



# Restoring Trust

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## The Reformation of Indian Trust Management (1994 - 2007)

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A Report to the United States Congress



***“OST has made important progress in implementing trust fund management reforms and plans to complete almost all of the key reforms by November 2007.”***

- Government Accountability Office (GAO)  
Report to Congress, December 2006

***“How the Department of the Interior was able to turn around one of the most notoriously intractable management problems in the federal government is an amazing story. Every Department employee who had a hand in this should be proud: Indian Country will be reaping the benefits of their labor well into the future.”***

- Ross Swimmer, Special Trustee for American Indians

More than a decade has passed since enactment of the *American Indian Trust Fund Management Reform Act of 1994* (1994 Act) [Public Law 103-412, Oct. 25, 1994; 108 Stat. 4239]: not enough time to resolve a problem over a century in the making, but sufficient time to assess the effectiveness of steps taken so far, and to decide how we should address Indian trust management in the future.

One of the difficulties in measuring progress is finding an appropriate frame of reference. There is a natural tendency to focus on the immediate, and often the frustration of temporary setbacks disguises that an incremental pace is, in fact, real progress. Moreover, in a complex project, one recalcitrant subproject can eclipse substantial improvement in other areas. How, then, to measure whether real overall progress has been made in reforming Indian trust management?

We begin by designating a reference point, and for the purposes of this report that point will be 1992 – the high water mark for criticism of Indian trust management. While several reports focused on Indian trust management have been produced over the years, the most cited document in recent discussions has been *Misplaced Trust*, the 1992 report from the Environment, Energy and Natural Resources Subcommittee of the House Committee on Government Operations, then chaired by Rep. Mike Synar of Oklahoma. *Misplaced Trust* was largely a compendium of criticisms and anecdotes gathered from earlier Congressional hearings, previous reports, audits and independent assessments, but its publication galvanized the Indian trust reform movement and led to passage of the 1994 Act two years later.

Because of its historical importance, the specificity of its complaints, and the fact that the 1994 Act created the Office of the Special Trustee for American Indians (OST), *Misplaced Trust* is a good yardstick for measuring the effectiveness of nearly thirteen years' work. Before examining the criticisms leveled by *Misplaced Trust*, and how they have been addressed by the federal government, it is helpful to understand how we arrived at the state of Indian trust management circa 1992.

This report will also examine the progress that has been made in addressing the trust reform issues raised in the *Cobell* class-action lawsuit, which has significantly affected Interior over the past decade.

## Early Federal Indian Policy

The history of the Indian trust is inseparable from the larger context of the federal government's relationship with American Indians, and the policies that were promulgated as that relationship evolved. At its core, the Indian trust is an artifact of a nineteenth century federal policy, and its current form bears the imprint of subsequent policy evolutions.

During the late 1800s, Congress and other influential social leaders, believed that the best way to foster assimilation of Indians was to introduce Indians to the customs and pursuits of the larger population so that they could be gradually absorbed. This conviction propelled the passage of the *General Allotment Act of 1887* (the "Dawes Act"), under which tribal lands were divided into parcels between 40 and 160 acres in size, which were then allotted to individual Indians. The total land area comprised by the allotments was small compared to the amount of land that had been held by tribes at the passage of the Act. The remaining Indian lands were declared surplus by the government and opened for non-Indian settlement. Consequently, approximately 90 million acres of Indian land went out of Indian ownership or control.

Section 5 of the Dawes Act required the United States to "hold the land thus allotted, for the period of twenty-five years, in trust for the sole use and benefit of the Indian to whom such allotment shall have been made." Initially, each allottee was allowed full use of his or her allotment however desired, except for the inalienability of the title during the trust period. Later, allottees were permitted to lease their land, individual accounts were set up for each Indian with a stake in the allotted lands, and income was collected for the Indian and then disbursed for use by the Indian. Indians could not sell, lease, or otherwise encumber their allotted lands without government approval – a practice still in effect today. After twenty-five years, the allotted lands would become subject to taxation. Where the tribes resisted allotment, it could be imposed. Unfortunately, many allottees did not understand the tax system, or did not have the money to pay the taxes, and ultimately lost their land to non-Indians.

## Fractionation: Fruit of a Failed Policy

The allotment regime created by the Dawes Act was never intended to be a permanent fixture; it was supposed to transition gradually into fee simple ownership by individual

Indians over a period of 25 years, or about one generation. The expectation that Indians could be turned into farmers working their allotted lands, however, did not materialize. Within a decade of passage of the Dawes Act, the policy was adjusted because of concerns about Indians' competency and willingness to manage their land and avoid predation. As late as 1928, there was extreme reluctance to grant fee patents to Indians: the Brookings Institution conducted the first comprehensive investigation of the impacts of fractionation, which became known as the *Meriam Report*, and advocated making Indian landowners undergo a probationary period to prove competence before they would be granted fee simple ownership of their lands.

The early 1900s saw, through a series amendments to the Dawes Act and other new statutes, the government's trusteeship of Indian lands made increasingly a permanent arrangement – this is why Interior's trusteeship is sometimes referred to as an “evolved trust.” The current Indian trust system was not so much established as cobbled together from a series of adjustments to the failing allotment policy – a policy that was gradually abandoned until its statutory foundation was eventually repealed.

Apparently, little thought was given at the time to the consequences of making the heirship of allotments permanent. Lands allotted to individual Indians were passed from generation to generation, just as other family assets pass to heirs. Probate proceedings commonly dictated that land ownership interests be divided equally among every eligible heir, unless otherwise stated in a will. As wills were not, and are not, commonly used by Indians,<sup>1</sup> the size of land interests continually diminished as they were divided and passed from one generation to the next. Today, an original allotted land parcel of 160 acres may have more than 100 owners. While the parcel of land has not changed in size, each individual beneficiary has an undivided<sup>2</sup> fractional interest in the 160 acres.

The 1928 *Meriam Report* formed the basis for land reform provisions that were included in what would become the *Indian Reorganization Act of 1934* (IRA). The original drafts of the IRA included two key titles, one dealing with probate and the other with land consolidation. Because of opposition to many of these provisions in Indian Country, most of these provisions were removed and only a few basic land reform and probate measures were included in the final bill. Thus, although the IRA made major reforms in the structure of tribes and stopped the allotment process, it did not meaning-

<sup>1</sup>In fact, it wasn't until 1910 that Congress declared Indians capable of making wills.

<sup>2</sup>While the ownership is divided, the 160 acres remain “undivided,” in that the size and description of the parcel has not changed. As their interest in the land parcel is shared, no individual or tribal beneficiary owns a specific section of the parcel – together, they all own the entire parcel.





fully address fractionation. The IRA did formally repeal the allotment policy on reservations, but the damage had been done, and its legacy continues today. Thirteen decades and several generations later, the consequences of federal Indian allotments are now manifested through the fractionated ownership of the original allotments.

