

INDIVIDUAL INDIAN MONEY ACCOUNTS

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED SEVENTH CONGRESS

SECOND SESSION

ON

THE JULY 2, 2002 REPORT OF THE DEPARTMENT OF THE INTERIOR TO
THE CONGRESS ON THE HISTORICAL ACCOUNTING OF INDIVIDUAL
INDIAN MONEY ACCOUNTS

JULY 25, 2002
WASHINGTON, DC



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INDIVIDUAL INDIAN MONEY ACCOUNTS

THURSDAY, JULY 25, 2002

U.S. SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The committee met, pursuant to notice, at 10:06 a.m. in room 485, Senate Russell Building, Hon. Daniel K. Inouye (chairman of the committee) presiding.

Present: Senators Inouye and Campbell.

STATEMENT OF HON. DANIEL K. INOUE, U.S. SENATOR FROM HAWAII, CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS

The CHAIRMAN. I have just been informed that the cochair is involved in a very important conference meeting on energy, so I will proceed.

The Committee on Indian Affairs will meet this morning to receive testimony on the report of the Department of the Interior submitted to the Congress on July 2, 2002, on the historical accounting of Individual Indian Money Accounts pursuant to conference report 107-234 of the Interior Appropriations Act of fiscal year 2002.

One of the fundamental duties of a trustee is the duty to the beneficiary to "keep and render clear and accurate accounts with respect to the administration of the trust." The United States' duty as trustee for the funds held in trust for individual Indians and Indian tribes requires that the United States provide an accounting to the beneficiaries.

This duty has been the subject of several House-Senate conference reports on Interior Appropriations acts, the 1994 American Indian Trust Fund Management Reform Act and currently, in class action litigation brought on behalf of Individual Indian Money Account holders, asserting as one of several claims against the United States that the United States must provide the beneficiary account holders with an accounting.

As a function of treaties and the course of dealings between the United States and Indian tribes, the United States holds legal title to lands held in trust for individual Indians as well as individual Indian tribal governments. The revenues derived from trust lands are also held in trust by the United States for the benefit of individual Indians and tribal governments. Over the last 20 years, at the request of this committee, the General Accounting Office has monitored the efforts of the Department to address the manage-

ment of funds held in trust for individual Indians and Indian tribes.

In August 2001, the General Accounting Office reported to the committee that an independent public accounting firm audit of Indian trust funds for fiscal year 2000 showed that the Department of the Interior was maintaining approximately 1,400 accounts for 315 Indian tribes with assets in excess of \$2.6 billion, and over 260,000 Individual Indian Money trust fund accounts with a balance of \$400 million as of September 30, 2000. Receipts are deposited to these accounts primarily from land use agreements, royalties on natural resource depletion, enterprises related to trust resources, judgment awards, settlement of Indian claims and investment income.

However, the audit report noted that reliance cannot be placed on the balances reflected in the trust fund accounts until tribal accounts are reconciled and/or resolved through negotiation and settlement and class action litigation on behalf of Indian Money Account holders is resolved.

Today we find ourselves at a critical crossroads as we consider the Department's report and the information it provides to the Congress on the uncertainties associated with the conduct of an historical accounting. First, there is the uncertainty associated with gaps in the records and documents upon which an historical accounting would necessarily rely. Second, there is the uncertainty associated with the time that would be involved in conducting a complete historical accounting.

Third, there is the uncertainty associated with the projected costs of an historical accounting. The Department's report projects that the total cost of an accounting would be \$2.4 billion with an error rate in the projected cost of minus 5 percent or as high as plus 25 percent.

The Department's report sets forth the methodology that the Department anticipates employing in conducting the historical accounting of Individual Indian Money Accounts. What the Department's report does not address is whether there are other methodologies that might be applied and whether alternative methodologies might entail less time, less uncertainty and less cost. Some have suggested that with all the gaps in information, the lost and destroyed documents, it is not even possible to conduct a complete historical accounting.

Beginning in 1995 and in subsequent testimony before this committee, the GAO suggested that the Congress consider a settlement of claims against the United States for an accounting. We have called upon the General Accounting Office and our third panelist today to assist the committee in developing an understanding of whether these matters lend themselves to a resolution through a legislative settlement. However, even if the Congress and the interested parties were to agree that the path to settlement of claims against the United States is the preferable path to pursue, the duty on the part of the trustee to provide an accounting to the beneficiary remains.

These are the challenging issues that are the impetus for the Committee's hearing this morning. And we look forward to the testimony that will be presented.

May I at this time call upon the Director of the Financial Management and Assurance, General Accounting Office, of Washington, DC, McCoy Williams. Mr. Williams, welcome, sir.

STATEMENT OF McCOY WILLIAMS, DIRECTOR, FINANCIAL MANAGEMENT AND ASSURANCE, GENERAL ACCOUNTING OFFICE, WASHINGTON, DC

Mr. WILLIAMS. Thank you.

Mr. Chairman, I am pleased to be here today to summarize previous GAO work that identified gaps in information needed to reconcile Individual Indian Moneys trust accounts and the rationale that led us to suggest, based upon our earlier work, that Interior seek alternatives to reconciliation such as a negotiated agreement. I am accompanied today by Mr. Koury and Mr. Jacobsen.

Before discussing our prior work, let me point out that we have not yet had time to analyze Interior's July 2, 2002 Report to Congress on the Historical Accounting of Individual Indian Money Accounts, evaluate its proposed methodology or discuss the report or its proposed methodology with Interior officials. Also, we have not done recent work to evaluate the current state of Interior's Individual Indian Moneys records.

Nevertheless, it is clear that a reconciliation of IIM accounts is a daunting endeavor, both in terms of the magnitude of the project's scope and the obstacles that are likely to be encountered. We reported to this committee in June 1996 that based on our work, we concluded at that time that records were not available to support a reconciliation of the IIM accounts. In addition to missing records, we pointed out obstacles that Interior would encounter in pursuing an IIM account reconciliation, such as the lack of an audit trail through Interior's integrated records management system, which was used to maintain IIM account information and the differences in the way the system operates at various Interior locations, which affect the consistency of the IRMS information.

Much of our previous work in the area of trust fund reconciliations relates to an earlier account reconciliation requirement and a related Interior effort to reconstruct both tribal and IIM trust accounts. From 1992 through 1997, we monitored and reported on various aspects of Interior's planning, execution and reporting of results for the reconciliation project. In our June 1992 report on Interior's efforts to reconcile Indian Trust Accounts, we noted that efforts originally consisted of two phases. The first phase was to cover, in addition to 500 tribal accounts, 17,000 Individual Indian Monies accounts maintained at three agency offices.

However, after an initial assessment by Interior's contractor of the level of effort and cost needed to complete the various segments of reconciliation work, a decision was made not to reconcile IIM accounts as part of the project. In reporting this status, we noted that Interior and its contractor had determined that a full reconciliation of all tribal and IIM accounts was neither possible nor cost effective due to missing records, commingled tribal and Individual Indian accounting records, poorly documented accounting transactions and the volume of data to be reviewed.

At that time, we recommended that Interior seek alternatives to the reconciliation project and develop a proposal for reaching a sat-

isfactory resolution of the trust fund account balances with account holders. Among alternatives that we recommended for Interior's consideration were that Interior consider negotiating agreements with Individual Indians on balances reported on their account statements and request legislated settlements on all selected or accounts.

In a number of testimonies and reports over the next several years, we supported the idea of Interior and tribal and Individual Indian money account holders negotiating a resolution of their issues. Interior's July 2, 2002 report relates directly to the American Indian Trust Fund Management Reform Act of 1994, which required Interior to reconcile tribal and IIM accounts and the ongoing class action lawsuit commonly referred to as the *Cobell* litigation, which is presently before the United States District Court for the District of Columbia.

In this regard, my comments today are not intended to address, nor is GAO taking any position on what level of accounting the 1994 Act or the courts have required of Interior thus far, whether Interior's plan satisfies those requirements or if so, whether Interior's plan is the only or best approach for Interior to satisfy the requirements imposed on it. Those issues will ultimately be decided by the court.

Having said that, we note that Interior's report recognizes that a number of obstacles, similar to those we have previously reported on, will complicate its ability to document for IIM account holders the amount and source of funds deposited to, managed in and disbursed from their IIM accounts. The Interior report enumerates among those obstacles known discrepancies in the balances at the trust fund level report by Treasury and Interior as well as the potential for errors in the electronic accounting system data, missing paper transaction records and missing land ownership information and revenue instruments. Interior's enumerations of obstacles is consistent with what our prior work has shown.

Mr. Chairman, this concludes my statement. I would be glad to answer any questions that you may have.

[Prepared statement of Mr. Williams appears in appendix.]

The CHAIRMAN. In the scholarship or vocabulary of accounting, in which GAO has considerable expertise, what do the terms complete historical accounting and historical accounting mean?

Mr. WILLIAMS. Mr. Chairman, those two terms are not terms that you would regularly see in the accounting profession. From the standpoint of various terms that we use, these are not two. What this would boil down to is this is a situation where this term has been coined in this particular litigation case as far as what the parties are looking for. And to that end, what it would mean in that situation is basically what all of the parties to the litigation would agree to as far as, are we satisfied that we have a complete accounting. But as far as the accounting profession itself is concerned, this is not a term that is used extensively throughout the industry, to my knowledge.

The CHAIRMAN. Since you have been following and monitoring the case, how do you interpret those terms? How does GAO interpret those terms?

Mr. WILLIAMS. From a general accounting standpoint, it's a process in which the agency is capable of identifying all of the account holders and being able to produce or prepare records that would show amounts of funds that are owed to all of the individuals, any activity that's taken place in the account, any disbursements that have taken place as well as the ending balance.

The CHAIRMAN. Well, over the years, GAO has issued a whole series of reports on the Interior Department's efforts to reconcile these accounts. You issued one in June 1992, and in March 1995, the report was entitled Indian Trust Fund Accounts Cannot Be Fully Reconciled. Based on these and other reports, and as you know, we rely upon the GAO as experts in this area.

Mr. WILLIAMS. Yes, sir.

The CHAIRMAN. So my question is, is GAO still of the view that these accounts cannot be reconciled, or put another way, that a complete historical accounting cannot be rendered?

Mr. WILLIAMS. Based on our previous work, and the information that we were able to review and analyze at that particular point in time, that was our position. As far as the current plan that the agency's putting forward, as I said in my statement, we have not had a chance to review that. I am not sure if there are any additional procedures or steps that would be in that plan that would make it possible. But GAO's position was that these accounts would not, could not be reconciled based on some of the gaps that had been identified and some of the problems that had been encountered in trying to do previous reconciliations.

The CHAIRMAN. How long will GAO take to fully analyze the July 2, 2002 report of the Department of the Interior?

Mr. WILLIAMS. We would put the two together and it would take us 1 month or so to do an analysis of it. This process would require from looking at the report, just giving it an initial read, where we got access to it last week, I received a copy of it last week, there were several players involved in putting together the document. There were cost experts, there were accounting experts, there were trust experts. So we would have to talk to those various individuals to get some input as far as what was the thinking in going in to put together the plan. Then we went through the analysis. So 1 month or 2 months to do a good analysis of the plan.

The CHAIRMAN. Would it be possible for your agency to provide this committee with a report before the end of September?

Mr. WILLIAMS. Let me provide for the record a statement on that. I'm not sure at this particular point in time. I need to discuss it. We would make every effort to put together a document that would lay out our initial assessments of the report. If it's okay with you, Mr. Chairman, we'll work with the staff to come up with a time that would work out as far as providing it possibly within that time frame.

The CHAIRMAN. It would be most helpful, sir.

Mr. WILLIAMS. Thank you.

The CHAIRMAN. In prior testimony before this committee, GAO suggested that the Congress consider the settlement of beneficiaries' claims against the United States for an accounting. What is it, in your assessment of the process involved in the reconciliation of trust fund accounts, that led GAO to this suggestion?

Mr. WILLIAMS. It was a combination of things that we had reported on. One, missing documentation, problems with the accounting system, just the vast number of transactions in the length of time that you're talking about as far as doing the reconciliation that goes back to the beginning of the first allotment. So it's a combination of those points.

The CHAIRMAN. In your investigation and study, did you come to any conclusions as to the cause of the missing documents, how they became missing?

Mr. WILLIAMS. No; we did not. In our review, we basically looked at the process of the reconciliation, we didn't get behind some of the root causes as far as why the documents were missing, et cetera. It's just that it was identified as one of the barriers, I guess you could call it, to completing the process.

The CHAIRMAN. And at this moment, do you still believe that a settlement is a process the parties should explore?

Mr. WILLIAMS. That is still GAO's position that that is one of the options the committee should consider.

The CHAIRMAN. Would you envision that one fundamental component of a settlement is that the Department and the Individual Indian Money account holders would agree on a balance in each account that would eliminate the need for an historical accounting of each account?

Mr. WILLIAMS. In our previous testimony, that was one of the options that we recommended. As I said, that was one of several options that we suggested should be given consideration.

The CHAIRMAN. We have heard many suggest that there should be alternative methodologies. In fact, the GAO has suggested that. May I call upon the GAO to identify other ways to approach the duty of conducting an accounting or any other methodology that might be applied to an accounting, and tell us about it?

Mr. WILLIAMS. In our previous reports, we talked about various options. Some of the options, well, one of the options I just mentioned, and that would be a process in which a letter would be mailed to the individual Indian stating that this is the balance that we're showing, do you agree or disagree. That's one option. The option that the agency is putting forward now as far as looking at all of the accounts that's been identified, that's another option.

So there were several that we've identified, and those were just two of many ways that a reconciliation could be performed. And let me let Mr. Jacobson add a little bit to that.

Mr. JACOBSON. Mr. Chairman, I appreciate the question. One of the difficulties with answering that question is that the methodology you would employ is affected by what your duty is and what your objective is. One of the challenges Interior faces is characterized in their own proposal. They've offered a methodology which they've characterized as the broadest reading of the court's opinions of the 1994 act.

The issue of what alternative methodologies might be out there depends on whether one accepts that broad reading of the 1994 act or if there is some alternative reading of what their duty is. And that's not really a call for us to make, that is a legitimate question for Interior as to why they took the broadest reading and what alternative readings of their obligations might be available. In some

respects, that would dictate what the alternative methodologies may be.

The CHAIRMAN. If you cannot recommend alternative methodologies, who can?

Mr. JACOBSON. Well, I think we can talk, in responding to the request that you and Mr. Williams discussed earlier, we can certainly talk to those experts and look at and find out what alternatives they considered. There is some suggestion in some of Interior's documents that they considered other methodologies, but we haven't done the work to find out what those are. That may shed some light on the question that you've posed.

The CHAIRMAN. Can GAO do the work?

Mr. JACOBSON. Do the work meaning do the reconciliation?

The CHAIRMAN. No; identify other methodologies.

Mr. JACOBSON. We can talk with the people who worked with Interior and find out what else they considered. That process may lead us to identifying other methodologies that parties could consider. But until we go in and start doing some work, we wouldn't know at this point until we went and saw what was out there.

Obviously, there are different methodologies for doing different forms of accounting, whether it's accounting by trustees or accounting of other natures. But the specific methodology that would be reasonable depends on what the objectives are. And we may, we will certainly as part of the effort that Mr. Williams described to you, we will talk to the people who have been involved in this process to see if in fact there are other methodologies that we'd consider.

The CHAIRMAN. I realize that the staff in the GAO are foremost in the field of accounting. But would you be able to identify whether there are other experts in this field that we could consult with?

Mr. JACOBSON. We could do that.

Mr. WILLIAMS. Yes, Mr. Chairman; we can do that.

The CHAIRMAN. That would be most helpful to us, sir.

And I thank you very much for your assistance.

Mr. WILLIAMS. Thank you.

The CHAIRMAN. And now may I call upon the second panel, the associate deputy secretary of the Interior, office of the secretary, James Cason, accompanied by Bert Edwards, executive director, office of historical trust accounting, of the Department of the Interior; and the special trustee for American Indians, from the Department of the Interior, Tom Slonaker.

Mr. Cason.

STATEMENT OF JAMES CASON, ASSOCIATE DEPUTY SECRETARY, OFFICE OF THE SECRETARY OF THE INTERIOR, ACCOMPANIED BY BERT EDWARDS, EXECUTIVE DIRECTOR, OFFICE OF HISTORICAL TRUST ACCOUNTING, DEPARTMENT OF THE INTERIOR; AND TOM SLONAKER, SPECIAL TRUSTEE FOR AMERICAN INDIANS, DEPARTMENT OF THE INTERIOR

Mr. CASON. Thank you, Mr. Chairman. My name is Jim Cason, I'm the associate deputy secretary for the Department of the Interior. The Department has prepared one testimony for the panel, which I'd like to submit in its entirety for the record.

The CHAIRMAN. Without objection, it will be made part of the record.

Mr. CASON. Thank you, Mr. Chairman.

We just have a few brief comments, and then we will take questions. We're pleased to be here to discuss the Government's trust accounting activities, in particular, those that are oriented towards historical accounting. The Government has collected and disbursed funds to Indians for over 100 years. Historically there has been no standard practice to provide regular, detailed accounting statements to Indian beneficiaries. That's the reason we're here.

With the passage of the American Indian Trust Fund Management Reform Act of 1994, Congress required the Secretary to account for daily and annual balances of all funds held in trust by the United States for the benefit of Indian tribes or Indian individuals which were deposited or invested pursuant to the act of June 24, 1938. Subsequently, the District Court here in the District of Columbia required the Secretary to provide an accurate accounting of all money in IIM accounts, that's Individual Indian Money accounts, held in trust for the benefit of the individual Indians without regard to when the funds were deposited. And that gives us an historical element to our accounting.

Subsequently, Congress required the Department to prepare and submit a report describing how the Department would proceed to undertake a historical accounting. And the Department's plan was provided to Congress in early July 2002. The report details an enormous and challenging undertaking. The report details a historical accounting for Indian beneficiaries, both for current and former account holders. The report delineates an anticipated workload management approach, and an anticipated cost for the accounting process.

The report required further discussion and possible refinement with Congress and the Court. Congress needs to determine if the plan is appropriate for meeting the Government's trust accounting responsibilities. Congressional appropriations will be needed to undertake the historical accounting and the appropriations rate will influence the time schedule for completing any accounting that we undertake. The Department believes that the Court may provide additional guidance on this subject as well.

Right now, all three branches of Government are interested and involved in this historical accounting effort. We need to work together to define and implement an approach that meets our trustee responsibilities to individual Indian beneficiaries. The report provides Congress a positive step forward. This hearing is another positive step forward. And Mr. Slonaker, Mr. Edwards and I are happy to be here to answer questions. Thank you.

[Prepared statement of Mr. Cason appears in appendix.]

The CHAIRMAN. Before we proceed, may I call upon the Vice Chairman.

Senator CAMPBELL. Thank you, Mr. Chairman.

I have no formal opening statement. I apologize for being late. We were in conference on the energy bill. As you know, there is a section there dealing with Indian energy that I'm trying to have expanded. So I had an opportunity to offer that amendment this

morning. So I'm sorry I'm late, and I'm just very happy to sit and listen. Thank you.

The CHAIRMAN. May I proceed by asking the Special Trustee questions? In the most recent report of the Court Monitor for the District Court in which the *Cobell-Norton* litigation is pending, the text of several memoranda that you have transmitted to Mr. Edwards was printed. In your memo of April 30, 2002, you stated:

I do not believe an accounting as that term is generally understood in the established trust scholarship acceptable to either the beneficiaries or the Special Trustee can be constructed. Short of a settlement, the best that might be able to be accomplished is the identification of the gaps of information. With that, the Department could perhaps seek some instruction from the judge on how to proceed. I remain concerned, however, that I have not heard anyone in the Department define the characteristics of an accounting to include anything more than the funds actually collected by the Department. That of course is inadequate.

And in your memo of May 22, 2002, you stated:

It is evident that the long term record of the Department's administration of the Indian trust accounts is incomplete to some degree. In addition, during the past year, the Special Master has been able to breach the Department's electronic systems that house the trust data, thereby demonstrating that the data may not be accurate. Because it is the duty of the Trustee to know all the facts about the administration of the trusts, these flaws cause me to doubt the ability of the Department to show either itself or the beneficiaries in sufficient detail the nature and amount of the trust property and its administration.

Mr. Slonaker, in your official capacity and from what you know of the gaps in information, do you believe that a complete historical accounting of the Individual Indian Money accounts can be achieved?

Mr. SLONAKER. Good morning, Mr. Chairman, Senator Campbell.

No; not completely. It may be possible to reconstruct a good many accounts completely. Even identifying the assets and the flow of income from the assets, which by the way is something that's incumbent upon the trustee to do.

I believe that the Office of Historical Trust Accounting, however, can go quite a way toward identifying what the gaps are in the information. As the trustee, it's crucial that every effort be made by the trustee to make certain that we have exhausted every means to identify the assets and the incomes that belong to the beneficiaries, and bring that accounting right up to date.

The CHAIRMAN. You spoke of obstacles. In your view, what are the obstacles, legal or practical, that would be presented if the Congress were to pursue a path of settlement of claims?

Mr. SLONAKER. The obstacles to the actual accounting itself I think are fairly well known in terms of their type. There are records that we believe are probably either destroyed or lost. There is, as the GAO panel already has indicated, there are situations where the accounting was not done properly, we believe, in the initial instance. So there are obstacles to getting a full and complete accounting.

What those obstacles are, which you termed as a gap, have to be further determined. They can only be estimated at this point in time.

The CHAIRMAN. Everyone seems to speak of missing or destroyed documents. Could you tell us as to when these documents began to be missing or when the Government learned that they were destroyed?

Mr. SLONAKER. I cannot, sir. We only have, at least I only have anecdotal evidence of missing documents at this point. I think that's the point of the historical trust accounting report in part, and that is that these gaps have to be identified as to what point they started and where those gaps are and what the nature of the gap is.

The CHAIRMAN. So there is no proof or data to tell us when the gaps began to come into existence?

Mr. SLONAKER. Not that I'm aware of, sir.

The CHAIRMAN. So these gaps or obstacles are such that settlement would be extremely difficult?

Mr. SLONAKER. I think my response to that, Mr. Chairman, has to be that the Trustee needs to do everything in his power to establish what the liability of the Trustee may be. The size of the gaps, the nature of the gaps has yet to be discovered. Whether that lends itself to identifying a figure which in turn might lend itself to some sort of a settlement is not clear to me.

Mr. CASON. Mr. Chairman, would it be okay if I make an addition on this? I think one of the things that we need to just try to keep in perspective is what the target is that we're after or what the job is. And there's been lots of speculation about whether or not the Department can do an accounting, cannot do an accounting, whether it's a complete accounting, etc. Lots of terms, lots of commentary on what we can do.

I think we need to take a look at the issue from two perspectives. One perspective is that the job that we have to do, as we perceive it in the Department, is to conduct a historical accounting on an account by account basis. So each individual person, their individual account is a task for us to do as part of an historical accounting. And within that boundary, our expectation is that we do have sufficient information to be able to do a complete accounting on a number of those individual accounts. And our expectation is it's a significant number, we don't know exactly how many, but a significant number of them.

So we think that we can move forward with the information we do have available to do a good, reasonable accounting for a large number of individual accounts. There's the other perspective that says, can you ensure that we have a complete accounting for all of the accounts. And from that perspective, I think everybody is in agreement that the answer is probably no, that we cannot, for all of the accounts, balance them historically from whenever funds were deposited. So I think we have agreement on that. And I think the issue that we need to have consideration on is, if we can't do the entire thing but we can do a good job on a lot of it, then should we go ahead and proceed forward to do the best that we can under the circumstances to do the accounting for the parts that we can accomplish.

The CHAIRMAN. I think you are right on target, sir.

Mr. CASON. Thank you.

The CHAIRMAN. Mr. Slonaker, Section 306 of the 1994 Trust Management Reform Act establishes an advisory board to advise you on matters within your jurisdiction. Section 133 of the Interior Appropriations bill that was recently approved by the House of Representatives includes language directing you "in consultation

with the Secretary of the Interior and the tribes” to appoint new members to the advisory board. Have you found the current membership to be unsatisfactory in any way, or unable or unwilling to provide you with the advice you need regarding matters within your jurisdiction?

