

STATUS REPORT TO THE COURT NUMBER FOURTEEN

August 1, 2003

I. TRUST REGULATIONS, POLICIES AND PROCEDURES

Introduction – Office of Trust Regulations, Policies and Procedures

The Office of Trust Regulations, Policies and Procedures (OTP) in the Office of Special Trustee for American Indians (OST) was established in the Departmental Manual changes signed by the Secretary on April 21, 2003. OTP is responsible for ensuring organizational knowledge, access, and compliance with applicable trust-related regulations, policies, and procedures. The Office:

- coordinates policies and procedures for implementing regulatory requirements
- participates in program audits
- promulgates and integrates trust policy into all business processes
- coordinates trust procedures with internal and external organizations involved with trust activities
- ensures development and implementation of OST's own policies and procedures
- reviews and provides edits of all fiduciary trust policies, regulations, handbooks, desk manuals, processes and procedures of all Interior bureaus and offices performing trust related activities.

An Acting Director for OTP was named during the initial reorganization of OST. He and his staff are developing a plan to establish the office so that it carries out its functions effectively and efficiently.

OTP will assist the Secretary in establishing “consistent, written policies and procedures for trust management and accountability” as required by the American Indian Trust Fund Management Reform Act (25 USC 162 a(d)(6)). OTP will facilitate and be a clearinghouse for the Interior-wide activities that are necessary to achieve the statutory mandate. That mandate must be achieved in an efficient and timely manner. OTP will monitor that process.

Current Status

Since the creation of OTP in April, the office has undertaken several initiatives in the discharge of its duties. Some are housekeeping in nature, such as identifying computer software to aid in performing its work, while some missions are more substantive and involve establishing OTP staff, tools and methods of operation.

OTP is assembling an Interior Fiduciary Library. Assessing Interior's Electronic Library of Interior Policies (ELIPS) is the first step in the creation of this hard-copy library and its virtual counterpart.

As a universal support function, OTP will be involved with many aspects of the “To-Be” Project, so it is essential that OTP build a close and successful working relationship with the core group working on that Project. To that end, OTP staff members attended the “To-Be” Project's Tier 1

STATUS REPORT TO THE COURT NUMBER FOURTEEN

August 1, 2003

Workshop in Portland, OR, and presented a short summary to the group about the responsibilities of OTP. Staff members also plan to attend the July workshop in Minneapolis.

OTP has begun a review of OST internal policies and has identified drafts of several which need to be examined. OTP is overseeing the effort to draft criteria against which issues can be identified, priorities set, and clearing standards established for the review or creation of internal fiduciary and administrative policies. With these criteria established, OTP will work with other Interior bureaus on review of their fiduciary trust-related policies, procedures and regulations. A liaison group has been established with members from those Interior bureaus with fiduciary trust responsibilities so that the review and rewriting of fiduciary trust-related policies, procedures and regulations can be co-ordinated through this group.

OTP is designing a clearing and tracking system to catalog those regulations and policies and procedures that are to be reviewed so that the Special Trustee can ensure compliance with **25** U.S.C. 4043(c)(1)(B). The system mission of the OTP Tracking System is to accurately identify and maintain all developmental phases of fiduciary trust-related laws, regulations, and directives (policies, procedures, manuals, handbooks) for all trust offices. Its purpose is to coordinate and facilitate policy and procedure development relating to Indian fiduciary trust reform activities to ensure fiduciary and legal requirements are fulfilled.

Bureau of Indian Affairs

It has been reported to OTP that the following initiatives have been taken by the Bureau of Indian Affairs (BIA). OTP will follow the development of these tasks.

25 CFR 161 - Navajo Partitioned Lands Grazing Permits - The drafting and review process was completed during this reporting period. The Navajo Hopi Land Commission and the Navajo Nation Natural Resource Commission met and gave their verbal approval for the regulation to be published in the Federal Register with a 90 day comment period. The regulation was submitted to the Office of the Solicitor (SOL) and is still being reviewed. It is anticipated that the regulation can be published as a draft in the last quarter of CY2003.

25 CFR 124 – Deposits of Proceeds of Lands Withdrawn for Native Selection under the Alaska Native Claims Settlement Act – Office of Trust Funds Management and SOL completed their review and comment on the draft revision of this regulation. The draft rule is still under consideration.

25 CFR 162 Subparts C & D – Residential Leases and Business Leases – BIA's Office of Trust Responsibilities (BIA-OTR) completed drafting proposed regulations. Interior's Office of Policy, Management and Budget is currently reviewing the draft for compliance with the Paperwork Reduction Act. The target date for publication of the proposed regulations in the Federal Register is August 2003. The comment period is planned to run for 90 days, during which time tribal consultation will be conducted on the proposed rule. The publication of the final rule is scheduled for May 2004.

STATUS REPORT TO THE COURT NUMBER FOURTEEN

August 1, 2003

25 CFR 216 – Surface Exploration, Mining, and Reclamation of Lands – Other mission-critical activities have delayed revision of this regulation by BLA-OTR staff. It is not expected that the rule will be revised and published before the latter part of CY2003.

Internal Program Guidance

Grazing Permits (25 CFR 166) Handbook - BIA-OTR staff and Tribal representatives met in December 2002, and January/February of 2003 to continue writing the handbook. An initial draft was completed in March of 2003. Once the editing and technical review of the draft is completed, appropriate comments will be incorporated, which is expected to occur during the last quarter of CY2003. The final draft will be furnished to SOL for legal review and appropriate changes will be incorporated in the final document. The proposed printing and distribution of the handbook is expected during the first quarter of CY2004.

National Environmental Policy Act (NEPA) Compliance Handbook –The target date for distribution of the BIA NEPA handbook for review and comment by Indian tribes and Alaska Natives is targeted for the next reporting period. At least sixty days is expected for review and comment.

Indian Affairs Manual (IAM) Forestry Program Chapter – The draft chapter has been reviewed by tribes, agencies, regions and by OST. The current draft is dated May 21, 2003. In the reorganization, the new BIA Office of Planning and Policy Analysis assumed responsibility for coordinating the completion of the draft chapter for review, distribution for comment, approval and distribution for incorporation into BIA's IAM. An estimated completion date will be established as the Office of Planning and Policy Analysis surveys its responsibilities.

IAM, Part 101, Individual Indian Money Accounts – This project has been assigned to the Office of Tribal Services (OTS), Human Services Division. Comments have been received from field offices. OTS is working with SOL on revisions to the IAM to ensure this manual complies with the regulations governing trust funds for tribes and individual Indians (25 CFR 115). This part is expected to be issued by December 31, 2003.

Surface Leasing (25 CFR 162) Handbook – The final draft remains under legal review. Upon finalization of the regulations for Subparts C and D of 25 CFR 162, the handbook will be amended to reflect the changes pertaining to residential and business leases. The expected distribution of this handbook has been extended to the spring of CY2004.

