

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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

**DEFENDANTS' SUPPLEMENTAL MEMORANDUM IN  
OPPOSITION TO PLAINTIFFS' MOTION FOR TEMPORARY  
RESTRAINING ORDER AND FOR PRELIMINARY INJUNCTION**

Defendants submit this supplemental memorandum in response to the Court's Order of September 1, 2004, which directs the parties to submit further briefing on Plaintiffs' motion for a preliminary injunction ("PI") prohibiting the sale of individual Indian trust land under 25 C.F.R. Part 152. The Court issued a temporary restraining order ("TRO") on August 31, 2004, and then extended the order to September 29, 2004. By this supplemental memorandum, Defendants urge immediate dissolution of the TRO and a prompt denial of all other relief requested by Plaintiffs. No injunctive relief is warranted on the law, the facts, or the equities that must be considered when deciding the propriety of extraordinary relief.

The Department of the Interior ("Interior") has received letters from Native Americans and others describing hardships resulting from entry of the TRO and asking that their pending sales of allotted land be permitted to proceed without delay. Named Plaintiffs, who purport to represent the individual Indian sellers, have provided the Court with no basis at all to justify the halting of these sales. Yet, as a result of the TRO, another Interior program designed to benefit

Indians has been stopped, with no discernable benefit to anyone and to the detriment of individual Indians, including absent class members as well as Indians having no interest in this litigation, who wish to dispose of their land interests.

Plaintiffs' motion is misguided and provides no legitimate basis for entering any injunctive order. Plaintiffs' arguments rest upon a fundamental misunderstanding of the challenged land transactions and a misstatement of the record in this case, as demonstrated below. The named class representatives, who have not proven any personal stake in the matter, are seeking to stop land sales that many other absent class members clearly favor.<sup>1</sup> Given such an intractable conflict among class members, the Court should refuse Plaintiffs' request for extraordinary relief.

The defects in Plaintiffs' motion are legion. No jurisdictional basis exists for the Court to grant relief, nor do Plaintiffs have standing to pursue it. Plaintiffs profess that their concern is to protect class members from losing their right to an accounting, but nothing relating to these land transactions affects a class member's right to an accounting of funds under the American Indian Trust Fund Management Reform Act of 1994 ("1994 Act"), Pub. L. No. 103-412, 108 Stat. 4239. The typical land sale under 25 C.F.R. Part 152 ("Part 152 sale") is initiated by an individual Indian for a host of individual reasons, and the regulations give preference for sales to the tribe and other Indians. The regulations require an appraisal prior to any sale. Nothing put forth by Plaintiffs indicates that Interior has communicated anything to individual Indians as part of Part

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<sup>1</sup> As concerns Invitation No. 69, the bid invitation issued by the Anadarko Agency and attached to Plaintiffs' motion ("Invitation No. 69"), Defendants acknowledge that many of the individuals who had sought to sell their interests through this solicitation are class members.

152 sales that discusses either the subject matter of this litigation or their right to an accounting. Continuation of the restraint will likely risk harm to those who are awaiting the sale of their land interest to meet some urgent financial need. The temporary restraining order should be dissolved forthwith and the request for a preliminary injunction denied.<sup>2</sup>

### **FACTS**

The land sales that Plaintiffs attack and seek to enjoin are routine transactions undertaken in the ordinary course of business at the request of the individual Indians who own the properties. Plaintiffs concede that individual Indians have a right to sell their land. Interior established the procedures now at issue in 1973; they are codified at 25 C.F.R. Part 152.<sup>3</sup> According to a recent survey conducted by Interior of its regional offices, approximately 1,663 applications for the sale of an interest in allotted Indian land have been approved but not yet sold pursuant to 25 C.F.R. Part 152. See Goodwin Decl. ¶ 6 (Sept. 8, 2004). A small minority (81) of these 1,663 applications are for sale by bid invitation, while the rest are slated for a negotiated sale. Id.

In the days following entry of the TRO, Interior has received letters from individual Indians describing hardships they face because their land sales were halted by the Court. See, e.g., Notice of Filing (Sept. 2, 2004) (Dkt. No. 2672) (attaching redacted letters). Several letters

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<sup>2</sup> Interior has made prompt efforts to implement the TRO across all offices of the Bureau of Indian Affairs around the country. All regions of the Bureau were directed to relay instructions to all agencies providing land sale services, including contracting and compacting tribes, to cease all sales under 25 C.F.R. Part 152 until further notice. See Declaration of Janet A. Goodwin (Exhibit 2) ("Goodwin Decl.").

<sup>3</sup> The governing regulations were adopted in 1973, see 38 Fed. Reg. 10,080 (Apr. 24, 1973), and redesignated in 1982, see 47 Fed. Reg. 13,327 (Mar. 30, 1982).

include statements that the sellers have negotiated a sale to their tribe; that the tribe has agreed to pay "a much higher price than the appraised value"; that the sellers were provided with the appraisal, maps and other information concerning their property interests; and that they consider their sales contract to be "more than fair." Some letters describe specific hardships the sellers face if the sales are not accomplished promptly. One letter states that the seller needs the sales proceeds because of the "need to pay for medications, bills and repairs to my home." Id. (First Letter, at 1). Another letter expresses a need to use the proceeds to help pay for "medical bills and medications," including surgery, id. (Second Letter, at 1), while a third letter describes a need to pay rent because "I could lose my house I am buying." Id. (Third Letter, at 1). Two other letters describe an urgent need to care for a close relative who is ill and how their land sale is necessary to alleviate that financial burden. See Notices of Filing (Sept. 8, 2004) (Dkt. Nos. 2677& 2678) (additional redacted letters).

Interior has also been contacted by the Department of Energy ("DOE") with concerns about whether it can continue a program of funding certain land acquisitions by tribes so that those lands can be permanently protected and managed by the tribes as fish and wildlife habitats. See Declaration of Gregory K. Delwiche (Sept. 7, 2004) ("Delwiche Decl.") (submitted with Defendants' Emergency Motion for Dissolution of the August 31, 2004 Temporary Restraining Order Insofar as It Restrains Tribal Acquisitions Funded By The Department of Energy as Part of Its Fish And Wildlife Mitigation Program (filed Sept. 8, 2004)). The tribal acquisitions of such lands, some of which are purchased from individual Indians pursuant to 25 C.F.R. Part 152, are funded by DOE as part of a federal program established under the Pacific Northwest Electric Power Planning and Conservation Act to protect, mitigate, and enhance fish and wildlife affected

by federal hydropower projects in the Columbia River Basin. See 16 U.S.C. § 839b(h)(10)(A). According to DOE, pending sales that do not close by September 30, 2004, the end of the fiscal year, are at risk of losing funding. Id. at ¶ 6.

Pursuant to 25 C.F.R. Part 152, any individual Indian may file an application with Interior for sale of his or her trust land. 25 C.F.R. § 152.18.<sup>4</sup> Part 152 does not govern only sales; it governs a variety of transactions involving Indian lands. For example, Part 152 provides that "trust or restricted lands acquired by allotment, devise, inheritance, purchase, exchange, or gift may be sold, exchanged, and conveyed by the Indian owner with the approval of the Secretary or by the Secretary with the consent of the Indian owner." 25 C.F.R. § 152.17 (citing multiple statutory authorities dating back to 1902) (emphasis added).<sup>5</sup> Plaintiffs have only complained about sales of trust land, and sales are the only transactions halted under the TRO.<sup>6</sup>

Two types of sales are possible under Part 152: sale by bid solicitation and sale by negotiated contract. See id. § 152.25. A sale by bid solicitation involves advertising the property for sale and inviting sealed bids, as was done in Invitation No. 69. See id. § 152.26 ("Advertisement"). A negotiated sale may occur only if the purchaser is (1) another Indian, (2)

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<sup>4</sup> The regulations also authorize the natural guardian of an Indian under a disability, 25 C.F.R. § 152.18, or a duly appointed fiduciary acting with court approval, id. § 152.19, to make an application on behalf of an individual Indian in his or her charge.

<sup>5</sup> These same regulations also provide a mechanism for an individual Indian to remove his or her land interest from trust without a sale or other immediate disposition. An individual Indian, for example, may apply to convert his or her trust land into a fee patent. 25 C.F.R. § 152.4.

<sup>6</sup> Although the TRO uses the word "auctions," the Court expressed an intent during the August 31, 2004 hearing to enjoin all sales under 25 C.F.R. Part 152, which is how Interior has interpreted and applied the order.

the tribe, (3) a co-owner, (3) the United States, a state or political subdivision thereof, or "[w]hen the Secretary determines it is impractical to advertise." See id. § 152.25. According to Interior's recent survey of regional offices, negotiated sales are far more common than sales by bid solicitation. See Goodwin Decl. ¶ 6.

In the case of the Anadarko Agency, bid solicitations for the sale of individual Indian lands have occurred only every few years in recent experience. Since 1994, the Anadarko Agency announced the following solicitations: Invitation No. 65, issued on April 19, 1994; Invitation No. 66, issued on March 22, 1995; Invitation No. 67, issued on May 20, 1998, and withdrawn on or about June 5, 1998; Invitation No. 68, issued on June 5, 1998. See Exhibit 3 (Anadarko Invitations). Interior cancelled Invitation No. 69 before accepting bids. Thus, for this agency, it appears that only one bid solicitation (Invitation No. 68) may have actually been completed during the pendency of this litigation.

Whether a sale is to be accomplished through negotiation or an invitation for bids, the individual Indian must complete an application for Interior's review.<sup>7</sup> The Indian must identify current sources of income and provide other information in order to satisfy Interior that the requested land sale is in the best interest of the applicant. See, e.g., Anadarko Agency Invitation No. 69 Application Files at DEF43844-7 (Exhibit 1, filed under seal Sep. 8, 2004) ("Application

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<sup>7</sup> The regulations provide, in pertinent part, as follows: "Applications may be approved if, after careful examination of the circumstances in each case, the transaction appears to be clearly justified in the light of the long-range best interest of the owner or owners . . . ." 25 C.F.R. § 152.23.

Files")<sup>8</sup> (completed application materials for parcel 1 of Anadarko Bid Invitation No. 69).<sup>9</sup> The completed sales application is then reviewed, and various persons within the local agency and the Superintendent must recommend and approve the sale. See, e.g., Application Files at DEF43844, DEF43846, DEF43849-51, DEF43861 (parcel 1). Factors such as the applicant's finances and whether the property is encumbered are examined during this process. See, e.g., Id. at DEF43844-52. In all cases, the regulations require Interior to obtain an appraisal before any sale can be approved. 25 C.F.R. § 152.24.

The regulations further limit Interior's ability to approve a sale unless the negotiated price or the winning bid, as the case may be, meets or exceeds the appraised fair market value. Transactions at less than fair market value are not permitted by the regulations, see id. §§ 152.25(a), 152.28(b), except for transfers and sales among relatives or others who have a close relationship, see id. § 152.25(d). In bid solicitations, the regulations provide for approval of a sale if the winning bid is not less than the appraised value.<sup>10</sup> See id. § 152.28(b).

All of the parcels that are the subject of Plaintiffs' motion were advertised for sale by reason of an application filed by the individual Indian owners. Declaration of Bruce W.

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<sup>8</sup> These documents (numbered DEF43844-DEF44519) are protected by the Privacy Act and were produced to Plaintiffs on September 3, 2004 pursuant to the Court's Order of Sept. 1, 2004.

<sup>9</sup> The references to numbered parcels (e.g., "parcel 1") are to the numbers assigned to the properties being sold as part of Invitation No. 69 and set forth on the bid solicitation document attached to Plaintiffs' motion.

<sup>10</sup> In some bid situations, the highest bid may not exceed the fair market value, in which case the regulations allow a sale only if the top bid "approximates said appraised fair market value," the Secretary concludes that the amount bid is the highest price that may be realized in the circumstances, and the land owner gives his or her consent. Id. § 152.28(b).

Maytubby ¶ 3 (August 30, 2004) ("Maytubby Decl.") (attached as Exhibit A to Defendants' Opposition to Plaintiffs' Motion for Temporary Restraining Order and for Preliminary Injunction (Aug. 30, 2004)). As demonstrated by the applications, each parcel listed on the invitation to bid submitted by Plaintiffs has a corresponding application from the individual Indian land owner (or owners) specifically requesting the sale. Invitation No. 69 was later cancelled after Plaintiffs filed their motion to halt these sales. See Exhibit 4 (local advertisement). Had it proceeded, the regulations cited above would have required Interior to obtain an appraisal if and when bids were submitted. Maytubby Decl. ¶ 7.

Plaintiffs' counsel asserted that individual Indians "are left with a Hobbesian [sic] choice. If they desperately need money because of their current financial condition and they need to sell, they have to sell in accordance with the scheme that does not ensure that they're going to get fair market value."<sup>11</sup> Tr., Hearing on Land Sales Motion for TRO, at 9:11-15 (Aug. 31, 2004); id. at 44:1-3. This assertion is false. As established above, the Invitation No. 69 parcels may not be sold for less than fair market value. 25 C.F.R. § 152.25(a),(b). As Invitation No. 69 shows, a number of the parcels being advertised in 2004 had previously failed to sell during the prior bid invitation (No. 68) in 1998, primarily because the bids received were less than fair market value. See Application Files at DEF44316, DEF44320, DEF44323 (parcel 19; rejected bid of 75% of appraised value); DEF44317, DEF44341, DEF44346 (parcel 20; rejected bid of 80% of appraised value); DEF44366, DEF44369, DEF44371 (parcel 21; rejected bid of 50% of

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<sup>11</sup> "An apparently free choice that actually offers no alternative. . . . This expression alludes to Thomas Hobson of Cambridge, England, who rented horses and allowed each customer to take only the horse nearest the stable door [Mid-1600s]." The American Heritage Dictionary of Idioms (1997) (brackets in original), available at <http://dictionary.reference.com/search?q=Hobson%27s%20choice>.



appraised value). Parcel 8 failed to sell in 1995 as well as in 1998. Id. at DEF43997, DEF44003 (1995 bid invitation No. 66); DEF43986, DEF43991, DEF43993 (1998 bid invitation No. 68; rejecting bid of same amount as in 1995; 1998 bid was for less than 50% of appraised value).

Plaintiffs incorrectly assume that individual Indians are forced to settle for a low price.<sup>12</sup> Plaintiffs have made no showing that any sale under part 152 is forced by the government. Indeed, "inducing an Indian to execute an instrument purporting to convey any trust land or interest therein, or the offering of any such instrument for record, is prohibited and criminal penalties may be incurred." Id. § 152.22 (citing 25 U.S.C. 202 and 348). For advertised sales, the notice of sale must include a "statement warning all bidders against violation of 18 U.S.C. [§] 1860 prohibiting unlawful combination or intimidation of bidders or potential bidders." 25 C.F.R. § 152.26(b)(3). When bids are received, the owner's consent is required for acceptance of the bid, even if it "approximates [the] fair market value and in the Secretary's judgment is the highest price that may be realized in the circumstances." Id. § 152.28(b). Even when the bid exceeds the appraised value, the owner may reject the bid. See Application Files at DEF44386-7 (parcel 22; sole owner rejected bid of \$792 on parcel for mineral rights appraised as having no value).

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<sup>12</sup> As the applications for Invitation No. 69 show, many parcels do not sell quickly. For 11 of the parcels, the applications were submitted in the mid to late 1990s. See DEF43940-41 (parcel 6), DEF43969-70 (parcel 8), DEF44133-44 (parcel 13), DEF44186-93 (parcel 16), DEF44226-35 (parcel 17), DEF44268-77 (parcel 18), DEF44293-300 (parcel 19), DEF44328-29 (parcel 20), DEF44352-53 (parcel 21), DEF44383-84 (parcel 22), DEF44420-21 (parcel 23). Most were submitted before 2004.

According to their applications, none of the 58 individuals<sup>13</sup> lives on the parcels being offered for sale under Invitation No. 69. Id. at DEF43844-7, DEF43862-65, DEF43885-8, DEF43904-5, DEF43917-8, DEF43940-1, DEF43951-4, DEF43969-70, DEF44008-31, DEF44041-2, DEF44091-2, DEF44106-9, DEF44133-4, DEF44144-5, DEF44186-93, DEF44226-35, DEF44268-77, DEF44293-300, DEF44328-9, DEF44352-3, DEF44383-4, DEF44420-1, DEF44482, DEF44491, DEF44495-8, DEF44505-6. Most resided in Oklahoma, but others resided in Texas, California, New Mexico and Colorado. Id. Thus, it does not appear that they are losing their homes as a result of the requested sale.

Half of the 70 applications relating to Invitation No. 69 indicate that the applicant received no income from the property being sold. Id. at DEF43969-70 (parcel 8); DEF44008-31 (parcel 9); DEF44041-2 (parcel 10); DEF44091-2 (parcel 11); DEF44144-5 (parcel 14); DEF44186-93 (parcel 15); DEF44420-1 (parcel 23); DEF44495-8 (parcel 25); DEF44505-6 (parcel 26). The owner of parcel 13, which generates grazing lease revenue, is again attempting to sell only mineral rights, which were appraised as having no value in 1998. Id. at DEF44386, DEF44393, DEF44004, DEF44007, DEF440017.

A notice of sale by advertisement describes "all reservations to which title will be subject and any restrictions and encumbrances . . . ." 25 C.F.R. § 152.26(b)(4). The applications include a blank for the owner to indicate whether sale of the parcel will include surface or sub-surface rights. See, e.g., Application Files at DEF43844. In fact, for Invitation No. 69, 21 of the 26 parcels reserved all mineral rights, one reserved "½" mineral rights, id. at DEF44133 (parcel 13),

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<sup>13</sup> Seventy applications were submitted by 58 individuals.

two made no reservation, id. at DEF44008, DEF44495 (parcels 9 and 25), while two reserved surface rights, id. at DEF44383-85, DEF44505 (parcels 22 and 26).

Finally, a thorough review of the Invitation No. 69 application files reveals no evidence that Interior has communicated any information to the individual Indian applicants about their rights to an accounting or about any other issues in this lawsuit. In sum, the documentation supports a finding that the individual Indian applicants have been treated fairly and properly in accordance with the established regulations and without any violation of this Court's December 23, 2002 Order.

## ARGUMENT<sup>14</sup>

### **I. THIS COURT LACKS JURISDICTION TO GRANT THE SOLE RELIEF PLAINTIFFS SEEK**

#### **A. The Court's Jurisdiction Does Not Extend to Asset Management**

Plaintiffs' motion attempts to bootstrap their arguments in favor of restraining asset management activities into this case, which is exclusively about Plaintiffs' right to an accounting of funds under the 1994 Act, by asserting that land sales compromise class members' right to an accounting. Defendants made it clear that, in their view, the land sales that are the subject of the Plaintiffs' motion are not events that cut off an individual Indian's right to an accounting. Tr. 8/31/04, at 51:22-52:6. On that basis, Plaintiffs conceded that the effect of the sales on Plaintiffs' accounting rights is "off the table." Id. at 56:18-22. Plaintiffs now ask "this Court . . . to enjoin the sale[s] until this Court is assured that the procedures that are in place are in place so that each

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<sup>14</sup> Defendants also incorporate by reference Defendants' Opposition To Plaintiffs' Motion For Temporary Restraining Order And For Preliminary Injunction, filed on August 30, 2004.

trust beneficiary who wants to sell his land can do so and receive whatever his fair market value is." Id. at 57:7-11. This Court lacks jurisdiction to provide this relief.

"[A]sset management is not part of this lawsuit." Cobell v. Babbitt, 91 F. Supp. 2d 1, 18 (D.D.C. 1999) (emphasis added). The Court reaffirmed this fact as recently as last week. See Order, Sept. 2, 2004, at 3 (granting Defendants' Motion For A Protective Order Regarding Plaintiffs' Notice Of Deposition Of Gabriel Sneezy because "plaintiffs may not inquire into appraisals for purposes of evaluating management of trust assets as that may stray beyond the scope of the underlying litigation"). Therefore, Plaintiffs' motion should be denied for want of jurisdiction.

#### **B. Plaintiffs Fail to Demonstrate Standing**

Plaintiffs have not demonstrated that any of the named class representatives are threatened with any injury in fact absent the relief requested.

That a suit may be a class action . . . adds nothing to the question of standing, for even named plaintiffs who represent a class "must allege and show that they personally have been injured, not that injury has been suffered by other, unidentified members of the class to which they belong and which they purport to represent."

Lewis v. Casey, 518 U.S. 343, 357 (1996) (quoting Simon v. Eastern Ky. Welfare Rights Organiz., 426 U.S. 26, 40 n.20 (1976)). In the present case, then, if the representative plaintiffs lack actual injury with respect to a sale under 25 C.F.R. Part 152, the Court lacks jurisdiction to award relief. Lewis, 518 U.S. at 349 n.1 ("standing . . . is jurisdictional and not subject to waiver"). Plaintiffs have made no showing or even an allegation of such injury that would confer standing and, in turn, jurisdiction on this Court.

