

**TESTIMONY OF THE CLIFFORD MARSHALL, CHAIRMAN
HOOPA VALLEY TRIBE
BEFORE THE SENATE COMMITTEE ON INDIAN AFFAIRS
REGARDING TRUST REFORM AND RELATED MATTERS
MAY 21, 2003**

I am Clifford Marshall, Chairman of the Hoopa Valley Tribe. I appreciate the opportunity to testify before the Senate Committee on Indian Affairs regarding the trust reform and related matters. I am here today serving as both the Chairman of my Tribe and as the representative of the Tribal Trust Reform Consortium. The Consortium is a group of seven Tribes in California, consisting of the Big Lagoon, Cabazon, Guidiville, Hoopa, Karuk, Redding Rancheria and Yurok, each of whom have been actively working with the Bureau of Indian Affairs (BIA) Pacific Regional Office (PRO) to resolve many of the trust issues that are typically discussed as major problems in other parts of Indian Country. I am here today to discuss the positive trust reform activities that our Consortium and the BIA Pacific Regional Office has undertaken over the past few years and to ask for your continuing support.

My primary purpose today is to discuss the purpose of the Consortium and the Consortium tribes' concerns that the trust reorganization plans will negatively affect the significant progress we have made to date working with the Bureau of Indian Affairs' Pacific Regional Office on trust management issues.

Consortium Member Tribe Profiles

Many comments have been made that problems associated with trust resource management are so bad in Indian Country that they cannot be fixed. Our Consortium has proven that even in situations where tribes have experienced some of the most damaging Federal Indian policies, we find ways to make improvement. Our Consortium Tribes have collectively found ways to work with the BIA to successfully implement one of the most progressive trust resource improvement programs that exists anywhere in Indian Country today.

For example, the Big Lagoon Tribal Government went from an all-volunteer staff in 1982 to one that contracts nearly all BIA functions today and is contracting with HUD and EPA to carry out activities on their own lands. The Cabazon Band of Mission Indians is a small tribe in Southern California that 20 years ago had few services for their members. Today, their activities have led them to develop one of the most progressive and successful business environments that exists in

Indian Country. The Guidiville Rancheria was terminated by the California Rancheria Termination Act in 1960 and had to regain recognition through a lawsuit against the United States in 1991. Since then, the Tribe has been able to reestablish a fraction of its original land base using HUD Block Grants funds in 1999. For Hoopa, the Tribe spent millions of dollars in over 30 years of litigation with the United States. In 1998, the Tribe became one of the first Self-Governance Tribes and assumed control over most of the BIA and IHS activities by 1993.

Of the Karuk Tribe's ancestral homeland of 1.2 million acres, it has 621 acres in trust today, all of which it had to purchase with its own funds. The tribe entered into its Self-Governance agreements in 1996 and today operates most BIA and IHS programs. The Redding Rancheria, which the BIA reported consisted of five houses (one burnt out) and twenty-five residents in 1958, also had its federal recognition stripped away under the California Rancheria Termination Act. In 1983, the Tribe's federal recognition was restored by legal action and its government reestablished in 1985. Today, Redding Rancheria has re-acquired 87 acres of its homeland using mainly its own funds, is contracting most of the BIA and IHS programs and is a significant employment and business provider for the Northern California area through its gaming and governmental operations. For the Yurok Tribe, after undergoing decades of legal, political and economic struggles, the Tribe's government was established through an Act of Congress in 1988. Now, the Yurok Tribal Government has over 170 employees who carry out services for over \$15 million in annual budgets for its people, and has developed several management and governmental agreements with Federal, State and local agencies.

In spite of this, the Consortium has demonstrated that positive progress toward meaningful self-determination, self-governance and trust reform can be achieved.

Comments Regarding Federal Trust Reform Efforts

Many people have expressed a view that the Cobell-type issues continue to evolve and that "new" trust problems are being created because of present-day management issues. We disagree, at least for the areas in which we work. This is not to say that we have solved every trust problem. But we have committed to working with the BIA Pacific Regional Office to address as many of these problems as we can with our limited budgets and resources.

