

IN THE
UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF COLUMBIA

FILED

NOV 27 1996

Clerk, U.S. District Court
District of Columbia

ELOUISE PEPION COBELL et al., on
their own behalf and on behalf
of all persons similarly
situated,

Plaintiffs.

v.

BRUCE BABBITT, Secretary of the
Interior, et al.,

Defendants.

Civil Action
No. 1:96 CV 01283 (RCL)

FIRST ORDER FOR THE PRODUCTION OF INFORMATION

Pursuant to the Stipulation of the parties and the Protective Order approved and entered this day, it is hereby ORDERED that defendants furnish to plaintiffs as soon as practicable the following information and documents:

1. All existing historical transactions for ten years of the twelve area offices of the Office of Trust Fund Management, including the Master file, ITRAM, HISTRAM, and all appropriate documentation to read and interpret files, including, without limitation, formats (e.g., ASCII or EBCDIC), file layouts, and data dictionary. Data shall be provided in 4 mm. or 9-track tapes or 3480 cartridges.

2. [Reserved.]

3. [Reserved.]

4. The number and total dollar value, as of December 31, 1987, December 31, 1992, and the date of production, of IIM accounts with whereabouts of account holders unknown, if any; including, without limitation, IIM accounts with management codes N81 ~~(to the extent they refer to accounts with whereabouts~~ *of holder unknown*), N82, and N83.

5. The number and total dollar value of IIM special deposit accounts as of the close of each of the past ten *financial* calendar years and currently.

6. The number and total dollar value of disbursements from IIM accounts returned as undeliverable in the last twelve months, if any.

7. The value of differences, if any, between the IIM Trust Fund's general ledger balance for investments and the amount of IIM Trust Funds invested. For the purposes of this paragraph, "value of differences" is interpreted to mean the numeric dollar value difference obtained when securities by units, or par, for investments recorded in the Omnitrust System for IIM accounts is compared to units, or par, per custodial or broker statements of investments. "IIM Trust Fund general ledger balance" means the *units* *or* par value of securities per the Omnitrust System on any day, specifically at month-end. Finally, "amount of IIM Trust *Funds* invested" is interpreted to mean the units, or par, value of investments held by custodians or brokers for IIM funds.

8. The value of differences, if any, between the IIM Trust Fund's cash balance with the United States Treasury according to the Department of the Interior's most recent general ledger, and

the cash balance reflected by the Treasury for the IIM Trust Fund Account. For the purposes of this paragraph, "value of differences" means the net numeric difference obtained when the cash balance per the Omni Trust Accounting System is compared to the adjusted cash balance per Treasury. The "cash balance with the United States Treasury" means the amount of any uninvested IIM cash balances per the Omni Trust Accounting System on any given day, specifically at month end. Finally, "cash balance reflected by the Treasury for the IIM Trust Fund Account" means the month-end balance for the Treasury account symbol 14X6039 (Individual Indian Money), as it appears on the Treasury report entitled "Undisbursed Appropriation Account Ledger (TFS 6653)," adjusted for the purchase amount of any Certificates of Deposit purchased or held outside the Treasury.

9. The value of any accounts established in the General Ledger to offset the IIM investment accounts, if any, and a description of the nature of entries to such accounts. In this Paragraph, "value of any accounts established in the General Ledger" means accounts set up in the Omnitrust System to increase or decrease the value of the IIM investment balance.

10. A statement as to whether transactions are netted, i.e., debits and credits netted together, when posting IIM accounts.

11. A statement as to whether all transactions are posted individually to IIM accounts in IRMS, or are batched or aggregated and then posted.

12. A statement as to the relationship between a posting's transaction description and its reference number, including whether one can be used as a proxy for the other if one or the other is missing.

13. The current and immediately preceding IIM procedures manuals for trust fund accounting functions, to the extent they can be found.

14. The current and immediately preceding procedures manuals for the IRMS system.

15. The current and immediately preceding procedures manuals for the Minerals Management Service (MMS) Production Accounting and Auditing System (PAAS).

16. The current and immediately preceding procedures manuals for the MMS Automated Fluid Minerals Management System (AFMMS).

17. Written ^{systems} descriptions of the ~~five pilot projects of the~~ Bureau of Indian Affairs' National Oil and Gas Evaluation and Management System (NIOGEMS) ^{currently in progress} *cf*

18. The current and immediately preceding handbooks, procedures, directives or instructions regarding tribal succession laws as they affect Trust Fund accounting.

19. All documents, records, and tangible things which embody, refer to, or relate to IIM accounts of the five named plaintiffs or their predecessors in interest.

And it is further ORDERED, that such information and documents be furnished or produced as each such item is prepared

or becomes available, without waiting until all such information and documents are available.

And it is further ORDERED, that identical data be provided to experts retained by Plaintiffs and that may be retained by Defendants.

This 27th day of November 1996.



United States District Judge

SUMMARY OF TRUST MANAGEMENT PROBLEMS, NEED FOR ACTION AND SPECIAL TRUSTEE'S STRATEGIC PLAN RECOMMENDATIONS

SUMMARY

The Special Trustee for American Indians proposes a single organization which will manage the U.S. Government's trust responsibilities to American Indians and American Indian Tribes for trust resource management, trust funds management and land title and records management (collectively, trust management activities).

This will involve consolidating trust management activities into a single, independent institution with its own management structure to assume the responsibility for the reforms identified in the Strategic Plan, to implement the reforms over a two year period and to provide for the ongoing management of the U.S. Government's trust responsibilities to American Indians for trust management activities. The institutional unit should be organized by business line or function and should be dedicated exclusively to trust management activities. The institutional unit should be managed by a full time Chairman and Chief Executive Officer (CEO) and a Board of Directors appointed by the President and confirmed by the Senate.

The unit's proposed organizational form is an independent Government Sponsored Enterprise (GSE) subject to Congressional oversight. The unit's generic name is referred to throughout the Strategic Plan as the American Indian Trust and Development Administration (AITDA).

The proposal would represent a major change in the way the U.S. Government manages its trust responsibilities to American Indians. It would for the first time clearly differentiate trust management activities that arise from the trust management of American Indian Tribal and individual lands and natural resources such as lease approvals and monitoring, timber sales, managing land, oil, gas, timber, and other trust assets; collecting, depositing, investing and disbursing funds derived from the Indian lands and Indian economic activities; and managing the land title and ownership records from those other activities that fall under what the courts have called the general trust responsibility, such as education, housing, welfare programs of all types, law enforcement and other American Indian services provided by the Federal Government.

Generally, the Strategic Plan also proposes, directly and indirectly, that all policies, procedures, systems and practices for trust management activities meet at a minimum the regulatory standards and best practices of national bank trust departments and companies. These modern regulatory standards are based on Anglo-American principals of trust law which have developed over the past several centuries. These standards are guided by, regulated, supervised and enforced by the U.S. Office of the Comptroller of the Currency (OCC). It is proposed that OCC regularly examine and supervise AITDA in much the same way OCC conducts examination and supervision of national bank trust departments. Similarly, the trust powers and account administration flexibility for various types of investments are also modeled after the powers and fiduciary flexibility available to national bank trust departments. In short, the American Indian trust beneficiaries will be receiving equivalent trust services to those trust services provided by the national bank trust departments to their trust customers. These private sector standards are proven, efficient and effective. Notably, no national bank since the 1930s has failed because of losses taken by bank trust departments and companies.

The reforms just noted and the other reforms identified in the Strategic Plan are urgently needed. The principal causes of the long standing trust problems have resulted in conditions which are unacceptable by any reasonable standards and continue to do significant harm and damage to American Indian trust beneficiaries. They have also caused permanent damage to the core trust management systems the government uses to manage the Indian lands and monies. These defective systems prevent the government from meeting the fiduciary, accounting and reporting standards required by the American Indian Trust Fund Management Reform Act of 1994 and standards of ordinary prudence applicable to all trustees, public or private. The failure of the trustee to perform its fiduciary duties in a manner consistent with accepted fiduciary standards represents a significant potential financial liability for the Federal Government as well as damage to its reputation for its failure to act in a responsible manner.

So long as the organization and management of the trust management activities remain status quo and as long as the trust management activities are mingled with general trust functions and other government programs and activities, it is unlikely that any meaningful reforms will be implemented and unlikely that these activities will receive appropriate allocations of financial and managerial resources sufficient to allow them to be administered according to the high moral obligations and trust and exacting fiduciary standards the United States has undertaken and assumed. For these reasons, the Special Trustee believes that the Department of the Interior and the Bureau of Indian Affairs (BIA) do not have and will not have the financial and managerial resources to undertake and implement the reforms proposed by the Strategic Plan.

Special Trustee's Assessment and Need for an Independent Administration of Trust Management Activities

The problems in the trust management systems are longstanding ones. Mismanagement and neglect have allowed the trust management systems, record keeping systems and risk management systems to deteriorate over a 20 to 30 year period and become obsolete and ineffective. For many of those years, including many years since 1990, the trust programs were seriously under staffed and under funded. The result was that the government increasingly was unable to keep pace with the rapid changes and improvements in technology, trust systems and prudential best practices taking place in the private sector trust industry. This gap continues today and will continue to increase until the reforms outlined in the Strategic Plan are funded and implemented.

There are four principal causes of the mismanagement and neglect which have contributed to the trust management problems both currently and in the past:

1. The primary cause of the trust management problems both historically and currently can be attributed to the trade-offs of financial and managerial resources which take place at every level of government between trust management activities (trust resource management, trust funds management and land title and records management) and other activities and programs of the Bureau of Indian Affairs, the Department of the Interior, the Administration and the Congress. History has consistently shown these politically expedient government trade-offs of competing financial and managerial resources to be adverse and detrimental to the effective and proper administration and funding of the trust management activities.

These trade-offs have been made and are continuing to be made even in the face of a long history of court cases which have consistently held the trust relationship between the United

States and the American Indians to be a distinctive one. Decisions of the Supreme Court reviewing the legality of administrative conduct in managing Indian property have held officials of the United States to "moral obligations of the highest responsibility and trust" and "the most exacting fiduciary standards," and "bound by every moral and equitable consideration to discharge its trust with good faith and fairness."

A trustee is not and should not be relieved of his duties, responsibilities and accountability to trust beneficiaries because the trustee lacks the financial and managerial resources to administer the trusts. To be so relieved for this reason is not acceptable for a private trustee. Yet, the most frequently cited reason and excuse for the Federal Government's historical and continued failure to address and resolve the longstanding trust management problems and, by so doing, to fulfill its trust responsibilities is the lack of funding and staffing for the American Indian trust management programs. While most certainly the lack of financial and managerial resources is the primary causal factor for the Federal Government's failure in this regard, under no circumstances should it also serve as an acceptable excuse for the continued neglect of the Federal Government's trust responsibilities to American Indian trust beneficiaries. Yet, this is exactly the case for the executive and legislative branches of the Federal Government. Lack of financial and managerial resources has become the standard and institutionally acceptable excuse for the Federal Government's continued failure to address and resolve the trust management problems. Because it is by now a well established standard and acceptable excuse, no one and no government management unit has been or is likely to be held accountable for this neglect at any level of the Federal Government. This is a policy of political and self-serving convenience and not one worthy of a Federal trustee who has charged itself with moral obligations of the highest responsibility and trust or one to be judged by the most exacting fiduciary standards. In addition, this policy of political and self-serving convenience not only facilitates and perpetuates the neglect of the American Indian trust management programs but continuously adds to it. This is because it is convenient, easy and politically desirable to make even more choices and trade-offs detrimental to the American Indian trust management activities in favor of other government programs which are politically more popular. All with the knowledge that the most the Federal Government or individuals making the choices and trade-offs will suffer from such behavior is some criticism from American Indians and their supporters. No real accountability will be exacted in the near or medium terms and if it is, it will be by the judicial branch of the Federal Government over the long term. The Strategic Plan proposes that the Federal Government provide sufficient financial and managerial resources to ensure that it can meet its trust responsibilities to the American Indians.

2. Another important cause of the trust management problems is the way the BIA is organized and manages trust management activities. The BIA's organizational alignment causes decision-making and management for Individual Indian Money (IIM) and Tribal issues to be an intricate and complex coordination process and an ineffective one at times. Responsibilities fall within 16 separate organizations all reporting directly to one entity, who has direct line authority for every other Bureau organization and program. Further, the activities are carried out by over 100 field offices. The BIA's organizational structure prevents in many instances informed and expeditious decisions because of the number of entities involved and the large number and complexity of the decisions their activities generate. That structure also results at times in trust management responsibilities of a higher order not receiving the attention and focus they deserve and/or being traded off against other Bureau priorities of a lower order, which are erroneously considered to be more important than trust management. The BIA offices must expend significant resources to coordinate with managers, supervisors and staff across the Bureau to obtain cooperation. Coordination and cooperation often breaks down. Field offices often manage their operations

autonomously with little discipline and control being exerted or enforced at either the local, area or Washington administrative levels. Further, because the BIA is not organized and managed by function, all too often policies and procedures written for specific trust programs or functions are not universally followed because the staff that perform the activities take their direction from general managers in area or field offices, not the trust program offices. Nor can discipline, control and accountability be enforced by a good management assessment and audit system since standardized policies, procedures and practices are rare and insufficient financial and managerial resources are provided for audit and risk management of any type. The Strategic Plan proposes a single unit organized along business lines to resolve these issues.

3. The two causes just described acting together over many years have resulted in a third causal factor for the longstanding trust management problems: lack of competent managerial resources to manage effectively and efficiently the trust management responsibilities to the American Indians. Managers and staff of the BIA have virtually no effective knowledge or practical experience with the type of trust management policies, procedures, systems and best practices which are so effective, efficient and prevalent in private sector trust departments and companies. The BIA area and field office managers do not have the background, the training, the experience, and the financial and trust qualifications and skills, necessary to manage the Federal Government's trust management activities according to the exacting fiduciary standards required in today's modern trust environment. Thus, and through no fault of their own, and even assuming adequate financial resources were made available, they are not capable of managing effectively and efficiently the Federal Government's trust management activities on a par with that provided by private sector institutions to their trust customers.

The lack of trust managerial competence and the lack of financial trust orientation and focus throughout the BIA and the Department of the Interior have been institutionalized over many years and are now inherent in the BIA organizational culture. It is the reason in large part:

- o Why the BIA has never originated meaningful reforms of the trust management processes in the last 25 years.
 - o Why the BIA has resisted and ultimately failed to implement nearly all of the meaningful reform efforts attempted in the last 25 years.
 - o Why a new organizational structure, new management and massive re-training are necessary for the future management of the Federal Government's trust responsibilities to American Indians and the management of the implementation of the reforms identified in the Strategic Plan.
4. Another fundamental problem is fractionation of American Indian Allotment interests. The vast majority of accounting, basic record keeping and other operating problems affecting trust resource management, trust funds management and trust land records and ownership management originate from one source: the ever increasing fractionation of undivided realty interests owned by Individual American Indian allottees.

Fractionation is a direct result of the Federal Government's policies and laws relating to lands owned by American Indians back to at least 1887.

As originally envisioned in the late nineteenth century, allotments were to be held in trust by the United States for their Indian owners no more than 25 years, after which the land would be conveyed in fee simple to its Indian owners. Many allottees died without wills during the 25

year trust period, and it also became evident that many allottees continued to need Federal protection. Consequently, Congress enacted limited probate laws and authorized the President to extend the trust period for those individuals who were not competent to manage their lands. The presumption was, however, that at some point in the foreseeable future the lands would be conveyed to their Indian owners free of Federal restrictions. Nevertheless, Congress continued to extend the period of trust protection but did not amend the probate laws. Under the Indian probate laws, as individuals died, their property descended to their heirs as undivided fractional interests in the allotment. As the years passed, fractionation has expanded geometrically to the point where there are hundreds of thousands of tiny fractional interests. These fractional interests have nominal economic value but pose an enormous cost burden estimated at about \$33 million per year on the Federal Government's trust management activities.

Congress attempted to address the fractionation problem with the passage of the Indian Land Consolidation Act (ILCA) in 1984. The ILCA authorized the buying, selling and trading of fractional interests, but most importantly it provided for the escheat to Tribes of interests of less than two percent. 55,000 of the two percent-or-less fractional interests have escheated since 1984, but the fractionation problem continues to worsen. Moreover, the 1997 *Youpee vs. Babbitt* Supreme Court decision called into question the legality of the escheated property since 1984, further complicating the fractionation problem. Maintaining the heirship and land records and administering the land is inordinately expensive, and the administration of the records pertaining to the money earned by each individual allottee is equally expensive and difficult. In addition, utilization and conveyance of the fractionated property by the numerous owners is difficult because of the need to secure the numerous consents required. Finally, the difficulty in dealing with the fractionated interests often effectively precludes the highest and best use of the land for economic development and the maximization of investment income, thus diminishing its economic value.

Legislation is therefore needed which would consolidate the large number of existing fractionated interests and prevent further fractionation. This alone would remove a primary obstacle to the efficient administration of the trust management systems and provide a major catalyst for the timely resolution of most of the operational problems associated with trust management activities, including trust resource and realty management, probate, land titles and ownership records management, IIM accounting, collections, deposits, investments and disbursements, customer service and record keeping for all trust management activities. An added benefit is the annual administrative cost savings estimated at the same \$33 million mentioned above.

Conclusion of Assessment

These principal causes of the trust management problems have resulted in conditions which are unacceptable by any reasonable standards and continue to do significant harm and damage to American Indian trust beneficiaries. They have also caused permanent damage to the core trust management systems the government uses to manage the Indian lands and monies. These defective systems prevent the government from meeting the fiduciary, accounting and reporting standards required by the American Indian Trust Fund Management Reform Act of 1994 and standards of ordinary prudence applicable to all trustees, public or private.

So long as the management and organization of the trust management activities remain status quo and

as long as the trust management activities are mingled with general trust functions and other government programs and activities, it is unlikely that any meaningful reforms will be implemented and unlikely that these activities will receive appropriate allocations of financial and managerial resources sufficient to allow them to be administered according to the high moral obligations and trust and exacting fiduciary standards the United States has undertaken and assumed. For these reasons, the Special Trustee believes that the Department of the Interior and the BIA do not have and will not have the financial and managerial resources to undertake and implement the reforms proposed by the Strategic Plan.

Special Trustee's Recommendations

To resolve the long standing trust management problems, the Special Trustee recommends as follows:

1. That the American Indian Trust and Development Administration be approved and be provided with the financial and managerial resources to manage the U.S. Government's trust management responsibilities to American Indians and American Indian Tribes for Trust Resource Management, Trust Funds Management and Land Title and Records Management according to the most exacting fiduciary standards and moral obligations of the highest responsibility and trust.
 2. That all the reforms identified in the Strategic Plan be approved, funded, staffed and implemented.
 3. That all trust management duties, responsibilities, budgets and activities, including Trust Resources Management, Trust Funds Management and Land Title and Records Management, carried out by the Bureau of Indian Affairs and the Department of the Interior should be transferred to the AITDA as soon as practical and before full implementation of the Strategic Plan reforms.
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Strategic Plan Requirements

Section 303 of the American Indian Trust Fund Management Reform Act of 1994 (Public Law 103-412) (Reform Act) requires a Comprehensive Strategic Plan:

(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 . . . 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:
 - o 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 (MMS) necessary to ensure the proper and efficient discharge of the Secretary's trust responsibilities to Indian Tribes in compliance with this Act.

- o 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.

- o A timetable for implementing the reforms identified in the plan, including a date for the proposed termination of the Office.

The Strategic Plan has been prepared by the Special Trustee of American Indians to meet the requirements of the Reform Act.

VISION FOR TRUST MANAGEMENT

1. Reform Act Vision & Objectives

The American Indian Trust Fund Management Reform Act of 1994 at Section 101 sets forth the foundation and vision to be achieved by the Strategic Plan:

"(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."

The Reform Act at Section 303 further requires that the Special Trustee shall ensure that the Bureau of Indian Affairs 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.

"(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 trust accounts.

"(C)...to maintain complete, accurate and timely data regarding the ownership and lease of Indian lands."

2. Prudent Investor Standard

The Strategic Plan proposes that the Federal trustee will be governed by the prudent investor standard

as adapted for the special circumstances of the trust relationship between the U.S. and Indian Tribes and individuals. Generally, under the standard the trustee shall exercise reasonable care, skill and caution to make and implement investment and management decisions as a prudent investor would for the entire portfolio, taking into account the purposes and terms and provisions of the governing instrument. The governing instrument would be the applicable treaties, statutes, regulations, judgments, or as negotiated with the trustor.

