

Statement of Alan R Parker
Before the Senate Committee on Indian Affairs
Committee Hearing on S 439
April 29, 2010

Indian Development Finance Corporation Act

Chairman Dorgan, Vice Chairman Barrasso, and Members of the Indian Affairs Committee, I want to thank you for the opportunity to testify today on this important legislation that would establish a Development Finance Institution to serve the economic infrastructure needs of Tribal Nations across the United States.

Historical Background to the IDFC Proposal: As you may know, Senator Inouye's bill, S 439, was originally introduced in 1987 during the 1st Session of the 100th Congress. At that time, it was my privilege to serve as Staff Director of the Committee on Indian Affairs under the Chairmanship of Senator Inouye. Shortly after he appointed me to the position of Staff Director in the spring of 1987, I informed him that I had been involved with developing a proposal that grew out of the work of the Economic Development Task Force of the **American Indian Policy Review Commission (AIPRC)**. The AIPRC was established by a Joint Resolution of the US Congress in 1975 and completed its work in 1977.

The Economic Development Task Force recommended that Congress adopt legislation to create a "**Development Bank**" type of institution to be modeled after the regional development banks created by the World Bank. The AIPRC recommendation was based on the analysis that the economic conditions that prevailed across Indian Country were very similar to the conditions in so-called "Third World Countries". The World Bank, created shortly after World War II, was intended to help such "Third World Countries"

recover from the War and the impacts of over a century of colonialism practiced by European Nations in those areas of the World. The World Bank created a model for “development” finance institutions that could assist its client nations in creating the economic infrastructure needed for the development of sustainable local economies.

The development banks that the World Bank established to serve lesser- developed national economies, were empowered to address the lack of privately-owned networks of financial institutions, the lack of transportation infrastructure and energy development systems by creating an electric power grid and supply electricity for consumer needs and public institutions such as schools and hospitals. They also assisted with technical help in creating legal and political institutions that could serve as a foundation to support trade and commerce.

The IDFC bill that was introduced by Senator Inouye in 1987, (S 721) was based on the final report and recommendations of the American Indian Development Corporation (AIDC), a private non-profit organization staffed by a talented team of Native American business development experts, which had conducted research on the track record of World Bank-sponsored regional development banks. AIDC was funded by the Administration on Native Americans and conducted its work with the assistance of economists, academics and officials from development finance institutions. They summarized their study and recommendations by concluding that the bill should create an independent, mixed ownership, federal corporation, and the Corporation should be designed to function as a stock corporation empowered to issue stock with voting rights to every Native nation that wished to purchase the stock. Their thoughts were that the stock-shareholder relationship would serve as a method to ensure accountability of the IDFC to its tribal shareholders as well as, of course, the Federal agencies that would normally be assigned to exercise supervisory duties. It would be authorized to issue “Capital Stock” to the federal government in two increments, \$20 million soon after the bill was enacted into law, and an additional \$80 million as soon as there was a demonstration of willingness on the part of tribal nations to participate in the corporation

as evidenced by the time when 10% of the authorized 500,000 shares of Tribal stock had been purchased by tribes.

This initial group of “tribal shareholders” would be authorized to convene a shareholders meeting and elect their own governing board. In the interim period following passage of the bill, an initial governing board would be appointed by the Secretary of Interior, with recommendations from Tribal leaders, and the members of the governing board were expected to establish, with the help of the Secretary of Interior, an office within the Department of Interior that could organize itself to issue the initial tribal stock offering. They were also expected to appoint an Interim President for the IDFC and hire a small management team that could work on designing operational policies for the new IDFC. As the historical record shows, Senator Inouye and his counterpart in the House, Mo Udall, Chairman of the Interior Committee, held hearings on S. 721, both in Washington, D.C., as well as a number of field hearings in Indian Country. The testimony from these hearings led to some important changes in the bill and it was then passed in both the House and Senate at the end of the 100th Session. (See attached Committee Report on S 721, 100th Congress which I have shared with your Committee staff)

Once S 721 was passed it was sent to President Reagan. He vetoed the bill, informing us that he could not support the creation of another GSE (Government Sponsored Enterprise) type of institution. He added that in his view, there were already sufficient federal authorities such as the Small Business Administration and the BIA Loan and Loan Guarantee program established under the 1975 Indian Financing Act. Congress had already adjourned for the year and there was no opportunity for Chairman Inouye and Chairman Udall to attempt an override of the President’s veto. When President Reagan’s successor, George Herbert Walker Bush, was installed into office, I called Interior Assistant Secretary Eddie Brown to discuss the IDFC bill and Reagan’s veto. The Assistant Secretary informed me that he had been told by his White House contacts that the bill would be considered “veto bait” and advised me that it would not be productive to have it introduced again and seek its passage in the 101st Congress.