Mr. SLONAKER. No; I have not found it unsatisfactory at all. Quite the contrary. It’s a good sounding board for me. I think that there is a fair amount of frustration on that board and a fair amount of frustration of my own in the sense that they are not seeing trust reform proceed at the rapid pace that they want, that they don’t see the stronger direction until perhaps more recently that they want. And I think quite candidly, the board is looking for a stronger role, it was hoping for a stronger role. They are an advisory board and technically just to me. But it has been helpful, sir.

The CHAIRMAN. Do you think you need new members, as the House bill says?

Mr. SLONAKER. I do not.

The CHAIRMAN. And finally, if I may ask this, under Section 303 of the 1994 Trust Reform Act, the Special Trustee must certify in writing the adequacy of each budget request within its area of jurisdiction:

To discharge effectively and efficiently the Secretary’s trust responsibilities and to implement the comprehensive strategic plan.

If the July 2002 report to Congress were presented to you in the form of a budget request, could you certify that carrying out historical accounting as set forth in the report would in fact discharge the Secretary’s trust responsibilities effectively and efficiently?

Mr. SLONAKER. No, I could not. The plan, while it is, I think, a good effort, simply can’t produce a full accounting as we’ve already mentioned, a complete and full accounting which the Trustee is obligated to provide to the beneficiaries. It could do, I think, the best possible, assuming it has sufficient resources. But the resources that would be required, the funding that would be required is, I think, more of a best guess but not much. It’s very difficult to assess the cost of something like this. We’ve had some experience in the past in the Department on document production and researching accounts which we’ve borrowed on for this report. But it’s still difficult to assess the true cost of something quite this large.

But beyond that, it can only be an attempt at the best possible research of what is due the beneficiaries. Since it can’t produce a full accounting, I don’t believe it satisfies the trust responsibilities and the Secretary to effectively and efficiently provide for that.

The CHAIRMAN. I think as Mr. Cason has indicated, this would be a good step. I appreciate the candor in which all of you have responded to our questions.

Before I call upon the Vice Chairman, Mr. Cason, can I ask a question, sir?

Mr. CASON. Obviously.

The CHAIRMAN. Does the Administration support the inclusion of language set forth in the House Interior Appropriations Bill, sections 131–134 regarding, first, the Ernst & Young report on IIM accounts of the *Cobell* plaintiffs, second, the fees of the Special Master and the Court monitor in that case, third, the Special Trustee advisory board established in the 1994 Trust Reform Act, and

fourth, the payment of attorneys fees and costs incurred in the *Cobell* litigation by Department of the Interior employees?

Mr. CASON. Mr. Chairman, on the E&Y report, the Department has not taken a position one way or the other. The position that we're in is we're attempting to be helpful to Congress and to be responsive to the Court. This issue has come up once before, where Congress made a request for the release of the E&Y reports. And the Department forwarded that request to the Court and the Court rebuked the Department for considering that as an option.

The Department is willing to continue to work with Congress and the Court to try to be helpful to both sides, because we believe that Congress is entitled to an explanation of the results of the money that it has invested. In this particular case, we've spent millions of dollars doing the reconciliation. So we think it's reasonable that the Court gets some sort of report from us on that. But at the same time, we have to respect the privacy rights of the individuals that were involved.

So we have a job to try and find a happy medium that's mutually beneficial for all. So we'll do what we can to help, but this is an issue that's somewhat controversial.

Regarding the second issue on the fees, the Department has not taken a position on this at all, and we don't anticipate taking a position. This is an issue that was not an initiative of the Department. We think this is an issue between the appropriations committees and the courts to solve. We'll do whatever we're directed to do.

Regarding the advisory commission or advisory panel for the Special Trustee, the Department has not taken a position on this issue, either. Mr. Slonaker has taken a position. To the best of my knowledge, this is not an initiative of the Department, it's an initiative of the Appropriations Committee. And it's my understanding that the underlying rationale supplied by the Appropriations Committee is a concern about having one of the five named plaintiffs in the *Cobell* litigation be on the advisory panel, and it is viewed as a conflict of interest.

And on the last item, the attorney fees, the Department would support that. We were asked in a hearing on the House side by Congressman Dicks to supply some information about how to provide for paying attorney fees for individuals who were named as alleged contamnors in the *Cobell* litigation. Congressman Dicks felt that the Department is in a very difficult position, having a number of its employees named as potential contamnors and sought some recommendations on how we could deal with that, and the Department has tried to respond.

The CHAIRMAN. So in one phrase, this is not your initiative?

Mr. CASON. It is not our initiative.

The CHAIRMAN. I thank you very much, sir.

Mr. CASON. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Vice Chairman.

Senator CAMPBELL. Thank you, Mr. Chairman. I'll try to be brief.

Two hundred and forty million pages of records, your statement says there are about 240 million pages of records that need to be analyzed. I'll bet you there's another 240 million pages of testimony, documentation, written things and so on, and we haven't cut

check one. I was interested in the report's conclusion that it will cost \$2.4 billion and at least 10 years to complete the historical accounting. There are a lot of Indian people out there that are going to die before that, waiting for that money, if they have to wait 10 years.

Let me ask you, what alternatives to that document intense, exhaustive kind of proposal, did the Department undertake? Did you look at anything else?

Mr. CASON. Yes, we did Senator; we did look at some other alternatives. It was a determination of the Department that any other alternative that we looked at appeared to us to be short of the complete job to provide an accounting, account by account, to all the Indian beneficiaries. We looked at the possibility of statistical accounting, we looked at a possibility of buyout programs and others. But we thought that it would be helpful to the Congress to lay out what the job would be to do a full accounting, to the extent that we can do it, and certainly there are some impediments to a complete accounting. But we thought that it would be helpful position to start first with doing a full accounting and look at alternatives as a second matter.

Regarding payments to Indians, I'd like to point out that the accounting process is to basically go and document the activity in an account. And as far as I understand, there is nothing in that process that would hold up making payments to Indians that are legitimate payments through the process, that the payments to Indians for income that comes in and out of the account is an ongoing process, and that the accounting process we're talking about is just documenting what happened.

Senator CAMPBELL. I see. Well, I appreciate that you want to do a good job for the Indians. I think from the Indians' perspective, though, we're doing a job on them, not for them. Because we just keep going around and around with this.

Of all the people that we owe money to, wouldn't it be simpler to settle with those owners that would be willing to settle?

Mr. CASON. Senator, that's certainly a possibility. The question for us, as far as the Department is concerned, is what exactly are we settling on. At this point, we don't know exactly who has a claim. We have a class. So all Individual Indian money account holders are part of the class. So we have on the order of 250,000 to 300,000 current account holders who are part of that class. And as we understand it, there is at least the possibility that former account holders are part of the class. So there may be as many as 500,000 accounts. Then, if you break down the job or the settlement, down to an account level, to say, okay, you're an individual, how much do I owe you and why do I owe it to you, we don't have answers for that.

That's part of the conundrum we have right now; in order to get to that answer, you need to do some accounting to actually run through the account and the activities of the account to see if the balance in the account is consistent with the activity in the account. And if you arrive at the same number, there's nothing to settle. If you arrive at a different number, then there's an issue of what you settle.

Mr. SLONAKER. Senator Campbell, may I add on to that?

Senator CAMPBELL. Yes, Mr. Slonaker; go ahead.

Mr. SLONAKER. I just want to raise a possible issue with your scenario, and that is the possibility that one beneficiary could be treated differently than another beneficiary. I think that's something that would have to be thought through very carefully.

Senator CAMPBELL. I guess if you reach some kind of a settlement with individuals, one may settle for a different amount than the other one. But if they accept it willingly, then what recourse would they have? That would be what they want, too. What's the problem?

Mr. SLONAKER. Conceivably you could be settling with some beneficiaries, let's say in the present day, and then eventually get to some other beneficiaries who you are finally able to reconstruct or to estimate what they're owed, and the funding may not be there for that money, and so they may be treated differently. I just raise it as an issue here.

Senator CAMPBELL. I understand too that your statement reads, I haven't read it completely, but it does have in there that there's a high level of uncertainty in cost estimates for the historical accounting and that the bulk of the costs is for transactional analysis. I don't know if I asked this clear enough at first or not, but isn't there a way we can do some kind of a modeling with greater accuracy and a lot cheaper than just exhaustive and particularly one that has a high level of uncertainty?

Mr. CASON. Senator, I would say that you have two criteria in your question, accuracy and cost. Certainly we could do modeling. The modeling probably would not improve accuracy over doing a full accounting, it would be less accurate. However, modeling probably would be less costly, and you could move more quickly in a model scenario than you could do in a full accounting scenario.

Senator CAMPBELL. Mr. Slonaker, regarding your role in the historical accounting, do you interpret the American Indian Trust Reform Act of 1994 as requiring the Special Trustee to approve the methodology use to complete a historical accounting?

Mr. SLONAKER. The words actually in the act are monitor, I think it's a question of the Special Trustee being satisfied that the full accounting responsibility has been leached, the methodology is a part of that decision, yes.

Senator CAMPBELL. And dealing with Congress, do you believe that the July 22, 2002 report provides enough information for us to decide whether it should embark on an accounting effort that may cost \$2 billion or more?

Mr. SLONAKER. I'm not sure that it does, Senator. I think there may be additional work that's required to identify the gaps and to better estimate the time required and the funding required. But I think it's a full faith effort to get it started and to do the full accounting that Mr. Cason was referring to.

Mr. CASON. Senator, we'd be happy to supply additional information, too, if the committee has any questions.

Senator CAMPBELL. I have some further questions I'd like to submit in writing, if you would answer them, I would appreciate it. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Cason, if I may followup on the vice chairman's questioning, when we speak of missing or destroyed docu-

ments, no one is suggesting that all of the documents are missing or all of the documents have been destroyed. Would you say that the bulk of the necessary documents are still in existence?

Mr. CASON. Mr. Chairman, that would be my assessment. We don't really have a number to know exactly how many documents have been generated over the last 130 years. But the estimate that we have on the table right now is we have somewhere on the order of about 500 million pages of documents, and we have an assortment of computer systems that have information in them as well.

So we believe that we have a lot of information that could be brought to bear to do a historical accounting. But we also realize that we don't have all of the information that may be needed to do a complete accounting of all accounts. So where we are is, we believe that we can do a reasonable accounting for a lot of accounts. At this point it's uncertain as to how many that would be. But we think that we can do a lot to move the process forward with what we have, and that there will be some part that we'll have to work on in this process where we have incomplete information.

The CHAIRMAN. With the existence of relevant documents, that you have indicated, most of them are still in existence, plus the electronic equipment that you have had since 1985, do you not think, as the vice chairman has suggested, that certain accounts can be easily resolved, because they are backed up with necessary documentation?

Mr. CASON. Mr. Chairman, we expect that there will be some accounts that can be easily resolved and addressed, and that there will be some that will be very difficult or impossible. So our plan basically envisioned a workload to try and address all of the accounts, both current and former, and that we would use best efforts to try and reconcile them to the extent that we had information that was reliable or we could develop methodologies based on other information and fill information gaps.

The CHAIRMAN. This question is being asked because your report of July 2002 suggests that the time span required may be 10 years. And there is a question as to whether 10 years will be sufficient.

Mr. CASON. That's correct, Mr. Chairman.

The CHAIRMAN. If that is the case, if you do have individual accounts that are clearly resolvable at this moment, why have them suffer and wait the 10 plus years?

Mr. CASON. Mr. Chairman, I would say just on the surface that we tried to develop a workload approach to deal with this issue. And we've been using the analogy within the Department that we have an elephant that we have to eat a bite at a time. And no matter where you start with this, we only have so many resources available in terms of time and people and money to do accounting.

What we've tried to do is set some priorities in the report that we provide to Congress about how we would go about the job. What we established as priorities first is, there's a sizeable chunk of money that we think would be relatively easy to resolve in the form of judgment accounts and per capita deposit accounts. We've already started the process of reconciling those accounts. Mr. Edwards has recently completed about 8,000 of those accounts, and we're on the cusp of sending out notifications on those that have been reconciled. We have a few thousand more of those accounts

that we already have in process to reconcile while we go through the debate about other individual accounts and the complexities that are involved in this process.

Then after that, we try to set some priorities—simply, under Jerry Maguire saying, “go where the money is.” We basically took all the accounts to the extent that we have knowledge of them and tried to array them in a way that we had highest balance of the account with highest throughput through the account for the last 15 years, all the way down to the lowest balance and lowest throughput. And our priorities were to go to where we had the highest throughput and the highest balance in accounts, to do those first and progressively work our way down from most important accounts down to least important accounts, money as the criteria.

So we laid out a workload process to try and get the biggest bang for the buck in the shortest period of time to the most beneficiaries we could. Certainly there’s other ways of approaching it, but we laid it out one way. We’d be happy to discuss with the committee and others in Congress, if there are other priorities that we ought to be pursuing, other than ones we laid out.

The CHAIRMAN. The vice chairman and I felt that if there are accounts that can be easily resolved and closed, why not close them and come before us 6 months from now and say, we have a balance of now \$1 billion, we have cleaned up 1½ billion, or something like that? It would make you look good. [Laughter.]

Mr. CASON. Looking good is a good thing. We’d like to do that. And actually, Mr. Chairman, we have a similar thought process, that the thing that is most helpful to us is actually show results. We’ve done accounting. And that’s why we started with the judgment accounts, and we have completed a reconciliation on about 8,000 of those. So we are heading in the same direction. We want to take the ones that we think we can get off the ground without a lot of complication and get those done and off the plate, and then move on to the more complicated ones.

The CHAIRMAN. The grapevine tells me that the Department may seek another delay.

Mr. CASON. A delay for what, Mr. Chairman?

The CHAIRMAN. In the *Cobell* case.

Mr. CASON. I’m not aware that we’re seeking any delay.

The CHAIRMAN. Well, whatever it is, it has taken many years, and pursuant to a report, it will take at least another 10 years. Are you completely satisfied that you can finish this accounting in 10 years?

Mr. CASON. No; I’m not, Mr. Chairman. This is a big job. And this is kind of uncharted territory. To the extent that we’ve shopped around, I don’t think we’ve found anybody that’s ever tried to take on a job like this. Going back to do a historical reconciliation of accounts with a long history just isn’t something that’s pretty common for accounting firms to do or the Government to do. So we’re in uncharted territory. We have significant structural issues to have to overcome.

For example, we estimate that there’s as many as 500 million pages of documents that we’re going to have to sort through to get the relevant information to do an historical accounting. We have a

variety of accounting systems that have been employed. Some of those systems have varying degrees of success. We've had generations of Indian agents involved in the process and generations of beneficiaries. It's a difficult process. And there are weaknesses in the system.

Ten years was an estimate for going through the process, assuming adequate funding to do the job. And if funding is stretched out, the job will take longer. If we run into impediments that we don't expect, the job could take longer. But we gave a best estimate, based on our feeling of how doable the job is with a reasonable staff size of contractors and departmental staff.

The CHAIRMAN. In your statement, you indicate that the plaintiffs claim that the Government owes them \$137 billion. And you counter that by saying that there is no evidence at this moment that would support such a claim. What do you think the realistic number would be?

Mr. CASON. Mr. Chairman, we have no idea. We don't know how you would make that determination unless you actually go through some sort of an accounting process to identify where errors occurred in the accounting process over the last 100 or so years. Our best estimate of how much throughput we've had through these accounts since 1909 is about \$13 billion, moneys that have come in and been disbursed through the process. We know that there is about \$404 million in the individual account balances right now, and our estimates, as much as we know, is around \$12.6 billion worth of throughput.

We frankly don't know how we get to \$137 billion of misappropriated funds that would be due to Indian recipients. And short of actually doing some accounting work, and that's why we've tried to prioritize—go where the money is, go to the highest value of accounts and work our way down, we don't know how we would make a determination that says we owe x number of dollars to this individual, because there is something wrong with that individual.

To the best of my knowledge, we have little information, if any, regarding specific accounts in which there is a problem with the account. That doesn't mean that there isn't that information out there somewhere. If somebody believes that they have a problem with their account, given how many accounts there are in a time period, it would be entirely plausible that there are problems out there.

But we don't have the specifics to operate on to substantiate any particular figure. That's part of the reason that we also went towards this full accounting process, that if we're going to make these determinations on an account by account basis, so that we can make appropriate payments, where the Government has not acted properly, then we need to have the facts to support it.

The CHAIRMAN. In other words, the cost estimate of the accounting, \$2.4 billion, that may also increase?

Mr. CASON. That's entirely possible. That's our best estimate based on what we know now, and it involves a number of assumptions regarding how many older accounts there are, how many transactions were involved, how difficult it will be to assemble all the paperwork to do the accounting, etc. So there is a lot of as-

sumptions that are in the process and a lot of best guesses in the process to derive that figure.

The CHAIRMAN. I requested that the GAO review and analyze your report. Will you help them?

Mr. CASON. We would be happy to do that, Mr. Chairman.

The CHAIRMAN. I think that would be extremely helpful.

Can the case proceed, or does it have to be delayed until the Department has completed the accounting?

Mr. CASON. You're referring to the *Cobell* case?

The CHAIRMAN. Yes.

Mr. CASON. Mr. Chairman, I think the position that's being taken by the Department of Justice, and I don't know that it's a final position, but what's being discussed is that on the historical accounting portion of the case, the plaintiffs are interested in proceeding to trial with that portion, and I believe the Department of Justice is taking a position that, until the Department actually undertakes an accounting and produces results, we don't know what we're trying. I leave that to the lawyers to sort out how we're doing that, that's not really my call. But as I understand it, there is some dialogue as to whether this is timely for us to pursue a case or whether we actually need to do some accounting and base the case on the accountings that are produced.

The CHAIRMAN. So it is going to take a little while longer possibly?

Mr. CASON. That's my sense, Mr. Chairman.

The CHAIRMAN. How long has the *Cobell* case taken so far?

Mr. CASON. It's my understanding it's around 6 years.

The CHAIRMAN. About 6 years.

Mr. CASON. Around 6 to 6½ years.

The CHAIRMAN. Well, we hope that this matter can be resolved as soon as possible. But I agree with you that this is not an easy one.

Mr. CASON. It's not. And we would like to resolve it as well, Mr. Chairman. It's a difficult situation for all involved.

The CHAIRMAN. So we look forward to the analysis that GAO will have of your report, and if you can help them I think we can expedite everything.

Mr. CASON. We'd be pleased to, Mr. Chairman.

The CHAIRMAN. Thank you very much, sir.

Mr. CASON. Thank you.

The CHAIRMAN. Do you have any questions?

Senator CAMPBELL. Mr. Chairman, I have no further questions. But I would like to just say something, if I can do this without hurting anybody's feelings on the panel. In the 6 years that you spoke of, we've had dozens of people here as witnesses for the Administration. And I have to tell you, I wish that they could speak with the passion and urgency that Indians have been waiting for it.

I'm sure that most of the people who have come over from the Administration in that 6 years never were raised on surplus Government cheese, as an example, like I know some of the people sitting in this audience, Tex Hall over there is an example, knows what that is.

Mr. CASON. So do I, Mr. Chairman.

Senator CAMPBELL. Do you? Well, then, maybe you understand how most people feel when you tell them, well, it may be 10 more years and some of you may die before you ever get fairness out of the Federal Government. It's just not right when we know people are out there without any income, with poor housing, with not enough food, with all that, and we just keep going around and going around, and for some reason they can't get their money that is owed them and is rightfully theirs, because we have to do more studies, we have to buy more computers, we have to hear from more people, we have to dot all the I's and cross all the T's, we've got to do every little thing and it just keeps going on and on.

I just wanted to leave you with that, that it's just not right to keep this thing going from one Administration to another, from one Secretary to another, from one Trust Administrator to another. We just do no fairness to the Indian people who have waited so long. I just wanted to leave you with that.

Thank you, Mr. Chairman.

Mr. CASON. Thank you, Senator. I think that's a great point.

We, too, share some of the frustration that the process takes so long to seemingly make any material progress. And we recognize that the situation has been longstanding and that it needs to be addressed.

We provided a plan for full accounting. Unfortunately, there's a ton of work that needs to be done in order to provide a full accounting.

Senator CAMPBELL. We will never have full accounting. There are so many missing documents, somewhere along the line, we've got to cut our losses and start signing some checks. It just seems to me, as I mentioned and the chairman did too, that we ought to be trying to negotiate with the people that would be willing to settle. There could be disclaimers so that would be the only time they would be willing to settle, whatever. But we ought to do some kind of negotiating where we can actually start the process moving instead of just keep going around about what more we have to do within the Administration.

Mr. CASON. Senator, we would be more than pleased to work with Congress on trying to structure something that would be fair in this circumstance.

Senator CAMPBELL. Thank you. Thank you, Mr. Chairman.

The CHAIRMAN. Once again, Mr. Cason, Mr. Slonaker, Mr. Edwards, I thank you for your forthright responses to our questions. Thank you very much.

Mr. CASON. Thank you, Mr. Chairman.

The CHAIRMAN. Our final witness is William Causey of Nixon Peabody of Washington, DC.

Welcome, Mr. Causey.

**STATEMENT OF WILLIAM F. CAUSEY, ESQUIRE, NIXON
PEABODY, LLP**

Mr. CAUSEY. Thank you, Mr. Chairman, Mr. Vice Chairman. It's a pleasure to be here.

Thank you for giving me the opportunity to share with you some views about whether and how the *Cobell* litigation might be susceptible of mediation. This morning we heard testimony about how

complicated and involved this matter is and how long this litigation has been going on, and everybody has expressed a desire to come to some kind of satisfactory resolution of this matter. I would like to suggest that everybody think seriously about some form of mediation to do that.

Just to set the stage for this, I have been litigating in the U.S. District Court for over 25 years. I have tried cases in front of the judge that's hearing the *Cobell* litigation. I have been specially trained in the mediation of complex cases involving the Federal Government and private parties. And I have been serving as a mediator in the U.S. District Court for 12 years. I have mediated cases involving matters that are pending before the judge that is currently hearing the *Cobell* litigation.

As we all know, what I will refer to as the Indian trust fund problem is an enormous problem. The litigation over this issue has made the likelihood of a successful and satisfactory resolution of the problem, in my view, less rather than more possible. Both of you certainly know the value and efficacy of compromise, which is the backbone of successful mediation. And as someone who has mediated many cases, let me share with you my views on how mediation might be employed to help the parties in the *Cobell* litigation resolve that matter and perhaps bring this entire problem to some quick resolution.

I think everyone will agree, and I heard this morning from some of the individuals who testified that everybody wants to see this matter resolved and would like to come to a realistic resolution of the problem. Certainly the investment of time, money, and resources and energy is *Cobell* draining the ability of the parties in the litigation to bring the matter to some kind of resolution.

So how can the parties in the *Cobell* litigation be encouraged to mediate this matter? And what if anything should the Congress do to assist the parties in agreeing to mediate the issue?

Frankly, in reading the various court decisions and all of the reports from all the various Federal agencies and departments involved, I am less than optimistic that the parties will come to the mediation table willingly to try and get this matter resolved, despite the fact that they all seem to say they would like to do that. I think that's unfortunate, but I think there are ways to encourage the parties in this litigation to come to the mediation table.

When I say that I'm less than optimistic that the parties might be willing to mediate this matter, that is particularly true in my view with respect to the Government's position in the litigation. My experience has been that the Department of Justice is usually reluctant to mediate cases pending in the courts. And I think that's an unfortunate position for the Government to take. There are many in the Department of Justice today who are encouraging the Department to change this view and to be more willing to mediate matters that are pending before the courts. And I certainly hope and believe that this case is one where the Department of Justice should seriously think about coming to voluntary mediation.

Even though this matter involves multiple parties, millions if not billions of dollars, and very complicated matters, I believe that if the parties are willing to be patient, creative, flexible and sensitive to the needs and positions of all concerned in the process, rules for

mediation can be devised that will protect the interests of all the parties, encourage all parties and interest groups to have a say and participate in the structuring of a resolution of the problem, and will substantially reduce the level of confrontation and acrimony that has flowed from the *Cobell* litigation.