The prudent investor standard requires a trustee to pursue an overall investment strategy to enable the trustee to make appropriate present and future distributions to or for the benefit of the beneficiaries under the governing instrument, in accordance with risk and return objectives reasonably suited to the entire portfolio.

In addition, the trustee is required to consider, to the extent relevant to the decision or action:

- the size of the portfolio,
- the nature and estimated duration of the fiduciary relationship,
- the liquidity and distribution requirements of the governing instrument,
- general economic conditions,
- the possible effect of inflation or deflation,
- the expected tax consequences of investment decisions or strategies and of distributions of income and principal,
- the role that each investment or course of action plays within the overall portfolio,
- the expected total return of the portfolio (including both income and appreciation of capital),
- and the needs of beneficiaries (to the extent reasonably known to the trustee) for present and future distributions authorized or required by the governing instrument.

3. Additional Commercial Trust Standards

Consistent with the Reform Act accounting and fiduciary standards are the following commercial trust standards which should also form part of the foundation and vision for trust management for American Indian beneficiaries:

"A trustee is under a duty to the beneficiaries of the trust to keep clear and accurate accounts."

"If the trustee fails to keep proper accounts, all doubts will be resolved against him and not in his favor."

--A. Scott, Law of Trusts (3rd ed. 1967) Section 172

4. Decisions of the Supreme Court

Decisions of the Supreme Court reviewing the legality of administrative conduct in managing Indian property have held officials of the United States to "moral obligations of the highest responsibility and trust" and "the most exacting fiduciary standards," and "bound by every moral and equitable consideration to discharge its trust with good faith and fairness."

5. Vision Statement

Taking into account the fiduciary standards set forth by Congress, the prudent investor standard,

common law, Supreme Court Decisions and the best practices of the private sector trust industry, the vision or mission of the U.S. Government's administration of American Indian trust management should be to:

VISION STATEMENT

MANAGE THE U.S. GOVERNMENT'S TRUST RESPONSIBILITIES TO AMERICAN INDIANS AND AMERICAN INDIAN TRIBES FOR TRUST RESOURCE MANAGEMENT, TRUST FUNDS MANAGEMENT AND LAND TITLE AND RECORDS MANAGEMENT ACCORDING TO THE MOST EXACTING FIDUCIARY STANDARDS AND MORAL OBLIGATIONS OF THE HIGHEST RESPONSIBILITY AND TRUST

SPECIFIC ACTIONS REQUIRED - PHASE I OF THE STRATEGIC PLAN

The principal objectives of Phase I of the Strategic Plan are the acquisition and institutionalization of an organizational structure, information systems and management and organizational skills which will permit and ensure that the U.S. Government establishes appropriate policies and procedures, develops necessary systems and takes the affirmative actions required which will allow it to meet the requirements and objectives of the American Indian Trust Fund Management Reform Act of 1994, the fiduciary standards of the Reform Act and common law and moral obligations of the highest responsibility and trust.

Generally, the Strategic Plan proposes, directly and indirectly, that all policies, procedures, systems and practices for trust management activities meet at a minimum the general standards and best practices of national bank trust departments and companies. These standards have evolved over the past 60 years and are guided by, regulated, supervised and enforced by the OCC. Similarly, the trust powers and account administration flexibility for various types of investments are also modeled after the powers and fiduciary flexibility available to national bank trust departments. It is proposed that OCC regularly examine and supervise AITDA in much the same way OCC conducts examinations and supervision of national bank trust departments. In short, the American Indian trust beneficiaries will be receiving equivalent trust services to those trust services provided by national bank trust departments to their trust customers and AITDA will receive supervision and examination by OCC. These private sector standards are proven, efficient and effective. OCC's supervision has been effective as well; notably, no national bank since the 1930s has failed because of losses taken by bank trust departments and companies.

Phase I of the Strategic Plan also includes specific proposals and provisions for opportunities for American Indian Tribes and Individual American Indians to assist in the management of their trust accounts and to identify options for the investment of their trust accounts, in a manner consistent with the vision statement, in ways that will help promote economic development in their communities. These proposals will also be subject to and governed by private sector trust standards applicable to national bank trust departments. The Strategic Plan proposes that the Federal trustee will be governed by the prudent investor standard as adapted for the special circumstances of the trust relationship between the U.S. and Indian Tribes and individuals. Generally, under the standard the trustee shall exercise reasonable care, skill and caution to make and implement investment and management decisions as a prudent investor would for the entire portfolio, taking into account the purposes and terms and provisions of the governing instrument. The governing instrument would be the applicable treaties, statutes, regulations, judgments, or as negotiated with the beneficiary. Generally, the proposed investment options will open up a myriad of prudent economic development opportunities, almost all of which have been previously denied to American Indian trust beneficiaries.

To meet the Strategic Plan objectives and deal with the present and the future, organizational structure, senior management and trust management activities and programs of all types must be improved and brought up to the fiduciary and trust asset and accounting management standards prevalent in the private sector as soon as possible. Only this will permit an accurate and full accounting to American Indian beneficiaries and allow for the proper discharge of the U.S. Government's trust responsibilities to American Indian trust beneficiaries.

ORGANIZATIONAL STRUCTURE AND MANAGEMENT

The Strategic Plan proposes a single organization which will manage the U.S. Government's trust responsibilities to American Indians and American Indian Tribes for trust resource management, trust funds management and land title and records management (collectively, trust management activities).

This will involve consolidating trust management activities into a single, independent institution with its own management structure to assume the responsibility for the reforms identified in the Strategic Plan, to implement the reforms over a two year period and to provide for the ongoing management and administration of the U.S. Government's trust responsibilities to American Indians for trust management activities. The institutional unit should be organized by business line or function and should be dedicated exclusively to trust management activities. The institutional unit should be managed by a full time Chairman and Chief Executive Officer and a Board of Directors appointed by the President and confirmed by the Senate.

The unit's proposed organizational form is an independent GSE subject to Congressional oversight. The unit's generic name is referred to throughout the Strategic Plan as the AITDA.

As noted, three of the four primary causes of the longstanding trust management problems involve serious management and organizational structure weaknesses. Management has been principally responsible for the failure to address and resolve the longstanding trust management problems and for the permanent damage to the core trust management systems the government uses to manage the Indian lands and monies. These defective systems prevent the government from meeting the fiduciary, accounting and reporting standards required by the American Indian Trust Fund Management Reform Act of 1994 and standards of ordinary prudence applicable to all trustees, public or private.

So long as the organization and management of the trust management activities remain status quo and as long as the trust management activities are mingled with general trust functions and other government programs and activities, it is unlikely that any meaningful reforms will be implemented and unlikely that these activities will receive appropriate allocations of financial and managerial resources sufficient to allow them to be administered according to the high moral obligations and trust and exacting fiduciary standards the United States has undertaken and assumed. For these reasons, the Special Trustee believes that the Department of the Interior and the BIA do not have and will not have the financial and managerial resources to undertake and implement the reforms proposed by the Strategic Plan.

The Special Trustee, therefore, has proposed a new organizational and executive management structure to address and resolve the long standing trust management problems and to ensure that the Federal Government fulfills its trust responsibilities to American Indian trust beneficiaries. AITDA has distinct advantages over the current structure. The reorganization will:

1. Stop and reverse the steady erosion of the Federal Government's fulfillment of its trust responsibilities (de facto "termination") currently occurring because of lack of financial and managerial resources (capacity) and the unwillingness to address and resolve the longstanding trust problems.
2. Clearly establish accountability both to American Indians and the U.S. Congress and American people.
3. Establish an organization focusing and specializing exclusively on trust management activities.

4. Create an organization which will function with a greater degree of independence and at a higher level in government than BIA. As a GSE and consistent with the treatment of other GSEs, Congress is more likely to provide appropriate financial and managerial resources to ensure the success of the new organization than exists at present.

5. Establish a five person Board of Directors appointed by the President and confirmed by the Senate who will devote full time to the governance and management of the new organization. Three of the Board members will be American Indians proposed to the President by Indian Country. This will assure high level advocacy of issues important to Indian Country and accountability to Indian Country. Two of the Board members, including the Chief Executive Officer, will be experienced and skilled financial and trust asset and accounting managers. This will assure competent management at the most senior levels of the organization.

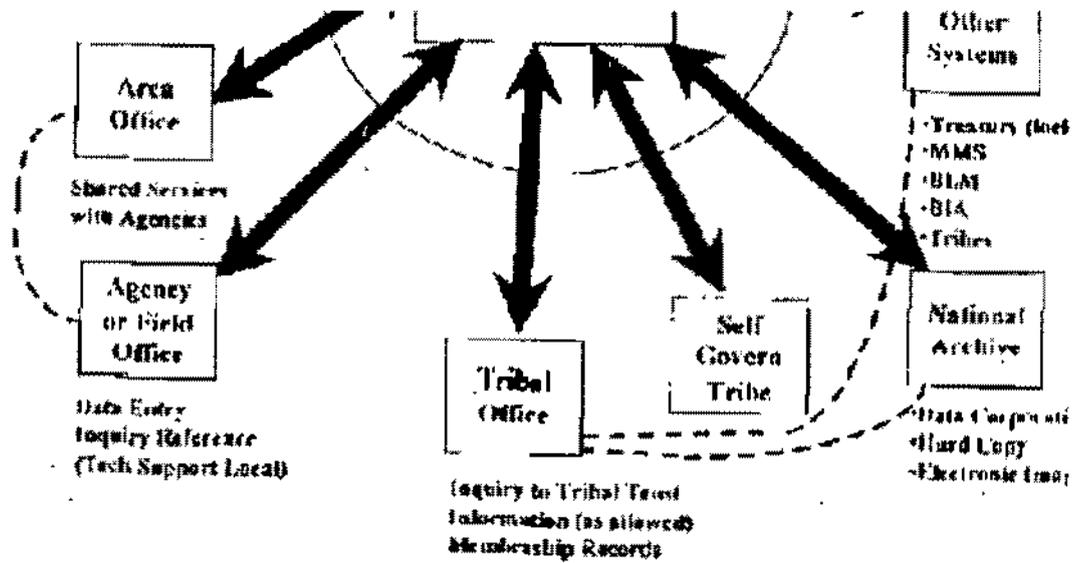
6. Attract, train and retain competent senior management, skilled and experienced in trust asset and accounting management and capable of managing a modern trust operation. This will be facilitated by making AITDA a GSE. AITDA, like other GSEs, will be exempt from government hiring rules and compensation ceilings and will therefore be able to compete with the private sector in attracting competent management.

7. Allow AITDA to assess, train, evaluate, compensate on a competitive basis with the private sector and replace, if necessary, those employees transferred from Department of the Interior (DOI) to AITDA.

8. Accelerate the process of self-governance by the Tribes. The proposal would not interfere with the Tribes' ability to contract or compact for trust functions since the Self-Determination Act and Self-Governance Act would still be applicable to these programs. Like a private trustee, the proposed administration of the trust activities would rely on a common set of laws, policies, practices, regulations and a common Trust Asset and Accounting Management System (TAAMS) and a means through annual audits and reviews and administrative oversight and supervision to assure performance by the Self-Governance Tribes. The Self-Governance Tribes would act as service bureaus under delegated authority from AITDA to provide trust management services for which they had expertise. Thus, increasingly in the future, service bureau management of nearly all of the trust management activities could and should be provided by qualified Tribes or American Indians, themselves, under appropriate compacts and contracts, subject to the rules, oversight and supervision of the Federal trustee.

The Board of Directors and executive management of AITDA will manage and administer, directly and indirectly, all trust asset and accounting functions, including trust resources management and trust funds management; trust financial and information services management; trust land title and records services; trust records and archiving; and risk management. The Trust Risk Management unit will report directly to the AITDA Board of Directors and will conduct operational, credit and compliance reviews and audits of AITDA units and outside servicers such as BIA, MMS, Bureau of Land Management (BLM), Self Governance & 638 Tribes and others. These service bureaus will contract with AITDA to provide specified services under delegated authority and will be subject to AITDA's oversight and supervision.

The organization chart for AITDA and the architecture and support system are as follows:



TRANSFER OF TRUST AUTHORITY, BUDGETS AND CERTAIN STAFF FROM DOI TO AITDA

ROLE OF THE BUREAU OF INDIAN AFFAIRS, MINERALS MANAGEMENT SERVICE, THE BUREAU OF LAND MANAGEMENT, SELF-GOVERNANCE & 638 TRIBES AND OTHER SERVICERS IN FUTURE TRUST MANAGEMENT ACTIVITIES

At the inception of the American Indian Trust Development Administration, the duties, responsibilities, budgets and certain staff engaged on behalf of the U.S. Government as trustee in trust resources management, trust funds management and trust land and records management will be transferred to AITDA from the Department of the Interior. This will include all statutory authority, funding and staffing, except as noted below, including those that are in the Tribal Priority Allocation part of the President's Budget.

At inception all authority, budgets and staff of the Office of Trust Funds Management (OTFM) and the Land Title and Records Office along with staff engaged in the operation of the Land Records Information System and budgets will be transferred to AITDA. Employees transferred or hired will be assessed, trained and closely evaluated on their qualifications and performance and replaced as necessary.

Staff of the BIA, MMS, BLM and Self Governance Tribes engaged in the management of Indian land and natural resources, including all pre-lease and pre-contracting activities and lease and contract origination, will remain in place. AITDA will contract with these units and they will serve as service bureaus for the indicated trust services and activities.

<p>BIA & Tribes (Self Governance & 638) and third parties</p>	<p>Land and natural resource management, except post leasing and post contracting activities and records and information system management, unless otherwise contracted.</p>
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BLM & Tribes (Self Governance & 638) and third parties	Production verification at lease site for oil, gas & coal. Environmental compliance from point of production through closure. Includes all current activities except records and information system management, unless otherwise contracted.
MMS & Tribes (Self Governance & 638) and third parties	Royalty and compliance management for oil and gas, including all current activities except records and information system management, unless otherwise contracted.

AITDA will delegate certain specified investment or management functions to BIA, BLM, MMS, Self Governance Tribes and other third parties only after exercising care, skill and caution in:

1. selecting a delegee suitable to exercise the delegated function, taking into account the nature and value of the assets subject to such delegation and the expertise of the delegee;
2. establishing the scope and terms of the delegation consistent with the purposes of the governing instrument;
3. periodically reviewing through operational and compliance audits and administrative oversight the delegee's exercise of the delegated function and compliance with the scope and terms of the delegation; and
4. controlling the overall cost and budget by reason of the delegation.

BIA, BLM, MMS, the Self Governance Tribes and other parties that operate as trust servicers and as delegees:

1. will have a duty to the trustee and to the trust to comply with the scope and terms of the delegation and to exercise the delegated function with reasonable care, skill and caution. An attempted exoneration of the delegee from liability for failure to meet such duty is contrary to public policy and null and void.
2. will, by accepting the delegation of a trustee's function from the trustee, submit to the jurisdiction of the Federal district courts or other appropriate jurisdiction and the delegee may be a party to any proceeding in such courts or jurisdiction that places in issue the decisions or actions of the delegee.
3. will operate under the regulations, standards, policies and procedures and the information, accounting and reporting systems issued, established and maintained by AITDA.

For land and natural resources management activities, existing staff of BIA, BLM and MMS and the Self Governance Tribes will remain in place at their current locations. Tribes will be assured the same opportunities and authority that currently exist. AITDA managers will sit down with the Tribes to prioritize programs within its's jurisdiction, thus assuring Tribal input and priorities are met on a local and area basis. Further, the current opportunities of 638 contracting and Self Governance Tribes will remain unchanged and fully available to the Tribes. By focusing the AITDA on the trust management

activities which have been transferred to AITDA, the BIA will be free to focus on other programs.

The Organizational Structure and Management Structure are more fully discussed in Appendix One.

DETAIL OF SPECIFIC ACTIONS REQUIRED - PHASE I OF THE STRATEGIC PLAN

I. Process and systems integration: optimizing systems and organization to maximize service delivery

BASIC INTERGRATED BUSINESS PROCESS AND SYSTEMS CONCEPT

The Strategic Plan proposes that the Federal Government align its trust management systems and organizational structure in order to allow it to better discharge its fiduciary obligations to American Indians and American Indian Tribes in a manner more consistent with the acceptable legal standards of modern trust practice. The new structure will optimize and promote the performance of business processes, the execution of its trust responsibility, and the delivery of services and products to American Indian trust beneficiaries. Because the execution of the trust activities and the delivery of services are primarily dependent upon the performance of its business processes (e.g., what it does as its business, and how it does its business), the most effective and efficient method to establish such an alignment would be to base its systems and its organizational structure on established policies and procedures long used in private sector trust management. The trust management business processes consist of three fundamental trust process groups involved in the delivery of Federal trust services to Indian Tribes and individuals: trust resources management, trust funds management and land title and records management.

The operational philosophy is that the policies, procedures and regulations applicable to national bank trust departments should be used as the guides in developing policies and procedures for AITDA and the fiduciary services performed by the U.S. Government for American Indian beneficiaries.

II. Rationale for a Private Sector-Based Strategic Approach

Background

The Special Trustee's assessment is that the present policies, procedures and systems do not allow the BIA as required by the Reform Act and generally accepted prudential standards applicable to all trustees to:

1. properly account for and invest as well as maximize the return on the investment on all Trust moneys of individual Indians and Indian Tribes; and
2. prepare accurate and timely reports to account holders regarding collections, disbursements, investments, and return on investments related to their accounts.

In order to accomplish the two major points described above, the Secretary of the Interior and those agencies that have been delegated responsibilities in this area must have a trust accounting and management system similar to a private sector trust department system (discussed below) in place to fully accomplish these goals or objectives. The essence of the trust accounting system that is needed is that all assets of an individual Indian or Tribe will be reflected on a single coordinated system that will enable a trust report or statement to be prepared for each individual account holder reflecting all the

assets owned, a value at cost and market, a projected income for the assets and an estimated yield or current return on the assets. A trust accounting system has at its core the ability to record financial and asset information, values, income and compute yields or rates of return. The core system can be complimented by assets specific systems or modules to account for special assets such as real property in its various forms including farm or grazing land, retail or commercial improved rental land or buildings, mineral leasing, oil and gas leasing, etc. The present systems and tools that are being utilized by the DOI, BIA, and OTFM are independent systems that do not operate on an integrated basis enabling information and data to pass between the systems, be verified, audited and ultimately produce the desired complete, accurate and timely reports to account holders regarding their assets and income.

Private Sector Trust Department

A typical trust accounting system would have as its central elements the recording of all assets for which the trustee has fiduciary responsibility. Assets come in broad categories, including cash and cash equivalent; financial assets (common stocks, preferred stocks, bonds, debentures, notes, etc.); real estate, mineral interest; intangible non financial assets, such as leases and partnerships (general and limited); tangible assets including jewelry, china, silver, furniture, precious metals such as gold and silver, coins, ingots, etc. Within the trust accounting system there will be various system subsets, or modules that will provide enhanced ability to record and manage the assets. These subsystems utilize assets specific information in providing financial transactions, trust statements, or consolidated statements for accounts or for the trust department as a whole. Included in such modules or subsets would be a securities module that would enable monthly, weekly or daily pricing of financial assets that are traded on a national exchange such as the New York Stock Exchange and the NASDAQ. Pricing services such as the Standard & Poors, Bloomberg, and Morningstar could be integrated into this securities subset or module. In a similar manner, systems pertaining to land and improvements on the land are also available and can be utilized where appropriate. An additional module frequently used by trust departments would be a common trust or pooled investment fund system to manage the investment, accounting and valuation for commingled investments.

At the heart of the trust system and organization is a trust accounting or operations unit or department. In order to enhance the integrity of the system, promote uniformity in recording and reporting of assets, and to establish an adequate audit trail, a centralized operations and financial recording activity is important. The trust operations area would include the following elements and activities:

1. All financial data input to the system, that is the initial description and recording of all assets including financial assets, land, and tangibles.
2. Data relating to the particular characteristics of an asset; e.g., common stocks have a specific description or security identification number, generally pay dividends on a quarterly basis that are uniform or may include special dividends; bonds generally pay interest on a semi-annual basis; land may produce rental income, leasehold payments, oil and gas revenues, royalties, etc.
3. Reporting within the trust department and to its beneficiaries; the systems and the operations group provides reports in a number of different forms within the department and to the beneficiaries. Within the department there would exist statements of conditions or balance sheets reflecting in summary form all assets such as the cash for which the department is responsible, all of the financial assets, all of the land, etc; and all the liabilities, essentially the

interest of all the beneficiaries (account holders) by the type of accounts, e.g., estates, trusts, agencies, corporate trusts, etc.

