



# INDIAN REPORT



## URGE CONGRESS TO APPROVE INDIAN TRUST SETTLEMENT

Finally some good news. Congress may vote this fall to approve legislation that would help address more than a century of mishandling of Indian trust funds and repay some of the billions of dollars owed to Native Americans. The Indian Trust Reform Act of 2005 (S. 1439) would also help to bolster government accountability and correct one of the worst instances of government mismanagement in U.S. history.

This legislation could improve relations between American Indians and federal agencies. Passage would signal congressional commitment to fair play and could lift the hopes of native peoples. It would help build a stronger economy in Indian Country as well.

Senators John McCain (AZ) and Byron Dorgan (ND) are lead sponsors of the Indian Trust Reform Act. The bill would require the government to pay individual Indians for land use fees and lease payments it collected but did not always pass on to native landowners. A companion bill, H.R. 4322, has been introduced in the House by Representatives Richard Pombo (CA) and Nick Rahall (WV).

In early August, just before the summer recess, the Senate Committee on Indian Affairs met to markup S. 1439. But while key congressional leaders had already signed off on the legislation, at the last minute, objections from the White House persuaded committee chair McCain to postpone consideration. According to unofficial reports, the administration wants to be doubly sure that similar trust problems do not arise in the future. This latest delay could affect this complicated legislation and the amount of compensation provided to Native Americans.

**This moment should not be lost.** Congress has taken an enormous step forward by writing legislation that provides \$8 billion to individual Native Americans whose money was lost. The colossal failure to adequately administer these trust funds is reminiscent of the savings and loan crisis of the 1980s. But, it may cost the government between \$8 and \$12 billion to correct the Individual Indian Money account scandal, a small amount compared to the \$124 billion required to fix the savings and loan debacle. The funds would come out of a separate, special Judgment Fund and would not affect other programs in the federal budget.

Senator McCain insists he wants to see this legislation passed this year. But Congress will return for only a short session before adjourning in early October for the fall congressional campaigns. If the legislation does not pass this year, the new Congress convening in 2007 will need to restart the legislative process with a new bill. We at FCNL expect Senator McCain to attempt to win congressional approval for the Indian Trust Reform Act in September. But negotiations with the White House likely will continue into the early fall. ■

### Here's what you can do:

- Ask your members of Congress to be champions of Indian trust reform and repayment.
- Watch your email and check the FCNL website at [www.fcnl.org/nativeam](http://www.fcnl.org/nativeam) for updates on the progress of this critical legislation.
- Sign up for our special Native American Legislative Alerts by clicking Email Lists at the top of the FCNL home page at [www.fcnl.org](http://www.fcnl.org).

## WILL CONGRESS FIX 119 YEARS OF INJUSTICE?

*"Theft from Indian people."*

—Senator John McCain (AZ)

Senator John McCain (AZ) has used strong words in the past about the century of government mismanagement and, yes, theft from Indian people. The legislation Senators McCain and Byron Dorgan (ND) have proposed (S. 1439) would be a big step toward reforming the trust system and, importantly, would repay Native Americans some of the money they are owed for use of more than 10 million acres of land that the federal government has managed in their name for more than a century. While Senator McCain no longer makes such statements, the fate of the legislation may reside with him.

This legislation could be the last act in an historical drama of mismanagement and abuse that began when Congress passed legislation in 1887 dividing up collectively-held Indian lands into small parcels for individual Native Americans. That law, the General Allotment or Dawes Act, decreed that the federal government would act as manager of all revenue-producing activities on those lands, collecting and distributing rent monies or royalties, from, for instance, gas leases or cattle grazing. Money collected was to be deposited in individual accounts, with the federal government acting as manager, banker, and custodian.

Most individual Native Americans with trust lands have accounts in their names. But the federal government failed repeatedly to document, record, and pass on these funds to individual Indian account holders. Trust

problems documented by congressional investigations and court cases include lack of audits, inadequate or destroyed records, deposits of collected funds in the general treasury, failure to collect funds, and incomplete disbursement of funds. *These problems were complicated by "fractionation," i.e., where, after generations, many people hold small interests in the land.*

The first indications of government abuse date back to a Joint Congressional Commission report in 1915. But even after that report, the federal government failed to act. In 1994, Congress enacted the Indian Trust Fund Management Reform Act, which called for appointment of a special trustee to try to clean up the mess. Although improvements were made, the pace was slow and the results were inadequate.

### *The Cobell Lawsuit*

Frustrated by government inaction and the failure of the Department of Interior to provide adequate records, an accountant and banker who is member of the Blackfeet Indian Tribe of Montana filed a class action lawsuit in 1996 against the departments of Interior and Treasury. In that lawsuit, Elouise Cobell sought to force the federal government to account for billions of dollars belonging to approximately 500,000 American Indians.

After the lawsuit was filed, the government failed to comply with court orders to produce documents and eventually acknowledged destroying boxes of documents related to the case. As a result, the court held the Department of the Interior in contempt. In 2001, the court issued a ruling citing the "magnitude of the government's malfeasance" as justification for court supervision and, in subsequent rulings, found that Interior had breached its fiduciary duties. The case has prompted many positive bureaucratic changes including a consolidation of existing records.

