

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

_____	)	
ELOUISE PEPION COBELL, <u>et al.</u> ,	)	
	)	No. 1:96CV01285
Plaintiffs,	)	(Judge Hogan)
v.	)	
	)	
KEN SALAZAR, Secretary of	)	
the Interior, <u>et al.</u> ,	)	
	)	
Defendants.	)	
_____	)	

**INTERIOR DEFENDANTS’ MOTION FOR PERMISSION TO COMMUNICATE  
WITH CLASS MEMBERS REGARDING TRUST LAND CONSOLIDATION**

**BACKGROUND**

On December 23, 2002, the Court prohibited the parties, their agents, and their counsel from communicating with any class member regarding the litigation or the claims involved therein, absent an order from the Court permitting communication. On September 29, 2004, the Court amended the December 23, 2002, Order to include a ban on communications regarding the sale or transfer of land.

On December 7, 2009, the parties executed a Settlement Agreement that was contingent on the enactment of legislation to authorize and fund the settlement. A major part of the Settlement Agreement is the establishment of a Trust Land Consolidation Fund. Section F.1 of the Agreement provides: “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.” On November 17, 2010, the parties modified the Settlement Agreement to incorporate “certain

additional terms” into the Settlement Agreement “if such additional terms are included in the enacted legislation implementing the Settlement.” Attachment 1. One such term sets the amount of the Trust Land Consolidation Fund at \$1.9 billion. Another term related to the Trust Land Consolidation provides: “OPERATION – The Secretary shall consult with Indian tribes to identify fractional interests within the respective jurisdictions of the Indian tribes for purchase in a manner that is consistent with the priorities of the Secretary.” Attachment 1, Exhibit 1 at 3.

On November 30, 2010, the House of Representatives joined the Senate in passing the Claims Resolution Act of 2010 (the Act). Title I of the Act contains the *Cobell* settlement legislation. The President signed the Act into law on December 8, 2010. Claims Resolution Act of 2010, Pub. Law No. 111-291, 124 Stat. 3064 (2010). Title I, §101(e)(2), of the Act contains the provision requiring the Secretary of the Interior to consult with Indian tribes about the identification of fractional interests for the land consolidation program.

Representatives of the Indian tribes and their staff may in many instances also be class members in *Cobell*. Thus, the tribal consultation required under the Settlement and the Act require communication with class members. Such communications are prohibited by the December 23, 2002 and September 29, 2004 class communication orders. Interior Defendants thus request permission from the Court to engage in the necessary consultation.<sup>1</sup>

---

<sup>1</sup> Defendants’ counsel conferred with Plaintiffs’ counsel about this motion on March 28, March 29, and April 4, 2011. Plaintiffs’ counsel indicated that Plaintiffs will oppose this motion.

## DISCUSSION

The December 23, 2002 and September 29, 2004 orders ban communications with class members, absent prior permission from the Court. In particular, the December 23, 2002 Order provides that:

during the pendency of the instant litigation, the parties to the litigation, their agents and officials, and their counsel shall not communicate, through the United States mail or any other mode of communication, with any class member in this litigation regarding this litigation or the claims involved therein, except as specifically permitted by order of this Court.

Order of December 23, 2002 at 18-19. The September 29, 2004 Order provides that:

during the pendency of the instant litigation, the parties to the litigation, their agents, representatives, employees, officials, and counsel shall not communicate, through the United States mail or any other mode of communication, with any member of the plaintiff class in this litigation regarding the sale, exchange, transfer, or conversion of any Indian trust land unless such communication is conspicuously marked with a notice that has been previously submitted to and approved by this Court.

Order of September 29, 2004 (Dkt. No. 2708).<sup>2</sup>

Any communication about the settlement necessarily involves communication “regarding this litigation or the claims involved therein” and thus would run afoul of the December 23, 2002 Order. Also, because the \$1.9 billion trust land consolidation is undisputedly a prominent feature of the settlement, communications regarding this aspect of the settlement might violate the September 29, 2004 Order.

