

Annual Report to Congress FY2011

U.S. Department of the Interior
Office of Special Trustee for American Indians





United States Department of the Interior
Office of Special Trustee for American Indians
Washington, D.C. 20240

March 7, 2012

Dear Member of Congress:

The Office of Special Trustee for American Indians (OST) performs high quality work to fulfill the government's fiduciary trust responsibilities to American Indian tribes, individual Indians, and Alaska Natives. I am pleased to provide the fiscal year (FY) 2011 annual report to Congress pursuant to the requirements stated in 25 U.S.C. § 4043 (f).

This annual report captures OST's accomplishments throughout FY2011 and identifies key priorities planned for FY2012. In FY2011, OST focused on Secretary Salazar's directives to work closely with the Bureau of Indian Affairs, to reach across bureaus and offices of the Department and outside to other agencies, and to support tribal litigation settlements. As OST moves forward in FY2012, inter- and intra-agency partnerships will offer significant opportunities to leverage OST's resources and tribal consultations increasingly will inform decisions about the Indian trust and how we can respond more effectively to our fiduciary trust responsibilities.

My return to OST in December 2011 as the Acting Principal Deputy Special Trustee offers me the opportunity to lead the office at an exciting time. Previously having served as OST's Chief of Staff from 2004 to 2006, I left for the position of Director of the Office of Regulatory Affairs and Collaborative Action in the Department of the Interior Office of the Assistant Secretary – Indian Affairs. In that position, I was responsible for the review and revision of all federal regulations governing Indian Affairs within the Department. I look forward to working with the dedicated staff of OST again.

I hope you find this publication useful. If you have questions or need additional information about OST and the Indian trust, please contact my office at 202-208-4866.

Sincerely,

Michele F. Singer
Acting Principal Deputy Special Trustee

Introduction

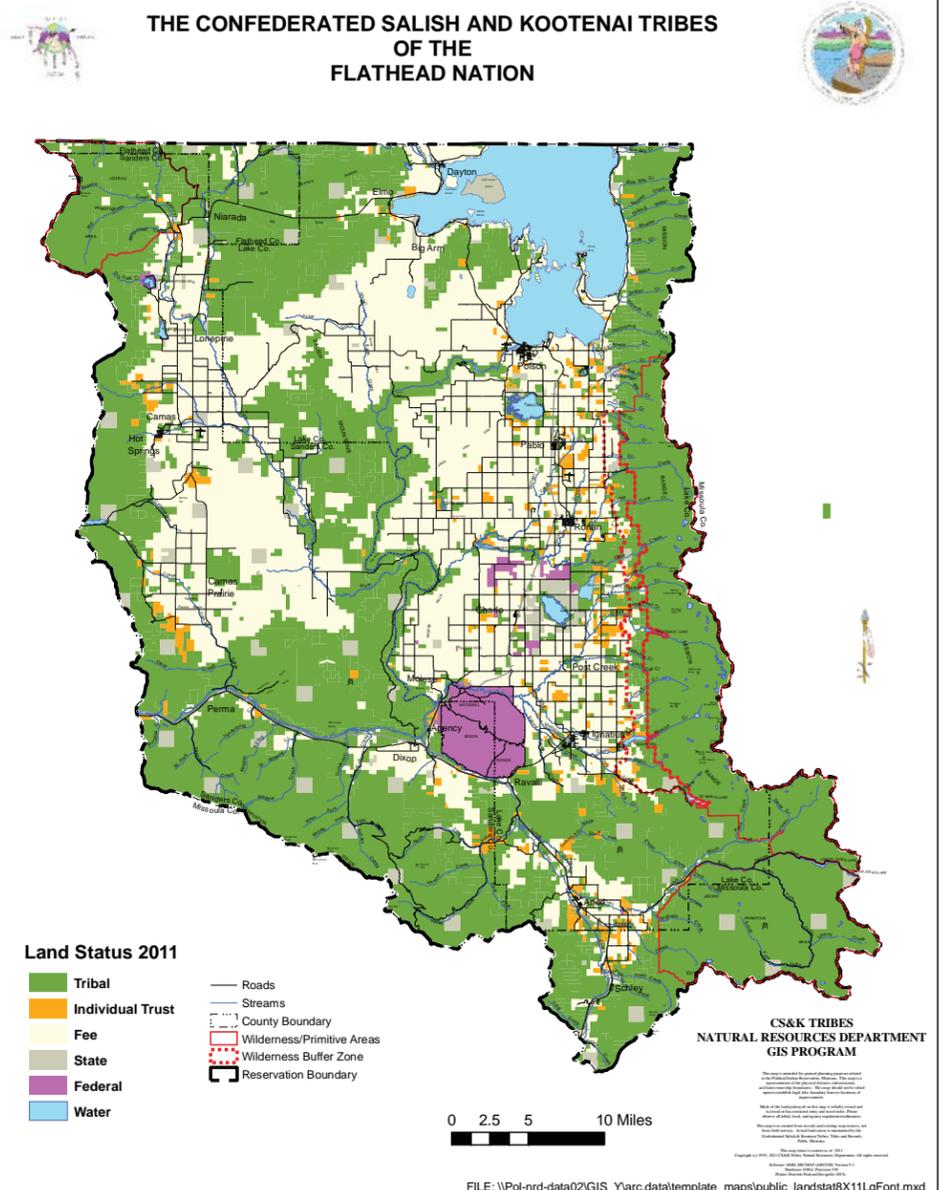
Since early in the history of the United States, the federal government's relationship with American Indian populations was fraught with concerns about balancing desires of the expanding nation with the needs of Indian country. The Indian trust responsibility developed over a period of time from that relationship. The Cherokee Nation v. The State of Georgia Supreme Court ruling in 1831 began the legal concept of trust responsibility when Chief Justice Marshall defined Indian nations as "domestic dependent nations" with a relationship like that of "a ward to his guardian."

