

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

_____	)	
ELOUISE PEPION COBELL, <u>et al.</u> ,	)	
	)	No. 1:96CV01285
Plaintiffs,	)	(Judge Lamberth)
v.	)	
	)	
GALE A. NORTON, Secretary of	)	
the Interior, <u>et al.</u> ,	)	
	)	
Defendants.	)	
_____	)	

**DEFENDANTS' PROPOSED NOTICES FOR CLASS COMMUNICATIONS**

The Court's September 29, 2004 Order directed the parties to submit proposed language to be included as a notice that accompanies any communication between Defendants and class members "regarding the sale, exchange, transfer, or conversion of any Indian trust land."

September 29, 2004 Order at 1. Defendants propose the following language:

This notice **only concerns** communications from the Department of the Interior regarding any transaction involving or resulting in **the sale, exchange, transfer, or conversion of your Indian trust land**. This notice is being provided in accordance with an Order in the class action lawsuit, Cobell v. Norton, No. 1:196CV01285 (D.D.C.).

Please be aware that many Individual Indian Money ("IIM") account holders are class members in the Cobell litigation, which involves Interior's obligation to perform an accounting for IIM account holders and may involve other issues that are disputed. If you are a class member, you may consult with class counsel in the Cobell litigation before proceeding with any transaction involving or resulting in the sale, exchange, transfer, or conversion of your Indian trust land. For further information you may contact the lawyers for the class members: Dennis M. Gingold, Esq., 607 14th Street, N.W., 9th floor, Washington, DC 20005; phone: (202) 824-1448; fax: (202) 318-2372; email: [dennismgingold@aol.com](mailto:dennismgingold@aol.com); or Keith Harper, Esq., Native American Rights Fund, 1712 N Street, N.W., Washington, DC 20036-2976; phone: (202) 785-4166; fax: (202) 822-0068; email: [harper@narf.org](mailto:harper@narf.org). You may also access further information at the plaintiffs' website, [www.indiantrust.com](http://www.indiantrust.com).

Although you may consult with class counsel in the Cobell litigation, you are not required to do so and may choose to waive consultation. However, in accordance with an Order in the Cobell litigation, no employee, official, representative, or agent of the Department of the Interior may communicate further with you regarding the sale, exchange, transfer, or conversion of Indian trust land until you indicate in writing that you have either: (1) consulted with class counsel or (2) you have waived consultation.

Please be aware that any decision that you make regarding the sale, exchange, transfer, or conversion of your Indian trust land will NOT eliminate ANY rights that you may have if you are a class member in the Cobell litigation. Also, whether you consult with class counsel, or choose to waive consultation, you will NOT lose ANY rights that you may have as a class member in the Cobell litigation.

Within ten (10) days of receiving this notice please check the appropriate box below and return this form to the Department of the Interior office from which you obtained this notice. Please have one of the Cobell lawyers listed above sign the document after you have indicated your preference. If you need assistance in providing the form to the Cobell lawyers for their signature, a Department of the Interior employee at your local Bureau of Indian Affairs office will fax your signed form to one of the Cobell lawyers.

\_\_\_ I have consulted with class counsel in the Cobell litigation and wish to proceed with any sale, exchange, transfer, or conversion of my Indian trust land.

\_\_\_ I hereby waive my opportunity to consult with class counsel in the Cobell litigation and wish to proceed with any sale, exchange, transfer, or conversion of my Indian trust land.

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(your signature)

\_\_\_\_\_  
(print name)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Cobell lawyer signature)

[End of proposed notice.]

The Court's September 29, 2004 Order also directed the parties to submit proposed notification language for communications with class members "related to: (1) the contract awarded by Interior's Office of Historical Trust Accounting to Quapaw Information Systems, Inc. pursuant to the settlement agreement in Quapaw Tribe of Oklahoma v. Department of the Interior, No. 02-CV-129 H(M) (N.D. Okla.); and (2) the activities of Quapaw Information Systems Inc. pursuant to that contract." Order at 4. Defendants propose the following language:

**This notice only concerns communications from the Department of the Interior and/or Quapaw Information Systems, Inc. regarding the contract awarded by Interior's Office of Historical Trust Accounting to Quapaw Information Systems, Inc. pursuant to the settlement agreement in Quapaw Tribe of Oklahoma v. Department of the Interior, No. 02-CV-129 H(M) (N.D. Okla.) ("Quapaw Contract") and the activities of Quapaw Information Systems, Inc. pursuant to the Quapaw contract.** This notice is being provided in accordance with an Order in the class action lawsuit, Cobell v. Norton, No. 1:196CV01285 (D.D.C.).

Please be aware that many Individual Indian Money ("IIM") account holders are class members in the Cobell litigation, which involves Interior's obligation to perform an accounting for IIM account holders and may involve other issues that are disputed. If you are a class member, you may consult with class counsel in the Cobell litigation before proceeding with any communications with the Department of the Interior or Quapaw Information Systems, Inc. regarding the Quapaw Contract or the activities of Quapaw Information Systems, Inc. pursuant to the Quapaw Contract. For further information you may contact the lawyers for the class members: Dennis M. Gingold, Esq., 607 14th Street, N.W., 9th floor, Washington, DC 2005;, phone: (202) 824-1448; fax: (202) 318-2372; email: [dennismgingold@aol.com](mailto:dennismgingold@aol.com); or Keith Harper, Esq., Native American Rights Fund, 1712 N Street, N.W., Washington, DC 20036-2976; phone: (202) 785-4166; fax: (202) 822-0068; email: [harper@narf.org](mailto:harper@narf.org). You may also access further information at the plaintiffs' website, [www.indiantrust.com](http://www.indiantrust.com).

