

**ELOUISE P. COBELL**  
**LEAD PLAINTIFF IN *COBELL V. SALAZAR***

**TESTIMONY**  
**BEFORE THE COMMITTEE ON INDIAN AFFAIRS**  
**UNITED STATES SENATE**

**DECEMBER 17, 2009**

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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 3600 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 agreement 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.