The General Allotment Act of 1887, known as the Dawes Act, is generally considered to have complicated the trust responsibility. The act divided reservation lands among Indians located on the land. The remainder of the land was typically declared surplus and opened to homesteading. The allotment program ended in 1934. However, checkerboarding and fractionation are long-term outcomes of the Dawes Act.

Checkerboarding refers to the pattern observed on a map that displays fee (privately held) and trust lands. Checkerboarding hinders law enforcement and economic development efforts, among other functions, in Indian country.

Fractionation is the effect of generations of inherited allotments being divided among heirs, who receive undivided interests. Some allotments have hundreds of owners. Again, this inhibits productive use of the land and stymies its economic viability.

Checkerboarding on the Flathead Reservation is evident in this image. Since passage of the *Indian Reorganization Act*, the Confederated Salish and Kootenai Tribes of the Flathead Nation have been actively working toward restoration of tribal lands through purchase of fee and fractionated trust properties.



A few short years ago, Congress recognized the need to address the federal government's management of the Indian trust. Spurred by decades of mounting concerns, which culminated in the 1992 report *Misplaced Trust* from the Environment, Energy, and Natural Resources Subcommittee of the House Committee on Government Operations, Congress created the *American Indian Trust Fund Management Reform Act of 1994* (Public Law 103-412). The Act established the Office of Special Trustee for American Indians (OST) within the Department of the Interior.

The Act set three goals for OST:

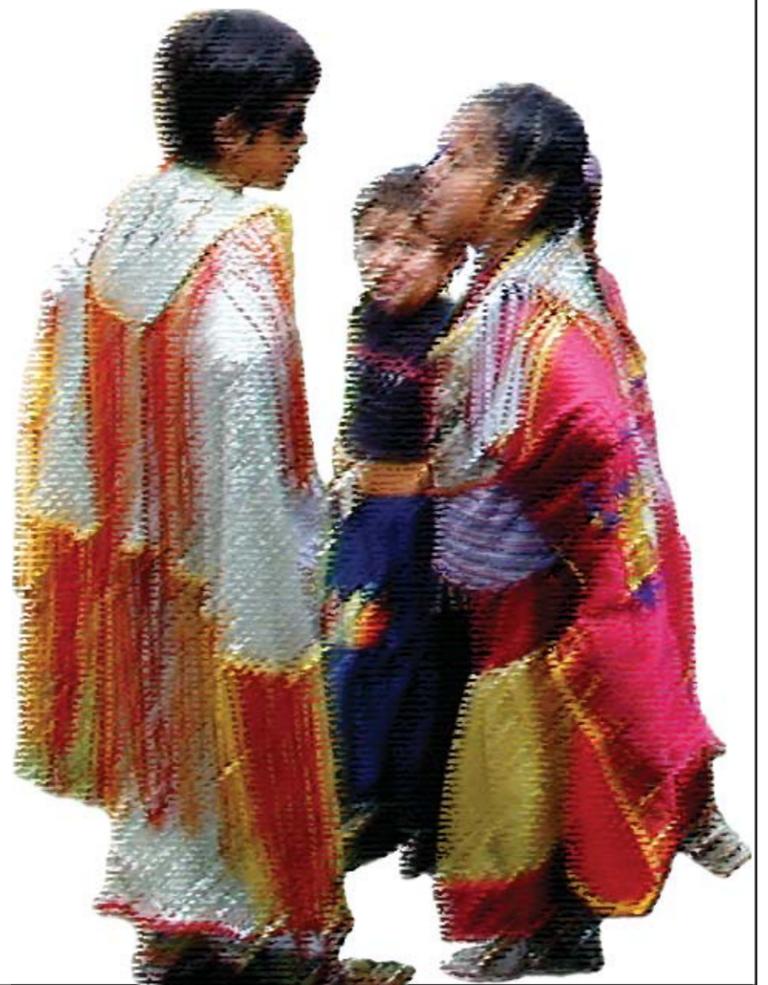
- Provide effective management and accountability for the proper discharge of the Secretary's trust responsibilities to Indian tribes and individual Indians.
- Ensure that reforms are unified across the Department and that they are effective, consistent and integrated.
- Ensure implementation of all reforms necessary for the proper discharge of the Secretary's trust responsibility.

OST Operations

Each office within OST has a function that directly aligns with the Act's goals or that provides support services so other offices can accomplish their tasks. The following accomplishments demonstrate the willingness of OST employees, often working across the Department and with external agencies, to ensure uniform reforms occur for the proper discharge of the Secretary's trust responsibility to American Indian tribes, individual Indians, and Alaska Native trust beneficiaries.

OST's fiscal responsibilities include receiving, investing, disbursing, and accounting for Indian trust funds. OST disbursed more than \$869 million to individual Indian and tribal beneficiaries in FY2011. Over the year, OST processed a total of \$622.7 million through the centralized commercial lockbox and posted 87.5 percent of the funds to beneficiaries' accounts within two days of receipt. These numbers represent increases of \$79 million dollars and 10.4 percent from FY2010.

Trust funds received are invested in public debt securities with maturities suitable to the needs of the fund involved.¹ In FY2011, OST conducted 548 investment meetings with tribal representatives, more than a 20 percent increase over FY2010.



The Act requires that an annual audit is conducted on a fiscal year basis of all funds held in trust by the United States for the benefit of Indian tribes and individual Indians. Audits, which have been conducted since 1996, are published on the OST website. The FY2011 independent annual audit, performed by KPMG, noted no material weaknesses.

The Act also requires that each beneficiary receive a statement of performance not later than 20 business days after the close of a calendar quarter. In FY2011, OST mailed to beneficiaries more than 1,000,000 oil and gas explanations of payment and statements of performance, which provide sources of funds, encumbrance information, listings of trust property owned, beginning and ending balances, and transactions.

Enhanced Operations

OST's structure and functions have evolved since 1994. Offices have been realigned within OST and reforms have been implemented. Each change has improved the delivery of services to trust beneficiaries.

In 2002, the appraisal function was moved to OST. In support of real estate transactions (sales, agricultural and non-agricultural leases, rights-of-way, land exchanges, acquisitions, and trespass settlement), OST conducts appraisal consulting, appraisals, and appraisal reviews of real property. In FY2011, clients received 7,539 appraisal products. OST is dedicated to providing appraisal services as efficiently as possible.

