



United States Department of the Interior

OFFICE OF THE SPECIAL TRUSTEE FOR AMERICAN INDIANS

Washington, D.C. 20240

October 11, 2006

Dear Tribal Leader:

One of my continuing priorities is to disseminate information about the Department of the Interior's management of the Indian trust and the status of trust reforms underway. To that goal, I wanted to give you an update on reform efforts, potential Congressional action that would resolve some Indian trust management issues, the *Cobell v. Kempthorne* litigation and our historical accounting work.

The future of reforms:

Staff members at the Office of the Special Trustee for American Indians (OST) and the Bureau of Indian Affairs (BIA) continue to work to convert Interior offices across the country to use new technology, new systems, and new business processes. These systems and processes will greatly improve the management of the trust for Indian beneficiaries. So far, OST and BIA staff have converted the Southern Plains, Great Plains, Rocky Mountain and Navajo regions and certain agencies in the Northwest, Pacific, Eastern Oklahoma and Western regions to the new systems.

The converted offices account for approximately 80 percent of all recurring dollars that flow through the Indian trust and more than 70 percent of the fiduciary trust accounts managed by the Department of the Interior.

The goal of the conversion is to support a beneficiary-focused, nationwide information system for trust asset ownership, the efficient collection and distribution of trust funds and a streamlined system for asset appraisals and probate processing. Today, beneficiaries with assets in the converted regions are receiving account statements with current title and leasing data, and information on land interests and encumbrances. Nationwide, funds received for the use of a trust asset are being distributed to accounts more quickly. As well, beneficiaries have access to staff members trained in fiduciary trust management through a toll-free call center (1-888-678-6836) and their local offices.

Congressional Action:

As you may know, the Advisory Board to the Office of the Special Trustee for American Indians meets on a quarterly basis to discuss the status of trust reform, and to offer Interior staff advice and recommendations to improve the management of trust assets. The nine-member board (see list below), was created through the American Indian Trust Fund Management Reform Act of 1994 to provide advice to the Office of the Special Trustee on all matters within its jurisdiction.

At the Advisory Board meeting this past August, we discussed Congressional efforts to resolve the *Cobell v. Kempthorne* litigation and administrative trust management challenges faced by the Department of the Interior. As a result, the Advisory Board adopted a motion to recommend passage of legislation to address some of the costly administrative requirements relating to: the management of small balance Individual Indian Money accounts; the management of low balance Special Deposit Accounts; and the probate process for estates with trust assets worth a nominal amount. The full text of the motion has been provided to Congress, and a copy is attached.

Each Advisory Board member serves a two-year term. The current Board members are:

- Honorable Bill Anoatubby, Governor of the Chickasaw Nation of Oklahoma;
- Mr. Bobby Brooks, Vice President and Trust Officer, Bank of Oklahoma;
- Professor David English, Fratcher Missouri Endowed Professor of Law, University of Missouri – Columbia;
- Honorable Jim Gray, Chief of the Osage Nation in Oklahoma;
- Mr. Edward Holland, President and CEO, Chota Capital Company, LLC and member of the Cherokee Nation of Oklahoma;
- Honorable Fred Matt, Member of the Confederated Tribes of the Salish-Kootenai of the Flathead Reservation in Montana;
- Honorable Richard Milanovich, Chairman of the Agua Caliente Band of Cahuilla Indians in California;
- Mr. Loren “Bat” Pourier, Owner, Muddy Creek Oil and Gas, Inc., and member of the Oglala Sioux Tribe of South Dakota; and
- Ms. Helen Sanders, Chairman, Allottees Association and Affiliated Tribes of the Quinault Reservation and member of the Quinault Indian Nation of Washington.

I look forward to working with the Board and Congress to seek appropriate solutions to the challenges of administering fiduciary trust assets.

Cobell v. Kempthorne

In the last few months, there have been some developments in the *Cobell v. Kempthorne* individual Indian trust litigation. At the end of 2005, the District Court had ruled that Interior must disconnect all computers that house or provide access to Indian trust data from the intranet in response to further IT security concerns. Recently the U.S. Court of Appeals overturned that ruling. To clarify, Interior offices that house Indian trust data will remain disconnected from all access to the internet, but do not have to further disconnect from intra-department networks.

In July 2005, the District Court ruled that Interior must include in its communications to account holders a notice that its information may be unreliable. The Court of Appeals agreed with the government that this order exceeded the district court's authority. In this same opinion, the Court of Appeals ruled to return the case to the Chief Judge of the District Court with instructions to reassign the case to a different judge. Interior will continue to answer to and comply with all court rulings and opinions as required.