A report to an individual beneficiary or account holder would include a trust statement displaying cash equivalents, financial investments (bonds, debentures, and common stocks); land, tangible assets, miscellaneous assets. Wherever available, the statement would also include the cost basis of each asset, the current market value, projected income, and a market yield on the respective assets wherever appropriate. Complementing the trust statement could be a report or data providing investment performance comparisons, that is the current income and total return for this particular account for a given period. This may be supplemented with comparison to standard indices including the Standard & Pears 500, a commercial bond total return index such as the Merrill Lynch Intermediate Bond Index or the Lehman Brothers Intermediate or Long term Bond Index, etc.

1. **Administrative Data** - A wide-range of administrative information relating to an account can also be produced by the system. This data frequently is produced in the form of administrative ticklers, i.e., notices or warnings that inform a trust administrator or management of events to come or action that is required to assist in the timely completion of such tasks. As an example, if an account is for a minor who will obtain majority and thus be entitled to a distribution of an account at a particular age, a 90-day notice ahead of that time can be provided by the system automatically. If the trust account is responsible for the payment of casualty insurance on improved real estate and the payment of real estate taxes, etc., these payments can be anticipated and advance notice provided so that these important tasks are completed on a timely basis without late penalty charges. In a similar manner, prospective termination of rental, grazing or leasing activities can be anticipated. Anticipated income reports can also be produced by the system to reflect the dividends, interest, rental, etc. payments due at a particular time to assist in ensuring that all payments are received.
2. **Management Data** - The typical trust system can provide a host of data and reports essential to the proper management and oversight of trust activities. These reports can include the workload or number of accounts assigned to an individual accounts administrator, can report on the receipt of new accounts and the termination of existing accounts, the existence of accounts in particular geographic or organizational locations.
3. **Audit** - The typical trust system will have an audit trail and the ability for an independent auditor to obtain reports, identify transactions, and the originator of the transactions. The auditors can determine whether there are controls and balances and verification processes in place that are consistent with operating policies and procedures and good trust management techniques.

III. Discussion of the Action Elements of the Strategic Plan

A. Purchase & Upgrades of Hardware and Software

Regarding the purchase and upgrade for end-user workstations, the outside contractor found the existing BIA facilities largely well equipped (or in the process of installation) with 486/586 technology. However, a significant number of new work stations will need to be purchased and present ones upgraded to bring the systems at both the Tribal and BIA levels up to modern standards.

The communications networking requirements are based on a new architecture which supports the Trust Asset and Accounting Management System in the style of a private sector trust operation. The

communications architecture is basically a point-to-point type service since most calls will be directed to the Central database in the form of data inquiry or deposit information from the agencies and Tribes. It has been structured to evolve into a client/server configuration at any location where the need becomes justifiable. Client/Server architecture, as it will be used in this proposed configuration, does not move any stored data or program responsibility down to the field server level. All files and processing will be the responsibility of the central office level software and hardware. Rationale for client/server facilities would be based on other areas of activity, but not for Trust Processing.

Preliminary analysis pegs the user workstation requirement for trust management and the trust-related functions of land management at over 1,900 PC workstations including all stated requirements at DOI, OST, BIA and Tribal staff in the field offices and locations, trust interfaces at the Tribal offices and the Land Title and Records Offices (LTRO) and realty user community.

B. Core Systems Development and Related Costs

The original points presented in the Conceptual Strategic Plan have been expanded into a complete, fully integrated Trust Management and Reporting System. Also, for Title Plant, the observations of the independent contractor have found that the existing Land Record Information System (LRIS) application presently is serving the user community adequately, where properly used. The inadequacies of this system are more related to training and data than to the functionality of the application itself. While not an immediate priority, the LRIS system will need upgrading in the near term and provisions have been made in the Strategic Plan for this upgrade (See the LRIS-2 discussion below).

The Strategic Plan proposes the acquisition of a commercially available TAAMS product adapted to fulfill all trust management activities, including investment, management and reporting requirements.

Commercial Trust Management Systems (CTMS) exist with modules that will integrate and perform the trust asset and accounting management and land lease management functions in a centralized location. This is an important enabler in achieving the Strategic Plan's objective of bringing the Trust Asset and Accounting Management System up to commercial standards. It also presents policies, procedures and systems that will allow the trustee to properly account for and invest all trust monies, and prepare accurate and timely reports to account holders.

The current Integrated Records Management System (IRMS) application is insufficient to create a trust management system at a level of commercial acceptability that would fulfill the U.S. Government's fiduciary responsibility without a major, expensive, lengthy reconfiguration. IRMS is an outmoded system and does not articulate easily with LRIS. Since several well-documented private sector trust management and accounting systems exist and are for sale, it is substantially more cost effective to buy rather than rewrite. Acquiring an existing commercially available trust management system will greatly reduce development costs and accelerate the implementation phase.

Given the requirement of trust management and the magnitude of the user community, the use of "client server networks" was not a recommendation of the outside contractor, is not a requirement and provides no real advantage. At some sites, such a facility is not practical. Instead, the Strategic Plan proposes that an effective communication network architecture support internodal linkages between the AITDA administration offices and field offices in Albuquerque, Agency Offices, Tribal facilities, a new national archive center, and other systems interfaces. Also, implementation of this architecture will accelerate the process of establishing a working network environment.

C. Other Core Elements

A number of other key elements are essential to meeting the Strategic Plan's goals. These elements include: a disaster recovery plan, daily backup capabilities, training at all levels, appropriate legal and legislative changes, IIM and Tribal file cleanup and probate and appraisal cleanup. These elements must also be performed or acquired if the Strategic Plan is to be effective.

D. End-User Administration; General Support and Maintenance

Under this configuration, end-user administration is kept to a minimum. The original Conceptual Strategic Plan allowed for OTFM Technical Staffing at all Area and Agency Offices. The final Strategic Plan eliminated the field requirement for that level of support and has instead funded a centralized Help Desk function. Local Technical Support now exists at the Area Offices and appears sufficient to cover true technical needs. A simple re-allocation of funds to permit travel allows the senior technical staff to support the field operations. Funds were also earmarked for training at all levels with the intent being to increase user performance and reduce end-user reliance upon the technical support staff, wherever possible.

E. Data Conversion and Imaging

Data conversion will be required to transfer to the new system information for processing. It was the outside contractor's judgment that this task has been understated in the Conceptual Strategic Plan from a budget point of view. Based upon the observations made during the field trips, a large number of manual files as well as a number of locally developed manual processes were observed; hence, there exists a major task in normalizing the data prior to loading it into any system. LRIS appears to provide the functions required. A significant data clean-up task appears necessary but conversion to a new application is not justified at this time.

The need for imaging is obvious and is requested at most locations. The primary need is to record maps, land deed documents, and any other documentation related to land ownership for electronic reference and safe storage of the original and paper documents related to land ownership. Lease and other financial documentation must be recorded from origination to final disbursement to owners.

The process of data clean-up and data imaging, when addressed as a common task, should provide a more synergistic effort to complete statement of work requirements.

F. Systems Integration and Implementation

The systems integration and implementation factors will be largely covered with the commercial trust system software to be acquired. A full integration will be a prerequisite in the selection of the software product. End-user training, which was also identified as a high priority, will be incorporated as a part of the related cost of core application acquisition.

G. Access by Tribes

The education and training to be given to the Tribal end-users will be extensive and will involve about 450 end-users. Monies will also be spent to integrate current hardware and software that the Tribes now use with the new system. Access to the information depository will be guaranteed so that the Tribes can extract data and manipulate and customize the data for their own general business

purposes.

H. National Archives Center and System

Internal studies and those of the outside contractor revealed the almost total lack of back-up and archiving procedures. Only one site of all those visited had addressed the archival issue. The equipment required was purchased with Tribal funds and installed in the Field Office. The staff was trained in the procedures related to imaging and verification, which was supplemented with the orientation required to use the services and functions of the system. This site could be the base for a model of what has to be done and one operational solution for consideration. A key lesson learned was the magnitude of set up time required. After one month of attempting to do the task with staff members, it was found to be more prudent to out source, saving both time and manpower.

The Strategic Plan budget contains the estimated costs for 1) equipment costs for imaging, 2) equipment costs for storing the data, 3) equipment costs for integrating this into the network for access by all concerned parties and 4) the out source expenses to avoid the labor intensive task and accelerate the process of imaging and creating document control.

I. Upgrades to General Ledger System

The CTMS, as defined above, includes the trust accounting functions and the changes required for the upgrade of the general ledger system.

J. Additional Budget Items

1) Personnel Training

Across all area, agency and Tribal sites a need for technology training, management training and organization development training exists at a significant level. These training needs create a major barrier to effective and efficient office operations having to do with the implementation of current fiduciary responsibility. It will be further compounded with implementation of a new integrated trust management system. Recent reductions in force have exacerbated these problems since field observations reveal that significant numbers of BIA and OTFM personnel are being required to perform a variety of different and new tasking functions. This has created significant confusion with regard to areas of responsibility, inadequate supervision, and negative feelings in both organizations. Without training and proper supervision, much of this additional duty is being accomplished with heavy doses of self-developed on the job training. In addition to these training needs, further work on process and procedure identification needs to occur. The field data supports the addition of significant increases in expenditures in training regarding the above. If this is approved and effected, there is a strong likelihood that the implementation of the trust system will occur without having to increase staff but rather through re-deployment and retraining. In short, a comprehensive skill mix transition plan is necessary coupled with an intense on-going training to provide the low-cost high performance trust operation which is the desired outcome of the strategic investment. Field data also support the Tribal long term interest in creating a system which allows for a larger role in managing their financial affairs. Therefore the ultimate system must have the flexibility to allow that transition and to provide the necessary training to accomplish the task.

2) Clean-Up Probate/Appraisal Backlog

This includes paralegal services and support services to reduce the probate backlog which averages about two years and is up to four years in some areas. This also includes certification of paralegal and appraisal resources.

IV. Review and Analysis of Data in Land and Lease Management System and Associated Training

LTRO provide a public record of the chain of title relating to real property allotted to and held in trust for individuals pursuant to various treaties with Indian Tribes and acts of Congress relating to individual Indians. The record keeping systems for LTRO include the LRIS and Property Index. LRIS is an electronic information system and the Property Index is manually maintained.

Inputs are based on documents submitted by various authorities outside of LTRO for the purpose of being recorded against a property or properties. Most documents submitted for recording originate from an Agency Office or, in the case of compact agreements, Tribes.

Outputs of an LTRO generally consist of a certified Title Status Report, a certified inventory of property held by a decedent, and uncertified indications of ownership by property or by individual.

While a given LTRO may only certify properties located within the boundaries of its Area Office, uncertified ownership information may be obtained across Area Office databases to provide an indication of ownership for an individual having trust property in multiple areas.

In comparison with public land record systems utilized under the jurisdiction of states, an LTRO combines the functions of a registrar of deeds and a title abstract company. However, the scope of an LTRO goes beyond these institutions in that an LTRO may give an opinion in the case of ownership disputes.

Ownership of land is also recorded by agencies on systems such as IRMS Ownership. A noted distinction of differences between the LTRO function and functions provided by systems such as IRMS Ownership is that the LTRO allows for public inspection of land title under certain circumstances while the IRMS Ownership information is subject to higher degrees of confidentiality.

A review of the Automated Land Management Records System (ALMRS) was performed by the Office of the Special Trustee and the outside contractor. Based on those reviews, it appears that the ALMRS is not a replacement for LRIS but, in fact, a complementary system and an effective source for official legal descriptions of the Indian properties and related data. ALMRS is still in the development stage. Specifics regarding an implementation schedule were not yet available. ALMRS provides no ownership information and therefore cannot be used as a substitute for LRIS, which, as stated above is a workable system for the present and near term. ALMRS has limited utility in replacing the basic IRMS system which is obsolete and must be replaced.

Gaps in the LTRO Function

A need for improved data flow between the LTRO and the mainframe in Albuquerque was articulated by interviewees of the outside contractor. Apparently the LRIS-2 project was to correct such deficiencies but was halted in the middle of the project.

Interviews indicated that guidelines for determination of whether a document should be recorded may not be applied uniformly.

Theoretically, LRIS and IRMS Ownership records should agree as to ownership, subject only to a timing difference in a document being recorded by LRIS and posted by the Agency. In one case, LRIS reflected that an individual had an interest in only one property (tract) when the IRMS Ownership reflected that the same individual had an interest in more than 30 properties (tracts). This difference was not due to timing since the most recent document date on either system was 1992.

Field data suggest that the LTRO function is adequately supported with the current LRIS application. What is missing is sufficient training, and appraisal and probate backlogs are creating barriers to effective performance of the system. The existing appraisal and probate backlogs are exacerbated by a significant lack of qualified personnel to perform the tasks on a timely basis at all levels in the process chain. If these issues were properly addressed with additional human resources allocations, the LTRO organization could provide the information necessary to enable LRIS application to be fully effective. Software improvements to the LRIS system, while needed to improve the interoperability at the end-user level, should be a second priority after the re-engineering of the Trust Asset and Accounting Management System. Nevertheless, while not an immediate priority, the LRIS system will need upgrading in the near term. This is because each time ownership changes, the LTRO staff must perform time-consuming manual determination and documentation of ownership interests. LRIS, as designed, is not capable of performing automated chain-of-title calculations and it does not store chain-of-title or calculated ownership information. LRIS system improvements have been delayed for the past two years due to reduction in force and budget cuts. Provision for the upgrade of LRIS to LRIS-2 has been provided in the Strategic Plan over the medium term.

LTRO staff universally want more training on information systems. Some personnel are not sufficiently familiar with computers and lack on-site systems support, especially at agency and Tribal locations. Some paralegal training would be helpful, especially related to probate functions. Other areas for training include real estate, accounting, property management, and appraisal, as well as a comprehensive overview of the trust process.

Calculation of Fractional Interests

A current system enhancement that would be beneficial would relate to the calculation of fractional interest for the heirs or beneficiaries of a deceased Indian. In the current environment, the LRIS system makes an automatic calculation of the new fractional share up to the 35 decimal places, if that is necessary. At the present time there is no such automatic calculation within the IRMS Ownership system. It is currently being done manually with some difficulty since most calculators will not go out that many decimal places. There is an impression that what staff members do is obtain the LRIS calculated fractional share and then enter that in the IRMS system. A system enhancement that would make the calculation process existing on LRIS available to the IRMS system would be desirable.

An additional suggestion was to consider the universal or global change order of interest in land and interest Indian property rights. In four current, separately-operated systems (IRMS Ownership, IIM, People and the Royalty Distribution Records System) the common identification of Indians is by their ID numbers throughout the system. The universal change order that would provide for the one-time systems input of an ID number, would go a long way in avoiding some of the problems that are currently being encountered. The current procedure and validation controls, for ID number assignment are either insufficient or need tighter management. This requires further research for clarification.

Other field comments supported the regulation on special requirements to pay owners directly for oil

and gas, and mineral interest, particularly 25 CFR 162.5 Section F. Others appear to favor some methodology and procedure that would require a proof of payment to the owner so as to avoid problems in determining whether owners have been receiving the correct amount of payment or payment at all. The rate of payment from the lessee is also an issue that arises in some of these problem areas. An additional concern is when an Indian actually uses land and he is a co-owner with other Indians or non-Indians. This may arise when property is inherited and four or five siblings have an undivided interest in the property represented by their fractional share. There are specific provisions in 25 CFR 162.2 as to the ability of a co-owner to use the land himself or herself. The problem arises when one of four or five siblings uses the land for grazing, farming, etc., but does not share the profits or rewards of such usage with the other siblings.

V. Review of Special Interest Areas

Gaps in Special Interest Areas

1) Oil and Gas

The basic element of information necessary for quality reporting of production information related to an individual trust account centers around property ownership. Ownership records at the trust account level are decentralized to the Agency level resulting in a variety of "trust accounting systems" as described above as IRMS, IBM System 36, "in house" PC-based and manual cards. Problems resulting from the lack of standard systems are manifest in centralized systems such as IIM and MMS.

Field issues were addressed regarding audit expectations relating to differences in bbls/mcf produced by a given well and bbls/mcf sold and reported to owners. Such concerns are not unique to DOI trust minerals; they permeate commercial trust management as well. The general rule governing the extent to which a commercial trust department audits the actual production at the well head level is dictated by the "prudent man rule," i.e., the degree of audit that a person with experience would use in the management of that persons own property. The resulting trust practice is guided by economic factors and the fact that collusion between the operator and a purchaser would normally be necessary to defraud the royalty owner. Consequently, field audits are normally conducted in cases where large amounts of production are involved.

A perception of substandard performance on the part of MMS was encountered. Interviews and direct observation were unable to produce supporting detail. It is possible that ownership and audit concerns previously discussed and their relationship to royalty distribution may be diverted to MMS, for the functions it is intended to perform, provides many audits and controls which are desirable. In addition, most funds are wired to MMS and deposited to Treasury, resulting in the generation of earnings for the trust beneficiary within a 24-hour time frame.

A requirement that 100 percent approval by owners of trust mineral interest on oil and gas leases was mentioned on multiple occasions as a source of problems and a hindrance of the opportunity to develop mineral interests. It was the opinion of those interviewed that the source of this requirement is judicial. An article written for the University of Tulsa Law Journal in the Fall of 1989 suggests that the judicial decision of a U.S. District Court in New Mexico was never published and that the case was later dismissed as moot. Thus, the Strategic Plan proposes that this problem be addressed by a policy change, rather than a legal change.

The basic element of information necessary for quality reporting of oil & gas production information

related to an individual trust account centers around property ownership, and this is where the system breaks down due to the problems of back-logs, deferred maintenance and training discussed above. Ownership records at the trust account level are decentralized to the agency level resulting in a variety of "trust accounting systems" such as IRMS, IBM System 36, "in-house" PC-based systems and manual cards. The CTMS integration with subsidiary support applications (e.g., LRIS) should eliminate the need for multi-systems.

System Architecture

A summary concept diagram of an integrated trust application and system architecture model would appear as represented in the diagram in Appendix One and is more fully described in Appendix I, in the Macro International Report and in the Strategic Plan Budget.

VI. Risk management

This will entail obtaining a risk management and control system that will provide for adequate operational audits, credit and asset quality audits, compliance reviews, independent asset appraisals, supervision, enforcement and liaison with outside, independent auditors. It will include annual reviews and audits of all service bureaus providing trust services under delegated authority from AITDA.

VII. Integrated organizational structure

As noted, the Strategic Plan would create an organizational structure in a manner that optimizes and promotes the performance of the Federal Government's trust management business processes, the execution of its trust responsibility, and the delivery of its services and products to its clients and the American Indian trust beneficiaries. Because the execution of the trust responsibilities and the delivery of services are primarily dependent upon the performance of its business processes, the most effective and efficient method to establish such an alignment would be to base its organizational structure on its business processes.

There are three fundamental and distinct business groups: (1) Trust Funds Management (2) Land Title and Records Management and (3) Trust Resources Management. The most appropriate organization for these fundamental process groups would be a structure that establishes distinct but inter-related organizational entities under a single administration such as the American Indian Trust and Development Administration.

VIII. Specific action requirements

The Strategic Plan proposes a single organizational structure organized along business lines. Phase I of the Strategic Plan is designed to bring it about and to bring the trust management and trust management information systems up to commercial standards within two years. The specific initiatives are more fully discussed in Appendix One and, at a minimum, will involve acquiring, automating, updating, integrating, coordinating and consolidating to produce:

I. A Single Organization to Manage Trust Management Activities.

This will involve consolidating trust resource, trust funds and land ownership and records management processes into a single, independent institutional unit with its own management structure to accommodate the restructuring and reorganization contemplated by Phase I of the Strategic Plan. The

unit should be organized by function and dedicated exclusively to trust management. The unit should be managed by a full time Chairman and a Board of Directors appointed by the President and confirmed by the Senate. The unit's proposed organizational form is as an independent GSE subject to Congressional oversight.

