

Sent: Friday, January 14, 2005 7:35 AM
Subject: Cobell v. Norton - Letter from Elouise Cobell to Trust
Beneficiaries

My fellow trust beneficiaries,

As we move into 2005, we have much to reflect upon, as Indian trust beneficiaries and as plaintiffs in the Cobell v. Norton lawsuit. With two recent U.S. Court of Appeals decisions, a nine-month attempt at mediation, and a presidential election, it was quite a busy year. We expect the coming year to be just as eventful, with considerable progress in our efforts to force the United States government to account for more than a century of income that has been collected by the government from property we own—including income from leases, grazing, mineral rights, and the outright sale of our land.

On two successive Fridays in early December, the United States Court of Appeals for the D.C. Circuit issued decisions that resoundingly affirmed the authority of U.S. District Judge Royce C. Lamberth to preside over our case. Some have tried to paint these decisions as a setback, but nothing could be further from the truth. Although the appeals court decisions overturned several of Judge Lamberth's procedural rulings, we were extremely pleased that the court otherwise affirmed many of the central principles of our case.

For example: after almost two years of the U.S. government arguing that Judge Lamberth has no further jurisdiction over the case, the Court of Appeals once and for all rejected this notion. The government had argued that Judge Lamberth is some sort of "rogue" judge, forcing his will upon the U.S. Department of the Interior, and that he has no authority to reform the grossly mismanaged Individual Indian Trust. The government lost that argument, and they will be unable to make it again.

In fact, in the first of the two decisions, the appeals court definitively stated that the district court retains "substantial latitude" to fashion an equitable remedy, because the lawsuit is "both an Indian case and a trust case" in which the trustees have "egregiously breached their fiduciary duties." The court also upheld Judge Lamberth's authority to grant relief to Indian Trust beneficiaries by identifying breaches and management deficiencies and "ordering specific relief for those breaches."

And in the most significant aspect of the decisions, the appeals court clearly recognized we have the right to full interest on all funds held by the government in trust. This resolves a longstanding dispute in this case, and makes clear the ultimate resolution or settlement will be in the tens of billions of dollars.

This particular ruling is critical to our case. You may have heard the government claim that its review of certain beneficiary accounts found little money missing. This notion is laughable. The government's so-called "analysis" was based upon their false, misleading and incomplete trust fund data. No self-respecting accountant would take this finding seriously. Under their system of analysis, Enron's books would have balanced!

Make no mistake, we will make the U.S. government prove it's numbers, and provide a real accounting, with interest, on money that has been taken from us over the course of more than a century.

Finally, the Court of Appeals also ruled that the legislation enacted last year to stop further proceedings in *Cobell v. Norton* (the so-called Midnight Rider) was constitutional only because of its temporary nature. This is an explicit endorsement of the underlying validity of judicial authority over this case. There are clear limitations on the ability of Congress to interfere with this case.

Regarding the presidential election: I would like to thank all of the Native people that came out in unprecedented numbers in the election to show that the Native vote counts! It was inspiring to go around the country and see my fellow Indians registering to vote and looking forward to Election Day with renewed hope. With the Bush re-election and Interior Secretary Gale Norton's decision to remain for a second term, we pledge to build on the positive momentum of the past year and demand public accountability from our elected officials.

I know this has been a long fight, a seemingly endless round of court hearings and appeals. But we all must remember that with each new district court decision and each new Court of Appeals ruling, we establish new rights for American Indians—rights that have been denied native people since this country was founded. Rights other Americans routinely take for granted. But our work is far from over.

We must stay the course. If we do, I am confident that the government will someday honor its 100-year-old fiduciary duty. The courts agree, and they have now ruled that the district court has the authority to compel Secretary Gale Norton and her colleagues if they continue to flout their trust duties. We must stand united and refuse to give up until we achieve justice for each and every one of our 500,000 beneficiaries in this case. I pledge to you that I will not give up this fight. The government has taken our money and mismanaged it for more than a century. We only want what is ours—as American citizens, we cannot be deprived of the land and resources we own.

I refuse to sit by as our fellow beneficiaries – our mothers, grandparents, sisters and loved ones – die without receiving what is legally theirs. We are encouraged that the U.S. Court of Appeals ruled that Interior must fix what they admit is a seriously broken trust management system, and that Judge Lamberth retains considerable authority over all aspects of this case. We believe that these appeals court decisions open up an entirely new phase of this litigation, with full discovery to determine specific breaches of trust. We look forward to heading back to district court so that we may finally get a resolution of the case—and the justice our friends and relatives so rightly deserve.

Sincerely,

/s/ Elouise Cobell

Elouise Cobell