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GENERAL MEMORANDUM 09-155

Departments of Interior and Justice Announces Settlement of *Cobell* Lawsuit

On December 8, 2009, Interior Secretary Ken Salazar and Attorney General Eric Holder announced a settlement of the *Cobell* lawsuit against the Federal government for mismanagement of individual Indian trust accounts and trust assets. The lawsuit, filed in 1996, has spanned seven trials constituting 192 trial days. The announcement of the settlement follows the July 2009 District of Columbia Circuit Court of Appeals ruling that Interior was required to provide a full accounting for mismanaged trust funds and reversal of the lower court's award of \$455 million to the plaintiff class.

The settlement contains three main components:

- \$1.4 Billion Fund to be Distributed to Plaintiffs as Compensation. The settlement establishes a \$1.412 billion fund to be distributed to Individual Indian Money (IIM) account holders to compensate them for accounting-related errors and to resolve claims that prior federal officials mismanaged the administration of trust assets.¹ Interior's goal is to resolve all potential claims by individual class members.
- \$2 Billion Fund for the Voluntary Buy-Back of Fractionated Interests. The settlement also establishes a \$2 billion fund for the voluntary buy-back of fractionated land interests and the transfer of such lands to tribes.² Interior stated that it will administer this program through the Indian Land Consolidation Program (ILCP). Furthermore, as an additional incentive for individual Indians to sell their interests, Interior will set aside up to five percent of the value of the fractionated land interests (up to \$60,000,000) into a college and vocational school scholarship fund for Native American students.
- Secretarial Commission on Indian Trust Administration and Reform. Secretarial Order 3292 establishes the 5-member Commission, which will serve an initial 2-year term. The duties of the Commission are set forth in the order and include a review of Interior's management and administration of the trust administration system, audits of this system, and consideration of the termination of the Office of Special Trustee (provided for under the American Indian Trust Fund Management Reform Act of 1994).

¹ There are two groups that will receive benefits under the settlement: the Historical Accounting Class and the Trust Administration Class. Interior estimates that, at a minimum, all members of the Accounting Class will receive \$1,000 and all members of the Trust Administration class will receive \$500.

² As of September 2009, there were 143,663 individual Indian allotments and more than four million fractionated interests.

The settlement agreement will not become final until Congress enacts legislation authorizing implementation of the settlement. A short-form legislative proposal authorizing implementation has been drafted. We understand that this legislative proposal will likely be attached to a larger piece of legislation that is already moving. The settlement agreement provides a legislation enactment deadline of **December 31, 2009**. Because it is a settlement of a litigation matter, the Judgment Fund maintained by the Departments of Justice and Treasury will fund the settlement, and such a use of the Judgment Fund requires congressional approval. The settlement must also be formally endorsed by the District Court for the District of Columbia. Interior Secretary Ken Salazar expressed his hope that legislation can be enacted by the end of the calendar year and that the court will be able to complete the necessary approvals in the next several months.

Interior Solicitor Hilary Tompkins clarified that this settlement will not affect suits brought by individual tribes alleging mismanagement of tribal trust fund accounts. However, Solicitor Tompkins stated that Interior is open to negotiating possible settlements with tribes as well.

We have attached the press release on the settlement, a Question and Answer document on the *Cobell* case and settlement, a copy of the Secretarial Order establishing the Commission on Indian Trust Administration and Reform, and the legislative proposal authorizing implementation of the settlement. Additional information on the settlement process and expected payment amounts to Individual Indian Money account holders and other class members can be found at: www.cobellsettlement.com. There is also a toll-free number (1-800-961-6109) that tribes may call for more information on the settlement.

Please let us know if we may provide additional information or assistance regarding the *Cobell* settlement.

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U.S. Department of the Interior



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News Release

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Secretary Salazar, Attorney General Holder Announce Settlement of Cobell Lawsuit on Indian Trust Management

WASHINGTON, D.C. – Secretary of the Interior Ken Salazar and Attorney General Eric Holder today announced a settlement of the long-running and highly contentious Cobell class-action lawsuit regarding the U.S. government's trust management and accounting of over three hundred thousand individual American Indian trust accounts. Also speaking at the press conference today were Deputy Secretary of the Interior David Hayes and Associate Attorney General Tom Perrelli.

