HEARING
BEFORE THE
COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE
ONE HUNDRED SEVENTH CONGRESS
SECOND SESSION
ON
UNITED STATES TRUST RELATIONSHIP WITH THE SOVEREIGN
GOVERNMENTS OF INDIAN COUNTRY

FEBRUARY 26, 2002
WASHINGTON, DC
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(III)
While the private trust industry might provide useful models after the relevant legal duties are identified, ITMA submits that the most modern, efficient and competent regime of trust administration known to man will fail by its business culture. It is characterized by the determination to hide losses, cover up theft and bury mistakes in buzz words and blizzard of promises.

In conclusion, ITMA takes no pride or pleasure in expressing such dissatisfaction with our government agencies. It is our government, too. We continue to have faith that those in charge of it will step forward to restore the faith and the honesty of what Thomas Jefferson once called the last best hope of mankind on Earth. Toward that end, we earnestly seek the diligence of this committee in continuing to champion the goal. We stand ready to provide whatever additional information the committee might request of us.

Thank you for your consideration.
[Prepared statement of William Martin appears in appendix.]

The CHAIRMAN. I thank you very much, Mr. Martin.

As chairman of this committee, it should be noted that I am part of the Government of the United States. And I hope that all of you would believe me when I say that I take my responsibilities and my trust obligations to Indian country very seriously.

As chairman of this committee, let me assure you that this committee will not consider any proposal that is not the product of open and free negotiation and consultation. I will be conferring with the Secretary of the Interior. I have met her several times. She is a good woman and I am certain her heart is in the right place. I hope that all of you will take this role responsibly, those of you on the Task Force, because the time is now. If we don't resolve this now, it will be another 10 years. And I have no idea who will be sitting here 10 years from now.

So with that, I thank all of you for your patience, for your testimony, and for your suggestions. And we will be do our part, I can assure you of that.

With that, the record will be open for 30 days if you want to submit addenda or corrections, please feel free to do so, and I invite all tribal leaders if they have statements they wish to have placed in the record, it will be done. I have a request from the Secretary, Mr. McCaleb that the statement of Secretary Norton be made part of the record, an article entitled "American Indian Trust Reform: The Challenge to Consensus." Without objection, that statement is made part of the record.
[Referenced document appears in appendix.]

The CHAIRMAN. With that, the hearing is adjourned.
[Whereupon at 1:18 p.m., the committee was adjourned, to reconvene at the call of the Chair.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF HON. BEN NIGHTSHORE CAMPBELL, U.S. SENATOR FROM COLORADO, VICE CHAIRMAN, SENATE COMMITTEE ON INDIAN AFFAIRS

Good morning and thank you Mr. Chairman for convening this important hearing. Unfortunately, all who have chaired this committee at some point must dedicate enormous time and effort in trying to reform the Indian Trust Fund Management systems.

You have done it in the past, Chairman Inouye, I did it for 5 years and now it's your turn once again. It's beyond frustrating for me and for the Indian beneficiaries as well.

Let me start off by saying that this issue is clearly a problem of historic proportions: It is not Secretary Norton's creation. When I chaired this committee I acknowledged the same fact to Secretary Babbitt.

Nonetheless, what Congress passed in 1994 to reform this system was enacted over the objections of the last Secretary of the Interior. My own opinion is that despite the 1994 Act and the vigorous involvement and encouragement of this committee, the trust reform strategy of the last Administration was to litigate, lurch from hearing to hearing by putting on a brave face and a dog and pony show, and do everything they could to make sure the Federal funding spigot didn't get turned off.

That strategy, as we all know and surely must recognize today, not only didn't work, Mr. Chairman but has in fact led us directly to where we are today.

Mr. Chairman, this reads like a bad soap opera. We have had several bills signed into law; documents lost, contaminated and shredded; Federal lawsuits filed; senior department officials resign and being held in contempt by a Federal judge; and countless hours of legislative and oversight hearings. Just 2 weeks ago we passed out of committee legislation designed to discourage more litigation and encourage the tribes and the Department to negotiate settlement which I believe is the much better option for all parties.

Having said that, we stand at a cross-roads here—a historic moment where I think if we recognize and admit that the litigation has served its purpose, but ultimately these issues should be, and I think will be, resolved here in Congress through a settlement bill.

Frankly, this committee—and the chairman and I—have done, are doing, and will continue to do everything we can to bring fair and equitable resolution to these issues but it requires some healthy, honest and open debate and one that may not have been held before.

Unlike many who have criticized her proposal, I believe the Secretary should be lauded, not criticized, for making a proposal to reform the way the United States handles Indian money and Indian assets.

There are tribal proposals as well and we'll hear a little about them today too. Some fundamental realities we all need to acknowledge are:

No. 1. The status quo is unacceptable: It's unacceptable to the Secretary, to the tribes, to the court and to this committee.
TRUST FUNDS TIME-LINE

Acronyms
AITFMR—American Indian Trust Fund Management Reform Act, P.L. 103-412
(GO/T-AFMD—92–12) July 2, 1992 ("The bulk of problems are internal to BIA "things such as poor decision making, staffing problems, weak internal controls and a lack of a fully trained staff."


