

DOC HASTINGS

4TH DISTRICT, WASHINGTON

COMMITTEE ON

NATURAL RESOURCES

RANKING REPUBLICAN MEMBER



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Congress of the United States

House of Representatives

February 24, 2010

Attorney General Eric Holder
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

The Honorable Ken Salazar
Secretary
Department of the Interior
1849 C Street NW
Washington, DC 20240

Dear Attorney General Holder and Secretary Salazar:

I am writing to request information regarding the Class Action Settlement Agreement for *Cobell v. Salazar*, dated December 7, 2009. To date, the House Natural Resources Committee has held no hearing on this Settlement, notwithstanding the Settlement Deadline of February 28, 2010. I was troubled to receive several communications concerning the Settlement, including a letter from the Intertribal Monitoring Association on Indian Trust Funds (ITMA) and a recently-adopted resolution from the Affiliated Tribes of Northwest Indians (ATNI), suggesting that Indian Country is not sufficiently informed as to how this settlement actually benefits individual Indians. A copy of each communication is enclosed with this letter. These organizations ask reasonable questions about how the Settlement was negotiated and about the fairness of the settlement terms. I know there is wide, bipartisan support in Congress for resolving the *Cobell* lawsuit, and believe more information to answer questions being raised across Indian Country will help facilitate action by Congress.

In my view, two of the more important questions raised in these documents concern: (1) the settlement of resource mismanagement claims (i.e., the Trust Administration claims in the Settlement Agreement) through negotiations with Class Counsel and Named Plaintiffs who do not represent and did not litigate such claims, but for which they will be compensated; (2) the lack of hearings in the House of Representatives and of regional consultations between the Obama Administration and Indian Country.

In furtherance of our mutual goals of transparency, accountability, and openness, I would appreciate your prompt and thorough written responses to the questions and concerns raised in the ITMA letter and the ATNI resolution. For convenience, following is a consolidated list of questions and concerns:

- (1) Why are resource mismanagement claims included in the proposed settlement and how were they valued as part of the \$1.4 billion amount of the settlement?**
- (2) Who represented these claim-holders' interests during the settlement negotiations?**
- (3) How will the new class be identified and the process for determining payments be made?**
- (4) Is it fair and reasonable to disallow opt-outs from the historical accounting settlement when an historical accounting may be necessary for an individual who opts out of the trust administration class to pursue a resource mismanagement claim?**
- (5) What is the purpose of the incentive payments for the named plaintiffs, how much will each named plaintiff receive in incentive payments, and why do the payments come out of the settlement fund?**
- (6) How will the land consolidation payments result in a meaningful benefit for Tribes?**
- (7) Attorney fees are reportedly in the range of \$50 million to \$99 million. Does the proposed settlement agreement cap these fees, and does this fee range represent both past and future attorney fees?**

Attorney General Holder and Secretary Salazar

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- (8) **How much, if any, of the attorney fees are attributable to the value of the asset mismanagement claims that are now included in the proposed settlement?**
- (9) **Do you support a hearing on the settlement agreement in the House Natural Resources Committee prior to moving a settlement bill through the House?**
- (10) **Prior to action on authorizing legislation for the settlement agreement, will you conduct regional consultation with Indian Country to explain the proposed settlement and answer questions?**

Thank you for your time and attention. On behalf of those individual Indian constituents and tribal governments who have asked for more information and public clarification of settlement terms, I look forward to your informative responses.

Sincerely,



DOC HASTINGS
Ranking Member
Committee on Natural Resources



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.

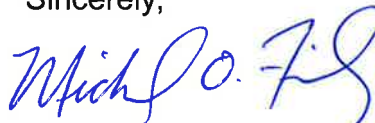
ITMA has long been involved in efforts to address the fractionated land problems and has worked with Tribal government to develop options and alternatives. Some Tribal Governments, while commending the settlement's inclusion of funding to purchase fractionated interests, have questioned whether providing 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", with a stylized flourish at the end.

Michael Finley, Chairman
ITMA Board of Directors

CC: ITMA Board of Directors
Senate Indian Affairs Committee



2010 Winter Conference Great Wolf Lodge, Grand Mound, WA

RESOLUTION #10 - 07

“DEMAND FOR TRANSPARENCY, AND TIME TO FULLY INFORM INDIAN COUNTRY REGARDING COBELL V. SALAZAR SETTLEMENT TERMS”

PREAMBLE

We, the members of the Affiliated Tribes of Northwest Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants rights secured under Indian Treaties and benefits to which we are entitled under the laws and constitution of the United States and several states, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the welfare of the Indian people, do hereby establish and submit the following resolution:

WHEREAS, the Affiliated Tribes of Northwest Indians (ATNI) are representatives of and advocates for national, regional, and specific tribal concerns; and

WHEREAS, ATNI is a regional organization comprised of American Indians in the states of Washington, Idaho, Oregon, Montana, Nevada, Northern California, and Alaska; and

WHEREAS, the health, safety, welfare, education, economic and employment opportunity, and preservation of cultural and natural resources are primary goals and objectives of ATNI; and

WHEREAS, the parties to the long-standing case of *Cobell v. Salazar* in the U.S. District Court for the District of Columbia have announced they have reached a Settlement Agreement; and

WHEREAS, the proposed settlement requires legislation by the U.S. Congress and approval by the court in order to be effective; and

WHEREAS, the Settlement Agreement reached by the parties on December 7, 2009 was binding only until December 31, 2009 unless authorizing legislation was enacted by that date, or unless the parties extended the expiration date by mutual agreement; and

WHEREAS, Congress did not act by December 31, 2009 and the parties have subsequently extended the expiration date until February 28, 2010; and

WHEREAS, the legislation required to authorize the proposed settlement has yet to be introduced in Congress and referred to the Committees of Jurisdiction over Indian Affairs; and

WHEREAS, no hearings have been held on the legislation required to authorize the settlement by the U.S. House of Representatives; and

WHEREAS, no legislation to authorize the proposed settlement has been printed and made publicly available by either house of the U.S. Congress; and

WHEREAS, a representative of the Presidential Administration of President Obama has advised the 2010 Winter Conference of ATNI that she can only refer interested tribal leaders to the web site maintained by the plaintiffs for information on the settlement agreed to by the administration and plaintiffs; and

WHEREAS, ATNI is determined that a settlement of this magnitude demands transparency and time for Indian country to understand what is being proposed to extinguish all their fiscal and trust-related claims against the government; now

THEREFORE BE IT RESOLVED, that ATNI does hereby demand that the Congress of the United States conduct hearings to ensure that Indian country has time to consider the likely consequences, transparency, and fairness of the proposed legislation; and

BE IT FURTHER RESOLVED, that the Department of Interior and the Cobell Plaintiffs conduct regional consultation with Indian Country to explain the proposed settlement and answer questions from affected Indian people.

CERTIFICATION

The foregoing resolution was adopted at the 2010 Annual Conference of the Affiliated Tribes of Northwest Indians, held at the Great Wolf Lodge, Grand Mound, Washington, February 8 - 11, 2010 with a quorum present.



Brian Cladoosby, President



Norma Jean Louie, Secretary