

John Berrey, Chairman, Quapaw Tribe of Oklahoma, Vice-Chairman ITMA, Tribal Representative Leader “To Be” Trust Process Reengineering Team

**Testimony before the United States Senate Committee on Indian Affairs oversight Hearing on Potential Settlement Mechanisms for Cobell vs. Norton
7/30/03**

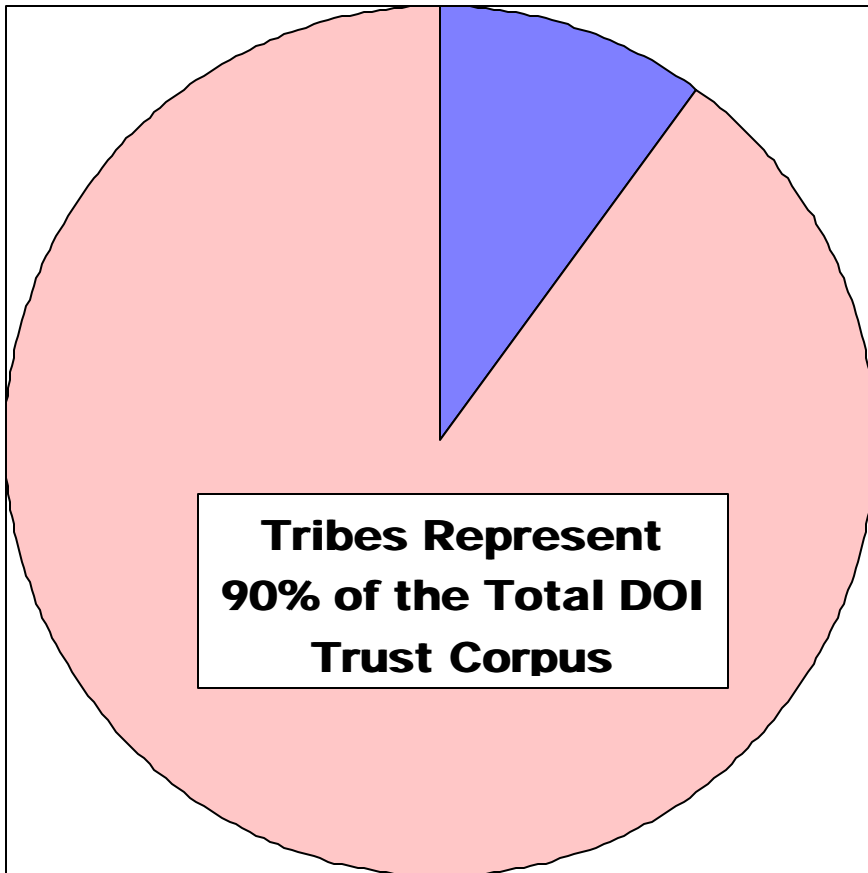
Chairman Campbell, Vice-Chairman Inouye, and members of this vitally important Committee regarding the affairs of Native Americans, thank you for the opportunity to testify today. On behalf of the Quapaw Tribe of Oklahoma, I want to thank you for your public service and commitment to Native American People and to all American citizens.

I am here to describe issues I believe that need your consideration as we all embark on the idea of settlement to this historic case. A case that has clearly exposed many of the horrible details related to the mismanagement of the American Indian Trust Estate. The Quapaw Tribe and its members reflect the most horrific examples of the very mismanagement we have all heard stories of.

The Department of Interior (DOI) managed the largest lead and zinc mines in our nation's history on land belonging to the Quapaw Tribe and its members, resulting in the Quapaw Tribe's current Trust Claims case in the United States District Court for the Northern District of Oklahoma in Tulsa and the reasons so many of my Tribal members are class members of the Cobell vs. Norton lawsuit. We recognize that our Tribe and its members have suffered over time but because litigation is so costly in terms of cash and human resources the Quapaw Tribe has entered into a formal Alternative Dispute Resolution (ADR) process with the DOI and Department of Justice to address our Tribal claims. I want to make it very clear that Tribal claims and Individual claims in the Cobell case are very different and I want to reiterate the clear distinction.