**C. The Land Sale Process Is Committed to the Secretary's Discretion**

To the extent Plaintiffs attack the implementation of the sale regulations, this Court lacks jurisdiction, because the procedure is committed to the Secretary's discretion. Norton v. Southern Utah Wilderness Alliance, 124 S. Ct. 2373 (2004) ("SUWA"); Lane v. Anderson, 67 F. 563 (C.C.D. Wash. 1895). Here, it appears that Plaintiffs are attempting to obtain an unlawful, de facto receivership by placing the Court in the path of all decisions that Interior makes.<sup>15</sup> The Supreme Court recently warned against injecting courts into such roles:

The principal purpose of the APA limitations . . . is to protect agencies from undue judicial interference with their lawful discretion, and to avoid judicial entanglement in abstract policy disagreements which courts lack both expertise and information to resolve. If courts were empowered to enter general orders compelling compliance with broad statutory mandates, they would necessarily be empowered, as well, to determine whether compliance was achieved – which would mean that it would ultimately become the task of the supervising court, rather than the agency, to work out compliance with the broad statutory mandate, injecting the judge into day-to-day agency management.

SUWA, 124 S. Ct. at 2381. Plaintiffs' motion should be denied because the Court lacks authority to grant the requested relief.

**II. PLAINTIFFS FAIL TO ESTABLISH ANY OF THE FOUR ELEMENTS REQUIRED FOR A PRELIMINARY INJUNCTION**

The law is well established that when considering whether to grant an application for a preliminary injunction, this Court must examine (1) whether a substantial likelihood exists that the plaintiff will succeed on the merits, (2) whether the plaintiff will suffer irreparable injury if

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<sup>15</sup> See, e.g., Pls.' Mot. at 3 ("Preservation of the *status quo* should compel this court to intervene immediately and supervise any such sale until [the Secretary] is replaced by a receiver . . .").

the injunctive relief is denied, (3) whether the granting of injunctive relief will substantially injure the other party, and (4) whether the public interest will be served by the granting of the injunctive relief. E.g., Davenport v. Int'l Bhd. of Teamsters, AFL-CIO, 166 F.3d 356, 360-61 (D.C. Cir. 1999) (citing Serono Labs., Inc. v. Shalala, 158 F.3d 1313, 1317-18 (D.C. Cir. 1998)); Kudjodi v. Wells Fargo Bank, 181 F. Supp. 2d 1, 2 n.2 (D.D.C. 2001). The burden placed upon the moving party is difficult because "a preliminary injunction is an extraordinary and drastic remedy, one that should not be granted unless the movant, by a clear showing, carries the burden of persuasion." Mazurek v. Armstrong, 520 U.S. 968, 972 (1997) (per curiam) (emphasis in original) (quoting 11A C. Wright, A. Miller, & M. Kane, FEDERAL PRACTICE AND PROCEDURE § 2948, at 129-30 (2d ed. 1995)). Plaintiffs have failed to carry their burden on any of these factors. Given the paucity of evidence, it would be hard to imagine a clearer case for denial of a request for a preliminary injunction.

**A. Plaintiffs Have Wholly Failed to Demonstrate Substantial Likelihood of Success on the Merits**

Although the four-part test for the issuance of a preliminary injunction requires a balancing of the factors, "it is especially important for the movant to demonstrate a likelihood of success on the merits." Nat'l Head Start Ass'n v. HHS, 297 F. Supp. 2d 242, 247 (D.D.C. 2004) (citing Davenport, 166 F.3d at 360, 366 (D.C. Cir. 1999), and CityFed Financial Corp. v. Office of Thrift Supervision, 58 F.3d 738, 747 (D.C. Cir. 1995)). This is intuitive, given the extraordinary nature of a preliminary injunction, whereby the court enters an order restraining a party before the court has considered the full record and merits of the parties' assertions. Such an

order is plainly improper if the moving party cannot demonstrate a substantial likelihood that it will, ultimately, succeed.

Plaintiffs' motion does little more than pretend to address this crucial factor. Their motion devotes a mere page-and-a-half to this element, Pls.' Mot. at 9-10, and cites no evidence or law to support the entry of preliminary injunctive relief to bar land sales that are otherwise authorized by law, e.g., 25 C.F.R. Part 152, and specifically requested by individual Indian land owners, including members of the Plaintiffs' own class. Moreover, as we explain below, to the extent Plaintiffs do refer to the record and facts, their references typically misinterpret the record and fail to substantiate factual assertions. For example, during the TRO hearing, Plaintiffs falsely sought to equate class membership with ownership of an interest in trust land. They also misstated the record when arguing that a land sale would necessarily result in the loss of accounting records. Plaintiffs point to a number of other imagined concerns about sales of trust land, but their argument is undermined by the fact that they have been on notice of land sales for years but never expressed any concern until now. Plaintiffs wholly fail to demonstrate a substantial likelihood of success on the merits.

**1. No Evidence Exists That Part 152 Sales Involve Any Communications That Violate This Court's Order Prohibiting Class Communications**

Plaintiffs have come forward with no evidence that any communications that Interior has had with purported class members in the context of a Part 152 sale violate either the letter or the spirit of this Court's Order of December 23, 2002. The Order's prohibitions are expressly limited to the subject matter of this case: the rights of class members to a full and fair accounting of

their IIM accounts.<sup>16</sup> The Order contains no proscription against the communications involved here, which concern asset management, not accounting. Plaintiffs tender no proof at all that Interior has had any communication "regarding this litigation or the claims involved therein" and instead resort to the metaphysical contention that these land sales are not in the ordinary course of business. Part 152 sales are, of course, in the ordinary course of business of Interior as mandated by federal statutes and regulations. Plaintiffs' protestations to the contrary do not alter these facts. Even if, for the sake of Plaintiffs' contorted argument, such sales were assumed to be "extraordinary" events, Interior's communications about Part 152 sales do not violate the Court's Order on class communications absent proof that the communications discuss "this litigation or the claims involved therein." Without this proof, Plaintiffs' motion must fail and the TRO should be dissolved.

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<sup>16</sup> The order provides, in pertinent part:

[D]uring the pendency of the instant litigation, the parties to the litigation, their agents and officials, and their counsel shall not communicate, through the United States mail or any other mode of communication, with any class member in this litigation *regarding this litigation or the claims involved therein*, except as specifically permitted by order of this Court. This restriction includes, but is not limited to, any communications that affect the rights of class members to a full and accurate accounting of their Individual Indian Money trust accounts.

The instant Order does not prohibit defendants from communicating with class members in the ordinary course of business on routine matters unrelated to the instant litigation.

212 F.R.D. at 24 (emphasis supplied).



## **2. The Land Sales Plaintiffs Seek to Enjoin Do Not Affect the Right to an Accounting of IIM Accounts**

Plaintiffs' right to an accounting of funds under the 1994 Act is unaffected by the land sales they seek to enjoin, and Plaintiffs' assertion that Defendants have previously contended otherwise is pure fiction. Neither Interior's historical accounting plan nor this Court's structural injunction conditions an IIM accounting on current or former ownership of an interest in trust lands.<sup>17</sup>

Interior's historical accounting plan provides, in part, as follows:

The historical accounting described in the Plan covers all IIM accounts that were open as of December 31, 2000, and all IIM accounts that were open as of October 25, 1994, or opened thereafter, but closed as of December 31, 2000.

Interior's Historical Accounting Plan For Individual Indian Money Accounts at 2 (Jan. 6, 2003).

Thus, even if the seller of a land interest also happened to be an IIM account holder, and even if that seller's IIM account was closed due to inactivity after sale of the land, the sale would not affect entitlement to an accounting under Interior's plan. Nor does the Court's structural injunction limit the plan's scope in that regard.<sup>18</sup>

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<sup>17</sup> During the hearing on August 31, 2004, it was noted that land acquisitions under the Indian Land Consolidation Project ("ILCP") are regularly reported in Interior's quarterly status reports filed pursuant to this Court's Order of December 21, 1999, whereas sales transactions under 25 C.F.R. Part 152 are not reported. Tr. at 43:7-43:20, 52:24-53:8 (Aug. 31, 2004). Interior reports on ILCP because it is directed at alleviating fractionation, which has a pervasive impact on individual Indian trust administration. Sales pursuant to Part 152 are not part of ILCP and are not aimed at alleviating fractionation, although some sales might indirectly affect fractionated ownership in particular cases.

<sup>18</sup> Plaintiffs' focus on Part 152 sales makes no sense - legal, common or otherwise. Part 152 sales are not the only land transactions that Interior administers by federal statute or regulation, yet Plaintiffs have expressed no complaint about other types of transactions. For example, Part 152 not only authorizes the sale of trust lands by bid solicitation and, in certain circumstances, negotiated sale, but it also allows trust land to be "exchanged, and conveyed by

**3. Plaintiffs Erroneously Contend That Class Membership Is Based Upon Land Interests Rather Than on Being an IIM Account Holder**

Straining to find some nexus between the land sales at issue and the subject matter of this litigation, Plaintiffs erroneously contend that the class includes all "trust beneficiaries," that is, anyone who has an interest in allotted land. Indeed, as Plaintiffs well know, the land owners who are being prevented from selling their land may not even be class members whom Plaintiffs can purport to represent. But Plaintiffs misstate the scope of the class that Plaintiffs proposed when they filed for class certification in 1996 and that this Court certified in February 1997. Plaintiffs defined the class as "consisting of present and former beneficiaries of Individual Indian Money ('IIM') accounts (exclusive of those who prior to the filing of the Complaint herein had filed actions on their own behalf alleging claims included in the Complaint)." Plaintiffs' Motion for Class Certification (Sept. 6, 1996) (emphasis added). The Court granted class certification on

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the Indian owner with the approval of the Secretary . . . ." 25 C.F.R. § 152.17. Such other conveyances may be by gift as well as by exchange. Id. at § 152.23. Part 152 also permits an individual Indian to request that his trust land interest be converted to a fee patent, 25 C.F.R. § 152.4, which the owner can then keep or sell as he or she sees fit. Likewise, pursuant to the Indian Land Consolidation Act of 2000, codified at 25 U.S.C. §§ 2201-2219, and ILCP, individual Indians are voluntarily selling thousands of allotted land interests in various states. The goal of the ILCP "is to acquire small fractional interests in trust and restricted lands owned by Individual Indians . . . in order to lessen the number of owners." Status Report to the Court Number 13, at 79 (May 1, 2003). As of June 30, 2004, allotted land interest holders had sold 93,184 interests through ILCP. Status Report to the Court Number 18, at 53 (Aug. 2, 2004). In addition, specific statutory authority governs the sale and disposition of land owned by individual members of the Five Civilized Tribes in Oklahoma. 25 U.S.C. § 355; see also 25 C.F.R. § 16 (providing legal representation to Indians of the Five Civilized Tribes in Oklahoma state courts on certain estate matters). Tellingly, Plaintiffs have not complained about these other land transactions, nor have they contended that they would somehow extinguish a class member's rights in this litigation.

February 4, 1997, signing Plaintiffs' proposed form of order and adopting Plaintiffs' own language. Order Granting Class Certification (Feb. 4, 1997).

Plaintiffs now insist, however, that the class includes "all past and current trust beneficiaries." Tr., at 20:22-23 (Aug. 31, 2004). Their assertion patently misstates the scope of the class, and Plaintiffs have known this assertion to be false since they first made it, to no effect, more than five years ago. See Plaintiffs' Memorandum Concerning Scope Of Class And Related Matters (Exhibit 5). Plaintiffs never sought to amend the class definition, and the scope of the class remains just as *Plaintiffs* defined it in 1996: "present and former beneficiaries of Individual Indian Money ('IIM') accounts (exclusive of those who prior to the filing of the Complaint herein had filed actions on their own behalf alleging claims included in the Complaint)." Order Granting Class Certification at 3 (Feb. 4, 1997).

Almost two years after class certification, Plaintiffs contended that the definition "consisting of present and former beneficiaries of Individual Indian Money ('IIM') accounts" includes "[e]very individual Indian (or, in appropriate cases, his heirs, estate, or personal representative) on whose behalf, as trust beneficiary, a trust account is, has been, should be, or should have been maintained by the United States or its agent." Exhibit 5 at 1-2. Plaintiffs, however, never justified their expanded interpretation. At the behest of Special Master Balaran, Defendants briefed the definition issue and demonstrated that Plaintiffs were attempting to expand the class without moving to amend the class certification order. See United States' Memorandum Addressing Plaintiffs' Scope of Class Memorandum at 2 (Mar. 26, 1999) (Exhibit 6). Defendants established that "the class does not include individuals who never held IIM accounts," such as those who have "direct pay" arrangements. Id. at 2-3 ("Direct pays' are

individual Indians who receive allotment income, such as mineral royalties, directly from a lessee or permittee rather than through an IIM account.").

Defendants demonstrated that a "trust beneficiary" is not necessarily an "IIM account holder"; the terms are neither coextensive nor interchangeable. Some Indians, for example, have an interest in allotted lands that generate no revenue and, therefore, have no IIM account. Such individuals may be "trust" beneficiaries due to their land interests, but they are not members of the class. *Id.* at 2. Therefore, Indians who never had an IIM account as of February 4, 1997 are not members of the class, and it is simply wrong for Plaintiffs to contend otherwise. The ban on land sales applies to class members and non-class members alike, resulting in hardships for people whom class counsel may not even represent.

#### **4. Account Information Is Not Destroyed When an Account Is Closed**

Plaintiffs have attempted to connect Part 152 sales to concern about the preservation and availability of accounting records, but this argument is without merit. During the TRO hearing, class counsel twice asserted that closure of an IIM account on Interior's computer system would result in the loss of all data related to that individual's account. In doing so, class counsel misstated Deputy Special Trustee Donna Erwin's testimony during the Phase 1 trial. Class counsel said:

This Court engaged in a dialogue with Donna Irwin [sic] during trial one concerning what happens when an account is closed. And, for example, the **history on file is then deleted**. And Donna Irwin [sic] responded to this Court by saying the information is gone. And this Court said gone forever, lost? She confirmed yes, lost. It's deleted. It's gone. Not recoverable.

Tr. at 7:3-9 (Aug. 31, 2004) (emphasis added). Then, in rebuttal argument, class counsel again misstated Ms. Erwin's Trial 1 testimony:

What we have learned, and again as I pointed out with regard to the Donna Irwin [sic] testimony, accounts had been closed. That means they're entitled to accounting because they've been taken out [sic] the system. That hardly is consistent with trust law. That is totally in conflict with the Trust Reform Act of 1994.

Id. at 49:12-17. Contrary to class counsel's statements, Ms. Erwin testified during the Phase 1 trial that when accounts are closed Interior retains all transaction and account number data on its computer system.

Ms. Erwin testified in pertinent parts as follows:

1266

10 Q. [W]hat's a closed account?

11 A. A closed account would still -- it would have been  
12 coded as closed, but it's still on the actual database.

\* \* \*

17 Q. When was the last time files were designated inactive?

18 A. In December 31, 1995.

19 Q. And what happens to an inactive file?

20 A. An inactive file is boxed, inventoried, and sent to  
21 Ken Rossman's records center.

22 Q. And in the process of inactivating a file, is any  
23 information lost?

24 A. On the prior system, when an account was closed and  
25 they referred to them as purging that account, you would

1267

1 lose the master record information, but you did not lose the  
2 transactional history.

3 Q. I'm sorry, and what's the master file information?

4 A. It would be things such as the account holder's  
5 address, account holder's management code, which tells how  
6 you would administer an account, and birth date, and date of  
7 death if it existed within there.

8 Q. And if there was suddenly activity in an inactive  
9 account, what would you do?

10 A. We would locate the file folder that we had, and we  
11 would set up a new account. We would have to set up a new  
12 account.

13 Q. And what happens with a transaction -- what happened

14 with the transaction data for inactive accounts?  
15 A. The transaction data still exists within the BIA  
16 database.  
17 Q. Okay.  
18 THE COURT: But what happened to the purged data?  
19 THE WITNESS: The actual master, that information  
20 is lost.  
21 THE COURT: Lost how, destroyed?  
22 THE WITNESS: Yes. It was -- it was on the prior  
23 system, and if those tapes were not retained, then it was  
24 lost.  
25 THE COURT: Until 1995?

1268

1 THE WITNESS: December the 31st of '95. If you  
2 could locate a file, then you're able to -- with the account  
3 number, you'll be able to still get the transactional  
4 history.  
5 THE COURT: But not the other data?  
6 THE WITNESS: That's correct.  
7 THE COURT: So it's lost forever?  
8 THE WITNESS: That's correct.  
9 BY MR. EICHNER:  
10 Q. And just so the record is clear, that kind of purging  
11 hasn't happened since -- since 1-1-96, I think you said?  
12 A. Records as of December 31st of 95, and I believe I  
13 said that if it was closed prior to 1-1 of '96.  
14 Q. Are files currently being closed?  
15 A. Files are -- accounts are coded as closed.

\* \* \*

1269

7 **Q. And in closing the account, is any information lost?**  
8 **A. No.**  
9 THE COURT: Today?  
10 THE WITNESS: Today.

Tr., Phase 1 Trial Day 8, at 1266:10-1269:10 (June 21, 1999) (direct examination) (emphasis added). Thus, according to Ms. Erwin's testimony, Interior revised its procedures prior to this lawsuit so that when an account is closed, no information is lost. Class counsel's assertions to the contrary during the TRO hearing were, therefore, demonstrably false. With the record now

corrected, it is obvious that Plaintiffs' attempt to connect these land sales to some accounting concern is unavailing.

**5. Contrary to Their Assertions in Court, Plaintiffs Have Had Notice of Land Sales**

As Plaintiffs must well know, Interior has conducted sales of allotment interests throughout the course of this litigation. During the Phase 1.5 trial last year, numerous witnesses testified concerning land sales, and the testimony was often elicited by Plaintiffs' counsel. See Tr., Phase 1.5 Trial Day 1 PM, at 23:24-24:4 (May 1, 2003) (direct examination of Homan); Tr., Phase 1.5 Trial Day 21 AM, at 53:3-12 (June 4, 2003) (cross-examination of Cason); Tr., Phase 1.5 Trial Day 39 PM, at 15:3-23 (June 30, 2003) (cross-examination of Swimmer, testifying that draft Accounting Standards Manual sought "timely and complete information regarding the gains and losses associated with the sale of allotment assets"); Tr., Phase 1.5 Trial Day 40 PM, at 32:12-18 (July 1, 2003) (cross-examination of Swimmer, discussing Arthur Andersen report concerning payments to Indians on land sales, including "whether or not presently all sales are recorded on the general ledger"); Tr., Phase 1.5 Trial Day 41 AM, at 8-9 (July 2, 2003) (re-direct examination of Mr. Swimmer concerning data cleanup of land sale information); Tr., Phase 1.5 Trial Day 23 AM, at 19:2-25 (June 6, 2003) (direct examination of Herman regarding the collection of accounting documents "primarily focused on land sales").<sup>19</sup>

Besides live testimony, Defendants offered and provided to Plaintiffs expert reports during the Phase 1.5 trial that openly discussed Indian land sales, such as those that have

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<sup>19</sup> See also Tr., Phase 1 Trial Day 3, at 429:5-7 (June 14, 1999) (Plaintiffs' direct examination of Christie, testifying that "traditionally, we have viewed appraisals as for the sale or exchange of land, not necessarily for the leasing of land")

occurred for decades under Part 152. See Expert Report of Ed Angel, Defs.' Ex. 60 at 35 ("Indian Land Sales and Individual Indian Monies, 1887-1934, Part I"); Defs.' Ex. 148, Indian Land Sales and Individual Indian Monies, 1887-1934, Part II.<sup>20</sup> Plaintiffs' professed ignorance in the face of all this previous information makes their new arguments against Part 152 sales all the more puzzling.

In addition, as already demonstrated above, Plaintiffs are on notice, and should be aware through their review of Interior's quarterly status reports to the Court, of the sale of thousands of allotment interests pursuant to the Indian Land Consolidation Act of 2000 and Interior's ongoing Indian Land Consolidation Program. In light of all this information available to Plaintiffs, their contention that Plaintiffs were not aware of ongoing land sales lacks credibility and undermines their assertions here that there is reason to be concerned about them.

**6. Plaintiffs' Allegations of Fraud, Deceit, and Misrepresentation Are Wholly Lacking in Support**

Plaintiffs assert that the land sales need to be enjoined "until this Court has approved all relevant communications with class members so that the Trust beneficiaries are protected against all efforts of Norton and her counsel to further unduly influence members of the class and further disseminate false and misleading statements concerning their rights in this litigation." Pls.' Mot. at 1. In making these reckless assertions, Plaintiffs ignore the facts surrounding the land sales and the governing regulations.