Here is what I think needs to be done to encourage the parties to agree to voluntary mediation of this problem. First, as any basic training in mediation will reflect, there must be incentives to get the parties to agree to participate in mediation. From the viewpoint of convincing the Department of Justice to participate, and the list that I am going to suggest is certainly by no means complete and inclusive, involves many complicated issues. But some of the things that might be suggested would be giving some level of immunity to individual Government officials, either party or non-party individuals, so that they would be willing to contribute and participate in a search for an honest and realistic solution to the problem. Another thing would be finding some source of money to pay for existing litigation expenses of party and non-party individual Government officials, so we can get that part of the litigation behind us and move to consideration of constructive solutions to the underlying problems.

Second, we might want to make sure that the parties are able to participate fully in deciding what the fundamental preliminary issues would be in any kind of mediation, such as who should be invited to attend and participate in the mediation process who may not be existing parties to the current litigation, such as the Court's Special Master and Special Monitor, or various Native American groups that have an interest in this matter. We also should look at to what extent the media should be involved in this mediation process, what outside experts and consultants might be necessary to assist the parties and a mediator or a mediation body to seek a resolution of the problem, and what Government and independent accounting records should be released and disseminated to the parties during the mediation process.

Third, I think a mediator should devise a schedule and a mechanism for the payment of attorneys fees for the class represented lawyers that is not dependent on the outcome of the mediation. I have found that the issue of attorneys fees can infect and destroy the early good intentions of parties in mediation. And getting this issue off the table early should substantially increase the likelihood of getting to the ultimate core issues in reaching a final resolution of the problems.

Finally, I think it's important to let all of the parties participate in the construction of the agenda of how and when certain more substantive issues, the real underlying issues, should be addressed, such as what methodology should be employed to do an accounting, whether certain claims can and should be paid now, how and to what extent should past and present Government officials be held accountable for the problems, and to what extent the Court and the Congress should participate in the implementation of any final resolution of the problem.

If the parties are not willing to voluntarily participate in mediation, and voluntary participation, is the core of successful mediation, it might be necessary for the Congress to become more

proactive in this matter and in some way compel some form of resolution of the problem. I might suggest to the committee, although I haven't looked at this in great detail, but the committee might want to consider something like the September 11 Victim Compensation Fund as a model for legislation to push the parties toward some resolution of the Indian trust problem.

In short, Mr. Chairman, the time has come for everyone in this matter to do something to get everybody together and try and get this matter resolved in a friendly, constructive, positive way. I think some form of mediation should be seriously considered by the parties to bring that about.

Thank you for giving me the opportunity to share these views with you, and I'll certainly be happy to answer any questions.

[Prepared statement of Mr. Causey appears in appendix.]

The CHAIRMAN. Thank you very much, Mr. Causey.

Have you had occasion to read or study the July 2002 report?

Mr. CAUSEY. Mr. Chairman, I have looked at it, I cannot honestly say I have studied it. But I have read it, yes.

The CHAIRMAN. Have you reached any conclusion?

Mr. CAUSEY. I have not. I have approached this matter, as my training would suggest, as a lawyer, and I've been looking at some of the legal issues that arise as a result of that report. But I have not studied or reached any conclusions as to what the report intends to suggest in terms of moving along in the process of getting this issue resolved.

The CHAIRMAN. Would you consider resolution time period of 10 years to be appropriate?

Mr. CAUSEY. I would not. I do not think that getting to a resolution of this problem should take 10 years.

The CHAIRMAN. How long do you think it should take?

Mr. CAUSEY. Mr. Chairman, that's difficult to say. If the parties were willing to sit down and participate in good faith mediation of this matter, I think this matter could be resolved within 1 year.

The CHAIRMAN. I realize that this is a class action case and there are thousands involved. But there are many thousands who have not responded, who are not party to this litigation. How would you resolve their problems?

Mr. CAUSEY. Well, of course, class action litigation is a representative process, in that the named plaintiffs in the litigation represent the identified class. I think we would have to ascertain how many potential claimants are not participating or are not members of the class, have the parties come to some means to try and identify those individuals, communicate with those individuals, see if there is some way for them to participate in the resolution process, not necessarily through the formal process that is employed in litigation in the court, but to come up with some means to identify these individuals and have them participate.

That's one of the great values of mediation, is that it is very flexible. The parties can be very creative, they are not bound by established rules and procedures that may restrict parties in seeking satisfactory resolution of problems. I think that issue could be one of the many issues placed on the table for the parties to try and voluntarily agree to solve and figure out some way to identify and reach those individuals who are not represented in the class.

The CHAIRMAN. As one who is an expert in matters of this nature, such as mediation, would you consider resolving the so-called easy cases, the cases that have been fully documented and can be resolved without much conflict, would you do that?

Mr. CAUSEY. Mr. Chairman, as I said, I think there are a number of preliminary issues that the parties should look at in structuring a mediation process for this problem. I think one of the preliminary issues that should be looked at is whether there are identifiable claimants who can be paid money now. And if that is possible, let's figure out a way to get them paid and get that issue off the table, so that we can then get to what I think is probably the much more complicated issue of identifying the source of money, the availability of records, the methodology for doing an accounting for those individual claims whose claims we cannot precisely identify and pay at the present time.

I don't know what the numbers would represent, whether we're talking about 5 or 10 or 20 percent of the potential claimants. But I think that is an issue that can be looked at in the early phases of mediation and try and get that resolved and settled, and then move on to the more complicated issues.

The CHAIRMAN. In your opinion, can this matter, this class action, be resolved with finality by your process, or would it take involvement of the Congress of the United States?

Mr. CAUSEY. Mr. Chairman, that's a good question, and I'm not sure I have an answer. I think a lot would depend on how the mediation progresses, what are the issues that can be easily resolved, and what are the issues that are more difficult to resolve. I suspect that there would be some need for the Congress and the court participate in this process in some way. I just don't know to what extent and what the nature of that participation would be.

I certainly believe that there would be some need for the Congress to help the parties figure out some way to implement and perhaps pay for the implementation of a resolution, and there's got to be some mechanism for the court to formally bring to conclusion the litigation. So I think there would be need for the court and the Congress to participate. But at what level and what stage and to what extent is difficult to tell right now.

The CHAIRMAN. May I ask Mr. Williams one more request?

Mr. WILLIAMS. Yes.

The CHAIRMAN. If you believe that the Congress should involve itself in the final solution, can you tell us the nature of that involvement? Not now, but in your report.

Mr. WILLIAMS. Yes; we will do that, Mr. Chairman.

The CHAIRMAN. I thank you very much, sir.

Mr. Vice Chairman.

Senator CAMPBELL. Thank you, Mr. Chairman.

A few years ago, it seems like we were in the same quandary, and we talked a little bit about, in fact, I remember we did circulate a bill that had a section in it that required some mediation being done in the private sector.

Let me ask you just a couple of questions. Can an individual opt out from a class action lawsuit and settle individually?

Mr. CAUSEY. There are procedures for individuals to opt out of the class, but the question of whether that individual who decides

to opt out can settle individually is a far more complicated question. I think in the structure of mediation, that could be defined and implemented. I think it would be much more difficult to do that under the Federal Rules of Civil Procedure that restrict the parties to what they can do and can't do in the court litigation.

But that's certainly an issue that I think a mediator should and could explore in the process.

Senator CAMPBELL. There's a trust fund task force, as you know, that's been meeting a number of times that hasn't dealt with this problem, but they've dealt with a number of others, and we've been trying to frame up a bill based on the agreements that they made with the Administration. There are still a lot of places where they don't agree. But it's coming along, we're going to do a hearing very shortly on that. I am frankly personally interested in putting something in that bill that requires some mediation commission to be established.

Would you be willing to work with the committee to give us some ideas on how that should be structured if we proceed with that?

Mr. CAUSEY. Certainly. I'd be delighted.

Senator CAMPBELL. The committee has been told that if Congress refuses to pay for the accounting because it believes it's just a futility, then *Cobell* can still proceed. But if Congress refuses to pay for it because it believes it's too expensive, then the United States may have to move to dismiss the case. Are you aware of that and could you maybe describe the difference between the two to a layman like me?

Mr. CAUSEY. Senator, I am aware of the Department of Justice suggesting that position. Frankly, I'm a little dismayed by the position that they're suggesting. I'm not sure what would be the argument that they could put before the court to say that the litigation which has gone on now for six years and has gone through numerous opinions and court of appeals review can come to an end simply because there's no money to pay a judgment. I don't think the court is going to be very receptive to that argument, but I certainly don't know. It's a perplexing position, from my analysis.

Senator CAMPBELL. Thank you. What's the present value of \$2.4 billion over 10 years? If we have settlements like Agent Orange or September 11 or so on, we knew we couldn't get to an exact figure. How can we structure a reasonable settlement when you talk about a 10-year timeframe?

Mr. CAUSEY. There are actuaries who can do the computations and come up with the number. But you have to have an agreement on what the numbers are that go into the calculation. Certainly the present value of \$2.4 billion over 10 years would be more than sufficient to pay for mediation of the *Cobell* lawsuit.

Senator CAMPBELL. What happens if a person, an account holder who has a legal right, dies within 2 years? What recourse do his heirs have?

Mr. CAUSEY. I don't know, Senator. I think that may be a complicated question. That question likely would be controlled by estate law in the various States. I just don't know the answer to that.

Senator CAMPBELL. We don't, either.

Thank you, Mr. Chairman.

Thank you for your testimony, and I look forward to your working with us to help us frame up something for that bill I was speaking of.

Mr. CAUSEY. I look forward to it.

Thank you

The CHAIRMAN. I wish to thank all the witnesses for their participation. I wish that this could be resolved in the very near future. If not, the situation could worsen, in light of what the Supreme Court has said.

With that, I thank you all very much. This hearing is adjourned. [Whereupon, at 11:40 a.m., the committee was adjourned, to reconvene at the call of the Chair.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF MCCOY WILLIAMS, DIRECTOR, FINANCIAL MANAGEMENT AND ASSURANCE, GENERAL ACCOUNTING OFFICE, WASHINGTON, DC

Mr. Chairman and members of the committee:

I am pleased to be here today to summarize previous General Accounting Office [GAO] work that identified gaps in information needed to reconcile Individual Indian Moneys [IIM] trust accounts, and the rationale that led us to suggest, based upon our earlier work, that Interior seek alternatives to reconciliation such as a negotiated agreement.

Before discussing our prior work, let me point out that we have not yet had time to analyze Interior's July 2, 2002, Report to Congress on the Historical Accounting of Individual Indian Money Accounts, evaluate its proposed methodology, or discuss the report or its proposed methodology with Interior officials. Also, we have not done recent work to evaluate the current state of Interior's IIM records. Nevertheless it is clear that a reconciliation of IIM accounts is a daunting endeavor, both in terms of the magnitude of the project's scope and the obstacles that are likely to be encountered. As to the scope, certainly tens of millions, and perhaps over 100 million, of IIM transactions have occurred in the more than 100 years since the first Indian allotment act. Further, the supporting documentation that must be examined to reconstruct the account transactions must first be located by searching more than 100 offices, warehouses, records centers, and archives.

Regarding the obstacles that Interior is likely to encounter, we reported to this committee in June 1996¹ that, based on our work, we concluded at that time that records were not available to support a reconciliation of the IIM accounts. In addition to missing records, we pointed to the lack of an audit trail through Interior's Integrated Records Management System [IRMS], which was used to maintain IIM account information, and differences in the way IRMS operates at various Interior locations, which affect the consistency of the IRMS information, as obstacles that Interior would encounter in pursuing an IIM account reconciliation.

Much of our previous work in the area of trust fund reconciliations relates to an earlier account reconciliation requirement and a related Interior effort to reconstruct both tribal and IIM trust accounts. From 1992 through 1997, we monitored and reported on various aspects of Interior's planning, execution, and reporting of results for the reconciliation project. First let me discuss the tribal portion of that earlier Interior effort.

The Congress established an Indian trust fund account reconciliation requirement in the Supplemental Appropriations Act of 1987. That requirement was in response to tribes' concerns that (1) Interior had not consistently provided them with statements on their account balances, (2) their trust fund accounts had never been rec-

¹U.S. General Accounting Office, *Indian Trust Fund Testimony Q's and A's*, GAO/AIMD-96-125R (Washington, DC: June 24, 1996).

onciled, and (3) Interior planned to contract with a third party for management of trust fund accounts.

The 1987 act required that the accounts be audited and reconciled before the Bureau of Indian Affairs [BIA] transferred funds to a third party. Interior's fiscal year 1990 appropriations act added a requirement that the accounts be reconciled to the earliest possible date and that Interior obtain an independent certification of the reconciliation work. The American Indian Trust Fund Management Reform Act of 1994 subsequently required the Secretary of the Interior to provide tribes with reconciled account statements as of September 30, 1995.

Interior contracted with two major independent public accounting firms, one to reconcile the trust accounts and the other to do an independent certification to indicate that the reconciliation resulted in the most complete reconciliation possible. Following a preliminary assessment in March 1992 by Interior's reconciliation contractor, Interior decided to have the contractor reconcile the tribal accounts for fiscal years 1973 through 1992. Subsequent to this decision, Interior also had BIA reconcile the tribal accounts for fiscal years 1993 through 1995 to comply with the 1994 act's requirement that Interior provide tribes with reconciled account statements as of September 30, 1995.

The tribal portion of Interior's Indian trust fund account reconciliation project was completed and Interior reported the results to tribes in January 1996. During the reconciliation project, Interior spent about \$21 million for contract costs over a 5-year period in a massive effort to locate supporting documentation and reconstruct historical trust transactions, as well as to perform other reconciliation procedures, in its attempt to validate tribal account balances.

During a February 1996 meeting at which Interior officials and the reconciliation contractor summarized the reconciliation project results, tribes raised questions about the adequacy and reliability of the reconciliations results. In May 1996, we reported² on shortcomings of Interior's reconciliation project. The shortcomings consisted of procedures that were not completed due to missing records, systems limitations, or time and cost considerations.

In May 1997, we reported³ to this committee that, as of May 6, 1997, Interior had provided reconciliation reports to 310 tribes, of which 51 tribes had disputed, and 41 had accepted, the reconciliation results. Of the remaining 218 tribes, 47 had requested more time to consider the results, and 171 had not responded to the reconciliation results. In summary, although Interior made a massive attempt to reconcile tribal accounts during its reconciliation project, missing records and systems limitations made a full reconciliation impossible.

Now, let me turn to the IIM portion of Interior's earlier account reconciliation effort. In our June 1992 report⁴ on Interior's efforts to reconcile Indian trust accounts, we noted that the effort originally consisted of two phases. The first phase was to cover, in addition to 500 tribal accounts, 17,000 IIM accounts maintained at three agency offices. However, after an initial assessment by Interior's contractor of the level of effort and cost needed to complete the various segments of reconciliation work, a decision was made not to reconcile IIM accounts as part of the project. In reporting this status, we noted that Interior and its contractor had determined that a full reconciliation of all tribal and IN accounts was neither possible nor cost-effective due to missing records, commingled tribal and individual Indian accounting records, poorly documented accounting transactions, and the volume of data to be reviewed.

²U.S. General Accounting Office, *Financial Management. BIA's Tribal Trust Fund Account Reconciliation Results*, GAO/AIMD-96-63 (Washington, DC: May 3, 1996).

³U.S. General Accounting Office, *Indian Trust Funds: Tribal Account Holders' Responses to Reconciliation Results*, GAO/AIMD-97-102R (Washington, DC: May 23, 1997).

⁴U.S. General Accounting Office, *Financial Management BIA Has Made Limited Progress in Reconciling Trust Accounts and Developing a Strategic Plan*, GAO/AFMD-92-38 (Washington, DC: June 18, 1992).

At that time, we recommended that Interior seek alternatives to the reconciliation project and develop a proposal for reaching a satisfactory resolution of the trust fund account balances with account holders. Among alternatives that we recommended for Interior's consideration were that Interior consider negotiating agreements with individual Indians on balances reported on their account statements and request legislated settlements on all, or selected accounts. In a number of testimonies and reports over the next several years,⁵ we supported the idea of Interior and tribal and IIM account holders negotiating a resolution of their issues.

Interior's July 2, 2002 report relates directly to the 1994 act and the ongoing class action lawsuit commonly referred to as the *Cobell* litigation, which is presently before the U.S. District Court for the District of Columbia. In this regard, my comments today are not intended to address, nor is GAO taking any position on what level of accounting the 1994 act or the courts have required of Interior thus far, whether Interior's plan satisfies those requirements, or, if so, whether Interior's plan is the only or best approach for Interior to satisfy the requirements imposed on it. Those issues will ultimately be decided by the court.

Having said this, we note that Interior's report recognizes that a number of obstacles, similar to those we have previously reported on, will complicate its ability to document for IIM account holders the amount and source of funds deposited to, managed in, and disbursed from their IIM accounts. The Interior report enumerates among those obstacles known discrepancies in the balances, at the trust fund level, reported by Treasury and Interior, as well as the potential for (1) errors in the electronic accounting system data, (2) missing paper transaction records, and (3) missing land ownership information and revenue instruments. The report further states that "It is certain that gaps in documentation will be encountered during the historical accounting. Such gaps may range from a single missing lease to an entire time period of missing documentation for some or all IN account holders served by a specific BIA agency." Interior's enumeration of obstacles is consistent with what our prior work has shown.

Mr. Chairmen, this concludes my statement. I would be glad to answer any questions from you or other members of the committee.

⁵U.S. General Accounting Office, *Financial Management Native American Trust Fund Management Reform Legislation*, GAO/T-AIMD-94-174 (Washington, DC: Aug. 11, 1994). U.S. General Accounting Office, *Financial Management Indian Trust Fund Accounts Cannot Be Fully Reconciled*, GAO/T-AIMD-95-94 (Washington, DC: March 8, 1995). U.S. General Accounting Office, *Indian Trust Fund Settlement Legislation*, GAO/AIMD/OGC-95-237R (Washington, DC: Sept. 29, 1995).

**Testimony of
James Cason
Associate Deputy Secretary of the Interior
before the Committee on Indian Affairs
United States Senate
July 25, 2002**

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

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

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

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

Background

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

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

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

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

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

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

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

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

Accounting

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

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

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

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

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

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

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

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

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

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

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

Priority

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

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

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

Phases

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

Phase 1—Accounting for the current IIM accounts (as of December 31, 2000) during the period of 1985–2000 using electronic transaction data. The cost estimate is

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

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

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

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

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

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

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

Objectives

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

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

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

Development of the Report

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

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

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

Reconciled Accounts

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

Conclusion

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

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

**TESTIMONY OF
WILLIAM F. CAUSEY
BEFORE THE
SENATE COMMITTEE ON INDIAN AFFAIRS**

July 25, 2002

Mr. Chairman and Members of the Committee:

I am pleased to be invited here today to share with you some of my views regarding whether and how mediation might be employed to resolve what I will generically refer to in this statement as the Indian Trust Fund problem currently being litigated in the case of Cobell v. Norton in the United States District Court for the District of Columbia.

As we all know so well, the Indian Trust Fund problem is a matter of immense scope, layered complexity, and enormous past, present, and future financial ramifications. It involves millions, if not billions of dollars, at least two Cabinet departments and dozens of employees in those departments, the attention for several years of numerous committees of the Congress, investigation by the General Accounting Office, the Inspector General, several independent accounting firms, and, of course, the commitment of huge expenditures in the Cobell litigation.

To get right to the point, there seems to be almost universal agreement that the Indian Trust Fund problem needs to be resolved- as quickly, as fairly, and as inexpensively as possible. Unfortunately, a quick, fair, and inexpensive resolution of the problem to date has not come about through the litigation process in federal court that by its very nature is adversarial and confrontational. Reading the hundreds of pages of court decisions shows that the courtroom is not the most conducive environment for rational and thoughtful settlement of this complex problem. Resolution of the underlying issue- getting money to those Native Americans who are owed that money- is diverted by ancillary issues of contempt citations, sorting out departmental bureaucracy and accountability, and the integrity of government computer systems.

It seems that the time has come for all of the parties in this matter to look for another vehicle to resolve this complicated issue. One method would be for the parties to agree voluntarily to public dispute resolution through mediation - what has been called by some "assisted negotiation" and by others as the "Multi-Gains Approach." The use of voluntary public dispute resolution through mediation is not new to the settlement of complicated public policy issues. For example, escalating confrontation, needless costs,

and unnecessary litigation has been avoided in the area of international environmental negotiations. Voluntary public dispute resolution is being used in the relicensing of hydroelectric dams by the Federal Energy Regulatory Commission. Public mediation has been successfully employed in resolving affordable housing issues in Hartford and Greater Bridgeport, Connecticut. Large land use controversies have been resolved through voluntary public mediation in Massachusetts.

However, the litigation history of the Indian Trust Fund problem leads me to be less than optimistic that all the involved parties will willingly agree to submit these issues to mediation. Nevertheless, I believe that the parties would be well served to consider seriously some form of public dispute mediation of this complicated matter if we are ever going to see a final resolution of the Indian Trust Fund problem.

What exactly is public dispute mediation, and how is it different from the more traditional forms of mediation that we see in everyday, private, two-party matters? For one thing, public dispute mediation invariably involves multi-parties- here we could be talking about dozens of parties. Also, public dispute mediation invariably involves large sums of money- here we already know that we are talking about millions, if not billions, of dollars. Finally, public mediation deals with major public policy questions or the efficacy, integrity, or wisdom of governmental behavior or decisions- this issue certainly has its share of those kinds of questions. But while public dispute resolution through mediation involves many parties and complex issues, like that in the Cobell litigation, my experience is that the principles that apply to simple, two-party private mediation also apply in complicated and involved multi-party public mediation.

For example, my experience in mediating cases has taught me that it is imperative for the mediator to instill in all the participants the understanding of the need for creativity and flexibility throughout the entire mediation process. Indeed, in my view, it is the creativity and flexibility of the mediation process that makes it such a valuable and successful tool in resolving all kinds of cases, including cases that involve complex public policy issues. Participants in complex mediation need to understand that the approach to successful mediation does not encompass the concepts of "who wins and who losses," or what steps should a party take to create their next best advantage if mediation fails. Because the parties to mediation are not bound by the more traditional court rules of litigation or the dictates of congressional parliamentary procedure, new rules can be sculptured to meet the needs and expectations of the participants and the issues. Finally, the participants also need to understand that they cannot prevail on every issue, and that giving up some minor issues in order to save their arguments for some major issues does not reflect weakness or submissiveness or defeat in the mediation world. To the contrary, my experience has been that it is the participants who show the most flexibility and sensitivity to the needs of other parties that achieve the greatest success in mediation.

There are other equally valuable principles that apply to mediation, whether it be a simple, two-party matter or a complicated, multi-party matter like the Cobell litigation. Here is what seems to be important for participants to understand and employ if mediation is going to be successful:

1. Participants need to understand that issues can only get resolved if they are candidly and truthfully explored. In this regard, the advantages of full disclosure far outweigh the disadvantages.

2. Participants need to select spokespersons who are trustworthy and committed to a program of open and free discussion without pre-determined prejudices and agendas. In mediation, it is more important to listen than to talk, whether one agrees or not with what is said.

3. Participants need to explore practical solutions to the problems at issue without the need or desire to protect or promote self-contained values and principles. The phrase "This is a matter of principle" that we hear so often in the courtroom really does not serve well in the mediation room.

4. Participants need to understand that mediation is a process of continuing dialogue. Issues invariably are interrelated and in many cases inseparable. The parties need to resist the temptation to prejudge issues and positions- a party may be premature in doing so.

With these basic principles of mediation in mind, permit me to address more specifically how mediation might work in exploring a resolution of the many complicated issues in the Cobell lawsuit.

Perhaps the most difficult- and most immediate- issue to confront in mediating the issues in the Cobell litigation, as in all public dispute resolution, is who should be invited to the party- who are the so-called stakeholders in the dispute, or in other words, what individuals and groups will be affected by a resolution of part or all of the dispute. A mediation of the Indian Trust Fund problem, for example, will of course involve the represented parties in the Cobell lawsuit and most if not all of the affected non-parties to that litigation. But consideration should also be given to whether other individuals and groups should be invited to participate in the process, including, for example, the Special Master and Special Monitor appointed by Judge Lamberth, various groups such as the Tribal Task Force on Trust Reform, the Commission on Native American Policy, or any number of organizations, such as various tribal groups, that protect and service the interests of our Native American population. Thought needs to be given to how the Executive agencies, such as the Bureau of Indian Affairs and the Office of Special Trustee for American Indians, will be represented in this mediation process. In any event, great care and time must be spent in deciding what individuals and groups should and must participate in the process if the process is going to be successful.

