Testimony of John Berrey

Mr. Chairman and distinguished members of the committee thank you for the invitation to speak to you today. My name is John Berrey, I am the Chairman if the Quapaw Tribe of Oklahoma and Vice-Chairman of The Inter-Tribal Monitoring Association (ITMA). The Quapaw Tribe is one of the Thirty Tribes currently involved in litigation in federal court claiming Trust mismanagement by the Department of the Interior (DOI). The Quapaw Tribe's membership are individual class members represented in the Cobell v. Norton litigation, as a result of the largest lead and zinc mines in the history of the United States that were managed by the DOI. I am very pleased to also tell you that the Quapaw Tribe is the only Tribe that is currently pursuing a formal alternative dispute resolution (ADR) process outside of our litigation. We are very pleased with the progress and successes we have achieved working with the DOI, Department of Justice (DOJ) and Department of the Treasury (Treasury) attempting to settle Tribal and Individual claims. I am also a member of the Osage Nation. My immediate and extended family may represent some of the individuals in the Cobell class with the very most at stake in terms of settlement because of the millions of dollars from the Osage mineral estate that moved through these Individual Indian Money accounts (IIM).

I personally sponsored or helped promote the two most recent settlement related resolutions passed by The National Congress of the American Indian (NCAI). The first, SD-02-099, approved and passed last year in San Diego against a similar appropriations rider to the one currently in the DOI appropriations legislation, that rider proposed creating a poorly conceived voluntary buyout plan. Most recently, PHX-03-040, a resolution passed a few weeks ago in Phoenix, supports Senator Ben Nighthorse Campbell and Senator Daniel K. Inouye's efforts to begin a process that would lead to a fair and equitable solution to the endless litigation.

I have had the great fortune to be part of a DOI effort to identify in detail the business process problems that created in part the claims in the Cobell v. Norton litigation called the "As Is" business model. I am part of a team that is tasked with reengineering these processes to eliminate any future claims called the "To Be" reengineering team. These efforts have allowed me the opportunity to travel throughout Indian Country interviewing nearly two thousand individuals directly involved in the management of Native American Trust assets.

I have the added responsibility to be the vice chairman of the Inter Tribal Monitoring Association (ITMA), an organization whose very existence revolves around monitoring DOI Trust management. I support the ITMA testimony that you will hear today. It is these experiences that have led me here to discuss these pressing settlement matters.

First, I am very grateful to Eloise Cobell and the attorneys involved in the Cobell v. Norton litigation. The efforts of these individuals have brought to light the terrible historic mismanagement of Indian Beneficiary Trust Assets. Many of the described problems relating to the DOI management have created the current reengineering that I am involved with. With the efforts of the Office of the Special Trustee (OST), the Bureau of Indian Affairs (BIA) and Tribal representatives, we will create better business processes for the DOI Trust Management service delivery to the Native American Beneficiary.

As a Tribal leader I have become very frustrated with the direction the case and the decisions the court has taken. The scorched-earth tactics of attorneys from both sides of the case have created tremendous hardships on the very beneficiaries both sides represent. The dollars allocated for tribal services are being used to produce endless data calls, insane computer security, and the failure of the solicitors office to take action on day-to-day business resulting in the fact that the burden of the case is now squarely on the shoulders of Tribes and Individual Tribal members. In the last quarter at my agency, the Miami Agency, eighty percent of the full time equivalent (FTE) in realty was spent on litigation document production, directly effecting the agencies ability to perform much needed realty service such as leasing, rent collections and lease enforcement for Quapaw Tribal members.

The court has broadened the scope of this case so wide that it is impossible to describe the case as it was originally intended. The court and both parties have become involved in business processes such as; fee-to-trust applications, resource management planning and leasing, title management and appraisals, the very types of activities that are typically DOI/Tribal issues and not specific to IIM accounting. We now have a court that is involved in activities that threaten Tribal governance and self-determination, and I am terrified that a case about ten percent of the Trust Corpus is threatening the ninety percent that should not be part of this courts jurisdiction. It is very obvious that many people are tired and wary of this case that has lingered for eight long years resulting in the destruction of many dedicated peoples reputations, careers, and ultimately the delay in payments to needy Indian families. The result has also been the burning down of the house of the very trustee delegated to providing services to the Indian beneficiary. Gale Norton, the attorneys from the DOJ, Judge Lambreth and the attorneys for the class are getting paid while Native American Indian people and Tribes are suffering.

The time is now to stop this endless, insane method of resolving a series of claims that need to be settled in a fair and collaborative way. The success of any dispute resolution is imbedded in the very process used to resolve the conflict. I appreciate the appropriators' attempt at finding a resolution in section 137 of the DOI appropriations bill, but it falls terribly short in terms of process. There has been absolutely no consultation with any of the plaintiffs, plaintiff's council or Tribal leadership. The entire issue of settlement must be process driven, instead of predetermining any settlement structure the focus must be on process, process, and process. This is a proven method of resolving complex issues and allows all the stakeholders a voice in the outcome. I am sure that an effectively managed collaborative process will work in a very timely way if allowed to happen. I am here to ask and to plead to Congressman Richard W. Pombo and the Congressman Nick J. Rahall II to work with Senator Ben Nighthorse Campbell and Senator Daniel K. Inouye quickly in a joint effort to resolve the Cobell v. Norton litigation using a collaborative process that will include IIM account holders, Tribal leaders, plaintiff's council, and DOI officials in a timely way. Please allow this process to begin, require a timeline and hold all parties accountable, but please allow a fair and collaborative method to settle this mess. The time is right, the methods of collaborative dispute resolution are proven and the process must be given the opportunity to work. As a Tribal leader I am dedicated to coming to terms regarding issues of the past. It is not right for me to teach my children to constantly look backwards, when I must teach them to focus on the future. Thank you for your time.