We have serious concerns regarding the Federal efforts to implement trust reform efforts over the past decade. It is tragic that in light of the scarcity of Indian appropriations, the Office of Special Trustee-controlled trust plan will have spent more than a billion dollars by the end of FY2004 in the name of trust reform. While some positive actions have emerged, like the establishment of the Office of Trust Funds Management, we have yet to work our way through the maze of concerns of tribes, individual Indians, the Federal Government and Congress to arrive at a trust reform agenda that is workable to each. We believe that a major contributor of the problems has been in the organizational approach OST has undertaken.

We believe that many of the problems that we continue to face in trying to implement positive trust reform efforts have been created by the organizational structure in which the reform is supposed to take place. We do not read the 1994 Trust Funds Management Improvement Reform Act of 1994 as intending for the OST to become an agency responsible for actually

carrying out Indian service programs. OST has moved significantly away from its original intended role of monitoring and coordinating trust reform with the agencies within the Department. It does not seem possible that the limited staff and expertise of OST could be successful in assuming the responsibilities and control of the BIA's thousands of employees who carry out trust resource management issues on a daily basis, or to address the problems associated with the vast diversities in Tribal/Federal relationships that have developed through decades of Tribal and BIA conflict resolution. If we have learned anything about the management of Indian affairs over the past decade it is that there is no one-size-fits-all approach that will succeed in accomplishing trust reform.

Unfortunately, since the creation of OST its primary mission appears to have been to either take over or replace the BIA. However, OST has not invested the time to understand and appreciate the kinds of complexities that are regularly associated with how management of trust resources interacts with tribal interests. Perhaps this complexity was best described in a West Coast tribal fishing case when the Federal Court ruled that salmon to West Coast Indians is as important to their existence "as the very atmosphere that they breathe." The same can be said of the relationship between trust resources of our reservation and their effect on the daily lives of Indian people. We believe that this is why tribes across the Nation nearly unanimously demanded to keep the BIA system intact while fixing the resource management problems that need to be addressed. The OST approach is one that is predicated on having to reverse the principles of tribal self-determination upon which Federal Indian Policy has been based for the past twenty-five years. OST's budget plan has also incorrectly re-instituted the old Federal trend of keeping over ninety percent of the benefit for the agency while tribes once again must fend for their budget needs without Department support.

Our Consortium's approach has been one that has taken a directly opposite approach from that undertaken by the OST in years past. Our plan has been based on a vision that successful resolution of trust resource management problems will never be implemented if it costs our tribes our right of self-determination and self-governance.

Successful Trust Reform through Tribal Self-Determination and Self-Governance

By establishing the policy of tribal self-determination in 1975, Congress set out a new and progressive agenda for Indian Country that was based on the fundamental rationale under which treaty-making itself was based. Treaties were based on the understanding that tribes have functioning governments that have inherent sovereign powers to control and direct affairs that are carried out within their territory. The policy of tribal self-determination is similarly based on the principles that tribes, as sovereign entities, must have a voice in the management of their resources, rights and territorial governance. Thus, the framework of the working relationship between our Consortium tribes and the BIA Pacific Regional Office is based on the foundation that both the Federal Government and our Tribes will have a meaningful voice in the management of our respective areas of responsibilities. Likewise, we also understand that our relationship includes an understanding that the management of resources is a shared responsibility and that we each have an integral role in working cooperatively to resolve conflicts and assist in management activities. The BIA Pacific Regional Office has been willing to use the opportunities that are available under self-determination and self-governance to bring our

respective experts together to improve trust resource management and work through problem areas.

Tribes understood that under Self-Determination and Self-Governance they necessarily had to accept that they are a part of a long term initiative. Tribes also understood that they needed to build Tribal infrastructure, capability, systems and standards to be a part of the overall plan of providing the necessary guidance that would ultimately fix the problem areas associated with trust reform. Even then, we did not realize that Self-Determination and Self-Governance would lead us in a direction to help fix major BIA trust problems involving the severe budget deficiencies of the BIA. Under Self-Governance, we have been able to use the BIA's limited budgets and staffing to leverage other funds and resources that are needed to strengthen Tribal capabilities and provide trust services at the reservation level. Again, in the recent year after a long consultation process of the Administration on trust reform, nearly every Tribal leader in the Nation stated that the lack of funding and necessary staff are the most pressing problems that must be resolved if we are going to successfully solve trust reform problems throughout Indian Country. This is a tremendously important issue for our tribes since the Pacific Regional Office has historically been one of the most under-funded regions in the BIA.