As I mentioned a moment ago, all individuals and groups who should participate in a voluntary mediation of the Indian Trust Fund problem may not be willing to give up what they believe may be the advantages and strongholds that they think they currently have through the litigation process. Mediation is essentially a voluntary process that works only if all interested and affected parties invest in the process. In the Indian Trust Fund

problem, voluntary mediation will be possible only if the major participants in the Cobell case agree to put the litigation process aside and commit to the less restrictive but also less expensive and more promising prospects of mediation. Of course, this would include the class representative plaintiffs and the Executive departments and individual agency employees involved in the Cobell lawsuit. This will not be easy, for my experience has been that class plaintiffs and the Federal Government, particularly the Department of Justice and the various federal departments and agencies, are suspicious of mediation and are reluctant to participate in any mediation process. But all the major participants surely should understand that successful mediation will reduce the time, cost and energy that a continuation of the litigation will consume, even if the mediation process takes months to complete.

Of course, it is possible that all the parties involved in the Cobell case will not voluntarily consent to mediation. In that case, it may be necessary for the Congress to pass legislation that creates an independent body that not only compels the participation of all the parties in the Cobell litigation, but also sets forth the mechanisms to facilitate mediation of these issues, such as rules and procedures for conducting the mediation, a source of funding for not only the administration of the independent body but also finding that can be used for payment of attorneys fees and other monetary issues that are intertwined with the substantive policy issues in the case. In this regard, something on the order of the September 11 compensation fund, established through the September 11 Victim Compensation Fund of 2001, might be a model for legislation to establish an independent body to resolve the Indian Trust Fund matter.

In any event, let me take a moment to explore some of the ways that might be employed to overcome any hesitation on the part of affected and necessary parties to submit to voluntary mediation of this matter or through the development and passage of legislation to create an independent body to resolve the problem. One way is to have the parties participate fully and actively in the earliest development of the structure of the mediation format and the agenda for the major issues to be initially considered. Parties will feel more willing to participate in the process if they truly believe that they have a say in how the process will unfold. For example, in order to encourage the Federal Government to participate in the process, one suggestion might be to decide whether Executive Department employees at all levels will have some form of immunity from potential liability and existing contempt orders so that they will be encouraged to offer their valuable knowledge and insights on the history of the problems involved and the steps that need to be taken to find solutions to those problems. Another issue that might encourage the Federal Government to participate in the process is to decide whether agency employees should be compensated in some way for their past litigation expenses. To encourage the class-represented plaintiffs and the various Native American groups to participate in the process, thought should be given to development of a formula for payment of attorneys fees to lawyers for the represented class plaintiffs. As a mediator in complex cases, I have found that if not addressed at an earliest phase, the issue of attorneys fees can infect the entire mediation process. When the issue of attorneys fees can be taken off the table early in the process, the likelihood of eventual success in resolving the dispute is substantially increased.

There are many other issues in the Indian Trust Fund problem that a mediator might want to explore at the early stages of the process or that the Congress might want to consider in creating an independent mediation body that might help the parties ease their concerns about participating in mediation. For example, input from the parties should be sought regarding what team of experts should be employed to assist a mediator or an independent body in deliberations and who should pay for those experts, what Interior Department records will be made available for the mediation, whether all GAO and independent accounting studies should be released and disseminated, and to what extent should the media be made aware of the activities and progress of the mediation.

Once these issues are resolved, either through the voluntary participation of the parties or through the involvement of the parties in the development of legislation to create an independent body, the more complicated and long-term policy issues then can be addressed through a some designated mediation format. This would include issues such as what methodology should be employed to do an accounting, can an accounting realistically be conducted before 1985, which I believe is the post-accounting date contained in the House Appropriations bill, how and to what extent should past and present government employees be held accountable for the Indian Trust Fund problem, to what extent and at what stages should the Congress approve the activities and decisions of the mediator or independent body, and what legislation likely will be necessary to implement some or all of the resolutions arrived at during the mediation process. Finally, thought will have to be given to what final order should be entered by the court to terminate the Cobell litigation.

In conclusion, it seems that the time has come for the parties in the Cobell lawsuit to agree to some form of mediation to resolve these important and complicated Indian Trust Fund issues, or if that is not feasible, for the Congress, working with the parties and perhaps a mediator-facilitator, to develop a means to resolve these issues in a more efficient and less expensive format. All concerned will benefit.

Thank you for giving me the opportunity to share these views with the Committee.

**REPORT TO
CONGRESS ON
THE HISTORICAL
ACCOUNTING OF
INDIVIDUAL INDIAN
MONEY ACCOUNTS**

*Prepared For the United States Congress
Pursuant to Conference Report 107-234*



**DEPARTMENT OF THE INTERIOR
JULY 2, 2002**

THE REPORT

This *Report to Congress on the Historical Accounting of Individual Indian Money Accounts* ("Report") has been prepared by the Department of the Interior ("Interior") pursuant to Congressional direction contained in Interior's appropriation for FY 2001:

[T]he [Congressional] managers direct the Department to develop a detailed plan for the sampling methodology it adopts, its costs and benefits, and the degree of confidence that can be placed on the likely results. This plan must be provided to the House and Senate Committees on Appropriations prior to commencing a full sampling project. Finally, the determination of the use of funds for sampling or any other approach for reconciling a historical IIM accounting must be done within the limits of funds made available by the Congress for such purposes. H.R. Conf. Rep. No. 106-914, at 150 (2000).

The Conference Report on Interior's FY 2002 budget reiterated this planning requirement, and stated that funds appropriated for a historical accounting "may not be allocated prior to the report requested by the Committees detailing the methods and costs associated with an historical accounting." H.R. Conf. Rep. No. 107-234, at 99 (2001).

EXECUTIVE SUMMARY**INDIVIDUAL INDIAN MONIES TRUST FUND**

In 1887, the General Allotment Act¹ directed that tribal trust lands be divided into parcels and given or allotted to individual members of Indian tribes. Much of the allotted lands passed out of Indian ownership. But today, there remain approximately four million owner interests in approximately 10 million acres of individual Indian owned trust lands. The United States Government is the trustee for lands and natural resources of individual Indians and for the monetary assets generated by those lands and resources which are managed by the Secretary of the Interior and the U.S. Department of the Treasury (Treasury) through the Individual Indian Monies (IIM) Trust Fund.

REQUIREMENT FOR THE HISTORICAL ACCOUNTING

Congress, in passing the American Indian Trust Fund Management Reform Act of 1994 (1994 Act), imposed the following duty on the Secretary of the Interior:

The Secretary shall account for the daily and annual balance of all funds held in trust by the United States for the benefit of an Indian tribe or an individual Indian which are deposited or invested pursuant to the Act of June 24, 1938 (25 U.S.C. 162a).²

In 1996, five plaintiffs filed a class action lawsuit, *Cobell v. Babbitt*, demanding, among other forms of relief, an equitable accounting of IIM funds. The District Court certified a class consisting of "present and former" IIM account holders.³ The District Court required the Secretary to "provide plaintiffs an accurate accounting of all money in the IIM trust held in trust for the benefit of plaintiffs, without regard to when the funds were deposited."⁴ In anticipation of the significant cost of conducting a historical accounting of the IIM accounts, the Congress in 2002 directed:

the Department [to] submit a comprehensive report to the Committee detailing the costs and benefits and likely results associated with any proposal.⁵

This *Report to Congress on the Historical Accounting of Individual Indian Money (IIM) Accounts* (Report) fulfills the Congressional requirement noted above. This Report details what we expect to accomplish in accordance with the broadest reading of the courts' opinions of the 1994 Act. Implementation of the activities described in this Report may be changed by court orders, other action by Congress, annual appropriations, or administrative action.

¹ General Allotment Act of 1887 (24 Stat 388)

² 25 U.S.C. § 4011(a).

³ *Cobell v. Babbitt*, Civ. Action No. 96-1285 (D. D.C.), Order Certifying Class (filed February 4, 1997) at 2-3.

⁴ *Cobell v. Babbitt*, 91 F. Supp. 2d 1, 58 (D. D.C. 1999).

⁵ H.R. Rep. No. 107-103 at 98 (2001).

THE PROPOSED ACCOUNTING PLAN

To comply with the requirements specified by Congress and the Courts, Interior proposes to gather transaction records and IIM-related documents to reconstruct the history of each IIM account. Interior's proposed historical accounting plan may analyze and report to the IIM account holders on:

- Identification of the beginning balance of the IIM account
- Reconciliation of IIM transactions, including receipts, interest, and disbursements
- The ending balance of the reconciled IIM account as of December 31, 2000
- A comparison with the previously reported balance for December 31, 2002, from the Trust Funds Accounting System (TFAS)
- Relevant account information to the extent required to support the accounting process.

SCOPE OF THE ACCOUNTING

Interior proposes December 31, 2000, as the end of the historical accounting period. As of December 31, 2000, there were:

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

Since 1985, most of the IIM Trust Fund financial information has been contained in electronic systems. However, for IIM accounts that existed prior to 1985, Interior will need to compile transaction histories from paper records. The available supporting documentation for the IIM account transactions that must be located and examined exists in some 120 offices, warehouses, records centers, and archives. A significant portion of approximately 240 million pages of records will need to be collected, scanned, and indexed so that the records can be used to document transactions in the IIM accounts. It is not feasible to determine the total number of transactions for the IIM accounts since inception, but, for the period 1985–2000, the total is 44 million. For costing purposes, the total transactions since 1887 are estimated at over 100 million.

COST OF THE HISTORICAL ACCOUNTING

Interior proposes to divide the historical accounting project into three phases.

- **Phase 1**—Accounting for the current IIM accounts (as of December 31, 2000) during the period of 1985–2000 using electronic transaction data
- **Phase 2**—Accounting for the current IIM accounts from account inception through 1985

- **Phase 3**—Accounting for former IIM accounts closed prior to December 31, 2000.

In Phase 1, Interior proposes to undertake the accounting for judgment and per capita IIM accounts first. Then, Interior proposes to examine 26,464,000 transactions (excluding interest) related to 193,766 land-based accounts that derive revenue from land-based allotment income. An additional 18 million transactions during 1985-2000 relate to interest, and judgment and per capita accounts. The estimated cost for doing this work is \$907 million or approximately \$4,680 per account and \$35 per transaction. The estimated cost for work in Phases 2 and 3 totals approximately \$1.5 billion.

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

The magnitude of the historical accounting is enormous. The 235,984 IIM accounts that existed on December 31, 2000, represent approximately a quarter to a third of all the IIM accounts that have existed since Interior began taking money into trust. Interior estimates that the total money collected since 1909 is approximately \$13 billion.

The total cost for the historical accounting is estimated to be \$2.4 billion. This Report includes information (Table 3-1) on how Interior will approach the historical accounting work and the costs associated with each unit of work in Phase 1.

FUTURE ACTIVITIES

The proposed historical accounting plan is responsive to the requirements of Congress and the courts. However, Congress has also indicated a reluctance to “appropriate hundreds of millions of dollars for an historical accounting that provides funds for a protracted reconciliation process whose outcome is unlikely to be successful.” The full reconciliation of both current and former IIM accounts is an enormously complicated, complex, controversial and costly initiative. Ultimately, Interior’s historical accounting activities will depend upon further direction as may be provided by the courts, other actions by Congress, or administrative action.

1. INTRODUCTION

1.1 THE DUTY TO ACCOUNT

In the American Indian Trust Fund Management Reform Act of 1994 (1994 Act), Congress stated the Secretary of the Interior's duty to account:

The Secretary shall account for the daily and annual balance of all funds held in trust by the United States for the benefit of an Indian tribe or an individual Indian which are deposited or invested pursuant to the Act of June 24, 1938 (25 U.S.C. 162a).⁶

The 1994 Act also required the Secretary, for each calendar quarter, to "provide a statement of performance to each Indian tribe and individual with respect to whom funds are deposited or invested pursuant to the Act of June 24, 1938."⁷ The statement must identify, for the period concerned: the source, type, and status of funds; a beginning balance; gains and losses, receipts and disbursements; and an ending balance.⁸

In 1996, five plaintiffs filed a class action lawsuit, *Cobell v. Babbitt*, demanding, among other forms of relief, an equitable accounting of IIM funds. The District Court certified a class consisting of "present and former" IIM account holders.⁹ At trial, Interior argued that Congress intended the phrase "all funds" in the 1994 Act to mean "all funds" placed in IIM accounts from the date of the enactment of the 1994 Act forward. The District Court rejected this interpretation of the 1994 Act and, in December 1999, declared that Congress intended the phrase "all funds" to mean "all funds" whenever deposited. Accordingly, the District Court required the Secretary to "provide plaintiffs an accurate accounting of all money in the IIM trust held in trust for the benefit of plaintiffs, without regard to when the funds were deposited."¹⁰

In February 2001, the Court of Appeals essentially affirmed the District Court's interpretation of the 1994 Act, stating:

[T]he 1994 Act makes clear that the Interior Secretary owes IIM trust beneficiaries an accounting for "all funds held in trust by the United States for the benefit of an Indian tribe or an individual Indian which are deposited or invested pursuant to the Act of June 24, 1938." 25 U.S.C. § 4011(a) (emphasis added [by Court of Appeals]). "All funds" means *all funds*, irrespective of when they were deposited (or at least so long as they were deposited after the Act of June 24, 1938). Therefore, the 1994 Act reaffirms the government's preexisting fiduciary duty to perform a complete historical accounting of trust fund assets.¹¹

⁶ 25 U.S.C. § 4011(a).

⁷ 25 U.S.C. § 4011(b).

⁸ *Id.*

⁹ *Cobell v. Babbitt*, Civ. Action No. 96-1285 (D. D.C.), Order Certifying Class (filed February 4, 1997) at 2-3.

¹⁰ *Cobell v. Babbitt*, 91 F. Supp. 2d 1, 58 (D. D.C. 1999).

¹¹ *Cobell v. Norton*, 240 F.3d 1081, 1102 (D.C. Cir. 2001) (emphasis in original).

Under the broadest reading of the opinions of the District Court and the Court of Appeals, the Secretary is required to provide a historical accounting of all funds ever placed in IIM accounts from their inception, or at least from the time the funds were deposited or invested pursuant to the Act of June 24, 1938. The Court of Appeals concluded that one cannot “give a *fair* and *accurate* accounting of *all* accounts without first reconciling the accounts taking into account past deposits, withdrawals, and accruals.”¹²

Implementing the historical accounting project may be limited by Court orders, farther action by Congress, available appropriations, or administrative action. This Report does not address any arguments available to the defendants in *Cobell v. Norton* or other litigation that would affect the scope of the historical accounting as a matter of law.

1.2 CONGRESSIONAL DIRECTIVE TO PREPARE A REPORT

This Report is in response to the concerns of Interior’s appropriating committees about the funding required to perform a “complete historical accounting.” It fulfills a request of the House and Senate appropriating committees for Interior, made first during the FY 2001 budgeting process and then reaffirmed in the FY 2002 process.

In 2002, the House committee stated that “[b]efore the Department agrees to any method for undertaking an historical IIM accounting, the Committee directs the Department to submit a comprehensive report to the Committee detailing the costs and benefits and likely results associated with any proposal.”¹³

The conferees stated that they “remain very concerned about the costs associated with [an historical] accounting,”¹⁴ and that funds appropriated to Interior “may not be allocated prior to the report requested by the Committees detailing the methods and costs associated with an historical accounting.”¹⁵ The conferees reiterated their concerns regarding the cost of a historical accounting:

[Congress] will not appropriate hundreds of millions of dollars for an historical accounting that provides funds for a protracted reconciliation process whose outcome is unlikely to be successful. If the Department, working with the plaintiffs and the Court, cannot find a cost effective method for an historical accounting, the Congress may have to consider a legislative remedy to resolve this and other litigation related issues.¹⁶

1.3 DEVELOPMENT OF THE REPORT

Recognizing the Courts’ declaration regarding the duty to perform a historical accounting and the Congressional expressions of concern about accounting costs, Interior has undertaken a detailed analysis of what a historical accounting would entail.

¹² *Id.* (emphasis in original).

¹³ H.R. Rep. No. 107-103, at 89 (2001).

¹⁴ H.R. Conf. Rep. No. 107-234, at 99 (2001).

¹⁵ *Id.*

¹⁶ *Id.*

Interior has retained five accounting firms to assist in developing and implementing this Report. These firms are Chavarria, Dunne & Lamey LLC, Deloitte & Touche LLP, Ernst & Young LLP, Grant Thornton LLP, and KPMG LLP. Other consultants have been retained to provide specific expertise. Interior has engaged the Bank of America, a major bank and commercial trust company, to provide the perspective of a commercial trustee. Interior has also engaged Hughes & Bentzen PLLC, a trust law practice, to provide advice on the law of trusts and to review accounting results.

Interior has also engaged subject matter consultants, including National Opinion Research Center, a research arm of the University of Chicago (data analysis), Morgan, Angel & Associates LLC (historical and policy research), Historical Research Associates, Inc. (historical and natural resource research), Gustavson & Associates (natural resources consulting), and Upper Mohawk, Inc. (cost analysis). Finally, Interior has retained Booz Allen Hamilton Inc. to assist with contractor integration, records management, and overall project coordination. Further information on consultants and Interior's Office of Historical Trust Accounting is provided in Appendix G.

In addition to engaging these consultants, Interior solicited suggestions from IIM account holders, Interior staff, and the public, and considered the comments it received.¹⁷ This Report provides a working framework for the ongoing historical accounting project.

1.4 ACCOUNTING STANDARDS

1.4.1 Requirements

To determine the standards for the historical accounting, Interior examined statutory requirements and common law practice. However, there is no single standard applicable to all of our requirements:

“Fiduciary Accounting” does not have one commonly understood meaning. In a broad sense, it can mean the entire process whereby a fiduciary—normally a personal representative, trustee or guardian communicates information on an ongoing basis regarding his administration of a fund and periodically justifies his administration to the parties in interest and, perhaps, to a court.

* * *

The fundamental objective of an accounting should be to provide essential and useful information in a meaningful form to the parties interested in the accounting process.

¹⁷ See, e.g., Historical Analysis of Individual Indian Money Accounts, 65 Fed. Reg. 17,521–17,527 (April 3, 2000); U.S. Department of the Interior, Transcript of Department of the Interior Employees Listening Meeting in Washington, DC (August 15, 2001); U.S. Department of the Interior, Transcript of Department of the Interior Employees Listening Meeting in Albuquerque, NM (August 20, 2001); U.S. Department of the Interior, *Blueprint for Developing the Comprehensive Historical Accounting Plan for Individual Indian Money Accounts* (September 10, 2001); U.S. Department of the Interior, *Report Identifying Preliminary Work for the Historical Accounting* (November 7, 2001); see also Intertribal Monitoring Association, *Intertribal Monitoring Association on Indian Trust Funds: Briefing Paper Prepared for the Department of the Interior Regarding Examination of Individual Indian Money Accounts* (February 9 and 10, 1995).

* * *

[A] fiduciary should have enough flexibility to state an account in the manner best adapted to the particular circumstances and [the existence of differing circumstances] discourages any effort to prescribe a totally rigid format.¹⁸

1.4.2 The Accounting Objective

In undertaking this proposed historical accounting project, Interior's objective will be to document for IIM account holders the amount and source of funds deposited to, managed in, and disbursed from their IIM account. To provide this information, Interior will need to gather transaction records and IIM-related documents to reconstruct the account history. Such information may include the following:

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

1.4.3 Obstacles to Meeting the Accounting Objective

A number of obstacles will complicate Interior's ability to meet the objective set forth above. The lengthy history of the IIM Trust Fund, variances in IIM procedures among different Bureau of Indian Affairs (BIA) Regions and Agencies over time, and gaps in supporting records collections may make the accounting difficult or impossible for some IIM accounts. There are additional factors that may compound the difficulties of the historical accounting. The following list generally describes some of the problems of which Interior is currently aware.

- **Errors in the electronic accounting system**—The electronic records may have erroneous entries, missing information, duplicate accounts, and gaps in data. As the accounting proceeds, Interior may be able to verify the accuracy of the electronic data using contemporaneous, supporting hard-copy records.

¹⁸ The American College of Trust and Estate Counsel, Committee on National Fiduciary Accounting Standards, *National Fiduciary Accounting Standards and Model Accounts Formats* at 19-3, 19-4 (revised April 15, 1990). These standards are the result of a joint project of the American Bankers Association, Trust Division; the American Bar Association, Section of Real Property, Probate and Trust Law; the American College of Trust and Estate Counsel; the American Institute of Certified Public Accountants; the National Center for State Courts; and the National College of Probate Judges.

- **Missing transaction records and supporting IIM records**—Some paper records may have been destroyed in accordance with document retention schedules at Interior, Treasury, or the General Accounting Office (GAO). Other paper records may have been damaged, may be missing, or may be in a condition too poor to use.
- **Missing land ownership information and revenue instruments**—Land ownership records systems are maintained separately from the IIM financial records. Leases, contracts, right-of-way agreements, and other instruments may no longer be available.
- **Discrepancies at the trust fund level**—There are known discrepancies in the balances reported by Treasury and Interior, and there are known discrepancies between general ledger and IIM account subsidiary ledgers.
- **Increasing fractionation of allotments**—For the past 65 years, allotments have generally been held in continuing trust status. As probate of trust assets has occurred, ownership of undivided interests in a single allotment has increased, with the result that there are allotments with hundreds or even a thousand owners. Fractionation of ownership has challenged Interior’s land recordkeeping. This could result in lease revenue being credited incorrectly.
- **Whereabouts unknown**—There are approximately 62,000 IIM account holders considered “Whereabouts Unknown.” These IIM account holders have not provided Interior with current addresses and, thus, Interior cannot provide them with accounting statements. These accounts have a total balance of approximately \$65 million.
- **Special deposit accounts (SDAs)**—SDAs are administrative accounts, some dating back several years, which have not been reconciled but may contain funds belonging to IIM account holders. There are approximately 21,000 SDAs with \$68 million in balances, an unknown portion of which may be IIM trust funds.

The extent to which these matters may affect meeting the accounting standard cannot be known until the accounting work proceeds and reports to IIM account holders are prepared. Interior is working to resolve known issues and minimize any negative effects on the accounting results.

1.4.4 Information To Be Provided to IIM Account Holders

The historical accounting information that will be provided to IIM account holders is similar to a statement that might be received from a bank for a personal checking account. A checking account statement is designed to tell the account holder what happened in the checking account for the time period covered by the statement. For the IIM accounts, the information would cover the full term of their IIM account to December 31, 2000, although the historical accounting may be presented in separate accounting portions.

The checking statement informs the account holder of the starting balance in the month, shows the deposits into the account, checks cleared against the account, automatic teller machine (ATM) transactions, and any interest received, explains other transactions, and concludes with a closing balance for the statement period. Sometimes additional information is included to explain what has happened in the account. The checking account holder can then reconcile his/her personal checkbook against the bank statement to verify that all deposits were properly

credited, that the checks written were cashed and properly deducted from the account, that ATM activity is accurate, and that interest earned appears to be correct.

In performing the historical accounting work, the IIM accounts will be prepared in a similar fashion, except that the reconciliation will be performed by Interior's accounting consultants and staff, and the results reported to the IIM account holders.

1.4.5 Direct Pay Arrangements

Allotment owners may elect direct payments from surface and subsurface lessees to pay respective rents and royalties to the allotment owner(s). In these situations, no funds are taken into trust by the Interior IIM Trust Fund and, accordingly, no funds are deposited into the respective allotment owner's IIM account. Accordingly, Interior does not contemplate including such arrangements within the historical accounting.

