



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians Resolution #MKE-11-019

TITLE: Supporting the Native American Rights Fund's Request for Attorney's Fees and H.R. 887

EXECUTIVE COMMITTEE

PRESIDENT
Jefferson Keel
Chickasaw Nation

FIRST VICE-PRESIDENT
Juana Majel Dixon
Pauma Band – Mission Indians

RECORDING SECRETARY
Matthew Wesaw
Pokagon Band of Potawatomie

TREASURER
W. Ron Allen
Jamestown S'Klallam Tribe

REGIONAL VICE-PRESIDENTS

ALASKA
William Martin
Central Council Tlingit & Haida

EASTERN OKLAHOMA
Cara Cowan Watts
Cherokee Nation

GREAT PLAINS
Patricia "Patti" Douville
Rosebud Sioux Tribe

MIDWEST
Marge Anderson
Mille Lacs Band of Ojibwe

NORTHEAST
Lance Gumbs
Shinnecock Indian Nation

NORTHWEST
Brian Cladoosby
Swinomish Tribal Community

PACIFIC
Don Arnold
Scotts Valley Band of Pomo Indians

ROCKY MOUNTAIN
Scott Russell
Crow Tribe

SOUTHEAST
Larry Townsend
Lumbee Tribe

SOUTHERN PLAINS
Robert Tippeconnic
Comanche Nation

SOUTHWEST
Joe Garcia
Ohkay Owingeh

WESTERN
Irene Cuch
Ute Indian Tribe

EXECUTIVE DIRECTOR
Jacqueline Johnson Pata
Tlingit

NCAI HEADQUARTERS
1516 P Street, N.W.
Washington, DC 20005
202.466.7767
202.466.7797 fax
www.ncai.org

WHEREAS, we, the members of the National Congress of American 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 the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

WHEREAS, at its 2010 Mid-Year Conference, the NCAI enacted Resolution #RAP-10-037, which desired to see a number of changes incorporated in the *Cobell* settlement agreement, including, "fairness in attorney fees and incentive payments to ensure that they do not unduly diminish the restitution to individual account holders;" and

WHEREAS, these changes were not included in the final version of the Claims Resolution Act of 2010, which authorized the *Cobell* settlement; and

WHEREAS, the *Cobell* attorneys, after congressional approval of the Claims Resolution Act, revealed for the first time the existence of a contingency fee agreement—previously unknown to and still unseen by most in Indian Country, Congress, and class members—that they believe entitles them to \$223 million in attorney's fees; and

WHEREAS, any excessive attorney's fees awarded will be taken from funds that would otherwise be distributed to class members; and

WHEREAS, in response to these revelations and the *Cobell* attorney's fee request, Congress has introduced H.R. 887, which would cap the total attorney's fees, expenses and costs in the *Cobell* case at \$50 million; and

WHEREAS, according to court filings, the *Cobell* lawyers have taken the position that the Native American Rights Fund (NARF) is not entitled to any attorney's fees or costs despite contributing more than 31,000 hours to the case from 1996 through 2006 and despite prior assurances by the *Cobell* attorneys that NARF would be compensated for its contributions; and

WHEREAS, in response to the *Cobell* attorney’s position, NARF has been forced to file its own request for fees that seeks \$8.1 million for its time, expenses, and costs; and

WHEREAS, the revelation of the contingency fee, and the \$223 million in attorney’s fees sought by the *Cobell* attorneys, is considered outrageous by many in Indian Country and as a breach of their fiduciary duty to the class by putting their own interests ahead of the class, and has resulted in intense bipartisan scrutiny and criticism; and

WHEREAS, NARF’s fee request is reasonable and seeks only those fees and expenses needed to make it whole for its efforts and it would be manifestly unjust for NARF to not receive anything for its 10 years of contributions to the *Cobell* litigation.

NOW THEREFORE BE IT RESOLVED, that the NCAI fully supports NARF’s individual request for \$8.1 million for attorney’s fees, expenses, and costs in the *Cobell* settlement; and

BE IT FURTHER RESOLVED, that NCAI fully supports H.R. 887’s view that there should be a total cap of \$50 million for attorney’s fees, expenses and costs in the *Cobell* settlement; and

BE IT FURTHER RESOLVED, in the absence of legislation, NCAI supports the Administration’s request that attorney’s fees be limited to \$50 million; and

BE IT FINALLY RESOLVED, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

CERTIFICATION

The foregoing resolution was adopted by the General Assembly at the 2011 Mid-Year Session of the National Congress of American Indians, held at the Frontier Airlines Center in Milwaukee, WI on June 13-16, 2011, with a quorum present.



President

ATTEST:



Recording Secretary