

AMERICAN INDIAN TRUST FUND MANAGEMENT REFORM  
ACT OF 1994

OCTOBER 3, 1994.—Committed to the Committee of the Whole House on the State  
of the Union and ordered to be printed

Mr. MILLER of California, from the Committee on Natural  
Resources, submitted the following

R E P O R T

[To accompany H.R. 4833]

The Committee on Natural Resources, to whom was referred the bill (H.R. 4833) to reform the management of Indian Trust Funds, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “American Indian Trust Fund Management Reform Act of 1994”.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

- Sec. 1. Short title; table of contents.  
Sec. 2. Definitions.

TITLE I—RECOGNITION OF TRUST RESPONSIBILITY

- Sec. 101. Affirmative action required.  
Sec. 102. Responsibility of Secretary to account for the daily and annual balances of Indian trust funds.  
Sec. 103. Payment of interest on individual Indian money accounts.  
Sec. 104. Authority for payment of claims for interest owed.

TITLE II—INDIAN TRUST FUND MANAGEMENT PROGRAM

- Sec. 201. Purpose.  
Sec. 202. Voluntary withdrawal from trust funds program.  
Sec. 203. Judgment funds.  
Sec. 204. Technical assistance.  
Sec. 205. Grant program.  
Sec. 206. Return of withdrawn funds.  
Sec. 207. Savings provision.  
Sec. 208. Report to Congress.  
Sec. 209. Regulations.

TITLE III—SPECIAL TRUSTEE FOR AMERICAN INDIANS

- Sec. 301. Purposes.  
Sec. 302. Office of Special Trustee for American Indians.  
Sec. 303. Authorities and functions of the special trustee.

- Sec. 304. Reconciliation report.  
 Sec. 305. Staff and consultants  
 Sec. 306. Advisory board.

TITLE IV—AUTHORIZATION OF APPROPRIATIONS

Sec. 401. Authorization of appropriations.

**SEC. 2. DEFINITIONS.**

For the purposes of this Act:

(1) The term "Special Trustee" means the Special Trustee for American Indians appointed under section 302.

(2) The term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(3) The term "Secretary" means the Secretary of the Interior.

(4) The term "Office" means the Office of Special Trustee for American Indians established by section 302.

(5) The term "Bureau" means the Bureau of Indian Affairs within the Department of the Interior.

(6) The term "Department" means the Department of the Interior.

**TITLE I—RECOGNITION OF TRUST  
 RESPONSIBILITY**

**SEC. 101. AFFIRMATIVE ACTION REQUIRED.**

The first section of the Act of June 24, 1938 (25 U.S.C. 162a), is amended by adding at the end the following new subsection:

"(d) The Secretary's proper discharge of the trust responsibilities of the United States shall include (but are not limited to) the following:

"(1) Providing adequate systems for accounting for and reporting trust fund balances.

"(2) Providing adequate controls over receipts and disbursements.

"(3) Providing periodic, timely reconciliations to assure the accuracy of accounts.

"(4) Determining accurate cash balances.

"(5) Preparing and supplying account holders with periodic statements of their account performance and with balances of their account which shall be available on a daily basis.

"(6) Establishing consistent, written policies and procedures for trust fund management and accounting.

"(7) Providing adequate staffing, supervision, and training for trust fund management and accounting.

"(8) Appropriately managing the natural resources located within the boundaries of Indian reservations and trust lands."

**SEC. 102. RESPONSIBILITY OF SECRETARY TO ACCOUNT FOR THE DAILY AND ANNUAL BALANCES OF INDIAN TRUST FUNDS.**

(a) **REQUIREMENT 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).

(b) **PERIODIC STATEMENT OF PERFORMANCE.**—Not later than 20 business days after the close of a calendar quarter, the Secretary shall 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 (25 U.S.C. 162a). The statement, for the period concerned, shall—

(1) identify the source, type, and status of the funds;

(2) the beginning balance;

(3) the gains and losses;

(4) receipts and disbursements; and

(5) the ending balance.

(c) **ANNUAL AUDIT.**—The Secretary shall cause to be conducted an annual audit on a fiscal year basis 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), and shall include a letter relating to

the audit in the first statement of performance provided under subsection (b) after the completion of the audit.

**SEC. 103. PAYMENT OF INTEREST ON INDIVIDUAL INDIAN MONEY ACCOUNTS.**

(a) **PAYMENT OF INTEREST.**—The first section of the Act of February 12, 1929 (25 U.S.C. 161a), is amended—

- (1) by striking out "That all" and inserting in lieu thereof "That (a) all"; and
- (2) by adding after subsection (a) (as designated by paragraph (1) of this subsection) the following:

"(b) All funds held in trust by the United States and carried in principal accounts on the books of the United States Treasury to the credit of individual Indians shall be invested by the Secretary of the Treasury, at the request of the Secretary of the Interior, in public debt securities with maturities suitable to the needs of the fund involved, as determined by the Secretary of the Interior, and bearing interest at rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable securities."

(b) **WITHDRAWAL AUTHORITY.**—The second sentence of the first section of the Act of June 24, 1938 (25 U.S.C. 162a) is amended by inserting "to withdraw from the United States Treasury and" after "prescribe,".

(c) **TECHNICAL CORRECTION.**—The second subsection (b) of the first section of the Act of June 24, 1938 (25 U.S.C. 162a), as added by section 302 of Public Law 101-644 (104 Stat. 4667), is hereby redesignated as subsection (c).

(d) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall apply to interest earned on amounts deposited or invested on or after the date of the enactment of this Act.

**SEC. 104. AUTHORITY FOR PAYMENT OF CLAIMS FOR INTEREST OWED.**

The Secretary shall make payments to an individual Indian in full satisfaction of any claim of such individual for interest on amounts deposited or invested on behalf of such individual before the date of enactment of this Act retroactive to the date that the Secretary began investing individual Indian monies on a regular basis, to the extent that the claim is identified—

- (1) by a the reconciliation process of individual Indian money accounts, or
- (2) by the individual and presented to the Secretary with supporting documentation, and is verified by the Secretary pursuant to the Department's policy for addressing accountholder losses.

## **TITLE II—INDIAN TRUST FUND MANAGEMENT PROGRAM**

**SEC. 201. PURPOSE.**

The purpose of this title is to allow tribes an opportunity to manage tribal funds currently held in trust by the United States and managed by the Secretary through the Bureau, that, consistent with the trust responsibility of the United States and the principles of self-determination, will—

- (1) give Indian tribal governments greater control over the management of such trust funds; or
- (2) otherwise demonstrate how the principles of self-determination can work with respect to the management of such trust funds, in a manner consistent with the trust responsibility of the United States.

**SEC. 202. VOLUNTARY WITHDRAWAL FROM TRUST FUNDS PROGRAM.**

(a) **IN GENERAL.**—An Indian tribe may, in accordance with this section, submit a plan to withdraw some or all funds held in trust for such tribe by the United States and managed by the Secretary through the Bureau.

(b) **APPROVAL OF PLAN.**—The Secretary shall approve such plan within 90 days of receipt and when approving the plan, the Secretary shall obtain the advice of the Special Trustee or prior to the appointment of such Special Trustee, the Director of the Office of Trust Fund Management within the Bureau. Such plan shall meet the following conditions:

- (1) Such plan has been approved by the appropriate Indian tribe and is accompanied by a resolution from the tribal governing body approving the plan.
- (2) The Secretary determines such plan to be reasonable after considering all appropriate factors, including (but not limited to) the following:
  - (A) The capability and experience of the individuals or institutions that will be managing the trust funds.

(B) The protection against substantial loss of principal.

(c) **DISSOLUTION OF TRUST RESPONSIBILITY.**—Beginning on the date funds are withdrawn pursuant to this section, any trust responsibility or liability of the United States with respect to such funds shall cease.

**SEC. 203. JUDGMENT FUNDS.**

(a) **IN GENERAL.**—The Secretary is authorized to approve plans under section 202 of this title for the withdrawal of judgment funds held by the Secretary.

(b) **LIMITATION.**—Only such funds held by the Secretary under the terms of the Indian Judgment Funds Use or Distribution Act (25 U.S.C. 1401) or an Act of Congress which provides for the secretarial management of such judgment funds shall be included in such plans.

(c) **SECRETARIAL DUTIES.**—In approving such plans, the Secretary shall ensure—

(1) that the purpose and use of the judgment funds identified in the previously approved judgment fund plan will continue to be followed by the Indian tribe in the management of the judgment funds; and

(2) that only funds held for Indian tribes may be withdrawn and that any funds held for individual tribal members are not to be included in the plan.

**SEC. 204. TECHNICAL ASSISTANCE.**

The Secretary shall—

(1) directly or by contract, provide Indian tribes with technical assistance in developing, implementing, and managing Indian trust fund investment plans; and

(2) among other things, ensure that legal, financial, and other expertise of the Department of the Interior has been made fully available in an advisory capacity to the Indian tribes to assist in the development, implementation, and management of investment plans.

**SEC. 205. GRANT PROGRAM.**

(a) **GENERAL AUTHORITY.**—The Secretary is authorized to award grants to Indian tribes for the purpose of developing and implementing plans for the investment of Indian tribal trust funds.

