



# Hoopa Valley Tribal Council

HOOPA VALLEY TRIBE

Regular Meetings on the First and Third Thursday of Each Month

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Clifford Lyle Marshall  
Chairman

TESTIMONY OF CLIFFORD MARSHALL,  
CHAIRMAN, HOOPA VALLEY TRIBE,  
BEFORE THE SENATE COMMITTEE ON INDIAN AFFAIRS  
REGARDING S. 1439  
THE INDIAN TRUST REFORM ACT  
MARCH 28, 2006

I thank you for the opportunity to submit testimony on S. 1439, the Indian Trust Reform Act. The Hoopa Valley Tribe, one of the original self-governance tribes, a Section 131 tribe and member of the California Trust Reform Consortium and the Affiliated Tribes of Northwest Indians (ATNI), commends Chairman McCain and Senator Dorgan for their dedication to resolving the issues arising from the *Cobell v. Norton* case, the Department of the Interior's reaction to that case, and the future of tribal and individual Indian trust assets management. We appreciate the time and energy that the Senate Committee has put into S.1439. The Hoopa Valley Tribe supports the bill's intent and purpose contained in each section of the bill. We also support many of the recommendations to S. 1439 that have been submitted jointly by ATNI and the United South and Eastern Tribes (USET). We strongly urge Congress to move this vital and necessary piece of legislation forward in this Congressional session.

S. 1439 presents a plan for remedying the wrongs of the past relating to trust management while proposing a positive, structured and systematic way to resolve current issues of trust asset management. It seeks to ensure that problems surrounding the United States' management of trust assets and resources, which have afflicted Indian Country for so long, will not plague us in the future. The bill reinforces the government-to-government relationship between tribes and the United States, adheres to the federal government's trust responsibility to tribes, and furthers the principles of tribal self-governance and self-determination. Unlike past short-sighted trust management approaches that gave rise to the breach of trust claims, S. 1439 is a balanced approach to addressing the issues of *Cobell* while also establishing a meaningful governmental structure for managing trust assets.

S. 1439 also preserves the rights of tribes, as inherent sovereign governments, to participate in the management and protection of their territories and resources. The bill acknowledges that the United States must account for

past wrongs and that true reform is needed for proper trust management in the future. It also recognizes that tribal governments are an indispensable party to trust reform if it is to be successful. We believe S. 1439 is a meaningful vehicle for accomplishing that reform.

Below, we discuss three overarching points of the bill and then provide brief comments on certain provisions with emphasis on the Title III Demonstration Project. Specifically, we believe S. 1439 rightfully refocuses trust reform to the original objectives and intent of the 1994 Trust Fund Management Reform Act, and moves away from recent policies which have resulted in duplications of effort, increased administrative costs and the creation of a bloated bureaucracy. Second, we believe S. 1439 protects self-governance and the rights and abilities of tribes to participate in trust management. Finally, we are hopeful that S. 1439 frees up substantial funds that could be used to address the many trust asset management issues in Indian Country where it is needed most: at the local level.

### **Refocusing Trust Reform**

We believe S. 1439 correctly refocuses trust reform to the original mission of the American Indian Trust Fund Management Reform Act of 1994, 25 U.S.C. §§4001-4061. The Hoopa Tribe agrees with the goals and principles of the 1994 Act. We also believe that the Office of Trust Fund Management (OTFM) should operate from within the BIA. Trying to account for funding in one agency (OST) for trust transactions that are developed by another agency (BIA) simply invites confusion, conflict and mis-coordination between agencies.

The 1994 Act established the Office of Special Trustee (OST) to oversee and coordinate reforms in the Department of the Interior's (DOI) practices relating to the management and the discharge of the Secretary's trust responsibility to tribes and individual Indians. Under the Act, the OST is to ensure that policies, procedures, practices and systems of the DOI's bureaus related to the discharge of the trust responsibility are coordinated, consistent and integrated. It is clear under the Act that OST is meant to be an oversight and coordinating entity. The 1994 Act states in nineteen different places that OST was to assist in the reform of systems of the BIA. There is nothing in the Act that suggests that one of OST's purposes is to become an overarching agency that transfers inherent trust functions to itself or takes over the administration of BIA programs or duplicate those functions, staff and budgets in the name of trust reform. But, this is precisely what is happening today.