- Tribal Claims vs. Individual claims represented in the Cobell class.
 - Tribal claims are representative of sovereign governments vs. individuals represented in the Cobell class.
 - Tribal governments represent ninety percent of the Trust Corpus vs. ten percent represented by the Cobell class.
 - Tribal claims are much more complex to include resource management claims vs. the difficult (in terms of poor recordation) but relatively simple Individual Indian Money (IIM) claims in Cobell.

Tribal Claims vs. Individual Claims



- **Individual Claims, DOI Natural Resource Management and control**
- **Tribal Claims, DOI Natural Resource Management and control**

I believe that we must also consider some facts about the limited claims made by the class in Cobell. The case is about the lack of an accounting of the money collected by the U.S. government and managed by the U.S. government for Individual Indian people. It is a case that begins with the collection of money generated by the development and exploitation of natural resources and some money related to past court judgments and ends with the closing of an account. The claims do not include those related to the Trust management of the United States related to all the activity that leads to a collection.

What are the claims of Cobell vs. Norton?

- **Cash collections from Natural Resource Management (Oil & Gas, Timber, Mining, Agriculture, Grazing, Commercial property)**
 - **Posting of Interest**
 - **Investments**
 - **Distributions**
 - **Audits**
 - **Itemization and reporting of all accounting activities**
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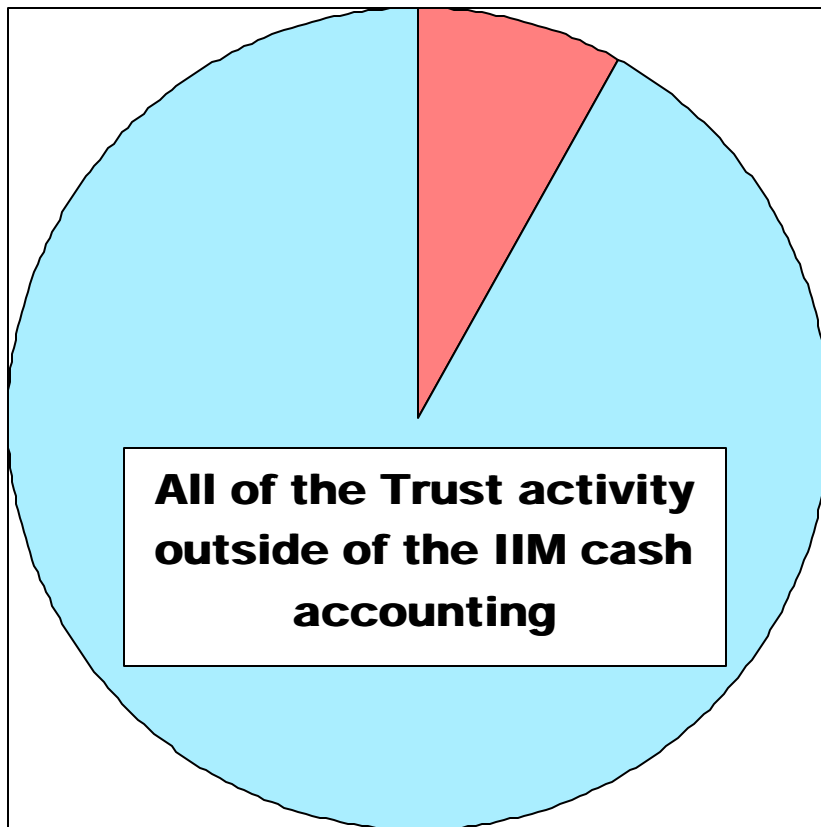
What are the parameters of Cobell vs. Norton?

- **Only current or living IIM account holders?**
- **All IIM including deceased IIM account holder claims?**
- **Are claims inherited?**
- **How far back in time? 1810? 1880?, 1920? When did the DOI Trust Responsibility begin?**

What are **not** the claims of Cobell vs. Norton?

