

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

**ELOUISE PEPION COBELL, et. al.,** )  
**on her own behalf and on behalf of** )  
**all persons similarly situated,** )  
**Plaintiffs,** )  
**v.** )  
**GALE NORTON, et al.,** )  
**Defendants.** )

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**Civil Action  
Case No. 1:96CV01285  
(RCL)**

**PLAINTIFFS’ MOTION FOR TEMPORARY RESTRAINING ORDER AND FOR  
PRELIMINARY INJUNCTION**

**I. INTRODUCTION**

Plaintiffs hereby move for a temporary restraining order (“TRO”) and request that this Court enter a preliminary injunction (“Injunction”) to restrain Interior Secretary Gale Norton (“Norton”), Assistant Secretary-Indian Affairs David Anderson (“Anderson”), and their managers and counsel, from selling Individual Indian Trust (the “Trust”) land until such time as this Court is satisfied that plaintiffs’ declared rights are protected fully, including without limitation their right to an adequate accounting of all items of the Trust since its inception. Further, plaintiffs request that Norton and Anderson be enjoined from proceeding with any sale or liquidation of Trust assets until this Court has approved all relevant communications with class members so that the Trust beneficiaries are protected against all efforts of Norton and her counsel to further unduly influence members of the class and further disseminate false or misleading statements concerning their rights in this litigation.

By way of background, this matter is brought before this Court because Norton and Anderson – without notice to plaintiffs’ counsel and without seeking authorization from this Court

– have invited the public to make sealed bids on September 1, 2004 for the purchase of Trust lands administered by BIA’s Anadarko Agency office (“Invitation to Bid”).<sup>1</sup> Of course, such sales are not made in the “ordinary course of business” since defendants – notwithstanding this Court’s instructions to the contrary and in breach of trust – consider the sale of Trust land as an event that terminates their fiduciary obligation to individual Indian trust beneficiaries whose lands have been sold.<sup>2</sup> As such, the sale of these Trust lands, if permitted, would constitute yet another impermissible and unlawful attempt by defendants and their counsel to terminate vested property rights and extinguish a class member’s remedies and relief that the Court may fashion in conjunction with Trial 2.0.

Furthermore, the subject Trust lands lack current appraisals and there is no assurance that existing land records reflect actual boundaries and true and correct acreage because cadastral surveys are backlogged. Under these circumstances, the sale of such assets constitutes a clear breach of trust and irreparable harm *per se* to the beneficial owners of such lands. To compound matters, there is no evidence that the beneficial owners have expressly consented to (or requested) a sale of their Trust assets. Nor is there any evidence that each, or any, affected Trust beneficiary had the opportunity to review and understand all relevant information material to the sale, including information that describes accurately and completely untenable Norton’s position that

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<sup>1</sup>See Plaintiffs’ Exhibit 1 (caps in original) (“INVITATION FOR BIDS – SALE OF INDIAN LANDS”) at 1. This invitation is identified as “INVITATION NO. 69,” indicating that 68 auctions or other sales of Trust land have been conducted without notice to this Court or plaintiffs’ counsel by the BIA Anadarko Agency. *Id.* If similar such liquidations of the Trust *corpus* have occurred – or in the event other BIA agency offices have sold Trust land – plaintiffs’ concern about the malfeasance and bad faith of Norton and her senior managers and counsel in their management and administration of the Trust is heightened considerably. Trust lands scheduled to be sold at auction on September 1, 2004 include allotments in Caddo County, Comanche County, Cotton County, Kiowa County, Tillman County, and Grady County. *Id.* at 3-4. Plaintiffs’ counsel have no idea how many beneficial interests are implicated by such action.

<sup>2</sup>Defendants argue untenably to this Court and the United States Court of Appeals that the scope of their trust duties is defined by what they choose to maintain on their grossly unreliable trust management systems; that they have no fiduciary duty to account to Trust beneficiaries, or for Trust assets, that are not recorded and maintained on Interior’s notorious Trust management systems. Of course, trust law does not permit a trustee-delegate to evade her fiduciary duties though such unscrupulous manipulation.

vested property rights would be terminated upon such a sale. Without a showing that full disclosure of all matters material to the sale and this litigation has been made to each affected class member, the irreparable harm caused by alienation of these assets must be stopped until this Court has had the opportunity to ensure that the rights of each affected class member are protected fully.

The Court's ability to protect beneficiaries has been hampered severely by defendants' refusal – in violation of this Court's December 23, 2002 Order – to have communications regarding such extraordinary actions pre-approved by this Court. By happenstance, plaintiffs have become aware of this auction, which on its face is a breach of trust since (according to defendants' bad faith claim) such sales would terminate rights that are protected in this litigation – including the yet-to-be-schedule Trial 2.0. This Court has the authority to restrain defendants from such imprudent and unlawful conduct.

The relief requested herein is essential to preserve the *status quo*. In this circumstance, preservation of the *status quo* means that Trust lands remain in trust and protected from unscrupulous actions of an unfit trustee-delegate. Preservation of the *status quo* requires this Court to exercise its inherent equitable powers to intervene and protect the *Cobell* plaintiffs from further irreparable injury until this Court is satisfied that knowing and informed consents are obtained from each of the beneficial owners of land to be sold, by auction or otherwise. Such preservation of the *status quo* is particularly critical where, as here, there is no evidence that the trustee has fulfilled its fiduciary duty and has ensured that each beneficiary will receive fair market value for the sale of any interest in such allotted lands. Preservation of the *status quo* requires this Court to intervene and ensure that accurate and complete records are created and maintained for the sale of any and all interests in such allotted lands. Preservation of the *status quo* should compel this Court to intervene immediately and supervise any such sale until this unfit trustee-delegate is replaced by a receiver who can and will discharge the government's fiduciary duties and commence the difficult rehabilitation of this deeply troubled Trust.

Plaintiffs do not seek this relief lightly. A class member has a right to sell his or her property. Plaintiffs do not seek in anyway to infringe on this right. However, the trustee-delegates also have an unconditional fiduciary duty to ensure that any such sale is fair and in the best interests of each such trust beneficiary and that each such trust beneficiary – whether or not his or her name is recorded on Interior’s trust management systems – has knowingly and willfully consented to any such sale. And given their deplorable track record and their cynical efforts to flout their trust duties by narrowing unlawfully the scope of the plaintiff class and by attempting to extinguish Trust interests (*e.g., Youpee*),, plaintiffs respectfully submit that this Court in equity must be satisfied that defendants are indeed fulfilling their fiduciary obligations before further harm is inflicted on the *Cobell* class. And, among the interests that must be protected is the declared right to the accounting of all revenues generated from auctioned Trust land notwithstanding any such sale. Until this Court is satisfied that beneficiaries’ interests are protected fully, the sale of Trust lands must be stopped and, accordingly, this TRO should issue.

