



UNITED STATES COURT OF APPEALS
FOR DISTRICT OF COLUMBIA CIRCUIT

DEC - 9 2004

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December 9, 2004

Mr. Mark J. Langer
Clerk, United States Court of Appeals
for the District of Columbia Circuit
United States Courthouse
Room 5423
Third & Constitution Avenue, N.W.
Washington, D.C. 20001

Re: Cobell v. Norton, No. 03-5314

Dear Mr. Langer:

Pursuant to Rule 28(j) of the Federal Rules of Appellate Procedure, we write to advise the Court that on December 8, 2004, the President signed into law the Consolidated Appropriations Act, 2005, H.R. 4818, 108th Cong. (2004),¹ Division E of which constitutes the Department of the Interior and Related Agencies Appropriations Act, 2005.

The legislation appropriates \$196,267,000 to Interior's Office of Special Trustee for Indian Affairs "[f]or the operation of trust programs for Indians by direct expenditure, contracts, cooperative agreements, compacts, and grants, * * * of which not to exceed \$58,000,000 shall be available for historical accounting." Tit. I (Office of Special Trustee for American Indians, Federal Trust Programs). The legislation further specifies that "total funding for historical accounting activities shall not exceed amounts specifically designated in this Act for such purpose." Id. § 112. Pertinent excerpts from the new legislation are attached.



¹ The final text of the Act, which has not yet been assigned a Public Law number, is available at this address:
http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108_cong_bills&docid=f:h4818enr.txt.pdf

The legislation does not include the provision found in Pub. L. No. 108-108, which stated that "nothing in the American Indian Trust Management Reform Act of 1994, Public Law 103-412, or in any other statute, and no principle of common law, shall be construed or applied to require the Department of the Interior to commence or continue historical accounting activities with respect to the Individual Indian Money Trust," absent new legislation or the lapse of Pub. L. No. 108-108 on December 31, 2004. 117 Stat. 1263.

Respectfully submitted,

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cc: Hon. Royce C. Lamberth
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One Hundred Eighth Congress
of the
United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Tuesday,
the twentieth day of January, two thousand and four*

An Act

Making appropriations for foreign operations, export financing, and related programs for the fiscal year ending September 30, 2005, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Consolidated Appropriations Act, 2005".

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

- Sec. 1. Short title.
- Sec. 2. Table of contents.
- Sec. 3. References.
- Sec. 4. Statement of appropriations.

DIVISION A—AGRICULTURE, RURAL DEVELOPMENT, FOOD AND DRUG ADMINISTRATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 2005

- Title I—Agricultural Programs
- Title II—Conservation Programs
- Title III—Rural Development Programs
- Title IV—Domestic Food Programs
- Title V—Foreign Assistance and Related Programs
- Title VI—Related Agencies and Food and Drug Administration
- Title VII—General Provisions

DIVISION B—DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS ACT, 2005

- Title I—Department of Justice
- Title II—Department of Commerce and Related Agencies
- Title III—The Judiciary
- Title IV—Department of State and Related Agency
- Title V—Related Agencies
- Title VI—General Provisions
- Title VII—Rescissions
- Title VIII—Patent and Trademark Fees
- Title IX—Oceans and Human Health Act

DIVISION C—ENERGY AND WATER DEVELOPMENT APPROPRIATIONS ACT, 2005

- Title I—Department of Defense—Civil
- Title II—Department of the Interior
- Title III—Department of Energy
- Title IV—Independent Agencies
- Title V—General Provisions
- Title VI—Reform of the Board of Directors of the Tennessee Valley Authority

DIVISION D—FOREIGN OPERATIONS, EXPORT FINANCING, AND RELATED PROGRAMS APPROPRIATIONS ACT, 2005

- Title I—Export and Investment Assistance

H. R. 4818--2

Title II--Bilateral Economic Assistance
Title III--Military Assistance
Title IV--Multilateral Economic Assistance
Title V--General Provisions

DIVISION E--DEPARTMENT OF THE INTERIOR AND RELATED AGENCIES
APPROPRIATIONS ACT, 2005

Title I--Department of the Interior
Title II--Related Agencies
Title III--General Provisions
Title IV--Urgent Wildland Fire Suppression Activities
Title V--General Reduction

DIVISION F--DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES,
AND EDUCATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 2005

Title I--Department of Labor
Title II--Department of Health and Human Services
Title III--Department of Education
Title IV--Related Agencies
Title V--General Provisions

