



## FULFILLING TRUST RESPONSIBILITIES

*Lessons learned from implementing the Fiduciary Trust Model at Concho and Anadarko agencies will help significantly as we move forward to other BIA agencies. This progress at the pilot agencies is a major accomplishment toward reform of the Indian trust.*

*Secretary Gale A. Norton, December 15, 2005*

The Department of the Interior has responsibility for the largest land trust in the world. Today, the Indian trust encompasses approximately 56 million acres of land. Over ten million acres belong to individual Indians and 46 million acres are held in trust for Indian Tribes. On these lands, Interior manages over 100,000 leases for uses such as farming, grazing, and oil and gas production on behalf of individual Indians and Tribes.

Interior collects revenues for over 277,000 open individual Indian money accounts that generate approximately \$302 million per year from leasing, use permits, land sale revenues, and interest. The Department also collects about \$518 million per year in over 1,450 tribal accounts for about 300 Tribes. In total, the Interior Department trust manages approximately \$2.9 billion in existing balances in tribal funds and \$400 million in individual Indian funds.

From 1996 through 2006, the Department will have invested \$3.4 billion in the management, reform, and improvement of Indian trust programs. As a result of these investments, trust business processes are being re-engineered to provide efficient, consistent, integrated, and fiscally responsible service to beneficiaries. Interior has reorganized the trust programs to better meet fiduciary trust responsibilities, provide greater accountability at every level, and operate with staff trained in the principles of fiduciary trust management. The Office of Historical Trust Accounting continues to focus on reconciling past transactions in individual and tribal trust accounts.

The 2007 budget proposes to invest an additional \$536.7 million in Indian trust programs. This

amount includes a net program increase of \$30.2 million over the 2006 enacted level.

The 2007 unified trust budget supports the full implementation of the planned reforms and operation of the re-engineered trust programs. The proposed increases will expedite eliminating the backlog of unresolved probate cases, streamline and strengthen efforts to complete cadastral surveys for Indian land transactions, provide technical assistance and grants to Tribes for Indian energy resource development, and expand efforts in consolidating fractionated individual interests in allotted lands.

## OPERATION OF TRUST PROGRAMS

The Department has developed a comprehensive and systematic plan known as the Fiduciary Trust Model to reform the management of its trust responsibilities. The FTM plan includes reorganizing Interior's fiduciary trust offices to improve service delivery and enhance the accountability of trust operations, re-engineering Interior's fiduciary trust business processes and universal support functions to ensure the fulfillment of fiduciary trust goals and objectives, and reducing fractionated individual Indian trust land interests.

To improve the delivery of services to tribal and individual Indian beneficiaries, the Department is streamlining and improving its business processes. Working in partnership with beneficiaries to implement the FTM, Interior has implemented changes in operations and staffing at agencies; hired Indian

## UNIFIED TRUST BUDGET FOCUS

The 2007 budget continues funding for efforts initiated in 2002 to re-engineer trust business processes. These comprehensive changes are intended to bring about dramatic improvements in the management of fiduciary trust assets, and thereby better meet the needs of individual Indians and Tribes – the beneficiaries. Replacing major legacy software systems that exceed 30 years in age with modern technology will facilitate a fiscally responsible, efficient, and effective business.

At field agencies throughout Indian Country, field staff are emphasizing beneficiary services and meeting account holders' needs. The Trust Beneficiary Call Center employees answer inquiries and, for 90 percent of inquiries received, resolve issues without referring them to another individual.

The Department is acquiring thousands of tiny fractionated interests of individual Indian land to reduce the rate of land fractionation. As of December 2005, 202,775 individual Indian interests have been acquired. In 2007, an increase of \$25.4 million is requested for this program and it is anticipated to result in the acquisition of about 80,000 additional undivided interests.

The 2007 budget includes \$39.0 million for IIM accounting and \$17.4 million for tribal accounting. Interior will continue its efforts to determine and verify the correctness of opening balances, transactions, and ending balances, and will provide individual Indians with statements of assurance regarding the accuracy of the historical statement of their account.

