

**Testimony of
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Before the Committee on Indian Affairs
United States Senate**

July 25, 2002

Thank you, Mr. Chairman and Members of the Committee, for inviting me to testify at this hearing on the recently issued *Report to Congress on the Historical Accounting of Individual Indian Money Accounts* (Report).

The Report prepared by the Department of the Interior's Office of Historical Trust Accounting (OHTA) focuses on strategies and methods for the historical accountings of all funds ever held in Individual Indian Money (IIM) accounts, the estimated cost associated with the project, and a time frame for completing the effort. This Report was prepared at the request of the appropriations committees of Congress.

In 2002, the House committee stated that "[b]efore the Department agrees to any method for undertaking an historical IIM accounting, the Committee directs the Department to submit a comprehensive report to the Committee detailing the costs and benefits and likely results associated with any proposal." H.R. Rep. No. 107-103, at 89 (2001).

In the previous year's conference report on Interior's appropriations, the conferees stated that ultimately, they believed that resolution of these issues would be best worked out through a negotiation and settlement process and "not by spending millions of dollars for accountants to reconcile relatively small sums of funds over decades." The conferees closed the discussion of this issue by stating that "[g]iven the tremendous needs in Indian country for public services from education to health care, the managers will be extremely judicious in allocating funds for an historical accounting or sampling study." Conf. Rep. No. 106-914, at 150 (2000).

Background

Trust asset management involves approximately 10 million acres held in trust or in restricted status for individual Indians and nearly 45 million acres held in trust for the Tribes, a combined area the size of Maine, Massachusetts, Vermont, New Hampshire, Connecticut, Rhode Island, Delaware, Maryland, and the District of Columbia. This land produces income from active leases for many individual Indian and Tribal owners. Leasing and sales revenues are distributed to open Individual Indian Money (IIM) and Tribal accounts. Even though some of these accounts might generate less than one dollar in revenue each year, each must be managed, with the same diligence that applies to all accounts.

Over the past 100 years, Congress has reviewed the issue of Indian trust asset management many times. In 1887, Congress passed the General Allotment Act, which basically allocated tribal lands to individual members of tribes in 80 and 160-acre parcels. The expectation was that these allotments would be held in trust for their Indian owners for no more than 25 years. The intention was to turn Native Americans into private landowners and accelerate their assimilation

into an agricultural society. Most Indians, however, retained their traditional ways and chose not to become assimilated into the non-Indian society. By the 1930s, it was widely accepted that the General Allotment Act had failed.

In 1934, Congress, through the first Indian Reorganization Act, stopped the further allotment of tribal lands. In 1934, the Commissioner of Indian Affairs warned Congress that fractionated interests in individual Indian trust lands cost large sums of money to administer, and left Indian heirs unable to control their own land. "Such has been the record, and such it will be unless the government, in impatience or despair, shall summarily retreat from a hopeless situation, abandoning the victims of its allotment system. The alternative will be to apply a constructive remedy as proposed by the present Bill." The bill ultimately led to the Act of June 18, 1934 which attempted to resolve the problems related to fractionation, but as we now know did not.

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

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

At that time, Arthur Andersen stated that it might cost as much as \$281 million to \$390 million in 1992 dollars to audit the IIM accounts at the then 93 BIA agency offices. The Committee report states in reaction to that:

"Obviously, it makes little sense to spend so much when there was only \$440 million deposited in the IIM trust fund for account holders as of September 30, 1991. Given that cost and time have become formidable obstacles to completing a full and accurate accounting of the Indian trust fund, it may be necessary to review a range of sampling techniques and other alternatives before proceeding with a full accounting of all 300,000 accounts in the Indian trust fund. However, it remains imperative that as complete an audit and reconciliation as practicable must be undertaken."