## **II. THE INVITATION TO BID**

Among the stated terms and conditions set-forth by Norton in the Invitation to Bid is that such bids shall be “consistent with the appraisal.”<sup>3</sup> However, there are no current appraisals on the subject Trust lands.<sup>4</sup> According to Norton’s own admission, “an appraisal or other valuation method is used to ensure that fair and just compensation is received on Indian land transactions.” *See* 18<sup>th</sup> Quarterly Report at 42. The importance of a current and accurate appraisal cannot be overstated. Without a current and accurate appraisal, there can be no assurance that the beneficiaries will receive “fair and just compensation” for the sale of their trust assets.<sup>5</sup> In

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<sup>3</sup>*Id.* at 1.

<sup>4</sup>*See* Plaintiffs’ Exhibit 2 (Rempel Declaration) at ¶ 3.

<sup>5</sup>Likewise, independent of its prudence, the failure to ensure that current cadastral surveys have been conducted and properly certified raises serious questions about the legality of any such sale of Trust lands. As Norton has again admitted:

Cadastral surveys provide assurance that land boundaries for individual Indian and

addition to the trustee-delegates' general malfeasance in the management and administration of the Trust – “malfeasance” that has been found explicitly by the Court of Appeals in *Cobell VI* on February 23, 2001<sup>6</sup> – the unresolved Anson Baker debacle, the refusal of Norton to discharge her fiduciary duties, the inability of Norton to reduce the appraisal backlog,<sup>7</sup> and her failure to provide current appraisals heightens the grave concern that plaintiffs have regarding the integrity of Interior's appraisal process.

Although the Invitation to Bid suggests that Norton at some point will conduct an appraisal of the subject lands, her subordinates have admitted that no appraisals have been completed.<sup>8</sup> Without adequate appraisals prior to the bidding on September 1, 2004, no fiduciary can ensure that fair market value is obtained. This is particularly true where, as here, the bidding process set forth in the Invitation to Bid is susceptible to collusion among oral bidders who wish to drive down their acquisition cost during the oral bid component of the auction. Specifically, the

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tribal trust lands are identified appropriately. By federal law, surveys of Indian lands are to be performed under BLM's direction and control. Official surveys are conducted to identify the location of land boundaries of Indian trust assets, and to determine official acreage. The official surveys are integral to resource management activities, litigation support and the federal system of patent, allotment and survey records maintained by BLM. Ownership information, distribution of trust assets, and management of trust accounts may be related to or based upon information recorded in official surveys.

*See* 18<sup>th</sup> Quarterly Report at 9 (emphasis added). By the agency's own record, cadastral surveys are backlogged by over \$64 million – tellingly, this \$64 million does not represent a value to bring the surveys current. *Id.* At best, it would prevent the backlog from increasing over the next three years, assuming absurdly that no further survey requests are made in that three year period. *Id.*

<sup>6</sup>*See, e.g., Cobell v. Norton*, 240 F.3d 1081, 1109 (D.C. Cir.2001) (describing the “magnitude of government malfeasance” in failing to fulfill the fundamental fiduciary duties owed to the plaintiff class).

<sup>7</sup>Norton, in breach of trust, has allowed the appraisal backlog to double during the last three months. *See* Quarterly Report at 43. Noticeably, this abysmal appraisal record does not even include the backlog of appraisals for Trust land administered by compacting and contracting tribes. Moreover, the backlog inventory only reflects requests for appraisals initiated by the agency (*e.g.* the inventory does not reflect whether a particular tract of Trust land requires a current appraisal to achieve its highest and best use). The adverse impact of the failure to maintain current appraisals can be material as reflected by the current price per barrel of oil compared to the price prior to the invasion of Iraq.

<sup>8</sup>*See* Rempel Declaration at ¶ 3.

Invitation to Bid provides in pertinent part:

ORAL AUCTION PROVISIONS: IMMEDIATELY FOLLOWING THE OPENING AND EVALUATION OF ALL BIDS, THOSE ITEMS ATTRACTING ONE OR MORE SEALED BIDS WILL BE SUBJECT TO ORAL AUCTION BIDDING BY THOSE INDIVIDUALS WHO HAVE MADE A SEALED BID OFFER ON THAT PARTICULAR TRACT.<sup>9</sup>

Neither this Court nor plaintiffs' counsel have been provided any information to determine independently that the auction procedures adopted, if executed properly, are sufficient to ensure that collusion does not occur. Therefore, the failure to protect the allottees from the risk of collusion among bidders in the September 1 auction is a clear breach of Norton's fiduciary duties.

Equally important, this Court and plaintiffs have been provided no information that demonstrates that each and every affected beneficiary has been informed that his or her Trust land is not currently appraised, does not have a current cadastral survey, and that Norton would manipulate the sale of such Trust assets in a bad faith effort to cut-off vested rights and terminate the trustee-delegates' fiduciary obligations, including without limitation the historical accounting duty owed to each beneficiary. For these and similar reasons, plaintiffs previously had asked this Court to restrain Norton and her managers' and counsel's direct communications with class members. And, this Court granted plaintiffs' motion and entered an order to ensure that future communications would first be presented to this Court for approval. As plaintiffs discuss below, Norton and her managers and counsel, have violated, and continue to violate, this Court's December 23, 2002 order.

### III. THE COURT'S DECEMBER 23, 2002 ORDER

On December 23, 2002, this Court entered an order that provides in pertinent part:

[D]uring 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. **This restriction includes, but is not limited to, any communications that affect the rights of class members to a full and accurate accounting of their Individual Indian Money trust accounts.**

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<sup>9</sup>*Id.* (caps in original).