<b>UNIFIED TRUST 2007 BUDGET</b>			
(dollars in millions)			
<b>Program</b>	<b>2006 Enacted</b>	<b>2007 Budget</b>	<b>Change</b>
Beneficiary Services & Ownership Information	170	206	+36
Land & Natural Resources	101	103	+2
Trust Fund Assets	40	41	+1
Historical Accounting	56	56	0
Other	139	131	-8
<b>Total</b>	<b>506</b>	<b>537</b>	<b>+31</b>

land surveyors and initiated the Certified Federal Surveyor program; established the division of Indian Probate Hearings and hired staff to serve as the primary point of contact for beneficiaries; opened the Trust Beneficiary Call Center; implemented a nationwide lockbox system for the collection of trust payments; updated Federal regulations and added a minerals valuation unit; and developed draft interagency handbooks and desk operating procedures that document the standardization and streamlining of the business processes.

On June 30, 2005, the implementation of the integrated systems to support the FTM was completed

at the BIA Anadarko and Concho agencies in Oklahoma. These agencies now utilize the re-engineered trust processes and interfaced trust systems, including the Trust Funds Accounting System and the Trust Asset Accounting Management System. Trust data have been reconciled and validated within these systems, and numerous backlog clean up projects have been completed. This joint effort between BIA and the Office of the Special Trustee for American Indians staff and contractors provides a working model of the efficient trust beneficiary organization envisioned by the FTM for nationwide implementation. New business processes, handbooks, desk operating

*Regional surveyors are expected to help expedite survey requests, prioritize requests, and determine when surveys are actually needed in order to avoid unnecessary surveys.*

*Special Trustee for American Indians Ross Swimmer, December 15, 2005*

procedures, and training will continue through 2006 to fully implement the FTM at these and other BIA agencies.



provided a first-line resolution for approximately 90 percent of the requests. First-line resolution by the person answering the call without referral is more responsive and more effective, meets the needs of the beneficiaries. This allows field staff to focus on operational duties without interruption.

A call tracking system opened in the field assures that beneficiaries receive consistent and timely responses and allows field staff to track requests and avoid duplication.

On December 3, 2004, OST opened the Trust Beneficiary Call Center, located in Albuquerque, New Mexico. This nationwide, toll free call center enables operators to conveniently access information about beneficiaries' account balances, check the status of transactions, and update account information. Staff trained in various trust beneficiary issues and systems operate the center. In its first year of operation, the center received over 75,000 calls and



#### **ACTIONS COMPLETED TO IMPLEMENT THE FIDUCIARY TRUST MODEL AT THE CONCHO AND ANADARKO AGENCIES**

- 14,000 asset statements for accounts that contained trust asset ownership information, encumbrances, as well as balances, receipts, disbursements, and liabilities were sent to beneficiaries.
- Data on 133,754 owner interests, 5,455 encumbrances, and 7,343 tracts representing 493,549 acres of trust land were encoded and verified.
- The Land Title Records Office processed 2,247 probates and 1,319 probate modifications.
- An inventory was established cataloging 1,349 beneficiaries' wills.

On July 1, 2005, the piloting of the lockbox process was also completed at the Anadarko and Concho agencies. These agencies streamlined the collection and distribution of trust funds, enhanced Indian beneficiary services, achieved separation of duties and responsibilities, improved the timeliness of deposits, and automated a funds receivable module.

A lockbox facility located in Prescott, Arizona, now receives checks, captures images, and records data for reporting. Checks are now deposited the same day they are received. As of December 2005, the lockbox facility served 76 locations, and has processed 18,667 checks with a dollar value of over \$139 million. When fully implemented nationwide, the lockbox will relieve BIA of billing, collections, and posting processes. This joint BIA-OST effort allows their trust information technology systems to exchange the information required for invoicing, collecting, and allocating trust funds.



*Reform of the fiduciary trust is proceeding. The conversion at the Concho and Anadarko pilot agencies demonstrates that the FTM can be implemented, and provides the business process tools to BIA to manage its part of the fiduciary trust. While obstacles remain, I believe that the foundation for fiduciary trust reform has been laid and that building on this foundation will allow Interior to execute more efficiently its legal obligations to trust beneficiaries.*

*Special Trustee for American Indians Ross Swimmer, December 15, 2005*



with the technical and professional skills to become certified surveyors.

