

SECRETARIAL COMMISSION ON INDIAN TRUST ADMINISTRATION AND REFORM



Final Report – December 10, 2013

FINAL REPORT – DECEMBER 2013

- ❖ Series of overarching recommendations
 - Legislative
 - Regulatory
 - Procedural

RECOMMENDATION NO. 1

❖ REVIEW AND AMENDMENT OF FEDERAL LAW

- Because the Supreme Court has narrowly construed the trust responsibility in the damages cases, Congress should amend federal law to provide a damages remedy for harm caused when the following standard is breached:
- “The trustee is a fiduciary in which the law demands an unusually high standard of ethical or moral conduct with reference to the beneficiary. The trustee owes a duty to act solely in the interest of the beneficiary, and must not consider their own personal advantage.”
- The United States should not import the narrow definition of the trust obligation that has been employed by the Supreme Court in some damages cases into cases involving Indian claims for prospective relief.

RECOMMENDATION NO. 2:

❖ EVALUATE TRIBAL CONSULTATION POLICY

- The independent counsel deserves further consideration by the federal government. The Commission recommends that the Secretary evaluate the options in this area in consultation with tribal leaders.
- Renewed emphasis on the United States' fiduciary obligations could correct some of the issues with respect to ensuring that all federal agencies understand their obligations to abide by and enforce federal trust duties.

RECOMMENDATION NO. 3:

❖ DEVELOP UNIFORM CONSULTATION POLICY

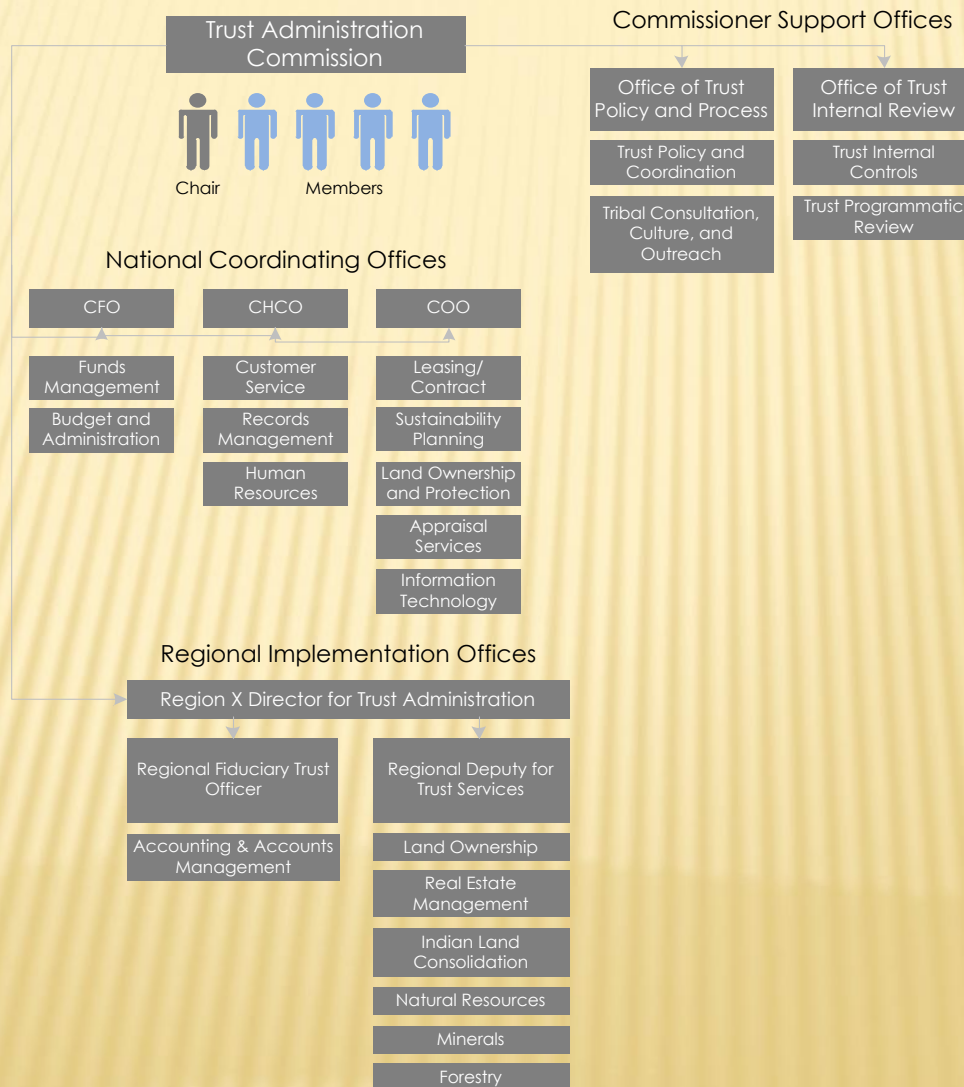
- The Commission recommends that the Administration work with Indian Nations and individuals to develop a judicially enforceable, uniform consultation policy that would be codified in a federal statute.

