IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA BEFORE THE SPECIAL MASTER

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)))	Civil Action No. 1:96CV01285 (TFH)
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PLAINTIFFS' UNOPPOSED MOTION TO CLARIFY THE GUIDELINES FOR ESTATE DISTRIBUTIONS

Plaintiffs, in accordance with the *Order Granting Unopposed Motion to Modify*Distribution of Settlement Proceeds to Estates and Heirs of Deceased Class Members dated

June 19, 2013 [Dkt. No. 3958] ("Estate Distribution Order"), hereby move the Special

Master, without opposition from Defendants, to clarify the guidelines for estate distributions.

In support thereof they respectfully show as follows:

1. Disclaimer of Trust Property.

- a. The Claims Administrator, the Garden City Group, LLC ("GCG"), has received probate orders from the Bureau of Indian Affair's Office of Hearings and Appeals ("OHA") where an heir has renounced all or part of his or her interest in trust property and has requested guidance on how to handle these distributions. The Plaintiffs believe that where the heir has retained an interest in trust personalty or a life estate, a distribution to that heir is consistent with the terms of the Settlement Agreement.
 - b. Accordingly, Plaintiffs hereby move as follows:

- 1. That where an heir has disclaimed an interest in trust property in its entirety, both real and personal, the heir receive no settlement distribution and the distribution be made pursuant to the probate order exclusive of the heir.
- 2. That where an heir has disclaimed an interest only in trust land but has not renounced an interest in a decedent's Individual Indian Money ("IIM") account, that the heir receive his or her percentage of the estate settlement distribution pursuant to the applicable law.
- 3. That where the heir has disclaimed an interest in part but reserved a life estate interest in the decedent's trust property, that the heir receive his or her percentage of the estate settlement distribution pursuant to the applicable law.

2. State Intestacy Requirement of Fixed Amount Distribution

- a. Under certain state intestacy laws, a surviving spouse is eligible to receive a fixed portion of a decedent's estate prior to the distribution of the remaining estate to all eligible heirs. *See*, *e.g.*, S.D. Codified Laws Ann. § 29A-2-102(2); Minn. Stat. Ann. § 524.2-102; AK Stat. § 13.11.011; Wis. Stat. Ann. § 852.01(1)(a)(2)(b); N.J.S. 3 B: 5-3(2)(c)(2); Idaho Code § 15-2-102(3). GCG has requested clarification with respect to how to handle such distributions.
- b. Plaintiffs respectfully request that, in making distributions to heirs based on probate decisions from such jurisdictions, GCG be required to distribute the settlement funds to all heirs, based on the assumption that the surviving spouse already received his or her fixed portion, unless any heir demonstrates that, at the time of probate, an estate was worth less than the amount fixed under state law. If an heir does so demonstrate, then GCG should ensure that the surviving spouse receives an amount which, when

combined with any previously obtained inheritance, equals the statutorily required fixed amount. GCG should then distribute any remaining funds (beyond the fixed amount) to all heirs based upon the applicable state intestacy law.

3. Mathematical Errors or Obvious Misapplication of the Applicable Intestacy Law in Probate Orders

- a. GCG has identified circumstances in which a probate order contains a mathematical error affecting distribution, or a federal probate order misapplies the American Indian Probate Reform Act ("AIPRA"), Pub. L. No. 108-374, 118 Stat. 1773 (codified as amended in scattered sections of 25 U.S.C.). Both GCG and Plaintiffs consider it improper to compound a previous distribution error by subjecting Cobell settlement payments to the same mistake. Moreover, in some cases, a distribution based on the existing probate order is impossible.
- b. Accordingly, Plaintiffs respectfully move the Court to allow GCG to apply the correct mathematical calculation or correctly apply AIPRA when distributing settlement funds to the heirs of Cobell Class Members.

