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Total Lack of Trust (Indian Trust Fund)

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More than a century ago, a trust fund was set up to generate income for American Indians in return for use of their property. Today they claim that the fund's trustees - the U.S. departments of the Interior and Treasury - have bilked them out of \$10 billion-plus.

A gang of politicians and bureaucrats may have stolen \$10 billion from the poorest Americans, and a growing number of people think nobody gives a damn. The official excuses for hiding federal records proving this huge theft include claims that a computer system, which to date has cost taxpayers tens of millions of dollars, does not function properly; that paper records cannot be brought to court from government warehouses because of contamination by the rodent-borne hantavirus; and that relevant documents and ledgers known to be in government possession were destroyed variously in suspicious fires and/or intentionally shredded.

All of which is why American Indians are not receiving income earned on their property from a trust fund begun more than 100 years ago under the General Allotment Act of 1887, which historical documents confirm was intended to

eliminate the Indian way of life and provide financial independence to integrate them into the mainstream culture - an Indian version of the Reconstruction's 40 acres and a mule. To fund this adventure in cultural eugenics more than 11 million acres of land were divided among the individual American Indians but placed in trust to the federal government, with income generated from the leasing of oil, mineral, timber or grazing rights to be paid from the trust to the Indians.

The authorities of that era did not think that American Indians had the education or experience to manage these properties or the substantial monies that would come from leasing their lands. Congress decided to have the monies held in a trust to be overseen by various federal agencies, including the departments of the Interior and Treasury. In theory, monies generated from the leased lands would be distributed to the landholders, making the Indians financially independent. In practice, today's 300,000 American Indians and their families claim to have been bilked out of an estimated \$10 billion. No one denies that the money is unaccounted for. Finding it is another matter.

Eloise Cobell, a banker from the Blackfeet Reservation in northwest Montana, and four other American Indians filed a class-action lawsuit against the United States in 1996. They sought to account for and recover all the monies due and owing from the revenues of the leased lands, based on historical

records and data kept throughout the years. But the trustees - the departments of the Interior and Treasury - have been unable and/or unwilling to produce the requested records, going to bizarre extremes to withhold information confirming the huge Indian claims.

Washington lawyer Dennis Gingold, the lead attorney on the case since it was filed, tells Insight: "We're talking about tens of billions of dollars that cannot be accounted for - especially disturbing given the fact that the trust was forced on the Native Americans at gunpoint. The government told the Indians, 'We're gonna take care of your property.' It's the equivalent of me pointing a gun at your head and saying to you today, 'Give me the keys to your house and your car and your bank-account information. You will remain the beneficial owner, so don't worry because I'm going to handle this exclusively in your best interest.'"

According to Gingold, "The government has handled this lawsuit as badly as they've managed the trust account - with total disdain toward the beneficiaries. There is no single situation that comes close to this one in which a trustee has so abused the trust beneficiaries for so many years."

How bad is it? That depends on who is being asked. Take for example the Department of the Interior (DOI), whose job it is to maintain the historical data on the trust lands, ensure accurate accounting and then turn any monies collected from the leased land over to

the Treasury Department. Because of shoddy record-keeping and a financial-management system that is not integrated, the DOI explained to the court, it cannot provide data for an audit.

In 1991, the General Accounting Office (GAO) reported that the DOI's Bureau of Indian Affairs (BIA) had spent more than \$21 million during a five-year period attempting to reconcile and certify Indian trust accounts. A decade later there still has been no reconciliation of these trust accounts despite the expenditure of an estimated \$30 million to \$40 million on a computerized financial-management scheme called the Trust Asset Accounting Management System (TAAMS), which doesn't work. But, when and if TAAMS ever is fully implemented, it is supposed to integrate all the various "modules" of the trust account.

Not to worry. Assistant Secretary of Indian Affairs Neal McCaleb tells Insight, that "We're pretty close with TAAMS. The system is an aggregation of several different modules like the land-title records. That's in good shape. Another is the realty module, which contains transactions of energy, mineral severance, and agriculture and timber leases that were integrated with the land-records module - which generated a user test with a 24 percent error rate. That doesn't sound good and it's not, but that was the first time we tried to marry those two systems."

You see, McCaleb explains, "It's a complex system and we haven't worked out all of the kinks. But [Interior] Secretary [Gale] Norton has directed that we have an evaluation of the progress of the TAAMS by an expert third party. EDS [Electronic Data Systems Corp.] will provide a preliminary report of that evaluation sometime in September. We've hired them to do an objective and dispassionate review of the progress of TAAMS. We know what needs to be done, we know how to do it and we just need some time. Secretary Norton has taken a very definitive and effective action in this area, and our hope is that TAAMS delivers all the services and uses our users need and want. We just got our hands around this in March, and there's a lot to do. With new hands on board we're trying to get the slack out and the sails trimmed and bring this ship into port. We're gonna fix the problem instead of fight the litigation."

Back on the reservation they're thinking about a war party of the kind that dealt with tea aboard a British ship in the port of Boston, and they're not buying the DOI's explanation that computer problems are, or could be, responsible for the theft or disappearance of billions in revenue generated from land leases. "This isn't about computer problems," Cobell explains. "It's about lying, mismanagement and corruption - and I'm up in arms about it. It really just seems that no one gives a damn. I think it's time that people start marching to jail for this kind of behavior. It is certainly time for journalists to let everyone know what

is going on in this case."