Under the authority of Tribal Self-Determination and Self-Governance today we see many places where Tribes and the BIA have worked together to address trust problems that are caused by the lack of funding and staff. Contrary to many statements made that trust problems remain unchecked and continue to become worse, this is not always the case. The Hoopa Valley Tribe has worked to leverage limited BIA funds with those of other agencies to increase the level of trust resources at the reservation level. Just for trust resource programs, our information demonstrates that my Tribe spends \$3.00 of non-BIA funds for every \$1.00 of BIA compacted/contracted funds (See, Attachment #1). Clearly, this information indicates that the Tribal Self-Determination and Self-Governance initiatives are very beneficial to the goals of reforming Indian trust programs, and in fact have resulted in enabling Tribes to significantly improve trust support capabilities and funding, thereby creating a positive environment for the management of Reservation trust assets. This information is not used to portray that it is acceptable for the United States to under fund trust programs. Congress mandated in the 1994 Reform Act that the Special Trustee certify in writing the adequacy of the trust reform budgets for federal agencies that carry out trust functions. This is a legal requirement that has never been carried out. I request that this Committee continue to work with the Special Trustee to ensure that this important legal mandate is carried out since without it, successful trust reform is not possible.

The BIA Pacific Regional Office/Tribal Trust Reform Consortium Approach to Trust Reform.

Restructuring of any federal agency must be done in accordance with pre-determined plans, identified and measurable goals and specific timeframes. Each seems to be lacking in the Federal reorganization of the BIA today. Restructuring for the sake of restructuring is typically not the best use of limited resources, funds or time. Quite simply, we do not believe that changing employee name tags from BIA to OST and agency addresses will fix trust problems.

The Consortium is fixing trust problems. Operating under the goal of resolving trust problems at the place closest to the Reservation with the most authority, our Tribes began to work with the BIA Pacific Regional Office to analyze and fix many of the trust resource management problems that had haunted us for years. In 1998, we formally established the California Tribal Trust Reform Consortium. Our plan was also to leave the issue of account management with the Office of Special Trustee since, unlike trust resource management, there is a clear cut set of common law standards that apply to those functions. We also believed that it was appropriate for “centralized management” within the Office of Trust Funds Management to retain this function so that its field functions could be coordinated with field activities. On the other hand, with respect to trust resources, while Consortium tribes and the Regional Office understood that there must be generally-accepted standards and responsibilities for resource management, usage of trust resources must be governed by standards that meet the needs of the tribal people being served.

Given the two somewhat different and sometime conflicting roles of the BIA and sovereign Tribal Governments, one of the first steps for our Consortium was to establish the operational guidelines by which the BIA and Consortium Tribes would function. In the Consortium’s operational guidelines, formally adopted in 1998, the BIA and member Tribes adopted requirements that each would abide by. Given the potential for differences in legal, political and social responsibilities of the two Governmental entities, a key part of the guidance includes provisions for resolving conflicts as they arise.

Under the Consortium’s plan, the Consortium began to address many of the trust problems that are being discussed today, such as how to address conflicts between Tribal and Federal management standards and priorities. In 1998, the Consortium tribes and the BIA adopted an Operating Agreement that set forth, among other things, procedures to:

1. Define the Consortium and BIA purpose under the program;
2. Define the management roles and responsibilities of the BIA and tribes;
3. Design methods of sharing budgets and shares to accomplish priorities;
4. Establish advisory oversight functions;
5. Establish standard trust management principles and procedures;
6. Establish joint evaluation criteria and procedures; and
7. Set forth procedures for resolving disputes and conflicts relating to tribal and federal responsibilities associated with trust resource management issues.

I have attached a copy of the Consortium and BIA Pacific Regional Office (PRO) Operating Agreement to my testimony for your information.

