

# INDIAN TRUST FUND ACCOUNTS MANAGEMENT

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## OVERSIGHT HEARINGS

BEFORE THE

TASK FORCE ON INDIAN TRUST FUND  
MANAGEMENT

OF THE

COMMITTEE ON RESOURCES  
HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTH CONGRESS

SECOND SESSION

ON

**MANAGEMENT OF INDIAN TRUST FUND ACCOUNTS  
RELATING TO ALASKA NATIVES**

AUGUST 10, 1996—ANCHORAGE, AK

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**MANAGEMENT OF INDIAN TRUST FUND ACCOUNTS BY  
THE DEPARTMENT OF THE INTERIOR**

AUGUST 20, 1996—SCOTTSDALE, AZ

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**MANAGEMENT AND RECONCILIATION OF INDIAN  
TRUST FUND ACCOUNTS**

SEPTEMBER 26, 1996—WASHINGTON, DC

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**Serial No. 104-95**

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Printed for the use of the Committee on Resources



U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1997

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# ALASKA NATIVES TRUST FUND ACCOUNTS

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SATURDAY, AUGUST 10, 1996

HOUSE OF REPRESENTATIVES, COMMITTEE ON RE-  
SOURCESS, TASK FORCE ON INDIAN TRUST FUND MAN-  
AGEMENT,

*Anchorage, AK.*

The task force met, pursuant to call, at 10:00 a.m. in Z.J. Loussac Public Library, Assembly Chambers, 3600 Denali Street, Anchorage, Alaska, Hon. Don Young presiding.

## STATEMENT OF THE HON. DON YOUNG, A U.S. REPRESENTATIVE FROM ALASKA; AND CHAIRMAN, COMMITTEE ON RESOURCES

Mr. YOUNG. Good morning. I want to welcome all of you to this hearing being conducted by the Congressional Task Force on Indian Trust Fund Management. A little form of explanation, the chairman of the task force that's actually been appointed by myself is J.D. Hayworth from Arizona, but he could not be here today, so as Chairman of the Full Committee, I am conducting this first hearing in Alaska.

Reports and investigations of the management of Native American trust fund accounts have revealed the history of waste and corruption unprecedented in the Federal Government. Recently, the Arthur Andersen Company reported that, in trying to reconcile 20 years of Native American trust fund management, it could not account for \$2.4 billion in account transactions. That's why I created the task force. I want to know what can be done to straighten the mess out once and for all.

Today we will receive testimony concerning the management of those trust fund accounts which are owned by Alaska Natives. We will focus on the Alaska Native Escrow Fund as well as those Individual Indian Money or IIM accounts, which are owned by individual Alaska Natives.

We have an impressive group of witnesses today. We have Donna Erwin, the director of the Office of Trust Fund Management at the Department of the Interior; Eric Davenport, the chairman of Intertribal Monitoring Association for the Indian Trust Funds; Carl Charles, an Alaska resident with an astounding story to tell; Lonnie Points, an accountant with the Intertribal Monitoring Association for Indian Trust Funds, and Ed Thomas, the president of the Central Tlingit and Haida Business Council; Alma Upicksoun, the assistant house counsel for the Arctic Slope Regional Corporation; Elouise Cobell, the chair of the special trustee's advisory board;

Robert Peregoy, representing the Native American Rights Fund, which has filed suit on the management of these funds.

We will have two hours for these hearings. I also want to ask each witness possibly to limit his or her testimony to about ten minutes. I do believe that will be enough. I read the testimony, and if there is any question, I will take and give you additional time. Anyone in the audience or otherwise that wishes to submit testimony can send it to my office and I will see to it that it gets on the record.

With that opening statement, there's no other opening statements, I will convene the first panel, and, Donna Erwin, director of the Office of Trust Fund Management, Department of Interior, will you please take your seat and your counsel will please be seated also.

Donna, you're recognized, and proceed as you wish.

#### **STATEMENT OF DONNA ERWIN, DIRECTOR, OFFICE OF TRUST FUND MANAGEMENT, DEPARTMENT OF THE INTERIOR**

Ms. ERWIN. Thank you. I want to thank you for the opportunity to present the testimony on the Indian trust funds management. As you're aware, the Office of Trust Funds manages approximately \$10.2 million, the Alaska Native Escrow Fund, \$6.8 million in the 27 accounts for the Alaska Native entities, and \$10.6 million for 1431 individual Alaskan residents. Now, some of those are actually managed out of the Lower 48 areas, but they are residents of Alaska currently.

The hearings, we realize, are focusing on the trust management practices and what it may take to ensure the correction of management in the future, so each of these I'll try to discuss in turn.

In October of 1995, the Office of Special Trustee, which is now referred to as OST, commenced the assessment of U.S. Government's trust management policies, procedures, practices and systems as they apply to the individual American Indians and American Indian tribal accounts.

By February of 1996, the OST completed the preliminary assessment and produced a conceptual strategic plan to require institutional specified systems. Implementation of this plan permits and ensures the U.S. Government establishes appropriate policies and procedures, develops necessary systems and takes the affirmative actions necessary to provide an accurate and timely account to the American Indian trust beneficiaries. In this manner, the proper discharge of the Secretary's trust responsibilities can be accomplished.

The assessment of the Phase I of the strategic plan are included in a document that's entitled Special Trustee for American Indians Assessment and Strategic Plan Principles, and it was dated February of 1996, which has been provided to Congress and we'll be glad to provide additional copies of that to your committee if you'd like us to do that.

In December of 1995, the Department of the Interior, the Bureau of Indian Affairs, substantially completed the multi-year tribal trust fund's reconciliation project, which has been referred to as the reconciliation project, and we issued agreed-upon procedures reports for the period of July the 1st, 1972, through September 30th



of 1995. The major findings in that report are incorporated in the special trustee's conceptual strategic plan.

In August of 1995, the Department of the Interior completed a study of the trust management systems related to the Individual Indian Money accounts, that are normally referred to as the IIM accounts, and they issued a report entitled IIM Related Systems Improvement Project Report.

And if you look at the special trustee's assessment, the reconciliation project reports that I just discussed, and the IIM related systems' report, which some people refer to as the Tiger team report, and then there's some earlier reports and some reports since then from the General Accounting Office, they'll all confirm that U.S. Government's trust management systems, policies, procedures and practices, coupled with the condition of the trust records and notably large numbers of missing documents, are inadequate to allow for a proper and accurate and timely account of trust account balances, preparation of accurate and timely reports to the trust account holders, and audits under generally accepted auditing standards, and also any further reconciliation efforts, since the cost of these efforts would likely substantially exceed the benefits, and at the same time would probably yield unsatisfactory and inconclusive results.

Significant improvements have been made over the last several years, but the inadequacies of the trust management systems and the condition of the historical records and the U.S. Government's inability to provide an accurate and timely accountings cannot be remedied without the major reforms required by the reform act of 1994.

To address these issues, the special trustee's strategic plan identified nine initiatives, and they're all good principles designed to rectify the problem and bring trust accounting and management up to commercial standards, and this would take approximately three years. This, at a minimum, will involve automating, updating, integrating, coordinating and consolidating to produce a trust resource and asset management delivery system and accounts receivable data and billing system that uses lease contract and land and ownership information, a trust depository payments and delivery system for Individual Indian Money accounts, a land records and title recordation and certification system, a general ledger accounting system, a technology service system dedicated to the trust resources, and a national archives records center, a risk management control system and an independent structure.

The conceptual work of this plan is completed. The next steps are conducting a requirements analysis, a users need assessment and a comprehensive inventory of existing skills, hardware and software. We have requested in the 1997 President's budget a million dollars to conduct these analyses. Once the analyses are completed, and this is expected to take about 90 days from the funding, and the staff at OST is hired, the remaining elements necessary to produce the comprehensive plan required by the reform act can be completed within 90 days, or by, hopefully, March the 31st of 1997, if the President's budget request for 1997 is approved.

And now I'd like to discuss a little about the total requests. The 1997 President's budget for OST is \$36.3 million, and that's a \$20

million increase over the 1996 conference level, which was \$16.3 million, and this includes \$13.6 million to begin the implementation of the strategic plan. And this will primarily be used to upgrade not only new IIM accounting systems, but also equipment needed for the tribes, as well as for the individual government entities that will be needing these.

The \$20 million requested will also reflect the high priority of the administration that the secretary places on the trust asset reform efforts. Improvement efforts are critically needed to ensure the Federal Government meets its fiduciary obligation to the Indian tribe and individual Indians.

When we realize the Federal Government's trust responsibility is unique, systems and policies and practices and procedures of commercial trust operations can be applied to the Federal Government so that the Federal Government better fulfills its fiduciary obligation. Beginning in 1997, the evolution of trust system reforms will be at a point where increased resources can prudently be expended.

In closing, I'd like to emphasize that resolving the past presents a very difficult challenge for everyone involved. This includes the Administration, it includes Congress, the individual Indian and the tribes.

The ending of the tribal reconciliation problem, which was done in December of 1995, represents only the beginning of an effort to resolve problems with U.S. Government's past trust fund management practices, and this Administration is committed to solving these longstanding problems and has made significant progress in strengthening trust funds operations and taking the steps necessary to ensure the highest level of fiduciary investment standards are in place, but future reforms will continue in earnest under the comprehensive strategic plan that we've requested funding for. It is required and also required by the reform act are adequate resources appropriated by Congress.

Enactment of the President's 1997 budget request would represent a substantial step to ensuring the Indian trust fund reform efforts are implemented in a manner that assures fiduciary responsibilities of the Federal Government are made in a prudent way.

This concludes my statement. I'll be happy to answer any questions that you might have.

[The statement of Ms. Erwin may be found at end of hearing.]

Mr. YOUNG. How long have you been with the department?

Ms. ERWIN. I've been with the department approximately four years.

Mr. YOUNG. You know, your presentation is very good. The thing that concerns me, there's a lot of requests for money which we will probably—to fund to properly solve this problem, but in the amount you state, we have a \$2.2 billion shortfall somewhere. Now, this is not necessarily this Administration's problem. This is the BIA's problem, Department of Interior's problem, or at least it goes back to different Administrations.

I'm going to suggest to you—where are you stationed now?

Ms. ERWIN. Albuquerque.

Mr. YOUNG. Albuquerque.

I'm going to suggest to you on a personal level that we're going to pursue this with Greg Megga, knowing that Mr. Kennedy is not

around, and you ought to give us a, I would say no less than a monthly report on where we're headed.

I mean, somewhere along the line we're going to make sure that these trust funds, which were the responsibility of the United States government to the American Indians, those that have not received the money, or those that in fact have lost their money, are going to be not only reimbursed, but adequately awarded, so we have to know what you're doing as we go through with this process of the task force.

We're not looking for any fall person. We just want to make sure that we go to the future, but where we made mistakes in the past, that the problem is recognized by the Congress of the United States, because the trust responsibility that actually comes from the Congress to the American Indian is one where we have let ourselves down because we let part of an agency, obviously very, very inappropriately, doing their duty; otherwise, we wouldn't be having these hearings. It's just the beginning of the process.

So that's what I'm going to suggest, that we will—Mr. Glidden here and Mr. Stearns and Mr. J.D. Hayworth will be in communication with you. We hope to have some reports monthly on where we're headed. If there's a problem, and you see a problem that we can be of assistance, we'll gladly administrate it. What I don't want are just a series of very good sounding words.

So we will be in contact and we will be working together to hopefully solve this problem. Thanks.

Ms. ERWIN. Thank you.

Mr. YOUNG. Panel one, Eric Davenport, Carl Charles and Lonnie Points, will you please take your seat. We'll have to put the names up there, if you don't mind.

I don't see our third witness.

Mr. GLIDDEN. Carl is not here yet.

Mr. YOUNG. He's not here yet? Well, we're moving right on time. That's one thing you find out about myself, I stay on time. We'll go ahead with Mr. Eric Davenport, chairman of Intertribal Monitoring Association, Indian Trust Funds, and Lonnie Points, accountant, Intertribal Monitoring Association, Indian Trust Funds.

Eric, you're first up.

#### **STATEMENT OF ERIC DAVENPORT, CHAIRMAN, INTERTRIBAL MONITORING ASSOCIATION, INDIAN TRUST FUNDS**

Mr. DAVENPORT. Well, good morning, Congressman, and welcome home. It's great to have you back in Alaska and here with us today.

Thank you very much also for holding this hearing here in Anchorage before the Alaska Native people. This is an important issue to Alaska Natives, as it is to all American Indians.

My name is Eric Davenport. My Tlingit name is Tu La'Aan. I am the chairman of the Intertribal Monitoring Association on Indian Trust Funds and the director of business for the Central Council of Tlingit and Haida Indian tribes.

This attention of the special task force on this very large and, unfortunately, growing issue is something that you can take great pride in, Congressman, and that it is more than what any of your predecessors have done. We have made strides in the past, but we do need, as you said, need to get to the bottom of this issue once

and for all, and I think the assignment of the special task force is certainly a very integral and positive step toward that end.

Also, I think following in line with that is the \$17 million Senate mark that was added to the special trustee's budget. Those are very necessary funds in the coming year for him to accomplish the task to put into place the types of systems and procedures that has so long been missing that should have been done years and years and years ago. And this is part of what's going to be needed to make this right, and we, hopefully, will get your support when it gets to conference. Unfortunately, it's going to take some dollars to build a system that should have been built years ago, but this is a start.

Our Alaska friends need to know that it was your committee that passed the 1994 Trust Fund Reform Act that for the first time put into place some very critical and important items, such as the requirement to pay interest on accounts, the establishment of the special—the Office of the Special Trustee, which for the first time put people in place in the Department of Interior that actually knew something about trust fund management. It's hard to believe that billions of dollars in account money were being managed by people that really didn't have trust experience. May have had some investment experience, some finance experience, but trust management is its own very special discipline. So your committee was integral in that process and it certainly was an initial step to moving us along here.

And the appointment of Chairman Hayworth and the task force, again, is moving us forward on this issue. They, in their early hearings, have had a little bit of sticker shock so far. They will have some more, but the tip of the iceberg is being uncovered. The \$2.4 billion that's unreconcilable we refer to as the tip of the iceberg in the process, and that kind of opened some eyes in Washington when we had our first hearing there.

Today I want to talk a few minutes about the Alaska Native Fund and its relationship to other trust accounts and the current status of that, IIM accounts in Alaska and one particular case, the current management of trust fund accounts and what remains to be done, and then finally the impact of the reconciliation on Alaska tribes, most particularly on the Central Council of Tlingit and Haida, which I can speak very directly to, of course.

The Alaska Native Fund did not receive similar examination as other accounts during the reconciliation reports and activities of this past year, even though the Alaska Native Fund has \$111 million, \$111 million, of unreconciled disbursements that were supposed to go to Alaska Natives. Now, of that \$2.4 billion that you referenced earlier, between eight and \$900 million went out in cash distributions to people and entities that we don't know, and \$111 million of that was targeted for Alaska Natives. That was 14 percent of that \$800 million in cash disbursements. A very significant number.

Today, the Alaska accounts total significantly small—or substantially smaller amounts of the total trust fund on deposit with the Bureau; however, the history, because of the Alaska Native Claims Settlement Act, has some very historic and significant amounts over time. But even though the amounts may be small, to the

Central Council and to individual tribes the \$7.7 million trust fund account that we still have, and we are growing, is very important to us, and even though it may not be the grandiose number, it is substantial in that regard.

So for this reason, ATMA would like to ask you to request a GAO separate investigation on the Alaska Native funds, ask them to get to the bottom and find out about this \$111 million that we cannot tag, and let's find out who that money went to and ensure that this type of activity doesn't happen again.

IIM accounts in Alaska, similar to the tribal accounts, maybe don't have the numbers, but they certainly have the significance to the individual people that do have them. And to give you an example, we have about a thousand IIM accounts, Individual Indian Money accounts, here in Alaska, totaling about \$11 million on deposit for these individual Native Alaskans. And it's my belief that the Alaska condition, because it is smaller, could be dealt with and resolved before waiting for a total global resolution.

I mean, when the reconciliation project was done, tribal activities and tribal accounts were examined, the IIM accounts weren't even looked at, and there are 300,000 IIM accounts, where Alaska has a thousand. I think that we could address many of these issues very quickly and maybe not necessarily have to wait for a whole global resolution in order to deal with the Alaska condition.

Unfortunately, Mr. Charles was not able to be here. I had talked with him this last week, and, in all honesty, I—we are paging him and looking for him. He has comes from Dot Lake, he's an older gentleman, and I have talked with him and I have documentation on his case that has been released to me and I would kind of like to review with you this one particular case, because it examples some very interesting and significant issues.

Mr. YOUNG. Go ahead.

Mr. DAVENPORT. Mr. Charles, in 1980, decided—was approached to sell a parcel of land, trust land. And in so doing, the procedure is that the BIA needs to authorize and approve the sale of trust land, which they did. Sale price was approximately \$42,000. \$21,000 was to be made in a down payment and then two equal payments in the two following years was to occur.

The deal was approved, the \$21,000 was given to the BIA on behalf of Mr. Charles and put on deposit there in an IIM account. Now, Mr. Charles asked for the money to be paid out in cash as soon as they could turn it over, and they did in ten days. He received the \$21,000. The transaction occurred in its normal course over the next two years and the transaction was completed.

In 1986, Mr. Charles got a letter from the Bureau of Indian Affairs, and in that letter it says that you've got \$41,000 and some dollars coming to you. Mr. Charles paused and debated the issue, as to whether or not he should be receiving that money, and asked what it's for. And they said, well, it's money that is coming off of your account. He said, I don't have an account, I had an account there for ten days. And they said, well, we are closing these accounts out, it's an IMPL account, an individual Indian money proceeds of labor account, and if you want it, sign below. And so after two or three exchanges of information, he signed the letter and they sent him a check for \$41,000 and change.

About three years after that the IRS called him and said you owe taxes, substantial taxes, interest and penalties, and you need to pay out. What the Bureau did not disclose was that the money that they were sending him was classified as interest money, and that interest money is taxable. Trust money is not, but interest on trust earnings is taxable. So Mr. Charles had been battling with the IRS to kind of drag him back on level ground.

The interesting point is, that the appearance here is that \$21,000 that was on account for ten days earned \$41,000 five years later.

Mr. YOUNG. Must have been working with somebody else I know in the White House. I couldn't resist that.

Mr. DAVENPORT. Well, I have asked my CPA, Mr. Points, to calculate the rate of return on that. He said he didn't have a—they hadn't figured a calculator yet that could do that.

Mr. YOUNG. Be waiting until the year 2000 to do that.

Mr. DAVENPORT. So that, anyway, is the gist of the story. Mr. Charles continues to wrestle with the IRS on this issue. I talked with him this last week. I wanted him to come and tell his story. He was willing to do that. I don't know why he was unable to be here today. But he did say that he was in the process, he told me over the phone, that he was in the process of surveying other trust land that he had so he could sell it to pay the taxes on this money.

So he's going to lose more of his land in this process to cover up, and, like I said, we have the correspondence here. I've read it. It's not clear at all that this money was interest and that he would ever be taxed if it would ever be reported to the IRS.

I also was able to contact the BIA staff person that was involved at that time with this distribution process. And I talked with her this last week, and her name is Salty White, who still is working with the area office out of Juneau. And I asked her about the Carl Charles case.

She said, oh, I'm very familiar with it. I said, well, how could possibly \$41,000 be distributed in the context of earnings to an individual who had an account for ten days of \$21,000? She said what happened was that over the—during the 1960's and 1970's, the moneys that came in as earnings on deposits was not following the principal of the account and that there was a court case of one sort of another that directed the closing of the IMPL accounts, the individual—or Indian money proceeds of labor accounts.

They didn't know that they had a bunch of money in there, they didn't know who that money went to, and so what they did was that they took a point in time, which happened to be, our guess at this point, is the end of January of 1980, found out the number of who had money on account during that month, what their percent of the total amount on account was, because that was what they figured was their best record, gave that a percentage figure. They knew how much they had on deposit and applied that percentage to what was in there and distributed money, and that's how Mr. Charles got \$41,000.

Mr. YOUNG. Eric, wait. Donna, I want to not ask you that question, but you're writing very, very seriously there. This should never happen.

Ms. ERWIN. We agree. Obviously we agree with that.

Mr. YOUNG. All right. We'll find out what happened with you as an example. Go ahead.

Mr. DAVENPORT. So I asked her, I said, well, how many people received checks during that mass distribution? She said, without going back and checking the records, she wasn't sure, but her recollection was someplace around 500. Clearly people ended up getting money, as Mr. Charles did, that probably shouldn't have, or shouldn't have. Other people that maybe had taken money out on December 31st of 1979 didn't get any money, or people who had deposits as of February 1 of 1980, they didn't get any money. And so we've got a number of Alaska Natives that did not get their fair share of that distribution. Others are, as in the case of Mr. Charles, are paying some significant penalties as a result of that.

I see that I'm out of time here. I know we've got a number of people, but I thought that it was important that issue got on the record.

[The statement of Mr. Davenport may be found at end of hearing.]

Mr. YOUNG. Thank you, Eric. Lonnie, and then we'll have some questions. Do you have any questions, any comments?

Mr. POINTS. Oh, I have a whole page of comments.

Mr. YOUNG. OK. Would you like to comment at this time?

Mr. POINTS. Not on Eric's, but—

Mr. YOUNG. I take it you don't have any testimony?

Mr. POINTS. Oh, yes.

#### **STATEMENT OF LONNIE POINTS, ACCOUNTANT, INTERTRIBAL MONITORING ASSOCIATION, INDIAN TRUST FUNDS**

Mr. YOUNG. Would you, please.

Mr. POINTS. Sure. I have submitted my written testimony, Mr. Chairman, and I want to thank you for being here this morning. It's a pleasure to visit your great State. And I understand that you wanted to hear the other side of the story from a CPA, and I am a CPA from Omaha, Nebraska. We have been involved in Indian country back till 1979, 1980, and we have done a lot of work in Indian country, as well as working with the Intertribal Monitoring Association since it began in 1990.

And because I have submitted my written testimony, what I would like to do is expand a little bit on what the Arthur Andersen report says, which we have received a copy of in 1991. And I would also like to preface my comments that I'm not here to badger my brethren or downplay the Bureau. These are things that happened in the past and the present people were not there then, and so if we would take those all in light, I'd like to just share that with you.

The report that we have a copy of was issued in 1991, and it was a piece of an extra effort that Arthur Anderson was asked to do on the 1971 through 1990 Alaska Native Fund, which is the escrow fund that was established—actually in 1976 was the first deposits that were made there.

The Alaska Native Claims Settlement Act, which was passed in '71, appropriated the \$962 million for the Alaska Native corporations. Now, there is some confusion, but Andersen's report says specifically that this money was paid directly to the Alaska Native

corporations and was not included in the escrow fund. There is supposed to be another fund that has that money in it, but for your committee's purposes we are as confused as to how that money moved as the report says, but what Andersen's report does say is that it was paid directly to the Alaska Native corporations.

The moneys that are in this report are the funds that were deposited from the earnings on the land that was transferred as the money earned—as that land earned funds, and it was eventually transferred to the Alaska Native corporations. It has approximately \$42 million in deposits from the principal of the receipts. There was an amendment in 1980, called the Alaska National Interest Lands Conservation Act, that played catch up from '71 to '76, and \$7.4 million was also deposited to this fund.

That's kind of the history of the report that we're dealing with and we're not dealing with the \$962 million. And some of the findings in the Andersen report are as follows: The Money Max system, which is the system that records the investments that the Bureau has, was reconciled to the finance system, which is the general ledger that records all of the transactions, as of September 30th, 1990, and as well as September '89. That—those two balances agreed. However, there was about \$2 million that was not recorded on either system in that reconciliation process.

There were also three months in 1989 and at September 30th, 1989, that none of the funds were invested to earn interest. The finance to the Treasury reconciliation was done to the extent possible, and the exceptions were identified and researched to the extent possible. Andersen did look at about 69 percent of the \$52 million in receipts and they looked at about 74 percent of the \$42 million that has been paid out over this period of '76 to 1990.

There was no testing on the regional corporations or the revenue sharing that runs through the regional corporations, and I think the important part of this report is the findings in the proposed adjustments. In my written testimony, I indicate that the aggregate adjustments were \$10 million, but what I'd like to do this morning is tell how that \$10 million gets there.

And that's a decrease in the fund, by the way. The funds started with \$18 million on the books of the finance system and was reduced by \$10 million and there's \$8 million left after the proposed adjustments.

The first proposed adjustment was a \$21 million payment to an Alaska Native corporation that wasn't recorded. It was sitting in an expense account. The important part of that was that the investment folks didn't rely on the general ledger to invest the money so that they didn't pretend—or didn't assume—that they had it invested or it could have been significantly more. It was only the principal piece.

There was \$1.2 million from a claim with MMS, which is the Minerals Management Services, that was not recorded in 1990. That's an add. And then there's a net of interest of about a million bucks that was thought to have been uninvested in computer treasury interest that actually was invested, and then another \$832,000 that wasn't invested that should have been. That was a plus.

And the books had two fund groups. There was a fund—and the Andersen report says that the present people that were there do



not know why they had two fund groups, but there are two fund groups. The second fund group had \$10.5 million in cash in it, and it was consolidated or combined with the other fund group. And the report further states that the second fund group was not invested, and our question is what happens to the interest and was interest computed on that. I can't tell from the report or any findings that the interest was actually computed on that money to be put into the escrow fund.

The other adjustment is kind of surprising. They reduced the cash for the unsupported transactions, and that adjustment was for \$281,000. Even though it's a lot smaller, it's still a significant amount of money. And there was a receipt for \$155,000 that was, quote, unreconciled, and this is the same kind of reconciliation process that Andersen went through in the five years and \$20 million plus for the—most of the tribes that have trust funds. But this receipt for some reason was adjusted in the \$281,000.

And then the other thing was discrepancies between the ending fund balance of the accounts and the beginning fund balance of the accounts, makes up the difference of the \$155 to the \$281,000. And these are things that they have found on a test basis in looking at procedures and documentation. It's an agreed-upon procedures report, it's not an audit, even though the audit of the aggregate fund in 1990 is the supplemental work.

Last, but not least, there was a reclassification entry to record a \$213,000 certificate of deposit that was not recorded. All in all, the question is, in 1990, this is the last report that was issued, the fund had a balance of \$8.8 million and to our knowledge has not been included in any of the reconciliation or accounting efforts that have been taking place after that point in time.

So in Eric's example of the \$41,000 payment, unfortunately, here we have things going the other direction and this is money that belongs to the Alaska Native corporations. It's in a holding pattern. [The statement of Mr. Points may be found at end of hearing.]

Mr. YOUNG. You've got me clearly confused, but I appreciate it. It's an awful lot of figures that exist to be recited by yourself of arrears amounts of money.

Where is this money, does anybody know?

Mr. POINTS. The Alaska Native Fund is in an account in the Office of Trust Fund Management.

Mr. YOUNG. In Albuquerque?

Mr. POINTS. In Albuquerque.

Mr. YOUNG. What I'm trying to get across, why was some funds reinvested to gather interest and some were not? Who controls that?

Mr. POINTS. OTFM, the Office of Trust Fund Management, prior to Donna.

Mr. YOUNG. Donna?

Ms. ERWIN. There's a couple of things that we probably need to discuss with that, and Lonnie is correct in what is in his statement. Since that time, we have made the adjustments, gone back. One of the things that's happened, and we need to bring this out, is in 1995, we—in 1994, really—started correcting the tribal side, tribal systems, and we converted to the Omni trust system for all the investments and all the tribal accounts. At that time we did go

back and make all of the adjustments, follow-up, do the research. It will be included in the FY-96 audit, the Alaska Native escrow—

Mr. YOUNG. All right. But what I'm going to say, when that gets done, I'm sure Eric and Lonnie are going to be looking at this very carefully, and there's some money there that's not accounted for.

Ms. ERWIN. Yes, he is correct.

Mr. YOUNG. And I just want to know where it is and why some money was not invested and some money was invested. You know, this whole thing is a mess, if you really want to get down to it. A big, big mess is what we're having.

But is the management of this fund reported to the Alaska corporations on a quarterly basis, does anybody know?

Mr. POINTS. Not to my knowledge. We have had significant efforts—and, believe me, Congressman, you thought you were confused, I was confused until I read a lot of history a long, long time ago—but not to my knowledge.

Mr. YOUNG. Donna, is it recorded?

Ms. ERWIN. No, I don't believe it is. There's some, still, determinations by various people—

Mr. YOUNG. OK. Let's put it this way: Is it reported to anyone?

Ms. ERWIN. No.

Mr. DAVENPORT. No.

Mr. YOUNG. Oh, boy.

Ms. ERWIN. This money belongs to—once the BLM, the Forest Service and every one makes a determination which corporations will this belong to, then these funds will be conveyed to those people. Right now, you do not know which percentage of those funds belongs to which corporations.

Mr. YOUNG. Well, now, as we go through this process, Eric, I am going to ask for a JO investigation, I want to show you, for the Alaska part of this, and I think this is part of this process. We have to establish again—what I'm trying to seek here is not putting anybody in jail. I'm trying to solve the problem. I'm trying to figure out what we're going to do from now on. There's no excuse what has occurred, none. I mean, this has been going on since 1903, and before that time. From here—I guess from 1971. And what we have to do—that's quite a while ago.

What we have to do now is figure out where the money is, what is accounted for, and then see if there's some way that we can't make this system work, and then go back into the past and see what we can do to gain what rightfully belongs to each corporation or each individual.

How many did you say belong to these individual money accounts, like Mr. Charles?

Ms. ERWIN. 1400.

Mr. DAVENPORT. In Alaska our figure is someplace around a thousand, which is fairly consistent. Donna said about 1400 IIM account holders. Overall within the system the number of accounts is about 300,000.

Mr. YOUNG. Now, does that person know he has that account?

Mr. DAVENPORT. Some do, some don't.

Mr. YOUNG. OK. That will be one of the questions I want to make sure the operation finds out, are they notifying their account holders.

The other thing I wanted to find out, you said—an important issue in Mr. Charles' program here, about \$21,000 generates \$41,000 worth of interest, that's a beautiful thing.

Has the BIA in Juneau—that's where they work it through?

Mr. DAVENPORT. That's correct.

Mr. YOUNG. Have they helped them in their or his defense to the IRS, or they're saying it's his responsibility?

Mr. DAVENPORT. They're saying it's his responsibility.

Mr. YOUNG. The BIA is saying it's interest of \$41,000. Did they send a letter of explanation saying at that time it was interest?

Mr. DAVENPORT. No. They sent him a letter—I have the letter here that they sent him and it does not say it is interest. It says that is IMPL proceeds.

In fact, I can quote it. It says—it—I don't know if I can go right straight to it here, but what it says is that it's proceeds from his IMPL account. On October 11, Mr. Charles was notified by the BIA that he had money in the Indian money proceeds of labor, IMPL, escrow account and requested him to sign and return a form to withdraw the funds. Mr. Charles did that. And then it says this money was interest earned on the \$21,000 payment he received for the sale of his land.

Mr. YOUNG. This is what I'm seeking. That has got to be rectified by the BIA. You know, someone, very frankly probably myself, would not even understand what's occurring, and Lord lead us into the temptation. And I want that letter, if you don't mind, Eric—submit it for the record. It will be a part of the record and it will back up what's occurring there, because it appears now you've got an individual who has to sell, as you mentioned, other trust lands to try to pay the IRS off, when in reality, it was my understanding, if it was a part of the trust lands, that's not taxable moneys.

Mr. DAVENPORT. That's correct.

Mr. YOUNG. There's something very, very wrong in this situation.

In the Alaska Native group alone, you say Alaska has \$111 million unaccounted for or is that part of the fund that is accounted for?

Mr. DAVENPORT. In the reconciliation report that was published on January 15th, it included as a part of that \$2.4 billion of unreconciled transactions about—more than \$800 million in cash disbursements that were not reconciled. The composition of that \$800 million includes \$111 million that was—has been somehow identified as being targeted for Alaska Natives.

Mr. YOUNG. The thing that confuses me the most, you know, we have \$2.4 billion somewhere out there. Where can it be? I mean, is it making money, has it lost money, is it spent money, or, in your own opinion, I mean, where is it?

Mr. DAVENPORT. Well, I think that's a real question, especially in the sense of the cash disbursements. I mean, that's cash paid out to parties whom we can't identify for sure.

A part of my testimony I didn't get to was that the Central Council has \$4.2 million of unreconciled transactions during that period of time, and you can bet that I've got accountants working on that.

And that's going to cost the tribe money to try and figure out what the trustee did with it. You know, we're having to spend our tribal money to do that.

Mr. YOUNG. What happens, Eric, if we find out there's been malfunction in the trust office itself? Are you willing to sue or is there going to be a way of retribution, or how's this going to happen?

Mr. DAVENPORT. The president will be here in just a few moments and Ed would probably be the best one to explain that.

Mr. YOUNG. I will ask Ed.

Mr. DAVENPORT. But I'm sure that we wouldn't hesitate to litigate if that proved to be the best avenue.

Mr. YOUNG. Because, see, what concerns me, if there's \$2.4 billion and the BIA, basically Department of Interior, is in charge of that and we can't find it but it is coming, guess who's going to be asked to appropriate it?

Ms. ERWIN. We need to clarify that it's \$2.4 billion that they cannot locate all of the documents to do a complete audit.

Mr. YOUNG. Well, again, though, they're somewhere out there, and I'm saying God help the BIA if you have to come to me and ask for appropriations to pay off some malfeasance to do it.

Ms. ERWIN. We agree.

Mr. YOUNG. We're going to have some real heated discussions about that. You know, it's a very poor way to run a train. We're doing this as a process, we're setting up the different systems, to make sure that the train arrives on time.

Do you have anything else to add prior to bringing up the next panel, Eric? Thank you, by the way. I want to thank you personally because you were very instrumental in bringing this to our attention in a period of a year-and-a-half to two years, and it's got a lot of interest in the Lower 48. Of course, your primary interest is here, and it's got a lot of interest in the Lower 48. Because, again, we're not looking for bad things. I'm trying to solve the problem because someone is not getting their just dues out here.

Lonnie, do you have anything to add?

Mr. POINTS. Well, I would just like to add that the \$2.4 billion is only the reconciliation piece. There's more things out there besides the 2.4.

Eric said that this morning, earlier, that was the tip of the iceberg, and there are proposed adjustments in these reconciliation reports beyond the \$2.4 billion. So that's only one piece, and I think that's key.

Mr. YOUNG. Lonnie, what's your role? Are you employed and is this part of your occupation, how did you get involved in it?

Mr. POINTS. I'm a CPA from Omaha, Nebraska. I work for Bland & Associates, a CPA firm. We are competitors, if you will, of the big six, which includes the Arthur Andersen folks, and we have a lot of Indian tribes as clients in the Lower 48. And we got involved in this in September of 1990, when Donna's predecessor called a group together because of your Committee that said we want to make sure you consult with Indian tribes before you start on this reconciliation audit certification process.

So I was at the very first meeting that started very well in the morning and by the afternoon disintegrated to you'll have to sue us if you want your money.

Mr. YOUNG. Well, what I'm asking, then, I'm not hitting on anybody here, but it goes for anybody who's involved in this. I listened to both of you, listened to all these numbers and figures, and I get a blank look on my face because, again, I don't know where the money is. I'm an old-fashioned riverboat captain; you either got the money in your hand or you don't. And when you say it's there, but it's not, I get very, very confused.

I'm hoping that you continue to pursue whoever you're doing this for, following what is being accomplished and where we're headed, because I just don't want to see the tip of the iceberg. If there's a bigger part of this than the iceberg that sunk the Titanic, I want to see it.

Mr. POINTS. Right. And we are.

Mr. YOUNG. OK. Eric?

Mr. DAVENPORT. Just in closing, Congressman, when I referenced the tip of the iceberg, that \$2.4 billion was the result of an unreconciled amount on \$17.8 billion of non-investment transactions.

Mr. YOUNG. The reconciliation, it was sort of a negotiated number to come up with 2.4.

Mr. DAVENPORT. What they did was they tested non-investment transactions, and during that time period, their \$17.8 billion, they did not test over \$200 billion in investment transactions. That hasn't been examined yet.

Mr. YOUNG. OK.

Mr. DAVENPORT. They've only looked at 17.9; they have not looked at \$200 billion.

They also do not have any accounts receivable system, they have not examined the oil and gas and minerals issues out there. That hasn't been examined. So when we talk about \$2.4 billion, we're talking about the tip of the iceberg.

Mr. YOUNG. OK. Well, we'll be pursuing this, and I do thank both of you for bringing your testimony in. It will be submitted for the record in written form and your spoken word has also been taken down. And this is just the beginning of this process, and like I said, especially—I know Eric will be back in office, but, Lonnie, I want you to mark out this as it goes by to see where we're headed.

Thank you very much.

Mr. POINTS. Thank you.

Mr. DAVENPORT. Thank you, Congressman.

Mr. YOUNG. The next panel will be Ed Thomas, president of the Central Tlingit and Haida Business Council; Alma Upicksoun, Elouise Cobell, Robert—Robert, how do you say that name?

Mr. PEREGOY. "Peregoy."

Mr. YOUNG. "Peregoy."

Mr. PEREGOY. Yes, sir.

Mr. YOUNG. All right. Is that French? What is it?

Mr. PEREGOY. French Basque.

Mr. YOUNG. French Basque.

Well, we will start out with Mr. Thomas. Welcome, glad to have you here.

Mr. THOMAS. Thank you very much.

Mr. YOUNG. We're running just a little bit more casual, if you need to have a few more minutes, but, remember, you have four other people there, and we'll go through it.

Mr. THOMAS. Thank you very much. I won't take a lot of time. I have some written testimony; I hope you've got a copy.

Mr. YOUNG. We have a copy. Thank you.

Mr. THOMAS. I will not be reading my written testimony, but I would present it for the record.

**STATEMENT OF EDWARD K. THOMAS, PRESIDENT, CENTRAL COUNCIL, TLINGIT AND HAIDA INDIAN TRIBES OF ALASKA**

Mr. THOMAS. I'd like to welcome this committee and this hearing to Alaska, and greetings from Southeast Alaska. As you know, Southeast Alaska is the home to Tlingit, Haida and Tsimshian people.

Uxut Duwa Sawk Tlingit Aya Xut. I'm a Tlingit. My Tlingit name is Tsa Xoo. I'm the president of the Tlingit and Haida Central Council. On the documents you have, it says it's a business council. There is a business manager, but we are not a business council, we're a central council.

I want to continue my introduction by pointing out that I'm a former member of the joint Department of the Interior, Bureau of Indian Affairs and Tribal Reorganization Task Force. I'm currently the Juneau area vice-president of the National Council of Indians and I'm a member of the appointed advisory board to the Office of Special Trustee.

I use those introductions to point out that I have been involved in this issue in each of these forums and we have discussed this issue very thoroughly at times, but oftentimes it's just to vent frustrations. But without exception, the tribes that participate in all of these groups and organizations and task forces agree that the issues relative to the tribal trust fund management and all the problems that have been uncovered need to be fixed and they need to be fixed as a high priority.

My testimony at times gets pointed and I hope that my testimony does not insult people. I don't intend to be overcritical and I don't want to be overcritical of any particular Congress or even the Federal Government. However, I need to point out that the problems of the trust fund management reside primarily in one office, in the Department of the Interior, and we need to focus on it.

And the problems in that Department need to be fixed and they need to be fixed a lot quicker than they are being fixed. Each day that the problems go by without being resolved, the problems are compounded. If we don't have accounts that are reconcilable, the earnings that should be earned by those accounts go unreconciled and so on and so forth. So it's very important that as we address the issues relative to the tribal trust fund management, that we do it with a degree of vigor, much more than we are at this point right now.

I was very proud of Congress and the President in the manner and expedience in which they dealt with the problems of the savings and loan scandals. I felt that it was a fiduciary responsibility of the Federal Government to make sure that people investing in institutes across this country did not lose their savings, their life

earnings because of certain scandals relative to managing their money.

And I think that Indian accounts need to be dealt with in the same manner, very direct, very straightforward, don't drag it out. I think that when we talk about where is the money, where did it go, I think those are important issues, but also as important, we need to identify who owns those dollars and how much they really should be entitled to.

In my latest involvement as a member of the board through the Office of Special Trustee, I have become more convinced that we need to put a lot of effort into fixing the systems. If we keep dwelling on the reconciliation problem as the only solution, I think we will miss the boat in not making sure that the systems that are designed for accountability be in place.

I think they need to be in place soon. I don't know if we need to study it too much more. I know that Paul Homan put forth a plan at one point where he identified a lot of things that were necessary from a banker's point of view, an investment point of view, how we should manage those systems.

So I think we need to move on two tracks. Yes, we need to reconcile the accounts on a high priority, but we also need to fix the systems that are ongoing problems.

I want to close by thanking you once again for being here, bringing this hearing to Alaska. Many times we feel like we're left out of the system because we don't get many hearings in Alaska, so it's a great honor to have the committee on this very important issue here in Alaska.

I also want to thank ITMA for all the work they have done over the past number of years in crystallizing the problems, defining a manner by which we can address them directly, and I think that's where we are. I think we need to move forward, and, once again, thanks for your time.

[The statement of Mr. Thomas may be found at end of hearing.]

Mr. YOUNG. Thank you, Ed. I appreciate those comments.

Alma, you're up.

#### **STATEMENT OF ALMA UPICKSOUN, ASSISTANT HOUSE COUNSEL, ARCTIC SLOPE REGIONAL CORPORATION**

Ms. UPICKSOUN. Good morning.

Mr. YOUNG. Welcome back to Alaska.

Ms. UPICKSOUN. Thank you. And I was going to welcome you back. It's good to be home. I, for one, know that.

My name, for the record, is Alma Upicksoun. I serve as assistant house counsel to Arctic Slope Regional Corporation. I'm one of the over 7,000—

Mr. YOUNG. Pull that microphone a little closer.

Ms. UPICKSOUN. I'm one of the over 7,000 shareholders for Arctic Slope Regional Corporation. Our shareholders want to thank you for the instigation of this task force and addressing this important issue.

I, for one, as an Alaska Native and other Alaska Natives here recognize the work that you have done to fulfill the obligations for the Federal Government with Alaska Natives, and I'm sure that

we'll see the same resolve as you address this issue with the task force.

This morning it's my honor to introduce to the task force Elouise Cobell, who's a leader from the Blackfeet tribe in Montana and serves as the project director for the IIM correction and recovery project. And I know that she and Bob Peregoy have some solutions and corrections, hopefully, to this process, and welcome them here.

[The statement of Ms. Upicksoun may be found at end of hearing.]

Mr. YOUNG. Thank you, Alma, and make sure to move that mike over.

Elouise, I just came up from Montana the day before yesterday with Gordon down there. Mainly what I was doing, I was traveling all over the northwest, checking out some of the responsibilities I have on this Committee. Welcome aboard. Welcome to Alaska.

### **STATEMENT OF ELOUISE COBELL, PROJECT DIRECTOR, IIM CORRECTION AND RECOVERY PROJECT**

Ms. COBELL. Thank you, Alma, and thank you, Congressman Young. I'll tell you, it was music to my ears when you said today that you were going to pursue this issue with great vigor—

Mr. YOUNG. Thank you.

Ms. COBELL. [continuing]—because I have been pursuing this issue with great vigor in many capacities, initially as one of the ITMA former chairs, that Eric now fills the position, and as chairman of the advisory board and also as a lead plaintiff in a class action suit on behalf of individual Indian account holders. I am now heading up as project director the trust fund recovery, individual Indian trust fund recovery project.

I bring you great warm greetings, and I was with our chairman and chief yesterday and he said specifically to give you a hello from Chairman Old Person.

I am very, very encouraged because, like the Alaska Natives, there are many tribes in Montana and individual Indian account holders that are also victims of the great mismanagement, financial mismanagement, I think, and in my opinion is the worst financial mismanagement in the entire United States because it affects the poorest people in this country, and so I really appreciate the effort that you have put into this task force to make sure there are some solutions and some resolution to this problem.

I guess maybe I want to talk to you a little bit about how I was involved. And how it came about is, I was treasurer for the Blackfeet tribe for many years. I was a young person at that time. And the way that I feel that the government and the Bureau of Indian Affairs were able to get away with this for so long is just—from the testimony that you heard, there was never any information that was provided to us.

I started questioning the account statements that were coming to Blackfeet, and you heard Lonnie and Eric talk about the numbers and there were negatives posted to your summary of trust accounts, and every time you questioned the Bureau, you just got an entire runaround: Well, you got to go to the area office, you got to go to the central office. You know, it was just on and on and on,



and nobody was accountable to the tribes and to the individual Indians.

And so finally you just had to start working together, and it was such a relief to be able to organize the Intertribal Monitoring Association, where we came together as a powerful group of tribes. And that was the only way that we got anywhere, is just being in the government's face every single day, because they would slam the doors in our face.

Since I've been involved with the trust funds, I hear many, many stories from the elders at home that come to me and tell me stories of what has happened to them, and it is so sad. Just the other day, I was called over to the nursing home, the Blackfeet nursing home that is run by our tribe, and it's not the best care that we have for our elderly people, but an elderly woman told me about the stories of what they would have to do to even get some money for the basic living, for food, for clothes for their children, and they rode horses through snow banks and finally made it to Browning, the seat where the Bureau of Indians Affairs would be, and they would lock them out. They were locked out. They had to stand outside in the cold and wait and wait and wait to see the agent to try to get some of their own money.

So this has been happening for years and years, and I really don't think it's gotten any better. There has been a little bit of progress.

But let me tell you another hat that I wear is I was organizer of the Blackfeet National Bank. It's one of the only national banks located on an Indian reservation that is owned by a tribe. And if we were—if we ran a bank like the way that the Bureau of Indians Affairs has been able to run and manage our own money, we would probably all be in jail and definitely our bank would be closed down by the Federal agencies.

And so that's what's so mind-boggling about this entire thing, is because the same government agencies that regulate our national bank that would close us down and put us in jail also have a double standard for Department of Interior that manages our money, so it's really important and I'm just so encouraged by your efforts of this task force.

And I also like the fact that you said that you were going to be asking for monthly reports, because I know for a fact that if you don't continue to hold their feet to the fire, then it goes away, the urgency goes away.

After ITMA was really involved in pushing the government to do something about this great mismanagement, Congressman Synar, and, of course, Congressman Clinger issued the mistrust—Misplaced Trust Report, and that report led to a lot of things. And I think the great thing that it led to was the 1994 Trust Fund Reform Act that gave tribes for the first time some teeth. It gave tribes the opportunity, if they did not like the way the government was managing their money, that they could actually pull their money out.

It also put in place the special trustee, and I'll tell you as part of the Act. And I know many people in this room, Dan, David, Lonnie, Eric, were all involved in helping with the Trust Fund Reform Act, along with many congressmen. And I was just so ecstatic when

that reform act got approved. I thought, my God, we finally made it, we're finally going to make the government accountable to the poorest people in this entire country.

Well, being from Montana and a long ways from Washington, I really didn't understand what really needed to happen. Well, the special trustee that was part of the Act, that we, the tribes, put in place for the very first time a very capable person that had managed banks, had turned huge banks and trust departments around. We finally got the person in place. Well then, Congress did not give him any money, so we're just back to square one.

I mean, if you put the most capable person in place and you don't give them any moneys to fix the systems, to implement a strategic plan, then we're back to square one. So we basically are just starting all over, and I really would like to encourage the task force to appropriate the money that is needed to implement the strategic plan that the special trustee has put forth.

It is my understanding, and I am—excuse me if I'm probably a little bit ignorant about how Congress works, but it's my understanding that the House appropriated a million dollars to do this. The special trustee had given the estimates that it would cost \$150 million to fix the systems over five years. Then it is also my understanding that the Senate committee bumped that up to \$18 million.

So I would encourage you, Congressman Young, to give us some support in making sure that we get the higher mark in order to start this, because if we don't have the money to fix the systems, every day is—we continue to lose our money. It's being stolen; who knows what's happening to it. We know we don't have any accounts receivable system.

I just want to tell you one very quick story. Maybe being from Montana, you might allow me a little extra time. But we had a situation where an individual, an elder, wasn't getting any income off of her land, but didn't really understand what's the process you go through. You go to the BIA agency office and they don't tell you anything.

But it just happened that somebody was driving by that land and saw there was a huge gravel pit on the land. So she went—and she didn't know where to go, where to enforce it, so she went to Tribal Court. And she brought it to the judges and said, you know, I have a problem here, people are taking gravel off of my land. And, you know, for the matter of the record, there's no accounts receivable system within the Bureau of Indian Affairs, so they never know if you're owed money or not.

So she had taken this situation to Tribal Court. Tribal Court tried to pursue it and went to the Bureau of Indian Affairs and said, you know, give us a reporting, this lady is not being paid, who is taking the gravel. Well, it was a non-Indian that was taking the gravel off the land and selling it, and this lady never, ever got a cent.

Well, unfortunately, she passed away before anything was resolved, and as of today, we don't think the heirs have received their just. But that just gives you a sampling of the individual Indian problems that we're having.

I think that part of the suit, as a lead plaintiff, and Bob will be getting into that in much more depth, is to compel the United

States Government to fix the systems for us. And I also believe, as you heard many of the stories today, is that you need to make the wrongs right. You have to give restitution to the Natives.

One of the areas President Thomas talked about was the advisory board and the different plans that have been submitted to the advisory board. And one that we felt that was very interesting and had some real capabilities to solve some of these problems is this special trustee introduced the creation of a development bank. A development bank would be capitalized, and maybe that would be the place, after Indian country was consulted, that would manage the trust funds and the trust assets.

But the \$2.4 billion, as you know, they don't know who that belongs to. They can identify some of the people that it belongs to. Eric talked about the escrow account that would belong—some of the money belongs there. I know that Blackfeet is owed some of the money, but there's some money that they just can't identify who that is owed to. So, you know, if we were to capitalize a development bank, it really could do some really economic development in Indian country, and I think that's something that we should look at.

I would like to thank you, and I know that you're going to do a wonderful job in developing a report after you're finished with this task force in November. And, once again, thanks a lot for an opportunity to testify before you in Alaska.

[The statement of Ms. Cobell may be found at end of hearing.]

Mr. YOUNG. Welcome to Alaska. If I can tell you one thing, this will not dissolve in November. We hope it will continue in pursuit of this, I think, real serious problem. I will ask each one of you, though, that has been here today just in the beginning, to continue to track where we're going. If you have any advice or any suggestions or any ideas, we're very, very open for them. And I just want to get this done.

As I said, I don't want to go into the past, but I also would like to solve the problem we're faced with today and seeing it doesn't recur, and then we'll go back for the restitution part, because I do believe there's been an awful lot of money lost to individuals and especially certain tribes and corporations that have been set forth. It's a loss and that wasn't what the intent was. If someone is not functionable in an agency, that they should be required to reimburse those moneys that were lost.

Robert?

**STATEMENT OF ROBERT M. PEREGOY, SENIOR STAFF  
ATTORNEY, NATIVE AMERICAN RIGHTS FUND**

Mr. PEREGOY. Thank you, Mr. Chairman. I want to express my appreciation for being here in your great State. This is the first time I've come to Alaska and it's every bit more beautiful than I've always heard.

Mr. YOUNG. What State did you come from?

Mr. PEREGOY. I come from Montana and from California. I'm a Flathead Indian from Montana on my mother's side of the family and so we have—I thought that was God's country, but I have to concede that this is going to give it a run for its money, but we won't make any—

Mr. YOUNG. The only bad thing you said in the whole thing was California.

Mr. PEREGOV. That's where my dad came from. I didn't have any control.

Mr. YOUNG. OK. Robert, go ahead.

Mr. PEREGOV. It's a real pleasure to be here, and I do want to thank you very sincerely on behalf of the Native American Rights Fund for taking the leadership to create this task force to resolve this most important issue.

And as Elouise has suggested here this morning, Mr. Chairman, we view this as the largest and longest lasting financial scandal ever involving the United States Government, and at stake are untold millions and millions and billions of dollars of Indian tribes and individuals, and that's why it's so important, because the very trustee who is charged with the responsibility of protecting the interests of these tribes and individuals has grossly breached that responsibility. And it's time long overdue to make the situation right, and that's why we commend you to bring this task force together, to help marshal the appropriate forces to rectify this situation.

On June 10th, Mr. Chairman, the Native American Rights Fund participated with other attorneys in filing a class action suit on behalf of more than 300,000 individual Indian trust beneficiaries whose moneys have been lost and mismanaged by the Federal Government to the point where they had no other choice but to go to court to compel the government to uphold its fiduciary duties.

I want to make it very clear to the task force and on the record, as Ms. Cobell pointed out, this lawsuit was really a last resort. Ms. Cobell and others have attempted to work very closely with past administrations and this Administration to see if they could get some kind of a resolve to this ongoing matter, but they met with basically deaf ears, and it—in terms of the individual Indian account holders, they really had no other choice but to go to court to force the Administration and government to finally seriously address and resolve this matter.

The lawsuit has three basic objectives. The first one is that we're asking the Court to compel the Federal Government to calculate the amount of money that is due to these 300,000 individuals. We're looking back, Mr. Chairman, at the 158-year period. We're not looking just at the individual trust beneficiaries who are living today, but we're looking at over the entire history of that IIM accounting system.

The second primary objective, which I think relates a lot to the testimony and what could be done immediately, is we're asking the Court to compel the Federal Government to fix the system, to create an accurate and reliable accounting and trust management system, because the system that exists now, as the other witnesses have testified, is hopelessly broken and it's really an embarrassment, I think, to the United States Government that is charged by law to legally handle and develop an adequate system of accounting, and they don't even have it.

And, of course, the third goal of our lawsuit is to ask the Court to compel the government to restore or make restitution to the account holders in this matter.

People ask—I was talking to one lady outside here this morning from the media and she was saying that this is very confusing, what is this really all about. The way I explained it was that every money manager, every money manager from a 7-Eleven to your local credit union, needs to have some kind of an accounting system to account for the money they collect and the money they deposit and the money they distribute, and that's what the problem is here.

For a long, long time, up to the—even today, the Bureau of Indian Affairs or the Federal Government does not have an adequate accounting system, and that's why they're in such a mess that they are in now.

We've heard a lot of talk, Mr. Chairman, about the \$2.4 billion in unreconciled money. Now, it's important to keep in mind that those are tribal trust funds that are unreconciled and that's only for a 20-year period, from 1973 to 1992.

Now, in the area of the Individual Indian Money accounts, we don't have any idea how much money is unreconciled for the very reason that the Arthur Andersen firm that did the tribal reconciliation projected it would cost between \$108 million and \$281 million just to do a reconciliation for those individual accounts and only for a 20-year period. And that even then, Mr. Chairman, after expending that kind of money, Arthur Andersen could not even predict that there would be any degree of accuracy to such a reconciliation, because the records are either missing or in so much disarray that it would basically be a meaningless gesture.

At that point, I think when the government learned that, they just basically stuck their heads in the sand and decided not to go forward with it, and along about that time, the Native American Rights Fund became involved with some other attorneys to look into seeing how we could compel the government to basically take some action on this.

Now, Ms. Cobell is very correct in stating that through the 1994 Act, we are very fortunate to have a very capable man in Mr. Paul Homan, the trustee, the special trustee, to help make some kind of sense and bring some justice to this deplorable situation. But the record shows here, Mr. Chairman, that Mr. Homan has stated on record that the Individual Indian Money accounts and accounting system are in the worst shape of all the Interior's trust systems and trust funds.

And so basically what we hope to achieve in terms of a short-term goal here is to, first of all, stop the hemorrhaging and the bleeding in terms of the individual Indian accounts. And that means to do that, we need to establish an accounting system that is at an acceptable level of adequacy. The special trustee has indicated that will take \$22.3 million to do, that he can do it in one year. The special trustee can stop the bleeding in the Individual Indian Money account system in one year with \$22.3 million.

Now, the special trustee asked the Administration for almost \$50 million this year for appropriations. The Administration reduced that to \$36.3 million, and then when that request went to the House, the House reduced that by almost 50 percent, to \$19.1 million. The \$19.1 million can do nothing to fix the Individual Indian Money accounting system. It's going to take an extra \$22.3 million.

And in the words of the special trustee, that will produce a Chevy, not a Cadillac. It's a basic kind of accounting system that can stop the bleeding, which means they can establish a system that is going to, from this day forward, at least end the Federal Government's mounting liability for its inability to account in these kind of losses.

And that's what basically we need to respectfully appeal to you, Mr. Chairman, and the task force and the Resources Committee, is to marshal your forces and authority and all the influence and power that you've got, to see if you can get the House and the Senate to kick in an extra \$22.3 million for this Individual Indian Money account system for this year, which can fix the system in one year.

I know that you're smiling up there and it sounds real easy for me to sit here and ask these kinds of things, but we know that, you know, that's what needs to be done to fix this system.

So basically what we're asking, with all due respect, is that the House would not only recede to the Senate appropriations committee mark, but add an extra \$8.7 million to it so that the special trustee can have this \$22.3 million that he needs to establish a rudimentary accounting system.

And I would put it also in these terms, Mr. Chairman, that \$22.3 million, we understand and appreciate very much that the mandate that Congress is under in terms of the budget balancing and all of those issues that you all have to face, but when you think about 300,000 individual Indians and the fact that the Federal Government has breached its trust responsibility to these people, has lost their money in untold millions, and that on the other hand the Federal Government's liability mounts every day, \$22.3 million divided by 300,000 people comes out to less than \$75 per person, and we think that is a pittance to pay to stop this bleeding, to honor this trust responsibility to these individuals and to, equally important, stop the Federal Government's mounting liability.

And so we are here to respectfully ask you, Mr. Chairman, if you would please consider to do that, and we would be most happy to work with your people in that regard.

And I do want to say one more thing, if I may, and that is that it's our position that it would be wrong for any such moneys to come out of Indian programs. It is—again, the Federal trustee is directly responsible for these—creation and continuation of the breaches of trust and that it just simply would not be right to ask individual Indians or tribes to pay for a system that basically the Federal Government, in the first instance, is legally obligated to implement. And so in that regard, we just think it would be unjust and unconscionable for any of these dollars to come from Indian programs.

With that, Mr. Chairman, I want to thank you very much for inviting me to come to your great State, for listening to my testimony, and, again, on behalf of the Native American Rights Fund and our clients, we sincerely thank you and commend you for taking the very leadership that's needed to bring this sad chapter of Indian/Government relations to a quick end. So thank you, sir.

[The statement of Mr. Peregoy may be found at end of hearing.]

Mr. YOUNG. Thank you, Robert. And make sure while both of you are here from Montana, you'll see the rest of Alaska. It's five minutes from Anchorage. Go out and see the northern part. There's some tremendous areas that you will not see right here in the proximity of this bowl.

One thing of all of you, I'd like to ask one question—and I agree with the money for the trustee. I don't think you're going to get the initial 22. I think we probably will recede to the Senate with the amounts of money being expended, probably around \$19 million. \$19.1 million, I think that's what we'll recede. With the Senate appropriating and the House appropriating, probably come in with about, probably, hopefully, 20, 22.

And now I want to ask the question, does the trustee work under the Department of Interior or is he independent?

Ms. COBELL. Department of Interior.

Mr. YOUNG. The thing that bothers me the most, if I had a bank and done what they have done, I certainly wouldn't give any more money to continue to do what they're doing.

I mean, has anyone ever thought about maybe we ought to take the whole thing out of the BIA and send it over to another area? We want the—subpoena all the records, all the files on each individual money deal, every corporation, everything, and let's run this independently. We'll do it government funded, but get it out of that office.

I mean, I'm not saying that would solve the problem. I'll tell you what I'm going to run into. With just \$2.4 billion being the tip of the iceberg, and I hear the term \$200 billion and we try to appropriate money, this is a temporary solution. We'd have to appropriate more money to make it work right. If that occurs, they're going to say, if there's that much money out there misappropriated, misused, not accounted for, why should we be appropriating money to the same agencies that did it. I'm hearing that argument already, so what do I say?

Ms. COBELL. Well, I have an answer, I think, for you. You cannot transfer or privatize until you fix the systems. We have to have accurate account balances. No bank would take this if they didn't have—they thought the balances were wrong. And that's the problem that I have as an individual Indian account holder and as a member of the Blackfeet tribe, is our account balances are not correct.

Mr. YOUNG. OK. But let's say I'm—and I'm sure Donna is not going to do this—but let's say the BIA, or the Department of Interior, decides that they are in serious trouble and there is a \$200 billion account out there and that needs to be settled. You know how I would settle it if I were that group? I would probably not say and not do anything at all.

How do we make them function to do the job correctly? Because you say you wouldn't take it as a bank, you couldn't privatize it until the records are accounted for, that means they don't have to take it to make it ever work. You follow what I'm saying? The best way to make a malfeasance effort would make no improvement.

Now, we could bird-dog them, and I've wanted a monthly report, I want you to follow it, but someone along the line, you know, I'm hoping we see some progress because appropriating money for this

is not going to be easy if in fact you say, oh, since 1903, whatever it is, you say 140 years, that this amount of inactivity or mismanagement has occurred, why should we appropriate money to the same agency that's doing it.

Ms. COBELL. Well, I think that they need to correct the system, they have to be corrected and you have to appropriate the money to get the systems corrected. I think that further down the road there should be options available. Right now, the way, you know, it stands now is, we can't fire them, but there should be options available to tribes and individuals.

There should be options available after proper consultation with the Indian people, because I know exactly what's going to happen. If you privatize today, and say, OK, I'm whipping all this over to Wells Fargo Bank, immediately if I go in and I have a problem, if I go to the agency, they'll say that's not our problem, that's Wells Fargo, the bank's problem, and that'll probably give them an opportunity to destroy more records.

So I think that we need to fix the systems first. You have to allocate the money to fix the systems first, and then let's transfer. Let's do it the right way.

Mr. YOUNG. OK. Now, what happens if I can't—what happens if we do exactly what you're saying, we fix the system, we make it work. And you're saying that the tribes can take their money out. What about the individual money account, individual person, why couldn't the tribe handle that account, too?

Ms. COBELL. Because the—I guess the way the law is written.

Mr. YOUNG. Well, can we change the law?

Ms. COBELL. Yeah, you can change the law.

Mr. YOUNG. I mean, it's something to look at.

Now, the other thing is the fact, why isn't the trustee—which you're talking Mr. Holman, is it?

Mr. PEREGOY. Homan.

Mr. YOUNG. Why isn't he independent?

Ms. COBELL. Well, we tried to make him independent when we were working on the law, and I don't know, it's something within managing Federal employees you can't be independent, so—but I think it definitely is worth exploring, you know, how can we make him independent so he's not under the Department of Interior's Secretary, because we have had problems with the Secretary not agreeing with the plans that the special trustee has on fixing.

Mr. YOUNG. And the Secretary is really appointed. To make this work, I think he'd have to be, and I know he's confirmed by the Senate, but—and I guess the law reads if a person is confirmed by the Senate, he has to be under the auspices of the appointed cabinet member—but we should be able to somehow work our way around where the individual has more autonomy to make this—because every four years or every minimum of eight years you have a new Secretary, and it depends who you get in the office. That could be devastating to the progress we've made. Now, you say he can do it in one year. I doubt if anybody can do anything in one year.

Ed, the question was asked a while ago, and it goes back to your lawsuit, Robert, would Tlingit/Haida—would you go to court if



things didn't perk along the way you wanted, or what would you do?

Mr. THOMAS. Well, let me say why we are not first. We—

Mr. YOUNG. I don't particularly like lawyers going to court, with all due respect to my legal friends here, but I'm just saying—

Mr. THOMAS. That is a very important part, but I also feel that with the kind of representation Alaska has in Congress, we are probably in a position where we need to not burn any bridges and put things in courts we don't trust. And we need to work with you and Ted and Frank and do the best we can.

Furthermore, we also have less at stake, and so to confuse the very real issues of the individual Indian accounts with our system—our problem, which is we know how much money we have, we just can't reconcile our accounts, generally. Now, I'm not saying it's accurately. It would be very much to our benefit that we could reconcile our accounts and be able to have an audit done of our programs, but I feel very strongly that we probably have a better chance of making progress and fixing systems working with you and others, as well as even the Administration, than we do in court.

Mr. YOUNG. OK. Now, again, I'm hoping that—I have already said this too many times. I'm hoping all of you keep your brain power working, because if you think there is a way—it goes back to the autonomy, possibly, of the trustee. If there're ways that we can do it legislatively, that's our job. You can, of course, ask for the accounting from the Administration.

Administrations, by the way, as I've been under six of them, and I have never seen any real progress under any of them under this program, other than we had for 1994. I think we have started to make progress and I hope we are.

But this issue has to be solved. And I have been around long enough to know the best way not to solve an issue is to pass the buck back and forth from the legislative side to the judicial side to the Administration side to the Secretary, back to the President. Then you get a new President and it goes on and on and on and we're back for another 50 years. I don't want to see that. I want to see this situation rectified, I would say as rapidly as possible.

So you all are going to have to continue to come up with some ideas and concepts. And I know we've been in this a long time. I think that's important.

Mr. THOMAS. I think the transfer of this program out of the Bureau into another Federal agency, like banking securities or Treasury or Justice even, to me should be talked about. I don't think that I have enough information to say let's do it tomorrow, but I think it's got to be talked about, where we have systems in place where they can be mirrored and complement the resolution of the problem.

But to leave—like what you're saying, leaving something where it is when everybody is confused and—without pointing fingers at Congress or the Administration, when we had a Democratic-controlled Congress making recommendations to a Republican Administration, they say, well, that's a Democratic issue. Now we get a Republican-controlled Congress making Democratic say, well, that's

a Republican issue. And so we end up getting caught into a battle of wits here and the problems goes on.

Mr. YOUNG. And that's what I'm trying to avoid, and I think the way you could avoid that, it could be even—this sounds kind of strange, it could be even under the Department of the Office of Trust if they had total autonomy with the trustee.

You see, instead of having it under the President and the battle between, like you're absolutely right, between the—I have been under four R's and two D's, and, you know, all this time there's been a D in the Congress and R's in—four in the House, but there is usually that argument, well, this is a position that a party takes.

This has nothing to do with a party. This is a trust relation between the Congress and the American need. People don't understand that that's our responsibility, and until we accept that responsibility and quit passing the buck, it leaves a lot of latitude for, frankly, the Department of Interior to play games with a lot of money, and that's not the idea of this.

I mean, that was never the reason it was set up that way. The reason the idea of the trust fund was set up, and I hate to be blunt, is you supposedly didn't have the ability to take care of your own money. That was why it was set up. Big Daddy was going to take care of you. And Big Daddy took care of it all right; nobody knows where it's at.

So what we have to do is try to get outside the political arena and try to get into an area where Donna can be and the trustees can be without having to go in and respond to the set up or to the Administration or to the accusations. I get concerned about the Congress when it comes to appropriating money. I'll be right upfront with you. This is a very cheap investment to solve a big billion dollar deal.

And I'm lecturing now. It reminds me of one thing that I'd like to see, and I've said this publicly and privately. After everything is said and done in Alaska, after all the preparations and the villages receive their land so they can't use that over their head, I think there ought to be one big lawsuit, because the moneys that have been used to fight the intent of the Congress in 1971 are awesome by the Federal Government. And the BIA never took the side of the Alaska Native. They never helped them in court.

I knew of Park Service, BLM, Fish & Wildlife, you name it, and the amount of moneys that sent kids through college that belong to lawyers' sons and daughters is awesome. And I'm just saying that was never the intent of Congress, but the agencies in fact have overstepped the intent of Congress, using taxpayers' money to pay lawyers to oppose, especially the allotment program, to oppose the solution to a problem, the selection of lands, et cetera.

And that has nothing to do with this issue, but it is a classic example where the responsibility never was followed through by the BIA to say this is our charge, this is our war, we ought to be defending them in court. Didn't happen.

Now, I said my little speech. Anything else you'd like to add while we're here?

I do appreciate you. And, again, I charge all of you to continue. This is the first hearing we've had in Alaska on this. We will have a series of hearings with J.D. Hayworth. We will be pursuing this

issue, but all of you have a responsibility to communicate with the Committee, and, Donna, you have a responsibility, and we'll try to see if we can't make progress. And we will have a backup hearing on this beginning in probably February, where we are, where we're going, and we will just continue to do it. We will get this problem solved.

I do thank all of you, and I hope that those that have come to Alaska have a chance to enjoy it more than just a day. It is raining outside today, but if you go to Fairbanks, it's not raining. The fishing is good in other areas.

Thank you very much, and this hearing is closed.

[Whereupon, the task force was adjourned; and the following was submitted for the record:]

United States House of Representatives  
Committee on Resources  
Task Force on Indian Trust Fund Management  
Hearing on Indian Trust Funds Management

Testimony of Donna Erwin  
Director, Office of Trust Funds Management  
Anchorage, Alaska  
August 10, 1996

Thank you for the opportunity to present testimony on Indian Trust Funds Management. As you are aware the Office of Trust Funds Management manages APPROXIMATELY \$10.2 million in the Alaskan Native Escrow Fund, \$6.8 million in 27 accounts for Alaskan Native entities, and \$10.6 million for 1431 Individual Alaskan Residents. The hearings are focusing on trust management practices and what it may take to ensure sound trust management in the future. Each of these focal points is discussed in turn.

In October 1995, the Office of the Special Trustee for American Indians (OST) commenced an assessment of the U. S. Government's trust management policies, procedures, practices and systems as they apply to individual American Indian and American Indian tribal accounts. By February 1996, the OST completed the preliminary assessment and produced a conceptual strategic plan to acquire and institutionalize specified systems. Implementation of this plan will permit and ensure that the U. S. Government establishes appropriate policies and procedures, develops necessary systems and takes the affirmative actions necessary to provide an accurate and timely accounting to American Indian trust beneficiaries. In this manner the proper discharge of the Secretary's trust responsibilities can be accomplished. The Assessment and Phase I of the Strategic Plan are included in a document entitled "Special Trustee for American Indians, Assessment and Strategic Plan Principles, Phase I, February 1996" which has been provided to Congress.

In December 1995, the U. S. Department of the Interior's Bureau of Indian Affairs substantially completed a multi-year "Tribal Trust Funds Reconciliation Project" (Reconciliation Project) and issued an "Agreed-Upon Procedures and Findings Report" for the period July 1, 1972 through September 30, 1992. Its major findings are substantially incorporated in the Special Trustee's Assessment.

In August 1995, the Department of the Interior substantially completed a study of the trust management systems relating to Individual Indian Monies (IIM) accounts and issued a report entitled "IIM Related Systems Improvement Project Report." The findings of this report are also substantially incorporated in the Special Trustee's Assessment.

The Special Trustee's Assessment, the Reconciliation Project reports, the IIM Related System Improvement Project Report and earlier and later reports issued by the General Accounting Office all confirm that the U. S. Government's trust management systems, policies, procedures and practices coupled with the condition of the trust records and, notably, large numbers of missing documents, are inadequate to allow for:

1. a proper, accurate and timely accounting for trust account balances, collections, disbursements and investments and the maximization of the return on investments.
2. the preparation of accurate and timely reports to trust account holders regarding all collections, disbursements, investments and return on investments.
3. an audit under generally accepted auditing standards.
4. any further reconciliation efforts, since the costs of such efforts would likely substantially exceed the benefits and at the same time would probably yield unsatisfactory and inconclusive results.

While significant improvements have been made over the last several years, the inadequacies of the trust management systems, the condition of the historical records and the U. S. Government's inability to provide an accurate and timely accounting cannot be remedied without the major reforms required by the Reform Act of 1994. To address these issues, the Special Trustee's strategic plan identified nine initiatives or principles designed to rectify the problems and bring trust accounting and management systems up to commercial standards within three years. This, at a minimum, will involve acquiring, automating, updating, integrating, coordinating and consolidating to produce:

1. A trust resource/asset management delivery system.

This will involve obtaining a new trust resource/asset management and delivery system for asset leasing, contracting, lending, buying and selling, together with standardized and/or integrated asset management,

credit and operating policies, procedures and practices. The system must be able to tie to and track from land and ownership records.

2. An accounts receivable data and billing system that uses lease-contract and land and ownership information.

This will involve obtaining a new accounts receivable, billing and collection data system that uses lease-contract and ownership information for trust income verification, reconciliation, billing, payments, collection, accounting, disbursement, audit, asset quality review and compliance purposes.

3. A trust, depository, payments and delivery system for Individual Indian Money (IIM) accounts.

This will entail purchasing a trust, depository, payments and other financial services accounting and statement system and a delivery system to more efficiently provide current financial services and to facilitate new and improved financial services to individual Indians and Tribes.

4. A land records and title recordation and certification system.

This will involve acquiring a new land records and title recordation and certification system, capable of instantaneous linkage with the trust resource asset management, accounts receivable and trust accounting systems.

5. A general ledger and general accounting system.

This will involve obtaining or modifying a general ledger and general accounting system to accommodate all present and planned systems and accounting improvements.

6. A technology services center dedicated to trust resource and funds management.

This will involve obtaining a centralized technology services center dedicated to trust resources, trust funds and land ownership and records management processes.

7. A national archives and records center.

This will involve obtaining and centralizing a modern national archives and records center for trust resource, asset and funds record storage and retrieval.

8. A risk management and control system.

This will entail obtaining a risk management and control system that will provide for adequate operational audits, credit and asset quality audits, compliance reviews, independent asset appraisals and liaison with outside, independent auditors.

9. An independent institutional structure.

This will involve consolidating trust resource, trust funds and land ownership and records management processes into a single, independent institutional unit with its own management structure to accommodate the restructuring and reorganization contemplated by Phase I of the strategic plan. The unit should be organized by function and dedicated exclusively to trust management. The unit should have agency or bureau status within the Department of the Interior or elsewhere.

The conceptual work on the strategic plan is completed. The next steps are conducting a requirements analysis, user needs assessment and a comprehensive inventory of existing skills, hardware and software, related network support and facilities requirements, all of which will lead to a technical requirements report for RFP purposes and confirm or revise the cost data contained in the conceptual strategic plan. This will require the use of an outside contractor. The 1997 President's budget request includes \$1 million to conduct the analyses.

Once the analyses are completed (expected to take 90 days from funding date) and once the staff of the OST is hired, the remaining elements necessary

to produce the comprehensive strategic plan required by the Reform Act of 1994 can be completed within 90 days or by March 31, 1997, if the President's budget request for FY 1997 is approved.

The total FY 1997 request for OST is \$36.3 million, a \$20 million increase over the 1996 conference level of \$16.3 million. The request includes \$13.6 million to begin implementation of the strategic plan. The funds will be used primarily to upgrade and establish a new IIM accounting system, which is long overdue. The 1997 budget requests no-year funding to allow adjustments resulting from re-estimates or delays in plan implementation. However, it should be noted that if funding for the strategic plan is delayed, the reform effort will be delayed.

The \$20 million requested increase in OST's budget for FY 1997 also reflects the high priority the Administration and the Secretary place on Indian Trust Asset Reform efforts. Improvement efforts are critically needed to ensure the Federal Government meets its fiduciary obligations to Indian Tribes and individual American Indians. While the Federal Government's trust responsibility is unique, systems, policies, practices and procedures of commercial trust operations can be applied to ensure that the Federal Government better fulfills its fiduciary obligations. Beginning in 1997, the evolution of trust system reforms will be at a point where increased resources can be prudently expended.

In closing, I would like to emphasize that "resolving the past" presents a difficult challenge to the Administration, the Congress, and individual Indians and tribes. The ending of the tribal reconciliation process in December, 1995 represents only the beginning of an effort to resolve problems with the U.S. Government's past trust fund management practices. This Administration is committed to solving these longstanding problems and has made significant progress in strengthening trust funds operations and in taking the steps necessary to ensure the highest level of fiduciary and investment standards are in place in the management of these funds. Future reforms will continue in earnest under the comprehensive strategic plan required by the American Indian Trust Fund Management Reform Act, provided that adequate resources are appropriated by Congress.

Enactment of the President's 1997 Budget request would represent a



substantial step to ensuring that Indian trust reform efforts are implemented in a manner that ensures the fiduciary responsibilities of the Federal government are met.

This concludes my statement. I will be happy to answer any questions you may have.

STATEMENT OF ERIC R. DAVENPORT,  
CHAIRMAN, INTER-TRIBAL  
MONITORING ASSOCIATION ON INDIAN  
TRUST FUNDS

Before the  
House Task Force on Indian Trust Fund Management,  
Committee on Resources,  
U.S. House of Representatives

Anchorage, Alaska  
10:00 a.m.  
August 10, 1996

Good Morning, Mr. Chairman, and welcome home to Alaska. With your permission, I believe my prepared remarks will be made a part of the record.

Let me thank you again in front of our home crowd for agreeing to bring this important issue to the attention of our Alaska friends, and especially to the attention of our Alaska Native people, who for the most part still not have been provided the accounting that they have every right to expect. With this hearing, I believe you have provided more focused attention to the subject of Indian trust funds than all of your predecessors combined.

I particularly want to thank you for your attention to the budget for this program in Fiscal Year 1997. As you know, the Senate Committee added some \$17 million to the House mark for the Office of the Special Trustee and the Office of Trust Funds Management, and that matter will be taken up in the Conference. We hope you will continue to urge Mr. Regula to accept the Senate position which is in line with the President's request.

I might point out here that the President's budget request for this program for FY 1997 marks the very first time in history that any Administration has provided the Congress with a realistic appraisal of this program and what it is going to take to put it on a sound basis. And the Congress wouldn't have gotten that insight in this year's budget without the efforts of a Special Trustee of the stature of Mr. Homan. And you know, of course, that we would not have a Special Trustee at all, much less one of Mr. Homan's stature, without the dogged perseverance of the Intertribal Monitoring Association on Indian Trust Funds over the past several years.

For our part, we know, and we want all our friends in Alaska to know, that your Committee deserves the credit for creating that position in the Indian Trust Funds Management Reform Act of 1994. We want to take this opportunity on our home turf to thank you for the leadership you have provided in creating the Congressional Task Force on Indian Trust Fund Management. This really does mark the first time that an authorizing Committee of Congress has attempted to develop a thorough understanding of this program, and I believe Chairman Hayworth and his Task Force members have already experienced a little "sticker shock" at what they are learning. But, as I said at the first hearing of the Task Force in June, what you have seen so far is only the tip of the iceberg.

The Alaska Native funds administered by the government did not, for the most part, receive the same level of examination that was provided to tribes throughout the lower 48, this despite the fact that almost 14% of the unreconciled disbursements, or \$111 million out of \$800+ million, identified by Arthur Andersen involved Alaska Native accounts.

This figure, I believe, is out of all proportion to the current balances carried on OTFM's books, but it may not be so disproportionate if this review included all the ANCSA payments that were paid out over this period. Today, out of a tribal portfolio of some \$2.1 billion, only \$6.4 million are carried for tribal accounts in Alaska. In other words, it appears to us, tribal accounts in Alaska account for only three-tenths of one per cent of the total tribal account portfolio, but 14% of the total amount of unreconciled disbursements. In other words, in this category of money-was-paid-out-but-we-can't-be-sure-to-whom, we are over-represented by a factor of 47 times.

I believe everyone assumes that this \$11 million or so is part of the ANCSA monies that were paid out over the years, but that assumption has not really been tested. So far, we haven't found anyone in either Arthur Andersen or the Special Trustee's Office who can tell us for sure just what was reviewed and what was not.

It is for these reasons, Mr. Chairman, that ITMA has asked that you consider requesting the General Accounting Office to conduct a separate investigation and prepare a special report on the Alaska Native trust fund accounts. If you make such a request, I suggest that this Committee should be very specific in providing oversight and direction to the scope and methodology of that examination, as well as to its actual execution.

We haven't even begun to undertake an examination of the individual accounts, in Alaska or anywhere else in the country. You will note that much of the increase provided by the Senate for the Special Trustee's program in FY '97 is for improvements in the IIM systems and administration.

We have previously suggested to OTFM that the universe of individual accounts in Alaska, and the amount of money in these accounts, are sufficiently small that a detailed examination of these accounts may be possible here that is not possible in other regions of the country. Out of some 300,000 accounts throughout the country with nearly \$500 million in them, we have only slightly more than 1,000 of those accounts in Alaska, with only about \$11 million in them. However, we keep running into the Department's apparent preference for a "global" approach that seems to us to say, "If we can't do it for everybody, we won't do it for anybody." This has never made a lot of sense to us, and we hope we can work our way through this with Mr. Homan and Ms. Erwin, now that she has her job officially as the Director of OTFM, after doing it without the title for nearly three years.

We have discovered one situation here in Alaska with respect to these individual accounts that demonstrates quite vividly the importance of the reforms that Mr. Homan and Ms. Erwin have proposed to undertake in FY '97. Some years ago, an Alaska Native

sold his allotment, and the initial payment of \$21,000 was deposited into his individual account then maintained by the Bureau of Indian Affairs. That money was paid out to the seller within a matter of days, and the remainder was paid directly to him over a period of years by the buyer. Some five years later, the seller received a check from the BIA for more than \$41,000. When he tried to return these funds, it was explained to him that this was interest on the original \$21,000. It was not explained to him that, while payment of principal for his allotment was not taxable, any interest earned on that principal was taxable. As a result, some years later he was forced to go into debt merely to pay federal taxes on monies he didn't even know were taxable in the first instance.

While you will hear about this from the individual himself, I would like to point out a couple of concerns this issue raises for us. In the first place, if the principal amount were paid out to him within a matter of days, it raises a question of how it could have continued to earn interest over a period of five more years. Secondly, since this individual was, in fact, paid more than \$41,000 five years later, money that conceivably was not his, then the question arises of just whose money was he paid. In other words, somewhere there may be other Alaska Natives who should have had that money in their account drawing interest over the last eleven years or so.

This is precisely the kind of thing that will in all likelihood never be investigated or revealed, unless this Committee continues to shed light on this program that has operated virtually in the dark for far too long. This also points out the importance of Congress' providing the Special Trustee with the resources to make the kinds of reports to account holders that are called for by the 1994 Reform Act, and which have not previously been provided.

We want to be clear that we are not suggesting that there are necessarily any "bad" people associated with this particular incident. But we do suggest that these kinds of anecdotal examples point out the need for the development of clearly articulated policies and the means for providing assurance that these policies are followed.

This tax issue is potentially troublesome for individual account holders throughout the country. There is a threshold of interest earnings, for instance, at which minors are catapulted into the marginal tax brackets of their parents. OTFM reports these earnings to the IRS, but does not always tell the account holder what they have told the IRS. Even if this information were provided to account holders, there remain a number of significant policy-level issues which we do not believe have ever received the kind of attention they deserve. For Example: Which parents' tax

rates are to be used? The birth parents? The adoptive parents? The custodial parent? The foster parents? What if there are no parents?

And remember these are minors we are talking about. Unless and until these issues are addressed and resolved, many minor Indian and Native children could be saddled with penalties and interest on obligations they have no way of knowing or understanding.

Here in Alaska, there are a number of other issues that Mr. Homan will soon know more about than I suspect he wants to know. The situation I described earlier regarding sale of an allotment is actually an easy one. As you know, some 10,000 applications for allotments have been made since 1906, and today almost 3,500 of those have yet even to be surveyed. Almost 6,000 parcels are still being worked on by BLM, and that does not include the more than 2,000 additional Natives who may be eligible for allotments if the program is opened up for Alaska Native Vietnam Era veterans. At present, BLM hopes to complete the surveys for these allotments shortly after the turn of the Century, but that will happen only if the Special Trustee and the Congress continue to provide the funds required to conduct these surveys.

In the meantime, we don't know how many of these pending allotments are generating any revenues, or should be generating revenues. We don't know what the process is for ensuring that revenues that are generated are appropriately escrowed and invested, and that earnings are accurately and timely posted.

What we do know is that Indian and Native trust funds in Alaska have not received the kind of attention that they deserve, and that our Indian and Native people have a right to expect from their trustee. And we know that there are a number of national issues which remain to be adequately addressed, and that these will also impact Alaska and Alaska Natives until they are resolved.

Although substantial progress has been made in recent years in the management of the trust funds, the Department of the Interior still cannot provide adequate management, and the Congress still has not provided the appropriations necessary for system improvements. For example:

- There is still not an accounts receivable system.
- Reductions in appropriations have resulted in personnel decisions which undermine effective management of the trust funds.

- There is still not a comprehensive set of policies and procedures for trust fund management.
- OTFM lacks the personnel and resources to monitor Area and Agency office performance of reconciliation, accounting and loss policy implementation.
- OTFM is unable to provide account statements which enable account holders to determine interest earnings, investment yields and duration to maturity on investments.
- The backlog in land ownership determinations and record keeping continues to grow as a result of reductions in appropriations and the loss of personnel.
- The BIA continues to distribute trust fund receipts to account holders based on unverified and incorrect land and lease ownership information.
- Reductions in appropriations have prevented OTFM from implementing plans to contract for investment advisory and custodial services.
- The Special Trustee has not developed a strategic plan for improving trust fund management and lacks appropriated funds to do so.
- The Treasury Department continues to regularly destroy trust fund account records as part of its records handling procedures. While those procedures may be appropriate for most Treasury accounts, they clearly are not appropriate for trust fund accounts with balances which have not been agreed to by the account holders.
- In the absence of timely and accurate ownership and accounting information, the Department will continue to be unable to provide trust fund account holders with reliable account information.

These issues are not just of academic interest to us at the Central Council of the Tlingit & Haida Tribes. The report recently provided to us by the Bureau shows \$4.2 million of our money unreconciled by the government's contractor. This is out of a total fund balance of \$7.7 million, of which \$5.6 million is managed by the Department of the Interior.

