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COBELL V. SALAZAR SETTLEMENT AGREEMENT

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED ELEVENTH CONGRESS

FIRST SESSION

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COBELL V. SALAZAR SETTLEMENT AGREEMENT

THURSDAY, DECEMBER 17, 2009

U.S. SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 2:39 p.m. in room 628, Dirksen Senate Office Building, Hon. Byron L. Dorgan, Chairman of the Committee, presiding.

OPENING STATEMENT OF HON. BYRON L. DORGAN, U.S. SENATOR FROM NORTH DAKOTA

The CHAIRMAN. We will now turn to the hearing. We have the Honorable Ken Salazar, who is the Secretary of the Interior, with us today.

Secretary Salazar, while we are waiting, if you would come forward, and you are accompanied the Honorable Hilary Tompkins, the Solicitor at the Department of the Interior; the Honorable David Hayes, Deputy Secretary of the United States Department of the Interior; and the Honorable Thomas Perrelli, Associate Attorney General, U.S. Department of Justice.

Let me say that we will now convene the hearing itself. The hearing is an oversight hearing on the subject of *Cobell v. Salazar*, and a settlement agreement of that court suit.

Earlier this month, the parties in the longstanding *Cobell* litigation reached a settlement agreement. And we have asked them here today to describe that agreement. I believe the *Cobell* settlement agreement is really historic, and I know it has been a long and very difficult journey to get to a settlement.

The case has been in court for over 13 years. It is a tragedy that many beneficiaries of this case have passed away before the case has been resolved, and they certainly will not benefit from the settlement.

I have long believed that settling rather than continuing to litigate year after year after year is the best course of action. In the 109th Congress, Senator McCain and I worked very hard to see if we could create that settlement, and that was not achievable.

The *Cobell* case itself was caused by a broken land management system developed by the Federal Government over a century ago. The U.S. was dividing up Indian reservations, allocating land to individual Indians. Remaining lands were sold to non-Indians. As part of these policies, the United States became responsible for

managing Indian lands, for collecting and distributing revenues produced from those lands to individual Indians.

The management duties became burdensome as ownership in the lands became fractionated. I know of parcels of land that had 10,000 owners, fractionated ownership. But in addition to just the complication, the fact is a number of American Indians whose accounts were to be handled by the Federal Government found that the accounts were mishandled. They were bilked, in my judgment. Some were perhaps stolen. The accounts were mismanaged.

What happened was a terrible blot on the Federal Government. And there was required to be some redress for it, and some people went to court to seek that redress. And as I indicated, the court case lasted a long, long while.

Today, there are 150,000 Indian land allotments with 4 million interests. And for each of these allotments, there could be as many as 1,000 owners. The problems is illustrated with 2005 date from the Fort Berthold Reservation in my home State. You can see on the chart that we are putting up, more than one third of the land parcels have between 11 and 1,000 owners.

Other States have similar problems on their reservations. Some are even much worse. The most fractionated Indian allotment is in Wisconsin. If Indian land generates income, then each owner will have a trust account and the United States is responsible for managing that. In Fiscal Year 2009, there were almost 400,000 individual Indian trust accounts.

Now, the courts have consistently held that the United States failed to properly manage these accounts. But the question of how much the plaintiffs have been owed or are owed, and how to fix the problem, have remained. And I am really pleased that the settlement agreement compensates the individual Indians whose accounts I believe were mismanaged, and takes a significant step towards decreasing the amount of land fractionation in Indian Country. I think this will help ensure that there will not be another *Cobell* case in the future.

The terms of the settlement require that Congress approve it before the end of this month. I don't know whether that will happen, but we hope it will happen. And if it doesn't, we intend to try to make it happen. If it does not happen, I hope the parties will agree to a brief extension of time.

It would be an incredible disappointment to waste this historic opportunity, and I pledge to you that I want to try to find a way in these waning days to make this happen.

I do want to say that Secretary Salazar, you came to that post of Interior Secretary and you perhaps more than anyone in a dozen years decided you were going to try to make something happen here that was good for everybody, that resolved a longstanding dispute. And I think that is called leadership. And I, for one, really appreciate your leadership to try to bring us to this day and to this table. So thank you very much.

The CHAIRMAN. Vice Chairman Barrasso, please?

STATEMENT OF HON. JOHN BARRASSO, U.S. SENATOR FROM WYOMING

Senator BARRASSO. Thank you, Mr. Chairman, and thank you for holding this hearing, a very important hearing.

I want to extend a warm welcome to my friend, Secretary Salazar. I want to thank you for appearing in front of the Committee this afternoon. I am very interested in hearing what you have to say about this proposed settlement, so I will be brief.

First and foremost, I think it is good that the parties in this dispute were able to come together and reach an agreement. For whatever reason, that didn't happen during the last 13 years. That said, I believe there are still many questions that can and should be asked about the settlement.

For example, I would like to know exactly how the settlement amount of $1.4 billion was arrived at. I would also like to know how the Administration arrived at the figure of $2 billion for the fractionated land buy-back program, and how and where they plan to spend that money.

Like many people, I am sure, I would like to know how much of this money will go to attorneys' fees; $3.4 billion is an incredible amount of money, and it is a lot of American taxpayers' money.

So it is appropriate that we delve into the details of that settlement with these and other questions, but I hope the witnesses can give us answers to these and other important questions this afternoon. If that can't be done, I would like to receive follow-up or supplemental answers as soon as possible after the hearing.

So I thank the witnesses for attending and preparing for today's hearing on such short notice.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator Barrasso.

Are there others on the Committee that wish to make a comment prior to my calling on the Secretary?

If not, Secretary Salazar, I will call on you for testimony. The testimony of all of the witnesses today will be entered into the record in its entirety, and you may summarize.

Thank you so much for being here.

STATEMENT OF HON. KEN SALAZAR, SECRETARY OF THE INTERIOR, U.S. DEPARTMENT OF THE INTERIOR; ACCOMPANIED BY DAVID J. HAYES, DEPUTY SECRETARY AND HILARY TOMPKINS, SOLICITOR, DEPARTMENT OF THE INTERIOR

Mr. SALAZAR. Thank you very much, Chairman Dorgan and Ranking Member Barrasso, Senator Murkowski, Senator Johnson, Senator Udall, Senator Franken and all the Members of the Committee who are here today.

Let me at the outset first acknowledge your leadership, Chairman Dorgan, along with the leadership of others who have tried to wrestle with this issue for many years, including that of Senator McCain, who over many years worked with you to try to bring about a resolution to this longstanding and very difficult and very bitter dispute.

Secondly, let me also say thank you to the members of the team who are here with me today as witnesses on the *Cobell* settlement.

Tom Perrelli, the Associate Attorney General from the Department of Justice has worked tirelessly on this matter, really for almost much of his last year, along with David Hayes, the Deputy Secretary of Interior, who spent an enormous amount of time working with Hilary Tompkins, who is the Solicitor General for the Department of Interior. So I thank them for their particular efforts.

Let me at the outset just say the history of this case has been a long and tortured and painful history. It was born 13 years ago, and you on this Committee have been familiar with the different chapters of it. Perhaps there are two ways of looking at this case and the journey that it has taken.

One of the ways it to look at it through the acrimony that has been created between the United States of America and the Indian nations around our Country, and the individual Indians who are represented in this class, where the issues that we are trying to deal with on reservations from law enforcement to education to economic development frankly have been hindered because of the fact that this has been a huge cloud over the relationship between the Department of the Interior and Indian Country.

And so hopefully what this settlement does is it brings about a turn in direction relative to the relationship between the United States of America in carrying out its trust responsibilities with respect to Indian Country.

Secondly, you can also tell the story of this journey through some of the numbers that have been dealt with that I think Dr. Barrasso, Senator Barrasso, you might know some of these numbers. But at some point in time, there was conversation about the fact that there was a claim here for $176 billion. There were plaintiffs' requests in 2004, they were public at $40 billion. There was a National Congress of American Indians Task Force which worked hard and had come up with a number of $27.4 billion.

And then in March 1 of 2007, under President Bush's Administration, Attorney General Gonzalez and my predecessor, Secretary Kempthorne, put forth a proposal for an amount of $7 billion to try to attempt to settle this case.

Between that time and this time, the litigation has continued, and in part as a result of the decisions that have been made in the courts, and the leadership of the court itself through the efforts of Judge Robertson, we were able to arrive a number that is $3.4 billion. So that is significantly less than had been talked about in the history. So that is part of telling the story of this case.

Now, what does the settlement do? I think in two broad ways, you should be thinking about this settlement in the same way that we thought about them, and Chairman Dorgan touched on those two things in his opening statement.

The first is that it does deal with past wrongs. When you think about the past wrongs we are trying to right here, these past wrongs to way back to over 100 years. And so what we will do is correct those past wrongs so we don't have to look at the past anymore, and we can look to the future.

The second thing that it does is it sets up a program so that we avoid the problem from occurring again in the future. It would do us not much good, in my view, to essentially settle the damages portion of this case, and not to move forward with a proactive effort

to try to make sure that we are not back in the same problem five years and 10 years and 20 years from now.

And I think some of the numbers that Senator Dorgan spoke about relative to fractionation is only going illustrate that the problem is simply going to exacerbate and become larger. There are now 4 million interests that we are dealing with here. But if the fractionation issue continues to move forward in the same direction that it has moved in, our projection is that we will be dealing with 11 million fractionated interests by the year 2030.

So when we think about having to deal with this complex problem, it is only going to get more complex unless we are able to figure out away of moving forward with it. And so that is why the buy-out provisions on the $2 billion, Senator Barrasso, that you talk about will deal with that very substantive problem to ensure that this problem does not occur again.

So it is for those reasons that I think that this is a fair and reasonable settlement.

And in conclusion, as Senator Dorgan, Senator Barrasso and the Members of this Committee know, one of the priorities that I have for the Department of Interior is making sure that we address the problems that First Americans are facing all across our Country. And getting this litigation behind us will allow us to move forward in major efforts we have already launched to deal with the issues of public safety and law enforcement, to deal with what hopefully will be a new educational era in Indian Country, as well as to deal with energy development on Indian Country.

So there are major issues that proactively require attention. This will allow us to do that.

So I appreciate the opportunity to testify, Chairman Dorgan, and if you wish, I would like my colleague from the Department of Justice, Tom Perrelli, also to make a comment, as well as my Deputy Secretary for Interior.

[The prepared statement of Secretary Salazar follows:]

PREPARED STATEMENT OF HON. KEN SALAZAR, SECRETARY OF THE INTERIOR, U.S. DEPARTMENT OF THE INTERIOR; ACCOMPANIED BY DAVID J. HAYES, DEPUTY SECRETARY AND HILARY TOMPKINS, SOLICITOR, DEPARTMENT OF THE INTERIOR

Good afternoon Mr. Chairman, Vice Chairman, and members of the Committee. Thank you for the opportunity to provide the views of the Department of the Interior (Department) regarding the settlement that has been reached between the United States and the plaintiffs in the *Cobell* class-action lawsuit and accompanying legislation, the "Individual Indian Money Account Litigation Settlement Act." The *Cobell* case, which devolved into contentious and acrimonious litigation over the Department's trust management and accounting of hundreds of thousands of individual Indian trust accounts, has hindered U.S. efforts to work effectively in Indian Country for more than a decade. During these years many members of this Committee have signaled a desire for the agencies involved in this litigation to find a way to bring the case to resolution. And this month, we have achieved an agreement. I am very pleased to say that the settlement we have reached is a fair one, a forward-looking one, and one that I am certain will strengthen the relationship between the Federal Government and Native Americans. This settlement will enable us to move ahead together and to focus on the many pressing issues facing Indian Country.

The agreement is the product of good faith, arms-length negotiations between the United States and plaintiffs. It not only resolves litigation over the U.S. government's management of hundreds of thousands of individual Indian trust accounts, but also forges a solution to an ongoing—and worsening—problem. This negotiated agreement lays out a path for the responsible management of Indian trust assets

in the 21st century. The agreement strengthens the trust relationship between the United States and our Native American citizens, a relationship that has at times been fraught with challenges but a relationship which the members of this Committee have long sought to develop into one of mutual respect and understanding. In this statement, I will briefly describe the components of the proposed settlement and related steps being taken by the Department to improve our management of Indian assets. I am accompanied today by David J. Hayes, the Deputy Secretary of the Department of the Interior, who led our negotiations on my behalf, and by Hilary Tompkins, the Solicitor for the Department and the first American Indian to hold that post. Ms. Tompkins also participated actively in the negotiations.

Accounting and Trust Administration Claims Settlement

The first part of this settlement agreement resolves claims related to the class-action lawsuit brought by the plaintiffs in *Cobell v. Salazar*. The case centers around the U.S. government's trust management and accounting of over three hundred thousand individual American Indian trust accounts. The settlement would resolve not only the plaintiffs' claims for an historical accounting for funds that the government holds in individual American Indian trust accounts, but also all claims associated with the management of these trust funds and the underlying trust assets (consisting of land and resources that are held in trust for individual Indian members of the plaintiff class). The settlement addresses all existing and potential trust-related claims that the plaintiffs may have against the United States to date, and thus brings final closure to this long and difficult issue.

Under the terms of the settlement regarding trust management and accounting issues, approximately $1.4 billion would be distributed to the class members, which consist of certain American Indians and Alaska Natives, as defined in the Settlement. Each class member will receive $1,000 for their historical accounting claims and may receive additional funds related to trust management claims under a formula set forth in the settlement agreement. By addressing alleged mismanagement as well as accounting-related claims, this settlement fund will fully resolve all potential claims by individual class members and avoid all further "look-backs" regarding prior fund accounting and trust management issues.

Correcting Fractionation

The second part of this settlement contains provisions designed to address the daunting problem called "fractionation." This problem consists of the continued proliferation of new trust accounts as land interests held in trust for individual American Indians continue to subdivide (or "fractionate") through inheritance processes. The settlement and legislation provide for a $2 billion fund for the buy-back and consolidation of fractionated land interests. The land consolidation fund addresses an historic legacy of the General Allotment Act of 1887 (the "Dawes Act") and other related allotment statutes, which divided tribal lands into parcels of between 40 and 160 acres in size, allotted them to individual Indians, and sold off remaining unallotted Indian lands. As original allottees died, their intestate heirs received equal, undivided interests in the allottees' lands. Today, it is not uncommon to have hundreds of Indian owners for one parcel.

The result of the continued proliferation of thousands of new trust accounts caused by the fractionation of land interests through succeeding generations is that millions of acres of land continue to be held in such reduced ownership interests that only a small percentage of the individual owners derive a meaningful financial benefit from their ownership. Indeed, as of September 30, 2009, there were 143,663 individual Indian allotments and more than four million fractionated interests. It has been estimated that these four million interests will expand to eleven million interests by the year 2030 if the actions contemplated in this settlement are not taken. This situation creates more harm than good for the individual owners, the tribes and the Federal Government. In too many instances, tribes find economic development efforts stymied by their inability to utilize heavily allotted tracts of land for much needed energy, commercial and agricultural development.

Under the provisions of the settlement for land consolidation efforts, the Department would use a $2 billion fund for the buy-back of fractionated land interests. The Department would use existing programs and law to make these acquisitions, with additional authority that would be provided under the proposed settlement legislation for the conveyance of interests held by persons who cannot be located after engaging in extensive efforts to notify them and locate them for a five-year period. As part of the class notice process that will notify individuals of this settlement, the Department will notify individuals of the opportunity to convey their interest. The $2 billion fund will cover administrative costs to undertake the process of acquiring millions of fractionated interests.

The fund will also cover up to $60 million that will be contributed to an existing non-profit organization for the benefit of educating American Indians and Alaska Natives. In addition to consolidating and preserving tribal homelands, settlement parties desired to connect with the next generation of Indians. Under the settlement terms, the sale and release of fractionated interests are directly linked to education—an overall benefit to Indian country. With each acquisition of an interest, an additional amount will be contributed to the educational Indian scholarship based on the value of the interest. For instance, for an interest worth $500 or more, five (5) percent of the value will be contributed to the scholarship fund.

The settlement implementing legislation would authorize the $2 billion fund to be established in the U.S. Treasury and the transfer of a portion of this fund to the non-profit organization for Indian education scholarship purposes, and also authorize the conveyance of interests held by persons who cannot be located after five years, as described above.

Long-term Trust Reform

To address the future of Indian trust management, on December 8, 2009, I signed a Secretarial order to establish a five-member national commission to evaluate ongoing trust reform efforts. The commission will make recommendations on the future management of individual trust account assets and the need for comprehensive auditing of these operations. While the Department has made significant progress in improving and strengthening the management of Indian trust assets, our work is not over. The Commission will make recommendations regarding how to improve trust management services on a going-forward basis, such as recommendations regarding the appropriate roles of various Interior agencies including the Office of Special Trustee and the Bureau of Indian Affairs.

Conclusion

I hope you will help us to secure swift enactment of the necessary legislation. As the members of this Committee are aware, this settlement is a starting point, not an ending point. It is time now to move beyond the litigation and to commit to working cooperatively with American Indian and Alaska Native communities to address education, law enforcement, and economic development challenges. With this settlement we will turn the page on a dark chapter in Indian Country and begin to move forward, together, towards our common goals.

Thank you for the opportunity to appear before you today. I look forward to answering your questions.

The Chairman. All right. Mr. Perrelli, you may proceed. Thank you so much.

And thank you, Secretary Salazar.

STATEMENT OF HON. THOMAS J. PERRELLI, ASSOCIATE ATTORNEY GENERAL, U.S. DEPARTMENT OF JUSTICE

Mr. PERRELLI. Thank you, Chairman Dorgan and Vice Chairman Barrasso, and the other Members of the Committee.

This Committee is quite familiar with the litigation now called *Cobell v. Salazar*, and has worked over the years with the Department of Interior to address it. And I think you have observed over time how this has drained Federal resources from Indian Country and has created a poor atmosphere for the administration of the Federal Government's trust responsibilities in Indian Country.

And you, as well as the courts, have encouraged parties to settle the litigation, and at times have directly supported efforts to mediate it.

Built in great part on direction that Members of the Committee have provided over the years, on December 7, we signed a settlement agreement that hopes to turn the page on that history. As previously indicated, the settlement does require legislative and judicial approval to become effective, but we believe it is fair to the plaintiffs, is responsible for the United States and provides a path forward to the future.

The settlement contains many of the elements that Members of this Committee have sought to include in prior efforts to resolve the matter. First, the settlement resolves plaintiffs' claims for an historical accounting, and will result in cash payment to class members and will bring 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. Those payments are $1,000 a person, and will be in conjunction with other payments under the settlement.

Second, the settlement resolves what are called trust administration claims. Those are claims based on allegations that the government may have mismanaged hundreds of thousands of acres of land and millions of dollars, including proceeds from those lands it holds in trust for individual Native Americans.

Now, to date, few of those claims have been brought, but they remain a threat to rebuilding a long-term relationship with the Department of Interior and Native Americans, because there has always been concern that if the *Cobell* case were to settle, it would simply be followed by 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. And each and every plaintiff of that class will receive an additional payment based on a formula to be approved by the court. Those payments, which are in addition to the accounting class payments, will start at $500 and go up from there, and for certain plaintiffs who hold valuable assets, will result in very significant amounts.

The total of those two class resolutions will be $1.4 billion approximately.

And then lastly, as Secretary Salazar mentioned, the settlement provides an important framework for the Department of the Interior to address one of the principal factors that has led us down this path, the problem of fractionation.

The legislation required to implement this settlement accomplishes a number of things, some of which I think are relatively technical. But the primary substantive provisions, much like the bill that Senators Dorgan and McCain put forward in the 109th Congress, authorizes the Secretary to administer the land consolidation program that is critical to the settlement.

We think this is a successful resolution for Native Americans and for all Americans, and hope that we are able to obtain the approvals we need so that we can move forward. Thank you to the Committee for its support over the years.

[The prepared statement of Mr. Perrelli follows:]

PREPARED STATEMENT OF HON. THOMAS J. PERRELLI, ASSOCIATE ATTORNEY GENERAL, U.S. DEPARTMENT OF JUSTICE

Good afternoon and thank you to Chairman Dorgan, Vice-Chairman Barrasso, and the other members of the Committee. The litigation that is today known as *Cobell v. Salazar* has lasted thirteen years, and for nearly as long, members of this Committee have taken a keen interest in it. Members have worked with the Department of the Interior to address the challenges at issue in it. They have observed that the litigation has drained federal resources from Indian Country, and has created a poisonous atmosphere for the administration of the Federal Government's trust responsibilities in Indian Country. They have encouraged the parties to settle the litigation, and at times have directly supported efforts to mediate it.

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 this Committee 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, 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 the bill that Senators Dorgan and McCain put forward to resolve *Cobell* in the 109th Congress—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.

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 appreciate the Committee's support over the years, and I look forward to any questions you may have.

The CHAIRMAN. Mr. Perrelli, thank you very much.

We will now hear from Mr. David Hayes.

Mr. Hayes?

Mr. HAYES. Thank you, Mr. Chairman.