The Consortium Tribes and the BIA PRO entered into the Operating Agreement in the spirit and intent of the general principles of Federal trust responsibilities to tribes, the right of tribal self-determination and self-governance, the government-to-government relationship between tribes and the United States, and providing early and meaningful consultation with tribes. The primary understanding of the Agreement is that the performance of Federal oversight and trust responsibility does not require daily control over tribes. Instead, it can be accomplished by the establishment of Tribal/Federal management standards and an annual trust evaluation process.

Tribal Contracting and United States Trust Obligations

Questions have been raised regarding whether contracting and compacting under the Self-Determination and Self-Governance Acts somehow relieves the United States of their trust obligations to tribes and individual Indians. Our Consortium Tribes completely disagree with any notion that the United States should be held harmless if Tribes choose to exercise their governmental rights to properly manage trust resources.

Tribal and individual natural resources are in a significantly different state today than when the treaties and agreements were entered into between the United States and tribes. In most cases, the United States itself was the party that executed agreements with non-tribal interests that led to the diminished state of our resources. The situation is exacerbated by inadequate funding to properly manage tribal and individual trust resources. To make matters even worse, tribal shares of funds are further reduced by the amount that the Agency needs to carry out inherently federal functions, and residual and retained functions. The end result to tribes is that they receive less than twenty-five percent of the funding needed to manage trust resources. Therefore, the questions of whether the United States should be held harmless for programs that are contracted and compacted by tribes is comparable to saying that the Tribes should be responsible for 100% of the problems while only receiving 20% of the funds needed to manage programs.

From a Tribal perspective, we have our own concerns regarding this unfortunate situation. First, does this situation lead to an obvious question of whether or not the United States should be able to sue a tribe for failing to find non-BIA funds in the amount that the United States determines is necessary to properly manage trust resources? On the other hand, should tribes be entitled to sue the United States for damages if a Tribe uses its funds to help the United States to improve management of Trust resources in situations where the United States has failed to adequately fund trust programs? Of course, under this scenario the United States is protected by the Unfunded Mandates Act. In both cases, if we are ever to have a level playing field between tribes and the United States, if the United States is protected by the Unfunded Mandates Act for failing to provide sufficient funds to properly manage trust resources, tribes should not be held liable for helping the United States perform a necessary trust function when they contract or compact trust programs from the under-funded agency.

Tribal Consultation

While time and cost are difficulties associated with Tribal consultation with over 500 Tribes, it is unreasonable for the Administration to try to shorten or get around providing formal consultation opportunities directly to Tribal Governments. Perhaps the best example of trying to circumvent the formal Tribal consultation process is the Trust Reform Task Force. In that process, the Administration established a standard of working through only two tribal representatives for each BIA region. The Task Force process ultimately resulted in a disservice to our Tribal Governments by first not having the administrative support and budgets to carry out their enormous tasks, and by limiting the number of Tribal spokespersons to represent the diverse views of sovereign Tribes across the Nation.

The Hoopa Tribe spent over \$250,000 of Tribal funds and submitted over 250 pages of testimony, comments and proposals throughout the Task Force process, of which little was even considered. The Consortium has undertaken the task for the past seven years to address trust reform and is one of the most successful and longest running trust reform efforts in Indian Country today.

Conclusion

In conclusion, the Consortium tribes are pleased that the BIA Pacific Regional Office has been willing to work with us for the past several years and that we have been able to establish a positive working relationship that accomplishes the goals and priorities of both the tribes and the BIA. Our Consortium approach works because our tribes are running programs. The BIA has been willing to work with tribes to find ways to fix problems and we are both committed to addressing problems in a mutually-acceptable manner. While many people have said that there is no room for “status quo” in trust reform today, I am here to say that our status quo means to be allowed to continue implementing our BIA/Consortium effort and work collectively to solve trust management problems at the local level.

There are also a number of other very positive trust reform efforts that have been under way between tribes and their BIA offices for years. We have talked with tribes like Salt River in Arizona, the Confederated Tribes of Salish and Kootenai and Rocky Boy in Montana, and many others about their efforts. We are heartened by the sense of pride and commitment that tribal governments across the Nation have in their trust reform accomplishments and fully support the continuation of their efforts. Because of this, I have also included in my testimony draft legislative language that I hope the Committee will consider that will establish a Tribal Trust Reform Pilot Project which will support and reinforce the positive efforts of many tribes that contribute to national trust reform through their own efforts. Just as we urge support for the efforts of our Tribal Trust Reform Consortium in California, we also request your support for recognizing and providing similar opportunities for other tribes as well. Our Consortium tribes are committed to working with you and others in Congress to ensure that the positive trust reform contributions of tribes will continue to be a vital part of the national trust reform effort.