STATUS REPORT TO THE COURT NUMBER FOURTEEN

August 1, 2003

Assurance Statement

I believe that the information contained in the OST Trust Regulations, Policies and Procedures section of the *Status Report to the Court Number Fourteen* is an objective analysis as of June 30, 2003. The information provided in this section is accurate to the best of my knowledge.

Date: July 31, 2003

Name: *Signature on File*
Richard V. Fitzgerald
Acting Director, Office of Trust Regulations,
Policies and Procedures

STATUS REPORT TO THE COURT NUMBER FOURTEEN

August 1,2003

V. BUREAU OF INDIAN AFFAIRS

A. FRACTIONATION

Introduction

Fractionation of Indian land occurs when land passes from one generation to the next, and more and more heirs or devisees acquire an undivided interest in the land.

Fractionation of Indian trust and restricted lands has a long history stemming from the federal Indian policy of the 19th Century. Fractionation is a complex and potentially emotionally charged issue due primarily to cultural, historical and family association of the present Indian owners with the original owners of those lands held in trust by the United States or subject to a restriction against alienation by the Secretary of the Interior. Both Congress and the Department of the Interior (Interior) are attempting to address this complex issue. The opportunities offered by the Indian Land Consolidation Act and the Amendments of 2000 (ILCA) are important to the solution of fractionated ownership of Indian land. Additional ways of streamlining the ILCA process are being considered.

The continued goal during this reporting period of the Indian Land Consolidation Program (ILCP) is to acquire small fractional interests in trust and restricted lands owned by individual Indians and consolidate the interests among individual Indians or the Indian tribes on whose reservation the interests are situated in order to lessen the number of owners. ILCP pilot programs are ongoing in the Midwest and Great Plains Region.

ILCP is presently operated in two Bureau of Indian Affairs (BIA) Regions. There are five reservations under the Great Lakes Agency, Midwest Region, and one reservation under the Rosebud Agency, Great Plains Region, participating in ILCP. The Land Titles and Records Office at the Great Plains Region, provides title and recording services for the Rosebud and Great Lakes Agencies. The implementing official for ILCP is now the Director of the Indian Land Consolidation Office (Director).

Accomplishments and Completions

- Acquired 5,094 fractional interests during this reporting period, for a total of 58,297 interests through June 2003, representing a combined total for the pilots in the Midwest and Great Plains Regions.
- Maintained a consistent stream of applications to sell interests and continued to seek ways to increase the number of applications.
- Completed 120 certified Title Status Reports (TSR) for tracts containing multiple interests identified for purchase on the Rosebud Reservation during this reporting period.
- Received 216 requests for TSR's for tracts containing interests targeted for purchase on the Rosebud Reservation this reporting period.
- Completed revestiture of all *Youpee* interests at Great Lakes Agency. Subsequent

STATUS REPORT TO THE COURTNUMBER FOURTEEN

August 1, 2003

probates have also been posted for the Great Lakes Agency. Rosebud Agency has revested interests to heirs of the original *Youpee* interest holders.

- Completed reconciliation of ownership data on the Fond du Lac reservation in MN.

Current Status

A draft national ILCP plan has been developed and takes into consideration the following:

- Federal and tribal government benefits and costs of the program.
- Alternative approaches for targeting tracts and owners to maximize benefits.
- Legislative and administrative changes to enhance program effectiveness and efficiency.
- Methods for an aggressive marketing and acquisition program.

Further direction from Interior leadership has been given to the Director to identify alternative methods for program financing including federal, tribal and private sources based on economic tradeoffs and long term public benefits. Among the methods that are expected to be examined during the next reporting period:

- Grants from private foundations and individuals.
- Federal loan program to individual interest owners in order to consolidate ownership in a tract.
- Tribal acquisition programs.
- Identifying pilot program impacts on federal trust management.

Actions being taken to facilitate and strengthen the ILCP pilot sites:

- Completion of the first phase in the Midwest Region, Great Lakes Agency, is expected by December 2003, signifying that majority ownership has been achieved on the first three reservations.
- Continuing reconciliation of ownership data on the Minnesota Chippewa Bands' reservations and the Rosebud Reservation.
- Continuing to coordinate with the Rosebud Sioux Tribe's land acquisition program to leverage federal funds with tribal funds and to prioritize purchases of land interests with the tribe.
- Continuing to purchase all available interests including *Youpee* interests from willing sellers.

Delays and Obstacles

- Expanding the program requires reconciliation of ownership records. Reconciliation efforts are expected to be improved with the implementation of Trust Asset and Accounting Management System.
- Qualified staff is scarce at remote locations.

STATUS REPORT TO THE COURTNUMBER FOURTEEN

August 1, 2003

- The Great Plains Regional Land Titles Records Office needs to record subsequent deceased heirs resulting from *Youpee* re-distributions for the Rosebud Agency in addition to existing workload.
- Need for the Great Plains Regional Land Titles Records Office to record the pre-*Youpee* probates for the five reservations under Midwest Region in addition to current workload.

Assurance Statement

The content of the information supplied and contained in the Fractionation section of the *Status Report to the Court Number Fourteen* is accurate to the best of my knowledge.

Date: July 31, 2003

Name: Signature on File
Robert R. Jaeger
Director, Indian Land Consolidation Office

STATUS REPORT TO THE COURTNUMBER FOURTEEN

August 1.2003

B. PROBATE

Introduction

Conducting and completing the probate of individual Indian trust assets requires the cooperative efforts of the Bureau of Indian Affairs (BIA), the Office of Hearings and Appeals (OHA) and the Office of the Special Trustee for American Indians (OST). Bringing the probate caseload current is important to the overall management of trust assets which relies on up-to-date ownership information.

All probate project responsibilities are now being consolidated and will be under the direct supervision of BIA.

Accomplishments and Completions

Number of Cases Processed and Decided

For this reporting period, BIA reports that BIA deciding officials received 327 cases and issued decisions in 216 cases; **OHA** reports that OHA deciding officials received 701 cases and issued decisions in 641 cases. OST distributed and closed 1,074 accounts representing 1,042 estates. The Trust Funds Accounting System (**TFAS**), as of the end of June 2003, contains 25,282 open estate accounts. Of these, 12,991 are classified as official deaths, as evidenced by a certified death certificate. Another 8,181 of these accounts are classified as unofficial deaths, where OST has received some indication of death that has not yet been confirmed by receipt of a death certificate. The rest of these accounts are classified as in the probate process or as pending final distribution of the assets. Lists of TFAS estate accounts classified as "unofficial death" were sent to all BIA Regional Directors during the reporting period so that their agencies can reconcile discrepancies and change the account status to "official death" where the deaths can be confirmed. This reconciliation is expected to occur by the end of calendar year 2003.

