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Opening Statement of
Doc Hastings, Ranking Republican Member
at the House Committee on Natural Resources hearing regarding
“The Proposed Settlement of the Cobell v. Salazar Litigation
March 10, 2010

I want to thank Chairman Rahall for scheduling this hearing on the *Cobell v. Salazar* Settlement Agreement.

It was on December 7th of last year that this Settlement was announced, and it was greeted with widespread hope across Indian country that a resolution was at hand.

I, too, am very hopeful that a fair treatment for individual Indians is close at hand. This lawsuit has gone on far too long and it's my first priority that individual Indians are treated fairly in this matter.

However, I must admit a degree of concern that the \$3.4 billion settlement announced on December 7th had an expiration date of December 31st. This deadline for Congress to act was then extended to February 28th and now to April 16th.

My concerns are two-fold. First, the urgency for action by the parties to the Settlement was not met by any open, transparent action by Congress. It's three months later and this Committee is just now holding a public hearing. And this hearing comes only after the Committee was contacted by individual Indians and several Indian organizations asking simply for more information on what the Settlement means. It is troubling that affected Indians have felt concerned that there may be a rush to action before public hearings were held so that they may better understand the Settlement.

My second concern has been the astonishing fact that no actual bill to implement the Settlement has yet been introduced. For three months, there has been no legislative text before either the House or Senate, and, more importantly, there is no introduced bill available to be read by Indians who are directly affected by the Settlement. Deadlines are being imposed on Congress to act with uncharacteristic swiftness, and yet there is no introduced bill for Congress to pass!

This raises the question of when and how this Settlement Agreement is going to be enacted. Will it be in an open, transparent manner that respects the right of individual Indians to see and

understand what is happening? Or, will it be done in a manner that instead puts the emphasis on speed and haste?

On the details of the Settlement itself, there are several matters I'd like to ask the witnesses to address – issues that have been raised by Indians contacting this Committee.

First, I want to distinguish between the \$1.4 billion portion of the Settlement Agreement that resolves the Indian historical accounting class action lawsuit and also extinguishes all potential damages claims, and the \$2 billion portion that provides funding to an existing authorized Department of Interior program to purchase fractionated lands.

The \$1.4 billion will provide a cash payment of \$1000 to each Indian account holder. While the class action case was not a money claims case, there is clearly merit in settling it by paying cash awards and starting with a clean slate.

The bulk of the \$1.4 billion portion, however, will go to settling damages claims, which were not litigated in the *Cobell* case. It is my understanding that a key reason behind the need for Congressional action on the Settlement Agreement is this matter of damages claims. The District Court has no jurisdiction over them and legislation is needed to create these claims while simultaneously resolving them. I admit this does raise a degree of concern that Congress would serve as lawyer, judge and jury in unilaterally dispensing with the claims of thousands of individual Indians. However, the parties to the Settlement Agreement have concluded this is a critical component and that should weigh very heavily in our consideration, though it is important to ask for information on how this affects individual Indians and whether they are being treated fairly.

Second, there is the matter of attorney fees. Reports have said lawyers could be paid between 50 to 100 million dollars. That is a very high amount. I believe it is important to understand what specific justification exists for this large payment to the lawyers in this case, and whether they are collecting any fees from the settlement of damages claims they did not represent. Lawyers deserve to be paid fairly for the actual work they performed, but there appears to be no accounting or records to back up this high level of fees. Congress should have that information, especially as it is my understanding that fees paid to the lawyers comes from the same pot of money that compensates individual Indians. When every dollar that goes into the pocket of a lawyer comes out of the pocket of an individual Indian, Congress has a duty to look at this closely.

Lastly, greater clarity would be helpful on the portion of the Settlement Agreement that provides \$2 billion for the consolidation of fractionated Indian lands. How is this related to the settling of claims? Was it included at the request of the plaintiffs or the government? What oversight will be provided to ensure the best benefit to taxpayers, individual Indians and Indian tribes?

In conclusion, I want to again thank Chairman Rahall for holding this hearing. I believe it is an important step and opportunity to improve our understanding, and the understanding of individual affected Indians, of this Settlement Agreement. Thank you.