With *Cobell* as its impetus, the OST in recent years abandoned its intended role as a coordinating oversight and independent trust budget certification entity. The OST has become an entity directly engaged in the delivery of trust services, a role originally reserved for the BIA. This has resulted in a fragmentation of appropriations and functions for Indian trust programs, a dismantling of the Indian service delivery system and unnecessary duplication of

bureaucracy. This is in direct contradiction to all tribes' longstanding desire to keep the BIA system intact while repairing resource management problems that need fixing. The purpose of the 1994 Act was to provide oversight, not create a new agency focused on protecting DOI from liability.

Tribes do not want more bureaucracy, nor can we afford it, particularly in today's budget environment. OST has been operating under a "bright line" philosophy which attempts to develop an arbitrary separation between Indian assets and the people themselves. Indian people and their assets, however, cannot be conveniently separated simply by dividing programs and functions and moving trust program management from a single line of authority to multiple lines of decision-makers that are located in different agencies. Any bright line plan that separates management of trust assets from management of programs for services to Indian people will conflict with the goals of economic development, providing adequate services, and reducing poverty in Indian Country. Simply put, development in Indian country occurs on trust land whether it is a house, a business, a school or a hospital.

Under the existing BIA structure, each Regional and Agency Office has established internal trust personnel to oversee the management of trust assets at every point in the delivery of trust services. The OST, however, also created trust officers to perform the same functions in the Regional and Agency Offices. Today, we hear more and more complaints from Indian Country that fewer trust services are actually being completed and there is a significant amount of confusion about who is really in charge under the OST reorganization. We do not believe this is what was intended by the 1994 Act.

The Hoopa Tribe supports S. 1439, in part, because Title V takes clear actions to restructure the BIA. Title V seeks to ensure a more accountable administration of the Secretary's duties with respect to providing services and programs to Indians and tribes. Title V creates the position of Under Secretary for Indian Affairs, who reports directly to the Secretary of the Interior, and provides for the phasing out of the OST. The termination of the OST is specifically intended by the 1994 Act, which demonstrates that OST was supposed to help fix trust programs, instead of taking them over. S. 1439's clear sunset of the OST protects against the possibility that the OST will become permanent, regardless of its efforts in bureaucracy building and assuming the responsibility for delivering certain trust services.

The Hoopa Tribe supports S. 1439's creation of the position of Under Secretary and the transfer of the duties and functions of the OST and the Assistant Secretary for Indian Affairs to this new position. We think this plan will streamline the process for carrying out trust functions. Moreover, with the emerging trust issues regularly surfacing in other bureaus and agencies of the DOI, we believe the creation of the Under Secretary position will help resolve trust problems tribes face due to the lack of coordination or understanding of the issues by those other agencies/bureaus. Having one direct line of authority will

help coordinate the various aspects of trust management. Further, we support the effective merger of OST functions and budgets back into Indian programs of the BIA, under the Under Secretary. This would eliminate the duplication of duties and promote more efficient delivery of services to Indian people.

### **S. 1439 Protects Self-Governance and the Ability of Tribes to Manage Their Own Resources**

As a self-governance tribe and participant of Section 131, we are grateful that Congress recognizes the benefits of the Section 131 Demonstration Project and has included the Indian Trust Asset Management Demonstration Project Act in Title III of S. 1439. The Hoopa Tribe was honored to participate in the Section 131 project with the six other tribes in the California Trust Reform Consortium (Karuk, Yurok, Cabazon, Big Lagoon, Redding, and Guidiville) as well as the Salt River Pima Maricopa Indian Community, the Confederated Salish - Kootenai Tribes and the Chippewa Cree of the Rocky Boys Reservation. Section 131, to date, has been successful. Accordingly, we strongly support the Demonstration Project in Title III of S. 1439 and will assist in any manner to address areas of concern that Congress or the Administration may have with this title.

