

February 21, 2005

REPORT
U.S. House Resource Committee
Oversight Hearing on the
“Status of Indian Trust Fund Lawsuit, *Cobell v. Norton*”
February 16, 2005

Panel One - James Cason

Acting Assistant Secretary James Cason briefly made a statement and offered to answer questions. In his written statement he summarized the following pertinent information:

- 1 Department of the Interior (DOI or Department) manages 56 million acres of trust land
- 2 (46 million acres for Tribes; 10 million acres for individual Indians).
- 3 DOI manages over 100,000 leases for Tribes and individuals.
- 4 \$205 million is collected annually for 245,000 IIM accounts.
- 5 \$414 million is collected annually for 1,400 tribal accounts for 300 Tribes.
- 6 \$3.0 billion is additionally managed for Tribes.
- 7 \$400 million is additionally managed for individual Indian accounts.

Cason responded to Chairman Pombo’s questions about solutions:

DOI budgeted \$135 million for historical accounting. Cason believed there are other places the money could be used if the DOI were allowed to “move on.”

DOI has been impacted negatively everywhere. Even BIA careers have been negatively impacted because of the taint of working on the *Cobell* issues.

Ten percent of DOI has no Internet and have resorted to “workaround” efforts. Employees receive e-mail at home, attorneys are not able to conduct legal research from web sites.

Cong. Napolitano asked what elements should be part of the solution?

Cason responded that:

DOI views a solution as hampered by (1) expectations of DOI. There is a view that there is a substantial error and fraud in DOI’s trust fund management but accounting tests showed a small error rate and inconsistencies. No issues of

fraud were found.

(2) Uncertainty hampers a solution because there are \$100's of millions of dollars in accounts that need to be reconciled without documents.

DOI wants a fair settlement. DOI met with plaintiffs dozens of times through meetings and each had their perceptions of what is fair.

Cong. Hayworth stated that § 131 Tribes under the Trust Demonstration Project were demonstrating that generally tribes do a more efficient job and provide increased services.

Cason agreed.

Cong. Hurset, S. Dakota asked if a historical accounting was critical?

Cason responded:

DOI believes that an accounting may not meet expectations. There is confusion as to what kind of accounting is required.

The question was asked why does it cost so much to audit the accounts?

Cason responded:

There was no flawed accounting in the system and the accounting was done by fellow Indians. There was no accounting for lost or stolen revenues.

Cong. Faleomavaega asked why can't give \$4 billion at the outset which is the Indians money to begin with.

Cason responded:

DOI was trying to get to a solution. Very few small errors had been found. But the \$4 billion to \$150 billion figure is all over the place. What is the magnitude?

Cong. Udall asked if Cason had a solution to put in front of the Committee.

Cason said the DOI was addressing process, settlement, and total piece options.

Udall said he did not want a patchwork or band-aid solution.

Cong. Pierce asked if DOI's opinion was that the errors were small, infrequent, and there was no consistent mismanagement, does DOI have examples to show this is so.

Cason did not answer the question.

Panel Two - Keith Harper

Harper made a preliminary statement summarizing a detailed, informative written statement.

Cong. Faleomavaega asked why mediation did not work.

Harper responded:

Procedural issues were not resolved. In fact, plaintiffs had made an offer and no counter-offer was made. There were questions of personal liability of Department

officials. The plaintiffs were simply required that the officials tell the truth to the Court and when they did not, sanctions were proper for giving false statements to the Court. Further, there is no accountability for officials in DOI.

Harper was asked if this was an Administrative Procedures Act (APA) case, where the agency is given great deference or trust law case.

Harper responded that the Court had already ruled this is a trust law case with a strict duty to account to beneficiaries.

Harper was asked his recommendation:

Harper stated that the case should not take away from DOI appropriations. DOI should find reasonable dollar amounts.

As to trust reform, the plaintiffs did not agree with the re-organization. **There was no accounts receivable.** Without this, what numbers are we looking at? Without such numbers, there can be no negotiation for fair market value.

SUMMARY

In sum, Mr. Cason appeared to make the argument that DOI could not provide solutions because of the (1) expectations of DOI that it has a high error rate and (2) uncertainty that exists because of the lack of records. He repeated the theme that DOI found few, infrequent errors with no consistent mismanage. The BIA accounting was done by fellow Indians. While Mr. Cason referred to judgment fund and per capita accounts, he did not address leasing accounts involved oil and gas, grazing or agriculture and timber leases, either for tribes or individuals.

Mr. Harper cited a 1915 Report of the Joint Commission of the Congress of the United States. The report investigated valuable lands, mines, oil fields, and other natural resources and concluded that the estate was left open to fraud, corruption, and institutional incompetence. Harper cited similar reports for the following decades up to the present. However, there was no review of the oil and gas leases or grazing, agriculture and timber leases today 2005.

Marcella Giles
ITMA Trust Reform Liaison