



CENTRAL COUNCIL
tlingit and haida indian tribes of alaska
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Testimony on
Bureau of Indian Affairs Reorganization
And
Trust Management
by
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Greetings from Alaska! My name is Edward K. Thomas. I am the elected President of the Central Council of the Tlingit and Haida Indian Tribes of Alaska, a federally recognized Indian tribe of more than 25,000 tribal citizens. Southeast Alaska is the ancestral homeland of the Tlingit and Haida people. I have been the President of my tribe since 1984. I have been managing federal program contracts and grants since 1975.

In the late 1980s and into the early 1990s I was one of two tribal representatives from Alaska to serve on the Joint Tribal/BIA Reorganization Task Force. My tribe was one of the first to join the Inter-Tribal Monitoring Association (ITMA). I was one of five (5) tribal leaders appointed to the Office of Special Trustee Board after passage of the 1994 Trust Reform Act. I represented Alaska's tribes on the Tribal/Department of the Interior/Bureau of Indian Affairs Trust Management Advisory Council. I am honored to be here today to testify on this very important matter of Bureau of Indian Affairs (BIA) Reorganization and Trust Management.

Federal Trust Relationship to Tribes

The Trust Relationship between the federal government and the American Indian and Alaska Native Tribes is one of the most important legal principles defining the relationship between our governments. The Trust Management system in the BIA is broken. The United States has a moral and a legal obligation to preserve this Trust relationship. The Trust relationship is seriously compromised by the extensive breakdown in the BIA management of the Trust assets.

The problems associated with Trust Asset Management within the BIA have led to this latest effort to reorganize the BIA. As in years past, there appears to be a perception that moving boxes around on the BIA organization chart will substantially contribute to the resolving trust management problems. While there most likely is some need to reorganize the BIA to improve Trust Asset Management, in this testimony I suggest that there are a number of important

questions to ask in making decisions on how to solve the Trust Management problems:

1. Is Trust Management worth fixing?
2. Is the BIA reorganization plan the solution to Trust Management?
3. Are the BIA reorganization and Trust Management efforts being funded through reductions to meagerly funded tribal human services programs?
4. Is it enough to fix BIA Trust Management systems and not the tribal components?
5. Is more tribal consultation needed?
6. Is more legislation needed?
7. Are clearly written and adopted Trust Management standards and principles important?

1. Worth fixing?

It is definitely worth it to fix Trust Management. The federal government must sustain the trust relationship that it has with Native Americans. To do this it is obvious to me that it will require us to concentrate resources on specific areas of Trust Management that are deficient.

2. BIA Reorganization the solution to Trust Management?

There is no question that it will take some reorganization within the BIA to address some of the deficiencies in the management of trust assets. It is also clear that upper level reorganization within the BIA is not related to Trust Management. While it should never be suggested that moving boxes around on an organization chart will solve all management problems it is often necessary to re-define and re-align management responsibilities to properly address deep-rooted problems.

3. BIA Reorganization and Trust Management at the expense of tribal programs?

The federal funding being used to fix the federally-created problems in Trust Management is coming from scarce resources traditionally used to address the problems of needy Native Americans. It is argued that there is no documented “cross-over” showing that money is being transferred out of tribal human services programs to Trust Management needs but it is clear to me that when you have a finite budget where one line item is increased and another is decreased, one is at the expense of the other. In the 2005 President’s budget request we see a substantial increase in BIA Reorganization and Trust Management while we see decreases in the Tribal Priority Allocation (TPA) categories of the budget – the place where tribal human services programs are typically funded.

Conversely, when you see one BIA program increasing and the other staying the same or also increasing then one is not at the expense of the other. This is what must happen as a result of this hearing. Tribal programs in the BIA budget must see reasonable increases this year and in some years to come. Tribal programs should not continue to be penalized because of BIA mistakes in trust management.

4. Fix BIA and not Tribal Trust Management?

It is critical that equal attention be paid to the fixing of Trust Management systems that are deficient at the tribal level along with the deficiencies at the BIA management levels. This requires the appropriation of additional dollars to tribes for these purposes. Tribal Trust

Management systems have been deficient for many, many years and are in dire need of funding increases.

5. More Tribal Consultation needed?

Tribal consultation is a very important tool when done correctly and recommendations given by tribal leaders are taken seriously and honorably. Unfortunately, too often tribes are not consulted with in good faith and many of their recommendations are taken as challenges the federal government must defend itself from rather than as suggestions for improvement. It is important that the federal government incorporate a policy of being judicious and clear on where tribal consultation is important and will make a difference. There are certain duties that the federal government must do in a certain way or methodologies required to comply with federal law or court mandates and these issues should not be brought forth for consultation with tribes in a manner that will create false expectations that what tribes say will make a difference. Conversely, there are many things happening in the current reorganization efforts where the BIA would benefit tremendously from tribal leader input.