Mr. Chairman and members of the Committee, I am very proud of the Tribal Trust Reform Consortium’s accomplishments to date and would again like to express my appreciation to the members of this Committee for your continuing support for Tribal Self-Determination and Self-Governance. I would be happy to address any questions that you may have.

ATTACHMENT 2

OPERATING AGREEMENT BETWEEN THE
BUREAU OF INDIAN AFFAIRS - PACIFIC REGIONAL OFFICE
AND THE
CALIFORNIA TRUST REFORM CONSORTIUM
June 1998 (revised March 2003)

SECTION I. PURPOSE.

This Trust Agreement ("Agreement") is entered into between the Bureau of Indian Affairs - Pacific Regional Office (PRO) and the California Trust Reform Consortium Indian tribes, listed on Exhibit A hereto ("Participating tribes") for management of trust resources associated with Indian reservations and rancherias and is intended to enhance the true partnership relationship between the Participating tribes and BIA for trust management activities. This Agreement is developed in good faith and in the spirit and intent of the general principles of federal trust responsibilities to Indian tribes, the right of tribal self-determination and self-governance, government-to-government relationship between Indian tribes and the United States, and providing early and meaningful consultation with tribes. It is agreed that any interpretations regarding implementation of this Agreement shall be decided in favor of implementation of the Agreement and furthering the continuation of meaningful partnerships between the Participating tribes and the PRO, to the extent not inconsistent with federal law.

SECTION II. DEFINING ROLES AND RESPONSIBILITIES.

- a. The PRO will be primarily responsible for all activities and functions related with trust resources for the Participating tribes. Unless otherwise specifically agreed in writing, the Agencies will have no authority or responsibilities for trust resources of Participating tribes. For purposes of this Agreement, "Agencies" means the Central California Agency, Northern California Agency, and the Southern California Agency of the Bureau of Indian Affairs. All management and administrative issues related to trust resources of Participating tribes will be directed exclusively to and performed in accordance with this Agreement by the PRO.
- b. Within 60 days following approval of this Agreement, the PRO Director shall meet with all trust resource branch chiefs to inform them of the requirements of this Agreement.
- c. It is agreed that the PRO may not re-delegate trust resources management and administrative issues to any other office without specific approval from the affected tribes(s).

SECTION III. MINIMUM PARTICIPATION TIMEFRAMES/SELECTION PROCESS/RETROCESSION PROCESS.

- a. A tribe may choose to participate in the Consortium Project by submitting a written

notice to the PRO Director of its decision to do so. A comparable funding amount will be assessed for each participating tribe, taking into consideration such matters as the benefits of consolidated cost efficiency, increased management expertise, limiting duplication of functions, and sources of funding.

- b. Once a tribe has opted to participate in the Consortium its participation must be maintained for a minimum of the full fiscal year. A Participating tribe may not withdraw its tribal share from the demonstration project without first providing a ninety (90) day written advance notice to the PRO Director and negotiating such agreement consistent with the fiscal year funding cycle.
- c. In the event that a participating tribe chooses to withdraw from this Agreement, only those funds associated with that tribe, determined in accordance with a tribal shares methodology approved by all Participating tribes, may be withdrawn and transferred to the accounts pursuant to a negotiated agreement with the withdrawing tribe.

SECTION IV. BIA EMPLOYEE SELECTION/EVALUATION PROCESS

- a. It is agreed that any increase in the PRO personnel resulting from this Agreement shall be governed primarily by the terms of this Agreement. Any conflicting management prescriptions shall be resolved in accordance with this Agreement. It is further agreed that personnel hired pursuant to this Agreement shall not be entitled to the legal definitions of Inherently Federal Functions, as defined under the Tribal Self-Governance Act, Pub. L. 103-413.
- b. It is agreed that the process for selecting PRO personnel for filling vacancies pursuant to this Agreement shall include the direct participation of the Participating tribes. Such involvement may include, but not be limited to, the development of position descriptions, interviewing prospective candidates for the positions, and participation in the selection process for the positions.
- c. It is further agreed that Participating tribes may submit documentation regarding staff/employees to the PRO Director concerning the performance of his/her duties under this Agreement and that the Regional Director shall give such documentation due consideration with respect to conducting employee performance evaluations.