A \$2.0 million proposed increase will stimulate Indian energy resource development, including \$1.4 million for grants to Tribes to develop their resources through such means as energy inventories, feasibility studies, and technical training. Interior proposes to offset these increases by OST reductions totaling \$4.9 million. These decreases result from the completion of certain contract efforts and include reductions in re-engineering efforts of-\$1.0 million; training programs of -\$1.4 million; risk management and trust examiner certification of-\$1.6 million; and trust operations costs as a result of implementing the lockbox and Trust Beneficiary Call Center of -\$875,000. These

## BIA TRUST

The 2007 budget provides program increases totaling \$11.5 million for BIA to meet the requirements outlined in FTM and continue trust reform initiatives. The increases for BIA include \$3.0 million to fund staff and contract costs associated with about 24,000 probate cases. The BIA undertakes pre-case preparation, case preparation, and closings stages of the probate process. This additional funding will assist BIA in closing an estimated 9,000 probate cases in 2007, an increase of 6,820 above the 2006 level.

The 2007 budget proposes a \$6.5 million increase to implement the FTM cadastral survey recommendations. These recommendations called for improvements to the cadastral survey process to eliminate backlogs and reduce the costs of surveys. A total of \$16.4 million, including base program funding, will be used by the Bureau of Land Management under contract to BIA to conduct cadastral surveys, operate a Certified Federal Surveyor program, and maintain the Public Lands Survey system. The Certified Federal Surveyor program will support training of BIA employees through a curriculum to be offered by the United Tribes Technical College and the Crownpoint Institute of Technology. The program will equip students

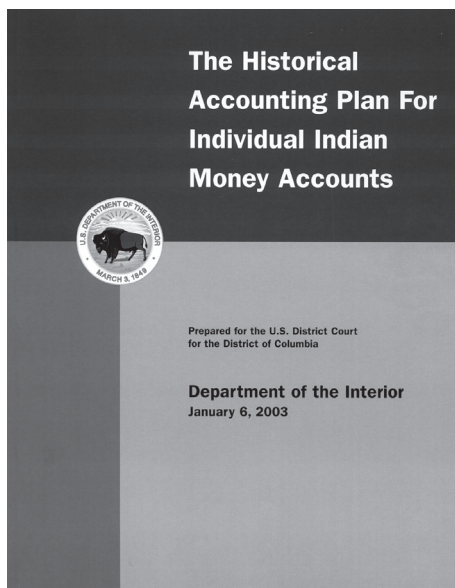


changes allow funds to be realigned to meet current trust priorities and program requirements.

## HISTORICAL ACCOUNTING

In 1994, Congress passed the American Indian Trust Fund Management Reform Act of 1994. The Act requires the Secretary of the Interior to “account for the daily and annual balance of all funds held in trust by the United States for the benefit of an Indian Tribe or an individual Indian, which are deposited or invested pursuant to the Act of June 24, 1938 (25 U.S.C § 4011 (a)).” The Department is currently involved in a class action lawsuit, *Cobell v. Norton*, and approximately 31 tribal lawsuits associated with the management of Indian trust funds.

On January 6, 2003, as ordered by the court in the Cobell litigation, the Department filed *The Historical Accounting Plan for Individual Indian Money Accounts*. The Department’s accounting plan provides for a historical accounting over a five-year period for about 260,000 IIM accounts open on or after October 25, 1994 that had balances. The plan had an estimated cost of \$335 million using both transaction-by-transaction and statistical sampling reconciliation techniques to develop assurances of the accuracy of the statements of account. The historical accounting addresses three distinct types



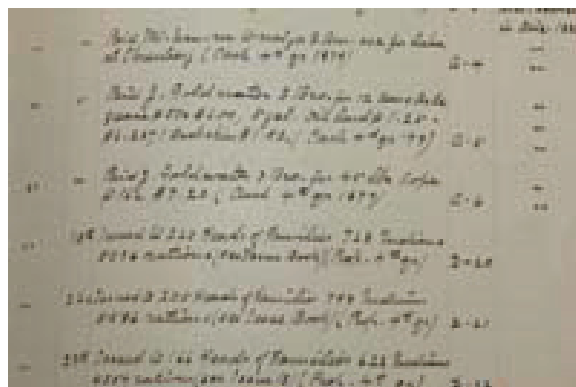
of IIM accounts: judgment and per capita IIM accounts, land-based IIM accounts, and special deposit accounts.