"This is an historic, positive development for Indian country and a major step on the road to reconciliation following years of acrimonious litigation between trust beneficiaries and the United States," Secretary Salazar said. "Resolving this issue has been a top priority of President Obama, and this administration has worked in good faith to reach a settlement that is both honorable and responsible. This historic step will allow Interior to move forward and address the educational, law enforcement, and economic development challenges we face in Indian Country."

"Over the past thirteen years, the parties have tried to settle this case many, many times, each time unsuccessfully," said Attorney General Eric Holder. "But today we turn the page. This settlement is fair to the plaintiffs, responsible for the United States, and provides a path forward for the future."

Under the negotiated agreement, litigation will end regarding the Department of the Interior's performance of an historical accounting for trust accounts maintained by the United States on behalf of more than 300,000 individual Indians. A fund totaling \$1.4 billion will be distributed to class members to compensate them for their historical accounting claims, and to resolve potential claims that prior U.S. officials mismanaged the administration of trust assets.

In addition, in order to address the continued proliferation of thousands of new trust accounts caused by the "fractionation" of land interests through succeeding generations, the settlement establishes a \$2 billion fund for the voluntary buy-back and consolidation of fractionated land interests. The land consolidation program will provide individual Indians with an opportunity to obtain cash payments for divided land interests and free up the land for the benefit of tribal communities.

By reducing the number of individual trust accounts that the U.S. must maintain, the program will greatly reduce on-going administrative expenses and future accounting-related disputes. In order to provide owners with an additional incentive to sell their fractionated interests, the settlement authorizes the Interior Department to set aside up to 5 percent of the value of the interests into a college and vocational school scholarship fund for American Indian students.

The settlement has been negotiated with the involvement of the U.S. District Court for the District of Columbia. It will not become final until it is formally endorsed by the court. Also, Congress must enact legislation to authorize implementation of the settlement. Because it is a settlement of a litigation matter, the Judgment Fund maintained by the U.S. Departments of Justice and Treasury will fund the settlement.

"While we have made significant progress in improving and strengthening the management of Indian trust assets, our work is not over," said Salazar, who also announced he is establishing a national commission to evaluate ongoing trust reform efforts and make recommendations for the future management of individual trust account assets in light of a congressional sunset provision for the Office of Special Trustee, which was established by Congress in 1994 to reform financial management of the trust system.

The class action case, which involves several hundred thousand plaintiffs, was filed by Elouise Cobell in 1996 in the U.S. District Court for the District of Columbia and has included hundreds of motions, dozens of rulings and appeals, and several trials over the past 13 years. The settlement funds will be administered by the trust department of a bank approved by the district court and distributed to individual Indians by a claims administrator in accordance with court orders and the settlement agreement.

Interior currently manages about 56 million acres of Indian trust land, administering more than 100,000 leases and about \$3.5 billion in trust funds. For fiscal year 2009, funds from leases, use permits, land sales and income from financial assets, totaling about \$298 million were collected for more than 384,000 open Individual Indian Money accounts and \$566 million was collected for about 2,700 tribal accounts for more than 250 tribes. Since 1996, the U.S. Government has collected over \$10.4 billion from individual and tribal trust assets and disbursed more than \$9.5 billion to individual account holders and tribal governments.

The land consolidation fund addresses a legacy of the General Allotment Act of 1887 (the "Dawes Act"), which divided tribal lands into parcels between 40 and 160 acres in size, allotted them to individual Indians and sold off all remaining unallotted Indian lands. As the original holders died, their intestate heirs received an equal, undivided interest in the lands as tenants in common. In successive generations, smaller undivided interests descended to the next generation.

Today, it is common to have hundreds—even thousands—of Indian owners for one parcel of land. Such highly fractionated ownership makes it extremely difficult to use the land productively or to provide beneficial use for any individual. Absent serious corrective action, an estimated 4 million acres of land will continue to be held in such small ownership interests that very few individual owners will ever derive any meaningful financial benefit from that ownership.

Additional Information is available at the following sites: www.cobellsettlement.com.