SECTION V. PROVISIONS APPLICABLE TO THE PRO.

It is agreed that all management and administrative issues regarding trust resources before the PRO will be finalized within sixty (60) days of the date of submission. The PRO has until the

45th day after the date of submission to identify to the effected tribe(s) any management concerns regarding the submitted proposal. Any lack of decision by the PRO by the 60th day after the date of submission shall be deemed approval by the PRO of the proposed action. Unless specifically agreed to by the effected tribe(s), in no situation shall any management or administrative decision involving trust resources of Participating tribes be delayed by the PRO for more that sixty days after the date of submission.

SECTION VI. FUNDING/BUDGET/ FUNDING WITHDRAWAL PROVISION.

- a. Funding provided to the PRO pursuant to this Agreement shall be maintained by the PRO in a separate budget from other PRO funds.
- b. In the event that a participating tribe chooses to withdraw from this Agreement, only those funds associated with that tribe, determined in accordance with a tribal shares methodology approved by all Participating tribes, may be withdrawn and transferred to the accounts pursuant to a negotiated agreement with such tribe.

SECTION VII. ESTABLISHMENT OF THE OVERSIGHT ADVISORY COUNCIL/OPERATING PROCEDURES.

- a. Oversight of the Trust Management Demonstration Project will be through a Joint Tribal/PRO Advisory Council which will be composed of the PRO Regional Director and one representative of each participating tribe. The Joint Tribal/PRO oversight Advisory Council shall meet at least two times each year.
- b. The tribes may appoint an Executive Committee for the purpose of providing more timely input to the Regional Director, which shall meet as may be necessary.
- c. A quorum of the Joint Tribal/PRO Oversight Council shall be three-fourths (3/4) of the Participating tribes. A quorum of the Executive Committee shall be as prescribed by the Participating tribes.
- d. Decision making for the Joint Tribal/PRO Oversight Advisory Council and Executive Committee shall be by unanimous vote of the attending tribes after a quorum is established.

SECTION VIII. STANDARD TRUST MANAGEMENT PRINCIPLES AND PROCEDURES.

- a. Where tribes have developed and adopted management standards for trust resources and where those standards are not inconsistent with federal law, those standards will be utilized by the PRO. In reviewing the Tribal standards, the PRO shall interpret statutes and regulations in a manner that facilitates approval of the Tribe's management standards. The PRO may only refuse to accept the Tribal standards that deviate from federal statutory requirements. The PRO may propose to the Tribe additional standards for their consideration that the PRO believes will assist in managing the trust resources in a prudent manner. Unless the PRO demonstrates that the Tribe's management standards will fail to adequately meet the statutory obligations, the PRO shall approve the Tribe's management standards for the Tribe's trust resources.
- b. Tribal management standards may be in a format, including law, plans, procedures, policies, etc., providing that the following principles are clearly described:
 1. Formal Tribal Approval. The standards must be formally approved by the tribe in a manner typical of other Tribal enactments and recorded as a formal Tribal action.
 2. Values. The standards must be written in a manner to readily compute the amount of revenues that are expected to be received from each trust transaction(s).
 3. Measurable/quantifiable standards. The standards must describe in measurable and/or quantifiable terms the expected goals and/or intended results from applying the standards.
 4. Methods for resolving disagreements/disputes. The standards used to describe a process whereby disagreements and disputes involving individual Indians, Tribes and the PRO can be resolved; and
 5. Trust evaluations. The standards must include a process whereby the Tribe and PRO can conduct mutually acceptable trust evaluations concerning management of trust resources.
- c. The PRO shall interpret federal statutes and regulations in a flexible manner to facilitate use of and implementation of the Tribe's approved management standards. The PRO is responsible for identifying federal regulations that conflict with Tribal management standards. To the extent practical, the management standards should identify conflicting federal regulations that have been waived or modified. After management standards have been approved by the Tribe and PRO, and where federal regulations conflict with the approved standards, the PRO must demonstrate why the regulations must be utilized before the PRO makes any efforts to require its use by the Tribe. However, the PRO is required to work with the Tribe to modify the Tribe's standards to accommodate the Federal statutory management standards before the PRO attempts to impose the Federal standards on the Tribe to the exclusion of Tribal standards. The PRO must utilize the

"re-assumption" regulations as a regulatory process to impose, or otherwise require the implementation of, the Federal regulations on the Tribe to the exclusion of the promulgated Tribal standards.

