

**STATEMENT OF KEN SALAZAR
SECRETARY OF THE INTERIOR
ON
THE PROPOSED SETTLEMENT OF
COBELL V. SALAZAR
BEFORE THE
COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE**

December 17, 2009

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 \$1000 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 US 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.