Although you may consult with class counsel in the Cobell litigation, you are not required to do so and may choose to waive consultation. However, in accordance with an Order in the Cobell litigation, no employee, official, representative, or agent of the Department of the Interior, including its contractor Quapaw Information Systems, Inc., may communicate with you regarding the Quapaw Contract or the activities of Quapaw Information Systems, Inc. pursuant to the Quapaw Contract until you indicate in writing that you have either: (1) consulted with class counsel or (2) you have waived consultation.

Please be aware that whether you consult with class counsel, or choose to waive consultation, you will NOT lose ANY rights that you may have as a class member in the Cobell litigation.

Within ten (10) days of receiving this notice please check the appropriate box below and return this form to the Department of the Interior office from which you obtained this notice. Please have one of the Cobell lawyers listed above sign the document after you have indicated your preference. If you need assistance in providing the form to the Cobell lawyers for their signature, a Department of the Interior employee at your local Bureau of Indian Affairs office will fax your signed form to one of the Cobell lawyers.

\_\_\_ I have consulted with class counsel in the Cobell litigation and wish to proceed with communications with the Department of the Interior and/or Quapaw Information Systems, Inc. regarding the Quapaw Contract or the activities of Quapaw Information Systems, Inc. pursuant to the Quapaw Contract.

\_\_\_ I hereby waive my opportunity to consult with class counsel in the Cobell litigation and wish to proceed with communications with the Department of the Interior and/or Quapaw Information Systems, Inc. regarding the Quapaw Contract or the activities of Quapaw Information Systems, Inc. pursuant to the Quapaw Contract.

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(your signature)

\_\_\_\_\_  
(print name)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Cobell lawyer signature)

[End of proposed notice.]

In the Court's September 29, 2004 Order, the Court suggested that the class communication notices might also include information related to the nature of the claims at issue in this litigation, and descriptions of the relief granted, and sought, in this litigation. See Order at 2. The language Defendants propose does not include information on these topics, other than

generally to refer to the obligation to conduct an accounting. These issues are in dispute on appeal of the Phase 1.5 trial structural injunction. Any attempt to address these topics at this time might prove to be confusing or misleading, pending resolution of the current appeals.

"Misleading communications to class members concerning the litigation pose a serious threat to the fairness of the litigation process, the adequacy of representation and the administration of justice generally." In re School Asbestos Litigation, 842 F.2d 671, 680 (3d Cir. 1981) (vacating order under Fed. R. Civ. P. 23(d)).

Therefore, communications on these topics should not be included in the notices approved by the Court. The notices inform class members of their right to communicate with class counsel, and in any such private communication class counsel can discuss these topics with the class members. These communications may still be misleading, but at least they would not have the imprimatur of the Court.

**CONCLUSION**

For these reasons, the Court should adopt Defendants' proposed language to be included in the class communication notifications.

Dated: October 12, 2004

Respectfully submitted,

ROBERT D. McCALLUM, JR.  
Associate Attorney General  
PETER D. KEISLER  
Assistant Attorney General  
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Deputy Assistant Attorney General  
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/s/ Sandra P. Spooner  
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CERTIFICATE OF SERVICE

I hereby certify that, on October 12, 2004 the foregoing *Defendants' Proposed Notices for Class Communications* was served by Electronic Case Filing, and on the following who is not registered for Electronic Case Filing, by facsimile:

Earl Old Person (*Pro se*)  
Blackfeet Tribe  
P.O. Box 850  
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Fax (406) 338-7530

/s/ Kevin P. Kingston  
Kevin P. Kingston

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ELOUISE PEPION COBELL, <u>et al.</u> , )	
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Plaintiffs, )	
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)	(Judge Lamberth)
GALE NORTON, Secretary of the Interior, <u>et al.</u> , )	
)	
Defendants. )	
_____ )	

**ORDER**

This matter comes before the Court on Defendants' Proposed Notices for Class Communications. Upon consideration of the Proposed Notice, the responses thereto, and the record in this case, it is hereby

ORDERED that Defendants' proposed language shall be included as a notice that accompanies any communication between Defendants and class members regarding the sale, exchange, transfer, or conversion of any Indian trust land; it is further

ORDERED that Defendants' proposed language shall be included as a notice that accompanies communications with class members related to: (1) the contract awarded by Interior's Office of Historical Trust Accounting to Quapaw Information Systems, Inc. pursuant to the settlement agreement in Quapaw Tribe of Oklahoma v. Department of the Interior, No. 02-CV-129 H(M) (N.D. Okla.); and (2) the activities of Quapaw Information Systems Inc. pursuant to that contract.



SO ORDERED.

Date: \_\_\_\_\_

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ROYCE C. LAMBERTH  
United States District Judge

cc:

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