



Quinault Indian Nation

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Testimony of President Fawn Sharp
Quinault Indian Nation
At the Senate Committee on Indian Affairs Oversight Hearing
*"Fulfilling the Federal Trust Responsibility: The Foundation of the
Government-to-Government Relationship"*
May 17, 2012

"The Great Spirit bestowed life to all of us...including the animals, birds, fish, insects and plants. Our collective Native warnings and predictions were ignored in the rush to capitalize and exploit the bountiful resources of the land. Countless irreplaceable species are preserved now in museums or documents in textbooks. As the consequences of unmanaged exploitation and pollution reach irreversible proportions, the United States heeded our centuries old appeals for environmental protection. We only hope it's not too late and that Mother Nature's wounds can still be healed. We will continue to serve as the environmental conscience to the nation and the world."

*Joseph B. DeLaCruz, President
Quinault Indian Nation, 1972-1993*

Good afternoon distinguished Committee Members and esteemed witnesses joining me today to provide testimony on ***Fulfilling the Federal Trust Responsibility: The Foundation of the Government-to-Government Responsibility***. My testimony addresses this topic from several, unified perspectives: as the President of the Quinault Indian Nation and President of the Affiliated Tribes of Northwest Indians regarding natural resources under authorities of Self-Determination and Self-Governance, and as the Chairperson of the Secretary of the Department of the Interior's *National Commission on Indian Trust Administration and Reform*.

First and foremost I would like to applaud this Committee for continuing such a vigilant effort to address the plethora of disparities Indian people are forced to deal with on a daily basis. It is because of these hearings and the Roundtable Sessions that Congress, the Administration and the American public are being educated about our issues. Mase' [Thank you]!

Prologue & Vision:

Five centuries ago, Europeans relied upon the notion of the "Doctrine of Discovery" to provide a quasi-religious, political justification for colonialism. This Doctrine led to the expropriation and exploitation of the natural resources of this land with little regard for the impacts on the cultures and economies of the Indian peoples that had relied upon for them for countless millennia.

When the United States was founded two and a half centuries ago, alliances were sought with Tribal nations to try to free the colonies from European powers. For nearly a half century after Independence, the United States entered into treaties to formalize relations with Tribal nations. In exchange for promises to protect Tribal peoples from depredation and provide for their needs, Tribal nations relinquished claims of title to their traditional territories and agreed to relocate to small areas of land that were to be set aside for their exclusive use and occupancy. These promises, and subsequent laws such as the General Allotment Act, form the foundation of the trust responsibility, a concept that was rooted in the fundamental notion that Tribal nations are dependent on the largesse of the dominant government, somehow incompetent and incapable of managing their own affairs.

Yet, even the solemn treaty promises of the United States were broken repeatedly.

- Treachery, fraud, and corruption of Indian agents assigned to serve the needs of reservation communities were common.
- Indian children were removed from their homes and placed in boarding schools where they were forbidden to speak their native languages.
- As non-Indians coveted the land and resources such as gold which were found on reservations, Tribal nations were forced to relocate or accept diminished land bases.
- Tribal lands were flooded to create reservoirs to provide water and power and to try to protect non-Indian property.
- A policy of allotment was adopted to “civilize” Indians while opening reservations to settlement and development by non-Indians. The confused and complex ownership and occupancy of Indian reservations created a jurisdictional morass that allows developers to ignore laws and regulations intended to protect the environment and perpetrators of crimes such as rape or the manufacture and distribution of illegal substances to evade prosecution.
- Tribal lands have become dumping grounds for hazardous materials that non-Indian communities would not tolerate.
- Tribes are being required to compensate for environmental deterioration caused by non-Indian development on and off reservations, infringing upon our prerogatives to utilize reservation resources for the benefit of our own communities.

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- When the duty to fulfill treaty obligations became burdensome, the United States pursued a policy of termination to try to “get out of the Indian business”.

Until just a few decades ago, when a new era of Self-Determination and Self-Governance was ushered in, the Indian policy of the United States was centered on conquest, removal, dislocation, and extirpation.

The purpose of highlighting this litany of wrongs against Indians is not to dwell on the past, but to serve as a prelude to discussion of the future form and substance of relations between Indian Tribes and the United States. The trust responsibility and government-to-government relationships are central to our deliberations. I say “our” because decisions cannot be made unilaterally by the United States. Our discussion should include consideration of the implications of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), particularly articles relating to free, prior, and informed consent. As sovereigns, Indian Nations and the United States must engage in substantive dialogue to collectively establish a common vision and policy to guide our path to tomorrow.