In 1992, the General Accounting Office (GAO) conducted an audit of 12 reservations to determine the severity of fractionation on those reservations. The GAO found that on the 12 reservations for which it compiled data, there were approximately 80,000 discrete owners, but because of fractionation, there were over a million ownership records associated with those owners. The GAO also found that if the land were physically divided by the fractional interests, many of these interests would represent less than one square foot of ground. In early 2002, Interior attempted to replicate the audit methodology used by GAO and to update the GAO report data to assess the continued growth of fractionation. Interior found that fractionation had exploded by over 40 percent between 1992 and 2002.

As an example of continuing fractionation, consider a real tract identified in 1987 in *Hodel v. Irving* (481 U.S. 704 (1987)):

Tract 1305 is 40 acres and produces \$1,080 in income annually. It is valued at \$8,000. It has 439 owners, one-third of whom receive less than \$.05 in annual rent and two-thirds of whom receive less than \$1. The largest interest holder receives \$82.85 annually. The common denominator used to compute fractional interests in the property is 3,394,923,840,000. The smallest heir receives \$.01 every 177 years. If the tract were sold (assuming the 439 owners could agree) for its estimated \$8,000 value, he would be entitled to \$.000418. The administrative costs of handling this tract are estimated by the BIA at \$17,560 annually.

In 2003, this same tract produced \$2,000 in income annually and was valued at \$22,000. It now has 505 owners but the common denominator used to compute fractional interests has grown to 220,670,049,600,000. If the tract were sold (assuming the 505 owners could agree) for its estimated \$22,000 value, the smallest heir would now be entitled to \$.00001824. The administrative costs of handling this tract in 2003 were estimated by the BIA at \$42,800.

Fractionation continues to become significantly worse and, as pointed out above, in some cases the land is so highly fractionated that it can never be made productive for any individual: the ownership interests are so small it is difficult to obtain owner participation in leasing or use of the land – thus necessitating a default to Interior for all decisions regarding the land. In addition, to manage highly fractionated parcels of land, the government spends more money probating estates, maintaining title records, leasing the land, and attempting to manage and distribute tiny amounts of income to individual owners than is received in income from the land. In many cases the costs associated with managing these lands can be significantly more than the value of the underlying asset.

Today, there are approximately four million owner interests in the 10 million acres of individually owned trust lands, which makes management of trust assets extremely difficult and costly. These four million interests could expand to 11 million interests by the year 2030 unless an aggressive approach to fractionation is taken. There are now single pieces of property with ownership interests that are less than 0.0000001, or 1/10 millionth of the whole interest, which has an estimated value of .004 cent.

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The economic consequences of fractionation are severe. Recent appraisal studies suggest that when the number of owners of a tract of land grows to between ten and twenty, the separate fair market value of each interest drops to zero. Highly fractionated land is for all practical purposes worthless to the undivided interest owner, from an economic perspective. These minuscule interests, however, still hold cultural and historical significance for many individual allottees.

Fractionation of allotted Indian land, and the resultant ballooning number of trust accounts required to collect revenue produced by those lands, have also produced an administrative quagmire for Interior. No single fiduciary institution has ever managed as many trust accounts as the Department of the Interior over the last century. Interior is involved in the management of 100,000 leases for individual Indians and tribes on trust land that encompasses approximately 56 million acres. Leasing, use permits, sale revenues, and interest of approximately \$330 million per year are collected for approximately 300,000 Individual Indian Monies (IIM) accounts, and about \$460 million per year is collected for approximately 1,450 tribal accounts. In addition, the trust currently holds for investment approximately \$2.9 billion in tribal funds and \$420 million in individual Indian funds.

Under current law, probates need to be administered for every account with trust assets, even those 25,000 account holders with balances between one cent and one dollar. The aggregate value of these small balance accounts administered by Interior is about \$5,700, while the average cost for a probate process exceeds \$3,000. Even a streamlined process, costing as little as \$500 per probate, would require almost \$10 million to probate the combined \$5,700 in those accounts.

Unlike most private trusts, which require the payment of administrative costs from the trust corpus, the federal government bears the entire cost of administering the Indian trust. As a result, the usual incentives found in the commercial sector for reducing the number of small or inactive accounts do not apply to the Indian trust. Similarly, the United States cannot adopt many of the tools that States and local government entities have for ensuring that unclaimed or abandoned property is returned to productive use within the local community.

We are now at the point where, absent serious corrective action, millions of acres of land will be owned in such small ownership interests that very few individual owners will ever derive any meaningful financial benefit from that ownership. The ownership of many disparate, uneconomic, small interests benefits no one in Indian country financially and creates an administrative burden that drains resources away from other beneficial Indian programs.

## Early Trust Accounting and Reform Efforts

Recent focus on the *Cobell*<sup>3</sup> litigation might lead one to believe that efforts to reform Indian trust management began after 1996. In fact, efforts to reform the trust pre-date the filing of the class-action lawsuit by several decades. As early as the 1930s, administration experts were warning about the problem of fractionated Indian heirships and the management nightmare waiting over the horizon if fractionation and its attendant accounting problems were not corrected.

In 1938, at a conference on Indian allotted and heirship land problems in Glacier Park, Montana, Commissioner John Collier said, “We have simply gone on, wondering from time to time what to do. We have taken occasion before the budget and before appropriations committees to bring up the problem; to show the waste of millions of dollars a year in these unproductive operations, and the effort taken out of positive human services; and that this type of expense was bound to increase every year.” Another attendee of the same meeting said, “I think we all have in mind three objectives in our discussion of the land program: We want to stop the loss of land; We want to put Indian lands into productive use by Indians; We want to cut down unproductive expenses in administering Indian lands.”

Prior to 1951, trust accounting activities were undertaken at each BIA Agency Office (typically located on Indian reservations), using handwritten ledgers and journals. In 1951,



<sup>3</sup>Originally *Cobell v. Babbitt* (1996-2001), then *Cobell v. Norton* (2001 - 2006), and currently *Cobell v. Kempthorne*.

an accounting system designed and approved by GAO was implemented in BIA Area (Regional) Offices. All account types – IIM as well as tribal – were integrated in this system. GAO released reports in 1952 and 1955 describing management concerns with the systems. Beginning in 1965, BIA began centralizing its accounting functions on a mainframe computer in Albuquerque, New Mexico. The conversion to the new computer system was completed in 1967, although a duplicate set of tribal fund “control accounts” was maintained in Albuquerque. A new automated accounting system was developed and implemented in 1968 and modified in 1974.

