

EXECUTIVE SUMMARY

ITMA-DOI TRIBAL TRUST FUND SETTLEMENT PROJECT

February 21, 2005

I. Introduction

The Project's goal is to *achieve a fair and workable process for determining agreed-upon balances in tribal trust accounts which Tribes and the DOI could use to reach timely settlements of, and payments to, tribal trust accounts.* While the Project could later be expanded to other time periods and to mismanagement of trust assets other than money, the current grant will focus largely on trust funds only and for the period 1972-1992.

ITMA has made it clear to the government that this project is entirely and strictly voluntary on the part of participating tribes. No tribe is ever bound by any methodology or agreement that the tribe itself does not enter into on its own behalf with the government.

II. Historical Overview

For ten years the government has attempted to achieve unilateral settlement of tribal trust fund balances based on the work performed by Arthur Andersen & Co. during the period 1991-1995. For a variety of reasons all these efforts have failed, and the current Administration has agreed to attempt a cooperative effort with willing tribes to develop methodologies that might be used by tribes and the government to come to some form of settlement of trust fund balances based on the Arthur Andersen work. ITMA has entered into a Cooperative Agreement with the Department of the Interior to facilitate that effort. ITMA has secured the services of an expert accountant to advise the organization and participating tribes on review, analysis, and assessment of Arthur Andersen's work and the tribal account balances reported by AA & Co. as of September 30, 1995.

ITMA has long contended that the work performed by Arthur Andersen & Co. does not constitute an "accounting," as that term was used by Congress in the 1980's to prohibit any transfer of Indian trust funds to a third party for administration until the account

holders were first provided an accounting. Since that time, the Indian Trust Funds Management Reform Act of 1994 has required the Secretary to maintain accurate balances for Indian trust funds. Of course, the Secretary finds it impossible to certify or to assert accurate account balances until either an accounting can be achieved, or agreement can be reached between the government and account holders.

The government hopes this project will produce a methodology or methodologies for achieving some measure of settlement of account balances, at least for the period of 1972 to 1992, the period for which Arthur Andersen & Co. attempted a reconstruction and reconciliation of receipts to and disbursements from tribal trust fund accounts, along with other review procedures that were hoped to provide a measure of confidence in the accuracy of the financial statements maintained by the Department during that period.

ITMA hopes that this project will result not only producing methodologies for achieving some measure of settlement of account balances, but also that it will result in the participating tribes' receiving finally the treatment that would have long ago been expected of any other financial trustee, namely, that known losses will be made good with appropriate interest, that spurious and stale claims upon the accounts will be stricken from the books, and that the cooperative effort by participating tribes and the government will result in the achievement of settlements even broader in scope than those expressly contemplated in the Cooperative Agreement, with appropriate adjustments to their account balances.

III. Project Approach

The project will consist of two phases. The first phase is aimed at developing a methodology for applying to tribal accounts to determine appropriate and agreed-upon adjustments to those balances based on an analysis of what funds should be in those accounts. The second phase will provide expert assistance to willing and participating tribes to attempt to reach some measure of agreement by the government regarding their accounts by application of the methodology to their accounts. If these two phases are successful, the project would then be open to other tribes throughout Indian country as one of the avenues available to resolve trust mismanagement disputes. Since this approach is exploratory in nature and designed to benefit from experience and knowledge gained in its execution, the following projections are subject to modification and revision by the government and the tribes who agree to participate.

IV. Projected Phase I Activities

- A. ITMA will select willing tribes as participants in Phase I.
- B. ITMA will prepare a proposed work plan and implementation schedule for the participating tribes and the government.
- C. ITMA will collect and disseminate background information and materials to the participating tribes, including the national reports prepared by Arthur Andersen & Co., and the individual tribal reports prepared by Arthur Andersen and distributed by the Department in 1995 and 1996. This information will

also include work performed by the Department or its contractors to continue reconciliation efforts after the Arthur Andersen reports were prepared. Tribal consents will, of course, be required for ITMA to access individual tribes' reports for review and analysis.

- D. ITMA and the participating tribes will engage in an intensive period of review and analysis of materials collected.
- E. Within three-four months of selecting the participating tribes and collecting the information necessary for analysis, ITMA and the participating tribes will convene together for the purpose of preparing collective views for presentation to government participants in Phase I.
- F. Within two-three months of the tribes' convening to share their findings and experiences, ITMA and the participating tribes and government participants will meet for intensive deliberations directed toward adoption of a methodology to apply to account balances as reported by Arthur Andersen & Co.

V. Projected Phase II Activities

In Phase II, ITMA will select willing tribes to participate in the actual application of the developed methodologies to their accounts in agreements with the government.

VI. Necessary Pre-Conditions and Understandings

ITMA has made it clear to the government that the success of this project requires an unequivocal commitment on the part of the government to make available all reports and materials necessary for ITMA and participating tribes to conduct a competent review of the work actually performed by Arthur Andersen & Co. in the "Reconciliation Project." The government has indicated its complete understanding and its complete commitment to provide the necessary information to ITMA and participating tribes.

ITMA has made it clear to the government that no tribe is bound by its agreement to participate in this project to accept any settlement, or to abandon any claim it may have, except upon a knowing and voluntary basis in conjunction with any agreement that might be reached with the government with respect to its own account balances.

ITMA has made it clear to the government that this project is entirely and strictly voluntary on the part of participating tribes, and that no tribe including the participating tribes, is bound by any methodology or any agreement that the tribe itself does not enter on its own behalf with the government.

VII. Invitation to Tribes to Discuss and Question and Participate

With these mutual understandings and commitments, the government and ITMA invite any tribe interested in participating to attend the meetings scheduled to discuss this project and to bring any questions any tribe might have to these

meetings. Two such meetings are scheduled for February 23, 2005 in Las Vegas, Nevada and March 9, 2005 in Minneapolis, Minnesota.