

OPENING STATEMENT
of
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before the
SUBCOMMITTEE ON INTERIOR AND RELATED AGENCIES
COMMITTEE ON APPROPRIATIONS
UNITED STATES SENATE
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Introduction

Good morning, Mr. Chairman and Members of the Subcommittee. I appreciate the opportunity to appear before you today to discuss the status of the Department of the Interior's efforts and our commitment to resolve decades old trust fund management issues for both Tribal and individual Indian account holders. With the assistance of this Committee, Congressional interest and support have been strong and have helped us move ahead on reform efforts for several years. Since FY 1997, this Subcommittee has been instrumental in supporting the development and implementation of appropriate accounting systems, and management information systems to help the Government meet its trust responsibilities to Tribes and individual Indians. Last year, Congress also passed much needed legislation to reform land consolidation activities. Additional funding has been appropriated each year for the day-to-day trust asset management program operations of the Bureau of Indian Affairs (BIA), Minerals Management Service (MMS), Bureau of Land Management (BLM) and the Office of Hearings and Appeals (OHA). Because of these additional resources, the Department has made progress in implementing much needed Indian trust reform efforts. As you know, we are actively working with you to resolve a number of key projects that have considerable work remaining.

When Congress enacted the *American Indian Trust Fund Management Reform Act* in 1994, it reaffirmed the Federal government's preexisting trust responsibilities. The Reform Act further identified some of the Secretary of the Interior's duties to ensure proper discharge of the trust responsibilities of the United States. These include (but are not limited to) the following:

- Providing adequate systems for accounting for and reporting trust fund balances;
- Providing adequate controls over receipts and disbursements;
- Providing periodic, timely reconciliations to assure the accuracy of accounts;
- Preparing and supplying periodic statements of account performance and balances to account holders;
- Establishing consistent, written policies and procedures for trust fund management and accounting; and
- Appropriately managing the natural resources located within the boundaries of Indian reservations and trust lands.

As part of my testimony today, I want to provide the Committee with some background information and context to help illustrate the broad scale of trust activities. I think it is important to have an understanding of the vast scope and complexity of trust asset management and litigation related activities in which DOI is currently involved. While a more extensive reference list follows my statement, I want to mention just a few facts about the government's Indian trust responsibility.

- In the early 1800's, the United States pursued the policy of "removal" which promoted the relocation of tribal communities from their homelands in the East and Midwest to remote locations.
- For most of the 19th century, the Federal Government entered into a series of treaties and agreements identifying the lands owned by the tribes. Tribal lands vacated were then declared "surplus", purchased by the U.S. and added to the public domain.
- Proceeds from the sale of Indian lands were used in a variety of ways. In some cases the money was placed in a trust fund for a specific Tribe or distributed to individuals. In other cases, the funds were used to settle claims against the Tribe.
- For the most part, early treaties vested ultimate authority for financial management of the Tribal resources with the President. In a few cases, the Secretary of Treasury, an Indian agent, the Indian Commissioner, or after 1857, the Secretary of the Interior were given authority.
- The individual trusts at issue here were created over one hundred years ago through the General Allotment Act of 1887, also known as the "Dawes Act".
- Under the Dawes Act, tribal lands were divided into parcels and allotted to individual Indians. The United States was established as the trustee of the allotted lands for individuals, and individual accounts were set up for each Indian with a stake in the allotted lands to be managed for the allottees' benefit.
- This system established under the Dawes Act remained relatively intact even when the Indian Reorganization Act of 1934 stopped the process of dividing tribal lands, but extended all trusts periods indefinitely. The Federal government's duty as trustee over control of allotted lands and the individual accounts that form the basis of the individual Indian money (IIM) accounts has remained and this is what we are grappling with today.
- Today the BIA is responsible for the management of 56 million acres of trust lands, including 46 million acres held in trust for Tribes and 10 million acres held in trust for individuals.
- The BIA also administers approximately 110,000 surface and mineral leases on these trust lands each year, with annual revenue in excess of \$100 million. These revenues flow either directly to the Tribe, individual allottee or into the trust fund system.
- The Office of the Special Trustee (OST) manages approximately \$3 billion in trust funds. These funds require the active management and investment of some 262,000 accounts in the individual Indian money system with a balance of approximately \$400 million, and 1,400 Tribal accounts with a balance of approximately \$2.7 billion.
- Although authorized to do so by the 1994 Reform Act, only a few Tribes have withdrawn their tribal funds from OST's management.
- OST spends an average of \$147 per year, per account to maintain the 263,000 accounts.