On November 15, 2005, the Court of Appeals for the D.C. Circuit vacated a February 23, 2005

structural injunction imposed by the District Court in the Cobell litigation that called for a transaction-by-transaction accounting for all transactions back to 1887 and was estimated to cost from \$10–\$12 billion. The Court of Appeals ruling specifically allows the use of statistical sampling as part of the IIM historical accounting.

Interior is considering modifying its January 6, 2003 accounting plan, based on the information now available from the work of the past three years, and the recent appellate court decision vacating the District court’s structural injunction. The process will consider lessons learned from work already completed, removal of the structural injunction, statistical sampling parameters, and accounting costs.

Interior proposes \$56.4 million in 2007 for historical accounting, continuing the level enacted by Congress in 2006 to implement the Department’s historical accounting plan. This amount will provide approximately \$39.0 million for IIM ac-



counting and \$17.4 million for tribal accounting. This amount may be revised depending on the outcome of any further court rulings in *Cobell v. Norton* or congressional action.

Within the \$39.0 million proposed for individual accounts, a total of \$6.5 million would be used to complete the reconciliation of the remaining 17,034 judgment and per capita accounts. To address land-based transactions, Interior will use \$22.0 million to reconcile 1,000 land-based IIM transactions; continue imaging and coding 3,000 boxes of jacket folders and digitize 100,000 paper ledgers, resulting in the imaging and coding of three million pages of trust documents; and continue data completeness validation for a total of seven BIA regions. An additional \$6.5 million will be used to identify the proper ownership of residual balances in special deposit accounts and distribute \$3.5



## OHTA ACCOMPLISHMENTS

As of December 31, 2005, OHTA had reconciled more than 50,000 judgment and over 15,000 per capita accounts of the 99,500 judgment and per capita accounts (including some with no current balance). The OHTA has mailed over 12,000 historical statements of judgment and per capita accounts to individual Indian account holders and former account holders. By the end of 2006, OHTA will reconcile an additional 16,500 judgment accounts and 6,500 per capita accounts. Pending approval of the court, an additional 28,000 historical statements of account are ready to send to account holders.

Through December 31, 2005, Interior also has resolved residual balances in over 9,500 of the nearly 21,500 special deposit accounts, which existed on January 1, 2000, identifying the proper ownership of more than \$48 million belonging to individual Indians, Tribes, and private entities. By the end of 2006, Interior expects to identify the proper ownership of nearly \$50 million (cumulative) in residual special deposit account balances.

The OHTA also has imaged, coded, and loaded into the accounting reconciliation tool more than nine million pages of fiduciary trust records representing over 634,000 documents in support of IIM accounting, and reconciled nearly 8,000 land-based IIM transactions using the ART system. The OHTA has determined variance rates and dollar differences in accounts for the electronic records era, approximately 1985 through 2000, as a result of the Litigation Support Accounting project completed in fiscal year 2005.

The OHTA has imaged for tribal analysis and resolution, and in support of on-going tribal litigation, over 1.5 million pages of tribal trust records representing over 800,000 documents.

million in account balances to Tribes, individual Indians, and non-trust entities.

In addition, \$4.0 million will be used for on-going litigation support costs associated with both individual and tribal cases for work provided by the Solicitor and Department of Justice.



The American Indian Records repository located in Lenexa, Kansas, currently holds more than 130,000 boxes collectively containing about 300 million pages of records stored in accordance with the highest standards for the preservation of archival records.