(b) **USE OF FUNDS.**—The purposes for which funds provided under this section may be used include (but are not limited to)—

(1) the training and education of employees responsible for monitoring the investment of trust funds;

(2) the building of tribal capacity for the investment and management of trust funds;

(3) the development of a comprehensive tribal investment plan;

(4) the implementation and management of tribal trust fund investment plans; and

(5) such other purposes related to this title that the Secretary deems appropriate.

**SEC. 206. RETURN OF WITHDRAWN FUNDS.**

Subject to such conditions as the Secretary may prescribe, any tribe which has withdrawn trust funds may choose to return any or all of the trust funds it has withdrawn by notifying the Secretary in writing of its intention to return the funds to the control and management of the Secretary.

**SEC. 207. SAVINGS PROVISION.**

By submitting or approving a plan under this title, neither the tribe nor the Secretary shall be deemed to have accepted the account balance as accurate or to have waived any rights regarding such balance and to seek compensation.

**SEC. 208. REPORT TO CONGRESS.**

The Secretary shall, beginning one year after the date of the enactment of this Act, submit an annual report to the Committee on Natural Resources of the House of Representatives and the Committee on Indian Affairs of the Senate on the implementation of programs under this title. Such report shall include recommendations (if any) for changes necessary to better implement the purpose of this title.

**SEC. 209. REGULATIONS.**

(a) **IN GENERAL.**—Not later than 12 months after the date of enactment of this title, the Secretary shall promulgate final regulations for the implementation of this title. All regulations promulgated pursuant to this title shall be developed by the Secretary with the full and active participation of the Indian tribes with trust funds held by the Secretary and other affected Indian tribes.

(b) EFFECT.—The lack of promulgated regulations shall not limit the effect of this title.

## TITLE III—SPECIAL TRUSTEE FOR AMERICAN INDIANS

### SEC. 301. PURPOSES.

The purposes of this title are—

- (1) to provide for more effective management of, and accountability for the proper discharge of, the Secretary's trust responsibilities to Indian tribes and individual Indians by establishing in the Department of the Interior an Office of Special Trustee for American Indians to oversee and coordinate reforms within the Department of practices relating to the management and discharge of such responsibilities;
- (2) to ensure that reform of such practices in the Department is carried out in a unified manner and that reforms of the policies, practices, procedures and systems of the Bureau, Minerals Management Service, and Bureau of Land Management, which carry out such trust responsibilities, are effective, consistent, and integrated; and
- (3) to ensure the implementation of all reforms necessary for the proper discharge of the Secretary's trust responsibilities to Indian tribes and individual Indians.

### SEC. 302. OFFICE OF SPECIAL TRUSTEE FOR AMERICAN INDIANS.

(a) ESTABLISHMENT.—There is hereby established within the Department of the Interior the Office of Special Trustee for American Indians. The Office shall be headed by the Special Trustee who shall report directly to the Secretary.

(b) SPECIAL TRUSTEE.—

(1) APPOINTMENT.—The Special Trustee shall be appointed by the President, by and with the advice and consent of the Senate, from among individuals who possess demonstrated ability in general management of large governmental or business entities and particular knowledge of trust fund management, management of financial institutions, and the investment of large sums of money.

(2) COMPENSATION.—The Special Trustee shall be paid at a rate determined by the Secretary to be appropriate for the position, but not less than the rate of basic pay payable at Level II of the Executive Schedule under section 5313 of title 5, United States Code.

(c) TERMINATION OF OFFICE.—

(1) CONDITIONED UPON IMPLEMENTATION OF REFORMS.—The Special Trustee, in proposing a termination date under section 303(a)(2)(C), shall ensure continuation of the Office until all reforms identified in the strategic plan have been implemented to the satisfaction of the Special Trustee.

(2) 30-DAY NOTICE.—Thirty days prior to the termination date proposed in the plan submitted under this section, the Special Trustee shall notify the Secretary and the Congress in writing of the progress in implementing the reforms identified in the plan. The Special Trustee, at that time, may recommend the continuation, or the permanent establishment, of the Office if the Special Trustee concludes that continuation or permanent establishment is necessary for the efficient discharge of the Secretary's trust responsibilities.

(3) TERMINATION DATE.—The Office shall terminate 180 legislative days after the date on which the notice to the Congress under paragraph (2) is provided, unless the Congress extends the authorities of the Special Trustee. For the purposes of this session, a legislative day is a day on which either House of the Congress is in session.

### SEC. 303. AUTHORITIES AND FUNCTIONS OF THE SPECIAL TRUSTEE.

(a) COMPREHENSIVE STRATEGIC PLAN.—

(1) IN GENERAL.—The Special Trustee shall prepare and, after consultation with Indian tribes and appropriate Indian organizations, submit to the Secretary and the Committee on Natural Resources of the House of Representatives and the Committee on Indian Affairs of the Senate, within one year after the initial appointment is made under section 302(b), a comprehensive strategic plan for all phases of the trust management business cycle that will ensure proper and efficient discharge of the Secretary's trust responsibilities to Indian tribes and individual Indians in compliance with this Act.

(2) PLAN REQUIREMENTS.—The plan prepared under paragraph (1) shall include the following:

(A) Identification of all reforms to the policies, procedures, practices and systems of the Department, the Bureau, the Bureau of Land Management, and the Minerals Management Service necessary to ensure the proper and efficient discharge of the Secretary's trust responsibilities in compliance with this Act.

(B) Provisions for opportunities for Indian tribes to assist in the management of their trust accounts and to identify for the Secretary options for the investment of their trust accounts, in a manner consistent with the trust responsibilities of the Secretary, in ways that will help promote economic development in their communities.

(C) A timetable for implementing the reforms identified in the plan, including a date for the proposed termination of the Office.

(b) DUTIES.—

(1) GENERAL OVERSIGHT OF REFORM EFFORTS.—The Special Trustee shall oversee all reform efforts within the Bureau, the Bureau of Land Management, and the Minerals Management Service relating to the trust responsibilities of the Secretary to ensure the establishment of policies, procedures, systems and practices to allow the Secretary to discharge his trust responsibilities in compliance with this Act.

(2) BUREAU OF INDIAN AFFAIRS.—

(A) MONITOR RECONCILIATION OF TRUST ACCOUNTS.—The Special Trustee shall monitor the reconciliation of tribal and Individual Indian Money trust accounts to ensure that the Bureau provides the account holders, with a fair and accurate accounting of all trust accounts.

(B) INVESTMENTS.—The Special Trustee shall ensure that the Bureau establishes appropriate policies and procedures, and develops necessary systems, that will allow it—

(i) properly to account for and invest, as well as maximize, in a manner consistent with the statutory restrictions imposed on the Secretary's investment options, the return on the investment of all trust fund monies, and

(ii) to prepare accurate and timely reports to account holders (and others, as required) on a periodic basis regarding all collections, disbursements, investments, and return on investments related to their accounts.

(C) OWNERSHIP AND LEASE DATA.—The Special Trustee shall ensure that the Bureau establishes policies and practices to maintain complete, accurate, and timely data regarding the ownership and lease of Indian lands.

(3) BUREAU OF LAND MANAGEMENT.—The Special Trustee shall ensure that the Bureau of Land Management establishes policies and practices adequate to enforce compliance with Federal requirements for drilling, production, accountability, environmental protection, and safety with respect to the lease of Indian lands.

(4) MINERALS MANAGEMENT SERVICE.—The Special Trustee shall ensure that the Minerals Management Service establishes policies and practices to enforce compliance by lessees of Indian lands with all requirements for timely and accurate reporting of production and payment of lease royalties and other revenues, including the audit of leases to ensure that lessees are accurately reporting production levels and calculating royalty payments.

(c) COORDINATION OF POLICIES.—

(1) IN GENERAL.—The Special Trustee shall ensure that—

(A) the policies, procedures, practices, and systems of the Bureau, the Bureau of Land Management, and the Minerals Management Service related to the discharge of the Secretary's trust responsibilities are coordinated, consistent, and integrated, and

(B) the Department prepares comprehensive and coordinated written policies and procedures for each phase of the trust management business cycle.

(2) STANDARDIZED PROCEDURES.—The Special Trustee shall ensure that the Bureau imposes standardized trust fund accounting procedures throughout the Bureau.

(3) INTEGRATION OF LEDGER WITH INVESTMENT SYSTEM.—The Special Trustee shall ensure that the trust fund investment, general ledger, and subsidiary accounting systems of the Bureau are integrated and that they are adequate to support the trust fund investment needs of the Bureau.

(4) INTEGRATION OF LAND RECORDS, TRUST FUNDS ACCOUNTING, AND ASSET MANAGEMENT SYSTEMS AMONG AGENCIES.—The Special Trustee shall ensure that—

(A) the land records system of the Bureau interfaces with the trust fund accounting system, and

(B) the asset management systems of the Minerals Management Service and the Bureau of Land Management interface with the appropriate asset management and accounting systems of the Bureau, including ensuring that—

(i) the Minerals Management Service establishes policies and procedures that will allow it to properly collect, account for, and disburse to the Bureau all royalties and other revenues generated by production from leases on Indian lands; and

(ii) the Bureau of Land Management and the Bureau provide Indian landholders with accurate and timely reports on a periodic basis that cover all transactions related to leases of Indian resources.