The government's failures in this area hurt us in ways that the government has never even considered. The Government Finance Officers' Association (GFOA) is a national association of municipal finance officers. The Central Council has applied to GFOA for their Superior Reporting Award in recognition of our financial reporting to our tribal members. Our application was denied because of an audit exception that occurs annually, but only occurs with respect to that portion of our finances that are managed by the federal government. In all other respects, we get a clean audit every year, and except for this exception over which we have no control, our efforts would bring us this prestigious national award.

In closing, I would like to leave you with one final thought that has bothered us at ITMA for almost six years now. And that is the continued unwillingness of the Department of the Interior to be forthcoming about problems that they know about, but which we have to discover through our own sleuthing. We believe that their lawyers and the lawyers at the Department of Justice are calling these shots, but there will never be confidence in the integrity of this program until those charged with running it are allowed to be honest about it. You know, we require our publicly traded institutions and banks to disclose their write-offs and their losses precisely in order to maintain customer and investor confidence in the integrity of our financial markets. A wise man once said that sunlight is the best disinfectant for government activities as well. Here we have a program that is deeply infected, and we urge you to continue to apply the disinfectant of sunlight in liberal doses until we have brought it back to health.

We are delighted that Ms. Erwin and Mr. Homan have begun to focus on these issues, and they have been responsive to our inquiries and our concerns. We are more grateful than we can say that you, Mr. Chairman, have agreed to provide the leadership that has been lacking in this area for nearly a Century, and we look forward to working with you and your Committee, and with the Department, to bring the reforms that are needed.

Thank you, and I'll be happy to respond to any questions you may have.



**STATEMENT OF LONNIE L. POINTS, CPA  
Bland & Associates, P.C.  
8712 West Dodge Road, Suite 200  
Omaha, Nebraska 68114**

**Before the  
House Task Force on Indian Trust Fund Management,  
Committee on Resources,  
U.S. House of Representatives**

**Anchorage, Alaska  
10:00 a.m.  
August 10, 1996**

Good morning, Mr. Chairman. My name is Lonnie Points, and I am a shareholder in an accounting firm in Omaha, Nebraska. I have performed bank directors' examinations for financial institutions in Nebraska, and I have examined Industrial Savings and Loan Associations. Our firm does the audit work for a number of tribes throughout the country, and we have been personally involved with the Intertribal Monitoring Association on Indian Trust Funds since its inception. As a result of our role with ITMA, we have been asked to review the reconciliation reports for a number of tribes. I have also had an opportunity to review the special procedures report that Arthur Andersen & Co. provided for the Bureau of Indian Affairs in 1991 regarding the Alaska Native Fund administered by the Office of Trust Funds Management.

I understand that the Task Force wanted to hear today from the perspective of a CPA who has had an opportunity to take a look at the work performed in the recent reconciliation effort. I appreciate the compliment to the profession that is implicit in that invitation, but I think Mr. Davenport gave a pretty good description of the shortcomings of that effort from a tribal perspective at the Task Force's first hearing.

I don't want to repeat what he has already put on the record, but I thought I could share some thoughts with you today, and then respond to any questions you might have. The problems with the reconciliation effort that Eric listed at the first hearing are ones that are shared by all of the tribes I have consulted on this issue. I might add here that it is never pleasant to criticize the efforts of our brethren in the profession, and I do not intend today's remarks to be taken unkindly by the people in either the Bureau or in Arthur Andersen, who put in incredible hours and efforts to generate the reports that were sent to all tribes early this year.

What I would like to do today, from a professional accountant's perspective, is to add a little bit to something Eric has touched on in his statement for today. The whole purpose of public accountability is to provide a basis for public confidence in the integrity of our financial institutions and systems. That is why most accountants' reports begin with a statement that they are the product of "Independent" public accountants. The role of a public accountant generally is not to prepare or to construct the books that he examines, but to report to other people, such as a board of directors or to shareholders, on the integrity of the books and the bookkeeping systems utilized by those who are entrusted with the control of other people's money.

We have had difficulty throughout this entire procedure with accepting the "independence" of the government's reconciliation contractor. Originally, Arthur Andersen & Co. was engaged to assist the Bureau of Indian Affairs in reconstructing and reconciling the books. After that was done, it was originally contemplated that these books would then be subjected to audit procedures by someone who was independent of the bookkeepers themselves. In our view, these roles became blurred early on in this process, and tribes were presented with financial statements that, in effect, were examined by the same people who put them together.

All these reports began with a statement that the objective of the review was to provide the tribes with reasonable assurance that the account balances carried on the books were accurate. We continually asked the question, "Who is the client in this exercise?" And the response was invariably the same. The client was the government, and not the account holders, not the owners of the money

Consequently, we do not feel that the government's records were reviewed with the degree of professional skepticism that our profession generally demands of an independent accountant. And, as a result, we have advised all our clients, and all other tribes whose reports we have reviewed on behalf of ITMA, that the reports they have been provided do not provide any reasonable assurance that their account balances are accurate.

On the other hand, even though I don't believe tribes in the lower 48 can take any confidence in the account balances that have been presented to them, at least their accounts did get some review in this latest, five-year, \$20+ million exercise.

I am advised by both the Office of Trust Funds Management and by Arthur Andersen staff that the Alaska Native Escrow fund was not reviewed at all in the reconciliation project. In fairness to them, we should point out to you that back in 1991 Arthur Andersen did make an examination of this fund from its inception in 1971 to September 30, 1990. As a result of that examination, Arthur Andersen proposed adjustments in excess of \$10 million. We cannot tell you what has been done since that time, if anything, because we have not yet found anyone in the Special Trustee's office, in the Office of Trust Funds Management, or in Arthur Andersen, who seems to know

We can tell you that it does not appear that the \$962,500,000 in cash payments authorized by ANCSA in 1971 were paid through this fund. Presumably, those payments were made directly by Treasury to the corporations.

What is probably most important for us to impress upon you today, Mr. Chairman, is that we have yet to find anyone who is charged with the collection, investment, accounting, and disbursement of these funds that expresses any confidence that all, or any, of this is being done correctly, even today. The 1991 examination did not even look at the issues that arise under Section 7(i) of the Act. Undistributed balances held by the collecting agencies were confirmed, but no effort has been made to determine whether or not the Bureau of Land Management, the U.S. Forest Service, the Minerals Management Service, the National Oceanic and Atmospheric Administration, the U.S. Fish and Wildlife Service, the Coast Guard, or the General Services Administration are actually collecting correctly. So far as we can tell, the only thing that has been reviewed is whether or not they have made any clerical errors in posting what they do collect.

In short, Mr. Chairman, if I had any Alaska Native groups among my clients, I would not advise them to take any confidence in their accounts as presented to them. I'll be happy to answer any questions you may have. Thank you.



CENTRAL COUNCIL  
 tlingit and haida indian tribes of alaska  
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Testimony of  
**Edward K. Thomas, President**

to the

**“Task Force on Indian Trust Fund Management”**

of the

**U.S. House of Representatives  
 Committee on Resources**

Welcome to Alaska! My name is Edward K. Thomas. I am the elected President of the Central Council of the Tlingit and Haida Indian Tribes of Alaska, a federally recognized Tribe from Southeast Alaska. My Tribe has a membership of over 23,000 enrolled members. My Tribe has approximately \$5,500,000 held in Trust by the Bureau of Indian Affairs (BIA).

All Alaskans are honored that you have come so far to our state to hear from the people on this very important issue. I am very pleased that the United States House of Representatives (and particularly you, Mr. Chairman) is taking its valuable time to look deeper into the BIA Trust Fund Management issue. I am honored to be invited to share with you my experiences and views on this very important topic.

**Consultation on this issue:**

I fully realize how difficult it is to travel all the way from Washington, DC, to hold hearings in Alaska. Historically, consultation with Alaska Natives on this very important issue has been non-existent. In recent years there have been hearings held on this topic with lower-48 Tribes and their input has been invaluable in efforts to correct problems relative to managing Trust funds on behalf of Tribes and Individual Indians and Alaska Natives. Consultation with Alaska Native Tribes is just as important as consultation with Tribes that are “handy” to Washington, DC. Unfortunately, when hearings are held only in Washington, DC, small Tribes and individual Alaska Natives can not afford to participate in them.

**Problems in BIA Trust Fund Management:**

The problems of BIA management of Tribal Trust Fund and Individual Indian Accounts are long-standing. Most accounts have never been reconciled until just a few years ago. Approximately 14% of the accounts are not reconcilable due to the absence of records. Fund management systems are out-dated and, in most cases, were never designed to properly manage these accounts. Personnel turn-over has been frequent and the quality of personnel recruited, at times

*60th Anniversary - 1995*

accounts. Personnel turn-over has been frequent and the quality of personnel recruited, at times has been questionable. There has never been enough equipment in BIA Tribal Trust Fund Management Offices to do the job properly.

#### **Tribal initiatives:**

Concerned Tribes pulled together the Inter-Tribal Monitoring Association. ITMA was instrumental in creating broad-based awareness of the problems in Tribal and IIM accounts managed by the BIA. They joined forces with the Joint DOI/BIA/Tribal Reorganization Task Force and the National Congress of American Indians in making positive recommendations to correct uncovered problems. Even though the BIA-DOI fully recognized the seriousness of identified problems, they strenuously resisted the sound recommendations made to rectify the problems.

Tribes were hopeful that if a "special trustee" was established 'outside' of the BIA administrative units we would be more effective in dealing with DOI in resolving the problems. We were wrong. The DOI did very little in the way of making the Office of the Special Trustee effective. Not only has the President's DOI budget request to Congress excluded funding for the recommendations of the Special Trustee, they did not include funding for the Advisory Council of the Office of the Special Trustee to meet.

#### **Current need:**

Congress was instrumental in helping us set up the Office of the Special Trustee, and for that we are grateful. However, now that the problems has been clearly defined and it is increasingly clear that it will take millions of dollars for the federal government to fix the problems uncovered, we have lost important Congressional support.

I fully understand the importance of balancing the national federal budget within 7 years. And I fully understand the need for all of us to do our part in making a balanced national budget a reality. However, when the federal government spends private money it is managing on behalf of its citizens, it must replace it. More importantly, when the federal government spends Tribal and individual Indian money that it holds in trust their behalf, it must exercise its fiduciary responsibility by replacing it.

#### **Consistency in federal policy:**

When the savings and loan institutions across the country made bad investments and lost hundreds of billions of dollars of American citizens' money, the federal government did the right thing by appropriating enough money to make things right. This is when our nation stood proud behind its citizens. It is time for this nation to stand tall again on behalf of its first citizens. I do not know how much money it will take to make these account whole but I know that it will be less than 10% of what it took to make the investors of the savings and loans whole.

It is also critical to rebuild the Trust Fund Management system to a modern state so that funds can be managed in an efficient, professional and effective manner. It is my understanding that it will take up to \$73,000,000 over the next 4 to 5 years in equipment, software and staffing to bring the management system up to a reasonable standard. Once the policies and management system is in place it will take no more than what is already in place to run a Trust Fund management system that we all can trust and count on.

In conclusion, thank you very much for this opportunity to testify to this very distinguished committee. It is gratifying to see Congress stepping forward in an effort to do what is right. I am confident that this issue that is so important to so many Indian and Alaska Native people will get fair consideration as Congress makes its very important decisions on our nations future through its budgeting process.

ALMA UPICKSOUN  
ASSISTANT HOUSE COUNSEL  
ARCTIC SLOPE REGIONAL CORPORATION  
BEFORE THE  
**TASK FORCE ON INDIAN TRUST FUNDS**  
RESOURCE COMMITTEE  
U.S. HOUSE OF REPRESENTATIVES  
AUGUST 10, 1996  
ANCHORAGE, ALASKA

Chairman Young, my name is Alma Upicksoun. I am an Inupiat Eskimo and a shareholder in Arctic Slope Regional Corporation (ASRC). I am an attorney and serve as Assistant House Counsel to ASRC in our Anchorage office.

On behalf of ASRC's shareholders, I want to thank you, Mr. Chairman, for establishing this Task Force on Indian Trust Funds. This problem has been ignored for too long. It has imposed huge economic and social costs on many of the nation's most economically disadvantaged Tribal governments and individual Indians.

As an attorney I am familiar with the legal obligations trustees owe their beneficiaries. I am appalled at the historic failure of the BIA, the

Department of the Interior and, yes, the Federal government, to address this matter.

I am thankful for the role you and the Resources Committee have played in recent years to address this problem. Those of us here today who are Alaska Natives are familiar with your resolve to make the Federal government fulfill its obligations to our people. The hundreds of thousands of our Indian friends in the Lower 48 states will, I predict, soon see this resolve in action on the Trust Fund management issues before the Task Force.

Mr. Chairman, it is my pleasure to introduce to Alaska and to the Task Force Eloise Cabell. Ms. Cabell is a very dedicated and distinguished leader of the Blackfeet Tribe. She also serves as Project Director of the IIM Correction and the Recovery Project.



TESTIMONY BEFORE THE TASK FORCE ON INDIAN TRUST FUNDS  
U.S. HOUSE OF REPRESENTATIVES  
COMMITTEE ON RESOURCES  
ANCHORAGE, ALASKA

AUGUST 10, 1996

SUBMITTED BY

ELOUISE COBELL, PROJECT DIRECTOR  
IIM CORRECTION AND RECOVERY PROJECT

My name is Elouise Cobell. I am a member of the Blackfeet Tribe and an IIM account holder. I am also the Official Representative on Trust Funds for the Blackfeet Tribe, Chair of the Special Trustee's Advisory Board, former chair of ITMA, the lead plaintiff in the breach of trust law suit filed against Federal officials on behalf of all IIM account holders, and Project Director of the IIM Corrections and Recovery Project.

Thank you, Mr. Chairman, for this opportunity to testify before the Task Force. I have been deeply involved in the trust fund reform effort for many years and in many capacities. I therefore want to express my personal appreciation to you for establishing this Task Force because it promises to be an essential ingredient for a just and final solution to over 100 years of disgraceful behavior by the United States Government. As discussed below, I believe that by taking certain steps, this Task Force, when it completes its task in November, will be able to proudly say that it has contributed significantly to the resolution of this crisis in the best interests of the account holders, the Government and the American taxpayers.

I first became aware of the Interior Department's failure to account for the monies belonging to 200 tribes and 300,000 individual Indians about 20 years ago when I began

serving as Treasurer for the Blackfeet Tribe. At first, I could not believe this incredible gross mismanagement of our monies could really be occurring, much less by the United States Government. When I came to understand the scope and depth of the mismanagement, I could not believe the Federal government's indifference to its massive breach of trust. When I raised the issue, the response I received from Federal officials was basically a yawn and a statement to the effect that it has been going on for a long time and some day someone should do something about it.

Finally, in 1991, the Tribes organized ITMA and slowly began to get the spotlight focused on this problem. Congress also sought to address the crisis. In a bipartisan effort, the late Congressman Synar and his minority counterpart, Congressman Clinger on the Government Operations Committee, held a series of hearings and published a damning report entitled "*Misplaced Trust*". Congressmen Yates and Regula urged the Interior Appropriations Committee to press the Interior Department to begin taking corrective action. And this Committee, in a bipartisan stand, enacted the 1994 Trust Fund Management Reform Act, thereby leading to the enactment of the first significant legislation on trust funds since 1938. This landmark, remedial legislation was enacted notwithstanding strenuous objections of the Secretary of the Interior.

These efforts over a six year period gave us what I would call a beachhead in the fight to correct this problem. While not solving some of the major problems, it created a solid foundation from which we could attack the huge issues still remaining. For example, the Reform Act created the position of Special Trustee, which, for the first time, put a person knowledgeable about trust funds in Interior headquarters directly below the Secretary. Congress gave to the Special Trustee the task of developing a strategic plan for correcting the

gross trust fund mismanagement problems inside Interior. The Act also brought self-determination to the trust fund area, by giving tribes the authority to remove their funds from trust and manage the money themselves. While not all tribes are ready or willing to do so, the Act provides a procedure for those tribes that do wish to. Finally, the reconciliation ordered by the Appropriations Committees, however flawed it may be, provided a good picture of both what can and cannot be done through standard accounting procedures to determine how much money tribes and individual Indians have lost as a result of the Interior Department's gross mismanagement over the years.

Having established this beachhead, it is now time to slay this dragon once and for all, to finally remove this ugly and embarrassing stain on the record of the United States Government -- a Government which monitors financial institutions to insure they meet their trust responsibilities to their customers -- yet is unable to meet the most basic trust responsibilities when it is serving as trustee. I believe the weapons to bring this situation to a fair and prompt end are now available. I would like to focus my testimony on the specific steps that this Task Force can take to accomplish this now realistic goal.

#### 1. Appropriations.

First, I urge this Task Force to vigorously lobby its colleagues to agree to the Senate mark for appropriations to begin fixing the trust fund systems. The President requested \$18 million in new money to enable the Special Trustee to prepare his strategic plan and begin making the needed improvements in the trust fund systems. (The total cost to fix the system is estimated at \$150 million over five years.) Until these systems are fixed, the United States will incur millions of dollars in liability each year, because there is so much leakage in

the systems. The Senate mark provided the full \$18 million which to Administration requested for FY 97 for improvement initiatives. However, the House provided only \$1 million, which is insufficient to even get started. We need your help to insure that when the Interior Appropriations bill goes to conference, the House recedes to the Senate on this issue. It is both the right thing to do and the fiscally responsible thing to do, because it is costing the American taxpayers millions a year in the form of the restitution they will have to pay the Indian account holders as long as the system remains broken.

Secondly, it is looking more and more likely that the Government will be funded in FY 97 through a continuing resolution. We ask your support to insure if Interior is funded through a Continuing Resolution, the CR contains the \$18 million for the Special Trustee to begin fixing the systems. If the FY 96 appropriations is used, the Special Trustee will receive only \$447,000 and another year will go by without any improvements and with continued liability.

## 2. **The Future**

We understand that some Interior officials have suggested that the trust fund system and the repairs should be privatized immediately. This is an unwise proposal. First, earlier efforts by Interior to hand this problem off to a bank proved unworkable. Secondly, we fear that any effort to transfer responsibility now, while the systems are so badly broken, will cause enormous confusion and pain and suffering in Indian country. To borrow an analogy from the medical field, you do not move a badly injured patient until he has been stabilized. Moving the systems while they are still badly broken will, as would be the case in the medical situation, simply exacerbate the injuries making it harder to cure the problem.

We also fear that moving the system now would lead, during the confusion that always accompanies such transitions, to the loss of information that is critical to resolving the historical liability of the United States. The confusion would provide any party who has been improperly taking advantage of the absence of adequate financial controls, to destroy all implicating information. It is our position that no steps should be taken to move the trust fund functions until they are fixed.

However, we also believe that a vigorous discussion needs to take place in regard to how the trust funds should be managed once the systems are fixed. The Special Trustee has already begun this discussion by putting on the table the idea of an Indian development bank that, while fully retaining the Government's trust responsibility, would manage the trust functions in a bank environment and would work with account holders, using non-trust funds, to promote economic development on reservations. We therefore ask that the Task Force initiate a dialogue with the Indian community on this issue and, without making any final decisions, include in the Task Force report a discussion of the various options that are available. Then, when the time comes for the Resources Committee to legislate on the future of the trust funds, it will have the work product of the Task Force to guide it.

Mr. Chairman, by taking the steps suggested above, the Task Force, when it goes out of business in November, will be able to proudly say that it has contributed significantly to the resolution of this crisis. Thank you for your support and for this opportunity to testify.

TESTIMONY OF  
ROBERT M. PEREGOY, SENIOR STAFF ATTORNEY  
NATIVE AMERICAN RIGHTS FUND  
PRESENTED TO  
THE HOUSE TASK FORCE ON TRUST FUND MANAGEMENT  
OVERSIGHT HEARING ON  
MANAGEMENT OF INDIAN TRUST FUNDS  
ANCHORAGE, ALASKA  
AUGUST 10, 1996

I. INTRODUCTION

Mr. Chairman and Members of the Task Force, I appreciate the opportunity to provide testimony today on this most important matter. My name is Robert Peregoy. I am a senior staff attorney with the Native American Rights Fund (NARF). I work in our Washington, D.C. office and coordinate NARF's Legislative and Administrative Advocacy Component, which is our governmental affairs division. I will summarize my written testimony, which I respectfully ask be included in the record.

Mr. Chairman, before I begin my testimony, I want to commend you on behalf of the Native American Rights Fund for your wisdom and leadership in creating the Task Force on Indian Trust Fund Management. It is an understatement to say that the federal government's mismanagement of Indian trust funds has reached crisis proportions. Indeed, this monumental debacle continues to haunt all of us as a most sorrowful blight on this great Nation's relationship with the First Americans. As you know, this crisis adversely impacts over 275 Indian tribes and more than 300,000 individual Indians who--without mincing words--have been ripped off in untold proportions by the very trustee charged by law to protect their rights and interests--the United States government. This mismanagement has been permitted to continue far too long--and cries out for a speedy and effective resolution. That is why we commend you for taking the initiative to establish this very important Task Force, which can play a key role in fashioning a satisfactory resolution to this sordid chapter in Indian-government relations. Suffice it to say that your leadership in establishing this Task Force is but one more indicia of your track record and commitment to protect and advance the fundamental rights and interests of Native Americans. For this, we thank you.

## II. CLASS ACTION LAWSUIT

As you are aware, in June of this year the Native American Rights Fund and other attorneys filed a class action lawsuit on behalf of over 300,000 Indians against the federal government to seek redress for the government's breaches of trust in mismanaging the Individual Indian Money (IIM) accounts held by these individuals. By this action, these individuals--the victims of the very government that is required by law to protect and advance their interests--hope to compel the federal government to honor its word and its legal responsibilities. To this end, the law suit has three basic objectives: (1) require the federal government to complete an accurate and reliable calculation of the moneys due individual Indian trust beneficiaries; (2) require the federal government, particularly the Department of Interior, to create an accounting system that is reliable and accurate; and (3) require the federal government to restore individual Indian account holders the trust funds that the federal government has lost through mismanagement or neglect. In this context, we seek to assure that the Special Trustee has all the tools he needs to fix the system--and to get the job done right--as Congress mandated when it enacted the Trust Fund Management Reform Act of 1994.

**We emphasize that this class action litigation was filed as a last resort.** As the record overwhelmingly indicates, the federal government and independent auditors have repeatedly admitted that the current trust administration and management system is hopelessly broken. Numerous reports attesting to this have been filed by the executive and legislative branches of government, including the General Accounting Office (GAO), Office of Management and Budget (OMB), and Inspector General of the Department of the Interior, as well as the House and Senate in many hearing records and reports. Successive Administrations--both Republican and Democrat--have recognized that the problems are serious and that they constitute gross mismanagement of individual Indian trust funds. In this sense, both the executive branch and Congress are equally responsible. Notwithstanding, each successive Administration--including the current one--has failed to resolve the problem. No Administration has ever come close to asking Congress for sufficient funds to fix the system--and Congress has summarily, routinely and drastically cut back the Administration's terribly inadequate funding requests. To make a long story short, we are in court because we have been unable to persuade the executive and legislative branches of government to honor the United States' solemn trust and legal obligation to over 300,000 individual Indian trust beneficiaries.

I cannot overemphasize the fact that Ms. Cobell and others have attempted in good faith to work with Administration officials over the course of the past few years to reform the system. Our people have pleaded with these federal officials to honor their trust responsibilities. They have repeatedly explained to the Secretary of the Interior and his staff that the money of 300,000 Indians continues to be lost every single day. These efforts have fallen on deaf ears. Regrettably, there was no other choice but to go to court.

### III. SUMMARY OF TRUST FUND ACCOUNTS, TRUST RESPONSIBILITY AND BREACHES OF TRUST REGARDING IIM ACCOUNTS

The Task Force record contains testimony from the June 18 hearing regarding a description of the origin and nature of Indian trust accounts, the government's statutory and common law duty to manage these accounts, and the nature and effect of the government's breaches of trust. However, the following review of these important matters will provide a helpful backdrop and serve the interest of continuity:

There are two major components to the trust funds, tribal trust funds and Individual Indian Money (IIM) accounts. There are approximately 2,000 tribal accounts beneficially owned by more than 275 tribes with an aggregate balance of approximately \$2.3 billion.

There are more than 300,000 individual Indian accounts with an aggregate reported balance of approximately \$450 million. More than \$250 million flows through these accounts each year. The IIM accounts are commingled and invested in common. The bulk of the funds held in trust is income derived from individual land allotments, including timber, oil and gas, hard rock mineral and surface rights.

As of February 29, 1996, there were 1,033 IIM accounts in the Juneau area with an aggregate balance of \$10,950,953; 136 of these accounts lacked Social Security numbers for the trust beneficiaries. Also as of February 29, 1996, there were 222 special deposit accounts (temporary holding accounts) in the Juneau area with an aggregate balance of \$1,056,629.

In addition to tribal trust funds and IIM accounts, there are several smaller



accounts. For example, the Alaska Native Escrow Account was established to escrow income from land that was to be transferred under the Alaska Native Claims Settlement Act (ANCSA) to Native corporations, but final transfer was put on hold pending the completion of surveys and other processing. While the annual aggregate balance in this fund does not exceed \$30 million, it is estimated that several hundred million dollars have flowed through the trust over the years.

Federal law imposes trust responsibilities upon executive branch agencies and officials in administering Indian assets. The Supreme Court has long held that the federal government must discharge its fiduciary duties prudently. In the management and administration of Indian property, executive agencies and officials are required to exercise due care, and are held to the "most exacting fiduciary standards" and "moral obligations of the highest responsibility and trust." Indian trust funds are no exception.

With particular regard to trust fund management, executive branch agencies and officials owe certain legal duties and responsibilities to the account holders as trust beneficiaries. These include the duty: (a) to maintain adequate books and records; (b) to maintain adequate systems and controls to guard against error and dishonesty, including an accurate accounts receivable system and separating the billing and collection functions; (c) to deposit trust asset receipts and safely and soundly invest these funds; (d) to account regularly and accurately to the beneficiaries; (e) to distribute the earned income to the proper Indian beneficiaries; and (f) to refrain from self-dealing and benefiting from the management of these trust funds.

Because it does not have an adequate accounts receivable system, and because so many lease documents are missing, the federal government does not know whether lease income has been collected from the lessees, if it has collected the correct amounts, or if it has been paid on time. Nor can the government determine whether distributions from the trust are made to the proper Indian trust beneficiary, or whether the amounts distributed are correct. Part of the problem rests with the fact that in 1987 the Department of the Treasury destroyed all of its records pertaining to IIM accounts, including canceled government checks. We are yet uncertain whether the government continues to destroy IIM records on a systematic basis as part of its records management policy. As a result of these breaches, the federal government in fact has no idea how much IIM money it has; how much IIM money it should have; how much IIM money it has lost; or how

much IIM money may be stolen daily.

The government's trust fund system is in such disarray that the Arthur Andersen accounting firm would not even attempt to reconcile the IIM accounts because federal officials had either willfully destroyed, or never created, the crucial documents necessary for a reconciliation. In fact, Arthur Andersen, LLP estimated that it would take at least \$108 to \$281 million just to attempt to reconcile the IIM accounts for just a twenty year period, and that even then, it would likely be of no value in providing the IIM account holders with assurance about the correctness of their account balances. Indeed, at the hearing before the Senate Committee on Indian Affairs on June 11, 1996, Special Trustee Homan testified that the IIM account system was "worse" than the tribal trust accounts. Notwithstanding, the Department of the Interior has no plans and has allocated no money to conduct an accounting of the IIM trust, to determine how much money the IIM trust beneficiaries have lost and continue to lose each day as a result of the government's neglect.

#### IV. CONCLUSION AND RECOMMENDATIONS

As the record amply demonstrates, the trust management system is hopelessly broken. According to the Special Trustee, the management system for the IIM accounts is in the "worst condition of any of Interior's trust management systems." However, the Special Trustee's hands have been hopelessly tied due to the government's failure to provide adequate resources. We respectfully appeal to you and the Task Force to remedy this situation.

The Special Trustee determined that it would take almost \$50 million in FY 1997 to begin to correct the overall trust management deficiencies. However, the Administration requested only \$36.3 million in appropriations. The House reduced this already inadequate number by nearly 50 percent to \$19.126 million, pursuant to the Interior appropriations bill passed in June. It is significant to note that the Office of Management and Budget stated in a June 12, 1996 letter to House Appropriations Committee Chairman Livingston that the President will likely veto the House Interior appropriations bill, in part due to the unacceptable level of funds appropriated to the Office of Special Trustee.

**We emphasize that the \$19.126 House appropriation can do nothing to rehabilitate the IIM trust management system. An additional \$22.3 million for**

**FY 1997 is necessary to provide the IIM trust with an accounting system.** As the Special Trustee has testified, this amount will produce within one year--"a Chevrolet, not a Cadillac." Without this repair, the government could be paying substantially more in restitution for the staggering losses that more than 300,000 individual Indian trust beneficiaries sustain every single day.

The Senate Appropriations Committee has included the full amount of appropriations requested by the Administration--\$36.3 million for the Office of the Special Trustee. This includes \$13.6 million to commence implementation of the strategic plan. As we understand it, this amount will be used primarily to **begin** to upgrade and establish a new IIM accounting system, which is "long overdue." While the Senate Appropriations Committee recommendation of \$13.6 million is a step in the right direction, it remains \$8.7 million short of the \$22.3 million necessary to fix the IIM accounting system.

We hope that the Senate will enact the Appropriations Committee recommendation pertaining to the Office of the Special Trustee, to start to provide the Special Trustee with the necessary resources and tools he needs to begin to reform the system, as Congress mandated when it passed the Trust Fund Reform Act of 1994. We respectfully ask you and the Task Force to work with the House Appropriations Committee and House Conference Managers to urge them to recede to and add \$8.7 million to the Senate level of \$36.3 million for the Office of Special Trustee, in order to provide the funding necessary to establish an adequate IIM accounting system. Should it appear that Interior spending will be covered instead by a Continuing Resolution, we likewise ask that you urge the Committee to include this amount for program improvement initiatives of the Special Trustee. We are well aware of the funding pressures to reduce overall spending and to balance spending priorities within each appropriation measure. However, there is simply no good reason that the Federal government should permit the property and assets of more than 300,000 individual Indian trust beneficiaries to wither away because of current budget deficits. In short, it is in everybody's best interest for the government to honor its legal responsibilities and provide the \$22.3 million to stop the hemorrhaging now. One hundred and fifty-eight years of willful neglect must stop!

As a final note, it is **not** necessary to complete the strategic plan before the IIM accounting system is fixed. The strategic plan will address intermediate and

long-term issues relative to the administration and management of the IIM trust funds. It is neither prudent nor rational to wait until the strategic plan is completed to address the specific needs that have already been clearly identified as critical to reduce losses that occur every single day in the administration of the IIM trust. Every manager and custodian of money, from the sole proprietor of a Seven-Eleven to the chief teller of your local credit union, must have a system to account accurately for funds collected, deposited and disbursed. This is what the Special Trustee has proposed to do with the \$22.3 million--which is a critical, immediate **foundation** for the successful implementation of the strategic plan, as it relates to IIM trust management. It is imperative to appropriate sufficient funds to permit the Special Trustee to **begin** to establish an adequate accounting system so that the government can knowledgeably address its fiduciary responsibilities tomorrow, not two or three years from now. Indeed, with an adequate accounting system in place, reliable information can be generated that can help determine the best strategic alternatives for the administration of IIM trust funds so that these problems will not recur.

In closing, we emphasize that an appropriation of \$22.3 million is a necessary expenditure for the federal trustee; **this will begin to end the government's continuing breaches of trust and its rapidly mounting liability for less than \$75 per each of the 300,000 individual Indians who are injured each day by the government's continuing neglect.** What a pittance to pay for the federal trustee to honor its trust responsibility to these 300,000 American citizens.

Finally, we respectfully submit that it would be wrong for any part of the \$22.3 million to come from any Indian program. To do so would be unjust and inequitable. The federal trustee is directly responsible for the creation and continuation of the IIM trust management crisis as a result of its total failure to administer the trust prudently. This has caused individual Indians to lose untold millions of dollars of their money. Accordingly, it is unconscionable to compel any Indian to pay for the government's breach of trust.

Thank you for the opportunity to testify.

# INDIAN TRUST FUND ACCOUNTS MANAGEMENT

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TUESDAY, AUGUST 20, 1996

U.S. HOUSE OF REPRESENTATIVES, TASK FORCE ON IN-  
DIAN TRUST FUND MANAGEMENT, COMMITTEE ON RE-  
SOURCES

*Scottsdale, AZ.*

The task force met, pursuant to notice, at 9:00 a.m., in the Salt River Community Center, 10000 E McDowell, Scottsdale, Arizona, Hon. J.D. Hayworth (Chairman of the Task Force) presiding.

## STATEMENT OF HON. J.D. HAYWORTH, A U.S. REPRESENTA- TIVE FROM ARIZONA; AND CHAIRMAN, TASK FORCE ON IN- DIAN TRUST FUND MANAGEMENT

Mr. HAYWORTH. Good morning, ladies and gentlemen. Thanks to all of you for attending. Thanks to congressional staff for joining us and the ranking member of the Native American and Insular Affairs Committee, the delegate from American Samoa, for being here this morning, as today we continue in our series of hearings concerning the management of Indian trust fund accounts by the Department of the Interior.

Earlier this month, the hearing was held in Alaska—in Anchorage, specifically—where the trust fund management problems which Alaska natives have experienced were discussed. Today we will focus on the experiences of various other tribes, including our host tribe, the Salt River Pima-Maricopa Indian community.

Reports of investigations of the management of Native American trust fund accounts have revealed a history of waste and corruption unprecedented in the Federal Government. This may be the longest scandal in American history, dating back over a full century—indeed, a century-and-a-half, some 158 years. Recently, the Arthur Andersen Company reported that in trying to reconcile 20 years of Native American trust fund management, it could not account for \$2.4 billion in account transactions.

No wonder that in the minds of many, BIA no longer stands for “Bureau of Indian Affairs.” In the minds of many, it now stands for “Billions In Arrears.” And from the viewpoint of so many Native Americans, “BIA” has come to stand sadly for “Bossing Indians Around.”

So for these and many other reasons, this task force was created. We want to find out what can be done to straighten out this mess once and for all.

We have an impressive group of witnesses appearing before us today. And I would like to ask each witness to limit his or her oral

testimony to about 10 minutes. If we do that, it is my belief that we'll be able to hear from everybody and cover everything that needs to be said.

I would also like to announce that anyone who would like to submit testimony can send it to my congressional office, and I will personally see that it gets into our record of these proceedings.

At this point, it is indeed my honor and privilege to recognize my friend and colleague, the delegate from American Samoa, the ranking member of the Native American and Insular Affairs Subcommittee, Eni Faleomavaega, for any comments he might have this morning.

**STATEMENT OF HON. ENI FALEOMAVAEGA, A U.S. DELEGATE  
FROM AMERICAN SAMOA**

Mr. FALEOMAVAEGA. Thank you, Mr. Chairman. I certainly would like on behalf of the Samoan tribe to express our appreciation for your hospitality and for allowing me to be here in this beautiful State of Arizona and to thank the chairman of the Pima tribe for allowing us to use this beautiful facility for this hearing this morning.

But before going to my statement, Mr. Chairman, I would like to express the regrets of the gentleman from Michigan, Mr. Dale Kildee, for not being here. He had an emergency in his district in Michigan which is the reason why he was not able to be here.

And I just want to share with the members of the Indian community how invaluable Mr. Kildee's contributions have been over the years, a very quiet man, but certainly, he has done a tremendous—been a tremendous asset in the many contributions he has made when he was the chairman of the Post-Secondary Subcommittee on Education and Labor. And over the years, Mr. Kildee has always been very helpful in dealing with Native American issues, especially education.

Mr. Chairman, I, too, would like to thank you for your leadership and for having this task force established specifically to address the issue of the Indian trust fund management by the Department of the Interior and express my gratitude for having such a good list of the leadership from across the country among Native American tribes to be here this morning to offer their suggestions on how we might be able to resolve this very critical issue.

For purposes of the time, I'm just going to submit my statement for the record, Mr. Chairman. But a couple of observations that I would like to make for the record. And that is, I'm not going to reiterate again about the sins of the past and the failures of the national government in addressing the most serious issues affecting Native American communities throughout our country.

But it seems to me that not only have we applied a double, but it seems to me, not only a triple, but a quadruple standard. It's so easy for us to address the issues when Chrysler needed a bail-out, when New York City needed a bail-out, when the savings and loans fiasco of \$150 billion—all of a sudden, we find solutions.

And here, we have been spinning our wheels for the past five years now. And we can't even account the fact that this was not the fault of the Native American tribes across the country for this fiasco that we're now faced with. But for some funding, approxi-

mately \$2.4 billion, and here we have to go through the auditing. We have expended \$21 million for the past four years just to get into the accounting aspects of this mess that we're now in.

I might also observe, Mr. Chairman, that it's not just the Bureau of Indian Affairs that is involved in this, it's a mixture of several subdivisions within the Department of Interior, the Bureau of Land Management, Minerals Subdivision, the Indian Affairs, just a real nice mix of a mess.

And I sincerely hope that in the course of these hearings—and you, Mr. Chairman, again, I want to thank you for taking the leadership in this effort, hopefully, that in the spirit of bipartisanship, that we will be able to find solutions to this very serious problem.

Two point four billion dollars, Mr. Chairman, I submit would go a long way in helping so many of the tribal needs that we find ourselves in. And I can't as an excuse say that because of restricted funds or the limited resources we have, that we are unable to come up with some kind of an accounting to the Native American tribes throughout the country. It could be more, it could be less, but \$2.4 billion, Mr. Chairman, I submit will be a tremendous help to the Indian communities throughout the country.

And I hope that in the course of this hearing and with your leadership and other members of our Committee, that we will find a good solution for this problem. And I thank you for the opportunity of my opening statement here this morning.

[The prepared statement of Mr. Kildee follows:]

STATEMENT OF HON. DALE KILDEE, A U.S. REPRESENTATIVE FROM MICHIGAN

This is the third in our series of oversight hearings on the problem-plagued management of the Indian Trust Funds by the Bureau of Indian Affairs and the Department of the Interior.

I want to commend Chairman Hayworth for his leadership and dedication to continuing the long process of righting the terrible injustice inflicted on Indian people by decades of mismanagement of Indian Trust Funds. It was no surprise to me that J.D. would come to Congress and in his first term look to tackle one of the most complicated, long standing messes ever created by the Federal Government. There is not a lot of glory in trying to clean up the trust funds problems, and I believe it speaks volumes that you are committed to doing so regardless. I also want to give you my thanks and praise for heading this task force in an open, fair and truly bipartisan manner.

During the 103rd Congress, Congress enacted the American Indian Trust Fund Management Reform Act of 1994. This Act required that the Secretary give periodic account statements to Indian account holders and was intended to give tribes easier access to their funds. The Act drew to a conclusion the 5 year, \$21 million reconciliation project being conducted by the BIA and required that each tribe receive a statement on the reconciliation of their accounts. Further, the Act established the position of Special Trustee for Indian Trust Funds and required that he develop a comprehensive plan to better manage the funds under the Department's control.

The reconciliation reports have gone out to tribes and for the most part we are hearing that they are incomplete and in some instances not much help at all to the tribes. I look forward to hearing from tribes as to what they need from BIA so they can better decide future management of their accounts.

We in Congress are sometimes criticized for traveling in the line of business, but I believe it is extremely important to conduct hearings such as this where the people most affected live. We are able to gather so much useful information by coming here to listen to so many who might not be able to travel to Washington, DC, to testify.

I thank all of you for being here this morning.

Mr. HAYWORTH. And I thank my colleague from American Samoa for his remarks, and I would endorse them fully as we try to get

to the bottom of what is, we can all agree, a serious, serious problem and an out-and-out mess.

With that in mind, then, we would like to hear from our witnesses. We will begin with the director of the Office of Trust Fund Management within the Department of Interior, Ms. Donna Erwin.

**STATEMENT OF DONNA ERWIN, DIRECTOR, OFFICE OF TRUST FUND MANAGEMENT**

Ms. ERWIN. Thank you, Mr. Chairman. I really appreciate the opportunity to present testimony today on the Indian trust funds management. As you're aware, the Office of Trust Fund Management manages approximately \$422 million for 50 different tribes in the Phoenix area and \$83 million for approximately 38,000 individual Indian accounts that are Arizona residents.

You are aware that we have had many, many reports about the past problems that have occurred. When the special trustee was appointed in September of 1995, he began an assessment to look at the policies and the procedures and the systems and how do we correct these and what we need to do to move forward. He included in those the past 20-year tribal agreed-upon procedures reports that you referred to.

We also included the August of 1995 Tiger team report, and that is a group that was put together to look at the IIM systems throughout the Department that's headed by an MMS employee and that is also available in addition to those various GAO reports. We did interviews with tribes, with account holders, and talked to people who were professionals in the trust management field.

And we have since then put together a conceptual strategic plan. And all of these reports were included in that strategic plan. But what all of these, including the special trustee's conceptual report, confirms is that the criteria that's outlined in the 1994 Trust Reform Act cannot be met currently.

There are things that it requires, such as timely and accurate accounting for balances, accurate and timely reports to account holders, and audits under generally accepted audit standards, and further reconciliation efforts that due to the records unavailability are not able to be accomplished at this time.

While significant improvements have been made at OTFM—at this point, we need to clarify, because there's some confusion that we part of OST—the Office of Trust Fund Management and the field staff which are the only units that currently report to the special trustee. Realty leasing is still part of the BIA, even though the special trustee is responsible for monitoring and correcting and doing reforms of the entire trust program.

Some of the things that have been accomplished during the last few years are that we are online directly to the Treasury now, so that we now perform daily reconciliations of cash, monthly reconciliations of assets. We have a system that actually tells us when securities are maturing and when cash is due on any of the investments.

We have a state-of-the-art trust system for the tribal accounts and all investments, and we have made additions to staff and reorganized the OTFM staff, to better enable us to perform the fiduciary duties. We have eliminated overdrafts in all the tribal ac-



counts from 1993 forward, there are no recurring overdrafts. We have reduced in half the number of overdrafts in the IIM accounts.

We have also been out this year doing five consultation meetings with IIM account holders to hear what their problems are. We have looked geographically where these people are located, and how dispersed they are and how can we better serve these people. We are also preparing work plans and target dates for the IIM data clean-up.

You've received the special trustee's strategic plan, and there's nine initiatives within this designed to rectify problems and bring the trust accounts up to commercial standards. And these are important enough that I would like to read those directly.

One is a trust resource asset management delivery system. This will involve obtaining new trust resource asset management and delivery systems for asset leasing, contracting, lending, buying, and selling, together with standardized and/or integrated asset management. The system must be able to tie to and track from the land-ownership records.

Number two is an accounts receivable data and billing system that uses lease contract and landownership information. Number three is a trust depository for payments and delivery system for individual Indian money, the IIM account system I've referred to. This will entail purchasing a trust depository, payments, and other financial services and accounting and statement system.

Number four is a land records and title recordation and certification system. Number five is a general ledger and general accounting system. And number six is a technology service center, a data center, that's dedicated to the trust resources and trust funds management.

Number seven is a national archives and records center. And this will involve obtaining and centralizing a modern, national archives and records center for trust resource, asset, and funds records storage and retrieval. Number eight is a risk management control system, an internal audit program.

Number nine is an independent institutional structure. And this will involve consolidating all the trust resource trust funds and landownership and records management into a single, independent institutional unit.

As stated above, the conceptual strategic plan is completed, and we have done the conceptual. Now what we need to do is go into a user's need assessment, know what the users need, what's out there, and that's the requirement analysis. In the 1997 President's budget, we requested a million dollars for that.

This requires an outside contractor. And the reason for that is that the staff in current staffing at OTFM is for the day-to-day operations, not for the cleanup, not for the evaluations. So everyone that's there is to be able to proceed on a day-to-day basis and continue the current operations.

It's going to take about 90 to 120 days to complete the requirements analysis and the user's need assessment once funding is received. There are many things, though, that can be done in the meantime.

For instance, the IIM system, the IIM accounting system that we referred to, that is a project that can be accomplished during the

user's need assessment and the requirements analysis, and it can be interfaced into the overall conceptual plan and the overall conceptual systems.

The 1997 President's budget request is for \$36.3 million, which is a \$20 million increase over the 1996 budget. And this is to be used for correcting IIM systems—again, it's a very crucial process. I would like to divert for a second, because one of the things the committee had asked about was how could a tribe take over the management of their money, the management of their IIM accounts. And you inquired as to how can that be accomplished.

One of the things is that Title III of the Trust Reform Act allows the tribes to remove their judgment funds money. And at that point, the government would have no further liability. They can take this money out to private institutions to be managed. There are regulations that are being published currently that outline the steps to be able to accomplish that.

There's another, self-governance. They can remove funds under self-governance, and that means they would take over the programs that the Office of Trust Fund Management or the Bureau is performing, but that the liability still would reside with the Secretary, which means that we would still need to be the monitoring and the auditing side and would be provided by the government.

Individuals, if they are a supervised account, cannot remove their money right now. The supervised account means one of two things: it's either a minor that has not reached age of majority, or it's non compos mentis. Anyone else that has an account—as we're going out in the consultation meetings, we're saying, "If you have an account, if you do not reside in one of those two categories, then you need to be asking why." That money should be released to the individual.

As we said, the IIM consultations have been going on. We feel like they have been very successful. We have got some very good input from the individuals around the country. One of those was held recently here in Phoenix.

But in closing, the one thing that I want everyone to understand is, the past is going to continue to be a challenge, not only to the administration, but to Congress, and to the account holders.

But the enactment of the President's 1997 budget request would represent a substantial step to ensure that Indian trust reform efforts are a top priority and implemented in a manner that will ensure that the fiduciary responsibilities of the Federal Government are met as they should be. This concludes my statement. I'll be happy to answer any questions you might have.

[The prepared statement of Ms. Erwin may be found at end of hearing.]

Mr. HAYWORTH. Director Erwin, we thank you for your statement. And we appreciate the efforts you have made to try and bring some order to the situation we now find.

Just a little background, first of all, on the individual accounts. Geographically, are we talking coast-to-coast and beyond? Or if there was a way to break this down geographically, where can the preponderance of these accounts be found? Is it here in the Southwest, or is it just completely coast-to-coast?

Ms. ERWIN. As we pointed out in some of the original meetings, we became a very mobile society. So historically, they have been serviced out of agency and area offices. But through the mobility, everyone generation to generation, they're now found coast-to-coast, from Hawaii. When we do maps they're very informative to find out where the people are located and where they're actually serviced.

Mr. HAYWORTH. When will these regulations that you mentioned, allowing tribes to take over their own accounts, be put into effect?

Ms. ERWIN. These regulations have been published for comment, and we have already had a comment period. And they will be published very shortly. But we have not restricted any tribe from removing funds. They're allowed to remove their money at any time, even though these are still proposed regulations.

Mr. HAYWORTH. So right now, if a tribe wanted to go ahead and take its funds, it would be free to do so?

Ms. ERWIN. Right. Several things should be brought up with this, one, there's several requirements in the regulations, it states that the tribe understands that it's not only removing funds but also the government liability and we require this be done by resolution.

Their constitution has to allow the governing body to remove the funds, that there's no further liability on the government's part. They need to acknowledge that. We need to see that they have signed agreements with their fund managers and that they will continue to utilize the funds in the manner they were appropriated.

Mr. HAYWORTH. You mentioned some different costs, projections; for example, I believe bringing in an outside contractor here initially over 90 to 120 days at a cost of \$1 million. Subsequently, the Administration is asking for in the next fiscal year a \$20 million increase to \$36.3 million to begin a process of trying to bring order to the situation we find now.

Let me see if we can break this down a little more specifically, Director Erwin. How much will it cost overall to first of all set up an asset management system?

Ms. ERWIN. The asset management system is not part of the 1997 budget request—it's only the IIM system module, unfortunately. The strategic plan that I referred to—and Mr. Homan's conceptual plan—has the breakdown of the conversion and the actual system costs—what is also involved here is bringing telecommunications equipment up to date, bringing all of the communications and equipment that have over the years not been properly funded up to the standards.

You cannot bring the best bankers in the world in to run current systems and operate the office efficiently the way it should be operated. So it takes a lot to bring everything up to date so they can support these systems.

Mr. HAYWORTH. With that in mind, do you know a figure, or has there been a breakdown for this?

Ms. ERWIN. There is a breakdown. I would be glad to supply that to you. I do not have it with me today. But when we went to the Appropriations Committee, we said, "This is how we will start that process. This is how we will use that additional \$20 million, which includes some of the systems that can be put in place immediately."

It's a stopgap so that immediate improvements can happen and reforms that would reduce any continuing liability. And then with the study completed in March or April of next year, we will be able then to give exact projections for how we will implement, target dates and how much money we will need in the future.

Mr. HAYWORTH. So really, in terms of specific numbers, whether for an asset management system, the accounts receivable system, the land records system, the general accounting system, the audit system, and all the other things that would be involved in this, specific figures have been formulated, and they right now reside with the appropriations request?

Ms. ERWIN. Correct.

Mr. HAYWORTH. And what we would very much appreciate, if you don't have them here with you today, is that this task force receive those specific sums and amounts in writing. And I believe the customary period just to make sure we get this done, taking into account travel back to Albuquerque and so forth, if we could make sure that information is to the task force within five business days, that would be greatly appreciated.

Let me return to a broader philosophical question. And I understand the challenges you face here in the Office of Trust Fund Management. You mentioned the fact that an outside contractor should be brought in at a cost of \$1 million over a certain period of time to begin the study. Indeed, the government turned to Arthur Andersen to audit the current—and to check on the current problems we now have.

Going to outside sources, it seems to beg the question, could this job be done more effectively in contracting out to private entities, still mindful of the Federal Government's Constitutional role to the first Americans; would it be more cost effective and more practical to follow the procedures that seem to be indicated at least partly here, reflexively, going to an outside contractor, using Arthur Andersen and others, would it be wise, frugal, and a good stewardship of the taxpayers' money to search for outside contractors to take on this very significant role?

Ms. ERWIN. I think that will be considered in the overall conceptual plan, what can be privatized and what should not be privatized. One thing you need to remember, and I have more years than I want to talk about, 29 years of private trust sector experience. You're creating somewhat of a liability for that entity you transfer accounts to, because you do not have accurate account balances.

You have 300,000 individual accounts right now that need to be reduced. There's some very small amounts, and that needs to be resolved. That's one of the questions we have been asking at the IIM consultation meetings, "What do we do with these small amounts?" And there's a myriad of suggestions. But people do not want checks for two or three cents. They don't get cashed.

And in 12 months, they get posted right back to that account again. And so we have to resolve some of these problems. There are some overdrafts. There are 50,000 lost account holders that we do not have their address right now. They have moved. Maybe the grandmother had the account, grandchildren never knew that she

had an account, and she passed away, so no one knows that this account is even existing.

And we have some large overdrafts in house accounts. So we need that data cleanup and the requirements analysis badly to be able to resolve some of these problems.

Mr. HAYWORTH. In terms of overdrafts, is it possible that a tribe could owe the BIA funds? And if so, how might this happen?

Ms. ERWIN. Yes, it is possible. There could be incorrect postings. And I believe when you talk about the \$2.4 billion, it should be brought up that those are not missing funds. \$1.1 billion of those are receipts that are residing in the tribes' accounts currently. There was just not the proper audit to make sure they were in the proper accounts, or how did they get into the accounts.

But they are in the tribal accounts. They are being invested. There's about \$500 million of that that's transfers from one tribal account into another, same tribe within the tribe's checking or savings type accounts. So that's about half a billion there. And then there's about \$800 million in disbursements. And those are the ones that are of a large concern, obviously.

Mr. HAYWORTH. We have been talking about the \$2.4 billion and whatever allocation of whatever problems. There have been those who have come to see us, however, who maintain that this is simply the tip of the iceberg, that there may be more significant problems and a far greater sum. What do you think of those assessments?

Ms. ERWIN. That is possible. The problem with that is, due to the funding timeframes, all of that was done during the past reconciliations for lease that was returned to fill-the-gap, was we know the money was received. Does it correspond with the lease? That was not accomplished. As has been pointed out in testimony, there is not an accounts receivable—a comprehensive accounts receivable system for money that's due for those leases across the country.

Mr. HAYWORTH. Thank you.

Let me turn to my colleague from American Samoa.

Mr. FALCOMVAEGA. Thank you.

Thank you, Ms. Erwin. We had the task force hearing in Alaska. And one of the concerns that the tribes had indicated at that hearing was the office did not notify them that the interest collected and the funding that was to be returned are taxable. Do you think that the tribes deserve that they should have this interest taxed?

I mean, do you think maybe the Federal Government could at least give them that courtesy, they don't have to pay taxes for this interest? After all, it wasn't their fault that they got into this mess.

Mr. ERWIN. I think that's an IRS question. IRS—there are regulations. They (IRS) recently this year published a new booklet on the taxation of Indian moneys. And the funds you are referring to in Alaska was called "IMPL," Indian moneys proceeds of labor funds. And this was back in 1985.

The Bureau has formulated in the regulations as to how that's disbursed. We have since the Alaska hearing been investigating each of the areas, asking them, "Please tell by survey, "Did you submit 1099s on this or not?" And that's the question we are currently in the courts with the IRS on.

We do issue 1099s. On the customer statements, we list this money, "Here is your taxable income for this year. This will be reported to IRS." That was a past practice of an escrow account.

Mr. FALEOMAVAEGA. The point here is that you do notify the tribes properly as to what portion of the money that's being returned that is taxable, or the interest?

Ms. ERWIN. Yes, and that was the individual accounts that we were referring to.

Mr. FALEOMAVAEGA. Is there any provision under the current law of the 1994 law that was passed concerning the establishment of the Office of Trust Fund Management—are there any provisions of the law that you think that ought to be amended or changed to improve it, not only the functions of your office, but just a better way to streamline the operations, besides the funding that is being requested, of course?

Ms. ERWIN. I think that's one of the things we're also going to look into in the requirement analysis. We are constantly streamlining, constantly finding, as we automate, more systems, better ways, more efficient ways. We're looking at the lock box situation. One of our problems is that we have been sending monthly statements and we're getting a lot of complaints about sending statements on small amounts.

Under the current Trust Reform Act, we're required to send quarterly statements to all of the IIM account holders. And they're saying, "For four or five cents, until we resolve this, can you send this only annually?" So that will be something we will be suggesting as a change to the Reform Act.

Mr. FALEOMAVAEGA. It's my understanding that as of this time, approximately 86 percent of the accounts are somewhat being—that you've been able to accomplish the task up to 86 percent that you've been able to account for? Am I correct in my background reading of this?

Ms. ERWIN. That's the past reconciliation. Those agreed upon procedure reports that Arthur Andersen presented, yes, that is a correct figure. And there was those amounts that could not be reconciled. You could not find proper documentation. And that is the \$2.4 billion that we keep hearing about. We did not find all the proper documentation to support all of those transactions.

Mr. FALEOMAVAEGA. So the 86 percent that is now being able to be accountable, that's the \$2.4 billion that we're talking about, or is that more or less—

Ms. ERWIN. Yes. The \$2.4 is the 15 or 14 percent difference that could not be audited in the reconciliation. And that's only tribal accounts. Bear in mind, that's only tribal accounts and only for a 20-year period.

Mr. FALEOMAVAEGA. The Chairman had indicated earlier about the fact that it's good that we also privatize or allow the private sector to do the accounting. My understanding from the fact that when we assigned Arthur Andersen to do the accounting, they couldn't do any accounting, because the records are so messed up. And here, we ended up paying them for doing this.

Now, couldn't the office perhaps just say, "There's no sense hiring somebody in the private sector, pay them a million dollars just

to tell us what we already know"? The fact is, how can they possibly do any accounting, when there are no records to do it with?

Ms. ERWIN. What we're looking for now is the requirements analysis and user input to be able to go forward in developing the proper systems, not to do the accounting for the past reconciliation. You're correct. There was a massive number of records that were missing. And as you noticed in the reform plan, one of the things that was outlined in one of the items in the initiatives, is a national archives, an Indian national archives center, so all trust records are centralized, and you know where they are.

Mr. FALEOMAVAEGA. Is there anything that you feel that is most critical at this point in time that the Committee should absolutely address by way of anything in the statutes or any way by way of regulations that we ought to pursue with due diligence to make sure that you've got all the tools, that you have every means available at your disposal to make sure that you don't get obstructionists and anybody else that will be as a barrier to prevent you from doing your job?

Ms. ERWIN. I think the appropriations for 1997 will be a big help on starting us on the right track and moving forward.

Mr. FALEOMAVAEGA. And do you feel that the responses from the Indian tribes and your consultations have been positive?

Ms. ERWIN. Yes, they have been very positive. I mean, there's past problems, I agree, but they have been very informative, and we have been very pleased with the results of how we should move forward. And they have suggested things including different hours as in banking hours, Saturday meetings. And so it has been very enlightening for us.

Mr. FALEOMAVAEGA. And I would like to invite you, Director Erwin, please do feel free also to ask any of the members of the Committee, also, that we would love to work with you closely to make sure that we pursue this at all costs. And thank you for being here, and thank the Chairman for this hearing.

Mr. HAYWORTH. I thank my colleague from American Samoa. I also thank you, Director Erwin, for your testimony. One final question, or perhaps it's really more of an observation.

Even as you petition for increased funding here—and I realize this is not your role with the Secretary of Interior, and perhaps it's something I can better convey to him face-to-face—one of the concerns that I have as a Member of Congress is that historically, putting the Department of Interior, for lack of a better term, in charge of the affairs of living, breathing human beings who are citizens not only of their respective sovereign nations but also citizens of the United States, causes me great concern, to the extent that while we all want to preserve our natural resources, as I have expressed and as I have heard often, should we not hold human beings in greater esteem and the needs and the concerns and the problems they face?

Should we not hold human beings in higher esteem than rocks and trees and critters? I mean, we all want to preserve our ecology. We all want to preserve our environment. But one thing that I will address personally with the Secretary in planning for the budget of the overall Interior Department, I would trust that he would be

a good steward of those funds and place more funding into these different endeavors.

Rather than asking to generate new funds and additional funds, I would hope that he would take a look—and I would trust that in the reports that you are making to him, even recognizing that it is not your role to define policy, that certain points would be made that perhaps with the billions of dollars already allocated to the Department of Interior, more precedence could be given to the needs of humans and the very real crisis we face here.

And with that in mind, again, I thank you very much for your testimony, Director Erwin, and appreciate the fact that we'll be working together in the coming days to try and reconcile this problem. Thank you, ma'am, very much.

Ms. ERWIN. Thank you. We appreciate all your efforts.

Mr. HAYWORTH. Thank you.

Our next panel, we would like to welcome. In fact, we'll receive a welcome from one of the panelists, given the protocol that goes on.

Ivan Makil, who is president of the Salt River Pima Indian community; Ronnie Lupe, chairman of the White Mountain Apache Tribal Council; and our friend, Albert Hale, president of the Navajo Nation, are here. And gentlemen, we would ask you to come front and center now. And we would appreciate hearing from all of you.

It's so good to see my friends and constituents here today to testify. And in the sporting vernacular, Ivan, we often talk about the home field advantage. With that in mind, since you've been so gracious as to open these facilities to us for this hearing, I would ask you to begin our time together on this panel.

#### **STATEMENT OF IVAN MAKIL, PRESIDENT, SALT RIVER INDIAN TRIBE**

Mr. MAKIL. Thank you, Congressman. First of all, welcome back to Arizona. You've been here for a few days or weeks, I guess, enjoying the nice weather. And we're especially pleased to have you here in Salt River, where a lot of people don't realize it, but it is 10 degrees cooler than in the city, believe me.

Mr. HAYWORTH. Absolutely.

Mr. MAKIL. Although sometimes, it's warmer than in the city.

Mr. HAYWORTH. Well, we always appreciate the warm welcome, Mr. President.

Mr. MAKIL. And we're also glad that you chose to have the hearing here today. We're glad that we can provide the facility to have it here. And Mr. Faleomavaega—I'll try to get that right—it really is a pleasure to have you here and also to have the opportunity to personally thank you for the work that you've done in support of our issues across the nation.

Tribes have been in need of it for some time, not people that just understand our issues. And for both of you to be here, both of you gentlemen here actively advocating on our behalf, I thank you for that, because that is something that hasn't been in the past.

And therefore, issues such as we're about to deal with today can occur and will continue to occur without people like yourselves advocating on our behalf.



So without taking a whole lot more time, I just wanted to thank you and welcome all of you here, as well as the distinguished other panel members here, Mr. Lupe, Mr. Hale, and all the other tribal leaders that are here and guests. And so we thank you all for coming here today, and we hope you will be enlightened even more so than I know you already are by a lot of the information that will be presented to you. And without anything further, I'll get right to the testimony.

I would like to submit for the record a formal written testimony to the task force. And I will just try to abbreviate those comments and summarize them. And I would like to really get to some issues that I think are of major concern to everyone here. And those are some thoughts about some resolutions to this issue.

It has been several years now since legislation was passed—at least I know the six years that I've been involved in this issue—that this problem has been worked on. And there was a plan developed after the results were looked at, or a plan developed to look at this whole issue. Results were turned out by Arthur Andersen. And it was an atrocity.

The results only confirmed what the tribal people always believed. And we had to go through a very costly process of proving what we already knew. And that's unfortunate. It's unfortunate, because those are a significant amount of dollars that could have been used and been helpful in a lot of other areas.

But nonetheless, what the results produced was an opportunity for a special trustee to have and develop a plan. Now, he was given one year—Mr. Horn was given a year to come up with the plan. And within about nine months, he came up with a plan. And I was particularly impressed with the plan he developed. And I was really impressed with his commitment to the whole issue once he understood the issue.

This strategic plan or conceptual strategic plan that he developed is a plan that is a start to beginning to understand some of what needs to be resolved in this issue. This plan, if initiated, will, I believe, begin to bring about not only solutions within the Department of Interior itself that need to be corrected, but also in terms of resolutions with tribes, which is—you know, if you think about the \$2.4 billion that we keep talking about—and as you've already stated several times, it's only the tip of the iceberg.

We don't know what really is out there with those other 300,000 other issues that are hanging out there. We don't know what the cost of those might be. When this plan was developed, it was going to cost about \$2 million to implement.

And many of us that were—let me back up a little bit. I was asked to serve on an advisory board to the special trustee. And as tribal leaders, many of us really felt comfortable with the creation of this advisory board, because it allowed for tribal input.

It allowed the voice of our people to be involved in this process, to have the ear of the special trustee, so that the issues or the solutions that could be developed would be real solutions, not what has happened in the past, where an agency develops a solution without good input from tribes. It is very important, and I think it's key in the resolution of this issue, because the potential liability that

the Federal Government has in these issues, I believe, is tremendous.

We have no idea what that might be. And we won't know until—I guess we have to get into court to get this issue resolved. So unfortunately, this \$2 million that could have been reprogrammed from somewhere within the Department of Interior was not done. When the special trustee asked the Secretary to forward us money that could be located somewhere in the Department of Interior's \$12 billion budget, they couldn't find \$2 million.

It seems that this \$2 million to resolve a potential—not just a potential liability in terms of trust, but a potential—not even a potential—a legal liability, a legal financial liability that the Department will have that the Federal Government will have to tribes, to Indian people, could be so much more than \$2 million. It could be so much more than even the \$12 billion budget that it's in.

But we can't find \$2 million. But in the same breath, we can find \$4 million in emergency money to fix canals, and we can propose \$100 million to buy land in the Everglades. Now, that really concerns us a great deal, because we're continuing to not deal with the problem that needs to be resolved.

We have to face this problem. We have to take it on. After 150 years, we finally have someone, a special trustee, that understands and knows that he has a fiduciary responsibility to tribes, to Indian people. And that must remain. He understands what it means to have that fiduciary responsibility. And now, he's being subdued. He's being, in effect, muzzled. That can't continue if this problem is going to be resolved.

One of the things that we know and has concerned us a great deal is the fact that while Arthur Andersen has identified \$2.4 billion, that in the same breath, the Department of the Interior is saying that—it's almost as if they're refusing to look at the reality of this problem.

What we're told is that there are techniques of economic modeling that make it feasible to produce valid estimates of the liability that exists and that it can hold up in court. In other words, what I'm saying is that a model can be created that can help us understand what that liability might be, but no one really wants to look at that.

And that's what's important, because once the Federal Government then begins to understand—really and truly understand—what the potential liability is, will they get serious about resolving the problem. Because the liability, once it goes to court, can be much greater than that.

Let me get right to some suggested or proposed resolutions of some of these issues. One of the things as part of this proposed program—and there are several areas like that need to be dealt with. Not only is it in the issues of the trust fund records, but there's one other issue here that has been overlooked.

And really—it really goes to the heart of how you distribute funds that come in from leases to the individuals, particularly to where tribes have a lot of lands—and that is in the records, allotted lands and how they're handled.

Let me give you a quick example. I'll try to make this short. For instance, here in Salt River, we have agricultural leases. And we

have allotted lands. So we have a 10-acre parcel, for instance, that may have originally started with one owner when the Federal lot map was created. It started with one owner.

We have situations where now and so do many other tribes, where that 10 acres might be owned by 300 members. And over time, what has happened and what the Federal Government has not provided for is a system by which to deal with that accurately. So what happens is, over the years, we lose track of all these heirs.

And so one of the places where some of these dollars get lost is in trying to find these people. They can't contact them, or if the probate system has not been completed, which—and there will be people that will tell you, as did here in Phoenix earlier this summer, they have been waiting 10 years for a probate to settle. And that's not unusual.

And so what happens to the money in the meantime? Well, it goes into the trust fund. And guess where that trust fund is? Federal Government. OK?

One of the things that could be done to deal with some of these issues is that if for fiscal year 1997, 1998, and 1999, an amount equal to one-half of 1 percent were taken from every line item within the Department of Interior budget and if it were transferred to the trust system, it's estimated that could raise about \$60 million a year, which would be enough to correct some of the problems. At least that's according to the budget that was created by the special trustee. Half of 1 percent of every line item.

I mean, I don't think any department is going to fall apart losing 1 percent of their budget or half of 1 percent. Also, if we could amend the Reform Act to convert the Office of Special Trustee and the advisory board into a control board, it would be similar to what Congress did when it created or it concluded that the government of the District of Columbia was incapable of reforming itself, and they created the system.

So it's not an unusual system. The trustee and the advisory board need to have some authority to be able to resolve some of these problems and to really bring in the issues that are brought about from tribes, because the tribes and the individual Indian people are really the ones that we have to make these settlements with.

The other thing, third would be to give the special trustee the independent authority to file suit in Federal court when it would be necessary to stop breaches of trust or prevent violations of the Reform Act. And all that is to be able to allow the trustee to intervene on the side of the account holders to really act as a trustee.

And I wanted to also deal with an issue that I thought I heard being raised earlier in the prior discussion, and that is that it was talked about privatizing this process. I think it's also important to make sure that we don't remove the system from the Department of Interior, and let me just say for this reason.

It should not be moved from Department of Interior until we fix it, because as it has already been stated, we can give them to a third party, but there's liabilities that go along with it. We need to resolve or at least come to some sort of agreement about what might possibly be a resolution of this before we can pass it somewhere else to be maintained.

But there are so many small things that are broken and that need to be fixed that it would take a long time. And these recommendations I'm making are only a small part, but at least they're a beginning to the resolution of this major issue that we have today. And I thank you.

[The prepared statement of Mr. Makil may be found at end of hearing.]

Mr. HAYWORTH. Ivan, we thank you very much for not only offering testimony but possible solutions. And we'll revisit that with questions in just a moment.

Chairman Lupe, you share your thoughts with us, please, sir.

Mr. Chairman, I'm sorry. Why don't we move the microphones over? Ivan, if we can put you to work as a sound technician, since you've already been a very gracious host. And I think that will help everybody out. And we should pause also to ask my former colleagues in radio if they have their microphones where they want them.

Mr. Chairman, I always look out for broadcasters, having come from that profession. With that in mind, I believe everyone's ready now. And Mr. Chairman, I'm happy to hear your testimony.

#### **STATEMENT OF RONNIE LUPE, CHAIRMAN, WHITE MOUNTAIN APACHE TRIBAL COUNCIL**

Mr. LUPE. Congressman, I'm also happy to see you again. You have done some great job for us on my reservation, other issues and concerns that we have for our people on White Mount Apache reservation. I want to thank you for that. That's aside from the present issue that we are addressing today.

I'm pleased today to testify before this task force committee created by Representative Don Young. The thought behind the creation of the task force is one of a big question. I've seen so many task forces come and go created by Congress or whoever in reference to Indian reservations or Indian concern, Indians collectively across the United States.

And we seem to be on the verge of this task force disappearing, and that concerns me a little bit, due to the fact that the funds were withdrawn from this trust task force recently by the Interior Department. So here today, gone tomorrow. Again, it kind of worries me. I've seen so many of those.

The efforts by Congress I'm sure is quite sincere to identify some lost money that once belonged to Indian people. But the effort doesn't seem to really become solid to me, whereby it seems to be disintegrating, bureaucracy, other red tape, other political concerns, both parties, Democrat, Republican, committees. Today, I'm a little bit at a loss as to the issues at hand.

Granted, Congressman, you were one of the key people to identify that money was gone rightfully belonging to our people. We have a concern from the White Mountain Apache Tribe, considering the fact that we have resources which brings in quite a bit of money to the tribe since back in 1871.

Our resources have been managed by the Interior Department, generated income, which was, I suppose, used by the Bureau of Indian Affairs agency on our reservation without checking with the owner, the White Mountain Apache Tribe. Several of these are

identified in my statement presented to you, and they are quite a concern to us.

We identified certain money recently, which is \$22 million in a trust fund, which is we call 22H. That concerns only mandated by the statute up to 1946, but there are positions beyond 1946 that are really unaccounted for.

Where lies again my concern with my colleagues here making statements referenced to Andersen, the lawsuit that has been initiated by NARF regarding the Indian Trust Fund Management Reform Act of 1994, NARF reports that the Department of Interior has obstructed the special trustee for American Indians from implementing and enforcing its Trust Fund Management Reform Act.

That disturbs me quite a bit, that the trustee mandate was deliberately sabotaged by the Department of the Interior. Department of the Interior returned, as I understand it, \$24 million of unspent funds in 1995, which could have been reprogrammed with the approval of the congressional committee and applied to the work of the special trustee, Andersen.

The Department of the Interior had refused to request adequate funds for the work of the special trustee mandated by 1994 Act and has prevented the special trustee from preparing the strategic plan mandated by the 1994 Act, which is quite a concern to our people on our reservation.

Again, I've heard solutions, conclusions, and complete fix. These are all kind and good gestures and words, but the substance does not seem to exist as how to define that. The solution that I would suggest, of course, to take the necessary step to provide a special trustee the tools and resources he needs to fix the system and achieve justice for Indian people.

I urge Congress to amend the Act as necessary to ensure that the trustee is armed with the strongest jurisdiction, subpoena power, and funding to get the job done. The court suit initiated by NARF may go on for years, and even if it is won, there are always appeals and appeals upon appeals, which may go into the next century. You and I will be long gone by that time, and the issue will have been gone with the wind.

In short, without adequate funding and authority from Congress, the trustee is doomed to failure, in my personal opinion, our opinion from the woods. The resolution of this breach of trust transcends a mere accounting of Indian money. It is a joint responsibility, as I've said, of Congress and the Administration and the responsibility of both political parties.

The President and Secretary of the Interior have been aware of this problem for years—many, many years. And it has now just surfaced, to a point where we understand what happened. "Thank you," and everybody goes home. It's a kind of an itch. That itch just doesn't go away. Even though we have forgotten, we go back, and that itch is still there.

Now, a resolution is to give this organization a trustee, a special power. Congress, if they are so desired and concerned about what happened to these billions of dollars, they should give this trustee a power, a subpoena power, an extra power, all the resources financially that it can muster, and see where it takes us. I believe that

would shorten the existence of the trustee with a complete fix solution for the worries or the constant worry of my people back home.

I have a water rights concern, which I have instituted in my statement, which is also money. I am worried that the people up in the northern boundary of my reservation are pumping water, groundwater. Soon, if that is not stopped, I will soon become an endangered species. You said humans, Congressman. I am a human.

Why is it that the people down here are pumping water underneath my reservation? They have no right to do that, and I need every protection for the existence of my people so that my culture and those that I value very much, children yet unborn, can survive and live and enjoy life. Thank you.

[The prepared statement of Mr. Lupe may be found at end of hearing.]

Mr. HAYWORTH. Mr. Chairman, we thank you for your comments. We would also note, in your very candid remarks, you said that you hoped—you've seen task forces come and go, and that has been a problem.

Let me just note here somewhat more than parenthetically, in his comments in Alaska, the ex officio member of this task force, the Chairman, whom you thanked earlier for instituting it, Don Young of Alaska, says that he would like to continue this task force on to the next Congress to make sure that we don't simply just recognize a problem, we take actions to try and solve those problems.

With that, we thank you for your testimony. Again, I would offer the entreaty to my colleagues in broadcasting, as Ivan as our host is doing double duty here as the audio engineer helping to move the microphones, we would ask our other friends in radio and television if they have those microphones assembled as they would like them.

And as soon as the different microphones are in place, we will call on our good friend from the Navajo Nation, the president of the Navajo Nation, Albert Hale. Albert, good morning. Thank you for joining us this morning. And we look forward to hearing your comments, sir.

#### **STATEMENT OF ALBERT HALE, PRESIDENT, NAVAJO NATION**

Mr. HALE. Good morning, Mr. Hayworth. And also, good morning to Mr. Faleomavaega. Good morning and greetings from the Navajo Nation and the Navajo people who I represent. And it's a pleasure to appear before you this morning to discuss with you the critical issue that faces not only the Navajo Nation, but also the people of the United States.

I believe that this is much more than just an Indian problem, because if the Federal Government can lose money as it has done in this situation, just imagine what it has done with money that has been entrusted to it by the people of the United States, including Medicaid, Medicare, Social Security. So it brings about a much greater issue than just an issue related to Indian nations and Indian people.

I also want to express appreciation to my colleagues here, President Makil for his fine statement, and also to Chairman Lupe for his fine statement, and ditto to both of those statements.

Let me begin my testimony by first introducing myself. I'm the president of the Navajo Nation, President Albert Hale. I'm elected to a four-year term, and I'm in the second year of that term. And I represent the largest Indian nation in the country in terms of population and also of land base.

I will present my testimony basically in four parts. First of all, to give you some background information to put this whole testimony into context; secondly, to also bring to your attention the problems that we have been having with regard to our dealings with the BIA and also the Office of Trust Fund Management regarding our trust accounts; thirdly, our problems with the reconciliation project; and fourthly, to advise the Bureau of Indian Affairs and the United States Government that we will hold them liable for all the losses that we have incurred as a result of this misconduct and serious breach of trust responsibility.

First, by way of background information, in 1982, \$22 million of judgment fund was awarded to the Navajo Nation by the United States Government. In 1986, another \$32.5 million of judgment fund was awarded to the Navajo Nation. In both cases, the Bureau of Indian Affairs was designated as the agency to act as investment manager and custodian.

These assets represent what is called the Navajo Nation's 1982 and 1986 chapter claims funds. Separately but also in 1982, \$14.8 million was awarded to the Navajo Nation for adding to the nation's scholarship fund and acquiring some more land. Once again, the Bureau of Indian Affairs was designated as the investment manager and custodian.

Since the time of the awards, the Navajo Nation periodically withdrew funds from these accounts primarily to pay for various chapter operating expenses in the case of the 1982 and 1986 chapter claim funds, and in the case of the scholarship funds, to assist qualified Navajo students in pursuit of their higher education. By the way, "chapters," when I talk about "chapters," they are the units of local government in the Navajo governmental structure.

As mentioned before and according to the BIA March 31, 1995, accounting records, the BIA manages and has custody of approximately \$59.1 million of Navajo Nation money. Secondly, the problems that we have had with the BIA and also the Office of Trust Fund Management. First, the BIA OTFM has failed to follow Navajo Nation instructions regarding investment of trust funds.

Because the Navajo Nation was attempting to secure a release of the 1982 and the 1986 claims funds, the Navajo Nation sent the BIA correspondence in 1992 requesting that these funds be invested in short-term securities. This request was made to ensure that these funds would be easily liquidated at the time of the withdrawal.

Contrary to the Navajo Nation's instructions, the funds were invested in securities which have maturity dates several years into the future. The Navajo Nation will now realize a loss when the securities are cashed in.

Secondly, the Navajo Nation also instructed BIA and OTFM to keep the rehabilitation trust funds in short-term securities of less than a one-year duration.

Federal law at 25 USC Section 64D-30 provides that these funds shall be available to the Navajo tribe with the approval of the Secretary for the sole purposes which will contribute to the continuing rehabilitation and improvement of the economic, educational, and social conditions of families in Navajo communities. This is part of the Navajo-Hope land rehabilitation efforts.

The Navajo Nation's instruction to invest these funds on a short-term basis in order to have them available and pursuant to Federal law was again ignored and these funds invested in long-term, all to the detriment of the Navajo Nation.

Thirdly, in 1991, the Navajo Nation first requested that the Navajo area office of the Bureau of Indian Affairs assist the Navajo Nation in securing the release of certain judgment funds under management by the BIA for integration into the Navajo Nation investment system. Despite providing a variety of documentation and documents and answering many questions raised by the Bureau of Indian Affairs, the funds were never released.

As outlined in the proposal and the proposed plan that we have accompanying this testimony, the Navajo Nation implemented a successful investment program in 1990. Today, the Navajo Nation manages 18 different funds, constituting approximately \$700 million in assets.

According to the BIA March 31, 1995, accounting records, approximately \$59.1 million in the claims fund and the scholarship funds are in the BIA custody. By resolution of the Navajo Nation Council, Resolution CJA-1196, the Navajo Nation requested voluntary withdrawal of the trust funds pursuant to the American Indian Trust Fund Management Reform Act of 1994.

The request was for release of the chapter claim funds and the scholarship claim funds received in settlement of Docket Number 69, Docket Number 299, Docket Number 256-69, Docket Number 377-70, and Docket Number 588-83L. The resolution of the Navajo Nation Council and the request was transmitted to the Office of Trust Fund Management within the Interior Department.

By letter dated April 12, 1996, OTFM requested the Navajo Nation to provide additional documentation to complete the application process for the voluntary withdrawal. The request for additional documentation raises issues concerning imagined discrepancies between the Congressional plan and the Navajo Nation plan.

The Navajo Nation has previously addressed these concerns in detail with the Bureau of Indian Affairs. In 1991, former Attorney General Donna Christiansen explained the perceived inconsistency between the plans in a letter to the area director. In that letter dated June 24, 1996—in my letter; excuse me—I again addressed the concerns expressed by that office, which are essentially a re-statement of the concerns previously raised.

Please note that the concerns raised are not substantive. They are not affecting the issue of whether the Navajo Nation is capable of managing the plain settlement funds. Instead, the concerns that are raised illustrate the worst bureaucratic tendencies of the Federal Government and lack of understanding and knowledge of Navajo Nation laws.



In addition, the OTFM has requested documentation which is not required by the 1994 Act and which is not relevant to the determination that the Secretary must make pursuant to the Act in assessing the Navajo Nation's proposed plan. For example, the requirement that the Navajo Nation submit a Navajo Nation Council resolution acknowledging that the funds once released to the Nation will no longer be in trust status is not found in the Management Act, nor any valid regulation that has been so far promulgated by the Secretary.

Because the Act itself provides that the funds will be removed from trust status once released, there is no further need for the Navajo Nation to express such an acknowledgment. This is stated at 25 USC Section 4022(c).

The Act also provides that a tribe's submission of a plan for voluntary withdrawal and that the Secretary's acceptance of that plan for voluntary withdrawal does not constitute an acceptance of the fund account balance as being accurate, nor does it waive the Navajo Nation or any Indian nation's rights to seek compensation. And that is stated in 25 USC Section 4027.

The Navajo Nation has demonstrated that the request for voluntary withdrawal previously submitted to the Office of Trust Management is adequate for the Secretary to make a determination as to the conditions set forth in 25 USC 4022, Subsection B.

First, by resolution of the Navajo Nation Council, the Nation plan for voluntary withdrawal has been approved by the governing body, therefore meeting that requirement. Secondly, the Navajo Nation's plan is reasonable. The capability and the experience of the individuals and the institutions which will have management and custody of the trust funds and also protection against substantial loss of the principal have been demonstrated, and that is sufficient to meet the requirements of the law.

Despite the fact that the proposed plan meets the requirement of the Act both on its face and substantively, the fund has still not been released to the Navajo Nation as requested. It is obviously in the best interests of the United States Government to release these funds immediately, not only because the Navajo Nation has met the requirements of the Act, but also for the purpose of limiting liability of the United States Government for the mismanagement of these funds.

The purpose of the 1994 Act was to allow Indian nations an opportunity to manage their own funds held in trust by the United States Government. It also was intended to give Indian nations and their governments greater control over the management of their own trust funds. And it also is consistent with the principle of self-determination in working out the management of these trust funds.

The Navajo Nation's experience thus far has demonstrated that the United States is willing to deny that opportunity that has been afforded to Congress through this Act. Instead, what it has demonstrated to the Navajo Nation is that it is willing to continue a bureaucracy which undermines self-determination and which has actually done financial damage to the Navajo Nation and also other Indian nations.

From the Navajo Nation's perspective, this mindset must immediately change. The Navajo Nation has complied with its statute.

We are entitled to receive our own money and to take responsibility for the management of our own money. We can put this money to work for our nation, for our children, and for our people, for we desperately need additional assistance and money.

And the Federal Government, through its recent efforts at cutting the budget, is not helping us at all. And that, again, is a separate issue that entails breach of fiduciary responsibilities and trust responsibility that Indian nations are owed by the United States Government.

Secondly, with regard to problems that we are having with the reconciliation project. The Navajo Nation has been provided with voluminous documents concerning an attempted reconciliation of the trust funds administered by the BIA covering the period of July 1, 1972, through September 30, 1992.

Based upon an initial examination of the portion of the documents, it is apparent that further consultation will be necessary between the Navajo Nation and the United States contracted auditor, Arthur Andersen. The Navajo Nation has been advised that further consultation will have to be paid by the Navajo Nation.

And in this regard, what we're being asked to do is, the money that we have entrusted to the Federal Government, we're asking you to find it for us, and you're telling us to pay for it. And that's absurd. This is our money. We left it in your trust, and we want the payment to be done by the Federal Government.

We are dealing with activities which clearly falls within the scope of Federal trust responsibilities. So therefore, funds should be made available for the further consultation that I speak of. These meetings are necessary so that we can ensure that there is meaningful examination of the source documents and the working papers of the auditor.

Based on the investment benchmarks calculated by the Arthur Andersen firm, the BIA's actual investment returns for the Navajo Nation funds underperform the benchmark by approximately \$3.1 million. This underperformance supports the Navajo Nation's position that the investment management style of BIA and OTFM is costing the Navajo Nation millions of dollars annually.

This point is underscored within the Navajo Nation's application for withdrawal of certain judgment funds in which the Navajo Nation illustrates how simple changes in the type of security the funds were invested in would reap several million dollars more in investment income to the Navajo Nation.

Thirdly, the Navajo Nation intends to hold the United States Government liable for all losses which it has sustained and suffered as a result of BIA and OTFM's inadequate management of the Navajo Nation trust funds. Since the implementation of the Navajo Nation investment program in 1990, the Navajo Nation government has been deeply concerned about how the United States manages the Navajo Nation funds.

Our internal investment program has strict guidelines which must be followed, benchmarks which must be met, internal controls to ensure that no loss of fund principal occurs—we expect no less from the Federal Government. However, we have learned from aggressive management of the Navajo Nation funds since 1990 that wise investments are the key to our financial future. Our govern-

ment will not be able to function in the next century without relying on the investment strategies that we have begun to pursue sometime ago.

While the expertise which the Navajo Nation has developed has allowed our government to have a much better grasp on our future needs, this expertise has also shown us that the systems used by the United States in managing our trust fund are sadly lacking. Our concern is not limited to the Navajo Nation. Other Indian nations may not have the asset base that the Navajo Nation has, but they are not truly aware of the losses that they also suffer.

Our concern also extends to the Federal Government itself. As one of our investment advisors said recently—and I'll quote here—"If the Federal Government cannot tell us exactly what has been done with respect to the management of tribal trust funds where a special fiduciary duty exists, can you imagine the state of other funds managed by the Federal Government; for example, Medicare, Social Security, and others?"

This is a problem which concerns all Americans and which certainly deserves the Federal Government and Congress's utmost attention. In conclusion, I reiterate that what we talk about here is our money. And we demand an accounting of our money. And we also demand compensation for those moneys that cannot be accounted for and has been lost in the system.

We also offer one solution, and I think that has been recurrent in my statement. The solution that has been offered by my colleagues has been to strengthen the Office of Trust Fund Management. Our solution from the Navajo Nation based on our experience and our performance is that we can do better than that office. And for that reason, our solution is to give us our money back so we can manage it and so we can reap the benefits. We can earn more from those investments than has been shown by the Federal Government.

We need to do this, because we have declining revenues. We're faced with budget cuts. And we have to explore every possibility, every avenue for increasing our revenues, because as we speak, the demand for service among my people continues to rise, while our revenues continue to decline. And as a result, we ask for our money so we can invest it for the benefit of our nation and for the benefit of our children and to secure our future.

Thank you very much. Have a good day.

[The statement of Mr. Hale may be found at end of hearing.]