2. ACCOUNTING METHODS

2.1 THE HISTORICAL ACCOUNTING PERIOD

For costing purposes, it is essential that the “historical” accounting have a defined end-date. Without a definite end-date, Interior would have to return to hundreds of physical locations repeatedly to collect newly-generated documents. Revisiting these locations would not only increase the costs of the project, such as travel, but would also make it substantially more difficult to estimate cost. Furthermore, repeated visiting would be disruptive to normal business activities of the BIA Agencies. Therefore, Interior has estimated costs for conducting an historical accounting through December 31, 2000.

Interior selected this date for two principal reasons. First, by this date, all BIA Regions and Agencies had converted to the TFAS, an accounting system used by many private commercial trust companies. With the final conversions occurring in early 2000, IIM account holders should have received by December 31, 2000, three quarterly statements generated by TFAS. Interior proposes to compare the ending balances of the historical accounting to the January 1, 2001, opening TFAS balances to determine what discrepancies, if any, exist. Second, the Integrated Records Management System (IRMS)/TFAS have been tested during annual audits of the IIM Trust Fund by independent certified public accounting firms since FY 1996.

2.1.1 Categories of Funds

“All funds” can be divided generally into two categories: funds derived from allotted lands and funds *not* derived from allotted lands. Some IIM accounts contain revenues generated from the allotted land (surface and subsurface leases); other accounts contain only other types of funds, such as judgment funds and per capita distributions from tribes. This distinction is important, because accounting for the second category of funds (accounts not containing revenues generated from the allotted land) involves far fewer records and transactions. Interior can account for these IIM accounts more efficiently than funds derived from allotted lands. The relationship between judgment and per capita accounts and other accounts with land-based revenues is depicted in Figure 2-1 and in Figure 2-2.

Special Deposit Accounts (SDAs) are established to hold funds until they can be properly allocated to recipients. SDA funds become part of the historical accounting when allocated to an IIM account.

Figure 2-1. IIM Account Balances by Type

As of December 31, 2000

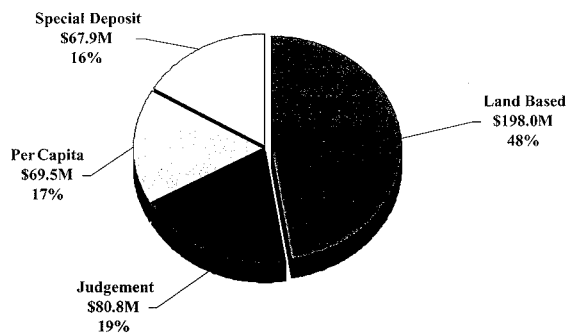
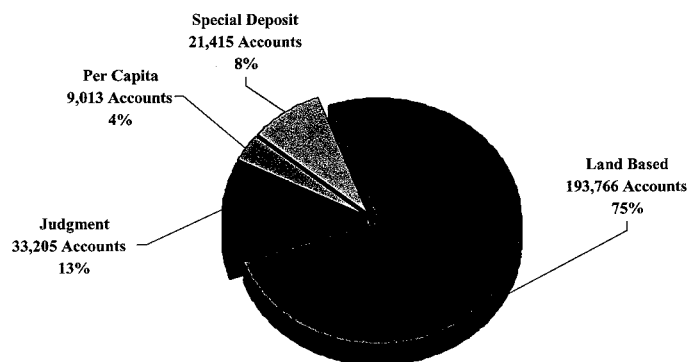


Figure 2-2. IIM Accounts by Type

December 31, 2000



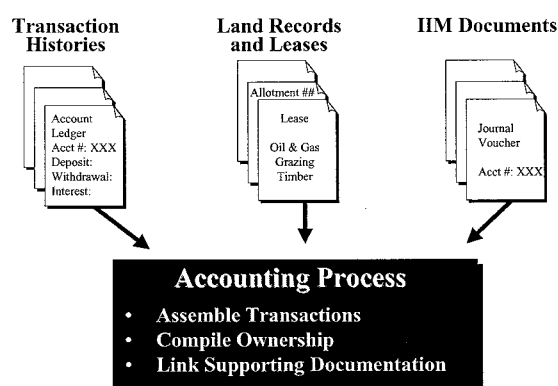
Appendices A-1 and A-7 contain further information on numbers of IIM accounts and aggregate account balances.

2.2 THE ACCOUNTING METHOD FOR LAND-BASED ACCOUNTS

Generally, land-based accounts contain funds derived from the use and development of allotted lands (e.g., timber revenue, farming and grazing fees, and oil and gas royalties). Accounting for

these land-based revenues is far more complicated than for other revenues because of the extremely large number of land-based revenue and disbursement transactions involved (44 million transactions from 1985 to 2000—26 million for land-based IIM accounts and 18 million for interest, and judgment and per capita accounts), the volume, variety, and geographical dispersion of supporting documentation, and the amount of analysis that must be performed. The primary methodology for accounting for land-based accounts requires the collection of three types of supporting documentation and the use of that information to reconstruct the accounts, as shown in Figure 2-3.

Figure 2-3. Accounting Methodology: Reconstruction of IIM Land-Based



The reconstruction of the land-based accounts requires a significant amount of work to ensure accuracy and completeness. The activities described in Sections 2.2.1 through 2.2.4 generally describe how the historical accounting for funds derived from allotted lands could be accomplished.

2.2.1 Reconstruction of Account “Ledgers”/Transaction Histories

Interior proposes to reconstruct a financial transaction history for each IIM account, using an approach similar to the reconstruction of the accounts for the named plaintiffs in the *Cobell* litigation. Financial transaction histories, also referred to as “ledgers,” will be assembled using available electronic databases, ledger cards, and hard-copy ledger books. Consistent with Section 4011(b) of the 1994 Act, the ledgers will reflect, to the extent practicable, the following:

- Transactions in an IIM account from the opening balance to closure of the account, or through December 31, 2000, whichever is earlier
- Revenue posted to an IIM account
- Interest credited to an IIM account
- Disbursements from an IIM account

- Opening and closing balances.

The account ledgers will be created using a number of techniques, depending on the history of the accounts in question. For accounts created during the Electronic Records Era beginning in 1985, ledgers will be created by extracting the relevant transaction histories from the electronic accounting systems. To compile complete financial transaction histories for accounts created during the Paper Records Era prior to 1985, it will be necessary for computer print-outs, ledger books, and ledger cards (depending on the age of the account) to be collected, scanned for reference, indexed, and then digitized. Collecting, scanning, indexing, and digitizing these ledger cards represents a large effort that will be both time consuming and costly.

2.2.2 Collection and Management of Support Documentation

Interior can evaluate the relative reliability of the accounting results by comparing transactions identified during the ledger creation process to contemporaneous historical documentation that substantiates the revenue receipt or disbursement. Interior plans to gather this supporting documentation in a systematic manner so that the accountants can verify and reconcile the IIM accounts in the most efficient manner.

To complete all three Phases of the historical accounting, as many as 240 million pages of records may have to be collected, scanned, and indexed. The records collection effort involves searching for paper, microfilmed, or electronic records that fall into the following categories:

- Revenue records (e.g., leases, contracts)
- Financial records (e.g., ledgers, journal vouchers)
- Ownership records (e.g., land, title).

The process for collecting supporting transaction histories, land records and leases, and IIM documents consists of the following activities:

- Identify the categories of records for collection
- Identify their physical locations
- Collect and electronically scan records
- Index records
- Exercise quality control over the collection and indexing processes
- As necessary, locate and collect documents held by third parties.

Because leasing and other economic activity varies from tribe to tribe, it may be more efficient for the historical accounting to focus on specific tribal members or IIM accounts serviced by a specific BIA Agency. Thus, an initial step in the collection of support documentation might be to conduct an analysis of tribal histories. The history would summarize allotment-related activities and local practices that occurred over the relevant time periods. It should provide an understanding of the types of revenues, land actions, prior legal settlements, and other relevant matters that could have affected the accounts in question. The history should also help to identify the interactions that Interior had with the tribes.

Records collection and management involves collecting, scanning, and analysis of supporting documentation, and is a major cost driver of the historical accounting. Extensive records

searches across the United States must be performed, including searches at BIA Regional and Agency offices, warehouses maintained by the Office of the Special Trustee (OST), Bureau of Land Management (BLM) and Minerals Management Service (MMS) offices, Federal Records Centers (FRC), and National Archives.

Interior also plans to continue its search for records in possession of third parties at non-Federal facilities, such as historical societies, state and local government entities, and private industry (e.g., oil companies and timber companies). Because non-Federal entities may have supporting documentation, Interior has initiated a notification and collection policy by requesting that non-Federal sources notify Interior if they have IIM- or allotment-related records. Interior has also requested that non-Federal records custodians either preserve these records indefinitely or send them to Interior for safekeeping.¹⁹ In addition, Gustavson Associates, a natural resources consulting firm, has conducted a pilot search of various county records offices and has found that these offices may be a particularly good source of information.²⁰

When the records are collected, imaged, and indexed with sufficient quality, the information will be placed in an electronic document management system with appropriate security. The accountants will use this system to begin linking the transactions—during the reconstruction of the historical transaction statement efforts—to the supporting documentation.

The process of associating the supporting documentation with the account ledgers will be costly and time consuming because of the complexity of the accounting and land records systems in use over the years and the sheer volume of transactions. Based on current understanding of the systems, for example, one supporting document may generate multiple transactions in various accounts, requiring substantial work on the part of the accountants to correctly identify the accounts affected by the transaction and then create the electronic links.

2.2.3 Verification Using Support Documentation

After the transaction histories/ledgers from the Electronic and Paper Transactions Eras are assembled, this relevant supporting documentation will be used to verify the accuracy of transactions that appear on the ledgers. For example, a monthly \$50 income transaction appearing on a ledger can be verified using a corresponding surface lease to confirm that required payments were, in fact, \$50 per month. Interior has developed an *Accounting Standards Manual* (Manual) to guide staff and contractors in using the types of records that support IIM transactions (see Appendix B). As the historical accounting project continues, Interior will update the *Manual* as it discovers new types of records and gains more information on the historical policies and procedures used at various BIA offices and other locations.

2.2.4 Missing Information

It is certain that gaps in documentation will be encountered during the historical accounting. Such gaps may range from a single missing lease to an entire time period of missing

19 Notice Regarding Records Relating to Indian Allotted Land and Individual Indian Money Accounts, 67 Fed. Reg. 5607 (February 6, 2002).

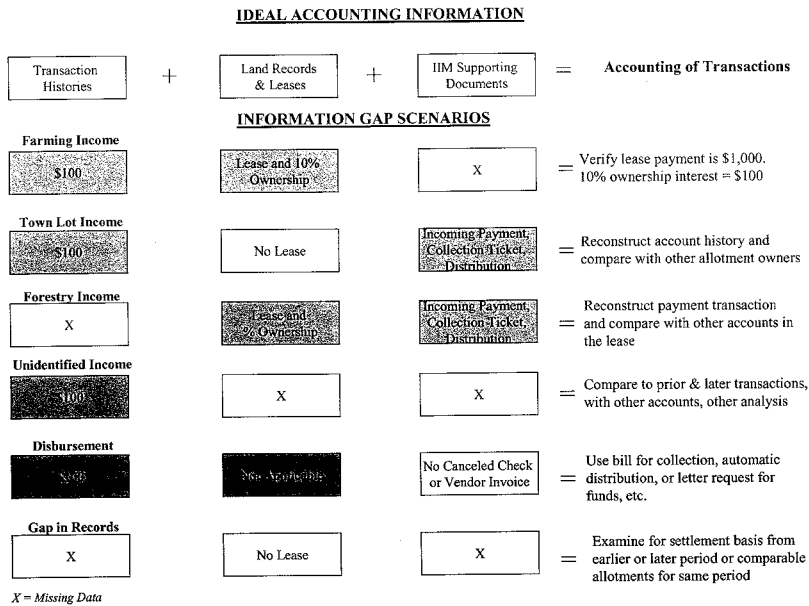
20 Gustavson Associates, Recommended Policies and Procedures for Collection of Missing Information (June 7, 2002).

documentation for some or all IIM account holders served by a specific BIA Agency. Various options, including forensic accounting methods, can be used to address gaps in documentation:

- Using a *comparable transaction approach*, accountants can identify similar transactions and project expected transaction amounts. This would allow the accountants to determine lease payments on allotted lands without actually having a lease document. The projected amount could then be cross-checked against actual collections as a second verification. This approach may be especially useful with regard to lease collections on multiple-allotment leases.
- *Secondary documents* may be used in place of primary supporting documents that may be missing. For example, even if a lease were missing, a lease summary sheet might exist that could provide all pertinent contractual details. This should be sufficient to establish contract payments, particularly if this option were used in conjunction with the comparable transaction approach.
- As stated earlier, *non-Federal parties* may have records that could serve as supporting documentation. This method may be particularly useful in locating oil and gas leases or in other situations where large volumes of documents may be available from a single source.
- A *pattern of regularity* may exist to explain the transaction. For example, a monthly vendor bill (utility, hardware, space) may be missing, but the prior and subsequent months' bills would document regular use of that vendor.

Other methods for addressing gaps in documentation may be utilized during the historical accounting project and will depend on the particular circumstances presented.

Figure 2-4. Handling Gaps in Information



2.3 THE ACCOUNTING METHOD FOR JUDGMENT AND PER CAPITA ACCOUNTS

Unlike the funds discussed above, some funds are not derived from allotted lands, but instead are payments from a tribe. Judgment funds are derived from a tribal litigation award. After a tribe receives a money judgment from litigation, the tribe may distribute a portion of the award to its individual members. Many tribal members are paid directly, but others, such as children and legally incompetent adults, have funds placed in trust in an IIM account.

Per capita funds also represent tribal payments to individuals, but are derived from a source other than judgment awards, such as tribal timber sales.

In 1995, the Intertribal Monitoring Association identified judgment funds as a promising area for “providing the [BIA] with clean account balances at a point certain in time” and obtaining “a one-time and final resolution of its difficulties regarding one-half of the assets in its most troublesome portfolio, the IIM pool.”²¹ Indeed, Interior conducted a pilot project to examine

21 Intertribal Monitoring Association, *Intertribal Monitoring Association on Indian Trust Funds: Briefing Paper Prepared for the Department of the Interior Regarding Examination of Individual Indian Money Accounts* (February 9 and 10, 1995) at 5.

judgment and per capita accounts and found that these funds generally can be accounted for with particular efficiency.

Judgment and per capita IIM accounts are reconciled by first identifying a particular judgment award or tribal per capita resolution, and then examining the corresponding tribal distribution plan and supporting documentation. By examining the official tribal membership roll or other supporting documentation including the distribution plan, tribal resolutions, financial documents, and/or related correspondence, the individual payment each member should have received can be determined. Because these types of accounts are often established for minors for the receipt of judgment per capita distributions, the accounts generally have no activity other than interest. The historical accounting could include verifying periodic interest accruals. The IIM accounts resulting from a particular judgment or per capita distribution have, for the most part, identical balances that can be readily compared for original revenue transactions and interest accruals. Some accounts, of course, would need additional analysis if the account holder has other trust income. The pilot project has produced account reconciliations for 7,903 judgment accounts totaling \$22,765,000.

2.4 RESULTS AND REPORTING

After particular historical accountings are complete, Interior plans to provide historical accounting statements to IIM account holders. Interior expects to design a reporting format providing accounting information that will be “stated in a manner that is understandable by persons who are not familiar with practices and terminology peculiar to the administration of estates and trusts”²² and will contain a “summary of [the historical accounting statement’s] purpose and content.”²³ Interior expects to provide the information called for in Section 4011(b) of the 1994 Act:

- Source, type, and status of the funds
- Beginning balance
- Gains and losses
- Receipts and disbursements
- Ending balance.

²² The American College of Trust and Estate Counsel, Committee on National Fiduciary Accounting Standards, *National Fiduciary Accounting Standards and Model Accounts Formats* at 19-5 (revised April 15, 1990).

²³ *Id.* at 19-6.

3. ACCOUNTING PRIORITY

Due to the scope of the historical accounting project, an accounting of “all funds” cannot proceed simultaneously for all IIM accounts, but must be divided into manageable segments, with the accounting work performed sequentially.

The following discussion proposes ways of segmenting the historical accounting project into orderly phases. In dividing the historical accounting work into phases, the following would be accomplished:

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

This Section of the Report presents a division of the accounting work by Phases, and then a further subdivision of Phase 1 describing the sequence of the historical accounting work.

3.1 PHASES OF THE ACCOUNTING

Two aspects of IIM records are the basis for establishing phases of work for the historical accounting project. First, IIM accounts can be divided between current accounts and former accounts. Current accounts are defined in this Report as those IIM accounts that were in existence on December 31, 2000. This date corresponds to the end date for the historical accounting described in Section 2.1. Because Interior has the TFAS data as of that date, the pool of current accounts can be defined from the electronic data.

“Former accounts” are the IIM accounts that were closed as of December 31, 2000. The exact make-up and number of these accounts is unknown at this time because the records of many of these IIM accounts predate electronic record keeping.

Second, IIM accounts also can be divided into those accounts in the “Electronic Transactions Era” and those in the “Paper Transactions Era.” In the Electronic Transactions Era, IIM account information was recorded in electronic data systems. The Electronic Transactions Era began in approximately 1985, although not all IIM accounts were added to the electronic systems at the same time. The initial electronic data system was IRMS, which was replaced during 1998-2000 by TFAS used currently.

In the Paper Transactions Era prior to the use of IRMS/TFAS, IIM account transactions were manually recorded in ledger books or on ledger cards. Some of the transaction records, for a period just prior to 1985, are in hard copy computer printouts generated from electronic records that no longer exist. These transaction records and other IIM-related records are stored in boxes and other containers located at BIA Agency offices, at warehouse facilities operated by Office of

the Special Trustee in Albuquerque, New Mexico, at Federal Records Centers and National Archives around the country, and in other dispersed locations or held by non-Federal parties.

The distinction between the Electronic Transactions Era and the Paper Transactions Era is significant because the electronic data is a readily accessible source of information on the number, type, and history of IIM accounts for the period from 1985 forward. Gathering documentation from the paper records will be time-consuming, labor-intensive, and expensive.

3.1.1 Phase 1: The Electronic Transactions Era for Current IIM Accounts

Phase 1 is a historical accounting for all the current accounts (IIM accounts existing on December 31, 2000), with a reconciliation during the Electronic Transactions Era from 1985 to December 31, 2000. Phase 1 includes 193,766 land-based IIM accounts that derive revenue from use of a land allotment (farming or grazing) or leasing of the resources on the allotment (oil and gas or timber), and 42,218 judgment and per capita IIM accounts that derive revenue from tribal payments. Having the accounting transactions in an electronic format facilitates analysis of both types of IIM accounts.

The IIM accounts that were opened during the Electronic Transactions Era, an estimated 170,000 IIM accounts, will have their transaction history reconciled in Phase 1. For example, if an IIM account was opened after 1985, by the end of Phase 1, the IIM account holder will receive a historical accounting covering the history of the transactions in the account from opening balance to the balance as of December 31, 2000.

In addition to dividing the historical accounting work into three Phases, additional segments have been identified to prioritize the order in which the work will be performed in Phase 1 and to provide a further breakdown for estimating costs. Using the IRMS/TFAS data, Interior proposes to divide Phase 1 for costing purposes and to explain and show how Interior will proceed with the historical accounting. Section 3.2 presents a schedule of accounting work that will be followed in Phase 1.

3.1.2 Phase 2: The Paper Transactions Era for Current IIM Accounts

There are an estimated 60,000 to 70,000 current accounts that were opened prior to 1985. These IIM accounts have transaction histories starting in the Paper Transactions Era and continuing into the Electronic Transactions Era. During Phase 1, the historical accounting will reconcile the transaction history in the Electronic Transactions Era for these IIM accounts. For example, if an IIM account were opened in 1975, by the end of Phase 1, the IIM account holder will receive a reconciliation covering the history of the transactions in their account from the first electronic transaction in 1985 to the balance as of December 31, 2000, although the 1985 opening balance could not be verified at that time. The portion of the IIM account in the Paper Transactions Era will be reconciled in Phase 2, and a comparison made of the account balances at the end of the Paper Transactions Era and the start of the Electronic Transactions Era.

Phase 2 comprises all the current IIM accounts (existing accounts on December 31, 2000) that have a portion of their account history in the Paper Transactions Era. The Phase 2 historical accounting is a reconciliation of the Paper Transactions Era portion of IIM accounts starting from inception of the IIM account to the first electronic transactions in 1985. This includes a

broad time span, since some current IIM accounts were established in the early part of the 20th century.

From the IRMS/TFAS electronic data, the number of current IIM accounts that existed before 1985 can be estimated. However, the number of transactions and IIM-related documents that exist only as paper transactions is not known and can only be determined by assembling the paper transaction records and compiling a transaction history for each of the IIM accounts. In the Paper Transactions Era, the number of land-based revenue IIM accounts compared with judgment and per capita IIM accounts also is not known. Therefore, while Interior can broadly define Phase 2 work in the historical accounting, a more detailed breakdown of the work is not yet possible.

3.1.3 Phase 3: Former IIM Accounts

Phase 3 comprises all the remaining IIM accounts that were closed prior to December 31, 2000. While there are no electronic data for closed accounts prior to 1985, electronic data support about 250,000 accounts closed during the Electronic Transactions Era. The accounts closed prior to 1985 is not estimated at this time (see the graphic at Appendix A-6). In Phase 3, the closed IIM accounts will be reconciled. The accounts in Phase 3 include former IIM accounts closed due to inactivity, former IIM account holders who received a distribution of proceeds during their lifetime from a closed judgment or per capita account, and deceased account holders whose IIM accounts and allotment interests were the subject of probates. Some of these IIM accounts were closed in the Electronic Transactions Era and a portion of their account history will be contained in the electronic data. Phase 3 includes the earliest opened IIM accounts and thus potentially the greatest problems with missing documents. The precise number of former IIM accounts will have to be calculated from an examination of the paper transaction records. Because of the lack of data, the cost estimate for Phase 3 is estimated most likely to change as the historical accounting progresses.

The sequence of work in Phase 3 remains to be determined. To the extent possible, information that results from a reconciliation of these IIM accounts will be reported to heirs and/or successors in interest. It is not clear who would receive the historical accounting information if there are no identifiable heirs or successors. However, this information will be retained.

3.2 SEQUENCE OF THE ACCOUNTING WORK

The strategy proposed for conducting the historical accounting is to reconcile the most recent IIM accounts starting with the highest dollar balances. As of December 31, 2000, there were 235,984 current accounts for individual account holders containing \$348.3 million (see Summary of IIM Accounts at Appendix A-7). The objective of this strategy is to first complete all the work in Phase 1, reconciling the Electronic Transactions Era component of the current accounts, and work starting with the highest dollar balance IIM accounts to the lower balance accounts.

From the IRMS/TFAS data, a sequential breakdown of the work within Phase 1 of the historical accounting project has been developed. The sequence of the accounting is shown in Table 3-1. The Table separates the work on the judgment and per capita accounts from the IIM accounts that derive their revenue from land-based activity. The information in Table 3-1 is based on information in IRMS/TFAS as of December 31, 2000.

Table 3-1. Sequence of the Phase 1 Historical Accounting Work

Accounting Groups	Number of Accounts	Account Balance	"Slice" Cost*	Cumulative Cost*
Judgment and Per Capita Accounts	42,218	\$ 150.3 M	\$1.1 M	\$ 1.1 M
TOTAL	42,218	\$ 150.3 M	\$1.1 M	\$ 1.1 M
Land-Based Revenue Accounts				
Group 1—(Current accounts opened between 1985 and 2000) High Value Accounts	242		\$4.2 M	\$5.3 M
Group 2—(Electronic component of accounts opened prior to 1985) High Value Accounts	546		\$9.5 M	\$14.8 M
Subtotal	788	\$103.5 M	\$13.7 M	\$14.8 M
Group 1 Medium-Value Accounts	18,473		\$78.1 M	\$92.9 M
Group 2 Medium-Value Accounts	22,268		\$175.2 M	\$268.1 M
Subtotal	40,741	\$88.3 M	\$253.3 M	\$268.1 M
Group 1 Low-Value Accounts	44,909		\$197.0 M	\$465.1 M
Group 2 Low-Value Accounts	98,835		\$442.3 M	\$907.4 M
Subtotal	143,744	\$1.0 M	\$639.3 M	\$907.4 M
No Throughput in the Account	8,493	\$5.2 M	N/A	
TOTAL	193,766	\$198.0 M	\$907.4 M	\$907.4 M

*See Section 4.3, Cost of the Historical Accounting, regarding limitations of all cost estimates.