The motivation behind Section 131 (Section 139 in its initial year) was multi-fold. For the California Trust Reform Consortium, we sought protection of our then-existing Operating Agreement for trust resources management that we entered into with the BIA Pacific Regional Office (PRO) and protection of our relationship with the PRO in the face of uncertainty in the direction of trust reform efforts. We did not want the imposition of the restructured OST and DOI to alter our tried and true successful means of managing our trust resources. It is our position that trust reform should focus on what is broken and preserve what is working. Section 131 tribes have systems and practices for trust management that work. In fact, pursuant to Section 131 each participating tribe underwent an evaluation by the OST and received a determination that it is capable of performing compacted trust functions under the same fiduciary standards to which the Secretary is held. Hoopa was even cited as "an excellent example of trust administration, in furtherance of tribal self-determination."

The Hoopa Tribe has several examples of how it has worked with the BIA PRO and other federal agencies to develop real and lasting trust improvements which provide significant benefits to the tribe, our members, and the federal government. Some of these examples are as follows:

Forest Management - The Tribe assumed control of our resource programs under the Indian Self-Determination Act in 1986 and later merged those programs under our Self-Governance program in 1990. Since taking over the forestry program, the Tribe worked with the BIA to develop a progressive forest management plan that has been in effect for nearly fifteen years. Like other tribes, we use our forest lands for multiple purposes, including for generating tribal revenues from timber sales, for hunting, for gathering of food and religious materials, for fish protection, and for cattle grazing. Our forest

management plan was designed to balance all of these factors. It exceeds environmental standards required by federal law and has been recognized internationally as a state-of-the-art forest management program. Since forest management includes forest protection, we created our own Wildland Fire Protection Program; all of our tribal fire fighters meet the same qualification requirements of the United States Forest Service.

Public Utilities – We established our Hoopa Valley Public Utilities District (HVPUD) in the mid-1980's and later compacted our irrigation program from the BIA. The HVPUD manages the BIA's irrigation projects, compacts IHS sanitation services, and works with the EPA on water quality and service delivery systems. The HVPUD operates in an environment where there is competition for water for public and private domestic and irrigation needs and for fisheries and ESA demands. Among all these seemingly conflicting factors, the HVPUD continues to stand as a self-sufficient tribal program which has never failed to meet the various needs of our community.

Road Maintenance - The funding level of our road maintenance program is only meeting 11.5% of need. We have decided to try to fix this problem rather than simply manage a failing program. Since compacting the roads maintenance program in the mid-1980s, we have expanded it to include revenue generating components. The Tribe invested in an aggregate plant which not only puts our gravel supplies to use, but subsidizes our Roads Program by paying the program employees with revenues from sales of gravel, sand and cement.

We know of many other similar successful programs that have been implemented by tribes around the nation. Section 131 has been an appropriate way to showcase these successful models of trust management. It is an example of how local decision-making and combined efforts with the BIA can result in significant trust management improvements that benefit tribes and their members. Tribes can properly implement trust management even though they may use different practices and methods than the DOI. Title III of S. 1439 acknowledges and encourages this philosophy by preserving the ability of tribes to continue their own successful trust resource management.

We believe the Title III Demonstration Project will provide a useful model for how tribes can assist the United States with proper trust assets management and create an understanding on the federal government's part of the differences between our respective values and expectations when managing trust assets within our tribal territories. We also believe that all tribal governments, regardless of whether they are direct service tribes or operating pursuant to self-governance or self-determination agreements, should be a part of the management of trust assets within their jurisdictions. Active participation by tribal governments in the management of trust assets not only creates positive results, but reduces the chance of conflicts and breach of trust claims against the United States. Again, we support the concept of the Demonstration Project and are committed to working with the Committee to find ways for tribal governments of any fashion of service delivery to engage in the management of their trust assets.

