



2011 Mid-Year Conference Worley, Idaho

RESOLUTION #11 - 45

"SUPPORTING THE NATIVE AMERICAN RIGHTS FUND'S REQUEST FOR ATTORNEY'S FEES AND H.R. 887"

PREAMBLE

We the members of the Affiliated Tribes of Northwest Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants rights secured under Indian Treaties, Executive Orders, and benefits to which we are entitled under the laws and constitution of the United States and several states, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise to promote the welfare of the Indian people, do hereby establish and submit the following resolution:

WHEREAS, the Affiliated Tribes of Northwest Indians ("ATNI") are representatives of and advocates for national, regional, and specific tribal concerns; and

WHEREAS, ATNI is a regional organization comprised of American Indians/Alaska Natives and 57 tribes in the states of Washington, Idaho, Oregon, Montana, Nevada, Northern California, and Alaska; and

WHEREAS, the health, safety, welfare, education, economic and employment opportunity, and preservation of cultural and natural resources are primary goals and objectives of the ATNI; and

WHEREAS, at its 2010 Winter Conference, ATNI enacted Resolution #10-07, which demanded transparency and time for Indian Country to understand the proposed *Cobell v. Salazar* settlement and demanded that Congress conduct hearings to ensure that Indian Country has time to consider the fairness of the proposed implementing legislation; and

WHEREAS, at its 2010 Mid-Year Conference, ATNI enacted Resolution #10-19, which supported Senator John Barrasso's proposed changes to the *Cobell* settlement that addressed many of the questions and concerns that were raised by Indian Country, which specifically included "capping pre-settlement date attorney's fees, expenses and costs at \$50 million;" and

WHEREAS, at its 2010 Mid-Year Conference, the National Congress of American Indians enacted Resolution #RAP-10-037, which desired to see a number of changes incorporated in the *Cobell* settlement agreement, including, "fairness in attorney fees and incentive payments to ensure that they do not unduly diminish the restitution to individual account holders;" and

WHEREAS, these changes were not included in the final version of the Claims Resolution Act of 2010, which authorized the *Cobell* settlement; and

WHEREAS, the *Cobell* attorneys, after congressional approval of the Claims Resolution Act, revealed for the first time the existence of a contingency fee agreement—previously unknown to and still unseen by Indian Country, Congress, and class members—that they believe entitles them to \$223 million in attorney's fees; and

WHEREAS, the \$223 million fee request filed by the *Cobell* attorneys seeks compensation for one lawyer who claimed to bill more than 28,000 hours over a seven year period at a rate of \$925/hr., including several days where more than 24 hours were billed in a single day; for extravagant dining and hotel expenses; for time for which the lawyers have already been compensated in earlier fee awards; and for other inappropriate and/or inflated fees and expenses; and

WHEREAS, any attorney's fees awarded will be taken from funds that would otherwise be distributed to class members; and

WHEREAS, in response to these revelations and the *Cobell* attorney's fee request, Representatives Don Young and Doc Hastings have introduced H.R. 887, which would cap the total attorney's fees, expenses and costs in the *Cobell* case at \$50 million; and

WHEREAS, according to court filings, the *Cobell* lawyers have taken the position that the Native American Rights Fund ("NARF") is not entitled to any attorney's fees or costs despite contributing more than 31,000 hours to the case from 1996 through 2006 and despite prior assurances by the *Cobell* attorneys that NARF would be compensated for its contributions; and

WHEREAS, in response to the *Cobell* attorney's position, NARF has been forced to file its own request for fees that seeks \$8.1 million for its time, expenses, and costs; and

WHEREAS, the revelation of the contingency fee, and the \$223 million in attorney's fees sought by the *Cobell* attorneys, is considered outrageous by many in Indian Country and as a breach of their fiduciary duty to the class by putting their own interests ahead of the class, and has resulted in intense bipartisan scrutiny and criticism; and

WHEREAS, NARF's fee request is reasonable and seeks only those fees and expenses needed to make it whole for its efforts and it would be manifestly unjust for NARF to not receive anything for its 10 years of contributions to the *Cobell* litigation; now

THEREFORE BE IT RESOLVED, that ATNI fully supports NARF's individual request for \$8.1 million for attorney's fees, expenses, and costs in the *Cobell* settlement; and

BE IT FURTHER RESOLVED, that ATNI fully supports H.R. 887 and the total cap of \$50 million for attorney's fees, expenses, and costs in the *Cobell* settlement.

CERTIFICATION

The foregoing resolution was adopted at the 2011 Mid-Year Conference of the Affiliated Tribes of Northwest Indians, held at the Coeur d'Alene Resort and Casino in Worley, Idaho, May 16-19, 2011 with a quorum present.



Brian Cladoosby, President



Norma Jean Louie, Secretary