Case Preparation by Contractors

Case preparation is the gathering of information and documents to enable the submission of a probate package to a deciding official. During this reporting period, the contractor continued to expand its efforts to prepare probate cases in the Midwest, Great Plains, Southern Plains, Rocky Mountain, Northwest, Pacific, Western and Navajo Regions. The contractor also developed a Central Research Team to provide research support in gathering information necessary to prepare a case for probate. During this reporting period, the contractor completed the preparation of 382 probate cases (double the 190 cases prepared by the contractor during the previous reporting period). **An** additional 23 summary and 84 non-summary cases previously prepared by the contractor were pending review by BIA at the beginning of this reporting period. Summary cases are those estates containing only trust cash assets with a value less than \$5000, not including any interest that may have accrued after the date of death. Non-summary cases are all other cases, including any estates containing land assets. During this period, BIA reviewed and accepted 312 cases from the contractor to be sent to a deciding official. At the end of the

STATUS REPORT TO THE COURTNUMBER FOURTEEN

August 1, 2003

reporting period, 177 probate cases prepared by the contractor were pending BIA review for acceptance. When a probate case management and tracking system is developed (see "current status" below), it will track case preparation by both the contractor and BIA. The Department of the Interior (Interior) then will be able to report case preparation statistics for BIA as well as for the contractor.

Case Preparation – Priorities

A new lead person has been identified in BIA to direct BIA probate activities and to ensure contractors are available to support BIA in processing these cases. Emphasis continues to be given to closing the largest 501 open estate accounts identified in May 2002. These accounts represented only **3.4%** of the estate accounts, but totaled **\$31 million** or **65%** of the estate funds. By the end of this reporting period 157 of these cases had been closed (thirty in this reporting period), totaling more than \$9 million in assets distributed.

Posting and Recording

The contractor's *Youpee* posting and recording efforts during this reporting period continued to be devoted primarily to bringing records current at the Aberdeen Land Title and Records Office in support of the pilot Indian Land Consolidation Program (ILCP) project to purchase small fractionated interests at the Rosebud Agency and in the Midwest Region. Phase II of the ILCP task for the Rosebud Agency was completed during this reporting period. Phase I of the contractor's ILCP task for the Great Lakes Agency was completed during this reporting period with 820 tracts reversed and approved by BIA. Phase II of the ILCP task for the Great Lakes Agency was nearly completed with 935 probate distributions completed, **364** of which had been accepted by BLA.

Current Status

National Association for Public Health Statistics and Information Systems (NAPHSIS)

NAPHSIS is a professional organization consisting of representatives from all of the vital records offices in the United States. Among its current initiatives is a project to enable electronic reporting of deaths. A meeting with the Executive Director of NAPHSIS was scheduled for July 1, 2003, to begin discussions on a proposal for Interior to be notified by the states when Indian deaths are reported in their jurisdictions and for Interior to obtain death certificates from the states in a more timely and direct way.

Probate Case Management and Tracking System

In response to the decision to discontinue efforts for a Case Location and Status database and the need for some way to manage and track the probate caseload, Interior's Trust Architect assumed the lead in developing a probate case management and tracking system during this reporting period. A meeting was held on June 30, 2003, in Washington, D.C., to begin collecting system requirements.

STATUS REPORT TO THE COURT NUMBER FOURTEEN

August 1, 2003

Probate Handbook

A contractor delivered a second draft of the revised Probate Handbook for the current probate process on May 2, 2003. The draft handbook incorporates procedures that previously were fragmented among several separate manuals and covers the probate process from death to distribution. The revised draft was circulated to BIA, OHA, and OST for review and comment during this reporting period. The handbook is to be further refined during the next reporting period based on comments received.

Streamlining the Smallest Estates

As of December 31, 2002, there were 1,522 open estate accounts where the funds derive only from per capita or judgment payments (**and** not income from land interests) with a total value for all 1,522 cases of \$7,193.86. The Office of Trust Review and Audit conducted a risk analysis and concluded that a more streamlined approach for probating these estates would pose little risk of erroneous distribution, while providing a benefit both to Interior and to the trust beneficiaries. A determination of procedures is expected to be made during the next reporting period.

Delays and Obstacles

The lack of access to the Internet, and the lack of electronic mail communications between OHA and BIA continue to impede the ability to process and complete probate backlogs.

Consequently, critical processes that used to be automated, such as the preparation of OHA-7 forms, the assignment of probate docket numbers and case counting and reporting, must be done manually. Interior's regulations requiring certified copies of death certificates and other documents (instituted two years ago in order to facilitate the Attorney Decision Makers' probate process) has had the unintended consequence of making case preparation more difficult, more costly, and more time consuming. BIA has brought this to the attention of Interior's senior management and is seeking relief from this requirement.

The lack of a comprehensive case management and tracking system prevents discerning the true extent of the probate caseload. Consequently, cases may be overlooked and resources may not be provided at the right time or in the right amounts to address the caseloads adequately. For example, a manual comparison of TFAS estate accounts to the cases reported by BIA to the Southwest Region Probate Specialist disclosed **44** open estate accounts in TFAS for estates that BIA had marked "closed." The discrepancies occurred largely because the lead agency for the estate was unaware that another agency had made deposits to the estate account in the legacy Individual Indian Money system.

The increasing productivity of contractors is beginning to put a strain on BIA resources to review and accept their work. Options for addressing this problem are expected to be explored during the next reporting period.

STATUS REPORT TO THE COURT NUMBER FOURTEEN

August 1, 2003

Assurance Statement

I concur with the content of the information contained in this Probate section of the *Status Report to **the** Court Number Fourteen*. The information provided in this section is accurate to the best of my knowledge.

Date: July 28, 2003

Name: *Signature on File*
Marinus Heymering Jr.
Supervisory Trust Reform Specialist

STATUS REPORT TO THE COURTNUMBER FOURTEEN

August 1,2003

ATTACHMENTS

- **Jim Cason's prepared statement**
- **Section 137 of HR 2691**

**STATEMENT OF
JAMES CASON
ASSOCIATE DEPUTY SECRETARY
DEPARTMENT OF THE INTERIOR
BEFORE THE HOUSE COMMITTEE ON RESOURCES
FOR THE OVERSIGHT HEARING RELATING TO
THE INDIAN TRUST FUND LAWSUIT**

JULY 9, 2003

Mr. Chairman, thank you for the opportunity to testify today on the issues surrounding the longstanding case that originated in 1996 as *Cobell v. Babbitt* and is now *Cobell v. Norton*. In your letter of invitation, you asked the Department to address its plan for historical accounting, the results of historical accountings conducted so far, the size of the accounts the Department holds in trust for American Indians, and the likelihood of an expeditious resolution of the Indian trust fund lawsuit.

