

TESTIMONY OF CLIFFORD LYLE MARSHALL, CHAIRMAN,
HOOPA VALLEY TRIBE
BEDFORE THE SENATE COMMITTEE ON INDIAN AFFAIRS
REGARDING TRUST REFORM AND RELATED MATTERS
MARCH 10, 2004

Mr. Chairman, members of the Committee, I am Clifford Lyle Marshall, Chairman of the Hoopa Valley Tribe. I thank you for again inviting me to testify on Trust Reform. I last testified before this Committee on May 21, 2003 on the subject of Trust Reform. I testified on behalf of the California Consortium on Trust Reform, a consortium of seven (7) tribes in California including Hoopa. At that hearing I presented as an attachment with my testimony the "Operating Agreement Between the Bureau of Indian Affairs – Pacific Regional Office and the California Trust Reform Consortium.

At that time I testified about "the positive activities that the Consortium and BIA Pacific Regional Office had undertaken," and that the "the Consortium Tribes had 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." I also testified that other tribes like the Salt River Pima Maricopa in Arizona, the Confederated Tribes of Salish and Kootenai, and the Chippewa Cree of Rocky Boy Montana had accomplished positive trust reform through their own unique working relationships with their respective BIA agencies. I asked, at that time, that the California Consortium "be allowed to continue implementing our BIA/Consortium effort and work collectively to solve trust management problems at the local level." And I also asked that the Committee consider establishing a Tribal Trust Reform Pilot Project that would preserve and protect these established working relationships between tribes and the BIA.

Last year this pilot project was established in Section 139 of the Department of the Interior and Related Agencies Appropriations Act of 2004. This Act provided that the California Consortium which includes Hoopa, the Salish and Kootenai, Rocky Boy, and the Salt River Pima Maricopa Tribes were designated by Congress to "operate separate and apart from the Department of the Interior's trust reform reorganization.

Section 139, however, had a proviso added to it that stated that the tribes referred to in Section 139 had to "demonstrate to the satisfaction of the Secretary of the Interior that they have the capability to carry out their responsibilities under the same fiduciary standards as those to which the Secretary of the Interior is held." In discussions with Interior staff prior to the introduction of Section 139 we believed that this would be a cursory review of our most recent trust evaluations and audits. However, we were later informed that we would be assessed, and our assessment would be as against the "As-Is" and "To-Be" models. We felt that this was entirely unfair, an imposition of the Department's trust management infrastructure, and what we felt was a clear violation of the intent of Congress which was that the tribes remain separate and apart from trust reform. We countered that under the Self Governance Act, Self Governance tribes are required to comply with federal law and standards set forth in federal regulations.

Between December, 2003, and February 2004 each of the ten tribes were visited by an assessment team of the Office of Special Trustee for Indian Programs, Office of Trust Review and Audit. The teams consisted of four (4) to six (6) auditors and attorneys, the assessments lasted for one (1) to four (4) days. Hoopa's review lasted two days. When asked what we were being evaluated against the response was that they weren't sure; that they were there to collect information. We were later told that we were being compared to a trust company. Our fiscal management program, policies and procedures, records management program, policies and procedures and our land and resource management programs, policies, and procedures were scrutinized.

On March 8, 2004 The Hoopa Valley Tribe received the final draft of the Department of the Interior's assessment. The Hoopa Tribe now has thirty days to provide comments. For Forestry, the assessment concluded that "no discrepancies were noted in the timber sales transaction file review." For Wildland Fire protection the assessment noted that "the fire suppression unit is sound" but funding level is one third of what is necessary to protect the timber resource. The assessment noted that our Roads Department maintains 108 miles of road but is funded at eleven percent of need. The Assessment also noted that the Pacific Region has not processed one probate for a Hoopa Indian in the last seven years.

For records management the assessment noted that the Tribe maintains all California Indian Rolls from the 1920's, and census records on Indian rancherias going back to 1882; have a record schedule policy for all departments; maintain a records inventory, uses a Doc Star computer system to electronically store records on CD Rom disks; and use an interdisciplinary approach for developing new policies and procedures. The assessment concludes that, "in appearance, all records are well organized, labeled, and secured."

The assessment of our fiscal department concludes that "the fiscal department appears to have excellent records management system and superior internal controls operation." Regarding information technology the assessment states Hoopa uses a "fully integrated fund accounting system; windows 2000 server with sonic wall firewall software; trackit software to keep an inventory of the software and hardware used; performs security testing, maintains strict controls on software installation; maintains virus scanning updates; and backs up and stores its data weekly on CD Rom disc and stores it in a safety deposit box in a fireproof safe at the local bank.

The executive summary concludes that, "The Tribe is capable of performing trust functions. The Tribe had some minor weaknesses that need attention but do not prevent them from meeting section 139 requirements." Specifically, the Tribe should seek an external evaluation of their information technology systems, policy, and procedures to certify compliance with applicable information security mandates."

I would like to address these alleged weaknesses. First, there are no section 139 requirements. Section 139 specifically said the 139 tribes were to remain separate and

apart from trust reform. Second, there are no "applicable information security mandates." Third, the BIA and OST don't have an "information technology system" that works. OST has spent over seventy million dollars on the TAMS system that has never worked, is not on line, and the BIA is still operating without internet access. Fourth, the Department of Interior has paid sixty million dollars on external evaluations to produce the "As Is" and "To Be" models and aren't any closer to implementing a system.

In FY 2003, like every previous year for the past fifteen years, Hoopa was audited by a certified accounting firm, evaluated by the Pacific Regional Office pursuant to the Self Governance Act; and assessed by the Office of Special Trustee. It is hard to understand why OST would conclude that we need another "external evaluation." Hoopa considers the OST assessment an external evaluation.

It appears that OST is holding us to a standard that the BIA and the Secretary has never achieved. The Hoopa Tribe's computer systems, used to manage fifty seven (57) departments, have been an investment that has accumulatively over the past ten years have cost hundreds of thousands of dollars. We've put our funding into developing an infrastructure and developing our capability. We've used our funds to build a system that works for us. It also works for our auditors and it works for the BIA Regional Office who does our evaluations. Why does Hoopa need another evaluation? More importantly, who is going to pay for it? If there are minor weaknesses in Hoopa's management, and I don't read in the assessment any finding that there is, it's because of inadequate funding. I believe that the other Section 139 tribes would say the same.

I believe that the Section 139 assessment was, in fact, an application of the trust reform "To Be" model and turned the intent of Section 139 on its head. But the importance of Section 139 is that it shielded the Section 139 tribes from trust reform/reorganization changes and preserved the agreements and working relationships of the ten tribes and their agencies. Section 139 required that the tribes demonstrate to the Secretary that they have the capability to meet the fiduciary duties of the Secretary. I am proud to say to this committee today that Hoopa's assessment and, to my knowledge, all the other Section 139 tribes state, "The tribe is capable of performing trust functions." We passed this arduous test and proved our capability. In conclusion, since Trust Reform continues to be a mystery wrapped in an enigma to most of us, and the Section 139 tribes have shown that they are managing at the same level or above that of the BIA, I ask that you support extending Section 139 for another year. The purpose of Section 139 was to maintain what is working now in Indian Country.

Thank you for this opportunity to speak today.