

DEPARTMENT OF THE INTERIOR AND RELATED AGENCIES
APPROPRIATIONS BILL, 2003

, 2003.—Committed to the Committee of the Whole House on the State of the
Union and ordered to be printed

Mr. SKEEN, from the Committee on Appropriations,
submitted the following

R E P O R T

[To accompany H.R. 1

The Committee on Appropriations submits the following report in explanation of the accompanying bill making appropriations for the Department of the Interior and Related Agencies for the fiscal year ending September 30, 2003. The bill provides regular annual appropriations for the Department of the Interior (except the Bureau of Reclamation) and for other related agencies, including the Forest Service, the Department of Energy, the Indian Health Service, the Smithsonian Institution, and the National Foundation on the Arts and the Humanities.

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Section 119 continues a provision permitting the conveyance of the Twin Cities Research Center of the former Bureau of Mines for the benefit of the National Wildlife Refuge System.

Section 120 extends for one year a provision regarding the use of transportation fees under the National Parks Omnibus Management Act of 1998.

Section 121 continues a provision authorizing a cooperative agreement with the Golden Gate National Parks Association.

Section 122 continues a provision permitting the Bureau of Land Management to retain funds from the sale of seeds and seedlings.

Section 123 continues a provision permitting the sale of improvements and equipment at the White River Oil Shale Mine in Utah and the retention and use of those funds by the Bureau of Land Management and the General Services Administration.

Section 124 continues a provision authorizing the Secretary of the Interior to use helicopter or motor vehicles to capture and transport horses and burros at the Sheldon and Hart National Wildlife Refuges.

Section 125 authorizes federal funds for Shenandoah Valley Battlefield NHD and Ice Age NST to be transferred to a State, local government, or other governmental land management entity for acquisition of lands.

Section 126 continues a provision prohibiting the closure of the underground lunchroom at Carlsbad Caverns NP, NM.

Section 127 continues a provision preventing the demolition of a bridge between New Jersey and Ellis Island.

Section 128 continues a provision prohibiting the posting of signs at Canaveral National Seashore as clothing optional areas if it is inconsistent with county ordinance.

Section 129 permits the use of funds for incidental expenses related to promoting the Centennial of the National Wildlife Refuge System.

Section 130 authorizes the National Park Service to enter into a cooperative agreement with Capitol Concerts.

Section 131 requires the Department of the Interior to provide a summary of the Ernst and Young report on the historical accounting of the named plaintiffs in *Cobell v. Norton*.

Section 132 limits compensation for the Special Master and Court Monitor appointed by the Court in *Cobell v. Norton* to 200 percent of the highest Senior Executive Service rate of pay.

Section 133 requires the Special Trustee for American Indian to appoint new Advisory Board members.

Section 134 allows the Secretary to pay private attorney fees for employees and former employees incurred in connection with *Cobell v. Norton*.

Section 135 allows the Interior firefighting Bureaus to engage in

[FULL COMMITTEE PRINT]**Union Calendar No.**107TH CONGRESS
2D SESSION**H. R.****[Report No. 107-]**

Making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 2003, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE , 2003

Mr. SKEEN, from the Committee on Appropriations, reported the following bill; which was committed to the Committee of the Whole House on the State of the Union and ordered to be printed

A BILL

Making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 2003, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That the following sums are appropriated, out of any
4 money in the Treasury not otherwise appropriated, for the
5 Department of the Interior and related agencies for the

1 NATIONAL INDIAN GAMING COMMISSION

2 SALARIES AND EXPENSES

3 For necessary expenses of the National Indian Gam-
4 ing Commission, pursuant to Public Law 100-497,
5 \$2,000,000, to remain available until expended.

6 OFFICE OF SPECIAL TRUSTEE FOR AMERICAN INDIANS

7 FEDERAL TRUST PROGRAMS

8 For operation of trust programs for Indians by direct
9 expenditure, contracts, cooperative agreements, compacts,
10 and grants, \$141,277,000, to remain available until ex-
11 pended, including not to exceed \$15,000,000 to perform
12 a historical accounting of each Individual Indian Money
13 Account open on December 31, 2000, covering the period
14 from the date on which the account was opened or Janu-
15 ary 1, 1985, whichever is later, to December 31, 2000:
16 *Provided*, That hereafter no funds provided under this or
17 any other Act shall be available to conduct a historical
18 accounting of Individual Indian Money Accounts other
19 than an accounting for the period specified in this Act of
20 accounts open on December 31, 2000, unless such ac-
21 counting is specifically provided for in a subsequent Act
22 of Congress: *Provided further*, That funds for trust man-
23 agement improvements may be transferred, as needed, to
24 the Bureau of Indian Affairs "Operation of Indian Pro-
25 grams" account and to the Departmental Management