The Department of the Interior manages about 1,400 tribal accounts and over 225,000 individual Indian money (IIM) accounts. Because the *Cobell* case only involves IIM accounts, most of my testimony will focus on the issues related to the management of those accounts. The Committee should be aware, however, that 16 tribes have filed 19 lawsuits seeking an accounting.

Background

Trust asset management involves approximately 11 million acres held in trust or in restricted status for individual Indians and nearly 45 million acres held in trust for the Tribes. This land produces income from more than 100,000 active leases for about 350,000 individual Indian owners and 315 Tribal owners. Over \$862 million is typically collected annually from leases, permits, sales, and interest income. About \$226 million is distributed among the IIM accounts; \$536 million is distributed among the tribal accounts.

One of the most challenging aspects of trust management is the management of the very small ownership interests, which result in many very small IIM accounts and land ownership interests.

In 1887, Congress passed the General Allotment Act, which resulted in the allotment of some tribal lands to individual members of tribes in 80 and 160-acre parcels. The expectation was that these allotments would be held in trust for their Indian owners for no more than 25 years, after which the Indian owner would own the land in fee. However, Congress ended up extending the trust period indefinitely once it became apparent that the goal of making the individual Indians into farmers failed.

Interests in these allotted lands started to "fractionate" as interests divided among the heirs of the original allottees, expanding exponentially with each new generation. There are now over **1.3** million fractional interests of 2% or less involving 58,000 tracts of individually owned trust and restricted lands. We have to provide a range of trust services – title records, lease management, accounting, probate – to the growing number of land owners. We have single pieces of property with ownership interests that are less than .000002 of the whole interest. The Department is required to account for each owner's interest, regardless of size. Even though these interests today might generate less than one cent in revenue each year, each is managed, without the assessment of any management fees, and the revenues generated are treated with the same diligence that applies to all IIM accounts. In contrast, in a commercial setting, these small interests and accounts would have been eliminated because of the assessment of routine management fees against the account. Management costs of the IIM accounts, as well as tribal trust accounts, are covered through the general appropriations process and borne by the taxpayers as a whole, rather than the account holders.

Past Congressional Actions

Over the past 100 years, Congress has reviewed the issue of Indian trust management many times. In 1934, the Commissioner of Indian Affairs cautioned Congress that fractionated interests in individual Indian trust lands cost large sums of money to administer, and left Indian heirs unable to control their own land. "Such has been the record, and such it will be unless the government, in impatience or despair, shall summarily retreat from a hopeless situation,

abandoning the victims of its allotment system. The alternative will be to apply a constrictive remedy as proposed by the present Bill." The bill ultimately led to the Act of June 18, 1934, the Indian Reorganization Act, which attempted to resolve the problems related to fractionation, but as we now know it did not.

In 1984, a Price Waterhouse report laid out a list of procedures needed to make management of these funds consistent with commercial trust practices. One of these recommendations was considering a shift of the Bureau of Indian Affairs (BIA) disbursement activities to a commercial bank. This recommendation set in motion a political debate on whether to take such an action. Congress then stepped in and required BIA to reconcile and audit all Indian trust accounts prior to any transfer of responsibility to a third party. BIA contracted with Arthur Andersen to prepare a report on what would be required in an audit of all trust funds managed by BIA in 1988. Arthur Andersen's report stated it could audit the trust funds in general, but it could not provide verification of each individual transaction.

In 1992, the House Committee on Government Operations filed a report entitled "'Misplaced Trust: the Bureau of Indian Affairs' Management of the Indian Trust Fund.'" That report listed the many weaknesses in the BIA management of Indian trust funds. It pointed out that the General Accounting Office's audits of 1928, 1952, and 1955, as well as 30 Inspector General reports since 1982 found fault with management of the system. The report notes Arthur Andersen 1988 and 1989 financial audits stated that "some of these weaknesses are as pervasive and fundamental as to render the accounting systems unreliable."

Arthur Andersen stated it might cost as much as \$281 million to \$390 million in 1992 dollars to audit the IIM accounts at the then 93 BIA agency offices. The 1992 Government Operations Committee report describes the Committee's reaction:

"Obviously, it makes little sense to spend so much when there was only \$440 million deposited in the IIM trust fund for account holders as of September 30, 1991. Given that cost and time have become formidable obstacles to completing

a full and accurate accounting of the Indian trust fund, it may be necessary to review a range of sampling techniques and other alternatives before proceeding with a full accounting of all 300,000 accounts in the Indian trust fund. However, it remains imperative that as complete an audit and reconciliation as practicable must be undertaken.”

The Committee report then moves on to the issue of fractionated heirships. The report notes that in 1955 a GAO audit recommended a number of solutions including eliminating **BIA** involvement in income distribution by requiring lessees to make payments directly to Indian lessors, allowing BIA to transfer maintenance of IIM accounts to commercial banks, or imposing a fee for BIA services to IIM accountholders. The report states the Committee’s concern that **BIA** is spending a great deal of taxpayers’ money administering and maintaining tens of thousands of minuscule ownership interests and maintaining thousands of IIM trust fund accounts with little or no activity, and with balances of less than \$50.

On April 22, 1993, the late Congressman Synar introduced H.R. 1846. On May 7, 1993, Senator Inouye introduced an identical version, S. 925. It was in these bills that Congress first included a statutory responsibility to account for Indian trust funds. Section 501 was entitled “Responsibility of Secretary to Account for the Daily and Annual Balances of Indian Trust Funds.” Senator Inouye’s bill included an effective date provision that stated:

“This section shall take effect October 1, 1993, but shall only apply with respect to earnings and losses occurring on or after October 1, 1993, on funds held in trust by the United States for the benefit of an Indian tribe or an individual Indian.”

The Senate Committee on Indian Affairs held a hearing on S. 925 on June 22, 1993. Eloise Cobell in her capacity as Chairman of the Intertribal Monitoring Association, testified in strong support of the bill. The only amendment Ms. Cobell recommended in her oral statement, as well as her written statement, was to allow Tribes to transfer money back into a BIA-managed trust fund at any time if they so wanted. Ms. Cobell mentioned “[W]e have amendments, and we are

willing to work with the committee on these particular amendments. I am not going to devote any more of my time in my oral presentation to the provisions of the bill because we feel it is an excellent bill."

The Navajo Nation and the Red Lake Band of Chippewa Indians were the only tribes to submit testimony. They supported the bill, and did not object to the prospective application of the accounting section in their testimony.