---

<sup>2</sup> On October 1, 2004, the Court clarified a separate provision in the September 29, 2004 Order, by limiting its impact to land sales communications. Order of October 1, 2004 (Dkt. No. 2713). On October 22, 2004, the Court further clarified the September 29, 2004 Order in several respects, including to specify that it does not apply to oral communications. *Cobell v. Norton*, 224 F.R.D. 266, 288 (D.D.C. 2004). On November 17, 2004, the Court clarified the specifics regarding the notice and waiver forms and procedure applicable to all written land sales communications. *Cobell v. Norton*, 225 F.R.D. 4 (D.D.C. 2004).

But both the Settlement Agreement and the Act mandate that Interior consult with Indian tribes about the trust land consolidation. This consultation process is expected to take several months and should begin soon. Interior needs to begin these government-to-government consultations soon to be ready should the agreement be finally approved by the court, to avoid losing valuable time to prepare for the potential disbursement of a significant amount of funds and the implementation of a substantially enlarged Interior program upon approval of the settlement. This consultation process will require communications with *Cobell* class members within the Indian tribes.

The Court recently permitted limited communications related to the settlement. On April 8, 2010, while the settlement legislation was still pending before Congress, the Court granted Interior Defendants' Unopposed Motion for Permission to Communicate with Class Members. Attachment 2, at 4 (April 8, 2010 Hearing Transcript); Attachment 3 (April 12, 2010 Minute Entry). The order permitted a small number of officials from the Department of the Interior to communicate with class members to provide information about, and otherwise discuss, the proposed settlement.

Now that Congress has enacted the Act and the Court has preliminarily approved the Settlement Agreement, broader communication authority is necessary. It is not feasible to have all communications about the trust land consolidation program funneled through the limited number of officials currently authorized to communicate with class members. In particular, Secretary Ken Salazar, Deputy Secretary David Hayes, and Solicitor Hilary Tompkins are currently authorized to communicate with class members, but the demands on their time from their multiple duties make it impossible for them to engage in the many

discussions and communications with those in Indian country needed to plan and implement the trust land consolidation program.

Therefore, pursuant to the terms of the December 23, 2002 Order, Interior Defendants ask the Court for permission for Interior officials generally to communicate with class members about the trust land consolidation program as envisioned in the Settlement Agreement, including communications that involve discussion about the transfer or sale of Indian land under that program.

### **CONCLUSION**

For these reasons, Interior Defendants respectfully ask that the Court grant its motion.

Dated: April 6, 2011

Respectfully submitted,

TONY WEST  
Assistant Attorney General  
MICHAEL F. HERTZ  
Deputy Assistant Attorney General  
J. CHRISTOPHER KOHN  
Director

/s/ Robert E. Kirschman, Jr.  
ROBERT E. KIRSCHMAN, JR.  
Deputy Director  
D.C. Bar No. 406635  
Commercial Litigation Branch  
Civil Division  
P.O. Box 875  
Ben Franklin Station  
Washington, D.C. 20044-0875  
(202) 616-0328

CERTIFICATE OF SERVICE

I certify that on April 6, 2011, *Interior Defendants' Motion for Permission to Communicate with Class Members Regarding Trust Land Consolidation* was served by Electronic Case Filing, and on the following who is not registered for Electronic Case Filing, by facsimile:

Earl Old Person (Pro se)  
Blackfeet Tribe  
P.O. Box 850  
Browning, MT 59417  
Fax (406) 338-7530

/s/ Robert E. Kirschman, Jr.  
Robert E. Kirschman, Jr.

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-TFH

November 17, 2010 Modification  
of December 7, 2009  
Class Action Settlement Agreement

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-TFH

**NOVEMBER 17, 2010 MODIFICATION OF  
CLASS ACTION SETTLEMENT AGREEMENT**

1. The December 7, 2009 Class Action Settlement Agreement (“Agreement” or “Settlement 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. The Parties have previously entered into modifications to the Agreement to modify the first sentence of Paragraph C.2.b to provide the Trust Administration Class additional time to review the terms of the Agreement and to extend the Legislation Enactment Date.

3. In the Agreement, the Parties agreed that the Settlement is contingent on 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 were enacted with material changes, the Agreement would become null and void.