The Department of the Interior website: www.doi.gov. The Office of the Special Trustee website: www.ost.doi.gov

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THE SECRETARY OF THE INTERIOR
WASHINGTON

ORDER NO. 3292

Subject: Individual Indian Trust Management

Sec. 1 Purpose. This Order identifies the actions the Department shall take, upon final approval by the U.S. District Court for the District of Columbia of the Settlement Agreement in *Cobell v. Salazar*, No. 96-CV-01285-JR, and enactment of the legislation set forth in the Settlement Agreement as necessary to authorize or confirm specific aspects of the Settlement. The actions taken under this Order shall address the Department's future responsibility for management and administration of trust assets maintained for individual Indian trust beneficiaries.

Sec. 2 Background. The proper management and administration of the Individual Indian Money ("IIM") accounts and trust assets (collectively the "trust administration system") are among the Department's most significant fiduciary duties. The Department's current management of the trust administration system involves a number of bureaus and offices, including the Bureau of Indian Affairs, the Minerals Management Service, the National Business Center, the Bureau of Land Management, and the Office of the Special Trustee for American Indians. It also involves a variety of procedures and has been the subject of complaints regarding, among other things, its responsiveness and customer service. The complex nature of the trust administration system and the complaints raised by some individual beneficiaries raise concerns. To address these issues, the Department requires a thorough evaluation of the existing management and administration of the trust administration system to support a reasoned and factually based set of options for potential management improvements. It also requires a review of the manner in which the Department audits the management of the trust administration system, including the possible need for audits of management of trust assets.

Sec. 3 Authority. This Order is issued under the authority of Section 2 of the Reorganization Plan No. 3 of 1950 (64 Stat. 1262), as amended, and the American Indian Trust Fund Management Reform Act of 1994, 25 U.S.C. §§ 4001 – 4061.

Sec. 4 Establishing the Secretarial Commission on Indian Trust Administration and Reform.

a. Immediately upon both the Final Approval of the Settlement Agreement in *Cobell v. Salazar*, No. 96-CV-01285-JR, and enactment of legislation necessary to authorize and fund such Settlement, the Department shall take steps to establish the Secretarial Commission on Indian Trust Administration and Reform ("Commission") in accordance with the requirements of the Federal Advisory Committee Act, 5 U.S.C. App. 2. The Commission shall complete its work within 24 months from the date of its establishment.

b. Following the solicitation of nominations and in consultation with trust beneficiaries, the Secretary shall appoint the Commission Chair and four (4) members who, collectively, shall have experience and/or expertise in trust management, financial management, asset management, natural resource management, Federal agency operations and budgets, as well as experience as account holders and in Indian country.

c. In coordination with the Department, the duties of the Commission shall include:

(1) Conducting a comprehensive evaluation of the Department's management and administration of the trust administration system, including a review of the report of the consultant hired in accordance with subparagraph d;

(2) Reviewing the Department's provision of services to trust beneficiaries;

(3) Receiving input from the public, interested parties, and trust beneficiaries, which should involve conducting a number of regional listening sessions;

(4) Considering the nature and scope of necessary audits of the Department trust administration system;

(5) Recommending options to the Secretary to improve the Department's management and administration of the trust administration system based on information obtained from these activities, including whether any legislative or regulatory changes are necessary to permanently implement such improvements; and

(6) Considering the provisions of the American Indian Trust Fund Management Reform Act of 1994 providing for the termination of the Office of the Special Trustee for American Indians, and making recommendations to the Secretary regarding any such termination.

d. To support the operation of the Commission after its establishment and to provide the Department with additional information regarding its management of the trust administration system, the Department shall use available funding to hire a management consultant. The consultant shall provide a comprehensive assessment of the Department's operation of the trust administration system, including:

(1) Evaluating the strengths and weaknesses of both the monetary and non-monetary trust asset management activities of each entity involved in the Department's administration of trust asset management programs;

(2) Identifying options for transferring, consolidating, or otherwise managing the trust fund and assets in an optimal manner to enhance accountability, responsiveness, efficiency and customer service;

(3) Reviewing the Department's prior reform efforts for effectiveness and to determine whether additional reforms are necessary; and

(4) Considering the adequacy of the Department's current trust administration system audit functions and recommending options for improvement and possible expansion of such audits.

