

**TESTIMONY OF AURENE M. MARTIN
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BEFORE THE
COMMITTEE ON INDIAN AFFAIRS
U.S. SENATE
ON
INDIAN TRIBAL LEADERSHIP DISPUTES AND TRIBAL GOVERNANCE
SEPTEMBER 26, 2002**

Good morning, Mr. Chairman and Members of the Committee. I am pleased to be here today, to discuss the role of the Department of the Interior's (Department) involvement in disputes of tribal leadership and tribal governance, which have become rather controversial in recent years.

Role of the Department in Leadership Disputes

To the extent that the Department does have a role in leadership disputes, its role is defined principally by the Supreme Court's decision in Santa Clara Pueblo v. Martinez, 436 U.S. 49 (1978), where the Court cautioned federal agencies to "tread lightly" when taking actions that might intrude on tribal sovereignty. As a general rule, the Department does not become involved in the internal disputes of Indian tribes because we understand that to do so would constitute an interference with tribal autonomy and self-government. Instead, we encourage the establishment of tribal dispute-resolution mechanisms such as tribal courts, that enable tribes to resolve disputes in a forum that they have established for themselves.

Departmental Authority in Leadership Disputes

There are instances where the BIA's authority to become involved in tribal disputes is required by federal law, for example, where Congress has mandated a payment of judgment monies to certain descendants of tribal members. Notwithstanding the tribe's determination of its membership, we are authorized to compile tribal rolls for distribution of these trust proceeds. In addition, federal law

requires that we know with whom we are dealing when we contract on a government-to-government basis with tribes pursuant to, for example, the 1974 Indian Financing Act, 25 U.S.C. 1451; the 1975 Indian Self-Determination and Education Assistance Act, Public Law 93-638; the 1978 Indian Child Welfare Act, 25 U.S.C. 1901, and other federal statutes intended to benefit Indian tribal governments. In those instances where there is a dispute as to the identity of the rightful tribal government empowered to conduct business on behalf of the tribe and it is apparent that no tribal resolution is forthcoming, we are authorized to make that determination in furtherance of our mission, although we take action in the least intrusive manner possible.

Furthermore, a tribe's own governing document may provide for Departmental involvement. The Department does not encourage tribes to include such provisions in their constitutions, bylaws or other organic documents. But, in some cases the Department has approved the use of such provisions in these documents. In those cases, the department may find it necessary to take action or make determinations concerning tribal disputes. Such determinations are handled in the least obtrusive manner possible to ensure that our actions and/or decisions do not infringe upon the sovereign right of tribes to govern themselves.

Conclusion

The Administration respects the sovereign-to-sovereign relationship between the United States and the 562 federally recognized tribes. We will continue to refrain from interference unless noted within tribal governing documents or statutorily mandated.

This concludes my prepared statement. I will be happy to answer any questions the Committee may have.