3.2.1 Judgment and Per Capita Accounts

Interior will continue the work already begun on the 42,218 judgment and per capita IIM accounts. The funds in these IIM accounts are derived from the distribution of monies from tribes to enrolled tribal members, and are relatively less difficult to reconcile because there is generally a single revenue transaction followed by interest accrual transactions. This work will proceed independently of the strategy for the land-based IIM account revenues. Interior believes that most of the current judgment accounts can be reconciled in 12 to 18 months, which would reconcile \$150.3 million in the IIM Trust Fund. Additional work will be necessary on per capita accounts and some more complicated judgment accounts.

3.2.2 Land-Based Revenue Accounts

The bulk of the current IIM accounts receive revenues from discrete activities on allotted lands. As described in Section 2, the reconciliation of these accounts is more complex because revenues must be traced from collected records starting with leases or other instruments, to collections at the allotment level, and then to the affected IIM accounts. One approach would be to follow a work plan in Phase 1 that divides the IIM accounts into two discrete groups of accounts as shown below. Within each group the IIM accounts will be examined in "slices" starting with the high value accounts, those with high dollar balances and high dollar throughput. (See Appendix A.1 on page A-4 for further details on "slices".) High-value accounts in each of the groups within Phase 1 would be examined as follows:

- **Group 1**—Current accounts in Phase 1 opened from 1985 to 2000, reconciling all transactions for the 15-year period
- **Group 2**—Current accounts in Phase 1 that opened in the Paper Transactions Era, reconciling all transactions in the electronic portion of this group of accounts.

Following this accounting work, reconciling the medium- and lower-value IIM accounts within the two groups would continue. The definitions of high-, medium-, and low-value IIM accounts in Table 3-1 are taken from the data defined on the table in Appendix A-1. The table is a matrix comparing current account balances as of December 31, 2000, with the average annual throughput of funds passing through the IIM accounts.

- **High-Value**—accounts (green color on the table at page A-4)
- **Medium-Value**—accounts (white color on the table at page A-4)
- **Low-Value**—accounts (blue color on the table at page A-4).

The “slices” above are for illustrative purposes and were selected to describe each “slice” of the accounting work in sequences. The actual values examined in each “slice” of the work may vary. The principal basis for calculating the cost of each “slice” of the accounting work in Phase 1 is the number of transactions that would need to be reconciled in each slice.

Interior cannot, at this time, project time frames and a completion schedule for the historical accounting work in Phase 1. Instead, if so directed by Congress, Table 3-1 will be used by Interior for planning and task scheduling. The actual historical accounting work will be conducted within the limits of funds appropriated for this purpose. Section 4.6 describes the work that Interior intends to accomplish in the balance of fiscal year 2002 and fiscal year 2003 with the funds that are anticipated to be available.

Following completion of the Phase 1 historical accountings, Interior will continue to work back in time through the IIM accounts in the Paper Transactions Era prior to 1985. It is not possible at this time to divide the work of Phase 2 as was done for Phase 1 because the IIM data are not available in an electronic format. However, Interior would define accounting periods for sequencing the work, such as 1970 to 1985, 1950 to 1970, 1938 to 1950, and earlier accounts. Within each time frame, the objective would be to examine the large value accounts, working to the lower value accounts.

4. HISTORICAL ACCOUNTING COSTS

This Section of the Report describes the overall costing methodology and rationale for pricing the IIM historical accounting.

4.1 COSTING ASSUMPTIONS

The scope and complexity of the historical accounting necessitates an assessment of costs for each of the tasks associated with the project. Interior's contractor, Upper Mohawk, Inc, used *ProPricer*, a proprietary software model specifically designed for cost estimates and price proposals. The analytical capabilities of the model—costing program alternatives and “what-if” analyses—require preparation of a detailed work breakdown structure. In the costing model, activities are costed at the various levels of the work breakdown structure. By standardizing cost elements (inputs), creating task-related cost estimating relationships, having consistent means of data manipulation, and effectively controlling the application of rates and other factors, cost estimates can be calculated that are consistent between options and accurate to the limit of the input data. More detail on *ProPricer* and developing the cost of the historical accounting project is contained in Appendix C.

The costing process relied on independent expertise and advice provided by Interior's various contractors. The objective was to establish the cost of the historical accounting, and the segmentation of costs based on staging the accounting work.

Within the costing model, several program-level assumptions were made to construct the baseline cost for the entire historical accounting. These assumptions are:

- Ten-year program duration for the historical accounting
- The estimate assumes that the accounting will examine and document transactions necessary to verify a transaction recorded in an IIM account:
 - Paper records need to be scanned and indexed
 - Electronic records need to be integrated into the document database
 - Accounting transactions need to be reviewed, including an examination of land ownership where appropriate
 - IIM accounts need to be reconciled
- The work breakdown structure completely defines the required work for the historical accounting project to the extent it is currently known
- Standard costing rates are used
 - \$60 per hour for Federal Government employees
 - \$125 per hour for all contractors (this is a combined rate, covering a broad range of contractor tasks, skill levels, and includes all administration and profit charges)
- Out-year projections (both current year and inflated dollar costs are included) are based on an escalation rate of 2.5 percent (as derived from the Consumer Price Index)

- Although there are probably some errors, the data that reside in the existing electronic records systems [Land Records Information System (LRIS), IRMS, TFAS] are presumed correct (no cost estimate is included for data clean-up or corrections). The cost estimates will be redetermined if this assumption proves invalid.

Additional information on assumptions appears in Appendix C.

4.2 METHODOLOGY

The primary methodology utilized for estimating the cost of the historical accounting was a “bottom-up” approach. That is, the estimates were “built up” from the lowest work level in the work breakdown structure and “rolled-up” to the higher levels. Depending upon the level of detail of the costing information available, cost estimates were developed at various levels in the work breakdown structure. For example, the cost of scanning and electronically indexing documents is estimated at the page level, whereas travel costs are differentiated only between average Federal Government and non-government travel rates.

The project cost estimate for historical accounting comprises five significant components (the project cost drivers), shown below in the logical order they will be performed:

- Program Management
- Document Collection
- Document Scanning, Imaging, and Indexing
- Document Management
- Account Reconciliation.

The cost of each of these five components is derived from the scope and magnitude of expected work effort in the accounting process. For Program Management, the scope is defined largely by the duration of the entire historical accounting project. For the Document Collection and Management activities, the scope is defined by the estimated count of IIM-related documents that must be located, collected, scanned, analyzed, and indexed. For the Account Reconciliation, the number of accounting transactions that need to be analyzed and the time required to perform each analysis is the basis of the estimate. Some accounting estimates, shown below, are developed by varying the scope for these five components. All remaining cost elements, although they are accounted for in the estimate, are relatively insignificant in the cost of the overall project.

4.3 COST OF THE HISTORICAL ACCOUNTING

The estimates for the cost of the historical accounting are only as robust and reliable as the information available to input into the pricing model. Some of the estimates for time and cost are based on the experience with the 1972 to 1992 Tribal Reconciliation project and the Ernst & Young accounting project performed for the IIM accounts of the five named plaintiffs in the

Cobell lawsuit.²⁴ However, neither of those projects compare in the number of accounts, transactions, or records that comprise the IIM historical accounting.

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

Based purely upon the experience of Interior's cost contractor, the cost range for the historical accounting could lie between -5 percent and +25 percent of the estimates in this Report.

The descriptions and costs of each estimate are shown in Tables 3-1 and 4-1. Changes made in the *ProPricer* model to calculate the different costs include:

- Whether transactions are in electronic or paper form
- The level of document location, collection, and scanning required
- The number of transactions that must be reconciled.

4.3.1 The "All Funds" Accounting

This is the cost estimate for performing a reconciliation of all the IIM accounts on a transaction-by-transaction basis. In this cost estimate, the accounting would reconcile all transactions and supporting documentation. This is the total project cost of the historical accounting. The work examined for this estimate includes all the aspects of the accounting objectives described in Section 1 for all current and former IIM account holders.

The time assumption for this and all the cost estimates used in this Report is a ten-year historical accounting project. Initially, a 20-year project duration was examined, however the only cost difference was additional project management for the longer time period. The *ProPricer* model has the capability to display time durations and periods of "ramping up" or winding down the project effort. However, Interior does not have reliable data to measure the cost effect of compressing or stretching out all the historical accounting project components. A quicker or slower project pace will be determined by the funding schedule that Congress adopts. The implications of the funding rate would need to be examined with additional cost estimates as the accounting work proceeds.

Table 4-1 presents the cost estimates for the accounting divided into the three Phases described in Section 3. The cost estimates assume that all three Phases of accounting will be completed, otherwise economies of scale are eliminated and the cost of each Phase could increase.

²⁴ Joseph R. Rosenbaum, Revised Interim Final Report of Joseph R. Rosenbaum, Ernst & Young LLP (November 19, 2001) (document under seal).

Table 4-1. Accounting Cost Estimates

Type of Estimate	Description	2002 Constant Dollars
Phase 1	Accounting for the Electronic Transactions Era portion (1985 to 2000) of current IIM accounts	\$907,400,000
Phase 2	Accounting for the Paper Transactions Era portion (from the inception of the account to 1985) of current IIM accounts opened prior to 1985	\$611,600,000
Phase 3	Accounting for all former IIM accounts, closed prior to December 31, 2000	\$906,000,000
Total Accounting	Accounting for all the IIM accounts and all funds taken into trust whenever deposited	\$2,425,000,000

For ease of comparison, only constant dollars and an assumed 10-year project are shown. Inflated dollars using an inflation rate of 2.5 percent would increase the estimated historical accounting cost by \$247 million to approximately \$2.7 billion.

Though work efficiencies are achieved by having access to electronic transactions records in Phase 1, the number of IIM accounts and transactions in Phase 1 is estimated to be greater than in Phase 2. The cost estimate for Phase 3 assumes all paper records—transaction records, land records, and IIM-related supporting documents—must be located, collected from various repositories and offices, scanned, indexed, and managed in data bases.

4.4 COST NOT INCLUDED IN THE DEPARTMENT'S ESTIMATES

These estimates do not include certain costs associated with the historical accounting, such as the following:

- **Costs to other Government agencies**—Interior has not estimated costs that may be incurred by Treasury, the General Services Administration's Indian Trust Accounting Division, or any other Federal Government agencies that may be affected by the historical accounting project.
- **Litigation costs**—As mentioned previously, the historical accounting is the subject of litigation in the Federal courts. Interior has not attempted to estimate any litigation costs.
- **Overpayments and underpayments**—These estimates are related only to performing the historical accounting. As the overall historical accounting project is completed, it is possible overpayments and underpayments to some account holders may be found. Until more historical accountings are completed, an estimate of overpayments and underpayments is not practicable.
- **Tribal trust funds**—The Report relates only to the accounting of individual Indian moneys and does *not* include a cost estimate for any accounting work for tribal trust funds. As a related matter, this Report has not attempted to estimate litigation costs relating to lawsuits brought on behalf of Indian tribes for an accounting of tribal trust assets.

4.5 SCHEDULE OF ACCOUNTING WORK

Because of the breadth of the historical accounting, a firm schedule for the completion of the project cannot be provided. As part of the cost analysis, the estimates are predicated on completion of the historical accounting within assumed time frames, the assumptions being based on how much accounting work can be accomplished over any given period of time and the availability of funding from Congress.

To put this project into context, it is instructive to examine the work of the Indian Claims Commission ("Commission"), which was established in 1946 as a quasi-judicial independent agency for the purpose of hearing and determining tribal claims against the United States that accrued prior to August 13, 1946.

Accounting cases were "the second most numerous type of claim" before the Commission.²⁵ The enabling act that created the Commission "granted it a 10-year life span and did not provide for extension on the contingency that it might not complete its work."²⁶ But "[i]t soon became obvious that the job was too complex to be accomplished within the time limit[;] . . . [t]he number of claims, the difficulty and complexity of the cases and the large amounts of highly technical and historical evidence necessary to decide each case were factors which proved to be barriers to any hope of speedy disposition of cases."²⁷ Therefore, "Congress extended the life of the Commission in 1956, and again in 1961, 1967, 1972, and 1976 because the job was still unfinished."²⁸ The Commission commented that, given the scope of the project, these extensions were not at all unreasonable:

The fact was that the time span of 20 years (or even 32 as it developed) was not an exorbitant one to resolve the immense and complex backlog of work involved in over 600 claims covering 150 years. The case exhumation and presentation, and the defense in the courtroom context was inherently a lengthy procedure.²⁹

Of course, some differences exist between the claims heard by the Commission and the historical accounting project. However, judicial adjudication of accounts is much more time-consuming than is the type of accounting contemplated in this Report. Another difference, though, is that the Commission addressed only tribal claims because "[a]cceptance of individual claims . . . was against the intent of Congress and would have resulted in a docket too huge to manage."³⁰

Interior now faces many of the obstacles reported by the Commission. The Commission reported that the accounting cases "required an accounting by the Government of any funds belonging to Indians, how they came into being, how they were expended, and

²⁵ Final Report, United States Indian Claims Commission, August 13, 1946–September 30, 1978 at 8.

²⁶ *Id.*

²⁷ 1969 Annual Report, Indian Claims Commission at 2.

²⁸ Final Report, United States Indian Claims Commission, August 13, 1946–September 30, 1978 at 12.

²⁹ *Id.* at 12.

³⁰ *Id.* at 10.

what balances were held in the United States Treasury.”³¹ It reported further that “[m]any of [the] records were quite old and the accounting involved thousands of transactions.”³²

And perhaps most important, the sheer number of accounts included in the historical accounting described in this Report represents many times the number of claims examined by the Commission in its 32-year existence. And after an untold number of former and deceased account holders are factored in, the enormity of the task becomes more clear on how much it may actually cost. Therefore, Interior cannot provide a dependable estimate as to when the project will be completed.

4.6 FY 2002 AND FY 2003 BUDGET AND EXPENSES

Table 4-3 provides data on OHTA funding and expenses for the Federal FY 2001 to FY 2003. As the table indicates, Congress appropriated an initial \$9,978,000 in FY 2001 to establish the OHTA. This Report fulfills the Congressional requirement, and OHTA anticipates its \$7.5 million FY 2002 appropriation will be released before the end of the FY 2002.

The budget request for FY 2003 is \$16.5 million. This amount would be used to fund a core group of OHTA permanent staff, as well as a specialized group of contractors and technical advisors (see Appendix G). The planned objectives in FY 2003 include:

- Complete the historical accounting of all IIM judgment and per capita accounts.
- Complete all pilot accounting projects begun in FY 2002.
- Devote substantial activity to building the hardware, software, and communications components of the data management system. This system will support the massive effort required to optically scan, index, and analyze the millions of pages comprising IIM documents.
- Initiate the historical accounting on the grouping of IIM accounts assigned the highest priority, as discussed in Section 3.

In regard to funding beyond FY 2003, it is too early in the FY 2004 Federal budget cycle to address OHTA’s funding request that the President will submit to Congress in January 2003.

³¹ *Id.* at 8.

³² *Id.*

Table 4-2. Historical Trust Funding, FY2001 to FY2003
 (\$000)

	2001	2002	2003
Appropriations (\$000)	9,978	7,500	16,500
Carryover Funds	--		7,349
Total Funds Available (%000)	9,978	15,870	23,849
Expenses: Pers Services/other	208		2,210
Expenses: Contractors	1,400		21,550
Total Expenses (\$000)	1,608	8,521	23,760

5. CONFIDENCE IN ACCOUNTING RESULTS

5.1 LAND-BASED ACCOUNTS

Interior is designing a methodology for the historical accounting to produce high quality results, subject to the limitations and availability of the IIM records and data. While Interior expects to discover some errors or variances in the historic IIM account records, Interior has a high level of confidence in the quality of the accounting work that will be performed, and the accuracy and reliability of the accounting results that will be produced using this methodology.

5.2 JUDGMENT AND PER CAPITA ACCOUNTS

Interior already has experience conducting historical accountings for judgment and per capita accounts. Based on a pilot project to reconcile a number of judgment and per capita accounts conducted by the accounting firm of Chavarria, Dunne & Lamey (CDL), Interior believes that accurate, reliable historical accountings can be performed on these accounts.

To confirm the reconciliations prepared by CDL, a second accounting firm, Grant Thornton, examined CDL's accounting results and work papers as part of a quality control review and evaluation. Grant Thornton concluded that the "approach taken to reconcile the judgment accounts was acceptable for conducting the historical accounting of the IIM judgment accounts."³³ Although some of the judgment accounts will require additional work, Grant Thornton noted that a significant number of accounts could be reconciled efficiently:

[t]he pilot project achieved significant progress in not only identifying methods for determining efficient account selection methodology (identifying high volume/high dollar account balances) but also in actually performing a significant number of IIM account reconciliations. During our review of the judgment accounts, we noted that approximately two-thirds of the IIM judgment accounts selected could be considered fully reconciled.³⁴

Grant Thornton also examined work done to complete accountings of per capita accounts. Although Grant Thornton agreed with CDL that additional research was required, Grant Thornton observed that "[t]here appears to be a significant potential benefit to resolving large numbers of per capita funded IIM accounts because they are very similar in nature to judgment accounts."³⁵ Based on these findings, Interior is optimistic that future judgment and per capita accounts can be reconciled with a high level of confidence.

5.3 QUALITY CONTROL

Interior is designing the historical accounting methodology to ensure that, should Congress appropriate funding to go forward and supporting data are sufficient, high quality results are

33 Grant Thornton LLP, Final Report of Grant Thornton LLP: Review of IIM Historical Accounting Pilot Project (April 8, 2002) at 9.

34 *Id.* at 10. The remaining third of the IIM judgment accounts require location of additional documentation or follow-up work to reconcile accounts with additional transactions.

35 *Id.* at 16.

obtained. The information and documents Interior would collect to be used in reconciling IIM accounts must be as reliable as possible for accuracy. To meet this requirement, Interior would work to weave needed quality controls throughout the historical accounting project by implementing controls over the:

- **Data Inputs**—Monitoring the collection of records for the historical accounting so that needed records are not missed or indexed incorrectly
- **Systems and Infrastructure**—Designing databases and supporting systems to match the historical accounting needs and using the systems properly
- **Processing**—Monitoring processes used in collecting records, compiling data from records, and the accounting procedures used to reconcile accounts
- **Outputs**—Reviewing various work products at appropriate stages in the historical accounting from initial or interim products to final accounting results.

The most effective controls are preventive. Interior will seek to reduce the likelihood of errors by building in quality controls upfront into systems and processes. Support systems developed will be evaluated to verify accuracy and to assure the system operates as intended and meets critical quality requirements, such as requirements for controls over access and data integrity. Source data used to populate support systems, such as ledgers and images of historical documents, will undergo quality control checks upon entering data into systems. Interior's intent would be to help make certain that the accounting teams have good information to work with.

To assure the quality of the historical accounting work, Interior is developing a guidance document for performing the historical accounting. Interior's *Accounting Standards Manual*, which is described further in Appendix B, provides information on the documentation requirements for reconciling IIM accounts. The Manual serves as a means to standardize performance expectations and ensure that consistent levels of quality are achieved by each team of accountants. Additionally, each firm involved in producing or reviewing accounting results for the historical accounting will have internal quality control practices, such as internal review of each work product.

5.4 ACCOUNTING REVIEW

The accounting results produced will undergo multiple levels of independent review and verification so that the results receive the benefit of multiple professional judgments. Several kinds of independent review and verification will include:

- **Technical Accounting Review**—Interior has engaged the independent accounting firm Grant Thornton to review accounting results against professional standards and the Manual
- **Trust Law Review**—Interior has advertised to engage law firms with experience in trust law to provide experienced, independent review of accounting results
- **Trust Management**—Interior has engaged the Trust Department of the Bank of America to review accounting results from the standpoint of a commercial trustee.

As necessary, some accounting results may be independently checked through selective testing.

As part of the review of the historical accounting work, Interior plans to develop a program to monitor and report on the overall quality of accounting results. Again, this is intended to monitor the performance of the historical accounting methods and the accounting work, not the results for each IIM account. Statistical control charts will be used to monitor performance, and issues will be tracked for prompt resolution. Strategies such as issuance of additional guidance or additional training to remediate performance issues will be implemented as appropriate. Other key performance data, such as number of transactions reconciled, cost of reconciliations, and other measures may be tracked.

Quality and performance data gathered will be used to adapt and adjust any review and testing strategies. For example, data may indicate that increased or decreased testing is desirable in selected areas to achieve greater confidence in the overall historical accounting results.

APPENDIX A. STATISTICS ON THE IIM TRUST FUND

A.1 IIM Account Distribution by Balance at December 31, 2000, and Average Annual Throughput for 1985-2000

- This Report details an implementation strategy for the historical accounting based on the most efficient use of available resources. The implementation strategy sequences the historical accounting effort into manageable components.
- The accounts associated with Phase I, the Electronic Transaction Era, are divided into three categories.
 - **High-Value**—Balances of \$10,000 or more and average annual throughput of \$10,000 or more
 - **Medium-Value**—Accounts other than those identified as ‘High-Value’ or ‘Low-Value’
 - **Low-Value**—Balances of \$100 or less and average annual throughput of less than \$10,000
- **High-Value—788 accounts** (indicated in blue in the table on page A-4).
 - These represent nearly 15 percent of the total dollar throughput as shown in the table, but less than 1 percent of the accounts.
 - Interior would give them highest priority due to the potential for errors affecting larger amounts of money in these accounts than Medium-Value or Low-Value accounts.
- **Medium-Value—40,741 accounts** (indicated in white in the table on page A-4). These represent 54 percent of the total dollar throughput as shown in the table.
- **Low-Value—143,744 accounts** (indicated in green in table on page A-4). These represent about 31 percent of the total dollar throughput as shown in the table, but 74 percent of the accounts.
- **Reconciliation to Table on Page A-4 and Table 3-1**

	<u>Number of Accounts</u>	<u>Number of Transactions</u>	<u>Aggregate Balances at December 31, 2000</u>
High-Value Accounts	788	406,805	\$103,504,172
Medium-Value Accounts	40,741	7,396,068	88,211,022
Low Value Accounts	<u>143,744</u>	<u>18,661,640</u>	<u>1,075,828</u>
	185,273	26,464,513	192,791,022
No Throughput Accounts	<u>8,493</u>	<u>-0-</u>	<u>5,184,402</u>
Total	<u>193,766</u>	<u>26,464,513</u>	<u>\$197,975,424</u>

Office of Historical Trust Accounting

Individual Indian Money Accounts as of December 31, 2000
 Stratified by Ending Balance and Average Annual Calendar Year Through Put (Calendar Years 1985 - 2000)
 (Accounts Excluding Judgments, Per Capita, Special Deposit, and Interest Funding)

Accounts with Ending Balance of:	No Through Put	Average Annual Through Put (Calendar Years 1985 - 2000)				Total
		Under \$15	\$15 to \$100	\$100,000 to \$1,000,000	> \$1,000,000	
Under \$15						
# of Accounts	280,297	1,765,245	4,741,937	1,581,174	50	2
# of Transactions	62,421	345,597	1,387,110	1,095,656	1,877,682	150,387
\$ Through Put	117,280	2,456,683	36,355,784	11,810,574	262,062,681	49,206,728
# of Accounts	1,750,694	4,041,339	1,321,148	14,835,931	11,676	571
# of Transactions	441	151	606	4,280	41	2
\$ Through Put	4,797	4,060,726	20,921,498	118,327,900	34,852,126	11,131,740
# of Accounts	2,296,538	483	855,042	5,179,325	27,405,750	1,536,307
# of Transactions	68	647	34,403	288,408	2,292,230	2,277
\$ Through Put	301	17,483	1,694,884	42,373,700	86,837,265	20,082,405
# of Accounts	865,739	428,083	1,024,084	10,083,398	2,247,000	83,642
# of Transactions	5	1	6	57	24,470,350	24
\$ Through Put	22	38	16,422	3,710,370	60,346,427	60,744,197
# of Accounts	5,184,402	1,872,881	4,587,622	26,057,858	54,817,672	35,843,009
# of Transactions	8,453	32,456	38,877	70,889	59,070,170	62,326,354
\$ Through Put	1,053,624	16,026,251	251,153,236	1,107,932,402	3,610,112	197,075,424
Total Accounts	5,184,402	1,872,881	4,587,622	26,057,858	54,817,672	35,843,009
Total Transactions	8,453	32,456	38,877	70,889	59,070,170	62,326,354
Total Through Put	1,053,624	16,026,251	251,153,236	1,107,932,402	3,610,112	197,075,424

Note: Through Put is defined as the absolute value of all transactions (except interest).