(5) TRUST MANAGEMENT PROGRAM BUDGET.—

(A) DEVELOPMENT AND SUBMISSION.—The Special Trustee shall develop for each fiscal year, with the advice of program managers of each office within the Bureau of Indian Affairs, Bureau of Land Management and Minerals Management Service that participates in trust management, including the management of trust funds or natural resources, or which is charged with any responsibility under the comprehensive strategic plan prepared under subsection (a) of this section, a consolidated Trust Management program budget proposal that would enable the Secretary to efficiently and effectively discharge his trust responsibilities and to implement the comprehensive strategic plan, and shall submit such budget proposal to the Secretary, the Director of the Office of Management and Budget, and to the Congress.

(B) DUTY OF CERTAIN PROGRAM MANAGERS.—Each program manager participating in trust management or charged with responsibilities under the comprehensive strategic plans shall transmit his office's budget request to the Special Trustee at the same time as such request is submitted to his superiors (and before submission to the Office of Management and Budget) in the preparation of the budget of the President submitted to the Congress under section 1105(a) of title 31, United States Code.

(C) CERTIFICATION OF ADEQUACY OF BUDGET REQUEST.—The Special Trustee shall—

(i) review each budget request submitted under subparagraph (B);

(ii) certify in writing as to the adequacy of such request to discharge, effectively and efficiently, the Secretary's trust responsibilities and to implement the comprehensive strategic plan; and

(iii) notify the program manager of the Special Trustee's certification under clause (ii).

(D) MAINTENANCE OF RECORDS.—The Special Trustee shall maintain records of certifications made under paragraph (3)(B).

(E) LIMITATION ON REPROGRAMMING OR TRANSFER.—No program manager shall submit, and no official of the Department of the Interior may approve or otherwise authorize, a reprogramming or transfer request with respect to any funds appropriated for trust management which is included in the Trust Management Program Budget unless such request has been approved by the Special Trustee.

(d) PROBLEM RESOLUTION.—The Special Trustee shall provide such guidance as necessary to assist Department personnel in identifying problems and options for resolving problems, and in implementing reforms to Department, Bureau, Bureau of Land Management, and Minerals Management Service policies, procedures, systems and practices.

(e) SPECIAL TRUSTEE ACCESS.—The Special Trustee, and his staff, shall have access to all records, reports, audits, reviews, documents, papers, recommendations, files and other material, as well as to any officer and employee, of the Department and any office or bureau thereof, as the Special Trustee deems necessary for the accomplishment of his duties under this Act.

(f) ANNUAL REPORT.—The Special Trustee shall report to the Secretary and the Committee on Natural Resources of the House of Representatives and the Committee on Indian Affairs of the Senate each year on the progress of the Department, the Bureau, the Bureau of Land Management, and the Minerals Management Service in implementing the reforms identified in the comprehensive strategic plan under subsection (a)(1) and in meeting the timetable established in the strategic plan under subsection (a)(2)(C).

**SEC. 304. RECONCILIATION REPORT.**

The Secretary shall transmit to the Committee on Natural Resources of the House of Representatives and the Committee on Indian Affairs of the Senate, by May 31, 1996, a report identifying for each tribal trust fund account for which the Secretary is responsible a balance reconciled as of September 30, 1995. In carrying out this section, the Secretary shall consult with the Special Trustee. The report shall include—

- (1) a description of the Secretary's methodology in reconciling trust fund accounts;
- (2) attestations by each account holder that—
  - (A) the Secretary has provided the account holder with as full and complete accounting as possible of the account holder's funds to the earliest possible date, and that the account holder accepts the balance as reconciled by the Secretary; or
  - (B) the account holder disputes the balance of the account holder's account as reconciled by the Secretary and statement explaining why the account holder disputes the Secretary's reconciled balance; and
- (3) a statement by the Secretary with regard to each account balance disputed by the account holder outlining efforts the Secretary will undertake to resolve the dispute.

**SEC. 305. STAFF AND CONSULTANTS.**

(a) **STAFF.**—The Special Trustee may employ such staff as the Special Trustee deems necessary. The Special Trustee may request staff assistance from within the Department and any office or Bureau thereof as the Special Trustee deems necessary.

(b) **CONTRACTS.**—To the extent and in such amounts as may be provided in advance by appropriations Acts, the Special Trustee may enter into contracts and other arrangements with public agencies and with private persons and organizations for consulting services and make such payments as necessary to carry out the provisions of this title.

**SEC. 306. ADVISORY BOARD.**

(a) **ESTABLISHMENT AND MEMBERSHIP.**—Notwithstanding any other provision of law, the Special Trustee shall establish an advisory board to provide advice on all matters within the jurisdiction of the Special Trustee. The advisory board shall consist of nine members, appointed by the Special Trustee after consultation with Indian tribes and appropriate Indian organizations, of which—

- (1) five members shall represent trust fund account holders, including both tribal and Individual Indian Money accounts;
- (2) two members shall have practical experience in trust fund and financial management;
- (3) one member shall have practical experience in fiduciary investment management; and
- (4) one member, from academia, shall have knowledge of general management of large organizations.

(b) **TERM.**—Each member shall serve a term of two years.

(c) **FACA.**—The advisory board shall not be subject to the Federal Advisory Committee Act.

(d) **TERMINATION.**—The Advisory Board shall terminate upon termination of the Office of Special Trustee.

## **TITLE IV—AUTHORIZATION OF APPROPRIATIONS**

**SEC. 401. AUTHORIZATION OF APPROPRIATIONS.**

There is authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

### **PURPOSE**

The purpose of H.R. 4833 is to bring about better accountability and management of Indian trust funds by the Department of the Interior and to provide an opportunity for Indian tribes to directly manage their trust funds. H.R. 4833 sets out the Secretary of Inte-



rior's responsibilities to American Indian trust fund account holders and provides the Secretary with the authority to settle claims on individual Indian accounts for uncredited interest. The bill requires the Secretary to provide technical assistance and grants to tribes to assist them in developing, implementing and managing trust fund investment plans. A Special Trustee for American Indian trust funds is established to prepare a comprehensive, strategic plan for management reform. The Special Trustee would oversee and ensure that the reforms take place throughout the Department of Interior regarding all aspects of the management of Indian allotted lands and the trust funds derived from them.

### BACKGROUND

Funds have been held in trust for American Indians by the Federal Government since 1820. The Bureau of Indian Affairs (BIA) has had the authority to invest Indian Trust Funds since 1918, however, it was not until 1966 that the BIA exercised its full range of investment authority. The Office of Trust Funds Management (OTFM) within the BIA is responsible for implementing the fiduciary responsibility of ensuring that all proper controls and accountability are maintained with regard to the Indian trust funds. OTFM, located in Albuquerque, New Mexico, oversees the trust fund operations at the 12 BIA Area Offices and 93 BIA Agency offices.

Trust fund accounts are comprised mainly of money received through the sale or lease of trust lands and include timber stumpage, oil and gas royalties, and agriculture fees. Accounts containing judgment funds awarded to tribes are also maintained. Trust funds controlled by the BIA currently total over \$2.1 billion with \$1.7 billion in tribal trust funds and \$390 million in Individual Indian Money (IIM) accounts. Several accounts may be held for each tribe. The BIA is currently managing some 1,880 tribal accounts and nearly 337,000 separate IIM accounts.

In order to protect these funds, investments must be unconditionally secured through Federal Government deposit insurance. Funds must be deposited in interest bearing accounts within 30 days of receipt. The Federal Government is responsible for lost interest if funds are not invested within that time. The responsibility for management of Indian Trust Funds by the BIA has been determined through a series of court decisions, treaties, and statutes.

Volumes have been written about improper management of funds within the Bureau of Indian Affairs since its inception. The Bureau of Indian Affairs was made a part of the U.S. War Department on March 11, 1824. Almost immediately there was criticism regarding the way it handled financial matters. In 1828, Henry Rowe Schoolcraft a noted negotiator of several Indian treaties and novelist wrote, "The derangements in the fiscal affairs of the Indian department are in the extreme. One would think that appropriations had been handled with a pitchfork." In 1834 during the first session of the Twenty-third Congress the House of Representatives Committee on Indian Affairs filed a report with accompanying legislation which characterized the administration of Indian Affairs as being "expensive, inefficient, and irresponsible". Although it is 160

years later, this Committee shares the concerns of its predecessor committee.

Over the years numerous audits and reports on Indian trust funds have been published by the Inspector General of the Department of the Interior, the U.S. General Accounting Office, the Office of Management and Budget, and Congressional Committees.

A 1992 report released by the House Committee on Government Operations entitled, "Misplaced Trust: The Bureau of Indian Affairs' Mismanagement of the Indian Trust Fund" details multiple problems with the management of these funds. The report was the culmination of several years of investigation and multiple Congressional hearings on the subject.

Among the problems outlined in the report which persist are:

- the inability to give proper accounting of balances to each of the account holders;

- lack of uniform written policies to govern how accounts are to be managed and under what circumstances funds can be withdrawn;

- insufficient training of personnel needed to carry out the duties required;

- inadequate automated and record keeping systems.