The Director of Planning and Reporting of the General Accounting Office also testified. He was asked if he agreed with the Arthur Andersen estimates I mentioned above. He stated the following:

"In my statement I talked about how there are a lot of these accounts that maybe you don't want to audit, that maybe what you want to do is come to some agreement with the individual account holder as to what the amount would be, and make a settlement on it. We had a report issued last year that suggested that, primarily because there are an awful lot of these accounts that have very small amounts in terms of the transactions that flow in and out of them. Just to give you some gross figures, 95 percent of the transactions are under \$500. One of our reports said there that about 80 percent of the transactions are under \$50. So in cases where you have the small ones, maybe there's a way in which we can reach agreement with the account holders and the Department of the Interior on how much we will settle for on these accounts rather than trying to go back through many many years, reconstructing land records and trying to find all of the supporting material. It may not be worth it." [page 29 of S. Hrg 103-2251

On July 26, 1994, Congressman Richardson introduced H.R. 4833 which ultimately became the American Indian Trust Fund Management Reform Act of 1994. The House report on H.R. 4833 notes that H.R. 1846 was the predecessor bill to H.R. 4833. There was one legislative hearing

held on **H.R.** 4833 by this Committee on August 11, 1994. There is no printed record of that hearing. There was no Senate hearing.

H.R. 1846 and H.R. 4833 were similar in many places. H.R. 4833 did not however include the effective date provision explicitly making the accounting requirement prospective only. While the report notes in a number of places why changes were made to the **H.R.** 1846 provisions, it is silent with respect to this omission.

It may surprise Members of this Committee to note that there is no mention of the costs associated with either complying with the Act, or completing the accounting in the Committee's report. Moreover, no analysis from the Congressional Budget Office was included in the Committee's report. The Department sent a letter on H.R. 1846 and an amended S. 925 that was placed in the Committee report on H.R. 3833. Its only mention of cost is the following sentence: "We wish to note that, given current fiscal restraints, the funding for implementation of this legislation may necessarily have to be derived from reallocation of funds from other BIA or Department programs." Given the lack of cost analysis contained in the legislative history, one could assume that Congress in enacting the 1994 Reform Act had no idea it may have required a multi-million or billion dollar accounting.

Interior's Historical Accounting Plan

Mr. Chairman, you specifically requested my testimony address the Department's plans for conducting an historical accounting of IIM accounts. The Cobell court ruled that the 1994 Reform Act requires the Department to provide IIM trust beneficiaries an accounting for all funds held in trust by the United States that are deposited or invested pursuant to the Act of June 24, 1938, regardless of when they were deposited. The D.C. Circuit Court noted that the statute does not make clear how to conduct such an accounting, and it is properly left up to the Department what accounting methods to use.

In the Department's FY 2001 Appropriations Act, Congress directed the Department to submit a comprehensive report to the Appropriations Committees as to the costs and benefits of a comprehensive historical accounting. That report was submitted on July 2, 2002. It looked at the costs associated with doing a transaction-by-transaction accounting and transaction-by-transaction verification for the IIM account holders. The estimate for such an accounting and verification was \$2.4 billion, and that would take ten years to complete. The feedback received from various Congressional members and staff suggested little support for this plan given its cost, the length of time required, and the fact that such a huge sum of money would go to accountants and lawyers, not Indian people.

In September 2002, Judge Lamberth, who presides over the Cobell litigation, ordered the Department to submit to the court by January 6, 2003 a proposed historical accounting plan. He also allowed the plaintiffs in the case to submit their own proposed accounting plan.

Our proposal is to compile a transaction-by-transaction accounting with transaction verification based in part on various statistical sampling verification methods. But all IIM account holders will receive transaction-by-transaction account histories. By using these different methods, we believe IIM account holders will receive their accountings much sooner. Interior plans to separate the historical accounting into three distinct types of IIM accounts.

- Judgment and Per Capita accounts
- Land-based IIM accounts
- Special Deposit Accounts

For the approximately 42,200 judgment and per capita accounts, we plan to reconcile 100 percent of the transactions in each account and verify all transactions.

For the approximately 200,000 land-based IIM accounts, we intend to reconcile 100% of transactions and verify those transactions using both transaction-by-transaction and statistical methods. We plan to verify all transactions that are equal to or greater than \$5,000. For

transactions that are less than \$5,000, we will verify transactions using statistically valid sampling technologies. The statistically valid sampling methodology is expected to result in our being able to determine the accuracy rate of the historical accounting with 99 percent confidence.

For the 21,500 Special Deposit accounts, which are in effect holding accounts, we intend to distribute the funds to the proper owners and then close those accounts.

The historical accounting described in our Plan covers all IIM accounts open as of October 25, 1994, the date of the Act, or opened thereafter. The historical accounting period ends on December 31, 2000; transactions occurring thereafter are addressed in current accounting activities. Interior engaged 14 consulting firms to assist in the development of this plan, including five accounting firms (four of which are among the five largest firms in the United States), the largest commercial trust operator in the United States, two historian firms that have specialized in Indian issues for many years, and firms to assist in statistical matters, trust legal matters and other areas pertaining to historical accounting.

Under our plan, at the end of the historical accounting process we propose, we intend to be in the position to provide each IIM account holder with a Historical Statement of Account. This statement will provide information on how much money was credited to each account, and the disbursements made from the account. It will also provide an assessment of the accuracy of the account transaction history. In addition, we intend to be in a position to provide land-based IIM account holders with information regarding their land assets. This information will be prepared by the BIA Land Title and Records Offices as a separate package to be provided to IIM account holders.

The cost of our historical accounting plan is approximately \$335 million over five years. The President's proposed FY 2004 budget for the Department of the Interior includes money for this accounting. Our \$9.8 billion budget request is the largest in the Department's history, and represents a net increase of \$344.1 million over the FY 2003 enacted appropriations. Nearly one half of the proposed increases will fund trust reform improvements. Included within the total is

\$100 million to support the Department's plan to conduct an historical accounting for IIM accounts and \$30 million to account for funds in tribal accounts.

The court has not yet ruled as to whether it believes our accounting plan is adequate. Plaintiffs have argued vehemently that it is not. Plaintiffs argue that the 1994 Reform Act requires a full verification for all transactions since the 1880s, and that such an accounting is "impossible" because the historical records are not complete – something Congress was obviously aware of when it passed the 1994 Reform Act. In the trial, plaintiffs have offered an alternative methodology, which uses various estimating techniques to approximate the amount they contend should have come into the IIM accounts since the 1880s. Their plan will, admittedly, not provide an accounting to even one IIM beneficiary, but will – like a damages model – come up with an amount of money to which plaintiffs as a class claim they are entitled. Press reports state that plaintiffs believe they are owed at least \$137 billion.

Indian country argues that the money for this accounting or any judicial or congressional settlement should all be new money and not come from Indian program money. In reality, appropriators are faced with funding this accounting out of the Interior allocation, and have openly stated that funding a multi-million, potentially multi-billion, dollar accounting will mean a reduction in money for other Indian program priorities.

