



## FULFILLING TRUST RESPONSIBILITIES

The Department has responsibility for what is surely the largest land trust in the world. The Indian trust today encompasses approximately 56 million acres of land. An estimated 10 million acres belong to individual Indians and nearly 45 million acres are held in trust for Indian Tribes. On these lands, Interior manages over 100,000 leases for individual Indians and Tribes. Leasing, use permits, land sale revenues, and interest totaling approximately \$194 million per year are collected for 260,000 open individual Indian money accounts. About \$378 million per year is collected in 1,400 tribal accounts for 300 Tribes. In addition, the trust manages approximately \$2.9 billion in tribal funds and \$400 million in individual Indian funds.

The Department recognizes the challenges of reforming the management of its Indian fiduciary trust responsibilities and has initiated changes to meet these challenges. First, to address needed changes in the Department's organizational structure to focus on its fiduciary trust duties, a reorganization of the Bureau of Indian Affairs and Office of the Special Trustee for American Indians was begun in 2003. Second, to address the exponential growth of fractionated interests in individual Indian allotted lands, the land consolidation program is being significantly expanded. Third, solutions are being sought to deal with 260,000 open individual Indian money accounts, the majority of which have balances under \$100 and annual transactions of less than \$1,000, for which the Federal government currently bears the entire cost of administration. Normal incentives found in the commercial sector for reducing unprofitable assets or paying for the management of the trust does not apply to the individual Indian monies trust. As an example, thousands of accounts must be maintained for IIM account holders that contain less than one dollar.

## UNIFIED TRUST BUDGET

The 2005 budget includes significant new funding to sustain and expand work begun in prior years to reform, re-engineer, and reorganize trust programs in order to enable the Department to better fulfill its fiduciary trust responsibilities. It funds a reorganized system of delivery and administration of trust programs designed to create greater accountability to Interior's trust beneficiaries. The 2005 Unified Trust budget focuses on four critical issues:

- Strengthening on-going Indian trust reform through the continued re-engineering of trust business processes to bring about dramatic improvements in the management of fiduciary trust assets. In addition, major legacy software systems that exceed 30 years in age will be replaced with modern technology.

## UNIFIED TRUST 2005 BUDGET

(\$ in Millions)

Program	2004 Enacted	2005 Budget	Change
Beneficiary Services	9.7	15.2	5.5
Ownership Information	99.4	166.3	66.9
Land & Natural Resources	127.6	123.9	-3.7
Trust Fund Assets	34.1	43.0	8.8
DOI Trust Organization	29.0	32.9	3.9
Historical Accounting	44.4	109.4	65.0
Information Technology	76.8	89.9	13.1
Records Management	20.1	21.7	1.6
Other	12.2	12.2	0.0
<b>Total</b>	<b>453.4</b>	<b>614.4</b>	<b>161.1</b>

- Continuing implementation of the trust reorganization begun in 2003 to provide a much greater emphasis on direct beneficiary services.
- Consolidating thousands of tiny fractionated interests of land resulting in enhanced economic development opportunities.
- Continuing funding for Interior's five-year historical accounting plan.

### RE-ENGINEERING

In 2002, the Department began a meticulous process to develop an accurate model of its current trust business processes. The documentation of the "as-is" processes has provided Interior a comprehensive understanding of trust business operations, an opportunity to identify needs and places for improvement, and an understanding of variances of practice among geographic regions and their causes. The "to-be" re-engineering phase is a process redesign activity that will transform the current trust business processes into an efficient, consistent, integrated, and fiscally responsible business model that will better meet the needs and priorities of the beneficiaries, while addressing the duties of the Department as trustee.

After examining existing business processes, Interior is comparing these processes to an initial "to-be" model to determine what needs to be changed.

In particular, where existing business processes vary from region to region, efforts will be made to standardize processes. In addition, the "as-is" and "to-be" models will be compared to standard industry practices. Finally, Interior plans to integrate the final "to-be" model with universal support and operational functions, and document these re-engineered business processes with appropriate policies, procedures, guidelines, handbooks, and information systems designed to reflect the new processes.

The "to-be" model will be completed by May 31, 2004, and implementation will be initiated during the balance of 2004.