In 1972, all Tribal Treasury appropriation accounts were consolidated into a single Treasury account (about 1,100 accounts were combined). Prior to this date, Treasury maintained separate accounts for each tribal trust fund, typically with separate accounts for principal and interest. These dual sets of accounts would generally make it easier to detect differences; for example, if Treasury received a cash receipt that was not posted by BIA, it would be easy to isolate the difference – a variance would show up between the specific account on BIA’s books and the specific account on Treasury’s books. Such differences were not as easy to identify when the accounts were collapsed into one account. Nevertheless, consolidation occurred to alleviate the administrative burden of Treasury maintaining dual accounts.

Throughout the twentieth century, there were periodic attempts to improve the accounting system, but it is fair to say that there was no comprehensive, sustained effort to reform Indian trust management or address fractionation until the mid-1990s, for various reasons, the most significant of which was insufficient funding.

### *Misplaced Trust: Critical Findings*

In 1982, GAO once again issued reports critical of Indian trust management systems. In the late 1980s, Congress convened a series of hearings to address long-standing concerns with Indian trust management. About the same time that Congressional authorizers were examining management problems, appropriators were also trying to find solutions. In 1987, after a series of oversight reports by GAO, a supplemental appropriations bill prohibited the outsourcing of trust

fund services to a commercial bank until the trust funds had been reconciled and audited. In 1988, 1989, and 1990, Congress continued the prohibition. The FY 1990 appropriations language further required that the reconciliation results be certified by an independent party.

The findings of various hearings were eventually summarized in a report submitted by the Environment, Energy and Natural Resources Subcommittee of the House Committee on Government Operations in April 1992 – a report which was scathing in its criticisms.

The specific deficiencies detailed in *Misplaced Trust* will be described later, but the primary and pervading criticism concerned Interior’s general “failure to comply with Congressional directives” and recommendations from the Inspector General, Office of Management and Budget, and independent public accounting firms. In short, the report accuses Interior of not taking the problems with the Indian trust management seriously.

### *Defining the Trust Responsibility*

One of the basic problems with Indian trust management has always been the absence of a primary statute creating Interior’s trust duty to Indians, and the lack of a trust document *per se*. There is no explicit delineation of a trust duty in the Constitution, only a delegation of power to Congress to regulate commerce with the Indian tribes (Art. I, §8, cl. 3). The federal government’s trust responsibility arises out of a patchwork of statutes, regulations, executive orders and case law that outlines the responsibilities of the federal government as trustee in relation to tribes and individual Indians, and the resources they own.

Case law has been the most important authority for determining the extent to which the federal government has a trust duty to Indians, and for describing the contours of that duty. Over the course of time, in seminal cases such as *Cherokee Nation v. The State of Georgia* (1831), *United States v. Kagama* (1886), *United States v. Mitchell (I)* (1980), and *United States v. Mitchell (II)*<sup>4</sup> (1983), a consensus developed that the “course of dealings” between the United States government and Indian tribes had created a fiduciary obligation

<sup>4</sup>Other important cases that further described the contours of the trust duty were: *Nevada v. United States*, 463 U.S. 110 (1983); *Lincoln v. Vigil*, 508 U.S. 182 (1993); *United States v. Navajo Nation* 537 U.S. 488 (2003).



on the part of the United States – even in the absence of a trust document or statutory language.

In addition to the cases cited above, there are numerous other cases pertaining to the Indian trust. In *Seminole Nation v. United States*, 316 U.S. 286 (1942), for example, the Supreme Court said that the government in its dealings with Indians is charged with “moral obligations of the highest responsibility and trust” and should be “judged by the most exacting fiduciary standard.”

The problem is determining the *specific* duties that fill out the general fiduciary duty with respect to tribal and Indian lands, rights and resources. As Interior Solicitor Krulitz stated in 1978, “That the United States stands in a fiduciary relationship to American Indian tribes, is established beyond question. The specific scope and content of the trust responsibility is less clear.”

The most comprehensive legislative statement of specific Secretarial duties in regard to the trust responsibility of the United States was finally set out in the 1994 Act, a statute intended to address the problems identified in *Misplaced Trust*. The 1994 Act mandated a number of things, all of them intended to reform what Congress judged to be a failed management system. In addition to creating the Office of Special Trustee for American Indians to oversee and coordinate trust reforms within Interior, the 1994 Act articulated specific accounting duties related to the Indian trust.

Among those duties was a requirement to issue a “periodic statement of performance” for every tribal and IIM account, identifying:

- ◆ the source, type, and status of the funds;
- ◆ the beginning balance;

- ◆ the gains and losses;
- ◆ receipts and disbursements; and
- ◆ the ending balance.

In 1995, Interior began the task of addressing the problems identified in *Misplaced Trust* and fulfilling the duties articulated in the 1994 Act. This was a mammoth undertaking, requiring millions of dollars of appropriations and thousands of man-hours. A threshold step in this process was reaching a consensus about the precise scope of the trust responsibility. The duties contained in the 1994 Act were non-exhaustive, so Interior looked to a variety of other sources for guidance.

### Early Reforms: 1995-2000

After passage of the 1994 Act, the period from 1995 to 2000 saw several important administrative and programmatic changes in Indian trust management. In 1995, the House Appropriations Committee expressed its intention that all financial trust functions be moved from BIA to the newly created OST. This transfer was effected in February 1996 with Secretarial Order #3197, which moved the Office of Trust Funds Management (OTFM) to OST. The BIA retained, and still retains, the responsibility to manage non-financial trust assets.

In 1997, Special Trustee Paul Homan submitted to Congress, in accordance with the 1994 Act, a strategic plan for trust reform. Secretary Babbitt amended the Strategic Plan and eventually replaced it with the High Level Implementation Plan (HLIP).

The HLIP was comprised of eleven subprojects to remediate specific trust functions:

- ◆ OST’s IIM administrative data cleanup
- ◆ BIA data cleanup and management
- ◆ Probate backlog
- ◆ BIA appraisals
- ◆ Trust Fund Accounting System (TFAS)
- ◆ Trust Asset and Accounting Management System (TAAMS)
- ◆ Mineral Management Service’s systems reengineering
- ◆ Records management and retention
- ◆ Policies and procedures
- ◆ Training
- ◆ Internal controls



The list of subprojects was later expanded to include cadastral surveys and addressing the issues identified by the Court in the *Cobell* case: collection of missing information from outside sources; retention of IIM-related trust documents; computer and business systems architecture framework plan; and, workforce planning.

One of the most significant accomplishments during this early period was the conversion to a commercial off-the-shelf (COTS) trust accounting system. In March 1998, OST awarded a contract to SEI Investments to use its Trust 3000 COTS trust accounting system, known as the Trust Fund Accounting System (TFAS), that provides collection, accounting, investing, disbursing, and reporting functions.