4. The Parties remain willing to implement the Settlement Agreement in accordance with the legislation attached to the Settlement Agreement as Exhibit A ("Exhibit A Legislation"), if such legislation is enacted into law.

5. The Parties have worked to support passage of legislation necessary to give effect to the Agreement. In that effort, the Parties have separately considered certain additional terms for the Agreement and have determined that, if such additional terms are included in enacted legislation implementing the Settlement, acceptance of these additional terms will be in the best interests of the Parties. The legislation containing those additional terms is attached hereto as Exhibit 1. If the legislative language set forth in Exhibit 1 is enacted into law, the Parties desire that the Agreement continue to be valid in conformity with modifications made by the legislative language set forth in Exhibit 1 and that definitions, terms, and other provisions of the Agreement shall be so modified and conform thereto. The Parties do not agree to any other material change to the Settlement.

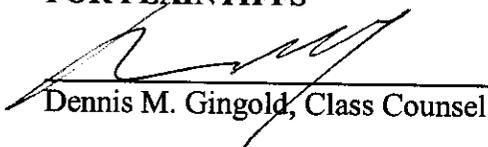
6. Accordingly, the Parties hereby agree that if the legislative language set forth in Exhibit 1 is enacted into law, all definitions, terms and other provisions set forth in Exhibit 1 are agreed to by the Parties and shall be incorporated by reference in the Settlement Agreement as if they are restated therein expressly and in their entirety, and any definitions, terms, and provisions in the Settlement Agreement inconsistent with such definitions, terms, and other provisions in the legislative language in Exhibit 1 shall have no effect. Further, and without limiting the prior

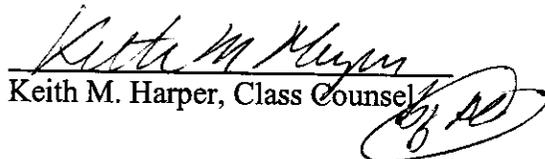
sentence, the Parties specifically agree that if the legislative language set forth in Exhibit 1 is enacted into law, the Trust Administration Adjustment Fund as set forth in Exhibit 1 shall be part of the Settlement and all payments made from it to individual Indians shall be payments made pursuant to the Settlement.

### SIGNATURES

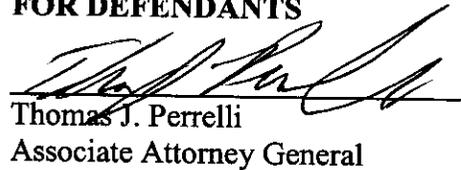
Wherefore, intending to be legally bound in accordance with the terms of this November 17, 2010 Modification of the December 7, 2009 Class Action Settlement Agreement, the Parties hereby execute this Modification:

#### FOR PLAINTIFFS

  
Dennis M. Gingold, Class Counsel

  
Keith M. Harper, Class Counsel

#### FOR DEFENDANTS

  
Thomas J. Perrelli  
Associate Attorney General

**EXHIBIT 1**  
**TO**  
**NOVEMBER 17, 2010 MODIFICATION OF DECEMBER 7, 2009 CLASS ACTION  
SETTLEMENT AGREEMENT**

## TITLE I — INDIVIDUAL INDIAN MONEY ACCOUNT LITIGATION SETTLEMENT

### SEC. 101. INDIVIDUAL INDIAN MONEY ACCOUNT LITIGATION SETTLEMENT.

(a) Definitions.—In this section:

(1) AGREEMENT ON ATTORNEYS' FEES, EXPENSES, AND COSTS.—The term “Agreement on Attorneys’ Fees, Expenses, and Costs” means the agreement dated December 7, 2009, between Class Counsel (as defined in the Settlement) and the Defendants (as defined in the Settlement) relating to attorneys’ fees, expenses, and costs incurred by Class Counsel in connection with the Litigation and implementation of the Settlement, as modified by the parties to the Litigation.

(2) AMENDED COMPLAINT.—The term “Amended Complaint” means the Amended Complaint attached to the Settlement.

(3) FINAL APPROVAL.—The term “final approval” has the meaning given the term in the Settlement.