*Cobell v. Norton*, 212 F.R.D. 14, 24 (D.D.C. 2002) (emphasis added). In explaining the nature and scope of permissible communications with the class, the Court did not impose a blanket prohibition on direct communication with class members; rather, the Court explicitly permitted defendants “to continue engaging in the **regular sorts of business communications** with class members that occur in the **ordinary course of business.**” *Id.* at 20 (emphasis added). Clearly, routine matters related to the administration of Trust lands fall within the ambit of the “ordinary course of business” exception – and, plaintiffs do not quarrel with such communications here. However, liquidation of the Trust *corpus* is not routine and is far from the “regular sort of business communication” or the “ordinary course of business” in that, among other things, it (according to defendants) would purport to terminate the trust relationship and cut-off and extinguish declared rights, including the right to an accounting of all items of the trust. To be clear, this Court did “not find such [ordinary course of business] communications objectionable because they d[id] not purport to extinguish the rights of the class members in this litigation.” *Id.* With respect to the sale of Trust lands here, it is simply not contestable that defendants will attempt to manipulate this sale to extinguish class member rights to the full and accurate accounting of all items of the Trust that they are owed, given their litigation position.

Importantly, the hurdle is low for the imposition of restrictions on direct communication with the class outside the presence of plaintiffs’ counsel. As recognized by this Court, a finding of actual harm need not be made: “Rule 23(d) . . . authorizes the imposition of a restricting order to guard against the ‘likelihood of serious abuses.’” *Id.* at 19 (*quoting In re School Asbestos Litig.*, 842 F.2d 671, 683 (3d Cir.1988) (emphasis in original)). Indeed, it is axiomatic that the Court “has the duty and authority to restrict communications that interfere with the proper administration of a class action and to restrict conduct that abuses the rights of members of the class.” *Id.* (citations omitted).

As noted above, and as any competent trustee-delegate would understand, plaintiffs do not seek to bar a sale of Trust land in situations where the allottee has been provided all material

information about (1) his or her trust assets, including without limitation fair market value, a current, accurate appraisal, and a cadastral survey, and (2) his or her rights as a member of this class and the impact, if any, such a sale would have on his or her rights. To be sure, this Court and the United States Court of Appeals have held that Norton has a fiduciary obligation to account for all Trust assets wherever and whenever they have been held (or sold); however, that is not what *Cobell* class members are being told and that is not how Norton is managing the Trust. As such, the auction process as detailed in the Invitation to Bid presents – **at a minimum** – “a significant risk of serious interference with the rights of the class members, and the Court possesses the duty and the authority to restrict communications that threaten to interfere with those rights.” *Id.* at 19-20.<sup>10</sup>

Defendants actions are in clear violation of this Court’s December 23 Order and must be stopped by this TRO.

#### **IV. PLAINTIFFS HAVE MET THE STANDARDS FOR THIS COURT TO ENTER A TEMPORARY RESTRAINING ORDER AND A PRELIMINARY INJUNCTION**

The District of Columbia Circuit applies a traditional four-part test for determining a request for a temporary restraining order, under which a moving party must establish: (1) substantial likelihood of success on the merits; (2) irreparable harm for which there is no adequate legal remedy in the absence of the injunction; (3) that the injunction will not substantially harm other parties; and (4) that the injunction will not significantly harm the public interest.<sup>11</sup> A deficiency in one or more of the four factors may be balanced against a particularly strong showing in one or more of the others.<sup>12</sup>

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<sup>10</sup>*Citing* NEWBERG ON CLASS ACTIONS § 15.02, at 15-6 (3d ed. 1992) (“When the court finds that the class action has been abused to the potential prejudice of class members, the court has full power to take appropriate remedial action to avoid or minimize any prejudice to the class.”).

<sup>11</sup>*See Cobell v. Norton*, 274 F. Supp.2d 111, 126 (D.D.C. 2003). *See also Al-Fayed v. CIA*, 254 F. 3d 300, 303 (D.C. Cir. 2001); *George Washington Univ. v. District of Columbia*, 148 F. Supp.2d 15, 17 (D.D.C. 2001).

<sup>12</sup>*See CityFed Financial Corp. v. Office of Thrift Supervision*, 58 F. 3d 738, 747 (D.C. Cir. 1995).

### **A. Plaintiffs Have a Substantial Likelihood of Success on the Merits**

Plaintiffs have prevailed on the merits in each phase of this litigation, including Trial 1.5.<sup>13</sup> In that regard, it is essential that the TRO be entered to ensure that Trust land is protected and preserved in accordance with the fiduciary duties conferred on the trustee-delegates by Congress, in accordance with common law, and as set forth in orders of this Court, including the court-ordered accounting. It is imperative that the declared duty to account for all items of the Trust is not impaired further by Norton and her counsel. This Court pointedly found that “[t]he relationship between the number of accounts and the number of individual Indian beneficiaries of the trust fund is difficult to unravel.”<sup>14</sup> There can be no dispute that the sale of Trust assets prior to the completion of an effective data cleanup and correction of Trust records would exacerbate the monumental difficulties that exist today because of generations of malfeasance and neglect that this Court has found and that defendants arrogantly admit to the Court of Appeals – *e.g.*, the accounting will cost of upwards of \$14 billion.

The United States Court of Appeals for the District of Columbia Circuit has held that the Secretary is entitled to **no** deference in the management and administration of the Individual Indian Trust. She is entitled to none here. Moreover, because trust law governs this action in equity and the Secretary has committed, and continues to commit, malfeasance in the management of the Individual Indian Trust, injunctive relief is required here because it is black-letter trust law that a breach of trust, on its face, constitutes irreparable harm.

Accordingly, it is essential that the trustee-delegates provide this Court with competent evidence that they have obtained the informed consent of each trust beneficiary who owns an interest – whether such interest is divided or undivided and joint or several – in such land to be auctioned, that the appraisals are competent and reflect fair market value, that the bidding process

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<sup>13</sup>See *Cobell v. Babbitt*, 91 F. Supp.2d 1 (D.D.C. 1999), *aff'd sub nom. Cobell v. Norton*, 240 F.3d 1081 (D.C. Cir. 2001) (Trial 1); *Cobell v. Norton*, 237 F. Supp. 2d. at \*14; *Cobell v. Norton*, 2003 WL 22211405 (D.D.C.) (Trial 1.5).