Additional workload is anticipated in the future due to the land consolidation component of the Cobell² settlement. Therefore, in FY2011, OST initiated development of the Market Analysis Appraisal Program System (MAPS) to produce and report appraisals in accordance with the Uniform Standards of Professional Appraisal Practice and recognized industry practices. MAPS will supplement the Undivided Fractionated Appraisal System. OST also initiated development of the Office of Appraisal Services Information System (OASIS) for OST, Bureau of Indian Affairs (BIA), and tribes to track and report on appraisal requests.

Internal trust reviews and audits were initiated in 2003 to implement a nationwide Indian trust risk management program that ensures a sound system of internal controls exist in programs, operations, organizations, and functions. The Indian Trust Rating System is used to assess and measure the operational effectiveness and performance of Indian fiduciary trust activities and operations within the Department, as well as those external to DOI. In FY2011, OST conducted 53 Indian Trust Examinations and issued 37 final ITE reports. Results of the reviews and audits provide



guidance to tribes and Indian trust managers in OST, BIA, the Bureau of Land Management (BLM), and the Office of Natural Resources Revenue (formerly part of the Minerals Management Service).

In May 2004, the American Indian Records Repository (AIRR) opened. Records that had been stored in various National Archives and Records Administration regional records centers, BIA, and other government facilities across the United States were moved to AIRR. In FY2011, 15,304 boxes of records were sent to AIRR and 13,855 boxes were indexed. AIRR now contains more than 220,000 boxes of records. Also in FY2011, records management training was provided to 551 BIA and OST records personnel and 133 tribal employees; 45 records assessments were performed and 27 reports were issued identifying improvements to BIA and OST records management programs.

The Trust Beneficiary Call Center (TBCC) opened in December 2004. This central resource for beneficiaries provides prompt, consistent information in response to trust inquiries. In FY2011, the center handled over 321,700 beneficiary-related inquiries, more than a 38 percent increase over FY2010.

OST hired the first of 50 Fiduciary Trust Officers (FTOs) in 2005. FTOs serve as primary, local points of contact for beneficiaries, helping with trust issues that require remedial action, providing training, and answering questions about trust services. In FY2011, FTOs and their staffs provided 7,902 outreach events to beneficiaries, more than double the previous year's number. Many events partnered OST with other DOI bureaus, state governments, and non-profit organizations to improve the delivery of trust services.

The Office of Historical Trust Accounting (OHTA) was realigned in 2007 to report directly to the Special Trustee. The Special Deposit Account Project, on which OHTA had been working for several years, offered an opportunity for cost savings in FY2011. Special Deposit Accounts (SDAs) are designed as temporary holding accounts for the deposit of funds that cannot be credited immediately to their rightful owners. SDAs have been used for a variety of reasons, including instances where ownership could not be readily determined, time constraints prevented distribution, or an unresolved issue affected the handling of the funds. Research and analysis of SDAs determine original sources of funds and enable their proper distribution. Because of OHTA's success with this project, Special Deposit Account offices in Muskogee, Oklahoma; Billings, Montana; Crow Agency, Montana; and Aberdeen, South Dakota, were able to be closed

Each WAU is a Story

Account holders without current addresses on file are referred to as whereabouts unknown, or WAUs. A seventy-seven year old elder would probably not access the Internet looking for the list of Individual Indian Money (IIM) account holders who do not have their addresses on file with the Office of the Special Trustee for American Indians (OST). In addition, a tribal list of WAUs usually only includes members of that tribe. So, how did one elder — let's call him *Jim* — learn he was listed as a WAU on another tribe's website? And what did he do with his IIM account when he was found?

Late one summer, one of OST's Fiduciary Trust Officers was meeting with tribal officials. Although the tribe did not have any active accounts with OST, 19 members of the tribe were listed as WAUs. The total value of those 19 accounts was more than \$93,000. OST's local Account Maintenance Technician worked with the tribe's web designer to post the list of WAUs on the tribe's website. Access to this tribe's website is only available to tribal members.

Whether family or friend, someone told *Jim* his name was on the tribe's WAU list, although he wasn't a member of that tribe! Now OST's detective work began — to be sure that *Jim* was one and the same as the person listed.

