

People, Land & Water
The Cobell Lawsuit and Indian Trust Management
By Ross Swimmer, Special Trustee for American Indians

One of the most contentious issues in Indian Affairs at the Department of the Interior is the long-running *Cobell v. Norton* litigation. This class action lawsuit was filed against Interior in 1996 to provide an historic accounting of the funds deposited and distributed to Indian Trust accounts. Last July, Senators McCain (R-AZ) and Dorgan (D-SD) introduced legislation as an attempt to provide a final resolution to the case. In November, Representatives Richard Pombo (R-CA) and Nick Rahall (D-WV) introduced companion legislation in the House of Representatives. This litigation has been dragging on for many years, and there is widespread hope across Indian Country, in the administration, and in Congress that an acceptable solution can be achieved for the good of all Indian people.

The *Cobell* litigation has helped bring necessary attention, and federal funding, to account for and improve the management of the Indian Trust. While we recognize and share the plaintiffs concerns for Indian people, the fact remains that the lawsuit that bears her name is not for reparations, or even mismanagement. The basis of the lawsuit was simply to find out how the funds that came into the trust were disbursed to the beneficiaries, and to provide those beneficiaries with statements of their accounts. Throughout this long case, plaintiffs have repeatedly accused Interior of stealing, embezzling, and misappropriating billions of dollars. The plaintiffs and their public relations staff have spread this message far and wide across the nation—often by using personal stories of Indians who are suffering financial hardship, and who receive very small payments for the use of their trust assets.

There are indeed many social, health, education, and land issues that plague Indian Country and need attention from tribes, federal agencies, and Congress. But resolution to the *Cobell* case should be based upon facts, and the facts don't support the plaintiff's severe accusations. While compelling, the human interest stories often have their roots in other issues—for example, it is not uncommon to find that a previous heir sold the trust land mineral rights (including oil), or that the beneficiary has an interest in a heavily “fractionated” trust asset. Fractionation is the result of early laws and probate codes that allowed individual trust allotments to be divided equally between all heirs. Today, it is common to have hundreds—even thousands—of Indian owners for one parcel. If you divide a lease or royalty payment of \$1,000 a month among 300 heirs, each beneficiary will receive a check for only \$3.33.

Over the course of the last century, Bureau of Indian Affairs employees across Indian Country, most of whom are American Indians, did, in fact, distribute trust funds to Indian account holders and did, in good faith, attempt to keep good Indian Trust records.

So far, the accounting firms working to reconcile historic accounts have found only a few instances in which individual Indians were underpaid, as well as a few that were overpaid. A recent decision by the U.S. Court of Appeals in Washington D.C. will allow

us to continue performing the historic accounting in accordance with the plan Interior submitted to the District Court in 2003. And while some records have been lost during the past 100 years, the bulk of the records needed for the accounting are believed to be available. Existing records account for a large percentage of Indian trust funds since the greatest sum of money came into the trust after the 1970s when oil and timber prices began to rise dramatically. To date, more than 120,000 boxes containing almost a quarter of a billion pages of Indian records have been electronically indexed in a new, state-of-the-art archive facility, and stored for safeguarding and future use.

As for the future of the trust: Over the past few years, Interior's Indian Affairs staff members and tribal leaders have been hard at work improving and modernizing the trust for the benefit of Indians across the nation. Today, Interior reconciles cash receipts on a daily basis, and financial assets on a monthly basis. Beneficiaries are provided with quarterly financial statements, and we are beginning to issue asset statements that include lease holder information, asset ownership and more. Our accounting systems are the same as those used in major private trust corporations, and are audited every year. We are improving trust technology, and beneficiaries have better access to their account information through new trust officers and staff across Indian Country. Beneficiaries can now also obtain information through a nationwide toll-free call center (888-678-6836 ext. 0). Fiduciary trust training has been provided to many Indian Affairs employees at Interior; and most of the new managers hired for trust work are seasoned professionals in trust administration. These are just a few of the reforms in place. I am proud to work with Interior staff, Indian leaders, individual Indians, and Congress on these and other important reforms to the Indian trust.

Ross Swimmer is the Special Trustee for American Indians at the Department of the Interior. He also served three terms as Principal Chief of the Cherokee Nation, and one term as Assistant Secretary-Indian Affairs.

For more information on the historical accounting and other reform efforts, see the 23rd Quarterly Report to the Court at www.doi.gov/ost.