<sup>14</sup>*Cobell v. Norton*, 283 F. Supp. 2d 66, 149 (D.D.C. 2003) ( “*Cobell X*”).

is fair and one that ensures that fair market rate will be paid, and that the record of any such sale is accurate, complete and preserved so that all relevant past and present trust beneficiaries will receive the full benefit of the declared accounting that they are owed. Otherwise, the trustee-delegates' alienation of trust assets is unlawful, would constitute waste and ruin, conduct that the U.S. Supreme Court has held is strictly prohibited,<sup>15</sup> is in violation of this Court's orders, and is inimical to the interests of 500,000 individual Indian trust beneficiaries. Thus, it is clear that plaintiffs will prevail on the merits.<sup>16</sup>

**B. Plaintiffs' Injury is Irreparable Unless a TRO and Preliminary Injunction is Entered by this Court**

Permitting Trust assets – the *corpus* – to fall into ruin through the disposal of land at below market value is a breach of trust and constitutes irreparable harm. There is nothing plainer than that.

In addition, the United States Court of Appeals for the District of Columbia Circuit in affirming this Court held that undue delay in rendering the accounting ordered by this Court constitutes irreparable harm.<sup>17</sup> Undue delay is assured when the trustee-delegates alienate Trust assets and fail to create and preserve complete and accurate IIM-related trust documents and data – records crucial to the court-ordered accounting – are lost, destroyed and corrupted because (and to the extent possible) extraordinary actions must now be taken to identify and recreate all lost, destroyed, or corrupted Trust Records. This is particularly significant here because systemic spoliation has occurred throughout the sordid history of the Individual Indian Trust – as well as throughout the notorious trusteeship of Norton – and there is no doubt that many irreplaceable IIM-

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<sup>15</sup>*See U.S. v. White Mountain Apache Tribe*, 537 U.S. 465, 475 (2003).

<sup>16</sup>*Compare Haitian Refugee Center, Inc. v. Christopher*, 43 F.3d 141, 143 (11<sup>th</sup> Cir. 1995) (only reasonable likelihood of success needed); *Gilder v. PGA Tour, Inc.*, 936 F. 2d 417, 422 (9<sup>th</sup> Cir. 1991) (need to show overwhelming likelihood of success); *Miller v. California Pac. Med. Ctr.*, 991 F. 2d 536, 543 (9<sup>th</sup> Cir. 1993) (must show “fair chance of success” on the merits).

<sup>17</sup>*Cobell v. Norton*, 240 F.3d 1081, 1098 (D.C. Cir. 2001) (“[T]he injury from delay could cause irreparable harm to plaintiffs' interests as IIM trust beneficiaries.” (emphasis added))

related trust documents and data critical to an accurate accounting have been lost, destroyed and corrupted. Thus, there is no doubt that further loss, destruction, and corruption of this information will continue absent vigilant oversight by this Court.<sup>18</sup> As such, it is certain that plaintiffs will be further harmed irreparably if the requested relief is not granted.

This Court found on April 4, 2000 that the “Indian plaintiffs deserve better than they're getting from the Department of Interior and the Bureau of Indian Affairs ...”<sup>19</sup> But the auction of Trust lands under these circumstances makes it clear that individual Indian trust beneficiaries are served no better today than they were when this Court made its findings more than four years ago notwithstanding two contempt trials, repeated official sanctions, and various orders and directions from this Court, including the Structural Injunction that requires Norton to manage the Individual Indian Trust in accordance with the highest fiduciary standards.

This is the sorry story today because Norton and her counsel openly have defied the authority of this Court and continue to do so by concealing from this Court this auction of Trust assets. There is no doubt that Trust assets, including more than 40 million acres of land have vanished from the Trust.<sup>20</sup> And, there is no doubt that Trust records have been, and will continue

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<sup>18</sup>Indeed, the most this Court and plaintiffs can hope for is to reduce further what now is at best an extremely remote and ever-shrinking possibility that defendants can render anything approaching a rational – albeit necessarily inaccurate and incomplete – accounting of the Individual Indian Trust.

<sup>19</sup>See April 4, 2000 Hearing Transcript at 14.

<sup>20</sup>See, e.g., December 18, 2002 Office of Historical Trust Accounting Executive Director Bert Edwards Deposition Transcript at 276-277 (“I have no idea what happened [to 40 million acres.] It got overrun.”). Perhaps this unsound and imprudent auction of Trust land – like that which Norton intends to hold on September 1, 2004 in Anadarko – helps educate Mr. Edwards as to how 80% of the Trust *corpus* has vanished without a trace. Moreover, neither this Court nor plaintiffs’ counsel – because they have been kept in the dark – can ascertain the material difficulties such liquidation will certainly cause with respect to the historical accounting that is owed to *Cobell* class. This is particularly critical here where – notwithstanding the instructions of this Court and the Court of Appeals that “all” items of the Trust must be accounted for from the inception of the Trust – Norton and her counsel steadfastly refuse to account for assets/funds no longer recorded on Trust management systems. Thus, among other things, Norton again would be expected to assert in her bad faith defense that she has no obligation to provide an historical accounting of funds generated from auctioned Trust lands once the sales are consummated, the assets are off the system, and the Trust accounts are closed. See, e.g., Defendants’ Historical Accounting Plan dated January 6, 2003 at 2 (“The historical accounting described in the Plan covers all IIM accounts that were open as of December 31, 2000,

to be, in imminent jeopardy of massive loss, destruction and corruption unless this Court intervenes to protect the Trust beneficiaries whose lands are marked for auction. And, in accordance with trust law, there can be no dispute that the harm caused by such malfeasance and breaches of trust is irreparable.

**C. Entry of a TRO and a Preliminary Injunction Cannot Harm the Secretary Since The Secretary Will Be Restrained From Conduct That is in Violation of Law and Orders of this Court**

The Secretary cannot argue in good faith that the injunctive relief plaintiffs request would harm Interior. First, all that plaintiffs seek is maintenance of the *status quo* until this Court is assured that defendants have fully complied with their fiduciary obligations. Defendants have no legitimate interest in moving forward with the unlawful and imprudent sale of Indian land. Second, the relief plaintiffs seek is prevention; that Norton cease her violation of law and this Court's orders. What plaintiffs seek herein is modest relief: that Norton stop violating court orders, stop violating the law, stop allowing Trust assets to fall in to waste and ruin on her watch, and stop breaching the trust duties that she as a trustee-delegate owes to the *Cobell* plaintiffs; fiduciary duties that Norton must discharge in accordance with the highest fiduciary standards and solely in the best interest of individual Indian trust beneficiaries.