TFAS replaced a module in BIA's Integrated Records Management System and two financial systems, which were not specifically designed to perform trust accounting functions. Conversion to TFAS began in August 1998 and IIM and tribal accounts were completely converted by May 2000.

TFAS is an accounting and investment system that allows automated trade settlements, automated payments of financial asset income, daily securities pricing, scheduled disbursements and automated reconciliation. It also enables the automated production of account statements for individual Indians and tribal account holders.

Toward the end of this period, the Department formalized the principles that would be the heart of all initiatives aimed at improving overall trust asset management, and would provide the guidelines for developing trust processes and systems for the 21st century. The Secretary of the Interior's Trust Principles were first issued by Secretary Babbitt in April 2000 with Secretarial Order 3215, and were eventually incorporated in the Departmental Manual.

**Trust Principles.** It is the policy of the Department of the Interior to discharge, without limitation, the Secretary's Indian trust responsibility with a high degree of skill, care, and loyalty. The proper discharge of the Secretary's trust responsibilities requires that persons who manage Indian trust assets:

- A. Protect and preserve Indian trust assets from loss, damage, unlawful alienation, waste, and depletion;
- B. Assure that any management of Indian trust assets that the Secretary has an obligation to undertake promotes the interest of the beneficial owner and supports, to the extent it is consistent with the Secretary's trust responsibility, the beneficial owner's intended use of the assets;
- C. Enforce the terms of all leases or other agreements that provide for the use of trust assets, and take appropriate steps to remedy trespass on trust or restricted lands;
- D. Promote tribal control and self-determination over tribal trust lands and resources;
- E. Select and oversee persons who manage Indian trust assets;
- F. Confirm that tribes that manage Indian trust assets pursuant to contracts and compacts authorized by the *Indian Self-Determination and Education Assistance Act*, 25 U.S.C. 450, et seq., protect and prudently manage Indian trust assets;
- G. Provide oversight and review of the performance of the Secretary's trust responsibility, including Indian trust asset and investment management programs, operational systems, and information systems;
- H. Account for and timely identify, collect, deposit, invest, and distribute income due or held on behalf of beneficial owners;
- I. Maintain a verifiable system of records that is capable, at a minimum, of identifying: (1) the location of the asset, the beneficial owners, any legal encumbrances (i.e., leases, permits, etc.), the user of the resource, the rents and monies paid, if any, and the value of trust or restricted lands and resources; (2) dates of collections, deposits, transfers, disbursements, third party obligations (i.e., court ordered child support, judgments, etc.), amount of earnings, investment instruments and closing of all trust fund accounts; (3) documents pertaining to actions taken to prevent or compensate for any diminishment of the Indian trust assets; and (4) documents that evidence the Department's actions regarding the management and disposition of Indian trust assets;

- J. Establish and maintain a system of records that permits beneficial owners to obtain information regarding their Indian trust assets in a timely manner and protect the privacy of such information in accordance with applicable statutes;
- K. Invest tribal and individual Indian trust funds to make the trust account reasonably productive for the beneficial owner consistent with market conditions existing at the time the investment is made;
- L. Communicate with beneficial owners regarding the management and administration of Indian trust assets; and
- M. Protect treaty-based fishing, hunting, gathering, and similar rights of access and resource use on traditional tribal lands.

Space does not permit us to catalogue all the other reforms that were accomplished during this period, but some of the more important ones include:

- ◆ Conversion to Treasury’s Electronic Certification System;
- ◆ Implementation of Automated Clearing House with Treasury, to allow for direct deposit of funds to IIM accounts;
- ◆ Initiation of annual audits;
- ◆ Completion of IIM Desk Operating Procedures;
- ◆ Establishment of daily cash reconciliations, as well as policies and procedures for reconciliations, on-line reconciliation with Treasury and timely reporting to Treasury;
- ◆ Issuance of the first investment policy;
- ◆ Conversion to a centralized financial securities custodian;
- ◆ Distribution of quarterly account statements to beneficiaries;
- ◆ Development of an IIM reconciliation process to identify and stabilize differences between IIM assets and liabilities;
- ◆ Identification of known problems within the IIM assets and liabilities;
- ◆ Initiation of centralized processing to ensure standardization; and
- ◆ Initiation of BIA/OST interagency handbook.

## Later Reforms: 2001-2006

In 2001, newly appointed Interior Secretary Norton issued a Secretarial Order directing the Special Trustee to hire a

management consulting firm to provide a comprehensive independent assessment of the effectiveness of Interior’s ongoing trust reform efforts. The Secretary wanted to be assured that all the various projects associated with trust reform were moving forward in a coordinated fashion. While there had been undeniable progress made in the previous six years, there had also been rough spots. The most notable problem involved development of TAAMS, a software development project that had been plagued with overly-optimistic timeframes, due to incompatible customer requirements, resulting in cost overruns and impaired functionality.

OST contracted with EDS to provide the independent assessment. After six months of analyzing the reform efforts, EDS concluded – and Interior concurred – that trust reform “lacked a vision or strategy.” While there had been intense reform efforts on many fronts, those efforts had focused on discrete, tactical elements with no big picture to inform and coordinate the projects and resolve disagreements among trust managers over priorities. EDS also concluded that trust reform lacked an “overarching fiduciary duty focus.”

The most important changes that EDS recommended were:

- ◆ Develop a Fiduciary Duty focus and strategy;
- ◆ Create a Beneficiary Approach to trust activities and service delivery;
- ◆ Develop an Enterprise Architecture that would facilitate fiduciary duties and the beneficiary approach;
- ◆ Create an organizational model with adequate resources to support the trust business model.

***“To ensure that the strategy fully considered tribal concerns, Interior assembled a Joint Task Force of tribal and government representatives.”***

In order to address the strategic deficiencies identified by EDS, beginning in January 2002, Interior undertook a comprehensive reengineering effort using a collaborative approach between bureaus with trust responsibility. These bureaus were BIA, Bureau of Land Management (BLM), Min-

erals Management Service (MMS), Office of Hearings and Appeals (OHA), and OST. This effort differed from prior trust reform efforts because it first sought to develop an overall strategy that would link individual trust reform projects and those agencies within Interior primarily responsible for their implementation. To ensure that the strategy fully considered tribal concerns, Interior assembled a Joint Task Force of tribal and government representatives.

The first step in the reengineering effort was the “As-Is” project, which involved holding meetings across the country, interviewing Indian trust managers and documenting findings, in order to gain a comprehensive understanding of the way major trust processes were currently being performed. This phase of the project took over a year to complete and required hundreds of interviews.