Recent Reconciliations and Accountings

The Committee also asked that I address the results of accountings Interior has done so far. In the 1990s, the **BIA** contracted with Arthur Andersen LLP to conduct a reconciliation of Tribal trust funds from 1972 to 1992 in accordance with certain agreed upon accounting procedures. More than one million records provided by BIA were examined in the reconciliation which concluded in 1996, but was augmented with additional work completed through 2001. Of the 251,432 transactions examined, 219,599 transactions worth \$15.8 billion or 89 percent of total receipts and disbursements for 1972-1992 of the funds were reconciled. The error rate for the reconciled transactions was far less than one percent. For the remaining 11 percent, \$1.9 billion

in transactions shown posted in the accounts, sufficient documentation was not provided to reconcile the transactions.

As part of the Cobell litigation, Interior collected over 165,000 documents for the historical accounting of IIM trust fund activity through December 31, 2000 for four of the named plaintiffs and 24 of their agreed-upon predecessors. Of these documents, about 21,000 documents were used to support the transactional histories, which dated back as far as 1914, and which included a total of about 13,000 transactions. The accounting contractor, Ernst and Young, found 86 percent of the transactions and 93 percent of the funds moving through the accounts were supported by the documentation located. The cost of this accounting was over \$20 million

Pursuant to the requirement in Section 131 of the FY 2003 Appropriations Act, on March 25, 2003, the Department of the Interior provided Congress with a summary of the expert opinion of Mr. Joseph Rosenbaum, a partner in Ernst and Young, LLP. “on the historical accounting for the five named plaintiffs in Cobell v. Norton.” This report describes the process the contractor went through and also contains a summary of his opinions. These conclusions included:

- The historical IIM ledgers were sufficient to allow DOI to create virtual ledgers that are substantially complete for the selected accounts
- The documents gathered by DOI support substantially all of the dollar value of the transactions in the analyzed accounts.
- The documents gathered by the Department of the Interior do not reveal any collection transactions not included in the selected accounts, with a single exception in the amount of \$60.94 that was paid to another account holder.
- An analysis of relevant contracted payments, evidenced primarily by lease agreements, shows that substantially all expected collection amounts were properly recorded and reflected in the IIM accounts.
- There is no indication that the accounts are not substantially accurate, nor that the transactions are not substantially supported by contemporaneous documentation.

The Department's Office of Historical Trust Accounting has also performed historical accountings for 16,821 IIM judgment accounts established for minors or restricted account holders. These accounts represent \$48,496,799. No errors were found regarding the collections and postings to these accounts. Only a few of these accountings have been provided to the beneficiaries or their legal representatives because the district court in Cobell found that sending them to plaintiffs is improper and has not acted on our motion for permission to send them to the appropriate person.

Interior Trust Reform Efforts

The Department has developed a comprehensive plan for the management of Indian trust funds. The Secretary established both the Office of Historical Trust Accounting and the Office of Indian Trust Transition. The Office of Indian Trust Transition engaged in a meticulous process to develop an accurate, current state model to document trust business processes. The Department, after the most extensive consultation ever held with Indian country, is well down the road of putting in place a reorganization of trust functions in response to widespread criticism of the former trust management structure.

We have not been sitting on our hands at Interior. Trust Reform has been the number one priority for the senior management of the Department during this Administration.

Settlement of the Ongoing Trust Fund Litigation

Recently Senators Campbell and Inouye sent letters to the parties urging a fair and equitable settlement of the Cobell case. We welcome such a settlement. However, the parties are far apart on the issue of what is fair and equitable. Although I did not work at the Department of the Interior during the previous administration, I understand that the Federal Government has made a number of efforts to engage in settlement talks in Cobell with no success. From June 1996 to July 1997, the Department engaged in negotiations with the Cobell plaintiffs on the issue of

development of an acceptable accounting mechanism. The Department tried again in early 1999 before the July 1999 trial and again right before the trial. Those negotiations failed.

After the July 1999 trial, Judge Lamberth asked the parties to work toward a settlement. The parties were unable to agree on an acceptable mediator, so the Judge appointed Stephen Saltzburg, a professor at George Washington University who has served as a special master in two class action cases in the District of Columbia District Court, and serves as a mediator for the U.S. Court of Appeals for the District of Columbia. The mediation ended with no resolution in November 1999.

Near the end of the previous Administration, then Special Trustee Toni Slonaker talked directly to plaintiffs' attorneys. While agreement was reached on a number of issues, other overarching issues went unresolved, and ultimately this effort failed. At the beginning of this Administration, the Department once again tried to enter into settlement talks in Cobell. The discussions became mired in a variety of issues surrounding the conduct of the negotiations. No resolution was reached on those issues.

Last year, the House Appropriations Subcommittee on Interior included language in the Interior FY 2003 appropriations bill that would have limited the historical accounting to the period from 1985 forward. That language was removed by amendment on the House floor. The debate on that amendment, which was more extensive than the debate on the actual 1994 Reform Act, centered on the point that this matter should be addressed by the authorizers, not the appropriators. The appropriators urged the authorizing committees to step in and come up with a legislative settlement. Members of this Committee from both sides of the aisle spoke to the need for hearings and action on this issue.

Congressman Dicks explained on the floor that it was the intent of the appropriators to try to resolve this issue so that the vast amounts of money involved could go to Indian programs instead of accountants. More precisely he said:

"This thing is broken; and somehow all the people that are here today expressing their wonderful concern, there is going to be a tomorrow, and we will see if anybody really wants to stand up with the majority side obviously having to be involved and work on this. This has to be done. We have got to get something done here." And then later in the debate, "What we are trying to do is get them money in a reasonable period of time without decimating the Interior appropriations bill every single year. I want that \$143 million to be used for other programs that will help Native Americans. I do not want to waste \$1 billion in going out and trying to do accounting that is not going to give us the information pre-1985."

He also invited the authorizers to develop a settlement compromise -- "[N]ow if these gentlemen who have come to the floor today to help us, if their committees would get busy and develop a compromise and do a settlement on this issue, it could be coming from Congress. Somehow we have to resolve this, because we do not have enough money."

Members of this Committee committed to engage in such a process. Mr. Young from Alaska said:

"I think it is the responsibility of Congress. Because if we **look** at the trust, if we **look** at what is said about American Indians, the trust belongs to the Congress. We have been neglectful in not pursuing and making sure that this issue has been solved in previous years. So I am asking us to sit down, as the gentleman mentioned before, and say, let us solve this problem . . ."

Mr. Pallone stated "[T]here should be a hearing, or perhaps a series of hearings, that are being held in the Committee on Resources, in the authorizing committee, not here on the floor, when we are dealing with this larger bill."

