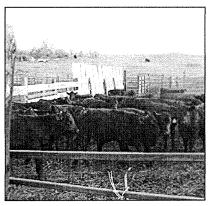
Native American Farmers Allege Loan Bias

by DAVID SCHAPER



David Schaper Keith and Claryca Mandan are two of the named plaintiffs in the lawsuit alleging discrimination by the USDA.



David Schape
The Mandans claim that discriminatory
lending practices by the USDA have
prevented them from getting the loans
they'd need to build a barn.

Lake Sakakawea

The lake is named for the famous Shoshone/Hidatsa woman who guided the Lewis and Clark expedition up the Missouri River in 1805.

The third largest manmade lake in the U.S., Lake Sakakawea was created in 1956.

The lake flooded some of the most sacred and fertile land on the reservation, an area Native Americans had

November 22, 2006

text size A A A

A federal lawsuit filed by Native American farmers and ranchers accuses the U.S. Department of Agriculture of systemic discrimination in farm-loan programs. After languishing in the courts since 1999, the suit may finally move forward.

One Family's Story

Keith Mandan is a cattle rancher. It's what his father and grandfather did, and what he always wanted to do.

"When you talk about the way of life, it's kind of our only way of life," says Keith Mandan. He's a member of the Three Affiliated Tribes — the Mandan, the Hidatsa and Arikara tribes — who live on the Fort Berthold Indian Reservation in western North Dakota.

Mandan's family runs a cow-calf operation. They raise calves from a base mother herd. "We breed the cows here, winter them, calve them out in the spring," he says. "And when the calf reaches approximately three to five months of age, we sell them on the feeder market."

Mandan estimates he has about 200 to 250 cows, on about 500 acres of prairie grasses overlooking the Little Missouri River Valley and Lake Sakakawea.

It's a tough way to make a living, as ranchers have slim profit margins that are vulnerable to market-price fluctuations. And their product, the livestock, can be damaged or killed by the wild forces of nature, from droughts to blizzards to predators, such as wolves and coyotes. Mandan says that because he's been denied access to USDA loans and subsidies over the years, he cannot afford a barn to protect his herd from the harsh elements.

"It's pretty much ranching on the open prairie" all year, Mandan says. He tries to compensate for the effects of nature by feeding his calves a higher-quality feed fortified with supplements and antibiotics.

Having no barn means that calving — when mother cows give birth to calves — happens out on the open prairie, a risky proposition. Keith's wife, Claryca Mandan, says nature can take a toll, particularly if a blizzard strikes during calving season.

been living on for centuries, forcing the relocation of more than 300 families, including Keith Mandan's parents and grandparents.

Mandan says starting again from scratch was difficult, and government and commercial lenders provided no help whatsoever.

"It's not uncommon, if we have an early spring storm during calving season, to lose a significant portion of the calf crop. It's very risky," she says.

In addition to not having barns for the animals or for their hay and feed, the Mandans lack a machine shed and a garage for their tractor, pick-up and other farm implements. That means their tools rust, age and break down more quickly. Until recently, they didn't have any water running to their calf corral. They hauled water from 15 miles away so their livestock could drink.

The reason, the Mandans claim, is because they were repeatedly denied USDA loans and subsidies — money they say white farmers and ranchers in

the area were able to access.

"You have to understand that FSA [Farm Service Agency] only provided us with operating loans for two years before they started the discriminating acts," Claryca Mandan says.

At Issue

In bad years for farmers and ranchers, the USDA often offers to restructure loans to give them more time to pay it off. The government will also write down, or forgive, some of the debt because of such losses.

"Our non-Indian neighbors got numerous write downs, some more than once, some almost every year," Claryca Mandan says. "These tools were never used on the Native American loans.

"Had we been given credit, and the opportunities and the programs that all of our non-Indian neighbors had gotten, we would be on par with them today," she adds. "We would have done developments such as a hay shed, a cattle corral, water facilities. We wouldn't be calving out on the barren prairie.

"All we were asking for was equal treatment, and we never got it."

Keepseagle v. Johanns

The Mandans realized they weren't alone. As the government tried to foreclose on them, they noticed that the delinquency rate was skyrocketing among the other farmers and ranchers on their reservation, and on others across the country. So in 1999, the Mandans and other Native Americans joined with a Sioux rancher named George Keepseagle and filed a civil-rights lawsuit against the USDA. *Keepseagle v. Johanns* alleges government discrimination against Native American farmers and ranchers.

The suit is similar to one filed in 1997 by black farmers, called the Pigford case, which resulted in a record civil-rights settlement just two years later. The settlement has allowed more than 14,000 plaintiffs to share in almost \$1 billion in compensation, through grants and loan forgiveness.

The Keepseagle case was granted class-action status in 2001. Attorneys for the plaintiffs say the class could ultimately cover tens of thousands of Native American farmers and ranchers who may have been discriminated against by the USDA, dating back to 1991. And if the lawsuit is successful, they say damages could be worth hundreds of millions of dollars.

But unlike the Pigford case, the Keepseagle suit has languished in the courts for nearly eight years. Attorneys for the plaintiffs accuse government lawyers of using just about every delaying and stalling tactic available.

