



Affiliated Tribes of Northwest Indians

December 20, 2006

John E. Echohawk, Executive Director
Native American Rights Fund
1506 Broadway
Boulder, CO 80302-6296

Dear Mr. Echohawk:

On behalf of the Affiliated Tribes of Northwest Indians ("ATNI"), I am writing to provide its views on the Native American Rights Fund's ("NARF") plan to file a class action lawsuit against the United States to compel an accounting of tribal trust accounts. Although ATNI strongly supports NARF's mission and acknowledges the positive impact of NARF's work in Indian country, ATNI has grave concerns about the proposed class action and does not support filing the lawsuit as proposed.

We have reviewed your December 12, 2006 memorandum that explains NARF's intentions and rationale regarding the class action lawsuit. Also, we very much appreciate your participation in a conference call of ATNI's Board of Directors on December 13, 2006.

Based on that memorandum and information gleaned from the conference call, we understand that NARF intends to file the lawsuit on behalf of the approximately 250 Indian tribes that received Arthur Andersen reconciliation reports and have not filed separate lawsuits challenging those reports. The lawsuit will seek, among other relief, a declaratory judgment that the Arthur Andersen reports do not constitute an accounting for purposes of the statute of limitations *and* an order to compel an accounting of the class members' trust accounts. The December 12 memorandum states that the rationale for the class action is to protect those Indian tribes that are either unaware of the pending deadline or have no legal representation.

As an initial matter, ATNI believes that as sovereign governments, Indian tribes should in the first instance decide who, or what entity, will represent their interests in litigation. A class action lawsuit that presumptively purports to represent hundreds of Indian tribes runs counter to this principle. The fact that the class action procedure may allow class members to opt out after the lawsuit has been filed is immaterial to this concern.

ATNI also believes that a class action to compel an accounting of tribal trust accounts will create a backlash in Congress that could jeopardize the resolution of all tribal accounting claims. Several members of Congress, including some who serve on appropriations committees, have by their public statements or their actions demonstrated that they have little patience for the prospect of continued litigation in the ongoing *Cobell* case. It is foreseeable, and, perhaps even likely, that the prospect of -

another *Cobell*-style lawsuit may be enough to tip the scales for Congress to acquiesce to the Administration's continued requests to impose a "rough justice," one-size-fits-all settlement of the individual and tribal accounting claims. It is also foreseeable that the imposition of such a settlement would not be limited to the members of the class, but, in an attempt to achieve a "global settlement," would also ensnare those tribes that are not and do not wish to be class members and that are currently litigating their own claims on their own time frames.

ATNI is on record emphasizing the fact that the pending individual tribal lawsuits stand on their own merits and are manageable for the United States to defend as reasons why the *mandatory* inclusion of tribal claims in any legislative settlement of *Cobell* is unwarranted. Neither is true with a class action accounting lawsuit. Conversely, a tribal class action accounting lawsuit makes it almost certain that any *Cobell* legislative settlement *will* include tribal claims.

In addition, ATNI is also concerned that a tribal class action to compel an accounting will complicate implementation of forward-looking trust reform. As you know, the Administration has taken various steps to limit or otherwise diminish the United States' trust responsibility to Indians. Recently, the Administration has disseminated draft regulations wherein it proposes to cease acquiring land into trust for individual Indians in all but limited circumstances. A tribal class action accounting lawsuit will give the Administration an arguable justification to formally extend this policy to limit the acquisition of *tribal* property into trust status, or to pursue other initiatives to diminish the United States' trust responsibility to Indian tribes.

If NARF's sole motive for pursuing a tribal class action lawsuit is to preserve the rights of those Indian tribes that lack the resources to protect themselves, ATNI respectfully submits that this goal can be more reasonably accomplished by pursuing only declaratory relief that the Arthur Andersen reports are not an "accounting" for purposes of the statute of limitations. Against this backdrop, prosecution of the accounting claim—and the sword that compelling nationwide discovery of 250 tribes' trust account records would bring with it—seems wholly unnecessary.

On the other hand, if the intent in pursuing the accounting claim is to bring additional pressure to bear on the Administration to settle *Cobell*, ATNI believes that it is utterly inappropriate and inconsistent with NARF's mission to leverage Indian country's potential accounting claims as a means to that end.

ATNI appreciates your consideration of this letter and looks forward to a constructive dialogue with NARF on this important issue. If you have any questions or additional comments, please feel free to contact me.

Sincerely,



Ernest L. Stensgar, President

cc: Board Members, Native American Rights Fund
United South and Eastern Tribes
Great Plains Tribal Chairman's Association
Intertribal Monitoring Association