4. Pre-AIPRA Multiple State Distributions

- a. GCG has received federal probate orders pre-dating AIPRA (June 20, 2006), in which property was distributed in accordance with the intestacy laws of multiple jurisdictions. Accordingly, GCG requests guidance with respect to which intestacy law to apply when distributing settlement funds.
- b. Plaintiffs believe that the most relevant intestacy law for purposes of distribution is the law of the jurisdiction in which the Class Member resided at the time of death. Accordingly, it is respectfully requested that, under such circumstances, GCG be

ordered to distribute settlement funds in accordance with the law of the jurisdiction in which the Class Member resided at the time of death.

5. Nevada and Alabama Sequestration of Funds Without Administration

- a. The States of Nevada and Alabama permit a court to sequester funds from a decedent's estate for the benefit of the decedent's minor children or dependents even when an estate has not been probated. *See, e.g.*, Nev. Rev. Stat. § 146.070; AL Code § 43-2-692.
- b. Accordingly, Plaintiffs respectfully request that in the case of estates to which such procedures were applied, GCG be ordered to distribute the settlement funds to the court or other entity holding the estate's sequestered funds for further distribution to heirs.

6. Probate Order Applying Pour Over Will Provision

- a. GCG has received probate orders approving a will in which the non-trust residue of the estate is to be distributed to a testamentary trust and has requested clarification on how to handle such probate orders.
- b. Plaintiffs respectfully request that, under such circumstances, for estates as to which there is an applicable probate order approving a will in which the non-trust residue of the estate is to be distributed to a testamentary trust, GCG be ordered to distribute the Cobell funds according to the terms of the approved will to the trustee of the beneficiary trust.

7. Court Order Approving Will Where Will Is Not Provided

a. GCG has received federal, state and tribal orders approving wills for probate but GCG has not received or located the actual wills approved in order to comply

with ¶ 1(c) of the District Court's Order Granting Plaintiff's Unopposed Motion To Modify Distribution Of Settlement Proceeds To Estates And Heirs Of Deceased Class Members [Dkt. No. 3958].

b. Plaintiffs respectfully request that, under such circumstances, GCG be permitted to distribute settlement funds based on the terms set forth in the court order approving the will.

8. **Pre-AIPRA Osage Headrights**

- a. GCG has received probate orders concerning the estates of Osage Class Members that distribute only Osage headrights, and no personalty, funds held in IIM accounts, or trust real property. Osage headrights are rights to participate in quarterly distributions of income from the Osage mineral estate. *Fletcher v. United States*, No. 02-cv 427-GKF-FHM, 2011 WL 1326045, *1 (N.D. Okla. Mar. 31, 2011). GCG has requested guidance with respect to the manner in which settlement proceeds should be distributed.
- b. Plaintiffs respectfully request that, under such circumstances, where the Class Member dies testate, that GCG be permitted to distribute funds according to the will relied upon by the federal probate order and, where intestate, according to the intestacy procedure cited by the probate order.

9. Escheatment to Tribes

- a. GCG has received federal probate orders providing for the escheatment of trust property to a tribe. The Cobell settlement was intended to benefit individual Indians.
- b. Accordingly, Plaintiffs respectfully request that, for distribution of funds related to Class Members who passed away after the effective date of AIPRA, GCG be permitted to disregard any provision of any federal probate order requiring escheatment of

trust property to a tribe even if that ultimately makes the estate undistributable. Pursuant to ¶ G.2 of the Settlement Agreement, any balance in the settlement account will ultimately benefit the Cobell Scholarship Fund.

10. The Same Distribution Procedure For All Heirs Of An Estate

- a. GCG has received a request that different authorized distribution procedures be used for different heirs of the same estate. Plaintiffs believe that all heirs of an estate should be treated identically.
- b. Accordingly, Plaintiffs respectfully request that GCG be required to utilize only one court approved distribution procedure for all heirs of a single estate absent approval of the Special Master.

11. Residue Under Will is to be distributed to a charitable organization or other corporate entity

- a. GCG has received probate orders approving a will in which the residue of the estate is to be distributed to a charitable organization or other corporate entity and has requested clarification on how to handle such probate orders.
- b. Plaintiffs respectfully request that, under such circumstances, for estates as to which there is an applicable probate order approving a will in which the residue of the estate is to be distributed to a charitable organization or other corporate entity, GCG be permitted to distribute the Cobell funds according to the terms of the approved will.