I want to just add a few brief comments about the operational aspects of this settlement in terms of the Department of Interior's plans, if approved, for moving out on the land consolidation program and also the trust reform efforts that are part of the settlement, actually part of a separate secretarial order that grew out of our discussions in the settlement.

In terms of the land consolidation program, the $2 billion, we believe, will make a huge dent in the problem that you identified, Mr. Chairman. We will be targeting tracts that have 20 or more interest holders. Those tracts contain 84 percent of the total number of interests. That is of 4 million interests total, 84 percent of them are in tracts that have 20 or more interest holders. That is 37,000 tracts, with a total acreage of almost 5 million acres.

We believe that, based on fair market value estimates, that our $2 billion will take a huge chunk out of that problem, and diminish the extrapolation of interests that the Secretary referred to.

I would also like to say that in addition to streamlining our trust obligation by reducing the number of individual trust holders through this land consolidation program, we will save a significant amount of money going forward in our trust efforts. By putting a close to our historical accounting efforts, we expect to save about $250 million going forward. We are spending $25 million a year. We expected to have to continue to do that until 2019 if we were not able to resolve and end the historical accounting dispute with individual account holders.

And in addition, while we have not done a complete calculation of how much money we will save by virtue of having a smaller number of trust accounts to account for, we have examples of one 40-acre parcel, for example, that has 500 owners and that, produces only $2,000 in income. It is valued at $22,000. The administrative costs each and every year to administer these 500 individual trust accounts is over $42,000 a year for a parcel that is worth $2,000.

So if we can diminish the number of individual trusts, as we expect to do, we expect enormous savings going forward in administering the program. And, of course, we expect, as the Secretary said, to be able to take better care of the accounts that we are following.

The final point I will make is in terms of trust reform. An important part of the effort here is the secretarial order that the Sec-

retary signed that will establish a commission upon approval of the settlement to look at organizationally how we should go forward in terms of administering the trusts, to do a full audit of the function as we start fresh without having to look backwards, and instead looking forward.

Thank you very much, Mr. Chairman.

The CHAIRMAN. Mr. Hayes, thank you very much.

Would you just for purposes of illustration go over again the paragraph in which you described the single parcel of land, I think, worth $20,000? Describe that again because it so aptly describes the dilemma that we have all inherited here.

Mr. HAYES. Certainly. This was a tract identified in 2003. We can get you the specifics of exactly where it is, but it is a 40-acre tract. There are 505 individual owners for that tract, meaning we have to undertake an accounting of individual trusts for 505 owners for that 40 acres. That 40-acre parcel is producing $2,000 in income annually. So we have to take that $2,000 and divide it appropriately into individual accounts and follow that money.

The 40-acre parcel is valued at $22,000. The administrative costs for the accounting that we have to do was estimated in 2003 by us at $42,800 a year, annually.

The CHAIRMAN. Well, that pretty well—although I must say you are a pretty expensive accountant.

[Laughter.]

The CHAIRMAN. Five hundred accounts and $42,000. But I think it really well describes the dilemma here of this fractionated ownership, and I appreciate your doing that.

Let me call on the Vice Chairman for comments or questions.

Senator BARRASSO. A couple of questions, Mr. Chairman, if I may.

First, Mr. Secretary, I know reaching this settlement was no easy matter, and there have been many attempts over the past number of years. I am going to submit some detailed questions, but based on what you know, two quick questions for you, Mr. Secretary. Based on what you know about the case and the issues that would be resolved by this settlement, is this settlement fair to the Indian account holders and the landowners?

Mr. SALAZAR. The answer to that is yes. And at the end of the day, because of the litigation and its history, I can tell you that the plaintiffs and the United States did not come together under the leadership of Judge Robertson to get to this settlement if it hadn't been a fair and reasonable compromise. So it is a fair and reasonable compromise that does reach that objective.

Senator BARRASSO. And that is the second question. Is it a good settlement for the United States and the American taxpayer?

Mr. SALAZAR. Absolutely.

Senator BARRASSO. And if I could go to Mr. Perrelli, if you wouldn't mind. As my background is a physician, I would like to ask about attorneys' fees.

[Laughter.]

Senator BARRASSO. The settlement agreement provides that the amount to which plaintiffs are entitled for attorneys' fees is, I believe, "within the discretion of the Court in accordance with con-

trolling law." How much in attorneys' fees do you expect the plaintiffs to request from the court?

Mr. PERRELLI. Well, let me take a quick step back. As the Committee knows, this is a historic settlement, and ultimately we had to make a decision; even if we couldn't ultimately come to agreement on attorneys' fees, was this a settlement that was in the interests of the United States? And we decided that it was.

I think we share your concern about attorneys' fees, in particular in this case where every dollar of attorneys' fees actually will come not from the United States, but every dollar of attorneys' fees will actually come out from individual class members' distribution, will come out of the $1.4 billion.

We also had to balance, in considering this issue, the fact that if this case were litigated for another 3, 5, 10 years, at the end of that, we would likely be facing a substantial petition for attorneys' fees in that context. And even though at that point we might well have very strong arguments against it, it was something we had to balance.

We didn't ultimately reach agreement on fees. There are a few things, a few agreements that I think are worth informing the Committee about.

First of all, as I indicated, the funds do come out of the $1.4 billion, so there is no additional outlay by the U.S. Treasury. Second, the court will decide the ultimate fee award, based on existing law. The parties, however, also agreed that they would litigate within a range. That wouldn't bind the court. It wouldn't bind individual class members as to what arguments they could make regarding fees. But they would litigate in a range between $50 million and $99.9 million in attorneys' fees.

When you look at that in the overall context of the settlement, if you were to take that as a ratio of over $1.4 billion, if the court were to determine that were the appropriate fund to look at, you are looking at between 3.5 percent and 7 percent.

Senator BARRASSO. So if the attorneys' fees are awarded as a percentage of the final amount, that was what the percentage would be, in that range, if you stay between $50 million and $100 million.

Mr. PERRELLI. If you use the $1.4 billion as the denominator. If you use the $3.4 billion, the numbers change.

Mr. SALAZAR. If I may, Senator Barrasso, may I, Mr. Chairman, make a quick comment on that issue because I know it is central to your thinking?

Having served as Attorney General of my State for six years and having watched what happened in other circumstances, including the tobacco litigation, this was a central issue of concern for us as we drove down to the final goal line on reaching this settlement.

For those of you who know how contingency case litigation and costs are paid out, at $1.4 billion in the damages part of this case, one third of that would have been about $500 million. Okay? And so what we were able to do because of the very concern that I knew that Chairman Dorgan and the Members of this Committee would have, we were basically able to come about the bracketing of these amounts in what I think is a very reasonable amount.

Senator BARRASSO. And then, Mr. Hayes, if I could ask you, could you explain to me how the Administration decided that $2

billion is the appropriate amount of money to spend on buying back fractionated land? And then maybe where most of that money is going to be spent? And then, specifically, if any of that is going to be used on the Wind River Indian Reservation in Wyoming?

Mr. HAYES. Yes, Senator. A lot of work had been done by the prior Administration in connection with some of the work with this Committee in evaluating potential land consolidation programs on a grand scale. And we had the advantage of having estimates of land values broken down by parcels and fractionated interest numbers.

In order to truly resolve this entire problem, we estimate it would cost $6 billion to $8 billion, frankly. But the largest problem are the highly fractionated shares, and as I mentioned in my brief comments before, we think that $2 billion has the potential to clear out as much as 80 percent of the number of interests overall held.

And frankly, as you get into parcels that have fewer owners, where they are earning income, you don't tend to have the fractionation problem because those owners are thinking about their future and their children's futures, and so you don't have that issue.

In terms of how we are going to target within this, we are essentially going to have a rolling process that targets, first of all, those fractionated lands that have 20 or more interests. We will start with lands that do not have mineral interests because those mineral interests are harder to value, frankly.

And within the 37,000 parcels of land that have more than 20 owners, there are 20,000 parcels that don't have mineral interests, that look like they are easier to value, and in fact we have already valued more than half of those.

So there are a number of parcels throughout Indian Country that fall in this first tranche, including some in the Plains, and we would be happy to go over with you and your staff, Senator, the situation in terms of the Wind River tribes in particular.

Senator BARRASSO. Thank you, I would appreciate that.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much.

Senator Franken indicated he has to leave and has one question. With the help of my colleagues, I will call on him for one question, and then come back to our colleagues.

STATEMENT OF HON. AL FRANKEN,
U.S. SENATOR FROM MINNESOTA

Senator FRANKEN. Thank you, Mr. Chairman, and I would like to thank my colleagues.

What I am interested in is that for Indians to receive money in the settlement, I guess they would have to know about the settlement and whether they are entitled to it. So my only question really is what is the plan to let people know that they are entitled to part of this settlement?

Mr. SALAZAR. There is an exact process that has been formulated, and I will have the Associate Attorney General respond to the process.

Mr. PERRELLI. Certainly, Senator.

There is a notice process that will include the Department of Interior, working with the plaintiffs and a contractor who does notice

professionally to, among other things, translate notice into appropriate languages. We will send notice to all the addresses that we have, so hundreds of thousands of pieces of mail, as well as publication notice and appropriate papers.

I think we will also work with individual tribes to ensure publication on reservations, and I think a number of other steps as well.

The CHAIRMAN. Senator Johnson?

STATEMENT OF HON. TIM JOHNSON,
U.S. SENATOR FROM SOUTH DAKOTA

Senator JOHNSON. Welcome, Secretary Salazar.

How many IIM account holders in South Dakota will be affected by this settlement? Do you have any idea, or could you get me that number?

Mr. SALAZAR. Deputy Secretary Hayes?

Senator JOHNSON. Yes?

Mr. HAYES. We can get you that number, and will, Senator. There are over 300,000 total and a number are in South Dakota. And it is being handed to me right now: 19,811 individual accounts held in your State.

Senator JOHNSON. In South Dakota, several of the tribes purchased land in the 1970s and 1980s using loans from the Department of Agriculture. Some of those tribes are so heavily impacted by this debt. Will these tribes be able to use the settlement money to pay down the debt on those loans, since they were used for land acquisition, including fractionated land?

Mr. SALAZAR. I am not certain of that. Let me see if either David or Tom or Hilary have a response to that question.

Mr. HAYES. I think, Senator, there is no restriction on how individual account holders getting their settlement money will use their money. They will have complete discretion to use it as they see fit. I assume that would include the ability to pay down loans that they may owe, but we would be happy to follow up and confirm that.

Senator JOHNSON. Yes.

Mr. Perrelli, this settlement covers individual claims. Are there remaining lawsuits filed by the tribes? Is so, how many?

Mr. PERRELLI. There are approximately 99 cases brought by tribal governments against the United States raising similar types of claims. There are a small number of those that have been settled, and I think the Department of Interior and the Justice Department are very committed to working on trying to find resolution of those matters as well.

Senator JOHNSON. I have no further questions.

The CHAIRMAN. Thank you.

Senator Murkowski?

STATEMENT OF HON. LISA MURKOWSKI,
U.S. SENATOR FROM ALASKA

Senator MURKOWSKI. Thank you, Mr. Chairman.

And nice to see you back in the Committee here, Mr. Secretary, and I appreciate your leadership on this settlement and the opportunity to ask a few questions.

The questions that I have this afternoon are probably more technical in nature, so I don't know whether they are directed to you, Mr. Perrelli, or perhaps you, Mr. Hayes, or to Ms. Tompkins, but they are as the settlement may relate to Alaska Natives.

The first one is regarding the settlement as it pertains to the land administration's claim, and the minimum payment of $500 per claimant, assuming that the settlement is approved. The question is whether every owner of an Alaska Native allotment will be eligible for these minimum payment amounts, assuming that they choose to not opt out of the class and are willing to forego their land administration claims relative to past conduct of the Federal Government. So will the Native allottees be eligible for these payments?

Ms. TOMPKINS. Senator Murkowski, yes they will. There are class members who are Alaska Natives, and some of them do hold allotments, and so they will be eligible for payment under the trust administration portion of this settlement.

Senator MURKOWSKI. Okay, that is good to hear.

The second question, then, is similar to what Senator Johnson asked about the individual Indian money accounts. And Mr. Hayes, it looks like you must have the list there, and I would be curious to know how many Alaskans have individual Indian money accounts and whether or not there is any indication in terms of how much each might expect to receive if the settlement is approved.

Mr. HAYES. Senator, I do have information about the number of accounts, and there are 5,365 individual accounts held by Alaska Natives. I don't have the information about the funds, although they presumably will get the basic allocation, $500, and then there is a formula that applies depending upon the amount of transactions and essentially the money flow through those accounts with the account holders that are on land that is being more productive, being awarded more funds.

Senator MURKOWSKI. Okay. Thank you.

Another question involves the scholarship funds and whether or not Alaska Natives will be eligible to apply for these scholarship funds. And also, whether you think that there is going to be any particular blood quantum that will be applied as a form of eligibility cutoff.

Mr. SALAZAR. Senator Murkowski, this is an important part of the settlement that creates an incentive for individual Indians to participate in the fractionation buy-back program. I am going to have Solicitor Tompkins report on exactly how that would work.

Ms. TOMPKINS. Senator Murkowski, under current existing law, the Alaska Native communities are not eligible for buy-backs under the land consolidation program under current existing law. However, the scholarship fund, which will be a part of that program under the settlement agreement, will be administered by a nonprofit entity. And presumably that entity would provide scholarships to Alaska Natives, as well as other Native Americans. That is one of the criteria we have in the settlement agreement.

Senator MURKOWSKI. I appreciate that answer. You mentioned that Alaska is not part of the Indian Land Consolidation Act and it doesn't apply there. So am I correct in assuming that the Department of Interior will not be acquiring Native allotments within the

State for donation to tribe using the proceeds of the land consolidation program?

Ms. TOMPKINS. That is correct. We are working within the current legal framework that exists.

Senator MURKOWSKI. I appreciate that. Thank you for the responses.

And again, Mr. Secretary, thank you for your leadership on this issue.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Murkowski, thank you very much, and thanks for your work on these issues as well, along with Senator McCain and myself over a long period of time.

Secretary Salazar, let me thank you and your team, and the Solicitor as well. Thank you for coming today to explain to us. Our Committee, of course, is the Committee of jurisdiction and we wanted to, prior to Congress taking action, have an opportunity to query you and those who were involved in the negotiations. We will hear as well from Ms. Elouise Cobell today, and we appreciate very much her being here.

So do you have other things to say before you leave, Mr. Secretary?

Mr. SALAZAR. If I may, Mr. Chairman, just in conclusion. Again, I want to thank you and the bipartisan leadership here in the U.S. Senate on this Committee who have worked so hard on this issue. It truly has been a herculean effort to get to where we are today, and it truly is a historic effort.

I also want to thank President Obama for his support of this effort, and Senator Murkowski, who actually came to the White House Tribal Conference with the President a few weeks ago.

The issues that we are facing for Alaska Natives and for Native Americans are huge and they are real. And all of you have shown a great amount of interest in helping this move forward and help us address those issues, so I want to thank you.

And finally, I also want to thank Elouise Cobell because she raised issues that were important, which had been unresolved for a very long time, and has brought us to this point in history where we are in front of this Committee today presenting what we all believe is a fair and reasonable way forward.

Thank you.

The CHAIRMAN. Well, Mr. Secretary, thank you. Having met many, many times with Ms. Cobell, she has a backbone of steel, I can tell you, and we invited her to testify today as well.

So let me thank you and your team, and we will excuse you and have Ms. Cobell come to the table.

Good luck to you, Mr. Secretary.

Ms. Cobell, Elouise Cobell, is the lead plaintiff in the *Cobell v. Salazar* class action. Ms. Cobell is from Browning, Montana. She is accompanied by Mr. Keith Harper, who is the Class Counsel and Partner, Kilpatrick Stockton, LLP, Washington, D.C.

Ms. Cobell, thank you very much for being here today. It has been a long and difficult road, I know, and we are anxious to hear your perspective about the settlement that is the subject of this hearing. Your entire statement will be made a part of the permanent record, and you may summarize. You may proceed.

STATEMENT OF ELOUISE COBELL, LEAD PLAINTIFF, *COBELL V. SALAZAR*

Ms. COBELL. Thank you, Chairman Dorgan. And once again, I am here representing the class of over 500,000 individual Indians as the lead plaintiff in this case initially entitled *Cobell v. Babbitt*, and now referred to as *Cobell v. Salazar*, you know, pending in the United States Court for the District of Columbia, presently being presided over by Judge James Robertson.

Since inception more than 13 years ago, this Committee and this House Committee on Resources have taken keen interest in this litigation and key objectives reforming individual Indian trusts, ensuring a full accounting, and correcting and restating each individual's account balances, and other trust assets.

I have been here numerous times, and on each occasion I have emphasized my willingness to explore settlement of this case. Resolution takes two parties willing to come to the table to negotiate in good faith and attempt to reach what might be an equitable settlement that would set the foundation for improved trust management and accountability in the future.

The President showed great leadership during the campaign when he committed to seeking fair resolution to this case. And when elected, he followed through and charged Secretary Salazar and Attorney General Holder with carrying out this commitment.

Having been through seven failed settlements before, I was not optimistic of these negotiations and that we would reach agreement. But we sat down in good faith with the Administration. The issues to discuss and resolve were gravely challenging, and I repeatedly felt we had reached an impasse. But both my team and the government continued on, knowing that resolution was the best thing for all individual Indian trust beneficiaries, and for a healthier foundation of trust relationships for the future.

The settlement, from my perspective, is not perfect. But after months of discussion, I am here to testify that we have reached an agreement and that I support this agreement. It is time to look forward, not backward. We must never forget the past. The settlement can move us forward together as it represents the best resolution we can hope for under the circumstances and is a partial atonement for historical mismanagement of individual Indian trusts.

Although we have reached an historical settlement totaling more than $3.4 billion, there is no doubt this is far less than the full amount to which each individual Indians are entitled. We could prolong our struggle, fight longer, and perhaps one day know down to the penny how much every individual Indian is owed. Perhaps we could even litigate long enough to increase the settlement amount. But we are compelled to settle now by the sobering reality that our class grows smaller each year, each month and every day as our elders and infirm class members die, forever preventing them from receiving which is theirs.

We also face the uncomfortable unavoidable fact that a large number of individual Indian trust beneficiaries are among the most vulnerable people in this Country, existing in sheer poverty.

Now that the *Cobell* case has brought heightened attention to this matter, I am optimistic that this settlement will lay the foun-

dation for genuine and meaningful reform of the trust. I am hopeful that the commission that Secretary Salazar has announced with this settlement will ensure that additional critical reforms are made and that we set the underlying for the safe and sound management of our assets in the future.

I know that Assistant Attorney General Perrelli has talked about the settlement, so I will skip that detail. But I am particularly pleased about the incentive program that is part of the land consolidation effort. This will create post-secondary academic and vocational scholarships for Indian youth.

When Indian parents and grandparents talk to me about our litigation, they always commit to use any money recovered from this case to improve their children's and their grandchildren's lives. These funds can establish a great legacy for our Indian children and grandchildren, providing them the education necessary to break the cycle of poverty that has held too many Indians in grips for generations.

I think the settlement will do a lot of good. It will get more than $3 billion in the hands of beneficiaries. It will provide monies for land consolidation. It will create the $60 million scholarship fund. Moreover, there will be a secretarial commission to recommend additional trust reforms.

When I embarked on this settlement process, I was skeptical that this result could be achieved, but we were able to reach a resolution. I now ask Congress to swiftly enact the necessary implementing legislation so we can start on the challenges of distribution without further delay. Hundreds of thousands of individual Indians have waited patiently for far too long. It is time that they see the proceeds of their efforts.

Thank you, Mr. Chairman.

[The prepared statement of Ms. Cobell follows:]

PREPARED STATEMENT OF ELOUISE COBELL, LEAD PLAINTIFF, *Cobell v. Salazar*

Good afternoon, and thank you Chairman Dorgan, Ranking Member Barrasso, and members of the Committee. I am here today once more representing a class of over 500,000 individual Indians as the lead plaintiff in the case initially entitled *Cobell v. Babbitt* and now referred to as *Cobell v. Salazar*, pending in the United States District Court for the District of Columbia and presently presided over by Judge James Robertson. Since virtually its inception more than 13 years ago, this Committee and the House Committee on Resources have taken keen interest in this litigation and its key objectives—reforming the Individual Indian Trust ("Trust"), ensuring a full accounting, and correcting and restating each individual's account balance and all other Trust assets.

By any measure, this litigation has proven exceptional and extraordinary. Not only is it one of the largest class actions ever brought against the United States as it addresses over 120 years of mismanagement of Indian trust assets and involves over 500,000 individual Indians, but the litigation has been intense and contentious. Moreover, there have been more than 3,600 docket entries in the district court and over 80 published decisions, including ten appeals—the most recent appellate opinion is referred to as *Cobell XXII*.