(4) LAND CONSOLIDATION PROGRAM.—The term “Land Consolidation Program” means a program conducted in accordance with the Settlement, the Indian Land Consolidation Act (25 U.S.C. 2201 et seq.), and subsection (e)(2) under which the Secretary may purchase fractional interests in trust or restricted land.

(5) LITIGATION.—The term “Litigation” means the case entitled *Elouise Cobell et al. v. Ken Salazar et al.*, United States District Court, District of Columbia, Civil Action No. 96–1285 (TFH).

(6) PLAINTIFF.—The term “Plaintiff” means a member of any class certified in the Litigation.

(7) SECRETARY.—The term “Secretary” means the Secretary of the Interior.

(8) SETTLEMENT.—The term “Settlement” means the Class Action Settlement Agreement dated December 7, 2009, in the Litigation, as modified by the parties to the Litigation.

(9) TRUST ADMINISTRATION ADJUSTMENT FUND.—The term “Trust Administration Adjustment Fund” means the \$100,000,000 deposited in the Settlement Account (as defined in the Settlement) pursuant to subsection (j)(1) for use in making the adjustments authorized by that subsection.

- (10) TRUST ADMINISTRATION CLASS.—The term “Trust Administration Class” means the Trust Administration Class as defined in the Settlement.
- (b) Purpose.—The purpose of this section is to authorize the Settlement.
- (c) Authorization.—
- (1) IN GENERAL.—The Settlement is authorized, ratified, and confirmed.
- (2) AMENDMENTS.—Any amendment to the Settlement is authorized, ratified, and confirmed, to the extent that such amendment is executed to make the Settlement consistent with this section.
- (d) Jurisdictional Provisions.—
- (1) IN GENERAL.—Notwithstanding the limitation on the jurisdiction of the district courts of the United States in section 1346(a)(2) of title 28, United States Code, the United States District Court for the District of Columbia shall have jurisdiction of the claims asserted in the Amended Complaint for purposes of the Settlement.
- (2) CERTIFICATION OF TRUST ADMINISTRATION CLASS.—
- (A) IN GENERAL.—Notwithstanding the requirements of the Federal Rules of Civil Procedure, the court in the Litigation may certify the Trust Administration Class.
- (B) TREATMENT.—On certification under subparagraph (A), the Trust Administration Class shall be treated as a class certified under rule 23(b)(3) of the Federal Rules of Civil Procedure for purposes of the Settlement.
- (e) Trust Land Consolidation.—
- (1) TRUST LAND CONSOLIDATION FUND.—
- (A) ESTABLISHMENT.—On final approval of the Settlement, there shall be established in the Treasury of the United States a fund, to be known as the “Trust Land Consolidation Fund”.
- (B) AVAILABILITY OF AMOUNTS.—Amounts in the Trust Land Consolidation Fund shall be made available to the Secretary during the 10-year period beginning on the date of final approval of the Settlement—
- (i) to conduct the Land Consolidation Program; and

(ii) for other costs specified in the Settlement.

(C) DEPOSITS.—

(i) IN GENERAL.—On final approval of the Settlement, the Secretary of the Treasury shall deposit in the Trust Land Consolidation Fund \$1,900,000,000 out of the amounts appropriated to pay final judgments, awards, and compromise settlements under section 1304 of title 31, United States Code.

(ii) CONDITIONS MET.—The conditions described in section 1304 of title 31, United States Code, shall be deemed to be met for purposes of clause (i).

(D) TRANSFERS.—In a manner designed to encourage participation in the Land Consolidation Program, the Secretary may transfer, at the discretion of the Secretary, not more than \$60,000,000 of amounts in the Trust Land Consolidation Fund to the Indian Education Scholarship Holding Fund established under paragraph (3).

(2) OPERATION.—The Secretary shall consult with Indian tribes to identify fractional interests within the respective jurisdictions of the Indian tribes for purchase in a manner that is consistent with the priorities of the Secretary.

(3) INDIAN EDUCATION SCHOLARSHIP HOLDING FUND.—

(A) ESTABLISHMENT.—On final approval of the Settlement, there shall be established in the Treasury of the United States a fund, to be known as the “Indian Education Scholarship Holding Fund”.

