8 billion dollars.

Limitation of Liability to the United States During and After Transition Period - The ITMA membership was offended by the concept to revise S.1439 and flatly rejects consideration. The concept, if incorporated, would undermine the longstanding special relationship between tribes, individual Indians and the Federal Government and it remains in the face of longstanding Treaty obligations to tribes.



Tribal representatives at the 16th Annual ITMA Conference.

ITMA Tribal Membership Unanimously Rejects Inclusion of Tribal Claims in S. 1439.

ITMA RESOLUTION #07ITMA01 - The ITMA Membership present at the Annual Conference unanimously endorsed ITMA Resolution #07ITMA01, citing objection to the inclusion of Tribal claims in any trust settlement that would be included in S.1439. For three years ITMA has worked diligently and in good faith with the Department of Interior on the ITMA Tribal Trust Fund Settlement Project to develop a methodology for resolution of Tribal claims and remains committed to complete the project on behalf of the participating tribes and to make the process available for future use by interested Tribes.

The Resolution resolves that:

1. ITMA rejects the United States Government's concepts, as a complete package, to revise S.1439 but is willing consider some of the proposed concepts separately; and
2. ITMA supports continued efforts to achieve settlement of the Cobell v. Kempthorne litigation; and
3. ITMA requests that DOI continue funding for the ITMA Tribal Trust Settlement Project.

ITMA Monitors OST Activities

On July 12, 2006, ITMA Executive Director Mary Zuni-Chalan and ITMA's Liaison to OST Majel Russell accompanied Donna Erwin, Principal Deputy Special Trustee and two other OST staff persons on a visit to the commercial "lock box" site in Prescott, Arizona.

Purpose and Intent of "Lock Box" System - A commercial lock box system is a process offered to commercial businesses to collect and expeditiously process account payments. Lock box systems are widely utilized by mortgage companies, credit card companies, financing entities, public utilities and any other businesses that receive a large volume of payments. A lock box system relieves the business of the time-consuming clerical functions of receiving payments, recording to the proper account, copying and then depositing. The Department of Interior Office of Special Trustee began contemplating a lock box system to address the documented delays between the receipt of trust lease and asset payments by field BIA agencies and eventual deposit into Individual Indian Money accounts. The OST "As Is" review of existing BIA processes revealed that trust lease and asset payments were not timely deposited due to the numerous necessary clerical functions performed by several departments for each payment. In an effort to streamline the collection and deposit of trust lease and asset payments, consistent with the goals of the Fiduciary Trust Model, a commercial lock box system was implemented in August, 2005 to receive and process all trust lease and asset payments on behalf of IIM account holders.

Description of the Lock Box Center - OST finalized a contract with the Bank of America to provide a commercial lock box system for all trust lease and asset payments made to the Bureau of Indian Affairs on behalf of individual Indians. Bank of America subcontracts the lock box process to CDS, a national lock box payment processing service. Thus, OST itself does not directly handle or process the payments. CDS has numerous locations throughout the United States and the Prescott center is a new site with a separate, secure area for the processing of trust payments. CDS has trained and obtained heightened security clearance for fifteen staff persons to process the trust payments. All activity in the

space to process trust payments is video taped at all times and the Center has back-up generators to operate equipment upon a power failure. These measures exceed usual security standards for lock box systems. In total, CDS handles sixteen million transactions per year for numerous commercial clients at the Prescott center.

Steps in the Lock Box Process - Upon implementation of the lock box system, OST requires all lease rental and trust asset payments to be made directly to the Prescott, Arizona lock box location for receipt and immediate processing of the payments. Each BIA field agency has its own post office box in Prescott, Arizona for receipt of lease and asset payments. BIA field agencies are not to accept any payments and instruct the lessees to send payments directly to the lock box. Field office staff will provide an envelope with the correct box number in Prescott for the lessees until lessees receive payment coupons. The steps in the processing of payments include:

- The major sorting of mail by post office box for each individual field BIA agency occurs in Phoenix, Arizona and arrives in Prescott at the CDS center by 7:30 a.m.