The Office of Management and Budget has consistently, since the 1980's when such a list was first kept, placed the financial management of Indian trust funds as a high risk liability to the United States.

Some attempts have been made to address some of the problems. BIA has contracted with the Arthur Anderson Company to reconcile accounts. Although this process has begun it is not expected to reconcile all of the tribal accounts and at this time there is no plan to reconcile any of the Individual Indian Money accounts. Much needed documentation is missing, making reconciliation extremely difficult.

Tribes have voiced their desire to have more input and control over tribal accounts and the way in which the BIA manages them. Several tribes have withdrawn certain accounts and taken on the responsibility for managing those accounts. In 1991 the Intertribal Monitoring Association (ITMA) was formed to work with the BIA in the reconciliation of current accounts as well as the formulation of future management practices.

The Committee realizes the depth and breadth of the problems regarding Indian trust assets within the Department. There must be an absolute long term commitment by the Department to address the problems affecting Indian allotted lands, their resources, and any receipts produced. This commitment would affect nearly every agency in the Department and is essential for the Secretary to properly discharge his trust responsibility.

#### H.R. 1846

On April 22, 1993, Representative Mike Synar, Chairman of the Committee on Government Operations Subcommittee on Environment, Energy and Natural Resources, introduced H.R. 1846, to require the Secretary of the Interior to pay interest on Indian funds invested, to authorize demonstrations of new approaches for the management of Indian trust funds, to clarify the trust funds, to

clarify the trust responsibility of the United States with respect to Indians, to establish a program for the training and recruitment of Indians in the management of trust funds, to account for daily and annual balances and to require periodic statements for Indian trust funds, and for other purposes. This legislation came after years of oversight and investigations regarding the problems of trust fund management and with the consultation of numerous Indian tribes, tribal organizations and individual Indian account holders.

#### H.R. 4833

On July 26, 1994, Chairman Bill Richardson of the Subcommittee on Native American Affairs of the Committee on Natural Resources introduced HR 4833. This bill is the culmination of an information gathering process including an oversight hearing by the Subcommittee on September 27, 1993 in Washington, D.C., testimony received on the issue in Tahlequah, Oklahoma on January 20, 1994 and a meeting to discuss the establishment of a Special Trustee on May 16, 1994.

H.R. 4833 sets up a program through which tribes may withdraw some or all of their trust funds to invest and manage themselves. The program is designed to allow tribes easier access and more control over their trust funds. The bill also provides the Secretary with additional options for investing tribal funds. This provision would allow funds to be invested in government secured funds, fixed income funds or bonds, and the common stock index. Since these funds offer various rates of return along with increased risk, the liability of the United States is adjusted accordingly. Finally, HR 4833 requires that a report be submitted to Congress on the reconciliation of trust fund accounts.

#### COMMITTEE AMENDMENT

##### PERIODIC STATEMENTS

The Committee expects that each account holder will receive a statement regarding the activity of that account at least 4 times a year. That statement is to provide the account holder with all pertinent data regarding the funds in that account and any activity which took place to affect the account during the time between statements. Further the Committee expects that consistent with private sector fiduciary practices, yearly audits of accounts will take place.

##### PAYMENT OF INTEREST ON INDIVIDUAL INDIAN MONEY ACCOUNTS

Section 103 of the Amendment to H.R. 4833 is intended to codify current investment practices of the BIA. Beginning in 1938, the BIA initiated a policy in which all IIM funds would be invested and managed by BIA Agency level offices. This policy was consistent with the Secretary of Interior's statutory responsibilities regarding tribal Indian trust funds. As early as 1929 the United States recognized its fiduciary responsibilities for Indian trust funds, and enacted 25 U.S.C 161a, requiring the Secretary to invest funds held in trust by the Secretary on behalf of Indian tribes. BIA investment policies developed such that since 1966, the BIA pooled all IIM ac-

counts for investment purposes, and since 1984 the Secretary has been required to invest tribal Indian trust funds in public-debt securities. Section 103 mirrors the language of 25 U.S.C. 161a to also require the Secretary of the Interior to invest individual Indian trust funds in public-debt securities.

Section 103 of the Amendment evolved from Title I of H.R. 1846. The Committee believes this will further clarify the Secretary's trust responsibilities to require the Secretary to invest individual Indian trust funds. H.R. 1846 required the Secretary of the Interior to invest the trust funds of any tribe or individual Indian in public-debt obligations. The Committee received testimony that the requirement in H.R. 1846 to invest in public-debt obligations was viewed by Indian account holders and GAO representatives as overly restrictive in terms of the types of investment options which would be available to the Secretary of the Interior on behalf of Indian account holders. Therefore, in order to broaden the types of investments in which the Secretary could invest individual Indian trust funds, and for purposes of consistency, Section 103 of the Amendment to H.R. 4833 requires the Secretary to invest individual Indian trust funds in public-debt securities.

25 U.S.C. 161a requires the Secretary to invest funds held by the Secretary in trust for tribes in public-debt securities. In order to achieve this requirement, 25 U.S.C. 162a authorizes the Secretary to withdraw tribal trust funds in order to deposit them for investment purposes. By borrowing language from both 25 U.S.C. 161a and 25 U.S.C. 162a, and amending both Acts, Section 103 of the Amendment to H.R. 4833 seeks to require uniformity in the Secretary's investment practices for both tribal trust funds and individual Indian trust funds. With the enactment of H.R. 4833, the Secretary will be authorized and required to both withdraw and deposit individual Indian trust funds in public-debt securities.

#### PAYMENT OF CLAIMS TO INDIVIDUAL INDIAN MONEY ACCOUNT HOLDERS

The Committee expects the Department to settle any claims which are brought to their attention with appropriate documentation taking into consideration the status of an absolute full and complete documentation trail.

#### VOLUNTARY WITHDRAWAL FROM TRUST FUNDS PROGRAM

The Committee was concerned about the Secretary's liability towards funds taken out of the BIA and directly managed by Indian tribes under H.R. 1846 and H.R. 4833 as introduced. The Committee amendment provides that all funds taken out of the BIA for direct management by Indian tribes be taken out of trust status. The Committee intends that all liability to those funds as to the future handling of those funds ceases. However, the Committee does not intend that the trust responsibility or liability for the management of such funds while under the control of the BIA should cease. Nothing in this Act should be construed as negating any liability which the Secretary incurred during the time that he managed the funds.

## JUDGMENT FUNDS

Judgment funds held in trust for Indian tribes are managed and invested through the BIA along with other held trust funds. At this time, over 60% of all trust funds held by the BIA are in the form of judgment funds. Distributions for these accounts are generally governed by the Indian Tribal Judgment Funds Use or Distribution Act (25 USC 1401-1408).

The Committee received testimony to the fact that some tribes want to directly manage the investment of tribal judgment funds and believe since they would be more likely to receive a higher rate of return on those funds than the Bureau is likely to under its investment constraints. The Committee intends Section 203 of the bill to allow tribes to take over direct management of tribal judgment funds provided that it is done in compliance with the Indians Tribal Judgment Funds Use or Distribution Act or other tribal specific judgment fund distribution acts which congress has enacted. Further, the committee intends that such judgment funds be managed in accordance with any current laws pertaining to the use and purpose of the funds.

The Committee understands that some Indian tribes have been successful in managing the investments of their trust funds by instituting sophisticated investment management structures which incorporate the use of individuals and financial institutions from the private sector. In addition, the Committee recognizes that through these structures, some tribes have developed comprehensive policies and procedures for the investment of their funds. As a result, some tribes are able to achieve higher returns than the BIA with virtually the same level of risk. The investment policies and procedures of such tribes should be taken into account when approving a plan to withdraw funds for direct tribal management.

## RETURN OF WITHDRAWN FUNDS

Some tribes may decide after managing and investing tribal funds directly that the tribe desires the Secretary to take over that management. The Committee intends that any funds, including interest made on those funds which were withdrawn from the Secretary's management may be redeposited with the Secretary. The Secretary retains all rights and authorities held prior to the enactment of this legislation with regard to the ability to accept funds to be held in trust. The Committee does not intend this legislation to alter that authority.

## SAVINGS PROVISION

One purpose for this legislation is to provide needed financial resources to tribes to enable them to develop, implement and manage tribal funds. The Committee believes that due to the problems and restraints which exist at the Department and in keeping with the policy of self-determination tribes that wish to take out funds from the Department to manage should do so. Because the Department is unable to provide account holders with an accurate and reconciled balance to the accounts, the Committee expects that the removal of funds from the Department will not in any way waive any

rights regarding the balance of such accounts by either the Department or the account holder.

#### SPECIAL TRUSTEE

Responsibility for the management of Indian allotted lands and the funds derived from them is spread throughout the Department of the Interior. It is primarily within the Bureau of Land management (BLM), the Minerals Management Service (MMS), and the BIA with the ultimate fiduciary trust responsibility remaining with the Secretary. For decades the Department has attempted to address problems in this area bit by bit. Several GAO reports and testimony before Congress attest to this including a June, 1992, GAO report entitled, "FINANCIAL MANAGEMENT: BIA has made Limited Progress in Reconciling Trust Accounts and Developing a Strategic Plan." The report asserts, "We stated in our May 1991 testimony that BIA had developed piecemeal corrective action plans that were not tied into an overall plan for conducting trust fund business. Since our testimony, BIA has continued to develop short-term plans to correct individual aspects of its current operations."

