

ORDER NO. 3215

SIGNATURE DATE: April 28, 2000

Subject: Principles for the Discharge of the Secretary ' s Trust Responsibility

Sec. 1 Purpose. This Order is intended to provide guidance to the employees of the Department of the Interior who are responsible for carrying out the Secretary ' s trust responsibility as it pertains to Indian trust assets. All Departmental regulations, policy statements, instructions, or manuals regarding the discharge of the Secretary ' s trust responsibility shall be interpreted or developed using these trust principles. In addition, these principles provide guidance to all persons who manage Indian trust assets.

This Order is intended to address neither the unique government-to-government relationship between the United States and American Indian and Alaska Native tribal governments nor the unique relationship between the United States and individual Indians, both of which have been referred to as a trust responsibility.

Sec. 2 Background. The trust responsibility is defined by treaties, statutes, and Executive orders. The most comprehensive and informative legislative statement of Secretarial duties in regard to the trust responsibility of the United States was set out in the American Indian Trust Fund Management Reform Act of 1994 (Reform Act), Pub. L. 103-412, Oct. 25, 1994, 108 Stat. 4239. The Reform Act provides:

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.

25 U.S.C. ' 162a(d).

As stated in the Reform Act, this list of duties is not exhaustive. Therefore, to understand the nature of the Department's duties, we must look to a variety of other sources for guidance. One internal Departmental source of guidance is legal advice from the Solicitor's Office. The Solicitor's Office continues to provide the Department with guidance through formal and informal legal advice regarding its trust responsibility. The most comprehensive document available on this subject is a letter by Solicitor Krulitz dated November 21, 1978, analyzing the federal government's responsibility concerning Indian property interests. This legal guidance from the Solicitor's Office informs our interpretation of the duties required by treaties, statutes, and Executive orders.

Legal guidance also is found in judicial decisions. In Seminole Nation v. United States, 316 U.S. 286 (1942) (*see reference section for case*), the Supreme Court said that the government in its dealings with Indians is charged with moral obligations of the highest responsibility and trust and should be judged by the most exacting fiduciary standard. *Id.* at 296. Many other cases too numerous to list here have discussed the trust responsibility. *See Poafybitty v. Skelly Oil Co.*, 390 U.S. 365 (1968) (*see reference section for case*); Nevada v. United States, 463 U.S. 110 (1983); United States v. Mitchell, 463 U.S. 206 (1983) (Mitchell II) (*see reference section for case*); White Mountain Apache Tribe v. United States, 20 Cl. Ct. 371 (1990); Pyramid Lake Paiute Tribe v. Morton, 354 F. Supp. 252 (D.D.C. 1972); and Cobell v. Babbitt, 1999 WL 1581470 (D.D.C. Dec. 21, 1999).

It is with this legal history in mind that I issue this Order. This Order is intended to provide guiding principles to interpret or develop policy statements, regulations, and instructions regarding the proper discharge of the Secretary's trust responsibility. It would be beyond my authority, and this Order is not intended, to impose the legal standards by which a breach of trust claim would be reviewed in a court of law.

Sec. 3 Authority. This Order is issued in accordance with the Reform Act.

Sec. 4 Definitions.

a. **Beneficial owner** means both Indian tribes and individual Indians who are the beneficial owners of Indian trust assets held by the federal government in trust or with a restriction against alienation.

b. **Persons who manage Indian trust assets** means Departmental employees or contractors, or Indian tribes that have been properly delegated specific authority to manage or administer Indian trust assets.

c. **Trustee** means the Secretary or any person who has been properly authorized to act as the Trustee for Indian trust assets.

d. **Indian trust assets** means lands, natural resources, money, or other assets held by the federal government in trust or that are restricted against alienation for Indian tribes and individual Indians.

e. **Trust responsibility** as used in this Order only pertains to Indian trust assets.