Accounting

The magnitude of the historical accounting as requested by the Court's interpretation of the Reform Act is enormous. As the July 2, 2002, *Report to Congress on the Historical Accounting of Individual Indian Money Accounts* noted,

Under the broadest reading of the opinions of the District Court and the Court of Appeals, the Secretary is required to provide a historical accounting of all funds ever placed in IIM accounts from their inception, or at least from the time the funds were deposited or invested pursuant to the Act of June 24, 1938. The Court of Appeals concluded that one cannot "give *a/air* and *accurate* accounting of all accounts without first reconciling the accounts taking into account the deposits, withdrawals, and accruals."¹ The Report estimates that it will cost approximately \$2.4 billion to complete the historical accounting of IIM accounts, based on the assumption that the project would be completed in 10 years. Estimates indicate that the total money collected since 1909 is approximately \$13 billion.

For costing purposes when developing the report, it was essential that the "historical" accounting have a defined end-date. Absent a definite end period, Interior would have to return to hundreds of physical locations to collect newly-generated documents. Therefore, the Report has estimated costs for conducting an historical accounting through December 31, 2000, as the end of the historical accounting period. As of December 31, 2000, there were:

- 235,984 IIM account holders (excluding Special Deposit Accounts)
- \$348.3 million held in trust for IIM account holders (excluding Special Deposit Accounts)
- \$208.4 million in average annual throughput-money collected and paid out during the years 1985-2000.

The average trust fund balance has been approximately \$464 million during these years. Today there are approximately 4 million owner interests in 10 million acres of individual Indian trust-held lands.

Since 1985, most of the IIM Trust Fund financial information has been contained in electronic systems. However, for IIM accounts that existed prior to 1985, the Report points out that the Department will need to compile transaction histories from paper records.

The available supporting documentation for the IIM account transactions that must be located and examined exists in some 120 offices, warehouses, records centers, and archives. A

¹Report to Congress on the Historical Accounting of Individual Indian Money Accounts, Department of the Interior, July 2, 2002.

significant portion of approximately 240 million pages of records will need to be collected, scanned, and indexed so that the records can be used to document transactions in the IIM accounts. It is not easy to determine the total number of transactions for the IIM accounts since inception, but, for the period 1985-2000, the total is about 44 million.

As the Report points out, there is a high level of uncertainty in the cost estimates for the historical accounting project. Many parameters continue to be investigated and could dramatically change, even in the near future. Looking at the accounting transactional analysis, over 60 percent of the cost of the project is driven by the estimated number of transactions involved and an estimate for the amount of time required performing an analysis of each transaction. A significant error in either or both of these estimates could drive costs lower or higher. The scanning and indexing tasks also possess a wide range of variability in the estimates for the number of paper documents involved.

As stated in the Report, based purely upon the experience of the Department's cost contractor, the cost range for the historical accounting could lie between minus 5 percent and plus 25 percent of the estimates in the Report.

Priority

The Report points out that due to the scope of the historical accounting project, an accounting of "all funds" cannot proceed simultaneously for all IIM accounts, but must be divided into manageable segments, with the accounting work performed sequentially.

The Report proposes ways of segmenting the historical accounting project into orderly phases. The Report states that in dividing the historical account work into phases, the following would be accomplished:

- Maximize the dollars of IIM account balances reconciled for the funds available to Interior.
- Provide accounting results to the greatest number of IIM account holders in the shortest amount of time.
- Produce accountings with relative accuracy and efficiency.
- Allow sufficient time to collect and compile paper transaction records.

Phases

As the Report states, the actual historical accounting work will be conducted within the limits of funds appropriated for this purpose. The three phases contemplated in the Report are as follows:

Phase I-Accounting for the current IIM accounts (as of December 31, 2000) during the period of 1985-2000 using electronic transaction data. The cost estimate is

approximately \$907 million for this phase or approximately \$4,680 per account and \$35 per transaction.

Phase 2-Accounting for the current IIM accounts from account inception through 1985. The cost estimate for this phase is approximately \$611.6 million.

Phase 3-Accounting for former IIM accounts closed prior to December 31, 2000. The cost estimate for this phase is approximately \$906 million.

The Report states that IIM accounts can be divided between current accounts and former accounts. Current accounts are defined in this Report as those IIM accounts that were in existence on December 31, 2000. Former accounts are those that were closed prior to December 31, 2000. The Report states the exact number and make-up of former accounts is unknown at this time because the records predate electronic record keeping.