The Committee strongly believes that only a long-term commitment by the Department in conjunction with management and financial experts and account holders can result in an efficient and productive management of Indian trust assets. At the top of needed reform must be one entity with the knowledge and authority to ensure that reform takes place and coordinates that action. The Committee believes that while this may be a temporary position, it is a full time job.

This legislation contains a provision to create an Office of Special Trustee within the Department of the Interior to ensure that trust management reforms take place and are coordinated with MMS, BLM, and the BIA. The Special Trustee, who would be appointed by the President with the advice and consent of the Senate, would prepare and submit to the Secretary and Congress a strategic plan for all phases of trust management to ensure the Secretary's trust responsibilities are properly discharged.

In August, 1992, the Department's Financial Management 5-year Chief Financial Officer plan and Status report stated that the BIA was preparing a strategic plan to correct, "\* \* \* the documented deficiencies in the administration of Indian Trust Funds." However, an overall strategic plan has still not been developed. The Committee believes such a plan, coupled with a commitment from the Department to implement the plan is paramount to getting a handle once and for all on the problems plaguing the management of Indian allotted lands and the revenues derived from them.

A GAO report of September, 1994, entitled, "FINANCIAL MANAGEMENT: Focused Leadership and Comprehensive Planning Can Improve Interior's Management of Indian Trust Funds" studied the provision in this legislation which would establish a Special Trustee within the Department. The report states:

A key responsibility of the Special Trustee would be to develop a comprehensive strategic plan for all phases of the trust management business cycle, including title and ownership determinations and recordkeeping; natural re-

source asset management; and collecting, accounting for, and investing trust fund revenues. In our June 1992 report, and in numerous testimonies, we emphasized the need for such a plan. We stated that Interior needed to re-evaluate key program objective and rethink the basic concept underlying trust fund management, including the Secretary's fiduciary responsibility and the wishes of tribes and Indians under self-determination initiatives.

However, Interior continues to develop piecemeal management improvement plans that do not provide the comprehensive approach to correcting fundamental problems in a way Interior agencies carry out their trust fund management business functions. While the Secretary's recent 6-point Trust Fund and Asset Management Reform plan enumerated certain important initiatives already planned or under way in BIA, BLM, and MMS, it does not provide the comprehensive approach needed to resolve the full range of interior's trust fund management problems.

The report recommends the enactment of this legislation and further states:

We recommend that the Congress enact proposed trust fund management reform legislation to establish an Office of Special Trustee in the Department of the Interior. This office would help to ensure the proper discharge of the Secretary's trust responsibilities by (1) developing a comprehensive strategic plan for all phases of the Indian trust management business cycle, (2) overseeing reform efforts within BIA, BLM, and MMS, and (3) coordinating the development of BIA, BLM, and MMS policies, procedures, systems, and practices.

The Committee concurs with the GAO findings and notes that the duties delineated by the GAO for the Special Trustee are precisely what is needed to reform trust asset management at the Department of the Interior.

## SECTION-BY-SECTION ANALYSIS

### SECTION 1. SHORT TITLE; TABLE OF CONTENTS

Subsection (a) cites the short title of the bill as the "American Indian Trust Fund Management Reform Act of 1994."

Subsection (b) states the Table of Contents.

### SECTION 2. DEFINITIONS

Section 2 provides for the definitions of the terms "Special Trustee", "Office", "Bureau", and "Department" as used in this Act.

## TITLE I—RECOGNITION OF TRUST RESPONSIBILITY

### SECTION 101. AFFIRMATIVE ACTION REQUIRED

Section 101 amends 25 U.S.C. 162a by adding a new subsection which provides a list of guidelines for the Secretary's proper discharge of trust responsibilities regarding Indian trust funds. These include: (1) Providing adequate systems for accounting and report-

ing of trust fund balances; (2) providing proper controls over receipts and disbursements functions; (3) providing reconciliations of accounts; (4) determining accurate cash balances; (5) preparing and supplying account holders with statements; (6) establishing written policies and procedures; (7) providing staffing, supervision and training for trust fund management and accounting, and (8) managing the natural resources located on Indian reservations and trust lands.

**SECTION 102. RESPONSIBILITY OF SECRETARY TO ACCOUNT FOR THE DAILY AND ANNUAL BALANCES OF INDIAN TRUST FUNDS**

Subsection (a) requires the Secretary to account for daily and annual balances of funds held in trust by the U.S. for an Indian tribe or an individual Indian which are deposited or invested pursuant to 25 U.S.C. 162a.

Subsection (b) provides for statements of performance to each Indian tribe and individual with respect to funds which are deposited or invested pursuant to 25 U.S.C. 162a. Such statement shall include (1) the source, type and status of funds (2) beginning balance; (3) gains and losses; (4) receipts and disbursements, and (5) ending balance.

Subsection (c) requires the Secretary to conduct an annual audit of funds held in trust by the U.S. for the benefit of an Indian tribe or an individual Indian. In addition, the Secretary shall include a letter regarding the audit in the first statement of performance.

**SECTION 103. PAYMENT OF INTEREST ON INDIVIDUAL INDIAN MONEY ACCOUNTS**

Subsection (a) amends 25 U.S.C. 161a by adding a new section which provides that individual Indian funds held in trust by the U.S. shall be invested by the Secretary of the Treasury. These investments shall be authorized by the Secretary of the Interior prior to investing.

Subsection (b) amends 25 U.S.C. 162a by inserting language which authorizes the Secretary to withdraw Indian funds in order to invest them pursuant to subsection (a) of this section.

Subsection (c) amends 25 U.S.C. 162a, as added by section 302 of Public Law 101-644, by redesignating subsection (b) and (c).

Subsection (d) states that any amendments made by Section 104 shall apply to amounts invested or deposited on or after the date of enactment of this Act.

**SECTION 104. AUTHORITY FOR PAYMENT OF CLAIMS FOR INTEREST OWED**

Section 104 provides for payments of claims for interest on deposited or invested amounts on behalf of an Individual Indian. Such payments shall be made before the date of enactment of this Act and retroactive to the date such monies were invested by the Secretary. Claims which may be paid are those identified through a reconciliation process or where the account holder provides proper documentation.



**TITLE II—INDIAN TRUST FUND MANAGEMENT PROGRAM****SECTION 201. PURPOSE**

Section 201 provides that the purpose of Title II is to provide for new approaches for trust fund management which will give Indian tribal governments more control over their trust funds.

**SECTION 202. VOLUNTARY WITHDRAWAL FROM TRUST FUNDS PROGRAM**

Section 202 provides the process by which the Secretary is to approve a plan submitted by an Indian tribe. Such approval is to take place within 90 days provided that: the plan has the appropriate support of the submitting tribe; the Secretary is satisfied with the experience of those who will be managing the funds. Funds withdrawn under this section will no longer retain trust status.

**SECTION 203. JUDGMENT FUNDS**

Section 203 authorizes the Secretary to approve plans for the withdrawal of judgment funds provided that: only those funds held by the Secretary under the terms of the Indian Judgment Funds Use or Distribution Act, or an Act of Congress are included in the plans; the Secretary ensures that the judgment funds will be used in accordance with the previously approved judgment plan; and only funds held by a tribe will be included in such plans.

**SECTION 204. TECHNICAL ASSISTANCE**

This section requires the Secretary to provide technical assistance to Indian tribes in developing, implementing, and managing trust fund investment plans. The Secretary is also authorized to provide legal, financial, and other expertise from within the Department of the Interior to Indian tribes for the investment and management of their trust funds.

**SECTION 205. GRANT PROGRAM**

This section establishes a grant program to Indian tribes for purposes including employee training, building tribal capacity, developing a comprehensive investment plan, implementation and management of trust fund investment.

**SECTION 206. RETURN OF WITHDRAWN FUNDS**

Section 206 provides that subject to conditions the Secretary may prescribe, any tribe which has withdrawn trust funds may return any or all of the trust funds to the Secretary for the Secretary's control and management upon written notification to the Secretary.

**SECTION 207. SAVINGS PROVISION**

Section 207 provides that the submission or approval of a plan under this Title will not be considered an acceptance that the account balance is accurate by either the tribe or the Secretary.

## SECTION 208. REPORT TO CONGRESS

Section 208 requires an annual report be submitted to Congress on the implementation of the program under this Title including recommendations for any necessary changes.

## SECTION 209. REGULATIONS

Subsection 209(a) requires the Secretary to promulgate final regulations within one year of the enactment of the Act. Regulations are to be developed with the active participation of tribes with trust funds.

Subsection 209(b) provides that the lack of regulations is not to limit the effect of this Title.

## TITLE III—SPECIAL TRUSTEE FOR AMERICAN INDIANS

## SECTION 301. PURPOSES

Section 301 explains the purposes of this title which are (1) to establish an Office of Special Trustee within the Department of the Interior in order for the Secretary to better discharge his trust responsibilities; (2) to assure that the Minerals Management Service (MMS), Bureau of Land management (BLM) and the Bureau of Indian Affairs (BIA) carry out reforms in a coordinated fashion; and (3) to assure that all reforms are properly implemented.