I have been before you numerous times, and, on each occasion, I have emphasized my willingness to explore settlement of this case. But of course, resolution takes two parties willing to come to the table to negotiate in good faith and attempt to reach what might be an equitable settlement that would set the foundation for improved trust management and accountability in the future. Until very recently, however, we did not have such a willing partner on the other side. The President showed great leadership during the campaign when he committed to seeking a fair resolution to this case and, when elected, he followed through and charged Secretary Salazar and Attorney General Holder with carrying out this commitment.

Having been through seven failed settlement efforts before, I was not optimistic at the outset of these negotiations that we would be able to reach agreement. Over the past few months though, we sat down in good faith and so did the Administration. Associate Attorney General Tom Perrelli, Interior Deputy Secretary David Hayes, and Interior Solicitor Hilary Tompkins were involved in the day-to-day negotiations. The issues to discuss and resolve were gravely challenging, and I repeatedly felt we had reached impasse. But both my team and the government soldiered on, knowing that resolution was the best thing for all individual Indian trust beneficiaries and for a healthier foundation of the trust relationship for the future.

Reaching agreement was certainly not easy, and the settlement from my perspective is not perfect. But after months of discussion, I am here to testify that we have reached agreement and that I support this agreement. It is time to look forward, not backward. And though we must never forget the past, this settlement can move us forward together as it represents the best resolution we can hope for under the circumstances and, resolving past claims, is a partial atonement for the historical mismanagement of the Individual Indian Trust.

Although we have reached an historical settlement totaling more than $3.4 billion dollars, there is little doubt this is far less than the full amount to which individual Indians are entitled. Yes, we could prolong our struggle, fight longer, and, perhaps one day, know—down to the penny—how much individual Indians are owed. Perhaps we could even litigate long enough to increase the settlement amount. But we are nevertheless compelled to settle now by the sobering reality that our class grows smaller each year, each month, and every day, as our elders and infirm class members die, forever prevented from receiving that which is theirs. We also face the uncomfortable, but unavoidable fact that a large number of individual Indian trust beneficiaries are among the most vulnerable people in this country, existing in the direst of poverty. This settlement can begin to provide hope and a much needed measure of justice.

In addition, now that the *Cobell* case has brought heightened attention to this matter, I am optimistic that this settlement will lay the foundation for genuine and meaningful reform of the Trust. There remains considerable room for improvement, as Secretary Salazar and Deputy Secretary Hayes have recognized. I am hopeful that the Commission that Secretary Salazar has contemporaneously announced with this settlement will ensure that additional critical reforms are made and that we set the underpinning for safe and sound management of our assets in the future.

The Settlement

The settlement is rather straightforward. There shall be set aside $1.412 billion for the resolution of the accounting, trust administration and mismanagement claims. These funds will be distributed as follows. Each individual Indian trust beneficiary who has an account open on government systems as of October 25, 1994, will receive $1,000.00 as a payment *in lieu* of the government providing an historical accounting. The remainder of this settlement fund, less the cost of settlement implementation, shall be distributed *pro rata*, calculated on the transactional activity in a beneficiaries' trust account over a designated period of time, with a baseline minimum payment of $500.00. Accordingly, the vast majority of beneficiaries will receive at least $1,500.00 from this settlement, and many will receive considerably more than that.

In addition, the agreement addresses the longstanding challenge of the increasing fractionation of individual Indian lands. The Interior Department repeatedly has acknowledged that managing these small interests—many of low monetary value—is one of the problems causing the Trust's mismanagement. The amount of $2 billion is set aside to purchase lands from willing sellers. This will provide additional funds to individual Indians and can establish a more stable foundation for prospective management.

I am particularly pleased about the incentive program that is part of the land consolidation effort. This will create post-secondary academic and vocational scholarships for Indian youth. When Indian parents and grandparents talk to me about our litigation, they passionately explain that they would use the money we recover to improve their children's and grandchildren's lives. I am confident this will prove an important incentive for land consolidation. More importantly, these funds should establish a great legacy for our Indian children and grandchildren, providing them the education necessary to break the cycle of poverty that has held too many Indians in its grip for generations.

I think this settlement will do a lot of good. It will get more than $3 billion in the hands of beneficiaries. It will provide monies for land consolidation. It will create a $60 million scholarship fund. Moreover, there will be a Secretarial Commission to recommend additional trust reforms that are needed. And there is an agree-

ment to perform an audit of the Trust. No audit has ever been done of this Trust. To heal the division between individual Indian trust beneficiaries and the government and to establish greater confidence that the IIM Trust is managed in accordance with trust law, transparency is essential. Too many records have been destroyed. Too much deception has occurred. Importantly, this settlement will allow individual Indians to look forward and work collaboratively with their trustee to ensure a better tomorrow.

We know this settlement does not solve all of the serious underlying problems plaguing this Trust. We know that reform cannot stop here. We will continue our efforts to ensure accountability. We have had to spend too much time looking backwards, trying to address the terrible wrongs of the past. Now my hope is that we look forward to ensure that in the future individual Indian trust beneficiaries finally receive that which rightfully is theirs.

Conclusion

When I embarked on this settlement process, I was skeptical that this result could be achieved. But we were able to reach a resolution. I now ask Congress to swiftly enact the necessary implementing legislation so we can begin to distribute our trust funds without further delay. Hundreds of thousands of individual Indians have waited patiently for far too long. Time is of the essence.

The CHAIRMAN. Ms. Cobell, thank you very much.

And as I have indicated, you have been very patient, but very resolute throughout this. You and I have had a number of discussions, and you have always been particularly generous in being willing to sit down with anybody at any time and try to talk through and discuss this case. And I have always been appreciative of that.

I want to ask a couple of questions. You talk about the incentive program and its ability to improve children's and grandchildren's lives. Give me a little better description of that. How do you see this incentive program investing in children?

Ms. COBELL. Many of the individual Indians that we represent in this case are living in poverty. They don't have any means to send their children to school. And I think that has been the driving force of my work on this case as the lead plaintiff is to better and improve the lives of our children. And it is the place that we need to start.

So many times that I have been in meetings with elders and individual Indians, it is always for my children, if I can have this for my children, if I can better the lives for my grandchildren. And I am always under the impression that if we can get our young people educated, this will never happen again. We can never allow the United States Government to behave like this and treat individual Indians the way that they have treated individual Indians. And I feel that if educating our young people, this will be the opportunity, that we can hold people accountable.

The CHAIRMAN. You are the lead plaintiff, but of course, there are many plaintiffs. Tell me about the reaction of the other plaintiffs in the class. I assume there are differences of opinion. How significant are those differences?

Ms. COBELL. Well, I think out of every 10 people that I hear from, you know, maybe one that is negative. But they have a little confusion of what does this really mean? What does this mean to us? Does it mean our tribal trusts?

So there is a lot of confusion that has to be, you know, described to them, that this is as a result of the Allotment Act or the Dawes Act.

Everybody has been ecstatic, let me tell you. At my home, I go into the grocery store and everybody runs and shakes my hand and thanks me for fighting for justice for them. Because, you know, $1,000 means a lot, and people don't understand that I think maybe living in the D.C. area, you know, what is $1,000? Well, $1,000 will buy, you know, maybe two or three months groceries for your family out where I am from.

And so, I think that the $1,000 means that maybe the government, for once in their lives, will pay up, will be honest to them; will actually, you know, have the ability to say, we did wrong and let's move forward, and so here is a first payment. But under the distribution plan, many individuals will receive a lot more money.

The CHAIRMAN. The historical accounting that the court would have required would be long, arduous and very, very expensive to do. And yet I understand why some would probably want that because there is evidence in the late 1800s and the early 1900s, there is evidence of Indians and tribes being completely bilked by representatives of the Interior who claimed that their land was producing no income, when in fact it was. And so there is such a shameful history here.

And I guess the question I have is I have the greatest respect for Secretary Salazar. We served with him here in the United States Senate. He is an extraordinary man. And he has committed himself, I know, to try to reach a settlement. He has also committed this Interior Department to a future that is vastly different than the past.

Tell me your feelings about viewing the Interior Department's actions going forward. Do you feel like you have extracted sufficient protections here that we are not going to see 50 years from now another lead plaintiff come to a table and say, we were wronged?

Ms. COBELL. Well, you know, I have to believe that they are going to correct this trust. I was very encouraged by the fact that the secretarial order was coming out that would establish a commission. And I worried about the fact that, you know, will that change if the Administration changes? How do we make sure that it continues on?

And I think it is something that we can't leave out of our sight, is that we will have to continue to watch and monitor and make sure that the commitments that have been made, and this Committee, I think, will have to continue to monitor, to make sure that we get trust reform. We can't let this happen again. We can't.

And, you know, I don't know, the sadness that I have, every single day that I go back to Black Butte is seeing another person die and another person die without their money. You know, we talked about fractionated heirship lands, and my feeling is that if these systems weren't broken in 1887, you know, we would have been able to account for the different types of land that was being inherited by other people.

You know, if it was done properly, but have broken systems and they don't change overnight. And we have to make sure that the Secretary is held accountable on this commission. And I compliment the Secretary and the Administration for taking this head-on because it is the first time that we have really seen this type of cooperation.

The CHAIRMAN. What is your understanding of the time of distribution of these funds, provided that Congress meets the end of the year deadline?

Ms. COBELL. Well, my understanding if they met the deadline, and I am hoping that we are still able to do that. I am, you know, I am a little concerned about going back home and telling everybody again, well, sorry, we are going to be delayed again. You know, people just get tired of that.

And so I think by the fall that there would be distribution that would, you know, that would take place, that we would be able to have proper notice and a fairness hearing, and there could actually be money distributed by the fall of 2010.

The CHAIRMAN. Well, Ms. Cobell, I support the decision. I think it is a wise choice, probably not an easy choice, but nonetheless a wise one, and one that I think will provide substantial benefits to those who have been injured.

My hope is, and I certainly commit as the Chairman of this Committee, to continue to hold oversight hearings to make sure that when we start fresh now and begin anew, that we not allow to happen in the future what happened in the past.

And I think the fact that you and others in the class, you as the lead in this class, have brought action against the Interior Department was entirely appropriate. As you know, the courts have spoken in the publishing of a lot of material over some years now about what happened in the Interior Department, and it is a sad chapter. But it needn't continue, and I think this suit and the subsequent settlement of the suit is an admonishment that things must change and will change. And as I said, I have great confidence in the Secretary and applaud him for the conclusion of these settlement negotiations.

Well, I want to thank you for flying to Washington, D.C. to testify. As the Committee of jurisdiction, we wanted to have, even though it was on short notice, we wanted to have a hearing, a formal hearing with the Secretary here, and invited you to be present as well. And we will now do all that we can to see that the terms of the settlement are carried out by the Federal Government.

Do you have additional comments, Ms. Cobell?

Ms. COBELL. I just want to thank you, and I appreciate the fact that you will continue to have oversight hearings to make sure. And I just pray that you do everything in your power to make this legislation happen by the end of the year. And I will be available to do any way that we can to help.

And I would like to ask maybe Keith Harper if he would like to have a closing statement.

Mr. Harper. The only thing I can add, Senator, is that from the legal team, that we also thank the leadership of this Committee. The Committee has been a staunch supporter of this litigation and has urged the parties to see resolution. And we strongly believe that that has led the parties to reach this settlement.

It was, again, across the table, very difficult, took months. But we are here and we do ask that you continue that leadership to get this legislation enacted for those beneficiaries out in Indian Country.

Thank you.

The CHAIRMAN. When you say before the end of the year, it certainly appears to me we will be here until the end of the year.

[Laughter.]

The CHAIRMAN. Let me also note that former colleague, Elliott Levitas, former Member of the House of Representatives is here, I believe a part of the team that was involved.

Elliott, it is nice to see you. Thank you very much for being here.

This hearing is adjourned.

[Whereupon, at 3:34 p.m., the Committee was adjourned.]

A P P E N D I X

PREPARED STATEMENT OF EDDIE JACOBS, CREEK INDIAN INDIVIDUAL INDIAN TRUST ACCOUNT HOLDER

Mr. Chairman and members of the Committee, I am a member of the present *Cobell* plaintiff class. I would also be a member of both proposed plantiff classes which this legislation would authorize the U.S. District Court for the District of Columbia to bind as a matter of law in settlement of the *Cobell* litigation. For several years I have sought to intervene in this litigation and have been opposed at every turn by the plaintiffs' attorneys. In addition, I have been advised by representatives of defendants' Special Trustee that they cannot address my claims directly with me because I have become a "represented party," represented by plaintiffs' counsel. I have been locked out of all deliberations and out of all consideration. And now I am advised that all my claims, including those that have never been part of this litigation, are to be resolved by this proposed "settlement," which is manifestly unfair to me and to individual Indians in my situation.

I urge the members of this Committee to reject those portions of the proposed legislation which would authorize settlement of matters that are not and never have been a part of the underlying litigation. This Committee's long-standing interest in settlement of this litigation is well known, but never before has this Committee proposed to sell out claims that are not part of the litigation in order to settle those matters that are actually before the court.

Class Members Have Been Assured They Will Be Paid Before Attorneys

In addition, Senator McCain has stated in public hearings on an earlier settlement proposal that no settlement would be approved by this Committee that does not provide for actual payment to the Indians before payment of untold millions of dollars to the attorneys in this matter. Under this proposal, not only the attorneys but also the named plaintiffs would be paid scores, or perhaps hundreds, of millions of dollars before any other class member would receive a dime.

Per Capita Payment Neither Fair nor Equitable

The per capita payment proposed for the Historical Accounting Class will treat individuals who inherited minuscule shares of Indian trust estates as recently as September 2009 the same way as Indians like myself who have been entitled to 100 percent of the revenue from my trust lands that have been significantly underpaid for many years. I have personally assisted other Indian trust landowners in collecting several thousands of dollars in partial payment of what they were owed for oil and gas production from their lands. By any standard of fairness these individuals should receive a greater payment than those whose interests can only be expressed by fractions with seven- or eight-digit denominators. A "Claims Administrator" should be permitted to make payments based on some reasonable estimate or evidence of loss and not on an across-the-board basis that will provide a huge windfall to some account holders while grossly underpaying those who have truly suffered significant losses through the years.

Payments Should Take into Consideration Shares of Ownership Interests

For owners of divided interests in trust land, the per capita payments will pay to an owner of a very small interest in a tract of land the same amount that is paid to the single owner of 75 percent or more of the very same tract. In my case, I am the owner of 100 percent of the land allotted to my father, and my payment will be the same as the payments to neighboring landowners whose ownership interests can only be expressed in numbers with seven or eight digits to the right of a decimal point. There is no fairness, equity, or otherwise sensible basis for such a settlement arrangement. My payment for losses should certainly reflect my 100 percent ownership interest in all the revenues generated and paid into the IIM system by my 100 percent ownership interest. It is not enough to say that these losses are to be compensated by payments to the second class of payees this proposed settlement would

create. My losses for revenues generated in past years are indisputably included in the Historical Accounting Class that will be compensated in the initial round of per capita payments. My losses on 100 percent of the revenues generated by my land over many years cannot reasonably be compared to those suffered by someone who only inherited a small interest in an already divided account as recently as three months ago.

Pro Rata Payments Based on Receipts, not on Losses

Ms. Cobell has spoken eloquently throughout this litigation of her concern for those Indians like myself who have actually suffered losses as a result of the government's failures to administer the Indian trust appropriately. This proposed settlement makes a mockery of those expressions. Under this proposal, those individuals who have already sold their land, some several years ago, would receive higher payments than those of us who have maintained our trust landholdings and have actually suffered the losses that Ms. Cobell claims to redress. Those of us who have been deprived of income we were entitled to receive would receive smaller payments for the very reason that we have been underpaid in the past.

Proposed Land Consolidation Fund Benefits Only Attorneys, not Indians

In an earlier hearing, Senator McCain asked Ms. Cobell to disclose the terms under which her attorneys would be compensated, and she agreed to provide that information for the record. I do not believe that information was ever provided to the Committee. Under this proposal, according to news releases, the proposed $2 billion Land Consolidation Fund is considered part of the settlement. In fact, no part of that money will be used to settle any loss that any Indian has ever suffered for anything. The only Indians who will receive any part of that money are those who agree to part with their birthrights in the future. On the other hand, if the attorneys are paid on any contingency fee basis that is calculated on a "settlement" that includes this Fund, the result will be that the initial $1.4 billion payment for Indians will be further reduced by taking the attorneys' percentage of the Land Consolidation Fund out of that portion of the settlement designated as the Historic Accounting Settlement. In other words. if the attorney fees are calculated at only one percent (1.0 percent), the Land Consolidation Fund will generate another $20 million in attorney fees, which will have to be taken from the $1.43 billion intended to compensate Indians. If the attorney fees are even capped at ten per cent, the result will be to reduce the money available to pay the Indians by a staggering $200 million which will go to the attorneys instead. At the very least, I urge this Committee to shed some light on this part of the settlement. The $2 billion Land Consolidation Fund should not be considered any part of a "settlement," for purposes of reducing the amount available to pay the Indians.

***Cobell* is not Afghanistan, nor Health Care; Time is Not of the Essence**

There are two only conceivable reasons for the urgency presented by this proposal. One is to prevent anyone from fully examining or understanding it The schedule presented by the settlement and this legislation makes a mockery of any pretense of consulting with class members, or even permitting the Congress to consider the consequences of its actions. The other conceivable reason is that the attorneys and named plaintiffs need relief. If the attorneys and the named plaintiffs are in desperate need of an immediate cash infusion, the Administration could arrange a bridge loan, or Congress could consider a private relief bill for them that would not involve selling out the very Indians that this settlement claims to benefit.

Recommendation

If the Committee is determined to act on this proposed settlement, common decency demands that Indians such as myself not be sold out just to appease the named plaintiffs who collectively have not shown losses amounting to a single, $1,000 per capita payment under this proposal, much less the estimated $15 million they will share in incentive payments. If the Congress is determined to act, then I respectfully recommend that the Claims Administrator should be authorized to review the documents and actual claims of individuals in the second-tier (Trust Administration) class which will be created by this settlement, and to make settlement payments based on some evidence of actual claims and actual losses rather than just on the amount that has gone through the accounts. Otherwise, those who have been the most mistreated in the past will be the most mistreated and least compensated in the settlement.

Thank you for this opportunity to present my views, and I am willing to work with the Committee in any way possible to make any settlement of this litigation truly honorable.

NATIONAL CONGRESS OF AMERICAN INDIANS

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Tlingit

NCAI HEADQUARTERS
1516 P Street, N.W.
Washington, DC 20005

December 17, 2009

Chairman Byron Dorgan
Committee on Indian Affairs
United States Senate
Washington, DC 20510

Vice Chairman John Barrasso
Committee on Indian Affairs
United States Senate
Washington, DC 20510

Re: Settlement of *Cobell v. Salazar*

Dear Chairman Dorgan and Vice Chairman Barrasso:

I am writing on behalf of the National Congress of American Indians to urge Congress to support the proposed resolution in *Cobell v. Salazar* and swiftly pass the legislation necessary to implement the settlement agreement. The NCAI has long supported a negotiated settlement to this litigation, to bring justice to the many elders who have been harmed by the federal government's mismanagement of their trust funds, and to bring an end to the contentious litigation that has strained the federal-tribal relationship.

First, we believe that Eloise Cobell, the stalwart lead plaintiff in the litigation, most accurately described the views of Indian Country when she called the settlement a bittersweet victory. There is no doubt that the federal government owes a greater debt to the many Indian people who relied upon its faithless guardianship. Nevertheless, the limitations of the legal system have restricted the ability to recover this debt. If Eloise Cobell believes this is the best possible settlement that can be achieved, there is no one in Indian Country who is in a position to second guess. We strongly support her judgment, her persistent effort, and her leadership on this important litigation.

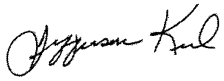
Second, NCAI also supports the proposal to devote $2 billion towards Indian land consolidation. Land consolidation is critical for addressing trust management problems created by fractionation and preventing future mismanagement. Over 4 million ownership interests in 130,000 tracts of land have created a title, management, and accounting nightmare for the federal government and enormous difficulties for Indian landowners in putting land to economic use. Land consolidation improves federal administration and management, and saves substantial federal dollars that currently go to tracking tiny land interests. The investment in land consolidation will give Indian landowners the option for a greater payout from the settlement and will create new economic opportunities on the consolidated lands.

Third, tribal leaders generally support the creation of a Secretarial Commission on Indian Trust to make recommendations and oversee a performance audit of trust systems and controls. Like all Commissions, this one will only perform well if it has strong commissioners, capable staff, and adequate budgets. Tribal leaders will want tribal representation on the Commission as well as to have significant input into its deliberations. As a primary priority, the new Commission should move forward on trust reform measures that will make the federal government a partner in tribal economic development rather than a bureaucracy that stands in its way. We need to increase the efficiency of trust administration, improve returns on trust resources, and

redirect trust administration to increase support for tribal development initiatives. Tribes strongly support the development of greater tribal land management authorities and a transfer of the functions of the Special Trustee back to a single line of authority.