Sec. 5 Audit Requirements. Upon implementation of any management reforms resulting from this Order, and after considering the recommendations of the Commission, the Department shall conduct an audit of the effectiveness of such reforms. The Department shall consider the recommendations of the Commission regarding the need for and scope of any subsequent audits.

Sec. 6 Implementation. The Deputy Secretary is responsible for ensuring implementation of this Order, including any necessary delegation of authority and transfer of resources. The Assistant Secretary – Indian Affairs, the Assistant Secretary – Land and Minerals Management, the Assistant Secretary – Policy, Management and Budget, and the Special Trustee shall provide necessary support, including implementing specific reforms within their subordinate bureaus and offices.

Sec. 7 Effective Date. This Order is effective immediately and shall remain in effect until it is amended, superseded, or revoked, whichever comes first. The termination of this Order shall not nullify implementation of the requirements, responsibilities, and organizational changes set forth herein.



Secretary of the Interior

Date: December 8, 2009

THE INDIVIDUAL INDIAN MONEY ACCOUNT
LITIGATION SETTLEMENT ACT OF 2009

SECTION 101. SHORT TITLE

This part may be cited as the “Individual Indian Money Account Litigation Settlement Act of 2009.”

SECTION 102. PURPOSE

The purpose of this part is to authorize the Settlement.

SECTION 103. AUTHORIZATION

The Settlement is authorized, ratified, and confirmed.

SECTION 104. DEFINITIONS

In this part:

- (a) The term “Amended Complaint” means the Amended Complaint attached to the Settlement.
- (b) The term “Land Consolidation Program” means a program, conducted in accordance with the Settlement and 25 U.S.C. §§ 2201 *et seq.*, through which the Secretary may purchase fractionated interests in trust or restricted land.
- (c) 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 (JR).
- (d) The term “Plaintiff” means a member of any class certified in the Litigation.
- (e) The term “Secretary” means the Secretary of the Interior.
- (f) The term “Settlement” means the Class Action Settlement Agreement dated December 7, 2009, in the Litigation.
- (g) The term “Trust Administration Class” means the class of 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 September 30, 2009 and who have or had Individual Indian Money (IIM) accounts in the “Electronic Ledger Era,” as that term is defined in the Settlement, as well as individual Indian beneficiaries who, as of September 30, 2009, had a recorded or other demonstrable beneficial 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 trust land, except that the Trust Administration Class does not include beneficiaries deceased as of September 30, 2009 and does include the estate of any deceased beneficiary whose IIM Accounts or other trust assets had been open in probate as of September 30, 2009.

SECTION 105. JURISDICTIONAL PROVISIONS

(a) Notwithstanding the limitation on the jurisdiction of district courts contained in 28 U.S.C. § 1346(a)(2), the United States District Court for the District of Columbia shall have jurisdiction over the claims asserted in the Amended Complaint for purposes of the Settlement.

(b) Notwithstanding the requirements of the Federal Rules of Civil Procedure, the court overseeing the Litigation may certify the Trust Administration Class, which shall then be treated as a class under Federal Rule of Civil Procedure 23(b)(3) for purposes of the Settlement.

SECTION 106. ACCOUNTING/TRUST ADMINISTRATION FUND

Funds in the amount of \$1,412,000,000 shall be disbursed to the Accounting/Trust Administration Fund, as provided in the Settlement, from the moneys appropriated by Congress under 31 U.S.C. § 1304, the conditions of which are deemed to have been met.

SECTION 107. TRUST LAND CONSOLIDATION

(a) (i) Upon the Settlement's final approval, as defined in the Settlement, there shall be established in the Treasury of the United States an account to be known as the "Trust Land Consolidation Fund."

(ii) Amounts held in the Trust Land Consolidation Fund shall be available for the Secretary to expend for no more than ten years from the date of the Settlement's final approval, as defined in the Settlement, for purposes of conducting the Land Consolidation Program and for the other costs specified in the Settlement.

(iii) Upon the Settlement's final approval, as defined in the Settlement, the United States shall transfer into the Trust Land Consolidation Fund the total sum of \$2,000,000,000, from the moneys appropriated by Congress under 31 U.S.C. § 1304, the conditions of which are deemed to have been met.

(b) (i) 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 lands.