It is unfortunate that the Secretary chooses to conduct the auction of Trust assets imprudently and that she continues to disdain instructions of this Court and the United States Court of Appeals. It is also unfortunate that plaintiffs must take this action now and again seek the protection of this Court from an unscrupulous trustee-delegate and her counsel. Accordingly, the Secretary cannot argue in good faith that an order that restrains unlawful conduct and that stops her from breaching further the trust duties that she owes to each member of the *Cobell* class in anyway harms the Interior Department.

**D. Injunction Cannot Harm The Public Interest**

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and all IIM accounts that were open as of October 25, 1994....”). Such bad faith should not be countenanced by this Court.

The conduct plaintiffs seek to restrain is inimical to the public interest – government officials are not above the law. Trustee-litigants are not permitted to allow the Trust *corpus* to fall into ruin on their watch. They may not violate court orders. It is surely in the public interest to enjoin the conduct of a trustee-delegate that is unlawful and in breach of trust. Trustee-delegates may not cut-off the rights of members of the *Cobell* class. Trustee-delegates are not permitted to destroy Trust documents. Trustee-delegates not entitled to put beneficiaries’ Trust assets, including the Trust *corpus* and Trust records at risk.<sup>21</sup> The proposed measures are simply designed to restrain Norton from continuing to breach her fiduciary responsibilities and from continuing to violate orders entered by this Court .

One would hope that entry of the requested TRO might help this trustee-delegate begin to comprehend the importance of her trust obligations and encourage her to begin to discharge the trust duties owed by the United States to individual Indians in accordance with the highest fiduciary standards.<sup>22</sup> But, it is clear that this is hopeless. It is certainly in the trust beneficiaries’ interest that this Court prevent further losses of the Trust *corpus* and Trust records.<sup>23</sup> It is certainly in the nation’s interest to restrain Secretary Norton from continuing to violate the law and willfully breach her trust duties. And, it is in the taxpayer’s interest to prevent additional loss, destruction, and corruption of Trust assets so this case, ultimately, can be resolved equitably and fairly.

## VI. CONCLUSION

For the foregoing reasons and to preserve the integrity of this litigation and whatever remains of the Trust *corpus* and other Trust assets, including extant Trust records, plaintiffs

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<sup>21</sup>Trust records are the property of the Trust and, as such, they are vested property rights of the Trust beneficiaries akin to the *corpus* itself. *See, e.g., Wood v. Honeyman*, 178 Or. 484, 169 P.2d 131 (1946.).

<sup>22</sup>While it seems unnecessary to restate the obvious and would normally not need to be stated generally, these trustee-delegates are required to manage and administer the Trust Assets for the benefit of the trust beneficiaries **not** for the benefit of government officials – no matter how much power they require to satisfy their egos and inflated importance – for the relatively brief time they will remain in office.

<sup>23</sup>*Cf. Sac & Fox Nation of Missouri v. LaFaver*, 905 F. Supp. 904, 907-08 (D. Kan. 1995).

respectfully request that this Court grant plaintiffs' motion for a temporary restraining order and preliminary injunction.<sup>24</sup>

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<sup>24</sup>By telephone, counsel for plaintiffs met and conferred with counsel for defendants in accordance with local rules and defense counsel states that they object to this motion.

Respectfully submitted,

/s/ Dennis Gingold

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202 785-4166

Attorneys for Plaintiffs

August 25, 2004

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION was served on the following by facsimile, pursuant to agreement, on this day, August 25, 2004.

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

/s/ Geoffrey Rempel

\_\_\_\_\_  
Geoffrey M. Rempel

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

**ELOUISE PEPION COBELL, et. al., on  
her own behalf and on behalf of  
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**Plaintiffs,**  
  
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**Civil Action  
Case No. 1:96CV01285  
(RCL)**

**TEMPORARY RETRAINING ORDER**

Upon consideration of *Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction*, the parties' responses, replies and the entire record of this case, it is by this Court hereby,  
  
ORDERED that Plaintiffs' Motion for a Temporary Restraining Order is GRANTED; and it  
  
is

FURTHER ORDERED that the Interior Defendants and their counsel immediately shall halt the auction of Individual Indian Trust land; and it is

FURTHER ORDERED that a hearing on plaintiffs' request for a preliminary injunction shall be held on August 31, 2004.

SO ORDERED this \_\_\_\_\_ day of August, 2004.

\_\_\_\_\_  
Royce C. Lamberth  
UNITED STATES DISTRICT COURT JUDGE

INVITATION FOR BIDS - SALE OF INDIAN LANDS

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF INDIAN AFFAIRS

ISSUED BY: ANADARKO AGENCY, BOX 309  
ANADARKO, OKLAHOMA 73005  
Betty Tippeconnic, Superintendent  
DATED: July 30, 2004

INVITATION NO. 69 - Bids will be received  
until and opened at 10:00 A.M. Local Time  
Date: September 1, 2004, Anadarko Agency  
Conference Room, Anadarko, Oklahoma

SEALED BIDS, subject to the terms and conditions of this invitation, will be received at the above office until the designated time for public opening. All sealed bids for Indian land offered for sale must be accompanied by a cashier's check, certified check, or postal money order, payable to the Bureau of Indian Affairs, for not less than 10% of the total offer made. Do not submit personal checks unless certified.

ORAL AUCTION PROVISIONS: IMMEDIATELY FOLLOWING THE OPENING AND EVALUATION OF ALL BIDS, THOSE ITEMS ATTRACTING ONE OR MORE SEALED BIDS WILL BE SUBJECT TO ORAL AUCTION BIDDING BY THOSE INDIVIDUALS WHO HAVE MADE A SEALED BID OFFER ON THAT PARTICULAR TRACT.

Should the high bid at the auction of such items be found to be consistent with the appraisal, that bid will be taken under advisement by the Superintendent or her representative. Subject to the acceptance and approval by the Superintendent, the high bidder will be required to increase the amount of his deposit to not less than 10% of the amount bid and amend his sealed bid accordingly.

The right is reserved to reject any and all bids and to disapprove any transaction at any time prior to final approval and delivery of a deed or issuance of a patent-in-fee in accordance with the Code of Federal Regulations, Title 25, Indians, Part 152.