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<sup>20</sup> The Court ultimately did not admit these reports into evidence, but the documents were nonetheless furnished to Plaintiffs and testimony was elicited concerning their contents.



a. Plaintiffs' Allegations Ignore the Regulatory Process and Safeguards for Land Sales

Plaintiffs' insinuations imply some form of secretive, undisclosed recruitment by Interior directed to members of the class, but nothing could be further from the truth. The Part 152 sales process begins with a request from individual Indian land owners. See 25 C.F.R. § 152.23 ("Applications for sale, exchange or gift"). Plaintiffs' motion ignores the governing regulations that have been in force for more than thirty years and offers no evidence that these regulations have not been observed in conducting Part 152 sales.

Nor do Plaintiffs offer proof of any misleading communication by Interior. Plaintiffs attached Anadarko Invitation No. 69 to their motion, but they do not contend that it contains any false or misleading communication.

At most, Plaintiffs' real complaint is that the public bidding process goes forward before an appraisal is prepared for the land interest. Pls.' Mot. at 4-6. The governing regulations, however, provide that appraisals must be performed before any sale occurs, 25 C.F.R. § 152.24, and nothing in the record suggests that this procedure is improper. In Mr. Maytubby's experience, appraisals are typically performed after a bid has been received.<sup>21</sup> Maytubby Decl. ¶ 7. The regulations also contemplate that the appraisal report will be shared with the seller. See 25 C.F.R. § 152.28. Plaintiffs have not presented any evidence to support their claims of fraud, deceit, and misrepresentation.

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<sup>21</sup> This is a sensible approach. No justification exists to expend limited resources for an appraisal until the potential exists for sale of the land interest. See Maytubby Decl. ¶ 6 ("Sometimes no bids are made for a parcel . . .").

b. Plaintiffs' Allegations Regarding Mr. Maytubby and His Declaration Are Without Basis in Fact or Law

Having failed to come forward with well-grounded facts or law to support their assertions, Plaintiffs seek to shift the burden of proof to Defendants. This is most notable in their attacks upon Mr. Maytubby and his declaration.<sup>22</sup>

Plaintiffs repeated at oral argument their assertion that Mr. Maytubby's declaration is supported by "an improper jurat" that fails to satisfy the requirements of 28 U.S.C. § 1746 or the Court's Local Rule 5.1(h). Tr. 2-4 (Aug. 31, 2004). While we recognize that this Court has, at times, accepted the validity of this argument, we continue to respectfully disagree and urge the Court to reconsider its legal analysis. Both the statute and the local rule provide that a certification meets applicable requirements if it is substantially in the form of the language set forth in those provisions, *i.e.*, "I declare under penalty of perjury that the foregoing is true and correct." Mr. Maytubby's declaration "that the foregoing is true and correct to the best of [his] knowledge and belief" is sufficient under the statute and the rule, as well as the requirements of Federal Rule of Civil Procedure 56. See United States v. Roberts, 308 F.3d 1147, 1154-55 (11th

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<sup>22</sup> It was suggested during oral argument that Mr. Maytubby had testified previously that he is a Cobell class member. Tr. at 44. His prior trial testimony, however, is to the contrary:

- Q. Mr. Maytubby, are you a Native American?**  
**A. Yes, I am.**  
**Q. Are you enrolled in a tribe?**  
**A. Yes. I'm enrolled in the Chickasaw Tribe of Oklahoma.**  
**Q. Are you an IIM account holder?**  
**A. No, I'm not.**  
**Q. Anybody in your family?**  
**A. Not that I'm aware of.**

Tr. 275:10-17 (Jan. 12, 1999) (emphasis added).

Cir. 2002) (false statement attested to as "correct and true to the best of my knowledge and belief" was substantially in the form provided by 28 U.S.C. § 1746), cert. denied, 123 S. Ct. 2232 (2003); Colon v. Coughlin, 58 F.3d 865, 872 (2d Cir. 1995) (reversing summary judgment against plaintiff because verified complaint "attesting under penalty of perjury that the statements in the complaint were true to the best of his knowledge" was sufficient under Rule 56).

Plaintiffs also asserted that Mr. Maytubby's declaration "is defective because it doesn't attest or purport to attest to any factual information." Tr. at 3 (Aug. 31, 2004). This argument simply disregards the statements of fact contained in Mr. Maytubby's declaration. E.g., Maytubby Decl. ¶ 3 (discussing facts underlying Invitation No. 69), ¶ 4 (describing nature of land transactions such as Invitation No. 69), ¶ 6 (describing cases where owner withdraws property from bid process, where no bids received, and where "bids are too low to be found acceptable"), and ¶ 7 (describing his experience whereby "appraisals are usually performed after a property has received a bid but before the sale is approved").

The undeniable conclusion is that Plaintiffs cannot dispute the accuracy of Mr. Maytubby's factual statements, even though it is Plaintiffs' burden – and not Defendants' – to come forward with facts to support their request for a preliminary injunction. Mr. Maytubby's declaration provides facts regarding Anadarko Invitation No. 69, and nothing within that declaration supports Plaintiffs' groundless and reckless allegations of fraud, deceit, and misrepresentation.<sup>23</sup>

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<sup>23</sup> Moreover, inasmuch as Plaintiffs adopted or relied upon the Maytubby declaration at the hearing, see Tr. at 9:16-18 (Aug. 31, 2004), the objections should be overruled.

**7. Plaintiffs Cannot Demonstrate Likelihood of Success on the Merits Through Reference to Past Trials**

Contrary to Plaintiffs' assertions, they must establish a substantial likelihood of success on the merits of this dispute concerning land sales requested by individual Indians. Plaintiffs cannot rely on past success in the Phase 1 trial, or the Phase 1.5 trial that is presently on appeal.<sup>24</sup> Instead, their burden is to show a substantial likelihood of success on whether Interior should continue to conduct Part 152 land sales. Previous success on unrelated issues is irrelevant to the likelihood of success at a later stage of litigation involving different issues. In deciding whether to grant an injunction, a court will evaluate the subject matter addressed in the requested injunction, not other unrelated matters. See Al-Fayed v. CIA, 254 F.3d 300, 303 (D.C. Cir. 2001) (in evaluating request for injunction ordering expedited processing of Freedom Of Information Act request, court focused primarily on likelihood of eventual success under act's "compelling need" for expedition provision); Davenport v. Int'l Bhd. of Teamsters, AFL-CIO, 166 F.3d 356, 361 (D.C. Cir. 1999) (on motion for injunction preventing implementation of temporary labor agreement, court denied injunction after finding plaintiffs not likely to succeed in voiding said agreement); Serono Labs., Inc. v. Shalala, 158 F.3d 1313, 1316-17 (D.C. Cir. 1998) (in deciding whether to enjoin government approval of drug, court weighed plaintiff's likelihood of proving that government erred in its analysis of the drug's danger.)

**B. No Proof of Irreparable Harm to Plaintiffs Exists**

Plaintiffs complain about the sale procedure but have offered no proof that any member of the class is, in fact, injured or threatened with imminent harm by these sales. Absent proof of

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<sup>24</sup> Furthermore, the Court did not adopt Plaintiffs' Phase 1.5 plan for determining IIM account balances.

harm, Plaintiffs have no standing to seek relief. Lujan v. Nat'l Wildlife Fed., 497 U.S. 871, 892-93 (1990). First, Plaintiffs have presented no evidence whatsoever that any one of the named Plaintiffs, as a representative of the class, has a land sale pending. The Supreme Court has unequivocally held that "named plaintiffs who represent a class 'must allege and show that they personally have been injured, not that injury has been suffered by other, unidentified members of the class to which they belong and which they purport to represent.'" Lewis v. Casey, 518 U.S. 343, 357 (1996) (quoting Simon v. Eastern Ky. Welfare Rights Organiz., 426 U.S. 26, 40 n.20 (1976)) Harm allegedly risked by absent class members will not suffice. This requirement is founded on the longstanding principle that the "remedy must of course be limited to the inadequacy that produced the injury in fact that the *plaintiff* has established." Id. (emphasis added). Not one of the named representative plaintiffs here, however, has even asserted that they have a Part 152 sale pending for which they are at risk of irreparable harm. Thus, there has been no showing of harm, much less irreparable harm, to Plaintiffs' interests.

Even if the named Plaintiffs had pending land sales and those lands were sold, those sales would not extinguish the named Plaintiffs' right to an accounting. As demonstrated below, however, rather than addressing any irreparable harm to Plaintiffs, injunctive relief could itself cause irreparable harm to individual Indians who wish to sell their land under Part 152.

**C. Plaintiffs Have Failed to Address Whether the Preliminary Injunction Will Substantially Injure the Other Party and Whether the Public Interest Will Be Served If It Is Granted**

The Secretary of the Interior has a statutory mandate to serve individual Indian beneficiaries, and any injunction that restrains the Secretary or her Department from discharging those statutory responsibilities necessarily adversely affects the public interest. In this case, at

Plaintiffs' request, the Court has halted a well-established and legally sound process whereby individual Indians – class members and Indians who are not class members – have the opportunity to sell their land interests with the assistance of Interior. This process, which has been ongoing for decades, includes regulatory safeguards to protect the interests of the land owners. E.g., 25 C.F.R. § 152.23.

Unlike the speculative and imagined harm put forth by Plaintiffs, the harm to the public wrought by Plaintiffs' requested relief is real. The record already contains statements asserting that the TRO has prevented sales by those who want to sell their interests for important and personal reasons, including medical and housing expenses. Notice of Filing (Sept. 2, 2004) (Dkt. No. 2672); Notices of Filing (Sept. 8, 2004) (Dkt. Nos. 2677 & 2678). There is also evidence that the TRO may adversely affect a fish and wildlife habitat project funded by the Department of Energy. See Delwiche Decl. ¶ 6. Simply put, Plaintiffs have come forward with nothing to justify the halting of this process. Yet, as a result of the TRO entered on August 31, 2004, another Interior program designed to benefit Indians has been stopped, with no discernable benefit to anyone and to the detriment of individual Indians, including absent class members and Indians who have no interest in this litigation but who wish to dispose of their land interests. The record already demonstrates the harm to the public and Defendants resulting from the issuance of the TRO. This harm will continue if the Court grants the preliminary injunction.

### **III. THE TRO AND REQUESTED PRELIMINARY INJUNCTION FAIL TO COMPLY WITH PROCEDURAL REQUISITES FOR SUCH RELIEF**

The TRO issued by the Court and the preliminary injunction sought by Plaintiffs suffer from procedural defects that warrant dissolution of the TRO and denial of preliminary injunctive relief. The TRO fails to provide specific details defining its parameters and explaining the bases for its issuance, as required by Federal Rule of Civil Procedure 65(d), and also lacks any provision requiring Plaintiffs to post security, as mandated by Federal Rule 65(c). The preliminary injunction that Plaintiffs seek would mirror the TRO and, therefore, would suffer from the same defects. In any event, Plaintiffs' motion fails to provide a proper legal basis for an injunction.

Under Rule 65, "[n]o restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained." Fed. R. Civ. P. 65(c). The rule further requires that "[e]very order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; [and] shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained." Fed. R. Civ. P. 65(d).

The TRO issued by the Court does not comply with these requirements. Instead, the operative language of the order consists solely of the following:

Plaintiffs' Motion for a Temporary Restraining Order is GRANTED; and it is FURTHER ORDERED that the Interior Defendants and their counsel immediately shall halt the auction under 25 C.F.R. Part 152 of Individual Indian Trust land.

The reasons for the issuance of the order are not provided. It does not describe "in reasonable detail" what conduct it restrains.<sup>25</sup> The order fails to specify the fundamental term of its duration. There is no provision imposing the mandatory security requirement on Plaintiffs. Indeed, the order dispenses with virtually all of the fundamental protections provided by Rule 65.

The Supreme Court has made plain that more is required:

As we have emphasized in the past, the specificity provisions of Rule 65(d) are no mere technical requirements. The Rule was designed to prevent uncertainty and confusion on the part of those faced with injunctive orders, and to avoid the possible founding of a contempt citation on a decree too vague to be understood. . . . The requirement of specificity in injunction orders performs a second important function. Unless the trial court carefully frames its orders of injunctive relief, it is impossible for an appellate tribunal to know precisely what it is reviewing.

Schmidt v. Lessard, 414 U.S. 473, 476-77 (1974) (citations omitted). In Schmidt, the court vacated an injunction order that, like the TRO issued here and the injunction that is now sought, enjoined conduct without explanation, because it was not "specific in outlining the terms of the injunctive relief granted; nor can it be said that the order describes in reasonable detail . . . the act or acts sought to be restrained. Rather, the defendants are simply told not to enforce the present Wisconsin scheme against those in the appellee's class." Id. at 476. As a result, the order fell "far short of satisfying the second and third clauses of Rule 65(d)." Id.; accord Northern California Power Agency v. Grace Geothermal Corp., 469 U.S. 1306, 1307 (1984) (district court's failure to provide "the benefit of its views as to the nature of the irreparable injury that

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<sup>25</sup> The absence of a sufficiently detailed description of the scope of the Court's order has resulted precisely in the problem that Rule 65 seeks to prevent. As mentioned supra, the written order restrains only "auctions" under 25 C.F.R. Part 152 but, during the August 31, 2004 hearing, the Court indicated that the scope of the order is broader than that, and includes all sales under that regulation.



respondent might suffer or the inadequacy of the remedy at law, or any other requirement for an injunction, . . . wholly fail[ed] to satisfy Fed. Rule Civ. Proc. 65(d)"); Atiyeh v. Capps, 449 U.S. 1312, 1316 (1981) (staying injunction, pending relevant upcoming decision by Supreme Court, that ordered Oregon to reduce population at prison facilities but failed to comply with the specificity requirements of Rule 65(d), and noting "I think it best, in the exercise of my function as Circuit Justice, that the District Court have the benefit of this Court's opinion in that case before it takes over the management of the Oregon prison system.") (Rehnquist, J., as Circuit Justice).

The TRO, which restrains conduct that is defined only by reference to a regulation and without a sufficient description of its scope or any explanation of its bases, falls short of the requirements of Rule 65(d). The injunction requested by Plaintiffs, which presumably would mirror the TRO, would fare no better.

Moreover, the TRO fails to require security to protect Defendants or individual Indians from damages they may sustain as a result of the order. No injunction should issue, but, in the event the Court grants Plaintiffs' motion, the court must require Plaintiffs to post appropriate security to protect Defendants from the harm resulting from being wrongfully enjoined, as mandated by Rule 65(c).<sup>26</sup> See Edgar v. Mite Corp., 457 U.S. 624, 649 (1982) ("Since a preliminary injunction may be granted on a mere probability of success on the merits, generally

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<sup>26</sup> It is within the Court's discretion to determine the appropriate amount of security that should be required. Malcolm v. Reno, 129 F. Supp. 2d 1 (D.D.C. 2000) (amount of security lies within court's discretion, and relevant considerations include hardship posting security would impose, public interest of litigation, and likelihood of success on merits "at least where it is extraordinarily high"); DSE, Inc. v. United States, 169 F.3d 21 (D.D.C. 1999) (court has broad discretion to determine the appropriate amount of the bond).

the moving party must demonstrate confidence in his legal position by posting bond in an amount sufficient to protect his adversary from loss in the event that future proceedings prove that the injunction issued wrongfully.") (Stevens, J., concurring); Monzillo v. Biller, 735 F.2d 1456, 1461 (D.C. Cir. 1984) ("The purpose of the security requirement is to protect a party from damages suffered if it is later determined that the preliminary relief was wrongfully granted."). Failure to address these matters in the TRO warrants its immediate dissolution and militates against the entry of a preliminary injunction.

## CONCLUSION

For the foregoing reasons, the Temporary Restraining Order should be promptly dissolved, and Plaintiffs' request for further relief in the form of a Preliminary Injunction should be denied in its entirety.

Dated: September 8, 2004

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on September 8, 2004 the foregoing *Defendants' Supplemental Memorandum in Opposition to Plaintiffs' Motion for Temporary Restraining Order and For Preliminary Injunction* was served by Electronic Case Filing, and

on the following, without a copy of the sealed bulky exhibit who is not registered for Electronic Case Filing, by facsimile:

Earl Old Person (*Pro se*)  
Blackfeet Tribe  
P.O. Box 850  
Browning, MT 59417

a copy of the sealed bulky exhibit was served upon:

Keith Harper, Esq.  
Richard A. Guest, Esq.  
Native American Rights Fund  
1712 N Street, NW  
Washington, D.C. 20036-2976

/s/ Kevin P. Kingston  
Kevin P. Kingston

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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

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**NOTICE REGARDING SEALED EXHIBIT ATTACHMENT**

Exhibit 1, an attachment to *Defendants' Supplemental Memorandum in Opposition to Plaintiffs' Motion for Temporary Restraining Order and for Preliminary Injunction*, is in paper form only and is being maintained in the case file in the Clerk's Office. This document is being filed Under Seal pursuant to the Court's Order of September 1, 2004 [Dkt. No. 2659].

Dated: September 8, 2004

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL et.al.,	)	
Plaintiffs,	)	Case No. 1: 96CV01285
v.	)	(Judge Lamberth)
GALE NORTON, Secretary of the Interior, et.al.,	)	
Defendants	)	

**DECLARATION OF JANET A. GOODWIN**

1. I, Janet A. Goodwin, am a Senior Attorney in the Office of the Solicitor, Division of Indian Affairs, United States Department of the Interior. I have held this position for approximately 2 years. I have been employed by the Office of the Solicitor in various positions for the past 23 years.
  
2. In response to the Temporary Restraining Order entered in this litigation on August 31, 2004, I provided the attached draft memorandum to the Bureau of Indian Affairs for distribution to all employees of that bureau by electronic mail on September 1, 2004. Also on September 1, 2004 and at my request, one of the support staff of the Office of the Solicitor sent a copy of the draft memorandum with a slightly modified "addressee" line, to all Regional and Field Offices of the Solicitor via facsimile. The following morning, September 2, 2004, the draft memorandum was sent via electronic mail to all employees of the Office of the Solicitor.
  
3. In order to obtain a rough assessment of the impact of the Temporary Restraining Order on land sales under 25 CFR Part 152, and the approximate number of land sale transactions that had to be postponed pursuant to that Order, I issued a "data call" on September 3, 2004, to all twelve regions of the Bureau of Indian Affairs. The "data call" was a request for two items of information:
  - 1) the number of applications under 25 CFR Part 152 which have been approved for an advertised sale where the deed has not yet been conveyed; and
  - 2) the number of applications under 25 CFR Part 152 which have been approved for a negotiated sale where the deed has not yet been conveyed.

4. The category of transactions which were characterized as "approved for an advertised sale" was to include all those for which an application under 25 CFR Part 152 for an advertised sale had been approved, including those for which an invitation for bids had already been issued as of August 31, 2004 and those for which such an invitation had not yet been issued. The category of transactions which were characterized as "approved for a negotiated sale" was to include all those for which an application under 25 CFR Part 152 for a negotiated sale had been approved, regardless of whether both buyer and seller had yet been identified and regardless of whether a sales price had been agreed upon.
5. I received replies to the "data call" from all twelve of the Bureau of Indian Affairs regions.
6. The following statements are a summary of the responses which I received:  
Approximately 81 applications under 25 CFR Part 152 had been approved for advertised sales, and the deeds for these properties had not yet been conveyed. Approximately 1,582 applications under 25 CFR Part 152 had been approved for negotiated sales, and the deeds for these properties had not yet been conveyed.
7. The actual number of such applications is likely to be higher than these numbers reflect, because the absence of certain key personnel in one region hampered its collection of information, and because the relevant information could not be obtained from all compacting and contracting tribes quickly enough for it to be included in this declaration. Also, the number of applications does not necessarily reflect the number of parcels of land affected, since one application may include many parcels of land. Conversely, multiple applications may affect the same parcel.
8. In addition, the Great Plains Region of the Bureau of Indian Affairs reported that the number of applications for negotiated sales pursuant to 25 CFR Part 152 pending in that Region total 5,258; and that of that total, all activity has ceased on approximately 3,943 in order to comply with the Temporary Restraining Order. Counting and reporting only approved applications in that region would be misleading as to the effect of the Order because in the Great Plains Region approvals of applications for negotiated sales are not granted until a willing seller, a willing purchaser, and the funds to complete the transaction, are identified. In approximately 3,943 cases, those elements are present and applications were being considered for approval. However, due to the Temporary Restraining Order, all activity to complete those transactions, including consideration of granting approval of the application, has ceased.



I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

9/8/04  
Date

Janet A. Goodwin  
Janet A. Goodwin, Senior Attorney  
Division of Indian Affairs  
Office of the Solicitor  
United States Department of the Interior

## Memorandum

To: Central Office Employees, Superintendents, \_\_\_\_\_

Fr: Director of the Bureau of Indian Affairs

Re: Land Sale Transactions Pursuant to 25 CFR Part 152; Temporary Restraining Order

On August 31, 2004, the Judge in *Cobell v. Norton*, Civ. 1:96CV01285 (D.D.C.) issued a Temporary Restraining Order ("TRO") requiring the Department immediately to "halt the auction [sic] under 25 CFR Part 152 of Individual Indian Trust land." Notwithstanding the language of the TRO, the Judge indicated orally at hearing that the TRO includes all land sale transactions conducted pursuant to 25 CFR Part 152, but does not include any land sale transactions conducted pursuant to any other regulations.