The next phase of the effort, which began in 2003, was the “To-Be” project, which redesigned the business processes documented in the “As-Is” project to utilize best practices. To help guide the “To-Be” project, Interior developed the Comprehensive Trust Management (CTM) Plan to define an approach for improving performance and accountability in the management of the trust. The CTM provides the overall trust business goals and objectives for Interior to achieve its fiduciary trust responsibilities.

The CTM identified three business lines:

1. *Beneficiary trust representation.* Representing the beneficiaries in all matters related to the trust, which requires independent representation on behalf of the beneficiaries.
2. *Trust financial management.* Managing the receipt, investment, and disbursement of funds generated by Indian assets, as well as record keeping and reporting on fiduciary trust management activities and accounts.
3. *Stewardship and management of land and natural resources.* Managing the land and natural resource assets of the trust.

Each business line represents a distinct group of products or services for comprehensive trust management and encompasses related processes, products, and services within its scope. Each business line consists of common business processes focused on a particular activity. Defining comprehensive trust management in terms of business lines is critical for several reasons, including:

- ◆ Determining the major segments of the business provides the framework for designing the new organizational structure.
- ◆ Managing the expectations of both beneficiaries and staff begins with clearly defining the business of comprehensive trust management.
- ◆ Defining business lines provides a baseline for developing standard business processes and systems, as well as effectively aligning the organization with the business model.

In essence, the CTM became the touchstone whereby the adequacy of “As-Is” business processes were judged. Where existing processes did not satisfy the demands of the CTM in terms of efficiency, fulfillment of fiduciary duties, or beneficiary focus, they were redesigned.

The end result of this strategic, collaborative reengineering process was the Fiduciary Trust Model (FTM). The FTM is designed to improve beneficiary services for tribes and individuals, as well as enhanced management of ownership information, land and natural resources assets, trust funds assets, Indian self-governance and self-determination, and administrative services. When fully implemented, the FTM transforms the current trust business processes into more efficient, consistent, integrated and fiscally responsible business processes that meet the needs and priorities of the beneficiaries and improve the working environment of our employees.

In accordance with the recommendation of EDS, the main emphasis of the FTM is to bring a *beneficiary focused approach* to Indian trust management. Because Indian trust management previously had been treated like any other government program, there had been too little recognition of the fiduciary duty to manage assets on behalf of beneficiaries. This resulted in a gradual distancing of the trustee from the beneficiary. The FTM attempts to lessen this distance with programs and personnel that ensure that meeting the needs of beneficiaries is the driving force in how business is conducted. A major component of this new focus is the addition of Fiduciary Trust Officers (FTOs) and Regional Trust Administrators (RTAs) to the staff of OST. FTOs are the primary points of contact for trust beneficiaries at the agency level – allowing BIA staff to devote more time to processing transactions, leasing land, ensuring lease compliance, pre-

paring probates for adjudication, and partnering with tribal governments to resolve reservation issues. OST also employs six RTAs with extensive backgrounds in fiduciary trust management. Each RTA is responsible for two or more regions, supervises FTOs in those regions, and coordinates trust activities with BIA regional directors.

One of the side benefits of reengineering trust reform with a beneficiary focus was the emergence of trust management reforms not directly tied to statutory demands or Court orders. The best example of this is the Trust Beneficiary Call Center. In December 2004, OST established a centralized call center at its headquarters office in Albuquerque, New Mexico. Through a toll-free telephone number, the call center provides timely responses to beneficiaries' questions and allows them to access account information. Call center operators and staff receive training and access to various trust data systems to enable them to better answer questions about beneficiaries' concerns. If a beneficiary's question cannot be answered immediately by the Call Center representative, the representative refers the question to an FTO, generally co-located at the BIA field agencies, to research and respond accordingly. Calls and referrals are tracked in an automated tracking system. After establishing the call center, calls were redirected from telephone numbers at BIA field agencies. The Trust Beneficiary Call Center has helped relieve the workload from OST and BIA staff in the field. As of December 2006, the call center had received over 200,000 calls from beneficiaries.

One longtime reform project that greatly benefited from the FTM reengineering was TAAMS.<sup>5</sup> This software development project had encountered many problems and suffered a number of setbacks in the early stages of trust reform. The fundamental problem with TAAMS was that it was attempting to automate a set of business processes that were not yet standardized or validated. In addition, TAAMS was originally an "off-the-shelf" system that was modified to accommodate local business processes in twelve different regions. Through the exercise of the "As-Is" analysis, the inconsistencies and inadequacies of the existing business model were revealed and targeted for correction. After the FTM imposed discipline on the overall process, certain modules of the TAAMS software were salvaged from the earlier TAAMS software.



BIA's TAAMS land title module contains both current and historical titles, with some of these historical titles in the system dating back to the original land grant. Data in the Land Record Information System (LRIS) was fully converted to the TAAMS software in January 2006. The TAAMS leasing module tracks leases and other encumbrances of Indian assets. BIA, with continuing assistance from OST, is currently validating and converting encumbrance data from BIA's multiple legacy systems to TAAMS. OST is interfacing TAAMS with TFAS data so that, for the first time, land title, encumbrance and financial data are operating in a fully integrated system environment. As each region is converted to the new systems, Interior provides beneficiaries with asset statements that identify the source of the funds, and a listing of assets owned in that region and any active encumbrances, as required by the 1994 Act. Prior to the conversion, the statements that beneficiaries received only included information on account balances and account transactions. As of the end of FY 2006, nearly 90% of all income-producing trust land allotments had been converted.

A major criticism contained in *Misplaced Trust* concerned inaccurate land ownership records. This problem is being addressed through the TAAMS conversion process. As encumbrance data are converted into TAAMS, OST is assisting the BIA with verifying, and if necessary, correcting the completeness and accuracy of the TAAMS title and leasing information for Indian lands.

<sup>5</sup>In December 1998, Interior awarded a contract to Artesia to develop a centralized system with two components for managing Indian trust assets: the TAAMS land title system and the leasing module. Over the years, Artesia was bought out by several contractors. Currently, the TAAMS contract is with CGI-AMS.



As part of the verification process, for trust income producing tracts, the BIA, with assistance from OST and contractors, compares the TAAMS data with the data contained in the BIA's legacy realty systems. Potential errors identified through this comparison are resolved by comparing the TAAMS title and legacy system data to source documents to: (1) validate the accuracy of the TAAMS data or (2) correct the data. This verification for trust income producing tracts is scheduled to be completed BIA-wide by September 30, 2007. The verification of data for all non-trust income producing tracts is scheduled to be completed by December 2009.

The various reforms implemented in the conversion to the FTM are too numerous to itemize, but a few of the more important changes – all of them either completed or nearing completion – merit special mention.