Mr. HAYWORTH. Mr. President, we thank you for your testimony. Indeed, I thank all three tribal leaders, again, for coming here, at home to talk about the challenges we face. And without betraying confidences, my colleague from American Samoa and I in the midst of the testimony were both very impressed that you have quite a compelling story to tell us in the experience of all three of your respective peoples.

Let me begin, then, with what appears to be variations on a theme. While the Chair certainly welcomes suggestions on how to solve the problem, it is important to note some of the limitations that if they have not exacerbated the problem, then they certainly have added to the delay.

President Makil, you perhaps came up with the best term to describe what's going on when you called it "an atrocity." You also spoke glowingly of the special trustee's effort to solve this problem, and yet quoting now your testimony, it's your opinion that "the special trustee was muzzled." Why do you have that impression? What exactly led to that conclusion in your mind?

And again, let me pause and let my colleagues in broadcasting move some mikes so that you can move forward here.

Mr. MAKIL. Several statements that have been made by the special trustee in trying to bring about the facts to tribal leaders is that the special trustee has not been allowed to speak or has been suggested to him that he not speak on certain issues, which some of those issues get to I think the realities of what those 300,000—just as one example—issues, unresolved issues might represent.

In other words, also to claim and to make a statement that there are ways of developing and determining what that economic liability might be, that financial liability might be, he has not really been allowed to talk about that, I think, in the depth that tribes could hear.

Because as was mentioned by President Hale, there are many tribes that have developed the sophistication to manage their own funds. But before we get our funds, we would like to develop a process that helps us best get to the best number that is owed to us, to tribes or to individuals. So that process is a process that can be developed. And no one has ever really talked about that.

And the Secretary—or the special trustee has not been really allowed to develop that, either. It's being considered as part of a lawsuit by the individual Indian people, but other than that, it hasn't been allowed to be discussed.

Mr. HAYWORTH. Mr. President, I noted at the outset of this hearing that problems in this area stretch back well over a century—indeed, over a century and-a-half, for what it's worth, prior to the current formulation of our partisan standing that is with us here to this day.

And in that time, there have been many people of both parties—and my colleague from American Samoa made the point that this really doesn't come down to a Republican problem or a Democrat problem, it's a problem we have to solve.

And yet even noting that, your testimony points up a concern as to the conduct of the Department of the Interior, specifically, the Secretary or others who formulate policy, either through a spoken instruction to the special trustee or in the form of memoranda or in a variety of unspoken ways to say "Cool it" on this problem. Is that a fair assessment, that something is going on currently in this stewardship of this Department that has led, in your terms, to the "muzzling" of the special trustee?

Mr. MAKIL. I think that's an accurate assessment. I think there's a lot of that. I think it relates to even the dollars, where several months ago, the advisory board was scheduled to have a meeting. The advisory board has met once with the special trustee.

And you're talking about, as has been said several times, our money. And you have an advisory board that consists of tribal leaders across the country as part of that advisory board to bring the

views of tribes and Indian people to the special trustee. And there's not even an allowance to have that meeting.

In order to represent us fairly, you have to have that input. And not allowing that communication between the special trustee and the tribes more in-depth is muzzling, at some point.

Mr. HAYWORTH. I just want to make sure I understand. And perhaps it needs amplification in this testimony today. You as a tribal representative have met with the special trustee only once since last September?

Mr. MAKIL. The advisory board has only met once.

Mr. HAYWORTH. This is not a game. This is a serious question. Unfortunately, the execution of public policy from time to time, there are those who are very willing to play the blame game. Let me move past that, because this is a problem so compelling, it does not need the usual seasoning of partisan debate or finger-pointing.

Let me move, Mr. President, to your suggestion for a remedy or at least an intermediate step in terms of remedial action that could be taken. And I want to make sure I understand this. It's something, an observation I made toward the end of the director's time with us.

You believe one way to solve this problem is to simply say to the Secretary of the Interior and to all the departments that come under the heading of that Secretary, a multi-billion dollar Cabinet level agency that the first and most compelling step would be for the next three fiscal years, 1997, 1998, and 1999, an allocation of one-half of one percent for every line item to go into a fund to solve this problem. It's a painful problem. Do you believe this to be the most painless way to solve it? And why?

Mr. MAKIL. It's painless because one-half of 1 percent of their budgets isn't going to destroy any programs or plans that I'm sure that any of those departments have. And again, if you consider—and believe me, I don't want to make light of the environmental issues that are part of that process, because you sit here with three tribal leaders who are very concerned about those issues.

But by the same token, as Chairman Lupe so eloquently stated, that you're talking about those kinds of issues—and as you stated yourself, Mr. Hayworth, that are those kinds of issues versus human issues. Those dollars that are available that belong to tribes are dollars that can be utilized to provide very basic necessities of life, life-sustaining things, projects, programs, needs, very simply that.

And do you want to put those environmental issues over basic human issues, needs? That's a question. I don't think that is asking too much. I think that's very minor.

Mr. HAYWORTH. In terms of putting a mathematical face on your suggestion, one-half of 1 percent of \$12 billion, according to the expert calculations of those Washington staffers, knowing my problems with mathematics and summer school—but notwithstanding—one-half of 1 percent of \$12 billion would total roughly \$60 million a year to go into solving this problem.

President Makil, I want to thank you, also. I think you offer some compelling ideas in terms of a control board reminiscent of the remedy being offered within the District of Columbia. And one

thing we hear from all you gentlemen is replacing the muzzle on the special trustee with genuine muscle to solve the problem.

I also appreciate, President Makil, your note of caution about privatization, in other words, saying what I—if the Federal Government is responsible for this mess, there must be some way to clean it up first before we move to any other types of resolutions.

Mr. MAKIL. If I could just clarify?

Mr. HAYWORTH. Sure. Please.

Mr. MAKIL. Again, I'm not opposed to the privatization. What I am concerned, though, about is making sure that the responsibility gets maintained, because it is important for that responsibility to be maintained so that it continues to further that overall issue of self-determination.

We need to get to a point where we are accurate about amounts and create adequate settlements to tribes and then provide the opportunity for those tribes who have the ability and who choose to manage those funds themselves. It's just furthering that concept of self-determination. I think that it's critical, and it's a very important factor here.

Mr. HAYWORTH. I thank you very much.

Let me turn, then, to Chairman Lupe. Mr. Chairman, we very much appreciate your presence this morning and your perspective and your cautionary note, delivered in all candor, that given the tendency prior to this with task forces and subcommittee investigations, that it tends to be like one of our Desert Storms, here today, gone tomorrow, and maybe here in the lifespan of our history for only hours at a time.

Again, I want to reassure you as I did earlier, Chairman Young is committed to continuing this process to make sure that we see this through to resolution. In referring to your testimony, the shorthand that I have here, Mr. Chairman, funding to the tune of \$25 million or the efforts—I want to make sure I understand, again, because I went over the notes here.

I have written down here from your testimony the quotation "deliberately sabotaged." Were you referring to the efforts of the special trustees, or funds that—

Mr. LUPE. No, the special trustee.

Mr. HAYWORTH. The special trustee?

Mr. LUPE. It has been rumored across Indian country that \$24 million was withdrawn from the trustee during its work by the Department of the Interior, whereby muzzling—again, is the word, for lack of a certain word—if it was not withdrawn, they could have continued with that money.

Mr. HAYWORTH. Oh, so in other words, the money—

Mr. LUPE. That was the power that they had, and it was withdrawn.

Mr. HAYWORTH. The money was withdrawn, and it's believed to be from the special trustee's agents?

Mr. LUPE. That's correct.

Mr. HAYWORTH. And then what became of those? Were they just restored to the general funds of the Interior Department, or allocated to other needs? Do you know where the money—

Mr. LUPE. I don't know where it went. It was just—I heard that it was just withdrawn. Up to the present time, I understand that

they only have about a million dollars to do the job, continue the trustee agent. The special trust that was created with the money—I don't remember what it was about, 40, \$45 million or something like that.

And then all of a sudden, they lose \$25 million. And then presently, they only have about a million dollars to do their work with. And in a very short time that they have been in existence, look at what they have discovered.

Congress in its intent, of course, was on a right track. You wanted to find the boondoggle of the Bureau of Indian Affairs with the Indian trust money. And you found it, with this special trust organization that you—this task force that was created in 1994 by Representative Young. And this was very much appreciated, as we heard, across the country.

Now that that is happening, in the middle of the stream to change horses—"We're giving you a different horse. We gave you a full pledge horse. Now, we're going to unsaddle that and see what you can do with this," this kind of thing. We're wondering what is happening to the power. I speak of subpoena power, as you—

Mr. HAYWORTH. Right. I was going to follow up with that. Yes, please—

Mr. LUPE. And without this kind of power, the special trust that was created I don't think will ever have the kind of power that it needs, that it really does not have the basic foundation to work with.

What we have in here and across the country with a limited amount of information that they have gathered, and then they have no money to really do the job with. So I look at the trust task force that was created to be in existence for another three years, and that's it.

Mr. HAYWORTH. Could the problem be solved in that period of time. Because as you stated, the tragedy is, as you look at a problem that continues, we have already had this for over a century and-a-half. It would be grave, indeed, to see this continue on without some resolution through the first decade of the next century, knowing that it takes some time to clear this up. But if we don't solve it now, it will continue unabated. And that's your fear.

Mr. LUPE. No. The Indian people across the country very much appreciate Congress, really, for discovering what has been known to have been happening across the country. Now, you have surfaced that, and you already have the information. That's not enough. We need a solution, like President Hale pointed out. We need a fix, and we need it now. How do we go about it?

The Interior Department, the Bureau of Indian Affairs, we have worked with them for years, Congressmen. And like they become an investor of Indian money. They become the manipulator of Indian money. And I don't know where it all goes to. And we from the Fort Apache agency, because of our noted problem over there, we have withdrawn some of our money from the IIM account. And we're using our own money now with our own department.

But there are those relationships still that Bureau of Indian Affairs is involved, the trust agency, for instance. Our timber harvesting continues today, and our trust agent, the Bureau of Indian Affairs, managed by the Forestry Department, they still have their

hands on those proceeds, the 10 percent money. Years ago, the 10 percent money went back into the general account. And we have stopped that.

We use it back now for reforestations and the improvement of the ecosystem on the reservation. But who has that money? The Bureau of Indian Affairs does have it, because it is our trust agent. The special relationship that we have with the White Mountain Apache Tribe and the Bureau of Indian Affairs, we don't want that to be erased. We want our land to be in a trust status with the United States Government.

Completely doing away with the Bureau of Indian Affairs would become a problem, but there can be a compromise. We feel that we have now on our reservation qualified educated tribal members who can handle money much better than the Bureau of Indian Affairs.

They can still have our trust responsibility for our land, but when it comes to money, I believe that the White Mountain Apache Tribe can do a lot better job today than any investor across the country, believe me. And when Hale presented the statute, you read in those statutes, the Bureau of Indian Affairs has still quite an authority under those statutes regarding Indian reservations.

We don't know what happened to our grace and fees that were collected back in the 1800's. The land leases, where did the money go? The Southwest Timber Company operated on my reservation, timber harvesting, processing for many years. What happened to that money? We still do not know. How much money transacted? How much is it?

Now, we understand how much those timbers cost. We sell our timber at \$400 per thousand feet presently, depending on the market outside. It goes up and down. But before that, who measured it before? Now, we do. So because of those problems that exist today, I believe that the task force should be strengthened, at least given some kind of power.

And the power really comes from money. When you don't have money, you can't do a doggone thing. \$22 million that is awarded, 22D we call it—22H, excuse me. 22D was a land claim. 22H is an accounting claim that we initiated. It took us about 45 years to discover that the Bureau of Indian Affairs doesn't know what happened to \$6 million that was derived from our land.

And it cost me a million dollars of my own money, White Mountain Apache tribal money, to discover that there is \$6 million lost, my own money. Like Hale said, somebody else should be paying for that.

So I could go on and on and on into my own turf in my backyard and front yard. I could go on to 1993, \$1,302,000. I could go on. You and I would be sitting here all afternoon.

Mr. HAYWORTH. Well, Mr. Chairman, we thank you for offering very compelling testimony and again pointing out—and I thank the indulgence of my colleague from American Samoa. I want to turn, as you mentioned, the experiences of the Navajo Nation, and President Hale was citing, being by no means unique, in fact, being some of the similar challenges that many tribes have faced.



I would simply start with the observation that supremely ironic to ask a sovereign people to pay a finder's fee, in effect, to account for their own money.

President Hale, you offer rather encyclopedic testimony here this morning and compelling testimony in terms of what has transpired on the Navajo Nation. I was especially concerned to hear of the challenges that your nation has faced in terms of investing tribal moneys and almost what appears to be if not a dereliction of duty, then to be charitable, a misinterpretation at best of tribal intent or a deliberate different direction than what the tribe intended.

What do you see from the incidents you've described to us today in your testimony? Was this a simple misunderstanding, miscommunication, or was there deliberate intent on the part of government agencies to dismiss the intent of the sovereign Navajo Nation in terms of its own money?

Mr. HALE. Well, let me put it this way. I have no evidence on which to articulate why there is a failure on the part of the Federal Government, particularly BIA and Office of Trust Fund Management, to take these actions. However, I would say that whatever action that is being taken, it's denying us access to our own money, and for whatever reason that action is being taken.

And it's denying us our rights, which has been incorporated into law, what has been stated in speeches, and which has been positions taken by Congress that Indian nation as a sovereign nation has to be given the opportunity to be self-determining. To me, that means the ability to decide how and where and when to invest our money.

So that has been denied of us, regardless of why those decisions are being made. And whether it's deliberate in terms of circumventing the intent of Congress or otherwise, the result is that we still do not have access to our money.

And the longer that happens, each day that we're denied access to our own money, each day we lose money, because we cannot invest those moneys at a higher return that we have already demonstrated that we have the capability of doing. So we lose money in that process. And that's the reason why I stated in my testimony that we will seek to hold the Federal Government liable for those losses.

And also, every day that we just talk about this problem, one of the things that I found out when I first got into this subject was—which was really appalling, as far as I was concerned—is that records are being destroyed by either the Department of the Treasury, because they are dated.

So we're losing records that may reflect these accounting or where these moneys have gone or the basis for trying to account for these moneys. And that's appalling to me.

Mr. HAYWORTH. If you would yield just one moment here. Again, because we heard something about this in Washington. And I again—I believe this needs amplification. It is your understanding that records involving trust funds are currently being destroyed either by the Treasury Department or the Interior Department? Records that would help us solve this problem may be destroyed? That is an ongoing process?

Mr. HALE. Certainly, it has been brought to my attention. That has been my understanding. And I think the reason why that's being done is that these are old records. But you will see that what has happened in this reconciliation project, it only covers 20 years.

And my colleague here, the chairman of the great Apache Nation, is talking about things that have happened prior to 1972, moneys that were collected by the Bureau of Indian Affairs. What happened to them? Every one of the Indian nations across the country, that has happened to them. But there is no requirement that the reconciliation project go even beyond 1972. If it does happen, just imagine how much more will be uncovered.

Only the 20-year period uncovers that there's a loss or over a billion dollars that's unaccounted for in that 20-year period that has been the subject of the audit and the reconciliation project. So that again underscores what I'm saying, which is that every day that we just talk about this problem, Indian nations, Indian people across the country are losing money. So it's imperative and critical that we do something about it immediately.

And I'll offer a solution, which is basically that you hand us over that money, and we'll do a better job at it. And our performance will manifest that.

And secondly, on a broader scale, one of the solutions that I think has to be seriously looked at based on your colleague from the American Samoa's status in Congress, it is about time that the United States Government considers dedicating two houses in the House of Representative, two houses in the Senate for Indian people, Indian nations, so that they can have a voice in that part of the government.

Right now, we don't have a voice, except through you and others who advocate on our behalf. But there is no one in there that is advocating constantly on behalf of Indian nations and Indian people. And as a result, we get into these types of situations.

So I would challenge the Federal Government to dedicate two seats in the House of Representatives and in the Senate dedicated to Indian people, Indian nations, so that we as Indian nations and Indian people across the country can send at least two representatives and two Senators who can have the same status as our colleague from the American Samoa. Thank you very much.

Mr. HAYWORTH. Thank you for your observations. I would also note that when you repeated the concern that documents are being destroyed, my colleague from American Samoa and I heard that in Washington. We put together a letter to the commissioner of the Financial Management Service.

We're still awaiting a formal reply as to just what is going on with these records, so that we get a definitive answer as to the destruction of some of these documents, which has been alleged. I thank you for your testimony.

Let me turn at long last—and I thank him for his indulgence, my colleague from American Samoa.

Mr. FALEOMAVAEGA. Mr. Chairman, thank you. I just want to say that I feel like I'm at home and to certainly thank President Makil and President Lupe and President Hale for their kind words in my presence here.

Several of my tribesmen play football for the University of Arizona and Arizona State University, and I hope that my fellow tribesmen here in the State of Arizona will look after them and be nice to them.

One of my cousins, Joe Salavea, currently plays for the University of Arizona. Of course, there were several others, but I think of another relative by the name of Junior Ahyou was also with Arizona State University some years back.

So I think in that sense, Mr. Chairman, I think I feel like I'm at home, where some of my tribesmen have migrated as far as here, to this great State of Arizona. And to thank you, the tribal chairmen, for your statements.

And I will say, Mr. Chairman, that in the eight years that I've served as a member of this Committee, I just wish that every Member of the Congress would have heard what the statements are that have been presented before this committee about this critical issue that we're confronted with, as far as the Congress is concerned.

Your eloquence and your understanding of the issues, I just cannot say enough in terms of how much I wish that there is a solution at last to see that these problems have existed. And I make this observation, Mr. Chairman. You know, it's bad enough, of some 350 treaties that the Federal Government has signed with the Indian nations, and we have broken every one of them.

I say this in a very sad way, because this has been the legacy of how our nation has been treating Native American tribes—I say for the last 500 years. Maybe I'm going too far back. But I make that observation in wanting to let the gentlemen know that there is a sensitivity in the Congress.

And I want to share this experience that I have had and the fact that another gentleman from the State of Arizona, Senator McCain, who Chairs the Indian Committee and, of course, with his colleague from the State of Hawaii, Senator Inoye—and it's a nice breath of fresh air to know that you, my good friend, Congressman Hayworth, that you do have a real sense of commitment in addressing these very serious issues.

And I want to say this point-blank and in all honesty with my friends here before this committee. About six years ago, I introduced a bill to provide four delegates representing Indian nations, because I felt that if it was good enough for American Samoa to have a delegate in the Congress, a territory, it is with Guam, it is with the Virgin Islands, as it is true with Puerto Rico and even the District of Columbia, why is it that the Indian nations are not given that same privilege? And I still continue to raise that question, Mr. Chairman.

When I introduced the bill, let me tell you, President Hale, there was about as quiet as I could ever hear from any Member ever suggesting that what I had proposed, I thought, what would be a reasonable effort to let this sensitivity carry on with the Members and to let them know that it's always a better format in the forum to have Native Americans themselves bring these issues to the forefront to the Members of the Congress in both houses.

And the process continues. And I can't say, Mr. Chairman, that it has been a pretty one. And Chairman Lupe, I know where you're coming from. I know the task forces. They come and go. I know the

Secretary of the Interior, they come and go. Presidents come and go. And yet we're still with the same problems.

I wish that there were solutions that we could provide in a way that these problems could be resolved in a matter of years. We have got a Presidential election this year. Who knows who's going to be sitting in the White House. Who knows who's going to be controlling both houses of the Congress. And I say this with all due respect. It's a very difficult situation.

Every new Congress and every two years, we have new Members, Members who have never heard of Indians, Members who don't even care about Indian problems, Members who won't even consider really seriously considering what can be done as far as the Congress is concerned to correct some of the problems that we're faced with in Indian country.

I have so many questions, I don't know where to begin. But I will say, hopefully in my chitchat with Mr. Hayworth, that as I have asked previously to Ms. Erwin, if there were any provisions of the current law that the Office of Trust Management can offer to strengthen this office if it's possible—and now, I hear quite clearly from Mr. Makil and Mr. Lupe—we need to put more teeth in this Office of Trustee.

But I'm faced with another dilemma to both of you gentlemen. We are adding another bureaucratic layer. It's bad enough already we have the Secretary of the Interior, who may never listen to the problems and who just passes on to another subordinate. And next thing you know, the problem just disappears. And so we're going to add teeth to the trustee, but the trustee still has to answer to the Secretary of the Interior.

And then when it gets through the political issues, then the Secretary of the Interior says, "Well, Mr. President, what can we do?" Well, it's either you fix it, or don't do anything. Look how long it has taken just even to try to get someone to fill the position of trustee. We have had that difficult problem. And it's not whether a Democratic or Republican Administration, it's a problem.

And I just wish I could answer it in a more clear way, Mr. Lupe, that I don't know what's going to be out there three months from now. And the problem is going to continue.

I don't know, Mr. Chairman. I suggest—why we have basically breached this fiduciary relationship, the trust responsibility that the Congress has to the Indian nations, at a tune of about \$2.4 billion that is out there in the Federal Treasury. It seems to me that the most practical thing to do—why don't we just advance the \$2.4 billion that we have already accounted for to the Indian nations and let them work it through some provisions of the law so that they can streamline the process?

Now, President Hale, you mentioned something about the Office of Trust Management giving you a hard time. I like your statement, "Just give us our money." And I would like Ms. Erwin to respond to this. Now, did you say that the judgment fund—now, there's a specific provision in the current law where the Secretary is to work this with the tribes about judgment funds.

Do you have any judgment funds that are still being locked up by the Office of Trust Management that you're having a hard time working with at this time?

Mr. HALE. Those are the ones that I referred to. It totals as of March 1995, it had totaled up to \$59.1 million.

Mr. FALEOMAVAEGA. 59.1?

Ms. Erwin, I would like to request the office for a response to this concern that has been expressed by President Hale.

Ms. ERWIN. Do you want it in writing, or do you want it now?

Mr. FALEOMAVAEGA. In writing, please, for the record.

Mr. HALE. And we have—excuse me, Mr. Chairman and members of the panel. We have already submitted letters requesting that money be transferred into our investment system. However, we have been confronted with—

Mr. FALEOMAVAEGA. You're getting the runaround?

Mr. HALE. Yes. We have been confronted with, "You have to provide these documents," and that's where in my testimony, I say that even those things are not required by the legislation or by the law it is being required.

We're being required to issue a statement, a legal opinion saying that the resolution that's coming from our governing body is valid. That, to me, is very disrespectful, because we are a sovereign nation. It's our laws. And why is another entity questioning the validity of our own law?

Mr. FALEOMAVAEGA. Do we have current regulations, Ms. Erwin, that is causing this problem?

Ms. ERWIN. The new regulations indicate much stricter requirements since when we did the consultation with the tribes. The tribes and many of the tribal leaders and many of the account holders were very concerned that when you remove the money, that the council understands that you are removing the liability from the government.

Mr. FALEOMAVAEGA. Ms. Erwin, give us your best opinion. Are we as strict with Indian tribes as we are with State and local governments when they ask for Federal funds?

Ms. ERWIN. What do you mean?

Mr. FALEOMAVAEGA. In terms of regulations, are we as strict with Indian tribes about this transfer of funds as we are with State and local governments? I mean, if I were Governor of Arizona, and I want my money and I'm due and I have to come up with these forms and applications and all these things, are we putting an added burden to these Indian tribes in order to justify what President Hale is concerned about?

Ms. ERWIN. No. There are no forms to complete. It's a plan, a resolution stating that your council understands that you're not required by your law to—

Mr. FALEOMAVAEGA. That's fine. Chairman Hayworth and I will definitely pursue this personally. We would love to work this closely.

I note, President Lupe, in your statement that this is the international community is recognizing the indigenous peoples and that both the Justice and the State Department have held recently a consultation supposedly two weeks ago in Washington.

For your information, tomorrow, we will be holding a conference, also, in the East-West Center in Hawaii in pursuing this same issue in terms of the both legal and moral obligations that our government has toward indigenous peoples here in our nation. And I

think this is something that we ought to pursue and to sensitize not only the world community, but certainly our own government, to see that this responsibility ought not to be taken lightly.

I sincerely hope, Ms. Erwin, that we will do all we can to help what President Hale has indicated. I mean, the last thing I want to hear is another bureaucratic forms and regulations and the very thing that we're trying to alleviate, that this is going on.

I want to thank you gentlemen for your statements, and I sincerely hope that we will find a solution to some of these serious problems that have now been brought before the committee.

And President Lupe, I sincerely hope this is not just going to be another task force that is going to disappear, but we'll come up with some substance rather than just form.

Thank you very much, gentlemen, and thank you, Mr. Chairman.

Mr. HAYWORTH. I thank my colleague from American Samoa. We have worked together on many issues in the past, and we'll continue to do so.

And to the gentlemen who lead their respective sovereign peoples, thank you very much for very compelling testimony. You raised many items we need to pursue, and more than raising items of concern, you do something that is oftentimes a challenge in public life, and that is, you provide the framework for possible solutions that will be a basis of discussion as days continue.

At this juncture, I would like to say that this task force will stand in recess for about 15 to 20 minutes. We will reconvene at 20 until 12:00, 11:40.

Mr. MAKIL. Mr. Hayworth, if I could, just before we convene, it really is important, because you raise the issue of some of these problems that have been raised. And that is exactly one of the problems that the special trustee is dealing with. Because you bring in a special trustee who the—office of special trustee, and he has limited authority.

And you have people within the Office of Trust Fund Management that have been there for years who handle these issues. And the special trustee does not have the authority yet to change some of those things.

And that's why that issue is really key and it's important, because it is not necessarily the special trustee, but it is the Office of Trust Fund Management and the regulations that exist and that have existed in the past and policies that have sort of done away with a don't—well, let me put it this way.

They don't reinforce the issues of self-governance and self-determination, so that tribes can have this authority to do these things and handle these dollars themselves. And that's important, because you put somebody there with no authority, and he can't change that office. And you've got people that have been there for a very long time that aren't as susceptible to change as they need to be.

Mr. FALEOMAVAEGA. Mr. Chairman?

Mr. HAYWORTH. I would be happy to yield to my friend from American Samoa.

Mr. FALEOMAVAEGA. My concern, again, Ivan, with what you've just stated, no matter who we put as far as the law's concerned but ultimately, as far as all Federal law is concerned, the Secretary of

the Interior is going to be the ultimate authority on all that we put in.

So even if we put any special authority given to the special trustee, there's definitely going to be a conflict, because ultimately, he has to answer to someone else. And basically, that person is going to be the Secretary of the Interior.

So perhaps what you're thinking of, maybe give the Secretary of the Interior more authority. But I don't know how much more authority we need to give him. He already has the authority to do this. And that's the only problem that I'm faced with about giving the trustee more teeth.

Perhaps maybe what you're thinking of is giving the Secretary more teeth to do his work, because that's always his response, "Well, I don't have the authority." Well, maybe that's what we need to do.

Mr. MAKIL. Well, that's why the suggestion, if I may, the suggestion about the control board idea, that's one of the reasons for that recommendation, because what that does is then it gives that board the authority—and again, there has been a precedent set where Federal Government has done that.

Anyway, in conclusion, we do appreciate, and I want to thank you for being here and helping and assisting us and listening to us. Self-determination is a major effort in Arizona, and we do have—Salt River does have an initiative on the November ballot which we look forward to Congressman Hayworth's support of that in the future.

And I know it's a difficult issue, but it's an issue of fairness, and it does get to self-determination not only of our tribe, but of all tribes in the State of Arizona. Thank you.

Mr. HAYWORTH. Thank you very much, Ivan. I would simply say that we all would like to see self-empowerment and self-determination in whatever form it may take. I thank my colleague from American Samoa. Again, I thank you.

And the Chair would just amend its reconvening notice. We will reconvene this actually at a quarter till noon. All right? Thank you. We stand in recess.

[Recess.]

Mr. HAYWORTH. Again, we thank you for coming. Panel two consists of Susie Long, the chairperson of the Yurok Indian Tribe; Julie Barton is here from the Oneida Tribal Council to help us with information involving that tribe; also, we have Mary Benedict, the treasurer of the Hoopa Valley Tribe; and Robert Peregoy of the Native American Rights Fund. Robert, we appreciate your presence. Ladies, we thank you.

And Madam Chairman Long, if you would begin your testimony, we would greatly appreciate that. And once again, we have the challenge of moving the microphones down. We thank you for that. And we will start—we have the one wireless mike, which is always nice. Madam Chairman, please.

**STATEMENT OF SUSIE LONG, CHAIRPERSON, YUROK INDIAN TRIBE**

Ms. LONG. Thank you very much for this opportunity to speak with you about the Yurok Tribe's concerns on tribal trust funds issues.

I would just like to give you a little bit of history on the Yurok Tribe. The Yurok Tribe, while always being federally recognized, only recently organized. We passed our Constitution in 1993.

Currently, our tribal membership is 3,416 members. Numerically, we're the largest tribe in California. We're a self-governance tribe. We are located in Northern California. Our reservation is one mile on either side of the Klamath River from the Pacific Ocean upstream 45 miles, where the confluence of the Trinity River comes into the Klamath River.

Eighty-five percent of our land is owned by a large timber company on our reservation. We previously were one single unified reservation. That was the Hoopa Valley Indian Reservation. In 1988, the Hoopa-Yurok Settlement Act was passed and split the reservation, divided that reservation into two separate reservations, the Hoopa Indian Reservation and the Yurok Reservation.

The total acres that we hold in trust is about 3,700 acres out of the total reservation of 56,000 acres. The funds currently held in trust for the Yurok Tribe results from the splitting of the reservation, the sum which we are informed is approximately \$41 million.

Please be aware that the splitting of the reservation and forcing of the Yurok Tribe to organize pursuant to the Hoopa-Yurok Settlement Act was very insulting to our people and continues to be a matter of great concern to all of our members. Also please be aware that the splitting of the reservation issue and the dispute surrounding it is directly known to staffers of OTFM.

We believe some of the difficulties that we have encountered are resulting from that personal knowledge and previous involvement with the Yurok and Hoopa Tribes by those staffers.

As a chairperson and a member of the Yurok Tribal Council, it is expected that a full, detailed accounting of all funds held in trust by the Federal Government be made available to the tribal members, that all funds be fully accounted for.

Unfortunately, with the current activities accounting by OTFM, this has become impossible for us. We have not been allowed to review in detail all of the records of our accounts. We have been promised reports and backup journals, but we have not received those promised items.

Our initial meeting with OTFM was scheduled in March of 1996 in Sacramento. What little information we did receive was provided on March 6th and did not contain any of the information relative to the larger, most significant account that we had with OTFM.

At the meeting, OTFM staffers insisted that I had been provided all of the information and that I had better check with my staff to find out who had signed for the package when it was delivered by special courier. I requested then of OTFM to tell me the name of that staffer who had signed for it. Upon their checking, they found out they had not sent it to me.

Once again, a meeting was set up with OTFM. We had an understanding that we would be provided some information. We traveled



to Albuquerque and was provided some documentation about 10 days prior to that meeting. But unfortunately, it's not all of the detailed accounting we need. And we can't do a complete, competent review of the accounts without even having the records, what records they have so that we can do an accounting for—so that we can either accept or reject the reconciliation report.

And we have been told that Congress believes that tribes don't have an interest, because they are not responding to either accepting or rejecting the reconciliation report.

Well, traditionally, the Yurok people are going to say to you, "Well, if you have a problem—if we have a problem, let's work it out, and we'll give you time to work it out." But now we're told because we're being traditional, we're being told, "Well, then you're going to be deemed to accept," and I can't accept a report that I can't reconcile.

So without the opportunity to review the pertinent records, the Yurok Tribe must, unfortunately, reject the reconciliation report.

Now, I cannot begin to speak to the difficulties we believe we will experience when our tribal members begin to investigate their IIM accounts. We're just too young. We haven't started—you know, we have only been organized—I'm the first Chair for the Yurok Tribe, so we're going into our third year under our Constitution. But I do need to say that the Yurok Tribe will every way we can assist those tribal members in getting a full accounting of their IIM accounts.

The action or inaction, we feel, must be considered as one of the most heinous crimes committed against Indian people of this land. And previously, I told one of the council members that's with me I didn't want to begin to speak of my uncle that died in war, my brother that came home in Vietnam, a husband that came home from Vietnam, but our people have laid their lives on the line for this country. You know, it's an insult to the Indian people to be treated this way.

Fulfillment of the trust responsibility held to the Native American people by the United States cannot continue to be so frivolously handled as the history documents. The Yurok Tribe appreciates this task force's efforts to solve this difficulty faced by Indian people.

The Trust Reform Act provides a good opportunity to correct the past, provide for the future management of trust funds for Indian people. Under the present posture, which provides for an advisory board to the special trustee, we believe that advisory board must be made into a board of directors with direct authority over that special trustee. Thus, this will allow for more direct input by the Indian people to the actions of the special trustee.

Thank you for this opportunity to speak with you.

[The prepared statement of Ms. Long may be found at end of hearing.]

Mr. HAYWORTH. Madam Chairman, we thank you for your input. And now, just perhaps with the ease of moving the microphones, we'll simply move them down and let Mary Benedict, the treasurer of the Hoopa Valley Tribe, offer her perspectives.

Madam Treasurer, we thank you for your attendance today. And if you would please offer your testimony.

**STATEMENT OF MARY BENEDICT, TREASURER, HOOPA VALLEY TRIBE**

Ms. BENEDICT. Thank you very much. My name is Mary Benedict, and I'm the treasurer for the Hoopa Valley Tribe. I also sit on the board of directors for the Intertribal Monitoring Association on Indian Trust Funds.

I would like to thank you first of all for your time in dealing with this important matter. The Indians have been victims of continued mismanagement of the Bureau of Indian Affairs and the Office of Trust Fund Management. I would like to discuss with you some problems that we have had with the reconciliation and the Office of Trust Fund Management.

The first item I would like to bring forth is the reconciliation project performed by Arthur Andersen and Office of Trust Fund Management. And the reason I say that it was performed also by Office of Trust Fund Management is our concern regarding issue papers that were developed by OTFM's staff, whether it be reconciliation staff or the management staff.

These issue papers, from what we understand, were allowed to change the scope of the work that originally was in the contract. These issue papers have not been provided to the tribes, as far as I know; at least they haven't been provided to Hoopa.

This raises another very serious concern to us in dealing with conflicts of interests. People involved in the reconciliation project who are employees of Office of Trust Fund Management previously held positions at the Hoopa Tribe's agency, the Bureau of Indian Affairs agency office. These were high-level positions. One of them was a superintendent at the agency.

And therefore, we believe that there's a conflict of interest, since those staff people were allowed to change the scope of project for the reconciliation with issue papers. This is a very serious concern to Hoopa for—one reason that we raise this concern is when Hoopa's accounts were done for the 20-year period, one account that Hoopa owned for 10 years was left out of the project.

We raised this issue to Arthur Andersen and the staff people for the reconciliation when they came to Hoopa. And from what we understand, Arthur Andersen said that that account number was not provided to them as an account that was owned by Hoopa. This was an account that was owned in the 1980's. This was an account that was at the agency office at the same time that the people were superintendents there.

So we discussed with them and negotiated with the staff people and Arthur Andersen, and they agreed to do limited testing on the account. I don't believe it was tested as much as the other accounts that Hoopa owned. Therefore, we believe that there needs to be further testing on that account in equality with the other accounts.

One other concern that we raised regarding the reconciliation project is the Fill the Gap project, which in our case, they tested several timber cell leases, and during the time of negotiation with the Bureau of Indian Affairs, Hoopa negotiated with them and said, "Well, we want a test to test for unrecorded deposits," which is what they did not test for.

Unrecorded deposits would be the most beneficial to tribes in locating funds that would be owed to tribes. They agreed. They pro-

vided us moneys to do our own testing. We tested the same number of contracts, the same contracts that they tested. They did what we call a downstream test, and that's taking something that they already know was deposited into our account and testing it down to the lease, the timber cell lease, to see if it was calculated correctly or if there was a typographical error.

We did what we call an upstream test. We took the same lease records, utilized statement of completion, which tells you how much should have been deposited to the account, how much was logged, and traced the amounts from the bills for collection up to the GL. And the results of that test indicated that the government owed us \$4.4 million, where as their test indicated that they owed us around \$10,000.

So these results are of great concern to us. We believe that there hasn't been proper testing on the account or accounts that Hoopa owned. We are concerned that there is not an audit that was able to be performed. And we are also very concerned that there hasn't been a fraud audit performed. These are the problems that we bring forth to you on the reconciliation.

I would like to address one problem that we're having currently with the Office of Trust Fund Management, and that is dealing with the IIM accounts. We recently did a per capita payment to our membership. And when we do a per capita payment, we deposit into IIM accounts for minors, adults who are mentally ill, child custody dispute cases, and adults whose whereabouts are unknown to us.

The Office of Trust Fund Management now is claiming and has returned a check to us stating that they no longer—or it was never their intent to take whereabouts unknown moneys. They have asked us to hang onto it. Since we make the payment, we should try to locate the individual. We don't believe this to be true.

We believe that the Federal Government has a trust responsibility not only to the tribe but to the individual Indian and that they should maintain those accounts. What is of greater concern to us is that this policy was not told to us until the check was returned. It's something that we have done for several years, and the accounts that have been established will prove that we have been depositing for several years into these accounts.

What concerns us is if that there's a policy change, there wasn't a consultation with us or we believe with any tribe, which raises another concern, because as far as we know, we haven't seen a "Dear Tribal Leaders" letter come out to the tribes that said, "This is our new policy: We're only taking minors and mentally incompetent funds for people." So therefore, it leads us to believe that maybe this is a personal attack on Hoopa. We don't know.

These are the concerns that we bring to you today. In closing, I would like to say that I believe the Intertribal Monitoring Association on Indian Trust Funds has been a very beneficial group to tribes. They have provided the most information and the most representation on behalf of tribes.

I believe that the advisory board could act in a very similar capacity in representing tribes. Many of these issues we have brought to the special trustee's attention and have received no assistance from him.

And I don't know whether that's because of politics or if it's because of—I don't know what the problem is there, but we believe that there should be another means for tribes to go to, and that could be the advisory board that could help us and assist us with these problems. Thank you for your time today.

Mr. HAYWORTH. Treasurer Benedict, we thank you for your time.

Now, we'll turn to Ms. Barton of the Oneida Business Committee to offer her perspective on what has transpired and the approach of her sovereign nation.

Thank you for coming, Ms. Barton, and please begin your testimony.

### STATEMENT OF JULIE BARTON, THE ONEIDA TRIBAL COUNCIL

Ms. BARTON. Thank you. Mr. Chairman, members of the committee, my name is Julie Barton, and I'm the secretary of the Oneida Tribe of Indians of Wisconsin.

I would also like to introduce Gerald L. Hill, who's our chief counsel, as well as Irene Martin, who is our attorney. They will be here to answer any technical questions you may have at the end of the panel.

I'm representing our Chairwoman, Deborah Doxtator, who wishes to express her sincere apologies for her inability to be here. She was looking forward to this opportunity to speak before your vital committee, which we feel is a topic of great significance. We're also here to support our fellow Indian nations to address this serious breach of trust responsibility.

Just a brief overview of Oneida. We're a federally recognized tribe located on 65,430 acres in Northeastern Wisconsin. Today, our nation is recognized for its success in the gaming industry, and we're also acknowledged as one of the most successful in addressing the basic needs of our members through sound government planning and action.

Today, we're proud to say that we have progressed dramatically. We are generating jobs, moving to diversify our economy and employment opportunities for our members, and also the surrounding community also feels the effects of this. We have built a new school.

Our language and culture is thriving. We have sound academic standards. But we're always under the threat of having our gaming revenues halted. And so we work to continue to maximize that every opportunity we have, because it's our future for our children and our seven-generation philosophy.

Mr. Chairman, there's a certain irony in testifying to you today. We're here to discuss the American Indian trust fund, and candidly, the Federal Government has yet to earn our trust. Our nation was one of the first allies to the United States. In fact, the very existence of this nation as it is today was impacted directly by us, as we fought in the British and the French and Indian War and then for the colonies in the Revolutionary War.

Even the government which evolved on this continent comes from us. Benjamin Franklin learned from our people, the Wanemeshawnee or Iroquoian people, about the government of the

people, the checks and balances, and the separation of powers and leaders as public servants.

In our written testimony, which is more formal, that I've submitted today, there's more detail, but the key issue is that we were a nation who entered into treaties with the United States, assisted mightily in the successful development of this country in many ways, and yet we were significantly among those whose land rights and resources were taken.

This is our experience, and this is our challenge under which we have always existed. The trust obligations of the Federal Government under law and treaty have seldom, if ever, been maintained.

After meeting with the representatives of the Office of Trust Fund Management and Arthur Andersen in January and April of this year, we have learned a great deal. The single most important fact we have learned is that this attempt to reconcile the funds held in trust by the Bureau of Indian Affairs during the period of 1973 through 1992 cannot be audited or reconciled. The procedures and findings are insufficient, due to the lack of documentation available to back up transactions.

During our meeting in April 1996, representatives of the Oneida Nation learned that the so-called reconciliation effort made by Arthur Andersen had determined that the Oneida Nation of Wisconsin owes the Bureau of Indian Affairs \$15,000, in spite of the fact that it had not produced documentation for a staggering number of transactions to our account.

Our representatives took a closer look at the reconciliation effort and found even more disturbing information. The attempt to reconcile Bureau accounts has been severely hampered by the lack of documentation that exists to back up a large percentage of these transactions made on all tribal accounts.

Additionally, other serious defects exist in the attempted reconciliation. These include the lack of effort to gain the input of the tribes whose accounts are being examined. The Oneida Tribe of Indians could have been an invaluable resource to the Bureau of Indian Affairs and Arthur Andersen during their attempts to cross-check our accounts.

Several of the people who have been involved in tribal affairs since the Oneida were awarded the Docket 75 judgment continue to be involved in tribal affairs today. These people could have answered questions and located documents, which would have aided the Bureau of Indian Affairs and Arthur Andersen in their attempts to correctly reconcile our accounts.

During April 1996, at the meeting representatives from the Office of Trust Fund Management and Arthur Andersen spoke candidly with us regarding attempts to work with tribes to locate missing documents. And according to these statements, a decision was made early on in the project to work with only five tribes on a one-to-one basis. However, due to the costs incurred and the time-intensive nature of working with tribes, this practice was not expanded.

The advisory board was specifically created to aid the special trustee pursuant to 25 USC Section 4046, which was never consulted regarding the Department of Interior attempts to reform trust fund management. In fact, President Ivan Makil reports that

their efforts to meet and to advise in departmental deliberations regarding reform were thwarted by the Bureau of Indian Affairs.

During our regional meeting, the BIA representatives responded to our inquiries concerning the advisory board. We were told who was on board and that it was not very active. The board members had one meeting, and the funding ran out. The board had no further opportunity to meet and that the DOI would not allocate funds for the advisory board until October of 1997.

This lack of consultation with the advisory board emphasized the fact that BIA made very poor efforts in consulting with Indian country on reconciliation of its own funds. The Bureau of Indian Affairs is also responsible for collecting amounts due to tribes through timber sales, mineral, and gas leases.

And when we were questioned on this issue at our April 11th meeting, Arthur Andersen's representative stated to us that it discontinued attempts to confirm whether the amounts deposited into each tribe's account were, in fact, the amount due to each tribe, because they were experiencing time and budgetary constraints.

We were told that determining the amounts due under many of the leases in question was complex and, therefore, costly. This procedure was explicitly referred to as the "fill-the-gap procedure" and is discussed in some detail in the report of the General Accounting Office to the Senate Committee on Indian Affairs submitted in May 1996.

Also, there has been no attempt to reconcile the individual Indian money accounts. The Bureau estimates that the cost to meaningfully audit these accounts would range from \$108 to \$180 million. Funds held in the branch of investments for 1997 and 1973 through 1978 were not scrutinized. We have begun our own analysis of this period, but we are in the most preliminary stages of our research.

Based upon our other research, we expect to be able to demonstrate that had errors occurred, they too would result in findings in our favor. The most offensive aspect of the accounting provided to the Oneida Nation was the indication from Arthur Andersen and the Bureau of Indian Affairs that the Oneida Nation owes the Bureau of Indian Affairs almost \$15,000.

When questioned in detail on the subject, Andersen representatives stated that the reason the summary of Treasury interest recalculation results shows the net adjustment due from the Oneida Tribe stems from overexpenditures made by the Bureau of Indian Affairs to Oneida accounts. These overdrafts resulted in negative balances, the interest from which has accrued over the years and now approaches \$15,000.

Arthur Andersen officials also conceded that these transactions were entirely handled within the Bureau of Indian Affairs and that the Oneida Tribe did not access those accounts directly. We have recently turned over the responsibility for monitoring our trust funds to our newly created trust department.

Its monitoring efforts of our accounts have led us to uncover discrepancies totaling more than \$19,000 in our favor. This number is based on our scrutiny of Bureau of Indian Affairs accounting and examination of our treaties with the United States. This oversight stemming from the most fundamental Federal obligation would not

have been located using the methodology agreed to by the Department of Interior, the Bureau of Indian Affairs, and Arthur Andersen.

Under this study methodology, they have not been responsible for checking the amount deposited into the Oneida account with the actual amount due under our agreements with the United States. Our inquiries have thus far restored our annuity payments based on our contribution to the establishment of this country.

We understand that we have recently been credited for the past years where payment was not made. We are awaiting credit for the payment for 1979. For us, this was a matter of pride, a matter of honor, and one which underscores the unique relationship of Indian nations to the United States, one which many in Washington today fail to understand or recognize.

We are presently reviewing our options and continue to monitor the accounts that we now hold with the Office of Trust Fund Management. An option before us is to conduct our own reconciliation of the accounts we have held with the Bureau of Indian Affairs in the past.

We are encouraged by the changes that have occurred in the Office of Trust Fund Management and are happy with the service provided to us by the representative assigned to our accounts. The direction the Office of Trust Fund Management has taken is a positive step, but stronger efforts need to be made in order to restore the good faith of Indian nations.

We are truly heartened that an effort is proceeding to address the very serious problems associated with the Bureau of Indian Affairs' efforts on our behalf, and we are obviously of the opinion that there's much room for growth. Our written testimony includes our recommendations for future attempts to resolve these pending issues, and I will not restate them here in-depth.

But in summary, we feel that all applicable treaties, leases, and sales agreements must be reviewed and information shared with the Indian nations, so that they may at least know how much money and how many obligations are held by the Interior. Absent that, there is no way for them to even begin to plan.

We are confident that should the Bureau of Indian Affairs adapt its hardware, software into compatible formats, this will aide them greatly in their research. And with the proper reconciliation of the Indian money accounts, the credibility of the Federal Government will be uplifted significantly.

Mr. Chairman, we're grateful for your conscientious role this committee has taken, and we hope that our thoughts have been helpful today. And if at any time we can provide additional information or assistance, we will be delighted to do so. Thank you.

[The prepared statement of Ms. Doxtator may be found at end of hearing.]

Mr. HAYWORTH. Ms. Barton, we thank you very much, and we appreciate your offer to help us in an ongoing process. And as has been noted here this morning, it is the intent of the Full Committee Chair to pursue this with the task force in the next Congress, if certain numerical contingencies hold up. And I dare say with the bipartisan effort, I'm sure if something were to change, that perhaps might be done, as well. So thank you very much.

Now, let's turn to our friend from the Native American Rights Fund, Mr. Robert Perego. Mr. Perego, we thank you for your attendance today, and we look forward to your testimony.

### STATEMENT OF ROBERT PEREGO, NATIVE AMERICAN RIGHTS FUND

Mr. PEREGO. Thank you, Mr. Chairman. I appreciate the opportunity to share a few brief remarks with you. I first want to thank you on behalf of the Native American Rights Fund for you taking the leadership of this important task force to hopefully get to the bottom and bring a long deserved resolve to what has become a huge crisis in Indian country with regard to this historical mismanagement.

It's very refreshing to see you use the words "longest-lasting scandal," "corruption," those kinds of adjectives to describe this crisis, because certainly, that's what we sincerely believe it is. And it's our view that your handle on this is much appreciated, that you have a good handle on it, and we're here to help work with you to bring this to as speedy a resolve as possible.

And I also want to thank Mr. Faleomavaega for attending and, of course, all of his track record and long dedicated commitment to native issues and particularly this one.

I want to briefly limit my comments this morning to the over 300,000 individual Indian money accounts and the particular issue and some immediate things that we think can be done to get this matter on track forthwith. Primarily, the—you've heard a lot of publicity and discussion and testimony about the real problem with the tribal reconciliation of the \$2.4 billion being unaccounted for over a 20-year period.

The Arthur Andersen firm did not even attempt to reconcile the individual Indian money accounts for that period, because there were not enough records to do the job. And here's what's real disturbing, Mr. Chairman, is that Arthur Andersen figured it would cost between \$108 million and \$281 million just to reconcile the IIM accounts for that 20-year period from 1973 through 1992.

And when the government realized that, I think they pretty much threw up their hands and said, "We're just not going to be able to do this," because the even more disturbing thing was that Arthur Andersen said, "Even if you spend up to \$281 million, a reconciliation's not going to do you any good. We're not going to know how accurate that is or what it's going to do for you."

And so over the course of this summer, with the different—this is the third hearing on this issue. The special trustee and his staff have indicated that the individual Indian money account system in the Department of Interior is in the worst shape of all of Interior's trust fund accounting systems.

And that is a grave problem that concerns us. That's one of the reasons that the Native American Rights Fund participated with other attorneys in filing this class action lawsuit against the government on behalf of the more than 300,000 account holders is so that we can compel the government—it appears that we're going to need the force of the courts to compel Interior to do something about this.



Now, the question that you have aptly put is, what can the task force and what can Congress begin to immediately do to resolve these problems. And the short answer is, I suppose like a lot of other things, is that it's going to have to put up adequate dollars to begin to establish an adequate accounting system for the individual Indian money accounts.

Now, we heard Donna Erwin from the Office of Trust Fund Management testify this morning that the tribal trust accounting system is state-of-the-art. That's for, what, 200 to 275 Indian tribes, the government has a state-of-the-art accounting system.

However—now, contrast that, Mr. Chairman, to 300,000 individual Indian accounts. That's a lot more than 200 tribal accounts. 300,000 individual accounts—the IIM accounting system is so far substandard and in shambles that it's sad. It's sick. It's a joke.

And because of that, the special trustee has placed as a top priority for this year to get adequate dollars so that he can establish a basic accounting system for the IIM accounts to put it basically on par with the tribal trust system, the Omni trust system that has been in operation for the tribes over the past several years.

And I want to make it very clear that the special trustee has indicated that he can establish within one year an adequate IIM accounting system for \$22.3 million—\$22.3 million to establish an adequate trust accounting system for 300,000 individual Indians.

Now, that's not going to get an accounts receivable system. What that's going to do is give an adequate system that once the money is collected, Mr. Chairman, then the government is going to be able to record the collections, the deposits, and the disbursements in an accurate way. That's going to stop the bleeding that's going on every day right now.

Because as we speak, the Federal Government's liability for this mismanagement for these 300,000 accounts is increasing because they don't have a system to stop the bleeding. What the \$22.3 million will do is to establish a basic accounting system that your 7-11 or your local credit union manager has and any money manager needs to have to do a decent and adequate job of accounting. And here, the Federal trustee does not even have that. That's 300,000 individuals.

And so our basic concern here at this point, what can we do to get things rolling. The special trustee asked the administration this year—the special trustee figures, Mr. Chairman, that it's going to cost about \$150 million over five years—\$150 million over five years to completely fix the trust fund management system. That's tribal accounts, individual accounts, special accounts, accounts receivable, the whole nine yards, \$150 million over five years.

Now, this year, the special trustee asked the administration in his budget request to the administration for almost \$50 million. The administration cut that back and asked for \$36.3 million. Now, here's where we really need your help. The House of Representatives in the Interior appropriations bill that it passed in June only appropriated \$19.1 million for the Office of the Special Trustee.

Now, that \$19.1 million is basically going to take care of existing staff and OTFM and what not. It's not going to provide one dollar for improvement initiatives in the system. In other words, not one

dollar for his priority of looking at fixing the trust fund system or the accounting system for the IIM accounts.

Now, you're likely aware, Mr. Chairman, that on the other side over on the Senate, that the Senate Appropriations Committee did approve \$36.3 million for the Office of Special Trustee. It basically approved the President's request. However, even in approving the President's request—now, out of that \$36.3 million, the special trustee figures that \$13.6 million is going to go to fixing the IIM accounting system.

Again, please keep in mind that the special trustee figures it's going to cost \$22.3 million—in other words, even with the Senate accepting the President's recommendation of \$36.3, we're still \$8.7 million short to come up with a basic accounting system for the IIM account holders to put them on par with the tribal accounts.

And by the way—and I think that the special trustee put it very aptly in his testimony earlier on this summer, that the \$22.3 million that he can fix the system within one year is going to give us a Chevrolet, not a Cadillac. He's not asking for anything extravagant there.

And so we are here to respectfully ask you, Mr. Chairman, and the power and authority of your task force to work with the good Chairman Don Young of the Resources Committee to work with the House Appropriations Committee and conference managers to ask them, number one, to recede to the Senate level, assuming that goes through at \$36.3 million and to add another \$8.7 million to that so that the special trustee can get that \$22.3 million he needs this year to fix the IIM basic accounting system.

And that's basically what we think that your committee can do at this point is to come up—because that's what it's going to take. The special trustee has testified that this problem has come about as a result of 20 to 30 years of neglect of not upgrading these kinds of systems, and it's basically time to call the question and put that money in there. Because if it's not put in there in terms of the IIM system, it's going to cost the Federal Government much, much more money in terms of mounting liability.

Now, look at it in this context. And we realize that you all are faced with appropriations politics and priorities and all of that. I mean, that's an understatement.

But when you figure that this country has a fiduciary obligation to these 300,000 Native Americans whose money it's losing every day and can't account for, the \$22.3 million to fix that system comes out to \$75 per person of those 300,000 Indians.

And that is a real pittance to pay in terms of doing two things. Number one, this country honoring its trust responsibility to those 300,000 Native Americans. But maybe even more important in the eyes of Uncle Sam, to stop the bleeding and cut the Federal liability that's increasing every day.

And let me close, Mr. Chairman, if I may, by saying one more thing that we feel is very, very important. There has been some discussion here this morning about ways to fund this kind of a fix that is going to be necessary for the government to come into compliance with the law and to meet its fiduciary duties.

The Native American Rights Fund on behalf of our clients would strongly oppose any of this money coming out of Indian budgets or

programs to fix this problem. We think that it would be unfair and inequitable for Indian people and programs to have to pay for this money to fix a problem that has been caused by the Federal trustee itself.

The Federal Government—the trustee—created and continues this problem, and it would just be unconscionable to take money from Indian programs, particularly when you keep in mind that Indian programs have taken monumental hits over the course of the last couple of years for various reasons. And it would just simply be unconscionable to force Indian people to pay for this fix.

And so we sincerely ask you, Mr. Chairman, to use the powers of your Chair and your colleagues and to prevail upon them to do what you can. And this is where we figure that within one year from this day, as the special trustee has testified, if Congress puts that \$22.3 million up, then the tribal system and the individual accounting systems are going to be on par. Your bleeding is going to stop, and then we have just got to go back and figure out what the restoration is on it.

So I very much appreciate your patience this morning in coming out here. And I guess like the old farmer with his grandsons, they have been bailing hay all season long, and they finally get to the last bale. And he picks it up, and he says, "That's the one we have been looking for all year." So it's all over. I'm glad to provide this testimony and will be glad to answer any questions for you. Thank you very much, sir.

[The prepared statement of Mr. Perego may be found at end of hearing.]

Mr. HAYWORTH. Thank you very much, Mr. Perego. I appreciate it as I appreciate the testimony of all those who join us this morning.

Let's begin, Mr. Perego, with a couple of points that come up. First of all, I appreciate your assessment of the situation in terms of the liability of the Federal Government. It almost seems as if the liability under the construct you offer is compounded by the nanosecond. With every syllable, you can attach a dollar value to it, almost, it can be argued.

But your testimony begs the question in terms of the possible solution advanced by our host today. Chairman Makil in terms of taking a look at possible remedies—and you heard him suggest it, and we'll just repeat it here—for every line item in the Department of Interior, a \$12 billion-plus enterprise, maybe closer to \$13 billion or more allocated annually, Chairman Makil says for the next fiscal year and the two years thereafter, that there be an across-the-board take, if you will, of one-half of 1 percent, the theory being that—and believe me, I've been on the front lines fighting a lot of these battles in terms of Native American programs and the trust responsibilities of the Federal Government.

Yet even acknowledging that, I guess the question becomes, even mindful of the dilemma, you state an opposition at least to touching Indian programs. Is that something that from your point of view should not be open to consideration at all? And I wonder why, because it seemed to be a very captivating policy solution.

Mr. PEREGOY. Essentially, Mr. Chairman, that is my position, that to fix a problem which the Federal Government has created

and basically that constitutes a breach of its legal and moral and ethical duties should not be forced upon the very people who the Federal trustee is there by law to benefit. That, to me, would be wholly unconscionable.

And according to the calculations that have been done here, I don't think that you need to hit into the Bureau budget to be able to fix that problem. If you figure one-half of 1 percent of the Interior budget's going to bring you, what \$60 million a year times three years, that's \$180 million. The special trustee figures it's going to take \$150 million over five years or \$100 million-plus over three years. You can get that one-half of 1 percent without going into the Bureau budget. And it might even be able to be done for a little less than one-half of 1 percent. And I would add this, if I may, sir. That number one, the United States Government through the Department of Interior primarily has a legal obligation to these Indian people as a trustee.

It does not have similar obligations through other agencies in Interior, as you have aptly pointed out yourself. But we're talking about people. We're not talking about rocks, animals, or birds here. We're talking about people. And the Bureau is the only people agency within Interior.

And I would suggest secondly, because of the fact, as the special trustee has testified, this problem, again, Mr. Chairman, is a result of 20 to 30 years of neglect in terms of putting the money into the system. Well, it seems to me that quite likely other agencies in Interior have somehow indirectly benefited over that 20- or 30-year period, because they perhaps got that money rather than that money going to fix the trust system like it should have been done.

So I think that it is not unfair at all to leave the Bureau out of that mix. And I do applaud and recommend Mr. Makil's solution, with the exception, as I have testified, that it not come out of Indian programs.

Mr. HAYWORTH. And so the amendment being, if this were actually something that we had in the form of a statute or proposed law, you would not be adverse to seeing it come out of Interior's budget in some other incremental fashion, but simply not to touch any program that deals with the very human element of the trust obligation to Native Americans?

Mr. PEREGOY. Absolutely. I think it's too simple to say that Native Americans have already taken more than their fair share of the budget hits in the Department of Interior, compounded with this trust responsibility to government that would be patently unconscionable to expect the very people who are the trust beneficiaries of this government to pay for the broken trust.

Mr. HAYWORTH. Mr. Peregoy, you mentioned the real difference just in terms of the multiplicity of parties affected in these individual accounts in excess of some 300,000 Native Americans as opposed to the tribal dilemma that exists.

In previous testimony in Washington, folks from your organization have come to visit us and offered testimony—and I hope I'm not mixing up the people involved or their comments when I paraphrase it by saying that the problems that we see in the Arthur Andersen audit of \$2.4 billion are just the tip of the iceberg.

You accurately point out to us 300,000 individual accounts. Do you have an idea of the dollar value attached yet, or that's something that still must be ascertained by the special trustee, or, given my former profession, I'll use the analogy, can you give us a ballpark estimate?

Mr. PEREGOY. I am very reluctant to even give you a ballpark estimate, because we simply do not know. One of the problems, as you know, Mr. Chairman, is that these records of these IIM accounts were systematically and purposely destroyed by the Department of Treasury, including canceled checks, in 1987.

So that to this day, the government cannot prove who was paid out this money out of these accounts over all of these years, and that in itself is a fundamental breach of any trustee. They are required to keep those records in perpetuity. We just don't have any idea at this point how much money we are talking about.

And we're working with an accounting firm to try to work that out so that we can come up with some kind of a reliable, justifiable estimate. But at this point, I would not venture to even make any kind of a guesstimate. But I think that it is very accurate to state that we're looking at the tip of the iceberg here and that it behooves all of us to continue to see how much is below there.

Mr. HAYWORTH. All right, sir. Thank you very much.

Mr. PEREGOY. Thank you.

Mr. HAYWORTH. Let me turn to Ms. Barton. And Ms. Barton, I very much appreciate your testimony here today on behalf of your trial chairman. I wanted to—and I heard it mentioned almost parenthetically, and I think it's a point that again needs to be brought up, because witness after witness this morning has accurately stated—and perhaps they have not used this particular term in doing so—the acute nature of this problem.

The neglect has gone on for so long that why, in your words, you believe that the trust responsibility, that the Federal Government has yet to earn the trust of your people, and I dare say that's the point of view of many Native Americans in this country. With this acute problem, growing worse by the nanosecond, I just wanted to amplify one piece of your testimony.

It may have come in conversation with President Makil here today. He told us that the advisory board under the BIA has met only once since last September. Now, I want to make sure I understand your testimony accurately. There are no funds to have the advisory board convene again, no BIA funds available until October 1997? Is that correct?

Ms. BARTON. That is correct.

Mr. HAYWORTH. 1996 or 1997?

Ms. BARTON. 1997, but I will confer with Arlene. Is that fiscal year 1997? Fiscal year 1997.

Mr. HAYWORTH. Fiscal year 1997. So this would be, again, with the discrepancy in the calendars, one is fiscal, one is real time; and so that would mean October of this year. But still, a discrepancy of meetings.

Again, revisiting what you heard in the wake of the audit, your tribe owes the BIA some \$15,000 according to the estimate, the audit of Arthur Andersen? Could you revisit that again, the expla-

nation given for that by Arthur Andersen and the other folks involved in the audit?

Ms. BARTON. The technical part of that, I would confer with Gerry Hill, our chief counsel.

Mr. HAYWORTH. Sure. We'll defer to the chief counsel here.

Ms. BARTON. If he could give the details on that.

Mr. HAYWORTH. Just for the record, again, Mr. Counsel, if you would give your full name for the record, and including accurate spelling, that would be good, so we have an accurate record.

Mr. HILL. Gerald L. Hill, chief counsel, Oneida Tribe, Wisconsin.

Mr. HAYWORTH. And Mr. Hill, feel free to pull up a chair if that helps you out a little bit back there, make a little room for you.

Mr. HILL. With regard to the audit procedures applied to the Oneida accounts, in response to a letter from the Office of the Special Trustee indicating the process that was used, our chairman responded on May 8th and indicated that the amount of transactions over the past 20 years had exceeded 2,000, of which only 12 percent of the transactions were supportable by documentation in our accounts.

Our concern about this, of course, was with the results showing that the tribe owed money rather than being justified in any amounts that they were taking care of for us. As our secretary just testified, our own trust accounts for those same periods are showing amounts in excess of \$19,000 in favor of the tribe. Clearly, there is a conflict there that needs more investigation to document where we are with them.

And I think that the amounts of money that we're talking about, the Oneida Tribe, while small compared to other tribes, should be of concern for the committee to give the office the kind of support it needs to conduct a very thorough type of audit. So this has been supplied before to the office and is also included in our testimony.

Mr. HAYWORTH. Mr. Hill, I thank you for offering your viewpoint on what exactly transpired, and Ms. Barton, I thank you for yielding to Mr. Hill. It almost sounds like a Yoga Berra-esque malapropos. It's seemingly an irreconcilable reconciliation afoot here. And I know that certainly shouldn't be the case.

And with that in mind, let me turn to Treasurer Benedict. Because you offered in your testimony, Madam Treasurer, an interesting perspective. And having not had the benefit of the theories of accountancy and that type of discipline which many take on as a career and, indeed as a well-respected position in society, I was interested to hear of your testimony involving tests, the downstream versus the upstream test, and I wanted to go back to that for a second.

I guess based on something that I never learned in journals or principles of accountancy but something that was in one of the first math workbooks I picked up as a younger guy, admittedly not too good in math, and that's just the principle of the commutative property of addition and the associative properties. There are certain ways you can add numbers, and the same totals should come up.

Now, you had a very dramatic—a very dramatic discrepancy, to say the least. I just want to make sure I understand this. By your upstream tests, it was your finding that the government owed your

tribe \$4.4 million, yet the government with its downstream approach estimates that—was it your tribal government, or the government only owing you \$10,000?

Ms. BENEDICT. The government owing the tribe.

Mr. HAYWORTH. The government owing the tribe \$10,000 as opposed to \$4.4 million?

Ms. BENEDICT. Correct.

Mr. HAYWORTH. With your knowledge of finance, take me back through this again. It just kind of intrigues me. What could have been the situation that made the downstream so radically different from the upstream estimates and tests that you conducted?

Ms. BENEDICT. Let me just explain the process again, maybe one more time.

Mr. HAYWORTH. OK.

Ms. BENEDICT. What they had done was taken deposits that they knew were already in the general ledger and selected their contracts based on those deposits, because they knew the money had been received into the account. So they—assuming there must be documentation for it.

So they take the general ledger deposit, and they trace it down using all of the contract documents, down to the bill for collection or the lease records. Basically, what we call that is a clerical accuracy test to see if somebody typed the number wrong or something like that.

What we did was took all of the same timber saw contracts that they used—and in our case, it may be a little bit different, because we had a lot of our records—and used statement of completion to verify what the total contract amount should have been deposited into the accounts and traced—took the bills for collection and tried tracing those up into the general ledger. That's the most beneficial way for tribes, because it shows you what should have been deposited that may not have been.

We have asked the Bureau or OTFM to research our report. We provided this back when they finished the reconciliation. And their response to us was, "Well, you'll just have to bring it to the negotiation table when we negotiate with your tribe, because we're not going to research your report. We're not going to look and see if maybe some of those were in there, and you just didn't catch them or anything of that nature."

And at one point, our report was even told to us that it was—because it wasn't done by a third party, that basically, it had—it wasn't worth anything, I guess, to them to research and also that they hadn't been provided funding to do research on that, yet, though the Bureau of Indian Affairs paid for the report to be done. They gave us the money to do it.

Mr. HAYWORTH. So the government in one sense offered resources for you to do that report?

Ms. BENEDICT. Yes.

Mr. HAYWORTH. But yet another agency within the government, in this case, the Office of Trust Fund Management, said—

Ms. BENEDICT. The Office of Trust Fund Management, specifically, the reconciliation staff, provided the funds and also the people that we provided the report to.

Mr. HAYWORTH. OK. But again, some folks did not—I want to make sure I understand who exactly gave you the money to do the report and then who told you, “Sorry, we’re not going to accept it”?

Ms. BENEDICT. It would be Joe Christi and Joe Weller, who were reconciliation project staff.

Mr. HAYWORTH. So staff?

Ms. BENEDICT. I’m assuming they’re Office of Trust Fund Management staff.

Mr. HAYWORTH. But they’re not responsible. They’re the nuts-and-bolts guys, not the folks who—and maybe I’ll defer later to our friends from the office. They’re the nuts-and-bolts folks, not the people who set out the philosophical parameters or the policy guidelines of the full office, to your knowledge?

Ms. BENEDICT. Well, to my knowledge, these are the same persons who have the authority to issue issue papers.

Mr. HAYWORTH. Well, one is tempted to talk about the right hand and the left hand here and seeing some basic disconnection, but perhaps this is obviously something we’ll have to pursue further to understand exactly what goes on in the—and they said because there was not a third party doing the study, your findings, therefore, they would not accept?

Ms. BENEDICT. Correct.

Mr. HAYWORTH. Having provided the funding to do it, then they said—or someone providing the funding, and then they said, “Sorry; it’s a moot point,” or, “We don’t want to accept your data.”

Let me turn, then, to—I thank you for your testimony, Treasurer Benedict. Let me turn to the chairperson of the Yurok tribe. Chairperson Long, we again appreciate your discussion here and what you bring to the table here and the nomenclature of a “new” tribe, and I’ll put that in quotations, given the challenge you face and your perspective that this is a division or a secession, if you will, that was not necessarily driven by your folks. And, indeed, you called it “insulting” from your perspective.

What is the biggest—I mean, we have gone over so much today and so many different areas of concern. If you could prioritize again through your eyes with your status as a new tribe, what is the greatest concern of this trust fund mystery, if you will, that you and your people have?

Ms. LONG. Basically, what is the amount of money that’s held in trust for us. A new tribe—I don’t have the records, so let me see the records that you have. At least let me see the records that you have, and I’ll be blunt about this.

There has always been a dispute between the Hoopa and the Yurok people for years. And the Hoopa-Yurok Settlement Act settled that. We have now said, “OK, Hoopa Tribe. You have what you have. And Yurok Tribe, you have what you have. And we’ll go on from here.” It has not been easy for the Yurok people to accept that, but we have accepted it.

And we have made very strong strides forward in our organization. We’ll work with the Hoopa Tribe on any issue that we possibly can. And if this is an issue we work with the Hoopa Tribe on, we will to solve it, because it was a joint account prior to 1988. We face the same problems that the Hoopa Tribe faces with this accounting, because it was a joint account.



But when they split it and they said, "OK, this is your share of the pie, Yurok Tribe," we need to know what made up those records. We need to know what made up that part of the pie. But I'm told, "I can't give you that, because Hoopa Tribe might not like it." And I'm saying, "Wait a minute, now. It's a joint account. I can have it. Hoopa can have it. Why can't we have it together?" It was only after that we were able to try to open the door to look at the records.

Mr. HAYWORTH. And you bring up a topic that I suppose will take research necessary by our staff in terms of what specifically the action taken to make this division. To your knowledge, was there any statutory language, any provision within the agreement that certainly said, "Well, of course there's going to be a joint sharing of information," or is that something that now needs to be provided either through statutory relief or through agreement of your two peoples? Do you have any knowledge of what existed in terms of the agreement?

Ms. LONG. Well, the Hoopa-Yurok Settlement Act in itself set out how the funds would be split, and that's fine. We understand that. But I need to know what made up the fund in the very beginning in order for them to divide it. And without seeing the records of what made up that fund, I can't determine what the total dollar is.

We looked at one account, one account, and we held a fishing court for a number of years on the Yurok Reservation, which was because our people fished, and you got fined for—if you violated the regulations. And it's \$50. Some Yurok person that was allowed to fish had to pay a \$50 fine.

I can trace that where it goes into this account, but then I can see why it went over to Hoopa. Well, why should it go to Hoopa? I know it's only \$50, but why should it go to Hoopa? It was a Yurok tribal member that paid it.

If that's a fund that's supposed to be split, then split the \$50. But don't just say, "OK. The \$50 goes to Hoopa." There's no rhyme or reason of how they split those funds. So that's just one minor thing that we found looking at the records that we have. I don't know what is there. I need to look at the records to see what is there.

Mr. HAYWORTH. The analogy being, in a very dark room, you at least need a candle or a flashlight, if not power restored, to be able to see what's in there so you can flick the switch and see what's in the room.

Ms. LONG. You know, and of all the tribes across this nation, I believe the Bureau of Indian Affairs has records for the Yurok Tribe. They were our trustee for over 40 years, and they acted on our behalf, because we were one single, unified reservation.

And because the Yurok Tribe was not organized as a separate government, they acted on our behalf, specifically acted on our behalf and kept those records. So they have those records. If they don't have it, then they destroyed it.

And that's our problem with the same staffers. That was the superintendent at that office. He knew the interests of the Hoopa on the Yurok accounts, and yet he's telling me one thing, and he's not

telling that to the Hoopa people. There's a conflict of interest, a strong conflict of interest there.

Mr. HAYWORTH. On that very compelling note, I want to thank you all for your testimony and answering questions. I indeed want to thank all of those who joined us today, especially the ever-intrepid, ever capable staff that made the venture forth from the swampland that does surround Washington, DC.

I really appreciate the efforts of everyone here today. This obviously raises more questions for us, but I think what is especially helpful in addition is the effort by many to offer some solutions and a framework. And while admittedly, our interaction here on this planet in every human endeavor is imperfect, to say the least, there may be corrective actions that we can take and certainly should take to bring about some sort of satisfactory resolution of the problems we confront.

So with that, I thank you witnesses. I thank also my colleague from American Samoa, who unfortunately had to leave a bit early to catch that plane toward the 50th State and another conference. And with that, this session of the task force stands adjourned. Thank you very much.

[Whereupon, the task force was adjourned; and the following was submitted for the record:]

United States House of Representatives  
Committee on Resources  
Task Force on Indian Trust Fund Management  
Hearing on Indian Trust Funds Management

Testimony of Donna Erwin  
Director, Office of Trust Funds Management  
Phoenix, Arizona  
August 20, 1996

Thank you for the opportunity to present testimony on Indian Trust Funds Management. As you are aware the Office of Trust Funds Management manages APPROXIMATELY \$422 million for 50 tribes in the Phoenix Area and \$83 million for 37,800 Individual Arizona residents. The hearings are focusing on trust management practices and what it may take to ensure sound trust management in the future. Each of these focal points is discussed in turn.

In October 1995, the Office of the Special Trustee for American Indians (OST) commenced an assessment of the U. S. Government's trust management policies, procedures, practices and systems as they apply to individual American Indian and American Indian tribal accounts. By February 1996, the OST completed the preliminary assessment and produced a conceptual strategic plan to acquire and institutionalize specified systems. Implementation of this plan will permit and ensure that the U. S. Government establishes appropriate policies and procedures, develops necessary systems and takes the affirmative actions necessary to provide an accurate and timely accounting to American Indian trust beneficiaries. In this manner the proper discharge of the Secretary's trust responsibilities can be accomplished. The Assessment and Phase I of the Strategic Plan are included in a document entitled "Special Trustee for American Indians, Assessment and Strategic Plan Principles, Phase I, February 1996" which has been provided to Congress.

In December 1995, the U. S. Department of the Interior's Bureau of Indian Affairs substantially completed a multi-year "Tribal Trust Funds Reconciliation Project" (Reconciliation Project) and issued an "Agreed-Upon Procedures and Findings Report" for the period July 1, 1972 through September 30, 1992. Its major findings are substantially incorporated in the Special Trustee's Assessment.

In August 1995, the Department of the Interior substantially completed a study of the trust management systems relating to Individual Indian Monies

IIM accounts and issued a report entitled "IIM Related Systems Improvement Project Report". The findings of this report are also substantially incorporated in the Special Trustee's Assessment.

The Special Trustee's Assessment, the Reconciliation Project reports, the IIM Related System Improvement Project Report and earlier and later reports issued by the General Accounting Office all confirm that the U. S. Government's trust management systems, policies, procedures and practices coupled with the condition of the trust records and, notably, large numbers of missing documents, are inadequate to allow for:

1. a proper, accurate and timely accounting for trust account balances, collections, disbursements and investments and the maximization of the return on investments.
2. the preparation of accurate and timely reports to trust account holders regarding all collections, disbursements, investments and return on investments.
3. an audit under generally accepted auditing standards.
4. any further reconciliation efforts, since the costs of such efforts would likely substantially exceed the benefits and at the same time would probably yield unsatisfactory and inconclusive results.

While significant improvements have been made over the last several years, the inadequacies of the trust management systems, the condition of the historical records and the U. S. Government's inability to provide an accurate and timely accounting cannot be remedied without the major reforms required by the Reform Act of 1994. To address these issues, the Special Trustee's strategic plan identified nine initiatives or principles designed to rectify the problems and bring trust accounting and management systems up to commercial standards within three years. This, at a minimum, will involve acquiring, automating, updating, integrating, coordinating and consolidating to produce:

1. A trust resource/asset management delivery system.

This will involve obtaining a new trust resource/asset management and delivery system for asset leasing, contracting, lending, buying and selling, together with standardized and/or integrated asset management, credit and operating policies, procedures and practices. The system must be able to tie to and track from land and ownership records.

2. An accounts receivable data and billing system that uses lease-contract and land and ownership information.

This will involve obtaining a new accounts receivable, billing and collection data system that uses lease-contract and ownership information for trust income verification, reconciliation, billing, payments, collection, accounting, disbursement, audit, asset quality review and compliance purposes.

3. A trust, depository, payments and delivery system for Individual Indian Money (IIM) accounts.

This will entail purchasing a trust, depository, payments and other financial services accounting and statement system and a delivery system to more efficiently provide current financial services and to facilitate new and improved financial services to individual Indians and Tribes.

4. A land records and title recordation and certification system.

This will involve acquiring a new land records and title recordation and certification system, capable of instantaneous linkage with the trust resource asset management, accounts receivable and trust accounting systems.

5. A general ledger and general accounting system.

This will involve obtaining or modifying a general ledger and general accounting system to accommodate all present and planned systems and accounting improvements.

6. A technology services center dedicated to trust resource and funds management.

This will involve obtaining a centralized technology services center dedicated to trust resources, trust funds and land ownership and records management processes.

7. A national archives and records center.

This will involve obtaining and centralizing a modern national archives and records center for trust resource, asset and funds record storage and retrieval.

8. A risk management and control system.

This will entail obtaining a risk management and control system that will provide for adequate operational audits, credit and asset quality audits, compliance reviews, independent asset appraisals and liaison with outside, independent auditors.

9. An independent institutional structure.

This will involve consolidating trust resource, trust funds and land ownership and records management processes into a single, independent institutional unit with its own management structure to accommodate the restructuring and reorganization contemplated by Phase I of the strategic plan. The unit should be organized by function and dedicated exclusively to trust management. The unit should have agency or bureau status within the Department of the Interior or elsewhere.

The conceptual work on the strategic plan is completed. The next steps are conducting a requirements analysis, user needs assessment and a comprehensive inventory of existing skills, hardware and software, related network support and facilities requirements, all of which will lead to a technical requirements report for RFP purposes and confirm or revise the cost data contained in the conceptual strategic plan. This will require the use of an outside contractor. The 1997 President's budget request includes \$1 million to conduct the analyses.

Once the analyses are completed (expected to take 90 days from funding date) and once the staff of the OST is hired, the remaining elements necessary to produce the comprehensive strategic plan required by the Reform Act of 1994 can be completed within 90 days or by March 31, 1997, if the President's budget request for FY 1997 is approved.

The total FY 1997 request for OST is \$36.3 million, a \$20 million increase over the 1996 conference level of \$16.3 million. The request includes \$13.6 million to begin implementation of the strategic plan. The funds will be used primarily to upgrade and establish a new IIM accounting system, which is long overdue. The 1997 budget requests no-year funding to allow adjustments resulting from re-estimates or delays in plan implementation. However, it should be noted that if funding for the strategic plan is delayed, the reform effort will be delayed.

The \$20 million requested increase in OST's budget for FY 1997 also reflects the high priority the Administration and the Secretary place on Indian Trust Asset Reform efforts. Improvement efforts are critically needed to ensure the Federal Government meets its fiduciary obligations to Indian Tribes and individual American Indians. While the Federal Government's trust responsibility is unique, systems, policies, practices and procedures of commercial trust operations can be applied to ensure that the Federal Government better fulfills its fiduciary obligations. Beginning in 1997, the evolution of trust system reforms will be at a point where increased resources can be prudently expended.

In closing, I would like to emphasize that "resolving the past" presents a difficult challenge to the Administration, the Congress, and individual Indians and tribes. The ending of the tribal reconciliation process in December, 1995 represents only the beginning of an effort to resolve problems with the U.S. Government's past trust fund management practices. This Administration is committed to solving these longstanding problems and has made significant progress in strengthening trust funds operations and in taking the steps necessary to ensure the highest level of fiduciary and investment standards are in place in the management of these funds. Future reforms will continue in earnest under the comprehensive strategic plan required by the American Indian Trust Fund Management Reform Act, provided that adequate resources are appropriated by Congress.

Enactment of the President's 1997 Budget request would represent a substantial step to ensuring that Indian trust reform efforts are implemented in a manner that ensures the fiduciary responsibilities of the Federal government are met.

This concludes my statement. I will be happy to answer any questions you may have.



*Executive Office of the Chairman*  
**WHITE MOUNTAIN APACHE TRIBE**

RONNIE LUPE  
CHAIRMAN

## **Task Force on Indian Trust Fund Management**

**Testimony of Chairman Ronnie Lupe  
White Mountain Apache Tribe of Arizona**

**Oversight Hearing**

**Mesa, Arizona**

**August 20, 1996**



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**TESTIMONY OF CHAIRMAN RONNIE LUPE****of the****White Mountain Apache Tribe**

Chairman Hayworth and Members of the Task Force Oversight Committee:

My name is Ronnie Lupe. I am Tribal Chairman of the White Mountain Apache Tribe. I am pleased to have the opportunity to testify today at this oversight hearing about my Tribe's personal experience with BIA mismanagement of tribal funds and resources.

I am most appreciative that Representative Don Young from Alaska has created this task force, chaired by our own Congressman, the Honorable J.D. Hayworth, to investigate Indian trust fund management by the Department of the Interior and Bureau of Indian Affairs. I am also heartened that on the Senate side, Senator John McCain, has held recent oversight hearings to scrutinize the government's wrongdoing. He characterized the BIA's failure to properly manage Indian money as a "theft from Indian people."

In my personal experience, I have never seen any commitment on the part of the Department of Interior or BIA to properly manage the Indian trust fund. In fact, it took a 45 year lawsuit by my Tribe to finally get the Department of Interior to admit that it could not account for \$6.5 million in White Mountain Apache Individual Indian Monies (IIM) between 1871 and 1946. How can \$6.5 million vanish without a trace of documentation? My Tribe also obtained a judgment against the United States of America, for mismanagement of my Tribe's grazing lands, timber and other tribal trust funds. However, we believe that there are IIM and other trust funds deposited after 1946 that still remain unaccounted for.

Although we have no allotted lands on our reservation, a great deal of money was collected from Tribal enterprise funds, from the sale of timber and cattle grazing permits

which was then transferred to IIM accounts so that the BIA could easily appropriate our money -- supposedly for Tribal use, without having to go to Congress. We have never had a verified accounting of those monies. In fact, some 24 years after we filed suit in 1951, the General Accounting Office could only complete a partial accounting for the years before 1946, but the post 1946 years are still in question.

I am aware that recently the Native American Rights Fund (NARF) has filed a class action on behalf of 300,000 Indian people to seek redress for government mismanagement of IIM trust funds. NARF describes it as the largest and most shameful financial scandal ever involving the United States government. I agree. These government managed trust funds are in total disarray and records are hopelessly broken down according to Arthur Anderson, the accounting firm employed to review the Indian Trust Fund account. I am sure that we are amongst the 200 tribes that have tribal trust funds deposited into the Indian Trust Fund and that there are still IIM monies unaccounted for from our earlier history and after 1946. I have never, as Tribal Chairman, ever received an accounting from the Office of Indian Trusts as to how much money my Tribe or its individual members may have in the Indian Trust Fund.

The White Mountain Apache Tribe has proved that the federal government, through the Department of Interior and BIA, committed waste and damage of untold millions of dollars to our reservation. The 22 million dollar judgment is a drop in the bucket of what we need to restore our lands. We will soon be presenting for Congressional approval a judgment distribution plan to use at least 20% of that judgment for a permanent land restoration fund to restore our once abundant grazing lands and timber which suffered from

over 100 years of BIA mismanagement, malfeasance and nonfeasance.

That lawsuit cost my Tribe over one million dollars in attorney and expert witness fees. The Department of Interior fought us every inch of the way. I am not surprised that the Native American Rights Fund claims that the Department of Interior has deliberately destroyed records and has obstructed implementation of the Indian Trust Fund Management Reform Act of 1994. NARF reports that the Department of Interior has obstructed the Special Trustee for American Indians from implementing and enforcing the Trust Fund Management Reform Act, and further, that the Trustee's mandate was deliberately sabotaged by the Department of Interior; DOI returned \$24 million of unspent funds in 1995 which could have been reprogrammed with the approval of Congressional committees and applied to the work of the Special Trustee; DOI has refused to request adequate funds for the work of the Special Trustee mandated by the 1994 Act and has prevented the Special Trustee from preparing the strategic plan mandated by the 1994 Act.

A solution to this shameful situation is for Congress to take the necessary steps to provide the Special Trustee the tools and resources he needs to fix the system and achieve justice for Indian people. I urge Congress to amend the Act as necessary to insure that the Trustee is armed with the strongest jurisdiction, subpoena power and funding to get the job done. The Court suit initiated by NARF may go on for years and even if it is won, there are always appeals and appeals of appeals. In short, without adequate funding and authority from Congress, the Trustee is doomed to failure.

The resolution of this breach of trust transcends a mere accounting of Indian monies. It is a joint responsibility of Congress and the Administration and the responsibility

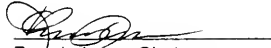
of both political parties. Presidents and Secretaries of Interior have been aware of this problem for years. It has become a matter of national conscience and moral turpitude.

I have seen many task forces come and go, I can only hope that this one will see the matter through and provide the Special Trustee with all the powers and funding necessary to once and for all make the Department of Interior accountable under the 1994 Indian Trust Fund Management Reform Act. The international community in this declared year for Aboriginal Peoples Rights is watching how the United States honors its legal and moral obligations to its Native peoples.