Mr. Hayworth was one of the sponsors of the amendment that deleted the accounting limitation from the bill. He spoke the following on the floor:

"**I think** it offers another compelling reason why we thank the appropriators, given the magnitude of the task, but reassert the role of the authorizing committee, and recognize the good but challenging work that has been done thus far to try and deal with this problem."

Mr. Tom Udall echoed the views of the opponents of the appropriations provision by stating:

"This Congress should address these issues in a bipartisan way, and that is what we are trying to do on the Committee on Resources . . . The gentleman from Washington raises, I think, a very good point when he says we need to move this case to settlement. I do not think there is any doubt that we need to move this case to settlement. We should be working on the settlement issue, and we should let all of the attorneys know we want to move towards settlement. The key issue here, the committee that should be working on this is the Committee on Resources
"

Mr. Rahall said "[M]r. Chairman, I perfectly agree with the statements that have just been said. We want to settle this. We want a settlement."

Nearly a year has passed, we are now facing another appropriations cycle, and there has been no movement toward a settlement of the Cobell case. There were no hearings held by this Committee on this issue after that floor debate until today. Since that time, the court has issued a ruling and required plans for a historical accounting to be submitted; we have developed a plan for our accounting and are moving forward with our trust reform plan; and the trial on our accounting plan as well as the plan to bring ourselves into compliance with our fiduciary obligations is wrapping up.

The House Appropriations Committee provided \$55 million less for a historical accounting than we have requested in our budget. The House appropriations bill also directs us, when doing the accounting, to use statistical sampling for all transactions. However, I understand the language allows the Secretary to provide funds to accounts from the claims and judgment fund once the statistical accounting is completed. Additionally, it prohibits any downward adjustments of accounts. Thus, if the sampling indicated that account holders have received more than their fair share of moneys, we could not recover those moneys. Finally, the language authorizes the Secretary to conduct a voluntary program to buyout accounting claims of **IM** account holders.

On April 20 2003, Eloise Cobell sent a letter to all class members in the Cobell case. Ms. Cobell urged them not to support any effort by Congress to authorize a voluntary settlement for their accounting claims. Ms. Cobell told them, many of whom own a minute share in one parcel of land and have accounts with throughputs under \$15 annually, that the plaintiffs are about to receive "a huge many billion dollar judgment in favor of us — all Indian trust beneficiaries." The letter also said if the voluntary program is enacted, "tens of thousands of Indian people will again be cheated by the United States government." As I mentioned above, in the press, the plaintiffs and their representatives have been quoted as saying they expect to receive over \$130 billion. They say this even though they have conceded in court that the district court has no jurisdiction to enter such a judgment.

As a result, expectations are high in Indian country. Given what we have seen as a result of the reconciliations and accountings done so far, we do not believe we can justify to the American taxpayers a settlement offer in the billions of dollars.

On June 13, 2003, Senators Campbell and Inouye sent a letter to Tribal leaders asking for their help in tackling 3 major tasks that would improve the management of Indian trust:

- To stop the continuing fractionation of Indian lands and focus on the core problems of Indian probate by swiftly enacting legal reforms to the Indian probate statute.

- .To begin an intense effort to reconsolidate the Indian land base by buying small parcels of fractionated land and returning them to tribal ownership.
- .To explore “creative, equitable, and expedient ways to settle the Cobell v. Norton lawsuit.”

We would like to work with you and the Senate Committee on Indian Affairs on all three of these tasks. Addressing the rapidly increasing fractionation on Indian land is critical to improving management of trust assets. Properly done probate reform could be essential. When land is leased, BIA has the responsibility to deposit receipts from the land into the appropriate IIM account. This involves probating estates, finding heirs, and holding money for unknown heirs. These tasks are all funded through the Department’s Indian budget.

The purchase of fractional interests increases the likelihood of more productive economic use of the land, reduces recordkeeping and large numbers of small dollar financial transactions, and decreases the number of interests subject to probate. The BIA has conducted a pilot fractionated interest purchase program in the Midwest Region since 1999. Through FY 2002, the program has acquired 47,188 ownership interests in over 25,000 acres.

Using the Office of Management and Budget’s Program Assessment Rating Tool (PART), we have learned there is a high level of interest and voluntary participation by willing sellers and large numbers of owners are willing to sell fractionated ownership interests. The President’s FY 2004 budget request proposes \$21.0 million for Indian land consolidation, an increase of \$13.0 million for a nationally coordinated and targeted purchase program. Interior believes that a national purchase program can be administered in a very cost-effective manner to target acquisitions that reduce future costs in trust management functions, such as managing land title records, administering land leases, distributing lease payments to IIM accounts, and processing probate actions. We are developing a strategic plan and necessary infrastructure to support a major expansion of this program in 2004. Where appropriate and to the extent feasible, the

Department plans to enter into agreements with Tribes or tribal or private entities to carry out aspects of the land acquisition program.

With respect to the third task, the settlement of the Cobell lawsuit, I can honestly say I don't think we can get there without the involvement of Congress. This does not mean we will not continue to try. Contrary to Ms. Cobell's letter to the class members, this case is not on the verge of being over. Even if the district court were to adopt the plaintiffs' accounting plan -- which the Administration argues is fundamentally improper given that this is a lawsuit ostensibly brought under the Administrative Procedure Act -- there are more steps before the district court, and before other tribunals, that will be required before the class members receive any money. The district court has said that it does not have the jurisdiction to compel payment of money damages. It has made clear that the reason it, rather than the Court of Federal Claims, can hear the case is that the plaintiffs have stated many times that they are not seeking money damages. Without a settlement, considerable hurdles remain before anyone other than the lawyers or accountants can see any money from this suit.

That concludes my prepared statement. Thank you again for giving me an opportunity to testify. I would be happy to answer any questions you might have.

Union Calendar No. 100

108TH CONGRESS
1ST SESSION**H. R. 2691**

[Report No. 108-1951]

Making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 2004, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 10, 2003

Mr. TAYLOR of North Carolina, from the Committee on Appropriations, reported the following bill; which was committed to the Committee of the Whole House on the State of the Union and ordered to be printed

A BILL

Making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 2004, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That the following sums are appropriated, out of any
4 money in the Treasury not otherwise appropriated, for the
5 Department of the Interior and related agencies for the
6 fiscal year ending September 30, 2004, and for other pur-
7 poses, namely:

1 Federal funds made available under subsection fa)
2 shall be not less than 50 percent

3 (j) TERMINATION OF AUTHORITY.—The authority of
4 the Secretary to provide assistance under this section ter-
5 minates on the **date that, is** 15 years after the date of en-
6 actment **of** this section.

7 EXPEDITED PROCEDURES FOR INDIAN TRUST

8 ACCOUNTING

9 SEC 137. (a) IN GENERAL.—Notwithstanding any
10 other provision of law, any claim against the United States
11 arising out of any obligation of the United States or any
12 of its agencies or officials relating to the conduct of an
13 accounting, or the balance of, any individual Indian money
14 account arising prior to December 31, 2000 shall be gov-
15 erned by the provisions of this section.