General information and specific instructions to bidders are contained in the Instructions to Bidders, Terms, and Condition of the Invitation for Bids, on the reverse hereof. For detailed information call or write: Margaret Arbison, Realty Specialist, Telephone 405-247-6677; ext. 226, Branch of Real Property Management, Anadarko Agency, Anadarko, Ok. 73005

SCHEDULE - OF - BIDS

ITEM NO.	ALLOTMENT NUMBER	NO. OF ACRES	AMOUNT OF BID	ITEM NO.	ALLOTMENT NUMBER	NO. OF ACRES	AMOUNT OF BID

The undersigned agrees that if the amount offered, for any item or items in the above be accepted, he will within 30 calendar days from date of receipt of notice of award, deposit with issuing office, Bureau of Indian Affairs, the full amount of his offer, with stipulated sales fee, and that failure to make such deposit within the specified time will constitute a forfeiture of 10% of the amount offered on each such item. The undersigned also agrees that the Bureau of Indian Affairs shall have an irrevocable option for a period of 120 days after the date set for bid opening to accept any one or more than one of the above bids.

IN ADDITION TO THE CONSIDERATION FOR THE LAND, THE PURCHASER WILL BE REQUIRED TO DEPOSIT THE SUM OF \$22.50 TO COVER THE COST OF CONVEYANCE AND SALES FEES FOR EACH SEPARATE ITEM WHEN HE IS NOTIFIED THAT HE IS THE SUCCESSFUL BIDDER.

\_\_\_\_\_  
SIGNATURE OF BIDDER

\_\_\_\_\_  
NAME OF BIDDER (type or print)

\_\_\_\_\_  
ADDRESS (print or type)

\_\_\_\_\_  
CITY & STATE      ZIP CODE

\_\_\_\_\_  
TELEPHONE NUMBER

NOTICE OF AWARD OF SUCCESSFUL BIDDER

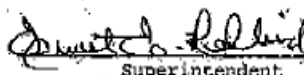
You are hereby notified that you are the successful bidder on Item(s) No. \_\_\_\_\_. Balance of the purchase price, by cashier's check, certified check, or postal money order in the amount of \$ \_\_\_\_\_, which includes sales and conveyance fees, shall be remitted to the above designated Agency Office on or before \_\_\_\_\_.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Superintendent

1. MARKING AND MAILING BIDS - Bids, with their guaranties, must be securely sealed in suitable envelopes, addressed to the Agency Office issuing this invitation and marked on the outside with the invitation number and date of opening, both of which may be found in the block opposite the name of the issuing office on the front of this form.
2. PREPARATION OF BIDS - Forms furnished, or copies thereof, shall be used, and strict compliance with requirements of the invitation, and these instructions are necessary. Special care should be exercised in the preparation and submission of bids to assure full compliance with the invitation and instructions. All item numbers and prices shall be fully and clearly set forth.
3. SIGNATURE TO BIDS - Each bid must give address of the bidder and be signed by him with his usual signature. The name of each person signing shall also be typed or printed below the signature.
4. CORRECTIONS - Erasures or other changes in the bid must be explained or noted over the signature of the bidder.
5. TIME FOR RECEIVING BIDS - Bids received prior to the time of opening will be securely kept, unopened. The officer whose duty it is to open them will decide when the specified time has arrived, and no bid received thereafter will be considered. No responsibility will be attached to an officer for the premature opening of a bid not properly addressed and identified. Telegraphic bids will not be considered, but modifications by telegraph of bids already submitted will be considered if received prior to the hour set for opening.
6. WITHDRAWAL OF BIDS - Bids may be withdrawn on written or telegraphic request received from bidders prior to the time fixed for opening. Negligence on the part of the bidder in preparing the bid confers no right to withdraw the bid after the time for submitting bids has expired. (See above Section 5).
7. BIDDER PRESENT - At the time fixed for the opening of bids, their contents will be made public for the information of bidders and others interested, who may be present either in person or by representative.
8. AWARD OR REJECTION OF BIDS - The award will be made to the highest bidder complying with the conditions of the invitation for bids, provided his bid is reasonable and it is in the interest of the Indian owner and the United States to accept it. The bidder to whom the award is to be made will be notified at the earliest possible date after the Superintendent approves the sale. The Superintendent also reserves the right to reject any and all bids and to waive any informality in bids received whenever such rejection or waiver is in the interest of the Indian owners or the United States.
9. ERRORS IN BID - Bidders or their authorized agents are expected to make a visual inspection of the premises to observe all physical conditions, apparent encumbrance, access, etc. Access is not guaranteed or warranted. A bidder cannot secure relief on the plea of error in the bid or in his lack of understanding the facts and circumstances.
10. Government appraisals of the herein described property will not be made available to the general public.
11. The land herein advertised for sale will be sold subject to the terms and conditions of existing oil and gas, mining or surface lease contracts, permits, easements or rights-of-way of record with the Bureau of Indian Affairs or in being. Bidders or their authorized agents, may examine existing lease contracts and permits at the issuing office. The United States does not regard a sale as having been consummated until approval and actual delivery of the deed or issuance of a fee patent to the purchaser; however, RENTS (cash or crop), for the lease contract year in which the land is offered for sale, are reserved to the Indian owners without regard to the date the sale is completed. Where advance rental payments are authorized by the Agency Office and have in fact been collected by the Indian owners beyond the lease contract year in which the land is offered for sale, such prepaid rents will be refunded to the purchaser, after full payment of the purchase price and formal approval of the sale transaction.
12. Minerals, including oil and gas, are to be sold with the land advertised unless reserved as indicated on the attached schedule. Purchasers of mineral interest will be entitled to royalty for oil and gas produced on and after the first of the month following the month in which title is conveyed.
13. All tracts listed with a statement showing that an oil and gas lease is "pending" or "Pending Approval" are being offered SUBJECT to said lease. Upon approval of such pending mineral leases, the cash bonus and first year advance rentals will be paid to and retained by the respective Indian owners; the purchaser to receive all future rental payments and mineral rights conveyed with the land.
14. Title to land sold as a result of this advertisement will be conveyed in a fee simple status by either patent in fee or approved deed. The cost of required documentary revenue stamps shall be borne by the purchaser.
15. Evidence of title to the lands herein offered for sale, such as commercial abstracts or title certificates which may be desired by the successful bidder, will be procured by him at his own cost and expense and will not be furnished by the Government or Indian owner. Inspection may be made, however, of available deeds, probate proceedings, and other title documents of record in the local Agency Office of the Bureau of Indian Affairs.
16. WARNING TO ALL BIDDERS - All bidders are warned against violations of 18 USC 1860, prohibiting unlawful combination or intimidation of bidders or potential bidders.
17. Title to lands sold as a result of this advertisement will not be conveyed until such time as the requirements of the National Environmental Policy Act have been satisfied.

