

**TESTIMONY OF PRINCIPAL CHIEF JIM GRAY OF THE OSAGE TRIBE
BEFORE THE SENATE COMMITTEE ON INDIAN AFFAIRS
ON S. 1770, THE INDIAN MONEY ACCOUNT CLAIM SATISFACTION ACT OF 2003**

OCTOBER 29, 2003

Chairman Campbell, Vice-Chairman Inouye, and other distinguished Members of the Senate Committee on Indian Affairs, I thank you for the opportunity to testify on S. 1770, the Indian Money Account Claim Satisfaction Act of 2003, and to present the views of the Osage Tribe. We thank the sponsors of this bill – Chairman Campbell, Vice-Chairman Inouye, and Senator Domenici – for introducing S. 1770 and commend the Committee for trying to bring justice and closure to many of the individuals who have Individual Indian Money accounts.

The Cobell lawsuit has focused attention on the federal government's failure to live up to the most basic requirements of a trustee to IIM account holders. The effort to obtain justice for IIM account holders began in the 1980's in Congress when Oklahoma Congressman Mike Synar first investigated the federal government's shoddy IIM and trust resource management and accounting practices. His investigations immediately brought federal and public attention to the scope and magnitude of this problem. His efforts also resulted in legislation preventing the transfer of IIM accounts into private banks until the beneficiary of the account received an accounting. A similar provision is now included in the annual Department of Interior appropriations bill to prevent the statute of limitations from beginning to run on any claims for losses to or mismanagement of individual or tribal trust money until the beneficiary receives an accounting. In 1992 the Government Reform Committee published its report *Misplaced Trust*, which revealed the magnitude and scope of the trust resource accounting and management fiasco. All of Indian Country owes Congressman Synar a great debt for his diligent effort to uncover these systemic problems and abuses. He is sorely missed.

We agree with the sponsors of S. 1770 that it is in the best interest of Indian account holders and the United States to have a voluntary alternative claims resolution process that will lead to a full, fair, and final settlement of existing and potential Indian money account claims. While we are concerned about provisions in this bill, particularly the definitions of "accounting" and "claim" contained in Section 3 of the bill, we believe that the process that would be established by S. 1770 is fundamentally fair. It does not, however, take into account the unique situation of the Osage Tribe and its hybrid tribal - headright holder trust funds scheme. Any fair resolution of the trust funds situation should deal specifically with the Osage. We would like to work with the Committee to address the concerns discussed in my testimony.

S. 1770 would: (1) establish a task force of experts to conduct an accounting of the IIM accounts; (2) determine a balance owed to eligible IIM account holders and notify them of it; and (3) allow the eligible IIM account holders the opportunity to accept the determined balance, challenge it through arbitration, or reject the balance and remain a part of the Cobell class. As stated earlier, this process is basically fair, but portions of this bill should be amended to ensure this.

We are concerned with finding #3, which states that a “court-ordered historical accounting . . . will not result in significant benefits to the members of the [Cobell] class.” While we disagree that this is the case, we also are concerned that this statement could be interpreted to undercut the basic theory of tribal and Cobell common law accounting claims, that funds the trustee cannot account for are owed to the beneficiary. This finding also should be read in context of the federal government’s effort for eight years to eliminate or evade its responsibility to provide an accounting to IIM beneficiaries. The most notable and nefarious example of this evasion was the sham consultation process with IIM beneficiaries. As a consequence of the federal government’s failure to perform an accounting over the years, we recognize that any fair attempt to provide an historical accounting required by law will be expensive. Even so, the basis for Cobell and tribal claims should not be undercut. We are confident that the Committee shares our desire to avoid the misinterpretation or misuse of this Finding. We would like to work with the Committee to eliminate any possible misuse or misinterpretation.

We also have serious misgivings of the definition of “accounting”. We believe that an IIM account holder should have enough information to make an informed decision about whether to accept the amount the IMACS Task Force recommends. Based on the particularly vague standards of both (A) and (B) of this definition, “accounting” may be an inaccurate, confusing name for an IMACS determination. We recommend that this legislation either adopt common law accounting standards, or call the determination something other than an “accounting” and require the Task Force to make clear the deficiencies, if any, in coming to a determination. IIM account holders have a legal right to a full accounting, and this legislation should ensure that they are not confused or deceived by an IMACS determination.

We are also concerned that the definition of “claim” could create particular problems for the Osage Tribe. The form of Osage government as well as the management and distribution of Osage trust funds are unique. In 1906, Congress directed the Secretary of the Interior to create a roll of all living Osages through July of 1907. All persons on that roll received allotments of Osage Reservation lands and a pro rata share of the Osage mineral estate. These pro rata shares have been passed along over the years to Indians and non-Indians and have come to be known as “headrights,” or the rights to receive quarterly distributions of funds derived from the Osage mineral estate. Only Osages with headrights have political rights to participate in Osage government through voting or running for elective office, and their voting power is equal to their headright fraction. The Osage mineral estate continues to be held in trust by the United States for the Osage Tribe.

Funds derived from the Osage mineral estate are placed into a tribal trust account in the name of the Osage Tribe. The Tribal Council can draw down up to \$1 million annually from the minerals income for purposes of Council and mineral estate administration. Each quarter, the balance of the funds in the Osage tribal account is distributed to the headright holders in accordance with their headright share. A few headright holders have more than one headright, while most have a fraction. The

Department of the Interior has established three categories of headright holders: (1) Osage, (2) non-Osage Indian, and (3) non-Indian. Osage and non-Osage Indians with headrights have Indian money accounts that funds from the mineral estate are deposited into. The non-Indians do not have IIM accounts but receive a check every quarter.

So, Mr. Chairman, the Osage trust funds system is an unique hybrid in which funds come into a tribal account (Congress has called these funds “tribal funds” in statutes), the Tribe has rights to these funds, and the Indian headright holders receive distributions into IIM accounts while the non-Indian headright holders get a check. The U.S. Court of Claims recently ruled that the Osage Tribe has standing to represent the interests of the headright holders in litigation involving federal mismanagement of Osage trust funds.¹ Furthermore, a federal statute makes clear that the Osage Tribe is the appropriate entity to bring claims against the United States.² Thus, the Osage Tribe and its headright holders do not comfortably fit into the otherwise simple dichotomy of tribal claims and individual claims.

We are concerned that the definition of “claim” in Section 3 of the bill is overly broad as it includes “any duty” that “pertains in any way” to the IIM account. Such broad terms subjects the definition to varying and different interpretations. The definition includes more than an “accounting” and appears to include activities that occur prior to the time the money is deposited into the IIM account. We are concerned that this definition may result in harm to Osage tribal claims brought in the Court of Federal Claims or one we plan to bring in federal district court, even though the stated intent of the bill is to resolve individual account holder claims. Indian headright holders would appear to meet the qualify as “eligible individuals” under S. 1770. Headright holder claims could subsume the Osage Tribe’s existing claims, contrary to the intent of the Tribe to represent the headright holders. Therefore, we would like to work with the Committee to amend this definition.

Thank you for the opportunity to testify today.

¹ *Osage Nation v. United States*, 57 Fed. Cl. 392 (2003).

² Act of June 28, 1906, Pub. L. No. 59-318, 34 Stat. 539, 544.