16 (b) STATISTICAL SAMPLING.—Not later than one
17 year following the date of enactment of this Act, the Sec-
18 retary shall formulate a statistical sampling evaluation to
19 assess the administration of individual Indian money ac-
20 counts for those accounts that were open as of December
21 31, 2000, and all individual Indian money accounts that
22 were open as of October 25, 1994, or opened thereafter
27 but closed as of December 31, 2000. The statistical sam-
24 pling evaluation described in this subsection shall be con-
25 ducted in a manner the Secretary deems feasible and ap-
26 propriate given the availability of records, data, and other

1 historic information, and shall estimate, so as to achieve
2 a ninety-eight percent confidence level, the rate of past
3 accounting error, if any, for each group or categories of
4 individual Indian money accounts. The Secretary shall
5 complete a statistical sampling evaluation covering all sub-
6 ject accounts within four years of the date of enactment
7 of this Act.

8 (c) CERTIFICATION — Upon completion of a statis-
9 tical sampling evaluation for a category or group of indi-
10 vidual Indian money accounts, the Secretary shall certify
11 completion of the evaluation and publish such certification
12 in the Federal Register

13 (d) ADJUSTMENT OF ACCOUNTS -

14 (1) Within 180 days following any certification
15 under subsection (c), the Secretary shall adjust any
16 individual Indian money accounts covered by that
17 certification. The Secretary shall base such adjust-
18 ment on application of the error rate, if any, deter-
19 mined by the statistical sampling to the average
20 transaction amount for transactions in an account
21 In addition, the Secretary may also consider any fac-
22 tual information regarding the particular account at
23 issue in adjusting the account

24 (2) Amounts necessary for adjustments to indi-
25 vidual Indian money accounts shall be derived from

1 the claims and judgment appropriation provided by
2 31 U.S.C. 1304 in the same manner as payment of
3 judgments received by the Court of Federal Claims
4 under 28 U.S.C. 2414.

5 (e) NO DOWNWARD ADJUSTMENT.—The Secretary
6 may consider both positive and negative errors in esti-
7 mating a rate of past accounting error, but in no event
8 shall the Secretary adjust the balance of an account down-
9 ward under this Act. In the event that the Secretary deter-
10 mines that the rate of past accounting error for an ac-
11 count is zero or negative, the Secretary shall make an ad-
12 justment of zero to that account. Such a zero adjustment
13 shall constitute an “adjustment” as defined in this section

14 (f) JUDICIAL REVIEW --

15 (1) Notwithstanding any other provision of law,
16 judicial review of, or judicial relief with respect to,
17 any action of the United States or any of its agen-
18 cies or officials in carrying out the provisions of this
19 section shall be made solely in accordance with this
20 subsection

21 (2) Judicial review of any agency action related
22 to an individual Indian money account performed
23 pursuant to this section may be had only by the fil-
24 ing of a petition for review in the United States
25 Court of Appeals for the District of Columbia no

1 later than 60 days after the Secretary's adjustment,
2 of an account,. Such review shall be conducted in ac-
3 cordance with chapter 7 of part I of title 5, United
4 States Code (5 U.S.C. 701, et seq.).

5 (3) Except to the extent, if any, that review
6 may be required by the Constitution of the United
7 States, no court shall have jurisdiction to review,
8 grant, or enforce any relief with respect, to any ac-
9 tion of the United States or any of its agencies or
10 officials in carrying out any obligation described in
11 subsection (a) other than pursuant, to paragraph (2).

12 The provisions of this **paragraph** shall apply to any
13 litigation filed before, on, or after the date **of** enact-
14 ment of this section

15 (g) ACCOUNT BALANCES.—The balance of any ac-
16 count as determined under this Act, including judicial re-
17 view in accordance with subsection (f), shall conclusively
18 constitute the new balance of the account as of December
19 31, 2000, and shall not be subject to any further adjust-
20 ment based upon events or occurrences prior to that date.

21 (h) VOLUNTARY SETTLEMENT OF CLAIMS.—Prior to
22 commencing the statistical evaluation provided in sub-
23 section (b), the Secretary may, at the Secretary's discre-
24 tion, resolve any claim or group of claims described in sub-
25 section (a) through voluntary settlement with any holder

1 or holders of individual Indian money accounts. Such vol-
2 untary settlement shall be paid from the claims and judg-
3 ment, appropriation as provided in subsection (d) and shall
4 conclusively resolve claims under subsection (a). The **hold-**
5 er of the account who settles shall not be entitled to any
6 further adjustment under this section.

7 (i) REGULATIONS.—The Secretary may adopt such
8 regulations, as the Secretary deems necessary to imple-
9 ment this section.

10 (j) REPORT TO CONGRESS.—The Secretary shall re-
11 port *to* the House and Senate Committees on Appropria-
12 tions, the House Committee on Resources, and the Senate
13 Committee on Indian Affairs regarding the progress of
14 statistical sampling evaluations at, least once every cal-
15 endar year until the Secretary has adjusted all accounts
16 covered by this Act.

17 (k) DEFINITIONS ---As used in this Act:

18 (1) The term “statistical sampling evaluation”
19 mean; an analysis of a selected statistically appro-
20 priate sample drawn from a group or groups of
21 transactions or other data.

22 (2) The term “individual Indian money ac-
23 counts” means account balances for funds held in
24 trust by the United States for the benefit of an indi-
25 vidual Indian which are deposited or invested pursu-

1 ant to the Act of June 24, 1938 (25 U.S.C. 162a),
2 but shall not include accounts classified by the Sec-
3 retary as Special Deposit, Judgment, or Per Capita
4 accounts.

5 (3) The term "adjust" means to revise the bal-
6 ance of the account pursuant to this Act.

7 (4) The term "Secretary" means the Secretary
8 of the Interior.

9 SEC. 138. None of the funds in this or any other Act
10 may be used by the Department of the Interior to support
11 the Klamath Fishery Management Council.

12 SEC. 139. Notwithstanding any other provision of
13 law, the United States Fish and Wildlife Service, here-
14 tofore and hereafter, may use funds for incidental ex-
15 penses related to encouraging public participation in Serv-
16 ice programs, and may use up to \$2,000,000 per year for
17 contracts for employment-related legal services.

18 TITLE II—RELATED AGENCIES

19 DEPARTMENT OF AGRICULTURE

20 FOREST SERVICE

21 FOREST AND RANGELAND RESEARCH

22 For necessary expenses of forest and rangeland re-
23 search as authorized by law, \$267,230,000, to remain
24 available until expended: *Provided*, That of the funds pro-