July 30, 2004  
Date

  
Superintendent

UNITED STATES DEPARTMENT OF THE INTERIOR  
BUREAU OF INDIAN AFFAIRS

SCHEDULE OF LAND TO BE SOLD

CADDO COUNTY

1. Kiowa #22, 35.75 ACRES SURFACE ONLY - POB N. bndry ln 819.6'E NW/C NE/4 of Section 13-T7N-R9W I.M., th S1026.6' to S bndry RRR ROW; th N eastrly alg S bndry of the RRR ROW 1918.7'; th N alg E bndry 862.5'; th W alg N bndry ln to the POB (less and except 1.75 acres). Approx. due West of Verdun, OK. Date of Lease Expiration Surface: 12/31/06 Mineral: N/A
2. Kiowa #22, 20.00 ACRES SURFACE ONLY - POB NW/Corner of NE/4 of Section 12-T7N-R9W I.M.; th S alg W ln of NE/4 1100.5'; th Eastfly alg S side of RR ROW 823.3'; th N 1026.6' to N ln of NE/4; th W819.6' alg N ln of NE/4 to POB. Approx. due West of Verdun, OK. Date of Lease Expiration Surface: 12/31/06 Minerals: N/A
3. Kiowa #24, 99.55 ACRES SURFACE ONLY - LOTS 12, 13, 14 & W/2 SW/4 SE/4 all in Section 12-T7N-R9W I.M., approx. due West of Verdun, OK. Date of Lease Expiration Surface: 12/31/06 Minerals: N/A
4. Kiowa #253, 20.00 ACRES SURFACE ONLY - E/2 SE/4 SW/4 of Section 28-T6N-R11W I.M., approx. 2 1/4 mi West of Stecker, OK. Date of Lease Expiration Surface: None Minerals: N/A
5. Kiowa #314, 51.875 ACRES SURFACE ONLY - S/2 N/2 S/2 N/2 S/2 SE/4; S/2 S/2 N/2 S/2 SE/4; SE/4 SE/4 SE/4; E/2 SW/4 SE/4 SE/4; N/2 SW/4 SW/4 SE/4 SE/4; NW/4 SW/4 SE/4 SE/4; SW/4 SW/4 SE/4; N/2 SE/4 SW/4 SE/4; N/2 SE/4 SE/4 SW/4 SE/4; N/2 SW/4 SE/4 SW/4 SE/4; SW/4 SW/4 SE/4 SW/4 SE/4 of Section 26-T6N-R11W I.M.; approx. 1/4 mi. West of Stecker, OK. Date of Lease Expiration Surface: 12/31/07 Mineral: N/A
6. Kiowa #314, 52.50 ACRES SURFACE ONLY - S/2 N/2 S/2 N/2 S/2 N/2 SE/4; N/2 N/2 S/2 SE/4; S/2 S/2 N/2 SE/4; S/2 S/2 N/2 S/2 N/2 SE/4; N/2 N/2 S/2 N/2 S/2 SE/4 of Section 26-T6N-R11W I.M.; approx. 1/4 mi. West of Stecker, OK. Date of Lease Expiration Surface: 12/31/07 Minerals: N/A
7. Apache #573, 80.00 ACRES SURFACE ONLY - S/2 NW/4 of Section 1-T5N-R13W I.M., approx. 3 mi. west & 2 1/2 mi. North of Apache, OK. Date of Lease Expiration Surface: 12/31/08 Minerals: N/A
8. WICHITA #865, 10.00 ACRES SURFACE ONLY - S/2 N/2 NW/4 NW/4 of Section 12-T7N-R17W I.M., approx. 1 mi. East of Washita, OK. Date of Lease Expiration Surface: None Minerals: N/A
9. Kiowa #2890, 1 LOT SURFACE AND MINERALS - Lot 12, Block 2, College Highlands Addition to the City of Anadarko, OK. aka 109 West Louisiana, Anadarko, OK. Date of Lease Expiration Surface: None Minerals: None
10. Wichita #612, 1 LOT SURFACE ONLY - Lot 5, Block 22, Original Townsite of Anadarko, Ok. aka 206 NE 6<sup>th</sup> Street, Anadarko, OK. Date of Lease Expiration Surface: None Minerals: N/A

COMANCHE COUNTY

11. Comanche #762, 15.92 ACRES SURFACE ONLY - M&B IN SW/4 SE/4 of Section 18-T31N-R11W I.M., comm at S/4 crn of Sec 18; th N89°36'04"E 603.15' to POB; th N89°36'04"E 307.95'; th N00°10'35"E 1312.87'; th S89°36'46"W 713.71'; th S04°30'16"E 775.44'; th N89°36'06"E 342.49'; th S00°10'35"W 539.49' to POB. Approx. 1 mi North of the junction of Hwy 49 & HE Bailey Turnpike North of Lawton, OK. Date of Lease Expiration Surface: None Minerals: N/A
12. Comanche #1098, 101.87 ACRES SURFACE ONLY - E/2 SE/4; E/2 W/2 SE/4 of Section 26-T2N-R15W I.M., less a tract of land desc. as comm NW/C SE/4 th 8820' to POB; th E720'; th S975'; th W725'; th N05°38'W 184.5'; th N21°39'W 112.5'; th N42°17'W 141.6'; th N162.3'; th N53°31'E 147'; th N30°16'E 45.7'; th N11°27'12"E 94.4' to POB cont 18.31 acs., approx. SE of Indianola, OK. Date of Lease Expiration Surface: None Minerals: N/A
13. Comanche #2068, 157.45 ACRES SURFACE AND 1/2 MINERALS - Lots 3, 4 & S/2 NW/4 of Section 2-T4N-R10W I.M., approx. 3/4 mi East & 1 1/2 mi North of Fletcher, OK. Date of Lease Expiration Surface: 12/31/04 Minerals: None