2. A Trust Asset and Accounting Management System.

This will involve acquiring and implementing a Trust Asset and Accounting Management System which will:

- A. Provide a new asset management information subsystem for land and natural resource management and a delivery system for asset leasing, contracting, lending, buying and selling, together with standardized and/or integrated asset management, credit and operating policies, procedures and practices. The system must be able to tie to and track from land and ownership records.
- B. Provide an accounts receivable/master lease subsystem data, tickler and collection system that uses lease-contract and ownership information for trust income verification, reconciliation, billing, payments, collection, accounting, disbursement, audit, asset quality review and compliance purposes.
- C. Provide an accurate and timely trust, depository, payments and delivery system for IIM accounts and Tribal accounts. This will entail purchasing a trust, depository, payments and other financial services accounting and statement system and a delivery system to more efficiently provide current financial services and to facilitate new and improved financial services to individual Indians and Tribes.
- D. Provide a general ledger and general accounting system to accommodate all present and proposed TAAMS systems and other improvements.
- E. Conform to the general systems architecture described in Appendix One and the Strategic Plan Budget.

3. A Land Records and Title Recordation and Certification System.

This will involve the acquisition of a new system which will:

- A. Be capable of instantaneous linkage with the TAAMS and other systems used by the service bureaus providing trust services under delegated authority from AITDA in the near term.
- B. Be brought up to private sector standards through LRIS-2 upgrades and implementation in the medium term.
- C. Conform to the general systems architecture described in Appendix One and the Strategic Plan Budget.

4. A Dedicated Technology Services Center.

This will involve obtaining a centralized technology services center dedicated to trust resources, trust funds and land ownership and trust records management processes with appropriate provisions for disaster/recovery and back-up capability.

5. A National Archives and Record Center.

This will involve obtaining and centralizing a modern national archives and records center for trust asset and accounting management records and land title and records storage and retrieval along with appropriate disaster recovery protection. Implementation of modern imaging technology should be at the fore-front of the improvement initiatives.

6. A Risk Management and Control System.

This will entail obtaining a risk management and control system that will provide for adequate operational audits, credit and asset quality audits, compliance reviews, independent asset appraisals, supervision, enforcement and liaison with outside, independent auditors. It will include annual reviews and audits of all service bureaus providing trust services under delegated authority from AITDA.

7. Legislation on Fractionated Ownership of Indian Lands.

Legislation is needed which would consolidate the large number of existing fractionated interests and prevent further fractionation. This alone would remove a primary obstacle to the efficient administration of the trust management systems and provide a major catalyst for the timely resolution of most of the operational problems associated with trust management activities, including trust resource and realty management, probate, land titles and ownership records management, IIM accounting, collections, deposits, investments and disbursements, customer service and record keeping for all trust management activities.

8. Such systems and organizational improvements must be accompanied by significant legal changes, including adoption of the prudent investor rule.

9. A significant investment to clean-up:

Probate Backlog

IIM and Tribal Records

LTRO Title Defects

Appraisal Backlog

10. A significant training investment for all trust management activities, including Tribal users.

11. The acquisition and retention of competent management.

OPTIONS FOR INVESTMENT FOR ECONOMIC DEVELOPMENT

Section 303 of the American Indian Trust Fund Management Reform Act of 1994 requires, in part, that the Strategic Plan include the following:

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

The Strategic Plan identifies several options which would promote economic development in the American Indian communities:

New Trust Management Products Under Phase One of the Strategic Plan

At present the Federal fiduciary must manage investments in accordance with the limited investment opportunities accorded by the statutes, none of which permit economic development options of any kind. The Strategic Plan proposes that the Federal fiduciary's investment discretion be broadened so that the goals of the legislation can be achieved. Several options for making investment decisions are proposed, all of which would permit investments of Tribal trust funds in ways which would promote economic development in the American Indian communities and would include provisions for opportunities for Indian Tribes to assist in the management of their trust accounts.

The Strategic Plan proposes that the trustee will be governed by the prudent investor standard as adapted for the special circumstances of the trust relationship between the United States and Indian Tribes and individuals. The powers and responsibilities of the trustee will be more clearly defined by adopting a modified prudent investor rule. Generally, under the standard the trustee shall exercise reasonable care, skill and caution to make and implement investment and management decisions as a prudent investor would for the entire portfolio, taking into account the purposes and terms and provisions of the governing instrument. The governing instrument would be the applicable treaties, statutes, regulations, judgments, etc.

The prudent investor standard will allow the investment of trust funds in a wider variety of securities than are authorized under existing law and regulation in order to make these funds more productive for current and future beneficiaries. It will not impact the accepted traditional use of the land except to ensure that it is preserved for future generations. However, the standard will allow the investment of trust funds in higher yielding securities appropriate for the investment of funds held in trust including investment in Tribal infrastructure and development activities subject to prudential rules. Venture capital investments can also be made when appropriate to the objectives of the trust.

In addition to withdrawal of trust funds under 25 CFR 1200, the Tribes will have the right to participate with the trustee in developing an investment plan for their accounts. One of the responsibilities of the trustee will be to work with the beneficiaries to ascertain their needs and determine how reasonably to accommodate them, if possible.

Tribes could also elect to:

1. continue the trust funds management of their account under currently existing restrictions.
2. withdraw eligible trust funds from the Federal fiduciary as at present.

The terms of the instrument may set forth various types of unusual or restrictive investment provisions, such as:

- Prohibit the purchase or sale of a particular security or one in a particular industry.
- Require the fiduciary to purchase only certain authorized securities or limit investments in one asset or asset category to a specified amount to avoid a concentration.

Under each of the options, the Federal fiduciary could also make available to the beneficiary the benefit of its research services and act in an advisory capacity. The Federal fiduciary could also:

- Collect the principal of matured or called bonds.
- Collect and distribute income.
- Accept possession of securities for safekeeping.
- Notify customers of calls, subscription rights, defaults, etc.
- Provide periodic account statements.

Exercise of any one of the options would open up, on a par with the private sector, a whole range of investment opportunities to aid economic development, including:

1. Commercial, consumer, real estate and infrastructure investments and loans.
2. Fractionated Realty purchases, sales, loans to facilitate, dealing and management.
3. Development investments in infrastructure acquisition and development, project financing, venture capital to new businesses and capital for existing businesses.

Several new trust management products are proposed for implementation during Phase I of the Strategic Plan which would benefit both Tribal and IIM account holders and through prudential savings and investments promote economic development:

1. Demand and Savings Deposits exercised through a mutual fund type accounting system with checking account and payments services, including ATM access, cash management, accounting, statements and reporting, disbursements, wire transfer, official checks, money orders and access to discount brokerage.
2. Acceptance of voluntary deposits from all sources, including gaming revenue, with subsequent income free from Federal taxation.
3. Income from all trust accounts would be free of Federal taxation to encourage savings and economic development.
4. Acceptance of Retirement Accounts such as Keogh Accounts and IRAs.

Phase II Options for Economic Development

During Phase II of the Strategic Plan full service lifeline banking, trust and financial services exclusively for individual American Indians and Tribes will provide funding for economic development making such individuals and Tribes economically more independent over the next several decades. This will be facilitated by the creation of the American Indian Trust Development Bank (TDBank). It will include:

1. A full service trust system.

This requirement will be met by building a system to provide, directly and indirectly, full trust services to include managed, agency and custodial accounts, cash management accounts, comprehensive accounting and tax statements, discount brokerage, stock transfer, custody, pensions, collective investment funds, fixed income and equity research and advice, mutual funds and insurance sales and other trust services.

2. A full service banking and depository system and delivery system.

This requirement will be met by building a system to deliver, directly and indirectly, through multiple offices, full banking and depository services, to include demand and savings accounts, certificates of deposit, overdraft protection, money orders and official checks, escrow services, foreign exchange, capital market sales, discount brokerage, cash management services and other financial services.

3. A full service asset management, lending and leasing system and delivery system.

This requirement will be met by building a full service asset management, lending and leasing system to deliver, directly and indirectly, through multiple offices, commercial loans and leases, including corporate, small business, middle market and agriculture loans and leases; consumer loans and leases, including credit card, home equity, auto, mobile home, and personal loans and leases; real estate loans and leases including loans secured by single and multiple family housing and commercial real estate; and infrastructure and development loans and leases. Such systems will have origination as well as packaging, sales to the secondary market, servicing, loan participation and correspondent banking services capabilities.

4. A fractionated realty holdings purchase and sales program.

This requirement will be met by a full service asset management capability and program to purchase, sell, deal in, finance and service fractionated realty holdings. TDBank will be allowed to invest up to \$300 million in purchases and loans for this purpose, subject to prudential terms at market rates. This program will ensure the consolidation of existing fractional interests and the prevention or substantial reduction of further fractionation.

5. An investment capability for community development projects.

This requirement will be met by developing an investment capability to provide equity capital, perpetual preferred stock and long term subordinated debt for economic development of the trust lands and the Tribes and individual Indians and their business ventures. Such total investment not to exceed 1% of the Bank's equity capital to any single enterprise or project and 25% of equity capital (initially \$125 million) for the aggregate of all such investments. Such investments will include:

- Infrastructure acquisitions and development activities.
- Project financing.
- Venture Capital Businesses.
- Established Businesses.

6. A new management and institutional structure to accommodate restructuring & reorganization, to

include a new independent bank & trust structure with the following capital requirements:

Equity Capital	\$500 million
Borrowing Capacity	10 times capital
Initial Borrowing from U.S.	\$3 billion, 30 years, 30 year T rate

This new structure which will permit a singular focus on trust management responsibilities to American Indians and Tribes and more independence from the appropriations process; more self-determination; more economic independence; greater funding access to the capital markets; greater access to economic development and a management structure and salary and benefit scale similar to the Federal Reserve System, the Federal Home Loan Bank System, the Farm Credit System and the Federal financial regulators.

7. A headquarters building adjacent to national archives and records center.

The restructuring and reorganization will require a new headquarters building adjacent to the national archives and record center to accommodate the expanded products and services and the centralization of many of the systems.

The U.S. banking system has long been the engine for economic growth in the private sector. Government sponsored banks such as those in the Federal Home Loan Bank System (since the 1930s) and the Farm Credit System (since 1916) have been the engine of economic growth for American housing and American agriculture. The American Indian Trust Development Bank could be the engine of economic growth for American Indian trust beneficiaries in the next century.

DEPARTMENT OF THE INTERIOR POSITION ON BROADENING THE FEDERAL GOVERNMENT'S TRUST RESPONSIBILITIES

The Strategic Plan broadens the Federal Government's trust responsibilities in several ways which are consistent, in the view of the Special Trustee, with the Reform Act of 1994 requirements which, in part, requires the Strategic Plan to include:

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

The Strategic Plan proposes that Federal fiduciary discretion be broadened and new trust products offered to meet the goals of the legislation, all of which would provide "opportunities for Indian Tribes to assist in the management of their trust accounts" and "promote economic development in their communities" and which include as noted above:

1. Increasing investment discretion for the trustee and the Tribes through use of the prudent investor rule.
2. Allowing demand and savings deposits.
3. Accepting voluntary Tribal and IIM deposits from all sources, including gaming revenues.
4. Providing for income to be free of Federal taxation.
5. Accepting retirement accounts.

6. Providing full service trust and banking services in Phase II through the proposed Trust Development Bank.
7. Other as is indicated above in this section of the Strategic Plan.

The Department of the Interior has indicated that the Administration will evaluate the Special Trustee's final recommendations, considering the results of Tribal and individual account holder consultation, and submit its full views to the Congress as soon as practicable. The Department of the Interior has expressed some initial views on some of the Special Trustee's recommendations:

- The Department is opposed to expanding our investment responsibilities, and therefore would be opposed to (1) accepting voluntary deposits; and (2) increasing investment discretion. The Department does not support acceptance of voluntary deposits in IIM accounts. Most IIM accounts are "flow through" accounts; funds are regularly disbursed to the account holders. In theory, funds are only maintained as deposits in a limited number of cases: minors, non-compos mentis, and pending identification of beneficiaries. However, this policy has not always been adhered to, as there is regulatory authority to accept voluntary deposits in case of hardship to the account holder. The OTFM has a significant IIM data clean-up effort underway, in part, to ensure the number of IIM accounts is kept to a minimum. OTFM is also developing formal policy and procedures on establishing IIM accounts which they expect to disseminate in 199
- The Department also does not support increasing our investment discretion. Currently, investments are limited to direct investments in U.S. Government securities (Treasury and other agency issues) and insured deposits or deposits collateralized by U.S. Government securities. Tribes desiring more risky investments can withdraw their funds from trust under the authority of Title II of the American Indian Trust Fund Management Reform Act of 1994. Final regulations on withdrawing funds from trust were published on December 26, 1996.
- The Department does not support the establishment of a new government entity to manage the Federal Government's trust responsibilities.
- Viewed in isolation, the proposals related to expanding the government's responsibilities are generally inconsistent with government downsizing and deficit reduction. However, the systems portion of the Special Trustee's plan in general would tend to be consistent with government downsizing and deficit reduction.
- Notwithstanding and with due respect to the Department's position which is a very narrow reading of the scope of current statutory authority (See 25 U.S.C. 2), the Special Trustee believes that the new trust products are essential to the economic growth and prosperity of the American Indians. As to the investment discretion of the trustee, the Special Trustee believes authorizing the trustee to invest Indian trust funds in securities in addition to "public debt securities" more effectively supports the trustee's fiduciary duty to serve the best interests of the beneficiaries, allow the Tribes to participate in the management of their funds held in trust in a practical and purposeful way and need not expose the trust funds to unacceptable investment risk. It is a settled principle of trusts that the trustee is under a duty to the beneficiaries to use reasonable care and skill to make the trust property productive. In making investments, however, a loss is always possible, since in any investment there is always some risk of loss even with "public debt securities."
- Under accepted and established principles of trust law, it is not the duty of the trustee, either

individual or corporate in the private sector, to invest only in the very safest and most conservative securities available. Such investments may not be in the best interests of the beneficiaries. Assuming, for example, United States Government bonds are the safest and most conservative securities available but that income yield thereon is lower than other securities, it is not necessarily the duty of the trustee to invest the whole trust property, or even any part of it in such bonds. The reason for this is that by the use of care, skill and caution, an investment can ordinarily be made which will yield a higher income and as to which there is no reason to anticipate a loss of principal.

LEGAL CHANGES REQUIRED

The upgrade of the trust services provided to the Indian Tribes and individuals will not only require a modernization of the systems but a review and updating of various laws and regulations to allow the trustee (U.S. Government) more flexibility to meet the needs of the beneficiaries. In addition, the changes should be such as to facilitate the active participation of the beneficiaries, if they so desire, in managing their assets consistent with sound fiduciary principles. Subsequent paragraphs will set forth some of the changes that the Special Trustee believes necessary to accomplish these objectives.

The trustee will be governed by the prudent investor standard as adapted for the special circumstances of the trust relationship between the U.S. and Indian Tribes and individuals, which will place particular emphasis on the cultural, religious, historic or environmental significance of Indian assets held in trust. The powers and responsibilities of the trustee will be more clearly defined by adopting a modified prudent investor rule. There is a large body of case law, interpretations, law review articles and other materials that can be referenced for guidance. Also, regulatory agencies such as the Office of the Comptroller of the Currency have extensive experience and materials concerning the oversight and supervision of fiduciary activities performed under the prudent investor rule.

Generally, under the standard the trustee shall exercise reasonable care, skill and caution to make and implement investment and management decisions as a prudent investor would for the entire portfolio, taking into account the purposes and terms and provisions of the governing instrument. The governing instrument would be the applicable treaties, statutes, regulations, judgments, etc.

The prudent investor standard requires a trustee to pursue an overall investment strategy to enable the trustee to make appropriate present and future distributions to or for the benefit of the beneficiaries under the governing instrument, in accordance with risk and return objectives reasonably suited to the entire portfolio. In addition, the trustee is required to consider, to the extent relevant to the decision or action, the size of the portfolio, the nature of the fiduciary relationship, the liquidity and distribution requirements of the governing instrument, general economic conditions, the possible effect of inflation or deflation, the expected tax consequences of investment decisions or strategies and of distributions of income and principal, the role that each investment or course of action plays within the overall portfolio, the expected total return of the portfolio (including both income and appreciation of capital), and the needs of beneficiaries (to the extent reasonably known to the trustee) for present and future distributions authorized or required by the governing instrument. The prudent investor standard will allow the investment of trust funds in a wider variety of securities than now authorized under currently applicable law and regulation in order to make these funds more productive for current and future beneficiaries. It will not impact the accepted traditional use of the land except to ensure that it is preserved for future generations. However, the standard will allow the investment of trust funds in higher yielding securities appropriate for the investment of funds held in trust including investment in Tribal infrastructure and development activities subject to prudential rules.

In addition to withdrawal of trust funds under 25 CFR 1200, the Tribes will have the right to participate with the trustee in developing an investment plan for their accounts. One of the responsibilities of the trustee will be to work with the beneficiaries to ascertain their needs and determine how reasonably to accommodate them, if possible. Of course, if the liability remains with the trustee so does the final decision. However, some flexibility can be legislated to consider an investment prudent when developed under certain procedures and safeguards. For example, venture

capital investments are generally considered speculative not prudent. Nevertheless, a Tribe may determine that it can afford to risk a certain portion of its funds in a venture capital fund to promote economic development. If the trustee concurs after considering all aspects of the proposal in relationship to the Tribe's total portfolio then this would be deemed a prudent investment.

While it is important to adopt new laws, regulations, rules, policies and procedures to modernize and upgrade the trust functions and services, it is equally necessary to review existing materials and practices to eliminate, amend or revise them to conform to present day trust practices. Many of the laws dealing with the trustee's responsibilities were passed a hundred or more years ago when communications were more difficult and support services less available. In present time perhaps the trustee should not be the entity to determine whether someone is an alcoholic and if so whether to withhold disbursement of funds due that individual. There are other practices and procedures that on their face appear to be offensive and unnecessary. In any case a general review of all existing laws, regulations, rules, policies and procedures will be undertaken to conform them to modern practice. This will apply not only to the Department of the Interior, but to other departments and agencies as well. An important goal of such a review will be to identify conflicts within the government that may adversely impact the trustee's fiduciary responsibility to the beneficiaries. For example, the Treasury Department has certain interpretations of laws concerning payment of interest that impact the trust funds deposits.

Other important legal issues include probate, fractionated interest and self-governance all of which affect the trust management reform efforts to a greater or lesser extent. Many of these matters are currently under study with changes being suggested.

Finally, it should be clearly understood that the updating of the legal parameters within which trust management is performed should not be a condition for the upgrading of the financial systems. The latter is critical and will be overdue no matter when it is completed. Many of the legal and policy reforms are underway or in the planning stage. Many of these reforms will require extensive consultation and outside input. Others may require only policy guidance. In a worst case basis, if no legal reforms occur, the trust function can be adequately performed if the systems are fixed, but if all the legal and policy reforms are implemented and the systems are not fixed the situation will be worse than it is now.

1. Investment of Tribal Funds Held in Trust

Section 201 of the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4021) authorizes the Secretary of the Interior to allow "Tribes an opportunity to manage tribal funds currently held in trust by the United States" in order to give Tribal governments greater control over the management of such funds or to demonstrate how the principles of self determination can work with respect to such trust funds, in a manner consistent with the trust responsibilities of the United States. At present 25 U.S.C. 161 a limits the investment of Indian Tribal funds held by the Secretary in trust to "public debt securities with maturities suitable to the needs of the funds involved." The statute restricts the type of investments that may be used and vests the selection of those investments exclusively in the hands of the Secretary. In order to accomplish the objectives of the Reform Act it will be necessary to amend 25 U.S.C. 161 a. The statute should be amended to allow the trustee to invest and reinvest funds held in trust by the United States for Indian Tribes in accordance with the prudent investor standard in any security or securities of any kind with the objective of producing a reasonable and regular return for the account consistent with the continuing needs of the beneficiaries. The trustee shall make such investments in consultation with the Indian Tribe for which the

investments are made provided the Tribe wishes to be consulted. Notwithstanding anything to the contrary, an Indian Tribe will continue to be able to withdraw some or all funds held in trust for such Tribe by the United States.

A new section of the statutes should be added which sets out the prudent investor standard applicable to the investment and management of property held in trust by the Government of the United States for both American Indians and or American Indian Tribes. That legislative language should read as follows:

PRUDENT INVESTOR ACT

(a) Prudent investor rule, purpose.

The Government of the United States, as trustee, has the duty to invest and manage property held by it in a fiduciary capacity for American Indians and American Indian Tribes in accordance with the prudent investor standard defined by this section, except as otherwise provided by the express terms and provisions of a governing instrument. This section shall apply to any investment made or held on or after January first, nineteen hundred _____ by the trustee.