(ii) In a manner designed to encourage participation in the Land Consolidation Program and at the Secretary's discretion, the Secretary may transfer not more than \$60,000,000 from the Trust Land Consolidation Fund to the Indian Education Scholarship Fund.

(c) (i) Upon the Settlement's final approval, as defined in the Settlement, there shall be established in the Treasury of the United States an account to be known as the "Indian Education Scholarship Holding Fund."

(ii) Notwithstanding other law governing competition, public notification, or federal procurement or assistance, amounts held in the Indian Education Scholarship Holding Fund shall be available without further appropriation to the Secretary to contribute to an Indian Education Scholarship Fund, as set forth in the Settlement, to provide scholarships for Native Americans.

(d) A Plaintiff whose whereabouts are unknown and who, after reasonable efforts by the Secretary, cannot be located within 5 years of the Settlement's final approval, as defined in the Settlement, shall be deemed to accept an offer made pursuant to this section.

SECTION 108. TAXATION AND OTHER BENEFITS

(a) For purposes of the Internal Revenue Code of 1986, amounts (whether as lump sums or as periodic payments) received by an individual Indian pursuant to the Settlement (a) shall not be included in gross income, and (b) shall not be taken into account for purposes of applying any provision of such Code which takes into account excludable income in computing adjusted gross income or modified adjusted gross income, including section 86 of such Code (relating to the taxation of Social Security benefits).

(b) Notwithstanding any other provision of law, amounts (whether as lump sums or as periodic payments) received by an individual Indian pursuant to the Settlement shall not be treated for any household member as income in the month received or as a resource for a period of one year from the date of receipt for purposes of determining initial eligibility, ongoing eligibility, or level of benefits in any Federal or Federally-assisted program.



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COBELL V. SALAZAR Q & As

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COBELL SETTLEMENT OVERVIEW

Why has the federal government decided to settle with the Cobell plaintiffs at this time?

Resolving this historic trust accounting lawsuit has been a top priority of President Obama. This administration has worked in good faith with the plaintiffs to reach an honorable and responsible settlement. This litigation has included hundreds of motions, dozens of rulings and appeals, and several trials. It has been a contentious and acrimonious case that has negatively impacted the government's relations with Indian Country for more than a decade.

How did the parties arrive at the \$1.4 billion settlement figure?

The U.S. Government will pay \$1.4 billion to the plaintiffs to settle claims related to the Department's performance of an historical accounting, alleged accounting errors and other allegations of funds mismanagement claims, and claims regarding the alleged mismanagement of trust assets. By addressing mismanagement as well as accounting-related claims, the settlement fund will resolve all potential claims by individual class members and avoid all further "look-backs" regarding prior fund accounting and management.

What is the land consolidation program? How did the parties arrive at the \$2 billion land consolidation figure?

The land consolidation fund addresses an historic legacy of the General Allotment Act of 1887 (the "Dawes Act"), which divided tribal lands into parcels between 40 and 160 acres in size, allotted them to individual Indians and sold off all remaining unallotted Indian lands. As original allottees died, their intestate heirs received an equal, undivided interest in the allottees' lands. Today, it is common to have hundreds of Indian owners for one parcel.

As of September 30, 2009, there were 143,663 individual Indian allotments and more than four million fractionated interests. These four million interests could expand to 11 million interests by the year 2030 unless an aggressive approach to fractionation is taken. The \$2 billion land consolidation program will provide for the voluntary buy-back of fractionated land interests. By reducing the number of individual trust accounts that the U.S. must maintain, the program will greatly reduce on-going administrative expenses and future accounting-related disputes. In order to provide owners with an additional incentive to sell their fractionated interests, the settlement authorizes the Interior Department to set aside up to 5 percent of the value of the interests into a college and vocational school scholarship fund for American Indian students.

Who will administer this land consolidation program? How will the value of a fractionated interest in a property be determined?

The Interior Department will administer the land consolidation program using existing programs already dedicated to land consolidation. Accepted valuation methods will be used to determine the value of a fractionated interest. Each person holding a fractionated interest will be eligible to sell their land on a voluntary basis.

How will the scholarship fund be handled?