In 1977, the American Indian Policy Review Commission issued a report to Congress noting, “The Relationship of the American Indian tribes to the United States is founded on principals of international law....a relationship founded on treaties in which Indian tribes placed themselves under the protection of the United States and the United States assumed the obligation of supplying such

protection.”¹ This relationship is not working! The implementation of the United Nations Declaration on the Rights of Indigenous Peoples is essential, the inability to pass amendments to the DOI Self-Governance amendments and the lack of funding to allow Tribes to protect our borders and communities are but a few of the elements of the current dysfunctional trust responsibility to American Indian and Alaska Native peoples. The United States trust responsibility has not evolved with the changed political relationship between the United States government and Indian governments. It must be changed to reflect the realities in Indian Country in the 21st century.

The following comments center on Self-Determination and natural resources, the particular area on which the Committee is seeking comments from the Quinault Nation:

- A Different Kind of Trust Responsibility. Historical notions of dependency and incompetency must be abandoned. Our dialogue should be focused on the forgotten trust responsibility of the United States – the responsibility to support the capacity of Tribes to take their place alongside the American system of governments. For natural resources, recognition and acceptance of Tribes as capable, responsible resource managers will be essential to enable us to protect our cultures and economies and to work collaboratively at the local, state, regional, national, and international levels to sustain the environment.
- Self-Determination & Self-Governance. The Quinault Nation was one of the first Tribes to employ Self-Determination contracting and Self-

¹ American Indian Policy Review Commission Report, 1977, p. 11

Governance compacting to improve its ability to manage its natural resources. The devastation of our forests, salmon, lands, and waters wrought by decades of mismanagement by the United States could no longer be tolerated and spurred our determination to embark on the newly opened path to Self-Determination. For years, buy-Indian and Self-Determination contracts provided a means for us to perform activities in lieu of the Bureau of Indian Affairs (BIA). We had little latitude to establish objectives and goals, but were rather limited to those imposed and supported by the federal administration and BIA. We found it necessary to turn to Congress to enable us to establish a demonstration program for a Tribal forestry program that was designed to address resource management problems that had accumulated over decades of BIA administration. Our ability to develop our own programs and priorities for forestry, fisheries, health, and social programs has been greatly enhanced through the use of Self-Governance compacting. Quinault was in the first tier of Tribes to participate in the Self-Governance program. While Self-Governance has provided us with the flexibility to tailor programs to best fit the needs of our own communities, several improvements, noted in H.R. 2444, the Department of the Interior Self-Governance Amendments, are needed.

The Quinault Indian Nation compacted to manage our forest lands but we have not received the additional funding or increases in our formula to manage existing obligations. We are further challenged by the increased cost of fuel to perform these services.

- A New Focus for Federal Administration: Support for Tribal Self-Government. There is a need to expand our vision of the nature of the

trust responsibility to see beyond the accustomed, narrow confines of fiduciary duties and obligations. In some respects, this requires the term trust responsibility to be turned on its head. Instead of a policy that perpetuates paternalism and dependency, trust responsibility should be viewed as the responsibility to administer Indian Affairs in a manner deserving of the trust of Indian Country. The time has come to transform the role of the United States from guardian to enabler, to make the primary function of the trustee that of supporting and assisting the capacity of Tribes to truly exercise Self-Determination. Tribes that are ready for this step should have the opportunity to establish relationships with the United States that move beyond tutelage to a position of sovereign equality. To make this transformation, fundamental, seminal issues must be addressed.

Paternalistic procedures, practices, and policies for management of the trust corpus that perpetuate paternalism, dependency, and bureaucracy while trying to shield the United States from financial liability for mismanagement have debilitating effects on the ability of Tribes to manage and develop their own lands and resources and greatly increased the costs of federal administration. Federal bureaucracy and administration has left Indian Country dirt poor despite the abundance of natural resources that blesses many reservations.

These administrative measures should be reformulated through a collaborative process between Tribal governments and the United States with the over-arching objective of strengthening the ability of Tribes to fully and exclusively exercise their inherent sovereign authorities to manage the lands and resources within reservation boundaries.