### REBUILDING BIA'S IT INFRASTRUCTURE

In December 2001, the U.S. District Court for the District of Columbia ordered a shutdown of Interior information technology systems from access to the internet as a result of a security concern related to BIA trust program data. Since the shutdown, BIA has revamped its enterprise infrastructure and management practices. The BIA established a state-of-the-art wide-area network, network operations command center, and security operations center; and developed over 40 new IT policies and procedures that comply with the security requirements of OMB Circular A-130 and the Government Information Security Results Act. In 2003, BIA scored the highest among Interior bureaus in security compliance for the Department. It successfully closed 13 of 19 Inspector General notices-of-findings-and-recommendations and 770 of 901 audit findings. New capital planning practices produced business cases for 50 systems, up from four a year earlier.

The 2005 budget includes increases of \$29.1 million to continue the ground-up rebuilding of the BIA IT infrastructure to support trust, as well as non-trust programs. The continued rebuilding is a fundamental component of the Interior enterprise architecture and includes full business cases for proposed investments. The IT budget increase will allow BIA to continue systems life-cycle management practices in investment management, portfolio management, business case development, configuration management, asset management, ar-

chitecture development, and systems replacement for security and e-government capabilities.

## TRUST ORGANIZATION

The Department began reorganizing trust functions in BIA and OST in 2003. The new organization was developed after detailed analysis of the prior organization and an extensive, year-long consultation process with tribal leaders. The new organization reflects a synthesis of the views heard during the consultation process. When fully implemented, it will meet fiduciary trust responsibilities, be more accountable at every level, and operate with people trained in the principles of fiduciary trust management.

The reorganization places a particular focus on the BIA and OST fiduciary responsibilities to individual Indian and tribal beneficiaries. For instance, land and natural resource management programs will continue to be managed in BIA due to its demonstrated expertise in this area of the trust. The OST has expanded its limited operational role for financial management and beneficiary services in addition to its statutory oversight duties. To carry out these duties, OST has developed a regional and local agency presence to ensure that fiduciary trust responsibilities are met in the management of these financial assets. This presence provides for better communication among OST, BIA, MMS, and trust beneficiaries, and provides for better financial trust asset management.

By further developing and taking advantage of the strengths of each organization, the Department will have a more cost-effective, efficient, and successful trust management system. The new organization dedicates more trained personnel to provide consolidated trust services, increases the emphasis on tribal contracting, and provides direct trust accountability.

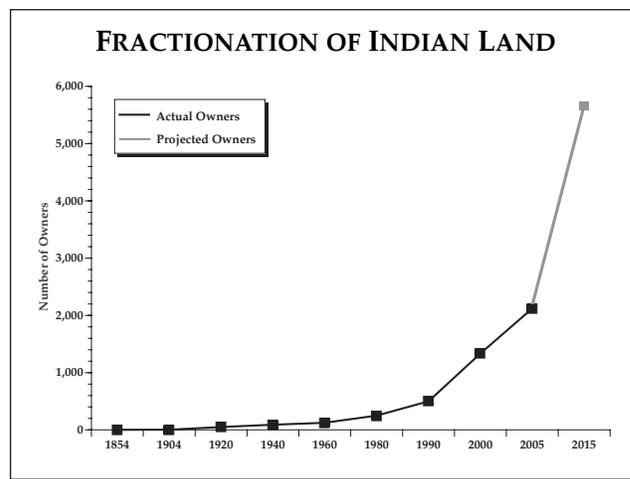
The budget provides \$7.2 million to support the new organization, including funding 85 new trust-related positions at the local level. Together with base funding available in BIA and OST, this increase will provide the resources needed for the new organization in 2005. In addition, the budget provides an increase of \$4.0 million to quicken the pace at which current probate cases are resolved.

Initially, two deputy superintendents and two trust officers were hired at the pilot BIA agencies, Anadarko and Concho, as part of the BIA and

OST reorganization effort. During 2004, OST will hire six regional trust administrators and 60 trust officers and related support staff. The BIA plans to hire 25 deputy regional directors for trust and deputy agency superintendents for trust during 2004. This additional staffing is a significant step toward implementation of trust reform. It will permit more decisions to be made at the local level, thus giving beneficiaries timely responses to questions and more efficient management of trust assets. These positions are being filled at agencies selected based on the volume of fiduciary trust work being performed, number of individual Indian money account holders, and dollar volume of business. Expansion of these efforts to other agencies will continue throughout 2004 and 2005.

