

Testimony of the Confederated Salish
and Kootenai Tribes
of the Flathead Nation
Before the Senate Committee on Indian Affairs
of the United States Senate

September 22,1999

Chairman Campbell, Vice Chairman Inouye and honored Members of the Senate Committee on Indian Affairs, my name is Anna Whiting Sorrell, and I am an enrolled member and a Program Analyst for the Confederated Salish and Kootenai Tribes (CSKT) of the Flathead Nation. On behalf of my Tribal Council, I am pleased to provide these comments regarding S.1587, which will amend the American Indian Trust Fund Management Act of 1994 by establishing within the Department an Office of the Special Trustee for Data Cleanup and Internal Control, and S.1589, which will amend the American Indian Trust Management Reform Act of 1994 by establishing a commission to provide oversight for all reforms in regard to Trust management Reform. Our comments begin with some relevant information about CSKT and our management efforts and then proceed with general observations regarding the implementation of the American Indian Trust Reform Act of 1994. We will conclude with specific comments regarding the two pieces of proposed legislation.

CSKT's unique relationship with the United States began with the Hellgate Treaty of 1855. As a result of this treaty, we ceded over 20 million acres of what is now western Montana and reserved for ourselves, and future generations, the 1.25 million acre Flathead Indian Reservation along with the agreement that our lands and treaty rights would be protected forever.

CSKT has led the way in assuming responsibility for the protection of our land, air and water and the needs of our membership as provided by Federal legislation especially through the Indian Self-Determination and Education Assistance Act of 1975, as amended. CSKT was one of the first tribes to exercise the option of contracting when we assumed the operation of a number of Bureau of Indian Affairs programs. In the late 1980's, under the guidance of our late Chairman Michael T. Pablo, we helped forge a new direction between the Federal Government and tribes as one of the IO original Self-Governance Tribes, It is through this innovative Indian policy that tribes have been able to assume the key role in the programs, functions, services and activities available to their membership yet, maintain the federal trust relationship. Self-Governance returns decision-making authority and control to the local level, the level which is most affected by operations of these programs.

Since the inception of P.L. 93-638 CSKT has assumed management and operation of the majority of functions previously provided by the federal Government. For example, CSKT has compacted all services from the Indian Health Service Flathead Service Unit for health care services provided for approximately 10,000 users. Through a P.L. 93-638 contract, CSKT's Mission Valley Power provides utility services to over 22,000 consumers. All BIA services from

Law Enforcement to Social Services to Realty Services and Title Plant functions are now under tribal direction. Additionally, we also operate Forestry and Roads programs previously operated by the BIA and we run what the Interior Department considers the model Safety of Dams in the country. In that capacity, I am proud to tell you that we have repaired dams in less time and under the budget projected by the Bureau of Reclamation. In short, I think it is widely accepted that the CSKT is one of the most sophisticated and advanced tribes in the country. We take great pride in having been on the cutting edge of a number of positive reforms.

In April 1996, CSKT notified the Department of the Interior of our intent to assume operation of the Financial Trust Services programs, including Individual Indian Monies (IIM) program. The Office of Trust Funds Management (OTFM) operates these Programs with oversight by the Office of the Special Trustee. After one year of negotiations, CSKT began managing the IIM program in a limited capacity. CSKT agreed to operate under severe limitations as imposed by the OTFM in order to gain their approval of our compact. Upon CSKT's assumption of management FTS programs, it became immediately apparent the disarray in which the program was in. At the insistence of CSKT, OTFM conducted an inventory of records and their status and condition prior to Tribal assumption. They found approximately 14,000 files in various conditions. To remedy the situation, 57 boxes of files were shipped to Albuquerque, NM for cleanup purposes including several boxes of documents that had not been filed into the appropriate file jackets. Eventually, the active files were returned. When that occurred, CSKT began operation and promptly made improvements to the system. For example CSKT has electronic imaged all documents contained in the IIM accountholder files. We have crossed trained qualified staff to ensure comprehensive coverage and better service to the account-holders. In addition, CSKT has implemented internal controls, which are audited each year by an external auditing firm.

Unfortunately, no agreement has been reached with OTFM for the operation of this program in FY 2000. The negotiations have been difficult and we believe the reasons we have not been able to reach agreement are as follows. We believe this is instructive in that it shows the obstacles that other Tribes will have thrown at them as they try and manage this important component of their financial affairs.

