



Hoopa Valley Tribal Council

HOOPA VALLEY TRIBE

Regular Meetings on the First and Third Thursday of Each Month

P.O. Box 1348 • HOOPA, CALIFORNIA 95546 • Phone 625-4211 • Fax 625-4594



Clifford Lyle Marshall, Sr.
Chairman

**Testimony of the Hoopa Valley Tribe
Senate Committee on Indian Affairs
Oversight Hearing on S.1439, the Indian Trust Reform Act of 2005
July 26, 2005**

We thank you for the opportunity to submit testimony on S.1439, the Indian Trust Reform Act of 2005. The Hoopa Valley Tribe, one of the original self-governance tribes, a Section 131 tribe and member of California Trust Reform Consortium and ATNI, commends Chairman McCain and Vice-Chairman Dorgan for their dedication to resolving the issues arising from the *Cobell v. Norton* case, the Department of the Interior's reaction to that case, and the future of tribal and individual Indian trust assets management. The Hoopa Valley Tribe appreciates the time and energy spent on the development of S. 1439 and is pleased with the outcome. We support the effort and look forward to working with the Committee on improving the bill as it moves through the legislative process.

S. 1439 presents a plan for remedying the wrongs of the past while proposing a structured approach for future trust management. It seeks to ensure that problems surrounding the Federal Government's management of trust assets and resources, which have afflicted Indian Country for so long, will not plague us in the future. The bill supports the government-to-government relationship between tribes and the United States, adheres to the federal government's trust responsibility to tribes, and furthers the principles of self-governance and self-determination. Unlike past short-sighted trust management approaches of the United States that gave rise to the breach of trust claims, S. 1439 is a balanced approach to addressing the immediate issues of *Cobell* and the Federal government's management of trust assets. Importantly, S.1439 also preserves the rights of tribes, as inherent sovereign governments, to participate in the management and protection of their territories and resources. It recognizes that the United States must be held accountable for past wrongs and also that true reform is needed for proper trust management in the future. We believe S. 1439 is the vehicle for that reform.

Below, we discuss three overarching points of the bill and then provide brief comments on certain provisions. Specifically, we believe S. 1439 rightfully refocuses trust reform to the original objectives and intent of the 1994 Trust Fund Management Reform Act, blunting the United States' recent policy of micromanaging trust issues in light of *Cobell* which has caused duplication and bloated bureaucracy. Further, we believe S.1439 protects self-governance and the rights and abilities of tribes to participate in trust management. Finally, it appears S.1439 frees up substantial funds that could be used on the ground to address the many issues in Indian Country.

Refocusing Trust Reform

We believe S. 1439 correctly refocuses trust reform back to the original mission of the American Indian Trust Fund Management Reform Act of 1994, 25 U.S.C. §§4001-4061. The Hoopa Tribe agrees with the goals and principles of the 1994 Act. We also believe in the need for the Office of Trust Fund Management (OTFM) to operate within the BIA. The 1994 Act established the Office of Special Trustee (OST) to oversee and coordinate reforms in the Department of the Interior's (DOI) practices relating to the management and discharge of the Secretary's trust responsibility to tribes and individual Indians. Under the Act, the OST is to ensure that policies, procedures, practices and systems of the DOI's bureaus related to the discharge of the trust responsibility are coordinated, consistent and integrated. It is clear under the Act that OST is meant to be an oversight and coordinating entity.

In light of *Cobell*, however, the OST in recent years has used the 1994 Act to leverage unnecessary control and micromanage trust issues. It has moved away from its intended role as a coordinating oversight entity to become an entity engaged in the delivery of trust services, a role originally reserved for the BIA. This has resulted in a fragmentation of appropriations for Indian programs, a dismantling of the Indian service delivery system and unnecessary duplication and bloating of bureaucracy. This is in direct contradiction to tribes' longstanding desire to keep the BIA system intact while repairing resource management problems that need fixing. The purpose of the 1994 Act was to provide oversight, not create a new agency focused on protecting itself from liability.

We do not need additional bureaucracy, nor can we afford it, particularly in today's budget environment. OST has been operating under a "bright line" philosophy under which it attempts to develop an arbitrary separation between Indian assets and the people themselves. Indian people and their assets, however, cannot be conveniently separated simply by dividing programs and functions and moving trust program management from a single line of authority to multiple lines of decision-makers at different agencies. Any bright line plan that has a basic framework to separate trust assets from Indian communities will necessarily be in conflict with the goals of economic development, providing adequate services, and reducing poverty in Indian Country.

