

## Hoopa Valley Tribe v. United States

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Paralleling *Cobell v Salazar*, the largest class action lawsuit ever filed against the federal government over IIM accounts and mismanagement of individual trust assets, a lawsuit was filed in December 2006 by the Hoopa Valley Tribe (HVT) against the United States of America (U.S.). According to long-time attorney for the Hoopa Valley Tribe, Tom Schlosser, it was filed because the Bush Administration refused to extend the time frame for such cases.

The complaint, filed in the United States Court of Federal Claims, charges breach of fiduciary trust duties, including violation of statutory, regulatory and common law trust duties owed to the Tribe by the federal government from August 21, 1864 to present. Unlike *Cobell*, a settlement has not yet been reached.

### Description of Plaintiff and Defendant

The Hoopa Valley Tribe (Plaintiff) is a sovereign and federally recognized Tribe, with all legal rights and responsibilities afforded to it and, therefore, eligible for the special programs and services provided by the U.S. to federally recognized Indian tribes.

The U.S.(Defendant), as trustee and a fiduciary to the Tribe, is charged with carrying out trust duties and responsibilities with regard to the management and administration of the Tribe's trust funds and other trust assets such as timber.

### Historical Background and Allegations

The HVT occupies and is the beneficial owner of land and natural resources within the Hoopa Valley Reservation, title to which is held in trust by the U.S. for the benefit of the Tribe.

Under longstanding constitutional, statutory, and federal common law, and based upon the historic relationship between the U.S. and Indian tribes, the federal government assumed the obligations and duties of a trustee by establishing and maintaining comprehensive regulatory control of funds derived from tribal trust lands and resources. The U.S. owes a trust duty to the Tribe with regard to the Tribe's trust funds and other trust assets.

The claim alleges violations of several congressional acts, statutes of the U.S. Code, and Executive Orders that have, throughout the years, imposed various accounting, auditing, fund management, reconciliation and reporting obligations on the United States government.

### Duties of the

#### U.S. Government

Regulations, policies, and manuals describe the duties of various U.S. Departments and Agencies to manage tribal trust funds and assets. For example, the complaint alleges the Bureau of Indian Affairs (BIA) failed in its duty to audit and reconcile tribal trust funds and to provide the Tribe with an accounting of those funds. The Secretary of Interior maintains comprehensive regulatory control over the management of lands, resources, and the Tribe's trust funds held in trust for the Tribe.

Defendant has controlled, conducted, and managed the collection, deposit, investment, and disbursement of income derived from the Tribe's trust assets, including funds derived from timber sales, leases, and other contracts. Defendant has been charged by Congress with the duties of collecting income derived from the Tribe's trust assets and depositing the income into the U.S. Treasury and other depository sites for the Tribe's benefit.

The defendant's duties also include prudent investment of trust funds and maximizing the return on the investment of all tribal trust funds while exercising reasonable care and skill. The U.S. government is responsible for establishing consistent, written policies and procedures for tribal trust fund management and accounting and properly crediting, recording, and accounting for all transactions relating to the Tribe's trust funds and assets. Adequate staffing, supervision, and training for tribal trust fund management and accounting is also a duty of the defendant.

A principal allegation by the plaintiff is that the U.S. failed to perform a full, complete, and accurate accounting and reconciliation of the Tribe's trust fund accounts as required by federal law, depriving the HVT of necessary information regarding its trust funds and accounts. As a result of the defendant's mismanagement, the Tribe has lost funds, royalties, interest income, profits, and proceeds that would have been earned, collected, and invested for the benefit of the Tribe.

#### Two Claims for

#### Relief – First Claim

The first claim is for breach of fiduciary trust duty—mismanagement of trust fund assets from 1864 to the present including financial trust assets, different types of accounts, income, interest, deposited or invested funds, and any other Tribal-related accounts that have been maintained, managed, invested, or controlled by either the Department of Interior or Treasury. This claim also alleges mismanagement of the Tribe's non-monetary trust resources and assets, including, but not limited to, the Tribe's forestlands and timber resources.

The charges under this first claim are many. In general, they allege the United States failed to collect, deposit and invest funds owed to the Tribe from sale or lease of non-monetary trust assets. They include failure to credit the Tribe's trust fund accounts with total income derived from sale or lease of natural resources held in trust for the Tribe; failure to record all transactions and credit the Tribe's accounts monies due from other sources; failure to deposit the Tribe's trust funds into interest bearing accounts in a timely manner; holding the Tribe's trust funds in investments paying inadequate interest rates; failure to obtain the maximum amount possible for the sale or lease of tribal assets; and, applying the Tribe's trust funds in a manner not authorized by law.

The first claim also charges the U.S. government with inadequately maintaining and operating a tribal trust fund system and that this lack of systems and controls failed to guard against error and dishonesty. The claim further alleges that failure to maintain adequate records and to store tribal trust account documents properly has prevented performance of an effective audit and reconciliation as required by law.

#### Second Claim

The second claim requests a complete accounting and preservation of all documents. The HVT alleges, because the U.S. failed to provide the HVT with an accounting consistent with federal law or the requirements of generally accepted accounting and auditing standards, the Tribe is entitled to a court order compelling an accounting to aid the Court in a final determination of damages.

The HVT also requests a court order directing the U.S. to preserve all records of the Tribe's trust funds, accounts, and assets. And, to turn over all information about its trust funds, accounts, and assets in the possession of the U.S.. This includes all relevant information about the terms of the trust, its present status, past acts of management or other incidents of the administration of the trust, including investments, which information is in the custody, possession or control of the U.S. or its agents.

#### Relief Sought by the Hoopa Valley Tribe

The Tribe requests compensatory damages; a complete accounting for all trust funds and assets from 1864 to the present; preservation by the defendant of all records pertaining to plaintiff's trust funds, resources, and assets while the lawsuit is pending; as well as interest, costs and legal fees.

#### Current Status of

#### the Complaint

After President Obama was elected, the HVT joined a group of 77 tribes in a Settlement Proposal to the Obama Administration (SPOA). The tribal attorneys in the SPOA coalition have had several fruitful meetings with top representatives of the Departments of Justice, Interior and Treasury. In Schlosser's opinion, these settlement talks are progressing satisfactorily and offer a significant chance of monetary recovery for the Tribe.