12. Deviation From Authorized Procedures To Protect Distributions

a. GCG has encountered circumstances in which it has developed concerns over the adequacy of a settlement distribution utilizing authorized procedures. By way of example, GCG has received requests for proceeds from one who is not a direct heir of

a deceased Class Member but who may be authorized to receive the funds utilizing small estate procedures, while at the same time receiving a federal probate order identifying the actual heirs of the same deceased Class Member. Under such circumstances GCG wants to insure that the known heirs receive the settlement funds, but under existing orders the first procedure has priority over the latter.

b. Accordingly Plaintiffs respectfully request that where GCG, in its discretion, develops concerns over the adequacy of a distribution to heirs of a deceased Class Member under existing authorized procedures, that it be permitted to refer the matter to the Special Master who may then permit GCG to distribute the settlement funds utilizing another authorized procedure.

13. Distributions Based On Documents On Hand

- a. GCG has requested clarification that where it has completed its review of estate documentation and is capable of making a distribution to heirs of a deceased Class Member through a court approved distribution procedure with the documents it has on hand, that it is not required to delay the distribution until further documentation becomes available to make an alternate distribution.
- b. Plaintiffs respectfully request that GCG shall be ordered to make distributions based on documents it has on hand at the time of its review pursuant to any court approved distribution procedure and not wait until other documentation becomes available.

Respectfully submitted this 8th day of July, 2015.

/s/ David C. Smith
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing PLAINTIFFS' UNOPPOSED MOTION TO CLARIFY THE GUIDELINES FOR ESTATE DISTRIBUTIONS was served on the following via facsimile, pursuant to agreement, on this 8th day of July, 2015.

Earl Old Person (*Pro se*) Blackfeet Tribe P.O. Box 850 Browning, MT 59417 406.338.7530 (facsimile)

/s/ David C. Smith
David C. Smith

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL, et al.,)	
Plaintiffs,)	
v.)	Civil Action No. 1:96CV01285 (TFH)
)	Before the Special Master
SALLY JEWELL, Secretary of the Interior, et al.,)	
Defendants.)	

Special Master Order #9

Pending before the Special Master is Plaintiffs' Motion to Clarify Guidelines for Estate

Distributions [Dkt. __]. Upon consideration of that motion, the Special Master hereby orders the

Claims Administrator to disburse Settlement Funds based upon the distribution procedures

outlined below.

I. Disclaimer of trust property

Where an heir's complete disclaimer of all property is present in a Department of the Interior Bureau of Indian Affairs Office of Hearings and Appeals ("OHA") probate order, the Claims Administrator is to honor that complete disclaimer of property. Where, however, an heir has renounced only an inheritance of trust land, but has not renounced any interest in a decedent's Individual Indian Money ("IIM") Account or has reserved a life estate in the decedent's trust property, the disclaimer should not alter the distribution of Cobell settlement funds because the heir has reserved the rights to some personalty. In these situations, the Claims Administrator should distribute as though no disclaimer had been issued.

II. State intestacy requirement of fixed amount distribution

Certain state intestacy laws provide that a surviving spouse is eligible to receive a fixed portion of a decedent's estate prior to the distribution of the remaining estate to all eligible heirs. [See, e.g., S.D. Codified Laws Ann. § 29A-2-102(2); Minn. Stat. Ann. §524.2-102; AK Stat. § 13.11.011; Wis. Stat. Ann. § 852.01(1)(a)(2)(b); N.J.S. 3 B: 5-3(2)(c)(2); Idaho Code § 15-2-102(3)]. In making distributions to heirs based on probate decisions from such jurisdictions, the Claims Administrator is to distribute Cobell settlement funds to all heirs, assuming the fixed portion for the surviving spouse has been met, unless any heir demonstrates prior to distribution that, at the time of probate, an estate was worth less than the amount fixed under state law. If an heir does so demonstrate, then the Claims Administrator shall ensure that the surviving spouse receives an amount which, when combined with any previously obtained inheritance, equals the statutorily required fixed amount. The Claims Administrator shall then distribute any remaining funds (beyond the fixed amount) to all heirs based upon the applicable state intestacy law.