In closing, NCAI supports the resolution of the Cobell litigation because it will bring justice to Indian people, and because continued litigation and historical accounting efforts will be extraordinarily expensive and are unlikely to lead to compensation in the lifetimes of many account holders. No one wants to spend billions on a historical accounting when that money could be put to better use benefiting Indian people and reservation land management. NCAI applauds the plaintiffs and the Obama Administration for their efforts in making this settlement a priority. We now urge Congress to move quickly to implement the settlement and make it a reality.

Sincerely,



Jefferson Keel

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN BARRASSO TO ELOUISE COBELL

Question 1: How much will the plaintiffs' request for an incentive award (including expenses and costs) be? The Settlement Agreement mentions the figure of $15,000,000 in the context of the incentive award. Is that the total amount that the class representatives will be seeking or will they be seeking more than that amount? If more, please state how much more, (if you don't know the exact amount, please give an estimate).

Answer to Question 1: Class Representatives expect to request from the District Court incentive awards, including expert expenses and costs incurred principally by Ms. Cobell, in the range of $15,000,000. This a mount has been negotiated with the government. In accordance with governing law and the settlement agreement, the authority to approve or disapprove the request is vested in the District Court. The class representatives will not seek additional amounts of incentive fees.

Question 2: Will each of the class representatives be requesting an incentive award? If so, how much will each class representative request?

Answer to Question 2: Each class representative will request an incentive award. The amount each representative will request has not been determined at this point in time.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN BARRASSO TO HON. THOMAS J. PERRELLI

Class Questions

Question 1: How many people are in the original class certified by the Court in the case of *Cobell v. Salazar*?

Response: As certified by the U.S. District Court for the District of Columbia on Feb. 4, 1997, the plaintiff class was defined to encompass all "present and former beneficiaries of Individual Indian Money [IIM] accounts (exclusive of those who prior to the filing of the Complaint herein had filed actions on their own behalf alleging claims included in the Complaint)." Order Certifying Class, Feb. 4, 1997. Although there is no precise determination of the number of individuals who belonged to that class, there is information regarding the number of accounts at issue under that definition. During proceedings in October 2007, the Government's statisticians estimated that as of that time, there had been a total of between 755,248 and 1,052,882 land-based, judgment, and per capita accounts in existence since 1910. Because it is not uncommon for a single individual to hold or to have held multiple accounts, the number of individuals belonging to the class that was certified in 1997 would be lower.

Court decisions since 1997 have further narrowed the number of accounts holders who are eligible for relief. In the parties' December 7, 2009 Settlement, they agreed to modify the definition of the historical accounting class. Under the parties' Settlement, the Historical Accounting Class is defined as follows:

> "Historical Accounting Class" means those individual Indian beneficiaries (exclusive of those who prior to the filing of the Complaint on June 10, 1996 had filed actions on their own behalf stating a claim for a historical accounting) alive on the Record Date and who had an IIM Account open during any period between October 25, 1994 and the Record Date, which IIM Account had at least one cash transaction credited to it at any time as long as such credits were not later reversed. Beneficiaries deceased as of the Record Date are included in the Historical Accounting Class only if they had an IIM Account that was open as of the Record Date. The estate of any Historical Accounting Class Member who dies after the Record Date but before distribution is in the Historical Accounting Class.

The Record Date is defined in the Settlement to mean September 30, 2009, 11:59 p.m. Eastern Time. As of December 2009, there are approximately 338,000 in the Historical Accounting Class as defined in the Settlement.

Question 2: Approximately how many people of this class will be eligible to receive a distribution for the historical accounting claims?

Response: All members of the Historical Accounting Class, which as of December 2009 is estimated to encompass 338,013 individuals, will be eligible to receive a distribution for the historical accounting class.

Question 3: Approximately how many people are in the *new* class created pursuant to the Settlement Agreement?

Response: There are approximately 338,013 members of the Historical Accounting Class, and approximately 496,000 members of the Trust Administration Class. There is significant overlap between the two classes.

Accounting/Trust Administration Fund

Question 1: Please explain in detail how the defendants determined that $1.412 billion was a necessary and sufficient amount to settle the *Cobell v. Salazar* class action. What are all of the relevant factors that went into this determination?

Response: The parties agreed to enter the $1.412 billion settlement after intense negotiations and the conclusion that such a settlement was in the best interests of the parties. This determination took into account the value of reaching a comprehensive settlement that would eliminate the risks of liability based upon accounting errors uncovered during Interior's historical accounting work, the risks of potential mismanagement claims, the costs associated with continued work on historical accounting, and the other provisions of the Settlement, including the certainty provided to the Government and the land consolidation program that the Settlement creates. We believe that the settlement is fair to the plaintiffs and responsible for the Government, and is preferable to continuing the *Cobell* litigation.

Question 2: Please identify how much of the $1.412 billion will be spent on settling the historical accounting claims. If you cannot identify the exact amount, please state an estimate of the amount that will be so spent.

Response: Under the Settlement, payments for the historical accounting claims will be based on a payment of $1,000 per account holder. As of December 2009, this is expected to amount to approximately $338,013,000.

Question 3: Please identify how much of the $1.412 billion will be spent on settling the asset mismanagement claims (i.e., the "Funds Administration Claims" and "Land Administration Claims"). If you cannot identify the exact amount, please state an estimate of the amount that will be so spent.

Response: After distribution for the historical accounting claims and any disbursements for fees, costs, or expenses required by the Settlement or the Court, all of the funds remaining in the $1.412 billion will be spent on settling the trust administration claims.

Question 4: Do you anticipate that the class members who opt out of the Settlement Agreement will file a class action for asset mismanagement claims in the future?

Response: It is difficult to anticipate the intentions of any particular individuals who may opt out of the Settlement, but we are encouraged to learn, as Mrs. Cobell testified before the Committee, that reaction to the Settlement among class members has been, with few exceptions, very positive. This favorable reception may suggest that future litigation is not likely to be substantial. If individuals who opt out do wish to bring additional claims, it is difficult to know whether they would attempt to bring such claims as a class action, consisting of individuals who both opted out and collectively meet the requirements for class treatment under the federal rules, or would bring isolated individual claims.

Question 5: If you do, what steps if any will the Department take to prevent this from happening?

Response: The Settlement contains a number of provisions that minimize the likelihood of future litigation for the claims resolved under the Settlement. Most importantly, the Settlement provides a reasonable and fair formula for distribution to class members that, if approved by the court, will minimize class members' incentives to opt out. Part C.2 of the Settlement provides further protections against opt-outs, including reducing total costs to the Government and providing additional protection if opt-outs reach certain levels.

Question 6: Please clarify how you intend to deal with the effects on the pro rata shares that will be caused by the opting out of class members in accordance with the Settlement Agreement. In particular, after all class members who wish to opt out have done so, and their pro rata shares have been deducted from the Fund as stated in the Settlement Agreement, will the pro rata percentages of the class members who have *not* opted out be re-calculated and the re-calculated percentages then applied to the remaining balance of the Fund? If the pro rata percentages are *not* so re-calculated, please explain how the remaining balance of the Fund will be distributed.

Response: There will be re-calculations in the course of the distributions. At the same time, paragraphs C.2.e and E.4.b(2) of the Settlement provide that no pro rata distribution will be made to members of the Trust Administration Class until the Accounting/Trust Administration Fund has been reduced by the total amount that opting out class members would have received had they not opted out.

Attorneys' Fees

Question 1: Do you think it is appropriate that the amount in the Fund for the asset mismanagement claims (i.e., the "Funds Administration Claims" and "Land Administration Claims") should have any relevance to the amount of attorneys' fees, in light of the fact that these claims were never part of the lawsuit until just recently, at the time of settlement?

Response: The Department will evaluate any arguments that plaintiffs and their counsel make in support of their petition for attorneys' fees, and will make appropriate arguments in support of the Government's position that as much of the Settlement funds as possible should go to the class members. Under the parties' agreement, plaintiffs' counsel will petition the court for a fee award, and will provide contemporaneous, where available, and complete daily time, expense, and cost records supporting their petition. Defendants and members of the class, who will be informed during the initial notice period of the amount of fees that counsel intends to seek, may submit responses to that petition. The court will then determine the appropriate fee award.

Question 2: At what point did class counsel begin representing class members with respect to asset mismanagement claims (i.e., the "Funds Administration Claims" and "Land Administration Claims")?

Response: Defendants are not aware of the content of communications that may have occurred between plaintiffs and their counsel regarding this subject. Counsel for plaintiffs had not, to the Government's knowledge, claimed to represent a putative class of asset mismanagement claimants prior to the recent negotiations that culminated in the Settlement'

Question 3: Will the Department argue that the court should treat the portion of the Fund attributable to these non-historical accounting claims (i.e., the "Funds Administration Claims" and "Land Administration Claims") differently than it does the historical accounting claims for purposes of determining attorneys' fees?

Response: As I described in my response to Question 1, regarding a similar question regarding the positions that the Department will take in litigation, the Department will review the justifications that plaintiffs' attorneys put forth to the court in their fee application, and determine how to respond at that time.'

Question 4: Although you testified that the Court will likely calculate the attorneys' fee award as a percentage of the amount recovered, you also testified that the parties agreed that they would not contest the amount of the award within a range of $50 million to $99.9 million.

a) Is this agreement in writing?

b) Is the Court presently aware of the agreement?

Response:

a) Yes. A copy of the parties' Agreement on Attorneys' Fees, Expenses, and Costs is attached, along with the original agreement and the papers agreed to as part of the parties' December 29, 2009 extension of the legislative deadline. As described therein, plaintiffs agreed not to seek attorneys' fees for past work in an amount greater than $99.9 million and the Government agreed not to seek a fee of less than $50 million for such work. Plaintiffs' counsel can seek additional fees, up to a capped amount, for future work.

b) At various points, Judge Robertson facilitated settlement discussions between the parties and is aware of the agreement. The Agreement on Attorneys' Fees, Expenses, and Costs has not to date been docketed with the court, but the agreement has been reported in various public media reports.

Question 5: You also testified that the Court would not be bound by this agreement when determining the amount of an attorneys' fee award.

a) Is there a statement to that effect in the agreement?

b) Does the agreement allow either party to contest or appeal an award even though it falls within the range of $50 million to $99.9 million?

c) If the Court grants the plaintiffs an attorneys' fee award in excess of $99.9 million, will the Department appeal such an award?

Response:

a) The agreement does not expressly so state. It is implicit in the nature of the agreement and the nature of the court's authority.

b) The parties agreed not to appeal an award for past fees within the range.

c) Any decision to appeal or not appeal an award in excess of $99.9 million would be made by the Solicitor General based upon the facts and circumstances known at the time of that decision.

Incentive Awards

Question 1: How large of an incentive award (including expenses and costs) do you anticipate that the plaintiffs will request for the class representatives?

Response: Under paragraph K.1 of the Settlement, it is expected that plaintiffs will file a notice with the court stating the amount of incentive awards to be requested for each class representative, including expenses and costs that were not paid for by attorneys, and that such expenses and costs are expected to be in the range of $15 million above those paid by defendants to date. Under the Settlement, defendants and class members have the right to respond to or oppose such request.

Attachments

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL, et al., Plaintiffs, vs. KEN SALAZAR, Secretary of the Interior, et al., Defendants.	Case No. 1:96CV01285-JR

MODIFICATION OF DECEMBER 7, 2009 AGREEMENT ON ATTORNEYS' FEES, EXPENSES, AND COSTS

1. On December 7, 2009, an Agreement on Attorneys' Fees, Expenses, and Costs ("Fee Agreement") was entered into in this case by and between Plaintiffs, as defined in the December 7, 2009 Class Action Settlement Agreement ("the Main Cobell Agreement"), on the one hand, and Defendants, as also defined in the Main Cobell Agreement. Plaintiffs and Defendants are collectively referenced as the "Parties."

2. In the Fee Agreement, the Parties agreed that "Plaintiffs may submit a motion for Class Counsel's attorney fees, expenses, and costs incurred after December 7, 2009, up to $10,000,000." Fee Agreement, paragraph 5.

3. The Parties agreed on the $10,000,000 limit set forth in paragraph 5 of the Fee Agreement based, at least in part, on the possibility that Congress would enact legislation upon which the Main Cobell Agreement is contingent by December 31, 2009, Main Cobell Agreement, paragraph A.22 (defining the "Legislation Enactment Deadline"); that Preliminary

Approval would be sought by the Parties on or near January 15, 2010, Main Cobell Agreement, paragraph B.3, B.4; and that a Fairness Hearing would occur on or about April 15, 2010.

4. It has become apparent to the Parties that in order for the agreement to continue to be valid after December 31, 2009, the Legislation Enactment Deadline will need to be extended. As a result, the Parties anticipate that they may not be seeking Preliminary Approval on or near January 15, 2010, and that a Fairness Hearing will not occur on or about April 15, 2010.

5. The Parties anticipate that as a result of the extension of time, Plaintiffs may incur greater attorneys' fees related to the Main Cobell Agreement.

6. Accordingly, the Parties hereby mutually agree to modify the first sentence of paragraph 5 of the Fee Agreement to read: "Plaintiffs may submit a motion for Class Counsel's attorneys' fees, expenses and costs incurred after December 7, 2009, up to $12,000,000.00." No other portion of paragraph 5 of the Fee Agreement is affected by this modification.

SIGNATURES

Wherefore, intending to be legally bound in accordance with the terms of this Modification of the December 7, 2009 Agreement on Attorneys' Fees, Expenses, and Costs, the Parties hereby execute this Modification:

FOR PLAINTIFFS:

12/29/09

Dennis M. Gingold, Class Counsel

12/29/09

Keith M. Harper, Class Counsel

FOR DEFENDANTS:

12/29/09

Robert E. Kirschman, Jr.
Deputy Director
Commercial Litigation Branch

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL, et al., **Plaintiffs,** **vs.** **KEN SALAZAR, Secretary of the Interior, et al.,** **Defendants.**	**Case No. 1:96CV01285-JR**

Agreement on Attorneys' Fees, Expenses, and Costs

December 7, 2009

WHEREAS the Parties entered the Class Action Settlement Agreement, dated December 7, 2009 ("Main Cobell Agreement"); and

WHEREAS the Parties desire that the Class should compensate Class Counsel for reasonable attorney fees and related expenses and costs;

THEREFORE, the Parties hereby enter this Agreement on Attorneys' Fees, Expenses, and Costs ("Fee Agreement").

1. Unless otherwise defined herein, this Fee Agreement incorporates all defined terms in the Main Cobell Agreement and shall be interpreted in a manner consistent with the Main Cobell Agreement.

2. The amount of attorneys' fees, expenses and costs shall be decided by the Court in accordance with controlling law and awarded from the Accounting/Trust Administration Fund.

3. The Parties agree that litigation over attorneys' fees, expenses, and costs should be conducted with a civility consistent with the Parties' mutual desire to reach an amicable resolution on all open issues. The Parties agree therefore that all documents filed in connection with the litigation over attorneys' fees, expenses, and costs shall consist of a short, plain statement of the facts and the law with the goal of informing the Court of relevant information for its consideration.

4. *Attorneys' Fees, Expenses, and Costs Incurred through December 7, 2009.*

a. Plaintiffs may submit a motion for Class Counsel's attorney fees, expenses, and costs incurred through December 7, 2009. Such motion shall not assert that Class Counsel be paid more than $99,900,000.00

above amounts previously paid by Defendants. Unless otherwise ordered by the Court, Plaintiffs' memorandum of points and authorities in support of such claim shall not exceed 25 pages and shall be filed no later than thirty (30) days following Preliminary Approval, and Class Counsel's reply in support of such claim shall not exceed 15 pages.

b. Defendants may submit a memorandum in opposition to Plaintiffs' motion. Such memorandum shall not assert that Class Counsel be paid less than $50,000,000.00 above the amounts previously paid by Defendants. Unless otherwise ordered by the Court, Defendant's memorandum shall not exceed 25 pages and shall be filed within 30 days after Plaintiffs' motion.

c. Concurrently with any motion for fees, expenses, and costs of attorneys through December 7, 2009, Plaintiffs shall file statements regarding Class Counsel's billing rates, as well as contemporaneous, where available, and complete daily time, expense, and cost records supporting this motion. Defendants may also submit an annotated version or summary of the time, expense and cost records in support of their opposition.

d. Plaintiffs disclosure and filing of the records referenced in the preceding paragraph shall not constitute a waiver of any attorney client privilege or attorney work product protections. Plaintiffs may request the entry of an appropriate protective order regarding such confidential records.

e. In the event that the Court awards attorneys' fees, expenses, and costs covered by this Paragraph in an amount equal to or greater than

$50,000,000.00 and equal to or less than $99,900,000.00, Plaintiffs, Class Counsel and Defendants agree not to file a notice of appeal concerning such award.

5. *Attorneys' Fees, Expenses, and Costs Incurred after December 7, 2009.* Plaintiffs may submit a motion for Class Counsel's attorneys' fees, expenses, and costs incurred after December 7, 2009, up to $10,000,000.00. Such motion shall be based solely on attorney hours and actual billing rates and actual expenses and costs incurred, and may not be justified by any other means (such as a percentage of the class recovery). Such motion shall be resolved in such manner as directed by the Court. Concurrently with any motion for post Agreement attorneys' fees, expenses, and costs, Plaintiffs shall file statements regarding Class Counsel's billing rates, as well as complete and contemporaneous daily time, expense, and cost records supporting this motion.

6. Should (a) either party terminate the Main Cobell Agreement pursuant to the terms thereof, (b) the Main Cobell Agreement become null and void because a condition subsequent does not occur, or (c) the Main Cobell Agreement not finally be approved by the Court, this Fee Agreement shall be null and void, and the parties and Class Counsel shall take such steps as are necessary to restore the *status quo ante*.

7. Nothing in this Fee Agreement shall affect the right of any non-party to this Fee Agreement.

Wherefore, intending to be legally bound in accordance with the terms of this Fee Agreement, the Parties hereby execute this Fee Agreement:

SIGNATURES

Wherefore, intending to be legally bound in accordance with the terms of this Agreement, the Parties hereby execute this Agreement:

FOR PLAINTIFFS:

Dennis M. Gingold, Class Counsel

Keith M. Harper, Class Counsel

FOR DEFENDANTS:

Thomas J. Perrelli
Associate Attorney General

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL, et al.,	)	
Plaintiffs,	)	
vs.	)	Case No. 1:96CV01285-JR
KEN SALAZAR, Secretary of the Interior, et al.,	)	
Defendants.	)	

CLASS ACTION SETTLEMENT AGREEMENT

This Class Action Settlement Agreement ("Agreement") is entered into by and between Elouise Pepion Cobell, Penny Cleghorn, Thomas Maulson and James Louis Larose (collectively, the "Named Plaintiffs"), on behalf of themselves and members of the Classes of individual Indians defined in this Agreement (collectively, "Plaintiffs"), on the one hand, and Ken Salazar, Secretary of the Interior, Larry Echohawk, Assistant Secretary of the Interior – Indian Affairs, and H. Timothy Geithner, Secretary of the Treasury and their successors in office, all in their official capacities (collectively, "Defendants"). Plaintiffs and Defendants are collectively referenced as the "Parties."

Subject to Court approval as required by Federal Rule of Civil Procedure ("FRCP") 23, the Parties hereby stipulate and agree that, in consideration of the promises and covenants set forth in this Agreement and upon entry by the Court of a Final Order and Judgment and resolution of any appeals from that Final Order and Judgment, this Action shall be settled and compromised in accordance with the terms of this Agreement.

The Parties agree that the Settlement is contingent on the enactment of legislation to authorize or confirm specific aspects of the Settlement as set forth below. If such legislation, which will expressly reference this Agreement, is not enacted on or before the Legislation Enactment Deadline as defined in this Agreement, unless such date is mutually agreed to be extended by the Parties, or is enacted with material changes, the Agreement shall automatically become null and void.

BACKGROUND

1. On June 10, 1996, a class action complaint (the "Complaint") was filed in the United States District Court for the District of Columbia (the "Court") entitled Elouise Pepion Cobell, et al. v. Bruce Babbitt, Secretary of Interior, et al., No. Civ. 96-1285 (RCL) (currently denominated as Elouise Pepion Cobell v. Ken Salazar, Secretary of Interior, et al., 96-1285 (JR)) (this "Action"), seeking to redress alleged breaches of trust by the United States, and its trustee-delegates the Secretary of Interior, the Assistant Secretary of Interior-Indian Affairs, and the Secretary of the Treasury, regarding the management of Individual Indian Money ("IIM") Accounts held on behalf of individual Indians.

2. The Complaint sought, among other things, declaratory and injunctive relief construing the trust obligations of the Defendants to members of the Plaintiff class and declaring that Defendants have breached and are in continuing breach of their trust obligations to class members, an order compelling Defendants to perform these legally mandated obligations, and requesting an accounting by Interior Defendants (as hereinafter defined) of individual Indian trust assets. See Cobell v. Babbitt, 52 F.Supp. 2d 11, 19 (D.D.C. 1999) ("Cobell III").