Cobell knows who she would like to march to jail. "Former interior secretary Bruce Babbitt and former treasury secretary Robert Rubin," the Blackfoot banker notes, "all had their fingers in it and . got away with lying to [U.S. District] Judge Royce Lamberth about crimes that their agencies got away with for 100-plus years. They're smart men, and they had 35 lawyers to our five. Unless something drastic is done - like personal sanctions - their successors are going to continue such behavior. I think it 's time to haul them off to jail. . They had no problem figuring how much was owed to the Holocaust victims. They can figure out this."

Cobell explains, "The government has maps of who the land belongs to, and they would just have to work forward. All you have to do is go back to the original land allotments, but the government is trying to cover up its liability, and there is a lot of the land that has gone into non-Indian ownership without records of how it happened. The government is full of crooks and liars, and that's what the headlines should read." Harsh words, and she isn't at all satisfied that the Bush administration is doing any better than the Clinton people did.

But according to Paul Moorehead, minority staff director and chief counsel on the Senate Indian Affairs Committee, "The Indians' perspective of the administration is that we've done little

more than shuffle the chairs on the deck of the Titanic. I understand their position. They've been through a lot. But everything for this administration has been accelerated, and they've had little time to get things going."

While Moorehead thinks the Bush team should be given more time to get to the bottom of these long-standing problems, he is well-aware that the Clinton team did everything possible to obstruct the lawsuit. He tells Insight, "At one point it became the theater of the absurd. There were four documents found out West, for instance, that were said to be covered with a rodent virus and therefore off-limits, so no staff would handle them and that's why we don't know how much money is owed. Then, in the thick of it, when questions were being posed about the documents - like where they are, if they are secure, whether the government was doing anything in a coordinated way - that's when the fire occurred at the Suitland, Md., [National Archives] records facility, and it became sort of an X-Files thing. It went from being a kind of Keystone Kops incompetence to something more nefarious."

Moorehead says that, before Vermont Sen. Jim Jeffords' switch gave control of the Senate to the Democrats, Sen. Ben Nighthorse Campbell (R-Colo.) was chairman of the Senate Indian Affairs Committee and "was riding herd on the trust-funds issue. Every conceivable angle was looked at - should we take the matter out of DOI altogether; should we bring more discipline to private

investment of Indian trust funds?
Innumerable bills were introduced, circulated, and I can't tell you how many hearings were held. I don't think there is a more frustrated man than Senator Campbell about what the Babbitt administration [at DOI] was doing with those trust funds."

Gingold, lead attorney for the American Indians in the class-action lawsuit, argues that it is the landowners - the Indians - who are most frustrated. "We've been in this case for five years," Gingold explains, "and I've been practicing law for 27 years. Never have I seen anything like this. Records are destroyed at DOI at the drop of a hat, and I've never seen a case where lawyers and litigants regularly lie to the court - and not just the trial court but also the circuit court. Meanwhile, they regularly lie to Congress and they always lie to the trust beneficiaries."

Just warming up, Gingold notes that not only has evidence been shredded while under subpoena but that "the special master himself had to save documents off the shredder at one DOI facility. Documents have been deleted on electronic systems, backup tapes have been lost in the thousands and tapes have been destroyed at Treasury too. But what is typical in this litigation is that lower-ranking people always get blamed for the wrongdoing. The people who make the decision and approve the conduct walk away."

For example, the furious Gingold

declares, "Take the documents that were destroyed during the contempt trial. On Nov. 23 and 24, 1998, the court held a hearing dealing with the production-of-documents request under the order which ultimately was found to be violated and was the basis for the contempt finding for former Treasury secretary Robert Rubin and former DOI secretary Bruce Babbitt. On Nov. 23, Treasury started destroying documents. At the end of January the contempt trial concluded and the destruction of the documents stopped. I believe in coincidences. I believe in the tooth fairy and Santa Claus. I just don't believe this was a coincidence."

Continuing, Gingold says, "This is a cover-up, it's a whitewash, and it ignores the tough questions. I wish I had the answers to why it's happening. We've heard lots of things that we can't corroborate. We've heard from former and present BIA officials that Indian trust monies have been used to help bail out the Chrysler Corporation. We've heard the money was used to bail out Penn Central and the City of New York. . The money that has been earned on those lands is substantial, so where did it go? Only one thing is clear: The only reason anything is happening in this case is that a tough federal judge has said this isn't going to happen anymore. Judge Royce Lamberth is the best thing that has happened to the Native Americans in 200 years. We're now seeking a receiver to take over. Every standard that's ever been used to appoint a receiver is met in this case. You have

deception, destruction of evidence, loss of trust funds and refusal to comply with court orders. I don't think there's a single standard that hasn't been violated here."

What's at stake if Lamberth decides the DOI isn't capable of handling this problem and gives control to a receiver? Plenty. According to Gingold, "Interior wouldn't like this because the Indian trust monies are its principle source of money and power. Lose the trust and the attendant power and it raises questions about whether you even need a DOI. No government agency ever would give up that kind of power because that's what's most important in Washington."

While Gingold waits for Lamberth's decision as to whether the DOI will remain in control of the Indian trusts, Interior Secretary Norton says she is doing her best. She assures Insight that her goal is to "put together a trust-reform management team and implementation strategy that will meet challenges head-on, solve problems one-by-one and leave a legacy of milestones met and tasks accomplished. It's a priority of the Bush administration to move Indian trust systems into the 21st century and identify and implement a method to make a historical accounting that will be funded by the Congress and is acceptable to the court."

After more than 100 years of dishonesty, who can blame American Indians for being dubious? But Washington insiders see this as an opportunity for the Bush administration to take the heat off their

appointments at DOI and begin asking Democratic celebrities, including Babbitt and Rubin, what happened to that unaccounted for \$10 billion-plus.

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