As a result of this TRO, you must:

- (1) Cease processing activities related to consummating any currently pending Part 152 land sales, where the bidding process has already been conducted;
- (2) Cancel and reschedule for a date beyond October 1, 2004, any pending Part 152 land sales scheduled to take place prior to September 30, 2004;
- (3) Out of an abundance of caution, cancel any currently active advertisements for Part 152 land sales and postpone any future advertisements that would otherwise be made public during September 2004; and
- (4) Notify Janet Goodwin in the Office of the Solicitor at (202) 208-3962, no later than the close of business on Friday, September 3, 2004, of any pending or scheduled land sale transactions that must be postponed as a result of this TRO,

You should continue to plan, process applications and otherwise prepare for Part 152 land sales. However, no land sale transactions conducted pursuant to 25 CFR 152 may be consummated until further notice.

Please also contact Ms. Goodwin in the event you require clarification as to whether a particular transaction is subject to the TRO.

## I N V I T A T I O N   F O R   B I D S   -   S A L E   O F   I N D I A N   L A N D S

UNITED STATES DEPARTMENT OF THE INTERIOR  
BUREAU OF INDIAN AFFAIRS

ISSUED BY: ANADARKO AGENCY, P.O. BOX 309      INVITATION NO. 65-Bids will be received  
ANADARKO, OKLAHOMA 73005                      until and opened at 10:00 A.M. Local Time  
James DeHaas, Superintendent                  Date: May 25, 1994,  
Anadarko Agency Conference Room  
DATED:                      April 19, 1994                      Anadarko, Oklahoma 73005

SEALED BIDS, subject to the terms and conditions of this invitation, will be received at the above office until the designated time for public opening. All sealed bids of Indian land offered for sale must be accompanied by a cashier's check, certified check, or postal money order, payable to the Bureau of Indian Affairs, for not less than 10% of the total offer made. Do not present personal checks unless certified.

ORAL AUCTION PROVISIONS: IMMEDIATELY FOLLOWING THE OPENING AND EVALUATION OF ALL BIDS, THOSE ITEMS ATTRACTING ONE OR MORE SEALED BIDS WILL BE SUBJECT TO ORAL AUCTION BIDDING BY THOSE WHO HAVE MADE A SEALED BID OFFER ON A PARTICULAR TRACT.

Should the high bid at the auction of such items be found to be consistent with the appraisal, that bid will be taken under advisement by the Superintendent or his representative. Subject to the acceptance and approval by the Superintendent, the high bidder will be required to increase the amount of his deposit to not less than 10% of the amount bid and amend his sealed bid accordingly.

The right is reserved to reject any and all bids and to disapprove any transaction at any time prior to final approval and delivery of a deed or issuance of a patent-in-fee in accordance with the Code of Federal Regulations, Title 25, Indians, Part 152.

General information and specific instructions to bidders are contained in the Instructions to Bidders, Terms, and Condition of the Invitation for Bids, on the reverse hereof. For detailed information call or write:

Ms. Sharlene Round Face, Realty Officer, Telephone No. (405) 247-6673, Ext.387  
or Mr. Don Ahshapanek or Mr. Jerry Pau-Kune, at Ext. 369 or 396 respectively,  
Branch of Real Property Management, Anadarko Agency, Anadarko, Ok. 73005

## S C H E D U L E - O F - B I D S

ITEM NO.	ALLOTMENT NUMBER	NO. OF ACRES	AMOUNT OF BID	ITEM NO.	ALLOTMENT NUMBER	NO. OF ACRES	AMOUNT OF BID

The undersigned agrees that if the amount offered, for any item or items in the above be accepted, he will within 30 calendar days from date of receipt of notice of award, deposit with issuing office, Bureau of Indian Affairs, the full amount of his offer, with stipulated sales fee, and that failure to make such deposit within the specified time will constitute a forfeiture of 10% of the amount offered on each such item. The undersigned also agrees that the Bureau of Indian Affairs shall have an irrevocable option for a period of 120 days after the date set for bid opening to accept any one or more than one of the above bids.

IN ADDITION TO THE CONSIDERATION FOR THE LAND, THE PURCHASER WILL BE REQUIRED TO DEPOSIT THE SUM OF \$22.50 TO COVER THE COST OF CONVEYANCE AND SALES FEES FOR EACH SEPARATE ITEM WHEN HE IS NOTIFIED THAT HE IS THE SUCCESSFUL BIDDER.

\_\_\_\_\_  
SIGNATURE OF BIDDER

\_\_\_\_\_  
NAME OF BIDDER (print or type)

\_\_\_\_\_  
ADDRESS (print or type) ZIP CODE

\_\_\_\_\_  
TELEPHONE NUMBER

## NOTICE OF AWARD OF SUCCESSFUL BIDDER

You are hereby notified that you are the successful bidder on Item(s) No. \_\_\_\_\_. Balance of the purchase price, by cashier's check, certified check, or postal money order in the amount of \$ \_\_\_\_\_, which includes sales and conveyance fees, shall be remitted to the above designated Agency on or before \_\_\_\_\_.

4-19-94  
Date

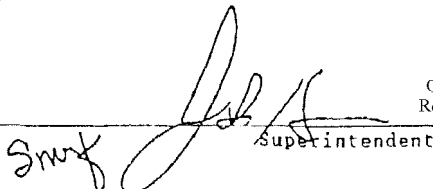
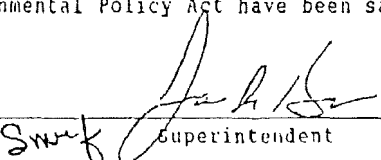
  
Superintendent

EXHIBIT 3  
Defendants' Supplemental Memorandum in  
Opposition to Plaintiffs' Motion for Temporary  
Restraining Order and for Preliminary Injunction

1. MARKING AND MAILING BIDS - Bids, with their guaranties, must be securely sealed in suitable envelopes, addressed to the Agency Office issuing this invitation and marked on the outside with the invitation number and date of opening, both of which may be found in the block opposite the name of the issuing office on the front of this form.
2. PREPARATION OF BIDS - Forms furnished, or copies thereof, shall be used, and strict compliance with requirements of the invitation, and these instructions are necessary. Special care should be exercised in the preparation and submission of bids to assure full compliance with the invitation and instructions. All item numbers and prices shall be fully and clearly set forth.
3. SIGNATURE TO BIDS - Each bid must give address of the bidder and be signed by him with his usual signature. The name of each person signing shall also be typed or printed below the signature.
4. CORRECTIONS - Erasures or other changes in the bid must be explained or noted over the signature of the bidder.
5. TIME FOR RECEIVING BIDS - Bids received prior to the time of opening will be securely kept, unopened. The officer whose duty it is to open them will decide when the specified time has arrived, and no bid received thereafter will be considered. No responsibility will be attached to an officer for the premature opening of a bid not properly addressed and identified. Telegraphic bids will not be considered, but modifications by telegraph of bids already submitted will be considered if received prior to the hour set for opening.
6. WITHDRAWAL OF BIDS - Bids may be withdrawn on written or telegraphic request received from bidders prior to the time fixed for opening. Negligence on the part of the bidder in preparing the bid confers no right to withdraw the bid after the time for submitting bids has expired. (See above Section 5).
7. BIDDER PRESENT - At the time fixed for the opening of bids, their contents will be made public for the information of bidders and others interested, who may be present either in person or by representative.
8. AWARD OR REJECTION OF BIDS - The award will be made to the highest bidder complying with the conditions of the invitation for bids, provided his bid is reasonable and it is in the interest of the Indian owner and the United States to accept it. The bidder to whom the award is to be made will be notified at the earliest possible date after the Superintendent approves the sale. The Superintendent also reserves the right to reject any and all bids and to waive any informality in bids received whenever such rejection or waiver is in the interest of the Indian owners or the United States.
9. ERRORS IN BID - Bidders or their authorized agents are expected to make a visual inspection of the premises to observe all physical conditions, apparent encumbrance, access, etc. Access is not guaranteed or warranted. A bidder cannot secure relief on the plea of error in the bid or in his lack of understanding the facts and circumstances.
10. Government appraisals of the herein described property will NOT be made available to the general public.
11. The land herein advertised for sale will be sold subject to the terms and conditions of existing oil and gas, mining or surface lease contracts, permits, easements or rights-of-way of record with the Bureau of Indian Affairs. Bidders or their authorized agents, may examine existing lease contracts and permits at the issuing office. The United States does not regard a sale as having been consummated until approval and actual delivery of the deed or issuance of a fee patent to the purchaser; however, RENTS (cash or crop), for the lease contract year in which the land is offered for sale, are reserved to the Indian owners without regard to the date the sale is completed. Where advance rental payments are authorized by the Agency Office and have in fact been collected by the Indian owners beyond the lease contract year in which the land is offered for sale, such prepaid rents will be refunded to the purchaser, after full payment of the purchase price and formal approval of the sale transaction.
12. Minerals, including oil and gas, are to be sold with the land advertised unless reserved as indicated on the attached Schedule. Purchasers of mineral interest will be entitled to royalty for oil and gas produced on and after the first of the month following the month in which title is conveyed.
13. All tracts listed with a statement showing that an oil and gas lease is "Pending" or "Pending Approval" are being offered SUBJECT to said lease. Upon approval of such pending mineral leases, the cash bonus and first year advance rentals will be paid to and retained by the respective Indian owners; the purchaser is to receive all future rental payments and mineral rights conveyed with the land.
14. Title to land sold as a result of this advertisement will be conveyed in a fee simple status by either patent in fee or approved deed. The cost of required documentary revenue stamps shall be borne by the purchaser.
15. Evidence of title to the lands herein offered for sale, such as commercial abstracts or title certificates which may be desired by the successful bidder, will be procured by him at his own cost and expense and will not be furnished by the Government or Indian owner. Inspection may be made, however, of available deeds, probate proceedings, and other title documents of record in the local Agency Office of the Bureau of Indian Affairs.
16. WARNING TO ALL BIDDERS - All bidders are warned against violation of 18 U.S.C. 1860, prohibiting unlawful combination or intimidation of bidders.
17. Title to lands sold as a result of this advertisement will not be conveyed until such time as the requirements of the National Environmental Policy Act have been satisfied.

4-19-94  
Date

  
Superintendent

UNITED STATES DEPARTMENT OF THE INTERIOR  
BUREAU OF INDIAN AFFAIRS

\*\*\*\*\*  
SCHEDULE OF LAND TO BE SOLD  
\*\*\*\*\*

CADDO COUNTY

- 1. CADDO #207, 160.00 ACRES SURFACE ONLY - SE $\frac{1}{4}$  of Section 3-T9N-R11W I.M., approx. 2 mi. South of Binger, Ok. Date of Lease Expiration: Surface/None.
- 2. CADDO #815, 100 ACRES SURFACE - N $\frac{1}{2}$ N $\frac{1}{2}$ E & N $\frac{1}{2}$ N $\frac{1}{2}$ S $\frac{1}{2}$ N $\frac{1}{2}$ E of Section 35-T10N-R10W I.M., approx. 7 mi. East of Binger, Ok. Date of Lease Expiration: Surface/12/31/97.

COMANCHE COUNTY

- 3. COMANCHE #1526, 11.25 ACRES SURFACE AND  $\frac{1}{2}$  MINERALS - N $\frac{1}{2}$ S $\frac{1}{2}$ W $\frac{1}{2}$ N $\frac{1}{2}$ W $\frac{1}{2}$ N $\frac{1}{2}$ W $\frac{1}{2}$  & SE $\frac{1}{4}$ S $\frac{1}{2}$ W $\frac{1}{2}$ N $\frac{1}{2}$ W $\frac{1}{2}$ N $\frac{1}{2}$ W $\frac{1}{2}$  & S $\frac{1}{2}$ S $\frac{1}{2}$ N $\frac{1}{2}$ W $\frac{1}{2}$ N $\frac{1}{2}$ W $\frac{1}{2}$  of Section 32-T2N-R14W, I.M., approx. 2 $\frac{1}{2}$  mi. East & 1 mi. South of Indianahoma, Ok. Date of Lease Expiration: Surface/ 12/31/94; Minerals/None.
- 4. COMANCHE #2648, 10.00 ACRES SURFACE ONLY - NE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 28-T2N-R14W I.M., together with an easement for ingress/egress purposes described as: the North 20 feet of N $\frac{1}{2}$ N $\frac{1}{2}$ W $\frac{1}{2}$ S $\frac{1}{2}$ W $\frac{1}{2}$  & NW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$  of said Section 28. Approx. 1 $\frac{1}{2}$  mi. West &  $\frac{1}{2}$  mi. South of Cache, Ok. Date of Lease Expiration: Surface/None.
- 5. COMANCHE #1663, 160.00 ACRES SURFACE ONLY - SE $\frac{1}{4}$  of Section 7-T1N-R14W I.M., approx. 3 $\frac{1}{2}$  mi. South & 1 mi. East of Indianahoma, Ok. Date of Lease Expiration: Surface/12/31/95.

6. COMANCHE #1662, 59.21 ACRES SURFACE ONLY - Fr. SW $\frac{1}{4}$  of Section 7-T1N-R14W I.M., Beginning on the section line 989.5' South of the NW/Corner of SW $\frac{1}{4}$  of Section 7, thence East 2605.64' East to a point on the quarter section line 989.5' South of the NE/Corner of SW $\frac{1}{4}$ , thence South along the quarter section line 989.52', thence West 2605.68' to section line, thence North 989.52' to place of beginning. 3 $\frac{1}{2}$  mi. South & 1 $\frac{1}{2}$  mi. East of Indianahoma, Ok. Date of Lease Expiration: Surface/None.

COTTON COUNTY

- 7. COMANCHE #1972, 160.00 ACRES SURFACE AND  $\frac{1}{2}$  MINERALS - SE $\frac{1}{4}$  of Section 32-T3S-R11W, I.M., approx. 7 mi. West & 1 $\frac{1}{2}$  mi. South of Temple, Ok. Date of Lease Expiration: Surface/12/31/95; Minerals/None.
- 8. COMANCHE #3232, 160.00 ACRES SURFACE ONLY - NW $\frac{1}{4}$  of Section 8-T4S-R13W, I.M., approx. 1 $\frac{1}{2}$  mi. North of Devol, Ok. Date of Lease Expiration: Surface/None.
- 9. KIOWA #3179, 80.00 ACRES SURFACE AND MINERALS - S $\frac{1}{2}$ N $\frac{1}{2}$ W $\frac{1}{2}$  of Section 23-T3S-R13W, I.M., approx.  $\frac{1}{2}$  mi. East and 3 $\frac{1}{2}$  mi. South of Ahpeatone, Ok. Date of Lease Expiration: Surface/None; Minerals/None.

KIOWA COUNTY

10. KIOWA #2526, 3.82 ACRES SURFACE AND MINERALS - S $\frac{1}{2}$ N $\frac{1}{2}$ W $\frac{1}{2}$ S $\frac{1}{2}$ N $\frac{1}{2}$ W $\frac{1}{2}$ N $\frac{1}{2}$ W $\frac{1}{2}$  & SW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ N $\frac{1}{2}$ W $\frac{1}{2}$ N $\frac{1}{2}$ W $\frac{1}{2}$  & W $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ N $\frac{1}{2}$ W $\frac{1}{2}$ N $\frac{1}{2}$ W $\frac{1}{2}$  & SW $\frac{1}{4}$ S $\frac{1}{2}$ W $\frac{1}{2}$ N $\frac{1}{2}$ W $\frac{1}{2}$ N $\frac{1}{2}$ W $\frac{1}{2}$  & W $\frac{1}{2}$ SE $\frac{1}{4}$ S $\frac{1}{2}$ W $\frac{1}{2}$ N $\frac{1}{2}$ W $\frac{1}{2}$ N $\frac{1}{2}$ W $\frac{1}{2}$  and W $\frac{1}{2}$ SE $\frac{1}{4}$ S $\frac{1}{2}$ W $\frac{1}{2}$ N $\frac{1}{2}$ W $\frac{1}{2}$ N $\frac{1}{2}$ W $\frac{1}{2}$  and W $\frac{1}{2}$ SE $\frac{1}{4}$ S $\frac{1}{2}$ W $\frac{1}{2}$ N $\frac{1}{2}$ W $\frac{1}{2}$ N $\frac{1}{2}$ W $\frac{1}{2}$  of Section 1-T6N-R14W, I.M., approx. 3 $\frac{1}{2}$  mi. South and 1 $\frac{1}{2}$  mi. West of Carnegie, Ok. Date of Lease Expiration: Surface/12/31/95; Minerals/None.

11. KIOWA #2116, 120 ACRES SURFACE ONLY - S $\frac{1}{2}$ N $\frac{1}{2}$ W $\frac{1}{2}$  & S $\frac{1}{2}$ N $\frac{1}{2}$ W $\frac{1}{2}$  of Section 24-T5N-R15W, I.M., approx. 2 mi. North and 1 $\frac{1}{2}$  mi. West of Saddle Mountain, Ok. Date of Lease Expiration: Surface/12/31/95.

TILLMAN COUNTY

12. COMANCHE #3129, 160.00 ACRES  $\frac{1}{2}$  MINERALS ONLY - SE $\frac{1}{4}$  of Section 31-T4S-R14W, I.M., approx. 4 mi. South of Grandfield, Ok. Date of Lease Expiration: Surface/None; Minerals/None.

I N V I T A T I O N F O R B I D S - S A L E O F I N D I A N L A N D S

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF INDIAN AFFAIRS

ISSUED BY: ANADARKO AGENCY, P.O. BOX 309 ANADARKO, OKLAHOMA 73005 James DeHaas, Superintendent	INVITATION NO. 66-Bids will be received until and opened at 10:00 A.M. Local Time Date: April 27, 1995 Anadarko Agency Conference Room Anadarko, Oklahoma 73005
DATED: March 22, 1995	

SEALED BIDS, subject to the terms and conditions of this invitation, will be received at the above office until the designated time for public opening. All sealed bids of Indian land offered for sale must be accompanied by a cashier's check, certified check, or postal money order, payable to the Bureau of Indian Affairs, for not less than 10% of the total offer made. Do not present personal checks unless certified.

ORAL AUCTION PROVISIONS: IMMEDIATELY FOLLOWING THE OPENING AND EVALUATION OF ALL BIDS, THOSE ITEMS ATTRACTING ONE OR MORE SEALED BIDS WILL BE SUBJECT TO ORAL AUCTION BIDDING BY THOSE WHO HAVE MADE A SEALED BID OFFER ON THAT PARTICULAR TRACT.

Should the high bid at the auction of such items be found to be consistent with the appraisal, that bid will be taken under advisement by the Superintendent or his representative. Subject to the acceptance and approval by the Superintendent, the high bidder will be required to increase the amount of his deposit to not less than 10% of the amount bid and amend his sealed bid accordingly.

The right is reserved to reject any and all bids and to disapprove any transaction at any time prior to final approval and delivery of a deed or issuance of a patent-in-fee in accordance with the Code of Federal Regulations, Title 25, Indians, Part 152.

General information and specific instructions to bidders are contained in the Instructions to Bidders, Terms, and Condition of the Invitation for Bids, on the reverse hereof. For detailed information call or write:

Ms. Freda Tate, Acting Realty Specialist, Telephone No. (405) 247-6673, Ex. 397  
 Branch of Real Property Management, Anadarko Agency, Anadarko, Ok. 73005

S C H E D U L E - O F - B I D S

ITEM NO.	ALLOTMENT NUMBER	NO. OF ACRES	AMOUNT OF BID	ITEM NO.	ALLOTMENT NUMBER	NO. OF ACRES	AMOUNT OF BID

The undersigned agrees that if the amount offered, for any item or items in the above be accepted, he will within 30 calendar days from date of receipt of notice of award, deposit with issuing office, Bureau of Indian Affairs, the full amount of his offer, with stipulated sales fee, and that failure to make such deposit within the specified time will constitute a forfeiture of 10% of the amount offered on each such item. The undersigned also agrees that the Bureau of Indian Affairs shall have an irrevocable option for a period of 120 days after the date set for bid opening to accept any one or more than one of the above bids.

IN ADDITION TO THE CONSIDERATION FOR THE LAND, THE PURCHASER WILL BE REQUIRED TO DEPOSIT THE SUM OF \$22.50 TO COVER THE COST OF CONVEYANCE AND SALES FEES FOR EACH SEPARATE ITEM WHEN HE IS NOTIFIED THAT HE IS THE SUCCESSFUL BIDDER.