Sec. 5 Trust Principles. The proper discharge of the Secretary's trust responsibility requires, without limitation, that the Trustee, with a high degree of care, skill and loyalty:

- a. Protect and preserve Indian trust assets from loss, damage, unlawful alienation, waste, and depletion;
- b. Assure that any management of Indian trust assets that the Secretary has an obligation to undertake promotes the interest of the beneficial owner and supports, to the extent it is consistent with the Secretary's trust responsibility, the beneficial owner's intended use of the assets;
- c. Enforce the terms of all leases or other agreements that provide for the use of trust assets, and take appropriate steps to remedy trespass on trust or restricted lands;
- d. Promote tribal control and self-determination over tribal trust lands and resources;
- e. Select and oversee persons who manage Indian trust assets;
- f. Confirm that tribes that manage Indian trust assets pursuant to contracts and compacts authorized by the Indian Self-Determination and Education Assistance Act, 25 U.S.C. 450, et seq., protect and prudently manage Indian trust assets;
- g. Provide oversight and review of the performance of the Secretary's trust responsibility, including Indian trust asset and investment management programs, operational systems, and information systems;
- h. Account for and timely identify, collect, deposit, invest, and distribute income due or held on behalf of tribal and individual Indian account holders;

- i. Maintain a verifiable system of records that is capable, at a minimum, of identifying: (1) the location, the beneficial owners, any legal encumbrances (i.e., leases, permits, etc.), the user of the resource, the rents and monies paid, if any, and the value of trust or restricted lands and resources; (2) dates of collections, deposits, transfers, disbursements, third party obligations (i.e., court ordered child support, judgements, etc.), amount of earnings, investment instruments and closing of all trust fund accounts; (3) documents pertaining to actions taken to prevent or compensate for any diminishment of the Indian trust assets; and (4) documents that evidence the Secretary's actions regarding the management and disposition of Indian trust assets;
- j. Establish and maintain a system of records that permits beneficial owners to obtain information regarding their Indian trust assets in a timely manner and protect the privacy of such information in accordance with applicable statutes;
- k. Invest tribal and individual Indian trust funds to make the trust account reasonably productive for the beneficial owner consistent with market conditions existing at the time the investment is made;
- l. Communicate with beneficial owners regarding the management and administration of Indian trust assets; and
- m. Protect treaty-based fishing, hunting, gathering, and similar rights of access and resource use on traditional tribal lands.

Sec. 6 General Provision. This Order is intended to enhance the Department's management of the Secretary's trust responsibility. It is not intended to, and does not, create any right to administrative or judicial review, or any legal right or benefit, substantive or procedural, enforceable by a party against the United States, its agencies, or instrumentalities, its officers or employees, or any other person.

Sec. 7 Implementation. This Order shall be implemented as guidance for the employees of all bureaus and offices within the Department as they review, modify or promulgate new regulations, policy statements, instructions or manuals, as they develop legislative and budgetary proposals, and as they manage, administer, or take other actions directly relating to or potentially affecting assets held in trust by the United States for Indian tribes and individual Indians.

Sec. 8 Effective Date. This Order is effective immediately. It will remain in effect until its provisions are converted to the Departmental Manual, or until it is amended, superseded or revoked, whichever comes first. In the absence of any of the foregoing actions, the provisions of this Order will terminate and be considered obsolete on October 31, 2000.

/s/ Bruce Babbitt
Secretary of the Interior

Department of the Interior Departmental Manual

Effective Date: 10/31/00

Series: Departmental Management

Part 303: Indian Trust Responsibilities

Chapter 2: Principles for Managing Indian Trust Assets

Originating Office: Office of the Assistant Secretary - Indian Affairs

303 DM 2

2.1 Purpose. This Chapter provides Department-wide guidance for carrying out the Secretary's trust responsibility as it pertains to Indian trust assets.

2.2 Scope. The provisions of this Chapter are applicable to all Departmental bureaus and offices.

2.3 Authority. This Chapter is issued under the authority of the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. § 4001, *et seq.*), and its implementing regulations.