One concern we do have with the Title III Demonstration Project is that the default action under Section 304(b)(3) is to deny approval of a tribal applicant's demonstration project plan if the Secretary does not act within a certain timeframe. We believe this standard should be reversed so that a plan is approved unless specifically denied by the Secretary. This approach would be mindful of the fact that tribes are always at a disadvantage when the Secretary has the ability to obstruct or curtail the negotiation process.

### **Under S. 1439, Much-Needed Monies Might Become Available to Address the Many Trust Management Issues in Indian Country**

It appears that under S. 1439 a substantial amount of funds currently being used for litigation costs by the DOI in the *Cobell* case as well as reorganization efforts of the OST might become available to be used for initiatives in Indian Country to address the many needs of tribes and their members. We strongly believe that meaningful and cost effective trust improvements occur when there is support and funding provided at the local level. S. 1439 appears to streamline trust management rather than expand federal bureaucracy. With this, monies that would have been put toward centralizing bureaucracies, it appears, would be available for spending at the local level on trust asset management improvements. This, in turn, will further tribal economic development and efforts to reduce poverty among tribal members, as well as reduce breach of trust claims by tribes and individual Indians against the United States.

### **Titles I, II, IV and VI of S. 1439**

The Hoopa Tribe is in support of a timely and fair resolution of the *Cobell* case. The importance of the United States' obligations to Indian people can never be diminished. Further, Indian people should not suffer from inaction on their claims. The Hoopa Tribe has had experience with claims that take far too long to resolve. Such delay does not do justice to Indian people. A fair and timely resolution is needed so Indian people can move forward.

The Tribe supports the establishment of the Settlement Fund and appointment of the Special Master, as provided in Section 103 of the legislation. We also support the ATNI/USET recommendations for Section 103. ATNI previously recommended that an initial deposit to the Settlement Fund be \$14.0 billion. We supported this recommendation as a starting point for discussion; the intention was to ask the question of whether this is enough. Any offer made by Congress to the Indian people will be a reflection of this nation's conscience. If Indian people are to feel that they have been treated justly, the settlement offer contained in this bill should be a sincere and generous one.

With respect to Title II of the bill, the Hoopa Tribe previously has not supported the concept of a commission because we do not want it to become another level of overreaching bureaucracy. However, as Title II is written and as modified by the ATNI-USET recommendations, it seems the Trust Asset Management Policy Review Commission might provide some benefit in reviewing the laws and practices of the DOI with respect to trust asset management, and recommending improvements to those laws and practices to the Secretary and Congress. The manner in which Indian trust services has been staffed, funded and carried out has left many of us with a strong sense of frustration and disappointment. The Commission concept may help ensure that the problems which plagued us in the past will not plague us in the future.

It is absolutely necessary, however, to make sure that there is no risk of the Commission extending its reach beyond reviewing and making recommendations. It cannot duplicate efforts of the agencies nor can it drain critically-needed funds from Indian programs or wield any authority over how tribal governments address individual issues relating to trust management.

The Hoopa Tribe strongly supports resolving the problem of fractionated interests of trust allotments, and supports the recommendation of ATNI and USET to Title IV. We believe the concept in Title VI, Audit of Indian Trust Funds, is necessary to ensure adequate checks and balances of financial trust functions within the federal government. The requirement for an independent audit will lend necessary credibility to the overall management of trust funds by the federal government.

### **Conclusion**

We want to express our appreciation for Chairman McCain and Senator Dorgan's leadership demonstrated through the introduction of S. 1439. Trust mismanagement problems have afflicted tribes and Indian people for too long. Allowing these problems to remain unresolved for much longer will only create more injustices, conflict and delays in the services the United States is obligated to provide Indian people. It is time to act. We strongly support this legislation and urge Congress to move it forward and enact it this session. We believe that S. 1439 is a solid foundation for true trust reform, and we look forward to working with the Senate Committee, the House Resources Committee and the Administration to move meaningful legislation through the process as expeditiously as possible.