- Pre lease activity (Appraisal, fair market value, etc.)
- Lease terms negotiation factors (Notice, bids, etc.)
- Lease compliance (Well head audits, run tickets, load volumes, stumpage audits, footage audits, ag species, cattle per acre audits, etc.)
- Lease enforcement (Trespass, proper usage, environmental, reclamation, etc.)
- Idle lands
- Land Stewardship

Cobell vs. Total DOI Individual land management activity



■ **Individual IIM Cash Accounting (Cobell) Collections, Interest, Investments, Distributions**

■ **Natural Resource Management: Leases, contracts, market value, just compensation, lease compliance, lease enforcement, etc.**

- Cobell claims are specific to Individual IIM account cash accounting not:
 - Appraisal, valuation of resources
 - Lease terms negotiations
 - Lease compliance
 - Lease enforcement
 - Land stewardship
 - Environmental protection

I am concerned that there is a perception that a settlement of the Cobell vs. Norton case will provide some closure to all claims associated with the historical management of the Native American Trust. This is most defiantly not accurate. A settlement can satisfy many problems and help provide solutions for the future and I am very much hoping that an improved delivery of service is one of the positive outcomes of any settlement. But a settlement of Cobell will settle only the claims relating to the IIM accounts, and not other claims – those claims related to the actual mismanagement of land and resources – the types of claims that are being asserted by the Quapaw Tribe and other Native American Tribal governments.

How do we get to a settlement process and how do we clearly identify what it is we are settling?

- Necessary Components of a settlement process include:
 - Conflict assessment
 - Selecting a neutral third party assessor
 - Third party neutral identifies and confers with stakeholders
 - Third party identifies preliminary issues
 - Third party makes process recommendations and works a intermediary
 - Develop and design collaboratively a settlement process
 - Provide judicial review and oversight

In our experience, the conflict assessment process has been very effective in developing the environment necessary for a complex settlement to take place. Once you have established a settlement process collaboratively you can begin a more formal settlement discussion. The science of ADR has

a proven track record of success and can be the most cost effective, equitable and expeditious way to end difficult litigation.

After eight years, millions of dollars spent, delayed and diminished services to the Native American beneficiary there are issues that must also be considered as potential outcomes in a settlement:

- Reduction and consolidation of fractional interest in Individual lands
- Promotion of an increase in the Tribal land base
- Provisions for future resources for managing the Trust Estate
- Promotion of self governance

The DOI takes the blame and the brunt of the complaints regarding the management of the assets belonging to Tribes and Individuals, but the failure of the Congress to provide adequate funding and resources for the management is glaring. In order for the United States to live up to its fiduciary responsibility to Native Americans the Congress must give DOI the tools. When the Bureau of Land Management (BLM) has a \$145 million '03 appropriation for Information Technology (IT) compared with an \$11 million IT appropriations at the Bureau of Indian Affairs (BIA) there is a problem. Indian Affairs has been terribly neglected for 150 years resulting in this litigation nightmare the DOI is facing.

The DOI has embarked on a long overdue project that I am involved with that is reengineering the future Trust management methods. The "To Be" reengineering project is well on its way and will identify and create the most effective, responsive and beneficiary focused Trust business processes for tomorrow.

Trust Processes that are to be reengineering:

- Leasing
- Probate
- Accounting
- Appraisals
- Title management
- Ownership records management
- Surveys
- All of the business processes that make up Trust services are being redesigned.

“To Be” Reengineering will include:

- Standardized work flows and processes
- Elimination of antiquated tools and redundant business practices
- Creation of a new IT systems architecture
- Policies and procedures
- Training
- Risk Management
- Work force planning
- All the tools needed to do the job

The reengineering project will develop the model processes needed to provide quality Trust Service delivery. The models will be provided to Indian Country for comment and consultation. The implementation will need the support, oversight and participation of Congress.

Congressional activity necessary for lasting Trust Reform:

- Resources (adequate appropriations)
- Oversight (ensure that the Trustee Delegate (DOI) upholds the Trust Responsibility of the United States)
- Collaborative legislation develop to make necessary changes

In closing I would like to offer encouragement to anyone involved. The damage to Individual Native Americans is obvious; we must bring this case to a close and begin the process of healing the Trust. It is very difficult to face the past when many of the crimes were so outrages and represent an embracing and shameful chapter in the history of America. It is also time for Native people to teach their children to focus on the future and to respect the past. It is the responsibility of us all to follow a process and ultimately provide a bright future for generations to come. I have attached some ADR specific information. Thank You.