\_\_\_\_\_  
SIGNATURE OF BIDDER

\_\_\_\_\_  
NAME OF BIDDER (print or type)

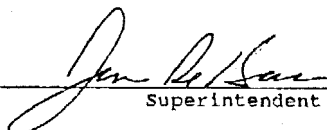
\_\_\_\_\_  
ADDRESS (print or type) ZIP CODE

\_\_\_\_\_  
TELEPHONE NUMBER

NOTICE OF AWARD OF SUCCESSFUL BIDDER

You are hereby notified that you are the successful bidder on Item(s) No. \_\_\_\_\_. Balance of the purchase price, by cashier's check, certified check, or postal money order in the amount of \$ \_\_\_\_\_, which includes sales and conveyance fees, shall be remitted to the above designated Agency on or before \_\_\_\_\_.

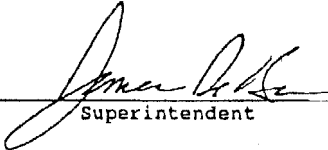
3-22-95  
Date

  
Superintendent

1. MARKING AND MAILING BIDS - Bids, with their guaranties, must be securely secured in suitable envelopes, addressed to the Agency Office issuing this invitation and marked on the outside with the invitation number and date of opening, both of which may be found in the block opposite the name of the issuing office on the front of this form.
2. PREPARATION OF BIDS - Forms furnished, or copies thereof, shall be used, and strict compliance with requirements of the invitation, and these instructions are necessary. Special care should be exercised in the preparation and submission of bids to assure full compliance with the invitation and instructions. All item numbers and prices shall be fully and clearly set forth.
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7. BIDDER PRESENT - At the time fixed for the opening of bids, their contents will be made public for the information of bidders and others interested, who may be present either in person or by representative.
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10. Government appraisals of the herein described property will not be made available to the general public.
11. The land herein advertised for sale will be sold subject to the terms and conditions of existing oil and gas, mining or surface lease contracts, permits, easements or rights-of-way of record with the Bureau of Indian Affairs or in being. Bidders or their authorized agents, may examine existing lease contracts and permits at the issuing office. The United States does not regard a sale as having been consummated until approval and actual delivery of the deed or issuance of a fee patent to the purchaser; however, RENTS (cash or crop), for the lease contract year in which the land is offered for sale, are reserved to the Indian owners without regard to the date the sale is completed. Where advance rental payments are authorized by the Agency Office and have in fact been collected by the Indian owners beyond the lease contract year in which the land is offered for sale, such prepaid rents will be refunded to the purchaser, after full payment of the purchase price and formal approval of the sale transaction.
12. Minerals, including oil and gas, are to be sold with the land advertised unless reserved as indicated on the attached Schedule. Purchasers of mineral interest will be entitled to royalty for oil and gas produced on and after the first of the month following the month in which title is conveyed.
13. All tracts listed with a statement showing that an oil and gas lease is "Pending" or "Pending Approval" are being offered SUBJECT to said lease. Upon approval of such pending mineral leases, the cash bonus and first year advance rentals will be paid to and retained by the respective Indian owners; the purchaser to receive all future rental payments and mineral rights conveyed with the land.
14. Title to land sold as a result of this advertisement will be conveyed in a fee simple status by either patent in fee or approved deed. The cost of required documentary revenue stamps shall be borne by the purchaser.
15. Evidence of title to the lands herein offered for sale, such as commercial abstracts or title certificates which may be desired by the successful bidder, will be procured by him at his own cost and expense and will not be furnished by the Government or Indian owner. Inspection may made; however, of available deeds, probate proceedings, and other title documents of record in the local Agency office of the Bureau of Indian Affairs.
16. WARNING TO ALL BIDDERS - All bidders are warned against violation of 18 U.S.C. 1860, prohibiting unlawful combination or intimidation of bidders.
17. Title to lands sold as a result of this advertisement will not be conveyed until such time as the requirements of the National Environmental Policy Act have been satisfied.

3-22-95

Date

  
Superintendent

UNITED STATE DEPARTMENT OF THE INTERIOR  
BUREAU OF INDIAN AFFAIRS

\*\*\*\*\*  
SCHEDULE OF LAND TO BE SOLD  
\*\*\*\*\*  
CADDO COUNTY

1. CADDO #94, 160.00 ACRES SURFACE ONLY - SW $\frac{1}{4}$  of Section 24-T8N-R12W, I.M., approx.  $\frac{1}{2}$  mi. East and  $3\frac{1}{2}$  mi. North of Ft. Cobb, Ok. Date of Lease Expiration - Surface: 12/31/98.
2. CADDO #207, 160.00 ACRES SURFACE ONLY - SE $\frac{1}{4}$  of Section 3-T9N-R11W, I.M., approx.  $1\frac{1}{2}$  mi. South of Binger, Ok. Date of Lease Expiration - Surface: None.
3. WICHITA #416, 160.00 ACRES SURFACE ONLY - E $\frac{1}{2}$ NE $\frac{1}{4}$  and E $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 26-T9N-R11W, I.M., approx. 2 mi. South and  $4\frac{1}{2}$  mi. East of Albert, Ok. Date of Lease Expiration - Surface: 12/31/96.
4. WICHITA #865, 10.00 ACRES SURFACE ONLY - S $\frac{1}{2}$ N $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 12-T7N-R11W, I.M., approx. 1 mi. East of Washita, Ok. Date of Lease Expiration - Surface: None.
5. APACHE #2816, 160.00 ACRES, AN UNDIVIDED  $\frac{1}{2}$  INTEREST IN MINERALS ONLY - NW $\frac{1}{4}$  of Section 15-T5N-R10W, I.M., approx.  $1\frac{1}{2}$  mi. West and 1 mi. North of Cyril, Ok. Date of Lease Expiration - Minerals: None.

COMANCHE COUNTY

6. COMANCHE #2456, 45.00 ACRES SURFACE AND AN UNDIVIDED  $\frac{1}{2}$  INTEREST IN MINERALS - E $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$  and E $\frac{1}{2}$ E $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$  and NE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$  and E $\frac{1}{2}$ E $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$  and E $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 12-T4N-R9W, I.M., approx.  $7\frac{1}{2}$  mi. East of Fletcher, Ok. Date of Lease Expiration - Surface: 12/31/98 Minerals: None.
7. COMANCHE #2456, 18.75 ACRES SURFACE AND AN UNDIVIDED  $\frac{1}{2}$  INTEREST IN MINERALS - W $\frac{1}{2}$ E $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$  and E $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$  and W $\frac{1}{2}$ E $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$  and E $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$  and E $\frac{1}{2}$ E $\frac{1}{2}$ NW $\frac{1}{4}$ W $\frac{1}{4}$ E $\frac{1}{2}$ SW $\frac{1}{4}$  and E $\frac{1}{2}$ W $\frac{1}{4}$ E $\frac{1}{2}$ NW $\frac{1}{4}$ W $\frac{1}{4}$ E $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 12-T4N-R9W, I.M., approx.  $7\frac{1}{2}$  mi. East of Fletcher, Ok. Date of Lease Expiration - Surface: None Minerals: None.
8. COMANCHE #2648, 10.00 ACRES SURFACE ONLY - NE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 28-T2N-R14W, I.M., together with an easement for ingress/egress purposes described as: the north 20 feet of N $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$  and NW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$  of said Section 28. Approx.  $3\frac{1}{2}$  mi. West and  $\frac{1}{2}$  mi. South of Cache, Ok. Date of Lease Expiration - Surface: None.
9. COMANCHE #2925, 160.00 ACRES - SW $\frac{1}{4}$  of Section 36-T1S-R13W, I.M., approx.  $2\frac{1}{2}$  mi. South and 3 mi. East of Faxon, Ok. Date of Lease Expiration - Surface: 12/31/95 Minerals: None.

COTTON COUNTY

10. COMANCHE #1972, 160.00 ACRES SURFACE ONLY - SE $\frac{1}{4}$  of Section 32-T3S-R11W, I.M., approx.  $1\frac{1}{2}$  mi. South and 7 mi. West of Temple, Ok. Date of Lease Expiration - Surface: 12/31/95.
11. KIOWA #3179, 80.00 ACRES - S $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 23-T3S-R13W, I.M., approx.  $\frac{1}{2}$  mi. East and 3 mi. South of Ahpeatone, Ok. Date of Lease Expiration - Surface: None Minerals: None.
12. COMANCHE #3232, 160.00 ACRES SURFACE ONLY - NW $\frac{1}{4}$  of Section 8-T4S-R13W, I.M., approx.  $4\frac{1}{2}$  mi. East of Grandfield, Ok. Date of Lease Expiration - Surface: None.
13. KIOWA #3361, 64.27 ACRES SURFACE ONLY - W $\frac{1}{2}$ E $\frac{1}{2}$ NW $\frac{1}{4}$  and a tract of land in Lot 2 (E $\frac{1}{2}$ SW $\frac{1}{4}$ ) described as beginning at the N/4 corner of Section 33-T5S-R12W, I.M., thence South 00°22'44" West 2640 feet, thence North 89°37'16" West 661.67 feet to the point of beginning, thence South 00°22'44" West 1630.20 feet, thence North 89°37'16" West 661.66 feet, thence North 00°22'44" East 1630.20 feet, thence South 89°37'16" East 661.66 feet to the point of beginning, approx. 5 mi. South and  $\frac{1}{2}$  mi. West of Randlett, Ok. Date of Lease Expiration - Surface: 12/31/97.

KIOWA COUNTY

14. KIOWA #1026, 30 ACRES SURFACE AND AN UNDIVIDED  $\frac{1}{2}$  INTEREST IN MINERALS AND A 3-BEDROOM HOUSE - W $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$  and SE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 7, together with a right-of-way for ingress and egress purposes, described as beginning at the NW/Corner of the NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 7, thence North 42 feet to the South right-of-way line of State Highway 9, thence Northeasterly along said right-of-way approximately 28 feet, thence South approximately 45 feet, thence West 25 feet to the point of beginning, all located in T7N-R13W, I.M., approx.  $\frac{1}{2}$  mi. Southwest of Carnegie, Ok. Date of Lease Expiration - Surface: None Minerals: None.
15. KIOWA #1339, 80.00 ACRES - N $\frac{1}{2}$ NE $\frac{1}{4}$  of Section 8-T6N-R15W, I.M., approx.  $5\frac{1}{2}$  mi. South and 2 mi. West of Mountain View, Ok. Date of Lease Expiration - Surface: 12/31/95 Minerals: None.





INVITATION FOR BIDS - SALE OF INDIAN LANDS

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF INDIAN AFFAIRS

ISSUED BY: ANADARKO AGENCY, P.O. BOX 309 ANADARKO, OKLAHOMA 73005 Betty Tippeconnie, Superintendent  
INVITATION NO. 67-Bids will be received until and opened at 10:00 A.M. Local Time Date: June 18, 1998 Anadarko Agency Conference Room Anadarko, Oklahoma 73005  
DATED: May 20, 1998

SEALED BIDS, subject to the terms and conditions of this invitation, will be received at the above office until the designated time for public opening. All sealed bids of Indian land offered for sale must be accompanied by a cashier's check, certified check, or postal money order, payable to the Bureau of Indian Affairs, for not less than 10% of the total offer made. Do not present personal checks unless certified.

ORAL AUCTION PROVISIONS: IMMEDIATELY FOLLOWING THE OPENING AND EVALUATION OF ALL BIDS. THOSE ITEMS ATTRACTING ONE OR MORE SEALED BIDS WILL BE SUBJECT TO ORAL AUCTION BIDDING BY THOSE WHO HAVE MADE A SEALED BID OFFER ON THAT PARTICULAR TRACT.

Should the high bid at the auction of such items be found to be consistent with the appraisal, that bid will be taken under advisement by the Superintendent or his representative. Subject to the acceptance and approval by the Superintendent, the high bidder will be required to increase the amount of his deposit to not less than 10% of the amount bid and amend his sealed bid accordingly.

The right is reserved to reject any and all bids and to disapprove any transaction at any time prior to final approval and delivery of a deed or issuance of a patent-in-fee in accordance with the Code of Federal Regulations, Title 25, Indians, Part 152.

General information and specific instructions to bidders are contained in the Instructions to Bidders, Terms, and Condition of the Invitation for Bids, on the reverse hereof. For detailed information call or write:

Ms. Freda Tate, Realty Specialist, Telephone No. (405) 247-3709, Ex. 226  
Branch of Real Property Management, Anadarko Agency, Anadarko, Ok. 73005

SCHEDULE - OF - BIDS

ITEM NO.	ALLOTMENT NUMBER	NO. OF ACRES	AMOUNT OF BID	ITEM NO.	ALLOTMENT NUMBER	NO. OF ACRES	AMOUNT OF BID

The undersigned agrees that if the amount offered, for any item or items in the above be accepted, he will within 30 calendar days from date of receipt of notice of award, deposit with issuing office, Bureau of Indian Affairs, the full amount of his offer, with stipulated sales fee, and that failure to make such deposit within the specified time will constitute a forfeiture of 10% of the amount offered on each such item. The undersigned also agrees that the Bureau of Indian Affairs shall have an irrevocable option for a period of 120 days after the date set for bid opening to accept any one or more than one of the above bids.

IN ADDITION TO THE CONSIDERATION FOR THE LAND, THE PURCHASER WILL BE REQUIRED TO DEPOSIT THE SUM OF \$22,50 TO COVER THE COST OF CONVEYANCE AND SALES FEES FOR EACH SEPARATE ITEM WHEN HE IS NOTIFIED THAT HE IS THE SUCCESSFUL BIDDER.

\_\_\_\_\_  
SIGNATURE OF BIDDER  
\_\_\_\_\_  
NAME OF BIDDER (print or type)  
\_\_\_\_\_  
ADDRESS (print or type) ZIP CODE  
\_\_\_\_\_  
TELEPHONE NUMBER

NOTICE OF AWARD OF SUCCESSFUL BIDDER

You are hereby notified that you are the successful bidder on Item(s) No. \_\_\_\_\_ Balance of the purchase price, by cashier's check, certified check, or postal money order in the amount of \$ \_\_\_\_\_, which includes sales and conveyance fees, shall be remitted to the above designated Agency on or before \_\_\_\_\_.

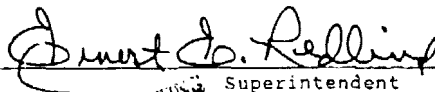
5-20-98  
Date

James G. Redbird  
Acting Superintendent

1. MARKING AND MAILING BIDS - Bids, with their guaranties, must be securely secured in suitable envelopes, addressed to the Agency Office issuing this invitation and marked on the outside with the invitation number and date of opening, both of which may be found in the block opposite the name of the issuing office on the front of this form.
2. PREPARATION OF BIDS - Forms furnished, or copies thereof, shall be used, and strict compliance with requirements of the invitation, and these instructions are necessary. Special care should be exercised in the preparation and submission of bids to assure full compliance with the invitation and instructions. All item numbers and prices shall be fully and clearly set forth.
3. SIGNATURE TO BIDS - Each bid must give the address of the bidder and be signed by him with his usual signature. The name of each person signing shall be typed or printed below the signature.
4. CORRECTIONS - Erasures or other changes in the bid must be explained or noted over the signature of the bidder.
5. TIME FOR RECEIVING BIDS - Bids received prior to the time of opening will be securely kept, unopened. The officer whose duty it is to open them will decide when the specified time has arrived, and no bid received thereafter will be considered. No responsibility will be attached to an officer for the premature opening of a bid not properly addressed and identified. Telegraphic bids will not be considered, but modifications by telegraph of bids already submitted will be considered if received prior to the hour set for opening.
6. WITHDRAWAL OF BIDS - Bids may be withdrawn on written or telegraphic request received from bidders prior to the time fixed for opening. Negligence on the part of the bidder in preparing the bid confers no right to withdraw the bid after the time for submitting bids has expired. (see above Section 5).
7. BIDDER PRESENT - At the time fixed for the opening of bids, their contents will be made public for the information of bidders and others interested, who may be present either in person or by representative.
8. AWARD OR REJECTION OF BIDS - The award will be made to the highest bidder complying with the conditions of the invitation for bids, provided his bid is reasonable and it is in the interest of the Indian owner and the United States to accept it. The bidder to whom the award is to be made will be notified at the earliest possible date after the Superintendent approves the sale. The Superintendent also reserves the right to reject any and all bids and to waive any informality in bids received whenever such rejection or waiver is in the interest of the Indian owners or the United States.
9. ERRORS IN BID - Bidders or their authorized agents are expected to make a visual inspection of the premises to observe all physical conditions, apparent encumbrance, access, etc. Access is not guaranteed or warranted. A bidder cannot secure relief on the plea of error in the bid or in his lack of understanding the facts and circumstances.
10. Government appraisals of the herein described property will not be made available to the general public.
11. The land herein advertised for sale will be sold subject to the terms and conditions of existing oil and gas, mining or surface lease contracts, permits, easements or rights-of-way of record with the Bureau of Indian Affairs or in being. Bidders or their authorized agents, may examine existing lease contracts and permits at the issuing office. The United States does not regard a sale as having been consummated until approval and actual delivery of the deed or issuance of a fee patent to the purchaser; however, RENTS (cash or crop), for the lease contract year in which the land is offered for sale, are reserved to the Indian owners without regard to the date the sale is completed. Where advance rental payments are authorized by the Agency Office and have in fact been collected by the Indian owners beyond the lease contract year in which the land is offered for sale, such prepaid rents will be refunded to the purchaser, after full payment of the purchase price and formal approval of the sale transaction.
12. Minerals, including oil and gas, are to be sold with the land advertised unless reserved as indicated on the attached Schedule. Purchasers of mineral interest will be entitled to royalty for oil and gas produced on and after the first of the month following the month in which title is conveyed.
13. All tracts listed with a statement showing that an oil and gas lease is "Pending" or "Pending Approval" are being offered SUBJECT to said lease. Upon approval of such pending mineral leases, the cash bonus and first year advance rentals will be paid to and retained by the respective Indian owners; the purchaser to receive all future rental payments and mineral rights conveyed with the land.
14. Title to land sold as a result of this advertisement will be conveyed in a fee simple status by either patent in fee or approved deed. The cost of required documentary revenue stamps shall be borne by the purchaser.
15. Evidence of title to the lands herein offered for sale, such as commercial abstracts or title certificates which may be desired by the successful bidder, will be procured by him at his own cost and expense and will not be furnished by the Government or Indian owner. Inspection may be made; however, of available deeds, probate proceedings, and other title documents of record in the local Agency office of the Bureau of Indian Affairs.
16. WARNING TO ALL BIDDERS - All bidders are warned against violation of 18 U.S.C. 1860, prohibiting unlawful combination or intimidation of bidders.
17. Title to lands sold as a result of this advertisement will not be conveyed until such time as the requirements of the National Environmental Policy Act have been satisfied.