## SECTION 302. OFFICE OF SPECIAL TRUSTEE FOR AMERICAN INDIANS

Section 302(a) establishes the Office of Special Trustee within the Department of the Interior.

Section 302(b) provides that the Special Trustee is to be appointed by the President with the advice and consent of the Senate. It further provides that the Special Trustee is to have demonstrated ability in managing a large business or government entity and possess knowledge of trust fund management and the investment of large amounts of money. The Special Trustee is to be paid at a salary not less than Level II of the Executive Schedule of section 5313 of Title 5 U.S.C.

Section 302(c) provides for the termination of the Office of Special Trustee following the completion of all reforms outlined in a strategic plan.

## SECTION 303. AUTHORITIES AND FUNCTIONS OF THE SPECIAL TRUSTEE

Section 303(a) provides that within one year the Special Trustee submit a strategic plan to the Secretary and Congress which details reforms to all phases of the trust management business cycle. This plan is to be developed after consultation with Indian Tribes and appropriate Indian organizations and shall identify all reforms to take place within the BIA, BLM, and MMS. Further the plan is to set up occasions for Indian tribes to manage their funds and offer options for the Secretary to invest funds in a manner which will help promote economic development for tribes. The plan is also to include an implementation timetable.

Section 303(b)(1) authorizes the duties of the Special Trustee including oversight responsibility for all reform efforts within the BIA, BLM, and MMS.

Section 303(b)(2) provides that within the BIA, the Special Trustee is to monitor the reconciliation of tribal and Individual Indian Money accounts and assure that the account holders receive fair and accurate information regarding their accounts. Further, the Special Trustee is to: assure that trust fund monies are properly accounted for and invested; that accurate and timely reports are submitted to account holders; and ensure that the BIA establishes practices to maintain complete and accurate data on Indian leases.

Section 303(b)(3) provides that within the BLM, the Special Trustee assure that policies and practices to enforce compliance with Federal requirements for drilling, production, accountability, environmental protection, and safety regarding Indian lands are adhered to.

Section 303(b)(4) provides that within the MMS, the Special Trustee assure compliance by lessees of Indian lands with Federal requirements including timely and accurate reporting of production and payment of lease royalties.

Section 303(c) requires the Special Trustee to assure that all policies and practices regarding trust fund management be coordinated among the BIA, BLM, and MMS and that the Department prepare comprehensive written policies to address all aspects of trust management including collections, accounting and timely reporting of transactions to account holders. Included within the Special Trustee's duties is the development of a consolidated Trust Management program budget proposal through consultation with program managers from BIA, BLM, MMS, and any other agency charged with any responsibility for the Special Trustee's comprehensive strategic plan. To achieve this program budget proposal, each program manager shall transmit the manager's office's budget proposal to the Special Trustee at the same time as such request is made to the manager's superiors.

Section 303(d) authorizes the Special Trustee to assist Department personnel in identifying problems which exist in the policies and practices within BIA, MMS, and BLM and potential solutions.

Section 303(e) authorizes the Special Trustee and his staff access to all data within the Department which he deems necessary to complete his assigned duties.

Section 303(f) authorizes the Special Trustee to submit an annual report to the Secretary and Congress detailing the progress of the Department on implementing the reforms identified in the strategic plan.

#### SECTION 304. RECONCILIATION REPORT

Section 304 provides that the Secretary, in consultation with the Special Trustee, submit to Congress within one year a report on each tribal trust fund account as of that date. The report is to include the methodology used in reconciling the account, proof by each account holder that the tribe accepts the balance provided or an explanation why the tribe disputes the balance. For all accounts where the account holder disputes the balance, the report is to include a statement explaining why the account is not balanced and the Secretary's plans to solve the dispute.

## SECTION 305. STAFF AND CONSULTANTS

Section 305 provides for staffing and contracting capabilities of the Special Trustee.

## SECTION 306. ADVISORY BOARD

Section 306 authorizes the Special Trustee to establish an advisory board and appoint 9 members to serve on the board to provide advice on the duties of the Special Trustee. The board shall include representatives of account holders, a representative with trust fund management knowledge, and knowledge of management of large organizations and financial management. The board terminates at the same time as the Office of Special Trustee and is exempted from the Federal Advisory Committee Act.

## TITLE IV—AUTHORIZATION OF APPROPRIATIONS

This Title provides that such sums as may be necessary to carry out the provisions of this Act are authorized to be appropriated.

## LEGISLATIVE HISTORY

On July 26, 1994, Congressman Richardson introduced H.R. 4833, the American Indian Trust Fund Management Reform Act of 1994. On April 22, 1993, Congressman Synar introduced H.R. 1846, the Native American Trust Fund Accounting and Management Reform Act of 1993. The Subcommittee on Native American Affairs held an oversight hearing on the issues of trust fund management on September 27, 1993. At that hearing, the Subcommittee also received testimony on H.R. 1846. The Subcommittee received further testimony regarding Indian trust funds on January 20, 1994 in Tahlequah, Oklahoma.

The Subcommittee convened a meeting to discuss the proposal to establish a Special Trustee for Indian trust funds within the Department of the Interior on May 16, 1994. This meeting was attended by representatives of the Government Operations Subcommittee on Environment, Energy and Natural Resources, the Appropriations Subcommittee on Interior, the Senate Committee on Indian Affairs, several Indian tribes and the Intertribal Monitoring Association for Indian Trust Funds. Representing the Department of the Interior were the Assistant Secretary for Indian Affairs, the Assistant Secretary for Policy, Management, and Budget, the Counselor to the Secretary and various staff members. Also attending the meeting and providing information and answering questions were outside professionals who have served as court appointed Special Masters or Special Trustees in private and public settings including the Special Master for the City of Chelsea, Massachusetts.

The Subcommittee held a legislative hearing on August 11, 1994 regarding H.R. 1846 and H.R. 4833. The Committee on Natural Resources reported H.R. 4833 as amended, favorably to the Full House of Representatives on September 28, 1994.

## COMMITTEE RECOMMENDATIONS

The Committee on Natural Resources, by voice vote, approved H.R. 4462 with an amendment and recommends its enactment by the House.

## CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman);

## ACT OF JUNE 24, 1938

AN ACT To authorize the deposit and investment of Indian funds

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* (a) That the Secretary of the Interior be, and he is hereby, authorized in his discretion, and under such rules and regulations as he may prescribe, to withdraw from the United States Treasury and to deposit in banks to be selected by him the common or community funds of any Indian tribe which are, or may hereafter be, held in trust by the United States and on which the United States is not obligated by law to pay interest at higher rates than can be procured from the banks. The said Secretary is also authorized, under such rules and regulations as he may prescribe, *the United States Treasury and to withdraw from* to deposit in banks to be selected by him the funds held in trust by the United States for the benefit of individual Indians: *Provided*, That no individual Indian money shall be deposited in any bank until the bank shall have agreed to pay interest thereon at a reasonable rate, subject, however, to the regulations of the Board of Governors of the Federal Reserve System in the case of member banks, and of the Board of Directors of the Federal Deposit Insurance Corporation in the case of insured nonmember banks, except that the payment of interest may be waived in the discretion of the Secretary of the Interior on any deposit which is payable on demand: *Provided further*, That no tribal or individual Indian money shall be deposited in any bank until the bank shall have furnished an acceptable bond or pledged collateral security therefor in the form of any public-debt obligations of the United States and any bonds, notes, or other obligations which are unconditionally guaranteed as to both interest and principal by the United States, except that no such bond or collateral, shall be required to be furnished by any such bank which is entitled to the benefits of section 12B of the Federal Reserve Act, with respect to any deposits of such tribal or individual funds to the extent that such deposits are insured under such section: *Provided, however*, That nothing contained in this Act, or in section 12B of the Federal Reserve Act, shall operate to deprive any Indian having unrestricted funds on deposit in any such bank of the full protection afforded by section 12B of said Federal Reserve Act, irrespective of any interest such Indian may have in any restricted Indian funds on deposit in the same bank to the credit of a disbursing agent of the

United States. For the purpose of said Acts, said unrestricted funds shall constitute a separate and distinct basis for an insurance claim: *Provided further*, That the Secretary of the Interior, if he deems it advisable and for the best interest of the Indians, may invest the trust funds of any tribe or individual Indian in any public-debt obligations of the United States and in any bonds, notes, or other obligations which are unconditionally guaranteed as to both interest and principal by the United States: *And provided further*, That the forgoing shall apply to the funds of the OSAGE Tribe of Indians, and the individual members thereof, only with respect to the deposit of such funds in banks.