I have one final point to make in respect to trust obligations of our Trustee the United States of America. Currently, the White Mountain Apache Tribe is involved in a life and death struggle for the preservation of its aboriginal homeland because of threats to our aboriginal ground water and surface water on our reservation. I am told that I must spend \$500,000.00 during the next two years to document the dramatic effect that geologists and hydrologists have already advised is taking place due to unregulated pumping of the water from beneath our reservation by off-reservation sources. No different from IIM monies, protection of our water assets is a trust responsibility of the Department of Interior and the United States. I need federal assistance to protect these sacred life sustaining waters from being mined from beneath our reservation. For many years, we have had to draw upon limited Tribal resources to finance the employment of attorneys and expert witnesses to protect our rights. I am told there is federal money for negotiation but not for litigation, but how can you negotiate when you do not even have the money to investigate the water resources that you have or to investigate the many claims opposing you? Other Tribes

across the country are in the same position, especially in the semi-arid southwest. I am now faced with an environmental debacle of untold magnitude, no different than the past destruction of our grazing and timber lands. Will I be appealing to another Task Force five years from now when Congress finally pays attention to the theft of our water? Will my Tribe be paid a pittance for the wrongful taking of our water? Will my land once abundant become parched - its springs and rivers run dry before we obtain relief?

Thank you again for this opportunity to speak on this important matter.



Ronnie Lupe, Chairman  
White Mountain Apache Tribe

**Testimony on Indian Trust Funds Issues**  
**Before The**  
**Task Force on Indian Trust Fund Management**  
**United States House of Representatives**

**By**

**Ivan Makil**  
**President**  
**Salt River Pima-Maricopa Indian Community**

**Scottsdale, Arizona**  
**August 20, 1996**

**TESTIMONY ON INDIAN TRUST FUND ISSUES BEFORE  
THE TASK FORCE ON INDIAN TRUST FUND MANAGEMENT  
UNITED STATES HOUSE OF REPRESENTATIVES**

August 20, 1996

Submitted by

IVAN MAKIL

Chairman and members of the Committee, I appreciate the opportunity to testify on this important issue. My name is Ivan Makil. I am President of the Salt River Pima Maricopa Indian Community. I am also a member of the Special Trustee's Advisory Board and a named plaintiff in the class action law suit filed on June 10, 1996, on behalf of the 300,000 IIM accountant holders against Secretary Babbitt and Assistant Secretary Deer for breach of their obligations as trustees of Indian trust funds.

In the Fall of 1995, I agreed to serve as a member of the Special Trustee Advisory Board because of my high hopes that the Trust Fund Reform Act, which this Committee spent two years working on, would finally correct the largest and longest-running violation of trust law in the history of our country. In June of this year, I agreed to be a plaintiff in the litigation because I was frustrated by the Secretary's effort to undermine that Act, cover-up the extent of the Department's breach, and stifle the Special Trustee and the Advisory Board.

Below, after documenting these serious charges, I propose some solutions to this problem. They are radical remedies, but we are facing a very serious crisis. It is a crisis not just for Indian people but for all Americans. If the Executive Branch of the Federal Government is incapable of correcting violations of law by its own officials, if it takes a Federal court to compel an agency of the United States to cease violating its legal trust responsibility, then the United States Government will have lost its moral authority to compel banks, labor unions, securities firms and all other entities that hold money of the American people in trust, to comply with the law.

**A. The Secretary's Failure to Support the Trust Fund Reform Act**

When I agreed to serve on the Special Trustee's Advisory Committee, I was impressed by Mr. Homan's credentials and experience. After working with him for the past nine months, I am equally impressed by his commitment to correcting this problem, his honesty and his quick grasp of the steps needed to correct this problem. On November 14, 1995, after being in office for less than two months, Mr. Homan published his outline of the strategic plan for bringing the Interior trust systems into compliance with trust standards. The plan is mandated by that the Reform Act and is due by September 1996, one year after Mr. Homan took office. Despite the fact that he had no staff and no

funding, he brought more clarity and direction to solving the trust fund problem in two months than the entire Interior Department had done previously in the six years that I have been involved in this issue.

The cost of turning the outline into the detailed strategic plan required by the Reform Act was estimated at \$2 million. The Special Trustee asked the Secretary to locate \$2 million that could be reprogrammed from somewhere in the Department's \$12 billion budget to enable him to complete the plan by the deadline. Despite the fact that the plan was mandated by statute and is the necessary first step to ending the Department's breach of trust, the Secretary said he was unable to find any portion of the money needed. As a result, the Special Trustee has not been able to do anything further on the strategic plan since November and he will be at least a year late in meeting the deadline set in the Reform Act for his plan. It is ironic that the Secretary was so concerned about meeting his obligation to report to Congress by May 31st on the reconciliation that his staff repeatedly contacted this Committee about the deadline. Yet, he appears to show no concern about the much more important Strategic Plan report deadline, the report that is necessary to end the violations of the law and end the millions of dollars in liability the United States in accruing every month the system remains in violation of the law.

More recently, the Special Trustee asked the Secretary for \$15,000 to hold a meeting of the Advisory Board. Again his request was rejected. Except for our organizational meeting in December, the Advisory Board has had no meetings and will have no meetings for at least the rest of this Fiscal Year. As a result, the Indian community is completely excluded from whatever deliberations are occurring within the Department about trust fund reform.

Yet, during this same period that he could find no money for trust fund reform, the Secretary went on television to announce that he would find \$4 million in emergency money to fix the C&O canal and to announce that he would be including \$100 million in new money in the FY 97 budget to purchase land in the Everglades. I am not opposed to these environmental activities. But as a public official, I know that I must meet my legal obligations before I chase after the programs that meet my personal and political agenda. Not only has the Secretary failed to make coming into compliance with the law his highest priority, he has placed it far below his personal and political agenda.

## **B. Muzzling the Special Trustee**

In order to insure outside pressures do not force him to move trust funds higher up on his priority list, the Secretary and his staff have sought to keep the Special Trustee from speaking frankly to his beneficiaries or taking steps to insure the full scope of this problem is fully understood by the account holders and the public.



Those of us on the Advisory Board have suspected for some time that the Secretary was muzzling the Special Trustee. Any doubt was removed last month at a meeting of tribal officials, when Mr. Homan responded to question after question by saying, "I have a personal and professional opinion on that issue, but I have been instructed not to say anything on that subject." Since the Special Trustee reports only to the Secretary, only the

Secretary has the authority to instruct him not to speak. After 150 years, we finally have someone in the Interior Department who knows something about trust fund management and who is committed to carrying out a trustee's duties, and he is muzzled by the Secretary.

### C. Cover-up

The third reason I decided to become a plaintiff in the law suit is that it became increasingly clear that the Secretary was trying to cover-up the full extent of the Government's liability to the account holders as a result of Interior's mismanagement. It is well known that the \$2.4 billion identified as unreconcilable by Arthur Andersen is just the tip of the iceberg regarding the Federal government's liability. For example, Arthur Andersen did not address the losses the account holders suffered because the Government never installed an accounts receivable system and therefore cannot tell an account holder if a lessee paid what was due under the lease.

Yet when we sought to raise the issue of the larger liability with Interior, through our attorneys, we were told that the problem is too big and the Government simply does not know how to deal with it. In other words, Interior's position is that Government has made such a mess out of the trust fund records that it should now be let off the hook because it will be too difficult to calculate the losses suffered by the account holders.

The proof that this was nothing but an attempt at a cover-up became clear when the plaintiffs in the law suit approached Price-Waterhouse with the same issue. We were told that the techniques of economic modeling make it feasible to produce valid estimates of the liability that will hold up in court, and can be done at a cost that is only a fraction of what Interior paid Arthur Andersen for looking at the tip of the iceberg. In other words, it was not that the Government could not figure out how to determine its liability, it simply did not want to and made no effort to see how it could be done. In my book, this is called a cover-up. Fortunately, it is not a successful one, because Price-Waterhouse will be presenting the calculations Interior said could not be done in court during the evidentiary portion of our law suit.

In sum, the Secretary has made meeting his legal obligations a low priority, has undermined the Special Trustee, and has tried to cover-up the full extent of the Government's liability. However, to make clear that this is not a personal attack on Secretary Babbitt, I want to emphasize that, with some minor changes in the facts, these same charges could be leveled against former Secretary Lujan when he was in office, former Secretary Andres when he was in office, and every other Interior Secretary for the past 100 years. They all knew they were in breach of trust, they all made, at best, token efforts to correct the breach, and they all worked to bury the problem until they could pass it on to their successor. The message is clear -- the Secretary of the Interior, institutionally, is incapable of solving this problem.

#### PROPOSED SOLUTIONS

I have several proposed solutions, all of which require Congressional action. However, while I believe the Secretary is incapable of leading the reform effort, I will not recommend that the trust functions be removed from the Interior Department at this time. To the contrary, I strongly oppose any effort to relocate the trust functions at this time. I do so for two reasons. First, in emergency medical care, when a person has many broken bones, they teach you to stabilize the patient before you move him. The trust fund program is broken and it should not be moved until the new systems are put in place (systems that will be needed wherever the trust functions ultimately end up). Otherwise, it will cause enormous dislocation for the thousands of Indians who rely on their trust money for survival. It will also likely destroy much of the evidence needed to finally determine the scope of the losses suffered by the account holders over the years.

Secondly, moving it now would violate this Committee's commitment to self-determination and the policy it has set forth in S. 814. That bill says that the reorganization of the BIA will be put into the hands of the tribes, at the local, area and national levels. That same principle needs to be applied to trust funds management. The future of that program should not be dictated from Washington out of frustration at the problems I discussed above. During the three years it will take to stabilize the program, the Special Trustee, the Advisory Board, and others should be tasked with the responsibility of initiating a dialogue with the tribal and individual account holders on the future of that program. At the end of the three year period, the Indian community should be asked to produce a reorganization plan for that program's future. This is no different from what S. 814 provides for other BIA programs.

To insure the program does get fixed during the three year period while its future is being debated by the Indian community, I have three recommendations. They are as follows:

1. That for FY 97, 98 and 99, an amount equal to 1/2 of 1% should be taken from every line item in the Interior Department budget and transferred from that line item to a fund to correct the trust systems. This will raise \$60 million a year, which will be enough to correct the problems, using the budget prepared by the Special Trustee. The loss of 1/2 of 1% of its budget will not seriously hurt any agency in the Department, while it will take the Department out of its present status as the largest trust violator in legal history.
2. Amend the Reform Act to convert the Office of Special Trustee and the Advisory Board into a control board similar to what Congress created when it concluded that the government of the District of Columbia was incapable of reforming itself. The trust fund control board would have the authority to compel action and to approve all trust related activities by every Interior official. The Secretary would have no authority over the control board. There is precedent for a part of a federal agency to not be subject to the authority of the Secretary. For example, the Comptroller of the Currency is not subject to the Treasury Secretary's authority.
3. Amend the Trust Fund Reform Act to give the Special Trustee the independent authority to file suit in Federal Court when necessary to stop breaches of trust or to prevent violations of the Reform Act. This will permit the Trustee to intervene in our law suit on the side of the account holders, or at least as an aid to the court. Without it, he will be treated as an employee of the defendant, where he will be kept silent by the Justice Department attorneys, thereby denying the court the valuable insights and expertise he has.

### **Conclusion**

Only by removing the Secretary from a position of authority over the trust functions, compelling the Department to produce the money to correct the violations, and giving the Special Trustee the independent authority to go to court, will the problems I discussed above -- the low priority for trust reform, the muzzling of the Special Trustee and the Secretary's cover-up and stonewalling -- be effectively corrected.

I am available to assist the Committee to develop these proposals into legislation. Thank you for the opportunity to testify.

TESTIMONY OF NAVAJO NATION PRESIDENT ALBERT HALE  
CONCERNING MANAGEMENT OF INDIAN TRUST FUND ACCOUNTS

I. Problems which the Navajo Nation has had concerning the Bureau of Indian Affairs' ("BIA") and Office of Trust Funds Management ("OTFM") management of the Nation's trust fund accounts.

A. The BIA/OTFM has failed to follow Navajo Nation instructions regarding investment of the 1982 and 1986 claims settlement funds ("Judgment Funds"). The BIA/OTFM has failed to follow Navajo Nation instructions regarding investment of trust funds. Because the Navajo Nation was attempting to secure a release of 1982 and 1986 claims funds, the Navajo Nation sent the BIA correspondence in 1992 requesting that those funds be invested in short-term securities. This request was made to ensure that those funds would be easily liquidated at the time of withdrawal. Contrary to the Navajo Nation's instructions, the fund were invested in securities which have maturity dates several years into the future. The Navajo Nation will now realize a loss when the securities are cashed in.

B. Failure to follow Navajo Nation instructions regarding investment of Rehabilitation Trust Funds. The Navajo Nation also instructed the BIA/OTFM to keep the Rehabilitation Trust Funds in short-term securities of less than one year duration. Federal law, at 25 USC Section 640d-30, provides that these funds "shall be available to the Navajo Tribe, with the approval of the Secretary, solely for purposes which will contribute to the continuing rehabilitation and improvement of the economic, educational and social condition of families and Navajo communities" that have been affected by the Navajo-Hopi land dispute. The Navajo Nation's instruction to invest these funds short-term, in order to ensure their availability pursuant to federal law, was also ignored and those funds have been invested long-term, to the detriment of the Navajo Nation.

C. Failure to release the 1982 and 1986 Claims Funds and Scholarship Claims Funds. In 1991, the Navajo Nation first requested that the Navajo Area Office of the Bureau of Indian Affairs assist the Navajo Nation in securing the release of certain judgment funds under BIA management for integration into the Navajo Nation investment system. Despite providing a variety of documents and answering many questions raised by the Bureau, the funds were never released.

As outlined within the Navajo Nation's proposed plan, the Navajo Nation implemented an investment program in 1990 which has been extremely successful. Today, the Nation manages 18 different funds containing approximately \$700 million in assets. According to the BIA's March 31, 1995 accounting records, approximately \$59.1 million in 1982 and 1986 Claims Funds and Scholarship Funds are in the BIA's custody.

By resolution CJA-11-96, the Navajo Nation Council approved a "Request for Voluntary Withdrawal From the Trust Fund Program" pursuant to the American Indian Trust Fund Management Reform Act of 1994. The Request asks for release of Chapter Claims funds and Scholarship Claims funds received in settlement of Dockets 69 and 299, 256-69 and 377-70 and 588-83L. The resolution and request were transmitted to the Office of Trust Funds Management within the Department of Interior.

By letter dated April 12, 1996, the Office of Trust Funds Management requested that the Navajo Nation provide additional documentation to complete the "application" for voluntary withdrawal. The request for additional documentation raises issues concerning imagined discrepancies between the Congressional Plan and the Navajo Nation Plan. The Navajo Nation has previously addressed these concerns in detail with the Bureau. In 1991, former Attorney General Donna Christensen explained the perceived inconsistencies between the Congressional Plan and the Navajo Nation Plan to the Area Director. In a letter to the Office of Trust Funds Management dated June 24, 1996, I again addressed the concerns expressed by that Office, which are essentially a restatement of the concerns previously addressed. Please note that the concerns raised are not substantive; they do not affect the issue of whether the Navajo Nation is capable of managing the claims settlement funds. Instead, the concerns raised illustrate the worst bureaucratic tendencies of the federal government and a lack of acknowledgement of Navajo law.

In addition, the OTFM has requested documentation which is not required by the 1994 Act and which is not even relevant to the determinations which the Secretary must make pursuant to the 1994 Act in assessing a tribe's proposed plan. For example, the requirement that the Navajo Nation submit a Navajo Nation Council resolution acknowledging that the funds, once released to the Nation, will no longer be in trust status, is not found in the American Indian Trust Fund Management Reform Act or any valid regulations promulgated by the Secretary. Because the Act itself provides that the funds will be removed from trust status once released, there is no need for the Nation to expressly acknowledge a portion of the law's contents. 25 U.S.C. §4022(c). The Act also provides that a tribe's submission of a plan for voluntary withdrawal and the Secretary's acceptance of a plan for voluntary withdrawal does not constitute acceptance of the fund account balance as accurate, nor as a waiver of the tribe's right to seek compensation. 25 U.S.C. §4027.

The Navajo Nation has demonstrated that the request for voluntary withdrawal which was previously submitted to the Office of Trust Funds Management is adequate for the Secretary to make the determination that the conditions set forth within 25 U.S.C. §4022(b) have been satisfied in that:

1. the Nation's plan for voluntary withdrawal has been approved by the tribe's governing body by resolution; and
2. the Nation's plan is reasonable considering relevant factors such as the capability and experience of the individuals or institutions that will be managing the trust funds and that there is adequate protection against substantial loss of principal.

Despite the fact that the proposed plan meets the requirements of the 1994 Act, both on its face and substantively, the funds have still not been released to the Navajo Nation. It is obviously in the best interests of the United States to release these funds immediately, not only because the Navajo Nation has met the requirements of the 1994 Act, but also for the purpose of limiting its liability to the Navajo Nation for mismanagement of these funds.

The purpose of the 1994 Act was to allow tribes an opportunity to manage tribal funds currently held in trust by the United States, consistent with the trust responsibility of the United States, in a manner which would:

1. give Indian tribal governments greater control over the management of such trust funds; or
2. otherwise demonstrate how the principles of self-determination can work with respect to the management of such trust funds, in a manner consistent with the trust responsibility of the United States.

The Navajo Nation's experience, thus far, has demonstrated that the United States is willing to deny the opportunity which Congress has created in order to continue to serve a bureaucracy which undermines self-determination and which has actually done financial damage to the Navajo Nation. From the Navajo Nation's perspective, this mindset must immediately change. The Navajo Nation has complied with the statute. We are entitled to receive our money and to take responsibility for its management, so that we can put it to work for the Navajo People.

## II. Problems with the OTFM Reconciliation Project

A. The Navajo Nation has been provided with voluminous documents concerning an attempted reconciliation of tribal trust funds administered by the BIA for the period July 1, 1972 through September 30, 1992. Based upon an initial examination of a portion of the documents, it is apparent that further consultation will be necessary between the Navajo Nation and the United States' contract

auditor, Arthur Andersen. The Navajo Nation has been advised that further consultation will be at the Navajo Nation's expense. Because we are dealing with activities which clearly fall within the scope of the federal government's trust responsibilities, there should be funds made available for all affected tribes to conduct further meetings with the contract auditors in order to ensure a meaningful examination of the source documents and working papers.

B. Based upon the Investment Benchmarks calculated by the Arthur Andersen firm, the BIA's actual investment returns for Navajo Nation funds underperformed the benchmark by approximately \$3.1 million. This underperformance supports the Navajo Nation's position that the investment management style of the BIA and OTFM is costing the Navajo Nation millions of dollars annually. This point is underscored within the Navajo Nation's application for withdrawal of certain judgment funds, in which the Nation illustrates how simple changes in the types of securities the funds were invested in would have reaped several millions more in investment income to the Navajo Nation.

**III. The Navajo Nation intends to hold the United States liable for all losses which it has suffered as a result of the BIA's and OTFM's inadequate management of Navajo Nation funds.**

Since implementing the Navajo Nation's investment program in 1990, the Navajo Nation government has been deeply concerned about how the United States manages Navajo Nation funds. Our internal investment program has strict guidelines which must be followed, benchmarks which must be met and internal controls to ensure that no loss of fund principal occurs. We expect no less from the federal government. We have learned, from aggressively managing Navajo Nation funds since 1990, that wise investments are the key to our financial future.

Our government would not be able to function in the next century without relying on the investment strategies that we began pursuing some time ago. While the expertise which the Navajo Nation has developed has allowed our government to have a much better grasp on our future needs, this expertise has also shown us that the systems used by the United States in managing tribal trust funds are sadly lacking. Our concern is not limited to the Navajo Nation; other tribes which may not have the asset base of the Navajo Nation may not be truly aware of the losses which they have suffered. Our concern also extends to the federal government itself--as one of our investment advisors said recently, "If the federal government cannot tell us exactly what has been done with respect to the management of tribal trust funds, where a special fiduciary duty exists, can you imagine the state of other funds managed by the federal government, for example, medicare, social security, etc.?" This is a problem which concerns all Americans and which certainly deserves Congress' utmost attention.



THE  
NAVAJO  
NATION

ALBERT A. HALE  
PRESIDENT

THOMAS E. ATCITTY  
VICE PRESIDENT

June 24, 1996

Donna Erwin, Acting Director  
Office of Trust Funds Management  
505 Marquette, N.W., Suite 1000  
Albuquerque, New Mexico 87102

**RE: Request for Further Documentation Concerning  
Navajo Nation Request for Voluntary Withdrawal**

Dear Ms. Erwin:

By Resolution CJA-11-96, the Navajo Nation Council, by a vote of 58 in favor, 0 opposed, 0 abstaining, requested to voluntarily withdraw the Nation's funds from the Trust Fund Program. This resolution was approved in order for the Navajo Nation to obtain release of the 1982 and 1986 Claims Settlement Funds pursuant to the American Indian Trust Fund Management Reform Act of 1994, 25 U.S.C. §4001, et seq. As you know, the Navajo Nation has sought to take over responsibility for the investment and management of these funds from the Bureau of Indian Affairs since 1991.

In response to the Navajo Nation's Request for Voluntary Withdrawal, the Office of Trust Funds Management, by letter dated April 12, 1996, advised the Navajo Nation that additional documentation would be required to complete the application for voluntary withdrawal with respect to the 1986 Claims Funds, to wit:

1. a Navajo Nation Council resolution acknowledging that the funds, once withdrawn pursuant to federal law, will no longer be held in trust status by the United States and acknowledging that the United States will have no further liability or responsibility for the funds once withdrawn; and
2. clarification as to how the Division of Community Development will administer the funds, as set forth in the Use and Distribution Plan approved by the Secretary of the Interior or documents indicating that the Use Plan has been amended to clarify this issue; and



Donna Erwin, Acting Director  
 Office of Trust Funds Management  
 RE: Request for Further Documentation Concerning  
 Navajo Nation Request for Voluntary Withdrawal  
 June 24, 1996  
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3. a legal opinion stating that:
  - a. resolution CJA-11-96 was enacted pursuant to the procedures established by the tribe's organic documents or oral tradition;
  - b. the tribal governing body has the legal authority to withdraw funds from trust status; withdrawal does not require a referendum vote or other procedure beyond a tribal council resolution; and
  - c. the tribe's plan for the management of the withdrawn funds meets the requirements of the approved use and distribution plan.

The Navajo Nation Investment Committee met with you and your staff on June 19, 1996. At that meeting, the Committee advised you that the Navajo Nation has complied with the requirements of the American Indian Trust Fund Management Reform Act of 1994 ("Act"). You indicated that the Office of Trust Funds Management would not release the funds unless the Nation complied with a proposed, but as yet unpromulgated, regulation requiring the submission of a Navajo Nation Council resolution acknowledging that withdrawn funds are no longer held in trust status. Please be advised as follows:

1. The Act does not require that the Navajo Nation Council enact a resolution providing such an acknowledgment. The Navajo Nation Council, by Resolution CJA-11-96, has complied with 25 U.S.C. §4022 (b)(1), which simply requires a resolution from the tribal governing body approving the tribe's plan to withdraw some or all funds held in trust for such tribe. The insistence that the Navajo Nation Council enact a resolution "expressly acknowledging that the funds, once withdrawn in accordance with P.L. 103-412, will no longer be held in trust status by the United States, and that we [United States] have no further liability or responsibility for the funds" is uncalled for in that:

- a. the Act itself, at 25 U.S.C. §4022(c) already provides for dissolution of trust responsibility once funds are withdrawn pursuant to the Act and expressly provides, at 25 U.S.C. §4027, that by submitting or approving a plan under the Act, "neither the tribe nor the Secretary shall be deemed to

Donna Erwin, Acting Director  
Office of Trust Funds Management  
RE: Request for Further Documentation Concerning  
Navajo Nation Request for Voluntary Withdrawal  
June 24, 1996  
Page 3

- have accepted the account balance as accurate or to have waived any rights regarding such balance and to seek compensation";
- b. the Navajo Nation estimates that had the Bureau of Indian Affairs as instructed by the Navajo Nation invested and managed the 1986 Claims Settlement Funds in a manner consistent with Navajo Nation investment policies, the Nation would have experienced additional earnings for the period 1991 through 1995 as set forth in the documentation transmitted to you within the Nation's request for withdrawal;
  - c. the Office of Trust Funds Management has acknowledged that it failed to follow the Navajo Nation's Investment Policy Regarding Navajo Nation Funds Held by the Bureau of Indian Affairs, transmitted by letter dated October 23, 1992, resulting in losses to the Nation.

Given these facts, I find your demand for a Navajo Nation Council resolution demeaning and highly disrespectful to the Nation. You then additionally requested that the Nation's Attorney General issue an opinion declaring the validity of Navajo Nation Council resolution CJA-11-96. The Navajo Nation declines to produce any additional Navajo Nation Council resolutions because such resolutions are not required by the Act and for fear that your Office will simply continue to obstruct the Nation's efforts to obtain custody of its own funds for management within the Nation's investment system, which has been proven far superior to yours. The Nation does not wish to participate in this vicious cycle of your requiring the enactment of resolutions and then demanding that the Attorney General opine as to the validity of those resolutions.

2. With respect to your question of whether the Navajo Nation's plan for management of the withdrawn funds meets the requirements of the approved use and distribution plan, please note the following:

- a. in preparing the use and distribution plan ("Congressional Plan"), the Secretary was obligated to receive and consider any resolution or communication, together with any

Donna Erwin, Acting Director  
Office of Trust Funds Management  
RE: Request for Further Documentation Concerning  
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Page 4

suggested use and distribution plan, which any affected Indian tribe may wish to submit to him. 25 U.S.C. §1403(a)(1). The Navajo Nation approved such a use plan ("Navajo Nation Plan") on December 12, 1986, by resolution CD-67-86. This plan provided that the Chapter Government Nation Building program would have "administrative responsibility for distribution of the ninety-five percent (95%) share of Fund income to certified Chapters." CD-67-86, Exhibit "A," Section 5(c). This provision accurately describes the method used by the Navajo Nation for distribution of fund income to Chapters. This provision does not concern administration of the investment fund, which is the responsibility of the Navajo Nation Investment Committee, Budget and Finance Committee and Division of Finance.

- b. The sentence within the second paragraph of the Congressional Plan, which states that "the investment plan shall be made for the Trust Fund for Chapter Government Nation Building in accordance with accepted tribal procedures for the investment and administration of trust funds" accurately describes the current system. The phrase "accepted tribal procedures" includes the investment and management of the funds by the Investment Committee, Budget and Finance Committee and Division of Finance and the distribution of the 95% of fund income to the Chapters by the Chapter Government Nation Building program. The "accepted tribal procedures" in place at the time of publication of the Congressional Plan in the Federal Register on August 2, 1988, included the Navajo Nation Code provisions concerning the Trust Fund for Chapter Government Nation Building adopted pursuant to CD-67-86 and codified at 12 N.N.C. §1151, et seq.
3. The Navajo Nation, by memorandum dated November 18, 1991, from former Attorney General Donna Christensen to former Navajo Area Director Walter Mills adequately clarified how the

Donna Erwin, Acting Director  
Office of Trust Funds Management  
RE: Request for Further Documentation Concerning  
Navajo Nation Request for Voluntary Withdrawal  
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Division of Community Development will administer the funds. Your staff has a copy of this memorandum.

4. The Office of Trust Fund Management's continued insistence on either amendment of the Navajo Nation Plan or changes to our system to accommodate your Office's preoccupation with a phrase in the Congressional Plan which the Nation has always interpreted in a manner consistent with the intent of the judgment funds a prerequisite to the release of 1986 Claims Settlement Funds is inappropriate and contrary to the provisions of 25 U.S.C. §1401, et seq. (distribution of judgment funds), 25 U.S.C. §4001, et seq. (American Indian trust fund management reform, and President Clinton's memorandum of April 29, 1994 to the Heads of Executive Departments and Agencies concerning Government to Government Relations with Native American Tribal Governments. The Navajo Nation has never construed the term "administer" to include the authority to manage investments.

5. The authorities of the Navajo Nation Council are set forth within the Navajo Nation Code. I am taken aback by the request for a legal opinion of the Navajo Nation Attorney General in that the provision of such an opinion is not a requirement of the Act, is not a requirement of Navajo law, and appears to be indicative of either the Office's ignorance of the provisions of the Navajo Nation Code concerning the authorities of the Navajo Nation Council, or simply your Office's refusal to acknowledge the existence of these laws.

6. Lastly, I note that the Secretary is obligated to approve the plan within ninety days if he determines the plan to be "reasonable." The request for withdrawal which the Navajo Nation has submitted to the Office of Trust Funds Management pursuant to CJA-11-96 includes documentation of the loss in fund income of several million dollars which the Navajo Nation has experienced as a result of the Bureau of Indian Affairs' management of the 1982 and 1986 Claims Settlement Funds. This information alone supports a conclusion that the provisions of 25 U.S.C. §4022(b)(2)(B) (protection against substantial loss of principal an appropriate factor in determining reasonableness of tribal plan) requires an immediate release of the funds before further losses are incurred. Your Office has no valid reason to delay the release any longer.

Given the Interior Department's familiarity with the Navajo Nation's investment system and the documents transmitted within the Navajo Nation's request for voluntary withdrawal sent to

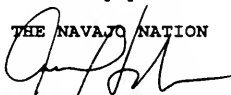
Donna Erwin, Acting Director  
Office of Trust Funds Management  
RE: Request for Further Documentation Concerning  
Navajo Nation Request for Voluntary Withdrawal  
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the Secretary on March 7, 1996, there is no question that the Navajo Nation plan is reasonable and that the funds must be released without further delay.

If there are any further questions or concerns regarding this matter, please contact Herb Yazzie of the Office of the Attorney General at (520) 871-6345.

Sincerely yours,

THE NAVAJO NATION



Albert Hale, President

- xc: Bruce Babbitt, Secretary  
Department of the Interior
- : Paul Homan, Special Trustee for American Indians  
Office of the Special Trustee
  - : Bobby J. White, Chairman  
Navajo Nation Investment Committee
  - : Herb Yazzie, Attorney General  
Office of the Attorney General  
Navajo Nation Department of Justice



THE  
NAVAJO  
NATION

P O BOX 9000 • WINDOW ROCK, ARIZONA 86515 • (602) 871-6000

ALBERT A. HALE  
PRESIDENT

THOMAS E. ATCITY  
VICE PRESIDENT

March 7, 1996

The Honorable Secretary Bruce Babbitt  
U S Department of the Interior  
1849 C Street, N W  
Washington, D C 20240

RE: **Withdrawal of Navajo Nation Judgement Funds Pursuant to the "American Indian Trust Fund Management Reform Act of 1994" (P.L. 103-412)**

Honorable Secretary Babbitt:

Pursuant to Public Law 103-412 cited as the "American Indian Trust Fund Management Reform Act of 1994", the Navajo Nation Council (The Navajo Nation's Governing Body) has approved enclosed resolution CJA-11-96 entitled Approving the "Request for Voluntary Withdrawal from the Trust Fund Program" which includes the statement of Objectives and Investment Policy Guidelines for the Chapter Claims Funds and the Scholarship Claims Fund (Judgement Funds) for the Purpose of implementing the withdrawal of Judgement Funds from the Bureau of Indian Affairs. Pursuant to the American Indian Trust Fund Management Reform Act of 1994.

It is the understanding of this office that the aforementioned Act authorizes the Secretary of Interior to approve the enclosed plan for the withdrawal of Navajo Nation Judgement Funds held by the Secretary and the Secretary shall approve the enclosed plan within ninety (90) days of receipt.

The Navajo Nation therefore respectfully requests your approval of the enclosed plan involving withdrawal of Navajo Nation Judgement Funds held by the Secretary.

THE NAVAJO NATION

A handwritten signature in dark ink, appearing to read "A. Hale".

Albert A. Hale  
President

Enclosure

cc Paul Homan, Special Trustee for American Indians  
Office of Special Trustee, Department of the Interior  
Donna Erwin, Acting Director  
Office of Trust Funds Management

RESOLUTION OF THE  
NAVAJO NATION COUNCIL

Approving the "Request for Voluntary Withdrawal From the Trust Fund Program" Which Includes The Statement of Objectives and Investment Policy Guidelines for the Chapter Claims Fund and the Scholarship Claims Fund (Judgment Funds) for the Purpose of Implementing the Withdrawal of Judgment Funds from the Bureau of Indian Affairs, Pursuant to the American Indian Trust Fund Management Reform Act of 1994

WHEREAS:

1. Pursuant to 2 N.T.C. §102 (a), the Navajo Nation Council is the governing body of the Navajo Nation; and

2. Pursuant to 2 N.T.C. §372 (1), the Budget and Finance Committee of the Navajo Nation Council has among its stated purposes to coordinate, oversee and regulate the fiscal, financial, investment, contracting and audit policies of the Navajo Nation; and

3. Pursuant to 2 N.T.C. §372 (3), the Budget and Finance Committee of the Navajo Nation Council is authorized to recommend to the Navajo Nation Council the adoption of legislation designed to strengthen the fiscal and financial position of the Navajo Nation and to promote the efficient use of the fiscal and financial resources of the Navajo Nation; and

4. Pursuant to the American Indian Trust Fund Management Reform Act of 1994 Section 202 (a) "IN GENERAL. An Indian tribe may, in accordance with this section, submit a plan to withdraw some or all funds held in trust for such tribe by the United States and managed by the Secretary through the Bureau"; and

5. The Navajo Nation's Investment Advisor has assisted in the development of the attached plan titled "Request for Voluntary Withdrawal from the Trust Fund Program" attached hereto as Exhibit "B" which includes the Statement of Objectives and Investment Policy Guidelines for the Chapter Claims Fund and the Scholarship Claims Fund (Judgment Funds); and


6. By Resolution BFJA-12-96, the Navajo Nation Investment Committee and the Budget and Finance Committee have reviewed and recommended approval by the Navajo Nation Council the "Request for Voluntary Withdrawal From the Trust Fund Program" attached hereto as Exhibits "1" and "A" respectively, and includes the Statement of Objectives and Investment Policy Guidelines for the Chapter Claims Fund and the Scholarship Claims Fund (Judgment Funds).

**NOW THEREFORE BE IT RESOLVED THAT:**

The Navajo Nation Council hereby approves the "Request for Voluntary Withdrawal From the Trust Fund Program" which includes the Statement of Objectives and Investment Policy Guidelines for the Chapter Claims Fund and the Scholarship Claims Fund (Judgment Funds) attached hereto as Exhibit "B" for submittal to the Secretary of Interior in order to carry out the implementation of withdrawing funds from the Bureau of Indian Affairs for management by the Navajo Nation, pursuant to the American Indian Trust Fund Management Reform Act of 1994.

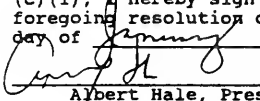
**CERTIFICATION**

I hereby certify that the foregoing resolution was duly considered by the Navajo Nation Council at a duly called meeting at Window Rock, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of 58 in favor, 0 opposed and 0 abstained, this 19th day of January 1996.

  
 \_\_\_\_\_  
 Kelsey A. Begaye, Speaker  
 Navajo Nation Council  
 1-23-96  
 \_\_\_\_\_  
 Date Signed

Motion: Young Jeff Tom  
 Second: Larry Noble

**ACTION BY THE EXECUTIVE BRANCH:**

- Pursuant to 2 N.T.C. Section 1005 (c)(1), I hereby sign into law the foregoing resolution on this 26<sup>th</sup> day of January 1996:  
  
 \_\_\_\_\_  
 Albert Hale, President  
 Navajo Nation
- Pursuant to 2 N.T.C. Section 1005 (c)(10), I hereby veto the foregoing legislation this \_\_\_ day of \_\_\_\_\_ 1996 for the reason(s) expressed in the attached letter to the Speaker:

\_\_\_\_\_  
 Albert Hale, President  
 Navajo Nation



Exhibit "A"

NFJA-12-96

RESOLUTION OF THE  
BUDGET AND FINANCE COMMITTEE  
OF THE NAVAJO NATION COUNCIL

Recommending to the Navajo Nation Council, Approval of the Plan Titled "Request for Voluntary Withdrawal from the Trust Fund Program" Which Includes the Statement of Objectives and Investment Policy Guidelines for the Chapter Claims Fund and the Scholarship Claims Fund (Judgement Funds) for the Purpose of Implementing the Withdrawal of Judgement Funds From the Bureau of Indian Affairs Pursuant to the American Indian Trust Fund Management Reform Act of 1994

**WHEREAS:**

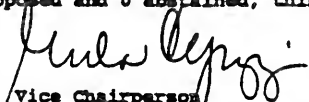
1. Pursuant to 2 N.T.C. §372(1), the Budget and Finance Committee of the Navajo Nation Council has among its stated purposes to coordinate, oversee and regulate the fiscal, financial, investment, contracting and audit policies of the Navajo Nation; and
2. Pursuant to 2 N.T.C. §372(3), the Budget and Finance Committee of the Navajo Nation Council is authorized to recommend to the Navajo Nation Council the adoption of legislation designed to strengthen the fiscal and financial position of the Navajo Nation and to promote the efficient use of the fiscal and financial resources of the Navajo Nation; and
3. Pursuant to the American Indian Trust Fund Management reform Act of 1994 Section 202 (a) "IN-GENERAL. -An Indian tribe may, in accordance with this section, submit a plan to withdraw some or all funds held in trust for such tribe by the Unites States and managed by the Secretary through the Bureau"; and
4. The Navajo Nation's Investment Advisor has assisted in the development of the attached Plan Titled "Request for Voluntary Withdrawal From the Trust Fund Program" attached hereto as Exhibit "B" which includes the Statement of Objectives and Investment Policy Guidelines for the Chapter Claims Fund and the Scholarship Claims Fund (Judgement Funds); and
5. Pursuant to Resolution NNICS-01-95, attached hereto as Exhibit "1", the Navajo Nation Investment Committee has reviewed and recommends approval by the Budget and Finance Committee and the Navajo Nation Council the "Request for Voluntary Withdrawal From The Trust Fund Program" which includes the Statement of Objectives and Investment Policy Guidelines for the Chapter Claims Fund and the Scholarship Claims Fund (Judgement Funds).

**NOW THEREFORE BE IT RESOLVED THAT:**

The Budget and Finance Committee hereby recommends to the Navajo Nation Council approval of the Plan "Request for Voluntary Withdrawal From the Trust Fund Program" which includes the Statement of Objectives and Investment Policy Guidelines for the Chapter Claims Fund and the scholarship Claims Fund (Judgement Funds) attached hereto as Exhibit "B" for submittal to the Secretary of Interior in order to carry out the implementation of withdrawing funds from the Bureau of Indian Affairs for management by the Navajo Nation pursuant to the American Indian Trust Fund Management Reform Act of 1994.

**CERTIFICATION**

I hereby certify that the foregoing resolution was duly considered by the Budget and Finance Committee of the Navajo Nation Council at a duly called meeting at Window Rock, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of 7 in favor, 0 opposed and 0 abstained, this 19th day of January, 1996.

  
Vice Chairperson  
Budget and Finance Committee

Motion: John Perry, Jr.  
Second: Ernest Hubbell

Exhibit "B"

***REQUEST FOR VOLUNTARY WITHDRAWAL***  
***FROM THE TRUST FUND PROGRAM***  
***BY THE NAVAJO NATION***

***(Pursuant to The American Indian Trust Fund  
Management Reform Act of 1994)***



**The Navajo Nation  
Administration Building #1  
Window Rock, AZ 86515**

**January 1996**

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3. <u>Navajo Nation Council Resolution CAP-25-82 - Directing the Secretary of the Interior to Use the \$13.3 Million Received from the Navajo Tribe land Claims Cases Settlement for Increasing the Navajo Tribal Scholarship Trust Fund and for Land Acquisition</u>	
4. <u>Budget and Finance Committee Resolution BFN-52-91 - Approving an Investment Policy Regarding Navajo Nation Funds Held by the Bureau of Indian Affairs</u>	
5. <u>October 23, 1992 Letter of Correspondence from TNN Controller to the BIA re: Investment Policy Regarding Navajo Nation Funds Held by the BIA</u>	

## Section I

## Section I

A. Introduction - Summary Review of The American Indian Trust Fund Management Reform Act of 1994

The American Indian Trust Fund Management Reform Act of 1994 (The Act) was passed by the U.S. Congress on October 25, 1994. The primary purpose of The Act was:

“to allow tribes an opportunity to manage tribal funds currently held in trust by the Secretary of the Interior through the Bureau of Indian Affairs.”

*[The Act; Title II; Sec. 201]*

In general, The Act states that the Secretary has 90 days to respond to a plan for the withdrawal of tribal assets. In particular, The Act outlines several criteria and procedures under which the Secretary of the Interior (Secretary) will release the assets. Specifically,

“such plan shall meet the following conditions:

- 1) Such plan has been approved by the appropriate Indian tribe and is accompanied by a resolution from the tribal governing body approving the plan.
- 2) The Secretary determines such plan to be reasonable after considering all appropriate factors, including (but not limited to) the following:
  - A) The capability and experience of the individuals or institutions that will be managing the trust funds.
  - B) The protection against substantial loss of principal.”

*[The Act; Title II; Sec. 202(b)]*

and

“In approving such plans, the Secretary shall ensure --

- 1) that the purpose and use of the judgment funds identified in the previously approved judgment fund plan will continue to be followed by the Indian tribe in the management of the judgment funds; ...”

*[The Act; Title II; Sec. 203(c)]*

Pursuant to The Act, The Navajo Nation (TNN) hereby submits this document entitled Request for Voluntary Withdrawal from the Trust Fund Program by The Navajo Nation to the Secretary of the Interior for the Secretary's review and approval. This document represents the Plan of Withdrawal of TNN's assets comprising The 1982 and 1986 Chapter Claims Fund (U.S. Court of Claims Docket Nos. 69 and 299, 256-69 and 377-70, 588-83L, and 353) and The 1982 Scholarship Claims Fund (U.S. Court of Claims Docket 229) held by the Secretary through the Bureau of Indian Affairs (BIA).

Throughout this document, The Navajo Nation will attempt to address each individual criteria and concern that the Secretary may have regarding the release of TNN's assets. TNN feels the beneficial long term interest of TNN members will be better served through direct management and oversight of these funds rather than continuing to receive these services from the BIA.

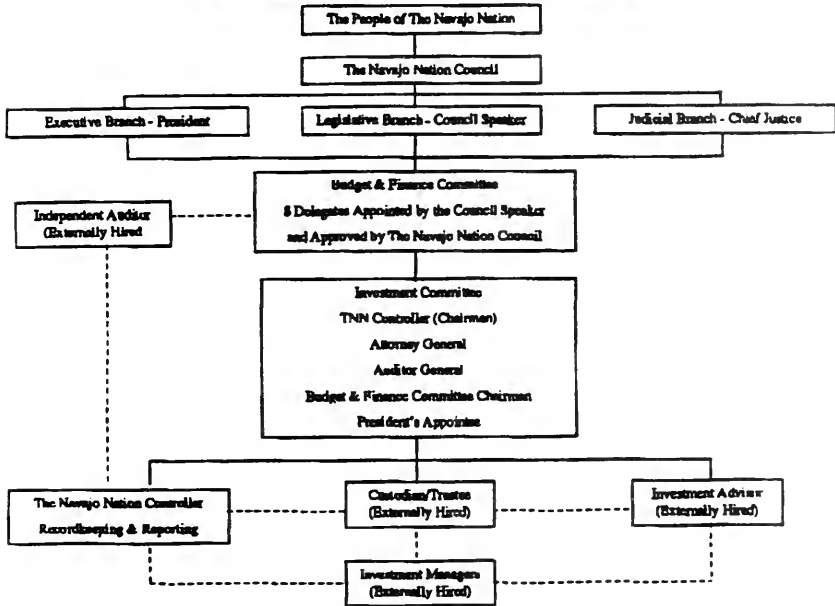
Also, this document will review the framework governing TNN's investment program and highlight the roles of the various participants. A brief discussion of the current status of the 1982 & 1986 Chapter Claims Fund and 1982 Scholarship Claims Fund as compared to TNN's other investment funds will be presented which will be followed by TNN's proposed plan for the BIA-held assets. The conclusion will summarize TNN's reasons for preparing this document and illustrate why the Secretary should find this a most compelling case to release the assets held by the BIA to The Navajo Nation.

## Section I

## B. Background

The Navajo Nation maintains a very structured and organized process in implementing its investment program.

The Navajo Nation Investment Management Flow Chart



All major investment policies require approval by TNN's Investment Committee and the Budget & Finance Committee of the Navajo Nation Council. Some of the characteristics and functions of each participant in TNN's investment program are highlighted below and described in more detail in The Statement of Investment Policies and Guidelines (Resolution BFO-61-90) in Section II of this document:

Executive Branch of The Navajo Nation

The Executive Branch maintains an informed and active role throughout the investment decision-making process. The President's office is often the last to approve and sign proposed resolutions.

Legislative Branch of The Navajo Nation

The Navajo Nation Council, which comprises the Legislative Branch of The Navajo Nation, delegates investment policy approval to the Budget & Finance Committee. The Council meets once a quarter.

Budget & Finance Committee

The Budget & Finance Committee meets monthly. As it relates to investment issues, they have the responsibility and authority (as stated in Resolution BFO-61-90, see Section II) to approve investment policies for the various funds comprising TNN's investment program, and also, to approve the externally hired investment manager contracts. They will periodically receive and review internal and external financial summary reports. The B&F Committee has the authority to hire and fire the external auditor. However, for the most part, the B&F Committee has delegated the implementation and administrative oversight of the investment details to the Investment Committee and the Division of Finance.

Investment Committee

At a minimum, the Investment Committee meets once a quarter. The Investment Committee is charged by the Budget & Finance Committee with developing and recommending investment policies for approval, reviewing and recommending all externally hired investment service providers (i.e., investment managers, consultants and custodians), and receiving and reviewing all investment performance reports from the service providers. In turn, this Committee reports to the Budget & Finance Committee upon request.

Controller and Financial Services Staff

The Controller chairs the Investment Committee and reports to the Budget & Finance Committee as well as TNN's Council. The Controller oversees the Division of Finance and is appointed by TNN's Council.

The Division of Finance staff records and reconciles all investment transactions onto TNN's financial systems on a daily basis. In addition, the Division of Finance will manage operating funds with the assistance of an external professional cash manager as well as monitor investment performance and fees against contractual requirements. The Accounting Manager



within the Division of Finance works with the Controller in reporting to the Investment Committee on a quarterly basis and to the Budget & Finance Committee and TNN's Council upon request. These reports document the status of all the financial assets belonging to TNN thereby providing substantive information for making decisions.

#### Investment Advisor

The Investment Advisor is an externally hired investment consultant that provides an objective and ongoing performance evaluation of TNN's investment managers, compliance monitoring of the investment managers relative to established guidelines and objectives, and consulting advice on various investment issues. Additionally, the Advisor will undertake asset allocation studies for TNN's various funds and assist the Investment Committee with conducting investment manager searches or master trustee/custodial searches. At a minimum, the Advisor meets with the Investment Committee on a quarterly basis.

#### Investment Manager(s)

Externally hired investment managers invest the funds on behalf of TNN pursuant to TNN's policies and guidelines established for the overall investment program as well as each manager's established investment policies, guidelines and objectives. They report to the Investment Committee in writing on a quarterly basis and in person on a semi-annual basis.

#### Custodian/Trustee

The custodian/trustee is hired-externally and is usually the trust division of a major money-center bank. Their primary function is to hold in custody all the securities that each of the investment managers manage in their portfolios. The custodian issues a monthly report detailing the securities transactions processed during that month as well as a listing of the market values for each security that is in the portfolio at the end of each month.

#### Auditor

The auditor provides an examination and a verification of all the assets in TNN's investment program.

#### Hiring Process and Review of External Service Providers

As it relates to the external service providers, a thorough and careful screening is conducted and reviewed for approval by all of TNN's investments-governing bodies given above. Some of the criteria that all external professional organizations must meet include: significant experience in each of their industries and with similar institutional client funds; qualified and respected professionals working for TNN's account; and finally, a track record for that organization that

would indicate significant added value to TNN's investment program in the future. All professional investment organizations rendering advice or managing assets must file a Form ADV with the U.S. Securities & Exchange Commission in accordance with the Investment Advisors Act of 1940. A short description of TNN's external professional investment organizations is provided in Appendix 1.

From the above discussion, it is clear to see that investment issues or ideas that need to be addressed are usually researched, reviewed and recommended by TNN's Investment Advisor, and if necessary, by other external investment specialists. If the matter is of significance, the Investment Committee will review and approve the proposal. Then the process continues with a recommendation from the sponsoring division's director accompanied by the proposal's information and a "Signature Approval Sheet" (SAS) that is routed to various divisions and department heads within TNN's governmental structure. The information and the sheet must be reviewed and signed by all the directors listed on the SAS before the proposed resolution can be considered for passage. As an example, an office within the executive branch of the President is one of the signatures required on the SAS, and they may attach an amendment to the recommendation and re-route the matter back to the originating division. Much like significant U.S. legislation and processes, the last step often involves the President's signature of approval. This process is outlined in greater detail in The Navajo Nation's Tribal Code, Title 2, Section 164. Albeit somewhat time-consuming, this entire process is very deliberate and thorough.

By closely following TNN's Tribal Code and Resolution BFO-61-90, the Budget & Finance and Investment Committees formally implemented the above processes in managing and monitoring TNN's investments in 1990. As of March 31, 1995, TNN's fiscal year ending date, the overall investment program consisted of 18 different funds and \$584-million in assets. Of that amount, the Bureau of Indian Affairs managed and custodied \$65.6 million in 4 different funds. This document addresses the \$59.1 million held by the BIA on behalf of The Navajo Nation's 1982 & 1986 Chapter Claims Fund and the 1982 Scholarship Claims Fund. As a side note, TNN may freely withdraw the other \$6.5 million remaining in the General Fund and the Navajo Rehabilitation Fund from the BIA pursuant to those funds' spending policies.

## Section I

### C. History of the BIA-Held Assets

In 1982, \$22 million of judgment funds was awarded to The Navajo Nation by the U.S. Government (see Appendix 2A). In 1986, another \$32.5 million of judgment funds was awarded to TNN (see Appendix 2B). In both cases, the Bureau of Indian Affairs (BIA) was designated as the agency to act as investment manager and custodian of these assets. These assets represent what is called The Navajo Nation's 1982 and 1986 Chapter Claims Fund.

Separately, but also in 1982, \$14.8 million was awarded to TNN for adding to The Nation's Scholarship Fund and acquiring some land (see Appendix 3). Once again, the BIA was designated as the investment manager and custodian.

Since the time of the awards, TNN has periodically withdrawn funds from the BIA primarily to pay for the various chapters' operating expenses in the case of the 1982 & 1986 Chapter Claims Fund, and in the case of the Scholarship Fund, to assist qualified students of Navajo descent in their pursuit of higher education. As mentioned before and according to the BIA's March 31, 1995 accounting records, the BIA manages and custodies approximately \$59.1 million for these two funds.

### Investment Restrictions of the BIA

The BIA investment program has attempted to preserve capital over short periods of time by investing in short to intermediate term U.S. government bonds. The BIA has orally communicated to TNN Financial Services officials that the BIA is required by the U.S. Government to follow very restrictive investment guidelines especially as it relates to the range of investable securities. The BIA manages funds with "protection of principal" as the main investment objective; and therefore, have investment guidelines that are more restrictive in terms of credit quality, type of security and maturity. In fact, the BIA may be prohibited by their own internal policies and guidelines from investing in higher returning securities (long-term Governments and corporate bonds) and higher returning asset classes (such as common stocks) which would more than protect the fund's principal from inflation over long time periods. This type of restriction severely erodes the income opportunities available to TNN over longer time periods. By continuing with the BIA's restrictions, the Funds' principal will not grow without external contributions, and inflation will "eat into" the principal and eventually reduce the value of the income stream.

Through Resolution BFN-53-91 (see Appendix 4), Approving an Investment Policy Regarding Navajo Nation Funds Held by the Bureau of Indian Affairs, which was approved by the Budget & Finance Committee, an investment policy was sent to the BIA regarding how The Navajo Nation wished to transfer all funds under the BIA's investment control to TNN's investment control.

Specific funds totalling \$135.5 million as of August 31, 1991 were listed in an attachment. The BIA denied this Navajo Nation policy request.

Later, in an October 23, 1992 correspondence from the Chairman of TNN's Investment Committee to the BIA (see Appendix 5), the letter detailed TNN's direction to the BIA in the Investment Guidelines of BIA Held Investments regarding how the various TNN funds were to be managed by the BIA. These guidelines are in accordance with TNN's overall investment policies and guidelines, Resolution BFO-61-90, which describes the nature and function of these Claims Funds and how they are classified as Dedicated Funds. Since Dedicated Funds provide ongoing revenues for specific operations or social programs, the funds should be invested in such a manner as to meet that role - especially if no future external contributions are expected. It does not appear that the BIA has been following TNN's October 1992 directions.

In particular, according to BFO-61-90, Dedicated Funds' Objectives are to:

- Retain sufficient investment return within the fund to offset the effects of inflation over time
- Maintain liquidity of investments to meet the budgeted program cash flows; and
- Minimize risk to investment principal.

Unfortunately, the BIA has taken a very short term view as it relates to these objectives and have not sought to adopt an investment strategy that would inflation-proof the funds during time periods of high inflation rates.

A quick analytical comparison of how the BIA-held asset's performance versus other dedicated fund's performance will show:

- 1) the lack of value added by BIA's asset management compared with even a passively indexed fund,
- 2) the inappropriateness of following the BIA's restrictive investment guidelines and
- 3) the need to diversify the assets and move them to external professional investment managers.

This analysis uses the actual March 31, 1991 starting balances held by the BIA, the actual cash flows for the past 4 fiscal years ending March 31, 1995, actual inflation rates and actual TNN's external investment managers' net of fees returns. (Please see next page)

In the Inflation Proofing Scenario, the main objective is for the funds to stay even with the rate of price increases. Hence, just to keep the same purchasing power as in March 31, 1991, TNN

## BIA vs. The Navajo Nation Active Investment Manager Program's Performance

(All dollars are in thousands - 000s omitted)

Balance As Of:

BIA-held assets on behalf of THN	3/31/81	3/31/82	3/31/83	3/31/84	3/31/85	
General Funds - Oil & Gas	\$53,145	\$43,844	\$44,505	\$1,451	\$1,340	
1982/1985 Chaparral Govt. Funds	\$54,480	\$54,998	\$54,895	\$55,482	\$49,505	
1982 Scholarship Funds	\$16,502	\$13,988	\$13,810	\$12,818	\$9,842	
Navajo Rehab. Fund	\$878	\$7,153	\$9,537	\$11,221	\$5,151	
<b>Total Balance</b>	<b>\$124,985</b>	<b>\$119,983</b>	<b>\$122,748</b>	<b>\$80,982</b>	<b>\$66,838</b>	
<b>Net Contribution</b>		<b>(\$24,444)</b>	<b>(\$3,111)</b>	<b>(\$45,195)</b>	<b>(\$19,290)</b>	
<b>Annual Investment Income Earned by the BIA</b>		<b>\$8,541</b>	<b>\$6,086</b>	<b>\$5,139</b>	<b>\$3,807</b>	<b>4 Year Total</b>
<b>BIA Rate of Return</b>		<b>7.9%</b>	<b>5.2%</b>	<b>6.3%</b>	<b>5.9%</b>	<b>5.7%</b>

**INFLATION-PROOFING SCENARIO**

Investment Earnings from Passively Indexing to the CPI	\$3,941	\$3,808	\$2,483	\$2,094	\$12,088
Inflation Rate	3.2%	3.1%	2.9%	2.9%	2.9%
<b>Difference between BIA Earnings and Inflation Proofing</b>	<b>\$4,800</b>	<b>\$2,458</b>	<b>\$2,956</b>	<b>\$1,873</b>	<b>\$11,957</b>

**PASSIVELY-INDEXING SCENARIO**

Investment Earnings from Passively Indexing the Assets to the Lehman Govt. 1 - 3 Yr. Index	\$11,454	\$9,825	\$2,622	\$3,140	\$27,041
Lehman Govt. 1 - 3 Year Index Returns	8.3%	8.4%	2.7%	4.4%	6.1%
<b>Est. Inv. Earnings Gain/(Loss) to the Navajo Nation</b>	<b>(\$2,913)</b>	<b>(\$3,788)</b>	<b>\$2,517</b>	<b>\$767</b>	<b>(\$3,388)</b>

**SCENARIO 1**

Estimated Investment Income earned by THN managers if assets were managed by them. (Bonds only)	\$11,540	\$12,223	\$2,888	\$2,925	\$29,556
Active Bond Mgrs. Rate of Return - Net of Fees (50% Sovran/50% Barrow Hanley)	8.4%	10.4%	2.9%	4.1%	6.7%
<b>Est. Inv. Earnings Gain/(Loss) to the Navajo Nation</b>	<b>(\$2,988)</b>	<b>(\$6,157)</b>	<b>\$2,270</b>	<b>\$881</b>	<b>(\$5,905)</b>

**SCENARIO 2**

Estimated Investment Income earned by THN managers if assets were managed by them. (17% Equity/83% Bonds)	\$11,417	\$12,810	\$2,988	\$4,210	\$31,405
Estimated Rate of Return - Net of Fees (8.5% Smith Barney/8.5% Newbolds/41.5% Sovran/41.5% Barrow Hanley)	8.3%	10.9%	3.9%	5.9%	7.2%
<b>Est. Inv. Earnings Gain/(Loss) to the Navajo Nation</b>	<b>(\$2,876)</b>	<b>(\$6,744)</b>	<b>\$2,171</b>	<b>(\$303)</b>	<b>(\$7,753)</b>

would have needed \$12.1 million more by March 31, 1995. The BIA's investment earnings of \$23.7 million did exceed that amount during this 4 year time period because inflation has been relatively tame. Sustained periods of higher inflation usually ravage fixed income portfolios.

Compared against the Lehman 1 - 3 Year Government Bond Index, the BIA fell almost \$3.4 million short over the past 4 years. In other words, the BIA's "active management" underperformed an "unmanaged index fund". This is a case of value lost rather than value added. At the very least, the BIA should match the return of a reasonable benchmark - in this example, the Lehman 1 - 3 Year Government Bond Index. That is definitely not the case here.

Had the BIA-held assets been managed by TNN's bond managers who invest for TNN's other Dedicated Funds in Scenario 1, the difference between what the BIA earned and what TNN's bond managers would have earned becomes amplified. The difference translates into an income opportunity loss of \$5.9 million over the past 4 years. This \$5.9 million added value by being invested in TNN's investment program is equivalent to a 1% net of fees rate of return per year for 4 years. This is a result of the external bond managers following TNN's established investment guidelines and their own active management expertise.

Scenario 2 demonstrates the most realistic comparison because if the BIA had transferred the assets to TNN four years ago, those assets would have been invested in this manner. Here, the 17% equity/83% bond asset mix is the most conservative policy that TNN could adopt yet still be able to meet their goals of maximum long-term spending of income and inflation proofing the principal. This policy would have yielded \$31.4 million in income over the past 4 years which is \$7.7 million above what the BIA actually earned.

These initial illustrations indicate that the BIA may have preserved capital and generated income in the most recent 4 fiscal years ending March 31, 1995, but a passively indexed investment in the Lehman 1 - 3 Year Government Index not only would have done the same but also would have exceeded the BIA's performance. This demonstrates the lack of value added by the BIA's management of assets.

In Scenario 1, by following TNN's investment guidelines and policies which allow for corporate bonds and slightly longer term Governments, TNN's active bond managers would have added \$5.9 million above the BIA's earnings.

In Scenario 2, TNN's investment managers for their other Dedicated Funds would have added even more value than in Scenario 1 by managing 17% of the assets in stock portfolios. Their 1.5% per year net of fees outperformance reinforces the inappropriateness of the BIA's restrictive guidelines relative to TNN's goals and objectives and the need to diversify the assets into equities - capabilities not offered by the BIA. In both Scenario 1 and 2, external professional investment managers would have added significant value above what the BIA provided. At this point, several changes to the portion of assets held by the BIA should be made and will be addressed next in Section I D.

## Section I

D. The Proposed Plan

As the first of four parts of this proposal, The Navajo Nation is requesting the withdrawal from the Secretary of the Interior, and held/managed by the BIA, all assets comprising TNN's 1982 & 1986 Chapter Claims Fund and 1986 Scholarship Claims Fund as early as possible. The Navajo Nation is clearly convinced that the long term interests of TNN members will be better served through direct management and oversight of these funds rather than continuing to receive these services from the BIA. By having this document in Resolution \_\_\_\_\_ and approved by The Nation's Council and signed by TNN's President Albert Hale on \_\_\_\_\_ (after being recommended for approval through the resolution approval process discussed in Section I A.), the Secretary of the Interior should feel confident that "the plan has been approved by the appropriate Indian tribe and is accompanied by a resolution from the tribal governing body approving the plan."

From an implementation standpoint, TNN's Financial Services Division is ready at any time to receive the BIA-held assets and deploy those assets in a manner that is consistent with TNN's investment policies and guidelines for the overall investment program as well as the specific fund. As mentioned before in Section I A., these policies and guidelines (BFO-61-90) were established and implemented in 1990 and provide TNN with a general framework for their investment program. Specific fund guidelines usually incorporate aspects of BFO-61-90, but will specify the expectations, limitations and reporting procedures for each hired investment manager. Hopefully, the Secretary of the Interior will develop a sense that not only has The Navajo Nation been following a very structured and well-organized process, but that they have been very prudent in managing their financial assets. Where appropriate, TNN has enlisted outside professionals to provide them with investment guidance, investment management, custodying of assets, and an external audit. The rates of return that TNN has earned in their investment program have been competitive, if not outstanding, especially when compared against the BIA's track record.

As the second part of this proposal, TNN proposes that the withdrawn assets be custodied with their hired trustee/custodian and managed by their externally hired professional investment managers. All of these professional investment organizations already work on behalf of TNN's other Dedicated Funds and all were selected after completing a rigorous screening process conducted by TNN's investment consultant. All the investment management firms as well as TNN's investment consultant have on file an ADV-Form in accordance with the U.S. Securities & Exchange Commission's Investment Advisor's Act of 1940. Each investment organization's contract with TNN also has been approved by the Budget & Finance Committee and signed by the President. The Secretary of the Interior may refer to a listing of the investment professional organizations in Appendix 1 to understand "the capability and experience of the individuals or institutions that will be managing the trust funds". Additionally, copies of each organizations'

liability insurance documents have been enclosed to further alleviate any concerns that the Secretary may have in the event of unusual mishaps.

The Navajo Nation views the third part of this proposal as the most critical in terms of "protection against substantial loss of principal". Since the BIA-held assets are categorized as Dedicated Funds, their specific asset allocations (established within their individual guidelines and policies) should provide for ongoing operations and social programs well into the future. With respect to the 1982 and 1986 Chapter Claims Fund and the 1982 Scholarship Claims Fund, a comprehensive asset/liability study was conducted by TNN's investment consultant and their recommendations were reviewed and approved by the Investment Committee and the Budget & Finance Committee.

In summary, in order for TNN to maintain their existing spending policy and, at a minimum, attempt to inflation-proof the Funds, the asset allocation needs to incorporate at least 17% equities and, at most, 83% government and corporate bonds. For Dedicated Funds, this asset allocation would still be considered very conservative and the risk of substantial principal loss would be minimal. As we saw in Scenario 2 earlier, over the most recent 4 fiscal years (which included a difficult 1994 for the financial markets), this 17% equity/83% bond allocation still averaged an annualized 7.2% net of fees rate of return when managed by TNN's professional investment managers - roughly 1.5% per year for 4 years above what was actually earned by the BIA. Also, not one of the 4 fiscal years posted a negative return.

Lastly, as Part Four of this proposal, The Navajo Nation does intend to maintain "the purpose and use of the judgment funds identified in the previously approved judgment fund plan..." The "previously approved judgment fund plan" refers to Resolutions CD-33-83 and CD-67-86 in the case of The 1982 & 1986 Chapter-Claims Fund and, in the case of the 1982 Scholarship Claims Fund, a December 28, 1982 letter from Mr. Ted Koenig, Area Director for the BIA in Window Rock, AZ to Mr. Peter McDonald, Navajo Tribal Council Chairman at the time (see Appendices 2A, 2B and 3).



## Section I

### E. Conclusion

Hopefully, the Secretary of the Interior has gained some broad understanding about The Navajo Nation's approach to their overall investment program from reading this document. TNN has made a significant commitment in terms of time and resources to prudently manage and oversee their financial resources. The established committees, the proposed resolution passage process, the investment manager selection process, and the different professional investment organizations that they have retained to help them demonstrate that commitment. The results over the past four fiscal years, in particular, would suggest that The Navajo Nation has been well-rewarded for their diligent efforts.

It is within this framework that The Navajo Nation is proposing to voluntarily withdraw their judgment assets held by the Secretary of the Interior through the Bureau of Indian Affairs. TNN intends to maintain the purpose and spending policies of these judgment funds but the only difference would be that they intend to better manage these funds with a longer term perspective. From the various scenario comparisons and the discussions above, the Secretary should find this case a most compelling one for releasing the assets held by the BIA to The Navajo Nation and allow TNN to incorporate and manage these assets within their already established investment program. Failure to do so would severely erode the income opportunities available to The Navajo Nation in the future.

## Section II

## THE NAVAJO NATION

**INVESTMENT POLICIES AND PROCEDURES****(Resolution BFO-61-90, Adopted October 5, 1990)**

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**THE NAVAJO NATION**

**INVESTMENT POLICIES AND PROCEDURES**

**I. GENERAL OBJECTIVES AND RESPONSIBILITIES**

The Investment Policies and Procedures (Policies) of the Navajo Nation (TNN) provide management personnel with policy guidance for investing TNN's financial resources. The policies provide the framework for TNN's execution of its fiduciary responsibility to tribal members, employees, and other beneficiaries of Tribal funds.

Policy makers, management and professionals hired by TNN to develop and implement the policies will act with care, skill, prudence and diligence that a prudent person acting in a like capacity and familiar with such matters would use.

These policies will be reviewed and reaffirmed or modified as appropriate on an annual basis. Responsibility for adoption, reaffirmation, modification and administration of the policies will be as follows:

Budget and Finance Committee

Pursuant to Navajo Tribal Council Resolution CD-68-89, the Budget and Finance Committee is authorized to coordinate, oversee and regulate fiscal, financial, *Investment*, Contracting and Audit policies of the Navajo Nation. As such, the Budget and Finance Committee (B & F) will approve these policies as initially developed and will annually reaffirm the policies or approve the modified policies. B & F approval may also be required to modify Section III; IV (D); and V at any time before the next annual review.

Investment Committee

- The Investment Committee should consist of:
  - (1) Controller; pursuant to 12 N.T.C. Section 203, the Controller shall serve as Chairman of the Investment Committee.
  - (2) Attorney General
  - (3) Auditor General
  - (4) President's Appointee
  - (5) Chairman, Budget & Finance Committee

- The Investment Committee (Committee) will approve these policies as initially adopted and will approve all modifications to these policies prior to the next annual review;
- Develop and manage a Funding Implementation Plan;
- Select the Investment Advisor and approve the Advisor's Contract;
- Accept or reject the Advisor's recommendations for money managers and custodians and approve each money manager and custodial contract;
- Receive quarterly reports from the Advisor regarding the performance of money managers and receive reports from individual money managers periodically;
- Receive quarterly reports from the Controller, which reconciles to the Advisor's report, regarding the status of each fund's investment; and
- Monitor the performance of the Controller in administering these policies.

#### Controller

- The Controller is responsible for the physical transfer of assets between the various custodial accounts;
- Managing the cash equivalent portfolios as directed by the Committee;
- Reconciling the books, custodial records and money manager records on a monthly basis;
- Accounting for each fund's ownership of commingled investment pools;
- Monitoring performance and fees against contractual requirements; and
- Presenting a quarterly report to the Committee which outlines the status of each fund's investments and which reconciles to the Advisor's report.

## II. FUND CLASSIFICATION

- A. Following are the Investment fund classifications for purposes of the investment policies:

Cash Management - Funds required for day-to-day operations or which must otherwise be immediately available;

Dedicated Funds - Funds which provide ongoing revenues for specific operation or social programs;

Benefit Plans - Funds held on behalf of Tribal employees; and

Permanent Fund(s) - Funds set aside for an unspecified use generally far into the future.

B. TNN funds are initially classified as follows:

Cash Management - The General Fund, the Business Industrial Development Fund, the Navajo Dam Escrow Fund, the liquidity component of the Retirement Fund and the Worker's Compensation Fund.

Dedicated Funds - The 1982 Claims Fund - Scholarship, The 1982 Claims Fund - Chapter, The 1986 Claims Fund, the Scholarship Fund, Handicapped Services Fund, Senior Citizens Fund, Vocational Education Fund and Navajo Academy.

Benefit Plans - The Retirement Fund and The Worker's Compensation Insurance Fund.

Permanent Fund(s) - The Permanent Trust Fund.

C. Funds Not Classified

The Nihibesso Retirement Fund (401 (K) Plan) is not included within the scope of these policies because plan participants self-direct their investments.

The Deferred Compensation Fund is not included within the scope of these policies because a separate committee has complete oversight responsibility for the program.

D. Additional Funds

From time-to-time TNN sets aside financial resources into new funds. All such funds will be classified into one of the four categories defined above

or a new category if appropriate. Such classification will be recommended by the Controller and approved by the Committee.

Between the time a new fund is created and the investment classification of the fund is approved by the Committee, the new fund will be treated as a Cash Management fund.

- E. Each Fund classification will be managed as an individual pool, unless they specifically cannot be commingled. Accordingly, all funds within a classification will share equally in the result of the pool's investment activity. Funds which cannot be commingled will be managed separately.

The Controller may, at his discretion, establish more than one cash management fund since the investment results of professionally managed cash equivalents portfolios should not differ significantly and the cost of allocating the commingled results may outweigh the benefits of identical return.

### III. **INVESTMENT MANAGEMENT APPROACH**

Tribal Investments will be managed by professional money managers except to the extent the Committee specifically delegates investment authority for Cash Management portfolios to the Financial Services Department.

The Committee will conduct a search for, and engage, an Investment Advisor (Advisor). The Advisor will have the following responsibilities:

- Conduct a search for professional money managers for the Investment funds (as set forth in these initial policies) - Individual selections will be approved by the Committee;
- Negotiate fee arrangements and other contract terms with the money managers on behalf of TNN (Individual money management agreements will be approved by the Committee);
- Provide the Committee with quarterly performance evaluations for each money manager;
- Negotiate and arrange for brokerage and custodial services - Individual selections will be approved by the Committee;
- Make recommendations regarding reaffirmation and modification of these policies on at least an annual basis; and

- Handle certain other matters, primarily reporting, as described elsewhere in these policies.

#### IV. ASSET CATEGORY DEFINITIONS

Investments must be made in accordance with accepted institutional investment practices. Investments must be of high quality and well diversified. Managers must exercise prudence in all matters and invest solely for the benefit of the Navajo Nation.

- A. Cash Equivalents - Interest bearing securities which maximize liquidity and safety of principal. The following cash equivalents are specifically authorized investments:
- Certificates of Deposit which are 100% federally insured or collateralized with government or government agency securities with a market value of at least 102% of the face amount of the certificate. Preference placement in Certificates of Deposits may be granted to those Financial Institutions who are supportive of the Navajo Nation's Fiscal objectives (i.e. loans, lease/purchase agreement, check cashing fee waiver, etc.)
  - United States Treasury Bills;
  - Repurchase Agreements acquired under a Committee approved master agreement;
  - Commercial Paper of the highest three grades as rated by a nationally recognized rating agency; and
  - Commercial Bank Trust Department commingled liquidity funds specifically approved by the Committee.
  - Maturities should be short enough that funds can be liquidated with no loss of principle.
  - Domestic Equities - common and preferred stocks
- B. The emphasis of the common stock portfolio will be on high quality companies which offer above average returns as a protection against inflation. Securities should be publicly owned and traded actively enough to insure liquidity of the holdings without significantly adverse effects on

price. Investment in any one corporation shall not exceed 5% of the equity portfolio at the time of purchase, and will be sold to prevent the percentage from exceeding 7% at market valuation. Investment in any one corporation will not exceed 5% of the outstanding shares of that corporation.

- C. **Domestic Fixed Income - Investment grade, marketable debt securities.** Includes Certificates of Deposit over one year, United States Treasury Issues, United States Agency (or Sponsored) Issues (FNMA, Federal Land Bank, GNMA, Federal Farm Credit, Federal Home Loan Bank, Student Loan Marketing), Mortgage Backed Securities, and Corporate Bonds. Minimum quality is BAA with a maximum of 100% in this classification at time of purchase. Maturities should be maintained in an intermediate range to minimize risk price declines.
- D. **Prohibited Investments - TNN funds will not be invested in real estate, except as specifically approved by the Committee, options, futures, commodities, venture capital funds, private placements debt securities, or equity securities not traded on a national exchange or international securities.**

#### V. FUNDS OBJECTIVES

It is understood that investment returns are affected by many economic and political factors and will fluctuate from year to year. It is important to state investment objectives as goals to be realized over three to five years, but not necessarily in each year.

##### A. CASH MANAGEMENT

###### Objectives

- Minimize uninvested balances
- Immediate availability of funds without risk to principle
- Low credit risk

##### B. GENERAL FUND INVESTMENTS

###### Objectives

- Earn greater than cash equivalent rates on funds in excess of those needed for operating purposes. (The cash equivalents required for



operating purposes will be determined by the Controller on a quarterly basis.)

- Minimize principal volatility.

C. DEDICATED FUNDS

Objective

Insure total return to meet the following objectives:

- Retain sufficient investment return within the fund to offset the effects of inflation over time;
- Maintain liquidity of investments to meet the budgeted program cash flows; and
- Minimize risk to investment principal.

D. BENEFIT PLANS

Objective

- Ensure that sufficient liquidity exists to fund benefits as they become payable; and
- Subject to prudent levels of risk, maximize long-term investment returns to minimize the costs of funding these employee benefits in the long run.

E. PERMANENT FUND

Objective

- Since these funds will not be used for 15 to 20 years the objectives should be to maximize growth through high quality investments which are diversified so that specific risk is minimized. Volatility must be controlled within acceptable levels.

VI. OTHER MATTERS

A. PROHIBITED SECURITIES

1. TNN will not invest in a company with which it is involved in litigation or a major contractual dispute. The Attorney General will provide a listing of such companies to the Advisor on a quarterly basis. The Advisor will be responsible for providing the list to the money managers.
  2. TNN prohibits investments in companies which derive revenue from the manufacture or distribution of alcoholic beverages.
- B. CORPORATE ISSUES

The money managers may vote proxies of investee companies as they deem appropriate. On a quarterly basis, the Advisor will report on proxy votes to the Committee. The Committee will reserve its right to exercise its proxy rights when it so chooses.

Money Managers will forward copies of the annual statements of each of the investee companies to keep on file at the Controller's office.

Managers will utilize brokers who provide the best net cost (trade execution and commission fee) for their transactions.

## Section III

<p>THE NAVAJO NATION STATEMENT OF OBJECTIVES AND INVESTMENT POLICY GUIDELINES</p>
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**FUND TYPE:** 1982/1986 Chapter Claims Fund

I. **GENERAL**

Briefly, the 1982/1986 Chapter Claims Fund was established as a result of judgment funds awarded to The Navajo Nation in 1982 and in 1986 (U.S. Court of Claims Docket Nos. 60 and 299, 256-69 and 377-70, 588-83L, and 353). The Fund's purpose is to pay for the operating needs of the various chapters that comprise the Nation. As per Resolution CD-67-86 of the Navajo Tribal Council:

"a) Ninety-five percent (95%) of the Fund income may be distributed annually to each certified Navajo Chapter based on registered voters. Each Chapter shall determine the most appropriate use of all funds received; provided that all Fund uses must be for the common benefit of chapter members and for the general, social and economic development of the local chapters, and Chapter operating and maintenance expenses; and provided that expenditure is pursuant to an annual Chapter budget approved by the voting members of the Chapter.

b) Five percent (5%) of the Fund income shall be reinvested in the Fund to cover the rate of inflation and to provide for reasonable Fund growth."

This Policy Guideline is intended to provide investment objectives and guidelines for The Navajo Nation's 1982/1986 Chapter Claims Fund. As such, it is subject to all provisions of The Navajo Nation Investment Policies and Procedures adopted by Resolution of the Budget and Finance Committee, BFO-61-90.

The Navajo Nation (TNN), the Budget and Finance Committee (B&F), the Investment Committee (Committee), and Staff have fiduciary responsibilities as delegated by the Tribal Council with respect to the investments of the Fund. The responsibilities include developing a Statement of Objectives and Investment Policy for the Fund administered by TNN and B&F.

II. **PURPOSE**

This statement of investment objectives and policies is set forth in order that:

1. There is a clear understanding of the responsibilities of the Tribal Council, B&F, the Committee, the Staff, any person or group of persons hired to act in a security selection and implementation capacity, hereinafter referred to as Manager(s), and any person or group of persons hired to act in a consultative capacity, hereinafter referred to as Consultant, as they relate to the investment policy and objectives of the Claims Fund of TNN, hereinafter referred to as The Fund.
2. The Manager(s) are given guidance/limitations and fully understand what is expected of them in the management of the assets of The Fund.
3. The Committee has a basis for evaluating the investment performance of The Fund and its managers.

It is the intent of this statement to establish a framework and/or philosophy which will guide the Manager toward the performance desired. It is intended that the objectives be sufficiently specific to be meaningful, but sufficiently flexible as to be practical.

The Investment Committee or Staff with delegated responsibilities for investments may, from time to time, find it necessary to direct Investment Managers, in writing, to follow more conservative guidelines regarding the investments. This could include the investment period, the types of investments or other factors considered necessary to preserve the funds.

#### COMMITTEE RESPONSIBILITY

B&F is charged by law with the responsibility for the investment of the assets of The Fund. Whereas B&F has delegated the administration of the investments to the Investment Committee, the Investment Committee shall discharge their duties in the interest of the Navajo Nation and for the exclusive purpose of (a) satisfying the purposes of the Fund, and (b) defraying reasonable expenses of administering The Fund. They will discharge their duties with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in conduct of an enterprise of a like character and with like aims.

#### INVESTMENT MANAGEMENT

The Committee is authorized and permitted to engage the services of one or more Managers who possess the necessary specialized research facilities and skilled manpower to meet these investment objectives and guidelines. Accordingly, the Committee requires the Managers to adhere to the "prudent man rule" under such Nation or Federal Laws as now, or in the future, apply to the investment of the Fund.

All managers retained to invest the assets will be firms with at least five years of investment experience and registered under the Investment Advisors' Act of 1940. Prior to being retained by The Navajo Nation, all managers' returns shall have outperformed a representative peer group of other investment managers and appropriate benchmark indices. Managers retained, in the judgment of The Navajo Nation and its outside investment consultant, are expected to be skilled and capable of generating competitive returns when compared against representative peer firms and relevant benchmark indices.

The policy guidelines may be changed from time to time by the Committee after consideration of the advice and recommendations of the Consultant, Manager, and/or others. All policy guidelines must be in accordance with the General Investment Policy of the Navajo Nation. All modifications of policy guidelines and objectives will be in writing and signed by the Committee as an amendment to this document. Copies of any and all modifications to this document will be forwarded to the Consultant, and Manager, and other interested party or parties.

#### DELEGATION OF AUTHORITY

The Manager(s) will be held responsible for making all investment decisions regarding security selection and timing of purchases and sales of Fund assets subject to the policy guidelines of the Navajo Nation and this Fund, and will be accountable for the objectives indicated herein with the exception of any specific limitations set forth in this document.

#### STATEMENT OF OBJECTIVES

The primary objectives of The Fund shall be:

- Retain sufficient investment return within the fund to offset the effects of inflation over time;
- Maintain liquidity of investments to meet the budgeted program cash flows; and
- Minimize risk to investment principal.

Financial objectives of the Fund have been established in conjunction with a comprehensive review of the current and projected long term financial requirements of The Fund. The targeted rate of return is 3.2% above the Consumer Price Index. While there cannot be complete assurance that the defined objectives will be realized, it is believed that the likelihood of their realization is reasonably high, based on the investment policy of the Funds. It is the Committee's belief that the asset allocation ranges specified in this policy statement will achieve the stated objectives. The Committee realizes that market performance varies from period to period. Accordingly, relative performance benchmarks for the managers are set forth in a later section entitled Control Procedures.

#### **ASSET ALLOCATION**

It shall be the policy of the Fund to invest its assets in accordance with the maximum and minimum range for each asset class as stated below:

<u>Asset Class</u>	<u>Minimum</u>	<u>Target</u>	<u>Maximum</u>
Fixed Income and Cash Equivalents	80%	83%	86%
Domestic Equity	14%	17%	20%

The Budget & Finance Committee is guided by the philosophy that asset allocation is the most significant determinant of long term investment return. The above asset allocation should be capable of achieving the objectives stated in the Objectives section of this document. The asset allocation will be maintained as close to the target allocations as reasonably possible. Fund withdrawals and any additions shall be allocated across portfolios to bring the asset mix as close to the target allocation as possible.

The asset allocation ranges established by this investment policy represent the long term perspective. Rapid unanticipated market shifts may cause the asset mix to fall outside the policy range. Any divergence should be of a short term nature. The Controller of TNN will review the asset mix of the Fund on a quarterly basis and direct a rebalancing of the asset mix to within the policy range if necessary.

Should an investment manager wish to exceed the guideline limits, special prior approval by the Committee will be needed. For special situations, the Committee can grant special exemptions from the guidelines. Under no circumstances should a manager actively exceed guideline limits without formal prior approval by the Committee.

**DIVERSIFICATION**

Investment diversification is consistent with the intent to minimize the risk of large losses to the Fund. Consequently, the total portfolio will be constructed by the individual fund managers to attain prudent diversification with regard to the concentration of holdings in individual issues, corporations and/or industries. To ensure adequate diversification, no manager will hold more than 8% at market value of its portion of the Total Fund in any single security. No more than 8% of the Fund may be held in securities of any one organization, except for U.S. Government Securities.

**VOLATILITY**

Consistent with the desire for adequate diversification, the investment policy is based on the assumption that the volatility of the combined portfolios will be similar to that of the market opportunity available to institutional investors with similar return objectives. Consequently, it is expected that the volatility of the total portfolio, in aggregate, will be reasonably close to the volatility of a commitment-weighted composite of the appropriate market indices, for example, S&P 500 Index for stocks and Salomon Brothers Broad Index for bonds, etc.

**LIQUIDITY**

The Controller will review cash flow projections on a periodic basis. The Committee will review the projected cash flow requirements at least annually.

**III. CONTROL PROCEDURES****Review of Investment Objectives**

The achievement of the Fund's investment objectives will be reviewed on an annual basis. This review will focus on the continued feasibility of achieving the objectives and the continued appropriateness of the investment policy. It is not expected that the investment policy will change frequently; in particular, short-term changes in the financial markets should generally not require an adjustment in the investment policy.

**Review of Investment Manager(s)**

The investment manager(s) shall discharge their responsibilities with respect to that portion of The Fund's assets under their management in accordance with responsible fiduciary practices.

Each manager shall be given the responsibility to advise the Committee of any material change in personnel, investment strategy or other pertinent information potentially affecting performance.

The Committee will review results of all managers at least quarterly. These reviews will focus on:

- the managers' adherence to the policy guidelines;
- comparison of managers' returns against funds using similar guidelines (in terms of the stock/bond ratio, diversification, volatility, style, etc.);
- the opportunities available in both equity and debt markets;
- material changes in the managers' organizations, such as philosophical and personnel changes, acquisitions or losses of major accounts, etc.

#### Investment Manager Guidelines

##### - Stocks

Stocks purchased for the equity portfolio shall be those of high quality, companies whose shares trade in adequate volume to insure liquidity. Maximum holding in any one company shall be limited to 8% at market value.

##### - Fixed Income

Fixed income purchases shall be limited to marketable securities issued or guaranteed as to principal and interest by the U.S. or Canadian governments or any agencies or instrumentalities thereof or to corporate issues of the four (AAA through BAA) quality grades as established by one or more of the nationally recognized bond rating services. Mortgage pass-throughs and collateralized debt obligations may be held. In particular, Collateralized Mortgage Obligation holdings shall consist only of mortgages guaranteed by the full faith and credit of the US Government or an agency thereof and exhibit price volatility and liquidity similar to components of the Lehman Mortgage Backed Securities Index.

In no event, however, should the debt securities of any one private corporation exceed 5% at cost and 10% at market of the Fund's assets under management. No more than 10% of the bond portfolio shall be below A quality.

Duration of the bond portfolio is to be no more than 6 months longer than the Salomon Brothers Broad Index.



- Cash Reserves

Cash and cash equivalents are fixed income securities maturing in 360 days or less. Holdings should be minimized beyond amounts needed for forthcoming distributions from the Fund. In keeping with this philosophy, equity managers shall have discretion to invest up to 10% of assets under management in cash equivalents when they deem appropriate. However, the Managers will be evaluated against their peers on the performance of total funds under their direct management.

Fixed income managers may hold higher amounts in short maturity securities as long as the total portfolio duration remains near the target.

Cash equivalent reserves shall have quality ratings of A-1, P-1 or higher by at least one leading rating agency.

Restrictions

The following restrictions apply to all investment portfolios:

- TNN will not invest in companies with which it is involved in litigation or major contractual dispute. The Attorney General will provide and maintain a list of such companies.
- TNN Investment Policy prohibits investment in companies which derive revenue from the manufacturer or distributor of alcoholic beverages.
- Other prohibited investments include:

Real estate - except as specifically approved by the Investment Committee;  
 Options, warrants, futures, commodities and commodity contracts;  
 Short sales, margin transactions or any leveraged investments;  
 Private placement debt securities, equity securities not traded on a U.S. stock exchange, or venture capital investments;  
 Natural resource properties such as oil, gas or timberlands;  
 Letter or other unregistered equity securities;  
 International securities.

