



INTERTRIBAL MONITORING ASSOCIATION on Indian Trust Funds
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April 8, 2010

The Honorable Nick Rahall II
Chairman
Committee on Natural Resources
Washington, D.C. 20515

Dear Chairman Rahall:

The Intertribal Monitoring Association (ITMA) on Indian Trust Funds appreciated the opportunity to present testimony before the Committee on March 10, 2010 in regards to the "Proposed Settlement of the *Cobell* Litigation." Please find below ITMA's responses to the questions from the Committee and be assured the testimony and issues presented herein are reflective of concerns presented to ITMA by various tribes and Indian individuals.

Question 1: "In the *Cobell* hearing, during questioning from the Committee, Plaintiffs' attorney William Dorris testified that in 2004, the Court invited the plaintiffs to file trust mismanagement claims. Accordingly, the issue of whether or not such claims were included in the *Cobell* lawsuit appears to be in some dispute. Can you comment on this matter?"

ITMA does not know if it's true that the Court invited the plaintiffs to include these claims in 2004. But it's not necessarily relevant. What's being settled is the lawsuit that was filed, not what was "invited." In fact, Judge Lamberth made it clear in a 1998 decision that these claims were not included. The proposed settlement now includes these claims absent provision for adequate notice to the hundreds of thousands of class members or any kind of fact finding. The inclusion of the claims has therefore been viewed as an ambush by the class members, told for years these claims were not included.

Question 2: "As you testified on the first panel, would you care to comment on the testimony of any other witness at the hearing or to respond to issues raised by any of the witnesses?"

You asked for comments on the testimony. Our first comment is about the flawed methodology used to identify and compensate the Trust Administration Class. Ms. Cobell's written statement says, "...a settlement requires compromise . . . [this settlement] represents the best resolution we can hope for under the

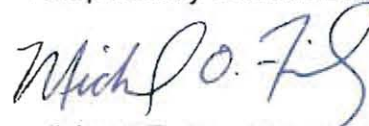
We also question the role of the Blackfeet Development Corporation. This is in regards to the "incentive awards" the named plaintiffs will receive, which Ms. Cobell indicates will reimburse this organization. What is the role of this organization and did it receive grants or loans? On page 8, Ms. Cobell's testimony says that "many of the grants we received are in the form of loans and are repayable." Are these grants or loans, and how can they be both? We think more transparency is required with regard to this non profit, e.g. what is its chartered goal? Is funding of the litigation an appropriate use of its funds? What other activities does it conduct within the Blackfeet Reservation?

Because of these concerns, we question whether it would be in the best interests of the class to appoint an independent attorney to protect their interests. Where the attorneys have \$50-100 million worth of fees at stake, for past work alone, and the named plaintiffs could recover up to \$15 million, and as Professor Monette testified, the usual class action rules are being broken, we question whose interests are being protected. We are also concerned that the settlement fund may be installed by the plaintiffs in the Native American Bank, of which Ms. Cobell is a principle. Last, we are concerned that the Native American Rights Fund stands to recover funds through the attorney fee award, and yet Mr. John Echohawk has stated publicly that the Fund was "left off the list of lawyers through an oversight." If this oversight occurred, what other oversights have been made? Due to all these potential conflicts, we believe an independent attorney should be appointed guardian of the class if the proposed settlement is to proceed.

Last, Ms. Cobell's written testimony states, "And there is an agreement to perform an audit of the Trust. No audit has ever been done." We are confused by this statement. The trust portfolio of IIM accounts is audited. The trust administration claims have been reviewed as well, although not so thoroughly as we would like. But if an audit is to be done, shouldn't damages be assessed and awarded then, based on the facts, and not now, based on a formula that may not reflect or compensate actual harm?

ITMA greatly appreciates the commitment of the Administration and the Committee to dealing with this most critical matter and stands ready to assist at your request.

Respectfully Submitted,

A handwritten signature in blue ink that reads "Mich. Finley". The signature is written in a cursive, flowing style.

Michael Finley, Chairman
ITMA Board of Directors
[Chairman, Colville Tribes]

cc: ITMA Board of Directors
ITMA Tribal Membership