As noted above, the scholarship fund is being established to provide an additional incentive for fractionated

interest holders to sell their interests so that land consolidation can occur and a large number of trust accounts that currently must be maintained for fractionated interests can be closed. The scholarship fund will be administered by a non-profit entity selected by the parties that will be overseen by a special board of trustees with representatives selected by the Department of the Interior and plaintiffs. The entity must demonstrate a track record and current ability to create and expand educational and vocational educational opportunities for Native Americans, must 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 scholarship fund. The entity will be required to provide reports on its activities and open access to its records regarding its administration of the fund to the special board of trustees.

Why the Indian scholarship fund?

Fractionated interests can be modest in value. We anticipate that including the additional incentive provided by a set-aside to the scholarship fund will help encourage individual Indians 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.

How does this settlement affect Indian trust reform?

Reform of the Indian trust management and accounting system began before this litigation was initiated in 1996, is ongoing today, and will continue in the future. As part of the effort to evaluate the current trust management and to improve the long-term management of trust assets, the Secretary will establish a 5-member Secretarial Commission on Indian Trust Administration and Reform. The Commission, created for an initial 2-year term, will make recommendations including addressing issues regarding a performance audit of trust systems and controls.

Has Congress been involved in the settlement negotiations?

Congress has played a leadership role and been actively involved in Indian trust reform over recent decades. We anticipate that Congressional leaders will welcome resolution of this long-standing litigation on these terms, which are fair to plaintiffs and Indian country, and which advance the U.S. Government's interest in reducing the number of small trusts that it must administer and facilitating a land consolidation program.

SETTLEMENT MECHANICS**When will the settlement be final?**

The settlement has been negotiated with the involvement of the U.S. District Court for the District of Columbia. It will not become final until it is formally endorsed by the court. Also, Congress must enact a short piece of legislation to authorize implementation of the settlement.

What happens if the settlement is approved by Congress and the Court?

If the legislation is passed by Congress and the settlement is approved by the U.S. District Court for the District of Columbia, the settlement will become effective and distribution of payments to the class will begin.

What is the notice process? Can a class member opt out of the settlement?

Several hundred thousand class members will receive an explanation of, among other things, a description of the settlement, procedures for distributing the settlement fund, the amount of attorneys' fees, the manner in which a person can opt out of the settlement, and contact information for inquiries. They will have time to review and understand the settlement, and will have 60 days to decide whether to opt out of the settlement. The District Court Judge will then determine if the notice and opt out process was fair. After that, the judge reviews the entire process. Upon his approval, the settlement becomes effective.

Who pays for the settlement?

Because it is a settlement of a litigation matter, the Judgment Fund, maintained by the Dept. of the Treasury to provide for judgments and settlements among other things, will fund the settlement.

How will attorneys' fees be handled? How much are the attorneys' fees?

The presiding judge will review and rule upon requests for the award of attorneys fees by plaintiffs' counsel. Any amount will come out of the settlement award of \$1.4 billion.

When will the money be distributed?

The settlement money will be distributed once the final settlement is approved. This will occur only after Congress authorizes implementation of the agreement, the class has been notified, and the court has given final approval to the settlement.

Will the money be distributed to the class members only?

The settlement money will only be distributed to members of the two classes – the Accounting Class and the Trust Administration Class. See below ("For Indians and Account Holders") for a description of the classes. The land consolidation fund will be used to purchase interests from any person holding a fractionated interest and not just class members. The Department will focus on the most highly fractionated tracts.

How is the money going to be distributed to Individual Indian Money (IIM) account holders?

The settlement funds will be deposited with the trust department of a private bank selected by the plaintiffs based on criteria set forth in the Agreement. The Department of the Interior will not be responsible for distributing these funds to class members. The lawyers for the class, along with a hired Claims Administrator, will have that responsibility. The land consolidation fund is separate from the settlement funds and will be administered by the Department of Interior under the existing the land consolidation program.

How much will class members receive?

The settlement agreement sets forth a formula for how much each individual will receive. It is not possible to estimate those payments at this time, as it would depend, among other variables, on the various trust assets held by an individual. At a minimum, all members of the Accounting Class will receive \$1,000 and all members of the Trust Administration class will receive \$500.

What happens to pending lawsuits that some individual tribes have brought, alleging claims that are similar to the claims that were brought by the Cobell plaintiffs?