RECOMMENDATION NO. 4:

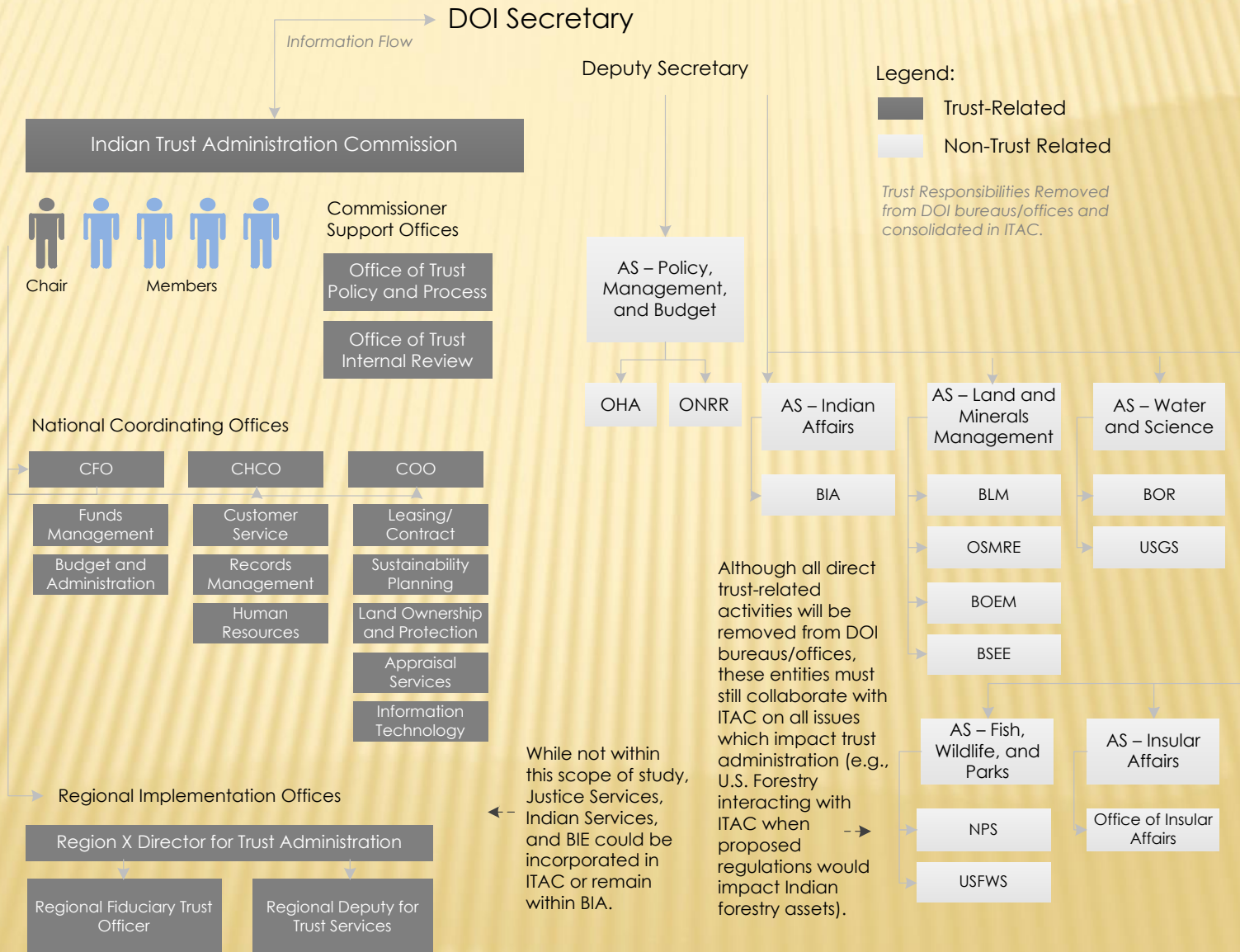
❖ TRUST ADMINISTRATION RE-STRUCTURING

- Modeled on the Federal Energy Regulation Commission (FERC) and its relationship with the Department of Energy (DOE), Congress should establish a fully independent Indian Trust Administration Commission (ITAC) located within the Department of the Interior (DOI).
- The independent commission would benefit from functional and budget autonomy from DOI, thus mitigating tribal/beneficiary concerns about conflicts of priorities.
- The proposed commission would maintain cabinet-level advocacy through the Secretary of the Interior by virtue of its continued relationship with DOI.

INDIAN TRUST ADMINISTRATION COMMISSION (ITAC) PROPOSED ORGANIZATIONAL STRUCTURE



DEPICTION OF POST-ITAC - DOI



RECOMMENDATION NO. 5:

❖ IMPROVE THE MANAGEMENT, OVERSIGHT, AND ACCOUNTABILITY OF TAS SERVICES AND TRUST ASSETS

- Create an Adequate Auditing System that Fulfills Trust Responsibility to Beneficiaries

RECOMMENDATION NO. 6:

× PROCEDURAL CHANGES

- + TAS-WIDE RECOMMENDATIONS
- + FUNDS MANAGEMENT RECOMMENDATIONS
- + INFORMATION TECHNOLOGY RECOMMENDATIONS
- + CUSTOMER SERVICE RECOMMENDATIONS

OTHER RECOMMENDATIONS - PROBATE

- ❖ Promote the use of alternative strategies to probates
 - Legal mechanism, streamlined OHA requirements for probate files, revitalize Attorney Decision Maker programs, consider legislative authorization of local forums including tribal courts

OTHER RECOMMENDATIONS - APPRAISALS