5-20-98

Date


Ernest C. Redding  
Acting Superintendent

UNITED STATE DEPARTMENT OF THE INTERIOR  
BUREAU OF INDIAN AFFAIRS

SCHEDULE OF LAND TO BE SOLD

CADDO COUNTY

1. APACHE #554, 50 X 140 FEET CITY LOT SURFACE ONLY & 2 BEDROOM HOUSE - Lot 7, Block 4, Bath Addition, located at 814 West Kentucky, Anadarko, Ok. Date of Lease Expiration - Surface: None
2. CADDO #207, 160.00 ACRES SURFACE ONLY - SE $\frac{1}{4}$  of Section 3-T9N-R11W, I.M., approx. 1 1/2 mi. South of Binger, Ok. Date of Lease Expiration - Surface: None
3. APACHE #554, 50.00 ACRES SURFACE ONLY - N $\frac{1}{2}$ N $\frac{1}{2}$ SW $\frac{1}{4}$  & N $\frac{1}{2}$ N $\frac{1}{2}$ S $\frac{1}{2}$ N $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 29-T6N-R12W, I.M., approx. 8 mi. West & 1/4 mi. North of Stecker, Ok. turnoff on Hwy 62. Date of Lease Expiration - Surface: 12-31-99
4. CADDO #209, 160.00 ACRES MINERALS ONLY - SE $\frac{1}{4}$  of Section 2-T9N-R11W, I.M., approx. 2 mi. South & 1/2 mi. East of Binger, Ok. Date of Lease Expiration - Minerals: None
5. WICHITA #865, 10.00 ACRES SURFACE ONLY - S $\frac{1}{2}$ N $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 12-T7N-R11W, I.M., approx. 1 mi. East of Washita, Ok. Date of Lease Expiration - Surface: None.
6. APACHE #2816, 160.00 ACRES, AN UNDIVIDED 1/2 INTEREST IN MINERALS ONLY - NW $\frac{1}{4}$  of Section 15-T5N-R10W, I.M., approx. 1 $\frac{1}{2}$  mi. West and 1 mi. North of Cyril, Ok. Date of Lease Expiration - Minerals: None.
7. KIOWA #1026 & KIOWA 2533, 32.30 ACRES SURFACE ONLY & 3 BEDROOM HOUSE - W $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ , SE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$  & a tract of land described as: Beg. At a point 900' West of the Center of Section 7-T7N-R13W, I.M., thence North 450', thence in a Southwesterly direction along the center line of Hwy. #9 a distance of 500', thence South 125', thence East 350' to the P.O.B., Approx. 1/2 mi. West of Carnegie, Ok. on Hwy #9. Date of Lease Expiration: Surface: None
8. FT. SILL APACHE #500, 5.00 ACRES MINERALS ONLY - N $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 4-T5N-R11W, I.M., approx. 2 mi. North of Apache, Ok. Date of Lease Expiration - Minerals: None
9. FT. SILL APACHE #67, 5.00 ACRES MINERALS ONLY - E $\frac{1}{2}$ E $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$  & W $\frac{1}{2}$ W $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 9-T5N-R11W, I.M., approx. 1 1/2 mi. North of Apache, Ok. Date of Lease Expiration: Minerals: None
10. CADDO 307, 158.75 ACRES SURFACE ONLY - N $\frac{1}{2}$ NE $\frac{1}{4}$ , SE $\frac{1}{4}$ NE $\frac{1}{4}$ , S $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ , NW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ , S $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ , SW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$  & N $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 7-T5N-R9W, I.M., approx 3 mi. East of Gracemont, Ok. Date of Lease Expiration - Surface: 12/31/98

COMANCHE COUNTY

11. COMANCHE #719, 15.00 ACRES, AN UNDIVIDED 1/2 INTEREST IN MINERALS ONLY - N $\frac{1}{2}$ N $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$  & N $\frac{1}{2}$ S $\frac{1}{2}$ N $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 10-T5N-R11W, I.M., approx. 1 3/4 mi. North of Apache, Ok. Date of Lease Expiration - Minerals: None
12. COMANCHE #2648, 10.00 ACRES SURFACE ONLY - NE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 28-T2N-R14W, I.M., together with an easement for ingress/egress purposes described as: the north 20 feet of N $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$  and NW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$  of said Section 28. Approx. 3 mi. West and 1/2 mi. South of Cache, Ok. Date of Lease Expiration - Surface: None.
13. COMANCHE #95, 160.00 ACRES SURFACE & 1/2 MINERALS - NE $\frac{1}{4}$  of Section 32-T3N-R9W, I.M., approx. 3 mi. South of Sterling, Ok. Date of Lease Expiration - Surface: 12-31-99 Minerals: None
14. COMANCHE #2032, LOT 8, BLOCK 67 JONES SUBDIVISION OF BLOCKS 54, 67 & 73 HEIGHTS ADDITION LOCATED AT 1716 IRWIN, LAWTON, Ok. Date of Lease Expiration - Surface: None Minerals: None
15. COMANCHE #783, 10.00 ACRES SURFACE ONLY - M&B BEG. PT 1466.65' SOUTH NW/CORNER SW $\frac{1}{4}$  OF SECTION 24-T4N-R11W, I.M., THENCE 1485' East, thence 293.33' South, thence 1485' West, thence 293.33' North to the P.O.B. Approx. 4 mi. West & 2 mi. South of Fletcher, Ok. Date of Lease Expiration - Surface: None
16. COMANCHE #2910, 140.00 ACRES SURFACE ONLY - N $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ , SE $\frac{1}{4}$ SW $\frac{1}{4}$  & N $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 17-T1S-R12W, I.M., approx. 5 mi. East of Faxon, Ok. Date of Lease Expiration - Surface: 12-31-2000

17. COMANCHE #746, 12.85 ACRES - A tract of land in the NW $\frac{1}{4}$  of Section 5-T3N-R11W, I.M., described as Beg. at the NW/Corner of Section 5-T3N-R11W thence S89°39'31" East 1314.56', thence S00°14'56"W 425.80', thence N89°39'31" West 1314.63', thence N00°15'31" East 425.80' to the POB, Approx. 2 1/2 mi. South & 1/2 mi. West of Apache, Ok. Date of Lease Expiration - Surface: 12-31-98 Minerals: None

18. COMANCHE #2557, 82.50 ACRES SURFACE ONLY WITH 3 BEDROOM HOME - W $\frac{1}{2}$ W $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ , NW $\frac{1}{4}$ SE $\frac{1}{4}$ , W $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ , NW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ , N $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$  & E $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 15-T3N-R12W, I.M., Approx. 3/4 mi. East of Lake Lawtonka, Lawton, Ok. Date of Lease Expiration - Surface: None

19. COMANCHE 1456, 72.69 ACRES MINERALS ONLY - Lot 1 (NW $\frac{1}{4}$ NW $\frac{1}{4}$ ) and NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 19-T3N-R16W, I.M., Approx. 1 mi. East and 1 1/2 mi. North of Mountain Park, Ok. Date of Lease Expiration - Minerals: None

#### COTTON COUNTY

20. COMANCHE #1972, 160.00 ACRES SURFACE ONLY - SE $\frac{1}{4}$  of Section 32-T3S-R11W, I.M., approx. 1 $\frac{1}{2}$  mi. South and 7 mi. West of Temple, Ok. Date of Lease Expiration - Surface: 12/31/2000

21. COMANCHE #1498, 160 ACRES SURFACE AND AN UNDIVIDED 1/2 MINERALS ONLY - NW $\frac{1}{4}$  of Section 22-T2S-R12W, I.M., Approx. 7 mi. West & 1/2 mi. North of Walters, Ok. Date of Lease Expiration - Surface: 12-31-98 Minerals: None.

22. COMANCHE #3232, 160.00 ACRES SURFACE ONLY - NW $\frac{1}{4}$  of Section 8-T4S-R13W, I.M., Approx. 4 $\frac{1}{2}$  mi. East of Grandfield, Ok. Date of Lease Expiration - Surface: None.

23. COMANCHE #1521, 40.00 ACRES SURFACE ONLY - NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 24-T3S-R11W, I.M. together with an easement along the West 20' of the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of said Section 24. Approx. 3 mi. East & 1/2 mi. South of Temple, Ok. Date of Lease Expiration - Surface: None

#### KIOWA COUNTY

24. KIOWA #1350, 19.15 ACRES - N $\frac{1}{2}$  of Lot 3 (NW $\frac{1}{4}$ SW $\frac{1}{4}$ ) of Section 31-T6N-R14W, I.M., approx. 1 mi. East and 10 $\frac{1}{2}$  mi. South of Mountain View, Ok. Date of Lease Expiration - Surface: None Minerals: None.

25. KIOWA #2526, 2.734375 ACRES SURFACE ONLY - W $\frac{1}{2}$ E $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$  and W $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$  and N $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$  and W $\frac{1}{2}$ E $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$  and W $\frac{1}{2}$ NE $\frac{1}{2}$ NE $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$  and NW $\frac{1}{4}$ NE $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 1-T6N-R14W, I.M., approx. 4 mi. South and 1 $\frac{1}{2}$  mi. West of Carnegie, Ok. Date of Lease Expiration - Surface: None.

26. KIOWA #2526, 71.25 ACRES - E $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$  and E $\frac{1}{2}$ W $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$  and E $\frac{1}{2}$ E $\frac{1}{2}$ W $\frac{1}{2}$ W $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$  and SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 1-T6N-R14W, I.M., together with a perpetual r/w for ingress and egress purposes described as the South 20 feet of the W $\frac{1}{2}$ W $\frac{1}{2}$ W $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$  and W $\frac{1}{2}$ E $\frac{1}{2}$ W $\frac{1}{2}$ W $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$  and W $\frac{1}{2}$ E $\frac{1}{2}$ E $\frac{1}{2}$ W $\frac{1}{2}$ W $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 1-T6N-R14W, I.M., approx. 4 mi. South and 1 $\frac{1}{2}$  mi. West of Carnegie, Ok. Date of Lease Expiration - Surface: None Minerals: None.

27. KIOWA #2116, 50 x 150 FEET CITY LOT & 3 BEDROOM HOUSE - Lot 8, Block 50 located at 829 South Lincoln, in SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 3-T6N-R18W, I.M., original Townsite of Hobart, Ok. Date of Lease Expiration - Surface: None. Minerals: None

28. KIOWA #1238, 18.75 ACRES SURFACE ONLY - SW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ , E $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ , SW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ , E $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 13-T5N-R14W, I.M., Approx. 13 mi. South & 1/4 mi West of Carnegie, Ok. Date of Lease Expiration - Surface: None

29. KIOWA #1238, 15.00 ACRES SURFACE ONLY - NE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$  & N $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 13-T5N-R14W, I.M., Approx. 13 mi South & 1 1/4 mi West of Carnegie, Ok. Date of Lease Expiration - Surface 12-31-2000

30. KIOWA #669-A, 80.00 ACRES SURFACE ONLY - E $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 5-T7N-R14W, I.M., Approx. 4 1/2 mi. West of Carnegie, Ok. Date of Lease Expiration - Surface: None

31. KIOWA #669-B, 80.00 ACRES SURFACE ONLY - W $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 5-T7N-R14W, I.M., Approx. 4 1/2 mi. West of Carnegie, Ok. No Legal Access. Date of Lease Expiration - Surface: None

#### TILLMAN COUNTY

32. KIOWA #2983, 80.00 ACRES SURFACE ONLY - W $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 11-T4S-R16W, I.M., approx. 9 mi. West & 1/2 South of Grandfield, Ok. Date of Lease Expiration - Surface: 12-31-2000

33. KIOWA #3073, 80.00 ACRES - N $\frac{1}{2}$ NE $\frac{1}{4}$  of Section 29-T2S-R14W, I.M., approx. 5 mi. South and 1/2 mi. West of Chattanooga, Ok. Date of Lease Expiration - Surface: 12/31/98 Mineral: None.

34. COMANCHE #3129, 160.00 ACRES, AN UNDIVIDED 1/2 INTEREST IN MINERALS ONLY - SE $\frac{1}{4}$  of Section 31-T4S-R14W, I.M., approx. 4 mi. South of Grandfield, Ok. Date of Lease Expiration - Minerals: None

# **NOTICE**

## **INVITATION NO. 67 SALE OF INDIAN LANDS HAS BEEN WITHDRAWN.**

**SEALED BIDS ORIGINALLY SCHEDULED FOR  
ACCEPTANCE ON 6/18/98 AT 10:00 AM AT  
THE ANADARKO AGENCY, ANADARKO, OK  
HAS BEEN WITHDRAWN.**

**HOWEVER, A NEW INVITATION FOR BIDS  
NO. 68 IS HEREBY ISSUED. THE DATE AND  
TIME IS : 8/21/98 AT 10:00 AM CENTRAL  
STANDARD TIME, DST, AT THE ANADARKO  
AGENCY, ANADARKO, OK.**

**IF YOU HAVE ANY QUESTIONS, YOU MAY  
CONTACT MS. FRED A TATE AT  
405/247-3709, EXT 226.**

Aug. 30, 2004 3:10PM

INVITATION FOR BIDS - SALE OF INDIAN LANDS

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF INDIAN AFFAIRS

ISSUED BY: ANADARKO AGENCY, P.O. BOX 309  
ANADARKO, OKLAHOMA 73005  
Betty Tippeconnie, Superintendent

INVITATION NO. 68-Bids will be received  
until and opened at 10:00 A.M. Local Time  
Date: August 21, 1998  
Anadarko Agency Conference Room  
Anadarko, Oklahoma 73005

DATED: June 5, 1998

SEALED BIDS, subject to the terms and conditions of this invitation, will be received at the above office until the designated time for public opening. All sealed bids of Indian land offered for sale must be accompanied by a cashier's check, certified check, or postal money order, payable to the Bureau of Indian Affairs, for not less than 10% of the total offer made. Do not present personal checks unless certified.

ORAL AUCTION PROVISIONS: IMMEDIATELY FOLLOWING THE OPENING AND EVALUATION OF ALL BIDS, THOSE ITEMS ATTRACTING ONE OR MORE SEALED BIDS WILL BE SUBJECT TO ORAL AUCTION BIDDING BY THOSE WHO HAVE MADE A SEALED BID OFFER ON THAT PARTICULAR TRACT.

Should the high bid at the auction of such items be found to be consistent with the appraisal, that bid will be taken under advisement by the Superintendent or his representative. Subject to the acceptance and approval by the Superintendent, the high bidder will be required to increase the amount of his deposit to not less than 10% of the amount bid and amend his sealed bid accordingly.

The right is reserved to reject any and all bids and to disapprove any transaction at any time prior to final approval and delivery of a deed or issuance of a patent-in-fee in accordance with the Code of Federal Regulations, Title 25, Indians, Part 152.

General information and specific instructions to bidders are contained in the Instructions to Bidders, Terms, and Condition of the Invitation for Bids, on the reverse hereof. For detailed information call or write:

Ms. Freda Tate, Realty Specialist, Telephone No. (405) 247-3709, Ex. 226  
Branch of Real Property Management, Anadarko Agency, Anadarko, Ok. 73005

SCHEDULE - O F - B I D S

ITEM NO.	ALLOTMENT NUMBER	NO. OF ACRES	AMOUNT OF BID	ITEM NO.	ALLOTMENT NUMBER	NO. OF ACRES	AMOUNT OF BID

The undersigned agrees that if the amount offered, for any item or items in the above be accepted, he will within 30 calendar days from date of receipt of notice of award, deposit with issuing office, Bureau of Indian Affairs, the full amount of his offer, with stipulated sales fee, and that failure to make such deposit within the specified time will constitute a forfeiture of 10% of the amount offered on each such item. The undersigned also agrees that the Bureau of Indian Affairs shall have an irrevocable option for a period of 120 days after the date set for bid opening to accept any one or more than one of the above bids.

IN ADDITION TO THE CONSIDERATION FOR THE LAND, THE PURCHASER WILL BE REQUIRED TO DEPOSIT THE SUM OF \$22.50 TO COVER THE COST OF CONVEYANCE AND SALES FEES FOR EACH SEPARATE ITEM WHEN HE IS NOTIFIED THAT HE IS THE SUCCESSFUL BIDDER.

\_\_\_\_\_  
SIGNATURE OF BIDDER

\_\_\_\_\_  
NAME OF BIDDER (print or type)

\_\_\_\_\_  
ADDRESS (print or type) ZIP CODE

\_\_\_\_\_  
TELEPHONE NUMBER

NOTICE OF AWARD OF SUCCESSFUL BIDDER

You are hereby notified that you are the successful bidder on Item(s) No. \_\_\_\_\_.  
Balance of the purchase price, by cashier's check, certified check, or postal money order in the amount of \$ \_\_\_\_\_, which includes sales and conveyance fees, shall be remitted to the above designated Agency on or before \_\_\_\_\_.

June 5, 1998  
Date

*Betty D. Tippeconnie*  
\_\_\_\_\_  
Superintendent

AUG. 30, 2004 3:10PM

1. ~~NONPAYING AND NONLIVABLE BIDS~~ - Bids, with their guaranties, must be securely secured in suitable envelopes, addressed to the Agency Office issuing this invitation and marked on the outside with the invitation number and date of opening, both of which may be found in the block opposite the name of the issuing office on the front of this form.
2. PREPARATION OF BIDS - Forms furnished, or copies thereof, shall be used, and strict compliance with requirements of the invitation, and these instructions are necessary. Special care should be exercised in the preparation and submission of bids to assure full compliance with the invitation and instructions. All item numbers and prices shall be fully and clearly set forth.
3. SIGNATURE TO BIDS - Each bid must give the address of the bidder and be signed by him with his usual signature. The name of each person signing shall be typed or printed below the signature.
4. CORRECTIONS - Erasures or other changes in the bid must be explained or noted over the signature of the bidder.
5. TIME FOR RECEIVING BIDS - Bids received prior to the time of opening will be securely kept, unopened. The officer whose duty it is to open them will decide when the specified time has arrived, and no bid received thereafter will be considered. No responsibility will be attached to an officer for the premature opening of a bid not properly addressed and identified. Telegraphic bids will not be considered, but modifications by telegraph of bids already submitted will be considered if received prior to the hour set for opening.
6. WITHDRAWAL OF BIDS - Bids may be withdrawn on written or telegraphic request received from bidders prior to the time fixed for opening. Negligence on the part of the bidder in preparing the bid confers no right to withdraw the bid after the time for submitting bids has expired. (see above Section 5).
7. BIDDER PRESENT - At the time fixed for the opening of bids, their contents will be made public for the information of bidders and others interested, who may be present either in person or by representative.
8. AWARD OR REJECTION OF BIDS - The award will be made to the highest bidder complying with the conditions of the invitation for bids, provided his bid is reasonable and it is in the interest of the Indian owner and the United States to accept it. The bidder to whom the award is to be made will be notified at the earliest possible date after the Superintendent approves the sale. The Superintendent also reserves the right to reject any and all bids and to waive any informality in bids received whenever such rejection or waiver is in the interest of the Indian owners or the United States.
9. ERRORS IN BID - Bidders or their authorized agents are expected to make a visual inspection of the premises to observe all physical conditions, apparent encumbrance, access, etc. Access is not guaranteed or warranted. A bidder cannot secure relief on the plea of error in the bid or in his lack of understanding the facts and circumstances.
10. Government appraisals of the herein described property will not be made available to the general public.
11. The land herein advertised for sale will be sold subject to the terms and conditions of existing oil and gas, mining or surface lease contracts, permits, easements or rights-of-way of record with the Bureau of Indian Affairs or in being. Bidders or their authorized agents, may examine existing lease contracts and permits at the issuing office. The United States does not regard a sale as having been consummated until approval and actual delivery of the deed or issuance of a fee patent to the purchaser; however, RENTS (cash or crop), for the lease contract year in which the land is offered for sale, are reserved to the Indian owners without regard to the date the sale is completed. Where advance rental payments are authorized by the Agency Office and have in fact been collected by the Indian owners beyond the lease contract year in which the land is offered for sale, such prepaid rents will be refunded to the purchaser, after full payment of the purchase price and formal approval of the sale transaction.
12. Minerals, including oil and gas, are to be sold with the land advertised unless reserved as indicated on the attached Schedule. Purchasers of mineral interest will be entitled to royalty for oil and gas produced on and after the first of the month following the month in which title is conveyed.
13. All tracts listed with a statement showing that an oil and gas lease is "Pending" or "Pending Approval" are being offered SUBJECT to said lease. Upon approval of such pending mineral leases, the cash bonus and first year advance rentals will be paid to and retained by the respective Indian owners; the purchaser to receive all future rental payments and mineral rights conveyed with the land.
14. Title to land sold as a result of this advertisement will be conveyed in a fee simple status by either patent in fee or approved deed. The cost of required documentary revenue stamps shall be borne by the purchaser.
15. Evidence of title to the lands herein offered for sale, such as commercial abstracts or title certificates which may be desired by the successful bidder, will be procured by him at his own cost and expense and will not be furnished by the Government or Indian owner. Inspection may made; however, of available deeds, probate proceedings, and other title documents of record in the local Agency office of the Bureau of Indian Affairs.
16. WARNING TO ALL BIDDERS - All bidders are warned against violation of 18 U.S.C. 1860, prohibiting unlawful combination or intimidation of bidders.
17. Title to lands sold as a result of this advertisement will not be conveyed until such time as the requirements of the National Environmental Policy Act have been satisfied.