(b) Prudent investor standard.

(1) The prudent investor rule requires a standard of conduct, not outcome or performance.

Compliance with the prudent investor rule is determined in light of facts and circumstances prevailing at the time of the decision or action of the trustee. The trustee is not liable to a beneficiary to the extent that the trustee acted in substantial compliance with the prudent investor standard or in reasonable reliance on the express terms and provisions of the governing instrument.

(2) Trustee shall exercise reasonable care, skill and caution to make and implement investment and management decisions as a prudent investor would for the entire portfolio, taking into account the purposes and terms and provisions of the governing instrument.

(3) The prudent investor standard requires the trustee:

(A) to pursue an overall investment strategy to enable the trustee to make appropriate present and future distributions to or for the benefit of the beneficiaries under the governing instrument, in accordance with risk and return objectives reasonably suited to the entire portfolio;

(B) to consider, to the extent relevant to the decision or action, the size of the portfolio, the nature of the fiduciary relationship, the liquidity and distribution requirements of the governing instrument, general economic conditions, the possible effect of inflation or deflation, the expected tax consequences of investment decisions or strategies and of distributions of income and principal, the role that each investment or course of action plays within the overall portfolio, the expected total return of the portfolio (including both income and appreciation of capital), the cultural, religious, historic or environmental impact on Indian land and the needs of beneficiaries (to the extent reasonably known to the trustee) for present and future distributions authorized or required by the governing instrument;

(C) to diversify assets unless the trustee reasonably determines that it is in the interests of the beneficiaries not to diversify, taking into account the purposes and terms and provisions of the governing instrument; and

(D) within a reasonable time after the creation of the fiduciary relationship, to determine whether to retain or dispose of initial financial assets.

(4) The prudent investor standard authorizes the trustee:

(A) to invest in any type of investment consistent with the requirements of this paragraph, since no particular investment is inherently prudent or imprudent for purposes of the prudent investor standard;

(B) to consider related trusts, the income and resources of beneficiaries to the extent reasonably

known to the trustee, and also an asset's special relationship or value to some or all of the beneficiaries including cultural, religious, historic, environmental and similar concerns, if consistent with the trustee's duty of impartiality;

(C) to delegate investment and management functions if consistent with the duty to exercise skill, including special investment skills; and

(D) to incur costs only to the extent they are appropriate and reasonable in relation to the purposes of the governing instrument, the assets held by the trustee and the skills of the trustee.

(5) Special investment skills.

The exercise of skill contemplated by the prudent investor standard shall require the trustee to exercise such diligence in investing and managing assets as would customarily be exercised by prudent investors of discretion and intelligence having special investment skills.

(c) Delegation of investment or management functions.

(1) Delegation of an investment or management function requires the trustee to exercise care, skill and caution in:

(A) selecting a delegee suitable to exercise the delegated function, taking into account the nature and value of the assets subject to such delegation and the expertise of the delegee;

(B) establishing the scope and terms of the delegation consistent with the purposes of the governing instrument;

(C) periodically reviewing the delegee's exercise of the delegated function and compliance with the scope and terms of the delegation; and

(D) controlling the overall cost by reason of the delegation.

(2) The delegee has a duty to the trustee and to the trust to comply with the scope and terms of the delegation and to exercise the delegated function with reasonable care, skill and caution. An attempted exoneration of the delegee from liability for failure to meet such duty is contrary to public policy and void.

(3) By accepting the delegation of a trustee's function from the trustee, the delegee submits to the jurisdiction of the Federal district courts, and or any alternative dispute resolution procedure adopted by the trustee by regulation, even if a delegation agreement provides otherwise, and the delegee may be made a party to any proceeding in such courts that places in issue the decisions or actions of the delegee.

(d) Investment in securities of related investment companies.

The trustee may invest in securities of the United States Government or its agencies.

(e) As used in this section:

(1) the term "trustee" is the United States Government;

(2) the term "trust" includes any fiduciary entity with property owned by a trustee as defined in this section;

(3) the term "governing instrument" includes a court order, treaties, statutes, awards, regulations, executive orders and similar documents;

(4) the term "portfolio" includes all property of every kind and character held by a trustee as defined in this section.

Authorizing the trustee to invest Indian trust funds in securities in addition to "public debt securities" more effectively supports the trustee's fiduciary duty to serve the best interests of the beneficiaries, allow the Tribes to participate in the management of their funds held in trust in a practical and purposeful way and need not expose the trust funds to unacceptable investment risk. It is a settled principle of trusts that the trustee is under a duty to the beneficiaries to use reasonable care and skill to

make the trust property productive (See the Restatement, section 181). In making investments, however, a loss is always possible, since in any investment there is always some risk of loss even with "public debt securities." The question of the amount of risk is a question of degree.

Under accepted and established principles of trust law, it is not the duty of the trustee, either individual or corporate to invest only in the very safest and most conservative securities available. Such investments may not be in the best interests of the beneficiaries. Assuming, for example, United States government bonds are the safest and most conservative securities available but that income yield thereon is lower than other securities, it is not necessarily the duty of the trustee to invest the whole trust property, or even any part of it in such bonds. The reason for this is that by the use of care, skill and caution, an investment can ordinarily be made which will yield a higher income and as to which there is no reason to anticipate a loss of principal (See the Restatement section 227).

These theories have been tested in the market place and produced highly successful results. For example, as set out in its Annual Report for 1996, Washington Mutual Investors Fund, managed by The American Funds Group, has performed well over the forty three years since it was founded in 1952 by selecting investments suitable for trust funds. Its investment concept evolved from the experiences learned during the Depression years of the 1930's, when individuals and institutions turned away from speculative excess to re-embrace sound investment principals based on prudence, diligence and value. In 1937, the United States District Court for the District of Columbia established a "Legal List" of bonds suitable for trust funds. This List was composed of high quality issues selected by the use of a strict investment criteria which became known as "Rule 23". The court modified Rule 23 in 1947 to permit investment in an expanded Legal List which included high-grade common stocks.

With few exceptions, the investment standards established by the U.S. District Court serve as the basis for the Fund's investment choices. Some of those standards are:

- A security must be listed on the New York Stock Exchange, or be eligible and have applied for listing.
- Except for banks, a company must have:
 1. fully earned its dividends in at least four of the past five years.
 2. paid a dividend in at least nine of the past ten years.
- The ratio of current assets to current liabilities for most industrial companies must be at least 1.5 to 1, or their bonds must be rated no lower than A- or A3.
- Banks, insurance companies and other financial institutions must have capital funds of at least \$100 million.
- Banks and savings and loans must have paid a dividend in four of the past five years and
- Companies must not derive the majority of their revenues from tobacco or alcohol products.

The Fund is committed to have at least 95% of its assets invested in equity securities that meet its Eligible List criteria. Not all such securities are purchased. It is reported that there are approximately 5,300,000 companies and partnerships in the U.S.; 13,000 of these are publicly held; 2,500 are listed on the New York Stock Exchange; 290 meet the standards of the Eligible List and 133 of these were held in the portfolio in 1996.

As of April 30, 1996, the Fund's net asset value was over \$20 billion. It is reported it has out paced the Standard and Poors 500 composite Index in 32 of 34 rolling ten year periods over the past 43 fiscal years on a reinvested basis, generated positive returns in 37 of the past 43 full fiscal years, including 19 of the past 20 and held up better than S & P 500 in every stock market decline of 15% or

more since the Fund was established. In contrast, over the past several years public debt securities have made a return of six to eight percent a year, far under performing other trust appropriate investments.

The market risk of expanding the trustee's investment authority for Tribal funds can therefore, be characterized as negligible, if such authority is executed in a professional and competent manner.

2. Investment of Tribal Funds and Funds Held for Individuals in Trust.

The trustee should be authorized to invest all or a portion of Tribal funds or funds held for individuals with other Indian funds held in trust, when it is in the best interest of the beneficiary for which the funds are held in trust, in a common trust fund or funds maintained by the trustee exclusively for the collective investment and re-investment of Indian monies. Each such common trust fund shall be established and maintained in accordance with a written plan which shall be approved by the trustee and each Tribe the funds of which are to be invested in it. The plan shall contain appropriate provisions not inconsistent with the rules and regulations of the Comptroller of the Currency, 12 CFR 9, Fiduciary Powers of National Banks and Collective Investment Funds, as to the manner in which the funds are to be operated, including provisions relating to the investment powers and a general statement of the investment policy and goals of the fund; the allocation of income, profits and losses; the terms and conditions governing the admission or withdrawal of participation in the fund; the auditing of accounts of the trustee with respect to the fund; the basis and method of valuing assets in the fund, setting forth specific criteria for each type of assets; the minimum frequency for valuation of asset of the fund; the period following each valuation date during which the valuation may be made, which period in usual circumstances should not exceed ten business days; the basis upon which the fund may be terminated; and such other matters as may be necessary to define clearly the rights of participants in the fund. Except as otherwise provided at 12 CFR 9.18 (G) (15), fund assets shall be valued at market value unless such value is not readily ascertainable, in which case a fair value determined in good faith by the trustee may be used. A copy of the Plan shall be available at designated offices of the trustee for inspection during all hours the office is open for business, and upon request a copy of the Plan shall be furnished to any person.

3. Other Investments

Generally, the prudent investor rule permits a wide variety of investments in most categories of commercial and infrastructure development enterprises, provided that proper care, skill and caution are exercised by the trustee. In addition, some flexibility can be legislated to consider an investment prudent when developed under certain procedures and safeguards. For example, venture capital investments are generally considered speculative not prudent. Nevertheless, a Tribe may determine that it can afford to risk a certain portion of its funds in a venture capital investments to promote economic development. If the trustee concurs after considering all aspects of the proposal in relationship to the Tribe's total portfolio then this would be deemed a prudent investment.

SUNSET DATE FOR THE OFFICE OF THE SPECIAL TRUSTEE

Sunset Date for the Office of the Special Trustee

The Office of the Special Trustee for American Indians and the Special Trustee for American Indians should be terminated 30 days after the effective date of the transfer of the trust management responsibilities, duties and activities to the AITDA.

The Office of Trust Funds Management and all its staff should be transferred to AITDA on the effective date of transfer just mentioned.

All other staff of the Office of the Special Trustee should be transferred to AITDA on the effective date of transfer just mentioned to assist in and help guide the implementation of the Strategic Plan.

Phase II of the Strategic Plan - American Indian Trust and Development Bank

Phase II Objective: To Form a single organization which will:

- manage the U.S. Government's trust responsibilities to American Indians and American Indian Tribes for trust resource management, trust funds management and land title and records management.
 - Provide for Full Service Lifeline Banking, Trust and Financial Services to Individual American Indians and Indian Tribes and Provide Funding for Economic Development Aimed At Making the Individual American Indian and Indian Tribes economically viable over the next several decades.
-

Phase II Introduction

Phase II of the Strategic Plan will commence with the completion of Phase I--i.e., when the systems, accounting and organizational restructuring and re-engineering required by Phase I are complete. Systems, accounting and organizational changes made during Phase I of the Strategic Plan will be planned, designed and implemented in such a way that they will anticipate and be compatible with Phase II changes, programs and initiatives.

The basic difference between Phases I and II of the Strategic Plan is that full financial services and economic development funding will be provided in Phase II. The recommended organizational structure and delivery system will take the form of a bank and trust company similar to those found in the Farm Credit System.

Phase II General Requirements

Phase II requirements will include all Phase I requirements. Phase II will build on Phase I and will include acquiring, automating, updating, integrating, coordinating and consolidating in ways so as to produce:

- A full service trust system.

This requirement will be met by building a system to provide, directly and indirectly, full trust services to include managed, agency and custodial accounts, cash management accounts, comprehensive accounting and tax statements, discount brokerage, stock transfer, custody, pensions, collective investment funds, fixed income and equity research and advice, mutual funds and insurance sales and other trust services.
- A full service banking and depository system and delivery system.

This requirement will be met by building a system to deliver, directly and indirectly, through multiple offices, full banking and depository services, to include demand and savings accounts, certificates of deposit, overdraft protection, money orders and official checks, escrow services, foreign exchange, capital market sales, discount brokerage, cash management services and other financial services.

A full service asset management, lending and leasing system and delivery system.

his requirement will be met by building a full service asset management, lending and leasing system to deliver, directly and indirectly, through multiple offices, commercial loans and leases, including corporate, small business, middle market and agriculture loans and leases; consumer loans and leases, including credit card, home equity, auto, mobile home, and personal loans and leases; real estate loans and leases including loans secured by single and multiple family housing and commercial real estate; and infrastructure and development loans and leases. Such systems would have origination as well as packaging, sales to the secondary market, servicing, loan participation and correspondent banking services capabilities.

A fractionated realty holdings purchase and sales program.

This requirement will be met by a full service asset management capability and program to purchase, sell, deal in, finance and service fractionated realty holdings.

An investment capability for community development projects.

his requirement will be met by developing an investment capability to provide equity capital, perpetual preferred stock and long term subordinated debt for economic development of the trust lands and the Tribes and individual Indians and their business ventures. Such total investment not to exceed 1% of the Bank's equity capital to any single enterprise or project and 25% of equity capital for the aggregate of all such investments.

A new management and institutional structure to accommodate restructuring & reorganization, to include a new independent bank & trust structure with the following capital requirements:

Equity Capital	\$500 million
Borrowing Capacity	10 times capital
Initial Borrowing from U.S.	\$3 billion, 30 years, 30 year T rate

This new structure which will permit a singular focus on trust management responsibilities to American Indians and Tribes and more independence from the appropriations process; more self-determination; more economic independence; greater funding access to the capital markets; and a management structure and salary and benefit scale similar to the Federal Reserve System, the Federal Home Loan Bank System, the Farm Credit System and the Federal financial regulators.

A headquarters building adjacent to national archives and records center.

The restructuring and reorganization will require a new headquarters building adjacent to the national archives and records center to accommodate the expanded products and services and the centralization of

many of the systems.

Systems and technology enhancements to facilitate Phase II restructuring and reorganization.

This will require building further integrated systems and technology enhancements to facilitate the Phase II requirements.

Phase II Specific Requirements

AMERICAN INDIAN TRUST AND DEVELOPMENT ADMINISTRATION TRUST DEVELOPMENT BANK (AITDA & TDBANK)

PURPOSE AND OVERVIEW

The strategic plan's primary objective is to form a single organization which will:

Manage the U.S. Government's trust responsibilities to American Indians and American Indian tribes for trust resource management, trust funds management and land title and records management.

Provide for Full Service Lifeline Banking, Trust and Financial Services to Individual American Indians and Indian Tribes and Provide Funding for Economic Development Aimed At Making the Individual American Indian and Indian Tribes economically viable over the next several decades.

The AITDA will be an independent GSE similar to the Farm Credit Administration with a Chairman and a Board of Directors appointed by the President and subject to Senate confirmation. The Board is structured in such a way so as to draw majority representation from American Indian trust beneficiaries, including both Tribal and Individual Indian Money account holders. The Chairman and one other Board member will be people who have practical experience in fiduciary trust fund, investment and financial management. The Board of Directors and Chairman of AITDA will devote full time to the job and will also serve as Board members and the Chairman of TDBank, which will be the development operating arm of the American Indian Trust & Development Administration.

While AITDA and TDBank will assume and manage the U.S. Government's primary trust responsibilities to American Indians and American Indian Tribes in the important areas of trust resource management, trust funds management and trust land and ownership records management, there will be no diminishment of the Federal trust responsibility to American Indian beneficiaries. Essentially, the United States will retain its full trust responsibility but simply transfer administration from the Department of the Interior to AITDA and TDBank for the trust management activities. AITDA and TDBank will still be backed by the full faith and credit of the United States. In addition, the singular focus on trust management activities, independent and dependable funding and a skilled Board of Directors and management team should ensure that the U.S. Government will be able to improve its ability to fulfill its trust responsibilities to American Indian beneficiaries. The United States would remain liable for any breach of trust by AITDA and TDBank. With initial capital of \$500 million and with the

U.S. Government's agreement to maintain minimum capital of \$500 million for TDBank, sufficient funds will be available to cover any operating losses or to pay claims for future possible breaches of trust.

TDBank will be a nationwide financial institution that lends to, invests in and provides financial services for American Indians and American Indian Tribes and their communities on prudential underwriting standards. These activities will provide the American Indian communities with a dependable source of credit and investment for economic development purposes and will provide a more stable and dependable structure for fulfilling part of the U.S. Government's responsibilities to individual American Indians and American Indian Tribes.

AITDA and TDBank will be created and extensively governed by Federal statute and will be a GSE of the Federal Government intended to carry out and further governmental policy concerning the Federal Government's trust obligations and responsibilities to American Indians and American Indian Tribes for trust management activities and the economic development of American Indians and their communities.

The TDBank will facilitate and implement efforts and initiatives to make individual American Indians and American Indian Tribes economically more viable and independent under established principles of self-determination and self-governance. TDBank will also provide at no cost or at a subsidized cost, lifeline financial services which are not being provided or cannot be provided by the private sector at an affordable cost to individual American Indians or American Indian Tribes.

TDBank will be a for-profit financial institution and will generally be required to cover its operating expenses from trust, lending, leasing and investment revenues. The Bank will therefore not generally be eligible for authorized and appropriated funds from the U.S. Government, except that the cost of lifeline financial services and the cost of certain other specified programs authorized by Congress will be reimbursed in whole or in part from authorized and appropriated funds.

BENEFITS TO AMERICAN INDIANS AND AMERICAN INDIAN TRIBES

TDBank will be a nationwide financial institution focused solely on providing a dependable source of:

- Lending to American Indians and Tribes and their communities, including access to commercial, real estate and consumer loans for all purposes.

- Investing in American Indian Enterprises for economic development purposes.

- Lifeline financial services to American Indians and Tribes.

The Bank's lending, investment and lifeline financial services will be provided consistent with principles of self-determination, self-governance and economic viability and independence.

TDBANK GENERAL STRUCTURE AND RELATIONSHIP TO THE FEDERAL GOVERNMENT

TDBANK will:

- be an instrumentality of the Federal Government and will be backed by the full faith and credit of the United States.

be governed by a Chairman and Board of Directors appointed by the President and confirmed by the Senate.

have appropriate oversight from the Congress on an ongoing basis.

be examined by an existing (OCC is proposed) or new agency of the Federal Government.

have a corporate structure patterned after banks belonging to the Farm Credit System.

not be commonly owned or controlled. Instead, the Bank will be cooperatively owned by the American Indian Tribes.

have a budget that will be subject to the Federal Government's authorization and oversight processes.

But the Bank will be a for-profit financial institution and will generally be required to cover its operating expenses from trust, lending, leasing and investment revenues and other banking activities. The Bank will not generally be eligible for authorized and appropriated funds from the Federal Government except that the cost of lifeline financial services and the cost of other specific programs approved by the Congress may require a subsidy, in whole or in part, from appropriated funds of the Federal Government.

be required to have an annual audit and report from an independent, qualified accounting firm.

be exempt from all Federal and state taxes.

TDBANK CAPITAL STRUCTURE, FUNDING, OWNERSHIP AND DIVIDENDS

TDBank's equity capital and funding will be provided by the Federal Government in the following amounts:

- . \$500 million in equity contributions from appropriated funds, judgment funds, or from funds provided by other Government Sponsored Enterprises such as the Farm Credit Banks or the Federal Home Loan Banks or FNMA and GNMA.
- . \$3 billion in direct, long term loans from the United States for 30 years at the U.S. Treasury interest rate paid on 30 year obligations.
- . Future funding of up to ten times equity capital from the sale of bonds and notes in the nation's capital markets, guaranteed by the full faith and credit of the United States. The initial limit of \$5 billion shall include the \$3 billion loan described under item two.
- . The Federal Government will be required to maintain permanent equity capital equal to 5% of average risk-adjusted assets.

TDBank's initial capital stock will be distributed to Federally recognized American Indian Tribes in proportion to the number of American Indians living on or near reservations as determined by the latest census information or by some other means determined by Congress with input from Indian Country. This permanent capital cannot

be sold, traded or withdrawn. Alternatively, or in combination, other Government Sponsored Enterprises such as the Farm Credit Banks, FNMA, GNMA and the Federal Home Loan Banks might be compelled to provide all or part of the initial investment capital of TDBank. While such funds could not be withdrawn, such investments would draw a dividend along with other shareholders.