3. On February 4, 1997, the Court granted Plaintiffs' Motion for Class Action Certification pursuant to FRCP 23(b)(1)(A) and (b)(2) "on behalf of a plaintiff class consisting of

present and former beneficiaries of IIM Accounts (exclusive of those who prior to the filing of the Complaint herein had filed actions on their own behalf alleging claims included in the Complaint)" (the "February 4, 1997 Class Certification Order"), reserving the jurisdiction to modify the February 4, 1997 Class Certification Order as the interests of justice may require, *id.* at 2-3.

4. On December 21, 1999, the Court held, among other things, that Defendants were then in breach of certain of their respective trust duties, Cobell v. Babbitt, 91 F. Supp. 2d 1, 58 (D.D.C. 1999) ("Cobell V").

5. On February 23, 2001, the United States Court of Appeals for the District of Columbia Circuit (the "Court of Appeals") upheld the Court's determination that Defendants were in breach of their statutory trust duties, Cobell v. Norton, 240 F.3d 1081 (D.C. Cir. 2001) ("Cobell VI").

6. Subsequently, the Court made determinations that had the effect of modifying the February 4, 1997 Class Certification Order, determining on January 30, 2008, that the right to an accounting accrued on October 25, 1994, "for all then-living IIM beneficiaries: those who hold or at any point in their lives held IIM Accounts." Cobell v. Kempthorne, 532 F. Supp. 2d 37, 98 (D.D.C. 2008) ("Cobell XX").

7. The Court and the Court of Appeals have further clarified those individual Indians entitled to the relief requested in the Complaint in the following respects:

(a) Excluding income derived from individual Indian trust land that was received by an individual Indian beneficiary on a direct pay basis, Cobell XX, 532 F. Supp. 2d at 95-96;

(b) Excluding income derived from individual Indian trust land where such funds were managed by tribes, *id.*;

(c) Excluding IIM Accounts closed prior to October 25, 1994, date of passage of the American Indian Trust Fund Management Reform Act of 1994, Pub. L. No. 103-

412, 108 Stat. 4239 codified as amended at 25 U.S.C. § 162a et. seq. (the "Trust Reform Act"), Cobell v. Salazar, 573 F.3d 808, 815 (D.C. Cir. 2009) (Cobell XXII); and

(d) Excluding heirs to money from closed accounts that were subject to final probate determinations, *id.*

8. On July 24, 2009, the Court of Appeals reaffirmed that "[t]he district court sitting in equity must do everything it can to ensure that [Interior Defendants] provide [plaintiffs] an equitable accounting," *Id.* at 813.

9. This Action has continued for over 13 years, there is no end anticipated in the foreseeable future, and the Parties are mindful of the admonition of the Court of Appeals that they work together "to resolve this case expeditiously and fairly," Cobell v. Kempthorne, 455 F.3d 317, 336 (D.C. Cir. 2006), and desire to do so.

10. Recognizing that individual Indian trust beneficiaries have potential additional claims arising from Defendants' management of trust funds and trust assets, Defendants have an interest in a broad resolution of past differences in order to establish a productive relationship in the future.

11. The Parties recognize that an integral part of trust reform includes accelerating correction of the fractionated ownership of trust or restricted land, which makes administration of the individual Indian trust more difficult.

12. The Parties also recognize that another part of trust reform includes correcting the problems created by the escheatment of certain individual Indians' ownership of trust or restricted land, which has been held to be unconstitutional (*see* Babbitt v. Youpee, 519 U.S. 234 (1997); Hodel v. Irving, 481 U.S. 704 (1987)) and which makes administration of the individual Indian trust difficult.

13. Plaintiffs believe that further actions are necessary to reform the individual Indian trust, but hope that such further reforms are made without the need for additional litigation. Plaintiffs are also hopeful that the Commission which Secretary Salazar is announcing contemporaneously with the execution of this Agreement will result in the further reform which Plaintiffs believe is needed.

14. The Parties have an interest in as complete a resolution as possible for individual Indian trust-related claims and agree that this necessarily includes establishing a sum certain as a balance for each IIM Account as of a date certain.

15. Defendants deny and continue to deny any and all liability and damages to any individual Indian trust beneficiary with respect to the claims or causes of action asserted in the Litigation or the facts found by the Court in this Litigation. Nonetheless, without admitting or conceding any liability or damages whatsoever and without admitting any wrongdoing, and without conceding the appropriateness of class treatment for claims asserted in any future complaint, Defendants have agreed to settle the Litigation (as hereinafter defined) on the terms and conditions set forth in this Agreement, to avoid the burden, expense, and uncertainty of continuing the case.

16. Class Counsel have conducted appropriate investigations and analyzed and evaluated the merits of the claims made, and judgments rendered, against Defendants in the Litigation, the findings, conclusions and holdings of the Court and Court of Appeals in this Litigation, and the impact of this Settlement on Plaintiffs as well as the impact of no settlement, and based upon their analysis and their evaluation of a number of factors, and recognizing the substantial risks of continued litigation, including the possibility that the Litigation, if not settled now, might not result in any recovery, or might result in a recovery that is less favorable than

that provided for in this Settlement, and that otherwise a fair judgment would not occur for several years, Class Counsel are satisfied that the terms and conditions of this Settlement are fair, reasonable and adequate and that this Settlement is in the best interests of all Class Members.

17. The Parties desire to settle the Litigation and resolve their differences based on the terms set forth in this Agreement.

TERMS OF AGREEMENT

NOW, THEREFORE, in consideration of this Background, the mutual covenants and promises set forth in this Agreement, as well as the good and valuable consideration provided for in this Agreement, the Parties agree to a full and complete settlement of the Litigation on the following terms.

A. DEFINITIONS

1. Accounting/Trust Administration Fund. "Accounting/Trust Administration Fund" shall mean the $1,412,000,000.00 that Defendants shall pay into a Settlement Account held in the trust department of a Qualified Bank (as hereinafter defined) selected by Plaintiffs and approved by the Court, as well as any interest or investment income earned before distribution. The $1,412,000,000.00 payment represents the maximum total amount that Defendants are required to pay to settle Historical Accounting Claims, Funds Administration Claims, and Land Administration Claims.

2. Amended Complaint. "Amended Complaint" shall mean the complaint amended by Plaintiffs solely as part of this Agreement, and for the sole purpose of settling this Litigation, to be filed with the Court concurrently with, and attached to, this Agreement.

3. Amount Payable for Each Valid Claim. "Amount Payable for Each Valid Claim" shall mean the amount prescribed in section E.3 and E.4 below.

4. Assigned Value. "Assigned Value" shall have the meaning set forth in subsection E(4)(b)(3) below.

5. Claims Administrator. "Claims Administrator" shall mean The Garden City Group, Inc., which shall provide services to the Parties to facilitate administrative matters and distribution of the Amount Payable for Each Valid Claim in accordance with the terms and conditions of this Agreement.

6. Classes. "Classes" shall mean the classes established for purposes of this Agreement: the Historical Accounting Class and the Trust Administration Class (both as hereinafter defined).

7. Class Counsel. "Class Counsel" shall mean Dennis Gingold, Thaddeus Holt and attorneys from Kilpatrick Stockton LLP, including Elliott H. Levitas, Keith Harper, William Dorris, David Smith, William Austin, Adam Charnes and Justin Guilder.

8. Class Members. "Class Members" shall mean members of the Classes.

9. Contact Information. "Contact Information" shall mean the best and most current information the Department of the Interior ("Interior") then has available of a beneficiary's name, social security number, date of birth, and mailing address, and whether Interior's individual Indian trust records reflect that beneficiary to be a minor, non-compos mentis, an individual under legal disability, an adult in need of assistance or whereabouts unknown.

10. Day. "Day" shall mean a calendar day.

11. Defendants. "Defendants" shall mean Ken Salazar, Secretary of the Interior, Larry Echohawk, Assistant Secretary of the Interior – Indian Affairs, and H. Timothy Geithner, Secretary of the Treasury, and their successors in office, all in their official capacities.

12. Fairness Hearing. "Fairness Hearing" shall mean the hearing on the Joint Motion for Judgment and Final Approval referenced in Paragraph D(4) below.

13. Final Approval. "Final Approval" shall mean the occurrence of the following:

a. Following the Fairness Hearing, the Court has entered Judgment; and

b. The Judgment has become final. "Final" means the later of:

(1) The time for rehearing or reconsideration, appellate review, and review by petition for certiorari has expired, and no motion for rehearing or reconsideration and/or notice of appeal has been filed; or

(2) If rehearing, reconsideration, or appellate review, or review by petition for certiorari is sought, after any and all avenues of rehearing, reconsideration, appellate review, or review by petition for certiorari have been exhausted, and no further rehearing, reconsideration, appellate review, or review by petition for certiorari is permitted, or the time for seeking such review has expired, and the Judgment has not been modified, amended or reversed in any way.

14. Funds Administration Claims. "Funds Administration Claims" shall mean known and unknown claims that have been or could have been asserted through the Record Date for Defendants' alleged breach of trust and mismanagement of individual Indian trust funds, and consist of Defendants' alleged:

a. Failure to collect or credit funds owed under a lease, sale, easement or other transaction, including without limitation, failure to collect or credit

all money due, failure to audit royalties and failure to collect interest on late payments;

b. Failure to invest;

c. Underinvestment;

d. Imprudent management and investment;

e. Erroneous or improper distributions or disbursements, including to the wrong person or account;

f. Excessive or improper administrative fees;

g. Deposits into wrong accounts;

h. Misappropriation;

i. Funds withheld unlawfully and in breach of trust;

j. Loss of funds held in failed depository institutions, including interest;

k. Failure as trustee to control or investigate allegations of, and obtain compensation for, theft, embezzlement, misappropriation, fraud, trespass, or other misconduct regarding trust assets;

l. Failure to pay or credit interest, including interest on Indian monies proceeds of labor (IMPL), special deposit accounts, and IIM Accounts;

m. Loss of funds or investment securities, and the income or proceeds earned from such funds or securities;

n. Accounting errors;

o. Failure to deposit and/or disburse funds in a timely fashion; and

p. Claims of like nature and kind arising out of allegations of Defendants' breach of trust and/or mismanagement of individual Indian trust funds through the Record Date, that have been or could have been asserted.

15. Historical Accounting Claims. "Historical Accounting Claims" shall mean common law or statutory claims, including claims arising under the Trust Reform Act, for a historical accounting through the Record Date of any and all IIM Accounts and any asset held in trust or restricted status, including but not limited to Land (as defined herein) and funds held in any account, and which now are, or have been, beneficially owned or held by an individual Indian trust beneficiary who is a member of the Historical Accounting Class. These claims include the historical accounting through the Record Date of all funds collected and held in trust by Defendants and their financial and fiscal agents in open or closed accounts, as well as interest earned on such funds, whether such funds are deposited in IIM Accounts, or in tribal, special deposit, or government administrative or operating accounts.

16. Historical Accounting Class. "Historical Accounting Class" means those individual Indian beneficiaries (exclusive of those who prior to the filing of the Complaint on June 10, 1996 had filed actions on their own behalf stating a claim for a historical accounting) alive on the Record Date and who had an IIM Account open during any period between October 25, 1994 and the Record Date, which IIM Account had at least one cash transaction credited to it at any time as long as such credits were not later reversed. Beneficiaries deceased as of the Record Date are included in the Historical Accounting Class only if they had an IIM Account that was open as of the Record Date. The estate of any Historical Accounting Class Member who dies after the Record Date but before distribution is in the Historical Accounting Class.

17. IIM Account. "IIM Account" means an IIM account as defined in title 25, Code of Federal Regulations, section 115.002.

18. Interior Defendants. "Interior Defendants" shall mean Ken Salazar, Secretary of the Interior, and Larry Echohawk, Assistant Secretary of the Interior – Indian Affairs, and their successors in office, all in their official capacities.

19. Land. "Land" shall mean land owned by individual Indians and held in trust or restricted status by Interior Defendants, including all resources on, and corresponding subsurface rights, if any, in the land, and water, unless otherwise indicated.

20. Land Consolidation Program. The fractional interest acquisition program authorized in 25 U.S.C. 2201 et seq., including any applicable legislation enacted pursuant to this Agreement.

21. Land Administration Claims. "Land Administration Claims" shall mean known and unknown claims that have been or could have been asserted through the Record Date for Interior Defendants' alleged breach of trust and fiduciary mismanagement of land, oil, natural gas, mineral, timber, grazing, water and other resources and rights (the "resources") situated on, in or under Land and consist of Interior Defendants' alleged:

a. Failure to lease Land, approve leases or otherwise productively use Lands or assets;

b. Failure to obtain fair market value for leases, easements, rights-of-way or sales;

c. Failure to prudently negotiate leases, easements, rights-of-way, sales or other transactions;

d. Failure to impose and collect penalties for late payments;

e. Failure to include or enforce terms requiring that Land be conserved, maintained, or improved;

f. Permitting loss, dissipation, waste, or ruin, including failure to preserve Land whether involving agriculture (including but not limited to failing to control agricultural pests), grazing, harvesting (including but not limited to permitting overly aggressive harvesting), timber lands (including but not limited to failing to plant and cull timber land for maximum yield), and oil, natural gas, mineral resources or other resources (including but not limited to failing to manage oil, natural gas, or mineral resources to maximize total production);

g. Misappropriation;

h. Failure to control, investigate allegations of, or obtain relief in equity and at law for, trespass, theft, misappropriation, fraud or misconduct regarding Land;

i. Failure to correct boundary errors, survey or title record errors, or failure to properly apportion and track allotments; and

j. Claims of like nature and kind arising out of allegations of Interior Defendants' breach of trust and/or mismanagement of Land through the Record Date, that have been or could have been asserted.

22. Legislation Enactment Deadline. "Legislation Enactment Deadline" shall mean December 31, 2009, 11:59 p.m. Eastern time.

23. Litigation. "Litigation" shall mean that which is stated in the Amended Complaint attached to this Agreement.

24. Named Plaintiffs; Class Representatives. "Named Plaintiffs" shall mean and include Elouise Pepion Cobell ("Lead Plaintiff"), Penny Cleghorn, Thomas Maulson, and James Louis Larose. The Named Plaintiffs are also referred to as the "Class Representatives."

25. Notice Contractor. "Notice Contractor" shall mean a mutually agreeable entity that shall provide services to the Parties needed to provide notice to the Classes.

26. Order Granting Preliminary Approval. "Order Granting Preliminary Approval" shall mean the Order entered by the Court preliminarily approving the terms set forth in this Agreement, including the manner and timing of providing notice to the Classes, the time period for objections and the date, time and location for a Fairness Hearing.

27. Parties. "Parties" shall mean the Named Plaintiffs, members of the Classes, and Defendants.

28. Preliminary Approval. "Preliminary Approval" shall mean that the Court has entered an Order Granting Preliminary Approval.

29. Qualifying Bank; Qualified Bank. "Qualifying Bank" or "Qualified Bank" shall mean a federally insured depository institution that is "well capitalized," as that term is defined in 12 CFR §325.103, and that is subject to regulation and supervision by the Board of Governors of the Federal Reserve System or the U.S. Comptroller of the Currency under 12 CFR §9.18.

30. Record Date. "Record Date" shall mean September 30, 2009, 11:59 p.m. Eastern time.

31. Settlement Account. "Settlement Account" shall mean the trust account(s) established by Class Counsel in a Qualified Bank approved by the Court for the purpose of effectuating the Settlement and into which the Accounting/Trust Administration Fund shall be

deposited and from which Stage 1 and Stage 2 Distributions, among other things set forth in this Agreement, shall be paid.

32. Special Master. "Special Master" shall be the person appointed by the Court as provided in paragraph E.1.a.

33. Stage 1; Stage 1 Distribution. "Stage 1" and "Stage 1 Distribution" shall mean the distribution to the Historical Accounting Class as provided in paragraph E(3).

34. Stage 2; Stage 2 Distribution. "Stage 2" and "Stage 2 Distribution" shall mean the distribution to the Trust Administration Class as provided in paragraph E(4).

35. Trust Administration Class. "Trust Administration Class" shall mean those individual Indian beneficiaries (exclusive of persons who filed actions on their own behalf, or a group of individuals who were certified as a class in a class action, stating a Funds Administration Claim or a Land Administration Claim prior to the filing of the Amended Complaint) alive as of the Record Date and who have or had IIM Accounts in the "Electronic Ledger Era" (currently available electronic data in systems of the Department of the Interior dating from approximately 1985 to the present), as well as individual Indians who, as of the Record Date, had a recorded or other demonstrable ownership interest in land held in trust or restricted status, regardless of the existence of an IIM Account and regardless of the proceeds, if any, generated from the Land. The Trust Administration Class does not include beneficiaries deceased as of the Record Date, but does include the estate of any deceased beneficiary whose IIM Accounts or other trust assets had been open in probate as of the Record Date. The estate of any Trust Administration Class Member who dies after the Record Date but before distribution is included in the Trust Administration Class.

36. Trust Land Consolidation Fund. "Trust Land Consolidation Fund" shall mean the $2,000,000,000.00 allocated to Interior Defendants and held in a separate account in Treasury for the purpose of acquiring fractional interests in trust or restricted land and such other purposes as permitted by this Agreement and applicable law.

B. AMENDED COMPLAINT AND PRELIMINARY APPROVAL

1. Legislation Required. The Parties agree that the Agreement is contingent on the enactment of legislation to authorize specific aspects of the Agreement. The Parties agree that enactment of this legislation is material and essential to this Agreement and that if such legislation is not enacted into law by the Legislation Enactment Deadline, unless such date is mutually agreed by the Parties in writing to be extended, or is enacted with material changes, the Agreement shall automatically become null and void. In the event this Agreement becomes null and void, nothing in this Agreement may be used against any Party for any purpose.

2. Effect of Material Modifications. A copy of the proposed legislation is attached as Exhibit "A". If legislation is enacted in any manner at any time prior to Final Approval which alters, expands, narrows or modifies the attached proposed legislation in any material way, this Agreement shall be null and void in its entirety.

3. Amended Complaint.

a. Amendment of Complaint. Within two business days of enactment of the legislation, or by January 15, 2010, whichever is later, Plaintiffs will file an Amended Complaint to which Defendants will provide written consent provided that such Amended Complaint conforms with the proposed Amended Complaint attached as Exhibit "B" to this Agreement. Defendants' obligation to answer the Amended Complaint shall be held in abeyance pending Final Approval. Defendants' written consent to the

filing constitutes neither an admission of liability regarding any Funds Administration Claims and/or Land Administration Claims, nor a waiver of any defense to such claims in any form.

b. Causes of Action. The Amended Complaint will include (a) a claim for breach of trust with respect to individual Indians and related request for an historical accounting of the IIM Account, (b) a claim for breach of trust seeking equitable restitution to restate the IIM Accounts in accordance with the historical accounting requested, and (c) one or more claims for breach of trust with respect to Defendants' mismanagement of trust funds and trust assets requesting damages, restitution and other monetary relief.

c. Classes. The Amended Complaint will set forth the Historical Accounting Class and the Accounting/Trust Administration Class as the two plaintiff classes.

d. Claims. For purposes of settlement only, and only as a provision of this Agreement, the Amended Complaint will include Funds Administration Claims and Land Administration Claims.

4. Preliminary Approval.

a. Joint Motion. Concurrent with the filing of the Amended Complaint, the Parties shall file a joint motion for Preliminary Approval of this Agreement by the Court and attach a copy of this Agreement and such other documents which the Parties determine are necessary for the Court's consideration.

b. Class Certification. The joint motion referenced in subparagraph a. above shall include a joint request by the Parties that the Court certify the Trust Administration Class pursuant to FRCP 23(b)(3), and also to amend the February 4, 1997 Order Certifying Class Action under FRCP 23(b)(1)(A) and 23(b)(2), in accordance with this Agreement.

5. Requirement for Notice Acknowledged. The Parties recognize that the Court is required to provide the Historical Accounting Class and the Trust Administration Class, pursuant to FRCP 23(c)(2)(A) and (B), as applicable, with reasonable and appropriate notice of (i) the Action, (ii) the proposed Agreement, and (iii) the opportunity for members of the Trust Administration Class to opt out of the settlement pursuant to the procedures set forth in paragraph C(2)(c), and, pursuant to FRCP 23(h), with reasonable and appropriate notice of attorney fees and costs to be requested by Class Counsel.

6. Joint Motion If Settlement Not Completed. Should (a) either party terminate this Agreement pursuant to the terms hereof, (b) this Agreement become null and void because a condition subsequent does not occur, or (c) this Agreement not finally be approved by the Court, the Parties shall file a joint motion (i) to strike the Amended Complaint, (ii) to vacate any Order of the Court certifying the Amended Complaint as a class action, and (iii) to restore the Parties to the *status quo ante*.

