

February 23, 2006

The Honorable J. Dennis Hastert
Speaker of the House
H-232 The Capitol
Washington, D.C. 20515

Dear Mr. Speaker:

I am writing to voice my outrage at the Interior Department's contrived and cruel action in taking money away from Indian programs to pay for the long anticipated interim attorneys fees and expenses awarded by the court in connection with the government's defeat in the first phase of the *Cobell* case, which held that the government had breached its trust duties to the IIM beneficiaries.

Imagine the absurdity and viciousness of making the Indian programs pay for the consequences of the government's own breach of trust! The government officials who perpetrated this transgression did so because they wanted to punish the IIM beneficiaries for winning in court, and to resort to their long-standing evil tactic of trying to pit Indian against Indian to divide and conquer them.

The award of attorneys' fees and expenses by the court pursuant to the Equal Access to Justice Act (EAJA) is a routine and normal consequence when the government loses a case to small businesses or claimants who have little money with which to sue the vast federal government. It happens all the time. By statute, to prevail, a petitioner must show that the government's actions underlying the litigation were not "substantially justified." Because the government's obligations vis-à-vis the Indian trust are unmistakably clear and the government's breach of those duties equally plain, plaintiffs met this standard. Accordingly, the EAJA award was no surprise. And indeed, the Treasury Department, who covered a substantial part of the award, was well prepared to pay their portion. Anybody who tells you these fees were a surprise is blowing smoke in your face.

To be more specific about advance notice of the fees, an initial application for interim fees was filed approximately two and one half years ago on October 9, 2003. Furthermore, the court entered an order on May 27, 2004 letting it be known that interim fees would be considered, and likely awarded. The well-documented petition for these fees was submitted at the court's direction on August 17, 2004. Other than some general objections, the government largely conceded an over \$4 million award. Moreover, the district court announced in open court, directly following addressing the IT Security issues, that it would deal with the EAJA Petition. In October, 2005, the court did address IT Security; consequently, everyone was aware that the EAJA award was imminent.

Nevertheless, Interior officials now feign surprise and stated that the award of fees was unforeseeable. As is readily apparent from the above stated facts, Interior's contention is simply false. What is true, is that Interior officials decided to punish Indian Country. It is a sham justification for Interior's offensive behavior in making Indian programs pay the cost.

When Congress enacted EAJA in 1980, it established a mechanism that for more than a quarter century has allowed poor and impoverished citizens to challenge "unreasonable government action." The law requires the government to pay the legal expenses for such legal challenges when the courts find the government's actions were not "substantially justified."

After fighting the federal government for nearly 10 years over its acknowledged mismanagement of Indian Trust programs, I have learned not to be surprised by the government's efforts to avoid responsibility for its misdeeds. But what the government is attempting to do now is a new low.

The Interior Department is turning that law on its head.

To my amazement, Associate Deputy Interior Secretary James Cason sent a "Dear Tribal Leader" letter on January 26 of this year detailing a plan to cut various Indian programs to pay some of the \$7 million in legal fees and expenses we have been awarded as a result of our nearly 10-year long lawsuit over the government's botched Trust programs.

"It's a matter of robbing Peter to pay Paul to pay them," Cason has told a reporter.

That's just not right. Congress created EAJA to protect people like us from "unreasonable government action" in the words of the House Judiciary Committee. And now Interior is using that law to punish the victims -- the very people the law was supposed to protect.

I hope you agree that the 500,000 Native Americans who have individual Indian Trust accounts have suffered long enough. Ironically, these accounts were established in 1887 by a government that believed Indians were not capable of handling their own financial affairs.

Numerous studies by Congress, the courts and others have confirmed that it was the government that could not properly handle the Indians' trust lands and their money. Our *Cobell v. Norton* lawsuit seeks a simple remedy: an accounting of the money that belongs to us, along with the reform of the trust management system. This is not the government's money. Under trust law, the government owes us a full

accounting of what they have done with the trust funds and assets, a conclusion with which the courts resoundingly agree.

Please insist that the Interior Department treats Native Americans fairly. It must not be allowed, in Mr. Cason's words, to "rob" one group of Indians to help another group of Indians who have already been robbed by the government.

This is not "equal access to justice" – but precise and targeted injustice. It is simply the action of a mean-spirited government.

It is wrong, and it should be stopped by Congress.



Elouise Cobell
Member, Blackfeet Tribe and
Lead Plaintiff, *Cobell v. Norton*
Browning, Montana

cc The Honorable J. Dennis Hastert
Speaker of the House

The Honorable John Boehner
House Majority Leader

The Honorable Nancy Pelosi
House Minority Leader

The Honorable Bill Frist, M.D.
Senate Majority Leader

The Honorable Harry Reid
House Minority Leader

The Honorable Thad Cochran
Chairman, Senate Appropriations Committee

The Honorable Robert C. Byrd
Ranking Member, Senate Appropriations Committee

The Honorable Conrad Burns
Chairman, Senate Subcommittee on Interior Appropriations

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The Honorable Jerry Lewis
Chairman, House Appropriations Committee

The Honorable David R. Obey
Ranking Member, House Appropriations Committee

The Honorable Charles H. Taylor
Chairman, House Subcommittee on Interior, Environment And Related Agencies

The Honorable Norman D. Dicks
Ranking Member
House Subcommittee on Interior, Environment And Related Agencies

The Honorable Richard Pombo
Chairman, House Resources Committee

The Honorable Nick J. Rahall, II
Ranking Member, House Resources Committee

The Honorable John McCain
Chairman, Senate Indian Affairs Committee

The Honorable Byron L. Dorgan
Vice Chairman, Senate Indian Affairs Committee

The Honorable Dale E. Kildee
Co-Chairman, House Native American Caucus

The Honorable J.D. Hayworth
Co-Chairman, House Native American Caucus