This discussion should include clarification that Indian lands are private lands that are held in trust with a fiduciary responsibility of the United States to manage the trust corpus for their beneficial owners. Trust lands are not subject to the federal nexus that triggers application of laws and regulations intended to govern public lands, such as NEPA and the ESA.

Tribal authority to make and enforce laws and regulations of their own making, including taxation authority, against Indians, non-Indians, and non-Tribal members alike must become a reality.

Currently, the Department of the Interior is in the position of being both “pitcher” and “umpire” for trust administration; independent oversight is needed.

Consideration should also be given for the need for, and value of, establishing a high-level ombudsman position, to help overcome recalcitrance in federal administration of Indian Affairs.

- Land consolidation and Jurisdiction. A major focus of trust responsibility and government-to-government relations should be directed at assisting Tribes to restore the integrity of reservation land bases as permanent homelands for their peoples and to establish viable land bases for newly federally-recognized Tribes. Funding provided under the recent Cobell settlement could provide critical resources for land consolidation, but efforts and priorities must be Tribally, not administratively-driven. Chaos caused by the Supreme Court’s decision in *Carcieri* must be rectified legislatively.

- Off Reservation Co-Management. The ability of Tribes to co-manage resources within their traditional ceded territories off reservation needs and deserves support. Arbitrary restrictions, such as those employed by the EPA for development of Tribal water quality programs restrict use to on-reservation activities, failing to recognize Tribal needs to protect off-reservation resources that are essential to their ability to exercise treaty and other federally reserved rights. The United States should provide financial, technical, and political support for Tribal governments to formally engage and substantively participate in international deliberations involving natural resources and environment, e.g., climate change, biodiversity.
- Consultation. Federal entity requirements for consultation with Tribal governments on matters pertaining to Tribal rights and interests should be made mandatory and enforceable. However, it is crucial, that consultation be implemented as part of a true government-to-government process that involves respectful dialogue to identify and try to overcome differences, not as a pro-forma checklist that reserves decision-making authority solely to the federal entity.
- Formalize Trust Agreements. The foundations for trust administration of natural resources need to be poured. Consideration should be given to enacting a suite of laws pertaining to Tribal natural resources. The National Indian Forest Resources Management Act and Indian Agriculture Act enunciated the federal trust responsibility and set forth certain standards for management. Comparable laws are needed for fish and wildlife, energy, and water resources.

Fiduciary standards expressed in Section 303 of the Department of Interior manual should be cooperatively and collectively reviewed by Tribal and administrative representatives and revised as needed.

The ability to establish formal contractual intergovernmental agreements between the United States and Tribes which would clarify duties, obligations, and responsibilities should be explored. These Agreements would establish performance standards for programs operated by both Tribes and federal agencies. A variety of arrangements could be considered, such as the option for Tribes to place their lands in a special form of trust that would protect them from taxation or jurisdictional intrusions by local, state, and federal governments. This option could reduce burdens, liabilities, and costs of federal administration and remove impediments in securing financing for Tribal natural resource development. The concept of converting Tribal trust lands to a new type of ownership, Tribal restricted fee, is presently under discussion by the House of Representatives ([American Indian Empowerment Act of 2011](#), H.R. 3532). President Rob Porter (Seneca Nation of New York) testified at a recent hearing on this proposed legislation: *"[I]t would do this by enabling Indian nations and Tribes to voluntarily convert some or all their existing Tribal lands from Tribal trust lands held by the United States to Tribal restricted fee status held by the Tribal government and thereby enjoy the enhanced flexibility that attaches to restricted fee land holdings. That flexibility should produce great savings in time and cost that otherwise would burden development on Tribal trust land."* The advantages and disadvantages, pros and cons of providing such an option deserve

thoughtful, serious deliberation by Tribal governments, Congress, and the Administration.

National Commission on Indian Trust Administration and Reform

The work of the National Commission on Indian Trust Administration and Reform is underway. As Chairperson I am joined by a cadre of Leadership and Academia who has listened and been engrained in the trust reform issues for many decades. Ours is a charge that we all consider very serious and with the help of this Committee, we will take the first step to improving the system that we can all agree is "not working"! We held our first meeting on March 1-2, 2012 and will begin to convene field Listening Sessions in June 2012. We are seeking the input of Indian Country regarding the Department's administration and management of trust assets and carrying out its fiduciary trust responsibility for individual Indians and Tribes.

Again, thank you to the Committee for allowing me to testify before you today on this important issue.