One of the most significant improvements is the implementation of a Lockbox operation. In 2005, to improve the efficiency and timeliness of collecting trust fund remittances while, at the same time, minimizing the risk of loss or theft, OST implemented a Lockbox operation that centralized the collection of remittances for land use through a single remittance-processing center. Under Phase I of the implementation, all trust fund remittances are sent to the processing center in Prescott, Arizona, for immediate processing, imaging and deposit into the U.S. Treasury. Previously, personnel at BIA agencies collected trust remittances locally, and processed and prepared the remittances for deposit.

Phase II of this project is to have collections and distributions automated. Because implementation requires the validation of all land title and leasing data in TAAMS, full automation of collections and distributions will commence with the completion of the regional conversions to TAAMS, scheduled for September 2007. In addition, OST has completed its desktop procedures for handling the receipt of trust funds, and BIA is completing its desktop standardization procedures.

Early in 2000, OST established a partnership with the National Archives Records Administration (NARA) for Indian trust records storage and began moving records to facilities in Lee's Summit, MO, and Overland Park, KS. In October 2002, a contract was established with Labat Anderson to in-

dex inactive Indian records. In September of the following year, Interior and NARA signed an agreement to establish the American Indian Records Repository (AIRR) in Lenexa, KS. AIRR was opened in May of 2004, and trucks began to roll out from other locations across the country to bring boxes of Indian records to AIRR. Ultimately, 44,000 boxes came from Lee's Summit and 50,000 boxes came from Albuquerque. Inactive records were also collected from BIA agencies across the country.

Today, more than 150,000 indexed boxes containing approximately 400 million pages of records are stored at AIRR and information from each box is entered into an electronic, searchable database. A box tracking system was created that allows any box in the facility to be located within five minutes. The facility continues to receive boxes at the Annex (where they are indexed) from BIA agencies and OST offices in the field as the offices clear out their inactive records. The only BIA and OST Indian records that are not stored at AIRR are those that have become legal property of the National Archives and Records Administration, active records at Interior offices, or some records retained at BIA agency offices.

***“Today, more than 150,000 indexed boxes containing approximately 400 million pages of records are stored at AIRR...”***

Another crucial reform has been the development of a comprehensive risk management program. In 1999, OST entered into a contract to develop and refine the existing risk management program for establishing management controls to monitor and evaluate the effectiveness of OST's trust operations. The original risk management product was a stand-alone compact disk application that provided an assessment tool to evaluate OST's business operations. Since then, a Web-based risk management tool, the RM-Plus tool, has been developed to facilitate data collection and reporting.

This tool has been made available to all bureaus and offices with Indian trust responsibilities. Additional revisions have and continue to be made to the RM-Plus tool in response to the new requirements in the Office of Management and Budget's Circular A-123.

The Indian Trust Appraisal Request System (ITARS) is also due for completion in 2007. This new system will centralize the appraisal process and track appraisal requests across Indian country, including the period of time it takes to process a request. OST completed pilot testing of the new system in October 2006. Similarly, a new probate case management and tracking system is under development. ProTrac, a modified off-the-shelf software program, was developed for use by BIA, OST, and the Office of Hearings and Appeals to manage and track probate cases from initiation to closing.

Over the next few years, additional reforms will further streamline Indian trust asset management. Interior will replace the oil and gas distribution system within BIA's Integrated Records Management System (IRMS) that tracks oil and gas revenue from Indian lands. The new system will interface with TFAS and the Minerals Management Service's system, and is estimated to be online by December 2009.

Interior is also exploring the use of either Land Title Mapper or Interior's National Integrated Lands System for standardization purposes. The systems use satellite imagery and geographic information systems to link the data in the TAAMS Title module with the physical site. Current project forecasts indicate early 2010 for completion. This will allow the BIA to provide beneficiaries with visual references to ownership interests and encourage more beneficiary involvement in resource development and management.

## Before and After *Misplaced Trust*

Having completed a quick survey of the various trust management reforms accomplished or nearly accomplished since the passage of the 1994 Act, let us now return to our reference point: 1992.

A central criticism of *Misplaced Trust* was that Interior failed to heed recommendations made by the Price Waterhouse accounting firm in 1984. After tracking the reforms implemented since the 1994 Act, it is instructive to examine those recommendations in detail. Price Waterhouse recommended that Interior:

1. Define responsibilities of trust fund financial management officials;
2. Prepare an up-to-date policy and procedures manual for the central office and agency offices;

**Corrected:** The responsibilities of trust fund financial management officials have been defined and documented; trust functions are guided by comprehensive written policy statements, and officials are held accountable for fulfilling those responsibilities. Professional fund managers are now employed by OST to manage investments in the tribal and individual fund accounts. OST has a dedicated program area that conducts continuous evaluation of policies and procedures to ensure their efficacy for trust business operations, and provides recommendations for new and modified policies.

3. Segregate the tasks of investment and management and security custody;

**Corrected:** The investment and account management functions are segregated. Financial trust securities managed by OST are held by a contracted financial custodian or by the U.S. Treasury. Investment staff does not have physical access to any trust assets, which are held separately and cannot be accessed, except through tight internal controls.

4. Establish an on-going audit function;

**Corrected:** Outside audits of the trust funds are conducted on an annual basis.

5. Implement a single trust accounting system; implement an improved system for tracking expected income; implement a deposit reporting service; use a balance reporting service;

**Corrected:** TFAS, the same accounting system used by eight of the top fifteen commercial trust operations, is the single trust accounting system utilized by OST, and has been the system of record since 2000.

6. Modify cash deposit procedures by establishing more local depositories;

**Corrected:** In 1993-94, OST implemented several additional local depositories. These were banks that already had Treasury General Accounts (TGA), or banks for which we

established new TGAs, for the purpose of improving deposit time. These have now been replaced by implementation of the centralized commercial lockbox process.

7. Establish fund concentration accounts in a major commercial bank;
8. Consider a shift of BIA disbursement activities to a commercial bank.

On the last two items, it should be noted that when Interior explored the possibility of shifting some trust accounting functions to a commercial bank, there was sharp criticism from Rep. Synar's Subcommittee – in fact, that criticism is contained in *Misplaced Trust*. There was additional opposition from Indian Country since any attempt at moving these functions to a commercial institution would increase costs to the Department or beneficiaries.

As for the other recommendations, almost every one has now been adopted by Interior as part of the reforms implemented since 1995.