**Indian Land Consolidation** – One of the greatest challenges facing successful fiduciary trust management is the fractionation, or continuing subdivision, of individual Indian interests in the land that the Federal government holds in trust. Because individual Indian trust lands are subject to a permanent restriction against alienation, they are primarily transferred through inheritance. With each successive generation, individual interests in the land become further divided and subdivided among heirs, each of whom holds a smaller and smaller interest in the land. The ownership of many disparate, uneconomic, small interests benefits no one in Indian Country and creates an administrative burden that drains resources away from other Indian programs.

Managing all of these fractionated individual interests is expensive. Individual owners often see little benefit because their interests are so small. Most often it is difficult, if not impossible, to put



the land to its best economic use because there are so many ownership interests involved.

As the number of ownership interests grows, the cost to the Federal government for accounting and managing those interests also grows. In many cases, the cost to account for and probate highly fractionated tracts far exceeds either the owners' receipts or the value of the underlying property. In 2004, BIA and OST will spend an estimated \$220 million on activities related to these interests. Costs are expected to grow six-fold in 20 years, to almost \$1.2 billion. Cumulatively, over the 20-year period, an estimated \$12.3 billion of the Interior Indian budget will be spent on managing fractionated interests, if changes are not implemented.

The Indian Land Consolidation program, which acquires small ownership shares in allotted land from willing sellers, is a key component in trust reform and management. Once interests are purchased, title can be transferred to the Tribe. Purchase of fractional interests increases the likelihood of more productive economic use of the land, reduces record keeping and large numbers of small dollar financial transactions, and decreases the number of interests subject to probate.

As a pilot, the program has been conducted in four states on seven reservations. As of December 31, 2003, program funds purchased 68,938 individual interests representing 42,075 acres. As reflected in a 2004 Program Assessment Rating Tool review, the pilot has also taught valuable lessons about the need to target purchases to maximize return of land to productive use and allow closure of IIM accounts associated with these interests.

The 2005 budget proposes an unprecedented amount of \$75.0 million for Indian land consolidation, an increase of \$53.3 million. This funding will provide for a nationwide program utilizing contractual arrangements with Tribes or private entities to purchase individual interests on behalf of the Department. This unprecedented level of funding, when coupled with meaningful probate reform, should begin to significantly address this longstanding and growing problem. The 2004 budget, together with carryover, will provide an estimated \$32.3 million to put in place the necessary infrastructure and contractual arrangements needed to implement a major expansion of the program in 2005.

This new vision and commitment to end frac-

tionation will also require legislative initiatives to provide for workable probate reform, disposal of unclaimed property, and partition of land. The Department will continue to work with Congress to find constructive and meaningful solutions to these issues. Interior has also begun to identify potential alternative methods for program financing, including tribal and private sources, based on economic trade-offs and long-term public benefits.

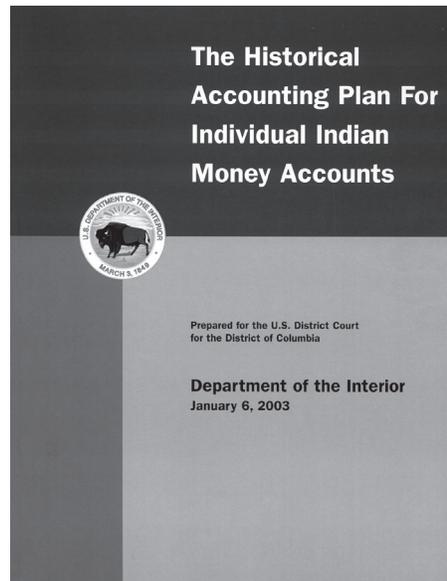
**Historical Accounting** – In 1994, Congress passed the American Indian Trust Fund Management Reform Act. This Act requires the Secretary of the Interior to “account” for “the daily and annual balance of all funds held in trust by the United States for the benefit of an Indian Tribe or an individual Indian which are deposited or invested pursuant to the Act of June 24, 1938 (25 U.S.C. 162a).” The

Department is currently involved in a major class action lawsuit *Cobell v. Norton*, and 25 tribal lawsuits associated with the Department's management of Indian trust funds.