## HISTORICAL ACCOUNTING

	2005 Actual	2006 Estimate	2007 Estimate
Judgment and per capita accounts reconciled .....	59,538	82,538	99,572
Special deposit account funds distributed .....	\$47.3 million	\$49.8 million	\$53.3 million
Land-based IIM transactions reconciled.....	8,046	8,346	9,346
Number of historical statements of account mailed to account holders <sup>1</sup> .....	12,122	39,122	81,122
Paper era ledgers digitized .....	0	80,000	180,000
Analysis and resolution of tribal claims <sup>2</sup> .....	0	3	7

<sup>1</sup> Mailing of historical statements of accounts subject to court approval. As of January 2006, mailings of 27,000 statements are pending court approval.

<sup>2</sup> This was formerly reported as tribal accounts reconciled, which does not capture the on-going work. In many cases, the work performed for a Tribe is not a historical accounting per se but may involve related and often more specific or detailed examination of management of tribal funds.

The \$17.4 million for tribal cases will support analysis and resolution of tribal claims and the potential settlement negotiations with Tribes. It will also fund four tribal claims analyses.

### INDIAN LAND CONSOLIDATION

The greatest challenge facing successful fiduciary trust management is the fractionation, or continuing subdivision, of individual Indian interests in the land held in trust by the Federal government. Because individual Indian trust lands are subject to a permanent restriction against alienation, they are primarily transferred through inheritance. With each successive generation, individual interests in the land become further divided and subdivided among heirs, each of whom holds a smaller and smaller interest in the land.

The ownership of many disparate, uneconomic, small interests generates significant management costs, benefits no one in Indian Country, and creates an administrative burden that drains resources away from other Indian programs. The Department currently administers and manages more than 3.2 million undivided interests in these lands.

In many cases, the cost to account for and probate highly fractionated tracts far exceeds either the revenue or the value of the underlying property. -Based on an average cost of \$5,000 per probate, 200,000 future probates would cost a minimum of \$1 billion.



Interior has demonstrated success over the past several years acquiring these highly fractionated interests through the Indian Land Consolidation Program. The ILCP acquires small ownership interests in allotted land from willing sellers and is a key component in trust reform and management.

Once interests are purchased, title can be transferred to the Tribe. Purchase of fractional interests increases the likelihood of more productive use of the land, reduces record keeping, reduces the large numbers of small dollar financial transactions, and decreases the number of individuals subject to probate.

The American Indian Probate Reform Act enacted in 2004, provided new tools to improve probate and slow the rate of fractionation. The first full year



## ILCP ACCOMPLISHMENTS

Through December 31, 2005, Interior has:

- Acquired 202,775 fractional interests in individual Indian allotted lands.
- Acquired 100 percent ownership in 166 tracts with over 1,142 individual owners.
- Acquired 100 percent ownership of interests held by 5,253 individuals.

As a result:

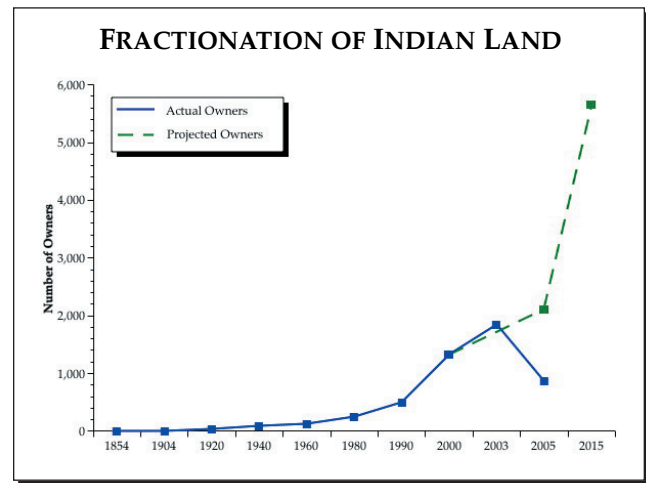
- One reservation now has a majority interest in 94 percent of all allotted tracts.
- One reservation now has majority interests in 75 percent of all allotted tracts.
- One reservation now has majority interests in 60 percent of all allotted tracts.
- Two reservations now have majority interests in over 50 percent of all allotted tracts.

of implementation of the Act will be 2007, as key provisions will take effect on June 28, 2006, with respect to the estates of Indians who die owning trust property after that date. Those provisions include a new Federal Indian probate code and authorities for consolidating land ownership through sales, gift deeds, land exchanges, and consolidation agreements.

