

**Testimony on the Proposed Settlement of the *Cobell v. Salazar* Litigation
Before the U.S. House of Representatives
Committee on Natural Resources**

**By Austin Nunez, Chair of the Indian Land Working Group
And Chairman of the San Xavier District of the Tohono O'odham Nation
March 10, 2010**

Honorable Chairman and Members of the Committee, I appreciate the opportunity to address this committee today on the proposed settlement of this long running, arduous and divisive litigation.

I am speaking today on behalf of the Indian Land Working Group, a nation wide organization founded in 1991, and since that time actively engaged in issues related to restoration, use and management of the remaining native land base, including trust allotments. The ILWG continually seeks improvement in the protection and management of all Indian Trust Lands and the revenues derived from them.

I am a member of the Tohono O'odham Nation, and have served for 22 years as chairman of that Nation's San Xavier District. The District is coextensive with the San Xavier Indian Reservation founded by Executive Order in 1874. The reservation covers 105 square miles, of which two-thirds, or approximately 42,000 acres were allotted to individuals under the General Allotment Act of 1887. My family and I are owners of allotted trust land, and thus within the class of plaintiffs in the *Cobell* litigation. With this background, my remarks today are in my capacity as the chairman of ILWG.

After considerable discussion and deliberation, the Board of Directors of ILWG has taken a position of support for the December 7, 2009 Class Action Settlement Agreement and the implementing legislation which it proposes. While the Settlement Agreement in several ways falls short of our initial expectations and hopes, nevertheless, we believe that this Settlement Agreement is in the best interests of the parties, including class members, and the government. We have concluded that the benefits of this Settlement outweigh the disappointments. Our reasoning follows that of the Plaintiff Class Counsel set out in paragraph 16 of the opening section of the Settlement Agreement, namely, the risk and uncertainty of further litigation, certainty of result, the benefits of closure and the payment to landowners, many more of whom would pass away before seeing any benefit should this dispute be further extended.

The Settlement Agreement does not provide for all of the damages sought by the plaintiffs, nor does it acknowledge mishandling of trust funds by the government which has caused great hardship to our people over many years and generations. Nevertheless, the good faith of the parties is obvious in light of the progress of the litigation over the past decade. We recognize and are encouraged that the amount of the settlement fund is more than twice the amount found by the trial court to be the losses resulting from fund mismanagement. The uncertainty of further litigating that finding is significant. More importantly, this litigation has

brought to the Department of Interior and the Bureau of Indian Affairs a dramatic change in understanding of the government's fiduciary duty. Regardless of the amount of damages to be distributed through this Settlement, this Settlement will bring closure to this chapter in United States and Indian relations. Finally, additional investment in land consolidation called for in the second aspect of the Settlement Agreement is long overdue, and welcome.

There have been rumblings in Indian country about the amount of attorneys' fees and incentive payments to the class representatives. It is appropriate for class representatives to be reimbursed for the monies they have expended in pursuing this litigation; however, it is difficult for most landowners, whose holdings provide little if any income, to comprehend litigation costs of the magnitude of \$15 million. We recognize, however, that it is appropriate to reimburse those native people who sacrificed and had the courage and stamina to support this endeavor for the past 14 years and without whose contributions there would be no settlement fund. It is also hard for many to understand how attorneys' fees of up to \$100 million can be fair and reasonable. However, these amounts in relation to the amount recovered through the litigation and negotiation of the settlement may be appropriate. We also note that trust beneficiaries are somewhat protected through the process outlined in the Settlement Agreement for publication and court approval of the amounts to be paid out for attorneys' fees and class representative payments.

We have some difficulty in understanding the inclusion of the unlitigated issues of land mismanagement claims into the settlement at this point, 14 years into the case. We understand the desire of the government to resolve as many claims as possible, and acknowledge the land mismanagement claims are related to the general allegations of trust mismanagement. In view of the other benefits of the Settlement Agreement, and the risks and uncertainty and delay of further litigating these issues, ILWG can accept this aspect of the Settlement Agreement.

In conclusion, the Board and Officers of the Indian Land Working Group acknowledge and thank those whose hard work, perseverance, financial support and sacrifice were able to conclude and deliver the Settlement Agreement. I urge the Committee, the House and Senate to act quickly to approve the implementing legislation so that the *Cobell* litigation can be put to rest and the Native landowners whose moneys were mishandled can be compensated.

Thank you for the opportunity to address you today.