14. Comanche #2456, 18.75 ACRES SURFACE ONLY - W/2 E/2 NW/4 SE/4 SW/4; E/2 E/2 W/2 W/2 W/2 E/2 SW/4; E/2 W/2 NW/4 SE/4 SW/4; E/2 W/2 W/2 NE/4 SW/4; W/2 E/2 W/2 NE/4 SW/4; E/2 W/2 E/2 W/2 W/2 E/2 SW/4 of Section 12-T4N-R9W I.M., approx. 7 1/2 mi East of Fletcher, OK. Date of Lease Expiration Surface: None Minerals: N/A

15. Comanche #2456, 45.00 ACRES SURFACE ONLY - E/2 E/2 NW/4 SE/4 SW/4; NE/4 SE/4 SW/4; E/2 W/2 SE/4 SE/4 SW/4; E/2 SE/4 SE/4 SW/4; E/2 NE/4 SW/4; E/2 E/2 W/2 NE/4 SW/4 of Section 12-T4N-R9W I.M., approx. 7 1/2 mi East of Fletcher, OK. Date of Lease Expiration Surface: None Minerals: N/A

16. Comanche #2910, 140.00 ACRES SURFACE ONLY - N/2 SW/4; SE/4 SW/4; N/2 SW/4 SW/4 of Section 17-T1S-R12W I.M., approx. 5 mi East of Faxon, OK. Date of Lease Expiration Surface: None Minerals: N/A

#### COTTON COUNTY

17. Comanche #463, 157.43 ACRES SURFACE ONLY - Lots 6, 7 (less M&B in Lt. 7 des-as comm SW/4 SW/4 SW/4 th N130' to POB; th E330'; th N165'; th W330'; th S165' to POB cont 1.25 ac) & E/2 SW/4 of Section 6-T2S-R9W I.M., approx. 6 1/2 mi East & 3 mi North of Walters, OK. Date of Lease Expiration Surface: None Minerals: N/A

18. Comanche #2939, 160 ACRES SURFACE ONLY - NW/4 of Section 32-T3S-R12W I.M. approx. 5 mi North & 1 1/2 mi West of Randlett, OK. Date of Lease Expiration Surface: 12/31/06 Minerals: N/A

#### KIOWA COUNTY

19. Kiowa #669, 80.00 ACRES SURFACE ONLY - E/2 SE/4 of Section 5-T7N-R14W I.M., approx. 4 1/2 mi West of Carnegie, OK. Date of Lease Expiration Surface: None Minerals: N/A

20. Kiowa #669, 80.00 ACRES SURFACE ONLY - W/2 SE/4 of Section 5-T7N-R14W I.M., approx. 4 1/2 mi West of Carnegie, OK. Date of Lease Expiration Surface: None Minerals: N/A

21. Kiowa #1238, 15.00 ACRES SURFACE ONLY - NE/4 NE/4 NW/4 & N/2 SE/4 NE/4 NW/4 of Section 13-T5N-R14W I.M., approx. 11 mi South & 4 1/2 mi West of Carnegie, OK. Date of Lease Expiration Surface: None Minerals: N/A

22. Comanche #1456, 22.56 ACRES MINERAL RIGHTS ONLY - Lot 1 (NW/4 NW/4) & NE/4 NW/4 of Section 19-T1N-R16W I.M., approx. 1 mi East & 2 mi North of Mt. Park, OK. Date of Lease Expiration Surface: N/A Minerals: None

23. Kiowa #2526, 2.73 ACRES SURFACE ONLY - W/2 E/2 NW/4 NW/4 SW/4 NW/4; W/2 NW/4 NW/4 SW/4 NW/4; N/2 NW/4 SW/4 NW/4 SW/4 NW/4; W/2 E/2 E/2 NW/4 NW/4 SW/4 NW/4; W/2 NE/4 NE/4 SW/4 NW/4 SW/4 NW/4; NW/4 NE/4 SW/4 NW/4 SW/4 NW/4 of Section 1-T6N-R14W I.M., approx. 4 mi South and 1 1/2 mi West of Carnegie, OK. Date of Lease Expiration Surface: None Minerals: N/A No legal access.

#### TILLMAN COUNTY

24. Comanche #3150, 40.00 ACRES SURFACE ONLY - SW/4 NW/4 of Section 26-T4S-R15W I.M., approx. 3 mi West & 3 1/2 mi South of Grandfield, OK. Date of Lease expiration Surface: None Minerals: N/A

25. Comanche #2997, 160.00 ACRES MINERALS ONLY - NE/4 of Section 22-T4S-R16W I.M., approx. 3 mi South & 1 mi West of Quannah, OK. Date of Lease expiration Minerals: None Surface: N/A

#### GRADY COUNTY

26. Caddo #771, 160 ACRES MINERALS ONLY - SE/4 of Section 10-T9N-R9W I.M., approx. 12 mi North & 3 1/2 mi East of Verden, OK. Date of Lease Expiration Surface: N/A Minerals: None

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action
	)	No. I:96 CV 01285 RCL
	)	
GALE NORTON, et al.,	)	
	)	
Defendants.	)	
	)	
	)	
	)	
_____	)	

AFFIDAVIT OF GEOFFREY REMPEL

1. My name is Geoffrey Rempel. I am a Certified Public Accountant (inactive) and I am engaged as a member of plaintiffs’ litigation team. I have been involved in this matter for almost eight years, including almost three-and-one-half years at PricewaterhouseCoopers L.L.P. (“PwC”) prior to my departure in March 2000. I make this affidavit in support of plaintiffs’.
2. On Thursday August 19, 2004, I contacted Ms. Freda Artichoker at the Anadarko Agency to gather further information on the Invitation to Bid which provided as follows:

General information and specific instructions to bidders are contained in the Instructions to Bidders, Terms, and Condition of the Invitation for Bids, on the reverse hereof. For detailed information call or write: Ms. Freda Artichoker, Realty Specialist, Telephone 405-247-6677, ext. 226, Branch of Real Property Management, Anadarko Agency, Anadarko, OK. 73005.<sup>1</sup>

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<sup>1</sup>Invitation to Bid at 1.

3. Ms. Artichoker informed me that the subject Trust lands would not have appraisals as of September 1, 2004.

I declare under penalty of perjury that the foregoing is true and correct. Executed on August 24, 2004.

/s/ Geoffrey Rempel

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GEOFFREY REMPEL