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ITMA Legal Counsel Majel Russell discussing OST's Lock Box system.

ITMA Monitors OST Activities (Continued from page 3)

- The CDS staff receives all mail in the central mailroom and conducts a second sorting of the mail to insure that no mail for other clients is included in the OST/BIA mail.

The OST/BIA mail is then transferred into the secure and separate room designated to process the payments.

- All mail is opened by staff and imaged with a highly sophisticated machine equipped with several types of software that reads the check and determines what account it should be credited to. All paper sent to the lock box, including the envelope, is imaged in "batches".

- After imaging, the checks are "keyed in" to a computer system by batches and the software totals each batch for deposit.

- Deposit totals (including the actual checks) are transported by a courier to the Bank of America in Prescott, Arizona where they are immediately deposited by the close of each business day. All imaged batches of material, including envelopes, coupons, notes, etc. are sent to OST offices in Albuquerque, New Mexico for storage.

- The CDS Center is capable of processing 150,000 trust lease and asset payments per year. This past year, the center has processed approximately 60,000 trust payments but the number will rise upon the issuance of payment coupons directly to lessees. The imaging and "keying-in" processes replace the manual BIA systems of logging, copying, recording and forwarding to Albuquerque for deposit. Any correspondence received with the payment or sent to the BIA agency lock box with a question is forwarded to the OST Call Center in Albuquerque, New Mexico.

Direct Pay and Minerals Management Payments - Many trust landowners who receive payments directly from their lessees for trust land leases rather than receipt of payments via their IIM accounts have expressed concerns about the lock box process. Many landowners have developed a relationship with their lessees that allows them to draw advances on their upcoming rental payments or negotiate their own rental rates. OST is considering the direct pay concerns and is finalizing a

form for lessees to submit verifying that payment has been made directly to the landowner. The form would then be sent to the lock box and processed to insure proper recording. Mineral royalty payments to landowners by the Minerals Management Services (MMS) are not currently paid into the lock box. OST is proposing that MMS also utilize the lock box system and these discussions are underway.



OST representatives; Doug Lords - Deputy Special Trustee, Donna Erwin - Principal Deputy Special Trustee, Ross Swimmer - Special Trustee for American Indians.

OST Albuquerque Facility and Services

OST invited ITMA representatives to its Albuquerque, New Mexico offices for a tour of the facility and an opportunity to get acquainted with key staff. Mary Zuni-Chalan, Executive Director and Majel Russell, ITMA Legal Consultant, met with Donna Erwin, Principal Deputy Special Trustee to discuss the ITMA's liaison role. ITMA staff toured the facility and met with Margaret Williams, Deputy Special Trustee for Accountability and Doug Lords, Deputy Special Trustee for Field Operations, Regional Trust Administrator Bob McKenna, Chief Information Officer. The Regional Trust Administrators discussed the goal of OST to provide effective beneficiary services at a local level for all trust related questions. Basically, the goal is for the local trust officer to address any trust account or land related ques-

OST Albuquerque Facility and Services (Continued from page 4)

tion including ownership interests, encumbrances, rental or royalty amounts due and the status of payments.

The initial visit provided an overview of the OST organizational structure and a topical explanation of the re-engineering efforts of each department within OST to reform trust management nationwide. Areas discussed included:

- Trust Asset Accounting Management System (TAAMS) for title and leasing information on trust land. All title information for trust lands nationwide has been converted to the TAAMS title system. An aggressive schedule to also implement the TAAMS leasing component is underway and conversion has been completed for the Southern Plains region. The Great Plains regions will be fully converted by July 1 and the Rocky Mountain region by August 1, 2006. The TAAMS title and leasing information will allow trust beneficiaries to access land ownership information including any encumbrances by accessing one system at local offices.
- Beneficiary Call Center - to address questions from trust beneficiaries. The call center was deployed on 12/30/04 and has received 114,404 calls as of 5/1/06. Approximately 101,882 calls or 89% of calls were resolved by the first person answering the call. The call center plans to reduce the number of work hours of OST and BIA staff spent answering trust beneficiary questions.
- Use of a commercial lockbox - for the collection and processing of lease and asset payments, OST has contracted with a national bank to receive and process payments to trust beneficiaries. The lockbox system is intended to prevent delay in receipt of income into Treasury and disbursement to beneficiaries.
- National Training Center- OST has developed a national training center to provide in-depth training for all BIA/OST employees who will work with trust assets and income. The training will focus on utilizing the new national TAAMS system and implementing other new processes and procedures to more effectively

ITMA Elects Board of Directors for 2006



[ITMA Chairman Carl Venne](#)
[Crow Tribe](#)



[ITMA Vice Chairman Mervin Packineau](#)
[Three Affiliated Tribes](#)



[ITMA Secretary Melinda Danforth](#)
[Oneida Tribe](#)



[ITMA Treasurer Jody Calaca](#)
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[1st Vice President Bill Martin](#)
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[Councilman Samuel Penney](#)
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[Councilwoman Betty Cooper](#)
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[Representative Richard Sangrey](#)
[Chippewa Cree Tribe](#)



[Chairman James Steel](#)
[Salish & Kootenai Tribe](#)



[Chief James Gray](#)
[Osage Nation](#)



Senate Committee on Indian Affairs (SCIA) offers "Staff Draft" of Legislation to replace S. 1439

On August 2, 2006 Senator McCain announced that he and Senator Byron Dorgan of North Dakota had met on August 1 with Attorney General Alberto Gonzales and Interior Secretary Dirk Kempthorne for "a very productive discussion of the salient issues," of legislation raised by S. 1439. Introduced in the first session of the 109th Congress to settle the Cobell lawsuit, S. 1439 raised nearly as many questions as it proposed to answer.

Among other things, S. 1439 would have reorganized the current Indian trust administration within the Department of Interior; created an Indian Trust Asset Management Policy Review Commission to suggest substantive changes to existing legislation; and authorized a Tribal Trust Asset Management Project. One thing many tribes questioned was whether S. 1439 as written would, in fact, have settled the Cobell lawsuit.

Hearings in the Senate and in the House of Representatives, and meetings with tribes and Indian organizations throughout the following year had produced a number of suggested recommendations. Throughout the intervening year, Committee staff had continued as well to meet with representatives of the plaintiffs in Cobell and with members of the Bush Administration. Those meetings apparently led to the August 1 meeting involving the two senators and the two Cabinet officers.

On August 4, two days after Senator McCain's announcement that the Committee would forego further consideration of S.1439 in favor of continuing "discussions with the parties to the [Cobell] litigation," the Senate Committee on Indian Affairs released a "staff draft" of legislation designed to replace entirely S. 1439. The new bill would be cited as the "Indian Trust Reform Act of 2006". Copies of the proposed substitute bill have been circulated widely with a footer at the bottom of every page, stating in bold type that this document is a "STAFF DRAFT – NOT APPROVED BY THE COMMITTEE – AUGUST 4, 2006."

Title I of the bill would settle the Cobell litigation, and the other titles reflect modifications to the previously

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David Mullon, Chief Counsel to the Committee, has emphasized that this draft legislation has not been endorsed by any Senator on the Committee, but that it does reflect the conditions laid down by members of the Administration for a multi-billion dollar agreement to settle the Cobell litigation. The draft legislation would provide \$4.06 billion for per capita payments to members of the Cobell plaintiff class and another \$2.38 billion for pro rata distributions. The pro rata distributions would be calculated by a formula based upon the total dollars that flowed through the individual accounts after January 1, 1985. Up to 3% of the funds, or \$210 million, would be available for the cost of administering the settlement funds, and another 3% for attorneys' fees and court costs. One billion dollars would be utilized to establish a Land Mismanagement Claims Settlement Fund.