- To date, in response to the *Cobell* litigation, the Department has produced more than 159,000 documents, representing more than 385,000 pages of information. This required the expenditure of more than \$19 million and is represented in thousands of hours of staff and contractor time.

Judicial attention also has affected trust reforms. In 1999, the Federal District Court held the Interior Secretary, the Treasury Secretary, and an Interior Assistant Secretary in contempt in the *Cobell v. Norton* (formerly *Cobell v. Babbitt*) litigation for failure to produce all court ordered documents. The District Court also appointed a Special Master to oversee the discovery process and trust record production and retention. Increasingly, however, time spent on responses required for the *Cobell* litigation adversely impacts the time and energies of the Special Trustee, as well as the OST, BIA, and Departmental managers who are all the principal directors of trust reform.

Unfortunately, to date, efforts to reach a negotiated settlement of portions of the issues at trial in the *Cobell* case have not been successful. Interior continues to pursue a resolution of these matters. Throughout the *Cobell* litigation, the Department has placed a high priority on the trust reform and addressing the ongoing requests of the District Court and the Special Master.

The Special Trustee monitors and oversees a multi-agency, multi-year effort to achieve and sustain meaningful trust reform. Pursuant to the Reform Act, a strategic plan was developed, part of which evolved into the High Level Implementation Plan. Subsequent District Court action resulted in the inclusion of plans to remedy four breaches of trust responsibility identified by the Court. Although the Appeals Court agreed that all the matters identified by the District Court were not breaches of the Reform Act, the Appeals Court left in place the government's obligation to address and report on those matters.

Management reform in any setting is a daunting task. In my view, the problems of the past will be corrected only with strong policy and project management. Changes to government management practices and locally developed procedures that vary from location to location and from year to year do not come easily. Change has been long overdue in the management of Indian trust assets. These changes affect the full spectrum of trust asset management activities within Interior. In addition, these changes in management practices will also impact trust resource management activities of Tribes and individual Indian account holders.

We are changing trust business practices to bring them into conformity with the best practices used in the private sector for the management of trust assets. Most important, these changes will improve the stewardship of trust resources for Tribes and individual Indian account holders.

Indian Trust Management Reform to Date

I was sworn-in as the Special Trustee last June, and I can report that there has been progress in trust reform over the past year. Some recent accomplishments and developments include:

- OST completed the conversion of all Tribal and IIM accounts in all 12 regions to the Trust Funds Accounting System (TFAS) in March 2000. Currently, approximately 263,000 Tribal and IIM accounts are maintained on the system. Approximately 120,000 statements are mailed out each quarter to account holders.
- The majority of IIM trust financial records have been consolidated into a central location in Albuquerque, New Mexico, with the exception of IIM records from three tribal locations. The Deputy Commissioner for Indian Affairs and I recently sent letters to the three Tribes requesting that each Tribe approve the transfer of IIM account holder jacket folders, which are federal property, to our Albuquerque office. OST is responsible for the efficient use, accuracy, and preservation of these trust records. If a satisfactory solution cannot be reached soon, the Department will notify the Court of this barrier to the Trustee's exercise of proper trust responsibility.
- OST has begun using a national commercial database to help locate more than 65,000 account holders whose whereabouts are unknown. To date, more than 31,000 accounts have been compared with the database to identify possible addresses. More than 18,000 letters requesting confirmation of identities have been sent. More than 2,600 account holders have been located and their account information updated. Responses to the majority of the letters are still pending.
- Effective December 29, 2000, the *land title* portion of the Trust Asset and Accounting Management System (TAAMS) was made the system of record. With this designation, TAAMS is officially designated the system for the recordation and maintenance of Indian title documents reflecting current ownership for current title processing in four BIA Regions: Alaska, Eastern Oklahoma, Rocky Mountain, and Southern Plains. The conversion of title history data is not yet complete.
- The Trust Management Improvement Project Steering Committee determined that the TAAMS *leasing* module should be available for Steering Committee evaluation and approval for the Rocky Mountain Region by May 31, 2001. A recent update on the progress indicates that the realty module will be available in the Rocky Mountain Region to run parallel with the legacy systems by June 1, 2001. The BIA has assigned key managers on a full-time basis to complete this effort. A schedule and plan for deployment to the other BIA Regions will be developed.
- BIA and OHA have hired additional staff and contract assistance to begin reducing the existing backlog of Indian probates cases, streamline the probate process, and develop a case management tracking system. These efforts will require significant management attention for several years to address all the impacts of probate on trust programs in BIA, OHA and OST operations.
- Final regulations were published on January 22, 2001 for Leases and Permits on Indian Lands, Trust Funds for Tribes and Individual Indians, Grazing Permits on Indian Lands and Indian

Probates. These revised regulations are long overdue and will establish nationwide standards of uniformity for trust administration.

- The Risk Management Program Handbook was published November 30, 2000. This Handbook provides the guidelines for OST's monitoring and review of risk within the Department's trust processes.
- The non systems training program for relevant Interior and Tribal trust asset management employees has been initiated in locations across the country. Training the trust asset management workforce is an ongoing commitment that is critical to the successful implementation of new business practices, accounting systems, new regulations, and management information systems.
- In late December 2000, former Secretary Babbitt directed me to proceed in planning, organizing, directing, and developing a plan to present to Congress on the feasibility of using a statistical sampling approach that may provide the basis of a historical accounting or some basis for settlement of *Cobell*. This approach was considered because of the state of trust records and the enormous costs associated with a historical accounting for each individual account. Secretary Norton has recently reconfirmed this decision. I am hiring a senior project manager and staff presently to begin development of this project plan.
- Congress passed the *Indian Land Consolidation Act Amendments of 2000*, P. L. 106-462. This legislation will help prevent further fractionation of trust allotments made to Indians and consolidate fractional interests and ownership of those interests into usable parcels. The Act fully supports the consolidation of fractional interests in a manner that enhances tribal sovereignty and promotes tribal self-sufficiency and self-determination. It also helps reduce the administrative and financial burden created by the fractionated ownership of Indian lands, an important component of Indian trust fund management reform. This fractionation of interests not only undermines the vitality of allottee-owned land, but it also severely complicates the government's management of trust assets and resources. As of December 2000, BIA has acquired more than 27,000 interests representing more than 14,600 acres. These purchases should avoid more than 600 probates and eliminate more than 200 IIM accounts.

Next Steps

There is still a great deal yet to be done before the Government can say that it is fully in compliance with the law with regard to our trust responsibility.

Three projects in particular, comprise a critical part of the Department's trust reform effort: TAAMS, BIA data clean up and probate. These are large, complex, interdependent projects. As an example, until the historical data required to be accessed is properly corrected, the TAAMS system cannot provide fully accurate and complete data output on which to make payments and reports to account holders. I am

concerned that we ensure that the management teams on these projects have the capacity and management resources to bring these projects to a successful conclusion. This is not a question of willingness, nor is it solely a question of funding. It is a question, as well, of providing the appropriate additional management expertise and leadership. The Department is addressing this management concern.

While some new regulations affecting trust reform were published in January, additional regulations relating to trust fund accounts and to reconciling commercial leasing to the *Indian Lands Consolidation Act Amendments of 2000* are necessary. Internal review, revisions and Tribal consultation of these new regulations will need to be completed soon in order to assist in the implementation of various trust reform business practices. A procedural handbook also needs to be completed which will provide a compilation of uniform business rules and practices for the administration of tribal and IIM trusts. The development, implementation and enforcement of consistent fiduciary business practices are mandatory to the success of trust reform.