March 8, 1995, GAO testimony; "Indian Trust Funds Cannot Be Reconciled" (GAO/ADM—95–48) (Before the House Committee on Appropriations).

December 13, 1995, SCIA hearing, S. Hrg. 104–340, on nomination of Paul Homan to be Special Trustee.


February 9, 1996, Secretary Babbitt issues Secretarial Order 3197, Establishment of the Office of Special Trustee and Transfer of Trust Funds Mgt. Functions from the BIA (Order terminates on October 1, 1997).


June 11, 1996, SCIA Hearing, 104–514, Indian Trust Funds 1995, the primary witness is the GAO, which presented testimony on its report: "BIA's Tribal Trust Fund Account Reconciliation Results," (May 3, 1996, GAO/ADM—96–63) ("[Beaucage] the BIA's report package did not explain or describe the nature and scope of the reconciliations, scope and methodologies or the procedures that were not performed, the limitations of the reconciliation were not evident.").

January 97, Senator Campbell assumes chairmanship of SCIA.

February 1997, Judge Lambeth certifies the named plaintiffs in Cobelli v. Babbit as representative of a class consisting of all resent and former IIM account holders.

April 1997, Special Trustee submits his proposed Strategic Plan, as required by AITFMR.

May 21, 1997, Sec. Babbitt writes letter stating that the proposed Strategic Plan "fails to meet the objectives of the AITFMR."


August 22, 1997, Sec. Babbitt issues memorandum on Trust Improvement Project Definition: "Notwithstanding my reservations about certain aspects about certain aspects of his Plan, selected trust systems improvements and data cleanup efforts in the Plan can and should proceed as soon as possible within the organizational structure of the Department." Secretary Babbitt calls for the creation of a "high level implementation plan."


August 22, 1998, SCIA submits Settlement Proposal for tribal trust funds to Congress. Introduced at the end of the month by Congressman Miller (by request) as H.R. 3782.

July 23, 1999, SCIA hearing, S. Hrg. 105–815, on H.R. 3782, to Compensate Certain Indian Tribes for Known Errors in Their Tribal Trust Fund Accounts, to Establish a Process for Settling Other Disputes Regarding Tribal Trust Fund Accounts, and for Other Purposes. (The proposal was roundly criticized by Indian tribes and others during the "playing field" in favor of the United States and effectively, if unintentionally, preventing Indian tribes from asserting certain claims.)

May 5, 1998, Judge Lambeth issues a discovery and scheduling order.

July 31, 1999 High Level Implementation Plan issued.

December 18, 1998, Cobell v. Babbitt, order to show cause why Sec. Babbitt should not be found in contempt.

January 5, 1999, Secretary Babbitt issues Secretarial Order No. 3208, Reorganization of the Office of the Special Trustee.


March 9, 1999, SCIA holds a joint hearing with Senate Energy and Natural Resources Committee on Secretarial Order No. 3208, S. Hrg. 106-126 Secretary Babbitt is principal witness. With respect to the contempt citation, Secretary Babbitt stated: "Let me just say we apologize to the court for the Government's failures in this litigation."

March 29, 1999, Senator Murkowski introduces S. 739 (to direct the Secretary of the Interior to contract with qualified financial institutions for the investment of certain trust funds) with Senator Campbell as an original co-sponsor. At the request of the bill's sponsors, the Inspector General sought to determine whether Departmental communications constituted illegal lobbying after published reports indicating such lobbying may have occurred.


June 25, 1999, Secretary Babbitt "unveils" TAAMS at Billings, Montana.

July 14, 1999, In the trial of Indian Trust Funds breach in Cobell v. Babbitt (Phase I) court orders the Court Monitor's second report, at this trial. Without question, the Federal Government indicated that trust reform was underway and TAAMS was the framework and infrastructure for effecting trust reform.

July 14, 1999, Joint Hearing SCIA/Senate Committee on Energy and Natural Resources, Trust Fund Reform, S. Hrg. 106-146. "Indian Trust Funds: Interior Lacks Assurance That Trust Plan Will Be Effective," (GAO/ADM-99-53). (GAO report: "Until Interior develops an information systems architecture addressing all of its management functions, it can not (sic) ensure that its information systems will not be duplicative or incompatible or will optimally support its needs across all business areas.").

Don Gray, Esq. "You can not and should not try to operate on yourself, and that is exactly what we're asking well-intentioned BIA officials to do—to work on a problem and to solve a problem where they or their friends . . . may have made mistakes. That is neither fair nor reasonable and in the commercial context would never be countenanced."

September 8, 1999, According to records revealed to the Court Monitor, a high level meeting was held within the Department concerning TAAMS ("Discuss current TAAMS status and agree on Departmental Policy Positions."). Meeting attended by Secretary Babbitt, G. of Chief Staff Ana Shubert, Kevin O'Grady, Dan Nessi (Sec. Order 1202), Barry, Bob Lamb, and Dom Nessi. (This meeting and the failure to inform either Judge Lambeth or Congress about TAAMS implementation problems are addressed extensively in the Court Monitor's Second Report dated August 9, 2000.)