The Trust Reform Act of 1994 and the Indian Self-Determination and Education Assistance Act of 1975, as amended, and as being implemented by the present bureaucracy, are quite simply in conflict with one another. These conflicts must be fully discussed and reconciled with Tribal Governments and Indian people and not just by organizations such as the Inter-Tribal Monitoring Association (ITMA) on Indian Trust Funds. It is not the ITMA's money and future that is at stake here, it is my Tribes' and the funds of many other tribal governments and their members.

a. The Office of Trust Funds Management has stalled the full implementation of P.L. 93-638 Titles I and IV. They have not provided education to tribal governments on the opportunities for tribal management through self-determination. They have not completed a tribal shares process.

b. OTFM's position as a non-BIA program makes negotiations for a Self-Governance compact more difficult by allowing OTFM to argue a different set of procedures, principles and standards for Self-Governance than the BIA can utilize. This allows OTFM to use non-BIA arguments to not enter into agreements with tribes. Initially, OTFM's position was that the Indian Self Determination Act did not apply to them.

c. OTFM is developing of a highly centralized system, which will preclude it from being assumed by Tribes through P.L. 93-638 in a meaningful way. For example, in Fiscal Years 1997 through 1999, CSKT encoded information into an individual's account. However, in Fiscal Year 2000, OTFM is proposing the removal of this function from the CSKT IIM Program. This is major step backward for CSKT in having some type of management opportunity in this area.

d. OTFM should be required to conduct audits and evaluations consistent with P.L. 93-638. For example, this week, OTFM sent a seven-member team, consisting of OTFM staff and staff from contracted auditing firm to evaluate CSKT's \$51,000 IIM program. They are there as I speak to you today. This would appear to hold CSKT program to a much higher standard than that of OTFM operated programs, which are not evaluated to our knowledge. When we requested that the evaluation team review the same files held by OTFM in Albuquerque as a part of the CSKT review, the request was denied by OTFM. OTFM stated that the records are scattered and not easily accessible. An agreement by both parties was reached where the evaluation would occur and CSKT would travel to OTFM Office in Albuquerque to ensure the documents we forward for inclusion in the OTFM files are being maintained accurately and safely.

Therefore, we strongly endorse the language on lines 7-13 of page 12 of S.1589, requiring that a part of the "reinvention strategy" for implementing the American Indian Trust Fund Management Act include allowing Indian tribes "to undertake some or all of the management, accounting or other parts of the trust management business cycle." With this language, Congress is clearly stating that the Indian Self Determination Act does apply to the operation of Indian Trust Funds. We applaud the inclusion of this provision but we seriously question whether it will come to be implemented as the centralization of trust funds management is totally at odds with a process allowing local tribal management.

It is a misguided position held by some that is "Anything But The BIA" would be better at resolving the current situation found in trust funds management without taking into consideration the impact on P.L. 93-638 and effective elimination of a Tribal Government's option to operate and manage this program. The effect of what those critics are doing can really be summarized as "Anything But the BIA AND Tribal Operation" because the mechanism for tribal operation is P.L. 93-638, which applies to BIA and IHS.

There has been a lack of meaningful participation by Indian tribes resolving the mismanagement of trust accounts by the Federal Government. While we may respect their intentions, we continue to object to an almost exclusive reliance on the ITMA and the handpicked Advisory Board to the Special Trustee as the barometer for measuring the views of Indian

country.

In Secretary's Babbitt's August 22, 1997 Memorandum on Trust Improvement Project Definition, he directed the development of a "High Level Implementation Plan" (HLIP) regarding trust systems improvement and data clean up efforts. The memorandum included the directive that an outreach and consultation plan designed to reach and inform affected account holders, Indian Tribes and the Congress be developed.

A. Tribes were not consulted in the development of the HLIP.

B. The HLIP does not include an outreach / consultation plan.

C. Tribes have not been adequately informed on the implementation of HLIP. Although there have been attempts to facilitate tribal consultation through tribal organizations, this does not constitute government-to-government consultation. Most organizations are formed for specific purposes, which do not relate to overall trust management reform.

D. The HLIP falls to take into consideration tribal operation of BIA programs through P.L.93-638.

CSKT provides the specific comments on the proposed legislation:

1. Congress must consider the application of Self-Determination as it moves forward with trust fund management reform. This must be done in consultation tribal Governments not tribal organizations. Consideration must be given to experiences of tribes operating the programs at the local level. Self-Determination has been an effective Indian policy and could be useful in solving this longstanding problem.

2. In its present form, the proposed legislation leaves many questions unanswered. What role will the new Special Trustee for Data Cleanup and Internal Control exercise within the current reform efforts? Are the timelines realistic to meet the requirements set forth in the legislation? Will the timelines be adhered to at the expense of meaningful tribal government consultation? We have very serious concerns that this can accomplished in a six month period. Are funds available to meet the needs that are identified as one of the major obstacles to true reform? Until these and other questions are answered, CSKT can not support another entity stepping into the decision-making arena concerning trust fund reform that is vital to our interests.

3. Should S.1589 and the Commission it proposes move forward, CSKT recommends the following concerns be addressed:

A. The Congress must clearly restrict the Commission from removing the responsibility for trust resource management from the Department of the Interior. Tribes spoke loudly to the Department of the Interior and Congress when the Special Trustee's proposed in his Strategic Plan the removal of these function when they almost unanimously told Congress that to leave those functions in the Department and continue there accessibility for tribal operation through P.L. 93-638.

B. The Congress require the Commission to conduct meaningful consultation with tribal governments. Although tribal organizations can be helpful in disseminating information, they do not speak for tribes or tribal government.