Each borrower using TDBank's loan facilities will generally be required to invest in capital stock or participation certificates of the Bank. The statutory minimum amount of capital investment required for borrowers should be two percent of the loan or one thousand dollars, whichever is less. This requirement will not apply to loans or leases to individual American Indians for consumer purposes such as housing, automobile loans and the like. Such payments of dividends and/or distribution of earnings are subject to regulations that establish minimum at-risk capital standards.

TDBANK BOARD OF DIRECTORS AND MANAGEMENT STRUCTURE

TDBank's Board of Directors shall consist of at least five members appointed by the President and confirmed by the Senate.

Three members shall be American Indians appointed by the President after being proposed by Indian Country in some organized way.

Two members, including the Chairman and Chief Executive Officer, shall be people skilled in financial and trust management and may also be American Indians.

TDBank's Board shall be identical with AITDA's Board.

All Board Members of TDBank and AITDA will be appointed for a term of 12 years using a staggered system. Initially, two will be appointed for four years; two will be appointed for eight years; and the Chairman & CEO shall be appointed for 12 years. Vacancies which occur prior to the expiration of the term shall be filled with individuals to fill the remaining term of the particular vacancy.

TDBank's Board shall organize itself through governing committee's to oversee the primary operations of the Bank, including trust resource management; trust funds management; trust land and ownership records management; lending, leasing activities; investment activities; risk management and audit activities; and other banking and trust activities.

All Board members will be full time employees and will be compensated at the same rate paid FDIC Directors or as otherwise determined by Congress.

The Chairman & CEO and other executive management and employees will be qualified bank and trust officers and employees and shall be exempt from Federal Government employment requirements. Compensation and benefits will be determined by the Board of Directors after taking into account general compensation and benefits schedules of the Farm Credit System Banks.

TDBANK DELIVERY NETWORK

TDBANK will deliver financial services through:

50 to 75 branch offices located in or near major American Indian communities.

A commercial grade telecommunications and electronic nation-wide delivery system.

TDBANK'S LENDING, LEASING, INVESTMENT AND FINANCIALLY RELATED SERVICES

The Bank will:

be dedicated and restricted solely to making loans, leases, investment and financial services available to eligible and qualified individual American Indians and American Indian Tribes and their communities in all areas of the nation.

follow prudential, safe and sound lending and investment policies, procedures and practices which will be enforced.

facilitate and implement efforts and initiatives to make individual American Indians and American Indian Tribes economically more viable under principles of self-determination and self-governance.

provide at no cost or at a subsidized cost, lifeline trust, depository, lending and other financial services which are not being provided or cannot be provided by the private sector at an affordable cost. Such lifeline financial services may be provided, indirectly, through private sector financial institutions if it is cost effective to do so.

charge appropriate fees and interest rates for its financial services and products, sufficient to cover funding, operating and administrative expenses and sufficient to produce reasonably profitable operations. These fees and interest rates should generally be lower than those charged by private sector institutions because the Bank will have access to the nation's capital markets for funding at rates commensurate with those paid by the Federal Government and agencies of the Federal Government and because the Bank will be exempt from all Federal and state taxes. Benefits from the lower funding costs and tax free status, in turn, will be passed on to American Indian borrowers in the form of favorable interest rates charged on the Bank's loans.

Lending and Leasing Products:

TDBANK will make long term loans of up to 30 years for economic development of American Indian communities, usually secured by first mortgages on individual properties and Tribal real estate or enterprises. These long term loans will be made for a variety of purposes including: purchasing land, buildings, machinery, equipment and livestock; refinancing existing mortgages and paying other debts; constructing or repairing buildings; improving land; and financing agriculture, industrial or extraction industries. Loans will also be made for the purchase and construction of homes, for real estate needed for aquatic operations, for plants, for processing and marketing facilities, for Tribal government needs and for American Indian related businesses.

The Bank will also make short term loans to consumers, home owners, small businesses, farmers, ranchers,

Tribal governments and American Indian related entities on a secured or unsecured basis; finance eligible utilities, including electrical distribution, generation and transmission, telecommunications, and water and waste disposal systems; and provide equipment and other leasing services to eligible borrowers.

TDBANK INVESTMENT IN COMMUNITY DEVELOPMENT ACTIVITIES

The Bank will be authorized to invest up to 25% (initially, \$125 million) of its permanent capital in eligible individual American Indian and American Indian Tribal business ventures and projects which will aid economic development of their communities. These investments will include common stock, preferred stock and long term subordinated debt investments in:

- . Infrastructure acquisitions and development activities.
 - . Project Financing.
 - . Venture Capital Businesses.
 - . Established Businesses.
-

TDBANK INVESTMENT IN FRACTIONATED REALTY INVESTMENTS

The Bank will be allowed to invest up to \$300 million for the purchase, holding, financing and sale of fractionated realty interests of American Indians on allotment lands. Such purchases and financing will be made on prudential terms at market rates to American Indian individuals and Tribes. Such activities will be regulated by rules set forth in legislation to resolve the fractionated heirship issues. The principal purposes of this program are:

- . The consolidation of existing fractional interests.
 - . The prevention or substantial reduction of further fractionation.
-

TDBANK LIFELINE DEPOSITORY AND OTHER FINANCIAL SERVICES

The Bank will provide a full range of commercial banking services to its American Indian customers. These will include:

- . Lifeline banking and financial products, including statement rendering, accounting, reporting, record keeping, tax planning, cash management, investment, collective investment funds, mutual funds, equity and fixed income funds, property management and others.
- . Lifeline depository, payment and investment services, including demand and savings accounts, certificates of deposit, IRA & Keogh accounts, check and other disbursement vehicles, wire transfer, cash management,

money orders, official checks, discount brokerage, insurance and annuity sales, mutual funds sales and treasury sales and the like.

These financial services are intended to be lifeline in nature. Lifeline financial services are not intended to compete with private sector financial institutions providing those services. Rather, they will be provided by the Bank when such services are not or cannot be provided by the private sector at an affordable cost. The Bank will provide them at no cost or at a subsidized affordable cost in such circumstances. Such lifeline banking services may be provided by the Bank indirectly through private sector financial institutions when it is cost effective to do so.

TDBANK'S FEES AND CHARGES

Generally, TDBank will charge fees for services at rates commensurate with the private sector. While fees will be charged, the American Indian beneficiaries will still benefit by substantially increased access to credit and capital at subsidized rates made possible by the Bank's access to U.S. Government guaranteed funding at low rates and by TDBank's tax-free status.

TDBank's Board of Directors will develop and publish a fee schedule for all financial and trust services provided by the Bank. The following principles will apply:

- . The fees charged will not be more than comparable fees charged by private sector banks and trust companies for similar financial and trust services.
 - . Fees will not be charged for lifeline financial services except at an affordable cost.
 - . Affordability will be taken into account in the entire fee structure. Small account holders or Tribes unable to afford a full fee would not be charged at all or would be charged a fee commensurate with their ability and capacity to pay
 - . Those Tribes that choose to continue to receive the level of services they now get from OTFM (i.e., investment in government insured instruments) will not be charged a fee for a period of five years, after which the general fee schedule will apply.
 - . Tribes could convert their trust funds into an agency account, wherein the Tribe makes investment decisions and the Bank simply carries them out. All Tribes taking this option would be charged a fee except those unable to afford the fee under the principles described above.
 - . The Bank's lending and leasing activities and investments in American Indian enterprises will be based on prudential principles. Appropriate fees will therefore be charged for all such activities.
-

TDBANK'S RELATION

In general, TDBank is not intended to compete with private sector financial institutions which are willing and able to supply comparable financial services at a reasonable cost to American Indians, Indian Tribes and their communities. TDBank is intended to augment, supplement or provide, directly and indirectly, financial services in circumstances where such is not the case.

TDBank's expertise and experience in lending and investing in American Indian enterprises should attract more private sector lending and investing. TDBank will develop programs:

- . To act as a upstream or downstream correspondent bank for private sector bank's wishing to purchase loans from TDBank, sell loans to TDBank or co-lend or co-invest with TDBank.
- . To contract with or out source certain financial services to private banks which may be able to provide lifeline banking services to American Indian beneficiaries at less cost than TDBank. TDBank would pay the full cost or partial cost of such services, which would be provided at no cost or at a low cost to American Indian beneficiaries.
- . To be a banker's bank to Indian owned banks.

TD BANK PROFROMA BALANCE SHEET BANKING OPERATIONS

(\$Millions)

ASSETS		*LIABILITIES	
Cash, Securities and Liquid Assets	\$ 500.00	Demand Deposits	\$ -
		Savings & CDS	\$ -
		Official Checks	\$ -
Loans:	\$ 4,500.00		
Commercial			
Consumer			
Real Estate			
Infrastructure			
Fractionated Realty Holdings:	\$ 300.00	Long term Debt:	\$3,000.00
Loans to Facilitate			
		Note to U.S. Treasury	

	Investment Holdings		30 yrs.; 30 yr. T Rate
Development Investments:	\$ 125.00	Other Debt:	\$ -
	Infrastructure Acquisition & Development		Limited to 10 x Equity Capital
	Project Financing		including long term debt.
	2,000 Venture Capital to New Businesses		
	Capital for Established Businesses		
Other	<u>\$ 75.00</u>	Equity Capital	<u>\$ 500.00</u>
Total Assets	\$ 5,500.00	Total Liabilities and Capital	\$5,500.00

* All deposits and liabilities guaranteed by the United States

TD BANK SUMMARY OF FINANCIAL SERVICES

LOANS AND LEASES:

Commercial:	Corporate	Small Business	Agriculture
Consumer:	Credit Card	Home Equity	Auto
	Mobile Home	Personal	

Real Estate:	Single Family Acquisition	Multiple Family Development	Commercial Construction
Infrastructure:	Acquisition	Development	Project Financing

FRACTIONATED REALTY HOLDINGS:

Purchases	Sales	Investments	Loans to Facilitate:
		Individual & Tribal	

DEVELOPMENT INVESTMENTS:

Project Financing	Venture Capital	Capital to Existing	Infrastructure
	New Businesses	Businesses	Acquisition & Development

DEPOSITORY SERVICES:

Demand Deposits	Savings Deposits	Other Deposits	Certificates of Deposit
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OTHER SERVICES:

ATM Access	Cash Management	Accounting	Statements & Reporting
Payments	Disbursements	Wire Transfer	Money Orders
Official Checks	Overdraft	Discount	Mutual Funds
	Protection	Brokerage	& Insurance Sales

**U.S. DEPARTMENT OF THE INTERIOR BUREAU OF INDIAN AFFAIRS
 TRIBAL, INDIVIDUAL INDIAN MONIES AND OTHER SPECIAL APPROPRIATION FUNDS
 MANAGED BY THE OFFICE OF TRUST FUNDS MANAGEMENT**

SUPPLEMENTARY COMBINING STATEMENT OF ASSETS AND TRUSTS FUND BALANCES
 SEPTEMBER 30, 1995

	Tribal Trust	Individual Indian Monies	Other Special Appropriation Funds	Combined Total
ASSETS				
Non-Entity assets:				
Intra governmental assets:				
Fund balances with Treasury:				
Cash	\$ 6,054,917.00	\$ 3,929,010.00	\$ 130,437.00	\$ 10,114,364.00
Investments	\$ 169,860,842.00	\$ 3,906,061.00	\$ 20,794,067.00	\$ 194,561,000.00
Overnight investment	\$1,464,284,398.00	\$363,873,825.00	\$262,201,350.00	\$2,090,359,573.00
Government backed securities	\$ 18,098,231.00	\$ 4,341,646.00	\$ 3,816,339.00	\$ 26,256,216.00
Accrued interest receivable				

**Governmental
assets:**

Investments

Certificates of deposit	\$ 35,237,962.00	\$ 5,892.00	\$ 27,803,390.00	\$ 63,047,244.00
Equity securities	\$ 15,740,200.00	\$ 20,000,000.00	\$ -	\$ 35,740,200.00
Mortgage backed securities	\$ 139,984,032.00	\$ 106,473,975.00	\$ -	\$ 246,458,007.00
Accrued interest receivable	\$ 2,606,475.00	\$ 859,412.00	\$ 1,251,129.00	\$ 4,717,016.00
Accrued dividends receivable	\$ 97,500.00	\$ 100,000.00	\$ -	\$ 197,500.00

**Total
Assets** **\$1,851,964,587.00** **\$503,489,821.00** **\$315,996,712.00** **\$2,671,451,120.00**

ADDENDUM ONE: CONDITION OF THE U.S. GOVERNMENT'S TRUST MANAGEMENT SYSTEMS

--SPECIAL TRUSTEE'S ASSESSMENT

Special Trustee's Condition Assessment

After a year long review of the U.S. Government's trust management systems, the Special Trustee has concluded that the undeniably poor quality of the trust management systems and the condition of the historical records effectively preclude the Federal Government from providing an accurate and timely accounting to American Indian trust beneficiaries and prevents the trustee from discharging its fiduciary duty to the beneficiaries in a legally acceptable manner. This can be demonstrated quantitatively:

1. The Reconciliation Project in January 1996 disclosed \$2.4 billion (32,319 transactions) for which source documentation could not be located. The point here is that these records should not be missing and would not be missing had the Federal Government followed conventional trust record keeping practices. Of particular concern is about \$575 million in unreconciled disbursements. Another concern is some \$4.1 billion of "reconciled" disbursements which did not have complete disbursement voucher packages. Notably over \$2 billion in large disbursement vouchers to Tribes in care of third parties did not have both tribal and other governmental signed authorization.
2. The Reconciliation Project also confirmed what the GAO calls the lack of a known universe of transactions and leases. This stems from the Federal Government's lack of an ability accurately to trace a collection to a source lease or contract. This, in turn, results from the lack of a consolidated accounts receivable (billing) system and master lease system.
3. At the end of 1994 there was about a two year backlog in bringing key land ownership and records up to date. It was estimated to take 104 staff years to eliminate the back-log, but rather than address the backlog the BIA reduced its Realty staff by 29% (126 staff to 90 staff) during 1995 and 1996, continuing the backlog. Because of staff and budget cuts in the last two years, the probate backlog is up to four years in certain areas.
4. There are 45,624 IIM accounts with \$27.7 million for individuals with no address or an incorrect address.
5. There are 27,519 IIM accounts with \$21.7 million held for individuals who were formerly minors. The vast majority of these monies should have been disbursed when the age of majority was reached.
6. There are \$42.2 million in Overdraft Interest Clearing Accounts resulting from interest mis-postings prior to 1993. These are non-earning assets which annually deprive current IIM account holders of over \$2 million.
7. There are general ledger differences of over \$28 million which should be cleared.
8. Continued maintenance of over 153,000 accounts (55% of total accounts) with balances less than \$10 is required at a significant operating cost.

9. There are 128,393 missing social security numbers for account holders with over \$175 million in their accounts.

10. Even with knowledge of the records management, storage and retrieval problems disclosed by the Reconciliation Project, the U.S. Government has taken no meaningful steps to improve records management, storage and retrieval. Worse, disaster recovery programs which backed up trust records processing were canceled in 1996, apparently due to lack of funding.

These conditions are unacceptable by any reasonable standards and continue to do significant harm and damage to American Indian trust beneficiaries. They are caused by inherent defects in the core trust management systems the government uses to manage the Indian lands and monies. These defective systems prevent the government from meeting the fiduciary, accounting and reporting standards required by the American Indian Trust Fund Management Reform Act of 1994 and standards of ordinary prudence applicable to all trustees, public or private.

The Special Trustee's Conceptual Strategic Plan addresses these issues and identifies several initiatives designed to rectify the problems and bring trust accounting and management systems up to commercial standards within three years. What is needed first is a complete overhaul of the four basic trust management systems. We must acquire a new:

1. trust asset and accounting management system.
2. accounts receivable data and billing system that uses lease-contract and land and ownership information.
3. trust, depository, payments and delivery system for IIM accounts.
4. land records and title recordation and certification system.
5. legislated solution to the problems caused by the fractionation of American Indian allo

Along with the overhaul of these core systems must come improvements to the general ledger system, record keeping and archiving, risk management, the technology center, disaster recovery and back-up assurance and organizational structure. Probate and appraisal backlogs must be eliminated and all trust records must be cleaned up prior to conversion. Finally, a significant investment must be made in the acquisition, retention and training of highly qualified trust management personnel.

In summary, the problems in the trust management systems are longstanding ones. Mismanagement and neglect have allowed the trust management systems, record keeping systems and risk management systems to deteriorate over a twenty to thirty year period and become obsolete and ineffective. For many of those years, including many years since 1990, the trust programs were seriously understaffed and underfunded. The result was that the government increasingly was unable to keep pace with the rapid changes and improvements in technology, trust systems and prudential best practices taking place in the private sector trust industry. This gap continues today and will continue to increase until the reforms outlined in the strategic plan are funded and implemented. That is why they should be funded and implemented, immediately, regardless of if and when the Comprehensive Strategic Plan called for in the Reform Act of 1994 is approved. Each day the trust management systems remain status quo, the Federal Government's exposure to claims of mismanagement and liability will continue

to grow and is another day the Federal Government cannot meet its trust responsibilities to the American Indians.

Specific Problems In Need of Reform

The fundamental problem is that the U.S. Government, using present systems, was, is and will continue to be unable to furnish beneficiary American Indian Tribes and individual Indians with an accurate and full accounting of trust funds. The difficulty lies with the historical and current:

1. lack of an effective trust asset, leasing and resource system which can be audited to determine that trust assets are being managed prudently and consistently in the best interest of the beneficiaries. The system is deprived of standardized and integrated asset management, credit and operating policies, procedures and practices. The system should be able to tie to and track from land and ownership records but such is not always the case.
2. lack of master lease system and a consolidated accounts receivable (billing) system which precludes appropriate documentation of lease management terms and conditions and an audit and comparison of general ledger entries to the amounts due under the lease contracts. The system in use does not accurately use lease-contract and ownership information for trust income verification, reconciliation, billing, payments, collection, accounting, disbursement, audit, asset quality review and compliance purposes.
3. lack of an effective IIM accounting system for collections, deposits and disbursements which leads to uncertainty over whether the right beneficiary was credited with the correct amount. The system in use is incapable of accurate and timely accounting and reporting and is not compatible with more efficient private sector systems capable of providing such financial services and new and improved financial services to American Indians as well.
4. lack of an effective land records and ownership system which prevents timely credit of income to the appropriate individual Indian or tribal account and precludes audits to determine whether the trust assets are fully utilized and receiving the highest rate of return consistent with trust and prudential standards. The current system is not accurate and system break-downs seem to be more the rule, rather than the exception.
5. lack of an adequate archives and record keeping system which has resulted in a massive loss of lease and contract records and the consequent inability to do acceptable audits and reconciliations. The technology services center is not a dedicated unit to trust management activities. Appropriate disaster/recovery and back-up assurance is lacking.
6. lack of an effective risk management system which prevents prudential audits, compliance reviews and quality ratings and appraisals.
7. lack of an organizational structure organized by function and dedicated exclusively to trust management.
8. lack of a permanent solution to the fractionation of American Indian allotment ownership.

At the core of many of the accounting and reconciliation problems is the lack of source documentation to support the general ledger entries. There is not a complete way to estimate the number of missing

documents, leases and contracts, but the BASIC RECONCILIATION effort disclosed the types of problems which prevent a full accounting:

1. There were 32,319 unreconciled transactions which totaled \$2.4 billion and which represented cash receipts, disbursement and internal transfer transactions posted to tribal accounts for which the supporting financial source documents were not located:

Unlocated Receipts:	\$1.1 billion
Unlocated Disbursements:	\$.8 billion
Unlocated Transfers:	\$.5 billion
Total	\$2.4 billion

2. Some offices of the Bureau of Indian Affairs have in the past sent trust and land leases and records to a federal records center where they are retained under federal records retention rules rather than under trust rules. The result was that many records were destroyed which should not have been destroyed. Some offices of the BIA followed federal retention rules for trust leases and contracts, which normally required retention of less than ten years after the leases or contracts expire. Thus, some records were destroyed which should not have been destroyed.
3. Some documents are missing for other reasons. For example, in one sampling, ten years of timber contracts were found to have been destroyed. Generally, the "Fill the Gap" part of the Reconciliation Effort was significantly curtailed because large numbers of leases and contracts could not be located.
4. There is not a complete system of redundant record keeping. Thus, no effective back-up exists if a record is destroyed or cannot be located for some other reason.