Under the existing BIA structure, each Regional and Agency Office has established internal trust personnel to oversee the management of trust assets at every point in the delivery of trust services. The OST has also established trust officers to serve in the Regional and Agency Offices. Under the combined BIA and OST restructured trust programs, there are nearly a dozen federal employees carrying out what was done by less than half in previous years. We do not believe this is what was intended by the 1994 Act.

The Hoopa Tribe supports S. 1439, in part, because Title V takes bold steps to restructure the BIA and the OST. Title V seeks to ensure a more accountable administration of the Secretary's duties with respect to providing services and programs to Indians and tribes, including the management of trust resources. Title V creates the position of Under

Secretary for Indian Affairs, who reports directly to the Secretary of the Interior, and provides for the phasing out of the OST by December 31, 2008. The termination of the OST is specifically intended by the 1994 Act. S. 1439's clear sunset of the OST protects against the possibility that the OST will become permanent, regardless of its efforts in bureaucracy building and assuming the responsibility for delivering certain trust services.

The Hoopa Tribe supports S. 1439's creation of the position of Under Secretary and the transfer of the duties and functions of the OST and the Assistant Secretary for Indian Affairs to this new position. We think the plan will streamline the process for carrying out trust functions. Moreover, with the emerging trust issues regularly surfacing in other bureaus and agencies of the DOI, we believe the creation of the Under Secretary position will help resolve trust problems tribes face due to the lack of coordination or understanding of the issues by those other agencies/bureaus. Having one direct line of authority will assist in the coordination of the various aspects of trust management. Further, we support the effective merger of OST functions back into Indian programs of the BIA, under the Under Secretary. This would prevent the duplication of services and the overgrowth of bureaucracy, and foster progress in the delivery of services to Indian people.

S. 1439 Protects Self-Governance and the Ability of Tribes to Manage Their Own Resources

As a self-governance tribe and participant of Section 131, we are grateful that Congress recognizes the benefits of the Section 131 Demonstration Project and has included the Indian Trust Asset Management Demonstration Project Act in Title III of S. 1439. The Hoopa Tribe is honored to participate in the Section 131 project with the six other tribes in the California Trust Reform Consortium (Karuk, Yurok, Cabazon, Big Lagoon, Redding, and Guidiville) as well as the Salt River Pima Maricopa Indian Community, the Confederated Salish - Kootenai Tribes and the Chippewa Cree of the Rocky Boys Reservation. Section 131, to date, has been successful. Accordingly, we strongly support the Demonstration Project in S. 1439 and will assist in any manner to address areas of concern that Congress or the Administration may have.

The motivation behind Section 131 (Section 139 in its initial year) was multi-fold. For the California Trust Reform Consortium, we sought protection of our then-existing Operating Agreement for trust resources management that we entered into with the BIA Pacific Regional Office (PRO) and protection of our relationship with the PRO in the face of uncertainty in the direction of trust reform efforts. We did not want the imposition of the restructured OST and DOI to alter our tried and true successful means of managing our trust resources. It is our position that trust reform should focus on what is broken and preserve what is working. Section 131 tribes have systems and practices for trust management that work. In fact, pursuant to Section 131 each participating tribe underwent an evaluation by the OST and received a determination that it is capable of performing compacted trust functions under the same fiduciary standards to which the Secretary is held. Hoopa was even cited as "an excellent example of trust administration, in furtherance of tribal self-determination."

Section 131, we also believe, is an appropriate way to showcase successful models of trust management that not only demonstrate to the United States how trust management can be implemented, but also encourage tribes to participate in the management of their resources. It stands as an example that local decision-making and combined efforts with the BIA can result in significant trust management improvements. Tribes can properly implement trust management even though they may use different practices and methods than the DOI. Title III of S. 1439 maintains and encourages this concept by preserving the ability of tribes to continue their own successful trust resource management.

The S. 1439 Demonstration Project builds upon and encourages self-governance and self-determination, which are proven successful policies for building growth in capability and infrastructure in tribal governments. We believe that the Demonstration Project under Title III will provide a useful model for how tribal governments can assist the United States with properly managing trust assets and create an understanding on the part of the Federal government of the differences between our respective values and expectations when managing trust assets within our tribal territories. We also believe that all tribal governments, regardless of whether they are direct service tribes or operating pursuant to self-governance or self-determination agreements, should be a part of the management of trust assets within their jurisdictions. Active participation by tribal governments in the management of trust assets not only creates positive results, but reduces the chance of conflicts or breach of trust claims. Again, we support the concept of the Demonstration Project and are committed to working with the Committee to find ways for tribal governments of any fashion of service delivery to engage in the management of their trust assets.