C. CLASS NOTICE AND OPT OUT

1. Class Notice.

a. Commencement of Notice. Upon entry of an Order granting Preliminary Approval, the Notice Contractor, in cooperation with Class Counsel and Interior Defendants, shall notify the Classes of this Agreement.

b. Direct Notice. The Parties shall use reasonable efforts, and utilize the services of the Notice Contractor and Claims Administrator, as appropriate, to effectuate a Direct Class Notice as soon as practicable following the date of entry of the Order Granting Preliminary Approval.

c. Published Notice. The Parties shall also use reasonable efforts and the services of the Notice Contractor to effectuate Published Class Notice through the use of media, including targeted mainstream and Native American media (including translation to native language where appropriate) contemporaneous with the mailing of the Direct Class Notice.

d. Contents of Notice. Pursuant to FRCP 23(c)(2), the notice to the Class Members shall include the following general notice information: the definition of the certified class[es]; a general description of the litigation and its claims, issues, and defenses; material terms of this proposed Agreement; procedures for allocating and distributing funds in the Settlement Account; Class Counsel's request for and amount of attorneys' fees, expenses and costs; Class Representatives' incentive awards, including expenses and costs; options available to settlement Class Members, including the manner, time limits, forum and form of an objection to this proposed Agreement; options available to potential Class Members ("claimants") to participate in a Stage 2 distribution, including the manner, time limits and form for such an application; the right of any Class Member to enter an appearance *pro se* or through an attorney to object to the Agreement or any of its terms; the nature and scope of opt

out rights; actions that are required to opt out of the Agreement; the effect of opt outs on the Agreement; the mailing address and toll-free telephone number of the Claims Administrator for class inquiries and clarifications regarding the Settlement; the date, time, and location of the Final Approval Hearing on Agreement; the binding effect on a Class Member's IIM Account balance as of the Record Date unless the Class Member opts out of the Trust Administration Class; and the binding effect of the Agreement on Class Members.

e. Interior's Second Notice Option. In addition to the Notice described in section 1.d, above, Interior Defendants reserve the right to issue a Second Notice after the Fairness Hearing, with such Second Notice containing detailed information regarding the Accounting/Trust Administration Fund and the Land Consolidation Program. The cost of this Second Notice would be a separate expense borne by Interior Defendants.

2. Class Member Opt Out.

a. No Opt Out for Historical Accounting Class. In accordance with FRCP 23(b)(2), no opt out will be available to those Class Members in the Historical Accounting Class.

b. Deadline for Trust Administration Class Opt Outs. The deadline for those Class Members in the Trust Administration Class to opt out will be sixty (60) days from the first day Notice is sent. Timeliness will be determined using the opt out or objection postmark date.

c. Opt Out Requirements. To opt out, members of the Trust Administration Class must submit to the Claims Administrator a written request for exclusion. The request for exclusion must include the individual's full name, address, IIM Account number(s), Social Security Number, and a statement of the individual's intention to opt out of the Settlement.

d. Opt Out List. The Claims Administrator shall compile a list of valid opt outs for submission to the Court and, if the Parties disagree over the validity of any opt out determination, then any such disagreement may be lodged with the Court for a final and binding decision. Through the date Class Members must exercise their option to opt out, the Claims Administrator shall be contractually bound to provide written daily status reports in a format agreeable to the Parties that identifies each and every person who has opted out.

e. Opt Out Fund Adjustment. When Class Members opt out of the Trust Administration Class, the amount of the Accounting/Trust Administration Fund shall be reduced by the amount such an opting out Class Member would have received in his or her Stage 2 payment, including both the baseline payment and the pro rata amounts. Such amounts for opt outs shall be determined prior to the Stage 2 distribution and paid to Defendants contemporaneous with the distribution of Stage 2 payments.

f. Kick-Out Option. In the event that the Class Members who do not opt out of the Trust Administration Class represent in the aggregate less than eighty five percent (85%) of the aggregate amount of all Assigned Values,

then Defendants, at their sole option, may elect to withdraw from and fully terminate this Agreement in which case the Parties will be restored to their prior positions as though the Agreement had never been executed, except as provided in paragraph D.7. In exercising such an election to terminate, Defendants must terminate the Agreement in its entirety and may not terminate only parts of the Agreement. Defendants must exercise this election to terminate no later than one day before the Fairness Hearing by filing a notice with the Court with a schedule under seal of Class Members who opted out and their respective Assigned Values. Any disputes regarding an attempt by Defendants to terminate shall be decided by the Court.

D. MOTION FOR JUDGMENT, FAIRNESS HEARING, AND FINAL APPROVAL

1. Motion for Judgment. Pursuant to this Agreement and in accordance with the Court's Order Granting Preliminary Approval, the Parties will submit a Joint Motion for Entry of Judgment and Final Approval for consideration by the Court at the Fairness Hearing.

2. Objections to Settlement. A Class Member who wishes to object to the fairness, reasonableness or adequacy of this Agreement or of the Settlement contemplated hereby must file with the Clerk of the Court and serve on the Parties a statement of the objection setting forth the specific reason(s), if any, for the objection, including any legal support that the Class Member wishes to bring to the Court's attention, any evidence that the Class Member wishes to introduce in support of the objection, any grounds to support his or her status as a Class Member, and whether the Class Member intends to appear at the Fairness Hearing. Class Members may act either on their own or through counsel employed at their own expense. Any Class Member

may appear at the Fairness Hearing to object to any aspect of the fairness, reasonableness or adequacy of this Agreement or of the Settlement.

3. Binding Effect. Any Class Member who neither objects to the Agreement nor opts out of the Class as provided in paragraph C(2), shall waive and forfeit any and all rights the Class Member may have to appear separately and/or to object and to opt out and shall be bound by all the terms of the Agreement and by all proceedings, orders and judgments in the Litigation.

4. Fairness Hearing. At the Fairness Hearing, the Parties will request that the Court, among other things:

a. Grant final certification of the Classes;

b. Enter Judgment in accordance with this Agreement;

c. Approve the Settlement as final, fair, reasonable, adequate, and binding on all Class Members who have not timely opted out pursuant to paragraph C(2);

d. Approve the payment of reasonable attorneys' fees, expenses and costs for Class Counsel;

e. Approve the incentive awards for Class Representatives, including expenses and costs that were not paid for by attorneys;

f. Order the Claims Administrator to process and pay all Valid Claims from the Settlement Account;

g. Order the release of all Class Members' claims pursuant to paragraph I(1)–(9); and

h. Order Defendants to make the final payment into the Accounting/Trust Administration Fund.

5. Final Approval. The Court's Final Approval shall grant each of those requests.

6. Effect of Failure to Grant Final Approval. If Final Approval does not occur, this Agreement shall be null and void.

7. Return of Remaining Funds in Settlement Account if No Final Approval. If for any reason Final Approval cannot be achieved, the Notice Contractor and Claims Administrator shall be notified to cease work. To the extent any funds remain in the Settlement Account, Class Counsel shall promptly seek a Court order to pay the remaining valid invoices of the Notice Contractor and Claims Administrator and, within thirty (30) days thereafter, the Parties shall jointly seek a Court order to return to Defendants all funds, if any, that then remain in the Settlement Account. Defendants shall not be entitled to recoup from Plaintiffs or Class Counsel any funds already spent from the Settlement Account.

E. ACCOUNTING/TRUST ADMINISTRATION FUND

1. General Provisions

a. Special Master. Upon Final Approval, the Parties shall request that the Court appoint a Rule 53 Special Master, who shall have only the duties referenced in this Agreement when so designated by the Court. The Special Master shall only be involved in taking certain actions or making certain determinations in connection with the distribution of the Accounting/Trust Administration Fund and eligibility of individuals to participate as Class Members. The Special Master shall have no role regarding the distribution of the Trust Land Consolidation Fund. The Special Master shall also have no role in resolving any disputes between (i) the Parties or (ii) a Class Member and Defendants. The Special Master shall be paid out of funds in the Settlement Account, and shall submit

invoices for fees and expenses to Class Counsel, at reasonable intervals, who shall file them with the Court, requesting an order to pay the Special Master. All disputes regarding the Special Master's invoices or compensation shall be decided by the Court. The Parties agree to cooperate to minimize the costs of the Special Master.

b. Claims Administrator. The Parties agree to cooperate as to all aspects of this Agreement to minimize the costs of the Claims Administrator. All payments to the Claims Administrator must be for reasonable and necessary services in accordance with detailed invoices provided to the Parties and approved by the Court or the Special Master as the Court may designate. Class Counsel shall be responsible for submitting such invoices to the Court and may include invoices for the Claims Administrator's fees, expenses and costs incurred prior to Preliminary Approval.

c. Qualifying Bank. The Accounting/Trust Administration Fund shall be deposited in, and administered by, the trust department(s) of a Qualified Bank or Qualified Banks. To the extent settlement funds are held in deposit accounts in excess of FDIC insurance coverage, the excess amount shall be collateralized with securities that are U.S. Treasury or other securities that are backed by the full faith and credit of the United States.

d. Duties. Class Counsel, with the Claims Administrator, shall have responsibility for administering the Accounting/Trust Administration Fund in accordance with this Agreement. Class Counsel shall provide the

necessary account information to Defendants as needed to support deposit of the Accounting/Trust Administration Fund.

e. Distributions. All distributions from the Accounting/Trust Administration Fund shall be made pursuant to final Order of the Court or the Special Master as the Court may designate. The Amount Payable for Each Valid Claim and the claims process for making such payment shall be in accordance with the terms set forth below.

f. Reliance on Defendants' Information. Class Counsel and the Claims Administrator shall be entitled to rely on the information provided by the Interior Defendants in making the distributions provided for in this Agreement.

g. Defendants' Limited Role. Except as specifically provided in this Agreement, Defendants shall have no role in, nor be held responsible or liable in any way for, the Accounting/Trust Administration Fund, the holding or investment of the monies in the Qualifying Bank or the distribution of such monies.

h. Payments to minors, non-compos mentis, individuals under legal disability, or adults in need of assistance. Class Members who are known to be minors, non-compos mentis, individuals under legal disability, or adults in need of assistance and who have an account open as of the date(s) of distribution shall have their distributions deposited into their IIM Accounts. If necessary, an IIM Account will be opened by Interior Defendants for each of them. Interior Defendants shall receive these

deposits as trust funds for the benefit of the pertinent individual Indian beneficiary.

i. Payments to "whereabouts unknown". Class Members who are deemed by Interior Defendants be "whereabouts unknown" and who have an account open as of the date of distribution shall have their distributions deposited into their IIM Accounts. For any Class Member who is designated as a "whereabouts unknown" and is not a minor, non-compos mentis, an individual under legal disability, or an adult in need of assistance, and does not claim any funds deposited in that beneficiary's IIM Account as a result of this Agreement within five (5) years after the date Defendants first transfer monies for the Accounting/Trust Administration Fund to the Qualifying Bank, the principal amount of the funds deposited pursuant to this Agreement in that beneficiary's IIM Account shall be paid by Interior Defendants to the Indian Education Scholarship Fund set out in Section G of this Agreement.

2. Payments into the Accounting/Trust Administration Fund

a. Defendants shall pay $1,412,000,000.00 to the Accounting/Trust Administration Fund in the Settlement Account. This amount shall be paid in installments from the Judgment Fund, as set forth in subparagraphs b, c and d, below.

b. Concurrent with the filing of the Amended Complaint, the Parties shall move the Court for an order requiring Defendants to pay $20,000,000.00 to the Accounting/Trust Administration Fund in the Settlement Account,

to be used by Plaintiffs to retain the Claims Administrator and Notice Contractor for necessary work required before Final Approval. Defendants shall make this payment upon order of the Court.

c. The Parties may jointly move the Court to order such further payments to the Accounting/Trust Administration Fund as are necessary to fund the work of the Claims Administrator and/or Notice Contractor before Final Approval. Defendants shall make payments requested in the joint motion upon order of the Court.

d. Upon Final Approval, Defendants shall pay $1,412,000,000.00 to the Accounting/Trust Administration Fund, less any amounts paid under paragraphs b and c, above.

3. Stage 1: Payment of Historical Accounting Claims

a. Per-Person Payment. Each member of the Historical Accounting Class shall be paid a per capita amount of $1,000.00 after Final Approval. This will be a per-person, not a per-account, payment.

b. Stage 1 Information from Interior Defendants. Interior Defendants will provide periodic updates on Contact Information on an ongoing basis. Within 30 days after Defendants first transfer monies for the Accounting/Trust Administration Fund to the Qualified Bank, the Claims Administrator will be able to rely on the Contact Information Interior Defendants then have for beneficiaries to make a Stage 1 distribution.

c. Returned Funds; Remainder Account. For distributions returned from the Stage 1 distribution, the Qualified Bank, working with the Claims

Administrator, shall use its best efforts to ensure that all such funds are deposited into the appropriate individual Indian beneficiary's trust account at Interior, if open, or into a separate interest bearing account at the Qualifying Bank ("Remainder Account") if no such IIM Account exists. The Claims Administrator shall take reasonable steps to locate, and distribute funds to, Class Members whose funds are deposited into the Remainder Account. If a Stage 1 participant whose funds were deposited into the Remainder Account subsequently provides documentation which is sufficient to show that such beneficiary is the Stage 1 participant for whom the returned funds were intended, Class Counsel shall file such documentation with the Court or the Special Master as the Court may designate, requesting an order to pay $1,000.00 to each such beneficiary from the Remainder account.

4. Stage 2: Payment of Trust Administration Claims

a. Final Determination of Class Prior to Payment. No Stage 2 payments shall be made until all Stage 2 Class Members have been identified in accordance with this Agreement and their respective pro rata interests have been calculated.

b. Stage 2 Formula. Each individual Indian beneficiary determined to be within the Trust Administration Class in accordance with paragraph A.35 shall be paid after Final Approval a pro rata amount based upon the following formula:

(1) Baseline Payment. Each individual Indian beneficiary determined to be within the Trust Administration Class shall be paid a baseline amount of $500.00;

(2) Amounts Available for Prorating. In addition, each individual Indian beneficiary in the Trust Administration Class who has or had an IIM Account that generated income that was credited to that IIM Account shall be paid an additional pro rata share of the funds remaining in the Accounting/Trust Administration Fund after deducting (a) amounts attributable to opt outs in accordance with paragraph C.2 of this Agreement, (b) all Stage 1 distributions, (c) an amount sufficient to cover a baseline payment to all Stage 2 Class Members, (d) the amount deemed necessary to fund the Reserve Fund provided for in section E.4.e.6; (e) all payments made, or to be made to, Class Counsel in accordance with an Order of the Court, (f) all payments made to, or to be made to, Class Representatives in accordance with an Order of the Court, (g) all payments to cover the costs of notice, administration and distribution of the Accounting/Trust Administration Fund (including but not limited to payments to the Notice Contractor, Claims Administrator, and Qualified Bank), and (g) an amount estimated by the Class Counsel to pay the remaining and future costs to be paid out of the Accounting/Trust Administration Fund for notice, administration and distribution.

(3) Calculation of Pro Rata Share. The additional pro rata share referenced in paragraph E.4 above will be calculated based upon an Assigned Value. The Assigned Value will be the average of the ten (10) highest revenue generating years in each individual Indian's IIM Account, from October 1, 1985 until the Record Date (September 30, 2009). If an account is open fewer than ten (10) years or otherwise reflects fewer than ten (10) years of revenue, the computation of the Assigned Value will utilize a zero dollar amount in each year that no revenue is reflected. For beneficiaries with more than one account during that period, the Assigned Value is calculated on an account by account basis for that Class Member, with each of the resulting calculations added together. Reversed transactions and inter-account transfers between an individual's accounts will not be considered in the calculation. A Class Member's pro rata percentage in the Stage 2 distribution shall be calculated based upon his or her Assigned Value divided by the sum of all Assigned Values for all Trust Administration Class Members. This percentage shall then be applied to the funds available for prorating to determine the Class Member's pro rata payment.

c. Information from Interior Defendants for Stage 2. Interior Defendants shall provide assistance to the Claims Administrator with respect to the preparation and creation of (i) the Contact Information for Stage 2

participants and (ii) the Assigned Value calculations and related Assigned Value percentages described in this Agreement.

d. Returned Stage 2 Funds. For distributions returned from the Stage 2 distribution, the Qualifying Bank, with assistance from the Claims Administrator, shall use its best efforts to ensure that all such funds are deposited into the appropriate individual Indian beneficiary's trust account at Interior, if open, or into a Remainder Account if no such IIM Account exists. The Claims Administrator shall take reasonable steps to locate, and distribute funds to, the Class Member associated with such returned funds. If a Stage 2 participant whose funds were returned subsequently provides documentation which is sufficient to the Claims Administrator to demonstrate that such beneficiary is the Stage 2 participant for whom the returned funds were intended, Class Counsel shall file such documentation with the Court or the Special Master as the Court may designate, requesting an order to pay amounts due to such beneficiary from the Remainder Account. In the event the documentation is determined insufficient by the Claims Administrator, notice of that determination shall be provided to the person submitting the documentation, who shall then have the right to the reconsideration process set forth in paragraph E(5) below.

e. Stage 2 Timeline. Stage 2 funds shall be distributed pursuant to the following timeline. The Court in its discretion may extend any Stage 2 deadline upon a showing of good cause.

(1) Supplementary Notice. The Parties shall direct the Notice Contractor to undertake a supplementary notice campaign as soon as practicable following distribution of the Stage 1 funds. The purpose of this notice is to target potential claimants and provide information related to the Stage 2 distribution. Such notice shall be targeted generally in Native American population centers.

(2) Standards and Procedures. The Claims Administrator shall prepare standards and procedures for the submission, timing and adequacy of documentation for potential additional Stage 2 participants who self-identify. The Parties shall provide assistance to the Claims Administrator to develop such standards and procedures. The Interior Defendants shall designate a liaison to the Claims Administrator for purposes of verifying documentation or responding to other queries regarding submitted documentation that might not be addressed by the agreed-to standards and procedures. The Claims Administrator may rely upon the Interior liaison's response or, after 14 days, the absence of a response, to the query in evaluating the submitted documentation. The Claims Administrator will take reasonable steps to provide assistance to potential claimants at all phases during the Stage 2 distribution so that they can comply with the agreed-to standards and procedures for the submission of documentation. The Claims Administrator shall maintain adequate records documenting all communications

with Class Members and such records shall be available to the Parties upon reasonable request.

(3) Self-Identification Period. Potential class members who wish to participate in the Stage 2 distributions shall submit any documentation to the Claims Administrator within 45 days of Final Approval or such later date as the Court may order.

(4) Initial Determination. The Claims Administrator shall make an initial determination with respect to each claimant's inclusion in the Stage 2 class within 90 days of Final Approval or such later date as the Court may order and shall so inform claimants in writing. If a potential claimant is denied participation as part of the initial determination, the Claims Administrator shall state the basis for its denial and the availability of reconsideration with the submission of additional documentation. Claimants who are denied participation in the Stage 2 distribution may submit additional documentation for reconsideration within 120 days of Final Approval or such later date as the Court may order. A claimant's failure to seek reconsideration will render the Claims Administrator's initial determination final and binding upon the claimant.

(5) Reconsideration. The Claims Administrator shall make a determination with respect to all claimants' documents submitted in support of their request to reconsider the initial determination.

The Claims Administrator shall make a second determination within 150 days of Final Approval or such later date as the Court may order, and shall so inform each claimant in writing. If a claimant is again denied participation in the Stage 2 distribution, the Claims Administrator shall state the basis of its denial and the availability of appeal to the Court or the Special Master as the Court may designate. Any appeal shall be made within 180 days of Final Approval or such later date as may be ordered by the Court. A claimant's failure to timely appeal will render the Claims Administrator's determination final and binding upon the claimant.

(6) Creation of Reserve Fund. Prior to the distribution of Stage 2 funds, the Parties shall discuss the timing and funding of a Reserve Fund out of Stage 2 funds to cover beneficiaries who did not receive notice of Stage 2 distributions and come forward after distribution of Stage 2 funds. Any disagreements between the Parties related to the creation and eventual termination of a Reserve Fund shall be presented to the Court.

(7) Distribution. After Stage 2 Class Members have been substantially identified, Class Counsel may apply to the Court or the Special Master as the Court may designate for permission to commence Stage 2 distribution. Funds will be set aside for any identified Class Members. Completion of distribution of Stage 2 funds shall be no later than 14 days after the Court's decision of the last

claimant's appeal becoming final. The Court's decision shall be binding and final, unless timely appealed by the potential claimant.

(8) Final Disposition of the Accounting/Trust Administration Fund. Any excess Accounting/Trust Administration Funds remaining after distribution (*e.g.*, funds not expended on administration), or funds in the Remainder Account, shall be paid to the organization selected as the recipient of the Indian Education Scholarship Fund set out in Section G of this Agreement.

F. TRUST LAND CONSOLIDATION FUND

1. Distribution. Conditioned on the enactment of the necessary legislation, the Interior Defendants shall distribute the Trust Land Consolidation Fund in accordance with the Land Consolidation Program authorized under 25 U.S.C. §§ 2201 *et seq.*, any other applicable legislation enacted pursuant to this Agreement, and applicable provisions of this Agreement.

