

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

(Electronically filed on June 28, 2013)

RAMONA TWO SHIELDS, <u>et al.</u> ,)	
)	
Plaintiffs,)	No. 13-90L
)	
v.)	Hon. Lawrence J. Block
)	
UNITED STATES OF AMERICA,)	
)	
Defendant.)	
_____)	

**UNITED STATES' REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF [6] MOTION
TO DISMISS AND FOR SUMMARY JUDGMENT**

Pursuant to Rule 7 of the Rules of the United States Court of Federal Claims and Rule 201 of the Federal Rules of Evidence, the United States hereby requests that this Court take judicial notice of the June 20, 2011, transcript of the fairness hearing in Cobell v. Salazar, No. 96-cv-1285, ECF No. 3842-1 (D.D.C.) (attached hereto as Exhibit 1). Specifically, in support of its motion to dismiss and for summary judgment (ECF No. 6), the United States directs the Court's attention to the following passages:

The payments to the members of the trust administration class will range from \$800 to well over \$100,000, and in a number of instances over \$1 million, based on the value of their assets in terms of earnings over time as reflected in the best data available.

Hearing Tr. at 16:7-11 (Mr. Dorris, Class Counsel).

Once you identify the members and their pro rata share, by their calculations they each receive a base amount that has been estimated at an \$800 base amount according to a formula that is outlined in the agreement, and then some Indians who are qualified under that account generate large amounts of revenue and could have funds generated in excess of \$1 million.

Hearing Tr. at 220:24-221:5 (The Court).

There is no plaintiff from the most active and largest oilfield in the nation. The money in the Fort Berthold accounts, or that should be in the Fort Berthold accounts, has very little in common with what should be in a very small account, for example, in Nebraska and Montana, Oklahoma or Wisconsin.

Hearing Tr. at 48:15-20 (Carol Good Bear, Objector).

In support of this motion, the United States avers the following:

1. The court “must take judicial notice if a party requests it and the court is supplied with the necessary information.” Fed. R. Evid. 201(c)(2). “Judicial notice may be taken at any stage of the proceeding.” Fed. R. Evid. 201(d). The Court has broad discretion to take judicial notice of facts. Biomedical Patent Mgmt. Corp. v. Cal. Dep’t of Health Serv., 505 F.3d 1328, 1331 n. 1 (Fed. Cir. 2007) (citing Lee v. City of Los Angeles, 250 F.3d 668, 689 (9th Cir. 2001)).

2. “The court may judicially notice a fact that is not subject to reasonable dispute because it: (1) is generally known within the trial court’s territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b).

3. Good cause exists here for the Court to take judicial notice of the fairness hearing transcript in Cobell. First, plaintiffs have repeatedly accused the United States of having no basis for its statement that

[i]ndividual compensation for members of the Trust Administration Class is expected to range from a low of \$800 to a high, for some individuals, of tens or hundreds of dollars, or even over \$1 million.

U.S. Memorandum at 28, ECF No. 6-2. See Plaintiffs’ Opp’n at 43, ECF No. 11 (calling United States’ statement “specious (and improper)”; Plaintiffs’ Reply to Rule 56(d) Mot. at 18, ECF No. 16 (“Plaintiffs assume that the Government has support for these assertions . . .”). The basis for the United States’ assertion can be judicially noticed: it is plaintiffs’ counsel’s (class counsel) statements in Cobell and findings of the United States District Court for the District of

Columbia.

4. Second, plaintiffs speculate that the parties to the Cobell Settlement and the District Court were unaware of the “unique” situation of oil and gas lessees on the Fort Berthold Indian Reservation. See, e.g., Plaintiffs’ Opp’n at 2 (“the unique Two Shields claims fall outside the Cobell release, which was negotiated by class representatives with no interest in any of the specific Fort Berthold allottee oil and gas lease claims at issue in this case.”). That unfounded allegation is belied by the fact (which can be judicially noticed) that one of the Cobell objectors was a member of Three Affiliated Tribes^{1/} and specifically raised oil and gas leasing issues on the Fort Berthold Reservation at the fairness hearing. Hearing Tr. at 48:15-20.

5. There is no prejudice to plaintiffs if this motion is granted. The United States’ motion has only recently been submitted. Furthermore, plaintiffs most recently levied their allegations against the United States for allegedly advancing unsubstantiated statements on June 21, 2013. Plaintiffs’ Reply to Rule 56(d) Mot. at 18.

WHEREFORE, the United States respectfully requests that this motion be granted and the Court take judicial notice of fairness hearing transcript in Cobell in resolving the United States’ motion to dismiss and for summary judgment.

Respectfully submitted, June 28, 2013,

ROBERT G. DREHER
Acting Assistant Attorney General

s/ Stephen R. Terrell
STEPHEN R. TERRELL
Trial Attorney

^{1/} Hearing Tr. at 45:11-14:

MS. GOOD BEAR: I am Carol Good Bear of the Mandan Hidatsa and Arikara Tribes of the Fort Berthold Reservation of North Dakota. I am a member of the Mandan and Hidatsa Tribe in particular.

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