The development of tools for evaluating the Department-wide trust asset management workforce, both in terms of the numbers of people needed and their competencies, is very important to the trust reform effort. Workforce planning will be an ongoing effort.

While continued support of this Committee is needed to complete our trust reforms, cost-effective management of those resources is essential for our success. As Special Trustee, I am responsible for ensuring that funding is spent properly and that sufficient work plans, including staffing, are developed prior to the release of funds to projects for obligation. In some cases, as these are no year funds, they have carried over until the next year so that project work plans can be properly addressed prior to funding.

As outlined in the President's Blueprint, the 2002 budget will continue to provide the funding necessary for Indian trust reform. The OST, BIA, MMS, BLM and OHA budget requests will provide the resources needed to sustain the operational and organizational improvements initiated in previous years. The BIA trust management functions, including efforts such as real estate services, probate, cadastral surveys, and land titles and record programs, are absolutely crucial to ensure that the trust management improvements we are implementing are institutionalized and maintained in the long term.

On a final note Mr. Chairman, I again want to thank this Committee, and its former Chairman for its past and current support and assistance provided me and the Department in this critical endeavor. Without the interest and support of this Committee, the reforms we have made and the improvements we have initiated simply would not be possible.

This concludes my opening statement, Mr. Chairman. I look forward to continuing to work with this Committee and you as the new Chairman, and will be pleased to answer questions of the Subcommittee.

Scope of DOI Trust Asset Management Responsibility

General Asset Management Information:

- Over the past 40 years, the number of trust and restricted acres of land administered by the Bureau of Indian Affairs (BIA) has grown by approximately 80,000 acres per year.
- Today, the BIA administers approximately 56 million trust and restricted acres of land.
- Over 46 million of these acres are administered on behalf of Indian Tribes.
- Over 10 million of these acres are managed on behalf of individual Indians.
- The BIA administers 110,000 surface and mineral leases on these trust lands. These leases generate over \$100 million in revenue to the Indian land owners.
- In FY 1999, approximately 1,800,000 acres of land were leased for oil and gas, generating an additional \$100 million in royalties to Indian land owners.
- Also in FY 1999, over 27 million tons of coal was sold from Indian lands, generating over \$60 million in royalties.
- In FY 2000, 579 million board feet of timber was harvested from Indian trust lands worth \$96 million.
- In FY 2000, the Office of Hearings and Appeals adjudicated 3,300 probates.

General Individual Indian and Tribal Account Management Information

- Currently, the Office of the Special Trustee for American Indians (OST), through the Office of Trust Funds Management (OTFM), manages approximately 262,000 Individual Indian Money (IIM) and 1,400 Tribal trust fund accounts.
- The balance of the IIM accounts is approximately \$400 million, and the balance of the Tribal accounts is approximately \$2.7 billion.
- Under the provisions of the *American Indian Trust Fund Management Reform Act of 1994*, two tribes have withdrawn all their funds from trust, and two tribes have partially withdrawn their funds. Six Tribes have withdrawn all their funds from trust based on other Public Laws and/or their Use and Distribution Plan(s).

- OST spends an average of \$147 per year per account to maintain more than 263,000 accounts.

Of the more than 262,000 IIM accounts currently held in trust (as of February 28, 2001), approximately:

- 101,000 (38%) of these accounts are unrestricted and individual account holders may determine the timing and amount of disbursements from the account.
- 138,000 accounts (53%) are restricted accounts for minors, individuals determined to be non compos mentis, or individuals in need of financial assistance.
- 23,000 accounts (9%) are special deposit, forestry and other accounts.
- 135,000 of these accounts (52%) have had no activity, except interest postings, in the last six months. However, this includes those accounts that only receive resource income annually.