Another problem we run into in Indian Country is the orchestrated delays in BIA decision making on routine issues suggesting that they can not do anything because they have to first consult with tribes. There are times when it is important to get tribal consultation done in a timely manner and move on to the next order of business.

6. Is more legislation needed?

I am personally not in favor of passing new legislation unless there is a resolve to require compliance with all existing laws for the purpose of Trust Management reform. I believe there are substantial portions of the 1994 Act that would greatly help these problems if implemented in a timely manner. There is no consequence for ignoring Congressional directions in this Act or any other Act.

7. Clear Trust Management standards and principles?

It is vital that tribal and individual Indian trust assets be managed in a professional manner from this point forward. While the federal government advocates that private banks and investment institutes be guided by clear and firm trust managing standards and principles in the management of resources of non-Indians, the Department of the Interior (DOI) forcefully resists the adoption of such standards in managing Indian resources. They worry about government liability. If there was a strong commitment to managing these resources in a professional manner they wouldn't have to worry about liability.

The 1994 Act

Prior to the 1994 Act my tribe was actively involved in the Inter-Tribal Monitoring Association (ITMA) in working with Congress to come up with solutions to the many problems that we were aware of in the BIA in the management of Trust assets. The 1994 Act was tribally driven legislation. This means that it was the tribes, not the Department of the Interior (DOI), who recognized that these Trust management problems were severe enough that they required

Congress to step in and fix it. I must say that many of the questions and problems being discussed today were similar to the ones we were trying to get answers to back then.

I believe the Act as finally enacted was not aggressive enough because I feel these severe breaches of Trust should have been dealt with at the same level of financial and administrative resolve as was the national Savings and Loan (S&L) scandal. You may recall that the federal government set up a quasi-governmental agency with far-reaching authorities to fix the S&L problems and the findings of this agency led to immediate acts of Congress to restore to citizens moneys illegally invested and eventually lost by these S&Ls. Nonetheless, I decided that I was willing to do my best to work with others in finding solutions and taking necessary action to fix these problems. I was honored in being selected to serve on the initial Advisory Board for the Special Trustee.

I understood that in passing the 1994 Act Congress intended that the Special Trustee take the necessary steps to put forth solutions to the Trust Management problems. The legislative history and the findings in the Act support this assertion. The fatal flaw in this approach is that the Office of the Special Trustee (OST) remained under the administrative authority of the DOI Secretary, who made it very clear from the beginning that he did not feel the OST was necessary nor did he support the work being performed under this authority.

Special Trustee Board Composition and Challenges

The OST Board is composed of five (5) tribal leaders and 3 investment bankers with substantial experience in Trust Asset Management. The tribal leaders on the Board are intimately familiar with the legal requirements of tribal and individual Indian Trust Asset Management as well as with the many problems at all levels of the BIA in managing these assets. It is fair to say that the Board needed very little, if any, orientation on the issues of Indian Trust Management.

The Board monitored the implementation of the automated Trust Fund Accounting System (TFAS) as well as the development of the High Level Implementation Plan (HLIP). Although it is clear that the Office of Trust Fund Management (OTFM) is still not up to acceptable standards, the new automated system is a dramatic improvement over what it was before. The HLIP was a plan that had firm dates for completing specific tasks relative to fixing problems in BIA Trust Management. This plan was greatly compromised by then Interior Secretary, Bruce Babbitt:

- Secretary Babbitt refused to sign off on the HLIP unless the tasks relative to the design and implementation the Trust Asset and Accounting Management System (TAAMS) and the BIA Data Cleanup components remained under the direct administration of the BIA.
- The BIA never gave the TAAMS the level of priority it needed. They had seven (7) different people in charge of TAAMS in two years, none of whom had the authority or expertise to get the job done.
- Very little was done on BIA data cleanup unless there were directives from the judge in the Cobell case.
- The BIA never took the initiative to finalize and certify the architecture of the TAAMS even after numerous reminders that timelines have been missed and that the project could

not be properly implemented without certifying the architecture of the proposed system.