Interior is committed to supporting all efforts to find a resolution to the *Cobell* litigation. The Secretary of the Interior and the Attorney General met with Senators McCain and Dorgan—the Chairman and Vice Chairman of the Senate Committee on Indian Affairs—to further efforts to frame a comprehensive legislative solution. As I write, members of Congress continue to meet with plaintiffs and Interior, Justice and the U.S. Treasury departments with the goal of crafting a solution that would be beneficial to all individual Indian account holders. I look forward to a resolution so Interior may refocus its efforts on its trust responsibility to the individual Indian account holder.

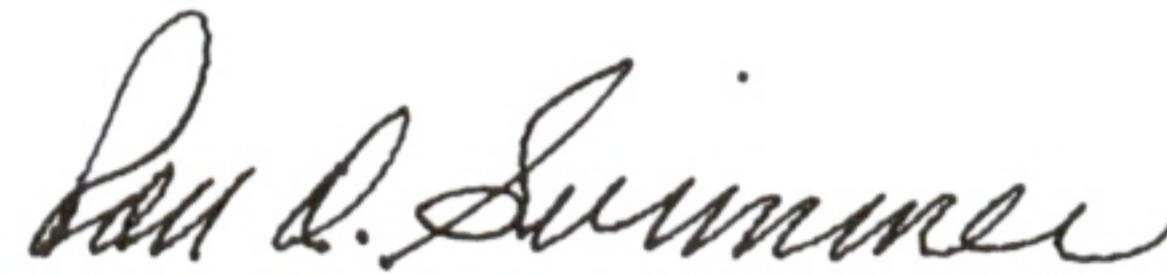
Historical Accounting

Throughout all the court and Congressional proceedings, staff in Washington D.C. and at the American Indian Records Repository outside of Kansas City continue to reconcile historic individual Indian trust accounts as required. The Office of Historical Trust Accounting has now completed full reconciliations

of judgment and per capita accounts for more than 80,300 account holders. Work continues on just over 18,250 remaining judgment and per capita accounts. The office has also reconciled more than 1,800 high-dollar (\$100,000 or more) land based transactions; however, it may be several years before all accounts are fully reconciled.

We are dedicated to accomplishing the goals established in Interior's Fiduciary Trust Model, and look forward to continuing to work with you to get there. If you have any questions please contact me or the Fiduciary Trust Officer assigned to your agency.

Sincerely,

A handwritten signature in cursive script that reads "Ross O. Swimmer". The signature is written in black ink and is positioned above the printed name.

Ross O. Swimmer
Special Trustee for American Indians

Attachment

Motion from the Advisory Board of the Office of the Special Trustee

Motion of the Advisory Board to the Special Trustee for American Indians

The Department of the Interior assumes a significant administrative burden that depletes staff and financial resources in the management of small balance Individual Indian Money (IIM) accounts, low balance Special Deposit Accounts (SDAs), and in the processing of probates of estates with total trust assets worth a nominal value.

As of August 31, 2006, OST manages approximately 28,220 unrestricted IIM accounts that accumulate less than \$15.00 each year. Of these, an estimated 7,322 IIM accounts have no associated land interest, which mitigates the possibility that the account would ever accumulate future trust earnings other than minimal interest.

The Department incurs significant costs to even minimally maintain and oversee these small balance accounts on the Trust Funds Accounting System and to send quarterly account statements to these beneficiaries.

When OST has sent checks to IIM account holders who have a small balance in their account and for whom it had a valid address, many account holders have not cashed their checks. If the check is not cashed, the account cannot be permanently closed.

OST requires the authority to explore means other than Treasury checks to distribute funds to these small balance IIM account holders so that the accounts can be closed.

The Advisory Board strongly supports legislation to authorize the prompt distribution of funds in IIM accounts that accumulate less than \$15.00 each year and the closure of these accounts by whatever manner the Secretary of the Interior deems appropriate.

As of August 31, 2006, OST manages approximately 21,839 Special Deposit Accounts, of which, approximately 15,500 have a balance of less than \$100.

Despite the devotion of significant effort and resources toward determining proper ownership of the funds in these low balance SDAs, the ownership of these funds remains unconfirmed and these funds have remained undistributed.

Projected costs to determine the proper ownership of the funds in these accounts is significantly greater than the value of the accounts.

The Advisory Board strongly supports legislation to authorize the prompt closure of low balance Special Deposit Accounts, and authorization to deposit these funds into an Unclaimed Property Account that would be accessible if the ownership of the SDA is resolved in the future and to satisfy any future claims.

The Department of the Interior has limited financial and staff resources to face a current backlog of 20,500 probates of estates involving trust property.

The current timeframe to process a probate can take in excess of two years.

The cost to probate an estate has been estimated to be in excess of \$3,000 per probate, regardless of the value of the assets in the estate.

Developing a new administrative process to probate estates of trust assets with a nominal total value would result in a savings of financial and staff resources, and the expedited resolution of these probates for trust beneficiaries.

The Advisory Board strongly supports legislation to authorize an expedited, administrative probate process for estates with total trust assets valued at \$2,500 or less.

The above motion was agreed to by a voice vote on August 17, 2006.