1 "Salaries and Expenses" account: *Provided further*, That
2 funds made available to Tribes and Tribal organizations
3 through contracts or grants obligated during fiscal year
4 2003, as authorized by the Indian Self-Determination Act
5 of 1975 (25 U.S.C. 450 et seq.), shall remain available
6 until expended by the contractor or grantee: *Provided fur-*
7 *ther*, That notwithstanding any other provision of law, the
8 statute of limitations shall not commence to run on any
9 claim, including any claim in litigation pending on the date
10 of the enactment of this Act, concerning losses to or mis-
11 management of trust funds, until the affected tribe or in-
12 dividual Indian has been furnished with an accounting of
13 such funds from which the beneficiary can determine
14 whether there has been a loss: *Provided further*, That not-
15 withstanding any other provision of law, the Secretary
16 shall not be required to provide a quarterly statement of
17 performance for any Indian trust account that has not had
18 activity for at least 18 months and has a balance of \$1.00
19 or less: *Provided further*, That the Secretary shall issue
20 an annual account statement and maintain a record of any
21 such accounts and shall permit the balance in each such
22 account to be withdrawn upon the express written request
23 of the account holder: *Provided further*, That not to exceed
24 \$50,000 is available for the Secretary to make payments
25 to correct administrative errors of either disbursements

1 from or deposits to Individual Indian Money or Tribal ac-
2 counts after September 30, 2002: *Provided further*, That
3 erroneous payments that are recovered shall be credited
4 to this account.

5 INDIAN LAND CONSOLIDATION

6 For consolidation of fractional interests in Indian
7 lands and expenses associated with redetermining and re-
8 distributing escheated interests in allotted lands, and for
9 necessary expenses to carry out the Indian Land Consoli-
10 dation Act of 1983, as amended, by direct expenditure or
11 cooperative agreement, \$7,980,000, to remain available
12 until expended and which may be transferred to the Bu-
13 reau of Indian Affairs and Departmental Management.

14 NATURAL RESOURCE DAMAGE ASSESSMENT AND
15 RESTORATION

16 NATURAL RESOURCE DAMAGE ASSESSMENT FUND

17 To conduct natural resource damage assessment and
18 restoration activities by the Department of the Interior
19 necessary to carry out the provisions of the Comprehensive
20 Environmental Response, Compensation, and Liability
21 Act, as amended (42 U.S.C. 9601 et seq.), Federal Water
22 Pollution Control Act, as amended (33 U.S.C. 1251 et
23 seq.), the Oil Pollution Act of 1990 (Public Law 101-380)
24 (33 U.S.C. 2701 et seq.), and Public Law 101-337, as
25 amended (16 U.S.C. 1911 et seq.), \$5,538,000, to remain
26 available until expended.

1 (2) deposited only into accounts that are in-
2 sured by an agency or instrumentality of the United
3 States, or are fully collateralized to ensure protec-
4 tion of the funds, even in the event of a bank failure.

5 SEC. 112. Notwithstanding any other provisions of
6 law, the National Park Service shall not develop or imple-
7 ment a reduced entrance fee program to accommodate
8 non-local travel through a unit. The Secretary may provide
9 for and regulate local non-recreational passage through
10 units of the National Park System, allowing each unit to
11 develop guidelines and permits for such activity appro-
12 priate to that unit.

13 SEC. 113. Appropriations made in this Act under the
14 headings Bureau of Indian Affairs and Office of Special
15 Trustee for American Indians and any available unobli-
16 gated balances from prior appropriations Acts made under
17 the same headings, shall be available for expenditure or
18 transfer for Indian trust management and reform activi-
19 ties.

20 SEC. 114. Notwithstanding any other provision of
21 law, the Secretary of the Interior hereafter has ongoing
22 authority to negotiate and enter into agreements and
23 leases, without regard to section 321 of chapter 314 of
24 the Act of June 30, 1932 (40 U.S.C. 303b), with any per-
25 son, firm, association, organization, corporation, or gov-

1 funds appropriated in this Act for incidental expenses re-
2 lated to promoting and celebrating the Centennial of the
3 National Wildlife Refuge System.

4 SEC. 130. The National Park Service may in fiscal
5 year 2003 and thereafter enter into a cooperative agree-
6 ment with and transfer funds to Capital Concerts, a non-
7 profit organization, for the purpose of carrying out pro-
8 grams pursuant to 31 U.S.C. 6305.

9 SEC. 131. No later than 30 days after enactment of
10 this Act, the Secretary of the Interior shall provide to the
11 House and Senate Committees on Appropriations and the
12 House Committee on Resources and the Senate Com-
13 mittee on Indian Affairs a summary of the Ernst and
14 Young report on the historical accounting for the five
15 named plaintiffs in Cobell v. Norton. The summary shall
16 not provide individually identifiable financial information,
17 but shall fully describe the aggregate results of the histor-
18 ical accounting.