(B) AVAILABILITY.—Notwithstanding any other provision of law governing competition, public notification, or Federal procurement or assistance, amounts in the Indian Education Scholarship Holding Fund shall be made available, without further appropriation, to the Secretary to contribute to an Indian Education Scholarship Fund, as described in the Settlement, to provide scholarships for Native Americans.

(4) ACQUISITION OF TRUST OR RESTRICTED LAND.—The Secretary may acquire, at the discretion of the Secretary and in accordance with the Land Consolidation Program, any fractional interest in trust or restricted land.

(5) TREATMENT OF UNLOCATABLE PLAINTIFFS.—A Plaintiff, the whereabouts of whom are unknown and who, after reasonable efforts by the Secretary, cannot be located during the 5-year period beginning on the date of final approval of the Settlement, shall be considered to have accepted an offer made pursuant to the Land Consolidation Program.

(f) Taxation and Other Benefits.—

(1) INTERNAL REVENUE CODE.—For purposes of the Internal Revenue Code of 1986, amounts received by an individual Indian as a lump sum or a periodic payment pursuant to the Settlement shall not be—

(A) included in gross income; or

(B) taken into consideration for purposes of applying any provision of the Internal Revenue Code that takes into account excludable income in computing adjusted gross income or modified adjusted gross income, including section 86 of that Code (relating to Social Security and tier 1 railroad retirement benefits).

(2) OTHER BENEFITS.—Notwithstanding any other provision of law, for purposes of determining initial eligibility, ongoing eligibility, or level of benefits under any Federal or federally assisted program, amounts received by an individual Indian as a lump sum or a periodic payment pursuant to the Settlement shall not be treated for any household member, during the 1-year period beginning on the date of receipt—

(A) as income for the month during which the amounts were received; or

(B) as a resource.

(g) Incentive Awards and Award of Attorneys' Fees, Expenses, and Costs Under Settlement Agreement.—

(1) IN GENERAL.—Subject to paragraph (3), the court in the Litigation shall determine the amount to which the Plaintiffs in the Litigation may be entitled for incentive awards and for attorneys' fees, expenses, and costs—

(A) in accordance with controlling law, including, with respect to attorneys' fees, expenses, and costs, any applicable rule of law requiring counsel to produce contemporaneous time, expense, and cost records in support of a motion for such fees, expenses, and costs; and

(B) giving due consideration to the special status of Class Members (as defined in the Settlement) as beneficiaries of a federally created and administered trust.

(2) NOTICE OF AGREEMENT ON ATTORNEYS' FEES, EXPENSES, AND COSTS.—The description of the request of Class Counsel for an amount of attorneys' fees, expenses, and costs required under paragraph C.1.d. of the Settlement shall include a description of all material provisions of the Agreement on Attorneys' Fees, Expenses, and Costs.

(3) EFFECT ON AGREEMENT.—Nothing in this subsection limits or otherwise affects the enforceability of the Agreement on Attorneys' Fees, Expenses, and Costs.

(h) Selection of Qualifying Bank.—The United States District Court for the District of Columbia, in exercising the discretion of the Court to approve the selection of any proposed Qualifying Bank (as defined in the Settlement) under paragraph A.1. of the Settlement, may consider any factors or circumstances regarding the proposed Qualifying Bank that the Court determines to be appropriate to protect the rights and interests of Class Members (as defined in the Settlement) in the amounts to be deposited in the Settlement Account (as defined in the Settlement).

(i) Appointees to Special Board of Trustees.—The 2 members of the special board of trustees to be selected by the Secretary under paragraph G.3. of the Settlement shall be selected only after consultation with, and after considering the names of possible candidates timely offered by, federally recognized Indian tribes.

(j) Trust Administration Class Adjustments.—

(1) FUNDS.—

(A) IN GENERAL.—In addition to the amounts deposited pursuant to paragraph E.2. of the Settlement, on final approval, the Secretary of the Treasury shall deposit in the Trust Administration Adjustment Fund of the Settlement Account (as defined in the Settlement) \$100,000,000 out of the amounts appropriated to pay final judgments, awards, and compromise settlements under section 1304 of title 31, United States Code, to be allocated and paid by the Claims Administrator (as defined in the Settlement and pursuant to paragraph E.1.e of the Settlement) in accordance with this subsection.