Provisions of the Act provide for measures to slow the rate for continued fractionation on approximately 85 percent of all interests. The remaining 15 percent of interests will, however, continue to fractionate, resulting in continued growth in the number of interests. Further, even those small interests that do not continue to fractionate will continue to cost millions to manage despite failing to provide notable economic benefits to their owners. The individual accounts that track, hold, and pay earnings and interest will require probate upon the death of the account holder.

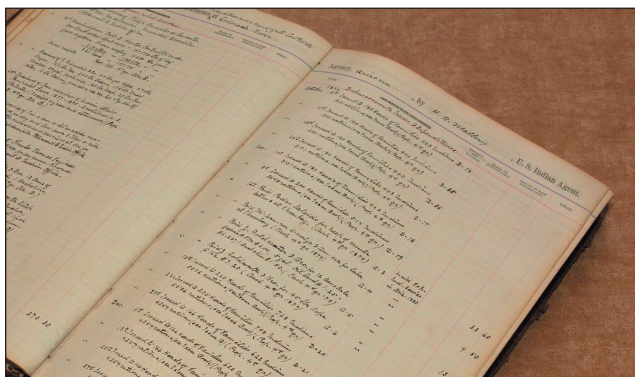
The Indian Land Consolidation program completed

a PART review in 2002. The review recommended coordinating efforts with tribal land acquisition entities to leverage program dollars and develop a long-term strategy to guide program expansion.



The 2007 budget proposes funding of \$59.5 million for Indian land consolidation, an increase of \$25.4 million, or 75 percent, above the 2006 enacted level. As part of this proposal, the Interior Department will implement a tiered acquisition strategy, targeting selected highly fractionated tracts. There are 2,173 highly fractionated tracts, defined as 200 or more interests per tract, owned by 98,905 individuals who own a total of 711,530 interests. A focus on these tracts will begin in 2006 and target approximately 1,557 of these highly fractionated tracts owned by 64,055 individuals who own 520,685 individual interests located in ten geographic locations. In addition, partnership efforts will continue with tribal land consolidation efforts to leverage funding where appropriate.

The \$59.5 million proposed for 2007 will fund an acquisition program of about 80,000 additional fractionated interests. The estimates of the number of interests to be acquired are based on historical average cost to date, and as acquisition activities continue and additional targeted interests are acquired, the average cost per acquisition, cost per interest, and amount of interests acquired will likely change from the experience to date.





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## LEGISLATIVE REFORM

The Administration's on-going efforts to implement trust reform and improve services to beneficiaries include reviewing and revising trust regulations. In 2005, as part of FTM implementation, the Department began reviewing existing regulations and the need for new regulations. This initiative brought together working groups comprised of employees from BIA, OST, BLM, the National Business Center, Office of the Solicitor, Office of Hearings and Appeals, and OHTA. The working groups developed draft regulations to implement the FTM, comply with requirements of the new Probate Reform Act, and streamline trust business processes.

As an outgrowth from the workgroup efforts, the Department will consult with Tribes this spring to propose regulations and legislation addressing needed technical corrections and administrative

improvements for implementing trust reform, which will continue to improve services to Indian trust beneficiaries.

Interior's legislative proposals to be addressed in consultation with the Tribes, will focus on issues such as an expedited probate process to reduce probate backlogs; and the authority to create an unclaimed property fund and to close certain accounts with no known address, small balances, and special deposit accounts, thus reducing the accounting costs and creating efficiencies in management of the trust. Also, the Department will suggest amendments to the American Indian Probate Reform Act to allow the Secretary to initiate the purchase of more highly fractionated interests and parcels, resell the tracts by alienation, and retain any proceeds from the sale to purchase additional highly fractionated lands, thus resulting in further reduction of the fractionation of Indian lands.