One concern we do have with the Title III Demonstration Project is that the default action under Section 304(b)(3) is to deny approval of a tribal applicant's demonstration project plan if the Secretary does not act within a certain timeframe. We believe this standard should be reversed so that a plan is approved unless specifically denied by the Secretary. This approach would be mindful of the fact that tribes are always at a disadvantage when the Secretary has the ability to obstruct the negotiation process.

Under S. 1439, Substantial Amounts of Money will be Available for Use on the Ground to Address the Many Issues in Indian Country.

It appears that under S. 1439 a substantial amount of funds currently being used for litigation costs by the DOI in the *Cobell* case as well as reorganization efforts of the OST would be available to be used for on-the-ground initiatives in Indian Country to address the many needs of tribes and their members.

We have previously estimated that the costs of implementing the To-Be Model, Records Policy and Trust Examination Handbook nationwide would be approximately \$1 billion. While we support the continuing requests of tribal leaders to provide adequate funding for trust resource programs, we do not support the concept that creating new multi-million dollar centralized bureaucracies located thousands of miles away from where the

resources need to be managed is the best way to accomplish trust improvements. To the contrary, we strongly believe that meaningful and cost effective trust improvements occur when there is support and funding provided at the local level. S. 1439 appears to recognize this principle by encouraging self-governance and the integration of tribal government action with a local decision-making focus in trust management. S. 1439 appears to streamline trust management rather than expand federal bureaucracy. With this, monies that would have been put toward centralized bureaucracies, it appears, would be available for spending at the local level on trust improvements. This, in turn, will further tribal economic development and the effort to reduce poverty among tribal members.

Titles I, II, IV and VI of S. 1439

The Hoopa Tribe is in support of a timely and fair resolution of the *Cobell* case. The importance of the United States' obligations to Indian people can never be diminished. Further, Indian people should not suffer from inaction on their claims. The Hoopa Tribe has had experience with claims that take far too long to resolve. Such delay does not do justice to Indian people. A fair and timely resolution is needed so Indian people can move forward. We look forward to hearing the comments that will be forthcoming with regard to the proposal outlined in Title I.

The Hoopa Tribe previously has not supported the concept of a commission because we do not want it to become another level of overreaching bureaucracy. However, as Title II is written, it seems the Trust Asset Management Policy Review Commission (Commission) might provide some benefit in reviewing the laws and practices of the DOI with respect to trust asset management, and recommending improvements to those laws and practices to the Secretary and Congress. The manner in which Indian trust services has been staffed, funded and carried out has left many of us with a strong sense of frustration and disappointment. The commission concept may help ensure that the problems which plagued us in the past will not plague us in the future. It is absolutely necessary, however, to ensure that there is no risk that the Commission will take on a life of its own, by extending its reach beyond reviewing and making recommendations. It cannot duplicate efforts of the agencies nor can it drain critically-needed funds from Indian programs or wield any authority over how tribal governments address individual issues relating to trust management. The manner in which Title II is drafted appears to protect against such short-sighted policies and additional bureaucracy that would only complicate the problems. We recommend, however, that the commissioners selected from Indian Country consist of a balance between direct service and self-governance tribes.

The Hoopa Tribe strongly supports resolving the problem of fractionated interests. We, however, reserve comments on Title IV regarding the Fractional Interest Purchase and Consolidation Program until we have had the opportunity to hear from the Indian Land Working Group and other appropriate entities that have an interest in this matter.

We believe the concept in Title VI, Audit of Indian Trust Funds, is necessary to ensure adequate checks and balances of financial trust functions within the Federal government. The requirement for an independent audit will lend necessary credibility to the overall management of trust funds by the Federal governments.

Conclusion

We want to express our appreciation for Chairman McCain's and Vice-Chairman Dorgan's leadership demonstrated through the introduction of S. 1439. Trust mismanagement problems have afflicted tribes and Indian people for too long. Allowing these problems to remain unresolved for much longer will only create more injustices, conflict and delays in the services the United States is obligated to provide Indian people. It is time to act. We believe that S. 1439 is a solid foundation for such action, and we look forward to working with the Committee, the House Resources Committee and the Administration to move meaningful legislation through the process as expeditiously as possible.