19 SEC. 132. None of the funds in this or any other Act
20 for the Department of the Interior or the Department of
21 Justice can be used to compensate the Special Master and
22 the Court Monitor appointed by the United States District
23 Court for the District of Columbia in the Cobell v. Norton
24 litigation at an annual rate that exceeds 200 percent of

1 the highest Senior Executive Service rate of pay for the
2 Washington-Baltimore locality pay area.

3 SEC. 133. Within 90 days of enactment of this Act
4 the Special Trustee for American Indians, in consultation
5 with the Secretary of the Interior and the Tribes, shall
6 appoint new members to the Special Trustee Advisory
7 Board.

8 SEC. 134. The Secretary of the Interior may use dis-
9 cretionary funds to pay private attorneys fees and costs
10 for employees and former employees of the Department
11 of the Interior reasonably incurred in connection with
12 Cobell v. Norton to the extent that such fees and costs
13 are not paid by the Department of Justice or by private
14 insurance. In no case shall the Secretary make payments
15 under this section that would result in payment of hourly
16 fees in excess of the highest hourly rate approved by the
17 District Court for the District of Columbia for counsel in
18 Cobell v. Norton.

19 SEC. 135. Section 124(a) of the Department of the
20 Interior and Related Agencies Appropriation Act, 1997
21 (16 U.S.C. 1011 (a)), as amended, is further amended by
22 inserting after the phrase "appropriations made for the
23 Bureau of Land Management" the phrase "including ap-
24 propriations for the Wildland Fire Management account

NATIONAL INDIAN GAMING COMMISSION
SALARIES AND EXPENSES

| | |
|-----------------------------------|------------|
| Appropriation enacted, 2002 | 0 |
| Budget estimate, 2003 | 2,000,000 |
| Recommended, 2003 | 2,000,000 |
| Comparison: | |
| Appropriation, 2002 | +2,000,000 |
| Budget estimate, 2003 | 0 |

The Committee recommends \$2,000,000 for the National Indian Gaming Commission the same as the budget request and \$2,000,000 above the fiscal year 2002 enacted level.

OFFICE OF SPECIAL TRUSTEE FOR AMERICAN INDIANS
FEDERAL TRUST PROGRAMS

| | |
|-----------------------------------|---------------|
| Appropriation enacted, 2002 | \$99,224,000 |
| Budget estimate, 2003 | \$151,027,000 |
| Recommended, 2003 | 141,277,000 |
| Comparison: | |
| Appropriation, 2002 | +42,053,000 |
| Budget estimate, 2003 | -9,750,000 |

The Committee recommends \$141,277,000 for the office of special trustee for American Indians, \$9,750,000 below the budget request and \$42,053,000 above the fiscal year 2002 enacted level.

Executive direction.—The Committee recommends \$2,530,000 for executive direction, an increase above the 2002 level of \$34,000 for fixed costs.

Operations.—The Committee recommends \$39,516,000 for operations, including increases above the 2002 level of \$15,767,000 for fixed costs, \$4,848,000 for the office of trust fund management, and \$2,400,000 for field operations.

Litigation support and records.—The Committee recommends \$3,129,000 for litigation support and records, including increases above the 2002 level of \$80,000 for fixed costs, \$200,000 for records operations, and \$300,000 for litigation support.

Program support services.—The Committee recommends \$5,451,000 for program support services, including a program increase above the 2002 level of \$1,226,000 and a decrease of \$503,000 for fixed costs.

Improvement initiatives.—The Committee recommends \$90,651,000 for improvement initiatives, including increases above the 2002 level of \$2,500,000 for OST data cleanup, \$2,000,000 for BIA data cleanup, \$4,000,000 for records management, \$4,000,000 for policies and procedures, \$1,000,000 for risk management, \$5,050,000 for trust improvement coordination, \$1,975,000 for the three trust breaches, \$7,500,000 for historical accounting, and \$10,000,000 for trust net to address high-priority computer security problems, and decreases of \$14,124,000 for fixed costs, \$2,000,000 for the probate cleanup, \$2,000,000 for trust asset account management system, and \$2,200,000 for training.

Bill Language.—The Committee remains very concerned about the escalating costs associated with the Cobell v. Norton litigation and with the effect this litigation is having on the Department's trust reform efforts. Therefore, the Committee has included a number of legislative provisions (under General Provisions, Department

of the Interior) it believes are important in moving the trust reform process forward.