DIVISION G--LEGISLATIVE BRANCH APPROPRIATIONS ACT, 2005

Title I--Legislative Branch Appropriations
Title II--General Provisions

DIVISION H--TRANSPORTATION, TREASURY, INDEPENDENT AGENCIES,
AND GENERAL GOVERNMENT APPROPRIATIONS ACT, 2005

Title I--Department of Transportation
Title II--Department of the Treasury
Title III--Executive Office of the President and Funds Appropriated to the President
Title IV--Independent Agencies
Title V--General Provisions
Title VI--General Provisions

DIVISION I--DEPARTMENTS OF VETERANS AFFAIRS AND HOUSING AND
URBAN DEVELOPMENT, AND INDEPENDENT AGENCIES APPROPRIATIONS
ACT, 2005

Title I--Department of Veterans Affairs
Title II--Department of Housing and Urban Development
Title III--Independent Agencies
Title IV--General Provisions

DIVISION J--OTHER MATTERS

Title I--Miscellaneous Provisions and Offsets
Title II--225th Anniversary of the American Revolution Commemoration Act
Title III--Rural Air Service Improvement Act of 2004
Title IV--L-1 Visa and H-1B Visa Reform Act
Title V--National Aviation Heritage Area Act
Title VI--Oil Region National Heritage Area Act
Title VII--Mississippi Gulf Coast National Heritage Area Act
Title VIII--Federal Lands Recreation Enhancement Act
Title IX--Satellite Home Viewer Extension and Reauthorization Act of 2004
Title X--Snake River Water Rights Act of 2004

DIVISION K--SMALL BUSINESS

SEC. 3. REFERENCES.

Except as expressly provided otherwise, any reference to "this Act" contained in any division of this Act shall be treated as referring only to the provisions of that division.

SEC. 4. STATEMENT OF APPROPRIATIONS.

The following sums in this Act are appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 2005.

* * *

unobligated balances in the "Central Hazardous Materials Fund": *Provided further*, That none of the funds in this or previous appropriations Acts may be used to establish any additional reserves in the Working Capital Fund account other than the two authorized reserves without prior approval of the House and Senate Committees on Appropriations: *Provided further*, That amounts otherwise appropriated by this Act for motor vehicle lease, purchase or service costs at the Department of the Interior are reduced by \$3,000,000 and, not later than 30 days after the date of the enactment of this Act, the Director of the Office of Management and Budget shall submit to the Committees on Appropriations of the House of Representatives and the Senate a listing of the amounts by account of the reductions made pursuant to this proviso.

PAYMENTS IN LIEU OF TAXES

For expenses necessary to implement the Act of October 20, 1976, as amended (31 U.S.C. 6901-6907), \$230,000,000, of which not to exceed \$400,000 shall be available for administrative expenses: *Provided*, That no payment shall be made to otherwise eligible units of local government if the computed amount of the payment is less than \$100.

OFFICE OF THE SOLICITOR

SALARIES AND EXPENSES

For necessary expenses of the Office of the Solicitor, \$52,384,000.

OFFICE OF INSPECTOR GENERAL

SALARIES AND EXPENSES

For necessary expenses of the Office of Inspector General, \$37,800,000.

OFFICE OF SPECIAL TRUSTEE FOR AMERICAN INDIANS

FEDERAL TRUST PROGRAMS

For the operation of trust programs for Indians by direct expenditure, contracts, cooperative agreements, compacts, and grants, \$196,267,000, to remain available until expended, of which not to exceed \$58,000,000 shall be available for historical accounting: *Provided*, That funds for trust management improvements and litigation support may, as needed, be transferred to or merged with the Bureau of Indian Affairs, "Operation of Indian Programs" account; the Office of the Solicitor, "Salaries and Expenses" account; and the Departmental Management, "Salaries and Expenses" account: *Provided further*, That funds made available to Tribes and Tribal organizations through contracts or grants obligated during fiscal year 2005, as authorized by the Indian Self-Determination Act of 1975 (25 U.S.C. 450 et seq.), shall remain available until expended by the contractor or grantee: *Provided further*, That, notwithstanding any other provision of law, the statute of limitations shall not commence to run on any claim, including any claim in litigation pending on the date of the enactment of this Act, concerning losses to or mismanagement of trust

funds, until the affected tribe or individual Indian has been furnished with an accounting of such funds from which the beneficiary can determine whether there has been a loss: *Provided further*, That, notwithstanding any other provision of law, the Secretary shall not be required to provide a quarterly statement of performance for any Indian trust account that has not had activity for at least 18 months and has a balance of \$1.00 or less: *Provided further*, That the Secretary shall issue an annual account statement and maintain a record of any such accounts and shall permit the balance in each such account to be withdrawn upon the express written request of the account holder: *Provided further*, That, not to exceed \$50,000, is available for the Secretary to make payments to correct administrative errors of either disbursements from or deposits to Individual Indian Money or Tribal accounts after September 30, 2002: *Provided further*, That erroneous payments that are recovered shall be credited to and remain available in this account for this purpose.