(B) CONDITIONS MET.—The conditions described in section 1304 of title 31, United States Code, shall be deemed to be met for purposes of subparagraph (A).

(2) ADJUSTMENT.—

(A) IN GENERAL.—After the calculation of the pro rata share in Section E.4.b of the Settlement, the Trust Administration Adjustment Fund shall be used to increase the minimum payment to each Trust Administration Class Member whose pro rata share is—

(i) zero; or

(ii) greater than zero, but who would, after adjustment under this subparagraph, otherwise receive a smaller Stage 2 payment than those Trust Administration Class Members described in clause (i).

(B) RESULT.—The amounts in the Trust Administration Adjustment Fund shall be applied in such a manner as to ensure, to the extent practicable (as determined by the court in the Litigation), that each Trust Administration Class Member receiving amounts from the Trust Administration Adjustment Fund receives the same total payment under Stage 2 of the Settlement after making the adjustments required by this subsection.

(3) TIMING OF PAYMENTS.—The payments authorized by this subsection shall be included with the Stage 2 payments under paragraph E.4. of the Settlement.

(k) Effect of Adjustment Provisions.—Notwithstanding any provision of this section, in the event that a court determines that the application of subsection (j) is unfair to the Trust Administration Class—

(1) subsection (j) shall not go into effect; and

(2) on final approval of the Settlement, in addition to the amounts deposited into the Trust Land Consolidation Fund pursuant to subsection (e), the Secretary of the Treasury shall deposit in that Fund \$100,000,000 out of amounts appropriated to pay final judgments, awards, and compromise settlements under section 1304 of title 31, United States Code (the conditions of which section shall be deemed to be met for purposes of this paragraph) to be used by the Secretary in accordance with subsection (e).

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL, : Civil Action 96-1285  
et al. :  
Plaintiffs :  
 : Washington, D.C.  
V. : Thursday, April 8, 2010  
 :  
KEN SALAZAR, Secretary of :  
the Interior, et al. :  
 :  
Defendants : 12:06 p.m.

*TRANSCRIPT OF STATUS CONFERENCE  
BEFORE THE HONORABLE JAMES ROBERTSON  
UNITED STATES DISTRICT JUDGE*

APPEARANCES:

For the Plaintiffs: KEITH HARPER  
KILPATRICK STOCKTON, L.L.P.  
607 14th Street, N.W.  
Suite 900  
Washington, D.C. 20005  
(202) 585-0053  
  
ELLIOTT H. LEVITAS  
KILPATRICK STOCKTON, L.L.P.  
1100 Peachtree Street  
Suite 2800  
Atlanta, Georgia 30309-4530  
(404) 815-6450  
  
DAVID C. SMITH  
KILPATRICK STOCKTON, L.L.P.  
1001 West Fourth Street  
Winston-Salem, North Carolina 27101  
(336) 607-7392  
  
For the Defendants: ROBERT E. KIRSCHMAN, JR.  
MICHAEL QUINN  
J. CHRISTOPHER KOHN  
U.S. Department of Justice  
1100 L Street, N.W.  
Washington, D.C. 20005  
(202) 307-0010  
  
Also Present: DAVID HAYES,  
DEPUTY SECRETARY OF THE INTERIOR

Court Reporter: REBECCA STONESTREET  
Official Court Reporter  
Room 6511, U.S. Courthouse  
333 Constitution Avenue, N.W.  
Washington, D.C. 20001  
(202) 354-3249

Proceedings reported by machine shorthand, transcript produced  
by computer-aided transcription.



1 process that includes preliminary approval, publication to  
2 Indian country, the opportunity to file objections, and then  
3 what is known as a fairness hearing so that objectors can be  
4 heard.

5 None of that can happen, however, if Congress does not  
6 act to assure the parties and this Court that the proposed  
7 settlement is within my jurisdiction and that funds will be  
8 appropriated or approved to pay for it. The deadline  
9 established by the settlement agreement for Congress to act has  
10 been twice extended, from the end of last year to the middle of  
11 February, and again to the middle of this month, April 16th.