SECTION IX. JOINT EVALUATION CRITERIA AND PROCEDURES/REPORTING

- a. The performance of federal oversight and trust responsibility does not require daily control over Tribes. Instead, it can be accomplished through the establishment of Tribal/Federal management standards and annual trust evaluation processes. Once management standards and the trust evaluation process are in place, the Federal Government will not need to regulate the daily affairs of the Participating tribes. In effect, Federal oversight over trust resource programs can be performed in a partnership relationship between Tribes and the PRO through the application of the approved management standards and annual trust evaluations.

Under this Agreement, individual trust transactions will not require approval by the United States unless required by statute. Under this proposal, Tribes will sign off on individual trust transactions on a daily basis. Instead of signing off on each trust transaction, trust transactions can be randomly reviewed during the annual trust evaluation for consistency with approved management standards. Because of the management of trust functions becomes a shared responsibility, annual trust evaluations must also include provisions for conducting trust evaluations of trust functions performed by both the Tribe and the PRO.

- b. Each participating tribe and the PRO Regional Director will develop joint reporting requirements, which are consistent with the reporting requirements of the Government Performance Results Act, Self-Governance and annual trust evaluations. Based on a mutually acceptable non-burdensome reporting format, the report will include methods for determining that trust transactions are being carried out consistent with the requirements contained in trust resource management prescriptions and can be easily reconciled with trust fund accounts. Among the issues reported, the reports shall emphasize the following:

- Land - tribal and individual
- Forestry - tribal and individual
- Agricultural leases
- Minerals and mining leases and sales
- Fisheries - tribal and individual
- Commercial (business) leases
- Water leases and sales
- Other trust functions

- c. Consistent with the self-governance regulations, the PRO may conduct additional trust reviews if sufficient information exists from credible sources that the Tribe is not operating consistent with the Tribal/Federal management standards. During the annual negotiations, the PRO and the Tribe will negotiate and agree on the process for fulfilling the Federal oversight responsibilities.

SECTION X. GRIEVANCE AND DISPUTE RESOLUTION PROCEDURES.

It is agreed that the Tribal management standards include a requirement for resolving conflicts, disagreements and disputes between the Tribe and PRO. Such a process must be based on principles of the government-to-government relationship between the United States and Indian Tribes as well as the partnership relationship between the Tribe and Secretary under Self-Governance agreements and 638 contracts. The burden falls on the Secretary to demonstrate how the Tribe's proposal is inconsistent with Federal trust responsibility standards in order to deny accepting the Tribe's proposal.

SECTION XI. AMENDMENTS.

This Agreement may be amended at any time by the Consortium and PRO.