INDIAN LAND CONSOLIDATION

For consolidation of fractional interests in Indian lands and expenses associated with redetermining and redistributing escheated interests in allotted lands, and for necessary expenses to carry out the Indian Land Consolidation Act of 1983, as amended, by direct expenditure or cooperative agreement, \$35,000,000, to remain available until expended, and which may be transferred to the Bureau of Indian Affairs and Departmental Management accounts: *Provided*, That funds provided under this heading may be expended pursuant to the authorities contained in the provisos under the heading "Office of Special Trustee for American Indians, Indian Land Consolidation" of the Interior and Related Agencies Appropriations Act, 2001 (Public Law 106-291).

NATURAL RESOURCE DAMAGE ASSESSMENT AND RESTORATION

NATURAL RESOURCE DAMAGE ASSESSMENT FUND

To conduct natural resource damage assessment and restoration activities by the Department of the Interior necessary to carry out the provisions of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (42 U.S.C. 9601 et seq.), Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq.), the Oil Pollution Act of 1990 (Public Law 101-380) (33 U.S.C. 2701 et seq.), and Public Law 101-337, as amended (16 U.S.C. 1911 et seq.), \$5,818,000, to remain available until expended.

ADMINISTRATIVE PROVISIONS

There is hereby authorized for acquisition from available resources within the Working Capital Fund, 15 aircraft, 10 of which shall be for replacement and which may be obtained by donation, purchase or through available excess surplus property: *Provided*, That existing aircraft being replaced may be sold, with proceeds derived or trade-in value used to offset the purchase price for the replacement aircraft: *Provided further*, That no programs funded with appropriated funds in the "Departmental Management", "Office of the Solicitor", and "Office of Inspector General" may

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SEC. 109. No funds provided in this title may be expended by the Department of the Interior to conduct oil and natural gas preleasing, leasing and related activities in the Mid-Atlantic and South Atlantic planning areas.

SEC. 110. Notwithstanding any other provisions of law, the National Park Service shall not develop or implement a reduced entrance fee program to accommodate non-local travel through a unit. The Secretary may provide for and regulate local non-recreational passage through units of the National Park System, allowing each unit to develop guidelines and permits for such activity appropriate to that unit.

SEC. 111. Advance payments made by the Department of the Interior to Indian tribes, tribal organizations, and tribal consortia pursuant to the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) or the Tribally Controlled Schools Act of 1988 (25 U.S.C. 2501 et seq.) may hereafter be invested by the Indian tribe, tribal organization, or consortium before such funds are expended for the purposes of the grant, compact, or annual funding agreement so long as such funds are—

(1) invested by the Indian tribe, tribal organization, or consortium only in obligations of the United States, or in obligations or securities that are guaranteed or insured by the United States, or mutual (or other) funds registered with the Securities and Exchange Commission and which only invest in obligations of the United States or securities that are guaranteed or insured by the United States; or

(2) deposited only into accounts that are insured by an agency or instrumentality of the United States, or are fully collateralized to ensure protection of the funds, even in the event of a bank failure.

SEC. 112. Appropriations made in this Act under the headings Bureau of Indian Affairs and Office of Special Trustee for American Indians and any unobligated balances from prior appropriations Acts made under the same headings shall be available for expenditure or transfer for Indian trust management and reform activities, except that total funding for historical accounting activities shall not exceed amounts specifically designated in this Act for such purpose.

SEC. 113. Notwithstanding any other provision of law, for the purpose of reducing the backlog of Indian probate cases in the Department of the Interior, the hearing requirements of chapter 10 of title 25, United States Code, are deemed satisfied by a proceeding conducted by an Indian probate judge, appointed by the Secretary without regard to the provisions of title 5, United States Code, governing the appointments in the competitive service, for such period of time as the Secretary determines necessary: *Provided*, That the basic pay of an Indian probate judge so appointed may be fixed by the Secretary without regard to the provisions of chapter 51, and subchapter III of chapter 53 of title 5, United States Code, governing the classification and pay of General Schedule employees, except that no such Indian probate judge may be paid at a level which exceeds the maximum rate payable for the highest grade of the General Schedule, including locality pay.

SEC. 114. Notwithstanding any other provision of law, the Secretary of the Interior is authorized to redistribute any Tribal Priority Allocation funds, including tribal base funds, to alleviate tribal funding inequities by transferring funds to address identified,

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