

**TESTIMONY
OF
PRESIDENT IVAN MAKIL
SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY**

**Oversight Hearing on the Indian Trust Fund Accounts: the Department of the Interior's
Restructuring Proposal**

**Before the House Committee on Resources
Longworth House Office Building, Room 1334
Washington, D.C.
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INTRODUCTION

Chairman Hansen, Ranking Member Rahall, members of the committee, Secretary Norton and members of the Interior department, and distinguished guests, I am Ivan Makil, President of the Salt River Pima-Maricopa Indian Community. Salt River has over 7,000 members in what has traditionally been a farming and resource-based community. While I commend the Department for undertaking this monumental task and putting its proposal forward, I believe I have some concrete proposals that may better serve Indian country and the federal government.

We applaud the Committee for holding this important hearing and are particularly gratified that Congressman Hayworth - whose district includes our community - has been tasked with chairing part of this hearing because of his intimate knowledge about the Indian trust reform issue. My testimony today will focus on five main areas: (1) the proposed restructuring plan; (2) the consultation process; (3) the impact of the current state of affairs; (4) previous failed efforts to reform trust; and most importantly, (5) alternative proposals.

As president of the SRPMIC for twelve consecutive years, I possess extensive personal history, knowledge, and involvement with the lost and mismanaged Indian trust funds. At the end of my testimony, I respectfully offer my own recommendations to a solution that should, once and for all, help to facilitate a successful completion of Indian trust reform that is consistent with the federal government's trust duties and maintains the dignity and respect that America's first people so richly deserve.

PROPOSED RESTRUCTURING PLAN

As you know, Mr. Chairman, the proposed restructuring of the BIA is one of the biggest issues facing Indian country, and it has sparked a wide range of emotion throughout Indian country. Many tribal leaders have argued vehemently against the newly proposed Bureau of Indian Trust Assets Management (BITAM). As a positive and productive response, many tribes have drafted a wide variety of options that would successfully address trust reform without creating a larger federal bureaucracy. The number of alternative options offered by tribes demonstrates their own ability and depth in recognizing the core problems associated with Indian trust management.

For many years, tribal leaders have specifically requested that the Department focus on the core problems of trust asset management and to stop making politically motivated cosmetics changes that only exacerbate the issue. Moving organizational boxes around will not solve the problem. Unfortunately, many lives in our

tribal communities hang in the balance. We all know that solving the fundamental problems in the BIA trust management system is what must happen programmatically regardless of changes in organizational structure.

Nevertheless, continuing the consultation process and congressional hearings are an important step toward solving this terrible dilemma that affects the very core of Indian country. I want to make it clear that the problem of Indian trust reform has lingered on for too many years and for too many years the sound recommendations of Tribal leaders have fell on deaf ears. I come here today to lend a helping hand to the members of the Committee and to the Department in solving this growing problem.

THE CONSULTATION PROCESS

As far as the consultation process is concerned, I commend the Department for extending the original deadline for the consultation period. Only with continued consultation with the tribes will a workable solution be proposed that will truly reform the trust fund process. It is my desire to see it extended yet again to ensure that all of Indian country has the opportunity to participate in this important process and propose solutions. By continuing consultation, the Department will be working in good faith and demonstrate its desire to truly work together with Indian country.

Given the fact that Indian trust reform directly impacts almost every Indian tribe in the country, it would make sense that any proposal would include the input of the actual benefactors of the trust relationship. In this regard, it is my desire to see the department provide some much-needed guidance regarding BITAM's affect on the local level before finalizing its proposal. I am also concerned that the BITAM proposal doesn't address the four breaches identified in the *Cobell* Court Orders. ⁽¹⁾

IMPACT OF THE CURRENT STATE OF AFFAIRS

Fortunately, as a self-governance tribe ⁽²⁾, we were not adversely affected by the recent shutdown of the Department's computer system. Through this status, we have taken over many of the services from the federal government including our own trust accounting system. While our system isn't perfect, we can account for trust assets and we continue to issue landowner lease payments in an efficient and effective manner.

Our self-governance status also presents an interesting dilemma in terms of the proposed creation of the BITAM office. With the BITAM, we are concerned about what the impact will be on "638 contract" and "self-governance" tribes. I am concerned that the current BITAM proposal violates both the spirit and the letter of numerous treaties, executive orders, secretarial orders, and federal statutes and regulations that promulgate the long standing federal policy of tribal self-governance and self-determination. ⁽³⁾ I urge Congress to impress upon the Secretary the importance of protecting our treaty and trust obligations in developing any proposal regarding trust assets.

PREVIOUS EFFORTS

As you know, Mr. Chairman, there have been many failed previous trust reform efforts. Congress most recently enacted the Trust Reform Act of 1994 to address the many trust management shortcomings and to provide for effective administration going forward. The '94 Act created the Special Trustee for American

Indians, operating within the Department, to oversee reform efforts. It also created the Office of Special Trustee Advisory Board. As a member of the Advisory Board to the Special Trustee, I have a unique perspective on Indian trust fund management because I have been working on this issue for many years.