\* \* \* \* \*

[(b)](c)(1) Notwithstanding subsection (a), the Secretary of the Interior, at the request of any Indian tribe, in the case of trust funds of such tribe, or any individual Indian, in the case of trust funds of such individual, is authorized to invest such funds, or any part thereof, in guaranteed or public debt obligations of the United States or in a mutual fund, otherwise known as an open-ended diversified investment management company if—

(A) \* \* \*

\* \* \* \* \*

(d) *The Secretary's proper discharge of the trust responsibilities of the United States shall include (but are not limited to) the following:*

(1) *Providing adequate systems for accounting for and reporting trust fund balances.*

(2) *Providing adequate controls over receipts and disbursements.*

(3) *Providing periodic, timely reconciliations to assure the accuracy of accounts.*

(4) *Determining accurate cash balances.*

(5) *Preparing and supplying account holders with periodic statements of their account performance and with balances of their account which shall be available on a daily basis.*

(6) *Establishing consistent, written policies and procedures for trust fund management and accounting.*

(7) *Providing adequate staffing, supervision, and training for trust fund management and accounting.*

(8) *Appropriately managing the natural resources located within the boundaries of Indian reservations and trust lands.*

\* \* \* \* \*

## ACT OF FEBRUARY 12, 1929

CHAPTER 178.—An Act To authorize the payment of interest on certain funds held in trust by the United States for Indian tribes

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, [That all] That (a) all funds held in trust by the United States and carried in principal accounts on the books of the United States Treasury to the credit of Indian tribes shall be invested by the Secretary of the Treasury, at the request of the Secretary of the Interior, in public*

debt securities with maturities suitable to the needs of the fund involved, as determined by the Secretary of the Interior, and bearing interest at rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities.

*(b) All funds held in trust by the United States and carried in principal accounts on the books of the United States Treasury to the credit of individual Indians shall be invested by the Secretary of the Treasury, at the request of the Secretary of the Interior, in public debt securities with maturities suitable to the needs of the fund involved, as determined by the Secretary of the Interior, and bearing interest at rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable securities.*

\* \* \* \* \*

#### OVERSIGHT STATEMENT

The Committee on Natural Resources will have continuing responsibility for oversight of the implementation of H.R. 4833 after enactment. No reports or recommendations were received pursuant to rule X, clause 2 of the rules of the House of Representatives.

#### INFLATIONARY IMPACT STATEMENT

Enactment of H.R. 4833 would have no significant impact on inflation.

#### COST AND BUDGET ACT COMPLIANCE

No analysis was received from CBO prior this filing.

DEPARTMENT OF THE INTERIOR,  
OFFICE OF THE SECRETARY,  
Washington, DC, August 11, 1994.

Hon. GEORGE MILLER,  
Chairman, Committee on Natural Resources,  
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Department hereby submits its views concerning legislation related to Indian trust fund management. There are now two versions of this legislation ("Native American Trust Fund Accounting and Management Reform Act of 1993") H.R. 1846 and S. 925, an amended version. The Department submitted views on S. 925, as first introduced, to the Committee in testimony on September 27, 1993. Since that time, the Committee has adopted a slightly revised version of the bill, in the nature of a substitute, in Committee markup. The substitute has been provided informally to the Department, and for reasons of simplicity and clarity, our comments apply to the most recent version, S. 925, which includes refinements to H.R. 1846 incorporated by the Senate Indian Affairs Committee.

The bill would provide for new and clarified performance requirements for the Secretary in management of Indian trust funds, and for demonstration of new approaches in trust fund management.

The Administration and the Department have felt it necessary to fully explore the concerns regarding trust funds management which have been voiced by the Office of Management and Budget, the General Accounting Office, Congressional Committees, and most importantly, the tribal and individual Indian account holders themselves. We are committed to resolution of these issues, and appreciate your patience while the Administration and the Department have taken the time to study and address them fully.

Accordingly, these comments reflect, to a large degree, the views of the Department as expressed in the Secretary's draft six point Reform Plan. This plan was developed to address and correct long-standing problems associated with the management of trust funds. The six components of the comprehensive plan include the following major actions:

I. Complete the reconciliation of tribal trust funds.

II. Provide the essential staffing to the Office of Trust Funds Management.

III. Acquire sound, proven, commercially available investment and accounting services to facilitate the transfer of trust fund management to skilled investment professionals.

IV. Authorize the assumption by tribes of the management and control of tribal trust funds.

V. Work Toward resolution of the complex issues surrounding Individual Indian Money (IIM) Accounts.

VI. Encourage and facilitate more direct tribal management of natural resources (oil, gas, forestry, grazing) on trust lands.

The comments on this legislation also reflect the Department's discussions with representatives of the Inter-Tribal Monitoring Association (ITMA) and with Congressional Committee Staff. Many of the comments are also technical in nature.

We appreciate the efforts Congress has made in drafting S. 925. Our comments on that legislation follow.

#### PREAMBLE

The preamble of the bill appears to require the Secretary to pay interest on Indian funds invested. A suggested revision to clarify that the Secretary is not the source of the interest is as follows: "To require the Secretary of the Interior to invest Indian trust funds so as to earn interest on funds invested. \* \* \*"

#### SECTION 101. PAYMENT OF INTEREST

Section 101(a) of the bill (page 17, line 3) would amend the first section, fourth proviso, of the Act of June 24, 1938 (25 U.S.C.A. 162a) by changing the words "may invest" to "shall invest", to require that the secretary "shall invest the funds of any tribe or individual Indian in any public debt obligations of the United States" or in other obligations unconditionally guaranteed by the United States.

The principal thrust of this provision appears to be to require all investments by the Secretary of individual Indian monies be in interest-bearing accounts. Previously this responsibility has been extended only to tribal accounts. While the Department objects to the provision of retroactive payment of interest on Individual Indian Money accounts contained in H.R. 1846, it does support the pro-



spective application of interest payments to IIM accounts as provided for in S. 925.

However, our interpretation of this provision notwithstanding, the proposed language could also be interpreted to supersede Section 161(a), which currently authorizes the Secretary to invest Tribal Funds in Treasury securities. The Committee should clarify that its language does not amend Section 161(a) because this is a key investment mechanism for trust funds.

We would also recommend that the new subsection 162a(d) (page 17, line 11) be amended to further clarify the term "appropriate rates", by adding before "type of deposit" the words "market, the purpose and amount of the investment, and"; add after the words "such interest" the word "earned", to clarify that the Secretary is not directly responsible for interest; and before the words "add such interest," add the words "and to the extent allowable by law" to recognized other possible legal requirements applicable to particular funds, e.g. by statute or agreement.

#### SECTION 101(c). REPEAL OF LIMITATION ON UNITED STATES LIABILITY

*(Page 17, line 22)*

We recommend against the repeal of this current legal limitation on the Secretary's trust responsibility. The current limitation applies only in cases where tribes or individuals request the Secretary to invest their funds in certain mutual funds. The Secretary should not be held liable for interest in cases where a tribe or individual has instructed the Secretary to invest trust funds in a particular manner. Liability should reside with the party making the investment decision.

The proposed new paragraph (2) of new subsection (c) of the first section of the 1938 Act (page 18, line 1) is unnecessary if new subsection (d) (page 17, line 11) is applied to the entire section, since the two provisions are substantially identical. We recommend deleting the new paragraph (2) and thus deleting the entire subsection 101 (c) of the bill (page 17, line 23, ff.)

New subsection (d) of 25 U.S.C. 162a could be further amended by adding the words "or generate earnings" after "shall earn interest", (page 17, line 12) to conform it to the purpose of subsection (c).

We believe that any proposal adopted by Congress should embrace the principle that the party making the investment decision should assume the responsibility for the performance of the investment.

#### SECTION 102. AUTHORITY FOR PAYMENT OF CLAIMS FOR INTEREST OWNED

*(Page 18, line 12)*

This provision has been amended in the revised Committee bill to allow account holders to claim interest actually earned but not paid on amounts deposited or invested. We have no objection to this provision.

## SECTION 202. DEFINITIONS

*Tribe (page 29, line 1)*

The term "tribe" in section 202(1) is not adequately defined. While it may be assumed that only those tribes with funds or assets subject to the trust responsibility and management of the Secretary are subject to this Act, we recommend that the term "tribe" be further defined here to include only tribes recognized by the Secretary.

In section 202(3) of H.R. 1846 only, the term tribe includes an association of Indians holding IIM accounts. We believe that the definition of tribes should not be extended for a group of individual Indians. The revised Senate version has deleted this provision and we support this deletion.

## SECTION 203. DEMONSTRATION PLANS

The Secretary is dedicated to the concept of enabling complete tribal assumption of trust fund management responsibilities. The Department takes the position in its own draft legislation that all tribes should have the option to manage their funds. Similarly, the Department urges Congress to support a more expansive approach to this legislation. We believe the Department's objectives in this regard are more in keeping with self-determination and tribal empowerment inasmuch as its proposal would allow for technical assistance but not mandate continual oversight in the interest of self determination. Demonstration programs require not only the provision of technical assistance but also continuing Federal oversight of tribal programs.

## SECTION 204. APPROVAL OF PLANS BY THE SECRETARY

As mentioned above, we support the concept of limited Federal involvement in the interest of self determination. However, the approval (by the Secretary) of plan submitted by the tribes, is an important ingredient of the Secretary's Management Reform Plan.

Any of the proposals adopted by Congress must allow the Secretary sufficient discretion in the approval of plans to assure their financial soundness. The provisions of section 204(a)(2), particularly subparagraphs (A), (B), and (C) provided important discretion to the Secretary.