2.4 General Provision. This Chapter is intended to enhance the Department's management of the Secretary's trust responsibility. It is not intended to, and does not, create any right to administrative or judicial review, or any legal right or benefit, substantive or procedural, enforceable by a party against the United States, its agencies, or instrumentalities, its officers or employees, or any other person.

2.5 Definitions. For purposes of this Chapter, the following definitions apply:

A. "Beneficial owner" means both Indian tribes and individual Indians who are the owners of Indian trust assets held by the federal government in trust or with a restriction against alienation.

B. "Persons who manage Indian trust assets" means Departmental employees who have been properly delegated specific authority to manage or administer Indian trust assets.

C. "Indian trust assets" means lands, natural resources, money, or other assets held by the federal government in trust or that are restricted against alienation for Indian tribes and individual Indians.

D. "Trust responsibility" as used in this Chapter only pertains to Indian trust assets.

2.6 Responsibilities.

A. **Office of the Special Trustee for American Indians** is responsible for ensuring compliance with the requirements of this Chapter.

B. **Assistant Secretaries** will ensure that bureaus and offices under their jurisdiction comply with this Chapter.

C. **Heads of bureaus and offices** are responsible for ensuring that the principles in Paragraph 2.7 of this Chapter are carried out by their organizations as they:

(1) Review, modify or promulgate new regulations, policy statements, instructions or manuals;

(2) Develop legislative and budgetary proposals; and

(3) Manage, administer, or take other actions directly relating to or potentially affecting assets held in trust by the United States for Indian tribes and individual Indians.

2.7 Trust Principles. It is the policy of the Department of the Interior to discharge, without limitation, the Secretary's Indian trust responsibility with a high degree of skill, care, and loyalty. The proper discharge of the Secretary's trust responsibilities requires that persons who manage Indian trust assets:

A. Protect and preserve Indian trust assets from loss, damage, unlawful alienation, waste, and depletion;

B. Assure that any management of Indian trust assets that the Secretary has an obligation to undertake promotes the interest of the beneficial owner and supports, to the extent it is consistent with the Secretary's trust responsibility, the beneficial owner's intended use of the assets;

C. Enforce the terms of all leases or other agreements that provide for the use of trust assets, and take appropriate steps to remedy trespass on trust or restricted lands;

D. Promote tribal control and self-determination over tribal trust lands and resources;

E. Select and oversee persons who manage Indian trust assets;

F. Confirm that tribes that manage Indian trust assets pursuant to contracts and compacts authorized by the Indian Self-Determination and Education Assistance Act, 25 U.S.C. 450, et seq., protect and prudently manage Indian trust assets;

G. Provide oversight and review of the performance of the Secretary's trust responsibility, including Indian trust asset and investment management programs, operational systems, and information systems;

H. Account for and timely identify, collect, deposit, invest, and distribute income due or held on behalf of beneficial owners;

I. Maintain a verifiable system of records that is capable, at a minimum, of identifying: (1) the location, the beneficial owners, any legal encumbrances (i.e., leases, permits, etc.), the user of the resource, the rents and monies paid, if any, and the value of trust or restricted lands and resources; (2) dates of collections, deposits, transfers, disbursements, third party obligations (i.e., court ordered child support, judgements, etc.), amount of earnings, investment instruments and closing of all trust fund accounts; (3) documents pertaining to actions taken to prevent or compensate for any diminishment of the Indian trust assets; and (4) documents that evidence the Department's actions regarding the management and disposition of Indian trust assets;

J. Establish and maintain a system of records that permits beneficial owners to obtain information regarding their Indian trust assets in a timely manner and protect the privacy of such information in accordance with applicable statutes;

K. Invest tribal and individual Indian trust funds to make the trust account reasonably productive for the beneficial owner consistent with market conditions existing at the time the investment is made;

L. Communicate with beneficial owners regarding the management and administration of Indian trust assets; and

M. Protect treaty-based fishing, hunting, gathering, and similar rights of access and resource use on traditional tribal lands.

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