September 22, 1999, SCIA hearing, Trust Management Reform Act, hearing on S. 1587 (Amending the American Indian Trust Fund Management Reform Act of 1994 to establish an independent Inspector General of the Department of the Interior appointed by the Secretary of the Department for Data Cleanup and Internal Control) and S. 1589 (Establishing a Independent Trust Fund Reform Commission). According to Secretary Babbitt: "Senator [Murkowski], if you go to the Supreme Court today you will see the TAAMS system running in parallel with the old system."

November 18, 1999, Interior Appropriations Conference report language limits de- ployment of TAAMS until the Senate "...advises the Committee of Appropriations that, based on the Secretary's review and analysis, such systems meet TAAMS contract requirements and user requirements."

December 21, 1999, Cobell v. Babbitt, 91 F. Supp. 1 (D.D.C. 1999), decision of Judge Lambeth based on June/July bench trial. The court rules that the Government had a duty to (1) provide an accounting of funds held in IIM trust; (2) create written plans for collection and retention of IIM trust documents, computer and business systems architecture, and staffing of trust management functions; (3) delay was a breach of trust.

February 8, 2000, Chairman Campbell sends copies of an draft bill entitled Indian Trust Reform Act to all Indian tribes.

February 29, 2000, Doi issues second High Level Implementation Plan March 22, 2000, SCIA hearing on the nomination of Thomas Sloman to be Special Trustee.

March 30, 2000, Doi issues its draft Secretarial Order concerning "trust principles."

April 3, 2000, BIA publishes notice of request for Comments on the Settlement of the IIM claims over trust accounts.

April 12, 2000, Chairman and Vice Chairman of SCIA and Chairman of Energy and Natural Resources Committees write to the Department to reconsider its draft "trust principles." Confirmation of Special Trustee is blocked over draft "trust principles."

April 28, 2000, Secretarial Order on Trust Principles is issued after it is modified to meet most concerns. Senate confirms Tom Sloman as Special Trustee.

June 22, 2000, SCIA hearing on draft bill Indian Trust Resolution Corporation Act.

July 14, 2000, Doi proposes regulations concerning the leasing and grazing of trust lands and the management of IIM funds and probate (65 FR 43874).

September 22, 2000 Chairman Campbell and Vice Chairman Inouye and 16 other Senators write to Secretary and ask him not to proceed to finalize most of the July 14, 2000 draft regulations.

September 29, 2000, Interior Appropriations Conference Report, H. Rep. 106-914 on H.R. 4576 (FY '01 Interior Appropri.) (While approving the request to begin an IIM sampling approach, the managers direct the Department to develop a detailed plan for the sampling methodology it adopts, its costs and benefits, and the degree of confidence that can be placed on the likely results.

December 1, 2000, plaintiffs in Cobell v. Babbitt file motion to re-open trial I. They assert that the Government presented false and misleading evidence to support its claim that reform was underway.

December 29, 2000, Secretary Babbitt issues Memorandum to proceed with statistical sampling. January 20, 2001, over the September 22, 2000 objections, the Doi finalizes draft July 14, 2000 regulations. (Regulations are allowed to go into effect by Bush Administration).

February 23, 2001, U.S. Court of Appeals for the D.C. Circuit issues opinion in Cobell v. Norton, 2001 WL 17299 (D.C. Cir.). The decision affirms Judge Lambeth's ruling that the plaintiffs may proceed with their action against the United States for breach of trust arising out of the government's failure to manage its trust activities. The panel also rules that the government's duty to account does not arise out of the AITFMA of 1994.

February 23, 2001, Dom Nessi writes two memorandum raising concerns about the Doi's project for both Trust Reform and Data Cleanup.

February 27, 2001, Secretary Norton issues Memorandum on statistical sampling.

February 28, 2001, Secretary Norton appears before SCIA, announces decision on statistical sampling.

April 16, 2001 Judge Lambeth appoints Joseph S. Kiefert, III as Court Monitor. July 10, 2001, Secretary Norton issues Secretarial Orders creating Office of Trust Reform and Historical Accounting (Sec. Order 3231) and augmenting the authority of the Special Trustee (Sec. Order 3232).

July 11, 2001, Court Monitor issues his first report on Historical Accounting.

August 9, 2001, Court Monitor issues his second report on TAAMS. This report contains that the Department misled Congress and the court with respect to trust reform efforts.

November 12, 2001 EDS submits Doi Trust Reform: Interim Report and Roadmap for TAAMS and IIA Data Cleanup (November 20, 2001 Office of Indian Trust Transition (OTT) through Secretary Order 3235).


PREPARED STATEMENT OF HON. BYRON L. DORGAN, U.S. SENATOR FROM NORTH DAKOTA

Mr. Chairman, I want to thank you for convening this hearing on the Department of the Interior's management—or perhaps mismanagement would be a better term—