June 5, 1998  
Date

*Betty B. J. J.*  
Superintendent



UNITED STATE DEPARTMENT OF THE INTERIOR  
BUREAU OF INDIAN AFFAIRS

\*\*\*\*\*  
SCHEDULE OF LAND TO BE SOLD  
\*\*\*\*\*

CADDO COUNTY

1. APACHE #554, 50 X 140 FEET CITY LOT SURFACE ONLY & 2 BEDROOM HOUSE - Lot 7, Block 4, Bath Addition, located at 814 West Kentucky, Anadarko, Ok. Date of Lease Expiration - Surface: None
2. CADDO #207, 160.00 ACRES SURFACE ONLY - SE $\frac{1}{4}$  of Section 3-T9N-R11W, I.M., approx. 1 1/2 mi. South of Binger, Ok. Date of Lease Expiration - Surface: None
3. APACHE #554, 50.00 ACRES SURFACE ONLY - N $\frac{1}{2}$ N $\frac{1}{2}$ SW $\frac{1}{4}$  & N $\frac{1}{2}$ N $\frac{1}{2}$ S $\frac{1}{2}$ N $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 29-T6N-R12W, I.M., Approx. 8 mi. West & 1/4 mi. North of Stacker, Ok. turnoff on Hwy 62. Date of Lease Expiration - Surface: 12-31-99
4. CADDO #209, 160.00 ACRES MINERALS ONLY - SE $\frac{1}{4}$  of Section 2-T9N-R11W, I.M., approx. 2 mi. South & 1/2 mi. East of Binger, Ok. Date of Lease Expiration - Minerals: None
5. WICHITA #865, 10.00 ACRES SURFACE ONLY - S $\frac{1}{2}$ N $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 12-T7N-R11W, I.M., approx. 1 mi. East of Washita, Ok. Date of Lease Expiration - Surface: None.
6. APACHE #2816, 160.00 ACRES, AN UNDIVIDED 1/2 INTEREST IN MINERALS ONLY - NW $\frac{1}{4}$  of Section 15-T5N-R10W, I.M., approx. 1 $\frac{1}{2}$  mi. West and 1 mi. North of Cyril, Ok. Date of Lease Expiration - Minerals: None.
7. KIOWA #1026 & KIOWA 2533, 32.30 ACRES SURFACE ONLY & 3 BEDROOM HOUSE - W $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ , SE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$  & a tract of land described as: Beg. At a point 900' West of the Center of Section 7-T7N-R13W, I.M., thence North 450', thence in a Southwesterly direction along the center line of Hwy. #9 a distance of 500', thence South 125', thence East 350' to the P.O.B., Approx. 1/2 mi. West of Carnegie, Ok. on Hwy #9. Date of Lease Expiration: Surface: None
8. FT. SILL APACHE #500, 5.00 ACRES MINERALS ONLY - N $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 4-T5N-R11W, I.M., Approx. 2 mi. North of Apache, Ok. Date of Lease Expiration - Minerals: None
9. FT. SILL APACHE #67, 5.00 ACRES MINERALS ONLY - E $\frac{1}{2}$ E $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$  & W $\frac{1}{2}$ W $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 9-T5N-R11W, I.M., Approx. 1 1/2 mi. North of Apache, Ok. Date of Lease Expiration: Minerals: None
10. CADDO 307, 158.75 ACRES SURFACE ONLY - N $\frac{1}{2}$ NE $\frac{1}{4}$ , SE $\frac{1}{4}$ NE $\frac{1}{4}$ , S $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ , NW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ , E $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ , SW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$  & N $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 7-T8N-R9W, I.M., Approx 3 mi. East of Gracemont, Ok. Date of Lease Expiration - Surface: 12/31/98

COMANCHE COUNTY

11. COMANCHE #719, 15.00 ACRES, AN UNDIVIDED 1/2 INTEREST IN MINERALS ONLY - N $\frac{1}{2}$ N $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$  & N $\frac{1}{2}$ S $\frac{1}{2}$ N $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 10-T5N-R11W, I.M., approx. 1 3/4 mi. North of Apache, Ok. Date of Lease Expiration - Minerals: None
12. COMANCHE #2648, 10.00 ACRES SURFACE ONLY - NE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 28-T2N-R14W, I.M., together with an easement for ingress/egress purposes described as: the north 20 feet of N $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$  and NW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$  of said Section 28. Approx. 3 mi. West and 1/2 mi. South of Cache, Ok. Date of Lease Expiration - Surface: None.
13. COMANCHE #95, 160.00 ACRES SURFACE & 1/2 MINERALS - NE $\frac{1}{4}$  of Section 32-T3N-R9W, I.M., Approx. 3 mi. South of Sterling, Ok. Date of Lease Expiration - Surface: 12-31-99  
Minerals: None
14. COMANCHE #2032, LOT B, BLOCK 57 JONES SUBDIVISION OF BLOCKS 54, 67 & 73 HEIGHTS ADDITION LOCATED AT 1716 IRWIN, LAWTON, Ok. Date of Lease Expiration - Surface: None  
Minerals: None
15. COMANCHE #783, 10.00 ACRES SURFACE ONLY - M&B BEG. PT 1466.65' SOUTH NW/CORNER SW $\frac{1}{4}$  OF SECTION 24-T4N-R11W, I.M., THENCE 1485' East, thence 293.33' South, thence 1485' West, thence 293.33' North to the P.O.B. Approx. 4 mi. West & 2 mi. South of Fletcher, Ok. Date of Lease Expiration - Surface: None
16. COMANCHE #2910, 140.00 ACRES SURFACE ONLY - N $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ , SE $\frac{1}{4}$ SW $\frac{1}{4}$  & N $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 17-T18-R12W, I.M., Approx. 5 mi. East of Faxon, Ok. Date of Lease Expiration - Surface: 12-31-2000

17. COMANCHE #746, 12.85 ACRES - A tract of land in the NW $\frac{1}{4}$  of Section 5-T3N-R11W, I.M., described as Beg. at the NW/Corner of Section 5-T3N-R11W thence S89°39'31" East 1314.56', thence S00°14'56"W 425.80', thence N89°39'31" West 1314.63', thence N00°15'31" East 425.80' to the POB, Approx. 2 1/2 mi. South & 1/2 mi. West of Apache, Ok. Date of Lease Expiration - Surface: 12-31-98 Minerals: None

18. COMANCHE #2557, 82.50 ACRES SURFACE ONLY WITH 1 BEDROOM HOME - NW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ , NW $\frac{1}{4}$ SE $\frac{1}{4}$ , NW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ , NE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$  & E $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 15-T3N-R12W, I.M., Approx. 3/4 mi. East of Lake Lawtonka, Lawton, Ok. Date of Lease Expiration - Surface: None

19. COMANCHE 1486, 72.69 ACRES MINERALS ONLY - Lot 1 (NW $\frac{1}{4}$ NW $\frac{1}{4}$ ) and NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 19-T3N-R16W, I.M., Approx. 1 mi. East and 1 1/2 mi. North of Mountain Park, Ok. Date of Lease Expiration - Minerals: None

COTTON COUNTY

20. COMANCHE #1972, 160.00 ACRES SURFACE ONLY - SE $\frac{1}{4}$  of Section 32-T3S-R11W, I.M., approx. 1 1/2 mi. South and 7 mi. West of Temple, Ok. Date of Lease Expiration - Surface: 12/31/2000

21. COMANCHE #1498, 160 ACRES SURFACE AND AN UNDIVIDED 1/2 MINERALS ONLY - NW $\frac{1}{4}$  of Section 22-T2S-R12W, I.M., Approx. 7 mi. West & 1/2 mi. North of Walters, Ok. Date of Lease Expiration - Surface: 12-31-98 Minerals: None.

22. COMANCHE #3232, 160.00 ACRES SURFACE ONLY - NW $\frac{1}{4}$  of Section 8-T4S-R13W, I.M., Approx. 4 1/2 mi. East of Grandfield, Ok. Date of Lease Expiration - Surface: None.

23. COMANCHE #1921, 40.00 ACRES SURFACE ONLY - NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 24-T3S-R11W, I.M. together with an easement along the West 20' of the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of said Section 24. Approx. 3 mi. East & 1/2 mi. South of Temple, Ok. Date of Lease Expiration - Surface: None

KIOWA COUNTY

24. KIOWA #1350, 19.15 ACRES - N $\frac{1}{4}$  of Lot 3 (NW $\frac{1}{4}$ SW $\frac{1}{4}$ ) of Section 11-T6N-R14W, I.M., approx. 1 mi. East and 10 1/2 mi. South of Mountain View, Ok. Date of Lease Expiration - Surface: None Minerals: None.

25. KIOWA #2526, 2.73475 ACRES SURFACE ONLY - W $\frac{1}{2}$ E $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$  and W $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$  and N $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$  and W $\frac{1}{2}$ E $\frac{1}{2}$ E $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$  and W $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$  and NW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 1-T6N-R14W, I.M., approx. 4 mi. South and 1 1/2 mi. West of Carnegie, Ok. Date of Lease Expiration - Surface: None.

26. KIOWA #2526, 71.25 ACRES - E $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$  and E $\frac{1}{2}$ W $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$  and E $\frac{1}{2}$ E $\frac{1}{2}$ E $\frac{1}{2}$ W $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$  and SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 1-T6N-R14W, I.M., together with a perpetual r/w for ingress and egress purposes described as the south 20 feet of the W $\frac{1}{2}$ W $\frac{1}{2}$ W $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$  and W $\frac{1}{2}$ E $\frac{1}{2}$ W $\frac{1}{2}$ W $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$  and W $\frac{1}{2}$ E $\frac{1}{2}$ E $\frac{1}{2}$ W $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 1-T6N-R14W, I.M., approx. 4 mi. South and 1 1/2 mi. West of Carnegie, Ok. Date of Lease Expiration - Surface: None Minerals: None.

27. KIOWA #2116, 50 x 150 FEET CITY LOT & 1 BEDROOM HOUSE - Lot B, Block 50 located at 829 South Lincoln, in SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 3-T6N-R18W, I.M., original Townsite of Hobart, Ok. Date of Lease Expiration - Surface: None. Minerals: None

28. KIOWA #1238, 18.75 ACRES SURFACE ONLY - SW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ , E $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ , SW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ , E $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 13-T5N-R14W, I.M., Approx. 13 mi. South & 1/4 mi West of Carnegie, Ok. Date of Lease Expiration - Surface: None

29. KIOWA #1238, 15.00 ACRES SURFACE ONLY - NE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$  & N $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 13-T5N-R14W, I.M., Approx. 13 mi South & 1 1/4 mi West of Carnegie, Ok. Date of Lease Expiration - Surface 12-31-2000

30. KIOWA #669-A, 80.00 ACRES SURFACE ONLY - E $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 5-T7N-R14W, I.M., Approx. 4 1/2 mi. West of Carnegie, Ok. Date of Lease Expiration - Surface: None

31. KIOWA #669-B, 80.00 ACRES SURFACE ONLY - W $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 5-T7N-R14W, I.M., Approx. 4 1/2 mi. West of Carnegie, Ok. No Legal Access. Date of Lease Expiration - Surface: None

TILLMAN COUNTY

32. KIOWA #2983, 80.00 ACRES SURFACE ONLY - W $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 11-T4S-R16W, I.M., approx. 9 mi. West & 1/2 South of Grandfield, Ok. Date of Lease Expiration - Surface: 12-31-2000

33. KIOWA #3073, 80.00 ACRES - N $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 29-T2S-R14W, I.M., approx. 5 mi. South and 1/2 mi. West of Chattanooga, Ok. Date of Lease Expiration - Surface: 12/31/98 Mineral: None.

34. COMANCHE #3129, 160.00 ACRES, AN UNDIVIDED 1/2 INTEREST IN MINERALS ONLY - SE $\frac{1}{4}$  of Section 31-T4S-R14W, I.M., approx. 4 mi. South of Grandfield, Ok. Date of Lease Expiration - Minerals: None

UNITED STATE DEPARTMENT OF THE INTERIOR  
BUREAU OF INDIAN AFFAIRS

\*\*\*\*\*  
SCHEDULE OF LAND TO BE SOLD  
\*\*\*\*\*

CADDO COUNTY

1. APACHE #554, 50 X 140 FEET CITY LOT SURFACE ONLY & 2 BEDROOM HOUSE - Lot 7, Block 4, Bath Addition, located at 814 West Kentucky, Anadarko, Ok. Date of Lease Expiration - Surface: None
2. CADDO #207, 160.00 ACRES SURFACE ONLY - SE $\frac{1}{4}$  of section 3-T5N-R11W, I.M., approx. 1 1/2 mi. South of Binger, Ok. Date of Lease Expiration - Surface: None
3. APACHE #554, 50.00 ACRES SURFACE ONLY - N $\frac{1}{2}$ N $\frac{1}{2}$ SW $\frac{1}{4}$  & N $\frac{1}{2}$ N $\frac{1}{2}$ S $\frac{1}{2}$ N $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 29-T6N-R12W, I.M., Approx. 8 mi. West & 1/4 mi. North of Stacker, Ok. turnoff on Hwy 62. Date of Lease Expiration - Surface: 12-31-99
4. CADDO #209, 160.00 ACRES MINERALS ONLY - SE $\frac{1}{4}$  of Section 2-T9N-R11W, I.M., approx. 2 mi. South & 1/2 mi. East of Binger, Ok. Date of Lease Expiration - Minerals: None
5. WICHITA #865, 10.00 ACRES SURFACE ONLY - S $\frac{1}{2}$ N $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 12-T7N-R11W, I.M., approx. 1 mi. East of Wawhite, Ok. Date of Lease Expiration - Surface: None.
6. APACHE #2816, 160.00 ACRES. AN UNDIVIDED 1/2 INTEREST IN MINERALS ONLY - NW $\frac{1}{4}$  of Section 15-T5N-R10W, I.M., approx. 1 $\frac{1}{2}$  mi. West and 1 mi. North of Cyril, Ok. Date of Lease Expiration - Minerals: None.
7. KIOWA #1026 & KIOWA 2533, 32.30 ACRES SURFACE ONLY & 3 BEDROOM HOUSE - W $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ , SE $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$  & a tract of land described as: Beg. At a point 900' West of the Center of Section 7-T7N-R13W, I.M., thence North 450', thence in a Southwesterly direction along the center line of Hwy. #9 a distance of 800', thence South 125', thence East 350' to the P.O.B., Approx. 1/2 mi. West of Carnegie, Ok. on Hwy #9. Date of Lease Expiration: Surface: None
8. FT. SILL APACHE #500, 5.00 ACRES MINERALS ONLY - N $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 4-T5N-R11W, I.M., Approx. 2 mi. North of Apache, Ok. Date of Lease Expiration - Minerals: None
9. FT. SILL APACHE #67, 5.00 ACRES MINERALS ONLY - E $\frac{1}{2}$ E $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$  & W $\frac{1}{2}$ W $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 9-T5N-R11W, I.M., Approx. 1 1/2 mi. North of Apache, Ok. Date of Lease Expiration: Minerals: None
10. CADDO 307, 158.75 ACRES SURFACE ONLY - N $\frac{1}{2}$ NE $\frac{1}{4}$ , SE $\frac{1}{4}$ NE $\frac{1}{4}$ , S $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ , NW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ , S $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ , SW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$  & N $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 7-T8N-R9W, I.M., Approx 3 mi. East of Gracemount, Ok. Date of Lease Expiration - Surface: 12/31/98

COMANCHE COUNTY

11. COMANCHE #719, 15.00 ACRES. AN UNDIVIDED 1/2 INTEREST IN MINERALS ONLY - N $\frac{1}{2}$ N $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$  & N $\frac{1}{2}$ S $\frac{1}{2}$ N $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 10-T5N-R11W, I.M., approx. 1 3/4 mi. North of Apache, Ok. Date of Lease Expiration - Minerals: None
12. COMANCHE #2648, 10.00 ACRES SURFACE ONLY - NE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 28-T2N-R14W, I.M., together with an easement for ingress/egress purposes described as: the north 20 feet of N $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$  and NW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$  of said Section 28. Approx. 3 mi. West and 1/2 mi. South of Cache, Ok. Date of Lease Expiration - Surface: None.
13. COMANCHE #95, 160.00 ACRES SURFACE & 1/2 MINERALS - NE $\frac{1}{4}$  of Section 32-T3N-R9W, I.M., Approx. 3 mi. South of Sterling, Ok. Date of Lease Expiration - Surface: 12-31-99  
Minerals: None
14. COMANCHE #2032, LOT B, BLOCK 67 JONES SUBDIVISION OF BLOCKS 54, 67 & 73 HEIGHTS ADDITION LOCATED AT 1716 IRWIN, LAWTON, Ok. Date of Lease Expiration - Surface: None  
Minerals: None
15. COMANCHE #783, 10.00 ACRES SURFACE ONLY - M&B BEG. PT 1466.65' SOUTH NW/CORNER SW $\frac{1}{4}$  OF SECTION 24-T4N-R11W, I.M., THENCE 1485' East, thence 293.33' South, thence 1485' West, thence 293.33' North to the P.O.B. Approx. 4 mi. West & 2 mi. South of Fletcher, Ok. Date of Lease Expiration - Surface: None
16. COMANCHE #2910, 140.00 ACRES SURFACE ONLY - N $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ , SE $\frac{1}{4}$ SW $\frac{1}{4}$  & N $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 17-T18-R12W, I.M., Approx. 5 mi. East of Paxon, Ok. Date of Lease Expiration - Surface: 12-31-2000

34. COMANCHE #3129, 160.00 ACRES, AN UNDIVIDED 1/2 INTEREST IN MINERALS ONLY - 5% of section 31-148-R14M, I.M., approx. 4 ml. south of Grandfield, OK. Date of lease expiration - Minerals: None  
12/31/98 Minerals: None  
33. KIOWA #3073, 80.00 ACRES - 5% of section 29-128-R14M, I.M., approx. 5 ml. south and 1/2 ml. west of Chateaugo, OK. Date of lease expiration - Surface: 12/31/2000

TIJERMAN COUNTY

32. KIOWA #2883, 80.00 ACRES SURFACE ONLY - 5% of section 11-148-R16M, I.M., approx. 9 ml. west & 1/2 south of Grandfield, OK. Date of lease expiration - Surface: 12-31-2000  
31. KIOWA #669-B, 80.00 ACRES SURFACE ONLY - 5% of section 5-17N-R14M, I.M., approx. 4 1/2 ml. west of Carnegie, OK. No legal access. Date of lease expiration - Surface: None  
30. KIOWA #669-A, 80.00 ACRES SURFACE ONLY - 5% of section 5-17N-R14M, I.M., approx. 4 1/2 ml. west of Carnegie, OK. Date of lease expiration - Surface: None  
29. KIOWA #1218, 15.00 ACRES SURFACE ONLY - NE 1/4 of section 13-15N-R14M, I.M., approx. 13 ml. south & 1/4 ml. west of Carnegie, OK. Date of lease expiration - Surface: None  
28. KIOWA #1218, 15.75 ACRES SURFACE ONLY - SW 1/4 of section 13-15N-R14M, I.M., approx. 13 ml. south & 1/4 ml. west of Carnegie, OK. Date of lease expiration - Surface: None  
27. KIOWA #2116, 80 x 150 FEET CITY LOT & 3 BEDROOM HOUSE - Lot B, Block 50 located at 829 South Lincoln, in SE 1/4 of section 3-16N-R18M, I.M., original Township of Hobart, OK. Date of lease expiration - Minerals: None  
26. KIOWA #2526, 11.25 ACRES - E 1/2 of section 1-16N-R14M, I.M., together with a perpetual 1/4 for ingress and egress purposes described as the south 20 feet of the NW 1/4 of section 1-16N-R14M, I.M., approx. 4 ml. south and 1/2 ml. west of Carnegie, OK. Date of lease expiration - Surface: None  
25. KIOWA #2526, 2.73437 ACRES SURFACE ONLY - NW 1/4 of section 1-16N-R14M, I.M., together with a perpetual 1/4 for ingress and egress purposes described as the south 20 feet of the NW 1/4 of section 1-16N-R14M, I.M., approx. 4 ml. south and 1/2 ml. west of Carnegie, OK. Date of lease expiration - Surface: None  
24. KIOWA #1510, 19.15 ACRES - NE 1/4 of Lot 3 (NW 1/4) of section 11-16N-R14M, I.M., approx. 1 ml. east and 10 1/2 ml. south of Mountain View, OK. Date of lease expiration - Minerals: None

KIOWA COUNTY

23. COMANCHE #1521, 40.00 ACRES SURFACE ONLY - NW 1/4 of section 24-138-R11M, I.M., together with an easement along the West 20' of the SE 1/4 of said section 24. Approx. 3 ml. east & 1/2 ml. south of Temple, OK. Date of lease expiration - Surface: None  
22. COMANCHE #3232, 160.00 ACRES SURFACE ONLY - NW 1/4 of section 8-148-R13M, I.M., approx. 4 1/2 ml. west of Grandfield, OK. Date of lease expiration - Surface: None  
21. COMANCHE #1498, 150 ACRES SURFACE AND AN UNDIVIDED 1/2 MINERALS ONLY - NW 1/4 of section 22-228-R12M, I.M., approx. 7 ml. west & 1/2 ml. north of Walters, OK. Date of lease expiration - Surface: 12-31-2000  
20. COMANCHE #1972, 160.00 ACRES SURFACE ONLY - 5% of section 12-138-R11M, I.M., approx. 1 1/2 ml. south and 7 ml. west of Temple, OK. Date of lease expiration - Surface: 12/31/2000

NOTION COUNTY

19. COMANCHE 1456, 72.69 ACRES MINERALS ONLY - Lot 1 (NW 1/4) and NW 1/4 of section 19-23N-R16M, I.M., approx. 1 ml. east and 1 1/2 ml. north of Mountain Park, OK. Date of lease expiration - Minerals: None  
18. COMANCHE #2557, 82.50 ACRES SURFACE ONLY WITH 3 BEDROOM HOME - NW 1/4 of section 15-23N-R12M, I.M., approx. 3/4 ml. east of Lake Lawtonka, Lawton, OK. Date of lease expiration - Surface: None  
17. COMANCHE #746, 12.85 ACRES - A tract of land in the NW 1/4 of section 5-13N-R11M, I.M., described as Beg. at the NW corner of section 5-13N-R11M thence 89°19'31" East 1314.56', thence S00°14'56" W 425.80', thence N89°39'31" West 1314.53', thence N00°15'31" East 425.80' for the EOB, approx. 2 1/2 ml. south & 1/2 ml. west of Apache, OK. Date of lease expiration - Surface: 12-31-98 Minerals: None

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# **NOTICE**

The Bureau of Indian Affairs, Anadarko Agency, Advertised Land Sale, Invitation #69 scheduled for September 1, 2004 at 10:00 A.M. is hereby cancelled. Bidders may pick up their sealed bids.

s- Betty B. Tippeconnie, Superintendent

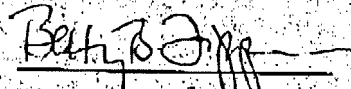
Date: 8-30-04

THE LAWTON CONSTITUTION

WEDNESDAY, SEPTEMBER 1, 2004

# NOTICE

The Bureau of Indian Affairs, Anadarko Agency, Advertised Land Sale Invitation #69 scheduled for September 1, 2004 at 10:00 A.M. is hereby cancelled. Bidders may pick up their sealed bids.