PARTICIPATING TRIBES

BIG LAGOON RANCHERIA

CABAZON BAND OF MISSION INDIANS

GUIDIVILLE INDIAN RANCHERIA

HOOPA VALLEY TRIBE

KARUK TRIBE OF CALIFORNIA

REDDING RANCHERIA

YUROK TRIBE

ATTACHMENT 3

PROPOSED TRIBAL TRUST REFORM PILOT PROJECT

Section _____. Tribal Trust Reform Pilot Project

A. PURPOSE. The purpose of the Tribal Trust Reform Pilot Project is intended to, but is not limited to:

1. Enhancing the working relationship between the participating tribes and Department of the Interior for trust management activities by establishing mutually acceptable methods for addressing trust issues in manners that are consistent with tribal priorities and applicable federal laws;
2. Maintaining a standard of good faith and in the spirit and intent of the general principles of federal trust responsibilities to Indian tribes, the right of tribal self-determination and self-governance, government-to-government relationship between the Indian tribes and the United States, and providing a meaningful working relationship with participating tribes.
3. Establishing a meaningful process whereby any interpretations regarding the implementation of this Project be decided in favor of the implementation of the Project and furthering the continuation of meaningful partnerships between the participating tribes and the Federal designated officials in cases where Reorganization is not needed to accomplish Trust Resource Improvements, to the extent not inconsistent with federal law.
4. Recognizing and utilizing tribal expertise and systems to accomplish appropriate management of trust resources, using those opportunities to explore the development of effective working models relating to the management of trust resources, and developing meaningful and measurable means of quantifying the respective values, standards and priorities of the participating tribes and the Department.
5. Identifying ways of resolving conflicting management prescriptions between tribal and federal standards, priorities and values in non-litigation and cooperative government-to-government forums, and memorializing those conflict resolution methodologies in a participating tribe's funding agreement.

B. TRIBAL PARTICIPATION.

1. A tribe that has an existing working relationship with BIA that includes specific management or improvement of trust resource management set forth in the funding agreement shall be included as a participating tribe in this trust pilot project. Such tribe must first submit a formal notice to the Secretary to be included as a pilot project.

2. Any tribe that is not included in part B (1) of this subsection may be included in this Trust Pilot Project upon the submission of a request to do so to the Secretary, with appropriate language to be included in that tribe's funding agreement for that purpose. The funding agreement shall identify the tribal and designated Federal officials responsible for carrying out the provisions of this section.
3. A participating tribe may withdraw from the Project at any time.

C. STANDARD TRUST MANAGEMENT PRINCIPLES AND PROCEDURES.

Where tribes have developed and adopted management standards for trust resources, those standards will be utilized under the Project. The designated Federal official shall interpret statutes and regulations in a manner that facilitates approval of a Tribe's management standards. The Federal designated official may only refuse to accept Tribal standards that deviate from federal statutory requirements. The Federal designated official may propose to the tribe additional standards for its consideration if the official believes that additional standards will assist in managing the trust resources in a prudent manner. Unless the Federal designated official demonstrates that the Tribe's management standards will fail to adequately meet statutory obligations, the Federal designated official shall approve the Tribe's management standards for the Tribe's trust resources. Tribal management standards may be in any format, including law, plans, procedures, policies, etc. providing that the following principles are clearly described.

- a. Formal Tribal Approval. The standards must be formally approved by the tribe in a manner typical of other Tribal enactments and recorded as a formal Tribal action.
- b. Values. The standards must be established in a manner to readily compute the amount of revenues that are expected to be received from each trust transaction(s).
- c. Measurable/quantifiable standards. The standards must describe in measurable and/or quantifiable terms the expected goals and/or intended results for applying the standards.
- d. Methods for resolving disagreements/disputes. The standards must describe in measurable and/or quantifiable terms the expected goals and/or intended results for applying the standards.
- e. Trust evaluations. The standards must include a process whereby the Tribe and Federal designated official can conduct mutually acceptable trust evaluations concerning management of trust resources.

JOINT EVALUATION CRITERIA AND PROCEDURES/REPORTING

Each participating tribe and the Federal designated official will develop joint reporting requirements, which are consistent with the annual trust evaluation requirements. Based on a mutually acceptable non-burdensome reporting format, the report will include methods for determining that trust transactions are carried out consistent with the requirements contained in trust resource management prescriptions and can be easily reconciled with trust fund accounts.

Consistent with the self-governance regulations, the Federal designated official may conduct additional trust reviews if sufficient information exists from credible sources that the Tribe is not operating consistently with the Tribal/Federal management standards. During the annual negotiations, the designated Federal official and the Tribe will negotiate and agree on the Federal designated official in fulfilling the federal oversight trust responsibilities.

D. GRIEVANCE AND DISPUTE RESOLUTION PROCEDURES

Each tribe participating in the Trust Pilot Project will develop and maintain with the Federal designated official non-litigation grievance and dispute resolution procedures that shall be incorporated in the tribes' funding agreement.

INDIAN TRUST FUNCTIONS

POST SELF-DETERMINATION/SELF GOVERNANCE

Source: Hoopa Tribe FY 2002 Budget