A separate examination and cataloguing of long-term problems with BIA's administration and management of the Indian trust fund (also referenced in *Misplaced Trust*) is from a report submitted to the Subcommittee by GAO in 1991. GAO noted the follow system weaknesses:

1. Inadequate systems to account for and report trust fund balances;
2. Inadequate controls over receipts and disbursements;
3. Absence of periodic, timely reconciliations to assure accuracy of accounts;
4. Inability to determine accurate cash balances;
5. Failure to consistently and prudently invest trust funds and/or pay interest to account holders;
6. Inability to prepare and supply account holders with meaningful periodic statements of their account balances;

7. Absence of consistent, written policies and procedures for trust fund management and accounting; and,
8. Inadequate staffing, supervision, and training.

Again, every one of the identified problems has been addressed by Interior. Many of these identified problems, of course, mirror the 1984 Price Waterhouse recommendations, but special attention should be paid to the fifth item, the investment of trust funds.

OST's Policy Manual contains a comprehensive investment policy that has been in place since 1996. The Investment Policy addresses investment authorities, investment objectives, acceptable portfolio investments and practices, unacceptable portfolio investments and practices, and provisions for exceptions. All financial trust assets are invested prudently and consistently, and interest earned on investments is credited to account holders on a daily basis. Many tribes now have professional investment advisors who work closely with OST investment managers to discuss tribes' budget needs and their investment requirements.

***“Again, every one of the identified problems has been addressed by Interior...”***

There is extensive discussion in *Misplaced Trust* of BIA's failure to establish a trust fund loss policy. OST now has a comprehensive written Trust Funds Loss Policy in place which is revised periodically – the current version was issued in 2002. The policy details the procedures to be followed in notifying a tribe or individual Indian if a trust fund loss is identified, and the circumstances in which a loss is reimbursable.

One criticism contained in the *Misplaced Trust* that is somewhat dated is BIA's failure to comply with the Brooks Act in its data processing purchases and contracting. The Brooks Act was enacted in an era when all government data processing was very centralized. It was repealed by the *Information Technology Management Reform Act of 1996* (ITMRA), which allows for much more decentralized acquisition of data processing equipment and services. All Interior data processing acquisitions are in compliance with ITMRA.

## Cobell Lawsuit

While the contrasts between the trust management system described in *Misplaced Trust* and the current system are certainly striking, there is another useful reference point for measuring how far Indian trust management reform has progressed in a decade.

On June 10, 1996, Elouise Cobell and four other named plaintiffs filed suit against the federal government, claiming mismanagement of IIM accounts and breach of trust. The case has now lasted more than a decade, and numerous Court opinions have been issued. It is beyond the scope of this report to examine all the ramifications of the *Cobell* case, but it is instructive to look at one filing from a relatively early stage of the case. In 1999, Interior conceded that it was in breach of its trust duties in certain respects, and filed a factual stipulation to that effect.

Each one of those stipulations has now been corrected:

1. Stipulation: Interior cannot provide all account holders with a quarterly report which provides the source of funds, and the gains and losses.

**Corrected:** Since 2000, Interior has been providing all IIM account holders with quarterly statements (tribes generally receive monthly statements) of the balances for their accounts. If an account has no activity, and is worth less than \$1, Congress has directed that Interior provide beneficiaries with a yearly account statement instead of a quarterly statement. In 2005, because of new trust technology and procedures, Interior began distributing account statements to beneficiaries that include additional information regarding the source of funds, encumbrance information (who is leasing their trust property, duration of the lease and payment terms) and a listing of the trust property they own with the locations of those properties. Today, account statements also describe the impact of gains and losses on interest rates. [All regions are scheduled to be converted by the end of FY 2007.]

2. Stipulation: Interior does not adequately control the receipts and disbursements of all IIM account holders.

**Corrected:** See 4. below.

3. Stipulation: Interior's periodic reconciliations are insufficient to assure the accuracy of all accounts.

**Corrected:** See 4. below.

4. Stipulation: Although Interior makes available to all IIM account holders the daily balance of their account and can provide periodic statements of the account balances, the Department does not provide all account holders periodic statements of their account performance.

**Corrected:** All business processes related to receipting and disbursing are now documented and rigorously enforced with stringent internal controls. TFAS is the same commercial "off-the-shelf" trust funds accounting system that is used by eight of the top fifteen major private sector trust institutions across the nation. This comprehensive system is able to interface with all elements of trust funds management, including the BIA land title and leasing modules, the Lockbox facility, and financial asset pricing services. The system facilitates the investing of collected funds and the daily pricing of securities to ensure beneficiary funds are quickly made productive. Lockbox, TAAMS and TFAS also automate collections, and make disbursements to beneficiaries more efficient. For the first time, TFAS allows OST to provide scheduled disbursements for Indian trust beneficiaries. In the past, scheduled payments (this can include budgeted payments for restricted access accounts) would have to be encoded by hand. TFAS also provides tools to reconcile daily financial activity at Treasury. On a monthly basis, OST reconciles financial investment holdings on TFAS to the custodian holding the securities.

TFAS can provide daily balances and regular statements to all account holders for whom we have current addresses.

5. Stipulation: Interior does not have written policies and procedures for all trust fund management and accounting functions.

**Corrected:** As part of the FTM reengineering, trust fund management functions were documented and written policies were established for them. These policies are updated periodically, and employees who perform trust functions are held accountable for abiding by the established policies.

6. Stipulation: Interior does not provide adequate staffing, supervision and training for all aspects of trust fund management and accounting.



**Corrected:** Interior now has an extensive training program for all trust functions, including training conducted by the Cannon Financial Institute, which can lead to certification in fiduciary management. Hundreds of Interior employees have completed this fiduciary trust training. In 2006, Indian Affairs opened a new state-of-the-art National Indian Programs Training Center (NIPTC) in Albuquerque, New Mexico. For the first time in the history of the Indian trust, tribal and individual trust beneficiaries have staff available who are specifically focused on trust asset assistance. A cadre of Regional Trust Administrators and Fiduciary Trust Officers – all with either previous professional experience in trust law and asset management, or extensive training in fiduciary trust matters – are working at BIA agencies in collaboration with other Interior agencies responsible for executing the Secretary’s trust responsibilities.

7. Stipulation: Interior’s record keeping system is inadequate.

**Corrected:** Not only is Interior’s record keeping system now adequate, in many respects it is considered exemplary. In addition, Interior’s preservation and storage of records at the AIRR is considered to be the best available.

## Conclusion: A Decade of “Resolute Corrective Action”

*Misplaced Trust* concluded that BIA had “repeatedly failed to take resolute corrective action to reform its long-standing financial management problems.” In the thirteen years since passage of the 1994 Act, Interior has clearly demonstrated a pattern of resolute corrective action. There is a night-and-day difference between 1992-era Indian trust management and the current program. Interior is currently fine-tuning business processes that were not even contemplated in 1992, much less implemented. By any measure, substantial and meaningful reforms have been accomplished.