Over the last five years, we have advised the Special Trustee and monitored the Department's trust reform efforts. Although the advisory committee has made some pro-active recommendations, the Special Trustee hasn't followed through on our proposals. The creation of a new approach may be the impetus for real reform and solutions to the lost Indian trust funds debacle once and for all.

AN ALTERNATIVE TO TRUST REFORM

There are many sound options to the proposed BITAM office that may be incorporated into the Department's proposal. In conjunction with the Department, the National Congress of American Indians (NCAI), has convened a tribal leaders task force on trust fund reform. They have been meeting for several months now and have put together various proposals to solve the trust reform issue. I would encourage Congress and the Department to carefully review and debate these and other proposals to craft the best possible solution.

I am particularly interested in a proposal that would establish an Independent American Indian Trust Oversight Commission. In reviewing the various proposals circulating, it has become evident that this proposal, combined with two proposals, could create a viable regulatory commission that would avoid the creation of additional bureaucracy. Recommendations brought forth by the Advisory Board to the Special Trustee, the Van Ness Feldman proposal, and the Inter Tribal Timber proposal each have compatible components that are based on sound trust fund reform principles.

The Independent American Indian Trust Oversight Commission would have the following structure and purpose:

- § It would be established by Congressional legislation
- § The Commission members would be appointed by the President and approved by Congress
- § It would be Independent or Quasi-Independent of the Department of Interior
- § The Commission would develop a comprehensive plan for trust reform
- § The Commission would recommend to Congress legislation to place responsibility for the reformed trust system and for implementing a reinvention of the current archaic process
- § The Commission would provide transparent regulatory oversight
- § It would provide annual progress reports to the President approved by the House Committee on Resources and the Senate Committee on Indian Affairs
- § The Commission would have control over the \$67 million proposed by the 2003 President's budget request earmarked specifically for Indian Trust Reform
- § The legislation would have a built-in sunset clause that will dismantle the Commission once it achieves its intended purpose

The Independent American Indian Trust Oversight Commission would act in a similar manner to the Federal Communication Commission or the Resolution Trust Corporation and would have the authority to effectuate real change. The Van Ness Feldman proposal provides an interesting comparison between the success of the District of Columbia Financial Responsibility and Management Assistance Authority and the Indian Trust Fund Management Reform Act. Both were enacted between 1994 and 1995. Seven years later, one was a

spectacular success and the other a miserable failure. The Van Ness Feldman proposal states that, "... *Congress and the President acted on the well established management principle that a system that is in bad-a-shape as the D.C. Government or the Indian trust system cannot reform itself from within. Reform must be directed from outside and that outside entity must have plenary authority to impose the reform.*" With input and critical participation from tribes -- the benefactors of Indian trust -- such a proposal could meet with similar success. Many of the other proposals have merit. All of them should be examined to help craft the proposal that will work and resolve this lingering headache for the federal government and Indian country.

SUMMARY

Mr. Chairman, the solution of the mismanaged Indian trust funds problem should be seen as a unique opportunity to right the wrongs of the past and not as an attempt to dismantle the BIA. As you know, a 1998 Department of Interior report showed that there were more than 340,000 individual Indian trust fund accounts and that more than \$300 million passes through the accounts each year. Tribal leaders and members alike have lost faith in a government that was entrusted to protect their assets. To restore this trust, we must find a solution to this escalating and disturbing problem. The time is now, and I stand committed to working with the Committee, the Department, and all of Indian country to find a sound and just solution.

I believe the Department and Indian country are united in the effort to reform the trust fund system, but we must act together to achieve our goals. Only with a united front between Indian country and the federal government will we be able to bring meaningful, achievable, and necessary reform to the system. Indian country can and will work with Congress and the Department to find the solution, but the Department must work with us too.

In conclusion, Mr. Chairman, I commend you for holding this important hearing on one of the most pressing issues facing Indian country. I also thank Secretary Norton and Assistant Secretary McCaleb for putting tribal consultation on the forefront of their agenda. For too long, Congress and the Administration have let this issue drag on. With this bold initiative, Indian country is committed now, more than ever, to finding a solution to this pressing problem. Again, I encourage the Department to extend the consultation period to ensure that all tribes are able to participate in this important process and propose viable solutions in conjunction with the Department's efforts. I also hope that the Department will carefully review and scrutinize some of the alternative proposals to BITAM in the hopes of crafting the best possible solution for Indian country. I remain committed to helping Congress and the Department in this regard.

Thank you again, Mr. Chairman for allowing me to testify before the committee today. I would be happy to remain here to answer any questions you or the other committee members may have.

¹ The Secretary has no written plans for either the gather of missing data; no written plan for the retention of IIM trust documents; no written architectural plan; no written plan for addressing the staffing of trust functions.

² The Tribal Self-Governance Act, P.L. 103-413

³ The Indian Self-determination and Education Assistance Act (P.L. 93-638), The Indian Trust Fund Management Improvement Act of 1994, the Federal Oil and Gas Royalty Management Act of 1982, National Indian Forest Resources Management Act of 1995, the American Indian Agricultural Resource Management Act of 1995

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