Authorities and Functions of the IDFC

The IDFC bill that you now have before you today, S. 439, is essentially identical to S. 721 as it was passed in the 100th Congress. The primary tools that it brings to the table include:

- 1) Authority to make investments of seed capital into the business ventures of its tribal shareholders and,
- 2) To provide federally-authorized guarantees for bank loan commitments and tribal tax-exempt development bond issues.

The only limitation is that the business activities supported by the IDFC must be related to the development of economic infrastructure on behalf of the tribal shareholders' communities . That is, the business should not be an activity that simply exists within an established commercial market and is not otherwise connected to the economy of the tribal shareholder.

- 3) The IDFC is also authorized to create a **Technical Support and Business Research Office** within the institution with expertise in designing and issuing development bonds.

It should also be able to assist in providing the research for and designing business opportunities that appropriately take advantage of the unique position of US Tribal Nations within the marketplace, *such as alternative energy developments, broad band internet information services or natural foods produced in Indian Country and identified with tribal food production traditions such as the wild rice in the Great Lakes, the Wapato root potato from the northern plains, chili spices from the southwest and wild salmon from the pacific northwest.*

Mr. Chairman, as I am sure you and your colleagues are aware, there have been some significant changes in Indian Country since the IDFC bill was first introduced in 1987. Primarily, these changes result from the introduction of casino style gaming that was made possible through the 1988 passage of the 1988 *Indian Gaming Regulatory Act*. According to the most recent reports from the National Indian Gaming Commission (NIGC), in 2009, tribes collectively generated over \$26 billion in revenue.

The most successful tribal gaming operations are typically located near major cities and metropolitan areas in close proximity to Indian Country. For the tribes that are located in such areas in California, Connecticut, Florida and New York, the advantage of their location has proven to be critical to their success. However, as you are no doubt aware, almost all of these tribes have communities that are very small in population and are located on a relatively small land base as compared to tribes in the Great Plains and Rocky Mountain areas that you and your colleagues on this committee represent – namely North Dakota, South Dakota, Montana, Wyoming, and Minnesota. In New Mexico, Washington State and Arizona, the conditions are similar in that most tribes do not have “large” casino operations but there are a minority that do have successful operations. In Utah and Hawaii, state law criminally prohibits all forms of gaming.

Thus, the record shows that casino style tribal gaming has not reached nor benefitted tribes in these states. Some tribes, such as the Shakopee Mdewakanton Sioux near Minneapolis, have been extraordinarily generous with their less fortunate neighbors, awarding over \$40 million in contributions to worthy causes in 2008. In Washington State where I live and have served for seven years as a member of the Washington State Gambling Commission, the tribes have agreed in State Gaming compacts to set aside 1% of their net revenues for charitable contributions. In 2009, these charitable contributions reportedly amounted to approximately \$3 million. Most Washington tribes give an informal preference to contribution requests coming from neighboring tribes for scholarship services delivered to Native Americans attending higher education programs. However, *in no state that I am aware of have the successful gaming tribes found a way to share their excess capital, that is “capital in excess of their own needs, and use this to invest in business ventures with other tribes.* In a few instances, the Mohegan and Pequot tribes have helped other tribes in the development of their gaming operations in other areas of Indian Country that have sought out such Tribal Capital. Although I have not exhaustively researched the record of these practices, I can assure you that the successful gaming tribes invest their excess capital primarily to diversify their own economies and invest in business opportunities within their own region. *I would suggest*

that this record shows that the majority of the 560 Indian Tribal Nations, particularly those with large land bases and large populations located far from commercial and trade centers, remain in conditions of extreme poverty that more than justify action by the Congress to enact legislation to establish a federally-chartered and funded IDFC as proposed by Senator Inouye in S. 439.

In my view, one of the primary goals of the IDFC to be created by S.439 would be *to "intermediate" business investment opportunities between the successful gaming tribes and the non-gaming tribes.* The IDFC would bring to the table the tools needed to make this type of inter-tribal economic development possible and much more likely to happen. The Bank's Technical Assistance and Business Research Office could conduct research on the potential for successful alternative energy resource development business development by tribes in the Great Plains and Rocky Mountain areas. Internet broadband development opportunities abound in the southwest and southern plains where many non-gaming tribes are located.

The IDFC could create *investment portfolios* around such investment opportunities and take them directly to the tribal council chambers of those successful gaming tribes who have expressed an interest. They could include suggestions about the amount of seed capital that the IDFC should be prepared to inject into such *inter-tribal economic opportunities.* The IDFC would advise tribal governments as well as on the potential help the Bank could provide in securing an IDFC-authored federal guarantee for either a bank loan or investment bank-sponsored Tribal tax-exempt bond issue that would be part of the financing package. Likewise, where there is a potential to develop export or import trading opportunities between IDFC shareholders and indigenous nations who have a *comparable legal and political framework* such as the First Nations in Canada or Maori Tribal Nations in New Zealand, the IDFC could bring their intermediation skills to the table to assist such initiatives.