A.2 Trust Fund History—1972 Through 2001 (\$ Million—Current Dollars)

Year	Balance, Beginning of Year	Interest and Gains/Losses on Investment Sales	All Other Receipts	Disbursements	Net Change During Year	Balance, End of Year
1972*	\$70.3		\$132.6	(\$114.1)	\$88.8	\$88.8
1973	88.8		182.2	(148.0)	34.2	123.0
1974	123.0		248.3	(242.0)	6.3	129.3
1975	129.3		248.4	(248.0)	0.4	129.7
1976	129.7		379.0	(357.0)	22.0	151.7
1977	151.7		363.6	(301.1)	62.5	214.2
1978	214.2		419.4	(372.7)	46.7	260.9
1979	260.9		419.9	(409.9)	10.0	270.9
1980	270.9		528.0	(485.3)	42.7	313.6
1981	313.6		524.4	(496.9)	27.5	341.1
1982	341.1		616.5	(574.9)	41.6	382.7
1983	382.7		569.5	(529.0)	40.5	423.2
1984	423.2		523.1	(500.8)	22.3	445.5
1985	445.5		467.5	(451.1)	16.4	461.9
1986	461.9	\$26.4	254.6	(290.1)	(9.1)	452.8
1987	452.8	6.4	281.0	(293.5)	(6.1)	446.7
1988	446.7	5.6	325.7	(327.0)	4.3	451.0
1989	451.0	17.2	286.7	(297.9)	6.0	457.0
1990	457.0	18.6	335.0	(322.7)	30.9	487.9
1991	486.9	13.7	252.7	(311.6)	(45.2)	441.7
1992	441.7	18.4	261.4	(279.9)	(0.1)	441.6
1993	441.6	31.4	265.2	(283.7)	12.9	454.5
1994	454.5	67.2	266.2	(324.5)	8.9	463.4
1995	463.4	35.8	293.5	(289.2)	40.1	503.5
1996**	503.5	37.8	267.4	(291.9)	13.3	516.8
1997**	516.8	38.6	239.0	(274.7)	2.9	519.7
1998**	519.7	30.9	282.7	(354.1)	(40.5)	479.2
1999**	479.2	49.4	257.3	(336.6)	(29.9)	449.3
2000**	449.3	29.9	215.3	(294.6)	(49.4)	399.9
2001***	399.9	26.3	199.6	(221.7)	4.2	404.1
TOTALS		\$453.6	\$9,905.7	(\$10,024.5)		

Notes:

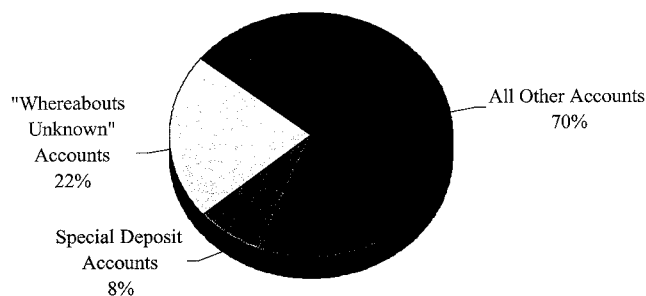
*Based on research provided by Morgan, Angel & Associates, L.L.C., the first recorded Trust Fund balance was \$6.5 million at June 30, 1909. It gradually increased to \$75 million by 1928, and ranged between \$50 million and \$76 million between 1929 and 1971. It is estimated that, during the entire period between 1877 and 1971, receipts into the Trust Fund were roughly \$3 billion. From these data, Interior estimates a cumulative throughput on all current and former IBM accounts of approximately \$13 billion. The "all funds" historical accounting has an estimated cost of \$2.4 billion or about 20% of all funds held in trust for nearly 125 years. The Trust Fund data between 1972 and 1995 are from Chavarria, Dunne, & Laney LLC, CPAs.

**Data for 1996 to 2000 are from Trust Fund audits performed by Griffin & Associates, PC.

***Data for 2001 are from Trust Fund audit performed by KPMG LLP.

A.3 "Whereabouts Unknown" and Special Deposit Accounts

**"Whereabouts Unknown" and
Special Deposit Accounts as a Percentage of Total IIM Accounts
as of December 31, 2000**



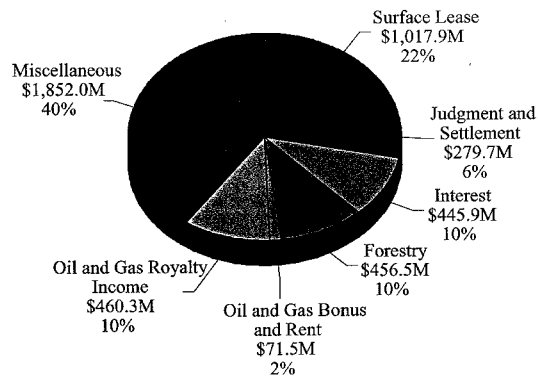
"Whereabouts Unknown"

- As of December 31, 2000, there were 61,673 IIM accounts in the name of individual Indians whose current address was not known to the Bureau of Indian Affairs or to the Office of the Special Trustee's Office of Trust Funds Management (OTFM), comprising a balance of \$65.4 million.
- Disbursements to such account holders cannot be made, and quarterly statements and eventually historical accountings cannot be provided to these account holders.
- OTFM has a continuing activity to locate addresses for these account holders, including posting the names on the Internet and obtaining Social Security data and data maintained by tribes.
- Despite some success in these efforts, new "Whereabouts Unknown" account holders are added each month. The most recent total figure, as of May 31, 2002, is 63,071 (source: OTFM Monthly Statistics Report).

Special Deposit Accounts

- Special Deposit Accounts (SDAs) were established to hold receipts temporarily until the funds could be allocated to the appropriate recipients. As of December 31, 2000, there 21,415 SDAs representing \$67.9 million in IIM balances.
- SDAs comprise individual Indian, tribal, non-Indian, or even corporate and other private sector funds.
- Since some of the monies in SDAs may properly belong in IIM accounts, efforts to reduce the number of these accounts and distribute funds to IIM accounts is a continuing priority of OTFM.
- OTFM is responsible for allocating SDA balances to appropriate IIM, tribal or non-Indian recipients

A.4 Individual Indian Monies Total Receipt Dollars By Revenue Type 15 Fiscal Years 1986–2001*

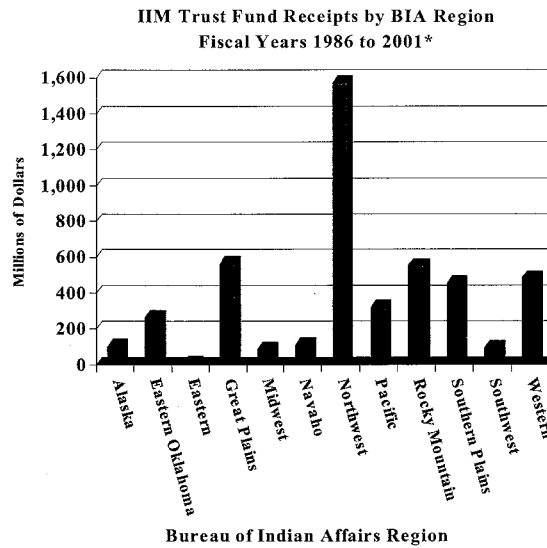


- **Total Receipts**—For 1986–2001 for all revenue type receipts totaled \$4.6 billion.
- **Surface Leases**—Receipts as a result of all types of real estate agreements, including farm and pasture lease, range lease, sand and gravel sale, land sale, right of way, business, etc.
- **Judgment/Settlement**—Receipts as a result of settlements of legal disputes or judgments in the favor of tribes or individual Indians. Individuals generally receive benefits through judgment or per capita distributions declared by tribes.
- **Interest**—Represents the interest distributed to IIM accounts based on calculated interest factors. The interest factors are determined by OTFM based on the earnings of IIM pooled investments for the period.

- **Forestry**—Receipts as a result of timber contracts or related timber operations.
- **Oil and Gas Bonus, Rental and Royalty Income**—Receipts from lease agreements and from income generated from producing wells.
- **Miscellaneous**—Primarily receipts coded as “miscellaneous,” “other,” or “transfers,” but also includes to a lesser extent revenue types that do not fall into the previously defined categories, such as quarterly annuity income, estate income, etc.

* The above data are for the latest 15-year period of Federal fiscal years (ending September 30), and are provided as a cumulative view of IIM revenue types.

A.5 IIM Trust Fund Receipts by BIA Region 1986-2001*

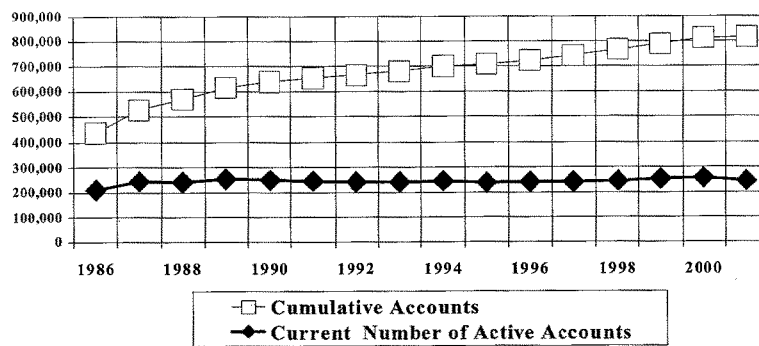


- **Total Receipts**—Total receipts for 1986 to 2001 for all Regions totaled \$4.6 billion.
- **Regional Receipts**—The Northwest Region accounted for about 34 percent of total receipts. The \$1.6 billion was the largest dollar total for any Region. It is due primarily to the high number of allotments that had timber contracts or related timber operations.
- **Regional Receipts**—Receipts by Region will be useful in segregating IIM accounts into homogenous groups for the historical accounting.

- **Eastern Region**—There have never been individual land allotments in the Eastern Region. Some IIM account holders in the Eastern Region, however, may have inherited interests in allotted lands administered by other Regions.

* The above data are for the latest 15-year period of Federal fiscal years (ending September 30), and are provided as a cumulative view of IIM receipts by Region.

A.6 Individual Indian Money Accounts: This Chart Illustrates the Number of Current Active Accounts and Cumulative Accounts for Fiscal Years 1986 To 2001*



- This chart was developed from available computer-based data.
- Accounts closed prior to 1986 are not included. This information is not readily available until paper transaction ledgers are compiled. Only accounts in the Electronic Transaction Era are illustrated.
- During this 15-year period the total accounts in existence at some point in time in the period more than doubled in number from about 246,000 to about 568,000 accounts.
- This increase is partially due to allotment fractionalized ownership on Indian Trust land.
- Interior estimates that about 800,000 IIM accounts have been in existence since initiation of the IIM Trust Fund.

* The above data are for the latest 15-year period of Federal fiscal years (ending September 30), and are provided as a cumulative view of IIM accounts.

A.7 Summary of IIM Accounts at December 31, 2000

	Number of Accounts	\$ Balances (in millions)	Cross- References
Land-Based Accounts	193,768	\$ 198.0	Appendix A-1, Section 2.1.1, Table 3-1, Figures 2-1 and 2-2
Judgment Accounts	33,205	80.8	Figures 1-1, 2-1 and 2-2, Sections 2.1.1 and 3.2
Per Capita Accounts	9,013	69.5	Figures 1-1, 2.1, and 2.2, Sections 2.1.1 and 3.2
	<u>42,218</u>	<u>150.3</u>	Sections 2.1.1, 3.2.1, and 3.2
Total IIM Account Holders	235,984	348.3	Executive Summary, Section 3.2
Special Deposit Accounts	21,415	\$ 67.9	Appendix A-3, Sections 1.4.3 and 2.1.1, Figures 2-1 and 2-2
Total Current Accounts	257,399	\$ 416.2	
House, Foreign, To Be Investigated and Other Accounts	4,071		
Total Open Accounts	261,470		
Closed Accounts - Note: these accounts have no recent activity, but are expected to have future activity	17,840		
Total IIM Accounts	<u>279,310</u>		Section 2.1.1, Figure 2-2
Whereabouts Unknown Accounts - Note: these accounts are spread among the above numbers	<u>61,673</u>	\$ 65.4	Appendix A-3 Section 1.4.3

Source: Office of Trust Funds Management December 31, 2000, IIM Statistics Report.

APPENDIX B. ACCOUNTING STANDARDS MANUAL**B.1 Overview**

Interior has developed an *Accounting Standards Manual* (Manual) that identifies key documents accountants will use to perform the historical accounting, such as documents related to each major revenue and disbursement stream. For each document identified as key to the historical accounting project, the Manual lists the form number, title, description, and significant data elements.

B.2 Development Process

A series of working drafts was distributed to persons with accounting and/or BIA process-specific expertise. This review team included Interior's Office of Historical Trust Accounting (OHTA) personnel, the accounting and other consulting firms on the historical accounting project team, and other Interior personnel.

B.3 Update Process

The Manual is a *working document* and will be continually enhanced and updated throughout the historical accounting project. The initial focus of the Manual is identification of key documents needed to perform the historical accounting. Updates will include additional documents that may be used to substantiate activity, such as those unique to earlier time periods or to a specific BIA agency. Updates will expand upon key guidance, such as policies and procedures for performing the historical accounting, and will provide accountants with additional background information on the processes. As the historical accounting progresses and additional documents are identified for inclusion in the Manual, they will be incorporated through a structured approval process.

B.4 Use of the Manual

The Manual was developed on the premise that accounting and other consultants, and OHTA staff should attempt to obtain the best direct evidence that is available to support accounting transactions. Direct evidence is defined as documentation that can be linked directly to the transactions being reconciled, such as when the account holder's name, the amount, date, and/or description in the ledger are traceable to the supporting documentation.

The Manual describes two levels of documents that provide direct evidence. For example, a negotiated check is a Level One document for a disbursement, and is the preferred form of direct evidence to support a disbursement. If Level One documents are not available, the consultants will attempt to obtain other direct evidence from Level Two documents, such as disbursement schedules. Consultants will assess the sufficiency of the direct evidence obtained to make a determination as to whether the transactions are reconciled.

Some transactions may not be supported by direct evidence or may be found to have inaccurate amounts. For these exceptions, Interior may use other evidence to support the account holder's transaction or to estimate potential adjustments to the account. For example, oil and gas lease documentation of another account holder who holds a reasonably similar land allotment, such as

an adjacent one, could be used to infer lease information missing on the account holder's ledger, such as terms and amounts. Interior may develop other methods to use other evidence to support the accounting.

B.5 The Role of the Manual in Historical Accounting Results

The accounting teams will perform the historical accounting using the guidance provided by the Manual.

APPENDIX C. PRICING TOOL FOR THE HISTORICAL ACCOUNTING PROJECT**C.1 Introduction**

The cost to perform the IIM historical accounting will amount to about \$2.5 billion in current-year dollars (2002) over a ten-year period. All accounting transactions back to the initiation of an IIM account will be included.

In order to estimate the cost of implementing the historical accounting, several options were considered and estimated:

- A historical accounting as a 10-year work project (the baseline)
- A historical accounting 10-year project for all current account holders back to 1985, in constant dollars (Phase 1).
- A historical accounting 10-year project, for all current account holders from 1985 back to the inception of their IIM account, in constant dollars (Phase 2).
- A historical accounting 10-year project, for all former account holders (e.g., the full accounting less Phases 1 & 2), in constant dollars (Phase 3).
- “Slicing” Phase 1 costs by nine accounting groups (see Appendix A-1)
 - High-Value
 - » 1995 and thereafter
 - » 1985 to 1995
 - » Current accounts opened prior to 1985
 - Medium-Value
 - » 1995 and thereafter
 - » 1985 to 1995
 - » Current accounts opened prior to 1985
 - Low-Value
 - » 1995 and thereafter
 - » 1985 to 1995
 - » Current accounts opened prior to 1985

C.2 Overall Methodology

A “bottoms-up” approach was used for estimating the cost of the historical accounting. Estimates were “built up” from the lowest work level and “rolled-up” to the higher levels. A system called the Work Breakdown Structure used was used to establish a hierarchy of tasks and their associated costs, and was used throughout the process to price out the various options. The costing process also employed the collaboration and expertise of various OHTA consultants. The consultant group is well versed in IIM documents, accounting practices and work procedures, and was therefore able to provide valuable contributions to the costing process.

C.3 General Program Costing Assumptions for a Historical Accounting

Table C-1 shows the cost estimates for the various basic, priced options.

Table C-1. Priced Options for the Historical Accounting

Option	\$ Amount Billions	Additional Assumptions
"All Funds" Verification: 10 Yr. No Escalation	\$2.425	Same as General Costing Assumptions, above, without escalation.
"All Funds" Verification: 10 Yr. Escalated	\$2.672	None. Same as General Costing Assumptions, above, with 2.5% escalation
Phase 1—Current Account Holders from 1985 to 2000	\$0.907	Little scanning or imaging Uses Annual Average Throughput from accounting data (Stratified) Interest calculations as minimal cost Little document collection Costed by \$ per transaction for land-based revenue and disbursements a. 1 hour per transaction for land-based revenue b. 0.1 hour per transaction for disbursements
Phase 2—Current Account Holders from account inception to 1985	\$0.612	Same as above, except full scanning and imaging Includes all active accounts from 1985 plus all others opened prior to 1985
Phase 3—"All Funds" accounting for all former HM accounts	\$0.906	Phase 3 represents cost required to do accounting for closed accounts

C.3.1 Cost Rationale for Table C-1

The Report assumes a historical accounting of all transactions and accounts going back to 1887. The effort includes scanning and document collection of 100 percent of the transactions, document management, program management and a complete analysis of all accounts. This analysis portion, which will last 10 years and is approximately 60 percent of the total cost, is based on an analysis performed and data compiled by the consultants. There is also an escalated version, using an escalation rate of 2.5 percent per year (see the description of escalation, below).

All costs are "rolled up" by in the *ProPricer* model and are used for estimating and pricing the various options. The "rolled up" costs include other fixed and semi-variable costs such as program management, document collection, scanning/imaging, document management system, historical analysis, and travel.

C.4 Cost Rationale for Specific Tasks

The project cost estimate consists of five significant elements (the project cost drivers) shown below in the order they will be performed. The cost of each of these five pieces is determined by the estimated document count, and, for the last element, the number of accounting transactions that need to be analyzed and the estimated time required to perform the analysis.

- Program Management
- Document Collection
- Document Scanning and Indexing
- Document Management
- Account Reconciliation.

All remaining elements in the estimate are relatively insignificant in the cost of the overall project.

C.4.1 Program Management

Program Management is the work necessary to perform the overall planning and coordination, cost tracking, scheduling, and estimating. It includes the management of the subcontractors, imaging project, the document management system, quality assurance, outreach, reporting, and management of the accounting analysis. Total program travel and the cost of personnel security clearances are also included in this function.

C.4.2 Document Collection

Before beginning the historical accounting, all necessary data must be collected and organized for scanning, imaging and coding. A vast number of records must be collected from many different locations throughout the country. The documents consist of paper records back to 1887, and electronic records from 1985 forward. This element includes planning the activity for identifying and collecting the ledger accounts, land and lease records, and other records necessary to perform the historical accounting.

C.4.3 Document Scanning and Indexing

Scanning is the process of changing a paper document into an electronic "picture" of the document. Certain typed documents may also be "scanned" with an optical character reader to convert the electronic image or picture into a searchable word document. Indexing is the process of associating information such as document type, date, account number(s), etc., to the document images stored in a database.

All paper and microform documents must be scanned and indexed, and ultimately merged with electronic data into a comprehensive database capable of supporting the accounting analysis. The ledger documents are significantly more complex to code than the other paper documents. Indexing of the ledgers is estimated to cost \$0.95 per page (about 35 million pages), while the remaining documents are expected to cost \$0.192 per page (about 240 million pages). These costs include the effort of preparing the documents for scanning. That effort may include removal of clips and staples or special handling of fragile documents. The cost numbers are based upon vendor quotations; the page counts are from internal estimates. An additional cost will be the retrieval and replacement of the boxes housing the paper documents at the scanning locations, and the selection of the appropriate pages from the boxes that must be provided to the scanning subcontractor for imaging and coding.

C.4.4 Document Management

This is the electronic system that will support the accountants as they perform their analyses. All imaged documents will reside on this system. The system includes the Oracle database, hardware and software, system design, requirements analysis, database administration, management, and data storage charges.

C.4.5 The Account Reconciliation

The analysis of the millions of transactions is the major cost of historical accounting, representing more than 60% of the project cost.

Costs for the accounting reconciliation were broken out into logical activities, as listed below:

- **Activity One**—Planning and managing
- **Activity Two**—Reconciling converted ledger data
- **Activity Three**—Performing procedures
- **Activity Four**—Reporting results
- **Activity Five**—Conducting quality checks.

The first four include solely the labor of accounting teams performing account reconciliation. The fifth includes efforts from the accounting teams and firms engaged specifically to provide independent quality checks of the historical accounting.

C.4.5.1 Planning and Managing

The accounting teams' efforts include the following items:

- Planning for pilot studies
- Planning for on-going historical accounting tasks
- Supervising the day-to-day operations of accounting teams
- Status reporting
- Attending project-related meetings, conferences, and training
- Providing input on related OHTA initiatives, such as policy and procedures, and system requirements.

C.4.5.2 Reconciling Converted Ledger Data

After ledger data are converted into the system, the accounting teams will perform reasonableness tests to verify ledger data are completely and accurately converted from source systems or paper ledgers. This activity includes comparing overall summary ledger totals per the historical accounting support system to Interior accounting source summary records, such as previously performed ledger reconciliations, ledger totals, and/or other accounting summaries.

During scanning and keying of paper ledgers, the scanning contractor will be performing a check to compare the data from paper ledger to the imaged copy. The effort for this individual ledger check is distinct from the reasonableness test described above. It is costed in the Document Scanning and Indexing portion of the costing work papers.

C.4.5.3 Performing Procedures

This activity references procedures to perform the following items:

- Verifying ledger transaction history using guidance from OHTA's *Accounting Standards Manual*. For example, verify lease receipts posted in an account-holder's ledger against the lease and ownership interests recorded in Interior's land ownership system.
- Performing analysis on gaps in the information or to characterize transactions for reporting.

These procedures assume a records collection team will provide documents for incorporation into the historical accounting support system. The accounting teams will perform queries in the historical accounting support system to associate documents to ledger entries.

The historical accounting support system's functionality is assumed to include the following components:

- Images of support documents, coded with key words for manual queries
- Transaction histories from Special Deposit Accounts and account-holders' ledgers
- Land ownership histories
- Interest calculator
- Expected lease payment and distribution calculator
- Account-holder statement generator
- Results report generator.

The system will compute interest and compare computed to posted interest. The accounting teams' effort involves researching the exceptions noted.

The system will have the capability to compute expected lease payments and the distribution to account holders based on historical ownership. The accounting teams' effort involves performing the linkage to and comparison of the expected payment to the SDA and account holders' transaction ledgers.

C.4.5.4 Reporting Results

Reporting results includes efforts related to the following items:

- Reporting reconciliation results periodically
- Resolving comments from quality check reviews
- Generating IIM account-holders' statements
- Providing support related to statements issued, such as responding to Interior questions on specific statements.

The account-holders' statements will be generated from information existing in the historical accounting support system. The support system will also be used to generate information for periodic results reporting.