Non Individual Securities

In addition to direct investment in individual securities, properly diversified commingled funds and other pooled asset portfolios are acceptable investment vehicles. All commingled trusts, mutual funds or other pooled asset portfolios must conform to the

security restrictions set above with the following exception - the Investment Committee may encourage managers of pooled or commingled funds to adopt The Navajo Nation's prohibitions of securities of specific corporations; however, it is recognized that adherence to these restrictions in a pooled investment vehicle may not be possible.

#### PERFORMANCE EXPECTATIONS

The most important performance expectation is the achievement of investment results that are consistent with The Fund's investment policy statement. A long term average annual return of 3.2 % above Consumer Price Index is a reasonable expectation. Performance will be monitored against a custom index made up of 17% S&P 500, 83% Salomon Broad Index and against a universe of Balanced Funds. Total Fund performance should outperform the aforementioned custom index at least by the amount of management fees.

#### Equities

Equity performance should achieve the following performance objectives over a market cycle, which is defined as a time period over which a broad market index, such as the S&P 500, falls from a high point to a low point, and back to a high point, or the reverse.

- Be greater than S&P 500 by 1%
- Be greater than SEI Equity Only Median
- Be greater than the 40th percentile for Manager Style.

#### Fixed income

Fixed income performance should achieve the following performance objectives over a market cycle:

- Total fixed income should exceed the median SEI bond fund on a total fund return basis for portfolios of similar maturity.
- Be greater than the Salomon Brothers Broad Index by 0.5%

Volatility for the portfolios should not exceed that of the relevant indices.

#### Other

While these standards should be achieved over a complete market cycle, the Investment Committee will also monitor performance over shorter periods of time.

**IV. REPORTS**

Managers will provide monthly reports to the Finance Division of TNN as requested by TNN and will be prepared to make quarterly presentations to the Committee, if requested.

**V. PROXIES**

Investment managers will vote proxies in accordance with TNN Investment Policies and Procedures. Voting will be in the best interest of the Navajo Nation. A record of voting will be maintained by the manager and reported quarterly. The Investment Committee of TNN reserves the right to exercise its proxy rights when it so chooses.

**VI. BROKERAGE**

Managers are responsible for securing the best net cost for transactions (commission plus execution cost). Subject to this requirement, TNN may direct managers to utilize certain brokerage firms in order to reduce Fund expenses.

## Section IV

<p style="text-align: center;">THE NAVAJO NATION STATEMENT OF OBJECTIVES AND INVESTMENT POLICY GUIDELINES</p>
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**FUND TYPE:** The Scholarship Fund

I. **GENERAL**

Briefly, the Scholarship Fund was established as a result of judgment funds awarded to The Navajo Nation in 1982. The Fund's purpose is to assist those college-bound students of Navajo descent that meet certain academic criteria and require financial assistance according to Resolution CAP-25-82 and Navajo Nation Use Plan for the Judgment Award Under Court of Claims Award Docket No. 229. Also, each college graduate is under a moral obligation to return to the Navajo Nation to provide professional services.

This Policy Guideline is intended to provide investment objectives and guidelines for The Navajo Nation's Scholarship Fund. As such, it is subject to all provisions of The Navajo Nation Investment Policies and Procedures adopted by Resolution of the Budget and Finance Committee, BFO-61-90.

The Navajo Nation (TNN), the Budget and Finance Committee (B&F), the Investment Committee (Committee), and Staff have fiduciary responsibilities as delegated by the Tribal Council with respect to the investments of the Fund. The responsibilities include developing a Statement of Objectives and Investment Policy for the Fund administered by TNN and B&F.

II. **PURPOSE**

This statement of investment objectives and policies is set forth in order that:

1. There is a clear understanding of the responsibilities of the Tribal Council, B&F, the Committee, the Staff, any person or group of persons hired to act in a security selection and implementation capacity, hereinafter referred to as Manager(s), and any person or group of persons hired to act in a consultative capacity, hereinafter referred to as Consultant, as they relate to the investment policy and objectives of the Scholarship Fund of TNN, hereinafter referred to as The Fund.
2. The Manager(s) are given guidance/limitations and fully understand what is expected of them in the management of the assets of The Fund.

3. The Committee has a basis for evaluating the investment performance of The Fund and its managers.

It is the intent of this statement to establish a framework and/or philosophy which will guide the Manager toward the performance desired. It is intended that the objectives be sufficiently specific to be meaningful, but sufficiently flexible as to be practical.

The Investment Committee or Staff with delegated responsibilities for investments may, from time to time, find it necessary to direct Investment Managers, in writing, to follow more conservative guidelines regarding the investments. This could include the investment period, the types of investments or other factors considered necessary to preserve the funds.

#### COMMITTEE RESPONSIBILITY

B&F is charged by law with the responsibility for the investment of the assets of The Fund. Whereas B&F has delegated the administration of the investments to the Investment Committee, the Investment Committee shall discharge their duties in the interest of the Navajo Nation and for the exclusive purpose of (a) satisfying the purposes of the Fund, and (b) defraying reasonable expenses of administering The Fund. They will discharge their duties with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in conduct of an enterprise of a like character and with like aims.

#### INVESTMENT MANAGEMENT

The Committee is authorized and permitted to engage the services of one or more Managers who possess the necessary specialized research facilities and skilled manpower to meet these investment objectives and guidelines. Accordingly, the Committee requires the Managers to adhere to the "prudent man rule" under such Nation or Federal Laws as now, or in the future, apply to the investment of the Fund.

All managers retained to invest the assets will be firms with at least five years of investment experience and registered under the Investment Advisors' Act of 1940. Prior to being retained by The Navajo Nation, all managers' returns shall have outperformed a representative peer group of other investment managers and appropriate benchmark indices. Managers retained, in the judgment of The Navajo Nation and its outside investment consultant, are expected to be skilled and capable of generating competitive returns when compared against representative peer firms and relevant benchmark indices.

The policy guidelines may be changed from time to time by the Committee after consideration of the advice and recommendations of the Consultant, Manager, and/or others. All policy guidelines must be in accordance with the General Investment Policy of

the Navajo Nation. All modifications of policy guidelines and objectives will be in writing and signed by the Committee as an amendment to this document. Copies of any and all modifications to this document will be forwarded to the Consultant, and Manager, and other interested party or parties.

#### DELEGATION OF AUTHORITY

The Manager(s) will be held responsible for making all investment decisions regarding security selection and timing of purchases and sales of Fund assets subject to the policy guidelines of the Navajo Nation and this Fund, and will be accountable for the objectives indicated herein with the exception of any specific limitations set forth in this document.

#### STATEMENT OF OBJECTIVES

The primary objectives of The Fund shall be:

- Retain sufficient investment return within the fund to offset the effects of inflation over time;
- Maintain liquidity of investments to meet the budgeted program cash flows; and
- Minimize risk to investment principal.

Financial objectives of the Fund have been established in conjunction with a comprehensive review of the current and projected long term financial requirements of The Fund. The targeted rate of return is 3.2% above the Consumer Price Index. While there cannot be complete assurance that the defined objectives will be realized, it is believed that the likelihood of their realization is reasonably high, based on the investment policy of the Funds.

It is the Committee's belief that the asset allocation ranges specified in this policy statement will achieve the stated objectives. The Committee realizes that market performance varies from period to period. Accordingly, relative performance benchmarks for the managers are set forth in a later section entitled Control Procedures.

#### ASSET ALLOCATION

It shall be the policy of the Fund to invest its assets in accordance with the maximum and minimum range for each asset class as stated below:

<u>Asset Class</u>	<u>Minimum</u>	<u>Target</u>	<u>Maximum</u>
Fixed Income and Cash Equivalents	80%	83%	86%
Domestic Equity	14%	17%	20%

The Budget & Finance Committee is guided by the philosophy that asset allocation is the most significant determinant of long term investment return. The above asset allocation should be capable of achieving the objectives stated in the Objectives section of this document. The asset allocation will be maintained as close to the target allocations as reasonably possible. Fund withdrawals and any additions shall be allocated across portfolios to bring the asset mix as close to the target allocation as possible.

The asset allocation ranges established by this investment policy represent the long term perspective. Rapid unanticipated market shifts may cause the asset mix to fall outside the policy range. Any divergence should be of a short term nature. The Controller of TNN will review the asset mix of the Fund on a quarterly basis and direct a rebalancing of the asset mix to within the policy range if necessary.

Should an investment manager wish to exceed the guideline limits, special prior approval by the Committee will be needed. For special situations, the Committee can grant special exemptions from the guidelines. Under no circumstances should a manager actively exceed guideline limits without formal prior approval by the Committee.

#### DIVERSIFICATION

Investment diversification is consistent with the intent to minimize the risk of large losses to the Fund. Consequently, the total portfolio will be constructed by the individual fund managers to attain prudent diversification with regard to the concentration of holdings in individual issues, corporations and/or industries. To ensure adequate diversification, no manager will hold more than 8% at market value of its portion of the Total Fund in any single security. No more than 8% of the Fund may be held in securities of any one organization, except for U.S. Government Securities.

#### VOLATILITY

Consistent with the desire for adequate diversification, the investment policy is based on the assumption that the volatility of the combined portfolios will be similar to that of the market opportunity available to institutional investors with similar return objectives. Consequently, it is expected that the volatility of the total portfolio, in aggregate, will be reasonably close to the volatility of a commitment-weighted composite of the appropriate

market indices, for example, S&P 500 Index for stocks and Salomon Brothers Broad Index for bonds, etc.

#### LIQUIDITY

The Controller will review cash flow projections on a periodic basis. The Committee will review the projected cash flow requirements at least annually.

### III. CONTROL PROCEDURES

#### Review of Investment Objectives

The achievement of the Fund's investment objectives will be reviewed on an annual basis. This review will focus on the continued feasibility of achieving the objectives and the continued appropriateness of the investment policy. It is not expected that the investment policy will change frequently; in particular, short-term changes in the financial markets should generally not require an adjustment in the investment policy.

#### Review of Investment Manager(s)

The investment manager(s) shall discharge their responsibilities with respect to that portion of The Fund's assets under their management in accordance with responsible fiduciary practices.

Each manager shall be given the responsibility to advise the Committee of any material change in personnel, investment strategy or other pertinent information potentially affecting performance.

The Committee will review results of all managers at least quarterly. These reviews will focus on:

- the managers' adherence to the policy guidelines;
- comparison of managers' returns against funds using similar guidelines (in terms of the stock/bond ratio, diversification, volatility, style, etc.);
- the opportunities available in both equity and debt markets;
- material changes in the managers' organizations, such as philosophical and personnel changes, acquisitions or losses of major accounts, etc.



Investment Manager Guidelines- Stocks

Stocks purchased for the equity portfolio shall be those of high quality, companies whose shares trade in adequate volume to insure liquidity. Maximum holding in any one company shall be limited to 8% at market value.

- Fixed Income

Fixed income purchases shall be limited to marketable securities issued or guaranteed as to principal and interest by the U.S. or Canadian governments or any agencies or instrumentalities thereof or to corporate issues of the four (AAA through BAA) quality grades as established by one or more of the nationally recognized bond rating services. Mortgage pass-throughs and collateralized debt obligations may be held. In particular, Collateralized Mortgage Obligation holdings shall consist only of mortgages guaranteed by the full faith and credit of the US Government or an agency thereof and exhibit price volatility and liquidity similar to components of the Lehman Mortgage Backed Securities Index.

In no event, however, should the debt securities of any one private corporation exceed 5% at cost and 10% at market of the Fund's assets under management. No more than 10% of the bond portfolio shall be below A quality.

Duration of the bond portfolio is to be no more than 6 months longer than the Salomon Brothers Broad Index.

- Cash Reserves

Cash and cash equivalents are fixed income securities maturing in 360 days or less. Holdings should be minimized beyond amounts needed for forthcoming distributions from the Fund. In keeping with this philosophy, equity managers shall have discretion to invest up to 10% of assets under management in cash equivalents when they deem appropriate. However, the Managers will be evaluated against their peers on the performance of total funds under their direct management.

Fixed income managers may hold higher amounts in short maturity securities as long as the total portfolio duration remains near the target.

Cash equivalent reserves shall have quality ratings of A-1, P-1 or higher by at least one leading rating agency.

**Restrictions**

The following restrictions apply to all investment portfolios:

- TNN will not invest in companies with which it is involved in litigation or major contractual dispute. The Attorney General will provide and maintain a list of such companies.
- TNN Investment Policy prohibits investment in companies which derive revenue from the manufacturer or distributor of alcoholic beverages.
- Other prohibited investments include:

Real estate - except as specifically approved by the Investment Committee;  
 Options, warrants, futures, commodities and commodity contracts;  
 Short sales, margin transactions or any leveraged investments;  
 Private placement debt securities, equity securities not traded on a U.S. stock exchange, or venture capital investments;  
 Natural resource properties such as oil, gas or timberlands;  
 Letter or other unregistered equity securities;  
 International securities.

**Non Individual Securities**

In addition to direct investment in individual securities, properly diversified commingled funds and other pooled asset portfolios are acceptable investment vehicles. All commingled trusts, mutual funds or other pooled asset portfolios must conform to the security restrictions set above with the following exception - the Investment Committee may encourage managers of pooled or commingled funds to adopt The Navajo Nation's prohibitions of securities of specific corporations; however, it is recognized that adherence to these restrictions in a pooled investment vehicle may not be possible.

**PERFORMANCE EXPECTATIONS**

The most important performance expectation is the achievement of investment results that are consistent with The Fund's investment policy statement. A long term average annual return of 3.2 % above Consumer Price Index is a reasonable expectation. Performance will be monitored against a custom index made up of 17% S&P 500, 83% Salomon Broad Index and against a universe of Balanced Funds. Total Fund performance should outperform the aforementioned custom index at least by the amount of management fees.

Equities

Equity performance should achieve the following performance objectives over a market cycle, which is defined as a time period over which a broad market index, such as the S&P 500, falls from a high point to a low point, and back to a high point, or the reverse.

- Be greater than S&P 500 by 1%
- Be greater than SEI Equity Only Median
- Be greater than the 40th percentile for Manager Style.

Fixed income

Fixed income performance should achieve the following performance objectives over a market cycle:

- Total fixed income should exceed the median SEI bond fund on a total fund return basis for portfolios of similar maturity.
- Be greater than the Salomon Brothers Broad Index by 0.5%

Volatility for the portfolios should not exceed that of the relevant indices.

Other

While these standards should be achieved over a complete market cycle, the Investment Committee will also monitor performance over shorter periods of time.

IV. REPORTS

Managers will provide monthly reports to the Finance Division of TNN as requested by TNN and will be prepared to make quarterly presentations to the Committee, if requested.

V. PROXIES

Investment managers will vote proxies in accordance with TNN Investment Policies and Procedures. Voting will be in the best interest of the Navajo Nation. A record of voting will be maintained by the manager and reported quarterly. The Investment Committee of TNN reserves the right to exercise its proxy rights when it so chooses.

VI. **BROKERAGE**

Managers are responsible for securing the best net cost for transactions (commission plus execution cost). Subject to this requirement, TNN may direct managers to utilize certain brokerage firms in order to reduce Fund expenses.

## Appendix i.

The Navajo Nation's Externally Hired Investment OrganizationsInvestment Advisor - SEI Capital Resources

SEI Capital Resources was hired in 1991 to serve as The Navajo Nation's Investment Advisor. They are headquartered in Wayne, PA and employ over 1,200 people nationwide. The team of senior consultants that work with TNN are located in their San Francisco office. Nationwide, SEI works with over 300 different plan sponsors including retirement plans, endowment plans, and hospital pools of assets with assets totaling over \$300 billion. SEI provides TNN with investment consulting services on all 18 funds comprising TNN's investment program.

Investment Managers

Organization	Location	Year Founded	Firm's Assets	# Profits	TNN Date of Hire	Product with TNN	Assets in Product	Product Started	# Clients in Product
Smith Barney	N.Y.	1893	\$11 B	67	1/91	Value Eq.	\$3.4 B	1982	51
Newbold's	Phila.	1943	\$9.4 B	22	1/91	Value Eq.	\$4.4 B	1982	201
Chancellor	N.Y.	1988	\$28 B	103	6/95	Growth Eq.	\$8.6 B	1982	160
Barrow Hanl.	Dallas	1979	\$16 B	24	1/91	FI/Sh. Mat.	\$409 M	1985	10
Sovran	Rich., VA	1975	\$2.4 B	6	1/91	Fixed Inc.	\$2.2 B	1986	40

Equities - The Navajo Nation hired Smith Barney and Newbold's in 1991 as large cap value managers for their defensive/conservative tilt. In 1995, TNN hired Chancellor Capital Management to diversify the equity portfolio in terms of equity management styles.

Bonds - Sovran and Barrow Hanley were hired in 1991 to manage TNN's bond portfolio in a short to intermediate maturity mandate.

Trustee/Custodian Bank

The Northern Trust Co. in Chicago was hired in 1990 by TNN to custody the actively managed assets. Northern works with over 100 clients and custodies over \$66.8 billion.

Testimony of Susie L. Long, Chairperson

Yurok Tribe

For The Task Force

On Indian Trust Fund Management

August 20, 1996

9:00 am

The Yurok Tribe appreciates the opportunity to provide testimony to the Task Force on Indian Trust Fund Management regarding the Tribal Trust Fund Accounts.

I would like to provide some information that highlights the experiences the Yurok Tribe has had since receiving the "Agreed Upon Procedures and Findings Report". In our attempt to determine if we had enough information to dispute or accept the report as a full and complete accounting we have encountered serious road blocks in obtaining the information necessary to make any determination. Our first major problem was not receiving the report and back-up journals in time for thorough review. Our regional meeting was March 19th in Sacramento and we received our information on March 6th. We had difficulty using the compact disk and when we finally started our review of the documents we discovered that records of our most significant trust accounts were not included. In fact, we had only received information on one of the Yurok Tribe's accounts. This account had a balance of

\$220,000.00. The account that we did not receive information on has a balance of \$41,000,000.00.

Additionally, at the regional meeting Mr. Christi insisted that we had received all of the information and called Albuquerque to verify this. It was discovered that the Tribe had not in fact received any of the disputed information. Thus, we were not able to conduct our meeting during the scheduled time. Mr Christi promised the information would be mailed to the Tribe immediately and the Bureau would pay for the Tribal Council members and staff to go to Albuquerque to complete the meeting we were to have in March. In preparation for this meeting we were to receive the journals for the other accounts immediately. The Albuquerque meeting was set for June 24-25. We received only a partial set of journals approximately 10 days before the Albuquerque meeting. There were reconciled account statements missing from the package as well as other incomplete information. I point out that these documents contain key information the Tribe must have to determine if their account balances are correct. While in Albuquerque we were able to view documents on CD-ROM that clearly show that Tribal funds had been posted to the account of another Tribe. To date however, the Yurok Tribe has not received these account statements or journals.

- At the March 19th meeting there were 8 issues discussed which required follow up response from O.T.F.M.. To date we have not received a response to these issues.
  
- At the June 24-25 meeting in Albuquerque there was another list of questions presented and we were promised the balance of the reports and journals. We have not had a response to these issues nor have we received the reports or journals.

The Trust Fund Reform Act requires each tribe to either 'dispute' or 'accept' the reconciliation report"...as full and complete accounting as possible to the earliest possible date". In light of this requirement, the Yurok Tribe could not summarily reject or accept the report due to the governments' failure to provide and disclose all of the data and information that was needed. Further, I reiterate that O.T.F.M. had committed to providing this missing information on two prior occasions.

We now understand that our decision to defer 'dispute' or 'acceptance' of the report is being represented by O.T.F.M. as disinterest by the Yurok Tribe. Nothing could be further from the truth. The Yurok Tribe summarily rejects the Trust Fund report as presented by O.T.F.M. The Yurok Tribe could not, in good faith, take a position on the report without being able to review the pertinent documents which have not



been provided. It appears that the Yurok Tribe and the other tribes who deferred a decision on their respective reports have been deemed to have no interest, thereby being wrongly perceived as being uninterested in the reconciliation effort. This assumption is symptomatic of the serious internal flaws in the reconciliation process. It flaunts the concept of a 'trustee' and totally undermines the credibility of the O.T.F.M. and the intent of the Trust Fund Reform Act.

Current reports from O.T.F.M.:

The Tribe is currently receiving monthly reports on funds held in Trust by O.T.F.M. We are pleased to receive current information. However, there are entries in these reports that our Representative has not been able to explain: Specifically, Income Transferred from I.I.M. account on 9-20-95 of \$5,058.93. This is not an I.I.M. account and should not contain this type of entry. On the same report there were deductions from the account entitled "per capita and other payments to Indians". To date the Tribe has not received an explanation of these entries.

From the above examples you can see that there is much more to do to resolve the old Trust Fund accounting issues. Also, we must continue to make improvements that will provide a system that is equivalent to Commercial Trust Departments for all Tribes and I.I.M. account holders.

To meet Commercial Trust Department Standards:

1. Funds must be appropriated by Congress to continue to upgrade O.T.F.M.'s accounting and computer systems.
2. O.T.F.M. must be immune to the "reduction in force process" so they may retain staff that have been trained in the special procedures necessary to handle trust funds.
3. Accounting must be provided to I.I.M. account holders on a regular basis, and when questions arise they need to prompt and professional response.
4. Standards must be established that mirror private trust fund standards and policies and procedures need to be developed for management and investment of trust funds.
5. Technical assistance funds are needed to implement the Trust Fund Reform Act provisions which offer Tribes the opportunity for self-determination in the management of their trust funds and trust assets. This should include the management of I.I.M. accounts.

Once again we thank you for the opportunity to present this testimony. We wish to impress upon you that this is a very important issue to the Yurok Tribe.

**TESTIMONY OF THE HONORABLE DEBORAH J. DOXTATOR  
CHAIRWOMAN OF THE ONEIDA TRIBE OF INDIANS OF WISCONSIN  
BEFORE THE  
U.S. HOUSE OF REPRESENTATIVES COMMITTEE ON RESOURCES**

Good morning, Mr. Chairman and members of the Committee. My name is Deborah Doxtator, and I am the Chairwoman of the Oneida Tribe of Indians of Wisconsin. I am once again pleased to have the opportunity to speak before this vital committee on a topic of great significance.

Mr. Chairman, the Oneida Tribe of Indians of Wisconsin is a federally-recognized treaty tribe located upon a 65,430 acre reservation in Northeastern Wisconsin. Today our nation is recognized for its success in the gaming industry, but more than that, it is acknowledged as one of the most successful in addressing the needs of its members through sound governmental planning and action.

Not long ago in the memories of our people, our nation was impoverished by every measure but pride. With \$40,000 for an annual budget, nearly 1/3 of our roads unpaved, 1/3 of our people living in substandard homes (defined as having no electricity, no plumbing, or both), a 55% unemployment rate, and an 8th grade average educational attainment level there was little that would hint to our future success. These statistics from only 25 years ago would have suggested that our communities were hopeless. We had a BIA agent attend every meeting of our Council to inform us of what we could not do, and that was the visible extent of the BIA's fiduciary responsibility.

In my testimony today, I will cover several issues. First, I will share a brief overview of Oneida history in relation to the federal government and trust. For you to appreciate our frustration around the Trust Funds Reconciliation Project, I feel compelled to place our situation in an historical context. I wish for you to truly understand the contributions and sacrifices that we have made and the way in which the United States has carried out its obligations. I will next address the 1973-1992 period targeted in the Bureau reconciliation effort. I will close with how this reconciliation affects Indian Country and propose some solutions to solve the dilemma now faced by the Bureau of Indian Affairs, Office of trust Funds Management.

On<sup>yo</sup>?tea.ka (Oneida), People of the Standing Stone, learn from our traditions that

the Creator placed us upon this land known as Turtle Island. From time immemorial, our people lived on this land. In 1532, F. Franciscus de Victoria, the Father of International Law, formally pronounced what we have always known: Indian nations held the same inherent rights over their lands as did the European nations. Under international law, there were two ways in which the land could change hands, by either a "just war," or by mutual consent (treaty). Nearly all of America was acquired by treaty...agreements that included *quid pro quos*. America seldom kept its word. War, however, was something that America understood.

While treaties were often broken, one might suspect that the concept of spoils going to the victors would certainly be a concept understood by Europeans and ultimately American patriots. Beyond peace treaties with the Indian nations, some agreements among the fledgling United States and Indian nations were those borne of military alliances. The alliances struck between us and the British resulted in our fighting on behalf of the British in the French-Indian War. At the time of the Revolution, our nation broke from the Iroquois Confederacy to fight on behalf of the Colonies. When the colonists refused aid to Washington's army at Valley Forge, it was our people bringing corn and other foodstuffs which preserved them. Our men, serving as officers and soldiers in this army helped secure the success of the fledgling nation. George Washington observed, that "were it not for the aid of the Indians, the War would have been lost."

A grateful President Washington guaranteed Oneida's scorched ancestral lands in New York to the people and their descendants<sup>1</sup> and extended monetary and other compensation for services<sup>2</sup>. His commitment lasted until the 1820's when the American mind set was altered by the Jeffersonian "Removal Policy" and the evolving concept of "Manifest Destiny." The majority of our people were forced to Wisconsin where we reside today. We, as victors and allies of this new nation were, like most other nations, victimized by an America that did not stand up to its word.

It was during this period of relocation Oneida entered into a treaty with the Menominee tribe which granted the Oneida a ½ interest in Menominee holdings in

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<sup>1</sup> Treaty with the Six Nations, 1794 (Treaty of Canandaigua), 7 Stat. 44, November 11, 1794.

<sup>2</sup> Treaty with the Oneida, etc., 1794, 7 Stat. 47, December 2, 1794.

the future State of Wisconsin.<sup>3</sup> The Menominee later ceded much of this land, without the consent of the Oneida, to the United States in the Stambaugh Treaty.<sup>4</sup>

Oneida eventually made a claim with the Indian Claims Commission for the loss of the ½ interest that was conveyed to the U.S. by the Menominee.<sup>5</sup> This claim, known as Docket 75, and the award was ratified by Congress on September 27, 1967.<sup>6</sup>

Pursuant to Congressional direction, the money remaining after payment of costs and attorney fees was to be apportioned by the Bureau of Indian Affairs. Any money expended from the accounts of the Oneida Tribe of Indians of Wisconsin required the approval of the Secretary of the Interior.<sup>7</sup>

The money awarded from the Docket 75 claim was placed in trust at the Bureau of Indian Affairs, where it was managed by the Division of Trust Responsibility, Branch of Investments from 1967 until 1989. At that time our nation took control of the monies and transferred them to our own accounts where we have since managed them. The Oneida Nation withdrew the majority of its funds upon secretarial approval for the express purpose of making annual *per capita* payments to tribal members aged 65 years and older.

The Oneida Nation made the decision to take control of its funds in response to a growing distrust among our membership in the ability of the Department of the Interior, Division of Trust Responsibility, to manage our money. Our apprehension appears to have been valid.

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<sup>3</sup> Treaty between the Oneida, Stockbridge, St. Regis, Tuscarora, and Munsee (the "New York Indians") and the Menominee, September 23, 1822.

<sup>4</sup>Treaty with the Menominee, 1831, 7 Stat. 342 (February 8, 1831).

<sup>5</sup> *Emigrant New York Indians, ex. Rel. Julius Danforth, Oscar Archiquette, Sherman Skenadore, Mamie Smith, Arvid E. Miller and Fred Robinson, the Oneida Tribe of Indians of Wisconsin and the Stockbridge-Munsee Community v. United States of America*, Indian Claims Commission, Docket 75, November 1, 1957)

<sup>6</sup> Public Law 90-93, September 27, 1967, codified at 25 U.S.C. §§1141, et. seq.

<sup>7</sup> 25 U.S.C. §§1144 & 1145.

**The American Indian trust Fund Management Reform Act<sup>8</sup> and the  
Tribal Trust Funds Reconciliation Project**

Today the Oneida tribe holds minimal funds with the Bureau of Indian Affairs, Office of trust Funds management. Self determination has been and continues to be our philosophy regarding the management of our funds. We are attempting to make our investments grow and increase our capacity to contribute to the needs of our elderly Tribal members.

Mr. Chairman, I am sure you are well aware of the American Indian Trust Fund Management Reform Act of 1994 and the attempted reconciliation made by Arthur Andersen, L.L.P. I am not confident, however, that you have been comprehensively informed on how this reconciliation affects the individual tribes who were involved.

The Oneida Nation of Wisconsin held the bulk of its assets in Branch of Investments from the period of 1967 through 1978. It was our initial hope that we would receive confirmation that the funds we withdrew from the Bureau of Indian Affairs management could be conclusively determined to have been either correct or incorrect.

However, after meeting with the representatives of the Office of Trust Funds Management and Arthur Andersen, L.L.P., in January and April of this year, we have learned a great deal. The single most important fact we have learned is that this attempt to reconcile the funds held in trust by the Bureau of Indian Affairs during the period of 1973 through 1992 cannot be audited or reconciled. The procedures and findings are insufficient due to the lack of documentation available to back up transactions.

During our meeting in April 1996, representatives of the Oneida Nation learned that the so-called reconciliation effort made by Arthur Andersen had determined that the Oneida Nation of Wisconsin OWES the Bureau of Indian Affairs \$15,000, in spite of the fact that it had not produced documentation for a staggering number of transactions to our account!

Our representatives took a closer look at the reconciliation effort and found even more disturbing information. The attempt to reconcile Bureau accounts has been

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<sup>8</sup> 25 U.S.C. 4001, et seq.

severely hampered by the lack of documentation that exists to back up a large percentage of the transactions made on all tribal accounts. Additionally, other serious defects exist in the attempted reconciliation. These include:

1. The lack of effort to gain the input of the tribes whose accounts were being examined. The Oneida Tribe of Indians could have been an invaluable resources to the Bureau of Indian Affairs and Arthur Andersen, L.L.P. during their attempts to cross check our accounts. Several of the people who have been involved in Tribal affairs since the Oneida were awarded the Docket 75 judgement continue to be involved in the tribal affairs today. These people could have answered questions and located documents which would have aided the Bureau of Indian Affairs and Arthur Andersen in their attempts to correctly reconcile our accounts. During our April 11, 1996 meeting with representatives from the Office of trust Funds Management and Arthur Andersen, Arthur Andersen representatives spoke candidly with us regarding attempts to work with Tribes to locate missing documents. According to their statements, a decision was made early on in the project to work with only five tribes on a one-to-one basis. However, due to the costs incurred and the time intensive nature of working with tribes, this practice was not expanded.
2. The advisory board, which was specifically created to aid the Special trustee pursuant to 25 U.S.C. sec 4046, was never consulted regarding Department of Interior attempts to reform trust funds management. In fact, a respected Indian leader, Ivan Makil, reports that their efforts to meet and to advise in departmental deliberations regarding reform were thwarted by the Bureau of Indian Affairs<sup>9</sup>. During our regional meeting the BIA, representatives responded to our inquiries concerning the advisory board. We were told who was on the board and that it was not very active. The board members had one meeting and the funding ran out. The board had no further opportunity to meet and that the DOI would not allocate funds for the advisory board until October, 1997. This lack of consultation with the advisory board emphasized the fact that the BIA made very poor efforts in consulting with Indian country on reconciliation of ITS own funds.
3. The Bureau of Indian Affairs is also responsible for collecting amounts due to Tribes through timber sales, as well as mineral and gas leases. When we questioned this issue at our April 11, 1996 meeting, Arthur Andersen, L.L.P. representatives stated to us that it discontinued attempts to confirm whether the amounts deposited

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<sup>9</sup> Testimony on Indian trust Fund Issues before the Senate Committee on Indian Affairs submitted by Ivan Makil, June 11, 1996.

into each tribe's accounts were in fact the amount due to each tribe because they were experiencing time and budgetary constraints. We were told that determining the amounts due under many of the leases in question was complex and therefore costly. This procedure was explicitly referred to as the "Fill-the-Gap Procedure." and is discussed in some detail in the report of the General Accounting Office to the Senate Committee on Indian Affairs submitted in May 1996.

4. There has been no attempt to reconcile the Individual Indian Money Accounts. The Bureau estimates that the costs to meaningfully audit these accounts would range from \$108 to \$280 million.
5. Funds held in the Branch of Investments from 1973 through 1978 were not scrutinized. We have begun our own analysis of this period, but we are in the most preliminary stages of our research. Based upon other research, we expect to be able to demonstrate that had errors occurred, they too would result in findings in our favor.

The most offensive aspect of the accounting provided to the Oneida Nation was the indication from Arthur Andersen and the Bureau of Indian Affairs that the Oneida Nation owes the Bureau of Indian Affairs almost \$15,000. When questioned in detail on the subject, Andersen representatives stated that the reason the Summary of Treasury Interest Recalculation Results shows the net adjustment due from the Oneida Tribe stems from overexpenditures made by the Bureau of Indian Affairs to Oneida Accounts. These overdrafts resulted in negative balances, the interest from which has accrued over the years and now approaches \$15,000. Arthur Andersen officials also conceded that these transactions were entirely handled within the Bureau of Indian Affairs and that the Oneida Tribe did not access those accounts directly.

We have recently turned over the responsibility for monitoring our trust funds to our newly created Trust Department. Its monitoring efforts of our accounts have led us to uncover discrepancies totaling more than \$19,000 in favor of the Tribe. This number is based on our scrutiny of Bureau of Indian Affairs accounting and examination of our treaties with the United States. This oversight, stemming from the most fundamental federal obligation, would not have been located using the methodology agreed to by the Department of the Interior, Bureau of Indian Affairs and Arthur Andersen, L.L.P. Under their study methodology, they have not been responsible for checking the amount deposited into the Oneida account with the actual amount due under our agreements with the United States.

Our inquiries have thus far restored our annuity payments based on our



contributions to the establishment of this country. We understand that we have recently been credited for the past six years where payment was not made. We are awaiting credit of the payment for 1979. For us this a matter of pride, a matter of honor, and one which underscores the unique relationship of Indian nations to the United States--one which many in Washington today fail to understand or recognize.

We are presently reviewing our options and continue to monitor the accounts that we now hold with the Office of Trust Funds Management. An option before us is to conduct our own reconciliation of the accounts we have held with the Bureau of Indian Affairs in the past. We are encouraged by the changes that have occurred in the Office of Trust Funds Management and are happy with the service provided to us by the representative assigned to our accounts. The direction the Office of Trust Funds Management has taken is a positive step, but stronger efforts need to be made in order to restore the good faith of Indian nations.

When the reconciliation efforts were first undertaken, I believe that all of Indian Country held hope that the reconciliation would uncover what we have known all along--that the Bureau of Indian Affairs has not fulfilled its responsibility to the Indian Nations. Unfortunately, the attempted reconciliation has not been detailed enough and there has been no investigation into the issues that really matter to Indian Nations.

Future attempts to address this issue must include the following:

1. Any reconciliation attempt must include a review of all applicable treaties, leases, and sales agreements which place an obligation on either the United States or third parties to pay monies to the Bureau of Indian Affairs on behalf of Indian tribes. The reconciliation is meaningless to Indian nations unless they know the amounts the Bureau of Indian Affairs is responsible for handling on their behalf.
2. As I stated earlier, we are heartened by the progress that has been made by the Office of Trust Funds Management. However, the Bureau of Indian Affairs must also make changes that allow its information systems to communicate to each other. It is my understanding that the computer programming for the separate functions of the Bureau of Indian Affairs is incompatible. Additionally, there is no Accounts Receivable system. Until these changes are made, the United States will not be meeting its trust responsibility to the Indian Nations with whom it has these obligations.
3. The Individual Indian Money accounts must be properly reconciled. While I realize that this will be an overwhelming challenge, some type of solution must be

fashioned using input from Indian country and the private sector.

I recognize the tremendous support the Committee has given to Indian country regarding this issue in the past. Your efforts have allowed us to begin this journey to uncover the past. However, we have only begun. I encourage you to continue your support and strengthen your efforts to demand the full truth.

I believe that a fair and equitable resolution can ultimately be reached in these matters. I urge all parties involved, Indian Nations, the Bureau of Indian Affairs, and the private sector entities, to all be part of the solution. We must all work together to fashion a solution to a problem that has literally existed for over two hundred years.

On behalf of the Oneida Tribe of Indians of Wisconsin, I would like to thank the Committee for its invitation to speak today. I appreciate all the support you have shown and I am willing to make any effort necessary to effect change. I am here because my nation has made it possible for me to be here. As I am certain you appreciate, there are many other Indian nations whose conditions do not permit them to join us. Their voices must also be heard. Their legitimate legal rights and the honor of the United States is once again at question.

I will be pleased to answer any questions you may have at this time.

STATEMENT OF  
ROBERT M. PEREGOY, SENIOR STAFF ATTORNEY  
NATIVE AMERICAN RIGHTS FUND

BEFORE THE  
HOUSE TASK FORCE ON INDIAN TRUST FUND MANAGEMENT  
COMMITTEE ON RESOURCES  
U.S. HOUSE OF REPRESENTATIVES  
SCOTTSDALE, ARIZONA  
AUGUST 20, 1996

Native American Rights Fund  
1712 N Street, N.W.  
Washington, D.C. 20036  
(202) 785-4166

STATEMENT OF ROBERT M. PEREGOY  
AUGUST 20, 1996

Chairman Hayworth and Members of the Task Force, I appreciate the opportunity to provide testimony on this most important matter. My name is Robert Perego. I am a senior staff attorney with the Native American Rights Fund (NARF). I work in our Washington, D.C. office.

Mr. Chairman, before I begin my testimony, I want to express appreciation to you on behalf of the Native American Rights Fund for your leadership in chairing this important Task Force. The government's mismanagement of Indian trust funds has been permitted to continue for far too long. This crisis cries out for a speedy and effective resolution. We believe this Task Force can play a key role in fashioning a satisfactory resolution to this sordid chapter in Indian-government relations. And the Native American Rights Fund looks forward to working with you in this regard.

As you are aware, in June of this year the Native American Rights Fund and other attorneys filed a class action lawsuit on behalf of over 300,000 Indians against the federal government to seek redress for the government's breaches of trust in mismanaging the Individual Indian Money (IIM) accounts held in trust for the exclusive benefit of these individuals. We have previously testified about the specifics of this litigation, which we again emphasize was filed as a last resort.

As the record amply demonstrates, the trust management system is hopelessly broken. According to the Special Trustee, the management system for the IIM accounts is in the "worst condition of any of Interior's trust management systems." However, the Special Trustee has been unable to fix the IIM accounting system because his hands have been hopelessly tied as a result of the government's failure to provide adequate resources. Our immediate purpose--on behalf of more than 300,000 individual Indian trust beneficiaries--is to seek adequate appropriations to fix the IIM accounting system.

The Special Trustee determined that it would take almost \$50 million in FY 1997 to begin to correct the overall trust management deficiencies. However, the Administration requested only \$36.3 million in appropriations. The House reduced this already inadequate number by nearly 50 percent to \$19.126 million, pursuant to the Interior appropriations bill passed in June. It is significant to note that the

Office of Management and Budget stated in a June 12, 1996 letter to House Appropriations Committee Chairman Livingston that the President will likely veto the House Interior appropriations bill, in part due to the unacceptable level of funds appropriated to the Office of Special Trustee.

We emphasize that the \$19.126 million House appropriation can do nothing to rehabilitate the IIM trust management system. An additional \$22.3 million for FY 1997 is necessary to provide the IIM trust with an adequate accounting system. This amount will provide the IIM trust beneficiaries with an accounting system equal to the OmniTrust System, which is in operation for the tribal trust and its more than 275 tribal trust beneficiaries. As the Special Trustee has testified, the \$22.3 million will enable him to fix the IIM accounting system within one year--by creating "a Chevrolet, not a Cadillac." Without this repair, the government cannot possibly expect to minimize the losses caused by its failure to administer the IIM trust prudently for more than 300,000 individual Indian trust beneficiaries every single day.

The Senate Appropriations Committee has included the full amount of appropriations requested by the Administration--\$36.3 million for the Office of the Special Trustee. This includes \$13.6 million to commence implementation of the strategic plan. As we understand it, this amount will be used primarily to begin to upgrade and establish for the first time a reliable IIM accounting system. *While the Senate Appropriations Committee recommendation of \$13.6 million is a step in the right direction, it remains \$8.7 million short of the \$22.3 million necessary to repair this part of the problem.*

We hope that the Senate will enact the Appropriations Committee recommendation pertaining to the Office of the Special Trustee, to start to provide the Special Trustee with the necessary resources and tools he needs to begin to reform the system, as Congress mandated when it passed the Trust Fund Reform Act of 1994. We respectfully ask that your Task Force work with Resources Committee Chairman Don Young, the House Appropriations Committee, and the House Conference Managers to urge them to recede to and add another \$8.7 million to the Senate level for a total of \$45 million for the Office of Special Trustee. Should it appear that Interior spending will be covered instead by a Continuing Resolution, we likewise ask that you urge that this amount be included for program improvement initiatives of the Special Trustee. We are well aware of the funding pressures to reduce overall

spending and to balance spending priorities within each appropriation measure. However, there is simply no good reason that the Federal government should permit the trust funds of more than 300,000 individual Indian trust beneficiaries to wither away because of current budget deficit concerns. In short, it is in everybody's best interest for the government to honor its legal responsibilities and provide the funding to stop the hemorrhaging now. One hundred and fifty-eight years of willful neglect must stop!

In closing, we emphasize that an appropriation of \$22.3 million is a critical expenditure for the federal trustee; this will begin to end the government's continuing breaches of trust and its rapidly mounting liability for a modest cost of less than \$75 per each of the 300,000 individual Indians who are injured each day by this continuing neglect. What a pittance to pay for the federal trustee to honor its trust responsibility to these 300,000 American citizens.

Finally, we respectfully submit that it would be wrong for any part of the \$22.3 million to come from any Indian program. To do so would be unjust and inequitable. The federal trustee is directly responsible for the creation and continuation of the IIM trust management crisis as a result of its total failure to administer the trust prudently. This has caused individual Indians to lose untold millions of dollars of their money. Accordingly, it is unconscionable to compel any Indian to pay for the government's breach of trust.

Thank you for the opportunity to testify.

# MANAGEMENT AND RECONCILIATION OF INDIAN TRUST FUND ACCOUNTS

THURSDAY, SEPTEMBER 26, 1996

HOUSE OF REPRESENTATIVES,  
TASK FORCE ON INDIAN TRUST FUND MANAGEMENT,  
COMMITTEE ON RESOURCES,  
*Washington, DC.*

The Task Force met, pursuant to call, at 10:09 a.m., in room 1334, Longworth House Office Building, Hon. J.D. Hayworth (Chairman of the Task Force) presiding.

## STATEMENT OF HON. J.D. HAYWORTH, A U.S. REPRESENTATIVE FROM ARIZONA AND CHAIRMAN, TASK FORCE ON INDIAN TRUST FUND MANAGEMENT

Mr. HAYWORTH. Good morning, ladies and gentlemen. Today the Task Force on Indian Trust Fund Management is holding its fourth and final hearing. The subject of this hearing will be possible legislative solutions to the many problems which continue to plague the management of Indian trust fund accounts.

In order to focus our witnesses, as well as the members of our Task Force, on legislative solutions, I have requested each member to comment upon and answer ten questions in his or her testimony. Let me hasten to add that these questions are not J.D. Hayworth's legislative solutions. Instead, these are proposals which the Task Force has encountered during its consideration of Indian trust fund account management problems, proposals which some or all members of the Task Force may not agree with but proposals which should be commented upon for the record.

Here are the ten questions which we hope to ask of each witness.

(1) Should the Federal Government continue to be in the business of administering IIM accounts?

(2) Would you support having DOI contract out the operation functions of managing Indian trust fund accounts to either A, a private trust management company, or B, another department of the Federal Government such as the Department of the Treasury so long as the United States retains its related trust responsibility?

(3) Would you support DOI charging administrative fees to trust fund account holders to defray the cost of improving its trust fund management systems.

(4) Would you support legislation which would disburse all funds in existing IIM accounts to appropriate account owners, would then terminate those IIM accounts and would provide that in the future whenever possible revenues would be forwarded directly to account holders by check without going first through a trust fund account?

(5) What do you think should be done about (A) fractionated heirship problems, and (B) the thousands of inactive IIM accounts which have no known beneficiary? Inactive account funds could be transferred to the Federal Government or to the tribe of the last known beneficiary or to some form of Federal and/or tribal escrow account held for some designated use.

(6) Assuming the tribal accounts cannot be reconciled any further, what settlement process do you support which would fairly compensate the tribes and would terminate any liability which the Federal Government might have for any breach of trust responsibility which might have taken place regarding the management of tribal accounts in the past?

(7) Assuming that IIM accounts cannot be fully reconciled, what settlement process do you support which would fairly compensate account holders and would terminate any liability which the Federal Government might have incurred for any breach of trust responsibility which might have taken place regarding the management of IIM accounts in the past.

(8) What changes in existing law would facilitate the administration of tribal trust fund accounts?

(9) What is your opinion of the proposed phase one of the Special Trustee's strategic plan issued in February 1996?

(10) What changes in existing law relating to the management of Indian trust fund accounts other than those mentioned above would you suggest be considered by the Congress of the United States?

As we have commented before in these Task Force hearings, it is disturbing to note that many believe that the letters BIA now stand not for Bureau of Indian Affairs but for billions in arrears. It is equally disturbing that by some accounts what we have uncovered through audits and forensic accounting is in the words of some who have testified before us just the tip of the iceberg. This is a problem that has confronted administrations of both parties. It is a problem which we are dealing with in a bipartisan fashion, for our purpose here is to be cognizant of the trust responsibilities vested in the U.S. Government, its trust obligations in the wake of treaties with several sovereign Indian nations.

I would like to thank the minority for its involvement in this Task Force. And I would turn to my distinguished friend from Michigan, the Ranking Minority Member, Mr. Kildee, for any comments he might have this morning.

**STATEMENT OF HON. DALE E. KILDEE, A U.S.  
REPRESENTATIVE FROM MICHIGAN**

Mr. KILDEE. Thank you, Mr. Chairman. Thank you for having these hearings in the really nonpartisan way in which they have been conducted. I think the sovereignty of the tribes, which I believe in very, very strongly as a fact, the sovereignty of the tribes and the trust responsibility of the U.S. Government move us to discover the facts that have brought us to the present situation and to explore possible courses of action. And I think that this is what this committee hopes to be able to do, suggest we need input from you. I think the ten questions which you have proposed will be very helpful to us. And I look forward to the responses to the questions.



Mr. HAYWORTH. I thank the gentleman from Michigan for his remarks. And let us begin, then, with the Special Trustee for American Indians from the Department of the Interior, Paul Homan. Mr. Homan, good to have you with us this morning. We would be interested in your opening remarks and then addressing some of the questions that we have put on the table.

Mr. HOMAN. Thank you, Mr. Chairman.

Mr. HAYWORTH. And if I could intervene and if you would yield for just 1 second, if you would also introduce the individuals who accompany you this morning to testify.

Mr. HOMAN. I will. Thank you, Mr. Chairman. We are pleased to be here representing the Department of the Interior. With me today is Ed Cohen, who is the Deputy Solicitor in the Department of the Interior, and Jim Simon, who is the Deputy Assistant Attorney General with the U.S. Department of Justice. I will give the opening remarks and all of us will be available to answer any questions the committee may have. I will make a brief statement, but I would like to request that my full statement be included for the record, and I wish to note that my strategic plan and assessment has been previously provided for the record in a previous hearing.

Mr. HAYWORTH. Yes, sir, your full statement will be included in the record without objection. We thank you for it.

**STATEMENT OF PAUL HOMAN, SPECIAL TRUSTEE FOR AMERICAN INDIANS, DEPARTMENT OF THE INTERIOR; ACCOMPANIED BY ED COHEN, DEPUTY SOLICITOR, DOI, AND JIM SIMON, DEPUTY ASSISTANT ATTORNEY GENERAL, DEPARTMENT OF JUSTICE**

Mr. HOMAN. Thank you, Mr. Chairman. The hearings are focusing on legislative solutions to trust management practices and problems. I would first like to present a brief report on my assessment of the trust management systems and the conceptual strategic plan which my office has derived to deal with some of these longstanding problems affecting the Federal Government's trust management system. Of course, this will involve a number of legislative initiatives if the strategic plan is to be implemented successfully, including the answers to some of the questions that the committee has under review.

My overall assessment concludes that the undeniably poor quality of the trust management systems and the condition of the historical records effectively preclude the Federal Government from providing an accurate and timely accounting to American Indian trust beneficiaries. This can be demonstrated quantitatively. The reconciliation project in January 1996 disclosed some \$2.4 billion (32,000 transactions) for which source documentation could not be located.

The point here is that these records should not be missing and would not be missing had the Federal Government followed conventional trust recordkeeping practices. Of particular concern is about \$575 million in unreconciled disbursements.

Another concern is some \$4.1 billion of so-called reconciled disbursements which did not have complete disbursement voucher packages, and notably over \$2 billion in large disbursement vouch-

ers to tribes in care of third parties, which did not have both tribal and other governmental signed authorization.

The reconciliation project also confirmed what the GAO calls a lack of a known universe of transactions and leases. This stems from the Federal Government's lack of an ability accurately to trace a collection to a source lease or contract. This in turn results from a lack of a consolidated accounts receivable billing system and a master lease system which at present defies auditing.

At the end of 1994, there was also a 2-year backlog in bringing key landownership and records up to date. It was estimated at that time to take 104 staff years to eliminate this backlog, but instead BIA reduced its realty staff by some 29 percent from 126 staff members to 90 presently during 1995 and 1996, continuing the backlog.

Turning to the IIM problems, there are 54,921 IIM accounts with \$44.9 million for individuals with no address or an incorrect address. There are 15,234 IIM accounts with \$21.8 million held for individuals who were formerly minors, the vast majority of which should have been dispersed when the age of majority was reached. There are \$42.2 million in overdraft interest clearing accounts resulting from interest mispostings prior to 1993. These are essentially non-earning assets which deprive current IIM account holders annually of over \$2 million in income. There are further general ledger differences of some \$28 million which should be cleared from the general ledger. There is a continued maintenance problem of over 153,000 small accounts, some of which are the subject of this hearing, with balances less than \$10 which we have to run at a significant operating cost to the taxpayer. And finally, there are over 130,000 missing social security numbers for account holders with over \$175 million in their accounts.

Mr. Chairman, these conditions are unacceptable by any reasonable standards and continue to do significant harm and damage to the American Indian trust beneficiaries. They are caused by the inherent defects in the core trust management systems the government uses to manage the Indian moneys. These defective systems effectively prevent the government from meeting the fiduciary accounting and reporting standards required by the American Indian Trust Management Reform Act of 1994 and standards of ordinary prudence applicable to all trustees, public or private.

The Special Trustee's conceptual strategic plan addresses each of these issues and identifies nine initiatives designed to rectify the problems and bring trust accounting and management systems up to commercial standards within 3 years. What is needed first is a complete overhaul of the four basic trust management systems. We must acquire a new trust resource asset management delivery system. We must acquire a new accounts receivable data and automated billing system that uses lease contract and land and ownership information. We must acquire a new trust depository payments and delivery system for IIM money accounts, and we have started this initiative with Fiscal 1997 moneys. And finally we must upgrade our land records and title recordation and certification system.

Along with these overall core systems must come improvements to our general ledger system, record keeping and archiving, risk

management, our technology center and our organizational structure. I have estimated in my plan that implementation of this plan will cost \$100 million over 3 years. And I wish to note that the President's budget contains \$14 million to that effect for 1997.

In closing let me just say that the problems in the trust management systems are longstanding ones. If mismanagement or negligence occurred, it stemmed principally, in my view, from allowing the trust management systems, record keeping systems and risk management systems to deteriorate over a 20- to 30-year period and become obsolete and ineffective.

For many of those years, including many years since 1990, the trust programs were seriously understaffed and underfunded. The result was that the government increasingly was unable to keep pace with the rapid changes and improvements in technology, trust systems and prudential best practices taking place in the private sector industry.

This gap continues today and will continue to increase until the reforms outlined in the strategic plan are funded and implemented. That is why they should be funded and implemented, in my view, immediately regardless of if and when the strategic plan called for in the Reform Act of 1994 is completed and approved. Each day the trust management systems remain status quo, the Federal Government's exposure to claims of mismanagement and liability will continue to grow and is another day the Federal Government cannot meet its trust responsibilities to the American Indians.

The comprehensive strategic plan is scheduled for completion by March 31, 1997. It will address in depth many of the issues and concerns raised by this committee at its hearings today and in previous hearings.

Included in my full statement are our initial answers to the committee's questions. Further research and analysis will be required over the coming months to arrive at sound legislative solutions to these longstanding trust management problems, and we look forward to working with the committee in that regard.

Mr. Chairman, that concludes my statement. My colleagues and I would be happy to answer the questions that you outlined for us in more detail or any other questions you may have.

[The prepared statement of Paul M. Homan may be found at end of the hearing.]

Mr. HAYWORTH. Mr. Homan, we thank you for your efforts as the Special Trustee at the Interior Department. We also thank you again for your testimony this morning. We put before you ten questions. And we appreciate your response and very thoughtful inclusion of the questions and answers on your prepared testimony. Let me in a general sense, before I get to some of the specific notions outlined in those ten questions and your ten responses, ask you, sir, in a perfect world, and admittedly this has been one of gross imperfection with reference to what has happened to these special accounts, if you were to design the perfect system, what would you be most interested in doing? If you had to rank the different legislative alternatives or what your solution would be, what would you rank first?

Mr. HOMAN. Well, I would rank first the accurate accounting to the American Indian beneficiaries of their account balances, the

moneys the government handles from start to finish starting with the leasing of the land, collection of the proceeds off those leases, investments and finally disbursements. And to do that I believe that eight of my nine strategic plan initiatives will address that. It will bring, essentially, the banking part of the Bureau of Indian Affairs up to commercial standards within 3 years.

And that is no different than, in my view, trying to go to the bank across the street. Every single commercial bank and trust company in the United States has a system which is capable of producing 100 percent accounting. And that is essentially the place to start.

Now in a perfect world, as trustee for the American Indian, my plan also contemplates a system with a common set of policies and procedures, a common set of accounting standards, a common system which is run by the government and a common set of laws by which the trustee can effectively downstream or delegate the operating authority to Indians themselves under self government principles, to third parties, or in certain instances because of affordability problems and others, to be continued with the Bureau of Indian Affairs. However, as long as the U.S. Government remains in the trustee capacity, it must have a way in to determine whether the operators of the Indian trust lands are doing their job.

Mr. HAYWORTH. Sir, I can recall your previous testimony here before this Task Force when you talked about your own resume and your rather extensive experience. Indeed, in your response to me just now you mentioned the situation which exists with commercial banking with an ability to account for 100 percent of the money deposit holders possess and the status of those accounts. It seems, Mr. Homan, that it begs the question if commercial banks can do this, taking into account even the legitimate trust obligations that this Federal Government has, and perhaps because of those trust obligations would it not be more cost effective to turn to an outside entity to provide this service? And could an outside entity, a financial house or some financial institution, do this job more effectively and more cheaply than your projection of, what, \$100 million over 3 years to completely overhaul the accounting system?

Mr. HOMAN. Well, certainly, Mr. Chairman, outsourcing some of these activities is not only possible, but may be desirable. And at a certain point in the future, providing the government is satisfied it can do the correct risk management; i.e., auditing of whoever that third party is that is performing the trust function, provided that is satisfied, then I think that is quite possible. And it can be done. I don't think it can be done for less than \$100 million. And I think the \$100 million has to be spent to first fix the system.

I am told that there have been attempts in the past to turn over a good part of these operations to private sector large banks that have this cash management and trust capacity, but the question has always been affordability. It has always been more than the government has been willing to pay, first. And second, there has not been a full accounting, as we all know, of these trust balances. A private institution taking over the administration of these accounts would probably ask for indemnification from the Federal Government for past practices or for errors and omissions and the lack of a full accounting. So that has been an impediment.

I believe before we could even consider outsourcing it we have to fix the system first. The \$100 million will get there. After that, it is an operating expense of less than \$20 million a year, which might be affordable.

Mr. HAYWORTH. Sir, I have taken a look at your written responses, and we put before all our witnesses today a variety of different alternatives that some have mentioned to us. I am concerned about the response to question three, would you support DOI charging administrative fees to trust fund account holders to defray the cost of improving its trust fund management systems. You respond that administrative fees might be charged to defray the cost. The Department is researching the issue of whether fees should be charged account holders with large balances or activity. Do you view this as a viable policy alternative? Is it something that would be, in fact, under active consideration to charge the account holders?

Mr. HOMAN. Yes, I think it is under active consideration. My personal view on this, and I don't think it differs with the Department's views, is first that the question addresses whether administrative fees should be charged to defray the cost of improving the trust systems. I don't believe personally that should be the case. These systems have been in disrepair for a number of years and to ask current account holders to pay for the past errors and omissions in terms of staffing and funding for these systems, I don't believe is a way to approach it.

But going forward, I think that for the larger accounts we might charge an administrative fee much like a bank would charge. We are in a monopolistic circumstance here, so I don't believe we should charge anything more than a comparable commercial trust company would charge for these same services for large accounts.

Second, a good many of these accounts are very small, and we deal with tribes that are very poor. And I think questions of affordability come into question, and I think there ought to be an exemption for tribes with small accounts or for tribes which simply can't afford to pay the type of administrative and trust fees that are common in the American private sector trust business. So with those caveats, I think we should charge.

Third, there is a large category here that runs through some of these questions of over 150,000 accounts with balances less than \$10. Now these are caused by our having to deal with fractionated shares where sometimes we keep track of less than a penny due on certain of these properties to certain of the property owners. That is an enormous operating cost. The realty people tell me in our suggested fractionated interest legislation that it costs something like \$33 million, or about half their annual budget, just to keep track of these small fractionated interests.

We have the same problem in keeping track of them at OTFM. These are largely dormant and inactive accounts. The government has not found a way to get rid of them, and normally a bank would escheat these accounts to the State or service charge them, you know, appropriately. And I believe that a service charge in our case might be doable.

There are questions of constitutional taking which came up in a 9th Circuit case in connection with the Indian Land Consolidation

Act in the mid-1980's and which is now pending before the Supreme Court. So we have to be very careful in terms of how we go about administering these trust fees. But I think in that case we should. It is costing the American taxpayer probably five or six times in operating costs what it costs to maintain those small accounts, and I don't believe a \$10 account is worth much of anything to any American Indian. I think they would like to get rid of the problem as well.

Mr. HAYWORTH. Mr. Homan, you will be pleased to note that in taking these hearings outside the beltway to the 6th District of Arizona we met with many tribal leaders, and many of them have lauded your efforts. Even as they have lauded your efforts, they have lamented what they believe to be some deficiencies in your purview of being able to really complete your strategic plan. And I am just curious. Has the Department ever told you why it has been unable to reprogram funds to your office so that you could complete your strategic plan?

Mr. HOMAN. Well, During my confirmation hearings before the Senate last year in September I was asked what it would cost, essentially, to complete my strategic plan within the timeframe of 1 year that the law gave me. And I indicated at that time that it was \$3.5 million and that I would ask the Department for that money for Fiscal 1996. Now unfortunately, the Fiscal 1996 budget got tied up, as you all know, with continuing resolutions all last year. It never changed, for whatever reason, from the \$447,000 that was actually given to me for 1996. With that amount of money, I could not complete my strategic plan and I could not hire the staff that would have made it possible. I requested the Department to reprogram moneys, but for whatever reason the priority was not, apparently, high enough for them to make that change last year.

Mr. COHEN. Mr. Chairman, if I may just add one point. The question had come up in one of the prior hearings, and I checked with our budget people, and what I am told is that the Office of the Secretary did not have the authority to reprogram, money to the office of special trustee. Because of the way the accounts are set up, a reprogramming would have required coming back to Congress. Mr. Homan's office is a separate budgetary unit. We can provide additional information to the Task Force on that point if you would like. I am not a budget expert, but that is my understanding.

With regard to funding of the rest of the plan, the administration, as Mr. Homan indicated, asked for \$36 million in 1997, of which I believe \$16 million goes to the implementation of the strategic plan. We are hopeful that Congress will respond positively to that. And each progressive budget submitted by the administration will include significant sums, I suspect, for the implementation of the strategic plan as it is completed and approved by Congress.

Mr. HAYWORTH. Well, I thank you for adding those remarks, because it does seem to raise a new specter here, and we have touched on it previously. In a department which has an annual appropriation of some \$12 billion, again without the accounting expertise, it would simply seem that common sense would dictate that the Secretary has a broad purview over discretionary spending.

And as I have said before, I think whoever sits at 1600 Pennsylvania Avenue in the years to come working with the Congress has to reconsider the way in which we have treated the first Americans, for we have Native Americans categorized in the Department of the Interior, which seems to betray to me some sort of antiquated notion. And I think somehow we get lost in the translation that we are taking the lives of human beings and their destinies, and we are putting them in the back seat as opposed to rocks and trees and critters. Now I would be the first to say we need to preserve our precious environment, but we must also honor our commitments to the first Americans. And that is what gives me pause.

So I would like to see further quantification from the budgeters and the folks at Interior and find out, given the nature of this problem and now the urgency that the forensic accounting reveals, why the Secretary or whoever has not offered more or served more as a catalyst with discretionary funds to help complete that mission.

Mr. COHEN. If I could add a little more detail, and I don't want to belabor the point. I wish our budget was \$12 billion. It isn't. I think it is—I can't tell you exactly what it is, but I know it isn't in that range, maybe in the seven billion dollar range.

Second, I think that as has become clear through these hearings, this is going to take a partnership between the administration and the Congress to solve this problem. It is going to cost a lot of money. The President's request was \$36.3 million. The House appropriated \$19.1 million for Mr. Homan's office, the Senate \$36.3 million, and we are hoping that whatever comes out will be, obviously from our vantage point, closer to the Senate number.

But you are quite right. I think this is going to require an effort of both the Executive and the Legislative Branch to get this problem solved.

Mr. HAYWORTH. I think we can both agree that the budget for the Interior Department is certainly bigger than a billion dollar bread box. There is a significant sum of money there, and I again think we do need to look, though, and see with whatever powers of discretion the Secretary has, given the urgent nature of this problem, given the fact now that there are pending court cases and civil action has been taken, it would seem to suggest to me some urgency to say well, here are billions of dollars appropriated and yes, a number of different priorities, what would prevent this from moving higher on the priority list. But you are quite right. We would hope to continue a productive dialog with the administration and with the Executive Branch, whomever may head it in the years to come.

Let me turn to my distinguished colleague, the Ranking Minority Member of the Task Force, Mr. Kildee.

Mr. KILDEE. Thank you very much, Mr. Chairman. When I first came to Congress, Gerald Ford was President. At that time we achieved the point where we had reached our first billion dollar Congress. I remember Gerald Ford mentioned that in the State of the Union message. And perhaps one good way to find the \$36 million is to look at our own budget and find some dollars there.

This is, to my mind, a question of real justice, and my primary goal is to achieve justice for the Indian nations and tribes and people in this country. That has been my primary goal as I have been

in the Congress in this area. It is incredible that this has happened. I happen to really appreciate the Chairman's tenacity, because this is a complicated area to explore. Every time you look at it you find more complications, but I appreciate your tenacity on this.

Let me ask this question. I am not even sure I can ask it in the right way. You are the expert on this, but while trying to achieve justice for Native Americans, can we or should we at some point achieve or declare closure on a number of the unreconciled accounts while trying to fix the system for the future? I am not sure that question is phrased that well or not, but if you can take that and try to respond.

Mr. HOMAN. Well, I think at some point we must come to a closure with the harm and damage claims that have arisen out of the deficiencies in the trust management systems. And one way to do that is to fix the systems so that at least you can stop the bleeding, so to speak, because our current systems for the most part are no different than they were in 1992 when the reconciliation project concluded. So as my staff is wont to say, we may be in the fourth year of a new reconciliation project.

And I am here to say that based on my observations if we did another reconciliation project today for the last 4 years, we would find similar exceptions, similar deficiencies, similar amounts of missing records that we did with the 20-year reconciliation project which we concluded last year based upon the end of 1992.

So one way to bring closure to the past is to assure that going forward we can provide the accurate accounting which is required by the Reform Act. Then you can separate it as a bank would into the institution going forward and the institution in the past and work down these exceptions. The 154,000 accounts that have no known address, for example, we have made significant progress in working some of those accounts down. However, the minute we stop, we get more over the transom, so to speak, coming in the door because the current systems have not been modernized. And this is basically in its simplest form a recordkeeping problem. And if we fix the recordkeeping problem, then we will be able to deal with both the past and the future in a sensible way.

Mr. KILDEE. To achieve closure which contains justice, would that require legislation on the part of the Congress?

Mr. HOMAN. Yes, I would like to have our representative from the Department of Justice answer that, and also if Ed would like to chime in on that.

Mr. SIMON. Congressman, thank you. I would refer you respectfully to some of the issues you raised the last time we were here. I believe that was at the beginning of the summer. And we reported that the Interior Department was making information available to all of the tribal account holders from the reconciliation and would be asking the tribes to attest as to whether or not they had an objection and if so what their objection was and that we would report back to Congress by November 15 as to what the objections and exceptions made by the tribes were, and that we would then try to analyze those exceptions and try to work with Congress on the solution.



I think we are all interested, as you say, Congressman, in achieving justice. I think we are all interested in doing it in a way which is expeditious, which doesn't squander money or time in needless litigation or dispute. And I think that what we have in mind is to gather the information from the tribes as to what they think the exceptions are and then work with them and with Congress and try to craft a solution. That may involve legislation. It is too early to say.

Mr. KILDEE. So it may require some action outside the executive branch of government to bring some type of just closure to this, some type of closure that contains justice, then?

Mr. SIMON. It very well may, sir. I think that we hope to know a little bit more in November, and we will report to you and we will be pleased to work with you, sir.

Mr. KILDEE. Mr. Chairman, I am just wondering what would happen if in the State Department we were running through the foreign aid accounts and found such a situation. There really would be probably some heads rolling over there. And we are not dealing with foreign aid here. We are dealing with the first Americans. It just seems incredible that has drawn up. But I think we—that has already happened. I think we have to say now what can we do now.

And I am certainly happy, Mr. Homan, that you are doing what you are doing. I think you have to be funded. I think that this is a very serious problem. You have to have the adequate funds so you can carry out your mandate. Thank you very much.

Mr. HAYWORTH. I thank the gentleman from Michigan for his point of view. Gentlemen, before we dismiss, any other comments from any of you?

Mr. COHEN. Mr. Chairman, if I could, I would like to address an issue that you haven't raised but I see that Mr. Old Person raises it in his testimony. And because he is coming after us, I would like to address his comments.

He indicates in his statement that a meeting he attended of the Advisory Board in Phoenix was abruptly canceled at which Mr. Homan was going to consult with the tribes on settlement issues. And without boring you with all the details, let me outline briefly what happened, because I think Mr. Old Person is justifiably upset. And I think he and the Native American community is owed both an explanation and an apology.

The meeting was scheduled for, I believe, a week ago Monday. And the purpose of it, as I indicated, was to discuss settlement options. Now as you know, there are two categories of trust fund claims that we are looking at. One category is the so-called IIM accounts, and the second are the tribal accounts. We had some concern about the extent to which settlement would be discussed with the Advisory Board, to which Mr. Old Person refers, for a couple reasons.

First of all with regard to the IIM accounts, there is litigation pending. A class action suit was filed in midsummer, and at this point, counsel for the plaintiffs and counsel for the United States in the form of the Justice Department have been meeting, and I think somewhat productively, to try to scope out an approach to resolving the issues.

Mr. Kildee, when you asked your question about how are we going to resolve this, it is quite possible that the IIM accounts will be resolved, or at least the framework for resolving them, could evolve from the litigation depending upon how successful we are at working out an approach.

Those discussions are in a very sensitive State and we were quite concerned about having discussions by anyone other than counsel for the parties going on.

With regard to the tribal accounts, Mr. Homan has been conducting discussions with the advisory board and we had no problems with that. But I did send him a memo immediately prior to his meeting that made two points. One was that with regard to the IIM accounts he shouldn't discuss settlement of the litigation. The second point that I made with regard to the tribal accounts was that to the extent that he has confidential and privileged information by virtue of his being an employee of the Department of the Interior, he should steer clear of revealing or discussing that in the context of his meeting. For whatever reason, whether the memo wasn't written clearly or whatever, what he read was not what I thought we had written. He interpreted the memo as saying that he could not discuss any settlement issues. That was not in any way, shape or form what was intended to be communicated with respect to the tribal accounts. Unfortunately when he read the memo he concluded, as I indicated, that he could not discuss settlement issues and that portion of his meeting was terminated.

I want to apologize to the Advisory Board members, the tribal leaders who traveled to Phoenix to participate in that meeting. That confusion should not have happened and I think it is a departmental wide issue that should have been resolved prior to the meeting. I just wanted to bring that up and again apologize to Mr. Old Person and apologize to the tribal leaders.

Mr. HAYWORTH. Mr. Cohen, I appreciate you raising this, but it does not offer absolution. Indeed, it raises an entirely new specter of a very disconcerting problem here. We have just finished hearing testimony about how acute and how badly needed resources are to solve this problem, and yet now we are reminded of a non-meeting taking place in my home State, presumably with folks journeying nationwide or across the continent to attend the meeting and then having it abruptly terminated for a misunderstanding or whatever. This is—it is a waste of money. It is the very thing we lament in the entire process.

And you bring to mind something else when you talk about the advisory group that I really—before I bid you adieu this morning I want to get into. And let me discuss this with Mr. Homan. Recalling the testimony of Ivan Makil, the Chairman of the Salt River Pima Indian community in my district, I believe he is a part of that special advisory council. But as I understand it now, that group will not meet with you again until well into 1997, at least according to the testimony he presented to us in Arizona. Why the delay in that, Mr. Homan?

Mr. HOMAN. I believe Mr. Makil probably meant Fiscal 1997. There was no money allocated last year to fund advisory board meetings, so we have met essentially over the phone. We had one organizational meeting in December of last year, and this was in

connection with settlement options and other criteria having to do with the reconciliation project. So we are scheduled to meet again in December of this year with a follow-up meeting in February to discuss the final stages of my strategic plan.

Mr. HAYWORTH. Thank you for clearing that matter up for me. One thing I would request also in writing if it can be provided, the cost, the expenditure of transport of government officials to Phoenix, Arizona, for a meeting that could not take place. I would like to know what that cost the taxpayers of this nation, and I would like to see again more detail. You said you didn't want to bore me with the details, and I will respect that this morning; but I would like in writing, please, an explanation of exactly why this was terminated. I am sure the American people appreciate the apology, but I don't believe they easily excuse what can only be described as a waste of funds.

Mr. HOMAN. Mr. Chairman, we will be glad to provide that for the record. I would like to say a few words about that meeting myself. When I received the advice from the Department of Justice, I conferred with my staff and we felt—all of us felt—that it precluded me, restrained me, if you will, from discussing the settlement options with not only the tribal members present, of which there were representatives from 15 tribes, but also with the advisory board itself because by definition the advisory board members, five of them, had to be members from tribes with tribal accounts. So with that I felt I had no choice—I didn't want to put my staff in jeopardy—but to call off the meeting. I have since received another memo indicating, as Ed indicated, that I may have misunderstood that memorandum, but that memo was given to me yesterday. My staff and my reading is still that I am restrained from doing any type of consultation on legislative settlement options with my advisory board. They have offered along with the Department of Justice to work with me in trying to clarify certain aspects of that latest advice and I will be doing that over the next week or two.

Mr. HAYWORTH. Well, we certainly appreciate that and I am sure you share the regret of having to travel and for whatever reason having the meeting abruptly canceled. And one is tempted to try and comfort you saying well, it must happen all the time, but that is exactly the problem we tend to have in this government that has grown so vast and so encyclopedic in its endeavors that the—whether it is the right hand or the left hand or whatever analogy we want to use, somehow we don't seem to be able to coordinate and we end up spending taxpayer's dollars needlessly or in vain, as I think was indicated in this episode.

Mr. HOMAN. Mr. Chairman, one final comment. The meeting was a general meeting on not only the reconciliation project but specific issues for each of the tribal members present. We did discuss those items in a general forum, so the settlement option proposal and settlement option discussion was only one part of the meeting, so it wasn't a complete waste of the government's money. However, the principal purpose of the conference was to discuss the settlement proposal and settlement options.

Mr. HAYWORTH. Well, gentlemen, I thank you very much. If you have nothing further to add, we will thank you for your time this morning and we will be in touch.

Mr. HOMAN. Thank you, Mr. Chairman.

Mr. HAYWORTH. Now the Task Force will welcome the Chairman of the Intertribal Monitoring Association for Indian Trust Funds, Eric Davenport, to the witness table. And, Mr. Davenport, we appreciate your attendance this morning even as we bid farewell to our first panel.

Yes, sir, welcome. Would you state your name and your role.

**STATEMENT OF DAVID HARRISON, PROFESSIONAL STAFF MEMBER, INTERTRIBAL MONITORING ASSOCIATION ON INDIAN TRUST FUNDS**

Mr. HARRISON. Yes, Mr. Chairman, I am David Harrison. I am part of the professional staff of the Intertribal Monitoring Association on Indian Trust Funds. Our chairman, Mr. Eric Davenport, who is the business manager for the Central Council of Tlingit and Haida tribes in Southeast Alaska, is stormbound in Juneau and the planes are not flying. And he deeply regrets that he can't be here, but he asked us to express his very great appreciation for the leadership that this Committee and this Task Force have shown on this very important subject. And he has asked me to elaborate on his prepared statement that was delivered to the committee in advance of today's hearing.

And while we did, Mr. Chairman, address each of the ten questions that the Committee put forward in our prepared statement, I would like to focus a little bit on just a couple of those in our discussion this morning. And then, of course, we will be happy to respond to any questions that you or members of the Task Force may have.

With respect to one of the questions about settlement, and it goes, I think, to a question that Mr. Kildee asked of Mr. Homan about what might be done in that arena to facilitate settlement, we would like to associate ourselves entirely with the remarks of Mr. Homan that we think there are very definitely things that can be done and should be done to use his words. And I am not sure he hasn't borrowed them from us in previous meetings, but to stop the bleeding, to begin to put into place some of the systems and some of the controls that are definitely and desperately needed in order to protect the government from the future liabilities that he has described, and in order to protect the Indians from future losses of the kind and the magnitude that they have suffered in the past.

Some of these, we think, are already on his list, and we simply urge this Task Force and the Congress to continue to support him in an effort to put some of those into place, some kind of an accounts receivable system so that the entire system won't simply be triggered by what comes over the transom every morning when people come to work in 85 or 90 different places around the country; some kind of a system so that the more than 50 million acres of land and timber and grazing land and farm land and irrigated pasture and crop land and oil and gas and coal and phosphate and copper mines that are operating out there are put on some kind of a basis so that there is a regular and routine procedure for seeing

that those activities on Indian lands are paying what they should pay and paying it in a timely fashion.

Some of the other things that you suggested or asked in your questions we have long urged be undertaken, and we understand they also are on the list. That is in terms of outsourcing some of the activities that are going on now. We have urged for years that there be some form of centralized custodial services that probably should be done by a private contractor, by a commercial institution for the more than \$2 billion of securities that are held by that office on a daily basis.

We talk about the size of this portfolio as being a \$2-1/2 billion portfolio, but with investments being made on a daily basis, with previous investments maturing on a daily basis, the actual volume of transactions conducted by that office is in the scores of billions of dollars a year of our money. And right now those securities that represent that couple billion dollars are scattered in 100 different institutions from coast to coast and border to border. And it is not unknown for some of those to go missing for periods of time. Even during the current—the recently completed reconciliation project a \$12 million TVA bond that had been called some 2 years earlier was discovered not to have been carried correctly on the books. So, for that kind of activity which increasingly, as Mr. Homan described, even private sector institutions, even commercial banks themselves are increasingly turning to each other and to specialized institutions for those kinds of needed services and are being outsourced.

We also would urge this Committee to see to it that there is some kind of an annual audit of these activities. We have recently concluded an effort at what we call a balance sheet audit for Fiscal Years 1995 and 1996; but we have gone from 1991 to 1995, the very period in which we were spending 4 years and \$20 million to reconstruct the books; we didn't bother to audit them at all, and notwithstanding what appears to us to be the requirements of both the Chief Financial Officers Act and the Trust Fund Reform Act, we think we definitely need to get this program on a scheduled basis of routine annual independent audits. And we need to enable the Office of the Trustee to develop an inventory of the leases and agreements that generate these funds and enable him to conduct the kinds of daily reconciliations that Mr. Homan says we would demand of even the smallest commercial bank in the country. We would demand that kind of daily reconciliation and we haven't provided the capability for our own government to do it for us.

And then finally the other thing I would like to really focus on a bit is in response to your invitation to discuss some changes in the law that we think might be needed. We are very grateful, as we have indicated to you in the past, for the position of the Trustee and for the presence in that position of Mr. Homan, but we know he is not always going to be in that position. And as grateful as we are for him there now, we think that the position itself perhaps merits a little bit of attention now. We would like to see some measure of increased independence for that position for the very—so we could avoid the very thing you were just discussing that happened in Phoenix last week. If this man is good enough for the President and he is good enough for the Senate of the United

States to be put in charge of this problem, he ought to be allowed to at least talk to the people whose money it is. And so we think some measure, greater measure of independence in the conduct of that office, is probably in order.

However, we remember the teachings of our youth that power corrupts and absolute power corrupts absolutely. And so we are not saying that we think Mr. Homan or anybody in that position should be made a unilateral czar.

But then we ask well, what kind of oversight should there be available? Well, we think maybe he comes from the place where that oversight should reside. Perhaps the Comptroller of the Currency, the same officer, the same agency that provides oversight and direction to all of these other commercial institutions that we are holding up as an example could also be asked to provide that kind of annual review, examination, oversight of these activities. We don't think that the other routine oversight bodies in either Interior or Justice or even the GAO would be as suitable for that purpose as the OCC.

We invite the Task Force to make their own inquiries of those other agencies in that regard, but I believe you will be told that as well. So we need, we think, some measure of oversight for that office, and we think that the Office of Special Trustee within that general oversight should be given the flexibility and independence to do the job that he was brought in to do.

And along those lines of legislation that we might suggest to the Task Force, any commercial bank today is required by law to do something that these guys would go to jail for if they did do, and that is to correct their own mistakes. As I mentioned with the TVA bond, and as we know again during the course of this \$20 million reconciliation effort, we accepted the guilty pleas from a couple of government employees for pilfering some of these funds. A commercial bank when faced with its own mistakes recognize them, acknowledges them, fesses up to them and uses their own equity or reserve accounts to make them whole. We really must figure out a way to give this officer the authority to correct the mistakes that he knows about. And whether that is to create a reserve account for him for that purpose or to authorize him the same way that people in litigation now can enter into stipulated agreements for access to the judgment fund, that could work—there are a number of ways that might work, but it doesn't do any good to give him all the tools in the world to do his job right and to find his own mistakes, and there will be mistakes. Wells Fargo makes mistakes, but if he can't fix them when he finds them, we really haven't profited much by the exercise.

So with that, Mr. Chairman, I would be happy to respond to any questions you may have. And thank you once again for your time and leadership in this important matter.

Mr. HAYWORTH. Mr. Harrison, we thank you for coming this morning to testify in the stead of Mr. Davenport. And we understand that the snow is falling in a variety of places, not only in our 49th State, but within the contiguous borders of the United States. So we appreciate you coming in to shed more light on Mr. Davenport's testimony, which will, of course, be included in the record as it was prepared.

[The prepared statement of Eric Davenport may be found at the end of the hearing.]

Mr. HAYWORTH. In fact, before we return to the very intriguing notions that you offer here, let me first note that our friend from Michigan was—his presence was required in another hearing this morning, so we welcome our good friend and colleague from Montana, Mr. Williams, to the Task Force hearing this morning.

I understand here, and I think we need to get this in the record, that the perception of the Intertribal Monitoring Association is that the \$2 billion figure that has been bandied about as a result of the audits and the forensic accounting that has gone on is just the tip of the iceberg, as I mentioned earlier and as we heard in testimony from people in our opening hearing. The testimony of Mr. Davenport, which I would like you to expound upon if you could, please, Mr. Harrison, is this assertion over \$200 billion in investment transactions were excluded and are left unreconciled. Now to people who may just be hearing of these problems, this exponential increase is nothing short of astounding, over \$200 billion left unreconciled. What is the rationale that you offer for that assertion?

Mr. HARRISON. The efforts by the contractors, like everything else you have heard here this morning, constrained by both time and money and where they were going to put the effort that was available to them, chose early on to focus on the money coming in and going out of the system, what basically we call collections and disbursements. And there was nearly \$18 billion of those kinds of transactions, what you hear referred to as the non-investment transactions. Well, that \$18 billion that came in and out of the system over that 20-year period was very largely scrubbed. And those are the numbers that you have heard Mr. Christie describe to you in terms of the high percentages of both numbers and dollars that were scrubbed. What did not get that kind of a scrub, although it did get some, in our view, little more than perfunctory evaluation were the more than \$200 billion of transactions that took place with that money while it was in the system. Those are what we call the investment transactions.

And that is what I alluded to earlier when I said while we have a \$2-1/2 billion portfolio we conduct scores of billions of dollars of transactions every year. Now that we are largely out of the commercial certificates of deposit and more into strictly Treasury paper, we don't have the level of investment transactions that we used to have, but I would guess we are still at a \$50 to \$60 billion-a-year level of investment transactions. Those are the transactions that did not get the kind of scrub that the collections and disbursements got. And we say that we think that is where a number of errors were likely to have been found that weren't found because they simply weren't looked for.

As I mentioned, even while this exercise was going on we lost track of a \$12-1/2 million bond for a couple of years. In an enterprise this size, there are going to be mistakes. And to their credit, they found this one. We didn't find it for them. They found it themselves through doing improvements that they had made in their procedures. But we know that those procedures were not in place for the last 20 years and we very strongly believe that—and we

know a number of tribes that say to us we think this money lay uninvested for 6 months when it should have been invested, we think this money was not reinvested when it matured the way it should have been. And so that is why we say that other \$200 billion of transactions did not get the scrub that we wish it had, and we have no doubt there would have been a good deal many more errors and omissions found and reported had that happened.

So that is what we mean when we say the \$2 billion that we so cheerfully tell you about in our view really does represent only the tip of the iceberg.

Mr. HAYWORTH. Mr. Harrison, you also mentioned perhaps in the tale of the bond or in some other episode a documented case, an example of someone within the Federal Government, someone vested to take care of these trust responsibilities, I believe your term was pilfering some of the proceeds. Is this a unique example or do you have documentation of other actions taken by those who have been entrusted with the care of these moneys to be less than straightforward?

Mr. HARRISON. We have at least one other documented example that we know of where an individual in the position of A, access, and B, trust, was in the agency handling these moneys, have helped themselves. In one case it was a man and in one case it was a woman, so we are gender neutral here. I might say that we have discussed another documented case in which it was not a government agent at all but a bona fide crook that swindled over \$8 million out of the agency's trust funds under the guise—he set up a bogus institution and bid on the money and got it. The government caught him and recovered most of the money. The President's budget for this very fiscal year included a \$14 million request to make whole that loss. And the Congress has not seen fit this year to make that whole, but that is a known, documented loss that the President's own budget officers have quantified and submitted to the Congress to be made whole.

Which goes to one of our other points, Mr. Chairman, if I just could press my own point a little about the authority that is needed for these people to correct their known mistakes. It is not a crime to make—I guess it shouldn't be a crime to make a mistake. It should be a crime to cover it up and it should be a crime not to make it right. And those are the two areas where we find real fault and where we take great issue and where we suggest that nothing less than the integrity of the Nation is at stake when it comes to covering them up and not making them right.

Mr. HAYWORTH. And you offer an intriguing policy initiative or action that we can perhaps take legislatively when you talk about the role of the Special Trustee and increased independence for that trustee. I would like to revisit that and get your thoughts about that a little bit more, then I will defer to my colleague from Montana.

Are you saying the Special Trustee, just to understand this, should come really under the auspices of the Office of the Comptroller of the Currency, there should be that transfer there, or would the Trustee take on a status not unlike what we have seen in the whole area of Indian gaming? Or if you, Mr. Harrison—in the world according to David Harrison, if you were offering the sug-



gestion of to how best increase the independence of the Special Trustee but at the same time have that genuine accountability, what do you perceive to be the best course of action?

Mr. HARRISON. I think that today—and by the way, let me say when I say that I think that today just like with Mr. Homan's strategic plan, we are all for the first seven or eight steps he has laid out today, but we expect to get smarter as this process goes on. And so we are not saying that we think we have got the final answer all figured out in advance. But if I were to design it today, I would go more along the second alternative that you suggested. I did not have in mind and I don't mean to suggest that he should be transferred to or in any way become a part of the OCC, but rather that is the kind of oversight body and agency that already exists. If it is good enough for 290 million other Americans and their money, maybe it would work for the million or two of us that have money in this system too.

But I have thought maybe more along the lines you suggested with the gaming commission that is a part of the Interior Department. Their budget is a part of the rest of that \$12 billion that Mr. Cohen wasn't too sure where you got the number. Well, part of it goes to that guy, part of it goes to other what your budget people call Interior and its related agencies. But the gaming commission operates independently. It has its own professional staff. It has its own—I believe it even has its own legal counsel, and it operates under the terms and the direction and the guidance provided by the Congress and oversees an operation that is bigger than this trust fund business by a considerable order of magnitude. That is probably a \$6 or \$8-billion business that is overseen by that agency. And it seems to be working and it doesn't put the people that are charged with the oversight of that enormous and expanding industry subject to the same kinds of personnel rules and requirements.