There are numerous problems and issues concerning IIM accounting which have been researched, reported on, and discussed in several internal and external reports. Some of these accounting and systems problems for the 387,631 IIM accounts with balances of approximately \$450 million have resulted in the following:

1. 12 different non-integrated databases to manage. File structures are obsolete. Data records are outdated and/or inaccurate. Automated systems applications and routines are not consistent and various versions of similar applications are used.
2. 16,828 duplicate accounts. These accounts should be researched and closed under an appropriate set of policies and procedures.
3. 45,624 accounts with \$27.7 million for individuals with no address or an incorrect address. Policies and procedures must be established on the steps to follow to locate missing persons and what to do if a person cannot be located. These accounts should be researched and placed in dormant status under appropriate policies and procedures if owners cannot be located within a reasonable period of time.
4. The Office of Trust Funds Management is responsible for accounting for monies held in trust for a minor judgment recipient until he/she reaches 18. There are 58,788 such accounts with \$143,617,096 in aggregate balances. But 27,519 accounts and \$21,735,681 are for individuals over 18 and one of the over 18 accounts contains \$490,121. These accounts should be

researched and resolved under an appropriate set of policies and procedures.

5. Special Deposit Accounts aggregating \$141,723,524 in 28,202 accounts are supposed to be a temporary repository for money until the ownership of the funds can be determined. Yet there are 6,119 accounts with \$2,273,074 which have had no activity in the last 18 months. These accounts should be researched and resolved as well under appropriate policies and procedures.
6. The database contains 21,572 accounts with \$37,543,163 for deceased individuals. There are 2,242 of these accounts which are coded as being closed estates. However, because of the probate backlog, there are \$787,625 which have not been distributed to heirs. This problem should be addressed by bringing the backlog current.
7. There are 270 accounts for individuals in the database which have overdrafts in the amount of \$314,042. No overdrafts are authorized. Overdraft prohibitions should be enforced.
8. As of September 30, 1996:
 1. 14,476 IIM Accounts had a balance of \$0 with no activity for 13 months and not coded for deletion.
 2. 14,906 IIM accounts had a balance between \$0 and \$1 with no activity for 13 months.
 3. 28,114 IIM accounts had no activity for 18 months and not coded for deletion.
 4. 128,393 IIM accounts had no Social Security Number or Taxpayer ID.

These accounts are expensive to administer and maintain. Policy and legal changes are required to eliminate them, escheat them or otherwise reduce them to levels that can be administered more efficiently and effectively.

9. Ownership of the land and its associated assets is critical to trust asset management and resulting trust income processes. The BIA systems and processes are currently not capable of establishing up-to-date and accurate land title records that are necessary for the lease management processes. In addition, significant backlogs in updating systems for land records revisions, additions and deletions exist. The time lags associated with probate (two-three year average) exacerbate the problem as well. Even if the records were up-to-date, the Bureau's current Land Records Information System (LRIS) does not interface with its Lease Management systems. Databases are separate even though they are inter-dependent and they contain redundant and conflicting information. There are also many instances reported that LRIS was often not available for trust asset management (e.g., leasing), due to hardware or communications problems.
10. Record retention and filing procedures at certain locations throughout the Bureau and for certain periods are not sufficient to document certain activities and account balances.
11. There is not an effective accounts receivable system in place to assure that all income due is collected and to assess late fees and interest when due. Field collections are not adequately controlled or deposited timely. Unwarranted delays exist between the receipt of money at Minerals Management Service and final distribution to the owners.
12. Poor internal controls and inconsistent policies and practices exist. The various audit reports that have been conducted on IIM related systems and activities have identified many cases of

inconsistent application of policies and procedures. Inconsistency prevents the accumulation and analysis of information within the BIA, making it difficult for the BIA to provide oversight and management, make management decisions, demonstrate accountability and develop confidence and credibility in the trust asset and trust funds management processes. Poor internal controls and inconsistent practices account for over 50% of the thirty consolidated problems identified in the IIM Related System Improvement Project Report of August 1995. According to that Report, this category of problems "pervades every function reviewed". Moreover the Report notes: "The Bureau has developed procedures and policies for a number of the problems and often, guidelines are in place. However, they are either unknown to the staff performing the function, not being followed, or not comprehensive enough to provide the requisite guidance."

13. Many of the BIA's leasing and other resource management actions result in an amount due from the lessee in payment of the benefit received from the leased resource, e.g., grazing fees. Unfortunately, the BIA's systems and processes do not create or record an amount due and they do not create and account for bills or notices. Except for revenues from minerals leases, the collection and follow-up on this trust asset income rests with the individual realty staff in the field. In some cases, BIA staff have developed P.C. software to perform leasing functions and as a by-product are able to issue bills for amounts due. Others have manual hard copy records that prompt action, but neither of these is generally practiced throughout the Bureau. The result is that it is possible that amounts due are not established, amounts due may be uncollected, or actions against lessees that may be necessary may not be taken. Further, with little opportunity to separate duties at the agency level, adequate internal control over the entire process becomes extremely difficult and costly and is often not possible.
14. The cash account at the U.S. Treasury is not verifiable due in part to inadequate Bureau procedures and also because the U.S. Treasury is not able to provide the Bureau with accurate information regarding cumulative balances.
15. The BIA's organizational alignment causes decision-making and management for IIM and tribal issues to be an intricate and complex coordination process and an ineffective one at times. Responsibilities fall within 16 separate organizations all reporting directly to one entity, which has direct line authority for every other Bureau organization and program. Further, the activities are carried out by over 100 field offices. The BIA's organizational structure prevents in many instances informed and expeditious decisions because of the number of entities involved and the number and complexity of the decisions their activities generate. The structure also results at times in trust management responsibilities of a higher order not receiving the attention and focus they deserve and/or being traded off against other Bureau priorities of a lower order. The BIA offices must expend significant resources to coordinate with managers, supervisors and staff across the Bureau to obtain cooperation. Coordination and cooperation often breaks down. Because the BIA is not organized and managed by function, all too often policies and procedures written for specific trust programs or functions are not universally followed because the staff that perform the activities take their direction from general managers in area or field offices, not the trust program offices.

Impact of Fractionated Ownership of Indian Lands on Trust Management Systems

Another fundamental problem is fractionation of American Indian Allotment interests. The vast majority of accounting, basic record keeping and other operating problems affecting trust resource management, trust funds management and trust land records and ownership management originate

from one source: the ever increasing fractionation of undivided realty interests owned by Individual American Indian Allottees.

Fractionation is a direct result of the Federal Government's policies and laws relating to lands owned by the American Indians dating back to 1887.

As originally envisioned, allotments were to be held in trust by the United States for their Indian owners no more than 25 years, after which the land would be conveyed in fee simple to its Indian owners. Many allottees died without wills during the 25 year trust period, and it also became evident that many allottees continued to need Federal protection. Consequently, Congress enacted limited probate laws and authorized the President to extend the trust period for those individuals who were not competent to manage their lands. The presumption was, however, that at some point in the foreseeable future the lands would be conveyed to their Indian owners free of Federal restrictions. Nevertheless, Congress continued to extend the period of trust protection but did not amend the probate laws. Under the Indian probate laws, as individuals died, their property descended to their heirs as undivided fractional interests in the allotment. As the years passed, fractionation has expanded geometrically to the point where there are hundreds of thousands of tiny fractional interests. These fractional interests have nominal economic value but pose an enormous cost burden estimated to be about \$33 million per year on the Federal Government's trust management activities.

Congress attempted to address the fractionation problem with the passage of the Indian Land Consolidation Act (ILCA) in 1984. The ILCA authorized the buying, selling and trading of fractional interests, but most importantly it provided for the escheat to Tribes of interests of less than two percent. 55,000 of the two percent-or-less fractional interests have escheated since 1984, but the fractionation problem continues to worsen. Moreover, the *Youpee vs. Babbitt* 1997 Supreme Court Decision brings into question the legality of the escheated property since 1994, further complicating an already bad situation. Maintaining the heirship and land records and administering the land is inordinately expensive, and the administration of the records pertaining to the moneys earned by each individual allottee is equally expensive and difficult. In addition, utilization and conveyance of the fractionated property by the numerous owners is difficult because of the need to secure the numerous consents required. Finally, the difficulty in dealing with the fractionated interests often effectively precludes the highest and best use of the land for economic development and the maximization of investment income, thus diminishing its economic value.

The fractionated ownership of Indian lands is taxing the ability of the government to administer and maintain records on Indian lands. These "allotted" or individually-owned trust lands comprise approximately 11 million acres and, in size, exceed that of the States of Massachusetts, Connecticut and Rhode Island, put together. Fractionated heirship also threatens the integrity and viability of the Department's trust management systems. The problem cannot be addressed by the Tribes; it cannot be fully addressed by the Department of the Interior; it requires a federal legislative solution.

The Department of the Interior is charged by statute with maintaining Federal Indian land records on these hundreds of thousands of fractional interests and with probating the estates of every Indian individual who owns a fractional interest in an allotment. In many cases, the fractions are so small that the cost of administering the fractional interests far exceeds both their value plus any income derived therefrom.

Currently, calculation of fractionated lease ownerships may result in a fractional denominator that exceeds 26 digits. Depending upon the amount of lease income to be distributed, it is possible that

trust income may have to be collected for several years before sufficient income is collected to entitle an account holder to even one cent.

Some administrative complications that result from fractionated ownerships include the following:

- Detailed accounting records must be maintained for all transactions regardless of size, sometimes as little as \$0.03 may be distributed among seven account holders, complicating the accounting.
- In most cases, OTFM policy does not permit funds to be disbursed to the account holders until balances reach \$15, thus increasing the number of IIM accounts that require interest posting and other account maintenance activities.
- Funds sometimes remain in special deposit (suspense) accounts for long periods, according to OTFM, pending OTFM's receipt of ownership information from OTR's Land Title and Records program and realty staffs.

Currently, OTR maintains official federal Indian land title and beneficial (lease) ownership information. OTR's Land Title and Records program staff are responsible for determining ownership and encumbrance for each federal Indian tract of land and for certifying for the Federal Government that such ownership and encumbrance is accurate for all legal, title, and evidentiary purposes. However, due to continuing increases in fractionation, inadequate staffing, and inadequate systems, OTR has almost a 2-year (4 years in some areas) backlog in land title and lease ownership determinations and record keeping.

Each time ownership changes, OTR's Land Title and Records program staff must perform time-consuming manual determination and documentation of ownership interests. This is because OTR's LRIS, as designed, is not capable of performing automated chain-of-title calculations and it does not store chain-of-title or calculated ownership information. LRIS system improvements have been delayed for the past two years due to reductions-in-force and budget cuts. In addition, LRIS is not integrated with OTFM's trust fund accounting systems.

Because official ownership information may be significantly out-of-date, OTFM has relied on unofficial ownership data in BIA's Integrated Resources Management System (IRMS). IRMS ownership information is periodically updated by OTR realty staff located in BIA's Agency Offices based on preliminary information that they have developed for use in probate determinations. However, unlike LRIS information, it is not verified or certified. As a result, OTFM cannot ensure that income is distributed to the proper account holder.

Inactive IIM accounts, which are defined as accounts with no transactions for 18 months, also increase the administrative burden for IIM accounts. Accounts may become inactive because they are in suspense status or because probate decisions are pending. As of

September 30, 1996, OTFM reported that there were approximately 60,823 inactive IIM accounts. According to information provided by OTFM, these are generally low balance accounts. Administrative costs associated with inactive accounts include:

- the cost of computer processing time;

- the administrative cost and responsibility of safeguarding the accounts; and
- the cost of preparing, printing, and mailing quarterly account statements.

Legislation is therefore needed which would consolidate the large number of existing fractionated interests and prevent further fractionation. This alone would remove a primary obstacle to the efficient administration of the trust management systems and provide a major catalyst for the timely resolution of most of the operational problems associated with trust management activities, including trust resource and realty management, probate, land titles and ownership records management, IIM accounting, collections, deposits, investments and disbursements, customer service and record keeping for all trust management activities. An added benefit is the annual administrative cost savings estimated at the same \$33 million mentioned above.

Confirming Views of Outside Public Accountants as to Trust Management Problems

The May 17, 1996, Report of Independent Public Accounts on Financial Statements for the Office of Trust Funds Management had the following observations on Trust Management activities, all of which precluded an unqualified audit opinion:

1. Cash and overnight investments are maintained by a related U.S. Governmental Agency (U.S. Treasury) and cannot be independently confirmed.
2. Cash balances reflected in the accompanying financial statement are materially greater than balances reported by the U.S. Treasury.
3. Major inadequacies in the Trust Fund accounting system, controls and records caused them to be unreliable.
4. Various Tribal organizations and classes of Individual Indians for whom the OTFM holds assets in trust do not agree with certain OTFM accountings and balances recorded by the OTFM; and certain of these parties have filed, or are expected to file, claims against the Federal Government. This may result in a potential liability to the Federal Government so large that it is not reasonably estimable.
Because of these matters, it was not practicable for the outside public accountant to extend its auditing procedures to enable them to express an opinion regarding the basis on which cash and trust fund balances are stated. The public accountant went on to observe:
5. In some instances, the OTFM has researched and corrected the balances held in trust for specific Indian Tribe, individuals, and Other Special Appropriation funds. Many individual Tribal and IIM accounts still need to be reconciled and/or resolved through negotiation and settlement before reliance can be placed on the balances reflected in the trust fund accounts.
6. A portion of the Beneficiaries for whom the Bureau holds assets in trust do not receive adequate information to determine whether their account balances reflected in the Bureau's records are proper. A significant number of IIM accounts and balances are held for the benefit of minors and other individuals who have been determined by the Bureau to require assistance in managing their trust account activities and balances. It is the practice of the Bureau to not forward financial data to minors and other IIM account holders with supervised accounts.

Agency Superintendents typically act as custodians for these supervised accounts. In addition, some IIM account holders have not furnished the Bureau their addresses which would allow the Bureau to forward their account statements. Accordingly, certain account holders do not, or are unable to, agree with the balances reflected in their accounts.

7. IIM account holders who have been determined by the Bureau to require assistance in managing their financial affairs have had instances of payments made from their accounts that have not been adequately reviewed and approved in accordance with applicable regulations. At many Bureau locations procedures are inadequate to ensure that such expenditures are made in accordance with applicable regulations.
8. Cash balances converted from the prior general ledger to Omni were approximately \$27 million higher than the balance per the U.S. Treasury. Cash reconciliation procedures only reconcile current activity from Omni to Treasury and do not address the unreconciled beginning balance. The composition of the difference is not known and no reliance has been obtained that either the OTFM balance or the Treasury balance is accurate. This results in an unconfirmed and unreconciled cash balance on OTFM's books.
9. The OMNI trust and investment system does not amortize premiums nor accrete discounts on investment purchases using the effective interest method as required by OMB 94-01, "Other Comprehensive Basis of Accounting." The amortization and accretion calculations must be computed separately and recorded as an adjustment at year end. This results in interim financial reporting which does not reflect the investment portfolios true yield.
10. The Budget Clearing Account with Treasury has a balance of about \$11.7 million, of which only about \$168,000 is reflected on OMNI. This is a shared account with the Division of Accounting Management and it cannot be determined at this time to whom the balances belong.
11. There is a difference between the general ledger summary account of IIM on OMNI and the total of the balances per the IIM subsidiary ledger detail. The difference was approximately \$30 million at September 30, 1995, with the general ledger carrying the higher balance. There are also negative cash balances on the IIM subsidiary system aggregating approximately \$46 million. The effect of the above items is to further substantiate the unreliability of the trust fund balances as reflected by OTFM.
12. A review of questionnaire responses from the Area and Agency Offices indicated that there is no consistency in the application of accounting processes and procedures. There were also inconsistencies reported in duties performed by certain key personnel at the Agency Offices, as well as inadequate segregation of duties. During the period under audit, staff in the Area and Agency Offices were supervised by the Bureau and did not report to the OTFM.
13. The accounting and internal control procedures used by the OTFM have suffered from a variety of system and procedural internal control weaknesses, and other problems, such as under staffed accounting operations at all levels, a lack of experienced accounting supervisors, a lack of minimum standards for key positions in the accounting process, inadequate training programs and inherent limitations in existing computerized accounting systems. In addition, current management is burdened with the ongoing impact of decades of accumulated errors in the accounting records. These factors place significant limitations on management's ability to effectively manage the trust funds entrusted to the OTFM.

14. The Bureau does not have an accounts receivable system in place. Currently, the Bureau has no assurance that all lease revenues are billed and subsequently collected. Such a system will provide reasonable assurance that earned revenues are billed, collected and posted to the appropriate beneficiary's account.

Tribal/Federal IIM Work Group: Confirmation of Problems and Priority of Issues to be Addressed

Over the course of several months during 1996 a combined Tribal/Federal Work Group, consisting of 19 tribal attendees and 12 Bureau of Indian Affairs' attendees, met to address IIM trust management problems and to prioritize categories for resolution. The Group met initially in New Mexico and concluded its work in January 1997 after regional hearings for IIM account holders were held in Tulsa, Phoenix, Portland, Oklahoma City, Bismarck and Albuquerque. After these consultation sessions, the top 5 priority categories were as follows:

Tribal/Federal IIM Work Group Priority Categories January 8, 1997

Tribal/Non-Federal	Federal	Combined
Accounting	Realty	Realty
Realty	Accounting	Accounting
Customer Service/Training	Records Management	Customer Service/Training
Policies & Procedure	Customer Service/Training	Records Management
Records Management	Policies & Procedures	Policies & Procedures

The work of the Tribal/Federal Work Group is another confirmation of the most serious problems and issues affecting trust management activities. The conclusions also demonstrate that any resolution of the trust management problems must start by addressing the realty issues, particularly fractionated ownership problems, accounting problems and records management. After that policies and procedures can be revised and extensive training conducted, ultimately to assure the customer service the American Indian trust beneficiaries deserve and to ensure the U.S. Government is meeting its trust obligations to the American Indians.

Confirming Views of Macro International Inc.

Macro International Inc. Executive Summary

The OST Needs Analysis project was conducted by Macro International Inc. (prime contractor) and its subcontractors, Larson Slade Associates, LLC., and Arrowhead Technologies, Inc. from December 19, 1996 to April 7, 1997.

The primary purpose of the project was to provide the Office of the Special Trustee with an analysis of the various components of the American Indian Trust system (i.e., trust accounting, asset

management and land title and recordation) based on the perspective of the end users in the field (OST employees, BIA employees, Tribes, and others). In addition, the project included specific reporting on the gaps that exist between the current Indian Trust system and trust departments in the commercial sector; the features needed in a new system which meets commercial standards; the training needs and requirements of staff; the key business events used in day-to-day trust business; an inventory of the equipment needs of end users; and, a recommendation on whether existing Government capabilities are adequate to satisfy the needs and requirements of a new trust system.

The project was modified three times to add further reporting elements to its scope, including: a validation of the Conceptual Strategic Plan including cost estimates; an increased analysis of oil and gas assets management; a review of commercially available land title and recordation applications and service bureau support; revisions of the Strategic Plan budget; and the development of roles and responsibilities of a systems integration and overseer for the integration, implementation and sustained management of a new trust management system.

The primary means by which the Macro project team gathered such information was through site visits to 50 Tribal locations, 35 BIA agency offices, 8 BIA area offices, one BIA field office and the OTFM headquarters office in Albuquerque, NM. Approximately 350 confidential interviews were conducted; however, since some of these were recorded as "joint interviews" (two or more people participating in a single interview on a specific subject or function), only 330 official responses were recorded. These responses were entered into a database and compiled into analysis segments with all personal or location identification removed. Additional data was gathered from interviews with OST officials and staff, service bureau providers, project resource firms (Riggs Bank, NationsBank, State Street Bank and Trust), Tribal representatives, and others.

Data analysis consisted of a systematic review of the database responses and a review of information gathered from additional resources, reports, and interviews.

Key Findings and Recommendations

Based on the field interviews and the project team's review and analysis of trust-related data, four major findings were identified and recommendations developed. They include:

Fiduciary Responsibility

The trust fiduciary responsibility to manage trust assets and accurately report on their status to beneficiaries is not being met. The existing trust system does not account for each and every asset under its responsibility and there is no method for gauging the accuracy of information depicting the assets for which they do account. The trust system is unable to provide the individual Indian account holder with a statement of assets and transactions for nonfinancial assets. A major deficiency in the existing system is the lack of accounting and control of the most important trust asset to the beneficiary--the land. In addition, responsibility for the management of trust accounting, asset management and land records rests with two different organizations, the Office of the Special Trustee and the Bureau of Indian Affairs. Without systems capability or, control of the most essential trust asset (land), and without single-point management responsibility, the current trust system cannot be considered operating at a commercial standard.