12 The need for Congress to act is real. Until or unless  
13 Congress acts, the lawyers who have devoted themselves to this  
14 case for 15 years on both sides are on hold, and, more  
15 importantly, all of Indian country is on hold. And I don't want  
16 to be too melodramatic about this, but justice is on hold.

17 With my approval, plaintiffs' counsel have been in  
18 Indian country to assure the members of the plaintiff class that  
19 settlement is still alive. Last week the government filed a  
20 consented motion that would permit its representatives to do the  
21 same, and that motion is hereby granted.

22 But this cannot continue. Again, from where I sit,  
23 this does not look like a partisan matter. It does not seem to  
24 me that this is one of those issues that will cause gridlock.  
25 It just needs an appropriate sense of priorities. It needs to

1 get done.

2 I have consulted with the parties before coming here  
3 today, and I am hereby approving their agreement to extend the  
4 deadline again, but only for another six weeks, until the start  
5 of Congress' Memorial Day recess. If Congress has not acted by  
6 the middle of May, I will convene a public hearing on this  
7 matter. I will invite - the operative word is "invite." I will  
8 invite the Secretary of the Interior, the Director of Management  
9 and Budget, and again, by invitation, of course, appropriate  
10 members of Congress, to explain to me, to Indian country, and to  
11 the American people why the approval required by this settlement  
12 agreement has not been given.

13 Now, that's all I have to say. Counsel are here from  
14 both sides. Mr. Kirschman?

15 MR. KIRSCHMAN: Your Honor, the Deputy Secretary of the  
16 Department of Interior, David Hayes, will speak for the  
17 government, with your permission.

18 THE COURT: Mr. Hayes certainly has my permission.

19 MR. HAYES: Thank you very much, Your Honor. I want to  
20 simply reiterate the Administration's commitment and interest in  
21 moving forward with this settlement.

22 As you know, the President, the Secretary of the  
23 Interior, the Attorney General have all publicly stated their  
24 support for this settlement. We believe it is a historic  
25 settlement, an opportunity to turn the page on a period of

1 history where the trustee has not performed as the trustee needs  
2 to.

3 We are anxious to proceed to full notice of the class  
4 so that all of the hundreds of thousands of individual Indians  
5 who have interest in this matter will have an opportunity to  
6 learn fully about the settlement, to have an opportunity to come  
7 forward to your court and have their answers -- their questions  
8 answered, have any objections heard, so that we can proceed with  
9 the judicial resolution of this matter.

10 I will also say that obviously, Your Honor, we will  
11 respect your request today, that we understand your interest in  
12 a timetable certain on this matter. We share a common interest  
13 in bringing this to resolution.

14 I will say for the record that the Administration has  
15 been working very closely with the leadership in Congress.  
16 Secretary Salazar has been personally engaged, and we will  
17 continue to do so. And now, with your instructions today, we  
18 will increase, even increase our attention to this matter, if  
19 that is possible.

20 And with regard to your call for a potential appearance  
21 by the Secretary of the Interior in mid-May if we do not have  
22 Congressional approval by then, I'm certain that the Secretary  
23 will be happy to participate in such a hearing, and will work  
24 with you and with the Congress towards resolution of this  
25 important matter.

1 THE COURT: Thank you, Mr. Hayes, Mr. Secretary.  
2 Mr. Harper?

3 MR. HARPER: Good afternoon, Your Honor. First let me  
4 thank the Court for its continuing attention to this case and  
5 this matter. It is, of course, of utmost importance to our  
6 beneficiary class and the entirety of Indian country. We, of  
7 course, agree, Your Honor, with your statement that this is a  
8 win; it is a win for our trust beneficiaries, it is a win for  
9 Indian country, and it turns the page on a problematic past.

10 We are disappointed that we have not yet had the  
11 legislation necessary to implement this important settlement.  
12 We continue to be in a position to work with the Administration  
13 and with Congress to try to get it done as soon as possible. We  
14 appreciate your role in trying to push this forward.