Of the 239,000 accounts held for individuals:

- 33,300 accounts (14%) are for minors (including accounts for those individuals whose date of birth indicates they are no longer minors, but who cannot be located or have not responded to correspondence).
- 65,000 accounts (27%) are for account holders whose whereabouts is unknown and for whom OST has no current address.
- The average balance in unrestricted IIM accounts is approximately \$420.
- The average balance in restricted IIM accounts is about \$2100.
- 142,000 accounts (59%) maintain balances in the IIM system. Of these, 91,000 have a balance of less than \$500.
- 97,000 accounts (41%) are flow through accounts, and checks are issued to account holders as soon as their balance reaches \$15.

- OTFM produces approximately 493,000 checks annually to account holders. Additional disbursements also are made via direct deposit and electronic funds transfers.

Of the 1,400 Tribal Accounts:

- OTFM issues approximately 24,000 per capita payments annually at the request of tribes.
- OTFM requests approximately 12,000 checks be cut annually for the Osage quarterly headright (annuity payments), which is the result of Tribal Mineral Income less expenses.
- OTFM prints and mails approximately 100,000 checks annually for the Wind River agency quarterly dividend for the Shoshone and Arapaho Tribes.

During the conversion to a new Trust Funds Accounting System (TFAS):

- Over 5,540 boxes of trust fund account documents were cleaned up by an outside contractor.
- More than 30 boxes of documents relating to pre- and post-TFAS conversion testing were cleaned up by OST staff. This effort included closing duplicate accounts, correcting invalid dates and sort character corrections.
- Over 70,000 accounts have been closed and/or corrected as a result of the cleanup effort.

Cobell v. Norton Litigation Efforts:

- To date, 55 CD-ROMs containing 159,384 documents have been provided to the Court in response to the Cobell litigation.
- These documents contain 385,421 pages of material.
- In OST alone, 14,000 boxes containing more than 35 million pages were searched for responsive documents and 46,600 documents were indexed and imaged on 26 CDs.
- To date, \$17 million has been appropriated to DOI organizations specifically to support litigation efforts, and thousands of staff hours have been spent responding to document requests.

Records Management Improvements:

- The Indian Affairs Records Management (IARM) program became operational in December 1999. The program is responsible for implementing a uniform and comprehensive records management program for BIA and OST. The Major emphasis of the IARM program is on cleaning up inactive records stored in off-site facilities.
- IARM has been to some 60 BIA regional and agency offices to assess records management practices and to identify records to be transferred to Federal Records Centers or other appropriate storage, and for non-trust records to be properly disposed. As part of this effort, IARM has arranged for the purchase of fireproof or other modern filing systems for more than two-dozen BIA locations to date.
- More than 1200 employees at all levels have attended IARM records training.
- More than 2300 cubic feet (nearly 6 million pages) of records have been transferred to Federal Records Centers, ending a four-year moratorium. 5200 cubic feet (13 million pages) have been packed and inventoried by IARM through the National Archives and Records Administration and its contractor.
- Approximately 75 million pages of trust financial and IIM account records have been transferred to OST storage in Albuquerque.

Arthur Andersen “Reconciliation” of Tribal Trust Accounts:

- In 1996, a report was issued by Arthur Andersen pursuant to its contract with BIA to review Tribal accounts held in trust for the 20 year period of 1972 to 1992. This contract with Arthur Andersen cost \$21 million.
- Arthur Andersen successfully identified receipts and disbursements for 86% of the transactions reviewed, representing \$15.3 billion.
- Arthur Andersen was unable to identify complete historic transactions to determine the origin of 14% of the transactions, worth \$2.4 billion. This \$2.4 billion has not been “lost,” but is held in the Department of the Treasury.

- In conjunction with the Tribal effort, Arthur Andersen estimated the cost of performing a reconciliation of the IIM accounts. At the time, Arthur Anderson estimated that between \$108 and \$281 would be needed to complete a 20 year review. Information collected since these estimates indicates that this cost could be well in excess of \$300 million.
- Following this effort, the Department crafted legislation to create a process by which it could negotiate settlements with the Tribes, based on the Arthur Anderson findings. The legislation was met with widespread Tribal opposition.