We had a situation in trust funds just recently where people that we had spent \$20,000 in training were busted out of the system by a reduction in force and replaced by people that—according to the Federal personnel rules, an accountant is an accountant is an accountant and any one of them could bump in and knock out the guys that we had just spent \$20,000 training in accounting for and recording amortizations and accretions and interest fiduciary accounting. And we get people coming in who have been used to counting fence posts for the Rains Project, but if they could count a fence post people think they can count securities.

And so that is the kind of problem that we think Mr. Homan needs to be freed up from to the best we can make it happen so that he can get on with his rat killing. And there is plenty for him to do without having to fight these other bureaucratic problems.

Mr. HAYWORTH. Well, I appreciate your observations, especially the notion that you offered in response talking about, perhaps, the role of the OCC in this, saying if it is good enough for the majority of Americans why would there be a separation there. I think we always want to be mindful of the special trust and treaty obligations that exist between this government and the several sovereign Indian nations, but I think that is a very valid point and I thank you for those observations.

With that, let me turn to my good friend from Montana, Mr. Williams, for his comments and questions.

Mr. WILLIAMS. Thank you, Mr. Chairman. This issue, as you know, Mr. Harrison, has been very troubling for the Congress, both Members of the House and Senate, for a number of years. And fully recognizing the enormous complexities that are involved in trying to find solutions to the problem, nonetheless a great many of us have joined America's tribal governments in impatience about what we perceive to be the on-again, off-again stuttering progress or non-progress that is being made. I do want to note that after very close scrutiny of this issue for quite a long time many of us have faith in the work of the Special Trustee, in Mr. Homan personally, and are hopeful that he will not only be continuing to pursue this but allowed to do so in an aggressive and appropriate manner.

In your testimony for the Association, you say, quoting now, "First, we believe that it is very important to increase the independence of the Special Trustee." Would that include support of legislation in the Congress to set a term certain for the Special Trustee, grandfathering in the current trustee to that term? Am I clear? Do you—

Mr. HARRISON. Yes, sir, you are clear. And it is my belief sitting here today that our organization and most of the tribes would support that kind of legislation. That is not a particular question I have put to any of them, so that is my speculation on the subject. But we think it would do a couple of things. It would give—this guy may not be—we may not be able to stand him after he gets through listening to us say all these nice things about him, but barring that, we think we like the sense that the guy that is in the job now would be given, really given an opportunity to get that job done. We also think the kind of term certain that you suggest, Mr. Williams, would also go somewhat toward increasing his sense of independence and make him—and whether it is Mr. Homan or anybody else in that position, perhaps a little less sensitive to the every-other-November concerns that seem to affect everybody in this town. And he could go about his job of being an honest banker and worry less about what kind of press his boss is going to get in tonight's or tomorrow's news.

Mr. WILLIAMS. I want to note for the record as well as bring to the attention of all the interested parties, there is active consideration in the Congress to try even at this late time to enact laws that would further stabilize and guarantee the independence of the Special Trustee. Our difficulty, of course, particularly on the House side given our rules, is to try to get anything of that nature included in any of these couple of year-end vehicles that, you know, might lend themselves to it. It may be that the Senate, given their rules different than ours, would be better able to include something in one of the omnibus bills.

But I know from talking to members on both sides of the aisle, and as all of the witnesses have recognized and every Member of Congress recognizes, this Task Force under the good leadership of the Chairman has adhered strictly to bipartisanship. And I have found Members on both sides of the aisle in both the House and Senate who are expressing enormous concern about the stability of the office of the Special Trustee under the able person of Mr.

Homan. If we aren't able to get legislation passed, I have the clear sense that a number of us on both sides of the aisle may want to make it very clear in communications to both the President and Mr. Babbitt, Secretary Babbitt, that we have these concerns, and particularly while the Congress is out of session we would object strenuously to any changes in the status of the Special Trustee.

Well, we appreciate you being here on short notice and thank you for coming.

Mr. HARRISON. Thank you, Mr. Williams. Thank you, Mr. Chairman.

Mr. HAYWORTH. And again, Mr. Harrison, we thank you for your point of view and we will continue to take into account your advice and your very unique perspective on what we may do to work on this problem. Thank you very much, sir.

Mr. HARRISON. On my way out, may I assume that the record will be open to receive a resolution adopted by the tribes comprising this Intertribal Monitoring Association with respect to Mr. Homan's role and the comments Mr. Williams has made?

Mr. HAYWORTH. Indeed commensurate with the rules and the life span of the Task Force, the record will remain open for 2 weeks. So that is the due date, Mr. Harrison. Thank you.

Mr. HARRISON. OK, well, we have it in town. I just don't have it in hand, but thank you.

Mr. HAYWORTH. That is quite all right.

Mr. HARRISON. OK, thank you.

Mr. HAYWORTH. We appreciate you coming in this morning, sir, and thank you very much.

And now it is our privilege on this Task Force to call to the witness table the Chief of the Blackfeet Nation, Earl Old Person.

Mr. WILLIAMS. Mr. Chairman, if I may.

Mr. HAYWORTH. I would be happy to defer to my colleague from Montana.

Mr. WILLIAMS. Thank you. Earl Old Person and I are old friends, and I am always honored to be in a committee when the Chairman and Chief of the Blackfeet Tribe comes to testify. Earl is no stranger to the Congress, and the Congress has always enjoyed and benefited from our relationship with all Native Americans, and I would add most particularly our old pal Chairman Earl Old Person. Earl, it is always good to see you, sir.

Mr. OLD PERSON. Thank you, Chairman Hayworth and Congressman Pat Williams.

Mr. HAYWORTH. And, Chief Old Person, before you get into your comments, sir, sorry to interrupt, but if you would also take the time to introduce the lady who accompanies you to the witness table.

#### **STATEMENT OF EARL OLD PERSON, CHIEF, BLACKFEET NATION; ACCOMPANIED, BY ELONISE COBELL**

Mr. OLD PERSON. Yes, I must. With me is Elouise Cobell, who is a member of the Blackfeet Tribe and was involved in this particular issue that is being discussed right from its beginning.

What I want to say today in the beginning is that I am not an expert in anything, but I am here representing the Natives and in particular the Blackfeet Tribe. We have two laws that we go by.

First we have a spiritual law, and we have a person that we have to make it right with on those laws. Then we have the law of the natural law that we have within this world and within the government. I am sure that my people in the past have done their best to uphold these laws that we have.

It was mentioned about treaties here. Our people—those treaties that were made by our ancestors, the agreements, our people held them sacred. They believed in them, and to those that they made the agreements with and treaties with they felt that they felt the same way and should treat them likewise.

In the beginning I want to say that although that—it has been said at times that we come from somewhere else, but as far as our ancestors is concerned and according to our ancestors we were here. We can't help it. And we are going to be here so long as our leadership is with that strength and continues.

We have done everything to the best. Even our people in the past have done everything to abide by the things that they were directed to abide by. We were asked—our people were asked to attend schools, education. Sometimes it was very severe for them but yet they done their best to abide by those laws, even at that time. And they didn't dwell on those things that happened to them at that time. They were forbidden not to do certain things in their Indian way of life while they were at school, but they didn't use that to hold back their children from receiving education, because they felt that this was very important.

After they began to analyze the future, they foretold us many things. The lands that we have, although it said that they are reservations, they are reserved for us, but I say they are lands that our people are able to keep for us. These lands are our homeland and we try to maintain them, preserve them, develop them to the best that we can. Our populations are increasing rapidly, and it is making our reservations become smaller, not in size, but because of the population it is difficult to accommodate everybody. But to those that are on the reservations today, the lands that we have we try to use them so that we can help one another.

This particular issue that we are talking about, had it not been for someone back in May 1991 or even before then finding and seeing that there is something wrong, we wouldn't be here today. This thing will go on and on. Our people are always careful in the things that they do. Sometimes we are referred to as people that really don't know too much, but in our Indian way of life our ancestors, our people, even the people that I—elders that I started my career with as tribal leader taught me many things. And they taught me that you must first go according to the laws that are before you. I got on the council in 1954 and I have been on it since, became chairman in 1964, so a lot of things have happened and I saw a lot of changes and a lot of things.

People come to me in many ways many times. And our people, they know when there is something wrong. They will bring it to our attention. I talked to another group the other day here. I said some of our young leaders, some of our leaders in the past, not too long, they refer to our elders as we don't need them anymore, but after our elders passed away they realized that they lost something and they begin to say I wish those elders were still here because

they are the people—they are the background and they are the people that gave us some directions.

The Federal Government has given us help. There are Federal funding that comes to the Indian reservations, and we are very careful in how we handle that kind of money. The minute that we do not send in the kind of reports that the government wants, the minute that they find that there is something wrong within the Federal funding that they send, right now we are notified of it, right now they want us to correct it, and we do everything to correct whatever the problem may be. And I believe that is all that we are asking today, that if there is that wrong that has been done, let us correct it, how can we correct it, how can we satisfy the minds of the people that is directly the victims of this particular wrongdoing or mismanagement, nothing else.

I am not about to answer any of these questions that are being asked, because I think there is something that needs to be fixed first. Then I think we can begin to say all right, let us handle it this way, let us do this. I have my leaders back home myself. I am speaking of just the Blackfeet. Other tribes have their leaders that they have to come together with to decide what do we see as the best way of handling these kinds of things that we see that has been wrong. This is the only thing that my people have is these lands, whatever it is derived from. And it is our own. We are not asking the government—it is not a government money funding that we are asking to be corrected. It is our own money that we are hoping that can be corrected.

If I might say a little bit about the individual money accounts, a lot of our people back home, that is the only thing that they depend on, is what money they get off of those lands. We have some people back home that are the victims. We have people back home that are on fixed income that they have some hardship. Many people don't know. We don't—we have no argument whatsoever against our government helping other foreign countries, foreign people that is in need, but we also have people right here in the United States that are just as much in need but we don't come out asking.

And so today this particular issue that we are talking about, we have some direct experiences. I have had people come to me that I am basing my arguments, my concerns on. Our government has asked the tribe a few years ago to set up an accounting system, which again we abided—we done everything to set up an accounting system for the tribe. And I asked one of the government employees do you folks have a system? They says no, but yet they were asking us to set up a system of that kind when they did not have it themselves.

And so as I have said, we have done everything that we can to help within our own government, within the government that we deal with, the Federal Government and any government that we work with. And we feel that—and we try to do the right thing. And this is the thing that I think brings down our people, especially our elders when they hear about these things. They wonder what is going on. And with all the technical things that is taking place, the technical system that we have today, we shouldn't have anything wrong. We should be able to keep up with things.

And so this morning all I ask that there is a person or persons that are concerned, have their concern for us. I certainly appreciate you people for allowing us and allowing me to be here and to be able to express my thoughts and how I see it and my understanding of this particular situation. But I agree that I hope that this person that is trying to remedy the thing that is wrong will be given that chance to help us out, and through you people you are the power. We ask that you folks help us out. I am not telling you that we want something new, but just correct and give us some direction so that we would not have this in the future.

And again I want to say that I am speaking on behalf of the Blackfeet people, and I am sure I am speaking on behalf of all Indian people who are involved in this particular case. It is true we were hurt in Phoenix. I think somebody should have known ahead of time unless they were totally ignorant of the purpose of the meeting. They should have told us that this may not go on. That is the reason I went down there, is because we were going to talk about, discuss settlement, but it was very disappointing to be told—and like you stated, it is a hardship on us. We don't have the money to travel all over. We have to sacrifice what little we have because it is important to us. These kinds of discussions are important to us. It is the future for our people in the upcoming generation.

And so with that, I will just say I want to thank you and I want to ask you to do what you can, because we still exist and we are still looking forward in using that what we have and still work with everyone that we are to work with and we can work with. Thank you.

[The prepared statement of Earl Old Person may be found at the end of the hearing.]

Mr. HAYWORTH. Chief, we would like to thank you very much for your comments. You may have heard the bells sound. There is a vote on, and I guess we have about 7 minutes to get over to the floor to vote. Let me—we have a series of five votes. With that in mind, do you have any questions?

Mr. WILLIAMS. No.

Mr. HAYWORTH. No questions. We will take into account what you have had to say to us. Recognizing the fact, Chief, that you correctly point out this is money belonging to the first Americans, this is not the government's money, we look forward to working with you and Ms. Cobell in the days ahead. We thank you for what you offer in this testimony here. And thank you for your time.

Mr. OLD PERSON. Thank you.

Mr. HAYWORTH. Let me call on briefly a gentleman who has appeared before us before from the Native American Rights Fund, Mr. Robert Perego. Mr. Perego, given the fact that you are well skilled in summarizing arguments and mindful of the responsibilities we have on the floor, could you briefly outline what you believe to be the course of action we should take legislatively?

#### STATEMENT OF ROBERT PEREGOY, NATIVE AMERICAN RIGHTS FUND

Mr. PEREGOY. I most certainly will, Mr. Chairman, and thank you for allowing me to testify today. I appear on behalf of 300,000

individual Indians who comprise the putative class in the class action litigation *Cobell v. Babbitt* to compel equitable redress for the government's gross mismanagement of these trust funds over the course of the last 158 years.

And in summary fashion and in response to the questions that you have posed to us here, we are not in a position to answer a number of those because they are intimately tied up and interwoven with the litigation which is now under the jurisdiction of the court and the supervision of the court. And so in my written testimony, which I have submitted for the record, I have asked that we must respectfully decline to answer a number of those questions by way of reason of the litigation.

I think it is very important for this Committee to know that the litigation is on a fast track. The court has scheduled regular status conferences. We are meeting cooperatively with officials from the Department of Justice and the Department of the Interior and we hope that we can move to an expeditious resolve of these issues. And as other witnesses testified this morning, Mr. Cohen, et cetera, as the litigation proceeds and as the strategic plan becomes final, some of these questions that you put to us will become a little bit clearer in terms of response; but the main thing that we have heard this morning, I think, from everybody that is our point is that what needs to be done is to fix the system now. And Congress needs to put up the money to do that.

The Special Trustee has indicated it will cost about \$147 million over a 5-year period. This is a drop in the bucket with the amount of liability that we are looking at with the Federal Government's breaches over the course of the last 158 years. That is the price that it will take for the government to finally live up to its trust responsibility, and it is very incumbent on all of us, particularly the administration and Congress, to work in bipartisan fashion to put up those dollars so that those breaches of trust will cease and so that the government can finally start honoring its trust responsibility.

I think that to look at other future-oriented questions is a bit premature while the system remains broken. And I think that is the message, that we need to fix the system and Congress needs to put the money up to do it. And basically that would summarize my testimony, Mr. Chairman.

[The prepared statement of Robert Peregoy may be found at the end of hearing.]

Mr. HAYWORTH. Mr. Peregoy, we thank you for the brief summation of your remarks. Your entire testimony will be included in the record. We are mindful of the fact that there is pending legal action. Indeed, we have been reminded of that a few times this morning with a variety of different inquiries. So with that we thank you for addressing the problem. We will continue to stay in touch with you as the Task Force continues its duties and its obligations to the first Americans. And we thank you for your time and attendance this morning and at all the other sessions that this Task Force has held publicly. Thank you very much, sir.

Mr. PEREGOY. Thank you, Mr. Chairman, and we express our appreciation to you for your leadership and would also like to state for the record to thank Chairman Don Young for his critical sup-

port this past week in urging House appropriations committee leaders to concur with the Senate appropriation mark of \$36.3 million. That is the administration's request and that is the kind of bipartisan cooperative work that we need to get this job done and fix the system. So thank you very much.

Mr. HAYWORTH. Thank you, sir. And mindful of that fact, I would just let you know that we are working very hard, Chairman Young, Chairman of the Full Committee, working in a bipartisan fashion to accommodate that request and to move forward with that. And with that, I thank you very much for your time, sir, and would like to thank those in attendance this morning, the staff members of both sides of the aisle for their help throughout the course of these hearings. And with that, the Task Force hearing stands adjourned.

[Whereupon, at 11:49 a.m., the Task Force was adjourned; and the following was submitted for the record.]



PREPARED STATEMENT OF PAUL M. HOMAN

United States House of Representatives  
Committee on Resources  
Task Force on Indian Trust Fund Management  
Hearing on Indian Trust Funds Management

Testimony of Paul M. Homan  
Special Trustee for American Indians  
September 26, 1996

Thank you for the opportunity to present testimony on Indian Trust Funds Management. The hearings are focusing on legislative solutions to trust management problems.

Special Trustee's Assessment and Strategic Plan and What It May Take to Ensure  
Sound Trust Management in the Future

In October 1995, the Office of the Special Trustee for American Indians (OST) commenced an assessment of the U. S. Government's trust management policies, procedures, practices and systems as they apply to individual American Indian and American Indian tribal accounts. By February 1996, the OST completed the preliminary assessment and produced a conceptual strategic plan to acquire and institutionalize specified systems. Implementation of this plan will permit and ensure that the U. S. Government establishes appropriate policies and procedures, develops necessary systems and takes the affirmative actions necessary to provide an accurate and timely accounting to American Indian trust beneficiaries. In this manner the proper discharge of the Secretary's trust responsibilities can be accomplished. The Assessment and Phase I of the Strategic Plan are included in a document entitled "Special Trustee for American Indians, Assessment and Strategic Plan Principles, Phase I, February 1996" which was previously provided to the Committee.

The principles are conceptual in nature. The Special Trustee will continue to receive input from ITMA, the Advisory Board, affected bureaus within the Department, Departmental staff offices, tribes and tribal members, and the Office of Management and Budget as the conceptual plan is transformed into a detailed strategic plan as required under the American Indian Trust Fund Management Reform Act.

In December 1995, the U. S. Department of the Interior's Bureau of Indian Affairs substantially completed a multi-year "Tribal Trust Funds Reconciliation Project" (Reconciliation Project) and issued an "Agreed-Upon Procedures and Findings Report" for the period July 1, 1972 through September 30, 1992. Its major findings are substantially incorporated in the Special Trustee's Assessment.

In August 1995, the U. S. Department of the Interior substantially completed a study of the trust management systems relating to Individual Indian Monies (IIM) accounts and issued a report entitled "IIM Related Systems Improvement Project Report." The findings of this report are also substantially incorporated in the Special Trustee's Assessment.

The Special Trustee's Assessment, the Reconciliation Project reports, the IIM Related System Improvement Project Report and earlier and later reports issued by the General Accounting Office all confirm that the U. S. Government's trust management systems, policies, procedures and practices coupled with the condition of the trust records and, notably, large numbers of missing documents, are inadequate to allow for:

1. a proper, accurate and timely accounting for trust account balances, collections, disbursements and investments and the maximization of the return on investments.
2. the preparation of accurate and timely reports to trust account holders regarding all collections, disbursements, investments and return on investments.
3. an audit under generally accepted auditing standards.
4. any further reconciliation efforts, since the costs of such efforts would likely substantially exceed the benefits and at the same time would probably yield unsatisfactory and inconclusive results.

While significant improvements have been made over the last several years, the inadequacies of the trust management systems, the condition of the historical records and the U. S. Government's inability to provide an accurate and timely accounting cannot be remedied without the major reforms required by the Reform Act of 1994. To address these issues, the Special Trustee's

strategic plan identified nine initiatives or principles designed to rectify the problems and bring trust accounting and management systems up to commercial standards within three years. This, at a minimum, will involve acquiring, automating, updating, integrating, coordinating and consolidating to produce:

1. A trust resource/asset management delivery system.  
This will involve obtaining a new trust resource/asset management and delivery system for asset leasing, contracting, lending, buying and selling, together with standardized and/or integrated asset management, credit and operating policies, procedures and practices. The system must be able to tie to and track from land and ownership records.
2. An accounts receivable data and billing system that uses lease-contract and land and ownership information.  
This will involve obtaining a new accounts receivable, billing and collection data system that uses lease-contract and ownership information for trust income verification, reconciliation, billing, payments, collection, accounting, disbursement, audit, asset quality review and compliance purposes.
3. A trust, depository, payments and delivery system for Individual Indian Money (IIM) accounts.  
This will entail purchasing a trust, depository, payments and other financial services accounting and statement system and a delivery system to more efficiently provide current financial services and to facilitate new and improved financial services to individual Indians and Tribes.
4. A land records and title recordation and certification system.  
This will involve acquiring a new land records and title recordation and certification system, capable of instantaneous linkage with the trust resource asset management, accounts receivable and trust accounting systems.
5. A general ledger and general accounting system.  
This will involve obtaining or modifying a general ledger and general accounting system to accommodate all present and planned systems and accounting improvements.
6. A technology services center dedicated to trust resource and funds management.  
This will involve obtaining a centralized technology services center dedicated to trust resources, trust funds and land ownership and records management processes.
7. A national archives and records center.  
This will involve obtaining and centralizing a modern national archives and records center for trust resource, asset and funds record storage and retrieval.
8. A risk management and control system.  
This will entail obtaining a risk management and control system that will provide for adequate operational audits, credit and asset quality audits, compliance reviews, independent asset appraisals and liaison with outside, independent auditors.

3. An independent institutional structure. This will involve consolidating trust resource trust funds and land ownership and records management processes into a single, independent institutional unit with its own management structures to accommodate the restructuring and reorganization contemplated by Phase I of the strategic plan. The unit should be organized by function and dedicated exclusively to trust management. The unit should have agency or bureau status within the Department of the Interior or elsewhere.

The conceptual work on the strategic plan is completed. An independent contractor was hired for the purpose of determining approximate costs associated with the development of the comprehensive systems overhaul just mentioned. Out of an abundance of caution, however, a requirements analysis, user needs survey and inventory must be completed before cost estimates can be completely validated and the comprehensive strategic plan completed.

The next step is therefore a requirements analysis, user needs assessment and a comprehensive inventory of existing skills, hardware and software, related network support and facilities requirements, all of which will lead to a technical requirements report for RFP purposes and confirm or revise the cost data contained in the conceptual strategic plan. This will require the use of an outside contractor. The 1997 President's Budget request includes \$1 million to conduct the analyses.

Once the analyses are completed, expected to take 90 days from funding date, and once the staff of the DST is hired, the remaining elements necessary to produce the comprehensive strategic plan required by the Reform Act of 1994 can be completed within 90 days or by March 31, 1997, if the President's Budget request for FY 1997 is approved.

The total FY 1997 request for DST is \$16.3 million, a \$10 million increase over the 1996 enacted level of \$16.3 million. The request includes \$13.4 million to begin implementation of the strategic plan. The funds will be used primarily to upgrade and establish a new IIM accounting system, which is long overdue. The 1997 budget requests no-year funding to allow adjustments resulting from re-estimates or delays in plan implementation. However, it should be noted that if funding for the strategic plan is delayed, the reform effort will be delayed.

The \$10 million requested increase in DST's budget for FY 1997 also reflects the high priority the Administration and the Secretary place on Indian

Trust Asset Reform efforts. Improvement efforts are critically needed to ensure the Federal Government meets its fiduciary obligations to Indian Tribes and individual American Indians. While the Federal Government's trust responsibility is unique, systems, policies, practices and procedures of commercial trust operations can be applied to ensure that the Federal Government better fulfills its fiduciary obligations. Beginning in 1997, the evolution of trust system reforms will be at a point where increased resources can be prudently expended.

I would like to emphasize that "resolving the past" presents a significant challenge to the Administration, the Congress, and individual Indians and tribes. The ending of the tribal reconciliation process represents only the beginning of an effort to resolve problems with the U.S. Government's past trust fund management practices. The problems in trust fund management have long been recognized by GAO, the Department's Inspector General, OIG, and others in Congress. This Administration is committed to solving these longstanding problems and has made significant progress in strengthening trust funds operations, in conducting a massive reconciliation effort and in taking the steps necessary to ensure the highest level of fiduciary and investment standards are in place in the management of these funds. Future efforts will continue in earnest under the comprehensive strategic plan required by the American Indian Trust Fund Management Reform Act, provided that adequate resources are appropriated by Congress.

Enactment of the President's 1997 Budget request would represent a substantial step to ensuring that Indian trust reform efforts are implemented in a manner that ensures the fiduciary responsibilities of the Federal government are met.

#### Questions of the Committee

Development of the comprehensive strategic plan is scheduled for completion by March 31, 1997. It will address many of the issues and questions raised by the Committee at this hearing. The following answers are the Department's initial response to the Committee's questions. Further research

analysis and consultation with American Indians and the Congress will be required over the coming months to arrive at sound legislative solutions to the longstanding trust management problems. It is anticipated however, that in some cases that legislation will not be necessary. Rather, establishment and enforcement of consistent policies, practices, and procedures could solve some of the problems.

The Department of the Interior looks forward to working with the Committee in this regard.

(1) Should the Federal government continue to be in the business of administering IIM accounts?

The American Indian Trust Fund Management Reform Act of 1994 added the following new subsection to 52 Stat. 1037, Chapter 648; 25 U.S.C. 162a:

(d) The Secretary's proper discharge of the trust responsibilities of the United States shall include (but are not limited to) the following:

- (1) Providing adequate systems for accounting for and reporting trust fund balances.
- (2) Providing adequate controls over receipts and disbursements.
- (3) Providing periodic, timely reconciliations to assure the adequacy of accounts.
- (4) Determining accurate cash balances.
- (5) Preparing and supplying each account holder with--
  - (A) periodic statements of the account performance of the account holder; and

(B) a balance of the account of such account holder, which shall be available on a daily basis.

(6) Establishing consistent, written policies and procedures for trust fund management and accounting.

(7) Providing adequate staffing, supervision, and training for trust fund management and accounting.

(8) Appropriately managing the natural resources located within the boundaries of Indian reservations and trust lands.

All of these requirements have a direct bearing on the administration of IIM accounts. As long as the Federal government continues to have trust responsibility to IIM account holders, it will have to ensure, directly or indirectly, that the trust responsibilities, including those listed, are met. Under self-governance principles, it is conceivable that at some time in the future most of the trust management functions presently being administered, managed and delivered by the Department or the Bureau of Indian Affairs could be delivered and managed by the Tribes or by other third parties, provided the trustee retains sufficient direct and indirect authority and oversight capacity to ensure that the trust responsibilities to account beneficiaries are being met.

(2) Would you support having DOI contract out the operational functions of managing Indian trust fund accounts to either (a) a private trust management company, or (b) another department of the Federal government such as the Department of the Treasury, so long as the United States retains its related trust responsibility?

All of these options might be alternatives worth pursuing. However,

extensive research and analysis will be necessary before the Department will be in a position to propose these or similar options to the American Indians through the consultation process and to the Congress for consideration. The feasibility of such options will also be in doubt, if the government is unable to state with some degree of certainty the correctness of the account balances transferred.

**(3) Would you support DOI charging administrative fees to trust fund account holders to defray the cost of improving its trust fund management systems?**

Administrative fees might be charged trust account holders to defray the cost of operating trust management systems, providing such do not exceed private sector fees for comparable trust services and provided appropriate consideration is given to certain account holders who may not be able to afford such fees. Whether charges for systems improvements are appropriate is less certain. The Department is researching the issue of whether fees should be charged tribal and IIM account holders with large balances or activity, dormant accounts, minor accounts, accounts with no known address or an incorrect address and the like. Further research and analysis will be necessary before a proposal can be produced for presentation to the American Indians through the consultation process and to Congress for consideration.

**(4) Would you support legislation which would disburse all funds in existing accounts to appropriate account owners, would then terminate those IIM accounts, and would provide that in the future, whenever possible, revenues will be forwarded directly to account holders by check without going through a trust fund account?**

There are three critical parts to the trust management process: trust resource management, trust funds investment and management, and land and ownership records management. None are mutually exclusive as all are integral parts of the trust management process. Terminating IIM accounts along the



lines indicated by the question would still leave the Federal trustee with legal trust responsibilities, but the trustee would have an incomplete ability to carry out its responsibilities to determine whether the amounts being collected on behalf of the beneficiary were consistent with the terms of the lease or contract or to determine whether income to the beneficiary was being maximized. In addition, the trustee might not be able to determine whether direct payments were going to the correct account holder.

Certainly, there will be accounts for which this approach would be entirely appropriate and consistent with the Federal trust responsibility. Decisions about the proper management of individual accounts or categories of accounts should be flexible and open to negotiation. The options provided to tribes remove their trust funds from federal management might serve as a model for IIM account holders. Given these constraints and conditions, more research and analysis is necessary for the Department to consider an appropriate proposal.

Just as important, there are approximately 48,219 accounts with balances of about \$201.3 million which are held for minors and other account holders requiring assistance in managing their affairs. Another 5,183 accounts with balances of \$80.9 million are controlled for various reasons as determined by BIA personnel. These accounts could not be closed and paid out unless substitute trustees and guardians could be arranged.

(5) What do you think should be done about (a) fractionated heirship problems and (b) the thousands of inactive accounts which have no beneficiary? (Inactive account funds could be transferred to the Federal government or to the Tribe of the last known beneficiary or to some form of Federal or Tribal escrow account held for some designated use.)

There is no question that a complete resolution of the trust management problems will not be possible unless the fractionated heirship problems are addressed. Toward that end the Department has under consideration a draft proposal for legislation to resolve the fractionated heirship issues which has

as its principal purposes:

(A) The consolidation of existing fractional interests.

(B) The prevention or substantial reduction of further fractionation.

The proposed legislation will be forwarded to the Congress as soon as it is finalized.

Inactive account balances (dormant accounts) and accounts without an address or with an incorrect address have been segregated by the Office of Trust Funds Management. At the present time a clean-up effort is underway to reduce the number of the larger accounts in these categories to the extent practical. The clean-up effort will extend into FY 1997. At the conclusion of this effort, a permanent solution to these troublesome accounts will have to be found consistent with prudential and efficient trust fund management policies and practices and Constitutional taking considerations. The Department will work with the Congress in pursuing these objectives.

(6) Assuming that tribal accounts can not be reconciled any further, what settlement process do you support which would fairly compensate the tribes and would terminate any liability which the Federal government might have for any breach of trust responsibility which might have taken place regarding the management of tribal accounts in the past?

Subsection 3 of Section 304 of the American Indian Trust Fund Management Reform Act of 1994 requires "a statement by the Secretary with regard to each account balance disputed by the account holder outlining efforts the Secretary will undertake to resolve the dispute." The Secretary of the Interior has advised the Senate Committee on Indian Affairs and the House Committee on Resources that he will provide a final report on the account holders'

attestations by November 15, 1996. The Department is awaiting those attestations from the tribes, and will address this issue in its report to Congress. Following a series of regional and individual meetings with account holders this spring and summer, the Department on August 26, 1996, sent a letter to each tribal account holder with an enclosed attestation form. The Department requested that the forms be completed and returned by September 27, 1996. The information provided will serve as a basis for the November 15, 1996, report to the Congress on the efforts the Secretary will undertake to resolve any disputes as required by Section 304 of the Reform Act.

**(7) Assuming the IIM accounts can not be fully reconciled, what settlement process do you support which would fairly compensate account holders and would terminate any liability which the Federal government might have incurred for any breach of trust responsibility which might have taken place regarding the management of IIM accounts in the past?**

On June 10, 1996, a class action lawsuit captioned Elouise Pepion Cobell et al. V. Bruce Babbitt et al. was filed on behalf of all IIM account holders. Counsel for plaintiffs and the United States have been engaged in comprehensive discussions about a process to settle that litigation. As that litigation is currently pending, it would be inappropriate to discuss potential settlement options.

**(8) What changes in existing law would facilitate the administration of tribal trust fund accounts?**

**(10) What changes in existing law relating to the management of Indian trust fund accounts, other than those mentioned above, would you suggest be considered by Congress?**

Any major reform of trust management systems, including many of the

improvements under review by the Committee, will require changes in existing law. The initiatives outlined in the Special Trustee's conceptual strategic plan will require some changes to existing law as well. The final comprehensive strategic plan and other Department initiatives will likely contain even more suggestions for change in existing law to accommodate improved trust management initiatives. At this time, however, it is premature for the Department to be proposing specific changes to existing law for consideration by Congress. With respect to IIM accounts, the Department supports changes to existing law to resolve fractionated heirship problems. For further discussion, please see the answer to Question # 5 above.

**(9) What is your opinion of the proposed Phase I of the Special Trustee's strategic plan issued in February of 1996?**

Please see the Special Trustee's Assessment and Strategic Plan presentation portion of this statement.

This concludes my statement, I will be happy to respond to any questions the Committee may have.

PREPARED STATEMENT OF ERIC R. DAVENPORT

TESTIMONY  
OF  
ERIC R. DAVENPORT, CHAIRMAN  
INTERTRIBAL MONITORING ASSOCIATION ON INDIAN TRUST  
FUNDS

BEFORE THE  
HOUSE RESOURCES COMMITTEE  
TASK FORCE ON INDIAN TRUST FUND MANAGEMENT

SEPTEMBER 26, 1996  
WASHINGTON, D.C.

Mr. Chairman and Members of the Task Force:

Thank you for the opportunity to appear before you today. My name is Eric R. Davenport. I am the Chairman of the Intertribal Monitoring Association on Indian Trust Funds (ITMA). On behalf of the members of ITMA I want to once again thank you for your leadership on this issue and your commitment to seek solutions to the past mismanagement of the trust funds and ensure the proper management of those funds in the future.

The Task Force has asked ITMA to respond to ten specific questions in today's testimony. I will take those questions in the order in which they were asked.

**(1) Should the Federal government continue to be in the business of administering IIM accounts?**

We believe that the answer is an unequivocal Yes.

We obviously do not base this answer on the past performance of the federal government. Little in the way of positive information about past performance is available. We do know that Arthur Andersen LLP has advised both the Bureau of Indian Affairs and this Congress that these accounts appear to be in such a state of disarray that it would take well in excess of \$200 million to perform the most basic reconstruction and partial reconciliation of the accounts. This assessment is consistent with the

information we have been able to gather from individual account holders from around the nation.

Our answer to this question is based on fundamental moral and legal grounds. The funds in the IIM accounts are derived from lands held in trust or are the result of payments made to individuals for settlement of breach of trust claims. The federal government established the allotment system which led to these individual accounts. In many instances these accounts are now administered for the benefit of minors. In virtually all instances, they are comprised of revenues derived from trust resources over which the federal government exercises substantial authority and control. We see no way to separate the administration of the funds from the resources at the present time.

There is no federally regulated financial institution in the nation which could undertake the administration of these accounts at the present time. Any attempt to do so would cause the appropriate federal regulatory bodies to take action against the institution seeking to do so. This is understandable since no one seems to know how much is really in these accounts or how much should be in them. Existing federal law would not permit a financial institution serving the general public to assume responsibility for such accounts.

**(2) Would you support having DOI contract out the operational functions of managing Indian trust fund accounts to either (a) private trust management company, or (b) another department of the Federal government such as the Department of the Treasury, so long as the United States retains its related trust responsibility?**

In the appropriate circumstances ITMA does support arrangements of the type contemplated by either part (a) or (b) of this question.

We believe that any transfer of the operational functions is not possible at the present time for the very basic reason that no one can establish with any degree of certainty what is in these accounts and what should be in these accounts. For the reasons noted in my answer to the first question, a private institution would immediately confront federal regulatory action were it to undertake the management of these funds. A

federal agency might be able to avoid the regulatory action, but we do not see how it would be in any better position to know what the balances actually are or should be on the day that it assumes responsibility for the account. We do not know of any federal agency which is presently disposed or prepared to assume DOI's responsibility for these funds.

It is possible that the custodial services component of the investment function for these accounts could be contracted to a private institution without the need for certainty as to overall account balances. We would favor such an arrangement, but only if it provided the flexibility necessary to allow Indian tribes to exercise the option provided in Title II of the Trust Fund Reform Act to directly administer their trust funds.

**(3) Would you support DOI charging administrative fees to trust fund account holders to defray the cost of improving its trust fund management systems?**

We would not support such fees.

In our view, the account holders have long ago prepaid any and all fees. We know of no instance where an account holder has not given substantial value for whatever funds have been paid into these accounts, That value has been given both to the United States government and to its non-Indian citizens.

The gross mismanagement of the trust funds has already added a surcharge to these accounts which has not been calculated and may not be capable of calculation. To suggest that the account holders should now or at any time in the future bear the responsibility for the cost of establishing the adequate system which both the Congress and the courts long ago decreed to be required defies fundamental fairness and common sense.

**(4) Would you support legislation which would disburse all funds in existing IIM accounts to appropriate account owners, would then terminate those IIM accounts, and would provide that in the future, whenever possible, revenues will be forwarded directly to account holders by check going through a trust account?**

We would not favor such a system.

As we have noted in our answers to previous questions, there is not even any certainty as to the balances of these accounts. In fact, the record shows that there is not even any certainty as to the number of these accounts. Until there has been a fair and impartial determination on these matters, we see no basis for the action proposed by this question. The disbursement of all funds in the absence of this information will only make an already complicated situation worse for both the account holders and the federal government. It does not take much imagination to understand the potential for additional federal liability if funds are disbursed to improper parties or in improper amounts.

We believe that the Special Trustee's proposal to transfer these accounts to the Development Bank and consolidate them through stock issuance and acquisition merits serious consideration by the Congress and the Administration. This proposal holds promise both for resolution of some of the problems in the administration of the IIM accounts and the consolidation of fractionated allotments.

**(5) What do you think should be done about (a) fractionated heirship problems and (b) the thousands of inactive IIM accounts which have no known beneficiary? (Inactive account funds could be transferred to the Federal government or to the Tribe of the last known beneficiary or to some form of Federal or Tribal escrow account held for some designated use.)**

As noted in my answer to question 4, ITMA supports careful consideration of the Special Trustee's recommendation for a Development Bank to resolve these issues.

We also note that this question may suggest that the inactive IIM accounts in fact have no known beneficiaries. We believe that such an implication is hasty, given what is generally understood about the lack of accurate record keeping with regard to these accounts. Transferring the balances of the accounts with no "known" beneficiary to others may add to the problem rather than resolve it. What is the liability of the federal



government when the “unknown” beneficiary appears and seeks restitution for the wrongful taking of his or her account?

**(6) Assuming that tribal accounts cannot be reconciled any further, what settlement process do you support which would fairly compensate the tribes and would terminate any liability which the Federal government might have for any breach of trust responsibility which might have taken place regarding the management of the accounts in the past?**

ITMA does not agree that the reconciliation is complete. Arthur Andersen LLP refuses to state that it is complete. Even a casual review of the national and tribal specific reconciliation reports reveals that only a small fraction of the accounts have been reconciled. Among the identified deficiencies of the report are the following:

- It failed to disclose known limitations in the methodology and scope.
- Procedures included in the reconciliation contract were not performed or could not be completed.
- Changes included in 9 contract modifications and more than 150 issue papers were never explained to the account holders.
- The universe of leases was unknown and undisclosed substitutions were made to the original lease sample.
- Over \$200 billion in investment transactions were excluded and are left unreconciled.
- The Special Trustee cannot meet his statutory duty to attest to the fairness and completeness of the reconciliation as an accounting of trust fund balances.

- Arthur Andersen LLP was essentially hired as the bookkeeper, we have never seen and will never see an audit of their work by an independent CPA. The only thing that Arthur Andersen did do was to analyze whether the BIA made any errors in posting what the BIA collected. Neither Arthur Andersen's recommendations nor the BIA's responses have been examined by a qualified independent auditor.

We understand completely why many Tribes believe that it is not possible to begin meaningful discussion of settlements in these circumstances. Would any citizen of this nation agree to resolve a dispute over the balance in their checking or savings accounts in similar circumstances? We think the answer is obvious. No.

When most, or a substantial number of Tribes have indicated a willingness to discuss settlements, ITMA suggests that the Congress give very careful consideration to an approach which recognizes that each Tribe has unique circumstances. We do not believe that one form of settlement will fit the circumstances of the mismanagement of each Tribe's funds and the equities of an adequate settlement based on those circumstances. We urge the Congress to consider an approach which will provide for several alternatives from which tribes may choose based on their individual situations.

At the present time, all of the parties lack the information necessary to make informed decisions. ITMA will work with the Tribes, the Congress and the Administration to find reasonable solutions to this lack of information.

**(7) Assuming that IIM accounts can not be fully reconciled, what settlement process do you support which would fairly compensate account holders and would terminate any liability which the federal government might have incurred for any breach of trust responsibility which might have taken place regarding the management of IIM accounts in the past?**

As noted in my answer to Question 6, ITMA believes that a proper reconciliation must be completed before it is possible to enter into meaningful settlement discussions. A reconciliation of the IIM accounts has not even been attempted. ITMA does not favor a discussion of settlement options until there is greater certainty about the account balances for the IIM accounts. We continue to believe that many IIM accounts are can be successfully audited.

As noted in the answer to Question 4, we also think that the Special Trustee's recommendation for a Development Bank merits careful consideration as a means for providing an equitable settlement of IIM claims.

**(8) What changes in existing law would facilitate the administration of tribal trust fund accounts?**

ITMA supports several changes in existing law to improve the administration of tribal trust fund accounts. First, we believe that it is very important to increase the independence of the Special Trustee. The Special Trustee cannot be expected to fulfill his duties to the beneficiaries of the trust if he is continually asked to serve the political objectives of the Secretary or the Administration. At the same time, we believe that the Special Trustee should be subject to oversight by an official who is well versed in finance and money management. We urge the Congress to be mindful of Lord Acton's dictum: Power corrupts, and absolute power corrupts absolutely. We do not support unfettered independence and authority for the Special Trustee.

Second, we believe that it is critical that the Congress appropriate the funds necessary to provide for the proper administration of the trust funds. In this regard we believe that the funding proposals being advanced by the Special Trustee are generally sensible and will move the administration of the trust funds in the proper direction.

Third, we believe that the Congress should authorize the Special Trustee to correct mistakes in the account balances when they arise. On several occasions mistakes have been made and acknowledged. Thefts of trust funds have been successfully prosecuted. For the 1997 Fiscal Year the

President's budget requested an appropriation of \$12 million to repay losses incurred in 1984. Today, more than 12 years later that loss is still on the books and accruing interest. Even with the improvements which have been instituted by Special Trustee Homan and Ms. Erwin, mistakes will happen in the coming months and years. We believe that common sense suggests that the Special Trustee should be given some authority to correct known errors before they languish for years and multiply into seven digit numbers.

Fourth, we believe that mandatory disclosure of known errors is essential. The account holders have the right to know how their trust funds are being handled. They also have the right to expect that simple mistakes will be corrected and that criminal misconduct will be vigorously prosecuted.

**(9) What is your opinion of the proposed Phase 1 of the Special Trustee's strategic plan issued in February of 1996?**

ITMA is generally supportive of the direction which is established in the first eight points of Phase I of the proposed strategic plan. We believe that flexibility will be required as these initiatives are implemented, but we also believe that these initiatives will move the process toward the improvements which are necessary to ensure full accountability in the management of the Indian trust funds. ITMA has not endorsed point nine in Phase I of the proposed strategic plan. It is clear to us that the Tribes have not had an adequate opportunity to consider the implications of this initiative and to express their views on it. We urge the Congress and the Special Trustee to work very closely with the Tribes on any proposal for the consolidation of all trust functions in the Office of the Special Trustee.

**(10) What changes in existing law relating to the management of Indian trust fund accounts, other than those mentioned above would you suggest be considered by Congress?**

ITMA urges the Congress to consider changes in the federal personnel laws which will ensure that the personnel of OTFM have the proper qualifications for their positions. The recent experience of OTFM has shown that sound efforts to improve employee qualifications and

performance can be lost to the whims of the appropriations process and the mandates of federal personnel laws. We cannot often afford to have OTFM absorb marginally qualified employees and let well trained, highly qualified employees go.

We also believe that the personnel in OTFM should be placed in a special status which would afford the Director of the Office and the Special Trustee greater flexibility in the management of the office based on factors such as employee performance. Such authority appears to be necessary if we are to achieve an adequate level of administration of the trust funds.

Mr. Chairman, this concludes my testimony. I want to once again extend my gratitude to you, the members of the Task Force and to Chairman Young for your efforts on this issue. I am particularly gratified by the moral tone which you and the members of the Task Force have set on this issue. We appreciate the fact that this has been approached as an issue of right and wrong rather than from the perspective of partisanship. Wrongs clearly have occurred. We look forward to continuing to work with you and the other members of the Task Force to set them right.

PREPARED STATEMENT OF EARL OLD PERSON

**TESTIMONY BEFORE THE INDIAN TRUST FUND TASK FORCE  
OF THE  
HOUSE COMMITTEE ON RESOURCES****SEPTEMBER 26, 1996****SUBMITTED BY****EARL OLD PERSON, CHIEF  
BLACKFEET TRIBE**

Mr. Chairman and Members of the Task Force, I appreciate the opportunity to appear here today. I am accompanied by Elouise Cobell, Project Director of the Individual Indian Monies Trust Correction and Recovery Project. As you know, this project is an initiative of the Blackfeet Reservation Development Fund.

I want to thank Congressman Young, Chairman Hayworth, Congressman Pat Williams, and the other Members of the Task Force for their efforts to develop meaningful answers to these longstanding trust fund issues. I also want to commend the Special Trustee for his leadership and for his efforts to address the facts and the history of grossly inadequate management of individual American Indians trust fund accounts.

One of the major purposes underlying the creation of the Special Trustee was to lay a basis for resolving this matter and reforming trust fund management. True to his mandate, the Special Trustee has brought a sense of purpose and urgency to the issue. He has put together an outline of a strategic plan. He is ready to make significant improvements as soon as funding is made available. He has tried to open up a discussion with tribal leaders on how the government and the tribes can settle the \$2.4 billion problem identified by the Arthur Andersen report.

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The Special Trustee deserves the support of the Interior Department, the Clinton Administration, the Congress, and all those who live in Indian Country. Together with other Tribal leaders who went to Phoenix last week to hear the Special Trustee's views on settlement options, I was disappointed that our meeting was canceled on short notice. We were told that the Solicitor's office had, at the last minute, decided it would be inappropriate for Mr. Homan to discuss his views on Tribal settlement terms and options. This cancellation was apparently based upon the fact that after generations of improper management of individual Indian trust funds, a law suit had been filed by myself and others on June 10, 1996 in Federal Court on behalf of IIM accounts, but not addressing the Tribal issues.

Many of the ten tribal leaders came away from the canceled Phoenix meeting angry and frustrated. Time and money had been wasted. No progress had been made on developing a basis and terms for an honorable Tribal settlement. And meanwhile, inadequate management of all of the Trust accounts continues.

After the meeting was canceled, the tribal leaders met to discuss how we should proceed in light of the Department's actions. We agreed that Special Trustee Homan was critical to the fair and timely resolution of the trust fund problem. We agreed to support legislation to strengthen his position so he can accomplish the goals Congress set out when it enacted the Trust Fund Reform Act two years ago. This is the same view that was reached at the Task Force's August 20th hearing on the Salt River Reservation, where the members of the Task Force and the tribal leaders agreed that the Special Trustee needed greater

operational independence. This latest episode removes any doubt about this. If the Special Trustee cannot air the critical issues of trust responsibility and discuss them with the beneficiaries -- the account holders -- then the purpose of the legislation will have been defeated.

To give the Special Trustee the full powers and independence he needs will require a thorough overhaul of the Act. I recognize that it is too late in this session for that to happen. I do, however, urge the Task Force to include a proposal for such an overhaul in the Task Force Report that is to be issued in November.

In the interim, I request that the members of the Task Force and other interested Congressmen and Senators communicate to President Clinton and Secretary Babbitt their support for the Office of Special Trustee and how important it is for the Secretary to work cooperatively with Special Trustee Homan if this problem is ever going to be resolved.

Second, I request the members of the Task Force encourage the House Interior Appropriations Committee to recede to the Senate Appropriations Committee mark on funding for the Office of the Special Trustee.

Third, I request that the Task Force take the lead in trying to enact some minor amendments to the Trust Fund Reform Act before Congress adjourns. They would give the Special Trustee some additional power so he can maintain forward progress until Congress can do the major overhaul next year. I have three specific proposed amendments attached to



my testimony. I am not asking Congress to break any new ground here. Each amendment is based on provisions of the Indian Gaming Regulatory Act.

Thank you for your deep commitment to trust fund reform. I hope you and the other members of the Task Force will be able to push through some amendments in the last days of the session.

Finally, I will be soon providing answers to the specific questions you asked in your invitation letter to witnesses. I apologize for not addressing them in this testimony, but we concluded that it was critical for me to focus my testimony on recent events and the need to maintain continuity and support the efforts of Special Trustee Homan.

**PROPOSED AMENDMENTS TO  
THE TRUST FUND MANAGEMENT REFORM ACT  
TO STRENGTHEN THE OFFICE OF THE SPECIAL TRUSTEE**

- I. Establishing a fixed four year term for the Special Trustee (retroactive to the date Mr. Homan took office) and prohibiting the President from removing him before the end of his term except for cause. (The language on removal only for cause is taken directly from the Indian Gaming Regulatory Act.)

Proposed New subsection 4042(b)(3):

"(3) Term of Office.-- The Special Trustee shall serve for a term of four years, (unless the Office of Special Trustee is terminated, pursuant to the provisions of section 4042(c)(3), prior to the completion of the term.) For purposes of the incumbent in that position on the effective date of this Act, to whom this provision applies, the term shall be deemed to have commenced on the day he assumed the office. The Special Trustee may only be removed from office before the expiration of his term by the President for neglect of duty, or malfeasance in office, or for other good cause shown."

- II. Giving the Special Trustee his own legal counsel

Presently, the Special Trustee is represented by the Solicitor of the Department of the Interior. There is an inherent conflict of interest, since the Special Trustee's sole loyalty is towards the Indian beneficiaries, while the Secretary and his staff's loyalty is to the entire department, which necessitates choosing and balancing among the different parts of the Department. The proposed language would give the Special Trustee his own general counsel (the language is taken directly from IGRA).

Proposed Language for a New section 4045(c):

"(c) General Counsel.--

The Special Trustee shall appoint a General Counsel to the Office who shall be paid at the annual rate of basic pay payable for GS-18 of the General Schedule under section 5332 of Title 5.

### III. Staffing

Presently the Special Trustee is bound by regular OPM hiring procedures and requirements when hiring staff. Given the Special Trustee's need to be able to hire quickly once funds become available and his need to select people with the skills and experience needed, the OPM process is extremely burdensome. The proposed amendment would give the Special Trustee the same special hiring authority that was given to the National Indian Gaming Commission by IGRA, language that permits him to hire without regard for the civil service laws.

#### Proposed Language Giving the Special Trustee Hiring Authority that is not Subject to the Civil service Procedures

Section 4045(a) is amended by repealing everything after the heading ("(a) Staff") and replacing it with the following:

#### "(a) Staff.

"The Special Trustee shall appoint and supervise other staff of the Office of Special Trustee without regard to the provisions of Title 5 regarding appointments in the competitive service. Such staff shall be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no individual so appointed may receive pay in excess of the annual rate of basic pay payable for GS-17 of the General Schedule under section 5332 of that title.

PREPARED STATEMENT OF ROBERT M. PEREGOY

**STATEMENT OF ROBERT M. PEREGOY**  
**NATIVE AMERICAN RIGHTS FUND**  
**SEPTEMBER 26, 1996**

Congressman Hayworth and Members of the Task Force, I appreciate the opportunity to provide testimony on this most important matter. My name is Robert Perego. I am a senior staff attorney with the Native American Rights Fund (NARF). I appear today on behalf of 300,000 individual Indian trust beneficiaries who comprise the putative class in the lawsuit filed in federal district court here in Washington on June 10, 1996 against the federal government. As you know, this class action litigation was filed to compel equitable redress for the federal government's gross mismanagement of their Individual Indian Money (IIM) accounts.

First, I want to express appreciation to you and Members of the Task Force for your commitment and hard work to carry out the mandate of Chairman Don Young in establishing this important Task Force. I also want to commend and thank Chairman Young for his timely and critical support this past week in urging House Appropriations Committee leaders to concur with the Senate Appropriations Committee mark for the Office of the Special Trustee in the FY 1997 Interior spending measure.

In preparation for my testimony, the Task Force has asked me to answer ten written questions, which I have attached to my written statement for the record. Several of these questions relate specifically to tribal trust fund matters. Such questions are beyond the purview of the IIM attorneys since our representation is limited to individual Indian trust beneficiaries. We are therefore not in a position to respond to such questions, and respectfully decline to do so. Rather, we defer to the tribes and their representatives to address them as they deem appropriate.

The Task Force has also asked me to answer several written questions related to the future status, treatment, disbursement of funds and termination of IIM accounts, as well as fair compensation of IIM account holders, termination of federal government liability for any breach of trust regarding IIM account management, and related settlement processes. Questions of this nature raise equitable and legal issues that are now under the jurisdiction of the United States district court here in Washington pursuant to the IIM class action lawsuit in Cobell v. Babbitt. Because these questions have been properly committed to the judicial

branch of government, we are ethically obligated to address them in that forum. I must therefore respectfully decline to testify in that regard.

Notwithstanding, suffice it to say that the litigation is currently proceeding on a fast track. The court has scheduled regular status conferences with the IIM and government attorneys, and we are meeting with officials from the Department of the Interior and Department of Justice in a joint cooperative effort to move to an expeditious resolve. To speak to the issues outside this context may undermine the process and interfere with the court's supervision of this case. Equally important, such could compromise the rights and position of over 300,000 individual Indian trust beneficiaries whom we represent in this matter.

At this juncture, I want to restate part of the testimony of John Echohawk, NARF's executive director, given before this Task Force on June 18, 1996. Neither the lawyers involved in this class action litigation, nor the accounting firm we have retained, Price Waterhouse LLP, currently contemplate accepting contingency fees available in a case like this. Fully, 100 percent of the recovery in this class action lawsuit is expected to go to the individual Indians who lost and continue to lose their money daily at the hands of the federal government. The lawyers and experts are currently retained by the Individual Indian Trust Correction and Recovery Project of the Blackfeet Reservation Development Fund, and private funds are currently being used to support this effort.

With regard to the Task Force's written question whether we would support the Department of the Interior charging administrative fees to trust fund account holders to defray the cost of improving its trust fund management system, the answer is no. Simply put, trust beneficiaries do not pay for the establishment or improvement of trust fund management systems. In the private sector, fiduciaries are responsible for establishing and maintaining adequate management systems to perform trust functions. There is simply no justification for the federal government to compel Indian trust beneficiaries to pay for an adequate trust management system that the government has been required to establish for more than for 158 years; and the government's failure to do so continues to cause Indian people to suffer huge losses of their own money every day.

The Task Force also asked us to answer other written questions concerning what the federal government should do in the future with regard to the administration of IIM accounts. These questions range from querying whether the

Federal government should continue to be in the business of administering IIM accounts, to whether the Department of the Interior should contract the operation and management of Indian trust accounts, either to a private trust management company or to another department of the federal government. However, discussing what the federal government should or should not do in the future with regard to its existing legal responsibility to manage and administer IIM trust funds is not the issue. The relevant, compelling question at this time is what the government needs to do now to fulfil its legal obligation and trust responsibility to Indian trust beneficiaries to fix a trust management system that has been broken for 158 years. Our collective job now--that of Congress, the Administration and those of us who represent Indian trust beneficiaries--is to work together to assure that the federal government for the first time in history begins to honor its fiduciary obligation to these people who continue to lose untold millions of dollars each year as a result of the government's continuing serious breaches of trust. To speculate what the federal government should be doing in the future when it is not doing the job now is to put the cart before the horse. When the system is fixed, we will all be in an informed position to knowledgeably evaluate and discuss these future-oriented questions in purposeful fashion.

The real question immediately confronting all of us--Congress, the Administration and IIM account holders alike--is how we can correct this 158 year-old problem, and equally important, how we can make sure that it does not happen again. Congress took a giant step to correct the problem by passing the Indian Trust Fund Management Reform Act of 1994. Pursuant to this remedial legislation, the President appointed the Special Trustee and the Senate confirmed him--with the endorsement of many Indian tribes, groups and individuals. By all accounts, the Special Trustee, Mr. Paul Homan, is highly qualified and exceptionally competent. This is the first time in the history of the Department of the Interior that a person of such eminent qualifications and capabilities has been placed in the critical role of carrying out the Nation's trust responsibility to Indian tribes and individuals with respect to trust funds. Congress has statutorily mandated that he establish and administer a trust fund management system that will enable the United States to meet its fiduciary duties and responsibilities to Indian tribes and individuals. For this the Special Trustee is responsible and accountable. Without adequate funding, he will not be able to do the job Congress mandated under the 1994 Act. We have a mutual obligation to support the Special Trustee's important work. If Congress does not appropriate adequate dollars, the 1994 Act cannot be implemented. Moreover, individual Indians and tribes will continue to incur huge losses every

single day, and the federal government may continue to incur huge financial liability for its daily breaches of trust.

These continuing breaches of trust, concomitant losses, and mounting liabilities that would be borne by U.S. taxpayers are precisely the reasons that Congress must appropriate adequate dollars to fix the entire trust fund management system. The Special Trustee's Strategic Plan is a 3-5 year plan designed to carry out the mandates of the Trust Fund Reform Act of 1994. It is an action oriented plan charted to fulfill the United States' trust responsibility to tribes and individual Indians in trust fund management. The Strategic Plan is expected to cost approximately \$147 million over a five-year period to implement. It is incumbent upon Congress and the Administration to work cooperatively in bi-partisan fashion to assure that Phase I is fully funded so that the Special Trustee can produce an adequate Indian trust management system. Such cooperation and funding will enable the federal government to begin to honor its fiduciary obligation and legal responsibilities to individual Indian and tribal trust beneficiaries.

We fully support the Special Trustee and Phase I of the Strategic Plan. We need to move forward with implementation as rapidly as possible. It is in this spirit that we commend Chairman Young for his leadership in urging the House to concur with the Senate Appropriation Committee's mark of \$36.3 million for the Office of the Special Trustee for FY 1997--which is the amount the Administration requested. While the Administration's request of \$36.3 million for the Office of the Special Trustee is approximately \$13 million below the amount that the Special Trustee recommended for FY 1997, it is a significant step in the right direction to provide the Office of the Special Trustee with the funding to begin to carry out the requirements Congress mandated when it passed the American Indian Trust Fund Management Reform Act of 1994.

As you are aware, the Senate Committee mark includes \$18 million to begin implementation of the Strategic Plan by initiating critical Indian trust management improvements, particularly as it relates to the IIM accounting system. The Special Trustee has determined that it will cost \$22.3 million to establish an adequate IIM accounting system, and that such can be done in one year. While the \$18 million for improvement initiatives includes \$13.6 to begin that task, it remains \$8.7 million below the amount the Special Trustee has determined is needed to do the job right, and which he recommended that the Administration include in its budget request to Congress.

Nevertheless, to begin sincere system reform, it is critical that Congress approve the Senate Appropriations Committee mark for the Office of the Special Trustee. Unfortunately, the House version of the Interior Appropriations bill does not contain any funding to begin to implement any systemic reforms in the Indian trust management program. Therefore, under the House version, the Special Trustee cannot comply with the Congressional mandate pursuant to the 1994 Trust Fund Management Reform Act. Only with adequate funding can the Special Trustee move expeditiously to implement Phase I of the Strategic Plan and begin to reform a miserably failed system. And only then can the federal government begin to end the government's breaches of trust and mounting liability which increases every single day that money is lost because the system remains broken.

In closing, we respectfully urge Congress to fund the Administration's request for \$36.3 million for the Office of the Special Trustee for FY 97 and to work cooperatively in bi-partisan fashion with the Administration to fully fund the Special Trustee's Strategic Plan during FYs 1998-2001. We pledge to work with you in this regard on behalf of the 300,000 individual Indian trust beneficiaries whom we represent in this most important matter affecting their fundamental rights--and their money.

Thank you for the opportunity to testify.



U.S. House of Representatives  
Committee on Resources  
Washington, DC 20515

September 18, 1996

Robert Peregoy  
Native American Rights Fund  
1712 N. Street, N.W.  
Washington, D.C. 20036

Dear Mr. Peregoy,

The Task Force on Indian Trust Fund Management has scheduled its final hearing on Indian trust fund management problems for Thursday, September 26th at 10:00 am.

The purpose of this letter is to request that you present testimony to the Task Force concerning the matters listed below. The hearing will be held as follows:

Room 1334 Longworth House Office Building  
Washington, D.C.  
10:00 p.m.  
Thursday, September 26th, 1996.

The subject of this hearing will be legislative solutions to the many problems which continue to plague the management of Indian trust fund accounts. We request that you comment upon and answer the following questions in your testimony:

- (1) Should the Federal government continue to be in the business of administering IIM accounts?
- (2) Would you support having DOI contract out the operational functions of managing Indian trust fund accounts to either (a) a private trust management company, or (b) another department of the Federal government such as the Department of the Treasury, so long as the United States retains its related trust responsibility?
- (3) Would you support DOI charging administrative fees to trust fund account holders to defray the cost of improving its trust fund management systems?
- (4) Would you support legislation which would disburse all funds in existing IIM accounts to appropriate account owners, would then terminate those IIM accounts, and

would provide that in the future, whenever possible, revenues will be forwarded directly to account holders by check without going through a trust fund account?

(5) What do you think should be done about (a) fractionated heirship problems and (b) the thousands of inactive IIM accounts which have no know beneficiary? (Inactive account funds could be transferred to the Federal government or to the Tribe of the last know beneficiary or to some form of Federal or Tribal escrow account held for some designated use.)

(6) Assuming that tribal accounts can not be reconciled any further, what settlement process do you support which would fairly compensate the tribes and would terminate any liability which the Federal government might have for any breach of trust responsibility which might have taken place regarding the management of tribal accounts in the past?

(7) Assuming that IIM accounts can not be fully reconciled, what settlement process do you support which would fairly compensate account holders and would terminate any liability which the Federal government might have incurred for any breach of trust responsibility which might have taken place regarding the management of IIM accounts in the past?

(8) What changes in existing law would facilitate the administration of tribal trust fund accounts?

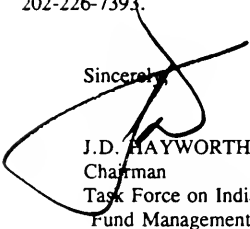
(9) What is your opinion of the proposed Phase I of the Special Trustee's strategic plan issued in February of 1996?

(10) What changes in existing law relating to the management of Indian trust fund accounts, other than those mentioned above, would you suggest be considered by Congress?

The rules adopted in the 104th Congress require that you submit 75 copies of your testimony to 1522 Longworth House Office Building at least 48 hours prior to the hearing. It is requested that your oral testimony be limited to ten minutes; however, additional written testimony or other materials may be submitted for the record.

For additional information please contact Tim Giidden of the Resources Committee at 202-226-7393.

Sincerely,



J.D. HAYWORTH  
Chairman  
Task Force on Indian Trust  
Fund Management



IN REPLY REFER TO:

## United States Department of the Interior

### OFFICE OF THE SPECIAL TRUSTEE FOR AMERICAN INDIANS

Office of Trust Funds Management

505 Marquette N.W. Suite 1000

Albuquerque, New Mexico 87102

OCT 24 1996

Mr. Tim Glidden  
Native American and Insular Affairs  
1522 Longworth House Office Building  
Washington, DC 20515

Dear Mr. Glidden:

During Ms. Donna Erwin's testimony in Phoenix, Arizona on August 20, 1996, Congressman J.D. Hayworth requested an update on the status of the Navajo Nations request to withdraw funds under the "Trust Fund Reform Act of 1994". The following is a chronology of what has transpired to date:

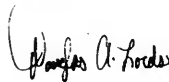
February, 1996	Office of Trust Funds Management (OTFM) contacted by Tribal Controller, advising that the Council had authorized the development of a plan to withdraw their funds, and asking for copy of latest draft regs. Regs were provided same day.
March 11, 1996	Original application to withdraw funds received at OTFM.
March 25, 1996	OTFM acknowledgment letter sent.
April 12, 1996	First OTFM letter to Navajo Nation requesting additional information, documentation and clarification.
On clock:	32 days
May 17, 1996	OTFM Customer Service calls Navajo staff to discuss response. (How it's progressing, need help, etc.) Navajo Nation staff advise that they are working on, making progress.
June 12, 1996	OTFM Customer Service calls Navajo Nation staff (Marty Ashley) who advised that all documents ready to mail except their statement regarding "no further U.S. liability" after funds withdrawn. Ashley believed that the Council would address this at the upcoming council session scheduled for the following week.
June 14, 1996	OTFM letter to Navajo Nation to remind that "clock is not running" while OTFM awaiting response, and offering assistance.

- June 20, 1996 OTFM Director, Acting Deputy Director, Trust Services staff, and Liaison Officer meet with the Navajo Nation Investment Committee in Albuquerque at their request to discuss investments in general, and the April 12 letter regarding withdrawal.
- June 27, 1996 Response letter received from Navajo Nation. None of the requested information was provided with the response, letter makes charges of demeaning demands made by OTFM, and demands release of funds.
- July-August-September, 1996 OTFM staff review and discuss situation, letter drafted , redrafted, discussed with Solicitor (Dave Moran) regarding the minimum requirements the U.S. needs to document due diligence in releasing the funds.
- September 19, 1996 Paul Homan letter to Navajo Nation to approve withdrawal pending receipt of signed management contracts, custodial contracts, and a complete copy of a resolution which was incomplete in the application package at OTFM.
- October 7, 1996 Navajo Nation response to last request received in OTFM. Meets all requirements.
- \*October 18, 1996 OTFM letter to Navajo Nation confirming approval for withdrawal and requesting written instructions as to delivery of cash or securities.

\*This is an anticipated date, if this date is not met the letter will definitely go out the week of October 21, 1996.

If any further information or clarification is need please call me at (505) 248-5723.

Sincerely,



Douglas A. Lords, Acting Deputy  
Director, Office of Trust Funds Management

cc: Marie Howard Fabrizio  
Democratic Legislative Staff  
Committee on Resources  
U.S. House of Representatives  
509 O'Neill Building  
Washington, DC 20515

ITMA Resolution  
1996 Annual Meeting  
Aladdin Hotel; Las Vegas, Nevada

ITMA's Position on the Special Trustee

WHEREAS, the InterTribal Monitoring Association on Indian Trust Funds (ITMA) is an association of 35 Tribes who have voluntarily joined ITMA;

WHEREAS, ITMA is committed to working with the Congress and the Office of the Special Trustee to correct inadequate systems used to manage Indian trust funds and trust assets and the unjust trust treatment of the beneficiaries of this trust;

WHEREAS, Paul Homan, the current Special Trustee, is the first executive employee in the Department of Interior with professional trust management experience;

WHEREAS, the federal government has admitted to owing the Individual Indian Account (IIM) investment pool over \$14 million, and disclosed that it cannot reconcile at least \$2.4 billion of Tribal non-investment transactions occurring during the period from 1972 to 1992;

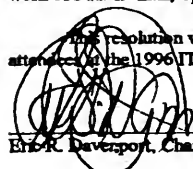
WHEREAS, a statutory responsibility of the Special Trustee is to consult with Tribes, the beneficiaries of the trust fund accounts;

WHEREAS, ITMA takes exception and objects in the strongest terms to the Department of Interior's order to the Special Trustee prohibiting him from complete consultation regarding the reconciliation and potential settlement options with Tribes;

THEREFORE BE IT RESOLVED THAT ITMA condemns any effort to prohibit the Special Trustee from fully discharging his statutory duties;

AND BE IT FURTHER RESOLVED THAT ITMA at its annual meeting endorses the work of Paul Homan, Special Trustee.

This resolution was passed on Thursday, September 19, 1996, by a voice vote of the attendees at the 1996 ITMA Annual Meeting, and is attested to by:

  
Eric R. Davenport, Chairman

, and witnessed by

  
Janice Myers, Secretary



United States Department of the Interior  
OFFICE OF THE SPECIAL TRUSTEE FOR AMERICAN INDIANS  
Office of Trust Funds Management  
505 Marquette N.W. Suite 1000  
Albuquerque, New Mexico 87102

AUG 30 1996

Native American and Insular Affairs  
Attention: Tim Glidden  
1522 Longworth  
Washington, DC 20515

Subject: Task Force on Indian Trust Fund Management

Dear Mr. Glidden:

Enclosed is a copy of information requested by the Task Force. If I can be of any further assistance, please call me at (505) 248-5723.

Sincerely,

Douglas A. Lords, Acting Deputy Director  
Office of Trust Funds Management

Enclosure

## FY 1997 STRATEGIC PLAN FUNDING

Upgrade of hardware and software for 400 existing workstations at an estimated cost of \$100 per workstation.	\$40,000
Purchase of 60 new PC workstations at an estimated cost of \$2,500 per workstation	150,000
Establish telecommunications links with 99 sites/87 agency locations during FY 97. Annual estimated cost is \$1,223,500	968,000
Trust Management/Individual Account System. Obtain a contract with a commercial source for a master trust and beneficiary accounting system. Estimate is based on 200,000 accounts at a cost of \$2 per month per account.	4,800,000
Provide end-user training.	353,000
External professional services from industry consulting groups to provide expertise in particular client/server areas.	1,000,000
Data conversion and imaging for IIM data conversion.	500,000
Systems integration and implementation: Costs associated with integrating OTFM diverse software applications, customizing vendor software to meet OTFM unique requirements, and training end-users on specialized software systems -- separate and apart from WAN-related products.	1,250,000
Rewrites of all operating and legal manuals.	2,000,000
File scrub and data & document check before conversion.	2,000,000
An overall technical strategic plan manager to oversee above and to oversee specific action plans and budgets to implement the strategic plan.	500,000
<b>Total FY 1997 Funding</b>	<b>\$13,561,000</b>



COMMISSIONER

AUG 21 1996

DEPARTMENT OF THE TREASURY  
 FINANCIAL MANAGEMENT SERVICE  
 WASHINGTON, D.C. 20227

August 18, 1996

Dear Mr. Chairman:

This is in response to your July 25, 1996, letter regarding the Financial Management Service's handling of both the Individual Indian Money account and the Indian Tribal Fund account. Enclosed please find our responses to your questions.

Please do not hesitate to contact us on (202) 874-7000, if we can be of further assistance.

Sincerely,

  
 Russell D. Morris

The Honorable J.D. Hayworth  
 Chairman  
 Task Force of Indian Trust Fund Management  
 Committee on Resources  
 U.S. House of Representatives  
 Washington, D.C. 20515

Enclosure



**1. How does FMS account for the IIM and ITF monies?**

The Financial Management Service (FMS), as the Federal Government's financial manager, manages the Federal Government's central accounting and reporting systems that track the Federal Government's monetary assets and liabilities. FMS tracks some 7,500 separate accounts based on approximately 1,200 Federal agencies' monthly submission of summary statements of transactions. FMS also is responsible for the investment of the Federal Government's multibillion-dollar trust funds.

FMS' duties with regard to the Individual Indian Money (IIM) and the Individual Tribal Fund (ITF) accounts are limited to performing certain accounting and investment functions. Specifically, the Bureau of Indian Affairs (BIA) submits monthly summary statements of transactions for the IIM and ITF accounts, that reflect the net receipts and disbursements out of each account. (Attachment 1). FMS then enters the data into the FMS centralized accounting system database (STAR).

BIA maintains individual and discrete tribal subaccounts reflecting monies owed to each individual Indian out of the IIM account and to each tribe out of the ITF account. FMS does not maintain any such subaccount information.

With regard to investing, FMS statutorily is required to invest funds in the IIM and ITF accounts upon the request of the Secretary of the Interior. 25 U.S.C. § 161a. Operationally, FMS immediately invests IIM and ITF monies upon receipt of oral instructions from BIA, which follows-up in writing with an "Investment Confirmation Letter." (Attachment 2).

**2. What are FMS' record retention practices/policies regarding the IIM and ITF accounts?**

FMS policy is to retain permanently all IIM and ITF account investment records. These records are maintained either within FMS or at a Federal Records Center. With regard to the summary statements of transactions entered into STAR, FMS policy is to retain all such data for approximately 7 years. Currently, FMS retains such data for the IIM and ITF accounts for the years 1990 through 1996. The data for 1989 is retained at a Federal Records Center.

3. Has either the Treasury Department or FMS ever intentionally destroyed any Indian trust fund accounting records?

Neither FMS nor Treasury, to the best of my knowledge, have ever intentionally destroyed discrete Indian trust fund accounting records. However, as indicated in my response to question 2, FMS periodically destroys accounting information received from Federal agencies, which includes summary data submitted by BIA for the IIM and ITF accounts. Notwithstanding that all such accounting records are generated and received from BIA, I have instructed my staff to retain all such records.

4. Under what authority does FMS cancel Treasury Department checks payable out of either IIM or ITF accounts?

FMS cancels Treasury checks under Title X of the Competitive Equality Banking Act of 1987, Public Law 100-86. Title X informally is referred to as "Limited Payability." The provisions of Limited Payability apply to all Treasury checks, including Treasury checks payable out of the IIM and ITF accounts. See 31 U.S.C. § 3334.

5. How does FMS apply the proceeds from the cancellation of such Treasury checks?

If a Treasury check issued on or after October 1, 1989, is not negotiated within 12 months after the date of issuance, FMS cancels the check and generates a cancellation report to the appropriate Federal agency. FMS also will credit the Federal agency's budget clearing account with the proceeds of the canceled Treasury check. See 31 U.S.C. §§ 3328 and 3334; 31 C.F.R. §§ 240.3 and 240.4. The Federal agency then is responsible for ensuring that the appropriate agency account is credited. For example, if FMS cancels a BIA payment, FMS will report the cancellation and remit the proceeds to the BIA budget clearing account. Because FMS cannot determine whether a specific BIA payment was an IIM or some other type of payment, BIA then is responsible for determining whether the proceeds are to be credited to the IIM or some other BIA account. BIA accomplishes this through its monthly summary statement of transactions.

6. **When the law requires FMS to cancel Treasury Department checks, payable to individual Indians, is the Federal government released of the underlying trust obligation to those individual Indians?**

No. Under Limited Payability, the mere fact that a Treasury check is canceled does not affect the underlying obligation. See 31 U.S.C. §§ 3328(a)(3) and 3334(c). Treasury regulations provide that upon receipt of a claim concerning the cancellation of a Treasury check, the authorizing Federal agency may make a new payment. 31 C.F.R. § 245.5. Specifically, where FMS cancels a BIA payment, BIA's underlying obligation to the payee remains, and BIA may make a new payment.

We also note that Congress had appropriated \$3,000,000 to BIA to liquidate in part its obligations to tribal and individual Indian payees whose checks were cancelled as a result of Limited Payability. Pub. L. No. 102-381, 106 Stat. 1374, 1391 (1992)

Attachment 1

14200699

## STATEMENT OF TRANSACTIONS(SF-224)

DEPARTMENT OF THE INTERIOR  
BUREAU OF INDIAN AFFAIRS  
DIVISION OF ACCOUNTING MANAGEMENT  
ACCOUNTS PAYABLE S.C. ATTN: M. GORMAN  
P. O. BOX 2042  
ALBUQUERQUE, NM 87103

14-20-8699  
4/30/96

## SECTION 1

APPR. FUND OR RECEIPT ACCOUNT (1)	RECEIPTS AND REVOLVING FUND REPAYMENT (2)	NET DISBURSEMENTS (3)
141199	969.23	0.00
141435	869.56	0.00
14X2100	0.00	3,181,301.13
1417100	0.00	267,723.71
1422100	0.00	356,580.95
1432100	0.00	91,881.45
1442100	0.00	481,118.67
1452100	0.00	5,136,947.50
1462100	0.00	69,322,879.24
141722100	0.00	667.81CR
142732100	0.00	227,354.43
143742100	0.00	2,168.49CR
143752100	0.00	51,963.19
144752100	0.00	252,405.73
145762100	0.00	18,082,511.40
146772100	0.00	4,980,953.04
14X2204	0.00	43,276.84
14X2301	0.00	9,236,277.85
14X2303	0.00	38,744,851.22
1452369	0.00	5,606.00
1462369	0.00	40.00
142419.1	96.47CR	0.00
14X2623	0.00	2,764.18
1452627	0.00	7,540.00
1462628	0.00	261,944.39
1452628	0.00	7,440.36
1462628	0.00	217,493.73
143220	44,750.61	0.00
14F3676.20	0.00	700.00CR
14F3680.20	0.00	27.50CR
14X4409	711,244.20	0.00
14X4410	1,463,510.06	39,353.12

ACCT. #--&gt; 14200699

A 16

ACCT. #--&gt; 14200699

A 16

14X4415	0.00	450,436.68
(65)14X4415	0.00	470,132.00CR
14X4416	0.00	100,252.21CR
(65)14X4416	0.00	7,500.00CR
14X5051	0.00	423,795.63
14X5051.1	521,808.21	0.00
14X5240	0.00	- 2,318,850.33
(88)14X5240	0.00	185,232,000.00
(58)14X5240	181,812,000.00	0.00
14X5240.1	5,136,341.13	0.00
14X5240.2	89,994.84	0.00
14X5242	0.00	36,453.43
14X5242.1	50,852.44	0.00
14X5648	0.00	3,630,731.58
(88)14X5648	0.00	192,930,000.00
(88)14X5648	185,072,000.00	0.00
14X5648.1	4,110,945.13	0.00
14X5648.2	78,185.00	0.00
14X6039	0.00	5,035.00CR
14X6875.20	0.00	36,492,590.30CR
1412X1105.20	0.00	9,308.90
1414X1119.20	0.00	1,122,332.04
1416X1120.20	0.00	1,412,760.44
14165/60174.20	0.00	64,273.00
1469X0592.20	0.00	1,130.20
1469X0803.20	0.00	7,527,118.41
147561509.20	0.00	38,312.00
20X6822.56	0.00	379,162,001.00CR
20X6822.56	0.00	376,894,000.00
20X6822.57	0.00	81,957.69
TOTALS	389,093,384.04	508,010,310.20

NET TOTAL, SECTION I

116,916,926.16

## SECTION II

## 1. ADD PAYMENT TRANSACTIONS ACCOMPLISHED:

THIS MONTH	125,339,536.30
PRIOR MONTH 03/95	5,759,313.86
PRIOR MONTH 02/95	97,533.82
PRIOR MONTH 01/95	63,639.30CR
PRIOR MONTH 12/95	3,636.95
TOTAL PAYMENTS	131,136,361.55

## 2. DEDUCT COLLECTIONS RECEIVED

12,219,455.39

## 3. NET TOTAL SECTION II

118,916,926.16

## SECTION III

ACCT. #--&gt;

B 16

1. BALANCE OF UNDEPOSITED COLLECTIONS,  
CLOSE OF PRECEDING MONTH

0.00

ACCT. #--&gt;

B 16

1. BALANCE OF UNDEPOSITED COLLECTIONS, CLOSE OF PRECEDING MONTH		0.00
2. ADD: COLLECTIONS RECEIVED THIS MONTH		12,219,455.39
3. DEDUCT DEPOSITS PRESENTED OR MAILED TO BANK		
THIS MONTH	11,768,696.72	
PRIOR MONTH 05/96	443,240.12	
PRIOR MONTH 02/96	326.23	
PRIOR MONTH 01/96	13,435.15CR	
PRIOR MONTH 12/95	3,233.97CR	
PRIOR MONTH 11/95	23,859.44	
TOTAL DEPOSITS PRESENTED OR MAILED TO BANK		12,219,455.39
4. NET TOTAL, SECTION III		0.00

DATE

SIGNATURE/TITLE

ACCT. #--&gt;

C 16

## SF 1220 STATEMENT OF TRANSACTIONS

DISBURSING OFFICER  
DEPARTMENT OF INTERIOR  
BUREAU OF INDIAN AFFAIRS

0000142  
ACCOUNTING PERIOD  
4/01/96 - 4/30/96

APPR. FUND OR RECEIPT ACCOUNT (1)	RECEIPT AND REVOLVING FUND REPAYMENTS (2)	NET DISBURSEMENT: (3)
14X5197	0.00	-19,270,545.3
✓14X8365	0.00	-13,380,004.7
✓14X8365	0.00	140,685.11
✓14X8365	0.00	-250,515.10
-----		-----
COLUMNAR TOTALS	0.00	-32,760,479.90
NET TOTAL - (REPORT ON LINE 4.10 OF SF 1219)		-32,760,479.90

CONTACT: HAROLD REDHOUSE  
TELEPHONE: (505) 248-5771

14200699

## STATEMENT OF TRANSACTIONS-2241

DEPARTMENT OF THE INTERIOR  
BUREAU OF INDIAN AFFAIRS  
DIVISION OF ACCOUNTING MANAGEMENT  
ACCOUNTS PAYABLE SEC. ATTN: M. GORMAN  
P. O. BOX 2842  
ALBUQUERQUE, NM 87103

14-20-0699  
5/31/96

## SECTION 1

APPR., FUND OR RECEIPT ACCOUNT (1)	RECEIPTS AND REVOLVING FUND REPAYMENT (2)	NET DISBURSEMENTS (3)
141099	2,680.60	0.00
141435	1,814.41	0.00
14X2100	0.00	4,178,496.92
1412100	0.00	1,108,596.70
1422100	0.00	403,036.72
1432100	0.00	696,235.55
1442100	0.00	1,805,789.13
1452100	0.00	5,310,959.63
1462100	0.00	43,528,237.97
140712100	0.00	185.78CR
141722100	0.00	22,861.23
142732100	0.00	263,736.62
143742100	0.00	158,720.62
143752100	0.00	13,050.47
144752100	0.00	140,947.84
145762100	0.00	17,277,526.21
146772100	0.00	5,661,943.99
14X2204	0.00	151,892.71
14X2301	0.00	13,973,960.68
14X2302	0.00	17,562.62
1432309	0.00	744.28
1452363	0.00	24,477.02
1432628	0.00	6,385.71
1442628	0.00	400,880.04
1452628	0.00	1,910,460.00
1462628	0.00	41,997.81
143283	737,471.00	0.00
14F3678.20	0.00	62.50
14F3880.20	0.00	522.50
14X4409	575,043.00	189.89CR
14X4410	18,623.56	37,571.35
14X4415	0.00	81,054.47CR

ACCT. #--&gt; 14200699

L 15

14514X4415	0.00	2,316,225.75CR
14X4416	0.00	130,208.15CR
14X5051	0.00	500,674.67
14X5051.1	532,046.37	0.00
14X5240	0.00	196,893.03CR
14514X5240	0.00	251,046,000.00
14514X5240	242,297,000.00	0.00
14X5240.1	2,169,939.67	0.00
14X5240.2	249,298.48	0.00
14X5242	0.00	
14X5242.1	0.00	



ACCT. #--&gt; (14200699

L

(65)14X4415	0.00	2,318,225.75CR
14X4415	0.00	139,208.15CR
14X5051	0.00	500,678.67
14X5051.1	532,040.37	0.00
14X5240	0.00	196,003.03CR
(68)14X5240	0.00	251,046,000.00
(80)14X5240	248,297,000.00	0.00
14X5240.1	2,169,939.67	0.00
14X5240.2	249,296.40	0.00
14X5242	0.00	40,522.65
14X5242.1	39,556.14	0.00
14X5648	0.00	3,662,104.93
(88)14X5648	0.00	194,954,000.00
(98)14X5648	195,154,000.00	0.00
14X5648.1	2,635,902.75	0.00
14X5648.2	167,476.97	0.00
14X6829	0.00	117.39CR
14X6875.20	0.00	2,120,274.17
1412X1105.20	0.00	18,626.13
1414X1119.20	0.00	1,920,173.17
1414X1120.20	0.00	2,301,656.95
141880174.20	0.00	10,000.00
14163/40174.20	0.00	880.00
14164/50174.20	0.00	64,070.00
1489X0083.20	0.00	13,329,590.73
14751509.20	0.00	169,762.00
147541515.20	0.00	1,451.00
147551515.20	0.00	100,712.00
20X6822.56	0.00	446,000,000.00CR
20X6822.56	0.00	443,451,000.00
20X6822.57	0.00	204,617.82
14X1618	0.00	15,187.61
TOTALS	450,580,763.07	562,510,600.16

NET TOTAL SECTION I

111,929,617.09

## SECTION II

## 1. ADD PAYMENT TRANSACTIONS ACCOMPLISHED:

THIS MONTH	120,389,746.49
PRIOR MONTH 04/96	1,420,341.42
PRIOR MONTH 03/96	174,826.87
PRIOR MONTH 02/96	9,990.10CR
PRIOR MONTH 01/96	380,579.00
TOTAL PAYMENTS	122,355,505.68

## 2. DEDUCT COLLECTIONS RECEIVED

10,425,688.59

## 3. NET TOTAL SECTION II

111,929,617.09

ACCT. #--&gt;

M

SECTION III

SECTION III  
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1. BALANCE OF UNDEPOSITED COLLECTIONS, CLOSE OF PRECEDING MONTH		0.00
2. ADD: COLLECTIONS RECEIVED THIS MONTH		10,425,688.59
3. DEDUCT DEPOSITS PRESENTED OR MAILED TO BANK		
THIS MONTH	9,854,591.91	
PRIOR MONTH 04/86	1,379,238.68	
PRIOR MONTH 03/85	558.28	
PRIOR MONTH 02/85	9,219,450.2	
PRIOR MONTH 01/85	759.21	
PRIOR MONTH 12/85	4.42	
TOTAL DEPOSITS PRESENTED OR MAILED TO BANK	10,425,688.59	
4. NET TOTAL, SECTION III		0.00

DATE \_\_\_\_\_ SIGNATURE/TITLE \_\_\_\_\_

ACCT. #--&gt;

N 15

## SF 1220 STATEMENT OF TRANSACTIONS

DISBURSING OFFICER  
DEPARTMENT OF INTERIOR  
BUREAU OF INDIAN AFFAIRS

0000142  
ACCOUNTING PERIOD  
5/01/96 - 5/31/99

APPR. FUND OR RECEIPT ACCOUNT (1)	RECEIPT AND REVOLVING FUND REPAYMENTS (2)	NET DISBURSEMENT (3)
14XB177	0.00	-5,551,398.0
✓ 14XB265	0.00	-25,892,774.0
✓ 14XB265	0.00	727,838.5
✓ 14XB265	0.00	-151,871.1
COLUMNAR TOTALS		-32,968,205.1
NET TOTAL - (REPORT ON LINE 4.10 OF SF 1219)		-32,968,205.1

CONTACT: HAROLD REDHOUSE  
TELEPHONE: (505) 248-5771

Financial Information  
 Fin. Info. Mgmt. Directorate  
 Funds Management Division  
 Finance Management Branch  
 Investment & Loan Section

INVESTMENT CONFIRMATION LETTER  
 Attachment 2

Dept. of the Treasury  
 3700 East-West Highway  
 Room 6F05-POC11  
 Hyattsville, Md 20782  
 Phone: (202) 874-8770  
 FAX: (202) 874-9344

TRANSACTION DATE: 9 February 1996

TRANSACTION TYPE: (check one)

INVESTMENT  REDEMPTION

FUND NAME & SYMBOL

<input type="checkbox"/> COCHITI WETFIELDS	14X5186	<input type="checkbox"/> RELIEF OF INDIGENT INDIANS	14X8060
<input type="checkbox"/> TRIBAL ECON. RECOV. FUND	14X5187	<input type="checkbox"/> N. CHEYENNE WATER FUND	14X8327
<input type="checkbox"/> IRRIGATION	14X5240	<input type="checkbox"/> TRIBAL FUNDS	14X8365
<input type="checkbox"/> POWER	14X5648	<input type="checkbox"/> PAPAGO CO-OP	14X8366
<input checked="" type="checkbox"/> INDIVIDUAL INDIAN MONEY	14X8039	<input type="checkbox"/> NAVAJO REHAB	14X8366
<input type="checkbox"/> ALASKA NATIVE ESCROW	14X8140	<input type="checkbox"/> CONTRIBUTED FUNDS	14X8563

MARKET BASED SECURITY: (check one)

One-Day Certificate: \_\_\_\_\_

Maturity Date: \_\_\_\_\_

Bills Maturity Date: \_\_\_\_\_

Extended 1510: \_\_\_\_\_

Notes Face Rate: 5.875%

Maturity Date: 11-15-2005

Bonds Face Rate: \_\_\_\_\_

Maturity date: \_\_\_\_\_

AMOUNT: (fill in one)

Available for Investment: \_\_\_\_\_

Need for Redemption: \_\_\_\_\_

Face: \$5,000,000.00

CONFIRMATION INFORMATION:

Agency Contact: (circle one)

F.H. Kollerup R. Reed H.F. Spears R. Zakrzewski

Date and Time of Call

2-9-96 9AM MT

Treasury Contact: (circle one)

Mrs. Bates Mrs. McCray Mrs. Kelly Mrs. Moore

CERTIFICATION:

I certify that the items listed above are correct and amounts to be invested are credited to the General Account of the U.S. Treasury and available for use by the Treasury.