2. Purposes of Trust Land Consolidation Fund. The Trust Land Consolidation Fund shall be used solely for the following purposes: (1) acquiring fractional interests in trust or restricted lands; (2) implementing the Land Consolidation Program; and (3) paying the costs related to the work of the Secretarial Commission on Trust Reform, including costs of consultants to the Commission and audits recommended by the Commission. An amount up to a total of no more than fifteen percent (15%) of the Trust Land Consolidation Fund shall be used for purposes (2) and (3) above.

3. Fair Market Value. The Interior Defendants shall offer fair market value in accordance with 25 U.S.C. § 2214 to owners of such fractionated interests. Interior Defendants shall use reasonable efforts to prioritize the consolidation of the most highly fractionated tracts of land.

4. Length of Fund. Interior Defendants shall have no more than ten (10) years from the date of Final Approval of this Agreement to expend the Trust Land Consolidation Fund, at which time any amounts remaining in the Trust Land Consolidation Fund shall be returned to the Treasury.

5. Indian Education Scholarship Holding Fund. Interior Defendants shall make the transfers to and from the Indian Education Scholarship Holding Fund as provided in paragraphs G.2.c and G.2.d.

6. Whereabouts Unknown. For those owners of fractional interests in trust or restricted land whose whereabouts are deemed unknown by Interior Defendants as of the date of Final Approval of this Agreement, Interior Defendants shall undertake the following additional efforts to attempt to locate such owners:

a. Additional Service. In addition to the class notice requirements under this Agreement, the Interior Defendants shall use due diligence to provide all owners whose whereabouts are unknown with actual notice of the opportunity to convey their fractionated interests through the best means available.

b. Notice. The Notice shall contain a general description of the Land Consolidation Program, the fractionated interests that the Interior Defendants wish to acquire, the proposed purchase price for such interests, the mailing address and a toll-free number for inquiries and clarifications regarding the Land Consolidation Program, and the process for responding to the offer to purchase.

c. Returned Notice. In the event the written notice to an owner is returned undelivered, the Interior Defendants shall attempt to obtain a current address for such owner by conducting a reasonable search (including a reasonable search of records maintained by local, State, Federal and tribal governments and agencies) and by inquiring with the Indian tribe with jurisdiction over the subject parcel, and, if different from that tribe, the Indian tribe of which the owner is a member, if applicable, and, if successful in locating any such owner, send written notice in accordance with subparagraphs (a) and (b) above.

d. Notice by Publication. The Interior Defendants shall give notice to all owners that the Secretary was unable to provide notice pursuant to subparagraphs (a) thru (c) above, by publication of the opportunity to convey fractionated interests as follows:

(1) at least two (2) times in a newspaper of general circulation in the county or counties where the subject parcel of land is located or, if there is an Indian tribe with jurisdiction over the parcel of land and that tribe publishes a tribal newspaper or newsletter at least once every month, one (1) time in such newspaper of general circulation and one (1) time in such tribal newspaper or newsletter for a period of six (6) months;

(2) posting such notice in a conspicuous place in the tribal headquarters or administration building (or such other tribal building determined by the Interior Defendants to be most

appropriate for giving public notice) of the Indian tribe with jurisdiction over the parcel of land, if any; and

(3) in addition to the foregoing, in the Interior Defendants' discretion, publishing notice in any other place or means that the Interior Defendants determine to be appropriate.

7. Consent for Conveyances. For those owners of fractional interests in trust or restricted land who are not located after Interior Defendants undertake the measures set forth herein and the passage of five (5) years from the date of Final Approval, the owners shall, to the extent authorized by the legislation contemplated by this Agreement, automatically be deemed to have consented to the conveyance of those fractionated interests that are located on a parcel of highly fractionated Indian land to Interior Defendants. The term "parcel of highly fractionated Indian land" is defined at 22 U.S.C. § 2201(6).

8. Deposits in IIM Accounts. All funds expended from the Trust Land Consolidation Fund for the acquisition of fractional interests from owners whose whereabouts are unknown shall be deposited in an IIM Account for such owners, for the benefit of those owners or their heirs or assigns.

G. INDIAN EDUCATION SCHOLARSHIPS

1. Funds for Indian Education Scholarships. Funds for Indian Education Scholarships are being established for the principal purposes of providing an additional incentive for individual Indians to participate in the Land Consolidation Program, beneficially utilizing any remainder of any Accounting/Trust Administration Funds, and providing financial assistance to Native American students to defray the cost of attendance at both post-secondary vocational schools and institutions of higher education.

2. Source of Funds. There will be three initial sources of funding for Indian Education Scholarships, as follows:

a. Accounting/Trust Administration Fund Balance. In the event that a balance remains in the Accounting/Trust Administration Fund following (1) payment of all settlement distributions to Class Members; (2) payment of all settlement notice and distribution costs, including payments to the Notice Contractor, the Claims Administrator, and the Qualifying Bank; (3) payment of all attorney fees and expenses to Class Counsel as approved by the Court, (4) payment of all Class Representative incentive awards, including expenses and costs that were not paid for by attorneys, as approved by the Court, and (5) payment of any other amounts agreed upon by the Parties or ordered by the Court, such remaining balance shall be transferred by the Qualified Bank in a timely manner upon Order of the Court to the organization selected in paragraph 3 of this section to be governed by the special Board of Trustees (that shall be established pursuant to paragraph 3 of this section).

b. Unclaimed Whereabouts Unknown Payments. Pursuant to Paragraph E.1.i of this Agreement, for any Class Member who is designated a "whereabouts unknown" and is not a minor, non-compos mentis, an adult under legal disability, or an adult in need of assistance, and does not claim any funds deposited in that beneficiary's IIM Account within five (5) years after the date of Final Approval, the principal amount of the funds deposited in that beneficiary's IIM Account from the Accounting/Trust

Administration Fund, shall be transferred in a timely manner by Interior Defendants to the organization selected in paragraph 3 of this section to be governed by the special Board of Trustees (that shall be established pursuant to paragraph 3 of this section), and the United States shall be released from any further obligation to pay that amount to such Class Member.

c. Consolidation Incentive Payments. To provide an incentive for individual Indians to participate in the Land Consolidation Program, a portion of the Trust Land Consolidation Fund shall be allocated for Indian Education Scholarships. For fractionated interests in trust or restricted lands conveyed by owners pursuant to Section F, contributions not to exceed a total, aggregated amount of $60,000,000.00 from the Trust Land Consolidation Fund shall be made to a separate account, established at Treasury pursuant to legislation, known as the "Indian Education Scholarship Holding Fund." No further contributions from the Trust Land Consolidation Fund to the Indian Education Scholarship Holding Fund shall be made once the sum of such contributions reaches a total of $60,000,000.00. Such contributions shall be made in accordance with the following formula:

(1) For an interest that Interior Defendants purchase for less than $200.00, a contribution of $10.00 shall be made to the Indian Education Scholarship Holding Fund.

(2) For an interest that Interior Defendants purchase for between $200.00 and $500.00, a contribution of $25.00 shall be made to the Indian Education Scholarship Holding Fund.

(3) For an interest that Interior Defendants purchase for more than $500.00, a contribution equal to five percent (5%) of the purchase price shall be made to the Indian Education Scholarship Holding Fund.

d. Transfers From Indian Education Scholarship Holding Fund. The Interior Defendants shall transfer the amounts in the Indian Education Scholarship Holding Fund to the organization identified in paragraph 3 below on a quarterly basis. Accompanying the transfer from the Interior Defendants to the organization shall be a report outlining the number of interests conveyed, the purchase price for each conveyance, and the corresponding contribution to the Indian Education Scholarship Holding Fund. The report shall be available to the public.

3. Recipient Organization. Within 60 days after Preliminary Approval of this Agreement by the Court, Plaintiffs shall recommend to the Secretary at least two and no more than three duly established non-profit organizations to administer the funds for Indian Education Scholarships. Each such organization must have a demonstrated track record and current ability to create and expand academic and vocational educational opportunities for Native Americans. Further, each such organization shall have a history of financial solvency and health, and a strong institutional governance structure that ensures a prudent and fair administration, investment, and distribution of the funds for Indian Education Scholarships. The Secretary of

Interior shall select from this list one organization to be the recipient of the funds for Indian Education Scholarships on the conditions that (a) the organization agrees to create a special Board of Trustees to govern the funds consisting of no more than five (5) members that will include two (2) representatives selected by the Secretary of Interior or his designee and two (2) representatives selected by the Lead Plaintiff or her designee, with the fifth representative selected by the organization; and (b) the organization provides reporting of its activities and access to its records related to the funds for Indian Education Scholarships which is satisfactory to the Secretary of Interior and Lead Plaintiff.

4. Release from Liability. The Parties shall not be liable, individually or collectively, for any claims arising out of or relating to the use, management, administration, distribution or other acts, omissions, or events regarding the funds for Indian Education Scholarships.

5. Removal Authority. The two (2) representatives selected by the Secretary of Interior and two (2) representatives selected by the Lead Plaintiff, as provided in paragraph 3 of this section, shall be empowered by majority vote to remove the funds for Indian Education Scholarships at any time from the selected recipient organization for any reason, including but not limited to, mismanagement of the funds and to select a new administrating entity that meets the qualifications set forth in paragraph 3 above.

H. TAXES AND ELIGIBILITY FOR BENEFITS

1. Legislation. The Parties contemplate that legislation shall address the treatment for tax purposes and eligibility for benefits of any Settlement Distributions to Class Members.

2. Source and Nature of Payments from Accounting/Trust Administration Fund. Notwithstanding the potential enactment of any legislation regarding taxability contemplated by the preceding paragraph, the Parties agree that the funds distributed pursuant to this Agreement

for the Accounting/Trust Administration Fund include monies derived directly from interests of individual Indians in trust and restricted lands.

3. Source and Nature of Payments from Trust Land Consolidation Fund. The Parties agree that all payments for fractionated or escheated shares of individual Indian trust land purchased pursuant to the Trust Land Consolidation Fund are derived directly from interests of individual Indians in trust and restricted lands.

4. Payments not deemed interest. No portion of payments to Class Members from either the Accounting/Trust Administration Fund or the Trust Land Consolidation Fund is considered payment of interest.

I. RELEASES

1. Release by Historical Accounting Class. Except as provided in this Agreement, upon Final Approval, all members of the Historical Accounting Class and their heirs, administrators, successors, or assigns (collectively, the "Historical Accounting Releasors"), shall be deemed to have released, waived and forever discharged the United States, Defendants, any department, agency, or establishment of the Defendants, and any officers, employees, or successors of Defendants, as well as any contractor, including any tribal contractor, (collectively, the "Releasees") from the obligation to perform a historical accounting of his or her IIM Account or any individual Indian trust asset, including any right to an accounting in aid of the jurisdiction of a court to render a money judgment, except as provided in paragraph I(7). The Historical Accounting Releasors shall be deemed to be forever barred and precluded from prosecuting any and all claims and/or causes of action for a Historical Accounting Claim that were, or could have been, asserted in the Complaint when it was filed, on behalf of the Historical Accounting Class, by reason of, or with respect to, or in connection with, or which arise out of, any matters stated in the Complaint for a Historical Accounting that the Historical Accounting Releasors, or any of

them, have against the Releasees, or any of them. This release shall include any and all Historical Accounting Claims, however characterized, whether under the common law, at equity, or by statute.

2. Release by Trust Administration Class. Except as provided in this Agreement, upon Final Approval, all members of the Trust Administration Class and their heirs, administrators, successors, or assigns (collectively, the "Mismanagement Releasors"), shall be deemed to have released, waived and forever discharged the Releasees from, and the Mismanagement Releasors shall be deemed to be forever barred and precluded from prosecuting, any and all claims and/or causes of action that were, or should have been, asserted in the Amended Complaint when it was filed, on behalf of the Trust Administration Class, by reason of, or with respect to, or in connection with, or which arise out of, matters stated in the Amended Complaint for Funds Administration Claims or Land Administration Claims that the Mismanagement Releasors, or any of them, have against the Releasees, or any of them.

3. Exclusions From Releases. The releases provided in paragraphs 1 and 2 directly above neither release nor waive (a) claims for the payment of the account balances within existing IIM Accounts, (b) claims for the payment of existing amounts in special deposit accounts, tribal accounts, or judgment fund accounts, (c) claims arising out of or relating to breaches of trust or alleged wrongs after the Record Date, (d) claims for damage to the environment other than those claims expressly identified as Land Administration Claims, (e) claims for trespass or continuing trespass against any or all of the Releasees, where such Releasee is acting in a capacity other than as a fiduciary for Plaintiffs, (f) claims against tribes, contractors, or other third parties (provided that this exception does not apply to agents for the Defendants to the extent such agents had performed Defendants' fiduciary duties to Plaintiffs),

(g) equitable, injunctive, or other non-monetary claims for correction of boundary and appraisal errors, (h) money damages arising out of boundary and appraisal errors, where such errors occur after the Record Date or where such errors are not corrected within a reasonable time following written notice to Interior after the Record Date, (i) claims arising out of leases, easements, rights-of-way, and similar encumbrances existing as of the Record Date against any or all of the Releasees to the extent such Releasee is acting in a capacity other than as a fiduciary for the plaintiffs, (j) claims against the Releasees arising out of, or relating to, water or water rights, whether adjudicated or unadjudicated, involving the adjudication, quantification, determination, establishment or protection of such rights; provided, however, that this exception does not apply to breach of trust claims for damages, losses, injuries, or accounting for income arising prior to and including the Record Date, other than claims that the Releasees failed to timely enforce such water rights; and (k) health and mortality claims. Nothing within these stated exclusions is meant to limit or shall defeat or void valid defenses, if any, based on statute of limitations, laches, or estoppel.

4. Trust Reform. By accepting this Agreement, Plaintiffs are neither waiving nor releasing any claims or causes of action for future trust reform. Defendants waive no defenses to such claims or causes of action, including res judicata.

5. Escheated Interests Not Released Unless Voluntarily Settled Later. Claims of beneficiaries or former beneficiaries for any interest that has been escheated to tribes, states, municipalities, other political subdivisions, the federal government, and companies, where the escheatment occurred in a manner which is unconstitutional according to decisions of the United States Supreme Court, are not released by this Agreement, except to the extent specific

settlement payments are made and accepted by such beneficiaries or former beneficiaries from the Trust Land Consolidation Fund in accordance with paragraphs F(1) – (8).

6. Osage Headright Owners. The members of the Historical Accounting Class and the members of Trust Administration Class do not include Osage headright owners, except to the extent individual Osage headright owners have, or have had, (i) IIM Accounts in which their Osage headright payments have been deposited, (ii) IIM Accounts for funds other than Osage Headright monies, or (iii) beneficial ownership interests in trust land. Nothing in this Agreement releases claims of individual Osage headright owners regarding their headright interests, except to the extent monies from such headright interests beneficially owned by such individual Indian have been deposited into an IIM Account for the benefit of such individual Indian.

7. Preservation of Claims and Rights by Opt Outs. Notwithstanding the releases stated above (including without limitation the release of Historical Accounting Claims in paragraph I(1), Trust Administration Class Members who properly and timely opt out in accordance with the instructions in paragraph C(2) of this Agreement hereby expressly preserve and do not release, waive or discharge any Funds Administration Claims (including without limitation accounting error claims) and/or Land Administration Claims, whether such claims arise in equity or at law. Further, any such opting-out Class Member retains and shall be entitled to all methods of proof, applicable evidentiary presumptions and inferences (if any), and means of discovery available in any court of competent jurisdiction pursuant to that court's procedural and evidentiary rules applicable to fiduciaries, including without limitation any right to an accounting in aid of the jurisdiction of a court to render judgment.

8. Agreed Balances. Trust Administration Class Members who do not opt out in accordance with paragraph C(2) (c) of this Agreement will be deemed to have waived any right

to an accounting in aid of judgment in connection with Funds Administration Claims and Land Administration Claims. Further, except as provided in the preceding paragraph with respect to Class Members who opt out of the Trust Administration Class, each such Trust Administration Class Member and his or her heirs, successors, and assigns will be deemed to have agreed that the stated balance in his or her last IIM Account periodic statement received from Interior in 2009, prior to the date of this Agreement is accurate and that any IIM Account closed before January 1, 2009, shall be deemed to have a zero balance. Further, if a Trust Administration Class Member did not receive a periodic statement for an open IIM Account in 2009 prior to the date of this Agreement, that Class Member may request written confirmation of his or her IIM Account balance(s) as of the Record Date; such Class Member shall be deemed to have agreed to the balance(s) shown on such written confirmation received from Interior, unless such Class Member opts out of that Class in accordance with this Agreement.

9. Vacatur of Document Retention Orders. Upon Final Approval, all existing document retention orders shall be deemed vacated; provided, however, that Plaintiffs do not release Defendants from any ongoing duty to maintain trust records necessary to prudently manage the individual Indian trust.

J. ATTORNEYS' FEES

1. Notice of Amount to be Requested. Prior to the hearing on the Motion for Preliminary Approval of this Agreement, Plaintiffs shall file a notice with the Court stating the amount of attorneys' fees, expenses and costs they will be requesting for Class Counsel through the date of this Agreement. This amount shall be included in the Notice to the class referenced in paragraph C.1.

2. Petition for Attorneys' Fees. Within the time set by the Court, Plaintiffs shall file a petition for fair and reasonable attorneys' fees, expenses and costs through the date of this

Agreement for the Court's approval ("Fee Petition"). Plaintiffs shall post that Fee Petition on their website http://indiantrust.com/.

3. Objections. Within the times set by the Court: (a) Class Members may object to the compensation Plaintiffs have requested for attorneys in the Fee Petition, (b) Defendants may submit a response to the Fee Petition, and (c) Plaintiffs may reply to such objections and responses.

4. Post-Agreement Attorneys' Fees, Expenses and Costs. Attorneys' fees, expenses and costs incurred subsequent to the date of this Agreement shall, upon Final Approval, be paid at reasonable intervals as ordered by the Court. Reasonable time spent after this Agreement in representing the Plaintiffs, including but not limited to preparing fee applications, shall be compensated at the actual hourly billing rates. Defendants may respond to, and Class Members may object to, any petitions for post-Agreement attorneys' fees, expenses and costs, and Plaintiffs may reply to such response and objections.

5. Court to Decide. The amount to which Plaintiffs are entitled for attorneys' fees, expenses and costs are within the discretion of the Court in accordance with controlling law, after receipt and consideration of Class Members' objections, Defendants' responses and Plaintiffs' replies.

6. Payment. All payments for attorneys' fees, expenses and costs are to be made following Final Approval from the Settlement Account.

7. Time of Payments. Payment for attorneys' fees, expenses and costs through the date of this Agreement shall be made immediately upon the deposit of the funds in the Settlement Account after Final Approval. Payment of post-Agreement attorneys' fees, expenses and costs are to be made after Final Approval at the times directed by the Court.

8. Release of Attorneys' Fees and Costs. Upon completion of all payments addressed in this Section J, Named Plaintiffs and Class Counsel, on behalf of the Classes and each individual Class Member, will be deemed to have irrevocably and unconditionally released, acquitted, and forever discharged, any claim that they may have against Defendants for attorneys' fees, expenses or costs associated with their representation of Plaintiffs and the Classes in this Litigation. Plaintiffs shall file no further claim against Defendants for attorneys' fees or expenses pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412 or costs pursuant to 28 U.S.C. § 1920; this paragraph does not apply to claims by Plaintiffs for payments from the Settlement Account, in accordance with this Agreement, for attorneys' fees, expenses and costs, and Plaintiffs' incentive awards, including costs and expenses.

K. CLASS REPRESENTATIVES' INCENTIVE AWARDS

1. Notice of Amounts to be Requested. Prior to the hearing on the Motion for Preliminary Approval of this Agreement, Plaintiffs shall file a notice with the Court stating the amount of incentive awards which will be requested for each Class Representative, including expenses and costs that were not paid for by attorneys, which expenses and costs are expected to be in the range of $15 million above those paid by Defendants to date. These amounts shall be included in the Notice to the class referenced in paragraph C(1).

2. Petition for Expenses and Incentives. Within the time set by the Court, Plaintiffs shall file a petition for incentive awards, including expenses and costs, of the Class Representatives ("Class Representative Petition"). Plaintiffs shall post that petition on their website http://indiantrust.com/.

3. Objections. Within the times set by the Court: (a) Class Members may object to the amounts Plaintiffs have requested in the Class Representative Petition; (b) Defendants may submit a response to the Class Representative Petition; and (c) Plaintiffs may reply to such

objections and responses. Defendants do not consent in any manner to an award of costs, expenses or incentives, except to the extent supported by and consistent with controlling law.

4. Post-Agreement Expenses and Costs of Class Representatives. Class Representatives' expenses and costs incurred subsequent to the date of this Agreement shall, upon Final Approval, be paid at reasonable intervals as ordered by the Court. Defendants may respond to and Class Members may object to any petitions for post-Agreement expenses and costs of Class Representatives. Plaintiffs may reply to such responses and objections.