Mr. Chairman, I have been advised that the IDFC proposal gives rise to a number of questions that are generated by our current national financial crisis. For example:

Will the IDFC be able to engage in the kinds of practices that are so controversial today and which have given rise to calls for financial reform?

The IDFC as provided for in Senator Inouye’s bill, S.439, will simply not be able to engage in the kind of “risky” investments and banking practices that are cause of such public concern today. As we know, the primary reason that the world of banking is so entangled in these difficulties is due to their excessive and unwise reliance of the use of “subprime” mortgage-backed securities bundled together into large investment vehicles. **The IDFC will simply not be engaged in mortgage lending.** As you well know, on the great majority of Indian lands that are held by the federal government in trust status, private mortgages are rarely issued because the underlying real estate for a home site cannot be used as collateral. Under federal law, Indian trust property cannot be pledged as collateral for a private bank or even a development bank loan. In recent years, it has become possible to create an *assignment of interest* as a leasehold interest on trust lands. In these cases, the value that is being pledged to the lender is the property that rests on the land, the buildings and fixtures that constitute the residence. These leasehold assignments can be pledged by a tribal member who has the right to do so under their tribe’s law. However, such an interest cannot be sold to another individual, even another tribal member. They may be transferred, if the tribal government approves such a transfer and the transfer is also approved by the BIA, but this cannot be used to create a “market” of such leasehold assignments. There is simply no way that the financial transactions that the IDFC will engage in can be used to create a market for negotiable securities that can be put into a larger market and become part of the financial scandals that have we have come to experience.

How will the IDFC be “supervised” or “regulated”?

Banks that have a federal license operate under the supervision and regulation of the Office of the Comptroller of the Currency (OCC). The Comptroller conducts regular inspections of all banks’ books and supervises them if they get into financial trouble. That is, the OCC may require them to write off bad loans and to change their lending

practices or to be seized by federal Marshalls. If the bank experiences a Failure or Bankruptcy, the Federal Deposit Insurance Corporation (FDIC) has the authority to take over a bank's assets and sell them to public buyers. The FDIC may arrange for a financially-strong bank to purchase the failed bank's assets.

The IDFC would be "supervised", in this sense of the word, by an agency of the Department of Interior or an office within the Treasury Department. Perhaps there is such a "Supervisory" office for the Community Development Finance Institutions housed within the Treasury Department, the CDFI group. I would like to suggest that Committee staff make inquiries into such arrangements prior to a "Mark-up" session for the bill, S. 439.

Mr. Chairman, before I conclude my testimony, I would like to address the question of language in the bill that provides that the stock to be issued to Tribal Shareholders be set at \$50 per share. This was language drafted in 1987 when the great majority of tribes had virtually no disposable income or cash reserves. In this post-IGRA era, I would suggest that a price per share of \$1,000 or even \$10,000 would be more appropriate. In addition, such a price would mean that if all 500 tribes purchased IDFC stock, it would create a pool of capital of either \$5 million or even \$50 million to augment the \$100 million authorized for federal government Capital Stock.

In addition, there should be a ceiling set on the number of shares one individual tribal nation should be able to purchase. Presumably, the Bank's Governing Board would write the initial operating policies to provide one vote per share for tribal shareholders if they are casting votes for the Governing Board or adopting or modifying important operating policies or considering investment decisions. If the US Treasury Secretary has a deciding vote on key decisions for loan commitments or investment of IDFC capital into Tribal Shareholder projects, the Governing Board's decisions could still be overruled by a majority vote of tribal shareholders at an official shareholder meeting. A basic principle of democracy should be considered which balances the views and wishes of small shareholders and voting power with tribes who hold larger blocks of the voting stock.

Mr. Chairman, it has been an honor to appear before you today and offer these comments on the IDFC authorizing legislation. I would like to close by pointing out to you that the IDFC is a “visionary” proposal that originally came from the group of Visionary Tribal Leaders who served 40 years ago on the Economic Development Task Force of the American Indian Policy Review Commission. I believe that they were looking into the future and that they could envision a time many years later when Indian Country would be in a position to make use of the resources and powers assigned to the IDFC in a powerful and dynamic way to meld Indian Country together into an integrated “Indian Country Economy” and, perhaps into an “Indigenous Nations Economy”. The Development Bank has the tools and can mobilize the capital and technical resources to help tribal leaders across Indian Country create a healthy and economically-sustainable Indian Country Economy. They can overcome the preceding generations of colonialism and economic oppression imposed on US Tribal Nations under the Allotment Acts and the termination-era policies of BIA domination and economic paternalism. It is an opportunity to bring about an economic transformation of Indian Country. This would be a fitting role for the IDFC to define as its mission. I thank you for your attention, and I am happy to respond to any questions you may have.