Individual Indian Money (IIM) account holders would be divided into land-based claimants and non-land-based claimants, although Committee staff have not been able to identify a bright line separating the two classes of account holders. Presumably, these and other issues would be decided by a Special Master appointed by the Chief Judge of the U.S. District Court for the District of Columbia, whose determinations (Continued on page 7)



Steve McHugh from Holland & Knight giving a presentation on the Judgment Fund.

Senate Committee on Indian Affairs (SCIA) offers "Staff Draft" of Legislation to replace S. 1439

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would be final, subject only to judicial review as provided by the bill.

Title II of the bill would create an Indian Trust Asset Management Policy Review Commission composed of five persons to be appointed by the President and the leadership of both houses of Congress. This Commission would review all federal laws and regulations governing Indian trust administration and make recommendations for improving those laws and practices within two years.

Title III - would establish an Indian trust asset management demonstration project for up to fifty tribes. Under this project, selected tribes and the Secretary of the Interior would enter in agreements under which tribes themselves would administer trust lands and assets subject to their jurisdiction. If specified conditions are met, the Secretary would be authorized to make offers to purchase up to three times the fair market value, which offers would be deemed to have been accepted unless rejected by the owner in writing within 90 days. This title would continue the practice of subjecting purchased lands to a federal lien "to repay the principal and interest" on the purchase money.

Title IV - provides for a Fractional Interest Purchase and Consolidation Program. This program would authorize the Secretary to offer incentives to individual Indian land owners to sell their interests in trust land. For tracts with 200 or more owners, the Secretary would be authorized to make offers to purchase for up to three times the fair market value, which offers would be deemed to have been accepted unless rejected by the owner in writing within 90 days. This title would continue the practice of subjecting purchased lands to a federal lien "to repay the principal and interest" on the purchase money.

Title V - would reorganize the current organization of the Department of the Interior for administering the Indian trust. A new Under Secretary for Indian Affairs would replace the current Assistant Secretary and the Special Trustee for Indian Affairs. The new Under Secretary would be responsible for supervising all activities related to Indian affairs now conducted by other Interior Depart-

ment agencies. The bill would restore Indian preference to all positions within the Office of the Under Secretary for Indian Affairs. In addition, this title would create a new Assistant Inspector General to conduct investigations and audits of Indian trust administration.

Title VI - would require an annual audit of individual Indian and tribal trust accounts, including a report on internal controls. Unlike the previous S. 1439 that placed this audit responsibility with the Comptroller General of the United States, the current draft legislation returns the audit function to the Department of the Interior. The Inspector General of the Department would contract with an independent external auditor to conduct the annual audit and make it available to the oversight committees of Congress and to the public.



Gerald Gray receiving an award on behalf of G & G Advertising of Blackfeet Montana from ITMA Chairman Carl Venne, in appreciation of contributions throughout the years.



We are on the web!

www.itmatrustfunds.org

ITMA's mission is to focus on trust fund and asset management initiatives as developed by tribal participants:

- Monitor the Government's Reform Efforts
- Trust Policies and Regulations
- Legislative and Litigation Initiatives
- Provide a Forum for Tribal Consultation
- Provide Increased Education for Tribes and Individuals
- Enforcing the Federal Government to Adhere and Implement Trust Standards
- Empowering Tribes and Individuals to Control and Manage Their Own Trust Funds and Assets

ITMA was organized in 1990 by tribes determined to actively monitor and have a voice in the activities of the Federal government to ensure fair compensation to tribes for the historical trust funds mismanagement. Today, ITMA is a national tribal consortium consisting of 65 federally recognized tribes, whose purpose and objectives have increased as it follows the trust reform activities of the Federal government and Congress.



ITMA

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