Costs related to staffing an account holder call center are not included in this estimate. The call center is assumed to be part of current operations, rather than historical accounting.

C.4.5.5 Conducting Quality Checks (QC)

The accounting results produced will undergo multiple levels of QC checks so that the results receive benefit from multiple professional judgments.

C.5 The Primary Estimating Tool

The commercial tool used to perform the various costing and pricing exercises is a product called *ProPricer*. It is a PC-based pricing and estimating system. It has been used by the defense contracting industry to respond to complex multi-year "request for proposals" (RFPs) since 1987.

C.6 Other Costing Issues

Other costing considered in the pricing include travel, escalation and uncertainty.

C. 6.1 Travel

It is almost impossible to estimate travel requirements for most programs. Business trips generally are "spur of the moment." For the historical accounting, a potentially long-running project, estimating travel using discrete trips was impractical. The travel estimate for the historical accounting is further complicated by the fact that both Federal Government and contractor personnel will be traveling, and the costs will vary between the two groups. Also, travel costs are highly volatile, and can change on a moment's notice (either up or down), and the costs to travel to many locations have a very wide range.

Travel was estimated for each level of labor on a basis of trips per year and complexity of the work.

C.6.2 Escalation

Cost escalation is very closely related to the Consumer Price Index. Over the past ten years, the CPI has risen at a stable 2.51% per year. Thus, a 2.5% rate was used for years two through ten.

C.6.3 Uncertainty

There is a high level of uncertainty in the cost estimates for any multi-year project. For the historical accounting, over 60% of the cost of the project is driven by an estimated number of transactions and an estimate for the amount of time required to perform each transaction analysis. An incorrect assumption in either or both of these estimates could drive cost lower or higher.

The scanning and indexing tasks also possess a wide range of variability in the estimates for the number of paper documents involved.

C.7 Summary

The total project cost is summarized in Table C-2, below. It shows a summary of the ten-year "all funds" project.

Table C-2. Estimated Project Cost Summary (\$ Billions)

Description	Cost (2002)
Document Collection	\$0.6
Imaging and Coding	0.2
IIM Accounting	1.5
Document management, program management, historians and travel	0.1
Total Estimated Project Cost	\$2.4

C.8 Continuing Efforts

The cost estimate for the project is evolving, and is a work-in-progress. All cost estimates should be considered tentative and preliminary. As intelligence is gathered, pilot programs and tests are performed, and we learn more about what needs to be accomplished in the historical accounting, the cost estimate will change and the residual uncertainty about the numbers will shrink. A formal uncertainty analysis will be completed. Periodic updates to the project estimate will be provided to Program Management.

APPENDIX D. ILLUSTRATIVE HISTORICAL ACCOUNTING STATEMENTS

The exact format and extent of historical accounting statements will vary by type of account (land-based vs. judgment or per capita), type of economic activity for land-based accounts (farming and grazing, oil and gas, timber), the length of time the IIM account was open, and the number of transactions.

The following are two sample historical accounting statements—a judgment account and a land-based account.

Sample Judgment Account Statement**Individual Indian Monies Trust Fund
Historical Statement of Account**

John Smith
100 Main Street
Oklahoma City, OK 55555

Account No. 205J0011223

Transaction Activity for Accounting Period 11/03/1997 Through 12/31/2000:

Date	Transaction Description	Cash
	Beginning Balance	0.00
11/3/97	Collection Judgment: White Bear Tribe v. the United States	\$1,500.00
12/18/97	Interest credit Journal Voucher (JV)11H206INT/NOV97	8.59
01/05/98	Interest credit Journal Voucher (JV)11H206INT/DEC97	8.11
02/05/98	Interest credit Journal Voucher (JV)11H206INT/JAN98	9.20
03/03/98	Interest credit Journal Voucher (JV)11H206INT/FEB98	7.87
04/07/98	Interest credit Journal Voucher (JV)11H206INT/MAR98	8.46
05/04/98	Interest credit Journal Voucher (JV)11H206INT/APR98	8.84
06/06/98	Interest credit Journal Voucher (JV)11H206INT/MAY98	8.35
06/30/98	Journal Voucher T18H181001—Correction of Interest	7.05
06/30/98	Disbursement Request Check #14208406	\$1,566.47
	Ending Balance	0.00

Pre-Decisional, Fictitious Example of a Possible Report to an IIM Account Holder

Sample Land-Based Account Statement

**Individual Indian Monies Trust Fund
Historical Statement of Account**

Name: John Doe
Address: ABC Drive, USA

Account Number: 123U00123
Tribe: XXXX
Agency: Western Nevada Agency

Account Inception: 6/15/78
Account Type: Unallotted Indian

Transaction History

<u>Date</u>	<u>Transaction</u>	<u>Balance</u>	<u>Reference</u>	<u>Description/Explanation</u>
6/15/78	\$275.00	\$275.00	Credit Voucher (CV) 405479	Deposit of funds disbursed from the estate of John Buck Sr.
7/1/78	1.38	276.38	Interest	Interest credit
7/18/78	47.50	323.88	Journal Voucher (JV) 60239	Distribution of royalty income ¹
8/1/78	1.52	325.40	Interest	Interest Credit
8/10/78	(200.00)	125.40	Check No. 24680	Payment by August 5, 1978 letter request from account holder
8/18/78	56.36	181.76	JV 60457	Distribution of royalty income ¹
◆-----◆ Break In Time ◆-----◆				
5/29/85	78.42	1,372.45	JV 73422	Distribution of royalty income ²
◆-----◆ Break In Time ◆-----◆				
12/18/00	102.57	104.86	JV 99340	Distribution of royalty income ²
12/18/00	-104.86	0.00	Check No. 87421	Automatic disbursement of oil and gas receipts
12/31/00		\$0.00	Ending Balance	Reported Ending Balance as of December 31,2000

Footnote of Notes

Footnote No. 54321, Ownership Interest 20%
Footnote No. 54321, Ownership Interest 35%

Ownership History

<u>Allotment No.</u>	<u>Managing Agency</u>	<u>Ownership Interest</u>	<u>Notes</u>
54321	Western Nevada	20 Percent	Probate Order No. 4537 of June 14, 1978
54321	Western Nevada	35 Percent	Probate Order No. 5173 of May 27, 1985

Pre-Decisional, Fictitious Example of a Possible Report to an IIM Account Holder

APPENDIX E. ACCOUNTING METHODS FOR LAND-BASED ACCOUNTS**E.1 Introduction**

Interior's objective for the historical accounting is to provide IIM account holders with sufficient information to allow them to determine whether the trust has been faithfully performed. As stated in Section 2.2 of the Report, successful performance of this task, if funding is appropriated by Congress, may require, among other information, the collection of three types of information:

- Transaction histories for the IIM accounts
- Land records for IIM accounts and leases for allotments
- IIM documents to support the transactions.

The information collected will be used to verify the historical accuracy of the transactions in the IIM accounts. It will also provide the beneficiaries with contemporaneous documentation to substantiate the transactions in the accounts. This appendix to the Report will provide a more detailed description of the planned methodology for executing the transaction verification for land-based accounts.

E.2 Transaction Verification Methodology

For each of the defined Phases of the historical accounting, all or part of the following steps to verify the accuracy of land-based accounts will be performed:

- Create account "ledgers" for IIM accounts.
- Compile the land ownership interests for IIM account holders, where necessary and possible.
- Link collected supporting documentation to transactions in account ledgers.
- Verify the transactions based on the supporting documentation and identify any variances between supporting documentation and account ledgers.
- Perform a lease variance analysis to compare actual lease collections to expected collections.
- Examine interest paid to the IIM accounts based on historical interest factors.

E.2.1 Create Account "Ledgers"

Transactional information for IIM accounts will need to be collected from various sources, including electronic databases, computer print-outs, ledger cards, and hard-copy ledger books. The collected transaction data would be assembled in a secure database. From this database, recreation of account "ledgers" for IIM account holders for use during the historical accounting, and for ultimate reporting to IIM account holders, will be performed. These ledgers should as closely as possible be a recreation of the financial activity in IIM accounts through time. Historical transaction records that were destroyed or damaged may limit the completeness of the recreated account ledgers.

E.2.2 Compile Land Ownership Interests

In order for Interior to accomplish the stated goal of verifying the accuracy of land-based transactions, the relevant data on ownership of tracts of allotted land will to be reviewed as necessary. Interior will attempt, where necessary, to gather the relevant land ownership data for identified IIM account holders from existing computer records and/or paper ownership records as necessary. This may include a description of the allotted tract, the current and historical owners of the tract, the fraction of the tract owned by individuals over time, and the acquisition and/or disposition dates of the ownership interests. Collected land ownership information will be compiled in a secure database for use during the historical accounting.

E.2.3 Link Supporting Documentation to Transactions

The accounting results can be validated by comparing transactions identified during the ledger creation process to contemporaneous historical documentation that substantiates the revenue receipt or disbursement. The supporting documents that are collected will be electronically imaged and indexed to facilitate rapid search and retrieval of specific documents.

Interior plans to electronically link the requisite images of contemporaneous supporting documents to the relevant IIM transactions using information such as the following:

- Document date/transaction date
- Lease number
- Allotment or tract number
- IIM account number
- Transaction amount
- Name of IIM account holder
- Name of lessee
- Name of original allottee
- Other reference numbers found in the transaction description and/or on the document.

Each type of transaction (i.e., collection, disbursement, or interest) will have a different set of supporting documents, as the documents used during the original course of business differed. Further, different types of collections (e.g., farm lease, oil and gas royalty) will likely have different types of supporting documents. Finally, because of the geographically dispersed nature of the Interior offices that originally performed this work over the history of the IIM system, the documentation for the same type of transaction in different regions may vary.

E.2.4 Verify Transactions Based on Supporting Documents; Identify Variances

Where necessary, IIM transactions will be reviewed to verify whether the correct amount was posted to the account based on the identified supporting documentation. Any variance between the amount shown in the account ledger and the amount reflected in the supporting documentation will be identified and noted.

Support for collection transactions will be reviewed to verify that Interior collected the appropriate amounts for leases, sales, and other income streams, and that the correct amount was ultimately credited to the IIM accounts. Supporting documents may include leases, permits,

financial documents, or documents showing the distribution of collected amounts to IIM accounts.

Support for disbursement transactions will be reviewed to verify that the amounts disbursed from an IIM account were properly recorded in the account ledger. The types of documentation required to support disbursement transactions may include requests for disbursement, disbursement authorizations, checks, check registers, or loan repayment documentation.

Interior has developed an *Accounting Standards Manual* to guide staff and contractors in using the types of records that support IIM transactions (see Appendix B). This Manual provides a more complete listing of the documents that will support the transactions in the account ledgers.

E.2.5 Perform "Lease Variance" Analysis

Land-based revenues will most likely result from leases or permits granted for the use of the land. These leases may have fixed contractual payments for the term of the lease from which an "expected" payment stream can be calculated. For this type of collection transaction, Interior, where possible, will identify the original lease terms, then calculate the expected revenues due to owners of the leased land. Expected revenue amounts will be compared to actual credits in the IIM accounts to verify both the completeness of Interior's collection and the accuracy of the distribution of the collected amount to the IIM accounts.

A complicating factor in this analysis is that many leases cover more than one allotment, and many allotments have multiple owners with fractional interests. Therefore, a single \$100 contracted lease payment could result in distribution of lease revenue to hundreds of IIM accounts. Furthermore, the actual credit to a given IIM account could be as little as \$0.01, depending on the ownership interest. However, there are many efficiencies that may be gained during this process, as the analysis of a single lease may result in the verification of hundreds, or even thousands of transactions.

E.2.6 Examine Interest

During the Electronic Transactions Era and part of the Paper Transaction Era, periodic interest was credited to IIM accounts at the same interest rate regardless of the account balance or the geographic location. To verify the historical accuracy of interest transactions credited to these accounts, Interior plans to examine and verify the interest credited to the account based on the historical interest rate used for each period.

APPENDIX F. RECORDS COLLECTION AND MANAGEMENT**F.1 Records Needed for Accounting**

To build historical accounts for each account holder and to perform the historical accounting, records and documents must be located, scanned, imaged, indexed, and linked. The task of managing these records will be daunting. By one estimate, there are an estimated 240 million pages.

The performance of the historical accounting requires the investigation and use of three types of information—transaction records, ownership records, and supporting documentation.

- **Transaction Records**—Transaction records include IIM statements and ledgers, whether electronic or on paper, that list the actual transactions that occurred. Transactions can be grouped into four major categories—collections, disbursements, interest, and transfers.
- **Ownership Records**—Ownership records indicate the land owned by each allottee and the fraction of the land owned as an undivided interest. Because much of the income to the accounts is derived from land-based transactions (e.g., farm leases), where possible, the ownership must be identified to appropriately associate land-related documents relevant to the transaction. Also, the ownership of much Indian land today is fractionated. In the fractionation process, many individuals may hold a tract of land. Similarly, an individual may own a fractional interest in many tracts of trust land. The fractional interests may be needed to correctly calculate the amount from a given lease collection that is actually owed to each beneficiary.
- **Supporting Documentation**—To test the accuracy of any given transaction in the IIM accounts, three main sources will be used—collection records, disbursement data, interest recalculation details.

F.1.1 Obtaining Records

Control elements, or in-process checks for completeness, would be introduced early to frame the work required to gather the paper records. One way to establish control of the paper records collection is to begin with records that are already electronic, such as the IIM accounts in TFAS. Starting with the existing electronic data affords a way to inform the search for paper IIM ledgers on accounts that were opened at some time in the Paper Transactions Era. Another control tool to ensure completeness of the ledgers is the Land Records Information System (LRIS). LRIS has historical ownership information for current IIM account holders. A third control tool is the land leases, many of which have already been microfilmed. To achieve a well-controlled approach of the sort envisioned, several steps might be done in parallel. Because each approach could reveal weaknesses in control or coverage, no one step should get too far ahead of any other.

It is essential that gaps and missing ledgers for current IIM beneficiaries be identified as early as possible, so that further record searching to close the gaps could commence. Current pilot efforts have shown that long delays can occur if there is a need to recover records from a third party.

These three steps pose major technological and cost challenges. These control steps will be expensive. Linkage software exists that should help, but there is no option but to employ patient and painstaking methods, using local knowledge gleaned from the historians and accumulated in the course of establishing a fully integrated set of reconciled controls for each Bureau of Indian Affairs Agency office.

F.1.2 Locating and Scanning Needed Paper Records

The effort to locate and scan the paper records necessary to perform the historical accounting will be time consuming. Previous and current efforts show that the records required are distributed throughout the country and can be found at BIA agency offices, BIA Land Title and Record Offices, Office of the Special Trustee warehouses, the National Archives and related Federal Records Centers. To minimize impact on current operations, the historical accounting effort would attempt to gather only the documents that are needed to conduct the accounting. The documents would be captured electronically through scanning processes, so that the original documentation can remain in its current location.

One of the key goals of the historical accounting would be to create a complete set of transaction histories for all individual Indians who received an allotment or were awarded a judgment. For current accounts, electronic records begin in 1985. Only the paper ledgers for those individuals with account activity prior to 1985 would need to be found and processed. But for earlier account holders, including deceased account holders, paper ledgers would need to be found and then scanned. For completeness, accounts with no recorded incomes also may need to be included; and for these, LRIS can be a partial bridge. No scanning would be needed in these cases.

Finding all these ledgers and scanning them would be among the biggest initial steps in the historical accounting. The scanning will have to be done on site in each location where ledgers are found. The process would employ a minimum of coding—just enough to control the return of documents, after scanning, to the proper storage container from which they were taken, and to be assured through a quality control review that all pages have been scanned and are legible.

The indexing of the scanned documents would vary depending on the document. For the ledgers, after their initial scanning, all the relevant details from each transaction (amount, dates, type of transaction, and so on) would be transcribed and put into a form similar to what would have existed had TFAS and the Integrated Records Management System (IRMS) been in existence during the periods when paper ledgers were used.

Leases and other supporting information would have to be located and scanned like the paper ledgers. For the leases and other supporting information, however, less information would be needed. The information required for a lease would include the lease amount and enough information to link the lease to each tract of land it covers. For the other supports, it may be enough to key in the linking information to bring the support and the applicable IIM transaction together.

F.1.3 Indexing and Linking the Scanned Documents

Linking the IIM transactions to their supporting documentation and bringing them together with transaction data may pose many challenges that have been mentioned already. To facilitate the linking, the indexed and scanned records would be uploaded to an electronic database that will allow the accountants to search for the documents using a set of fields and pull up the scanned images. The electronic records system would house the supporting documentation in a secure environment to ensure that privacy information is not dispersed.

APPENDIX G. MANAGEMENT OF THE HISTORICAL ACCOUNTING PROJECT

On July 10, 2001, the Secretary of the Interior established the Office of Historical Trust Accounting (OHTA) and ordered it to “to plan, organize, direct, and execute the historical accounting of Individual Indian Money Trust (IIM) accounts.”³⁶ With the submission of this Report to Congress, OHTA will focus on directing and executing the historical accounting project.

G.1 Project Management

As described elsewhere in the Report, the historical accounting is a massive and expensive project requiring oversight and direction of staff and contractors, management of sequential and simultaneous operations, obtaining and managing large volumes of IIM data and records, ensuring the quality and timeliness of the work, and securing and managing fiscal resources. OHTA is using the following tools in managing the historical accounting project:

- Work breakdown structures to define all components of the historical accounting project
- Project management software to track progress at the task and project levels
- Scheduling software to ensure coordinated travel and work activities
- Costing and expenditure software to monitor expenditures and refine future cost estimates
- Knowledge management software to store information and facilitate access to, and timely flow of information
- Quality control methods and systems.

OHTA will manage the historical accounting project using permanent staff, staff detailed to OHTA from Interior bureaus and offices, and support staff from Booz Allen Hamilton Inc., a consultant that is assisting in project management, coordination, and knowledge and document management. Additional contractors supervised by OHTA staff will provide analysis, quality control, and expert advice regarding the collection of records, record imaging, and accounting analysis.

G.2 Staff Resources

Table G-1 illustrates OHTA staff resources as of June 28, 2002, and vacant positions that may be filled in the future. OHTA will consider establishing a small office in the Kansas City, Missouri, area to provide management oversight and contract supervision for the records collection and imaging operations for the extensive record holdings at the Federal Records Center in Lee’s Summit, Missouri.

³⁶ U.S. Department of the Interior, Secretarial Order No. 3231 (July 10, 2001), as amended June 27, 2001.

Table G-1. Office of Historical Trust Accounting Staffing

Position	Status
Executive Director	Filled
Deputy Director	Filled
Administrative Officer	Filled
Secretary	Filled
Office Automation Clerk	Filled
Accountant	Filled
Program Analyst	Filled
Program Analyst	Filled
Program Analyst	Filled
Program Analyst	Filled
Program Analyst	Filled
BIA Liaison	Filled
Program Analyst	Detail Pending from Office of Special Trustee
OST Records Liaison	Detail Pending from Office of Special Trustee
Attorney-Advisor*	Vacancy
Supervisor	Possible Future Vacancy—Lee's Summit, MO
Program Analyst	Possible Future Vacancy—Lee's Summit, MO
Secretary	Possible Future Vacancy—Lee's Summit, MO

* The Office of the Solicitor assigned a staff attorney to advise OHTA on legal matters. This position became open on June 28, 2002.

G.3 Contractor Resources

During the planning and preparation of the Report, OHTA has been assisted by a number of contractors working in support, planning, and advisory roles. As the historical accounting project moves to implementation, additional contracting support will be needed. Table G-2 lists the contracting firms already engaged by OHTA, pending contracts, and future requirements.

Table G-2. Contracting for Expert Assistance

Contract Title	Assistance Needed	Contractor(s)	Status
Project Integration and Coordination	<ul style="list-style-type: none"> • Support team coordination • Information management and synthesis • Maintenance of the administrative record • Management of accounting information and results 	Booz Allen Hamilton Inc.	Engaged in December 2001
Trust Accounting	<ul style="list-style-type: none"> • Expertise in accounting • Reconstruction of accounts from records • Reconciliation of accounting information • Drawing inferences from prior audits • Reporting to IIM beneficiaries 	<ul style="list-style-type: none"> • Chavarria, Dunne & Lamey LLC • Deloitte & Touche LLP • Ernst & Young LLP • Grant Thornton LLP • KPMG LLP 	OHTA engaged five public accounting firms during December 2001 and January 2002
Statistics/Economics	<ul style="list-style-type: none"> • Examination and definition of populations of accounts • Exploration of cost-effective approaches to analyzing existing IIM account-related data • Development of quality control and data testing methods • Handling of gaps in IIM data • Economic analysis 	National Opinion Research Center (NORC), an affiliate of the University of Chicago	Engaged in September 2001
Trust Law	<ul style="list-style-type: none"> • Expertise in trust principles • Experience with trust law in the private sector or other fiduciary situations • Expertise to address the adequacy of proposed accounting methods 	<p>Hughes & Bentzen PLLC (Initial contract in effect through May 2002)</p> <p>Follow-on contractor(s) pending</p>	June 13, 2002, solicitation for proposals from law firms published with July 12, 2002, response date
Trust Operations Advisor	<ul style="list-style-type: none"> • Commercial trust operations experience • Knowledge of commercial fiduciary/trustee duties across a broad range of trust asset types and management situations • Independent advice on commercial trustee obligations • Independent advice on trustee-beneficiary relationships in a commercial trust setting 	Bank of America	Engaged in May 2002
Historical Research	<ul style="list-style-type: none"> • Histories of IIM activity • Research on Indian leasing policies and procedures • History of audit and accounting procedures • Geographic differences in policies and procedures 	<p>Historical Research Associates, Inc.</p> <p>Morgan, Angel & Associates, L.L.C.</p>	Initial contracts with both firms in June 2002

Table G-2. Contracting for Expert Assistance (continued)

Contract Title	Assistance Needed	Contractor(s)	Status
Specific Investigations	<ul style="list-style-type: none"> • Conduct of specific investigations related to location of records • Research on types of accounts • Research as needs are defined 	<p>Initial pilot contract with Gustavson Associates (December to June 2002)</p> <p>Follow-on contractor(s) pending</p>	Contract solicitation to be announced in July 2002
Document Imaging and Coding	<ul style="list-style-type: none"> • Scanning of IIM documents • Coding of captured images for later reference • Quality control of imaging and coding process 	Initial market and pricing survey underway	Contract solicitation to be announced in August 2002
Data Entry	<ul style="list-style-type: none"> • Entry of data from paper ledgers into a transaction table • Quality control of data 	No vendor contacts to date	Contract requirements to be defined
Local Labor	<ul style="list-style-type: none"> • Support of ongoing records collection operations • Support of ongoing scanning operations 	Preliminary contacts with vendors have been made	Contract requirements to be defined, as needed

APPENDIX H. BIBLIOGRAPHY**Statutes**

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Acronyms

BIA	DOI Bureau of Indian Affairs
BLM	DOI Bureau of Land Management
DOI	Department of the Interior
FRC	Federal Records Center
GAO	General Accounting Office
IIM	Individual Indian Money
IRMS	Integrated Records Management System
IT	Information Technology
LRIS	Land Records Information System
MMS	DOI Minerals Management Service
OHTA	DOI Office of Historical Trust Accounting
OST	DOI Office of the Special Trustee
OTFM	OST Office of Trust Funds Management
SDA	Special Deposit Account
TFAS	Trust Funds Accounting System
WBS	Work Breakdown Structure

Other Abbreviations

1994 Act	American Indian Trust Reform Act of 1994
Report	<i>Report to Congress on the Historical Accounting of Individual Indian Money Accounts</i>
Interior	United States Department of the Interior
Manual	Accounting Standards Manual
Treasury	United States Department of the Treasury

Glossary of Terms

Current accounts	IIM accounts that were open on December 31, 2000
Former accounts	IIM accounts that had been closed before December 31, 2000
Electronic Transactions Era	The period in which transaction histories of IIM accounts have been maintained electronically (beginning approximately 1985)
Paper Transactions Era	The period in which transaction histories of IIM accounts were maintained on hardcopy ledger cards and ledger books
Judgment and Per Capita	Accounts Accounts containing funds derived from tribal distributions