

Resolution of the BIA/Tribal Budget Advisory Council

Objection to and Call for Reversal of the Department of Interior's Recent Decision to Defund Tribal Program Work to Pay *Cobell* Attorney Fee Award

WHEREAS, the United States owes a trust duty to American Indians and American Indian tribes, which trust duty generally encompasses matters relating to the management of natural resources, including the revenues earned therefrom; and

WHEREAS, the United States has expressly recognized that its trust responsibility extends to American Indian water rights, *see* 55 Fed. Re. 9223 (March 12, 1990) (“Indian water rights are vested property rights for which the United States has a trust responsibility...”); and

WHEREAS, the congressionally established Western Water Policy Review Advisory Commission has affirmed that “[a] key objective of federal water policy is to assist tribes in meeting tribally defined goals regarding the use, management, and protection of their water and water rights.” *Report of the Western Water Policy Review Advisory Commission, Water in the West: Challenge for the Next Century* (June 1998) at xix; *id.* At 3-45 through 3-51; and

WHEREAS, through the Bureau of Indian Affairs and largely consistent with the “key objective” affirmed by the Western Water Policy Review Advisory Commission, the Department of the Interior provides some federal financial support for tribal water rights litigation and negotiation activities as well as water management programs. *See* 70 Fed. Reg. 60,846 (Oct. 19, 2005): 25 C.F.R § 89.41 (2005); and

WHEREAS, while that federal financial support never provides adequate funding to cover *all* costs and expenses associated with tribal water rights litigation and negotiation activities or water management programs, many tribes critically rely on such funding in order to implement those activities and programs; and

WHEREAS, concerning wholly separate trust-related matters, a group of American Indian beneficiaries of Individual Indian Money Accounts have sued the United States for mismanagement of those trust accounts, *see Cobell v. Norton*; and

WHEREAS, the *Cobell* court recently ordered the United States to pay \$7,066,471.05 in attorney fees relating to the plaintiffs’ litigation of their trust claims; and

WHEREAS, in a “Dear Tribal Leader” letter from Associate Deputy Secretary James E. Cason and dated January 26, 2006, the Department of the Interior announced that it was reallocating Bureau of Indian Affairs program funding to pay the *Cobell* attorney fee award and such reallocation essentially defunded programs designed to support tribal water litigation, negotiation, and management efforts; and

WHEREAS, Associate Deputy Secretary Cason has publicly acknowledged that his funding reallocation decision amounted to “robbing Peter to pay Paul...” Diana Marrero, “Tribes Angered by Budget Cuts,” *Gannett News Service* (Feb. 3, 2006); and

WHEREAS, it is utterly inconsistent with the federal government’s trust responsibility to defund tribal programs in order to satisfy and adverse legal judgment entered against the United States, particularly where such judgment relates to separate and well founded allegations of federal violation of its trust duties; and

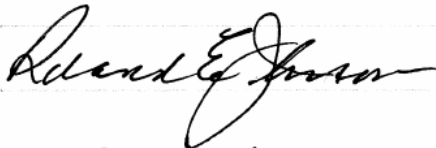
WHEREAS, funding for such judgments should be paid out of United States Treasury judgment funds or other sources of federal revenues and should not come at the expense of programs designed to facilitate implementation of the federal-tribal trust relationship.

NOW THEREFORE BE IT RESOLVED, that the Council strongly objects to the Department’s offensive action in defunding some tribal programs in order to pay attorney fees associated with legal action taken by American Indians to seek a just resolution of historic failures of the United States in the discharging of its trust responsibility.

BE IT FURTHER RESOLVED, that the Council calls on the Department to reverse its funding allocation decisions, which were explained in a “Dear Tribal Leader” letter from James E. Cason and dated January 26, 2006, and reinstate all tribal water program funding.



Yerington Parake Tribe



Governor, Pueblo of Laguna



Governor, Gileta Del Sur Pueblo



Chairman - Comanche Nation



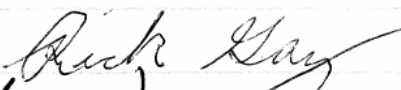
Chairman, TICKAPOO TRIBE OF
KANSAS



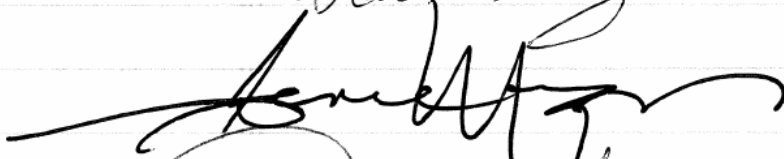
Vice Chairman - Black Feet Tribe,
MONTANA



Secretary Crow Nation



Umatilla Tribes



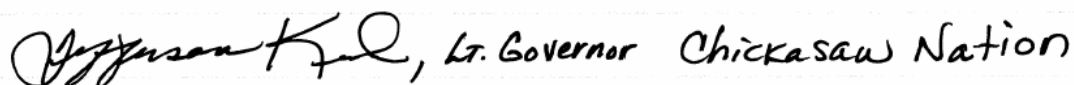
Navajo Nation-Speaker

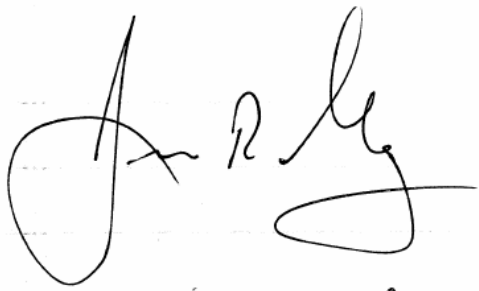


Red Lake Nation Tribal
Treasurer



Miami Nation of OKLA

 Lt. Governor Chickasaw Nation

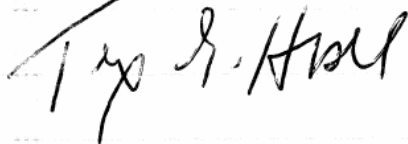


Chief Dsage Nation

Ken W. Davis Chairman, Turtle Mountain
Band of Chippewa Indians

Lucia Fie Phunder President
Oglala Sioux Tribe

Brenda Fields, TBAC Eastern Regional Representative



Mandan, Hidatsa + Arikara
Tribal Nation