On January 6, 2003, as ordered by the court in the Cobell litigation, the De-

partment filed *The Historical Accounting Plan for Individual Indian Money Accounts*. The Department's accounting plan provides for a historical accounting for about 260,000 IIM accounts over a five-year period at a cost of approximately \$335 million. The accuracy of the transactions is to be verified by reviewing support documentation on a transaction-by-transaction basis for all transactions over \$5,000 and by statistically sampling transactions under \$5,000. The sampling methodology would be designed to provide a 99 percent confidence level of any error rate. (See box following this section for details on the status of the historical accounting plan.)

The 2005 budget of \$109.4 million for the Office of



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Historical Trust Accounting includes an increase of \$65.0 million over the enacted 2004 appropriation. This amount will provide \$80.0 million for IIM accounting. The request will also provide \$29.4 million for tribal accounting.

The 2005 budget for IIM accounting is based on an estimate of the Department's costs to begin full implementation of the *Historical Accounting Plan for Individual Indian Money Accounts* after December 31, 2004. This amount may be revised depending on how the Court of Appeals for the District of Columbia Circuit rules with regards to the structural injunction in the *Cobell* case and on whether Congressional action is taken to delineate the specific historical accounting obligations of the Department as suggested in the 2004 Interior Appropriations Act. The Department will continue to work with Congress and trust beneficiaries to reach a settlement on the historical accounting and related issues.

The 2005 request for IIM accounting will continue efforts described in the plan and reconcile 200,000 transactions in land-based IIM accounts. It will also resolve the proper ownership of approximately \$8 million of residual funds in special deposit accounts, distributing funds to the appropriate owners and closing these administrative accounts. In addition, OHTA plans to image approximately five million pages of trust records and code more than one million documents.

As of December 31, 2003, OHTA had reconciled more than 17,600 judgment accounts with balances totaling over \$50 million and reconciled over 130,000 transactions worth over \$183 million in per capita accounts. The OHTA also resolved residual balances in over 3,500 special deposit accounts, identifying the proper ownership of more than \$15 million belonging to individual Indians, Tribes, and private entities. In support of both

IIM and tribal accounting efforts, OHTA imaged more than 1.5 million pages of trust records and coded nearly 100,000 documents. Also, OHTA completed its accounting reconciliation tool and began using the tool to reconcile land-based IIM transactions.

By the end of 2004, OHTA expects to resolve the proper ownership of approximately \$30 million in residual special deposit account balances, complete the reconciliation of judgment accounts, and complete the reconciliation of per capita accounts and per capita transactions in land-based accounts. As part of litigation support, OHTA will reconcile several thousand land-based IIM account transactions.

The 2005 request for tribal accounting will support work by OHTA on potential settlement negotiations with Tribes. It will also provide funding to conduct historical accountings for Tribes, administer settlements, and present tribal briefings, as requested. In 2005, OHTA expects to complete reconciliation for trust fund accounts of five tribes, image an additional three million pages of tribal documents, and code 1.3 million tribal documents.

In 2004, OHTA will work on the 20 tribal lawsuits. It has already conducted a number of briefings for Tribes and tribal organizations. These briefings will be a first step in OHTA's administrative process to address unresolved or additional accounting issues, and are a prelude to anticipated discussions and negotiations with Tribes to develop Tribe-specific work plans to resolve outstanding accounting issues and the litigation. Working with Interior's Office of the Solicitor and the Department of Justice, OHTA has already started implementing a settlement with one Tribe, provided briefings to five Tribes on the results of the 1972-1992 tribal reconciliation, and developed three tribal historical accounting plans.

## HISTORICAL ACCOUNTING PLAN

The historical accounting described in the January 6, 2003 historical accounting plan for individual Indian money accounts covers all IIM accounts that were open during the October 25, 1994, to December 31, 2000, period. At the end of the historical accounting process, the Department intends to be in a position, subject to approval of the court in the *Cobell* case, to provide each IIM account holder with a historical statement of account. The Department plans to provide information on how much money was credited to each account, from what sources, the amount of interest credited to each account, and the disbursements made from the account.