As set out in the Report, Phase 1 would examine all current accounts (those in existence on December 31, 2000), with a reconciliation from 1985 to December 31, 2000--when electronic transactions were in use. The Report proposes that the Department undertake the accounting for judgment and per capita IIM accounts first. Then, it proposes the Department examine 26,464,000 transactions (excluding interest) related to 193,766 land-based accounts that derive revenue from land-based allotment income. An additional 18 million transactions during 1985-2000 relate to interest, and judgment and per capita accounts.

As outlined in the Report, Phase 2 would examine current IIM accounts that were opened prior to 1985 and that have a portion of their account history recorded in paper transactions. The Report points out the distinction between the Electronic Transactions Era and the Paper Transactions Era is significant because the electronic data is readily accessible source of information on the number, type, and history of IIM accounts for the period from 1985 forward and that gathering documentation from the paper records will be time-consuming, labor-intensive, and expensive. Phase 3 would address IIM accounts that were closed prior to December 31, 2000.

The Report states that Interior cannot, at this time, project time frames and a completion schedule for the historical accounting work in Phase 1. The actual historical accounting work will be conducted within the limits of funds appropriated by Congress for this purpose. The Report outlines that following completion of the Phase 1, the Department will continue to work back in time through the IIM accounts in Phase 2 prior to 1985. OHTA, through the Report, does not feel it is possible at this time to divide the work of Phase 2 because the IIM transaction data are not available in an electronic format.

Objectives

The Report points out that in undertaking this proposed historical accounting project, the Department's objective will be to document for IIM account holders the amount and source of funds deposited to, managed in, and disbursed from their IIM account. To provide this

information, the Department will need to gather transaction records and UM-related documents to reconstruct the account history. Such information may include the following:

- Asset information, including, as appropriate, a description of trust property (e.g., allotment interest) and the source and type of funds generated from the asset (e.g., leases, interest).
- The beginning cash balance of the IIM account.
- Transaction details - receipts (including a judgment of per capita distribution), interest, and disbursements.
- The ending cash balance of the reconciled IIM account as of December 31, 2000, and a comparison with the previously-reported balance as of December 31, 2000 from Trust Fund Accounting System (TFAS).
- Other information as appropriate.

Development of the Report

The Department retained five accounting firms to assist in developing and implementing the Report. Other consultants were retained to provide specific expertise. The Department engaged the a major bank and commercial trust company to provide the perspective of a commercial trustee. We also engaged a trust law practice, to provide advice on the law of trusts and to review accounting results.

The Department also hired subject matter consultants, including National Opinion Research Center, a research arm of the University of Chicago (data analysis), Morgan, Angel & Associates LLC (historical and policy research) Historical Research Associates, Inc. (historical and natural resource research), Gustavson & Associates (natural resources consulting), and Upper Mohawk, Inc. (cost analysis). Finally, the Department retained Booz Allen Hamilton Inc. to assist with contractor integration, records management, and overall project coordination.

In addition to engaging these consultants, the Department solicited suggestions from IIM account holders, Department staff, and the public, and considered the comments it received.

Reconciled Accounts

In 1995, the Intertribal Monitoring Association identified judgment funds as a promising area for "providing the [BIA] with clean account balances at a point certain in time" and obtaining "a one-time and final resolution of its difficulties regarding one-half of the assets in its most troublesome portfolio, the IIM pool." Within the last 12 months, 7,903 judgment accounts totaling \$22,765,000, have been reconciled. It was found that these accounts had correct balances and no adjustments were recommended. The Department will be filing these results with the Court and requesting the distribution to the respective account holders in the near future.

Conclusion

The Plaintiffs in Cobell claim that the government owes them \$137 billion. Interior presently has no evidence that would support such a claim. The only way to determine the truth is to do some accounting. As that accounting goes forward, it is hoped that it will become clear to all parties - Congress, the Cobell plaintiffs and the Federal government - what a fair and equitable settlement would entail.

This concludes my prepared remarks. I would be more than happy to answer any questions the Committee may have.