

In a cave, counting up what Indians are owed

LENEXA, Kan. (AP) — Seventy feet beneath the prairie, the government is filling limestone caverns — protected by guards and a bomb-sniffing dog — with truckloads of American Indian financial and cultural records.

What is ground zero for an accounting that will take seven years and cost \$335 million owes its existence to a bitter class-action lawsuit brought against the Interior Department a decade ago. Still, it's only a short version of the historical accounting that Indians demanded but no longer want — because they don't think it can be done properly.

The Indians say the government mismanaged a trust in their names for 120 years and now owes them tens of billions of dollars.

The dispute dates to 1887, when Congress made the Interior Department trustee for 145 million acres of Indian lands. Indians were supposed to benefit but the government gave most of the land to white settlers.

Today, Interior manages 10 million acres of trust land for individual Indians and 46 million acres for tribes. In 1996, the Indians sued to reconcile their historical accounts. They, and Congress, demanded an audit. The Indians may be owed a century's worth of grazing rents, oil and gas royalties and timber sales from the land, plus interest.

Both the Indians and the Interior Department agree \$13 billion was collected between 1909 and 2001.

The Indians had claimed the unpaid interest could be more than \$150 billion, but they've offered to drop the whole thing if the government coughs up \$27.5 billion. That money would be spread among individual Indian accountholders, about a fifth of the nation's 2.5 million Native Americans who live mainly in the West.

No way, the Bush administration replied: The government has been forwarding most of the rents and royalties to tribes and individual Indians all along.

"It could be just \$30 million that's owed to the Indians," said Ross Swimmer, the Interior Department's special trustee for American Indians and also a member of Oklahoma's Cherokee Nation.

During a tour of the Kansas cave, Swimmer and other Interior officials were eager to show that many more Indian records exist than people realize. They also wanted to demonstrate their ability to check the accuracy of financial transactions with Indians.

"They're finally going to get their accounting," Swimmer said. "For once we've gotten something right for the Indians."

In an irony befitting an "Alice's Adventures in Wonderland" legal war, the government is relying on the Indian-demanded accounting — actually, it's a statistical sampling — to come up with figures that Indians claim lowball what they're owed.

"It's a number in the m's, not the b's," said Fritz Scheuren, who oversees Interior's statistical sampling and was president of the American Statistical Association last year.

The Indian plaintiffs now say too many records have been destroyed to come up with an accurate figure. Before 1990, the Treasury Department routinely destroyed the Indian trust's canceled checks, and court documents attest to numerous destroyed trust records.

"The documents that the government has preserved are a fraction of those that have been lost and destroyed," said Dennis Gingold, an attorney for the suing Indians. "Massive hard copy and electronic destruction ... make the accounting legally and factually impossible."

The Indians' biggest ally is embattled U.S. District Judge Royce Lamberth, a former Reagan administration official whose strongly worded rulings condemn the Interior Department. After nine years presiding over the case, Lamberth concluded last July the agency is a "pathetic outpost" that has bungled its fiduciary duty.

"For those harboring hope that the stories of murder, dispossession, forced marches, assimilationist policy programs, and other incidents of cultural genocide against the Indians are merely the echoes of a horrible, bigoted government-past that has been sanitized by the good deeds of more recent history, this case serves as an appalling reminder of the evils that result when large numbers of the politically powerless are placed at the mercy of institutions engendered and controlled by a politically powerful few," the judge wrote.

Not surprisingly, the Interior Department wants Lamberth removed from the case and another judge assigned to it.

Down the rabbit hole, tractor trailers disappear into an obscure grassy knoll just off the Prairie Star Parkway. Situated in an industrial park a half hour southwest of Kansas City, the cave offers few indications it houses a semi-secretive government facility.

Several minutes of driving through the dark, and the corridors get curiously and curiously. A faint dankness and dust fill the nostrils. Pocked walls climb into shadow. Painters have brightened them, like gardeners painting red roses white.

In dimly lit parking spaces, trucks discharge box after box of documents to be catalogued, computerized and stashed away.

Two years and \$120 million into the accounting, the archive has amassed 140,000 boxes with 300 million pages of old leases, bills, ledgers, account statements, school records, maps, letters and black-and-white photographs.

In a space the size of Kansas City's Arrowhead Stadium and managed by the Interior Department and the National Archives, boxes extend close to the ceiling and down aisles so long they fade into the caverns — reminiscent of the fate met by Indiana Jones' recovered ark.

"People come in and ask, 'Where is the Lost Ark?'" said Jeffrey Zippin, deputy executive director of Interior's Office of Historical Trust Accounting.

The shelves are coated with an electrostatically charged powder to resist corrosion or chemical action. The air within the painted cavern walls is kept at 60 degrees Fahrenheit and 40 percent humidity. High-efficiency air filters catch 99 percent of all microscopic particles.

The facility is leased for \$900,000 a month from Minneapolis-based Meritex Enterprises Inc. Its security and climate controls are matched only by the National Archives itself in Washington and an annex in College Park, Md.