The Department urges the deletion of Section 204(a)(1)(B), which would allow a tribe to assume responsibility for IIM accounts. The problems associated with IIM accounts have been widely documented. In recognition of these problems, the Secretary's Management Reform Plan contains measures to address and correct these longstanding problems. Accordingly, we believe transfer of these accounts to tribes before adequate resolution of issues surrounding IIM accounts is premature at this time. Furthermore, we ask that all references to IIM accounts in Title II be deleted.

In Subsection 204(b) we have no objection to tribal plans providing for investment in equities provided that the Secretary is not responsible for the performance as such investments.

Subsections 204 (c) and (d) in the revised Senate bill provide a timeframe of 90 days for approval by the Secretary of plans and amendments submitted under this bill. However the Department

does not have the internal expertise to evaluate such plans in a timely and professional manner. Therefore we request that the Committee authorize the Secretary to contract with qualified private or governmental entities to evaluate such plans on an expedited basis. This would ensure a timely and effective response to tribal requests. Furthermore, the Department should be provided 180 days in which to contract for such services before accepting tribal plans.

The new subsection 204(e) in the revised draft allows for a transfer of funds to a tribally managed account under this bill, and then a transfer back to an account managed by the Secretary. We have no objection to this provision. However, in light of the costs and management problems that could be faced by the Department by frequent transfers between tribally-managed and BIA-managed accounts, we suggest the inclusion of the words, "on such terms as the Secretary may deem necessary," after the words "to this title and," in the new subsection 204(e) (page 24, line 18).

#### SECTION 205. FEDERAL TRUST RESPONSIBILITY

Under the Secretary's proposed plan, upon the assumption by tribes of their trust funds, full responsibility and liability will rest with the tribes, as is appropriate under self-determination. Despite the bill's attempts to waive the Secretary's liability for the loss of funds during the demonstration program, such liability can not be effectively waived as long as the Secretary retains monitoring and oversight responsibility for plans. The demonstration plans would require extensive monitoring of potentially hundreds of separate plans with the liability remaining with the Secretary.

#### SECTION 206. TECHNICAL AND FINANCIAL ASSISTANCE

As discussed previously, we do not support a demonstration project phase. However, we do recognize the necessity for technical and financial assistance for tribes in developing implementation and management plans for the assumption of trust fund responsibilities. The Department's draft legislation includes such a provision.

#### SECTION 207. NO INCOME TAX CONSEQUENCES

With respect to provisions regarding income tax consequences, the Department prefers an approach whereby provisions would apply for a period of 5 years following a tribe's withdrawal of funds. This comment is offered in lieu of provisions stated in the proposed bill with relation to demonstration programs, since the Department does not endorse such programs.

#### SECTION 208. VOLUNTARY WITHDRAWAL FROM THE TRUST FUND PROGRAM

In general we support section 208, and have expanded upon it in our draft bill. The Department's legislation supports this concept, and provides appropriate sections dealing with management plans, plan approvals, audits, Federal trust responsibility, return of withdrawn funds, technical and financial assistance, and income tax

consequences. As stated previously, we think the Department's approach offers greater opportunities for tribal self-determination.

#### TITLE III. RECOGNITION OF TRUST RESPONSIBILITY

This Title delineates specific actions the Secretary is charged with taking to discharge his trust responsibility under the 1938 Act. We do not disagree with the delineation; however, we suggest a few modifications to section 301.

At page 27, line 22, after "by", "providing for the following:", and strike the word "providing" elsewhere in the section. This would allow for the possibility of providing for these services indirectly, and not necessarily directly by the Secretary, as he may choose as the trust fund management program develops.

Items (3), page 28, line 4, add "in accord with contemporary industry standards;". This change would allow for application of contemporary industry standards to provision of reconciliations, and should provide a sufficient standard for service.

Item (5), page 28, line 7, strike the word "meaningful", add the words "performance and" after "account", and at the end, of line 8, add "in accord with contemporary industry standards;".

These changes adjust for the removal section 501(b), and by providing for contemporary industry standards, should allow for sufficient service.

Item (4), page 28, line 5, at the end, add, "available on a daily basis;"; to incorporate a provision of Title V.

Item (6), page 28, line 9, strike "establishing consistent," as its meaning is unclear and it is unnecessary.

The Department recommends eliminating 501 (a) and (b) of Title V. These provisions are redundant as these responsibilities are covered by the revised section 301. We note that the requirement in section 501(b) for statements within 10 business days after the close of a calendar month would prevent the Secretary from staggering statements throughout the month, as is the practice with most commercial finance establishments these days, and it would be much less workable.

#### TITLE IV. TRAINING AND PERSONNEL

The Department supports these programs. However, since there are no specific funds authorized for them, the Secretary should have discretion as to how and when to establish such programs, with input from the tribes. Therefore we recommend striking the word "shall", page 29, line 4, and inserting the word "may."

Further suggested changes are:

Page 29, line 11, after "obtain", add "and experience".

Page 29, line 17, add "Indian" before "employees", strike "Bureau", and add "Department and the tribes." Training and employment opportunities targeted by the bill should be for Indians but should not be limited to the Bureau.

Page 29, line 22, strike "Federal" and insert "Departmental." The Secretary cannot perform this function for other agencies or entities.

## TITLE V. RESPONSIBILITY TO ACCOUNT FOR INDIAN TRUST FUNDS

Revise title to be reentitled "Miscellaneous." Delete subsections (a) and (b). Redesignate subsection (c) to (a).

At page 31, line 20, strike "(b)" and insert "162a(e) of that Act" to conform to suggested changes eliminating 501(b).

Page 31, line 20, strike subsection (b) and substitute a new subsection (b) to read, "The provisions of section 301 shall be implemented within the earliest practicable time after enactment of this Act. The Secretary shall present an implementation timetable to the Congress within 120 days of enactment, providing for a schedule of dates for performance of the various aspects of section 301, and shall include advice as to progress on implementation of that section in its quarterly reports to Congress on the trust management program. Congress does not intend that failure to perform any of these functions during this timeframe shall not of itself constitute a breach of trust; however, this does not relieve the Secretary of any potential liability for losses of principal and interest and may be occasioned thereby."

Page 31, following subsection (b), add a new subsection (c) to read, "There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act."

We wish to note that, given current fiscal constraints, the funding for implementation of this legislation may necessarily have to be derived from reallocation of funds from other BIA or Department programs.

This completes our report. We look forward to working with you to produce a mutually agreeable bill.

The Office of Management and Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

ADA E. DEER,  
*Assistant Secretary, Indian Affairs.*

DEPARTMENT OF THE INTERIOR,  
OFFICE OF THE SECRETARY,  
*Washington, DC, August 16, 1994.*

Hon. BILL RICHARDSON,  
*Chairman, Subcommittee on Native American Affairs, House of Representatives, Washington, DC.*

DEAR MR. RICHARDSON: Thank you for the opportunity to discuss a number of the trust funds management issues last week. Trust funds management is a high priority of this Administration and I believe that my working together we can make significant progress in addressing the longstanding problems which have impaired fulfilling our Federal Trust responsibilities in this area.

We regret that there has been confusion about the Department's role in developing trust funds legislation. We are committed to addressing this highly complex issue, and apologize for delays in submitting comments on H.R. 1846 and S. 925. Our intent is to move forward with the Secretary's objectives as stated in the trust fund reform plan as detailed below.

Our first objective is to improve the investment services delivered to the trust account owners. We are incorporating suggestions made in the April 1992 report issued by the House Committee on Government Operations, "Misplaced Trust: The Bureau of Indian Affairs' Mismanagement of the Indian Trust Fund," which proposed that alternative approaches in both the Federal and private sector be explored to enable the Department to deliver quality investment services. The second objective of the plan is intended to allow Tribes that are ready to manage their own funds be provided an opportunity to do so. We believe that this is a critical element of any reform proposal, as you and Congressman Synar have indicated in both of your legislative proposals.

We have also been holding discussions with the Treasury Department on an initiative to create a special fund for trust funds. We believe that the Treasury option is a sound investment vehicle because it would provide competitive rates of return while assuring both safety of principal and adequate liquidity to meet changing tribal needs for capital. In addition, it would place investment responsibility with a Federal agency known for its expertise. You will be notified of the results of our discussions with Treasury as soon as they are concluded. We understand that some Tribal leaders want more than one vehicle for investing their trust funds. Discussions will continue over the next several weeks to resolve this issue.

Again, I share your concern about the legislative timetable and welcome the opportunity to work with the Committee on drafting legislative language that is acceptable to the Congress, the Department and the Tribes. In this regard, I would be happy to assign Bureau staff and others to meet with Committee staff and representatives from the Inter Tribal Monitoring Association (ITMA) as a working team to craft legislation that can move us closer to reforming the management of Indian trust funds.

I agree with you that problems in adequately fulfilling the Federal Trust responsibility must be addressed in a thoughtful and comprehensive manner as soon as possible. You are to be commended for helping to bring forward a forum in which these matters can be discussed openly. I look forward to working with you and others in achieving our mutual goal of best fulfilling the Trust and fiduciary responsibilities in the management of funds we hold in trust for Indian Tribes and individual account holders.

Sincerely,

ADA E. DEER,  
*Assistant Secretary, Indian Affairs.*

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