Department of Justice

STATEMENT

OF

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BEFORE THE

COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES

HEARING ENTITLED

"PROPOSED SETTLEMENT OF THE COBELL v. SALAZAR LITIGATION"

PRESENTED ON

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TESTIMONY OF ASSOCIATE ATTORNEY GENERAL THOMAS J. PERRELLI

Proposed Settlement of the *Cobell v. Salazar* Litigation

House Committee on Natural Resources

March 10, 2010 – 10:00 a.m.(Longworth-1324)

Good morning and thank you to Chairman Rahall, Ranking Member Hastings, and the other members of the Committee. The litigation that is today known as *Cobell v. Salazar* has lasted thirteen years, and over those years it has been an important issue for this Committee, its members, and their constituents.

That interest is well-placed, as *Cobell v. Salazar* is one of the largest class actions ever brought against the U.S. government. What began in 1996 has seen 7 full trials constituting 192 trial days; has resulted in scores of judicial decisions; has been up to the Court of Appeals ten times; and has been the subject of intense, and sometimes difficult, litigation.

Thanks in large part to the direction and support that the members of this Committee have provided over the years, on December 7, Mrs. Cobell's attorneys and the United States signed a settlement that would turn the page on that history. The settlement, which will require legislative and judicial approval to become effective, is fair to the plaintiffs, is responsible for the United States, and provides a path forward for the future.

The settlement contains many of the key elements that members of Congress have sought to address in prior efforts to resolve this matter. First, the settlement resolves the plaintiffs' claims for an historical accounting. The resolution on this issue, like other aspects of the settlement, is important both for the past and the future. It is important for the past, because it will result in a $1,000 check being sent to each member of the class. And it is important for the future, because it brings the Government and each holder of an Individual Indian Money account into agreement on the balance of each account – something that has been contested since this litigation began.

Second, the settlement resolves what have been called the "trust administration" claims. Such claims allege that over the years, the Government has mismanaged the hundreds of thousands of acres of land and millions of dollars – including proceeds from those lands – that it holds in trust for individual Native Americans. Although to date few such claims have been brought, allegations of trust mismanagement have remained a possible threat to rebuilding the long-term relationship between the Department of the Interior and Native Americans. There has always been concern that, even if the *Cobell* case settled, it would simply be followed by a slew of mismanagement cases that would continue the acrimony. Under the settlement, the plaintiffs will amend their complaint to add these claims, which will then be resolved. Each and every plaintiff in this class will receive a payment, in addition to the $1,000 check for the accounting claims, based on a formula to be approved by the Court. And the Department of the Interior will know that it has put those trust administration claims, too, behind it.

Between the accounting claims and the trust administration claims, the plaintiff class will be receiving approximately $1.4 billion.

Finally, the settlement provides a framework through which the Department of the Interior can address one of the principal factors that has led down this path. The trust system that the Government manages has become increasingly complex over the years, as lands that were jointly owned by a small handful of individuals many decades ago are now often owned by several times that number, as the individual owners have passed away and left those interests to be divided among their heirs. Much of this land, divided up among sometimes hundreds of owners, has severely limited economic potential.

To address this problem of fractionated lands, the settlement contributes additional funds to a land consolidation program that provides critical benefits to every party. For individuals who own a fractional amount of land and wish to sell it, it will put money directly into their hands. The tribes that will ultimately own these newly consolidated interests will have productive assets that they can finally put to beneficial economic use. And over time, the Department of the Interior will reduce the hundreds of thousands of small accounts that it has been managing at a highly disproportionate cost.

As I mentioned, this settlement is not final. It requires authorization from Congress and approval from the court. We hope that both will happen quickly.

The legislation that is required to implement this settlement accomplishes a number of things. Among other things, it ensures that the United States District Court for the District of Columbia, which has been handling the litigation, can continue to assert jurisdiction over it after the plaintiffs amend their complaint. The legislation also sets up two funds within the Treasury of the United States, permits the court to certify a single class of trust administration claims, and – much like earlier efforts to resolve *Cobell* – authorizes the Secretary to administer the land consolidation program that is critical to the settlement. We believe that Congress should move forward with this legislation as quickly as possible.

The settlement also requires approval from the court. Once legislation has passed, the parties will present their proposed settlement to the court, and will begin the process of explaining it to class members across the country. Those individuals and others will have an opportunity to review the settlement and express their views on it, and the court will ultimately decide whether it represents a fair resolution of the claims. We believe that this formal process of explaining the settlement to the class, which the court does not have authority to initiate until after legislation passes, will be an important opportunity to provide information and answer questions – and for the court to ensure that the settlement meets the legal requirements of fairness to the class.

In the meantime, the parties are already engaged in extensive active outreach to explain the Settlement, both to the individual Indians who are the members of the plaintiff class in the litigation and to Indian tribes. Once the Settlement was reached in December 2009, the Secretary, Deputy Secretary, and Solicitor of the Department of the Interior held a call with tribal leaders across the nation to inform them of the Settlement and to answer their questions, followed by a widely-publicized hearing before the Senate Indian Affairs Committee. Representatives of the government also recently appeared before the National Congress of American Indians to answer questions and provide information on the Settlement. Similarly, federal representatives have appeared before other tribal organizations to provide information

regarding the Settlement. Mrs. Cobell and the plaintiffs' counsel are engaged in similar outreach.

Throughout our discussions with the plaintiffs, we have been guided by two principles. First, we wanted true peace for the parties. We wanted to turn the page on history. The resolution of the accounting and trust administration pieces of this litigation will do that. And second, we wanted to put Interior on a new path for the future, and give it tools to address some of the underlying conditions that have contributed to its challenges. The land consolidation program will do that.

This settlement is a successful resolution for Native Americans, and for all Americans, and I hope that it will receive swift approvals so we can bring the litigation fully to an end. We look forward to working with the Committee to move the necessary legislation forward, and I look forward to your questions.