The Department intends to provide its assessment of the accuracy of the account transaction history. This information will assist IIM account holders in ascertaining whether their money has been properly accounted for. The Department also intends to be in a position, subject to approval of the Cobell court, to provide IIM account holders with information regarding land assets as of December 31, 2000. The information on assets will be prepared by the BIA land title and records offices as a separate part of the package to be provided to IIM account holders.

On September 25, 2003, the U.S. District Court ordered a far more expansive accounting with more constrained time lines than Interior's plan. The court-issued structural injunction specified what must be included in the accounting and when it must be done. The court decided that the accounting must provide a complete history of all financial transactions and all land ownership transactions in the trust since 1887. To understand the significance of the court order, it is useful to compare it to the historical accounting plan that the Department prepared, but which, in large part, the court rejected. See summary chart that follows.

The structural injunction would require the review and documentation of approximately 61 million financial transactions and supporting land ownership records. The Department currently holds approximately 500-600 million Indian trust pages. The injunction appears to necessitate the indexing and electronic imaging of a large percentage of these pages.

In addition, the court would require the Department to obtain additional records from third parties, which may include State and county record offices, energy companies, timber companies, other former and current lessees, Tribes, and individual Indians.

The court has ordered that the bulk of the accounting be completed in three years. In addition to the historical accounting, the court ordered the Department to fully implement a plan for trust reform by May 31, 2005. This would accelerate Interior's schedule by several years, and would have significant budget implications in both 2004 and 2005.

On November 12, 2003, the Court of Appeals for the District of Columbia Circuit stayed the District court's structural injunction order until the Court of Appeals could hear the case on appeal.

In addition, as a result of the court injunction, Congress included limitations and directions in the 2004 Interior and Related Agencies Appropriations Act affecting historical accounting activities during 2004. Congress placed a temporary limit on the scope of activities for historical accounting, until either Congress amends the American Indian Trust Fund Management Reform Act of 1994 to delineate the specific historical accounting obligations of the Department of the Interior with respect to the individual Indian money trust, or December 31, 2004. Congress provided funds not to exceed \$45 million in 2004 for records collection and indexing, imaging and coding, accounting for per capita and judgment accounts, accounting for tribal accounts, reviewing and distributing funds from special deposit accounts, and program management of the Office of Historical Trust Accounting, including litigation support.

The 2005 budget for IIM accounting is based on an estimate of the Department's costs to begin full implementation of the Historical Accounting Plan for Individual Indian Money Accounts after December 31, 2004. This amount may be revised depending on how the Court of Appeals for the District of Columbia Circuit rules with regards to the structural injunction in the *Cobell* case and on whether congressional action is taken to delineate the specific historical accounting obligations of the Department as suggested in the 2004 Interior and Related Agencies Appropriations Act. The Department will continue to work with Congress and trust beneficiaries to reach a settlement on the historical accounting and related issues.

	INTERIOR'S PLAN	STRUCTURAL INJUNCTION
Estimated Cost	\$335 million	\$6-13 billion <sup>1</sup>
Time to Complete	5 years	3 years for most accounting <sup>2</sup>
Verification Approach	Verify all transactions over \$5,000 by review of supporting documents. Verification by statistical sampling of transactions under \$5,000.	Verify all transactions by review of supporting documents.
Trust Asset Accounting	Describe trust assets owned by each IIM account holder as of December 31, 2000.	Describe all trust assets ever owned by current IIM account holders or their predecessors in interest from 1887 to the present.
Deceased IIM Account Holders	No accounting for beneficiaries who died prior to October 25, 1994; probate considered final.	Full accounting for all IIM accounts since 1887.
Closed IIM Accounts	No accounting for IIM accounts closed prior to October 25, 1994.	Full accounting for all IIM accounts since 1887, including all direct pay transactions.
Direct Pay (rents and royalties paid directly to Indians at their request and never held in trust)	No accounting.	Full accounting for all IIM accounts since 1887; including all direct pay transactions.
Time Frame	Accounts that were open between October 25, 1994, and December 31, 2000, reconciled back to 1938.	Accountings back to 1887.

<sup>1</sup> Estimate is very preliminary.

<sup>2</sup> Even though the order gives until September 30, 2007, to complete the Special Deposit accounts, it requires all accountings for individual Indians to be completed by September 30, 2006.