- ❖ Expand the use of per-approved third-party vendor solutions to effectuate a common, standard services on commercial timelines
- ❖ A review of USDA appraisal methodology and policies
- ❖ Improvements to the Process of Procuring and Utilizing Mass Appraisals
- ❖ Expand Previously Approved Waiver Authority to All Tribes and All BIA Regions.
- ❖ Increase Authority to Waive Appraisal or Valuation Requirements for Transactions Involving Competitive Bids

OTHER RECOMMENDATIONS – ALASKA

- Congress should overturn the U.S. Supreme Court’s decision in *Alaska v. Native Village of Venetie Tribal Government*, by amending ANCSA to provide that former reservation lands acquired in fee by Alaska Native villages and other lands transferred in fee to Native villages pursuant to ANCSA are Indian country.
- Congress should amend the ANSCA to allow a transfer of lands from Regional and Village Corporations to Tribal governments; to allow transferred lands to be put into trust and included within the definition of Indian country in the Federal criminal code; to allow Alaska Native Tribes to put tribally owned fee simple land similarly into trust; and to channel more resources directly to Alaska Native Tribal governments for the provision of governmental services in those communities.
- Congress should pass legislation that will restore and protect Native hunting and fishing rights in Alaska, and provide a co-equal role for Alaska Natives in the management of fish, wildlife and other renewable resources.