

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

ELOUISE PEPION COBELL et al., on)
their own behalf and on behalf of all)
persons similarly situated,)
)
Plaintiffs,)
v.)
)
SALLY JEWELL, Secretary of the Interior,)
et al.,)
)
Defendants.)

Civil Action No.
1:96CV01285 (TFH)

INDIAN LAND TENURE FOUNDATION’S MOTION TO INTERVENE

The Indian Land Tenure Foundation (“ILTF”) respectfully moves the Court to permit ILTF to intervene in this case. This motion is supported by a supporting memorandum of law. A proposed order is also included for the Court’s convenience.

Counsel certifies that on December 3, 2013, pursuant to Local Civil Rule 7(m), counsel discussed this motion to intervene with William E. Dorris (counsel for Plaintiffs), who stated that Plaintiffs take no position on the motion. Counsel also certifies that on December 2, 2013, counsel met and conferred with Robert J. Kirschman, Jr. (counsel for Defendants), who stated that Defendants oppose the motion because in his view ILTF lacks standing and the motion is untimely. Mr. Kirschman provided no further explanation and he offered no objection on the merits. Once ILTF reviews Defendants opposition brief, ILTF will address its arguments in its reply. Accordingly, ILTF asks that the Court grant this Motion.

Respectfully submitted,

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Date: December 4, 2013

Attorneys for Indian Land Tenure Foundation

CERTIFICATE OF SERVICE

I, Iris Figueroa Rosario, hereby certify that I caused the foregoing to be filed via the Court's ECF System, which will cause electronic notice of the filing on all parties registered in this proceeding.

I further certify that on this 4th day of December, 2013, I caused copies of the foregoing document to be sent by first-class mail, postage prepaid upon the following:

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/s/ Iris Figueroa Rosario
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Defendants.)

**INDIAN LAND TENURE FOUNDATION’S MEMORANDUM IN SUPPORT OF ITS
MOTION TO INTERVENE**

Pursuant to Fed. R. Civ. P. 24(a)(2), the Indian Land Tenure Foundation (“ILTF”) respectfully moves the Court to permit it to intervene in this case for the purpose of supporting Plaintiffs’ Notice of Supplemental Information and Correction Regarding Plaintiffs’ Motion for Reconsideration of Class Representatives’ Expense Application (“Plaintiffs’ Notice”) (Dkt. #3956). ILTF does not seek to submit additional briefing on the merits of the Notice of Supplemental Information (Dkt. #3956) or the Motion for Reconsideration (“Motion for Reconsideration”). Nor does it seek to raise new issues. It simply seeks to ensure that its right to \$496,393 that it loaned to the Blackfeet Reservation Development Fund (“BRDF”) to fund this litigation is fully protected, particularly in the event of an adverse ruling on the pending Motion for Reconsideration. The Court should grant ILTF’s motion to intervene for the reasons set forth in the Declaration of Cris Stainbrook, President of ILTF (Docket #3956, Attach. #1), which demonstrate that ILTF shares common questions of law and fact with specific claims the *Cobell*

plaintiffs have asserted in their Motion for Reconsideration and whose final resolution necessarily will determine, and be dispositive of, substantive property rights of ILTF.¹

Federal Rule of Civil Procedure 24(a)(2) explicitly sets forth the standards for a movant's Intervention as of Right, standards that ILTF meets squarely, *i.e.*, ILTF claims an interest relating to the property that is the subject of this action and it is so situated that disposing of the action may impair ILTF's ability to fully protect its interests absent intervention.² Most importantly, if the Motion for Reconsideration is denied, ILTF would have no right to appeal an adverse ruling absent intervention. Plainly, without intervention, ILTF cannot ensure full protection of property rights and other substantive interests that are implicated in the *Cobell* plaintiffs' motion.

As detailed in Mr. Stainbrook's Declaration, among other things, ILTF is a unique national, community-based Indian organization that serves American Indians in the recovery and control of their trust lands. (Dkt. #3956-1 ¶ 2.) From the outset of this litigation, ILTF provided critical financial support to the *Cobell* plaintiffs so that they could enforce trust duties the United States owes to individual Indians. It continues to works to promote education, increase cultural awareness, create economic opportunity, and reform and improve the legal and administrative systems that prevent Indian people from owning and controlling reservation lands. (*Id.* ¶ 2.)

¹ Parenthetically, intervention by ILTF will not unduly delay or prejudice the adjudication of the pending Motion for Reconsideration inasmuch as the issues have been argued and fully briefed and ILTF concurs fully with the arguments made to this Court by the *Cobell* plaintiffs.

² Timeliness, admittedly, is a factor that this Court should consider and although plaintiffs' underlying motion has been pending for more than two and one-half years, Plaintiffs Notice, which this motion expressly supports was filed very recently, on June 10, 2013. Further, the defendants will not be prejudiced since no new legal arguments are presented in support of the Motion for Reconsideration.

ILTF is a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended. (*Id.*)

In that regard, ILTF made loans to the Blackfeet Reservation Development Fund (“BRDF”) solely for purposes of funding the *Cobell* plaintiffs’ litigation costs in this action. (*Id.* ¶ 4.) The *Cobell* plaintiffs agree and their agreement is confirmed expressly in their Motion for Reconsideration, which seeks in part repayment of unpaid litigation expenses, including a \$496,393 ILTF loan to BRDF, the necessary conduit for their litigation funding. (Dkt. #3956.) Funds advanced by ILTF enabled the *Cobell* plaintiffs to achieve the landmark settlement that this Court approved, an historic settlement that is important to the United States and 500,000 individual Indian trust beneficiaries.

If ILTF and other foundations are unable to provide such funding in the future because they cannot recover loans made for the benefit of individual Indian plaintiffs upon the successful resolution of their enforcement proceedings, it is unlikely that individual Indians ever again will have access to the resources and counsel to enforce their rights and hold the United States accountable for breaches of trust. That always was a serious concern of Elouise Cobell, the lead plaintiff in this action and an iconic figure in Indian country. If accountability cannot be ensured, the landmark resolution in *Cobell* will amount to nothing more than a Pyrrhic victory. After more than a century of egregious breaches of trust, and 17 years of the most intensely contested litigation in this circuit, individual Indians surely are entitled to more than that.

ILTF intends to redeploy any and all recovered ILTF loan funds in Indian Country to further mitigate harm that individual Indians continue to suffer as well as to continue working with the Department of Interior to implement effectively the Land Buy-Back provision of the Settlement. It is vitally important that individual Indians have the ability to enforce their rights

in the future and without the funding of organizations like ILTF, effective enforcement is a fiction.

Accordingly, for the reasons set forth above and because this Court's resolution of the Motion to Reconsideration will bind, and affect ILTF as well as adjudicate issues important to individual Indians now and in the future, ILTF respectfully requests that this Court grant this motion and permit ILTF to intervene pursuant to Fed. R. Civ. P. 24(a)(2).

Respectfully submitted,

/s/ Iris Figueroa Rosario

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ORDER

Upon consideration of Indian Land Tenure Foundation’s Motion to Intervene and the responses of defendants and class members, it is hereby ORDERED that:

The motion is granted and the Indian Land Tenure Foundation is hereby permitted to intervene pursuant to Fed. R. Civ. P. 24(a)(2).

SO ORDERED this the ___ day of _____, 2013.

Judge Thomas F. Hogan
United States District Judge