While the improvements in trust management are undeniable, an obvious question is, “What took so long?” The problems associated with Indian trust management were readily apparent decades before *Misplaced Trust* was published, and were acknowledged to exist in report after report issued by GAO and Interior itself. Why was the problem left uncorrected for so long, and what change finally allowed real reform to take place?



There are many theories as to why Indian trust management was slow to reform, but at least part of the problem was a lack of statutory clarity about the precise contours of the trust duty. Everyone understood that a fiduciary obligation of some sort existed, but in the absence of statutory guidance about enforceable duties, and informed by sometimes conflicting case law, the Indian trust became regarded as just another government program – and like other programs, subject to the vicissitudes of appropriations. In short, the Indian trust was accorded the level of care that could be afforded, not the highest level of care normally demanded of a fiduciary.

By the time the *Mitchell* decisions (1980, 1983) identified enforceable duties incumbent on the trustee, institutional inertia had already set in, and Congress continued to fund Indian trust management at historical levels.

The 1994 Act marked a turning point, not only because it articulated statutory trust duties and created a separate office charged with overseeing trust reform, but also because it was soon accompanied by increased appropriations targeted at Indian trust management reforms.

Although 1995 marked the beginning of a serious, sustained effort to reform the trust, improvements were not automatic or easy to accomplish – trust reform required more than simply summoning the political will to get serious about doing the job. Immediately after passage of the 1994 Act, Interior engaged in what might be described as an exploratory period. Some initial reforms were successful; others failed or took much longer to accomplish than was expected. The mixed results can be attributed, in part, to the lag time involved in assembling the necessary institutional expertise. As of 1994, there was only one senior manager at Interior who had exten-

sive training and experience in managing major commercial trust operations. Another reason for the delay in reform was simply that no one knew what a properly functioning Indian trust program would look like: there is no other trust like it in the world. Interior could draw on the expertise of commercial trust operations, but this was of limited utility because of the unusual set of challenges associated with the Indian trust:

- ◆ The Indian trust is unique in the amount of land under management, the large number of small land ownership interests, probate and title change requirements, and the sovereignty of the beneficiary community;
- ◆ The need for consent of multiple owners to the leasing or sale of land;
- ◆ A large number of small accounts, below the threshold normally managed in the commercial trust environment, exist within the Indian trust. In many cases, the value of the trust account is less than the cost of its administration, and the cultural heritage associated with the land held in trust is sometimes more important to the beneficiary than its monetary worth;
- ◆ Lack of a uniform probate code;
- ◆ The dependence on annual appropriations from Congress to fund trust activities, rather than on trust revenues;
- ◆ Trust agreements or trust documents do not exist for each tribal account or each IIM account, which in a commercial trust would provide specific guidance in management of the trust assets;
- ◆ By law, the Indian trust is limited to investments in government or government-backed securities;
- ◆ Changes in tribal administrations and priorities will often require modified investment strategies.

A final factor in the delay was institutional inertia. The sheer scope of reforms required to address the myriad trust management problems made it difficult even to begin the process. Small-scale, targeted reforms were never going to fix the system; only a complete overhaul could make Indian trust management whole – and initiation of such radical reforms within government agencies is always problematic.

## Decisions About the Future

Interior is proud of its accomplishments to date in reforming Indian trust management, even though they have taken over a decade to implement. The program is not perfect; there is

still work to be done with many challenges ahead, but in 2007, Indian trust management is professional, accountable, and can withstand close scrutiny. Compared to the program described by *Misplaced Trust* in 1992, it is hardly recognizable.

It is interesting to compare the 1991 GAO report cited in *Misplaced Trust* with the most recent report from GAO, *The Office of the Special Trustee Has Implemented Several Key Trust Reforms Required by the 1994 Act, but Important Decisions about Its Future Remain* (December 2006). Whereas the 1991 report is a litany of failures and shortcomings, the 2006 report is a chronicle of accomplishments. The 2006 report describes how OST has either completed all the key reforms required by the 1994 Act, or will complete them in the near future.

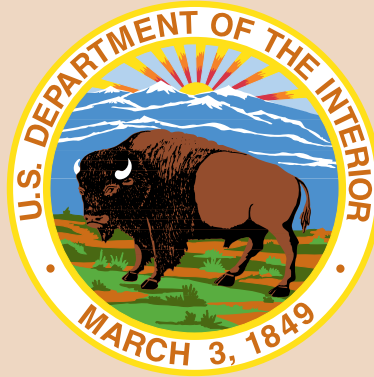
The 2006 GAO report, however, also raises a crucial question: what will Indian trust management look like in the future? The 1994 Act stipulates that the Special Trustee is the one who will make the final recommendation to Congress on whether OST will continue or, if its functions will be absorbed into the permanent bureaus and offices of Interior, how and when that will happen. Whatever decision the Special Trustee makes, he or she is duty-bound to make the recommendation that is in the best interest of Indian trust beneficiaries.

Beyond the question of OST's future is a more fundamental set of questions about the worth of the Indian trust itself. For some time the pressing issue was whether Interior *could* manage the Indian trust, with its myriad complexities and challenges. That question having been answered in the affirmative, the next question is whether Interior *should* continue to manage Indian trust assets – whether the very concept of Federal trustee for Indian assets makes any sense in the 21st century. The creation of the Indian trust was predicated on a 19th century belief in the incompetence of Indian tribes and individuals to manage their own affairs. If we now find that belief to be antiquated and reprehensible, what is the philosophical foundation for the continued existence of the Indian trust? Many will argue that there remains a fiduciary duty imposed by treaty obligations which will endure in perpetuity. But does this treaty-based trust obligation require spending millions of taxpayers' dollars to manage and administer lands rendered worthless by fractionation? What is the justification for maintaining more than 300,000 individual Indian trust accounts, of which an astounding 86% receive \$10 or less in income in a year's time?



These are not questions that Interior can, or will, attempt to answer on its own. They require the input of all stakeholders: Indian Country, Congress, Interior and other interested parties. Unless and until statutory changes are made, Interior remains obligated and committed to managing the Indian trust with the highest level of care. The past thirteen years have demonstrated that we are capable of doing so, and should Congress decide that more fundamental changes are in order, Interior stands ready to offer the insights learned from more than a decade of very difficult work – restoring trust to Indian trust management.





Office of the Special Trustee for American Indians

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*Washington, D.C.*  
*1849 C Street NW*  
*Mail Stop 5140*  
*Washington, D.C. 20240*  
*(202) 208-4866*

*Albuquerque, NM*  
*4400 Masthead Street NE*  
*Albuquerque, NM 87109*  
*(505) 816-1000*

Trust Beneficiary Call Center, toll-free  
1-888-678-6836