

**TESTIMONY OF A CONSORTIUM OF INDIAN NATIONS  
SEEKING ENACTMENT OF THE “AMERICAN INDIAN TRUST  
FUND MANAGEMENT REFORM ACT AMENDMENTS OF 2005”**

My name is Darrell Hillaire. I am the Chairman of the Lummi Indian Nation. We work in cooperation with the California Tribal Trust Reform Consortium tribes (Big Lagoon, Cabazon Band of Mission Indians, Hoopa, Karuk, Quillville Rancheria, Redding Rancheria, and the Yarok Tribe). We are joined by the Rocky Boy Nation. Our nation is one of the fifty-five member tribes of the Affiliated Tribes of N.W. Indians (ATNI). The ATNI enacted a resolution (#5-02) that calls upon the House of Representatives and Senate to conduct hearings to ‘examine the status of the implementation of the 1994 Reform Act, the on-going role of the Office of the Special Trustee, the effects of the reorganization of the Bureau of Indian Affairs on the implementation of the policies of self-determination and self-governance and the feasibility of a legislated settlement to the Cobell v. Norton litigation.’ In addition, the ATNI called upon their peer tribes, regional & national intertribal leadership and organizations to come forward and participate in the oversight hearings.

We have drafted and submitted for consideration proposed legislative language that addresses our concerns regarding the national conflicts associated with ‘Trust Reform’ and the ‘Settlement of the Cobell litigation.’ Riding on both issues is the Office of Special Trustee (OST) and its failure to limit its activities and scope of work within the boundaries set by the 1994 American Indian Trust Fund Management Reform. Indian tribes and leadership, nationwide, have become polarized by the terminationist and paternalistic insensitivity that the OST has displayed toward the impacted tribes and the damages caused by prior mismanagement of trust funds and assets. The topic of OST

‘Consultation’ with the Indian tribes has become a farce that Indian Country does not take kindly too.

The draft language can be divided up into five synoptic topics. The first is the consortium tribes’ concerns that the legislation include protection of treaty rights and self-determination. The second is the recommendation to create a ‘Deputy Secretary for Indian Affairs’ that will replace any counterpart duties and functions assigned to an Assistant Secretary or the Office of Special Trustee; and, that the funding and resources that were temporarily placed under the OST will be completely transferred to said Deputy Secretary. The third concern is that Indian tribes should be provided every right and opportunity to fully assume the functions of trust fund and asset management, along with the financial resources essential to accomplish the tasks. The fourth concern was the idea of a ‘Commission’ to provide advisory services to the Deputy Secretary, for the purposes of assessing the fiduciary and management responsibilities of the Federal Government with respect to Indian tribes and individual Indian beneficiaries; although this recommendation has surfaced before, our consortium is concerned that it will simply become a commission to circumvent the concerns of the tribes and beneficiaries. The fifth issue is associated with the call for mandatory ‘Mediation’ of the Cobell litigation. It is, sometimes, too easy for parties that are not plaintiffs to the litigation to recommend settlement when the impacts are not directly felt by their tribe or their individual membership. However, the consortium, at least, believes that the subject could be submitted for consideration during the hearings. It recommends that major plaintiffs and their lawyers are given agenda time during the hearing process.

The most common theme that unites the consortium tribes together is the principles of Indian Self-determination and Self-government. The Individual Indian Money Accounts are trust funds that were created as a result of the enactment of the General Allotment Act. The Indian lands were divided. The trust patents were created. And, the BIA assumed control over the estates of all 'incompetent or non-competent Indians.' This even included control of 'tribal' trust funds. The Allotment Act nearly completely destroyed Indian tribal governance. It did destroy tribal reservation economies and impoverished the Indian people. Since then, the Indian Reorganization Act (1934) and the Indian Self-determination and Education Assistance Act (1975) have been enacted. Then, the latter was amended to provide tribes with the opportunity to become 'self-governing' as a matter of federal Indian law.

Indian tribal leadership was aware that the 'trust system' has been a failure since it began. The Indians have always suffered as the 'wards' and the 'guardian' has always failed to protect the interests of the Indians. This failure was why the War Department transferred Indian Affairs to the Department of Interior (1848). This continuing failure is why President Grant (1872) placed church leadership in control of Indian Reservations. This is why the U.S. Congress held hearings (1870's) as to the extent of the BIA mismanagement that then resulted in modification of the laws that governed legal contracts with the Indians. The Cobell case is litigation that was simply forming over one hundred years ago.

Indian Country suffers from the highest infant mortality, shortest life expectancy, highest poverty levels, lowest vocational & educational attainment, poorest housing, highest teenage suicide rates, poorest infrastructure development, is most often extremely

isolated, is forced to witness as non-Indian criminals enter Indian Country and cannot be prosecuted. We witness drug dealers and gangs entering our reservations and victimizing our youth and community. We witness a people that are generally still suffering from historical traumas caused by the application of federal Indian law and policy.

Throughout this, the Indian lands and inheritance has been destroyed beyond recovery due to the fractionated heirship problems instituted by federal/BIA mismanagement of Indian Affairs. The Indian Land Consolidation Act must be seriously funded by the Congress in order to reverse the damages done to the Indian land titles. Major appropriations should be ear-marked specifically for the use of the tribes to clear land titles. Clear titles are essential to Indian housing development, as well as tribal governance and economic development projects. This is a concern of the self-governance tribes in the consortium.

The consortium tribes want every opportunity to develop a tribally-based trust fund and asset management system that will guarantee the protection of the rights and benefits to both the tribe and the individual beneficiaries at the local level. The standard of the DOI/BIA thus far has been mismanagement and failure. Indian tribes should not have to confront OST or other similar types of officials that work to squash tribal efforts to develop honest, fair, and equitable trust fund & asset management systems.

The main point is that tribes and tribal leadership deserve to be heard. They deserve to be treated fairly. And, in this light, they will continue to voice their concerns that the damages done, per findings in the Cobell litigation, to the plaintiffs should not be resolved by taking additional revenues from Indian programs and BIA functions. The OST has already severely damaged Indian services and benefits by taking over three

hundred million dollars out of the BIA and out of Indian Country. Any settlement of Cobell should come from the U.S. Treasury. Any resolution of the OST problem should only result in the OST duties, functions, responsibilities, and even personnel, being merged back into the DOI-Bureau of Indian Affairs under the Deputy Secretary of Indian Affairs.

In addition, there is inadequate attention paid to the difference between the individual trust and the collective trust owed to the Indian people. The individual trust is associated with BIA management of the trust assets created by the general allotment act. Then, there is the 'sacred trust of civilization' that is tied to the government-to-government relationship the Indian tribes have with the United States. Under the latter, the Indian tribes are concerned about assuring that they are given access to the rights, services, and benefits provided to other population segments of the United States by the other federal departments and agencies. The 'trust' concept has been abused. In history, it was always the BIA, and only the BIA, that serviced Indians and Indian Tribes. Indian Tribes have treaty relationships with the whole United States and not just the BIA.

Trust Reform is more than simply undoing the damages caused to the Individual Indian Money Accounts beneficiaries. It is more about providing Indian people and Indian Tribes the opportunity to really exercise Indian self-determination and self-government. This will take the cooperation of the whole United States. It will require re-establishment of the government-to-government relationship between the Indian Tribes and the United States as founded upon the U.S. Constitution.