III. Mathematical error in distribution of decedent's assets

When a federal, state or tribal probate order contains a mathematical error or a federal order misapplies the American Indian Probate Reform Act ("AIPRA"), Pub. L. No. 108-374, 118 Stat. 1773 (codified as amended in scattered sections of 25 U.S.C.) the Claims Administrator may do the following:

- a. When a federal, state or tribal probate order contains a mathematical error, the Claims Administrator may apply the correct calculation.
- b. When the Claims Administrator is using a federal probate order for purposes of distribution and that order misapplies AIPRA, the Claims Administrator may correctly apply AIPRA based on the heirs listed in the decedent's probate order.

IV. Pre-AIPRA multiple state distributions

For estates pre-dating AIPRA (June 20, 2006), as to which property was distributed according to procedures from multiple jurisdictions, the Claims Administrator is to distribute the Cobell funds under the terms of the intestacy procedure of the state of the decedent's domicile at the time of death.

V. Order to set aside estate without administration or other non-probate order

The states of Nevada and Alabama permit a court to sequester funds from a decedent's estate for the benefit of the decedent's minor children or dependents even when an estate has not been probated. (*See, e.g.*, Nev. Rev. Stat. § 146.070; AL Code § 43-2-692). In the case of estates to which such procedures were applied and documentation of such is provided to the Claims Administrator, the Claims Administrator is to distribute the Cobell settlement funds to the court or other entity holding the estate's sequestered funds for further distribution to heirs.

VI. Probate order applying pour over will provision

For estates as to which there is an applicable probate order approving a will in which the non-trust residue of the estate is to be distributed to a testamentary trust, the Claims

Administrator is to distribute the Cobell settlement funds according to the terms of the approved will to the trustee of the beneficiary trust.

VII. Court order approving will but will itself not provided

For estates as to which there is a court order approving a will but the actual will has not been provided to the Claims Administrator or is otherwise unavailable, the Claims Administrator is to distribute settlement funds based on the terms set forth in the court order approving the will.

VIII. Pre-AIPRA Osage headrights

For estates as to which there is a federal probate order which distributes only Osage headrights, and no personalty, IIM account money, or trust real property, where the decedent died testate, the Claims Administrator is to distribute funds according to the will relied upon by the federal probate order, and where intestate, according to the intestacy procedure cited by the probate order.

IX. Escheatment to Tribes

For distribution of settlement funds of Class Members who passed away after the effective date of AIPRA, the Claims Administrator shall disregard any provision of any federal probate order requiring escheatment of trust property to a tribe.

X. The same distribution procedure for all heirs of an estate

The Claims Administrator shall utilize only one court approved distribution procedure for all heirs of a single estate absent approval of the Special Master.

XI. Residue distributed to a charitable organization or other corporate entity

For estates as to which there is an applicable probate order approving a will in which the residue of the estate is to be distributed to a charitable organization or other entity, the Claims Administrator is to distribute the Cobell settlement funds according to the terms of the approved will.

XII. <u>Deviation from authorized procedures to protect distributions</u>

If the Claims Administrator, in its discretion, develops concerns over the adequacy or sufficiency of a distribution to heirs of a deceased Class Member under existing authorized procedures, it is to refer the matter to the Special Master who may then permit the Claims Administrator to distribute the settlement funds utilizing another authorized procedure.

XIII. <u>Distributions based on documents on hand</u>

The Claims Administrator shall be entitled to make distributions based on documents it has on hand at the time of its review pursuant to any court approved distribution procedure and is not required to wait until further documentation becomes available.

This is the day of July, 2015.	
	Hon. Richard A. Levie (Ret.)
	Special Master