Records were requested from the American Indians Records Repository in Lenexa, Kansas. A journal voucher from decades earlier listed *Jim* as heir to the account. But the search for verification didn't end there. The tribe provided an extensive family history and probate records were checked. Still more checking was done with *Jim* about his tribal affiliation. He had changed his affiliation because his tribe was terminated in 1966. Although the tribe was restored in 1990, *Jim* had stayed with his current enrollment, which explained why he had an account with one tribe although enrolled with another. Finally, it was confirmed that he was the true account holder.

The perseverance and thoroughness of all the people involved in assuring that the funds were provided to the right person made a real difference in someone's life. The funds — more than \$3000 — were a windfall for *Jim*. He chose to have them deposited into his bank account so he could use them to augment his paycheck, because *Jim* is still a working man.

in FY2011. Remaining work on the project was shifted to OST's office in Albuquerque. The SDA Project goal of disbursing \$1.25 million in FY2011 was exceeded. A total of \$1.6 million was distributed to rightful owners.

Administrative Savings

FY2011 was driven by efforts to nimbly and effectively respond to budgetary pressures and evolving external events. In response to the Accountable Government Initiative (September 2010 presidential memorandum), each manager was sensitive to the need for performance improvements during FY2011 that would result in effective and cost efficient operations. Particular focus was placed on eliminating wasteful, duplicative, or otherwise inefficient operations. No activity was too small, or too large, for an objective review. OST questioned how any function could be done better, and save dollars.

Merging OHTA and OST operational functions presented an opportunity to achieve administrative savings. Operational functions include human resources, budget, contracting and acquisitions, safety and security, property, space, DOI access cards, workers compensation, and training. In FY2011, the organization realized \$120,000 administrative savings through the integration of acquisition/contracting functions between OHTA and OST. In addition, costs were reduced by \$230,000 by transferring OHTA IT security and system compliance tasks to OST. Additional savings related to merging operations will be realized in FY2012.

Three Special Objectives

The Secretary honed OST's focus by setting three special objectives in FY2011: work closely with the Bureau of Indian Affairs (BIA); reach across bureaus and offices of the Department and outside to other federal, state, and local agencies; and support tribal litigation settlements.

Three OST employees who are attorneys were detailed to form an OST tribal litigation team. As members of tribes, they bring a valuable perspective. They continue to support efforts of the Department's Office of the Solicitor and the Department of Justice to resolve trust management litigation.

OST has leveraged the expertise of other organizations, within and outside the Department, to enhance services to beneficiaries. The following accomplishments exemplify a few cooperative efforts in support of beneficiaries.

- Worked with an intra-agency committee to finalize an interim trust land appraisal manual that will provide interpretation, guidance, and



clarification for the consistent application of nationally recognized appraisal methodology and standards to Indian trust and restricted fee lands.

- Partnered with the Department of the Treasury to define the processes for Treasury to print checks if a catastrophic event disables OST systems
- Partnered with the BIA Division of Human Resources to document all contacts and services provided to beneficiaries with supervised accounts by piloting a BIA Social Services module in the OST beneficiary contact tracking system and database.
- Collaborated with BIA to initiate development of a “Superintendents Boot Camp” for BIA superintendents and OST Fiduciary Trust Officers to cross-inform/train regarding functions in support of beneficiaries.
- Partnered with the Department’s BIA, Office of Hearing and Appeals, and Office of Minerals Evaluation to develop a Congressional directive for the improvement of timely land asset services to beneficiaries.
- Implemented Treasury’s Internet-based application Pay.gov that provides the option of making BIA lease and permit payments online via electronic check or credit card.
- Conducted a post quality assurance review of 58,927 transactions encoded to the Trust Asset and Accounting Management System title and encumbrance modules to validate trust records for BIA.
- Published an administrative procedure, based on Department policy, to launch a wellness program. Extended health and wellness seminars and activities to the U.S. Forest Service in Albuquerque.

OST’s dedicated employees have and continue to make a difference to the lives of beneficiaries. There is optimism that expanded efforts to connect OST’s work with other components of the trust within the Department will produce an enhanced realization of the goals of the Act. Working with the tribes and individual Indians, OST employees look forward to exceeding priorities established for FY2012.