The cavern teams with a small army of federal contractors — five accounting firms and 15 other businesses — assisting

about a dozen Interior and National Archives employees. Thirty students at Haskell Indian Nations University, in nearby Lawrence, use the documents for training. It is closed to all but federal workers, contractors, Indian tribal representatives and researchers; privacy laws protect the names of living accountholders.

The boxes come from about 100 of Interior's Bureau of Indian Affairs offices and National Archives' record centers around the country. At a nondescript warehouse nearby, 100 workers sort through the boxes and log their contents into computers.

The records are an eclectic mix: 1943 photographs of Navajo women cooking; a handwritten appeal from a Great Plains Indian for compensation because some of his cattle died; and a 16-page list of Sioux Indians killed and wounded — bearing ill-fated names like Black Moon, Sore Eyes Woman and Afraid of Left Hand — on Dec. 29, 1890 at Wounded Knee.

Some boxes are tattered, faded or water-damaged. A few were decontaminated because of animal droppings.

Concerns about the how the trust accounts are managed are almost as old as the trust itself.

In 1915, the Joint Commission of Congress on Indian Funds warned of "fraud, corruption and institutional incompetence almost beyond the possibility of comprehension." In 1928, the Interior Department found Indian trust data unreliable and almost useless. Dozens of other, scathing reports followed.

Finally, in 1994, Congress demanded Interior fulfill an obligation to account for money received and disbursed. A year later when account statements still hadn't been reconciled, Elouise Cobell of the Blackfeet Indian tribe joined with the Boulder, Colo.-based Native American Rights Fund and others in filing suit.

So-called "fractionalization" of accounts is a major obstacle in managing the trust. As ownership of the 160-acre and smaller land parcels transferred from generation to generation, proceeds from the trust accounts

had to be divided among more and more descendants. Interior officials say 90 percent of the transactions are for less than \$100.

"In every category it has cost us more to find the errors than the total amount of the errors we found," said departing Interior Secretary Gale Norton. "When you consider that we have millions of transactions under \$1, you're spending \$3,500 to find out if we handled \$1 correctly."

Norton's plan for the accounting includes checking half the 57 million transactions and a quarter of the \$5 billion at stake between 1985 and 2000.

"We don't have every single record of every single transaction that has occurred since the 1800s. We certainly do have enough records to do a complete accounting," she said.

Accountants are examining nearly all financial transactions over \$100,000 in the 1985-2000 window. That represents \$276 million — or about 5 percent of all the money at stake. Also being checked is nearly every payment an Indian tribe made to its members or resulted from a lawsuit or settlements. They total \$784 million — or 16 percent of the transactions.

Another 4 percent of the money — 19 million transactions, most for less than \$1 — is considered interest. That represents \$177 million. All those transactions are checked, too.

For the other half of the transactions — three-quarters of the \$5 billion at stake — the department uses statistical sampling to check the accuracy. It's a method the Indians and Lamberth rejected, but a federal appeals court approved for use as a tool. The courts must sign off on any final accounting.

After 10 years of battling in court, no one knows exactly how much was collected or paid out to the Indians.

"The previous administration as well as ourselves tried in good faith to tackle this problem. It was a much larger undertaking than anyone imagined," Norton said. Early in her tenure, Norton half-joked about how she divided her time. "Indian trust, Indian trust and Indian trust," she told the AP.

Geoffrey Rempel, an accountant working for Indian plaintiffs, said the evidence is undisputed that trust records were destroyed over the past century, so there is no way Interior officials can claim to have enough of them for a proper accounting.

"All they're doing is matching bad documents to bad documents, showing you what they want you to see," he said. "People would be thrown in jail if they audited banks like this. This is completely unacceptable — unless it's for the Indians."

Most people agree the only acceptable solution will come from Congress. Senate Indian Affairs Committee Chairman John McCain, R-Ariz., and House Resources Committee Chairman Richard Pombo, R-Calif., co-chaired a recent hearing to find the quickest and fairest way to end the dispute.

Experts urged them to study the legal arguments — then arbitrarily pick a settlement figure.

Stuart Eizenstat, a former deputy Treasury secretary in the Clinton administration, believes Congress should create an Indian claims settlement commission to process claims, similar to the reparations made after World War II.

"It would be a disaster to go back to court. It would just resign the Indians to another decade of fruitless litigation," he told the AP. "This cries out for an administrative, rough justice solution."

Eizenstat negotiated the historic agreement with Switzerland's two largest banks to pay Holocaust survivors \$1.25 billion. He said Congress should pick a figure that errs on the side of overpay to handle both accounting claims and anticipated claims from Indians challenging how the government actually managed the lands.

"You presume that if the records weren't there, it's because of mismanagement," he said. "If they themselves as trustees mishandled records, then they have to handle the burden."

Even Swimmer, who wants Congress to give Interior some "clear direction on its responsibilities," agrees with the concept of a big, somewhat arbitrary payout. "Just pick a number," he told the AP. "It's reparations, not repayment."

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