But the U.S. government, perhaps overwhelmed by the work and money needed to correct the problems and the liability implications, refused to admit fault or to reach an informal settlement.

The government had "lost track" not only of money but also of a quarter of account holders. Little effort was

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made to find these “lost” people until after the Cobell case started. But the case did produce some immediate results: in one instance a Native American was located who had \$100,000 in his account.

While some money has been paid out to individual Indian account holders, much money remains at stake. After documenting a century of negligence and lost investment opportunities, in 2005 Native Americans said they believed a fair settlement would require \$27.5 billion. The Interior Department insisted the amount owed ranged from \$30 million to, at absolute maximum, \$500 million.

### ***Congress Steps In***

In 2005, key Senate and House committee leaders proposed legislation to resolve the Cobell case once and for all. The Indian Trust Reform Act, sponsored by Senators McCain and Dorgan and by Representatives Richard Pombo (CA) and Nick Rahall (WV) offers the best chance for providing some measure of justice for hundreds of thousands of individual Indians. At a hearing in the summer of 2005, Senator McCain stated, “I can certainly understand that no one [will] be entirely satisfied with the bill... That is the nature of a settlement proposal.”

Unfortunately, after numerous hearings in Washington and around the country, after wide acceptance in Indian Country, and after endless compromises, the government raised new objections. At the very moment that the Senate bill was scheduled for markup by the Senate Indian Affairs Committee in August 2006, Secretary of Interior Dirk Kempthorne and Attorney General Alberto Gonzalez asked for more time to review the legislation, and Senator McCain delayed taking action on the legislation.

Nevertheless, a great deal of progress has been made in laying out how the settlement would be handled, and the committee is expected to take up the bill in September. Formulas for distribution and plans to use an independent Special Master (similar to the process used in the September 11 settlement for affected families) have been worked out so that the money could be distributed in three years. While some of the specifics may change, the legislation could reach the floor this fall. ■

### **Summary of Indian Trust Reform Act of 2005**

*The Bush administration will be working until after Labor Day to persuade Congress to amend the bill (S. 1439), but as of Aug. 1, 2006, the legislation included:*

**Title 1:** Would allocate \$8 billion to settle all claims of individual Indian account holders.

**Title 2:** Would establish a commission to review Department of Interior's administration of Indian trust assets.

**Title 3:** Would empower Indian tribes to manage trust funds.

**Title 4:** Would consolidate fractionated Indian land holdings.

**Title 5:** Would reorganize the Department of Interior offices and create a new under-secretary responsible for administering trust accounts.

**Title 6:** Calls for the Secretary of the Interior to prepare financial statements for individual Indian, tribal, and other Indian trust accounts.

*At FCNL, we have focused our advocacy on Title 1 because the public has an obligation to assure that the government behaves ethically. Check the FCNL website at [www.fcnl.org/nativeam](http://www.fcnl.org/nativeam) for updates on this legislation.*

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## TALKING POINTS: INDIAN TRUST REFORM ACT

The federal government's neglect and misuse of Indian trust funds inflicted monumental misery on generations of Native Americans. Now, advocates face a similar monumental challenge to explain to Congress why the federal government's misconduct requires repayment of many billions of dollars.

Many in Congress still are unaware of the problem's existence or are unfamiliar with the remedies, even though this legislation may come to a vote in the fall.

Rather than attempting to explain the complex steps involved in untangling the bureaucratic and judicial knots, advocates can make a moral argument: it is not a choice but an obligation to give back money that never belonged to the federal government in the first place.

### ***Talking points for meetings with your legislators:***

- 1. Every person has a legal right to proceeds from their property holdings.** If any person in this country discovered the government was withholding or misplacing thousands of dollars of her money, she would have a right to legal remedy. After years of fruitless appeals, Elouise Cobell (Blackfeet) went to court to help 500,000 of her people who were in this very situation.
- 2. Massive negligence by government agencies has kept American Indian families from knowing even how much money they are owed.** As the trustee, the federal government is responsible for these funds, yet it is unable to provide an accounting of them. Ironically, the government insisted back in 1887 that it must hold land profits to protect Indians.
- 3. Some Indian families with oil wells or other resources and with revenues from leased land have been kept in poverty**—their homes lack electricity and plumbing, their children receive insufficient health care because of this injustice. Because these families received checks for the profits from their land so erratically with no account statements, they have no way of knowing whether they are being compensated fairly.
- 4. Congress first investigated the mishandling of Indian funds in 1915.** In the last 10 years, additional facts have been documented in federal court. **S. 1439 and H.R. 4322 were introduced to fix the system and pay interest on the losses suffered by past errors.**
- 5. The many billions owed individual Native Americans are *not* reparations but rather a cleanup of banking "errors."** The many billions of dollars required to square the accounts will come from the Judgment Fund, which is managed by the Treasury Department and used when the government loses or settles a case. The Judgment Fund is off-budget and, thus, does not compete with money for other programs.
- 6. Since American Indians are only one percent of the population, it is difficult for them to be heard no matter how just their cause.** Approximately 3,000 elderly Indians are dying each year without receiving a penny of their money. This is clearly a case of "justice delayed is justice denied." Members of Congress need to ask the administration to stop resisting payment and to right this wrong. ■