- Secretary Babbitt authorized the “roll out” of the Billings component of TAAMS before the certification of the TAAMS architecture which was intended to demonstrate that they were making progress on TAAMS and it ended up, instead, distracting from the work that should have been done to getting the total system running like it was intended to run.
- Requests by the Board to meet with Secretary Babbitt were ignored.
- Secretary Babbitt fired former Special Trustee, Paul Homan, when Mr. Homan pointed out the fact that very little more could be done in data cleanup and TAAMS implementation without total cooperation from all levels of BIA management and a total commitment from Secretary Babbitt to provide the necessary authority to the Special Trustee to require BIA employees to get Trust issues addressed in concert with timelines set for those projects.

The Board has also had difficulty in getting the second Special Trustee to follow-up on our requests or directives:

- A couple of years ago the Board requested that the minutes of our meetings be copied to members of this Congressional Committee on a regular basis. This was not done.
- The Board has authorized the implementation of an “action tracking” form to be used to track administrative action taken on Board action. This form would specify the Board action taken; specify who is responsible for following up on the action and the expected date of completion. The use of this form was never implemented.
- We have requested that BIA employees key to the implementation of the TAAMS project and records cleanup meet with the Board. We have been receiving report after report that BIA employees were behind on these projects so the Board wanted to avoid blaming and instead work together to get the job done. None of these BIA employees were sent to meet with us.
- We requested that the Chief of Staff of this Committee be invited to the Billings TAAMS role out to see that it was deficient and that this was a serious problem. The invitation was not extended.
- As a member of the Board I have asked for specific financial information as to how much it would cost to fully implement the recommendations in the EDS Report and where the money would come from if more money was needed. This was never provided. I am very concerned that if these additional costs are not put forth in the form of DOI budget amendments there would be proposals to take funding from other BIA programs to pay for these costs.
- We requested a meeting with Secretary Norton to discuss our findings and problems encountered with her predecessor. The request to meet with her was never forwarded by the Special Trustee or responded to.

The Board has been very vocal with the Special Trustee and his staff as to our displeasure that project timelines were being violated on a regular basis and that there did not seem to be any

interest in putting these major projects under the direction of highly qualified people within the BIA. The response we got time-after-time was that the BIA didn't do this and the BIA didn't do that but we were never given the opportunity to talk directly to these people who were led to believe were in charge of getting the job done.

I strongly believe that if the last two Secretaries of the Interior would have made a strong personal commitment to implementing the 1994 Act to the best of their ability in a timely manner and if they would have taken all of the advice of the OST Board we would not have to be here today talking about total BIA reorganization.

Reorganization Process and Consultation

The Department of the Interior/Bureau of Indian Affairs policy of reorganizing first and then consulting with tribes once they're done is not right and is very demeaning to tribal leaders. While I understand and appreciate that some of the BIA reorganization is driven by court directives from the Cobell case, I believe that there could have been better participation by tribal leaders in the entire process if there was the proper "will" within the DOI.

To hold a consultation session in Las Vegas for Alaska Natives is insulting. I fail to see why such a session couldn't be held in Alaska. Our people deserve the opportunity to participate in the consultation process just as Native Americans in the Lower-48.

Reorganization in Alaska

I strongly object to having two Regional Director's Offices in Alaska. We don't need two and we can't afford two. Furthermore, the fragmentation of administrative oversight has led to inefficiencies in the execution of administrative responsibilities. We have seen vacancies go unfilled for as long as a year. We have seen precious unspent balances being called back to BIA Central Office for its needs instead of being used to address the serious social problems facing Alaska Natives.

I strongly disagree with the movement of the Alaska Realty program from Juneau to Anchorage. This is a worthless and wasteful move. We not only can't afford the cost of the move, there is no value to moving the office. It is argued that because there are more realty activities north of Anchorage, it would be more efficient to have the office in Anchorage. When the office was in Juneau the Southeast Alaska tribes did not experience any benefit from it being in our region and we, at Tlingit and Haida, did not benefit from the office being in the same town.

BIA Reorganization at the Expense of Tribal Programs

There is no question that the BIA reorganization efforts are being paid for at the expense of BIA funding for Native American human services programs. Analyses done by the General Accounting Office, the BIA Budget Advisory Council, and the United States Civil Rights Commission all show that this is true. This is wrong-headed and unfair budget policy. The DOI should have been required to do a better job in justifying its reorganization plans to Congress and making requests to have all reorganization costs fully funded through supplemental appropriations. Furthermore and most importantly, DOI should have requested additional funding for the improvement of Trust Management at the Tribe/Agency levels along with the

increases requested for its responsibilities in Trust Management.

I thank you for the opportunity to share my views with you on the Bureau of Indian Affairs reorganization activities. I wish you well in your deliberations and I trust you will make the right decisions on the issues affecting our people.

Gunalcheesh! Howa!

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