F.H. Kollerup  
 (AUTHORIZED SIGNATURE)



## United States Department of the Interior

OFFICE OF THE SOLICITOR  
Washington, D.C. 20240

OCT 31 1996

October 29, 1996

Hon. J. D. Hayworth, Chairman  
House Resources Task Force on Indian Trust  
Fund Management  
U.S. House of Representatives  
Washington, D.C. 20510

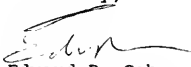
Dear Mr. Chairman:

At the conclusion of our testimony on September 26, 1996, I referenced a matter associated with the Office of Special Trustee's Advisory Board's meeting in Phoenix. You had requested for the record a summary of the costs of that meeting. Attached is a list of the expenses and the names of the meeting participants.

As we indicated at the hearing, while discussion of the settlement recommendations did not occur, the remaining items on the Advisory Board's agenda for that meeting were discussed and acted on. Moreover, the previous work of the Advisory Board on settlement options was finalized and has now been submitted to the Secretary.

Please contact me should you have any additional questions.

Sincerely,

  
Edward B. Cohen  
Deputy Solicitor

## PHOENIX ADVISORY BOARD MEETING EXPENSES

## SUMMARY:

## 1. TRAVEL ESTIMATED COSTS:

OFFICE OF THE SPECIAL TRUSTEE STAFF AND ADVISORY BOARD MEMBERS	\$9,475.38
TRIBAL REPRESENTATIVES	\$27,814.59
TRUST FUND RECONCILIATION STAFF	\$2,559.36

## 2. OTHER EXPENSES:

MEETING ROOM RENTAL, COMPUTER RENTAL, FILM, PAPER, OFFICE SUPPLIES, ETC.	\$2,983.23
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TOTAL	<hr/> \$42,832.56
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	Name	Organization	Estimate Cost	Actual Cost	Airline Fare
1	Judy Kessler	Advisory Board Representative	855.00		281.00
2	Ed Thomas	Advisory Board Member	1359.00		1014.00
3	Michael Patriarca	Advisory Board Member	739.00		119.00
4	William Smider	Advisory Board Member	399.00		140.00
5	Elouise Cobell	Advisory Board Member	1116.00		664.00
6	Larry Hartwig	Advisory Board Member	912.00		363.00
7	John Miller	Office of the Special Trustee	1100.00		400.00
8	Paul Homan	Office of the Special Trustee	1100.00		300.00
9	Cheryl Jodoin	Office of the Special Trustee	1050.38		304.00
10	Bernita Joyce	Office of the Special Trustee	845.00		360.00
<b>Total</b>			<b>9475.38</b>		

I.M.P.A.C. LOG (FOR OBLIGATION ONLY)

Cardholder Name: PATSY A. ANTONIO		I.M.P.A.C. DCN: K005899-6		Period Start/End Dates: 09/11/96 - 9/18/96		Page: 1 of 1	
Date Ordered:	DCN SEQUENCE NUMBER:	Accounting Data:	Vendor:	Brief Description:	Ordered:		Total
					Qty.	U/I	Unit Price
09/11/96	K0058996026	K00551/96/99T00/216A	Office Depot	Office supplies	01	lot	327.18
09/12/96	K0058996027	K00551/96/99T00/259Z	Brooks Photo	35mm films	62	lot	315.00
9/13/96	K0058996028	K00551/96/99T00/259Z	Brooks Photo	35mm films	33	lot	165.00
9/13/96	K0058996029	K00551/96/99T00/261A	The Paper Warehouse	Color papers	1	rm	7.62
9/13/96	K0058996030	K00551/96/99T00/259Z	Brooks Photo	35mm film	1	ea	5.00
9/17/96	K0058996031	K00551/96/99T00/261A	WalMart	Packing tapes	1	pg	5.71
9/17/96	K0058996032	K00551/96/99T00/237D	Computer for Rent	Computer rental	1	lot	195.58
9/18/96	K0058996033	K00551/96/99T00/2320	The Pointe Hilton Resort at Squaw Peak	Meeting room rental	1	lot	1962.14

<b>BUDGET</b>
Beginning Balance:
(-) Minus Total (this page): \$2,983.23
Budget Balance:

<b>RECEIVED</b>	
Date Delivered:	Statement Date:
Credit Due:	Credit Received:



ADVISORY BOARD TO THE SPECIAL TRUSTEE FOR AMERICAN INDIANS  
MEETING IN PHOENIX, ARIZONA  
SEPTEMBER 15 - 18  
ATTENDEES LIST

	NAME	TRIBE / ORGANIZATION	ESTIMATE COST	ACTUAL COST	AIRLINE FARE
1	CALEB SHIELDS	ASSINIBOINE & SIOUX / FT. PECK	604.00		650.00
2	MARY J. PAVEL	ASSINIBOINE & SIOUX / FT. PECK	409.00		320.09
3	EARL OLD PERSON	BLACKFEET TRIBE	484.00		650.00
4	MERRIL BURKE	CONFED TRIBES & BANDS OF YAKAMA NATION	404.00		398.00
5	JOE PAKOOTAS	CONFEDERATED TRIBES OF COLVILLE	474.00		348.00
6	DEBRA ROSENBAUM	CONFEDERATED TRIBES OF COLVILLE	474.00		348.00
7	A. DAVID LESTER	COUNCIL OF ENERGY RESOURCE TRIBES	564.00		140.00
8	VERNON HILL	EASTERN SHOSHONE TRIBE	424.00		499.00
9	JOHN SCHUMACHER	EASTERN SHOSHONE TRIBE	424.00		499.00
10	FERRELL SECAKUKU	HOPI TRIBE	548.75	0	0
11	DANIEL HONAHNI	HOPI TRIBE	548.75	0	0
12	JERRY KING	JICARILLA APACHE TRIBE	733.00		338.00
13	ALBERT HALE	NAVAJO NATION	778.00		0
14	BOBBY WHITE	NAVAJO NATION	424.00		341.00
15	RICHARD BRANNAN	NORTHERN ARAPAHOE TRIBE	584.00		96.00
16	DAVID CLARK	NORTHERN ARAPAHOE TRIBE	584.00		96.00
17	CHARLES TILLMAN	OSAGE TRIBE OF OKLAHOMA	893.00		448.00
18	JOE TRUMBLEY	OSAGE TRIBE OF OKLAHOMA	893.00		448.00
19	ROLAND E. JOHNSON	PUEBLO OF LAGUNA	434.00		84.00
20	WILLIAM ROCHE	PUEBLO OF LAGUNA	404.00		348.00
21	BOBBY WHITEFEATHER	RED LAKE BAND OF CHIPPEWA	1276.00		852.00
22	RONALD EISCHENS	RED LAKE BAND OF CHIPPEWA	404.00		855.00
23	GARY QUIGNO	SAGINAW CHIPPEWA TRIBE	742.50		298.50
24	VAL ULMER	SAGINAW CHIPPEWA TRIBE	742.50		288.50
25	JERRY HANEY	SEMINOLE NATION OF OKLAHOMA	434.00		237.00
26	THOMAS MCGEISEY	SEMINOLE NATION OF OKLAHOMA	449.00		237.00
27	MARK FOX	THREE AFFILIATED TRIBES OF FT. BERTHOLD	958.00		524.00
28	DAVID BRENDSEL	THREE AFFILIATED TRIBES OF FT. BERTHOLD	958.00		524.00
29	EDWARD MANUEL	TOHONO O'ODHAM NATION	458.40		0
30	GLORIA RAMIREZ	TOHONO O'ODHAM NATION	433.80		0
		SUB-TOTALS	17935.50	27814.59	9879.09
		TOTALS			





United States  
General Accounting Office  
Washington, D.C. 20548

Accounting and Information  
Management Division

B-275522

December 10, 1996

The Honorable J. D. Hayworth  
Chairman, Task Force on Indian  
Trust Fund Management  
Committee on Resources  
House of Representatives

Dear Mr. Chairman:

This letter responds to your October 29, 1996, request that we provide information for the record on Indian trust fund settlement issues raised at the Task Force's September 26, 1996, hearing. You asked for information on various questions that relate to the following three topics that were discussed by witnesses at the hearing:

- administration of Individual Indian Money (IIM) accounts,
- options for trust fund settlement, and
- progress on the Special Trustee's strategic plan.

Enclosed are our responses to the questions contained in your letter. We obtained comments on a draft of our responses from officials in the Department of the Interior's Office of Special Trustee for American Indians and the Bureau of Indian Affairs' Office of Trust Responsibilities. Overall, they concurred with our responses to the questions, and we have incorporated their comments where appropriate.

B-275522

I hope that this information is helpful. If you have further questions, or would like to discuss any of the issues in more detail, please contact me at (202) 512-9508 or Gayle Fischer, Assistant Director, at (202) 512-9577.

Sincerely yours,



Linda M. Calbon  
Director, Civil Audits

Enclosure

ENCLOSURE

ENCLOSURE

RESPONSES TO QUESTIONS CONTAINED IN OCTOBER 29, 1996, LETTER

Following are questions asked by the Chairman of the House Task Force on Indian Trust Fund Management and GAO's responses.

IIM ACCOUNTING ISSUES**Question 1: Under what authority did the government begin maintaining Individual Indian Money (IIM) accounts?**

**GAO Response:** According to our research, no distinction was made between tribal and individual funds until 1918.<sup>1</sup> Prior to that time, Indian funds were handled on a tribal basis. The Secretary of the Interior had long had authority under treaties with individual tribes to invest tribal funds, and did so routinely.

In 1918, the Congress directed the Secretary<sup>2</sup> to segregate the common funds of any Indian tribe, which were susceptible to segregation, and to credit an equal share to each member of the tribe. This was the first recognition of individual Indian monies.

**Question 2: What is the government's current system for administering those accounts?**

**GAO Response:** As of September 30, 1996, Interior's Office of Trust Funds Management (OTFM) was administering almost 317,000 IIM accounts, according to information provided by OTFM officials. Although the aggregate value of the IIM accounts was reported by OTFM to be almost \$470 million on that date, the majority of the IIM accounts had low balances. Almost 185,000 (over 58 percent) of the IIM accounts had balances of \$10.00 or less as of September 30, 1996, according to OTFM. OTFM maintains IIM accounts as separate accounts similar to demand deposit accounts. The cash balances in the accounts are combined and invested as a pool primarily in U.S. Treasury and U.S. agency securities. The IIM accounts earn interest at a rate based on the earnings of all the pooled investments. Trust fund accounting staff and, in some cases, Interior's Office of Trust Responsibilities (OTR) realty staff, at about 60 Bureau of Indian Affairs (BLA) Agency Offices, perform the administrative duties, including accounting,

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<sup>1</sup>See generally, White Mountain Apache Tribe of Arizona v. United States, 20 Cl. Ct. 371, 378-80 (1990).

<sup>2</sup>Public Law 65-159, Sec. 28, 40 Stat. 591 (Act of May 25, 1918), which was eventually codified at 25 U.S.C. 162a.

ENCLOSURE

ENCLOSURE

billing, collecting, and depositing nonmineral<sup>3</sup> lease receipts, and preparing related accounting records.

BIA's subsidiary IIM accounting system generates quarterly account statements that OTFM mails to account holders from its Albuquerque, New Mexico, headquarters. OTFM sends account statements for minors and noncompetent account holders to their designated guardians. For some minors and noncompetent account holders, BIA Agency Office superintendents are the designated guardians, and they receive the statements for those account holders. BIA Agency Office superintendents also receive account statements for any IIM account holders for which OTFM has no valid address. These statements are to be placed in the account holders' IIM files.

Because BIA's current accounting system does not have an accounts receivable component, BIA Agency Office staff use inconsistent manual procedures for billing and collecting lease revenue. The system also lacks a complete lease master file. In our June 1996 testimony,<sup>4</sup> we reported that an accounts receivable system and an accurate, complete lease master file are needed to ensure that all lease revenues are being billed and collected.

**Question 3: How is the administration of the accounts complicated by fractionated heirship problems and inactive accounts?**

**GAO Response:** The fractionated heirship problem arises from the large number of fractional land and lease ownership interests that currently exist, the substantial increase in such interests over time, and the administrative burden associated with maintaining an increasing number of small accounts to record fractionated interest income. Over time, fractionation has resulted in hundreds of thousands of tiny fractional interests in federal Indian land allotments and in the trust income derived from those allotments. We reported in February 1992,<sup>5</sup> that over 20 percent of the 83,000 land tracts at 12 reservations we reviewed were characterized by fractionated ownership with at least one small ownership interest of one-fiftieth or less.

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<sup>3</sup>Except for the Osage Tribe, Interior's Minerals Management Service (MMS) collects royalty payments on Indian mineral leases and transfers the proceeds to OTFM through the Treasury for deposit in tribal and IIM accounts.

<sup>4</sup>Financial Management: Interior's Management of the Indian Trust Funds (GAO/T-AIMD-96-111, June 18, 1996).

<sup>5</sup>Indian Programs: Profile of Land Ownership at 12 Reservations (GAO/RCED-92-96BR, February 10, 1992).

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Currently, according to OTR, calculation of fractionated lease ownerships may result in a fractional denominator that exceeds 26 digits. Depending upon the amount of lease income to be distributed, it is possible that trust income may have to be collected for several years before sufficient income is collected to entitle an account holder to even 1 cent.

Some administrative complications that result from fractionated ownerships include the following.

- Detailed accounting records must be maintained for all transactions regardless of size--sometimes as little as \$0.03 may be distributed among seven account holders--complicating the accounting.
- In most cases,<sup>6</sup> OTFM policy does not permit funds to be disbursed to the account holders until balances reach \$15, thus increasing the number of IIM accounts that require interest posting and other account maintenance activities.
- Funds sometimes remain in special deposit (suspense)<sup>7</sup> accounts for long periods, according to OTFM, pending OTFM's receipt of ownership information from OTR's Land Title and Records program staff and realty staff.

Currently, OTR maintains official federal Indian land title and beneficial (lease) ownership information. OTR's Land Title and Records program staff are responsible for determining ownership and encumbrance for each federal Indian tract of land and for certifying for the federal government that such ownership and encumbrance is accurate for all legal, title, and evidentiary purposes. However, due to continuing increases in fractionation, inadequate staffing, and inadequate systems, OTR has almost a 2-year backlog in land title and lease ownership determinations and recordkeeping.

Each time ownership changes, OTR's Land Title and Records program staff must perform time-consuming manual determination and documentation of ownership interests. This is because OTR's Land Records Information System (LRIS), as designed, is not capable of performing automated chain-of-title calculations and it does not store chain-of-title or calculated ownership information. LRIS system improvements have been delayed for the

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<sup>6</sup>For oil and gas leases, OTFM policy allows funds to be disbursed to account holders when balances reach \$5.

<sup>7</sup>These special deposit accounts are intended to be suspense accounts with short turn-around times.

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past 2 years due to reductions-in-force and budget cuts. In addition, LRIS is not integrated with OTFM's trust fund accounting systems.

Because official ownership information may be significantly out-of-date, OTFM has relied on unofficial ownership data in BIA's Integrated Resources Management System (IRMS). IRMS ownership information is periodically updated by OTR realty staff located in BIA's Agency Offices based on preliminary information that they have developed for use in probate determinations. However, unlike LRIS information, it is not verified or certified. As a result, OTFM cannot ensure that income is distributed to the proper account holder.

Inactive IIM accounts, which are defined as accounts with no transactions for 18 months, also increase the administrative burden for IIM accounts. Accounts may become inactive because they are in suspense status or because probate decisions are pending. As of September 30, 1996, OTFM reported that there were approximately 60,823 inactive IIM accounts. According to information provided by OTFM, these are generally low balance accounts. Administrative costs associated with inactive accounts include

- the cost of computer processing time;
- the administrative cost and responsibility of safeguarding the accounts; and
- the cost of preparing, printing, and mailing quarterly account statements.

**Question 4: Are there private trust management companies, or other federal agencies, that could perform operational functions under contract with the Department of the Interior?**

**GAO Response:** The government can contract with the private sector for trust management and land records and systems planning services as long as the Secretary of the Interior, as the fiduciary, maintains management responsibility, including the exercise of judgment and discretion. For example, our September 1994 report<sup>8</sup> stated that there are numerous private-sector title and land records companies, many of which use systems and technologies that can be useful to BIA. We also suggested that private-sector firms could assist BIA and OTFM in selecting and integrating trust system packages. In addition, we reported that OTFM could contract for banking or financial management services. However, because of the Secretary's fiduciary responsibility, Interior would need to establish policies and provide instructions on matters such as the following:

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<sup>8</sup>Financial Management: Focused Leadership and Comprehensive Planning Can Improve Interior's Management of Indian Trust Funds (GAO/AIMD-94-185, September 22, 1994).



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- how IIM accounts would be maintained, that is, as investments or as checking and savings accounts;
- whether the financial institutions would collect oil and gas, grazing, timber, and other revenues;
- how ownership and income distribution formulas would be determined;
- whether account maintenance fees would be required from account holders;
- how supervised accounts for minors and incompetents and accounts restricted due to child support or other requirements would be handled;
- how reporting requirements to account holders and BIA management would be met; and
- how the financial institutions would relate to account holders.

Because administration and reporting for over 300,000 IIM accounts would be costly, we suggested that in developing plans to transfer account maintenance responsibilities for IIM accounts, OTFM would benefit from

- developing a strategy to resolve problems associated with small fractionated interests;
- reviewing IIM accounts to first identify and close any inactive accounts;
- cleaning up "hold" accounts;<sup>9</sup>
- correcting account holder address information; and
- considering alternative ways of handling royalty distributions, which are generally withdrawn and do not remain in the accounts, thus contributing to the number of low balance accounts.

These suggestions have been considered by OTFM, and while some actions have been taken, progress to date has been slow due to limited financial resources.

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<sup>9</sup>Hold accounts are a general category of IIM accounts for which distributions cannot be made without some form of approval. They include supervised accounts for minors and noncompetent account holders and accounts that are subject to probate court decisions.

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TRUST FUND SETTLEMENT ISSUES

**Question: Assuming that tribal accounts cannot be reconciled any further and that IIM accounts cannot be fully reconciled, what settlement process do you support which would fairly compensate the Tribes and IIM account holders and would terminate any liability which the federal government might have for any breach of trust responsibility which might have taken place regarding the management of tribal and IIM accounts in the past?**

**GAO Response:** We have long raised serious concerns about the ability to reconcile tribal and IIM accounts. Our May 1996 report<sup>10</sup> stated that tribal accounts could not be fully reconciled or audited due to missing records and the lack of an audit trail in BIA's systems. In addition, because BIA did not know the universe of transactions or leases, it was not able to determine the total amount of receipts and disbursements that should have been recorded, further impeding a complete reconciliation. We also reported that due to cost considerations and the potential lack of supporting documentation, reconciliations for individual Indian accounts were not performed, and no alternative procedures were developed to verify these account balances. We concluded that if follow-up meetings with tribes do not resolve concerns about account balances, the legislated settlement process, which we recommended in our September 1995 letter,<sup>11</sup> could be used as a framework for resolving disagreements about account balances. We also concluded that since any attempt to reconcile individual Indian accounts would be costly and the results would be limited, these accounts could be included in the settlement process.

Our September 1995 letter provided draft settlement legislation for discussion purposes. The draft legislation would provide for a mediation process and, if mediation does not resolve disputes, a binding arbitration process. The proposed process draws on advice provided to us by the Federal Mediation and Conciliation Service and the rules of the American Arbitration Association. Both of these organizations have extensive experience in the use of third-party facilitators to provide alternative dispute resolution. The proposed process offers a number of benefits. Because of the informal nature of the process, the third-party facilitator can permit the parties, in the presentation of their cases, to deviate from the more structured rules that generally govern other forms of adjudication. Further, because the decision of the arbitrators would be binding and could

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<sup>10</sup>Financial Management: BIA's Tribal Trust Fund Account Reconciliation Results (GAO/AIMD-96-63, May 3, 1996).

<sup>11</sup>Indian Trust Fund Settlement Legislation (GAO/AIMD/OGC-95-237R, September 29, 1995).

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not be appealed, it offers a final resolution of the dispute. In addition, arbitration has generally been found to be less costly than litigation.

#### STRATEGIC PLAN ISSUES

#### **Question 1: What is your opinion of the proposed Phase I of the Special Trustee's strategic plan?**

**GAO Response:** The American Indian Trust Fund Management Reform Act of 1994 established a Special Trustee for American Indians and required the Special Trustee to develop a comprehensive strategic plan for trust fund management. As envisioned in the act, a comprehensive strategic plan for Indian trust fund and asset management would reflect the requirements of Interior, BIA, the Bureau of Land Management (BLM), MMS, OTFM, and other Interior agency Indian trust programs. It would also address the interrelationships of the strategic plans for each of these entities, including information resource management, policies and procedures, and automated systems. In addition, a comprehensive strategic plan would address various trust fund related systems options and alternatives and their associated costs and benefits.

The Special Trustee's February 1996 proposed Phase I strategic plan consisted of a strategic planning concept paper. The concept paper represents progress in that it provides an initial assessment of the problems that need to be addressed in a strategic plan. However, as stated in our June 1996 testimony,<sup>12</sup> the concept paper, which has not yet been revised or expanded into a strategic plan, focuses on one potential system solution for addressing critical OTFM and BIA financial management information requirements and does not address the costs and benefits of other alternatives as a basis for selecting one approach over another. Also, the concept paper focuses on OTFM and related LRIS system improvements, and it does not address all needed improvements or other Interior agencies' Indian programs.

In addition, the concept paper does not explain the rationale for many of the assumptions that support the \$147 million estimate to implement the specified improvements. For example, the concept paper proposes acquiring new trust fund general ledger and subsidiary accounting systems but, unlike a strategic plan, it does not analyze the costs, benefits, advantages, and disadvantages of enhancing OTFM's current general ledger and investment accounting system, leasing a new commercial off-the-shelf system that would

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<sup>12</sup>Financial Management: Interior's Management of the Indian Trust Funds (GAO/T-AIMD-96-111, June 18, 1996).

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include accounts receivable or lease ownership components, or contracting for accounting services instead of improving or acquiring systems.

Since 1992, our reports and testimonies have recommended that the Secretary of the Interior require a comprehensive review of the entire trust fund operation, including those functions outside the control and responsibility of OTFM, in order to determine how, and by whom, the trust funds can best be managed. Our September 1994 report stated that to develop a comprehensive strategic plan

- Interior, BIA, BLM, and MMS managers would first need to analyze the Secretary's overall trust fund management mission;
- the managers would need to identify all the activities needed to fulfill this mission, including any critical activities that are not being performed, activities that may be unnecessary, and any current problems in performing current activities;
- managers would need to identify internal and external improvement options and the feasibility of each as a means of developing a comprehensive strategic plan; and
- Interior, BIA, BLM, and MMS managers would need to establish priorities and milestone dates for completing corrective actions.

We have not yet seen this level of coordination in Interior's trust fund strategic planning efforts.

The Special Trustee told us that during fiscal year 1996, he lacked the resources to adequately plan for needed trust fund system improvements. He said that he will use about \$1 million of his fiscal year 1997 appropriation to contract for a requirements analysis that will provide him with information on systems integration alternatives and electronic equipment needs. In October 1996, the Special Trustee issued a request for proposals for contractor assistance in this requirements analysis, including

- identifying the internal and external users of Indian trust fund data,
- determining the needs and requirements of internal and external users,
- identifying training and equipment needs of internal and external users,
- identifying the business events in the day-to-day trust business and the relationships among those events,

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- compiling an inventory of equipment currently in use, and
- analyzing the needs and requirements for a new system or systems to achieve the eight elements outlined in the strategic planning concept paper.

The Special Trustee told us that he hopes to use the results of the requirements analysis to complete his strategic plan and submit it to the Secretary of the Interior by March 31, 1997. However, we are concerned that the analysis is primarily a user needs study and does not include an assessment of alternatives for trust fund administration nor fully consider the feasibility and the costs and benefits of alternative improvement options.

**Question 2: Will implementation of this plan allow the federal government to properly discharge its trust responsibilities and provide an accurate accounting to American Indian trust beneficiaries in the future?**

**GAO Response:** As noted in the above responses, the Special Trustee's February 1996 concept paper has not yet been revised or expanded into a strategic plan. In addition, the concept paper does not address programs across Interior agencies. The American Indian Trust Fund Management Reform Act of 1994 gives the Special Trustee responsibility for oversight of reforms relating to the management and discharge of the Secretary's trust responsibilities to Indian tribes and individual Indians, including the reform of policies, practices, procedures, and systems in BIA, BLM, and MMS. However, the concept paper, which does not address how this broad oversight function will be achieved, focuses primarily on OTFM, with some focus on OTR.

Until the Special Trustee revises and expands the February 1996 concept paper into a comprehensive strategic plan, there is no way to determine whether implementation of that plan would allow the federal government to provide an accurate accounting to American Indian trust beneficiaries in the future. Furthermore, even with an adequate plan, future results will be dependent upon sufficient resources and oversight and will require effective coordination and implementation of Indian trust programs across Interior, including OTFM, BIA, BLM, and MMS.

(913800)



THE SECRETARY OF THE INTERIOR  
WASHINGTON

DEC 11 1996

Honorable Don Young  
Chairman, Committee on Resources  
House of Representatives  
Washington, D.C. 20515

Dear Mr. Chairman:

I am pleased to transmit to Congress the Department of the Interior's Proposed Legislative Options in Response to the Tribal Trust Fund Reconciliation Project Results. This submission is made as required by Section 304 of the Indian Trust Funds Management Reform Act of 1994 (25 U.S.C. § 4044), which provides that the Secretary shall outline efforts he will undertake to resolve disputed Tribal trust fund account balances.

This report marks a milestone in the Federal Government's efforts to address longstanding inadequacies in the management of Tribal trust accounts. Having completed a five-year study of Tribal account transactions for the period 1972-1992, we now turn to the task of working in collaboration with Congress and the Tribes to address what to do about our findings. As our report indicates, we believe a legislative settlement is the most effective, expeditious, economical and equitable way to go. While this report begins to define our views on what form that legislation might take, we have more work to do. We will be consulting with Tribes in the weeks to come to solicit their views on various settlement options, particularly with respect to claims based on the unreconciled transactions and claims that may arise outside the time period and scope of the 20-year reconciliation period. We plan to submit our final recommendations in April 1997.

The issues that Congress, the Tribes and the Administration must confront in constructing a settlement are not easy; there are no clear answers. Our overriding objective for this settlement process must be to achieve fairness, recognizing the limitations of what has occurred in the past. Our efforts must be principled and undertaken in good faith, paying those to whom money is owed with due regard to our fiduciary obligation, while protecting the taxpayers where little or no reasonable likelihood of actual loss exists.

The Office of Management and Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program.

We look forward to working with you in developing this settlement proposal. An identical letter is being sent to Senator John McCain.

Sincerely,

cc: Honorable George Miller, Ranking Minority Member

## PROPOSED LEGISLATIVE OPTIONS IN RESPONSE TO TRIBAL TRUST FUND RECONCILIATION PROJECT RESULTS

### I. EXECUTIVE SUMMARY

For more than a century, the federal government has been the trustee of funds for Indian Tribes and individual Indians. Currently, the Secretary of the Interior, through the Office of the Special Trustee (OST), maintains approximately 1,500 accounts for 280 Tribes with assets in excess of \$2.5 billion. Each year, more than \$802 million passes through the Tribal trust funds system. In addition, the Secretary, through the OST, maintains over 300,000 individual Indian money (IIM) trust fund accounts with a current balance of \$450 million. Each year, \$300 million passes through the IIM system.

Concerns have been expressed for a number of years in Indian country, various quarters of the Executive branch, the General Accounting Office and Congress that the trust funds management and accounting systems have not kept pace with technological developments in the private sector. Questions have been raised about whether assets were being properly managed and funds accounted for. There have been calls for accountings of both Tribal and IIM funds and for additional investment by the federal government to upgrade its systems.

In response to these concerns and the direction of Congress, the Department contracted with Arthur Andersen, LLP to perform a reconciliation of the Tribal trust fund accounts. The five-year project covered transactions for the twenty-year period from 1972 to 1992, and cost \$21 million to complete. The objective of the project was to reconstruct tribal accounts to the extent possible, to provide some assurance of the accuracy of transactions, reasonableness of investment earnings, and propriety of income collected. The results of the reconciliation project and the Department's approach to developing a settlement of disputed account balances are described in more detail below. In brief, the basic reconciliation portion of the project examined \$17.7 billion in non-investment transactions, of which \$15.3 billion -- about 86 percent -- were reconciled. For the reconciled transactions, approximately \$1.87 million in transactions were in error -- an error rate of .01 percent.

The remaining 14 percent of transactions -- amounting to \$2.4 billion --

were deemed by Arthur Andersen to be "unreconciled," meaning that the Office of Trust Funds Management (OTFM) was unable to locate source documents to verify the accuracy of the general ledger entry for the transactions. For example, the general ledger might list a receipt of \$1,000 to a Tribal account in connection with a mineral lease of trust property; however the underlying documentation necessary to verify its accuracy could not be located with the time and resources available. While this does not mean that the \$2.4 billion is lost or missing, it does mean that the poor condition of the records and systems did not allow the federal government to conduct an audit or provide the level of assurance to account holders that should be expected.

In addition, almost half of the unreconciled \$2.4 billion related to transactions involving receipt of funds by the government on behalf of a Tribal account from third parties. An additional half billion dollars of unreconciled transactions involved transfers between different accounts of the same Tribe. With respect to these two categories of transactions, where the receipts or transfers to a particular Tribe's accounts were posted to the general ledger, it is likely that the Tribe had use of the funds even if they were posted to the wrong account of that Tribe. Deducting these amounts from the \$2.4 billion in unreconciled transactions, and based on other supplemental data, we believe the legislative settlement options to address unreconciled transactions should focus on the remaining \$575.1 million (excluding interest).

This report reflects a milestone in the federal government's efforts to address these longstanding inadequacies. As described more fully below, the report contains our preliminary proposals for settling the disputed balances in the Tribal trust fund accounts based on the results of the five-year, \$21 million reconciliation project. These concepts are provided in accord with the American Indian Trust Fund Management Reform Act of 1994, which provides that the Secretary shall outline efforts he will undertake to resolve disputed Tribal trust fund account balances. In addition, pursuant to the Act, the Special Trustee is making recommendations to implement improvements to trust management policies, practices, procedures and systems Department-wide. Some reforms already have been instituted, including conversion to a core trust accounting and investment system for tribal funds, publication of standardized procedures for the management of IIM accounting operations and reconciling all cash activity on a daily basis for both Tribal and IIM accounts. OTFM has published regulations providing procedures for Tribes to withdraw and manage their own funds should they so



choose. Between 1990 and the present, staffing of the OTFM has been increased five fold. Finally, the Administration has included in its budgets for 1996 and 1997, and will include in the outyears, funding to implement trust reform efforts.

We believe that legislation ultimately will be required to provide a settlement that will be fair to account holders. This report contains the Department's specific recommendations for addressing claims based on transactions where documentation indicates that errors were made. We refer to these as "Type I claims," and we recommend that where errors occurred to the detriment of Tribes, the government reimburse the account with simple interest computed at the Tribal benchmark rate. With respect to the Type 1 claims where errors inured to the benefit of the Tribe, the Department recommends netting those amounts against any amounts owed to the Tribe, and forgiving any remaining amount owed by the Tribe after netting is applied.

Where Tribes have additional documents to contest their account balance (we refer to these as "Type 2 claims"), we recommend that Tribes have an opportunity to present those claims to the Department. In the event the Department disagrees with the Tribe's position, the Tribe may request that the matter be submitted to a mediator who would be empowered to recommend a resolution of the claim.

There are two additional types of claims for which consultation with Tribes is necessary before we can develop any settlement recommendations. First, there are claims based on the \$2.4 billion of unreconciled transactions, which we refer to as "Type 3 claims." Although we may be able to locate some documents, it is not possible to determine whether the Tribes suffered money losses as a result of the Bureau of Indian Affairs' (BIA) management and accounting practices. We believe that resolution of these questions by litigation would be time-consuming, expensive and not in the interest of either the government or the Tribes. Accordingly, we are soliciting Tribal input on how best to address these claims in settlement.

Second, some Tribal representatives assert that they are entitled to some form of redress for management and accounting practices involving transactions outside the scope and duration of the 20-year study. They argue that they will be unable to agree on a final account balance unless these issues are addressed in the settlement process.

The report outlines several possible "total" settlement options as a point of departure for our further discussions on these broader claims and the Type 3 claims. While the government does not endorse any of these specific proposals - and those described in this report by no means constitute all of the possible approaches - we nonetheless would like to consider Tribal views with respect to these and other proposals.

Our overriding objective for this settlement process is to achieve fairness and justice with respect to Tribal trust account balances. We are committed to doing the best job we can, recognizing the limitations of what has occurred in the past and the available information, to restore funds to Tribal trust accounts that have suffered losses as a result of inadequacies in the Department's management and accounting systems. The effort must be principled and undertaken in good faith, paying those to whom money is owed, with due regard to fiduciary obligations, while, at the same time, protecting the public fisc where little or no reasonable likelihood of loss exists.

We considered the following objectives in formulating the proposals and options for the proposed legislation:

- achieve a settlement that is fair
- achieve the most resource-efficient settlement of claims (in terms of conserving federal government and Tribal time, money, and staff, including attorneys' and expert witness fees)
- encourage settlement by providing incentives to settle and by providing disincentives to litigation
- use the most informal settlement processes available rather than litigation to encourage Tribal participation
- obtain funding for the settlement without reducing appropriations for the BIA budget and Tribal programs
- achieve final agreement on account balances through September 30, 1995, as required in the Act, as an agreed-upon starting point for the future

When the consultation process is complete, the Department will submit a final set of recommendations to Congress. Funding sources also will need to be identified. In order to provide time for consultation with Tribes, we plan to submit those recommendations to Congress in April 1997.

## **II. BACKGROUND**

### **A. Overview**

The Secretary of the Interior has the responsibility to ensure the proper accounting, investment and financial reporting of over 300,000 Indian Tribal and individual Indian money (IIM) trust fund accounts. The authority for management of Indian trust funds was delegated to the Assistant Secretary, Indian Affairs, and re-delegated to the BIA. Since February 1996, this authority has been delegated to the Office of the Special Trustee (OST) through the transfer of authority over the Office of Trust Funds Management (OTFM).

The American Indian Trust Fund Management Reform Act of 1994 (the Act) directs the Secretary of the Interior to prepare a report to Congress by May 31, 1996, to include a description of the procedures used for reconciliation of the Tribal trust fund accounts and a statement outlining efforts the Secretary will undertake to resolve disputes regarding Tribal account balances.<sup>1</sup> The reconciliation was carried out by the Bureau of Indian Affairs (BIA) in an effort called the Tribal Trust Funds Reconciliation Project (the Project). This report identifies for Congress the general approach the Secretary is contemplating for resolving account balance disputes and includes specific recommendations to resolve known errors. The Department will consult with the Tribes by circulating this report to Tribal account holders and seeking their comments on the various approaches to settlement and to the specific questions raised herein.

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<sup>1</sup> Because most Tribes did not have sufficient time to review their reconciliation reports and inform the Department whether they disputed their account balances (known as "attestation responses") as of the May 31 deadline, the Secretary submitted to Congress an interim report describing the reconciliation procedures on May 31, and set a deadline of September 27, 1996, for submission of attestation responses. With the extension of the deadline for submitting attestation responses, the Secretary indicated that he would submit a supplemental report to Congress, including proposed legislative options to address disputed account balances later in the year.

This analysis incorporates many of the settlement recommendations of the Special Trustee's Advisory Board, which was created by Section 306 of the Act (hereinafter the "Advisory Board"). The Advisory Board's settlement proposals were submitted to the Secretary on September 24, 1996, and were the result of a series of consultations between the Special Trustee, his Advisory Board and several Tribes. As requested by the Special Trustee, the Advisory Board's recommendations are appended to this paper. In our recommendations, we describe where we agree and where we disagree with the Advisory Board's recommendations.

### **B. Tribal Accounts Versus Individual Indian Accounts**

There are two general types of accounts which are administered by the OST.<sup>2</sup> First, there are Tribal trust fund accounts maintained on behalf of 301 account holders. Second, there are IIM accounts, maintained on behalf of over 300,000 individual Indians. The options outlined in this analysis address approaches for resolving account balances of Tribal accounts only, because Section 304 of the Act requires a report on only those accounts. While this report does not address resolution of IIM account balances, on June 10, 1996, a class action lawsuit, captioned Cobell v. Babbitt, was filed in U.S. District Court on behalf of the IIM account holders. Settlement discussions are proceeding between attorneys for the plaintiffs and the United States to attempt to resolve claims by the IIM account holders. Unlike the Tribal trust accounts, no historical reconciliation of the IIM accounts has been performed because of the inordinately high costs -- estimated in 1992 to be in the \$108 million to \$281 million range -- of conducting such a reconciliation. The settlement process in the litigation, if successful, may provide a more efficient means of estimating liability, if any.<sup>3</sup> Some components

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<sup>2</sup> All Indian trust fund accounts were historically administered by the Bureau of Indian Affairs ("BIA"). In February 1996, the Secretary re-delegated the responsibility for management of Indian trust fund accounts to the Office of the Special Trustee, through the transfer of authority over the Office of Trust Funds Management (OTFM).

<sup>3</sup> The Advisory Board selected the \$281 million amount simply because it was the upper end of an early estimate of Arthur Andersen L.L.P., for undertaking a reconciliation of the IIM accounts similar to the reconciliation already conducted for tribal accounts. The Advisory Board reasoned that rather than spending this sum "to produce what is likely to be an unsatisfactory result," that amount should be "used to compensate IIM account beneficiaries for any harm, damage or loss arising out of the government's inability to provide an accurate and timely accounting to IIM trust account holders." In our view, there is no demonstrable relationship between the "harm, damage or loss" that IIM account holders may have suffered and the cost to produce a reconciliation of the IIM accounts. Moreover, the Advisory Board's recommendations do not make

of the Tribal settlement legislation outlined in this report may also be appropriate for settling components of the IIM claims as well as issue in the Cobell litigation.<sup>4</sup>

### C. Legislation Versus Litigation

We believe that legislation rather than litigation would provide an orderly and efficient mechanism for resolution of the disputes over account balances arising out of the Project. The proposed legislative approach described here responds to the statutory directive that the Secretary outline efforts to resolve such disputes in his report to Congress. It would address only those claims arising from the Project, not individual Indian accounts or other funds. Case-by-case litigation would be wasteful, expensive and time-consuming. Given the inadequacy of the available records and the historical deficiencies in BIA's accounting and management systems, additional reconciliation efforts that would accompany litigation would, at best, produce only marginally more refined data. Moreover, some elements of a settlement policy, including forgiveness and offset of claims, might be desirable and legislation could define the parameters of the Department's authority to implement them. Legislation also could address funding sources for the settlement.

### D. Past Versus Future

This report addresses options for a legislative resolution of problems from the past -- the Tribal trust fund account balance disputes. On a separate track, the Secretary and the Congress, through the efforts of the Special Trustee, are evaluating approaches for comprehensive reform of the Department's management of trust systems for the future. The Special Trustee has completed an assessment of trust management policies, procedures, practices and systems as they apply to both IIM and Tribal accounts. He has produced a conceptual strategic plan to acquire and institutionalize new trust accounting and management systems. Through additional analysis and consultation with both Tribal and federal interests,

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clear how IIM account holders would agree that the payment was in full satisfaction of their individual claims.

<sup>4</sup> The settlement recommendations of the Advisory Board include a proposal for settling IIM accounts which was developed prior to the filing of the Cobell litigation. The Advisory Board proposed, among other things, a payment of \$281 million to be deposited in the IIM Investment Pool and subsequently invested for the benefit of IIM account holders. The payment would be a permanent fund, generating interest for IIM account holders, and also would serve as a reserve to pay claims successfully brought by individual account holders.

the conceptual plan will be transformed into a strategic plan as required by the Act and submitted to Congress. The President's annual budget requests for the Department include funds earmarked for implementing the Special Trustee's strategic plan.<sup>5</sup>

#### E. Structure of this Report

Part III of this report describes in detail the Department's role with respect to Tribal and IIM trust funds, deficiencies in the records concerning trust accounts and balances, and the Project which studied Tribal trust fund investment transactions for a 20-year period.

Part IV presents some options for settling Tribal claims based on errors, incomplete documentation or inaccurate accounting of trust funds during the reconciliation period, 1972-1992.<sup>6</sup> As noted, the Department needs to consult further with Tribes and with others in the Administration to develop an appropriate settlement proposal. This part of the analysis does not address issues relating to the individual Indian money accounts held by the United States on behalf of individual Indians or Tribal claims outside the scope of the Project.

Part V outlines options for Congress to structure any future litigation concerning Tribal claims based on alleged trust fund losses. While the idea behind the settlement proposal being developed by the Department is to encourage settlement through means other than litigation, we also envision that it will be necessary to provide those Tribes that choose not to settle a fair process to litigate their claims.

Part VI presents the concept of a "total settlement" that would resolve claims

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<sup>5</sup> The Advisory Board proposed \$147 million for implementation of the strategic plan as a component of a joint settlement for IIM and Tribal account holders. This amount is based on preliminary estimates, and includes approximately \$20 million in annual operating costs over five years, and \$47 million of one-time equipment and infrastructure costs. The Department proposes to continue to request funding of implementation costs as part of its annual budgets. The enacted FY 1997 Interior and Related Agencies Appropriations Act included \$15,726,000 for implementation of the Special Trustee's strategic plan, including funding for immediate office staffing and the Advisory Board. Future Departmental requests will be based on the final approved strategic plan being developed by the Special Trustee in 1997.

<sup>6</sup> There is potential overlap between settlement options for the Tribal claims and the claims in the Cobell litigation. Certainly, Congress could consider a broader settlement package which addresses both Tribal and IIM claims.

beyond the scope and time frame of the Project and any claims that may relate to historical mismanagement of trust assets. Undertaking additional reconciliation efforts or litigating these claims could be particularly expensive. With the Tribes and Congress, and after further consultation within the Administration, we would like to explore possibilities for legislative resolutions that would resolve disputes on behalf of all or virtually all Tribes, and that would provide final account balances for Tribal trust funds as of September 30, 1995.

At this stage, the Department is merely exploring whether a "total settlement" is warranted and whether it would be fair to all concerned. We do not endorse at this time the concept of a "total settlement" or any of the specific alternatives presented for comment. As a result of additional consultation, other ideas could emerge which might produce a more equitable result for all involved. We also have tried to identify important questions about these options; many of these questions do not have obvious or easy answers.

### **III. RECONCILIATION EFFORTS FOR TRIBAL TRUST FUND ACCOUNTS**

#### **A. The Project**

Over the past decade, operational reviews and financial audits have identified weaknesses in the control and oversight of Indian trust funds. A primary concern was the failure to reconcile the trust fund accounts regularly and to assure that account balances were accurate. Consequently, in 1988, 1989 and 1990, Congress directed BIA to take steps to reconcile Indian trust fund accounts as accurately as possible back to the earliest possible date. The FY 1990 appropriations language further required that "the results of such reconciliation [be] certified by an independent party as the most complete reconciliation of such funds as possible."

Pursuant to these directives, BIA commenced its Project in 1990. In the fall of 1990, an ad hoc Tribal advisory group<sup>7</sup> worked in conjunction with the BIA, the General Accounting Office (GAO) and the Department's Inspector General to develop a request for proposal for the reconciliation contract. In May 1991, the contract was awarded to a national accounting firm, Arthur Andersen, LLP.

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<sup>7</sup> The ad hoc group constituted itself as the Intertribal Monitoring Association (ITMA).

Phase I of the contract was intended to determine what records were available, what procedures would be necessary, and the cost of a complete reconciliation for both Tribal trust and IIM accounts. This work was performed from June 1991 through January 1992. The results of Phase I disclosed that not all supporting documents could be located, but to the extent they could be located, they could be examined, and that some BIA trust policies, procedures, and systems had deficiencies. As a result, it was agreed, through discussions involving the Department, the Office of Management and Budget (OMB), Congress, and the Intertribal Monitoring Association (ITMA), that a conventional financial audit was not likely to produce meaningful results.

In view of this, the Department of the Interior, in consultation with OMB and ITMA, considered alternative methodologies and approaches with the goal of producing as accurate an accounting as practicable. As a result, the BIA modified the Arthur Andersen contract to incorporate the methodological procedures agreed upon by the Department, OMB and Tribal representatives. While the procedures do not constitute an audit in accordance with generally accepted auditing standards, they were deemed to be the best available approach and were therefore used to reconcile the Tribal trust fund accounts for the period July 1, 1972 through September 30, 1992. The year 1972 was selected as the starting point because it coincided with the date on which BIA assumed sole responsibility for Tribal trust fund accounting and recordkeeping to the account level. Prior to that time, the Department of the Treasury had accounts for individual Tribes listed within its systems, although BIA may have reported the amounts to be placed in the accounts (in contrast to the current practice where there is one combined account for all Tribes at Treasury).

In accord with the Congressional mandate that the Tribal trust fund reconciliation be certified by an independent third party, the BIA awarded a contract to perform the certification to Coopers and Lybrand in September 1993. Due to a projected cost that far exceeded available resources, BIA terminated the contract in October 1995, before the certification was completed. At BIA's request, Coopers and Lybrand provided a close-out letter summarizing the work performed prior to termination. In the letter, Coopers stated that it noted errors in certain aspects of Arthur Andersen's reconciliation work under the BIA contract, and that some, but not all, of these errors were reported to Arthur Andersen and BIA. The letter further stated, however, that no conclusions could be drawn from the preliminary information reported because Coopers did not



complete the certification work. Arthur Andersen investigated and cleared the reported errors and a record of these activities are on file at Arthur Andersen's office.

In 1994, while the Arthur Andersen reconciliation efforts were ongoing, Congress passed the American Indian Trust Fund Management Reform Act of 1994, 25 U.S.C. §§ 4001-4061, which established the Office of the Special Trustee for American Indians. Under this legislation, the Special Trustee is responsible for oversight, reform, and coordination of the policies, procedures, systems and practices used by various Departmental agencies in managing Indian trust assets.<sup>8</sup> The statute required that the Secretary transmit to Congress by May 31, 1996, a report that describes the methodology and results of the trust fund reconciliation process, includes Tribal attestations as to disputed account balances, and outlines efforts the Secretary will undertake to resolve such disputes. As noted, that report was submitted to Congress with a commitment to provide this supplemental report on the Secretary's recommendations for resolving account balance disputes.

In January 1996, the Department released a report to 301 Tribal trust fund account holders summarizing the results of its Project. The agreed-upon procedures used in the Project were intended to accomplish the following: (1) verify that non-investment financial transactions posted to the BIA's official accounting records are in agreement with supporting financial source documents; (2) assess the accuracy of investment income posted to Tribal accounts; (3) recalculate the U.S. Treasury interest earnings; (4) reconcile general ledger transactions with U.S. Treasury transactions; (5) verify that financial transactions posted to the accounting records are in agreement with the originating lease or sale agreements, permits, or contract terms (not completed for all-transactions); and (6) determine the timeliness of the deposit of receipts (for informational purposes only). The Project report indicates that of the \$17.7 billion (absolute value)<sup>9</sup> in non-investment transactions, \$15.3 billion of transactions were reconciled, while \$2.4 billion (absolute value) were unreconciled (that is, as of the time the Project was completed, financial source documents could not be located to support the

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<sup>8</sup> While Title III of the Act vests this responsibility in the Special Trustee, the Act further provides that the Special Trustee "shall report directly to the Secretary." Section 302(a), 25 U.S.C. § 4042(a).

<sup>9</sup> The absolute value of transactions means disregarding the positive and negative values of the transactions.

accuracy of these transactions as entered on BIA's general ledger). For example, the general ledger might show a receipt of \$1,000 to a Tribal account in connection with a mineral lease of trust property; however, the underlying documentation necessary to verify its accuracy could not be located. (See pages 21-22 for a more complete description of these unreconciled transactions).

The reconciliation procedures and the proposed adjustments to account balances are detailed in the Project report, and were explained to the Tribes at a national meeting on February 14 and 15 in Albuquerque, New Mexico. More detailed individual consultation was provided to account holders at a series of regional meetings held through July 1996. In August 1996, the Special Trustee sent out a request for all Tribes to submit attestations as to acceptance or dispute of their account balances on or before September 27, 1996.

As of November 1, 1996, the OST received attestation responses from 79 of 301 Tribal trust fund account holders. 33 Tribal account holders accepted the account balances as reflected in the Project, and 46 account holders disputed the balance. 49 account holders requested additional time for their response. 173 account holders filed no attestation response. Among the reasons given by those account holders which disputed their account balances were that the reconciliation procedures were inadequate, that they needed additional time, and that the records were inadequate. Other comments were more specific in nature and did not fall into one of these categories. Some account holders identified more than one reason for disputing their account balances.

Despite five years of effort and the expenditure of \$21 million, the Project provides a less than complete accounting of the state of the Tribal trust funds. The inadequacy of the Department's trust management systems, policies, procedures and practices, the condition of the trust records, the fact that a substantial number of documents relating to the 20-year period could not be located as of the time the Project was completed, and funding constraints all contributed to the Department's inability to verify the accuracy of Tribal account balances.

The Project did identify specific errors which resulted in underpayments to Tribal trust fund account holders. These must be corrected and options to do so are outlined below. The Project also uncovered errors which resulted in overpayments to Tribes. Whether and how to recover these amounts is also discussed below. The most difficult issues, however, relate to (1) the unreconciled

transactions where there were no records located to support \$2.4 billion of non-investment transactions for the 20-year period of the Project; and (2) those transactions outside the scope and period of time covered by the Project.

#### **B. Types of Claims**

For purposes of this analysis, the three basic types of potential claims that may arise from the Project results are referred to as Type 1, Type 2, and Type 3 claims:

- Type 1 claims are based on errors specifically identified in the Project for which there was a documented loss to the Tribe or the government. Type 1 claims involve two types of circumstances; either funds are owed by the government to a Tribal account, or the Tribal account was overpaid and it owes funds to the government.
- Type 2 claims are those where a Tribe disputes its account balance from the Project based on additional documentation produced by the Tribe. Because no Tribes responded to a letter sent to them in January 1994, requesting any records in their possession relating to transactions on the general ledger, there may be few Type 2 claims. Nevertheless, there is a need to offer a means for addressing these claims, should they arise.
- Type 3 claims arise from unreconciled transactions, where neither the Tribe nor BIA could locate source documentation to support the account transactions or to support a conclusion that those transactions are in error. This is by far the largest category.

There also are claims arising from transactions that were outside the scope of the Project, or outside the 20-year period covered by the Project. It is impossible to estimate the amount of those claims or to identify the specific Tribe or account to which money may be owed. Should Congress conclude that it wants to address these types of claims, this analysis outlines several different approaches for doing so, in the form of "total settlement" options.

#### **IV. OPTIONS FOR SETTLEMENT OF SPECIFIC CLAIMS**

### A. Detailed Discussion of Options for Legislation

We are considering the following framework for legislation and options to settle the three types of Tribal claims:

#### 1. Payment of Type 1 Claims

- Payment of All Claims. Type 1 claims are those where the Arthur Andersen Project report indicates that there has been an error. Because the Department has an obligation to correct its known errors, Tribes would be paid in full without regard to the Tribe's willingness to settle any other claims. The Department recommends that the government pay the Tribe any principal amounts owed, plus interest as defined below.

Three types of claims fall within this category. First, of the amounts reconciled in the Basic Reconciliation portion of the Project, approximately \$1.87 million in transactions (excluding interest) were found to be in error -- an error rate of about .01 percent. An additional \$25.2 million (absolute value) in proposed adjustments were identified in the entire Project.<sup>10</sup> These known errors include both underpayments and overpayments to Tribal trust fund account holders.

Second, some Tribes claim that interest is owed due to the lag time between when funds were paid to the BIA and when they were deposited. While we agree that interest should be paid, there is a question as to when interest should begin to accrue. For example, interest could begin to accrue after 1-3 days, 4-6 days, 7-10 days, 11-30 days or over 30 days. The Department believes it is entitled to a commercially reasonable time to deposit checks in Tribal accounts (due to mailing, processing, check clearance, etc.), but that time should be limited and Tribes should receive interest only after that period has passed. We recommend that interest be paid to Tribes beginning after six (6) days, whether or not the funds have actually been deposited.<sup>11</sup> In addition, there are interest claims relating to lag time from when money was received by the Minerals Management Service (MMS)

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<sup>10</sup> The \$1.87 million does not include adjustments of less than \$1,000 that were accepted without further research, which are referred to as "scoped adjustments." These scoped adjustments would also be considered known errors and would be paid as Type 1 claims.

<sup>11</sup> Because reservations tend to be located in isolated and remote areas, reliance on mailing is typical. During the 1972-1992 reconciliation period, approximately one-third of the payments were made electronically.

and when it was actually credited to the accounts by BIA. The Department believes that interest should be paid on these claims from the date the funds were received by MMS. If Congress adopts this policy for the reconciliation period, the government would owe \$1.7 million in back interest.<sup>12</sup>

The third type of Type 1 claims involve so-called "rollover amounts." These amounts result from end-of-accounting period balances in Tribal trust accounts in BIA's general ledger that do not always equal the balance recorded in the general ledger for the beginning of the subsequent accounting period. The Advisory Board proposes to forgive \$26.1 million in principal plus interest in cases where an account balance increased, and to pay Tribes \$17.5 million in principal plus interest where a Tribe's account balance decreased. These amounts assume netting of rollover increases against rollover decreases at the account level; and no netting of rollover adjustments against known errors.

These rollover discrepancies result from accounting entries that change the beginning balance of a Tribe's account for an accounting period. Although a transaction history does not show up in the BIA general ledger, the entries should appear in the BIA's monthly journal of transactions or other supporting documents. Because of time constraints imposed on the Project, research necessary to support these transactions could not be performed prior to the issuance of the final reconciliation reports to the Tribes.

The OST has recently begun an effort to research rollovers where a tribe's balance decreased from one accounting period to the next. To date, \$5.2 in rollover decreases have been verified by the OST staff. OST will continue this research effort. To the extent that the Department is unable to reconcile rollover decreases, the Department agrees with the Advisory Board's proposal to pay Tribes principal plus interest in cases where account balances have decreased.<sup>13</sup> However, the Department proposes that these amounts be netted against known errors inuring to a Tribe's benefit.<sup>14</sup>

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<sup>12</sup> \$1.4 million is attributable to the BIA deposits and \$.3 million is attributable to the MMS deposits.

<sup>13</sup> It should be noted that while the Department is proposing that unexplained rollover decreases be paid to Tribes, it has not been determined that an error, in fact, occurred in these instances.

<sup>14</sup> The Department does not agree with the Advisory Board's classification of rollover increases as amounts that need to be "forgiven." In order to determine whether rollover increases actually represent

- Interest policy. An issue that must be resolved is how interest should be paid on amounts owed to Tribes. There are two considerations in that regard: whether simple or compound interest should be paid, and what rate of interest should be used.

The Advisory Board proposes that interest payments be determined by computing compound interest at a blended Tribal benchmark rate.<sup>15</sup> While the Tribal benchmark rate is skewed somewhat on the high side by a number of long-term instruments held in one account, it nevertheless has the advantage of being easily determined. Against this is balanced the fact that the compound rate is greater than what a Tribe could likely recover in litigation; courts generally limit the interest on government trust funds to simple interest on principal only.<sup>16</sup> Accordingly, the Department recommends that simple -- not compound -- interest be paid at the blended Tribal benchmark rate.

- Forgiveness and netting policy. The Project results indicate that in some cases, BIA errors resulted in overpayments or erroneous payments to a Tribe or to a particular Tribal account. As a result, some Tribes owe the government money. When interest is included, the amounts owed by Tribes to the federal government can be significant, and repayment would be a particular burden for Tribes with limited financial resources. The Department has considered whether it should recommend to Congress that some or all of the amounts owed by Tribes to the government should be forgiven. Although a policy of forgiving amounts

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overpayments to Tribes, it would be necessary to perform research on the underlying transactions recorded in BIA's monthly journal of transactions or other supporting documents. Absent this work being performed, it cannot be concluded that these rollover increases represent overpayments to Tribes. However, to ensure that the issue of rollover increases is resolved by the settlement, the Department contemplates that settlement legislation will provide that unreconciled rollover increases to a Tribe's accounts be deemed accurate transactions.

<sup>15</sup> The Tribal benchmark rate is the average annual yield of invested Tribal trust funds.

<sup>16</sup> It is well settled that the Tribal owner of interest-bearing trust funds that are improperly disbursed by the federal government can recover only the amounts disbursed plus simple interest annually thereon (at the rate prescribed by statute to be paid on these funds). See, e.g., United States v. Gila River Pima-Maricopa Indian Community, 586 F.2d 209, 216 (Ct. Cl. 1978); White Mountain Apache Tribe of Arizona v. United States, 20 Cl. Ct. 371, 377 (1990). And, where a statute or treaty provides for the payment of simple interest, compound interest is not recoverable. United States v. Mescalero Apache Tribe, 518 F.2d 1309, 1331-33 (Ct. Cl. 1975), cert. denied, 425 U.S. 911 (1976). In contrast, compound interest is frequently awarded in private sector litigation.

owed from Tribes to the United States would deny the government potential revenue, forgiveness of a debt does not require the further expenditure of funds. Congressional authorization would define the parameters of the Department's authority to forgive the repayment of obligations due the government.

The Advisory Board believes that amounts owed by Tribes to the government as a result of errors should be forgiven, for the following reasons:

A. These are known and admitted errors of the U.S. Government. Even though the Tribes apparently benefitted by these overpayments, they should not be asked to repay amounts which arose out of the U.S. Government's inability to provide an accurate and timely accounting.

B. These admitted errors were made over a period of twenty years. The usual and customary standards for clearing similar exception items in the private sector is one accounting period, usually ninety days or less.<sup>17</sup>

C. The overpayments were identified for reconciled items only. Had a full accounting been possible for the \$2.4 billion in unreconciled non-investment transactions, or had a full accounting been possible verifying financial transaction to source documents (such as land leases and contracts), or had the Project covered different time periods, the net result for a particular Tribe may have been different.

D. Tribes should not be asked to reimburse the government unless the government can document that no subsequent correcting entry was made.

There are various forms that a forgiveness policy could take. For example, amounts that are owed to and from a particular Tribal account, or to and from a particular Tribe (as explained below, some Tribes have several different accounts), could be offset against each other, or "netted." How the netting policy is structured has significant financial ramifications. It also could have important legal implications that would require a legislative resolution.

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<sup>17</sup> While there may be regulatory requirements that exception items be cleared in one accounting period for regulatory or accounting purposes, this does not necessarily mean that a private sector institution would forgive an error in the customer's favor. Such practices vary by institution, amount at issue, type of customer and other relevant circumstances.

The Department maintains two basic categories of funds for Indian Tribes: Judgment funds and Indian Money Proceeds of Labor funds. Within these two major categories, various accounts may exist. For example, within the Judgment category there are accounts for specified purposes, such as education, economic development, burial, etc. Within the Proceeds of Labor category, there are accounts for the proceeds from various tribal resources, such as grazing, mineral leasing, and forestry. If a netting policy authorizes or requires offset or netting of funds among accounts of different types, then funding for the specified purposes of the accounts may be altered. The interests of specific classes of beneficiaries (e.g., all Tribal members, minors) in particular accounts would be altered. The Department believes that Congressional authorization may be required for such alterations.

There are several different options for netting discussed below. The estimated cost to the Treasury for each is based on the government paying Type 1 claims using the assumptions described above (simple interest based on the Tribal benchmark rate) and does not include adjustments for rollover amounts.

Under a *no-netting approach*, the government would forgive all amounts that were overpaid to Tribes and pay all amounts owed to Tribes, plus interest. This approach would require the greatest expenditure and forgiveness of public funds to pay claims, with actual payment of \$13.1 million in principal and \$11 million in interest, and forgiveness of \$14.0 million in principal and \$9.4 million in interest.

*Netting to the Tribal level* would provide for adding or subtracting of all amounts owed to or from a Tribe for all accounts owned by that Tribe (e.g., payment was made to one account of the Tribe when it should have been made to another, or payment was made in the wrong amount to a Tribe's account). In other words, all plus and minus adjustments for all of a Tribe's accounts would be netted together to arrive at a net amount due to or from a Tribe. Interest would also be netted to arrive at a net amount due to or from a Tribe. If this process resulted in a net amount (principal and interest) due to a Tribe, the government would pay that amount. If it resulted in a net amount (principal and interest) due from a Tribe, the government would forgive that amount. Netting to the Tribal level would result in the government paying \$3.5 million in principal and \$4.0 million in interest, and forgiving \$4.4 million in principal and \$2.2 million in interest.



*Netting to the Tribal account level* would provide for netting all amounts within one account owned by a Tribe, but would not net all accounts of that Tribe against each other. For example, if netting all amounts due to and from a Tribe's settlement fund accounts resulted in a net amount due to the Tribe, the government would pay that amount plus interest to the settlement fund accounts. If this method showed a net amount due from the Tribe, the government would forgive that amount. This approach would require payment of \$10.7 million in principal and \$9.5 million in interest, and forgiveness of \$11.6 million in principal and \$7.7 million in interest.

Even with a netting policy, a Tribe still may be found to owe the government money. If no additional forgiveness of the debt is granted, Tribes would be required to reimburse the government. Under the recently enacted Debt Collection Improvement Act, 31 U.S.C. § 3711, *et seq.* (DCIA), the government may offset payments to satisfy delinquent debts. Applied here, the DCIA could require the government to offset any funds that the government may pay the Tribe in the future against amounts owed by the Tribe to the government.<sup>18</sup> If additional forgiveness is granted, however, a Tribe whose debts are forgiven will have been treated more generously than a Tribe who did not need the additional forgiveness, simply because the amount owed by the Tribe to the government happened to be greater than the amount owed to the Tribe by the government.

The Department envisions that a forgiveness and netting policy should apply. We also anticipate that the settlement legislation should include provisions for netting at the Tribal level. Although the Advisory Board proposed netting at the Tribal account level, that approach fails to recognize that the Tribe already had the benefit of the funds, albeit not necessarily for their original intended purpose. Any legal infirmity due to the inadvertent mixing of funds among accounts would be remedied by the legislation authorizing the settlement. For example, to the extent payments are made to a Tribe, the legislation could authorize Tribes to direct the funds be allocated within their various accounts as the Tribes deem appropriate.

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<sup>18</sup> Under the DCIA, any federal agency that is owed by a person a past due legally enforceable debt (other than taxes) that is over 180 days delinquent is required to notify the Secretary of the Treasury. The Secretary offsets the debt against certain amounts that may be owed to that person. Historically, the BIA has not considered an Indian Tribe to be a "person," although the Department has not yet reached a conclusion under the DCIA. If, however, a Tribe is deemed to be a "person" under the Act, the offset provisions would apply, subject to provisions of the DCIA prohibiting use of administrative offset for debts over ten years delinquent.

After the netting policy is applied, if a Tribe still owes the government money, the Department recommends that the debt be forgiven. This forgiveness policy would nullify application of the DCIA because there would no longer be a valid and legally due debt owed to the United States.

- Waiver/Review. We believe that Tribes which accept payment of Type 1 claims under this settlement process should be required to waive bringing any Type 1 claims as part of any subsequent litigation involving claims encompassed in the scope and time period of the Project. Therefore, we propose that legislation specify that Tribes choosing not to settle their Type 1 claims pursuant to the Type 1 claims procedures will not be entitled to the favorable standards governing netting interest rate or forgiveness that may ultimately be applied under the settlement procedure. In other words, we propose offering favorable rules on netting, interest rate, and forgiveness as an inducement to settle and avoid further litigation.

## 2. Evaluation of Type 2 Claims

- Evaluation/Guidelines. Type 2 Claims involve one of two circumstances. First, there may be disputes about an account balance based on additional documentation in the Tribe's possession. The Department would evaluate those claims pursuant to the reconciliation standards employed by Arthur Andersen in the Project.<sup>19</sup> Second, there are so-called "passed adjustments" -- transactions

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<sup>19</sup> In the course of the Project, approximately \$6.035 billion in disbursement transactions were categorized as reconciled. Of this amount, about a third -- \$1.925 billion in transactions -- were reconciled based on complete voucher packages. The balance -- \$4.110 billion in transactions -- were reconciled based on disbursement voucher packages which may not have included, or may not have been required to include, all the supporting documentation described below. A complete disbursement package could include a series of transactional documents, including a signed Form SF-1166 (Authorization to Disburse); an accomplished copy, endorsed by the Treasury Department, of that same Form SF-1166; a Form SF-1034 (Request for Disbursement); and an accompanying Tribal resolution or other Tribal authorization, either authorizing a particular signatory for the SF-1034, or merely requesting payment of the funds. The Advisory Board concluded that "[b]ecause some degree of proof of payment exists and because the Tribes now have access to the images and the documentation for all these transactions, the burden of bringing a claim should fall on the Tribes." The Board estimated that the probability of a loss from incomplete disbursement voucher packages is most likely less than 10 percent. The Board proposed an aggregate settlement of \$400 million (about 10 percent of total incomplete disbursement packages), \$200 million of which would be used as part of the initial capital of an Indian Development bank (described below), and \$200 million of which would be used to satisfy specific claims brought by the Tribes, with individual accounts capped at 5 percent of total incomplete disbursement packages for that Tribe. The Department disagrees with this proposal because these transactions have been reconciled pursuant to the procedures and standards of the Project.

which were deemed to be reconciled even though BIA and Arthur Andersen disagreed about the adequacy of the documentation to support the transaction. Claims based on passed adjustments would be handled by submitting them directly to the negotiation/mediation process described in the following paragraphs.

- Process. The Department, through the OST, would be authorized to negotiate with Tribes in good faith in an effort to resolve Type 2 claims. If the Department agrees that an adjustment should be made, resolution would be structured under the provisions for Type 1 claims (including interest rate, forgiveness, netting, etc.). If the new documentation is insufficient under the guidelines to categorize the claim as a Type 1 claim, the claim would be handled under the procedures adopted for Type 3 claims as described below.

In the event the Department and the Tribe are unable to agree on the disposition of a Type 2 claim, the Tribe could request that the matter be submitted to a mediator. The Federal Mediation and Conciliation Service would be requested to appoint a mediator skilled in dispute resolution who would seek to resolve the issue using alternative dispute resolution mechanisms. Resolutions could include categorizing the claim as a Type 1 or Type 3 claim to be settled under the legislated settlement process, proposing a cash settlement or concluding that the claim lacks merit. Mediation would be non-binding.

- Timing. The legislation should provide that Type 2 claims be submitted to the Department within a specified period – perhaps two years. It is possible that a Type 2 claim would be recategorized as Type 1 after consideration by the Department or a mediator. If this could be done promptly enough, all Type 1 and Type 2 claims could be settled simultaneously. However, because the Tribes have no incentive to submit Type 2 claims in instances where they will owe the government money, and because the Department believes that it is important to resolve the Type 1 claims as promptly as possible, the Department would attempt to handle Type 1 and Type 2 claims together wherever possible, but sees no reason to delay resolution of the Type 1 claims until the Type 2 process is complete.

### 3. Settlement of Type 3 Claims

During the course of the Project, 32,901 transactions totaling \$2.4 billion (in absolute terms) were identified for which supporting documentation was not

located.<sup>20</sup> The Department estimates that the maximum potential claims against the government amount to approximately \$575 million for the following reasons. Of the total \$2.4 billion, \$1.123 billion were transactions involving receipt of funds by the government on behalf of a Tribal account from third parties. The government can demonstrate that the unreconciled receipts were posted to the general ledger accounts of a particular Tribe. Accordingly, it is likely that those Tribes benefited from receipt of the funds and the chance of loss is relatively low. (While there is a possibility of a posting error, the Project demonstrated that posting errors in reconciled transactions for the basic reconciliation were extremely low - approximately .01 percent). If errors did occur, such as the funds being credited to the wrong Tribe or Tribal account, there is no way to determine which Tribe or account should have received the money and therefore, no way to direct a corrective deposit.

Similarly, \$479.6 million of the unreconciled transactions were transfers of funds within different accounts of the same Tribe. For example, funds may have been erroneously credited to a Tribe's education account which should instead have gone to its burial account. In order to rectify the situation, the funds must be debited from the education account, and then credited to the burial account. In such a situation, there would be no net change in the amount of funds held for the Tribe's benefit. While there is no way to determine whether damage occurred to particular beneficiaries of specific accounts as a result of unreconciled transfers, it is clear that members of the intended Tribe benefited from these transfers even if they were placed in the wrong accounts.

Finally, there were \$808.6 million in disbursement transactions for which there was no supporting documentation. Of that amount, \$73.6 million are positive disbursements (i.e., receipts) where even had there been an error, it would have benefited the Tribe. An additional \$40.5 million was for attorney and expert witness fees and \$119.5 million were disbursements of settlement funds to Alaska Regional Corporations. It is reasonable to presume that attorneys, expert witnesses, and the Alaska Regional Corporations would have filed claims had the

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<sup>20</sup> It is important to note that the lack of supporting documentation for \$2.4 billion in transactions does not mean the money was lost, stolen, or otherwise misappropriated. It means that the BIA was unable to locate documents to support the accuracy of transactions reflected in the general ledger. An analogy in the general commercial banking sector would be if a bank were unable to locate copies of cancelled checks.

payments not been made.<sup>21</sup>

As a result, deducting the positive disbursements, attorney fees, expert witness fees and Alaska Regional Corporation disbursement transactions, the Department believes that the settlement options should focus on the remaining \$575.1 million of undocumented disbursements.

- Settlement of claims. Developing an equitable settlement for potential Type 3 claims is not a simple task. On the one hand, guidelines governing the Project indicated that a transaction would not be categorized as reconciled without certain documentation to support that funds were handled as reflected in the general ledger. On the other hand, there was no indication during the course of the Project that Tribal or IIM funds have been misappropriated, misdirected or lost, although the Project did not specifically examine fraud. And, as noted above, for the 86 percent of transactions which were reconciled, the error rate was extremely low -- .01 percent.

The Department intends to consult with Tribes on their recommendations on how to address Type 3 claims. We have no preconceived approach as we enter these consultations.

The Advisory Board proposes that with respect to undocumented disbursements, a total payment of \$300 million would be distributed proportionately to all Tribes with trust accounts, based on the product of the percentage of the Tribe's unreconciled disbursements plus interest and the total of all unreconciled disbursements plus interest. According to the Advisory Board, this award equals 52 percent of total unreconciled disbursement exposure or 15.5 percent of total unreconciled disbursement exposure plus compound interest (it would be 23 percent based on simple interest). In addition, the Advisory Board proposed a general settlement amount of \$300 million to be used to help capitalize a proposed Development Bank for American Indians, in settlement of unreconciled receipts, transfers and disbursements (not otherwise addressed in the settlement).

Under the Advisory Board's proposal, half of the amounts paid in settlement would be Tribe-specific, while the balance would go to the proposed Bank, for a

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<sup>21</sup> The General Accounting Office recently commenced an investigation to determine if the Alaska Regional Corporations suffered losses with respect to these unreconciled disbursement transactions.

total amount of \$600 million. It is not clear, however, that the \$600 million bears any relationship to any actual government liability for the unreconciled disbursement transactions; it should be noted that an unreconciled transaction does not necessarily mean that there was a loss.

The Department requires additional consultation on how to address the Type 3 claims before it makes a specific proposal to Congress. Among the issues on which we will seek the views of the Tribes are the following:

*On what basis does the Department compute the aggregate value of any settlement of Type 3 claims?*

*Do Tribes want the settlement of Type 3 claims to be paid directly to individual Tribes, to go towards some type of total settlement option such as the proposed Bank, or a combination approach such as the one proposed by the Advisory Board?*

*If claims are to be paid directly to Tribes, on what basis should the claims be valued? Should different types of claims be valued differently? How?*

*If claims are to be paid through some type of total settlement option aimed at benefitting Tribes generally, what options should be considered? (The issues raised by total settlement options are discussed on pages \_\_.)*

*What procedures should apply to settling the Type 3 claims?*

*How should the proposed settlement be affected in the event that some Tribes choose not to participate in the settlement?*

*How should the total amount of the settlement be determined?*

*What type of waiver of claims should be required of Tribes that opt to participate in the Type 3 settlement process?*

*What percentages should be used to calculate settlement amounts?*

*To the extent that compensation is paid for transactions for which no*

*documentation exists, how should it be distributed among the Tribes?*

## V. LITIGATION

Tribes that do not settle their claims under the settlement procedure outlined above may wish to litigate those claims in court. In the past, similar litigation has often proved extremely costly and time-consuming for all the litigants. Given this history, we specifically want to avoid any litigation process that would resemble the Indian Claims Commission proceedings of years past. To avoid this result, we believe that legislation establishing the settlement procedures also must establish certain parameters for judicial litigation of claims of non-settlers. Such parameters are necessary to ensure that litigation proceeds in an orderly and efficient manner, to ensure that the beneficiaries of the claims, as opposed to their attorneys and accountants, are the persons who benefit from any amounts recovered in litigation, and to encourage settlement of as many claims as possible. The Department is considering several parameters including the following:

- **Statute of Limitations:** All claims for the period preceding September 30, 1995,<sup>22</sup> must be brought within two years of the date of enactment of the legislation or 90 days after the conclusion of the Type 2 claims process, whichever is later.

- **Burden of Proof:** The Tribal account holder will bear the burden of proof on damages, under applicable fiduciary standards. The burden of going forward will first be on the account holder, to present a prima facie case on liability. If that burden is satisfied, the burden of going forward then would shift to the government, to show that the Tribe's accounts are correct by some predetermined quantum of evidence appropriate in the circumstances. The account holder would then have the opportunity to produce evidence to respond to that showing.

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<sup>22</sup> Although the Reconciliation Project covered the 1972-1992 time period, the Act provides that the Secretary's report shall identify for each Tribal trust fund account, a balance reconciled as of September 30, 1995. In response, OTFM has been internally reconciling Tribal trust fund accounts and providing statements to Tribal trust fund account holders since 1992. In order to bring some closure to the litigation process, we propose that all claims for the period preceding September 30, 1995, must be brought by Tribes who choose to litigate.

- Waiver: At the conclusion of any such litigation, the court would adjudicate and declare as final the balance in the accounts which are the subject of the litigation as of September 30, 1995. Any claims of mismanagement of the underlying trust assets also would have to be brought simultaneously or would be barred.

The purpose of these parameters is to achieve a final balance in Tribal accounts as of September 30, 1995, much like the Indian Claims Commission legislation, which also established a baseline date from which to look forward.

## VI. TOTAL SETTLEMENT ALTERNATIVES

The settlement process outlined above concerns resolution of claims arising within the scope and period of the Project. It does not address claims that Tribes may have arising from the period preceding or subsequent to the reconciliation period, or for claims related to deficiencies in other aspects of the Department's trust asset management outside the scope of the Project (including management of the underlying trust assets).

In order to arrive at settlement that would truly put to rest all trust management and accounting issues predating September 30, 1995, Congress may also want to address all of these other potential claims through what we refer to as a "total settlement" approach. A settlement of this type conceivably could encompass IIM claims as well. In many respects, developing an equitable approach to a total settlement is even more challenging than crafting a resolution of Type 3 claims. There has been no methodical analysis of the nature and scope of deficiencies, if any, that would be addressed in a total settlement approach, although Tribes have long criticized various aspects of the Department's management of their assets.

Moreover, assuming that some type of programmatic settlement is adopted, a number of issues arise, including: criteria for participation (should participation be limited to Tribes whose claims meet specified criteria, or be available to any Tribe with Tribal accounts); what form participation would take (e.g., if an education fund were established, would each Tribe be eligible for a one-time payment in a certain amount for educational purposes, or would Tribal members be entitled to apply for scholarships); how participation in this component would



fit in with the payment of individual Tribe's specific claims (e.g., would this replace or be in addition to payments to settle specific claims, would there be offsets, cumulative limits to the settlement, etc.); what is the relationship between access to the benefits of the programmatic settlement and the amount of potential claims a Tribe may have; and the source of funding.

Yet, the prospect of achieving some degree of finality on trust asset issues is attractive for both the Department and Tribes alike. It will allow us to focus on prospective reforms that will result in more accurate and productive management of Tribal resources. Moreover, a total settlement option could encourage further the settlement of claims based on the Project, and settle claims relating to trust issues that fall outside the scope or time period of the Project. This approach would only be successful, however, if most Tribes agreed to participate in the program and specifically agreed to waive all Tribal trust claims through September 30, 1995.

As with Type 3 claims, the Department has not adopted a position on whether a total settlement approach is either in the public interest or is workable. Moreover, it endorses no particular approach to a total settlement option should we decide to recommend a total settlement component. Both matters will be the subject of further consultations with the Tribes. However, for purposes of discussion and illustration only, we outline several possible approaches for Tribal consideration. These generally are intended to advance economic development in Indian country and are structured to meet the policy objectives of the Tribes themselves, rather than those of the government. Moreover, these are not the only possible total settlement options. Over the next several months, as we engage in Tribal consultations, we will be considering other initiatives that may serve as an appropriate mechanism.

#### **A. Advisory Board Proposal - Development Bank**

One option proposed by the Advisory Board consists of the establishment of a development bank for American Indians with certain capital and assurances provided by the United States Government. The Advisory Board proposal envisions the United States forming and capitalizing a federal Development Bank for American Indians to serve as a nationwide financial institution providing a dependable source of lending to American Indians and Tribes and a dependable source of funds for investment in American Indian enterprises. The Advisory

Board would allow all IIM and Tribal account holders to participate in the Bank, in settlement of all potential claims arising out of the Project not covered by the other components of the Advisory Board's settlement proposal, as well as any past potential liability for trust management practices in general. Under the Advisory Board's approach, the Bank would be partially capitalized by the proceeds of two general settlement components for all Tribes with trust accounts, to address all unreconciled transactions arising from the Project (\$300 million) and some potential liability for all reconciled disbursements with incomplete disbursement voucher packages (\$200 million). Shares would be distributed to all federally recognized Tribes on some equitable basis set forth in the legislation. In total, the United States would provide the following capital and guarantees for the Bank:

Equity Capital	-	\$500 million
Borrowing Capacity guaranteed by U.S.	-	10 times equity capital
Initial Borrowing from U.S.	-	\$3 billion for 30 years at 30-year Treasury Rate

The Bank would provide access to long-term loans and investments for economic development and would provide access to low interest rates on loans, made possible by the Bank's tax-free status and its access to funding in the Nation's capital markets at rates commensurate with those paid by the U.S. Government. The Bank would be a for-profit financial institution and would not receive appropriated funds for operating expenses. It would receive appropriated funds for lifeline financial services and other specific programs as approved by Congress. The Bank would be authorized to invest up to 25 percent (initially \$125 million) of its permanent capital in eligible Indian businesses and projects.

The Bank would also be allowed to invest up to \$300 million in the purchase, holding, financing and sale of fractionated realty interests in Indian allotted lands. According to the Advisory Board, such purchases and financing would be made on "prudential terms" to eligible individuals and Tribes. Fractionated heirship activities would be governed by rules in the legislation to resolve the fractionated heirship problem, and would be administered to achieve the consolidation of existing fractional interests and to prevent or substantially reduce future fractionation. The fractionated heirship problem is discussed more fully below on pages 30-31.

As with any total settlement option, the Advisory Board Development Bank proposal would have the advantage of finally resolving all claims arising out of the United States' management of Tribal trust funds (other than those which Tribes choose to litigate). The Advisory Board recommends extending the Bank settlement option to resolve IIM claims as well. It is unclear whether smaller Tribes or individuals would be likely to support or take advantage of the Development Bank settlement option; their interests might be better served by providing more direct access to funding for other purposes. It also is unclear whether the Advisory Board proposal would provide access to the Development Bank to non-Indian IIM account holders.

There are many unanswered questions about the Advisory Board's proposal for a Development Bank, including the relationship between the Bank and non-Indian IIM account holders, how membership in the Bank should be determined, mechanisms for accountability and control of the Bank and the status of Tribes which choose to litigate rather than settle their claims. Moreover, as a general policy, the Treasury Department strongly opposes Federal entities having authority to borrow in the credit markets. In short, the Department has many questions about this proposal and, at this point in time, specifically does not endorse it. However, the Advisory Board's proposal warrants consideration and has been included in this report to generate additional thought and discussion.

**B. General Program for Trust Resource Management or Other Activities**

A second option for a total settlement of claims would be some type of general settlement grant or other program providing access to funds for Tribal economic development purposes. The terms and conditions for such a program would be defined in authorizing legislation and would conform to longstanding federal financial policies. The intention would be to provide a source of funding for types of initiatives for which no other funding is readily available.

For example, in settlement of all potential outstanding Tribal trust management claims, legislation could establish a permanent or temporary grant or other program to provide Tribes with access to financial support for Tribally-owned businesses or other Tribal economic development projects. Administration of the program could be performed by the Secretary of the Interior, the Attorney

General, or other appropriate official. The program could be financed and made available to all federally recognized Tribes on an ongoing basis, with criteria governing eligibility, appropriate projects, the amount available to each Tribe in a given year or time period, total funding available, repayment obligations, etc. This approach would provide Tribes with direct access to funding to undertake and support American Indian businesses and projects, as opposed to the ability to borrow money to pursue these concerns provided in the Advisory Board's Development Bank proposal. Alternatively, a fund could be established and claims would be made against the fund, with acceptance of payments considered to be in full satisfaction of any claims on behalf of a Tribe, similar to the claims procedure used in other restitution funds administered by the United States. A Tribe's acceptance of such a total settlement proposal would extinguish all of its outstanding Tribal trust fund claims.

### C. Fractionated Heirship Land Acquisition Program

A third option for a total settlement of claims would be an initiative to address the fractionated heirship problem, which is a major cause of the difficulties in the administration of the BIA's trust fund management systems and BIA's inability to obtain more productive returns for the use of trust lands. As noted above, the Advisory Board's Development Bank proposal would direct some funds toward resolving this issue. It could, however, be addressed in any number of ways, with or without the existence of the Bank.