Recommendations

A single trust organization with management control over both resource and financial assets utilizing standard commercial applications programs to process data for trust asset and financial accounting, for land title and recordation, and for carrying out fiduciary responsibilities and reporting to American Indian Trust account holders.

New and updated policies, practices and procedures for implementation and operation of the new information technologies infrastructure.

Acquisition of a dial-up communications (WAN/LAN) network to link trust locations (regional, field, Tribes, MMS, and BLM) with the single trust organization.

Acquisition and upgrade of workstations with required hardware and software to enable all trust system staff and the 300 Tribal sites direct access to account information through the dial-up network.

Trust Data and Information

Although a new commercial system will have the capability of processing current and historical land information, existing data relating to land ownership and valuation is not in suitable condition or is nonexistent. Land appraisals are out of date and, if they exist at all, are perceived by many owners to be inaccurate. There are major appraisal backlogs in most field locations.

American Indian properties are fractionated as a result of generation after generation of inheriting undivided lands. Some properties are fractionated to the 35th decimal and incomes are essentially zero or not accountable.

The filing, storage and retrieval process of hard copy documents is inefficient. There is an overabundance of documents (which are vulnerable to disaster) and a lack of facilities and trained personnel to safeguard and preserve them.

Recommendations

A reconciliation of historical land titles and the appraisal of Indian lands must be completed before any new system can provide accurate information to account holders regarding this critical trust asset.

Enact legislation to resolve fractionated ownership.

Establish a national archives to image, store and retrieve official and historical documents.

Acquire and/or upgrade hardware and software equipment to enable field offices to image, store and retrieve documents.

Update and complete file jackets, records, and accounts to provide the new commercial trust system with accurate information for processing.

Organizational Staffing, Training & Development

A new commercial trust system will have the capacity to process accounting, asset management and land information; the reconciliation of land titles and the appraisal of Indian lands will provide accurate

land records; a national archives will insure that official documents and historical trust records are maintained; a communications network will enable user access to trust information; and, hardware and software purchases and upgrades will enable the internal and external trust system users to image, store and retrieve documents. However, all of these important tasks will not, by themselves, improve the Indian Trust system unless an effective and efficient staff is able to carry out these tasks.

Field interviews indicated that recent reductions in staff have resulted in current employees being forced to handle tasks for which they have no formal training. On-the-job training is almost solely relied upon to prepare employees for their jobs. This has resulted in deficiencies in quality and timeliness of many work tasks. The concept of fiduciary trust responsibility is not readily apparent at OST and BIA field offices, although OST staff in Albuquerque are exceptions. While the effort of most employees is exemplary, many employees have responded to this difficult situation by either resigning themselves to never getting their jobs done correctly or becoming so achievement-oriented that they are nearing physical and mental exhaustion.

Recommendations

Provide a variety of trust activities training related to improving job functions, improving customer service, understanding trust services, dealing with stress, and handling the transition of the current trust system to a new commercial system.

Implement functional improvement training on an on-going basis.

Conduct training related to the commercial trust transition to coincide with the "rollout" of the new system in the FY 1998-FY 2000 time frame.

Make a commitment to bolster the capability of the field offices by acquiring more staff with trust banking experience to provide needed technical support to fellow employees.

Establish a "help-desk" system from regional and central offices as additional backup and support to current field staff.

Administrative

Two major administrative issues need to be resolved in order to improve the Indian Trust system. They are: resolve the probate backlog; and, resolve the relationship difficulties between OST and BIA field employees.

Probate Process

The probate process takes much too long to complete due to fractionated land ownership, incomplete files and records, under staffing, and too few Office of Hearings and Appeals (OHA) and administrative judges to adjudicate the case load.

Recommendations

Enact legislation to resolve fractionated land ownership.

Increase administrative staff levels to enable probate case information to be compiled in a more timely

manner.

Increase the number of administrative judges thereby increasing the number of probate cases that can be adjudicated annually.

OST/BIA Relationship

The relationship between OST and BIA field employees is strained and in need of immediate clarification. Agreements between these Organizations are required in such areas as staff roles, procedures, authority, and reporting relationships. This situation has resulted in employee frustration in both Organizations and a concern that preferential treatment is being received by one group or the other.

Recommendations

Establish an agreement between the two Organizations to provide much-needed leadership and guidance to OST and BIA employees across the United States.

Establish a single organization with all trust activities under one manager.

See Appendix Two for the complete report of Macro International Inc.

Summary Comment by Special Trustee

Each of the trust management problems identified above and in this Condition Assessment is considered by the Special Trustee to be a material weakness and in need of reform as required by the American Indian Trust Fund Reform Act of 1994. Each is addressed generally and a reform solution is proposed in the general proposals contained in the Strategic Plan. The Appendix contains more specific proposals for each needed reform. Once the Strategic Plan is approved, a specific action plan will be written in the implementation phase to resolve each of the material weaknesses in the trust management systems identified in the Strategic Plan.

ADDENDUM TWO: STRATEGIC PLAN BUDGET AND TIMETABLE

Urgent Need to Fund and Staff Strategic Plan Reforms During Fiscal Years 1998 and 1999

The principal overall objective of Phase I of the Strategic Plan is and will be to address and resolve the root causes of the longstanding trust management problems as quickly as possible. The Special Trustee has concluded as to the trust management systems problems:

These conditions are unacceptable by any reasonable standards and continue to do significant harm and damage to American Indian trust beneficiaries. They are caused by inherent defects in the core trust management systems the government uses to manage the Indian lands and monies. These defective systems prevent the government from meeting the fiduciary, accounting and reporting standards required by the American Indian Trust Management Reform Act of 1994 and standards of ordinary prudence applicable to all trustees, public or private.

Mismanagement and neglect have allowed the trust management systems, record keeping systems and risk management systems to deteriorate over a twenty to thirty year period and become obsolete and ineffective. For many of those years, including many years since 1990, the trust programs were seriously under staffed and under funded. The result was that the government increasingly was unable to keep pace with the rapid changes and improvements in technology, trust systems and prudential best practices taking place in the private sector trust industry. This gap continues today and will continue to increase until the reforms outlined in the Strategic Plan are funded and implemented. That is why they should be funded and implemented, immediately, regardless of if and when the Comprehensive Strategic Plan called for in the Reform Act of 1994 is approved. Each day the trust management systems remain status quo, the Federal Government's exposure to claims of mismanagement and liability will continue to grow and is another day the Federal Government cannot meet its trust responsibilities to the American Indians.

The primary cause of the trust management problems both historically and currently can be attributed to the trade-offs of financial and managerial resources which take place at every level of government between trust management activities (trust resource management, trust funds management and land title and records management) and other activities and programs of the Bureau of Indian Affairs, the Department of the Interior, the Administration and the Congress. History has consistently shown these politically expedient government trade-offs of competing financial and managerial resources to be adverse and detrimental to the effective and proper administration and funding of the trust management activities.

These trade-offs have been made and are continuing to be made even in the face of a long history of court cases which have consistently held the trust relationship between the

United States and the American Indians to be a distinctive one. Decisions of the Supreme Court reviewing the legality of administrative conduct in managing Indian property have held officials of the United States to "moral obligations of the highest responsibility and trust" and "the most exacting fiduciary standards," and be "bound by every moral and equitable consideration to discharge its trust with good faith and fairness."

A trustee is not and should not be relieved of his duties, responsibilities and accountability to trust beneficiaries because the trustee lacks the financial and managerial resources to administer the trusts. To be so relieved for this reason is not acceptable for a private trustee. Yet, the most frequently cited reason and excuse for the Federal Government's historical and continued failure to address and resolve the longstanding trust management problems is the lack of funding and staffing for the American Indian trust management programs. While most certainly the lack of financial and managerial resources is the primary causal factor for the Federal Government's failure in this regard, under no circumstances should it also serve as an acceptable excuse for the continued neglect of the Federal Government's trust responsibilities to American Indian trust beneficiaries. Yet, this is exactly the case for the executive and legislative branches of the Federal Government. Lack of financial and managerial resources has become the standard and institutionally acceptable excuse for the Federal Government's continued failure to address and resolve the trust management problems. Because it is by now a well established standard and acceptable excuse, no one and no government management unit has been or is likely to be held accountable for this neglect at any level of the Federal Government. This is a policy of political and self-serving convenience and not one worthy of a Federal trustee who has charged itself with moral obligations of the highest responsibility and trust or one to be judged by the most exacting fiduciary standards. In addition, this policy of political and self-serving convenience not only facilitates and perpetuates the neglect of the American Indian trust management programs but continuously adds to it. This is because it is convenient, easy and politically desirable to make even more choices and trade-offs detrimental to the American Indian trust management activities in favor of other government programs which are politically more popular. All with the knowledge that the most the Federal Government or individuals making the choices and trade-offs will suffer from such behavior is some criticism from American Indians and their supporters. No real accountability will be exacted in the near or medium terms and if it is, it may be by the judicial branch of the Federal Government over the long term.

The lack of funding for trust management improvement initiatives is nowhere better illustrated than in the following table one which shows the history since inception in September 1996 of funding requests by the Office of the Special Trustee for such initiatives versus the amounts contained in the President's budgets for fiscal years 1996 through 1998.

As table one shows, reform requests have been consistently under-funded. For fiscal 1997, OST requested \$47.7 million for trust management systems improvements, but only \$14.6 million was approved; for fiscal 1998, OST requested \$48.7 million, but only \$17.7 million was approved.

Moreover, given the Administration's long term budget estimates, there is no reason to believe that the funding levels approved for fiscal years 1997 and 1998 will be significantly increased on an annual basis. Funding the reforms with installments of \$15 million to \$20 million per year simply will not work. This is because the Strategic Plan Budget (See enclosed full Strategic Plan Budget) estimates about \$61 million will be needed in the first two years to purchase the trust asset and accounting management system, the land title and records management system and the information infrastructure technology. In the first two years of implementation, another \$49 million will be needed for data conversion, reconciliation and backlog clean-up of probates, land title and records, IIM and Tribal records and appraisals. In the same period \$52 million will be needed for imaging, training, policies and procedures and legal manuals, risk management, archives and records management and external professional services. In short, all these expenditures must be made over a year or two and the systems purchased must be kept current through annual maintenance and upgrades lest they become obsolete and ineffective.

What is proposed in Phase I of the Strategic Plan involves low risk and proven technology and operating and accounting systems which have long been readily available in the private sector and can be implemented very quickly once funding and staffing is made available. The core asset and accounting management systems, records and archiving systems and reporting and delivery systems in Phase I of the Strategic Plan must be installed over two years if they are to remain current and effective on an on-going basis. The systems will use latest available technology which changes rapidly. Alternatively, if the core systems are funded in installments of \$15 to \$20 million a year over 6 years or longer, they will already be obsolete when the implementation is finally completed and ineffective as well, necessitating another costly reform effort. Therefore, a two year implementation period is critical. In the private sector, the usual and customary period for implementation of such systems has been less than a year. However, an extra year has been built into the plan to allow for the processes of government. Consistent with the Strategic Plan objectives and the proposed two year timetable for implementation is the Strategic Plan Budget necessary to implement the Strategic Plan reforms. The complete Strategic Plan Budget is included below.

Finally, the Special Trustee notes that the American Indian Trust Fund Management Reform Act of 1994 (Public Law 103-412) requires the Special Trustee to certify in writing as to the adequacy of the Department of the Interior's consolidated trust management budgets to discharge, effectively and efficiently, the Secretary's trust responsibilities and to implement the Comprehensive Strategic Plan. A credible consolidated budget for trust management activities has not been prepared by the Department of the Interior. Therefore, the Strategic Plan Budget is prepared on the basis of what will be required to implement the Strategic Plan for all trust management activities. If a credible consolidated budget is not produced or if the budget for the implementation of the Strategic Plan reforms is reduced materially or delayed or if adequate staffing or funding is not provided, the Special Trustee or a successor organization will not be in a position to certify the consolidated trust management budgets when they are prepared for fiscal 1998.

Table One
President's Budget Shortfalls in Implementing Reforms
FY 1996, FY 1997 & FY 1998

	OST REQUEST FY 1996	PRES. BUDGET FY 1996	SHORT- FALL FY 1996	OST REQUEST FY 1997	PRES. BUDGET FY 1997	SHORT- FALL FY 1997	OST REQUEST FY 1998	PRES. BUDGET FY 1998
Strategic Plan Core Systems				45,682	13,561	32,121	30,317	14
Record Keeping Systems				-	-	-	11,200	
Land Records Systems	-		-	-	-		7,220	3
Requirements Analysis	1,000	0	1,000	1,000	11,000		-	-
Outside Contractors	500	0	500	1,000	0	1,000	-	-
Sub-Total Reform Costs	11,500	0	1,500	47,682	14,561	33,121	48,737	17
OST Immediate Office	1,600	450	1,150	1,600	1,229	372	1,221	1
Advisory Board	400	0	400	400	161	239	200	
Sub-Total	3,500	450	3,050	49,682	15,950	33,732	50,158	19
IRM Pool Shortage	-	-	-	-	-	-	42,200	
General Ledger Losses	-						28,300	
Sub-Total	3,500	450	3,050	49,682	15,950	33,732	120,658	19
OTFM, Records Mgt & ITMA Budget							20,217	20
Total							140,875	39

* Transferred to OST 2/9/96

Strategic Plan Budget Summary

	Implementation 1997-1999	Ongoing Per Annum
1 Standard Trust Asset and Accounting Management System,	34,662.8	18,122.7
Land Title and Records Management System and General Ledger System		
2 Information Technology Infrastructure for AITDA, BIA, MMS, BLM, Tribes and other End-Users	26,467.4	10,490.9
Sub-Total Systems Costs	61,130.2	28,613.6
3 Data Conversion, Reconciliation & Backlog Clean-up for probates	48,945.0	5,200.0
IIM/Lease(Files, LRIS & LTRO Records, Imaging and Appraisals		
4 Implementation for Imaging, training, policies & procedures, risk. management, archives and records management and external professional services	52,104.3	18,223.4
5 Management: OST or AITDA	5,548.0	1,861.0
TOTAL	167,727.5	55,898.0

**Strategic Plan Budget
(\$ Thousands)**

	Implementation Costs			Ongoing Costs	
	FY 97/98	FY 99	FY 97-99	FY 00	FY 01
1. Standard Trust	15,933.3	18,729.5	34,662.8	19,665.5	18,122.7

Asset and Accounting Management System and Land Title and Records Management System					
A. Trust Asset and Accounting Management System	8,237.3	9,870.5	18,107.8	12,970.5	12,970.5
B. Land Title & Records Management System	3,196.0	8,059.0	11,255.0	6,095.0	4,552.2
C. General Ledger System	2,000.0	300.0	2,300.0	300.0	300.0
D. Interface Development	2,500.0	500.0	3,000.0	300.0	300.0
2. Information Technology Infrastructure	13,214.6	13,252.8	26,467.4	11,847.9	10,490.9
A. AITDA, BIA, MMS, BLM	10,457.9	11,928.4	22,386.3	9,928.8	9,354.5
B. Tribes, Including End-user Training	2,756.7	1,324.4	4,081.1	2,019.1	1,136.4
SUB-TOTAL SYSTEMS COSTS	29,147.9	31,982.3	61,130.2	31,513.4	28,613.6
3. Data Conversion, Reconciliation & Backlog Clean-up	27,535.0	21,410.0	48,945.0	8,625.0	7,200.0
1. Probate Related Backlog Clean-ups:					
Agency	600.0	540.0	1,140.0		
Hearings & Appeals/Admin. Law	1,400.0	1,030.0	2,430.0		
LTRO	4,000.0	4,000.0	8,000.0	1,425.0	
2. File Clean-up, Data/Document Check	4,400.0	3,000.0	7,400.0		
3. IIM/Lesse/ Subsystem Conversion/Reconcile.	1,375.0	840.0	2,215.0		
4. LRIS	2,600.0	2,000.0	4,600.0	2,000.0	2,000.0

Conversion/Ownership Reconciliation/Defective Title Clean-up					
5. Imaging Clean-up	3,160.0		3,160.0		
6. Appraisal Clean-up	10,000.0	10,000.0	20,000.0	5,200.0	5,200.0
4. Implementation	31,572.9	20,531.4	52,104.3	19,417.2	18,223.4
A. Imaging	2,730.2	1,608.5	4,338.7	1,608.4	1,608.4
B. Training AITDA, BIA, MMS, BLM	6,416.7	3,609.4	10,026.1	2,495.3	2,301.5
C. Policy, Procedures, Legal Manuals	4,000.0	250.0	4,250.0	250.0	250.0
D. Risk Management	4,520.0	4,520.0	9,040.0	4,520.0	4,520.0
E. Archives and Records Management	10,406.0	8,043.5	18,449.5	8,043.5	8,043.5
F. External Professional Services	3,500.0	2,500.0	6,000.0	2,500.0	1,500.0
5. Management: OST or AITDA	3,687.0	1,861.0	5,548.0	1,861.0	1,861.0
TOTALS	91,942.8	75,794.7	167,727.5	61,446.6	55,898.0
Less: \$13.350 million appropriated for FV97 improvement initiatives.			-13,350.0		
COST TO IMPLEMENT STRATEGIC PLAN			154,377.5		

Strategic Plan Major Data Conversion, Reconciliation & Backlog Problems to be Addressed:

	Amount	Transactions
Tribal Reconciliation Project Disclosures		
Transactions without source documentation	\$2.4	32,319

	billion	
Amount with incomplete disbursement voucher packages	\$4.1 billion	
Amount without source documentation for unreconciled disbursements	\$575 million	
Universe of leases and transactions		Unknown
Probate Related Backlogs		
Backlog of cases at Agencies		3,500
Backlog of cases at Administrative Law Judges		3,453
Number of TSRS, Recordation, Imaging & Mapping Documents for research at LTROs		212,381
Land Title and Records Offices		
Number of Defective Titles to research		4,300
Number of Defective Titles - Muskogee Area		4,942
Number of Pre-1966 Statutes of Limitations Cases to research		25,000
Leases to be imaged		
		60,000
Appraisals to be made		
		36,000
IIM Files Information		
Number of files to be researched and given document check/reconciliation prior to conversion		749,000
"Whereabouts Unknown" files with no address or incorrect address	\$27.7 million	45,624
Former minors accounts with positive balances or "Whereabouts Unknown"	\$21.7 million	27,519
Overdraft Interest Clearing Accounts mis-posted	\$42.2 million	
General Ledger losses not cleared	\$28 million	
Number with no tax identification or social security number		128,393
Duplicate Accounts		16,828

Special Deposit Accounts with no activity last eighteen months	\$2.3 million	6,119
Number of accounts with \$0 balance and no activity last thirteen months and not closed		14,476
Number of accounts with balance \$0 to \$1 with no activity for thirteen months		14,906
Number of accounts with no activity for eighteen months and not coded for deletion		28,114

Strategic Plan Data, Reconciliation & Backlog Clean-up Summary

		Clean-up Backlog Problem	FY1997-2001 (\$ thousands)
1. Probate Related Backlog Clean-up			
Agency	3,500	Probates	1,140
Administrative Law Judges	3,453	Probates	2,430
LTRO	212,381	TSRS, Recordation, Imaging & Mapping Documents	9,425
2. File Clean-up, D2t2/Document Check	749,000	IIM Files Document Verification	7,400
3. IIM Lease Subsystem Conversion		File Conversion/Testing/Reconciliation	2,215
4. LRIS Conversion/Ownership Reconciliation & Defective File Clean-up & Reconciliation*	4,300	Defective Titles. Must be researched and cleared	9,600
5. Imaging	60,000	Image 60% of high dollar leases	3,160

		in two years:	
		Image remaining leases in FY2000 and FY2001:	1,000
6. Appraisals	20,000	Appraisals of 20% of high dollar assets Yrs. 1&2:	16,000
	81000	5% Appraisal Sampling of other assets: Yrs. 1&2:	4,000
	4,000	Appraisals of renewing high dollar assets - Yrs. 4&5:	6,400
	4,000	5% Appraisal Sampling of other assets - Yrs. 4&5	4,000
TOTAL			65,770
TOTAL FOR FY 1997 THROUGH FY 1999			48,945

* Does not include \$13.3 million to research and clean-up 4,942 defective titles for Muskogee Area and \$38.5 million to research and clean-up about 25,000 pre-1966 Statutes of Limitations cases allowed under the Indian Claims Act of 1982. These costs should be included in DOI's operating budgets.