The suits brought by individual tribes will not be affected by this settlement. They will continue to proceed through the courts.

FRACTIONATION**How small are the interests?**

As of September 30, 2009, there were 143,663 individual Indian allotments and over 4 million fractionated interests. Of those, over 37,000 tracts of land account for more than 2 million fractionated interests. There are now single pieces of property with ownership interests of less than 0.0000001, or 1/10 millionth of the whole interest, valued at less than a penny. As an example of continuing fractionation, consider a real tract identified in 1987 in *Hodel v. Irving*:

Tract 1305 is 40 acres and produces \$1,080 in income annually. It is valued at \$8,000. It has 439 owners, one-third of whom receive less than \$.05 in annual rent and two-thirds of whom receive less than \$1. The largest interest holder receives \$82.85 annually. The common denominator used to compute fractional interests in the property is 3,394,923,840,000. The smallest heir receives \$.01 every 177 years. If the tract were sold (assuming the 439 owners could agree) for its estimated \$8,000 value, he would be entitled to \$.000418. The administrative costs of handling this tract are estimated by the BIA at \$17,560 annually. Today, this tract produces \$2,000 in income annually and is valued at \$22,000. It now has 505 owners but the common denominator used to compute fractional interests has grown to 220,670,049,600,000. If the tract were sold (assuming the 505 owners could agree) for its estimated \$22,000 value, the smallest heir would now be entitled to \$.00001824. The administrative costs of handling this tract in 2003 are estimated by the BIA at \$42,800.

What is the effect that fractionation has had on the management of the Indian lands?

Generally, over 50% of owners must agree on the use of the land, such as leasing for resource development, grazing, timber harvesting, and other rights-of-way and lease activity. When land is highly fractionated and ownership interests are modest, it is difficult to obtain owner participation in leasing or use of the land. As a result, highly fractionated tracts of Indian land often cannot be used for the benefit of either the many individual owners or for tribal communities. The land consolidation program will help unlock the unrealized benefits of these lands for the benefit of tribal communities.

What are the economic consequences of fractionation?

The economic consequences of fractionation are severe. Appraisal studies suggest that when the number of owners per tract of land grows to between ten and twenty, the fair market value associated with each interest declines -- often precipitously. Fractionated interests, however, still hold cultural and historical significance for many individual allottees.

Where are these lands primarily located? Can they be found within the boundaries of an existing reservation?

The majority of the highly fractionated parcels are located within the Great Plains and Rocky Mountain Regions and are found within existing reservation boundaries.

How long has the problem of fractionation existed?

Fractionation is not a new issue. In the 1920s the Brookings Institute conducted the first major investigation of the impacts of fractionation. This report, which became known as the Meriam Report, was issued in 1928 and formed the basis for land reform provisions that were included in what would become the Indian Reorganization Act of 1934.

What has been done to try to correct fractionation?

The American Indian Probate Reform Act of 1994 created a new Federal probate law that changed the way intestate trust estates are distributed to heirs after a beneficiary's death and provides for land consolidation options during probate. This increases the importance and benefits of estate planning so the beneficiary can

determine who inherits his/her assets. The Indian Land Consolidation Act, as amended in 2004, offers opportunities for fractionated interest holders to sell their interests and consolidate ownership with the Tribal governments. At Interior, efforts have been coordinated primarily through the BIA Indian Land Consolidation Office, which has sought to help Tribes by operating several acquisition projects which purchase interests in fractionated tracts and transfers title to the Tribes. A total of 20 reservations located in seven BIA Regions have participated in ILCP.

INDIAN TRUST MANAGEMENT

How big is the Indian trust?

The Department of the Interior is responsible for managing over 100,000 leases on 56 million acres of land. For fiscal year 2009, funds from leases, use permits, land sales and income from financial assets, totaling approximately \$298 million (excluding \$57 million of transfers from the tribal trust funds), were collected for more than 384,000 open IIM accounts. About \$566 million was collected in fiscal year 2009 for about 2,700 tribal accounts for over 250 tribes. Most of the total revenue was produced by a very small percentage of accounts. \$3.5 billion in trust funds is also managed.

Since 1996, the Office of the Special Trustee for American Indians has receipted over \$10.4 billion from the individual and tribal trust assets and disbursed more than \$9.5 billion to individual account holders and tribal governments.

