



INTERTRIBAL MONITORING ASSOCIATION on Indian Trust Funds
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January 28, 2010

The Honorable Nick J. Rahall, II
Chairman
Committee on Natural Resources
Longworth House Office Building
Washington, DC 20515

The Honorable Doc Hastings
Ranking Member
Committee on Natural Resources
Longhouse House Office Building
Washington, DC 20515

Dear Chairman Rahall and Ranking Member Hastings:

On behalf of the Intertribal Monitoring Association on Indian Trust Funds (ITMA), I appreciate the opportunity to respond to the Committee's request for an explanation of various issues brought to ITMA's attention regarding the proposed settlement of the *Cobell v. Salazar* litigation.

ITMA is gratified and enthusiastic that the Obama Administration is willing to provide more than \$1.4 billion to individual Indian beneficiaries to resolve the *Cobell* litigation. Although ITMA has no position on whether Congress and the Court should approve the settlement as proposed, ITMA agrees that a conclusion to the litigation is long overdue and commends all involved for reaching agreement.

ITMA is a national tribal association established in 1990, which presently consists of 65 federally recognized Indian tribes. ITMA's mission includes monitoring the United States' trust reform efforts and providing a forum for consultation on Indian trust issues. Consistent with its mission, ITMA conducts continuous outreach activities to inform and solicit the views of Indian tribes and individual Indian beneficiaries on the status of trust reform efforts within the Department of the Interior and reform efforts undertaken in Congress.

Since the announcement of the settlement on December 7, 2009, ITMA has fielded numerous questions from both Tribal Leaders and individual Indians about the proposed settlement and what it means for them. In many cases, after being provided with a general explanation of the proposed settlement, the individuals making the inquiries raised additional questions and, in many cases, concerns about the settlement and its potential effects should it be ratified by Congress and approved by the Court in its current form. Although ITMA has done its best to address these inquiries based on our review and analysis of the publicly available settlement documents, we are unable to explain how or why certain provisions were included in the proposed settlement.

The primary question posed involves the inclusion in the proposed settlement of Indian beneficiaries' resource mismanagement claims. These claims were not included in the *Cobell* complaint. ITMA has been asked why these claims are now included in the proposed settlement and how they were valued as part of the \$1.4 billion amount. In addition, because these claims were not included in the *Cobell* class, individuals are asking who represented these claim-holders' interests during the settlement negotiations and questioning the propriety of the current named plaintiffs and counsel apparently representing this "new class." Questions have also been asked on how this new class will be identified, whether the notice to individual landowners will designate which class they belong to, and the process for determining payment beyond the base amount of \$500 to each member of this class.

ITMA has also heard concerns that even though the proposed settlement on its face allows individuals who may have resource mismanagement claims to preserve their claims by opting out of the trust administration class, these individuals cannot opt out of the accounting class and, therefore, may not be able to obtain an accounting of their trust assets. Without the ability to obtain an accounting to ascertain their damages for mismanagement by the United States, individual Indians who intend to prosecute their own claims will have a much more difficult path in obtaining a favorable outcome.

ITMA has also fielded inquiries on the incentive payments that would be paid to the named plaintiffs under the proposed settlement. Depending on how the proposed settlement is construed, the four named class representatives may all share in \$15 million, may each receive up to \$15 million, or may each receive more than \$15 million. Regardless of the amount(s), these payments will be taken out of the \$1.4 billion that will be divided among the class members. Although any incentive payments would ultimately require the Court's approval, ITMA has been asked why the payments are being allowed in the first instance, how much the payments might be, and why the payments would come out of the settlement fund. The answers to these questions are not apparent from the proposed settlement.

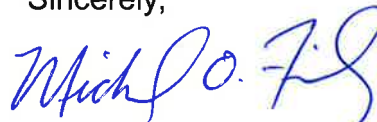
ITMA has long been involved in efforts to address the fractionated land problems and has worked with Tribal government to develop options and alternatives. Some Tribal Governments, while commending the settlement's inclusion of funding to purchase fractionated interests, have questioned whether providing all land consolidation funds back to the government will result in meaningful benefit for Tribes. Tribes had expressed concerns that the last fractionated land purchase efforts were simply focused on purchasing interests and closing IIM accounts rather than purchasing lands that would strategically benefit Tribal use and development.

ITMA has received a number of questions regarding attorney's fees. As with the incentive payments, under the proposed settlement all attorneys' fees would be taken out of the \$1.4 billion that would be divided among the class members. Although it was noted during the December 16, 2009, Senate Committee on Indian Affairs hearing that

hearing that the plaintiffs' counsel had agreed to limit their request for attorney's fees to between \$50 and \$99 million, the proposed settlement does not provide for a cap or other limitation on attorney's fees. ITMA has been asked whether this fee range represents both past and future attorney's fees and how much, if any, of the attorney's fees are attributable to value of the asset management claims that are now included in the proposed settlement. Again, the answers to these questions are not apparent from the settlement documents.

Again, ITMA greatly supports a settlement of the *Cobell* litigation and is grateful for the parties' efforts to reach an agreement to resolve the case. For the benefit of ITMA's membership and those who rely on ITMA to provide them with accurate information on issues affecting Indian trust funds and trust resources, we are hopeful that the Committee will be in a position to obtain answers to the questions identified in this letter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Mich. Finley". The signature is fluid and cursive, with the first name "Mich." and the last name "Finley" clearly visible.

Michael Finley, Chairman
ITMA Board of Directors

CC: ITMA Board of Directors
Senate Indian Affairs Committee