Betty B. Tipperconnie  
Superintendent

8-30-04  
Date

IN THE  
UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL <u>et al.</u> , on	)	
their own behalf and on behalf	)	
of all persons similarly	)	
situated,	)	
	)	
<u>Plaintiffs,</u>	)	
	)	Civil Action
v.	)	No. 96-1285 (RCL)
	)	
	)	
BRUCE BABBITT, Secretary of the	)	
Interior, <u>et al.</u> ,	)	
	)	
<u>Defendants.</u>	)	

PLAINTIFFS' MEMORANDUM  
CONCERNING SCOPE OF CLASS AND RELATED MATTERS

At the hearing on November 23 (Tr. 31), plaintiffs undertook to file with the Court a statement with respect to the persons on whose behalf this lawsuit was filed and whom they understand to be members of the class.

Confusion has been injected by the government's effort to narrow the class simply to those trust beneficiaries that it has included in the reporting system currently being used, and in effect to define its trust duties by the scope of that reporting system - thus implying that the government can relieve itself of trust duties by failing to set up an adequate system.

Our understanding is as follows.

1. Every individual Indian (or, in appropriate cases, his heirs, estate, or personal representative) on whose behalf, as

trust beneficiary, a trust account is, has been, should be, or should have been maintained with the United States or its agent, is a member of the plaintiff class. An "account holder" and a "trust beneficiary" are simply two terms for the same person. Such accounts are commonly referred to as "individual Indian money accounts" ("IIM accounts"), to distinguish them from "tribal accounts," which reflect trusts for the benefit of tribes rather than of individual Indians.<sup>1</sup>

2. Beginning in approximately 1985 and extending over several subsequent years, the government established an electronic database and associated accounting programs for the management of some, but not all, IIM accounts. It is operated by the Office of Trust Fund Management ("OTFM"), which until recently was part of the BIA but has been transferred to the Office of the Special Trustee. In this lawsuit, this database with its associated programs has sometimes been referred to as "the System" (more fully, "the OTFM IIM System"). An account, or an aspect of an account, has been said to be "on the System" if it is included in this database.<sup>2</sup> As is explained further

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<sup>1</sup> There may be more than one account with respect to a class member. For example, a class member may have inherited an interest in a tract of timberland from her mother and an interest in a tract of grazing land from her father. Similarly, many different class members may have an interest in the same trust asset; for example, all the great-grandchildren of an original allottee of a tract may have interests in the tract. All are members of the class. So are their predecessors in interest.

<sup>2</sup> We have frequently spoken of "fixing the system" as one of the goals of this lawsuit. This does not refer to merely repairing the existing "System" (it is beyond repair), but to ensuring



hereinbelow, this current "System" does not define the plaintiff class, the total class of IIM accounts, or the scope of this action; there are many, many members of the plaintiff class whose accounts are not "on the System," and there are accounts on the current "System" that do not correspond to class members.

3. With respect to an undetermined number of class members, account management (or portions thereof) is performed not by an agency of the United States directly but by an Indian tribe, pursuant to a compact or contract between the United States and the tribe. For such an account, the tribe, in general, manages the money (and perhaps the underlying asset), holds it, and supposedly pays it over to the account holder (beneficiary). All such activity is conducted, however, by the tribe as agent for the trustee, the United States. It holds and pays the money as agent for the United States. For purposes of this lawsuit, such accounts and their accountholders (trust beneficiaries), including the money relevant thereto, stand on exactly the same footing as do the accounts and money managed directly by the United States and their accountholders (trust beneficiaries). Such an accountholder (trust beneficiary)-is a class member just as is an individual whose account is managed directly by the defendants.

4. Contrary to the impression created by the government, we are aware of IIM accounts managed by tribes which are not "on the System" as of this time. Accountholders (trust

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across the board that the management of individual Indian trusts is placed on a satisfactory basis.

beneficiaries) of accounts managed by tribes and not "on the System" are members of the class just as are accountholders (trust beneficiaries) with respect to whom the United States has not contracted out their account management.<sup>3</sup> Note that when a beneficiary who is "on the System" has his account transferred to management by a tribe, prior transactions may remain "on the System" and his account may subsequently be automatically designated as "inactive" after no new transactions are reported on it for a period of time.

5. Some account holders (trust beneficiaries) may have never been "on the System" because they ceased to be accountholders (trust beneficiaries) before the current "System" was established. This does not affect the status of such persons as members of the class.

6. The foregoing are the two most important reasons now known to us that a class member's account(s) might be not "on the system." There may be many other reasons (including simple incompetence). We reiterate the basic point: The class is not limited to persons whose accounts are "on the System," nor does every account on the current "System" correspond to an individual trust beneficiary.

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<sup>3</sup> The Special Trustee, Paul Homan, testified at his deposition that all accounts, including those managed by the tribes, should be on the System; perhaps more accurately, all accounts, whether managed by tribes or by the government directly, should be on one single system. Correction of this situation will be an element of the relief sought in this case.

7. Defendants can be expected to allege certain defenses against various class members or categories of class members. Examples are a claim that the statute of limitations bars a class member's rights because she cannot show equitable tolling; or a claim that the class member's agreeing to direct payment of his income directly from the lessee or other person who exploits his trust assets constitutes a knowing and informed waiver of certain rights against the trustee. The fact that these defenses might be asserted does not affect the status of such persons as class members.

8. We note some features of defendants' management of the trusts that can contribute to confusion and that underscore the fact that the class cannot be defined by reference to the current "System":

(a) The defendants have seriously confused the situation by actually including some trust accounts for the benefit of tribes on the current "System," although the current "System" is supposed to include only accounts for individuals. This category includes (i) so-called "tribal IIM accounts," which essentially reflect employment of the current "System" to manage tribal accounts for which it was not designed; and (ii) some accounts on the current "System" which reflect revenue derived from tracts of land in which both individuals and a tribe may hold beneficial interests. Tribes in the latter category will obviously benefit from the correction of accounts in the present case just as will individual class members, although they are not in the strict sense members of the class.

(b) In the current "System" there exist accounts called "special deposit accounts." While these should only hold money of individual Indians, they reflect no class member (trust beneficiary) at all. Often carried in the name of an oil company or other lessee of a trust asset, they are accounts through which trust income may be passed before being distributed to the beneficiary's account.

(PricewaterhouseCoopers and Arthur Andersen disagree as to how these accounts should be treated in a sampling process, but that issue is not relevant here.)

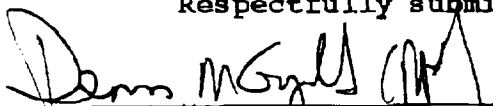
(c) When a minor beneficiary with an account on the current "System" reaches the age of 18, his account is commonly relabeled "deceased," and a new account may be opened for him. The funds in the "deceased" account may or may not be transferred. After a stated period the current "System" automatically labels it as "inactive" and ceases to report relevant credit and debit transactions. The current "System" thus contains multiple or successor accounts which in reality reflect not merely the same class member but the same account.

(d) Defendants have permitted agency superintendents to declare persons "incompetent" on their own authority. When account management is transferred to a tribe by compact or contract, incompetents' accounts are generally not transferred and relevant credit and debit transactions may or may not appear "on the System."

9. We take this opportunity to point out a related misapprehension on the government's part. At p. 11 of

"Defendants' Proposed Case Management Plan and Status Report" filed November 17, 1998, the government said: "The accounting would be limited to determining whether the monies that were actually collected were properly accounted for in the IIM system and not whether the proper amount of money was collected." (Emphasis added.) The underscored words improperly seek to limit the case to accounts and transactions which are "on the System" (as witness the proposition in the preceding sentence that "Defendants' accounting obligations are defined as accounting for money already existing in the system"). On the other hand, we agree with the government that "whether the proper amount of money was collected" is not an issue in the case - but not for the government's reasons. Under trust law, a trustee is presumed to have discharged its duty to the beneficiary and to have collected "the proper amount of money," whether or not the transaction is recorded accurately.


Respectfully submitted,



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Attorneys for Plaintiffs

December , 1998

**CERTIFICATE OF SERVICE**

I hereby certify that on this <sup>SA</sup> 31 day of December, 1998 copies of the forgoing Plaintiffs' Memorandum Concerning Scope of Class and Related Matters was sent via facsimile and U.S. mail, first class, postage prepaid to defendants' counsel of record and of counsel as follows:

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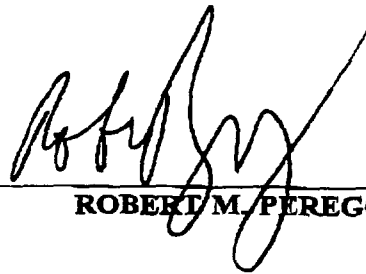
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ROBERT M. PEREGOY

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL, et al., )  
 )  
 Plaintiffs, )  
 v. )  
 )  
 BRUCE BABBITT, Secretary of the )  
 Interior, et al., )  
 Defendants. )

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DISTRICT OF COLUMBIA  
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U.S. DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA  
No. 1:96CV01285-RCL  
(Hon. Alan Balaran, Special Master)

**UNITED STATES' MEMORANDUM ADDRESSING PLAINTIFFS'  
SCOPE OF CLASS MEMORANDUM**

**Introduction**

At the parties' first conference with the Special Master on March 4, 1999, the Master directed defendants to respond to Plaintiffs' Memorandum Concerning Scope of Class and Related Matters (December, 8, 1998) (hereinafter cited as "Plts Mem"). Defendants submit this memorandum pursuant to those instructions.

By order entered February 4, 1997, the Court certified the plaintiff class as "present and former beneficiaries of Individual Indian Money Accounts." Plaintiffs' scope of class memorandum shows plaintiffs' belief that the class is larger than those account beneficiaries. The belief is erroneous. Importantly, however, plaintiffs' expanded vision of the class has no apparent bearing on existing discovery requests.



**I. The Certified Class Is “Present and Former Beneficiaries of Individual Indian Money Accounts” Which Does Not Include Individuals Who Allegedly Should Have Had Accounts, Such as “Direct Pays”**

Plaintiffs filed their scope of class memorandum without an accompanying motion. The memorandum therefore does not purport to seek modification of the certified class and is at most a statement of views.

The significant point of departure between the parties, as expressed in the memorandum, is plaintiffs’ belief that the certified class includes individual Indians for whom an account “should be, or should have been maintained”. Plts Mem, ¶ 1. They are similarly incorrect to propose now, two years since certification of the class, that “[a]n ‘account holder’ [beneficiary] and a ‘trust beneficiary’ are simply two terms for the same person”. *Id.* (emphasis added). The former does define the class, as the record shows, but “trust beneficiary” would extend far beyond account holders. For example, “trust beneficiary” includes the trust relationship that exists between the Bureau of Indian Affairs (“BIA”) and individuals for managing the land held in trust. Not all land held in trust earns revenue; therefore, some trust beneficiaries are not IIM account holders. In addition, the trust relationship regarding the Secretary’s duty to manage the land is not at issue in this case.<sup>1</sup>

As explained below, the class simply does not include individuals who have never held IIM accounts. Plaintiffs’ example of such individuals is “direct pays.” *Id.*, ¶ 7. “Direct pays” are individual Indians who receive allotment income, such as mineral royalties, directly from a lessee

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<sup>1</sup>See, e.g., Plts Mem, ¶ 9 (“...we agree with the government that ‘whether the proper amount of money was collected’ is not an issue in the case....”); Plaintiffs Revised Memorandum Of Points And Authorities In Support of Motion For Class Certification, p. 6 (Jan. 14, 1997) (“As of now, this action is not one to review the United States’ management of the underlying trust assets....”).

or permittee rather than through an IIM account. The BIA and the Minerals Management Service (“MMS”) allow direct payments pursuant to 25 C.F.R. § 162.5(f), as do Tribes operating the real estate services program by contract or compact pursuant to 25 U.S.C. § 450 *et seq.*<sup>2</sup> Those “direct pay” monies are not processed through an IIM account, nor are they handled in any fashion by the United States. Thus, individuals receiving direct payments are not members of the class unless they have or had IIM accounts to receive other income.

Plaintiffs’ recent memorandum on scope of class is at odds with their complaint, their motion for class certification and the Court’s order certifying the class, all of which make clear that the class includes only IIM account beneficiaries. From the beginning of this action, plaintiffs unequivocally limited the scope of this action to IIM accounts. Their complaint states that:

Involved in this action are accounts commonly referred to as Individual Indian Money (“IIM”) accounts. As is more fully set forth hereinbelow, IIM accounts include money which is the property of individual Indians, held by the United States as trustee on their behalf.

Complaint, ¶2. They reiterated this limitation: “This action deals only with Individual Indian money accounts.” *Id.*, ¶ 5. And, in describing the named plaintiffs as representative of the class, they identified them as current or past account holders:

All named plaintiffs are or have been beneficiaries of the trust

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<sup>2</sup> For example, the Salt River Pima Maricopa Indian Community has a Tribal Self-Governance compact pursuant to 25 U.S.C. §458aa *et seq.*, under which it assumed responsibility for allotment real estate services. Those services include preparing and negotiating leases, exclusive of lease approvals, and collection of lease income. When the Tribe collects the income for the individual allottees, it pays that money directly to the individuals except that, if they are minors or incompetents, the Tribe sends the money to the IIM clerk at Salt River to be place in IIM accounts for those individuals.

obligations herein involved, are or have been owners of IIM accounts, and like all owners of IIM accounts are unable to know whether their account balances are what they should have been in the absence of the breaches of trust herein complained of.

Id., ¶ 36.

Later, in moving for certification of the class, plaintiffs continued to describe the action as involving current and past account holders:

This action involves certain accounts maintained on the books of the government in the names of individual Indians, known as Individual Indian Money ("IIM") accounts, reflecting cash assets held in trust for the account-holders by the United States.

Plaintiffs Revised Memorandum Of Points And Authorities In Support of Motion For Class

Certification, p. 2 (Jan. 14, 1997).<sup>3</sup> In requesting certification, plaintiffs argued that "[t]he class of all present and former account beneficiaries is thus self-evidently too numerous for all members to be joined," id., p. 8, but assured that the named plaintiffs are representative as account holders:

As IIM account holders, the representative plaintiffs share with the absent class members the same interest in seeing the United States live up to its trust obligations and in having the correct amount of their accounts ascertained. None has any special features of his or her IIM account that renders him or her incapable of fairly representing other account beneficiaries.

Id., p. 20. Indeed, plaintiffs attached affidavits from each of the named plaintiffs testifying that they are account holders. Plaintiffs' memorandum then continued by arguing the commonality of

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<sup>3</sup> It described the accounts in some detail. For example:

The beneficiary's IIM account is in effect a "bank account" held and managed by the government as trustee, in which money derived from allotment management stands to the beneficiary's credit and can be withdrawn when the beneficiary wishes to do so - in accordance with the terms of the trust.

Id., pp. 3-4 (footnote omitted).

all IIM account holders:

Substantially all IIM accounts are held for the beneficiaries by the defendants on essentially the same basis and subject to the obligations and responsibilities of the United States and the defendants. Moreover, the funds in such accounts are held by defendants, and invested, in a common pool. Defendants' inadequate recordkeeping and other incompetent systems management affect all IIM account holders alike.

Id., pp. 20-21.

The Court ultimately entered the certification order proposed by plaintiffs, tying the class to the IIM accounts. Consistent with plaintiffs' complaint and motion for certification, the order defines the class as "present and former beneficiaries of Individual Indian Money accounts" and finds that "[t]he claims of the named plaintiffs herein (hereinafter 'the Representative Plaintiffs') are typical of the claims of the Class." Order Certifying Class Action (Feb. 4, 1997), ¶¶ 1,3.

In sum, plaintiffs never sought to include, in either this action or the class, people who have never been IIM account holders, such as people who receive income directly and have had no other allotment income, nor does the Court's certification include them. None of the named plaintiffs allege that they should have had an account or that they are "direct pays". Rather, as the "Representative Plaintiffs," the five named plaintiffs testified that they are all account holders and the Court certified the class on the premise that their claims are "typical" of the class.

Other parts of plaintiffs' scope of class memorandum suggest controversy where none appears to exist. Plaintiffs suggest that there may be an issue as to whether the class is defined by individuals who have accounts "on the system" (i.e., accounts on the Office of Trust Fund Management ("OTFM") IIM electronic accounting system begun in 1985). Plts Mem, ¶¶ 3, 4, 6. This is not an issue. No one equates the class with accounts "on the system". Indeed, plaintiffs

provide one example where the holder of an account not “on the system” would be part of the class, i.e., where an account was closed before the OTFM IIM system was implemented. Id., ¶ 5. In fact, named plaintiff Maulson alleges that he holds an account that was established for a judgment distribution, and BIA believes that it was closed before 1985. Similarly, plaintiffs’ statements that “the system” includes some tribal funds, as opposed to those attributable to individual Indians, or special deposit accounts, which exist for the purpose of collecting allotment revenues before depositing them in IIMs, should not implicate issues. Id., ¶ 8(a), (b). Tribal moneys do not form the corpus of IIMs and are not part of this action;<sup>4</sup> revenues in special deposit accounts derived from allotments are attributable to IIMs.<sup>5</sup> Nor does the existence of inactive accounts, any multiple accounts for the same individual, or accounts for incompetents raise a scope of class issue. Id., ¶ 8(c), (d). Holders of these IIM accounts are part of the certified class.<sup>6</sup>

Finally, the statute of limitations defense does not, as plaintiffs seem to suggest, bear on the scope of the class. Id., ¶ 7. Instead, the defense will simply determine whether claims of some class members are barred as stale.

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<sup>4</sup> See, e.g., Complaint, ¶ 5 (“The United States holds money and property in trust for Indian tribes and has committed breaches of those trusts as well; however, plaintiffs do not in this action claim standing to seek redress of those breaches and such breaches are not covered by this action.”).

<sup>5</sup> Though not relevant to this motion, it should be noted that not all special deposit accounts hold monies for immediate disbursement to individuals. For example, some special deposit accounts hold bonds or escrow payments for timber sales and other activities requiring a bond.

<sup>6</sup> Whether the class includes deceased account holders or their estates or whether those are members of a subclass whose rights or interests may differ materially from those of living account holders is not addressed in this memorandum. Defendants expect to address this issue in the future.

**II. Plaintiffs' Belief that the Certified Class Includes Individuals Who Allegedly Should Have Had Accounts, Such as "Direct Pays," Does Not Raise a Discovery Issue**

Plaintiffs have propounded five sets of requests for production of documents, two sets of interrogatories and one set of requests for admissions. Defendants have propounded two sets of requests for production of documents and four sets of interrogatories. The Court directed defendants to produce documents in its Order of November 27, 1996, and it issued further discovery instructions to both parties on May 5, 1998. Plaintiffs' scope of class memorandum, claiming that the certified class includes individuals who allegedly should have had IIM accounts, does not raise any apparent issues affecting these discovery obligations. Accordingly, the memorandum does not warrant action by the Master as discovery overseer. Should a concrete issue arise as a result of a party's particular discovery request, it can be addressed at that time.

**Conclusion**

Plaintiffs' memorandum expresses a belief that the certified class includes individuals who should have had IIM accounts, such as "direct pays". There is no support in the Court's Order Certifying Class Action, or elsewhere in the case record, for this belief. In any event, plaintiffs' memorandum raises no apparent issue affecting existing discovery obligations. However, if plaintiffs believe that "direct pays" or any other individuals should be members of the class, it is incumbent on them to seek modification of the class under Rule 23, Federal Rules of Civil Procedure, and explain why the five named plaintiffs raise questions of law or fact in common

with, and have claims typical of, this very different group of individuals who take allotment revenues directly and have no IIM accounts.

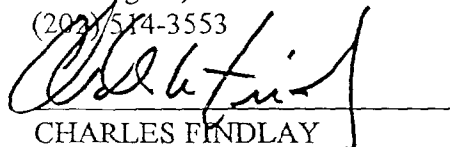
Dated: March 26, 1999

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CERTIFICATE OF SERVICE

The undersigned certifies that on this 26<sup>th</sup> day of March 1999, a copy of the above Memorandum Addressing Plaintiffs' Scope of Class Memorandum was served on Plaintiffs by hand or by placing a copy in the United States mail, first-class postage prepaid, and addressed to Plaintiffs' counsel at the following addresses:

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