Fractionated heirship is an indirect result of the 1887 General Allotment Act, which directed the division of Tribal lands and allotment of them to individual Indians. Allotted or individually-owned trust lands comprise approximately 11 million acres. As originally envisioned, allotments were to be held in trust by the United States for their Indian owners for no longer than 25 years, after which the land would be conveyed in fee simple to the Indian owners. Many allottees died without wills during the 25-year trust period, and it also became evident that many allottees' land continued to need federal trust protection. Consequently, Congress enacted limited probate laws and authorized the President to extend the trust period for those individuals who were not competent to manage their lands. The presumption was, however, that at some point in the then-foreseeable future the lands would be conveyed to their Indian owners free of federal restrictions. Nevertheless, Congress continued to extend the period of trust protection but did not amend the probate laws. Under the Indian probate laws, as individuals died

without wills, their property descended to their heirs as undivided fractional interests in the allotment. As the years passed, fractionation has expanded geometrically to the point where there are hundreds of thousands of tiny fractional interests in Indian Trust property. Without action, this problem will become even more severe.

Congress attempted to address the fractionation problem with passage of the Indian Land Consolidation Act (ILCA) in 1984. The ILCA authorized the buying, selling and trading of fractional interests. Most importantly, it provided for the escheat to Tribes of interests of less than 2 percent. Although over 55,000 of the 2 percent-or-less fractional interests have escheated since 1984, the fractionation problem continues to worsen. Maintaining heirship and land records and administering the land is inordinately expensive, and the administration of the records pertaining to the moneys earned by each individual allottee is equally expensive and difficult. This is a major cause of the problem with maintaining individual Indian trust accounts.<sup>23</sup> Equally important, utilization and conveyance of the fractionated property by the numerous owners is difficult because of the need to secure the numerous consents required.

The Department believes that legislation which would consolidate the large number of existing fractionated interests and prevent further fractionation would benefit the Tribes by promoting self-determination, and by removing a significant obstacle to the efficient administration of Indian trust funds.<sup>24</sup> The legislation would have to specify the criteria for participation, whether the Department would commit to buying a certain number of interests for each Tribe, whether there would be cumulative limits to the settlement funding, and other issues. The fractionated heirship land acquisition proposal could comprise or be a portion of a broader total settlement proposal to resolve all Tribal trust fund claims.

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<sup>23</sup> Over 170,000 IIM accounts -- about 55 percent of all accounts -- have a balance of less than \$10.

<sup>24</sup> We recognize that fractionation is one major cause of the current state of trust funds management. In order to prevent further fractionation, it will be necessary to change inheritance laws relating to Indian allotments. Currently, however, the constitutionality of the Indian Land Consolidation Act (25 U.S.C. § 2206) is before the United States Supreme Court in the case of Babbitt v. Youpee, Case No. 95-1595. In Youpee v. Babbitt, 67 F.3d 194 (9th Cir. 1995) the appellate court held that the ILCA violates the right of certain Indians to convey their allotment interests freely. We anticipate that the Supreme Court's resolution of this case, which was argued earlier this month, will provide needed insight into the best means for balancing the need to control fractionation with the inheritance rights of individual Indians.

#### D. Consultation

Because of the complexity of these proposals, the need to generate near universal support among Tribes in order for the total settlement approach to be successful, and the Administration's policy on government-to-government relations with Tribes, the Department believes additional consultation on all these ideas is required. The Department intends to circulate this analysis to all Tribes and interested parties who may have Tribal trust fund claims to solicit their ideas for a total settlement initiative and explore their willingness to waive their own claims if one were to be implemented. The Department will submit a supplemental report to the Congress in April 1997, with its findings and additional recommendations.

### VII. OTHER TRUST FUNDS ISSUES

#### A. Restoration of Overdraft Interest Clearing Accounts and Settlement of Miscellaneous Losses

There are two additional issues that might be addressed by legislation. These issues relate to the restoration of overdraft interest clearing accounts (which apply only to IIM accounts) and settlement of miscellaneous losses (which apply to both Tribal and IIM accounts).

In the course of reviewing IIM accounts, OST staff determined that there is \$42.2 million in unidentified Overdraft Interest Clearing accounts in the detailed IIM subsidiary ledger. Overdraft interest clearing accounts are control accounts that are used when interest is posted to the underlying individual accounts. When interest is credited to the underlying accounts, the control account is debited. When interest is funded the control accounts are credited. The amounts debited and credited, in theory, should be equal. The current debit balances in these accounts are likely the result of either the non-posting of interest in the IIM subsidiary ledger that was funded, or interest credited to individual account holders in excess of what was actually earned/funded. Research on these accounts is continuing.

The Advisory Board proposes that \$42.2 million be appropriated to restore these accounts, as the practical effect of these overdrafts is that current IIM account holders are deprived of approximately \$2 million in interest income

annually. This assertion is not entirely accurate, as the total assets actually invested in the IIM account pool exceed the balance in the IIM subsidiary ledger. The Department agrees that these discrepancies need to be investigated, and if necessary, rectified. However, it is not clear at this time how much funding, if any, is needed.

The review also identified \$28.3 million in other miscellaneous losses, broken down as follows:

	(millions of dollars)
Loss and associated interest	\$10.0
To bring subsidiary (IRMS) and Control Account (OMNI) into balance	10.8
Budget suspense accounts	1.0
Clean-up remaining General Ledger Accounts	<u>6.5</u>
Total	\$28.3

The Advisory Board proposes that \$28.3 million be restored to the IIM accounts.

Although the Department agrees that these discrepancies need to be rectified, it is not clear how much funding is necessary to do so. In some cases, simple accounting adjustments might be sufficient. Over the next several months, the OST will prepare a detailed analysis of all accounts in the trust fund general ledger and subsidiary ledgers which (1) explains how the accounts correspond to the actual underlying assets and liabilities; (2) quantifies the resultant deficiency/equity of the trust fund as a whole; and (3) explains the efforts that have been undertaken to rectify these variances. The Department also recommends that legislation provide general authority to clear trust fund subsidiary and general ledger account discrepancies. This authority could be exercised after reports on the nature of the discrepancies and descriptions of efforts taken to resolve those discrepancies are submitted to and approved by the Office of Management and Budget.

**B. Funding of the Settlement Legislation**

The Advisory Board proposes that claims be paid from the Judgment Fund<sup>25</sup> although it does not identify a specific reason for this position.

Any of these proposals would require the government to pay significant amounts of money. Some Tribes have pointed out that to the extent that settlement would be funded from Departmental funds and scored against the BIA budget, the settlement would effectively be funded from programs for which the Tribal beneficiaries are otherwise the intended beneficiaries. Tribes with small or no trust fund claims also might conclude that they are helping to fund payment of claims to other Tribes through the reduction in funding of the programs that are intended to benefit them. Tribes with trust funds could also claim that they lost twice: initially through the incorrect management of their trust funds, and a second time by a reduction in programs and services to the Tribes and their members that a reduction in BIA funding would necessarily entail. Moreover, some Tribes have pointed out that similar major liability claims against the government, such as those arising from the failure of federally insured savings and loan institutions, were not scored against a particular agency.

If these claims were to be settled through litigation rather than legislation, judgments would likely be paid through the Judgment Fund. In enacting settlement legislation, we urge that the Congress take steps to ensure that any payments to resolve these areas of difference not be made in a manner that would jeopardize current levels of service to Tribes and individuals who, collectively, have experienced the lowest level of economic recovery of any group in the Nation and for whom the government has pledged a special trust relationship emanating from treaties and compacts entered into on a government-to-government basis. The Department's final recommendations will address a source of funding for the settlement.

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<sup>25</sup> The Judgment Fund is administered by the Secretary of the Treasury, and is funded by a permanent, indefinite appropriation.



Advisory Board Proposals In Response to Tribal Trust Fund

Reconciliation Project

PROPOSED LEGISLATION  
IN RESPONSE TO TRIBAL TRUST FUND RECONCILIATION RESULTS  
AND TO ADDRESS SOLUTIONS TO THE MAJOR TRUST MANAGEMENT  
PROBLEMS

INTRODUCTION AND PURPOSE

This paper presents a proposal for legislation in response to the Bureau of Indian Affairs' (BIA) Tribal Trust Fund Reconciliation Project (Reconciliation Project), to major problems affecting American Indian trust management and to the statutory requirements of the American Indian Trust Fund Management Reform Act of 1994 (Reform Act of 1994).

The Reform Act of 1994 provides that the Secretary of the Interior (Secretary) shall prepare a report which must include a description of the procedures used for reconciliation of the Tribal trust fund accounts and a statement outlining efforts the Secretary will undertake to resolve disputes regarding Tribal account balances arising out of the Tribal trust fund reconciliation process. The Secretary provided an interim report to Congress on May 31, 1996.

As the Secretary's Report indicates, commencing in January 1996, each tribal account holder was provided a report on the reconciliation of its accounts along with account statements that show account balances, reconciled transactions, and proposed adjustments. Subsequent to the distribution of the reconciliation report and account statements, a national meeting, to which all account holders were invited, was held in Albuquerque, New Mexico, to explain the reconciliation methodology and the report and account statement format, content and terminology. A series of five (5) regional meetings were also scheduled during the spring and summer of 1996 to work directly with each account holder to address questions and issues on its specific report and account statements.

Through April 30, 1996, seventy-seven (77) of the 280 tribes involved in the reconciliation project have responded. Specifically, two (2) account holders have accepted and three (3) account holders have disputed their account balances. Because by the end of May all of the scheduled meetings had not been held to receive and discuss account holder issues and comments and since many account holders had not communicated their acceptance or dispute of their account balances, only an interim report on the account holders' attestations was provided in the Secretary's Report. The Department of the Interior (Department) testified in June that it will be in a position to propose a mechanism to resolve any disputes sometime during the fall of 1996 and that a final report on account holder attestations and a mechanism to resolve any disputes will be submitted to the Congress by November 15, 1996. The mechanism to resolve any disputes will almost certainly take the form of proposed legislation. Legislation would provide an orderly and efficient mechanism for resolution of the disputes over account balances arising out of the Tribal trust fund account reconciliation process, would respond to the statutory directive that the Secretary outline efforts to resolve such disputes and because claims arising out of the Reconciliation Project will probably substantially exceed the Department's financial resources.

**Need for a Comprehensive Settlement and Solution to Trust Management Problems**

This proposal presents a comprehensive set of settlements and initiatives which are designed to compensate American Indian trust beneficiaries for damages from past trust management practices and assure an accurate and timely accounting to trust account holders in the future.

In October 1995 the Office of the Special Trustee for American Indians (OST) commenced an assessment of the U. S. Government's trust management policies, procedures, practices and systems as they apply to individual American Indian and American Indian tribal accounts.

By February 1996 the OST completed the preliminary assessment and produced a conceptual Strategic Plan to acquire and institutionalize specified systems. Implementation of this plan will permit and ensure that the U. S. Government establishes appropriate policies and procedures, develops necessary systems and takes the affirmative actions necessary to provide an accurate and timely accounting to American Indian trust beneficiaries. In this manner the proper discharge of the Secretary's trust responsibilities finally can be accomplished. The Assessment and Phase I of the Strategic Plan are attached in a document entitled "Special Trustee for American Indians, Assessment and Strategic Plan Principles, Phase I, February 1996" (Special Trustee's Assessment or Special Trustee's Strategic Plan).

In December 1995 the Department's Bureau of Indian Affairs (BIA) substantially completed a multi-year "Tribal Trust Funds Reconciliation Project" (Reconciliation Project) and issued an "Agreed-Upon Procedures and Findings Report" for the period July 1, 1972 through September 30, 1992.

In August 1995 the Department substantially completed a study of the trust management systems relating to Individual Indian Monies (IIM) accounts and issued a report entitled "IIM Related Systems Improvement Project Report." The findings of this report are substantially incorporated in the Special Trustee's Assessment.

The Special Trustee's Assessment, the Reconciliation Project reports, the IIM Related System Improvement Project Report and earlier reports issued by the General Accounting Office all confirm that the U. S. Government's trust management systems, policies, procedures and practices coupled with the condition of the trust records and, notably, large numbers of missing documents, effectively prevent:

1. a proper, accurate and timely accounting for trust account balances, collections, disbursements and investments and the maximization of the return on investments.
2. the preparation of accurate and timely reports to trust account holders regarding all collections, disbursements, investments and return on investments.

3. an audit under generally accepted auditing standards.
4. any further reconciliation efforts, since the costs of such efforts would substantially exceed the benefits and at the same time would probably yield unsatisfactory and inconclusive results.

The past and present undeniably poor quality of the trust management systems, the condition of the historical records and the U. S. Government's inability to provide an accurate and timely accounting prevent any reasonably accurate determination of the extent of harm, damage or loss to American Indian trust beneficiaries. For example, the Reconciliation Project disclosed there were no records located to support \$2.4 billion out of \$17.7 billion for the twenty year period (1972 - 1992) for one category of transactions (non-investment transactions). In addition, it appears that the condition of the records and the quality of the trust management systems were much worse for periods prior to 1972. Therefore, it is reasonable to assume that several billion dollars more in unlocated documents and substantially more harm, damage and loss would have been disclosed had a full reconciliation or full accounting been possible for periods prior to 1972.

It is undeniable that some compensation is due the American Indian account beneficiaries for the U. S. Government's inability to provide an accurate and timely accounting and such compensation could be justified in the billions of dollars. But, even if the damages could be reasonably estimated, there would remain the question of which American Indians were harmed and damaged? There is no complete answer to that question and since there is not, any settlement of claims, present and prospective, arising out of the U. S. Government's inability to render an accurate and timely accounting or the Reconciliation Project or both, necessarily must start with the settlement of known and quantifiable harm, damage and loss and proceed to a subjective, common sense settlement process for the other harm, damage and loss which may have accrued to trust account holders over many, many years.

Any settlement process would also be inadequate unless it addressed the root causes of the Government's inability to provide an accurate and timely accounting to American Indian trust beneficiaries. That is why the Special Trustee's Strategic Plan is an integral part of the settlement process. Implementation of this plan will ensure that the U. S. Government establishes appropriate policies and procedures, develops necessary systems and takes the affirmative actions necessary to provide an accurate and timely accounting to American Indian trust beneficiaries in the future. In this manner the proper discharge of the Secretary's trust responsibilities finally can be accomplished.

Consistent with the general approach just described, the following pages describe specific settlement terms and amounts, the criteria to be used and the rationale for each general settlement.

## II. BACKGROUND

The Secretary of the Interior has been designated by Congress as the trustee of the funds held by the federal government for Indian Tribes and individual American Indians. Therefore, the Secretary has a responsibility to ensure the proper accounting, investment and financial reporting of approximately 300,000 Tribal and IIM trust accounts.

Accordingly, the Department of the Interior through the Bureau of Indian Affairs and the Office of the Special Trustee for American Indians has a responsibility to ensure that the trust accounts are properly maintained and invested in accordance with applicable laws, and that accurate and complete accountings and reports are periodically provided to fund owners.

Over the past decade, operational reviews and financial audits have identified weaknesses in the control and oversight of Indian trust funds. A primary concern was the failure to reconcile the trust fund accounts regularly. Accordingly, in 1988, 1989 and 1990, Congress directed BIA to take steps to reconcile Indian trust fund accounts as accurately as possible back to the earliest practical date. The FY 1990 appropriations language further specified the requirement that "the results of such reconciliation have been certified by an independent party as the most complete reconciliation of such funds as possible."

Pursuant to these directives, BIA commenced its reconciliation project in 1990. In the fall of 1990, an ad hoc Tribal advisory group worked in conjunction with the General Accounting Office (GAO) and the Department's Inspector General to develop a request for proposal for the reconciliation contract. In May 1991, the contract was awarded to a national accounting firm, Arthur Andersen, L.L.P. The ad hoc group constituted itself as the Intertribal Monitoring Association (ITMA).

Phase I of the contract was intended to determine what records were available, what procedures would be necessary, and what was the cost of a complete reconciliation for both the Tribal trust and IIM accounts. This work was performed from June 1991 through January 1992. The results of Phase I disclosed that all supporting documents could not be located, but to the extent they could be located, they could be examined. Because some records could not be located, it was resolved that an audit would not produce meaningful results.

In view of this, the Department of the Interior, in consultation with the Office of Management and Budget (OMB) and ITMA, considered alternative methodologies and approaches with the goal of producing as accurate an accounting as practicable. As a result, the BIA modified the Arthur Andersen contract to incorporate the agreed-upon procedures methodology, which does not constitute an audit in accordance with generally accepted auditing standards but was used to reconcile the Tribal trust fund accounts back to 1973.

The Reconciliation Project did not address IIM accounts because it was determined that a similar reconciliation effort for IIM accounts would cost \$108 to \$281 million.

In accord with the Congressional mandate that the Tribal trust reconciliation be certified by an independent third party, the BIA awarded a contract to perform the certification to Coopers and Lybrand in September 1993. Due to difficulties with the contractor and a projected cost for completion of the certification that far exceeded initial estimates, BIA terminated the contract in October 1995, before the certification was completed. At BIA's request, Coopers and Lybrand provided a close-out letter summarizing the work performed prior to termination. In the letter, Coopers states that it noted errors in certain aspects of Arthur Andersen's reconciliation work under the BIA contract, and that some but not all of these errors were reported to Arthur Andersen and BIA. The letter further states, however, that no conclusions can be drawn from the preliminary information reported because Coopers did not complete the certification work or finalize the results.

While the BIA reconciliation efforts were ongoing, in 1994, Congress passed the American Indian Trust Fund Management Reform Act, 25 U.S.C. 4001-4061, which established the Office of the Special Trustee for American Indians. The Special Trustee, who reports directly to the Secretary, is responsible for oversight, reform, and coordination of the policies, procedures, systems and practices used by various Departmental agencies in managing Indian trust monies. The statute also required that the Secretary transmit to Congress by May 31, 1996, a report that describes the methodology and results of the trust fund reconciliation process, includes Tribal attestations as to disputed account balances, and outlines efforts the Secretary will undertake to resolve such disputes.

In January 1996, OTFM released to approximately 280 Tribes a report summarizing the results of its Tribal Trust Funds Reconciliation Project. The agreed-upon procedures used in the reconciliation were intended to accomplish the following: (1) verify that financial transactions posted to the accounting records are in agreement with the originating lease or sale agreements, permits, or contract terms (not completed for all transactions); (2) determine the timeliness of the deposit of receipts (for informational purposes only); (3) verify that non-investment financial transactions posted to the BIA's official accounting records are in agreement with supporting financial source documents; (4) assess the reasonableness of investment income posted to Tribal accounts; (5) assess the reasonableness of U.S. Treasury interest calculations; and (6) reconcile accounting systems and general ledger balances with U.S. Treasury balances. The report indicated that there were some \$2.4 billion in unreconciled non-investment transactions (transactions for which supporting financial source documents cannot be located). The procedures and the proposed adjustments to account balances are detailed in the Reconciliation Report, and were explained to the Tribes at a national meeting on February 14 and 15 in Albuquerque, New Mexico. More detailed follow-up was provided at a series of regional meetings with individual Tribes.

As noted, the Department has indicated it will be in a position to propose a mechanism to resolve any disputes sometime during the fall of 1996 and that a final report on account holder attestations and a mechanism to resolve any disputes will be submitted to the Congress by November 15, 1996.

### III. TYPES OF CLAIMS AND SETTLEMENTS

For purposes of this paper, the two basic types of potential claims that may arise from the Reconciliation Project or otherwise are referred to as Type 1 or Type 2 claims.

Type 1 claims are claims based on exceptions or errors for which the government has adequate documentation and agrees that either funds are owed to a Tribal account or that funds are owed from a Tribal account to the government. These claims are described in the Reconciliation Project Reports or otherwise as set forth in the legislation.

Type 1 claims also include claims where a Tribe disputes its account balance from reconciliation and brings a claim which can be negotiated, mediated or arbitrated. These claims can be based on additional documentation produced by the Tribe or the government in addressing Reconciliation Project issues, other claims of a similar nature or certain reconciled disbursement transactions without complete disbursement packages which can be quantified to some extent and examined for reasonableness.

Type 2 claims are claims arising from all other circumstances and include unreconciled transactions, where neither the Tribe nor BIA can locate adequate source documentation to support the account transactions or balance or to support a conclusion that those transactions or balances are in error. Type 2 claims would address not only those claims arising from BIA's Tribal trust fund reconciliation, but would include claims and settlement amounts arising from other trust management issues that need to be addressed and resolved. These include claims arising from the IIM accounts for all periods up to settlement and from the Tribal accounts outside the 20-year tribal reconciliation period, as well as issues pertaining to the Department's existing trust management practices and the OST's reform efforts.

Settlements involve payment for both specific and general claims and deficiencies. Settlement proceeds include direct distribution to Tribes or IIM account holders where specific settlements can be reasonably supported based on the factual situation. Where damages cannot be reasonably estimated for particular individuals or Tribes, settlement proceeds are distributed to remedy trust management deficiencies or to provide for other initiatives which will benefit substantially all trust beneficiaries.

### IV. PROPOSALS FOR SETTLEMENT OF SPECIFIC CLAIMS

#### A. General Framework

The general framework for resolution of claims arising from the reconciliation must be legislative. The legislative options described below would provide for the expedited payment of claims from the Judgment Fund or otherwise as specified for particular settlements.

All agreed Type 1 claims would be paid in full with interest, and with forgiveness of any amounts that may be owed by Tribes, and without regard to the settlement of Type 2 or any other

claims. Payments would be made promptly after the legislation takes effect in accordance with procedures and guidelines set forth in the legislation.

Type 2 claims would be settled and paid based on specific and general settlements and guidelines set by the legislation.

Tribes that settled their Type 2 claims pursuant to the legislative procedure would waive all claims related to Tribal trust funds administered by the BIA for the period prior to September 30, 1995. Account balances, adjusted by the agreed claim amounts, would be accepted as of September 30, 1995 and would be used as the basis for future accountings. The government subsequently would not be required to perform further accountings or reconciliation exercises for periods prior to September 30, 1995. Nor would the government be liable for past damages arising from trust management practices prior to September 30, 1995. Tribes that did not resolve their claims pursuant to the legislative procedure would be able to bring their claims in court, consistent with certain parameters for those claims set out in the legislation but would not be able to participate in the Type 2 settlements. Settlement for IIM damages or losses would be as of a certain date specified in the legislation with IIM balances deemed to be accurate as of that date. Such a date would be used as a basis for future accountings.

## **B. Detailed Discussion of Proposed Settlement for Legislation**

It is clear from an examination of existing authorities regarding settlement of claims, forgiveness and offset of claims, payment of interest and available funding that a legislative solution is necessary to address Tribal claims arising from the reconciliation results and other trust management issues. The following framework should be considered to settle the two types of Tribal claims:

### **General Payment Policies**

**Payment of All Agreed Claims.** All agreed claims will be settled under policies and guidelines where the government agrees to pay specific settlement amounts to the Tribes. These include all Proposed and Scoped Adjustments, Roll-forward Adjustments and interest on deposits due to lag times between collection and deposit as set forth in the Reconciliation Project Reports. Other agreed Type 1 claims which have been settled by negotiation, mediation or arbitration will also be paid directly to the Tribes. Also included will be specific payments to beneficiaries with unreconciled disbursements as set forth in the legislation. All agreed settled claims should be paid promptly within a specified period of time set forth in the legislation. The government would pay the Tribe any principal amounts owed, plus interest, compounded from the date of the error to the date the payment is made or otherwise as set forth in legislation.

**Interest Policy.** There are various ways to compute interest. The fairest method with parallels in the private sector would determine interest payments by computing compound interest at a blended Tribal benchmark rate. This interest payment would be



greater than what a tribe could likely recover in court, because the courts have limited the interest amount on trust funds to simple interest on principal only, and because the Tribal benchmark rate is skewed somewhat by a number of long-term instruments held by one tribe. Other market indexed rates may also be used for certain time periods and in particular circumstances.

**Forgiveness Policy.** The reconciliation results indicate that in some cases errors resulted in overpayments or erroneous payments to a tribe or a particular Tribal account. One option is to require tribes to reimburse BIA for amounts erroneously credited to their accounts, with or without interest. However, forgiveness of the entire amount is proposed for the following reasons:

- A. These are known and admitted errors of the U. S. Government. Even though the tribes apparently benefitted by these overpayments, they should not be asked to repay amounts which arose out of the U. S. Government's inability to provide an accurate and timely accounting to tribal trust account beneficiaries.
- B. These admitted errors were made over twenty years. The usual and customary standards for clearing similar exception items in the private sector is one accounting period, usually ninety days or less. After ninety days, private trust companies usually do not charge their customers for errors committed by the trust companies even though the customers may have benefitted from such errors. The U. S. Government should not adopt a lower standard for itself by seeking restitution from the tribes for these overpayments.
- C. The overpayments were identified reconciled items, only. Had a full accounting been possible for the over \$2.4 billion in unreconciled non-investment transactions (documentation which could not be located), or had a full accounting been possible in verifying financial transactions to source documents (such as land leases and contracts), or had the Reconciliation Project covered different time periods, the net results for particular tribes might have been different. Errors such as overpayments for particular tribes might have been offset in whole or in part by errors resulting in amounts due to the same tribes had a full accounting been possible or had the Reconciliation Project used different time frames.
- D. Overpayments or other exceptions resulting in an amount due from tribes were not researched fully to determine whether a subsequent correcting entry was made by the BIA. Tribes should not be asked to reimburse the government for these amounts unless the government can document that no subsequent correcting entry was made.

Given the conditions which have prevented the U. S. Government from rendering an accurate and timely accounting, the U. S. Government should not seek restitution for admitted errors which apparently benefited certain trust beneficiaries which are based on results from a Reconciliation Project with undeniable shortcomings.

No appropriated money will be required for this settlement.

**Netting Policy.** A significant policy consideration that would affect any of the settlement options described above is how the Department should account for amounts owed to a tribe based on the reconciliation results for one or more accounts versus amounts due the United States based on the reconciliation results of one or more different accounts of the same tribe.

Under a no-netting approach, the Department would forgive all amounts that were overpaid to tribes and pay all amounts owed to Tribes plus interest. This approach would require the greatest amount of funds to pay claims.

Under a netting to the tribal level approach, adjustments for all accounts of the same tribe would be netted against each other to arrive at the net amount due to or owed by a tribe. While the least costly approach from the government's point of view, this approach has the distinct disadvantage of netting accounts which may have been set up with a specific purpose in mind (e.g., general tribal funds and judgment funds) or which benefit a specific class of beneficiaries (e.g., all tribal members, specific tribal members, minors) against accounts of the same tribe with a different purpose or which benefit a different class of beneficiary.

The proposed approach would net all amounts owed to a tribe against all amounts due from a tribe for each account of the tribe, but would not net adjustments for all accounts of the same tribe against each other. This is obviously the fairest way to proceed in arriving at the net amount due to or owed by a tribe.

**Waiver/Review.** Tribes that accept payment of Type 2 claims under this settlement process would waive bringing any further claims as part of any subsequent litigation.

**Funding/Cost.** All claims should be paid from the Judgment Fund.

### 1. Payment of Type 1 Claims

Type 1 claims are those where the Department agrees to a specific settlement amount. These include all Proposed and Scoped Adjustments, Roll-forward Adjustments and interest on deposits due to lag times between collection and deposit as set forth in the Reconciliation Project Reports. Because the government has an obligation to correct its known errors, all such claims should be paid promptly within a specified period of time as set forth in legislation. The government would pay the tribe any principal amounts owed, plus compounded interest from the

date of the error to the date the payment is made or otherwise as set forth in legislation. The following is a summary and estimate of Type I claims and settlement estimates. In accordance with the general policy Type I claims due from tribes would be forgiven.

Type 1 Claims  
Settlement Estimate  
(\$ millions)

Type 1 Settlement Category	Principal	Interest	Total
1-1. Due From Tribes: Forgiven			
1-1A. Proposed Adjustments	11.6	11.6	23.2
1-1B. Rollover Amounts	<u>26.1</u>	<u>116.9</u>	<u>143.0</u>
Total Forgiven	37.7	128.5	166.2
<p>Note: Total Forgiven amount does not require appropriations or payment from the Judgment Fund.</p>			
1-2. Due to Tribes			
1-2A. Proposed Adjustments	10.6	14.5	25.1
1-2B. Rollover Amounts	<u>17.5</u>	<u>92.1</u>	<u>109.6</u>
Sub-total	28.1	106.6	134.7
1-2C. Interest on Deposits Due to Lag Times Between Collection and Deposit (BIA)		8.2	8.2
1-2D. Interest on Deposits Due to Lag Times Between Deposit at Treasury and Credit to Account of Beneficiary (MMS)	—	<u>.5</u>	<u>.5</u>
Sub-Total Due to Tribes under Settlement 1-2	28.1	115.3	143.4

## 2. Evaluation and Payment of Type I Claims Resulting From Disputes

**Evaluation/Guidelines and Payment of Agreed Claims.** The Department would evaluate any Type I claims where the tribe disputes the account balance. The Tribe would be required to initiate a claim based on additional Tribal documentation the tribes may have. To the extent practical such documentation should be pursuant to the reconciliation standards employed by Arthur Andersen in the Reconciliation Project. Claims could also be initiated based on an analysis of reconciled disbursements without complete disbursement voucher packages. Type I claims could include challenges to "Passed Adjustments" contained in the Reconciliation Project Reports and other challenges to the Reconciliation Report findings.

The Department shall negotiate in good faith with any account holder who initiates a Type I claim in an attempt to reach agreement on the account balance and any adjustments prior to a mediator being appointed. If agreement is reached, the agreed claim would be settled under the general payment policies and procedures for Type I claims, including interest, forgiveness, netting, funding, etc., as set forth above.

**Negotiation/Mediation/Arbitration.** The Department shall enter into mediation with any account holder who disputes the balance of the account holder's account as reconciled and reported in the Reconciliation Report and any other Type I claim. The Department shall negotiate in good faith with the account holder to reach agreement on the balance of the account holder's account. Negotiating sessions may take place at any site agreed upon by both the Department and the account holder. If agreement cannot be reached within a reasonable period of time, upon notification from the Department, the Director of the Federal Mediation and Conciliation Service shall appoint a mediator to mediate the dispute. The time and frequency of negotiating sessions shall be determined by agreement of the Department, the account holder, and the mediator. Six months from the date mediation commences, the Department shall record, and the account holder and any other party of interest shall accept, as the balance accurate as of September 30, 1995, for any accounts submitted to negotiations under mediation, the account balance reported by the Secretary to the Congress in the Reconciliation Report under section 304 of Public Law 103-412, 108 Stat. 4239, 4248 (1994), unless:

1. The Department and the account holder enter into an agreement, prior to that date, stipulating the correct balance of the account and any agreed adjustments to the account; or
2. The account holder or his agent, prior to or on that date, notifies the Department and the mediator that he has decided to submit the dispute to binding arbitration for resolution or has decided to litigate the matter.

If binding arbitration is chosen, both the Department and the account holder must agree to it. The Department must not unreasonably withhold its consent to binding arbitration. Any arbitration proceeding shall be conducted by a panel of three arbitrators under rules established by legislation.

The panel of arbitrators, in resolving an account holder's dispute, shall decide the appropriate balance of the account holder's account, and shall award amounts to either party as necessary to adjust the balance of the account holder's account. Awards may be limited by type, by aggregate amount, by individual tribe or otherwise as set forth by the Congress in legislation. Any payment to the account holder by the United States as a result of the decision shall be paid from the Judgment Fund and may be enforced by a federal district court.

The government should pay the expenses of mediation and arbitration for both parties under terms and conditions set forth in the legislation.

#### **Treatment and Limitations on Claims based on Reconciled Disbursements Without Complete Disbursement Voucher Packages**

The Reconciliation Project Reports sent to each tribe contains a summary of the basic reconciliation disbursement transaction results for each tribe. Codes were assigned to reconciled disbursement transactions indicating the level of supporting documentation. In the aggregate approximately \$6,035 million were categorized as "Reconciled" transactions. Of this amount, only \$1,925 million were in the category in which the complete disbursement voucher package was reconciled. \$4,110 million involved reconciled transactions with incomplete disbursement voucher packages. Some of these incomplete disbursement packages may not constitute "proof of payment" as that term is understood in the private sector. As a result claims may be pursued by individual tribes seeking restitution for these poorly documented transactions. Because some degree of proof of payment exists and because the tribes now have access to the images and the documentation for all these transactions, the burden of bringing a claim should fall on the tribes. In addition, most of these transactions are supported by at least one valid authorization. The probability that the tribes suffered a loss or other damage from these incomplete disbursement voucher packages, while significant, is most likely less than 10%.

An aggregate settlement of \$400 million seems appropriate. This is approximately 10% of the \$4,110 million in reconciled transactions with incomplete disbursement packages. In addition, if an accounting were ordered to establish "proof of payment" for all reconciled transactions without complete disbursements packages, the government might have to spend similar amounts in the accounting alone. It is proposed that \$200 million be earmarked as a general Type 2 claim settlement with the proceeds to be used as part of the initial capital of the development bank proposed as part of the Type 2-7A claims settlement proposal. \$200 million should be earmarked to satisfy any individual claims brought by Tribes based on these transactions. Individual awards to a Tribe agreed to by the Department or compelled by the Arbitration process for Type 1 claims of this nature should be limited to no more than 5% of the total reconciled transactions with incomplete disbursement packages for that Tribe.

**Timing.** Evaluation of Type 1 claims would occur simultaneously with calculation of the Type 1 settlement amount, so that if a tribe presented adequate documentation to merit an agreed adjustment, that adjustment and other Type 1 claims could be included as part of the settlement of its Type 1 claims. However, payment of agreed Type 1 claims should not be delayed for

those tribes choosing to bring a claim under the procedures established for other Type 1 claims.

In keeping with general policy, Type 1 claims due from tribes for Passed Adjustments would be forgiven.

The following table is a summary of Type 1 Claims and Settlements arising from disputes.

Type 1 Claims  
Settlement Estimate  
(\$ millions)

Type 1 Settlement Category		Principal	Interest	Total
1-3. Due From Tribes: Forgiven				
Passed Adjustments:				
Principal	7.6			
Interest	<u>25.4</u>			
Total	33.0	-	-	-
1-4. Due To Tribes:				
Passed Adjustments:				
Principal	3.4			
Interest	<u>5.7</u>			
Total	9.1	(1)	(1)	(1)
1-5. Disputed Claims Based on Additional Tribal Documentation and Due To Tribes Based on Negotiation, Mediation and Arbitration		(1)	(1)	(1)
1-6. Reconciled Disbursements with Incomplete Disbursement Voucher Packages				
1-6A. General Settlement of all potential liability for all reconciled disbursements with incomplete disbursement voucher packages. Proceeds will be used to capitalize partially the Development Bank (See Settlement 2-7).				200
1-6B. Reconciled Disbursements with Incomplete Disbursement Voucher Packages and Due To Tribes Based on Negotiation, Mediation and Arbitration.				
Principal	4,110	<u>(1) &amp; (2)</u>	<u>(1) &amp; (2)</u>	<u>200</u>
Total Type 2 Exposure		(1) & (2)	(1) & (2)	400

(1) None unless tribes dispute the account balance and bring successful action and receive settlements based on negotiation, mediation or arbitration.

(2) It is proposed that the legislation cap the potential liability for Type 1-6B claims at \$200 million. Individual awards to a tribe will be capped at 5% of the total reconciled transactions with incomplete disbursement packages for that tribe. The unused portion of the \$200 million pool will be used to pay other Type 1 claims with any remaining balance reverting to the U. S. Treasury. General Settlement 1-6A for \$200 million will be used to capitalize the development bank described in Settlement 2-7.



### 3. Settlement of Type 2 Claims

There are two approaches to settlement of Type 2 claims. Under the first approach, an amount would be paid that reflects a Congressionally-determined amount for the specific Type 2 claims described below. A second approach provides for a general settlement of Type 2 claims with all or most IIM account holders and Tribes for all other covered issues and claims defined in the legislation.

The following section discusses the rationale and the terms and conditions for each proposed settlement of Type 2 claims.

## SPECIFIC TYPE 2 CLAIMS SETTLEMENTS

### Type 2-1: IIM Account Holders Settlement Proposal

- Settlement 2-1:      1. \$281 million  
                              2. Tax Free Status for IIM Accounts

This amount of money would be used to compensate IIM account beneficiaries for any harm, damage or loss arising out of the government's inability to provide an accurate and timely accounting to IIM trust account holders.

#### Rationale:

A full discussion and assessment of IIM trust management systems are contained in the report entitled "IIM Related Systems Improvement Project Report" and in the Special Trustee's Assessment. Generally, both reports point to:

1. the poor condition of the IIM data bases and the lack of integrated and adequate systems.
2. the dependence on outdated manual systems and inconsistent automated systems.
3. the lack of documentation supporting subjective management decisions.
4. failures to address adequately large and unacceptable numbers of suspense items; accounting and reconciling errors and exceptions; accounts with no address or an incorrect address; duplicate accounts; retention of funds for minors over 18 years of age; dormant special accounts; and undistributed closed estates.
5. poor internal controls and inconsistent policies and practices.
6. a lack of appropriate audit trails.
7. an inability to trace deposits and collections to source documents.
8. large numbers of missing documents.
9. systems and processes which are not capable of establishing up-to-date and accurate land title records, necessary to the lease management process.
10. no accounts receivable system to assure that all income due is collected or that it is collected in a timely manner.
11. an organizational alignment which is ineffective at times.

The following Table is illustrative of the type and depth of problems affecting IIM trust management.

<u>IIM Exposure</u>	<u>No Accts.</u>	<u>Liability Principal</u>	<u>Expense</u>
Balance as of 2/96	308,000	\$509 million	
1. Problems			
A. 54,921 accounts without a known address Whereabouts Unknown over 7 years		\$ 44.9 million \$ 7.8 million	Unknown Unknown
B. 15,230 accounts for former minors over 21		\$21.8 million	Unknown
C. Overdraft Interest Clearing Accounts (Non-earning assets which deprive current IIM account holders of over \$2 million annually), as of 8/29/96.		\$42.2 million	\$2million/yr
D. 1,493 closed estates not distributed to heirs over 4 years		\$0.419 million	Unknown
E. 55% of accounts (170,262) have balance less than \$10 which are maintained at significant cost to taxpayer.			Taxpayer Cost
F. 36,917 accounts have had no activity during last eighteen months and are maintained at significant cost to taxpayer.			Taxpayer Cost
G. At OTFM there are \$28.3 million in general ledger differences, suspense differences, balancing differences, overdraft losses and miscellaneous losses which have not been cleared, as of 8/29/96.			\$28.3 million
2. Interest owed to IIM account holders for 1980's thrift losses \$13 million			
3. Cost to reconcile IIM accounts: Contractor's 1992 estimate: \$108 to \$281 million			
4. Risk of court ordered accounting/reconciliation			Unknown
5. Past IMPL exposure			Unknown
6. Other:			
Missing Social Security Numbers	130,833	\$174,975,472	
Overdrafts IIM	300	319,358	
Special Deposit Accounts	26,087	135,987,085	
Special Deposit Accounts 0 Balance	9,954		
Special Deposit Overdrafts	45	120,786	
Special Deposits - No Activity last 2 yrs.	5,245	2,149,707	
J Accounts over 18	23,494	25,563,216	
J Accounts over 21	15,236	21,842,120	
Whereabouts Unknown:			
\$0 Balance	4,286	0	
\$0 to 50	26,066	381,100	
50 to 100	4,409	322,013	
100 to 1,000	14,382	5,749,547	
1,000 to 5,000	3,982	8,536,362	
Over \$5,000	1,785	30,004,307	

Trust management system deficiencies and the poor condition of the records prevent a proper, accurate and timely accounting of IIM account balances, collections, deposits, disbursements, investments and return on investments.

Further, to conduct a reconciliation of the IIM accounts similar to that undertaken for tribal accounts during the recently completed Reconciliation Project would require between \$108 million and \$281 million according to estimates made by the Reconciliation Project primary contractor in 1992. This compares to approximately \$20 million which was spent for the twenty year tribal Reconciliation Project. The reason the costs to reconcile are so much larger for IIM accounts is due to the large number of accounts and the fact that the IIM trust management systems and the condition of the IIM records are generally considered to be much worse than the systems and records applicable to tribal trust accounts. For example, substantially all of the IIM electronic financial records are missing prior to 1985. Therefore, even if a reconciliation effort were initiated for IIM accounts, it is unlikely that it would produce satisfactory or conclusive results or amount to an accounting sufficient to aid in the determination of harm, damage or loss to IIM account holders.

Rather than spend \$108 million to \$281 million to produce what is likely to be an unsatisfactory result, it is proposed that the larger amount or \$281 million (Settlement 2-1) be specifically used to compensate IIM account beneficiaries for any harm, damage or loss arising out of the government's inability to provide an accurate and timely accounting to IIM trust account holders. This figure is not submitted as nor is it to be considered an appraisal of the actual damage and harm suffered by these account holders. This figure is based on the probable amount it would cost the trustee to produce an unsatisfactory reconciliation of these accounts. The actual damage figure may be materially different.

Since there is not a practical way equitably to allocate the settlement amount to individual account holders, past and present, it is proposed that all \$281 million in principal be deposited in the IIM Investment Pool and subsequently invested for the benefit of IIM account holders. This would be a permanent fund and would also act as a reserve to pay claims successfully brought by individual account holders. Principal could not be withdrawn from the IIM Investment Pool, except to pay for individual claims successfully brought by IIM holders through litigation or otherwise.

Current and future IIM account holders would benefit by receiving the earnings on the permanent fund in the form of an increased yield on IIM account balances.

To further enhance their opportunity for higher yields on savings, to encourage savings and to allow previous IIM account holders an opportunity to participate, all IIM accounts will be converted to trust savings accounts with a checking account feature. Such accounts would retain all current account features, including the feature which permits disbursement of IIM deposits. IIM account holders would continue to receive all eligible disbursements as they do now or could elect to save all or a part of IIM monies to earn the extra yield provided by the \$281 million permanent settlement fund. Voluntary deposits would be accepted from all current or past IIM account holders. Former IIM account holders could re-open accounts and deposit their savings to earn the higher yield as well. In addition all interest received by IIM account holders would be free of federal taxes by Act of Congress.

**Type 2-2: Restoration of IIM Thrift Industry Losses****Settlement 2-2: \$13 million, more or less.**

This amount of money would restore to the IIM account holders \$12.8 million, more or less, in interest that was not earned on over \$5 million in principal that was lost as a result of failed investments by the BIA in the 1980s and not restored until recently.

**Rationale:**

The documentation for this settlement amount is contained in the Department of the Interior (Department) FY 1996 Budget Submission to Congress, wherein the Department requested appropriations of \$12,668,000 to be used to restore interest that was not earned for IIM account holders because of principal that was lost as a result of investments from the IIM Investment Pool in uninsured obligations of failed credit unions and savings and loan associations.

The 12,668,000 is for the period from FY 1984 through FY 1995 and continues to increase at an amount of approximately \$53,000 a month or about \$636,000 annually.

**Type 2-3: Restoration of Overdraft Interest Clearing Accounts****Settlement 2-3: \$42.2 million, more or less.**

Specific Settlement to restore \$42.2 million in unidentified Overdraft Interest Clearing Accounts to the IIM Pool. Amount is equivalent to non-earning assets which deprive current IIM account holders of over \$2 million in annual income.

**Type 2-4: Settlement of Miscellaneous Losses at Office of Trust Funds Management****Settlement 2-4: \$ 28.3 million:**

<b>Losses and associated interest</b>	<b>\$10.0</b>
<b>To bring subsidiary (IRMS) and Control Acct (Omni) into balance</b>	<b>10.8</b>
<b>Budget Suspense Accts</b>	<b>1.0</b>
<b>To clean-up all remaining General Ledger Accts</b>	<b><u>6.5</u></b>
<b>Approximate Total</b>	<b>\$28.3</b>

\$28.3 million will clear known losses, aged suspense accounts, unreconciled general ledger entries and other accounting errors of the past which cannot be recovered.

The "Approximate Total" of \$28.3 million is the best estimate of the funds that would be required to wipe the slate clean as of 8/29/96. This liability has accrued over numerous years and various accounting systems and conversions (from manual systems to automated systems). Just to reiterate this is the best estimate of the potential liability that continues to grow, and was derived

from numerous accounting systems that at best are very suspect as to their accuracy.

**Type 2-5 IIM and Tribal Account Holders Joint Settlement on Systems Improvements  
Implementation of the Special Trustee's Strategic Plan**

**Settlement 2-5: \$147 million.**

IIM account beneficiaries would share with tribal beneficiaries in the \$147 million proposed by the Special Trustee to bring trust management policies, procedures, practices and systems up to a commercial standard within three years.

**Rationale:**

As noted, in February 1996 the OST produced a conceptual Strategic Plan to acquire and institutionalize specified systems. Implementation of this plan will ensure that the U. S. Government establishes appropriate policies and procedures, develops necessary systems and takes the affirmative actions necessary to provide an accurate and timely accounting to American Indian trust beneficiaries in the future. In this manner the proper discharge of the Secretary of the Interior's trust responsibilities finally can be accomplished. The Strategic Plan (attached) reads in part:

Phase I of the Strategic Plan is designed to bring the trust accounting and management systems up to commercial standards within three years. This, at a minimum, will involve acquiring, automating, updating, integrating, coordinating and consolidating to produce:

1. A trust resource/asset management delivery system.
2. An accounts receivable data and billing system that uses lease-contract and land and ownership information.
3. A trust, depository, payments and delivery system for Individual Indian Money (IIM) accounts.
4. A land records and title recordation and certification system.
5. A general ledger and general ledger accounting system.
6. A technology services center dedicated to trust resource and funds management.
7. A national archives and records center.
8. A risk management and control system.
9. An independent institutional structure.

This will involve consolidating trust resources, trust funds and land ownership and records management processes into a single, independent institutional unit with its own management

structure to accommodate the restructuring and reorganization contemplated by Phase I of the Strategic Plan. The unit should be organized by function and dedicated exclusively to trust management. The unit should have agency or bureau status within the Department of the Interior or elsewhere.

The details are contained in the attached Special Trustee's Strategic Plan.

The details of the costs to implement the Strategic Plan are also in the attachment. The summary costs are as follows:

Cost of Special Trustee's Strategic Plan Phase I  
(\$ in thousands)

1996	1997	1998	1999	2000	2001	Total
3,000	49,682	32,706	20,389	20,586	20,585	146,948

The implementation of the OST Strategic Plan will provide with reasonable assurance an accurate and timely accounting of the IIM and tribal trust account balances, collections, deposits, disbursements, investments and return on investments. For this reason, the OST Strategic Plan implementation and costs are an integral part of both the IIM settlement proposals and the tribal settlement proposals.

**2-6: Settlement for Reconciliation Project Unreconciled Transactions**

**Settlement 2-6A: \$300 million**

This is a general settlement of potential damages for all unreconciled transactions arising from the Reconciliation Project. Proceeds of this general settlement will be used to partially capitalize the Development Bank contemplated by Settlement 2-7.

**Settlement 2-6B: \$300 million**

This is a specific settlement for the following 32,901 transactions for which supporting documentation could not be located during the Reconciliation Project (\$ millions, absolute value):

Receipts:	1,123.3
Transfers:	479.6
Disbursements	<u>808.6</u>
Total	<u>2,411.5</u>

Actual Disbursement Exposure can be computed as:

Unreconciled (\$ million, absolute value)	808.6
Less: Positive Disbursements	(73.6)
Attorney and Expert Witness Fees	(40.5)
Alaska Regional Corporations	<u>119.5</u>
Principal Disbursement Exposure	575.1
Interest on Principal	<u>1,361.8</u>
Total Disbursement Exposure	<u>1,936.9</u>

\$300 million will be disbursed to individual tribes with known unreconciled disbursements. The settlement for each tribe would equal the product of the percentage of each tribe's unreconciled disbursements plus interest (date of inception through 12/31/95) to total unreconciled disbursements



plus interest on the total times the settlement amount of \$300 million. The excess principal and interest potential liability to the tribes will be considered satisfied by the 2-6A general settlement and by the 2-7 general settlement.

Rationale:

These aggregate settlements are to be awarded to tribal trust account beneficiaries based generally on the \$2.2 billion of unreconciled non-investment transactions (excluding positive transactions and payment of attorney's and expert witness fees and expenses and certain other exclusions for which reasonable proof of payment exists) identified by the Reconciliation Project.

The disbursement errors and exceptions are of particular importance and concern since they represent known amounts which were charged against known tribal accounts, but for which the payee could not be determined during the Reconciliation Project. Therefore, proof of who benefitted from these disbursements cannot be established by the federal government. The unreconciled disbursements expose the government to the greatest potential liability and are treated accordingly in the allocation of the settlement amounts, both specifically to tribes and in the general settlement as well.

\$575.1 million is a net amount representing unreconciled disbursements as defined above. Compounded interest from the date of the errors through December 31, 1995 is \$1,361.8 million.

Distribution is based on the reasons stated below.

#### **Settlement 2-6A: \$300 million**

It is proposed that this amount be distributed to all tribes with trust accounts in a general way. The proceeds will be used to provide part of the initial capital for the Development Bank described in Type 2-7.

The rationale for Settlement 2-6A is as follows. Had a full accounting been possible for the \$575.1 million in unreconciled disbursements or had the Reconciliation Project covered previous or different reconciliation periods, different results might have occurred and tribes other than those covered in Settlement 2-6B might have suffered harm, damage or loss. Also, those tribes covered in Settlement 2-6B might have had different levels of harm, damage or loss as well. The general settlement is intended to cover any damages which may have occurred as a result.

In addition, it appears that the condition of the records and the quality of the trust management systems were much worse for periods prior to 1972. Therefore, it is reasonable to assume that substantially more unreconciled receipts, transfers and disbursements would have been exposed had the Reconciliation Project covered periods prior to 1972. Any harm or damage resulting is intended to be covered by the 2-6A general settlement of \$300 million and general settlement 2-7.

The general settlements also compensate trust beneficiaries that may have been harmed as a

result of mis-posted receipts and transfers which may have occurred in the universe of unreconciled receipts and disbursements. Receipts are mostly deposits. The government can demonstrate that the unreconciled receipts were posted to the general ledger accounts of particular tribes, so those tribes benefitted by the transactions and are unlikely to bring a claim as a result. The same is true, generally, for unreconciled transfers between accounts of the same tribe. There is no evidence of damage to these tribes, but if transfers were mis-posted and should have been posted to the account of a different tribe, damage to the other tribe may have resulted. There is simply no way to determine whether damage occurred to particular beneficiaries as a result of the unreconciled receipts or transfers, nor who these harmed beneficiaries were. The general settlements, however, are intended to cover any such unidentified harm or damage.

To partially compensate all eligible tribal trust account holders for the harm and damage which might have occurred as a result of the unreconciled transactions, \$300 million will be awarded. The proceeds will be used to capitalize in part the Development Bank which will benefit all tribes.

**Settlement 2-6B: \$300 million.** It is proposed that this amount be distributed to individual tribes with known unreconciled disbursements since these items represent the highest potential for actual harm and damage having occurred for Tribal trust beneficiaies.

The settlement for each tribe would be equal to the product of the percentage of each tribe's unreconciled disbursements plus interest (calculated from date of the transaction through December 31, 1995) to total unreconciled disbursements plus interest on the total unreconciled disbursements times the settlement amount of \$300 million. While this may not cover all the potential damage which may have resulted from these unreconciled disbursements, the total award to the tribes covers 52% of total unreconciled disbursement exposure and 15.5% of total unreconciled disbursement exposure plus interest on those transactions from inception. Excess damage, if any, is intended to be covered by settlement 2-6A and by the general settlement 2-7.

**Type 2-7: General Settlement for IIM and Tribal Account Holders  
Establishment of a Development Bank for American Indians**

**Settlement 2-7: Establishment of a Development Bank for American Indians with the following capital and guarantees to be provided by the U. S. Government:**

<b>2-7A. Equity Capital</b>	<b>\$500 million</b>
<b>2-7B. Borrowing Capacity</b>	<b>10 x Equity Capital</b>
<b>2-7C. Initial Borrowing from U. S.</b>	<b>\$3 billion for 30 yrs at 30 year T Rate</b>

Settlement 2-7 is intended to settle all other potential claims arising out of the reconciliation project not covered by Type 1 claims and other Type 2 claims and past potential liability for trust mismanagement practices in general. A full explanation of the rationale on this settlement and

details on the Development Bank can be found in Appendix 1.

General Settlement 2-7 involves the creation of a federal Development Bank for American Indians (D-Bank) which will be formed and capitalized by the federal government and will be a nationwide financial institution providing a dependable source of lending to American Indians and American Indian Tribes and their communities and a dependable source of investing in American Indian Enterprises.

D-Bank will provide access to long-term loans and investments for economic development, consistent with principles of self-determination, self-governance and self-sufficiency and will provide access to low interest rates on loans, made possible by D-Bank's tax free status and its access to funding in the nation's capital markets at rates commensurate with those paid by the U. S. Government and Agencies of the U. S. Government.

D-Bank will also be allowed to invest up to \$300 million in the purchase, holding, financing and sale of fractionated realty interests in Indian allotment lands. Such purchases and financings will be made on prudential terms to eligible individuals and tribes. Such activities will be regulated by rules set forth in legislation to resolve the fractionated heirship issues and will be administered to achieve the consolidation of existing fractional interests and the prevention or substantial reduction of further fractionation.

D-Bank will be a for-profit financial institution and will not receive appropriated funds for operating expenses. It will receive appropriated funds for lifeline financial services and other specified programs as approved by Congress.

D-Bank will be authorized to invest up to 25% (initially \$125 million) of its permanent capital in eligible individual Indian and Indian Tribe businesses and projects which will aid economic development of the American Indian communities. These investments include common and preferred stock and long-term subordinated draft investments in:

- A. Infrastructure Acquisition and Development Activities
- B. Project Financing
- C. Venture Capital Businesses
- D. Established Business

D-Bank's capital and funding will be provided by the federal government in the following amounts:

2-7A. Equity Capital: 500

Initial Equity Capital of \$500 million will be provided by the federal government as part of Settlement 1-6A (\$200 Million) and 2-6A (\$300 million). Shares will be distributed to all federally recognized tribes on some equitable basis set forth in legislation.

2-7B. Loans from U. S. Government: 3,000

\$3 billion in direct long-term loans will be provided to D-Bank for thirty years at the U. S. Treasury rate for 30 year obligations.

2-7C. U. S. Government Guaranteed Obligations 5,000

Future funding of up to 10 times equity capital from the sale of bonds and notes in the nation's capital markets by D-Bank will be guaranteed by the full faith and credit of the United States. Loans from the United States Government of \$3 billion are included in this amount.

The following is a summary of Type 2 Claims and Settlements:

**Type 2 Claims  
Settlement Estimate  
(\$ millions)**

<b>Type 2 Settlement Category</b>	<b>Total</b>
2-1: IIM Account Holders Settlement Proposal	281
<p style="margin-left: 40px;">Specific Settlement of Past Damages to IIM Holders</p> <p style="margin-left: 80px;">1. Amount is equal to estimated reconciliation costs for IIM Accounts. Amount will be invested in IIM pool for benefit of all account holders, past, present and future who will receive a higher yield as a result.</p> <p style="margin-left: 80px;">2. Settlement also includes tax free status for future IIM accounts.</p>	
	Tax Free Status
2-2: Restoration of IIM Thrift Industry Losses	13
<p style="margin-left: 40px;">Specific Settlement to restore interest lost by IIM account holders because of principal that was lost as a result of IIM Pool investments in obligations of failed thrifts in 1980s.</p>	
2-3: Restoration of Overdraft Interest Clearing Accounts	42.2
<p style="margin-left: 40px;">Specific Settlement to restore \$42 million in unidentified Overdraft Interest Clearing Accounts to the IIM Pool. Amount is equivalent to non-earning assets which deprive current IIM account holders of over \$2 million in annual income.</p>	
2-4: Miscellaneous OTFM General Ledger Losses	28.3
<p style="margin-left: 40px;">Specific Settlement to clear \$28.3 million in general ledger differences, suspense amounts, balancing differences, overdraft losses and other losses.</p>	

## Type 2 Claims Settlement Estimate (\$millions) (continued)

Type 2 Settlement Category	Total
2-5: IIM and Tribal Account Holders Joint Settlement for Systems Improvements	147

Specific Settlement to bring trust management systems up to commercial standards. Amount is the estimated cost to implement the Special Trustee's Strategic Plan over five years. Implementation will ensure that the government takes the actions necessary to provide an accurate and timely accounting to American Indian trust beneficiaries in the future. In this manner the proper discharge of the Secretary's trust responsibilities finally can be accomplished.

## 2-6: Settlement for Reconciliation Project Unreconciled Transactions

2-6A. General Settlement of potential damages for all unreconciled transactions arising from the Reconciliation Project. Proceeds of General Settlement will be used to partially capitalize Development Bank (See Settlement 2-7)	300
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2-6B. Specific Settlement for the following 32,901 transactions for which supporting documentation could not be located during the Reconciliation Project (\$ million, absolute value):	300
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Receipts:	1,123.3
Transfers:	479.6
Disbursements	<u>808.6</u>
Total	<u>2,411.5</u>

## Actual Disbursement Exposure can be computed as:

Unreconciled (\$ million, absolute value)	808.6
Less: Positive Disbursements	(73.6)
Attorney and Expert Witness Fees	(40.5)
Alaska Regional Corporations	<u>119.5</u>
Principal Disbursement Exposure	575.1
Interest on Principal	<u>1,361.8</u>
Total Disbursement Exposure	<u>1,936.9</u>

**Type 2 Claims Settlement Estimate (Smillions) (continued)****Type 2 Settlement Category****Total**

\$300 million will be disbursed to individual tribes with known unreconciled disbursements. The settlement for each tribe would equal the product of the percentage of each tribe's unreconciled disbursements plus interest (date of inception through 12/31/95) to total unreconciled disbursements plus interest on the total times the settlement amount of \$300 million. The excess principal and interest potential liability to the tribes will be considered satisfied by the 2-6A general settlement and by the 2-7 general settlement.

**2-7: General Settlement for IIM and Tribal Account Holders**

Settlement 2-7 is intended to settle all other potential claims arising out of the reconciliation project not covered by Type 1 claims and other Type 2 claims and all past potential liability for trust mismanagement to be defined by the legislation through the effective date of settlement set by legislation.

General Settlement 2-7 involves the creation of a federal Development Bank for American Indians (D-Bank) which will be formed and capitalized by the federal government and will be a nationwide financial institution providing a dependable source of lending to American Indians and American Indian Tribes and their communities and a dependable source of investing in American Indian Enterprises.

D-Bank will provide access to long-term loans and investments for economic development, consistent with principles of self-determination, self-governance and self-sufficiency and will provide access to low interest rates on loans, made possible by D-Bank's tax free status and its access to funding in the nation's capital markets at rates commensurate with those paid by the U. S. Government and Agencies of the U. S. Government.

D-Bank will also be allowed to invest up to \$300 million in the purchase, holding, financing and sale of fractionated realty interests in Indian allotment lands. Such purchases and financings will be made on prudential terms to eligible individuals and tribes. Such activities will be regulated by rules set forth in legislation to resolve the fractionated heirship issues and will be administered to achieve the consolidation of existing fractional interests and the prevention or substantial reduction of further fractionation.

## Type 2 Claims Settlement Estimate (\$millions) (continued)

## Type 2 Settlement Category

D-Bank will be a for-profit financial institution and will not receive appropriated funds for operating expenses. It will receive appropriated funds for lifeline financial services and other specified programs as approved by Congress.

D-Bank will be authorized to invest up to 25% (initially \$125 million) of its permanent capital in eligible individual Indian and Indian Tribe businesses and projects which will aid economic development of the American Indian communities. These investments include common and preferred stock and long-term subordinated draft investments in:

- A. Infrastructure Acquisition and Development Activities
- B. Project Financing
- C. Venture Capital Businesses
- D. Established Business

D-Bank's capital and funding will be provided by the federal government in the following amounts:

2-7A. Equity Capital: 500

Initial Equity Capital of \$500 million will be provided by the federal government as part of Settlement 1-6A (\$200 Million) and 2-6A (\$300 million). Shares will be distributed to all federally recognized tribes on some equitable basis set forth in legislation.

2-7B. Loans from U. S. Government: 3,000

\$3 billion in direct long-term loans will be provided to D-Bank for thirty years at the U. S. Treasury rate for 30 year obligations.

2-7C. U. S. Government Guaranteed Obligations 5,000

Future funding of up to 10 times equity capital from the sale of bonds and notes in the nation's capital markets by D-Bank will be guaranteed by the full faith and credit of the United States. Loans from the United States Government of \$3 billion are included in this amount.



**Type 2 Claims Settlement Estimate (\$millions) (continued)**

<b>Type 2 Settlement Category</b>	<b>Total</b>
<b>Total Type 2 Claims:</b>	
1. Direct Settlement Obligations: Settlements 2-1 through 2-7A	1,611.5
2. Loans from U. S. Government: Settlement 2-7B	3,000
3. U. S. Government Guaranteed Obligations of \$5 billion, net of \$3 billion Loan: Settlement 2-7C	<u>2,000</u>
<b>Total Type 2 Claims</b>	<b>6,611.5</b>

**V. WAIVERS AND LITIGATION**

If a tribe accepts payment of its Type 2 claims under the legislation's settlement process, the acceptance would constitute a full discharge of the United States with respect to all claims regarding Tribal trust fund accounts for the period prior to September 30, 1995. Settlements under the statute would not be reviewable in court. If a tribe did not accept settlement under these provisions, the tribe could litigate its claims, but none of the guidelines pertaining to the value of its claims would be applicable, nor would the tribe be able to participate in the Type 2 settlements.

Tribes that do not settle claims under the settlement procedure outlined above may seek to litigate those claims in court; however, such litigation is usually extremely costly and time-consuming for all the litigants. For these reasons, the Department has specifically rejected any litigation process that would resemble the Indian Claims Commission proceedings of years past, and believes that the legislation establishing the settlement procedures also must establish certain parameters for litigating the claims of non-settlers. Such parameters are necessary to ensure that litigation proceeds in an orderly and efficient manner, to ensure that the beneficiaries of the claims, as opposed to their attorneys and accountants, are the persons who benefit from any amounts recovered in litigation, and to encourage settlement of as many claims as possible. The Department may seek to establish parameters for the litigation of claims for those who do not avail themselves of the settlement opportunities in the legislation. Such parameters could address and resolve, for example, issues relating to statute of limitations, burdens of proof, standards of accounting, limitations on attorneys fees and forgiveness/interest policies. Congress should also consider requirements forcing the trustee (U.S. Government) to negotiate, litigate and arbitrate in good faith.

The IIM and tribal account balances will be set as of September 30, 1995, subject to individual changes as result of court procedures, error corrections, etc.

## APPENDIX I

## ESTABLISHMENT OF A DEVELOPMENT BANK FOR AMERICAN INDIANS

Establishment of a Development Bank for American Indians with the following capital and guarantees to be provided by the U. S. Government:

<b>Equity Capital</b>	<b>\$500 million</b>
<b>Borrowing Capacity</b>	<b>10 x Equity Capital</b>
<b>Initial Borrowing from U. S.</b>	<b>\$3 billion for 30 yrs</b> <b>at 30 year T Rate</b>

The American Indian Trust Fund Management Reform Act of 1994 requires, in part:

"(B) Provisions for opportunities for Indian tribes to assist in the management of their trust accounts and to identify for the Secretary options for the investment of their trust accounts, in a manner consistent with the trust responsibilities of the Secretary, in ways that will help promote economic development in their communities."

The Special Trustee is considering a phase two to the comprehensive strategic plan which will include a Development Bank for American Indians.

A Development Bank (D-Bank) will be formed and capitalized by the federal government. D-Bank will be a nationwide financial institution providing a dependable source of:

- A. Lending to American Indians and American Indian tribes and their communities.
- B. Investing in American Indian Enterprises.

D-Bank will provide the following principal benefits to American Indians and Indian tribes:

- A. Access to long-term loans and investments for economic development, consistent with principles of self-determination, self-governance and self-sufficiency.
- B. Access to low interest rates on loans, made possible by D-Bank's tax free status and its access to funding in the nation's capital markets at rates commensurate with those paid by the U. S. Government and Agencies of the U. S. Government.

D-Bank:

- A. will be an instrumentality of the federal government and will be backed by the full faith and credit of the U. S. Government.
- B. will be examined, supervised and regulated by an Agency of the U. S. Government, existing or to

be formed for this purpose.

C. will lend to and invest in various American Indian enterprises, infrastructure projects and other projects of a developmental nature.

D. will facilitate and implement efforts and initiatives to make individual American Indians and American Indian tribes economically more self-sufficient under established principles of self-determination and self-governance.

E. will be a for-profit financial institution and will not receive appropriated funds from the Federal Government for operating expenses. It will receive appropriated funds for lifeline banking services and other specified programs as approved by Congress.

F. may be used to facilitate the disbursement of appropriated funds for other governmental programs for American Indians and their tribes and communities.

G. will have a nationwide delivery network with branch offices located in or near major American Indian communities. The delivery system will also employ a state of the art telecommunications and electronic delivery system.

D-Bank's capital and funding will be provided by the federal government in the following amounts:

1. \$500 million in equity contributions from appropriated or judgment funds.
2. \$3 billion in direct, long-term loans from the federal government for thirty years at the U. S. Treasury interest rate on thirty year obligations.
3. Future funding of up to 10 times equity capital from the sale of bonds and notes in the nation's capital markets, guaranteed by the full faith and credit of the United States.

D-Bank's initial capital stock will be distributed to federally recognized American Indian tribes in proportion to the number of American Indians living on or near reservations as determined by the latest census information or by some other acceptable means. This permanent capital cannot be sold, traded or withdrawn. Each share will be vested with one voting right for purposes of electing D-Bank's Board of Directors or for voting on other corporate matters requiring shareholder approval.

Each borrower of D-Bank will generally be required to invest in capital stock or participation certificates of D-Bank, generally at the rate of two percent of the loan.

Dividends and patronage payments may be authorized by D-Bank's Board of Directors, subject to regulations that establish minimum at-risk capital standards.

D-Bank will have a corporate structure patterned after banks belonging to the Farm Credit System and will be an instrumentality of the federal government with the full faith and credit backing of the United States.

D-Bank's Board of Directors will consist of 10 to 20 members, the majority of whom must be American Indians. The Board will be diversified by tribe, area of the country, borrowing relationships and will include members from the public at large.

D-Bank's executive management and employees will be qualified bankers and will be exempt from federal government employment requirements. Compensation will be determined by the Board of Directors after taking into account general compensation and benefits schedules of the Farm Credit System banks.

D-Bank's lending, leasing, investment and financial services will be dedicated and restricted solely to making loans, leases, investments and financial services available to eligible and qualified American Indians and American Indian tribes and their communities in all areas of the country. Prudential, safe and sound lending and investment policies and practices will be strictly followed and enforced.

D-Bank will charge appropriate fees and interest rates for its financial services and products, sufficient to cover funding, operating and administrative expenses and to provide a reasonable return on shareholder's equity.

D-Bank will provide a full range of commercial, real estate and consumer loans to eligible American Indians, tribes and their communities.

**Investment in Community Development and American Indian Businesses: \$125 million**

D-Bank will be authorized to invest up to 25% (initially, \$125 million) of its permanent capital in eligible individual Indian and Indian tribe business ventures and projects which will aid economic development of the American Indian communities. These investments will include common stock, preferred stock and long-term subordinated debt investments in:

- A. Infrastructure Acquisition and Development Activities
- B. Project Financing
- C. Venture Capital Businesses
- D. Established Businesses

**Investment in Fractionated Realty Interests: \$300 million**

D-Bank will be allowed to invest up to \$300 million in the purchase, holding, financing and sale of fractionated realty interests in Indian allotment lands. Such purchases and financings will be made on prudential terms to eligible individuals and tribes. Such activities will be regulated by rules set forth in legislation to resolve the fractionated heirship issues which has as its principal purposes:

- A. The consolidation of existing fractional interests.
- B. The prevention or substantial reduction of further fractionation.

D-Bank will be required to have an annual audit and report from an independent and qualified accounting firm.

D-Bank will be exempt from all federal and state taxes.

D-Bank's pro-forma balance sheet is as follows:

**D-BANK PRO-FORMA BALANCE SHEET  
BANKING OPERATIONS  
(\$millions)**

<b>ASSETS</b>		<b>*LIABILITIES</b>	
Cash, Securities and Liquid Assets	500	Demand Deposits	0
		Savings & CDS	0
		Official Checks	0
<b>Loans:</b>	<b>2,500</b>		
Commercial			
Consumer			
Real Estate			
Infrastructure			
<b>Fractionated Realty Holdings:</b>	<b>300</b>	<b>Long-term Debt:</b>	<b>3,000</b>
Loans to Facilitate		Note to U. S. Treasury	
Investment Holdings		30 yrs.; 30 yr. T Rate	
<b>Development Investments:</b>	<b>125</b>	<b>Other Debt:</b>	<b>0</b>
Infrastructure Acquisition &		Limited to 10 x Equity Capital,	
Development		including long-term debt	
Project Financing			
Venture Capital to New			
Businesses			
Capital for Established			
Businesses			
<b>Other</b>	<b>75</b>	<b>Equity Capital</b>	<b>500</b>
	<hr/>		<hr/>
<b>Total Assets</b>	<b>3,500</b>	<b>Total Liabilities and Capital</b>	<b>3,500</b>

\*All deposits and liabilities guaranteed by the United States

## D-BANK SUMMARY OF FINANCIAL SERVICES

## LOANS AND LEASES:

<b>Commercial:</b>	<b>Small Business</b>	<b>Middle Market</b>	<b>Agriculture</b>
<b>Consumer:</b>	<b>Credit Card</b>	<b>Home Equity</b>	<b>Auto</b>
	<b>Mobile Home</b>	<b>Personal</b>	
<b>Real Estate:</b>	<b>Single Family</b>	<b>Multiple Family</b>	<b>Commercial</b>
	<b>Acquisition</b>	<b>Development</b>	<b>Construction</b>
<b>Infrastructure:</b>	<b>Acquisition</b>	<b>Development</b>	<b>Project Financing</b>

## FRACTIONATED REALTY HOLDINGS:

<b>Purchases</b>	<b>Sales</b>	<b>Investments</b>	<b>Loans to Facilitate: Individual &amp; Tribal</b>
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## DEVELOPMENT INVESTMENTS:

<b>Project Financing</b>	<b>Infrastructure Acquisition &amp; Development</b>	<b>Venture Capital New Businesses</b>	<b>Capital to Existing Businesses</b>
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## DEPOSITORY SERVICES:

<b>Demand Deposits</b>	<b>Savings Deposits</b>	<b>Other Deposits</b>	<b>Certificates of Deposit</b>
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## OTHER SERVICES:

<b>ATM Access</b>	<b>Cash Management</b>	<b>Accounting</b>	<b>Statements &amp; Reporting</b>
<b>Payments</b>	<b>Disbursements</b>	<b>Wire Transfer</b>	<b>Money Orders</b>
<b>Official Checks</b>	<b>Overdraft Protection</b>	<b>Discount Brokerage</b>	<b>Mutual Fund Sales</b>
<b>Insurance Sales</b>	<b>Annuity Sales</b>		

**OFFICE OF TRUST FUNDS MANAGEMENT  
PRO-FORMA BALANCE SHEET AND TRUST SERVICES  
(Smillions)**

**TRUST OPERATIONS:**

<b>Assets:</b>	<b>Liabilities:</b>		
<b>Cash, Securities and Liquid Assets</b>	<b>2,500</b>	<b>Trust Accounts:</b>	
		<b>Tribal</b>	<b>2,000</b>
		<b>Individual Indian</b>	<b>500</b>
	<hr/>		<hr/>
	<b>2,500</b>		<b>2,500</b>

**TRUST SERVICES:**

<b>Managed Accounts</b>	<b>Agency Accounts</b>	<b>Custodial Accounts</b>
<b>Statements &amp; Reporting</b>	<b>Accounting</b>	<b>Payments/Disbursements</b>
<b>Resource, Asset &amp; Lease Management</b>	<b>Cash Management</b>	<b>Investment Services</b>
<b>IIM Deposits</b>	<b>Land Records &amp; Ownership Management</b>	<b>Collections</b>



APPENDIX 2  
SETTLEMENT PROPOSAL SUMMARY

Type 1 Claims  
Settlement Estimate  
(\$ millions)

Type 1 Settlement Category	Principal	Interest	Total
<b>1-1. Due From Tribes: Forgiven</b>			
1-1A. Proposed Adjustments	11.6	11.6	23.2
1-1B. Rollover Amounts	<u>26.1</u>	<u>116.9</u>	<u>143.0</u>
<b>Total Forgiven</b>	<b>37.7</b>	<b>128.5</b>	<b>166.2</b>
<b>Note: Total Forgiven amount does not require appropriations or payment from the Judgment Fund.</b>			
<b>1-2. Due to Tribes</b>			
1-2A. Proposed Adjustments	10.6	14.5	25.1
1-2B. Rollover Amounts	<u>17.5</u>	<u>92.1</u>	<u>109.6</u>
<b>Sub-total</b>	<b>28.1</b>	<b>106.6</b>	<b>134.7</b>
1-2C. Interest on Deposits Due To Lag Times Between Collection and Deposit		8.2	8.2
1-2D. Interest on Deposits Due to Lag Times Between Deposit At Treasury and Credit To Account of Beneficiary	<u>—</u>	<u>.5</u>	<u>.5</u>
<b>SubTotal Due to Tribes Settlement under 1-2</b>	<b>28.1</b>	<b>115.3</b>	<b>143.4</b>

Type 1 Claims  
Settlement Estimate  
(\$ millions)

Type 1 Settlement Category		Principal	Interest	Total
<b>1-3. Due From Tribes: Forgiven</b>				
Passed Adjustments:				
Principal	7.6			
Interest	<u>25.4</u>			
Total	33.0	-	-	-
<b>1-4. Due To Tribes:</b>				
Passed Adjustments:				
Principal	3.4			
Interest	<u>5.7</u>			
Total	9.1	(1)	(1)	(1)
<b>1-5. Disputed Claims Based on Additional Tribal Documentation and Due To Tribes Based on Negotiation, Mediation and Arbitration</b>				
		(1)	(1)	(1)
<b>1-6. Reconciled Disbursements with Incomplete Disbursement Voucher Packages</b>				
1-6A. General Settlement of all potential liability for all reconciled disbursements with incomplete disbursement voucher packages. Proceeds will be used to capitalize partially the Development Bank (See Settlement 2-7).				(2) 200
1-6B. Reconciled Disbursements with Incomplete Disbursement Voucher Packages and Due To Tribes Based on Negotiation, Mediation and Arbitration.				
Principal	4,110	<u>(1) &amp; (2)</u>	<u>(1) &amp; (2)</u>	<u>200</u>
<b>Total Type 1 Exposure Arising From Disputes</b>		<b>(1) &amp; (2)</b>	<b>(1) &amp; (2)</b>	<b>400</b>

(1) None unless Tribes dispute the account balance and bring successful action and receive awards based on negotiation, mediation or arbitration.

(2) It is proposed that the legislation cap the potential liability for Type 1-6B claims at \$200 million. Individual awards to a tribe will be capped at 5% of the total reconciled transactions with incomplete disbursement packages for that tribe. The unused portion of the \$200 million pool will be used to pay other Type 1 claims with any remaining balance reverting to the U. S. Treasury. General Settlement 1-6A for \$200 million will be used to capitalize the development bank (See Settlement 2-7).

**Type 2 Claims  
Settlement Estimate  
( \$ millions)**

Type 2 Settlement Category	Total
<b>2-1: IIM Account Holders Settlement Proposal</b>	<b>281</b>
<b>Specific Settlement of Past Damages to IIM Holders</b>	
<p>1. Amount is equal to estimated reconciliation costs for IIM Accounts. Amount will be invested in IIM pool for benefit of all account holders, past, present and future who will receive a higher yield as a result.</p> <p>2. Settlement also includes tax free status for future IIM accounts.</p>	
	Tax Free Status
<b>2-2: Restoration of IIM Thrift Industry Losses</b>	<b>13</b>
<b>Specific Settlement to restore interest lost by IIM account holders because of principal that was lost as a result of IIM Pool investments in obligations of failed thrifts in 1980s.</b>	
<b>2-3: Restoration of Overdraft Interest Clearing Accounts</b>	<b>42.2</b>
<b>Specific Settlement to restore \$42 million in unidentified Overdraft Interest Clearing Accounts to the IIM Pool. Amount is equivalent to non-earning assets which deprive current IIM account holders of over \$2 million in annual income.</b>	
<b>2-4: Miscellaneous OTFM General Ledger Losses</b>	<b>28.3</b>
<b>Specific Settlement to clear \$28.3 million in general ledger differences, suspense amounts, balancing differences, overdraft losses and other losses.</b>	

## Type 2 Claims Settlement Estimate (\$millions) (continued)

Type 2 Settlement Category	Total
<b>2-5: IIM and Tribal Account Holders Joint Settlement for Systems Improvements</b>	<b>147</b>

Specific Settlement to bring trust management systems up to commercial standards. Amount is the estimated cost to implement the Special Trustee's Strategic Plan over five years. Implementation will ensure that the government takes the actions necessary to provide an accurate and timely accounting to American Indian trust beneficiaries in the future. In this manner the proper discharge of the Secretary's trust responsibilities finally can be accomplished.

**2-6: Settlement for Reconciliation Project Unreconciled Transactions**

<b>2-6A. General Settlement of potential damages for all Unreconciled Transactions arising from the Reconciliation Project. Proceeds of General Settlement will be used to partially capitalize Development Bank (See Settlement 2-7)</b>	<b>300</b>
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<b>2-6B. Specific Settlement for the following 32,901 transactions for which supporting documentation could not be located during the Reconciliation Project:</b>	<b>300</b>
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Receipts:	1,123.3
Transfers:	479.6
Disbursements	<u>808.6</u>
Total	<u>2,411.5</u>

## Actual Disbursement Exposure can be computed as:

Unreconciled (\$ million, absolute value)	808.6
Less: Positive Disbursements	(73.6)
Attorney and Expert Witness Fees	(40.5)
Alaska Regional Corporation	<u>119.5</u>
Principal Disbursement Exposure	575.1
Interest on Principal	<u>1,361.8</u>
Total Disbursement Exposure	<u>1,936.9</u>

## Type 2 Claims Settlement Estimate (\$millions) (continued)

Type 2 Settlement Category	Total
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\$300 million will be disbursed to individual tribes with known unreconciled disbursements. The settlement for each tribe would equal the product of the percentage of each tribe's unreconciled disbursements plus interest (date of inception through 12/31/95) to total unreconciled disbursements plus interest on the total times the settlement amount of \$300 million. The excess principal and interest potential liability to the tribes will be considered satisfied by the 2-6A general settlement and by the 2-7 general settlement.

Type 2-7:	<b>General Settlement for IIM and Tribal Account Holders Establishment of a Development Bank for American Indians</b>
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Settlement 2-7:	<b>Establishment of a Development Bank for American Indians with the following capital and guarantees to be provided by the U. S. Government:</b>
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2-7A. Equity Capital	\$500 million
2-7B. Borrowing Capacity	10 x Equity Capital
2-7C. Initial Borrowing from U. S.	\$3 billion for 30 yrs at 30 year T Rate

Settlement 2-7 is intended to settle all other potential claims arising out of the reconciliation project not covered by Type 1 claims and other Type 2 claims and past potential liability for trust mismanagement practices in general. A full explanation of the rationale on this settlement and details on the Development Bank can be found in Appendix 1.

General Settlement 2-7 involves the creation of a federal Development Bank for American Indians (D-Bank) which will be formed and capitalized by the federal government and will be a nationwide financial institution providing a dependable source of lending to American Indians and American Indian Tribes and their communities and a dependable source of investing in American Indian Enterprises.

D-Bank will provide access to long-term loans and investments for economic development, consistent with principles of self-determination, self-governance and self-sufficiency and will provide access to low interest rates on loans, made possible by D-Bank's tax free status and its access to funding in the nation's capital markets at rates commensurate with those paid by the U. S. Government and Agencies of the U. S. Government.

D-Bank will also be allowed to invest up to \$300 million in the purchase, holding, financing and sale of fractionated realty interests in Indian allotment lands. Such purchases and financings will be made on prudential terms to eligible individuals and tribes. Such activities will be regulated by rules set forth in legislation to resolve the fractionated heirship issues and will be administered to achieve the consolidation of existing fractional interests and the prevention or substantial reduction of further fractionation.

D-Bank will be a for-profit financial institution and will not receive appropriated funds for operating expenses. It will receive appropriated funds for lifeline financial services and other non-profit programs as provided by Congress.

D-Bank will be authorized to invest up to 25% (initially \$125 million) of its permanent capital in eligible individual Indian and Indian Tribe businesses and projects which will aid economic development of the American Indian communities. These investments include common and preferred stock and long-term subordinated draft investments in:

- A. Infrastructure Acquisition and Development Activities
- B. Project Financing
- C. Venture Capital Businesses
- D. Established Business

D-Bank's capital and funding will be provided by the federal government in the following amounts:

2-7A. Equity Capital: 500

Initial Equity Capital of \$500 million will be provided by the federal government as part of Settlement 1-6A (\$200 Million) and 2-6A (\$300 million). Shares will be distributed to all federally recognized Tribes on some equitable basis set forth in legislation.

2-7B. Loans from U. S. Government: 3,000

\$3 billion in direct long-term loans will be provided to D-Bank for thirty years at the U. S. Treasury rate for 30 year obligations.

2-7C. U. S. Government Guaranteed Obligations 5,000

Future funding of up to 10 times equity capital from the sale of bonds and notes in the nation's capital markets by D-Bank will be guaranteed by the full faith and credit of the United States. Loans from the United States Government of \$3 billion are included in this amount.

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**Total Type 2 Claims:**

Direct Settlement Obligations: Settlements 2-1 through 2-7A 1,611.5

Loans from U. S. Government: Settlement 2-7B 3,000

U. S. Government Guaranteed Obligations of \$5 billion,  
net of \$3 billion Loan: Settlement 2-7C 2,000

**Total Type 2 Claims** 6,611.5

Summary of Type 1 and Type 2 Claims  
Settlement Estimates  
(5 millions)

Settlement Category	Principal	Interest	Total
<b>1-1. Due From Tribes: Forgiven</b>			
1-1A. Proposed Adjustments	11.6	11.6	23.2
1-1B. Rollover Amounts	<u>26.1</u>	<u>116.9</u>	<u>143.0</u>
<b>Total Forgiven (Does not require appropriations)</b>	<b>37.7</b>	<b>128.5</b>	<b>166.2</b>
<b>1-2. Due To Tribes:</b>			
1-2A. Proposed Adjustments	10.6	14.5	25.1
1-2B. Rollover Amounts	17.5	92.1	109.6
1-2C. Interest on Deposits Due to Lag Times		8.2	8.2
1-2D. Interest on Deposits Due to Lag Times (MMS)	—	<u>.5</u>	<u>.5</u>
<b>SubTotal Type 2 Claims Settlement</b>	<b>28.1</b>	<b>115.3</b>	<b>143.4</b>
1-3. Due From Tribes: Forgiven Passed Adjustments	-	-	-
1-4. Due To Tribes: Passed Adjustments	(1)	(1)	(1)
1-5. Disputed Claims Settled by Negotiation or Arbitration	(1)	(1)	(1)
1-6. Reconciled Disbursements with Incomplete Packages			
1-6A. General Settlement. Proceeds to D-Bank			200
1-6B. Payable to Tribes after Negotiation/Arbitration	<u>(1)</u>	<u>(1)</u>	<u>200</u>
<b>SubTotal Type 1-3 through 1-6 Claims Settlements</b>	<b>-</b>		<b>400</b>
2-1. IIM Account Holders Settlement Proposal	281		281
2-2. Restoration of IIM Thrift Industry Losses		13	13
2-3. Restoration of Overdraft Interest Clearing Accounts	42.2		42.2
2-4. Miscellaneous OTFM General Ledger Losses	28.3		28.3
2-5. IIM and Tribal Account Holders Joint Settlement for Implementation of Special Trustee's Strategic Plan	147		147
2-6. Settlement for Unreconciled Transactions			
2-6A. General Settlement. Proceeds to D-Bank	300		300
2-6B. Payable to Individual Tribes. Capped at \$300m.	300		300
2-7. General Settlement for IIM and Tribal Account Holders			
2-7A. Equity Capital for Development Bank provided by Settlements 1-6A & 2-6A	500		500
2-7B. Loans from U. S. Government	3,000		3,000
2-7C. U. S. Guaranteed obligations of D-Bank of \$5 billion, net of \$3 billion loan	<u>2,000</u>		<u>2,000</u>
<b>Total Type 2 Claims Settlement</b>	<b>6,598.5</b>	<b>13</b>	<b>6,611.5</b>

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**Total All Claims Settlements**

<b>1. Forgiven Amounts</b>	<b>166.2</b>
<b>2. A. Total Type 1 and Type 2 Claims Settlement Direct Obligations, net of \$500 million capital for D-Bank which was double counted (See Settlements 1-6A, 2-6A &amp; 2-7A) &amp; net of U. S. Loans &amp; Guarantees of \$5 billion</b>	<b>1,654.9</b>
<b>B. Loans \$3,000 and guarantees \$2,000 from U.S.</b>	<b><u>5,000.0</u></b>
<b>Total Claims Settlements including Forgiven Amounts</b>	<b>6,821.1</b>

(1) None unless tribes dispute account balance and bring successful negotiation/arbitration action.

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