5. Court to Decide. The amounts to be granted on the Class Representative Petition and any post-Agreement request for expenses and costs are within the discretion of the Court in accordance with controlling law, after timely receipt and consideration of objections received from Class Members and/or Defendants.

6. Payment. All payments of Class Representatives' incentive awards, including expenses and costs, shall be made from the Settlement Account.

7. Time of Payments. Payment of incentive awards, including expenses and costs, shall be made immediately upon the deposit of the funds in the Settlement Account after Final Approval. Payment of post-Agreement expenses and costs are to be made at the times directed by the Court following Final Approval.

8. Complete Compensation. Defendants shall have no additional liability for any incentive awards or expenses and costs of Class Representatives. The payments to Class Representatives under this section K, together with any amounts due them as Class Members under this Agreement, shall be full and complete compensation for the Class Representatives in connection with this Litigation and for any Accounting Claims and Trust Administration Claims the Class Representatives had through the Record Date.

L. NO FURTHER MONETARY OBLIGATION

1. Complete Monetary Obligation. The Parties agree and acknowledge that the payments of $1,412,000,000.00 into the Accounting/Trust Administration Fund and the $2,000,000,000.00 deposited into the Trust Land Consolidation Fund represents Defendants' complete financial obligation under this Settlement relating to the settlement and compromise of all Historical Accounting and Trust Administration Claims for Class Members.

2. No Further Monetary Obligations. Except for the payments of $1,412,000,000.00 into the Accounting/Trust Administration Fund and the $2,000,000,000.00 deposited into the Trust Land Consolidation Fund, the Parties further agree and acknowledge that Defendants shall have no further monetary obligations whatsoever, including but not limited to any monetary obligations with respect to the Class Representatives, the members of the Classes who do not opt out, Class Counsel, Claims Administrator, Notice Contractor, the Qualifying Bank, or the Litigation. Defendants, however, will retain all monetary obligations that exist as a result of the trust relationship that will continue to exist between Defendants and all individual Indian beneficiaries. Likewise, the Parties agree that the Classes, Class Representatives, Class Counsel, Claims Administrator, Notice Contractor, and Qualifying Bank shall have no monetary obligation or incur any liability to Defendants or their agents regarding this Agreement or other matters settled and within the scope of this Agreement.

3. Cooperation. Interior Defendants will in good faith cooperate and make their resources and information available to assist in the distribution of notices and, subsequently, settlement payments. However, Interior Defendants assume no financial responsibility or liability related to the quality of the information to be provided.

M. ADDITIONAL PROVISIONS

1. No Assignment. Class Representatives represent and warrant that they have not assigned or transferred, or purported to assign or transfer, to any person or entity, any claim or any portion thereof or interest therein, including, but not limited to, any interest in the Litigation or any related action.

2. Non-Admission of Liability. By entering into this Agreement, Defendants in no way admit any liability to Plaintiffs and the Classes, individually or collectively, all such liability being expressly denied. Nor do Defendants admit that a class action is an appropriate vehicle to bring Trust Administration Claims. Rather, Defendants enter into this Agreement to avoid further protracted litigation and resolve and settle all disputes with Plaintiffs and the Classes. The Parties understand and agree that neither this Agreement, nor the negotiations that preceded it, shall be used as evidence with respect to the claims asserted in the Litigation, the propriety of a class action, or in any other proceeding or dispute except to enforce the terms of this Agreement.

3. Cooperation Between The Parties, Further Acts. The Parties shall cooperate fully with each other and shall use their best efforts to obtain the Court's approval of this Agreement and all of its terms.

4. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties and (A) with respect to Plaintiffs and the Class Members, their spouses, children, representatives, heirs, administrators, executors, beneficiaries, conservators, and attorneys, and (B) with respect to Defendants, the Releasees.

5. No Third-Party Beneficiaries. This Agreement shall not be construed to create rights in, or to grant remedies to, or delegate any duty, obligation or undertaking established herein to any third party as a beneficiary of this Agreement.

6. Arms Length Transaction; Materiality of Terms. The Parties have negotiated all of the terms and conditions of this Agreement at arms length. All terms and conditions of this Agreement have been relied upon by the Parties in entering this Agreement. If any Class Member petitions the Court for a modification of, addition to or alteration of any material terms or condition of this Agreement and if the Court on such request or *sua sponte* does modify, add to or alter any of the material terms or conditions of this Agreement, this Agreement shall become voidable and of no further effect upon the filing with the Court of a Notice of Withdrawal from settlement by Class Counsel or Defendants' Counsel within five (5) business days of receipt of any order or final statement of the Court modifying, adding to or altering any of the material terms or conditions of this Agreement.

7. Captions. The captions or headings of the sections and paragraphs of this Agreement have been inserted for convenience of reference only and shall have no effect upon the construction or interpretation of any part of this Agreement.

8. Construction. The determination of the terms and conditions of this Agreement has been by mutual agreement of the Parties. Each Party participated jointly in the drafting of this Agreement and, therefore, the terms and conditions of this Agreement are not intended to be, and shall not be, construed against any Party by virtue of draftsmanship.

9. Applicable Law. This Agreement shall be interpreted in accordance with the laws of the United States without respect to the law of any particular State.

10. Notices Between the Parties. For all documents, notices, and submissions filed with the Court, service of a copy on the other Parties shall be deemed complete when uploaded and docketed with the Court's ECF system.

11. Agreement to Hold Personal Information Confidential. The Parties recognize that this Agreement will require the exchange of individual Indian trust data and/or confidential personal information that is or may be subject to the Privacy Act of 1974, as amended, relating to actual and putative class members. The Parties agree to cooperate in taking all appropriate steps to maintain the confidentiality of all such information. In order to facilitate the prompt exchange of information to facilitate the best practicable notice to the Class, the Parties further agree to file a stipulated motion with the Court promptly upon public announcement of this Agreement requesting the Court to enter an appropriate order to authorize the disclosure of such information by the Interior Defendants or Plaintiffs to the Notice Contractor and Claims Administrator.

12. Petition for Writ of Certiorari. The Parties acknowledge that Plaintiffs' deadline for filing a petition for a writ of certiorari seeking Supreme Court review of Cobell XXII is December 21, 2009, and that the Supreme Court's rules do not permit this deadline to be extended further. To preserve their right to seek Supreme Court review in the event that this Agreement is terminated, becomes null and void, or otherwise is not finally approved, it is understood that Plaintiffs intend to file a petition for a writ of certiorari on or before the deadline.

SIGNATURES

Wherefore, intending to be legally bound in accordance with the terms of this Agreement, the Parties hereby execute this Agreement:

FOR PLAINTIFFS:

Dennis M. Gingold, Class Counsel

Keith M. Harper, Class Counsel

FOR DEFENDANTS:

Thomas J. Perrelli
Associate Attorney General

US2000 11623208.1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL, et al., Plaintiffs, vs. KEN SALAZAR, Secretary of the Interior, et al., Defendants.	Case No. 1:96CV01285-JR

MODIFICATION OF DECEMBER 7, 2009 CLASS ACTION SETTLEMENT AGREEMENT

1. The December 7, 2009 Class Action Settlement Agreement ("Agreement") in this case was entered into by and between Elouise Pepion Cobell, Penny Cleghorn, Thomas Maulson and James Louis Larose (collectively, the "Named Plaintiffs"), on behalf of themselves and members of the Classes of individual Indians defined in this Agreement (collectively, "Plaintiffs"), on the one hand, and Ken Salazar, Secretary of the Interior, Larry Echohawk, Assistant Secretary of the Interior – Indian Affairs, and H. Timothy Geithner, Secretary of the Treasury and their successors in office, all in their official capacities (collectively, "Defendants"). Plaintiffs and Defendants are collectively referenced as the "Parties."

2. In the Agreement, the Parties agreed that the Settlement is contingent on the enactment of legislation to authorize or confirm specific aspects of the Settlement as set forth in the Agreement. The Parties further agreed that if such legislation is not enacted on or before the Legislation Enactment Deadline as defined in the Agreement, unless such date is mutually

agreed to be extended by the Parties, the Agreement shall automatically become null and void. Settlement Agreement, paragraph B.1.

3. The Agreement defines the Legislation Enactment Deadline as December 31, 2009, 11:59 p.m. Eastern time. Settlement Agreement, paragraph A.22.

4. It has become apparent to the Parties that in order for the Agreement to continue to be valid after December 31, 2009, the Legislation Enactment Deadline will need to be extended.

5. The Parties desire that this Agreement continue to be valid after December 31, 2009.

6. Accordingly, the Parties hereby mutually agree to extend the Legislation Enactment Deadline set forth in paragraph A.22 of the Agreement to February 28, 2010, 11:59 p.m. Eastern time.

SIGNATURES

Wherefore, intending to be legally bound in accordance with the terms of this Modification of the December 7, 2009 Class Action Settlement Agreement, the Parties hereby execute this Modification:

FOR PLAINTIFFS:

12/29/09
Dennis M. Gingold, Class Counsel

12/29/09
Keith M. Harper, Class Counsel

FOR DEFENDANTS:

12/29/09
Robert E. Kirschman, Jr.
Deputy Director
Commercial Litigation Branch

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. TOM UDALL TO HON. KEN SALAZAR

Question 1: How many members of the Historical Accounting Class are from the State of New Mexico?

Answer: In the Office of Special Trustee's (OST) current database of open accounts (as of 9/30/09) there are 21,152 statements that are mailed to New Mexico addresses. This number includes members from tribes nation-wide that reside in NM. In addition there are 14,210 accounts that do not receive statements with a NM tribal affiliation (includes Navajo). These numbers are a rough proxy for the number of New Mexico residents affected by the settlement, since the location of an IIM account may not always match the account holder's domicile. Also, some people have more than one IIM account, and the Cobell class also includes people who have closed IIM accounts if their account was open at any time between October 25, 1994 and September 30, 2009.

Question 2: How many members of the Historical Accounting Class are from the Navajo Nation?

Answer: Our current data shows that there are 24,133 individuals from the Navajo Nation who are eligible to receive the historical accounting and the trust administration payments, and an additional 9,143 who are eligible to receive only the trust administration payment.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. TIM JOHNSON TO HON. KEN SALAZAR

Question 1: In South Dakota, several Tribes purchased land in the 1970's and 1980's using loans from the United States Department of Agriculture. Some of those Tribes are still heavily impacted by this debt.

Is it possible to expand the Indian Land Consolidation Program and to allow these Tribes to be able to use the $2 billion portion of the settlement money to pay down the debt on these loans since the loans were used for land acquisition, including fractionated land?

Answer: Neither the Settlement Agreement nor the authorizing legislation provide for such a use of the Trust Land Consolidation Fund. Land consolidation under the Settlement Agreement is prospective, and is only intended to consolidate fractionated interests of individual class members. This settlement does not expand uses of funds for purposes that would not be allowed under the Indian Land Consolidation Act.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. LISA MURKOWSKI TO HON. KEN SALAZAR

Question 1: To further clarify the rights of Alaska Native allotment holders with respect to the settlement:

a) Are all holders of Alaska Native allotments under the Alaska Allotment Act of 1906 members of the Trust Administration Class as defined in the Settlement Agreement? If not, which holders of Alaska Native allotments are included in the Trust Administration Class?

> **Answer:** Individual Indians alive as of September 30, 2009 who have or had IIM Accounts during the "Electronic Ledger Era" (approximately 1985 to the present), as well as individual Indians who as of September 30, 2009 had an ownership interest in land held in trust or restricted status, even if he or she did not have an IIM account, are eligible to be included in the Trust Administration Class." This includes holders of Alaska Native allotments who meet these specific criteria.

b) Are holders of any other types of trust or restricted Indian property in the State of Alaska included in the Trust Administration Class as defined in the Settlement Agreement?

> **Answer:** In addition to holders of ownership interests in Alaska Native allotments, there are two other categories of Alaska land owners included in the Trust Administration Class. The larger category consists of owners of restricted interests in one or more of the roughly 4,000 restricted Alaska Native Township Act lots, granted pursuant to the 1926 Alaska Native Township Act, formerly codified as 43 U.S.C. § 733 (1970)(repealed in 1976). The other smaller category consists of heirs to certain Native Americans who secured title to so-called Public Domain allotments in Alaska under the terms of 25 U.S.C. § 334.

c) Do I correctly understand that all members of the Trust Administration Class who do not opt out of the class and who agree to release past land administration claims against the United States will receive a payment of not less than $500 if settlement goes forward?

> **Answer:** All individuals who fall within the definition of "Trust Administration Class" in the Settlement Agreement who do not opt out of this particular Class will be paid a baseline amount of $500. An additional pro rata amount may also be paid if certain criteria are met and under certain circumstances set forth in the Agreement.

d) There are a number of Alaska Native allotment applications that have been pending in the Bureau of Land Management for lengthy periods of time. Do these individuals have any rights in the settlement?

Answer: It is our understanding that a majority of the pending applications have been administratively approved and are awaiting conveyance as restricted Native allotments. Since the land has not yet been conveyed, there is a question as to whether these pending allotment claims fall into the category of individuals who had an ownership interest in trust or restricted land on September 30, 2009 (i.e., the definition of the "Trust Administration Class"). However, there is legal precedent to support the notion that a valid Alaska Native allotment vests and relates back to the date of initiation of qualifying use and occupancy. As such, while the pending applications are not yet restricted land per se, there is an argument to be made that they represent a vested interest in future restricted land. Under these circumstances, the Department will give careful consideration to this important question to ensure that any eligible Alaska Native is entitled to participate in the settlement.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN BARRASSO TO DAVID J. HAYES

Trust Land Consolidation Fund

Question 1: Please explain in detail how the Department determined that $2 billion was the appropriate amount for the Trust Land Consolidation Fund.

Answer: The Department analyzed regional data for estimates of regional land values combined with an assessment of the number of interests that exist on the most fractionated tracts of land. Our analysis using these estimates was that $2 billion would be sufficient to purchase most tracts that have 20 or more owners. Policymakers at the Department of the Interior believe that the purchase of these interests would be a significant step in alleviating the problems caused by fractionation of interests, and would substantially reduce the number of individual Indian accounts under Federal management (see our next answer). Analysis by prior administrations was also considered.

Question 2: Please estimate the percentage of all fractionated interests that the Department will be able to purchase through the Trust Land Consolidation Fund.

Answer: Using the Trust Land Consolidation Fund that would be provided for under this settlement, the Department would be able to consolidate up to 84% of the aggregate interests. We use the term "aggregate interests" to signify the number of interests that exist when we combine multiple interests in a single tract that are owned by the same accountholder. There are 4.4 million total interests (this figure includes some interests that the Department of the Interior would not purchase through the Land Consolidation Fund), and 3.1 million aggregate interests. We estimate that about 2.6 million aggregate interests can be purchased with the Trust Land Consolidation Fund as proposed. The 2.6 million interests are located in the most fractionated tracts. The 84% figure is derived by dividing 2.6 million aggregate interests to be purchased by 3.1 million aggregate interests that are now in individual Indian ownership. Looking through the prism of the number of tracts that this represents, our analysis is that the proposed Trust Land Consolidation Fund could enable the purchase of about 37,000 tracts out of a total of approximately 140,000 tracts, or about 27% of total tracts.

It must be noted that the forgoing discussion reflects the Department of the Interior's goals for the use of the proposed Trust Land Consolidation Fund. The number of tracts or aggregate interests that would actually be purchased cannot be determined with certainty. The actual number of interests that would be purchased would depend upon the total funds available in the Trust Land Consolidation Fund, the time it takes to disburse the funds (in light of the 10 year time limit in the Settlement Agreement), the purchase price of the individual interests to be purchased, and the number of interested sellers.

Question 3: Please identify the reservations on which fractionated interests will be purchased.

Answer: Our current practice is to identify tracts by BIA Agency or Region or Land Area Code rather than reservation. The Department will focus its consolidation efforts in those areas with the highest volume of fractionation, for example, in the Great Plains and Rocky Mountain regions. For instance, the chart below depicts BIA Agencies and Regions and best estimates of the corresponding amount of fractionated tracts in descending order. This list is a sampling of areas where the Department will prioritize its efforts. In addition, the Department uses a land area code system which roughly reflects the geographic areas of reservations. Based on that system and most recent estimates, approximately 219 areas contain fractionated tracts. Please note that we are identifying areas where the Department will be working to purchase tracts; the sale of these tracts is voluntary so we cannot state with certainty where tracts will actually be purchased using the Trust Land Consolidation Fund as proposed.

BIA Agency	**Tracts**
Standing Rock Agency	2749
Pine Ridge Agency	2264
Pima Agency	2264
Navajo Region	2114
Blackfeet Agency	1402
Northwest Region	1373
Rosebud Agency	1183
Cheyenne River Agency	1024
Crow Agency	893
Fort Totten Agency	519
Wind River Agency	393
Total	**16,178**

Question 4: What, if any, contingency plan does the Department have if a significant number of landowners do not respond to the buy-back program?

Answer: The Department expects that there will be great interest in the land consolidation program based on prior requests to sell fractionated interests under the Indian Land Consolidation Act (ILCA). Under ILCA, the BIA has already purchased 400,000 fractionated interests. There have always been more applications to sell fractionated interests than funds available to purchase them. The momentum of the settlement and the notices that will go out to class members

will increase awareness of this opportunity and are likely to maximize responses from willing sellers.

The Department also expects that by including the additional incentive provided by a set-aside to the Indian Education Scholarship Holding Fund willing sellers will be encouraged to convey their interest to the United States. The scholarship fund set-aside to benefit Indian education will be used in lieu of an additional cash incentive to help maximize the land that will be purchased in the program.

Mineral Estates

In your testimony, you stated that the Department will not be purchasing mineral interests due to the difficulty in appraising those interests.

Question 5: Does that mean that you will not be purchasing any mineral interests at all, only surface interests? Or will you purchase interests that include both surface and mineral estates where the mineral estate has little or no value?

Answer: The Department is not adopting a prohibition on acquiring mineral interests. If an individual wishes to convey his or her surface and mineral estate to the Department, we are open to such a transaction. The Department intends to focus its initial purchasing efforts on those most fractionated parcels which do not include valuable mineral interests.

Question 6: Where a fractional interest includes both mineral and surface components and the mineral component has significant value, will the Department sever the two estates and purchase the component?

Answer: The Department has no specific plan to sever mineral and surface estates. The goal of our program will be to acquire as many fractionated interests as possible and to consolidate tracts. The Department will address transactions involving mineral estates on a case-by-case basis to determine the best course of action.

Wind River Indian Reservation

Question 7: Will the Department use the Trust Land Consolidation Fund to purchase fractionated interests on the Wind River Indian Reservation?

Answer: Yes, the Department intends to purchase fractionated interests on the Wind River Indian Reservation.

Question 8: How many "highly fractionated" tracts are located on the Wind River Indian Reservation?

Answer: There are 3,300 fractionated allotments located on the Wind River Indian Reservation; 1,374 of these tracts have 20 or more owners, and the Bureau of Indian Affairs has identified 393 of these surface tracts as high priority acquisition tracts.

Whereabouts Unknown

Question 9: Under the Settlement Agreement, the Claims Administrator is required to "take reasonable steps to locate, and distribute funds to, Class Members" whose whereabouts are unknown and who do not have an open IIM Account.

a) Please explain in detail what these "reasonable steps" would entail.
b) Would "reasonable steps" include the hiring of contractors and investigators?

Answer: As part of the Settlement Agreement, a Claims Administrator will provide services to ensure the distribution of the settlement amount to the Class Members. In addition, a Notice Contractor will be hired to provide the necessary notice to the Class Members. These entities will be responsible for designing and implementing, in consultation with the Department and the plaintiffs, a comprehensive notice, media, and outreach campaign, including through targeted and mainstream media notices and publication, communication and coordination with tribal governments and organizations, and direct notice mailings. The Plaintiffs' Counsel and the Claims Administrator are responsible for administering the settlement funds in a private bank and all final distributions to the Class Members will be by order of the court.

Question 10: Paragraphs F.6.a through F.6.d (pp 36-38) outline the steps the Department will take to locate the owners of fractionated interests whose whereabouts are unknown

a) Will the Department take any other steps to locate the owners of fractionated interests whose whereabouts are unknown?

Answer: The steps set forth in the Settlement Agreement to locate owners of fractionated interests whose whereabouts are unknown are based on similar procedures used by OST and existing provisions in the Indian Land Consolidation Act. Currently, OST Fiduciary Trust Officers and BIA staff take steps to locate whereabouts unknown account holders in a variety of ways, including: (1) by making announcements during beneficiary events; (2) through direct outreach at Pow-Wows and various tribal organization meetings, (3) through direct requests to the tribes and tribal enrollment offices, and (4) by postings in tribal newspapers and at tribal facilities. OST also employs internet search engines to obtain information useful for ascertaining individuals' whereabouts, such as last known addresses and name changes. OST's partnership with LexisNexis Risk Management Services - Accurint allows for queries from multiple databases and a faster turnaround for requests.

The Department will undertake the steps outlined in the Agreement but will not be precluded from using other methods that will assist in locating such individuals.

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