How does this compare to a commercial trust?

No single fiduciary institution has ever managed as many trust accounts as the Department of the Interior has managed over the last century. Unlike most commercial trusts, there was no trust document that created the Indian trust and articulated the fiduciary duties incumbent on the federal government in managing that trust. Unlike the commercial trust environment, where accounts and underlying trust assets must remain economically viable and productive or face liquidation under the common law of trusts, a large number of small balance accounts exist within the Indian trust. Similarly, the United States has not adopted many of the tools that States and local government entities have for ensuring that unclaimed or abandoned property is returned to productive use within the local community.

How many small balance accounts exist?

As of the end of fiscal year 2009, nearly 131,600 IIM accounts have balances of less than \$15 with no activity for 18 months. Over 73,000 of open IIM accounts receive less than \$10 per year. Interior maintains thousands of accounts that contain less than one dollar, and has a responsibility to provide an accounting to all account holders. In many cases the value of an Indian trust account is less than the cost of its administration.

Are account holders charged for trust services?

The Indian fiduciary trust does not charge for services to manage the natural resources of the trust or investment of trust funds. The Federal Government bears the entire cost of administration. Virtually 100 percent of the income is returned to tribes and individuals.

Where are the assets invested?

By law, the Indian trust is limited to investments in government or government-backed securities. This decreases risk but also limits the potential for growth.

FOR INDIANS AND ACCOUNT HOLDERS

Where can I learn more about the settlement?

Information is available at www.cobellsettlement.com.

Who can I contact to update my address?

A toll-free hotline, set up for the settlement, will take your contact information at 1-800-961-6109.

Will I be included in the settlement?

You must be a member of the class in the Cobell litigation. You are eligible to participate if you had an IIM account open at any time between October 25, 1994 and September 30, 2009 and your account had at least one transaction credited to it ("Accounting Class"). You are not eligible if you had filed your own accounting case prior to June 10, 1996.

There also is a new, second class created under the settlement for individuals who had an IIM account during the "electronic ledger era" (1985 to present) and individuals who as of September 30, 2009 had an ownership interest in land held in trust or restricted status even if you did not have an IIM account "Trust Administration Class." A person is not eligible if you had filed a separate case before this settlement for mismanagement claims against the Department of the Interior.

What legal document/documents will I have to sign in order to receive the settlement?

For land conveyance, you will need to sign an application and deed(s).

Is the settlement pay out going to be distributed confidentially?

In the settlement, the federal government and the plaintiffs agree to take all appropriate steps to maintain the confidentiality of each class member's information. The parties will need to share information with contractors hired to implement the settlement and make payments to class members. They will also be bound by confidentiality requirements.

Does this affect my status as a land holder?

If you choose to sell your interests, you will be paid fair market value for the land. In addition, a contribution will be made to a scholarship fund benefiting Indian students for each interest that you sell; however, only people who sell their interest early on will have a portion go to the scholarship fund. There is a cap of \$60 million that can go to the scholarship fund.

Do I have to give up my land if it is a fractionated share? At what level of fractionation?

It is up to you if you want to sell your fractionated share. We will focus the land consolidation program first on the most highly fractionated areas but there is no limit on the fractionated interests that the Interior Department will offer to buy and transfer to tribal communities.

How can I sell my land?

The process is being handled by the existing Indian Land Consolidation Program. Should you possess fractionated interests, an inventory with the value of your interests will be sent to you. You can select which interests you wish to sell. Once your selections are received, a deed will be sent and payment will be made through your IIM account.

Will I have to pay taxes on the compensation of the settlement that I receive?

If Congress passes the proposed settlement legislation, then you will not have to pay taxes on the settlement funds.

Is there a possibility of my money being garnished from other debts that I owe?

The plaintiffs' class counsel will be responsible for distributing the funds to you. You are obligated to comply with any court orders or requirements to pay outstanding debts. These funds would most likely be subject to any garnishment proceedings or other restrictions that are in effect against you so you should look into that. We cannot offer you legal advice on this matter.

If I am a BIA employee, are there any exemptions or penalties for receiving the settlement? There are no exemptions or penalties for receiving the settlement.

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