¹U.S. Code, Title 25: Indians, Chapter 4: Performance by United States of Obligations to Indians, Subchapter III: Deposit, Care, and Investment of Indian Moneys

²Cobell v. Salazar, et al., is a class action lawsuit brought against the federal government in 1996 for alleged mismanagement of Indian trust funds and records since inception of the trust, resulting in the lack of accurate payments to Individual Indian Money account holders. Land consolidation, with a goal of tribal management of the lands, is an objective of the Cobell settlement. During FY2011, tribal consultations regarding land consolidation took place across Indian country.

Select FY2012 Goals

- Conduct 100 financial education classes across Indian country, focusing on young adults who receive tribal per capita payments. The objective is to provide IIM beneficiaries with fundamental financial information so they may make informed decisions regarding their financial future.
- Implement broadcast messaging for account holders who use direct deposit or debit card for disbursements, saving costs to print and mail paper notifications; when implemented, the disbursement threshold for these account holders drops from \$15 to one cent.
- Provide initial ethics orientation to all new employees and annual ethics training to employees whose positions require financial disclosure filing.
- Automate certain transactions and terminate the encoding services contract to save approximately \$1 million per year.
- Meet 96% of established negotiated due dates for appraisal products.
- Reduce printed publications by 15%, an annual cost savings of \$12,000.
- Provide retention and disposition of trust records training to all BIA and OST records contacts.
- Increase from 43% to 55% audits and reviews of Bureau of Indian Affairs, Bureau of Land Management, Bureau of Ocean Energy Management, Bureau of Safety and Environmental Enforcement, fiduciary trust offices, and Native American tribes.

Office of Special Trustee for American Indians Additional FY2011 Accomplishments

- Recovered addresses for more than 32 percent of the whereabouts unknown accounts. This represents 33,567 accounts totaling approximately \$22.9 million.
- Mailed more than 550,000 disbursement checks to beneficiaries.
- Distributed funds for 8,508 probates, which closed 8,640 estate accounts.
- Distributed \$632,249 Youpee Escheat funds.
- Handled over 321,700 beneficiary-related inquiries, more than a 38 percent increase over FY2010.
- Provided tribal account statements on CD-ROM to approximately 100 tribes.
- Increased the total number of account holders who use either the direct deposit or debit card option to 36,150.
- Awarded the Cannon Financial Institute Certified Indian Fiduciary Trust Specialist designation to eight Bureau of Indian Affairs (BIA) and two OST employees.
- Processed 25 Freedom of Information Act (FOIA) and privacy requests.
- Provided FOIA and Privacy Act workshops to BIA, Office of Justice Services, Bureau of Indian Education, OST and tribal records staff members.
- Created over 100 trust account databases, which combined information from six accounting systems and data sources, for tribal litigations.
- Resolved 82,381 discrepancies resulting in accounts being properly encoded for trust income distribution.
- Reconciled 225 tribal per capita accounts.
- Maintained Self-Governance and Self-Determination funding agreements for the Appraisal Program with 39 tribes; two of these tribes also operate the Beneficiary Process Program.
- Hired a Deputy Ethics Counselor to oversee implementation of the ethics program by administering the financial disclosure system, conducting ethics training, and providing ethics counseling and advice to OST employees.
- Wrote and recorded an Ethics Office training video for OST employees.
- Provided information to beneficiaries on their accounts and available services by producing and distributing brochures, statement inserts, and promotional items that include OST contact information.
- Developed and explored new systems to enhance OST investment operations.
- Expanded Office of Trust Review and Audit capabilities.
- Developed an annual report to Congress, as required by the Act.
- Published an administrative procedure, based on Department policy, to launch telework.
- Provided technical support to BIA Southwest and Western Regions for the development and management of oil and gas, shale and gravel, oil shale and tar sands, solar, and wind projects.

Department of the Interior
Office of Special Trustee for American Indians

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www.doi.gov/ost

Trust Beneficiary Call Center
1-888-678-6836



Images of dancers taken at the 2008 Little Shell Powwow. Provided courtesy of Anson Baker.