15 You did mention that we have been out in  
16 Indian country. And on that note I just wanted to say that that  
17 has confirmed our understanding with our beneficiary class that  
18 this is something they want, this is something that the vast  
19 majority of individuals that we've met with have supported.  
20 Indeed, we've done some 40 meetings, and in the vast majority of  
21 those, there is not a single dissent. Everybody has been in  
22 support. There are a few folks here and there that have made  
23 statements in opposition, but then, of course, there are  
24 procedures in place to deal with those individuals to the extent  
25 that they are not satisfied with the resolution.

1           So we want to make clear that our trips out to  
2 Indian country have not been in vain, that they have  
3 demonstrated conclusively that there is broad support. We are  
4 again disappointed that the legislation has not been enacted  
5 yet, but we will too join with the Administration in redoubling  
6 our efforts to try to make sure that it gets done as soon as  
7 possible.

8           Thank you, Your Honor.

9           THE COURT: Thank you, Mr. Harper. If there's nothing  
10 further, I think we've said what we need to say and done what we  
11 need to do today.

12           Again, the defense motion for leave to contact the --  
13 make appropriate contact with the plaintiff class is granted,  
14 and if there's nothing further, we're adjourned until about the  
15 middle of May. Hopefully we don't -- hopefully we'll reconvene  
16 for a different purpose at that time.

17  
18  
19  
20  
21  
22  
23  
24  
25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**CERTIFICATE OF OFFICIAL COURT REPORTER**

I, Rebecca Stonestreet, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

\_\_\_\_\_

\_\_\_\_\_

**SIGNATURE OF COURT REPORTER**

**DATE**

**Kirschman, Robert (CIV)**

---

**From:** DCD\_ECFNotice@dcd.uscourts.gov  
**Sent:** Monday, April 12, 2010 6:01 PM  
**To:** DCD\_ECFNotice@dcd.uscourts.gov  
**Subject:** Activity in Case 1:96-cv-01285-JR COBELL, et al v. SALAZAR , et al Status Conference

This is an automatic e-mail message generated by the CM/ECF system. Please **DO NOT RESPOND** to this e-mail because the mail box is unattended.

**\*\*\*NOTE TO PUBLIC ACCESS USERS\*\*\*** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.

U.S. District Court

District of Columbia

**Notice of Electronic Filing**

The following transaction was entered on 4/12/2010 at 6:01 PM and filed on 4/8/2010

**Case Name:** COBELL, et al v. SALAZAR , et al

**Case Number:** 1:96-cv-01285-JR

**Filer:**

**Document Number:** No document attached

**Docket Text:**

**Minute Entry for proceedings held before Judge James Robertson: Status Conference held on 4/8/2010. [3637] Unopposed MOTION for Order Granting Defendants Permission to Communicate with Class Members by ALL FEDERAL DEFENDANTS; heard and granted. Oral motion to extend the deadline by 6 weeks; heard and granted. (Court Reporter Rebecca Stonestreet) (cp)**

**1:96-cv-01285-JR Notice has been electronically mailed to:**

Scott Sutherland Harris (Terminated) scott.harris@usdoj.gov

Richard A. Salzman (Terminated) salzman@hellerhuron.com

Richard L. Cys rickeys@dwt.com, carolkaltenbaugh@dwt.com

Jonathan Brian New jonathan.new@usdoj.gov

Steven F. Benz sbenz@khhte.com

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

_____	)	
ELOUISE PEPION COBELL, <u>et al.</u> ,	)	
	)	No. 1:96CV01285
Plaintiffs,	)	(Judge Hogan)
v.	)	
	)	
KEN SALAZAR, Secretary of	)	
the Interior, <u>et al.</u> ,	)	
	)	
Defendants.	)	
_____	)	

**ORDER**

This matter comes before the Court on the *Interior Defendants' Motion for Permission to Communicate with Class Members Regarding Trust Land Consolidation*. Upon consideration of the motion and the representations therein, the entire record of this case, and having determined that the motion is well-taken and should be granted, it is hereby

**ORDERED**, that the Motion is **GRANTED**.

It is **FURTHER ORDERED**, that the Department of the Interior is permitted to communicate with *Cobell* class members regarding the trust land consolidation program.

**SO ORDERED.**

\_\_\_\_\_  
Thomas F. Hogan  
UNITED STATES DISTRICT JUDGE  
Date: April \_\_\_\_, 2011