The Committee has included a general provision to address the issue of releasing the Ernst and Young study, and has included legislative language in the Office of Special Trustee account to address the issue of an historical accounting. In the Fiscal Year 2002 Joint Explanatory Statement of the Committee of Conference, the managers reiterated their position that they will not appropriate hundreds of millions of dollars for a historical accounting whose outcome is unlikely to be successful. The Committee now believes that a transaction-by-transaction accounting for all accounts without regard to when the funds were deposited could cost as much as \$1 billion. The allocation of these funds would have a devastating effect on Indian country by siphoning scarce resources away from critical Indian programs.

The Committee's concern is reinforced by the opposition of plaintiffs in *Cobell v. Norton* to disclose the results of the Ernst and Young report on the historical accounting of the five named plaintiffs and their predecessors. Accordingly, the Committee has included a requirement for disclosure to the Committee of a summary of the Ernst and Young report. Congress provided nearly \$20 million to conduct this accounting and the Committee believes that the results of this accounting will provide important information for determining whether this expenditure was a wise use of appropriated funds, and to serve as a benchmark to determine the extent to which future appropriations for this type of activity are warranted.

The Committee has also included a provision limiting the historical accounting to a more defined period. By limiting the historical accounting, the Committee will focus its limited resources on a manageable group of accounts for which results can be produced within a reasonable period of time and at a more reasonable cost. By specifying the starting date for the accounting, it is the Committee's intent that the balance in each account as of that date shall be accepted as correct for purposes of the accounting. This provision also includes language limiting, until further action by the Congress, any historical accounting beyond that described in the provision.

Further accounting shall not proceed until the Committees on Appropriations and the relevant Committees of jurisdiction have had an opportunity to review the comprehensive plan now under development by the Department, the Ernst and Young report, and the results of the focused accounting funded in this bill. Such a review will provide the Congress the opportunity to consider options for further accounting or other legislative remedies.

The Committee notes that the Special Master and the Court Monitor appointed by the Court to review various aspects of trust reform at the Department are receiving compensation for their activities that exceed those of the Chief Justice and the Vice President of the United States. The Committee believes that, by any measure, the current level of compensation is excessive. Therefore, given current fiscal and budgetary constraints, the Committee has included a general provision that caps the compensation for each of these Court Officers at no more than 200 percent of the highest Senior Executive Service rate of pay. For fiscal year 2003, that maximum amount is \$276,400.

With minor exceptions the current Special Trustee Advisory Board has been in place since the Board was first constituted; even though the Trust Reform Act established a nine member Board to be appointed by the Special Trustee for a period of two years. Recent events, including the EDS report, the decision to replace the High Level Implementation Plan with a new Strategic Plan, the Secretary's proposal to create a new organizational structure to address trust reform, and the establishment of a new Office of Historical Trust Accounting, speak to the need for a new board with a new perspective and fresh ideas. In addition, the Committee remains concerned over the appearance of a conflict of interest having the named plaintiff in the Cobell v. Norton litigation on the Advisory Board. Therefore, the Committee has included a general provision requiring the appointment of a new advisory board.

The Committee is very concerned that the ongoing Cobell v. Norton litigation is jeopardizing the ability of the Department of the Interior to successfully implement trust reform. The Committee finds it particularly troubling that almost every individual in a position of leadership has been subject to a contempt of court motion by the plaintiffs in the case. It is clear to the Committee that this legal strategy is resulting in some of the best people having to recuse themselves from working on trust reform, and it is becoming more difficult for the Department to hire talented people to take on the difficult responsibilities. If this situation continues unabated it will surely result in the inability of the Department to implement trust reform. To help ameliorate this extraordinary situation, the Committee has included a general provision that would help the employees in the Department pay for legal costs arising from this litigation. It is the Committee's hope that this language will create sufficient incentives to allow the Department to continue to seek out the best and the brightest for this challenging work.

INDIAN LAND CONSOLIDATION

| | |
|-----------------------------------|--------------|
| Appropriation enacted, 2002 | \$10,980,000 |
| Budget estimate, 2003 | 7,980,000 |
| Recommended, 2003 | 7,980,000 |
| Comparison: | |
| Appropriation, 2002 | - 3,000,000 |
| Budget estimate, 2003 | 0 |

The Committee recommends \$7,980,000 for Indian land consolidation the same as the budget request and \$3,000,000 below the fiscal year 2002 enacted level.

NATURAL RESOURCE DAMAGE ASSESSMENT AND RESTORATION

NATURAL RESOURCE DAMAGE ASSESSMENT FUND

The purpose of the Natural Resource Damage Assessment Fund is to provide the basis for claims against responsible parties for the restoration of injured natural resources. Assessments ultimately will lead to the restoration of injured resources and reimbursement for reasonable assessment costs from responsible parties through negotiated settlements or other legal actions. Operating on a "polluter pays" principle, the program anticipates recovering over \$54 million in receipts in fiscal year 2002, with the vast majority to be used for the restoration of injured resources. The program works