They suggest a couple of reasons for the difference in the federal government's attitudes toward the two lawsuits. The Pigford case was filed against the Clinton administration, which attorneys say was more sympathetic to claims of racism. In fact, under the direction of then-Secretary of Agriculture Dan Glickman, the USDA formed its own internal Civil Rights Action Team to investigate claims of racism and discrimination. Its 1997 report detailed findings of systemic mistreatment of minority farmers, helping lay the groundwork for the lawsuits.

Another reason given for the rather quick settlement in with African-American farmers is that black leaders and lawmakers kept up the pressure to settle, while the media focused on the case as well. Meanwhile, the Keepseagle case has received almost no national media attention.

Adding salt to the wound, Claryca Mandan says, is that the USDA recently settled a lawsuit and agreed to changes in practices in order to protect endangered wildlife.

"We're citizens of this country as much as anyone," she says. "We don't get the respect that a duck would get."

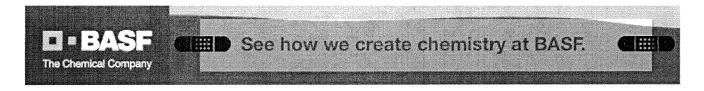
A spokesman for the USDA would not comment on the lawsuit, citing a policy of not commenting on pending litigation. A spokesman for the Justice Department, which represents the USDA in the case, also refused to comment.

While waiting for their day in court, the Mandans note that many Native Americans continue to lose their ranches and farms to government foreclosures. Of the 150 or so on the Fort Berthold Reservation who were initially members of the class-action lawsuit, they say only a very small fraction are still actively engaged in agriculture.

Claryca Mandan says the lawsuit is not about money, or a way for Native Americans to get rich quick. She says it's about the land, which she and her husband Keith want to pass onto the next generation.

"We want to be able to go to our graves knowing that our children are on the same equal footing as non-Indians, and that they can keep our land in the family and keep on ranching," she says, adding, "Our whole culture is embedded in agriculture, and we want to pass that onto our children."

That day in court may be coming soon. Attorneys for the government and the Native American plaintiffs will go before a magistrate in Washington on Nov. 28 to try to iron out differences over discovery. They'll appear before the judge overseeing the case next month, with the hopes of finally setting a trial date, which the plaintiffs hope can begin next year.







Native American farmers hopeful about suit involving USDA loans

By Alyse Shorland, CNN STORY HIGHLIGHTS

- Native American farmers say USDA loan practices were discriminatory
- Recent African-American farmers' settlement gives them hope their lawsuit will be settled
- Lawyers say Native American farmers need government loans to sustain their businesses
- USDA official: "We want to put this behind us and focus on the future"

Porter Holder vividly remembers the day in 1998 when he left a U.S. Department of Agriculture loan office in Oklahoma empty-handed.

He had applied for a low-interest USDA loan to help keep a farm in family ownership. He says he expected his application to be accepted. He had kept his debt at a minimum and developed a plan for supplementing his income. He believes he was turned down because he's Native American, a member of the Choctaw tribe.

"The day I walked out of there, I knew why he denied me," Holder said.

In 1999, He joined other Native Americans in a class-action lawsuit that accused the USDA of discriminatory lending over a 25-year period. USDA loans can be used for purchasing land, livestock, equipment and other operational items.

The lending practices of USDA regional offices have cost Native American farmers hundreds of millions of dollars in potential revenue, their lawyers said, although they added that it's a hard number to estimate because of how many farmers may have been affected. The attorneys say their expert witness, agricultural economist Patrick O'Brien, estimated that over 18 years, Native American farmers received only half the loans they could have expected to obtain.

As a result, many saw their farms foreclosed on and their fields lying fallow.

A recent settlement on behalf of African-American farmers gave Native Americans hope that their case will also be resolved in their favor. Individual black farmers could receive \$50,000 each as a result of the case, known as *Pigford II*.

According to the 2007 Census of Agriculture, there are about 60,000 Native American farmers in the United States -- double the number of African-American farmers. The vast majority of Native American farmers work on family-operated farms.

Holder lives on 320 gently rolling acres in Oklahoma, where he raises cattle. His primary source of income is work as a blacksmith, shoeing horses in his community. With the right amount of financial help, he said, his life could have been different.

"I could have been a rancher," he said. "That's what I wanted to do."

Holder said regional USDA offices repeatedly denied him access to loans. In one instance, he said he was told to "go see [his] tribe."

After the regional office denied him a loan at 4 percent interest, Porter said he received an 8 percent interest loan through a private bank. He purchased the acres he lives on now, but he said the high interest has put a strain on his finances.

"If it was fair, I would be in a different place," he said. "I am thankful to be where I am, don't get me wrong, but I would be in a different place."

The Native Americans' lead counsel, Joseph Sellers, said the USDA loans are vital to the existence of Native American farmers.

"The precondition to getting these kinds of loans is the USDA is regarded as the lender of last resort," he said. "So the people who get these loans have already demonstrated that they can't get loans at two commercial lending institutions. So if they don't get credit from the

USDA, they get credit from no one."

O'Brien, formerly with the USDA research service, agreed, saying that USDA loan programs were "limited to operators who cannot obtain sufficient credit at reasonable rates elsewhere but who would be able to operate viable farm businesses if USDA made the loan(s) in question."

Claryca Mandan says farming is in her blood. Her family was named its county's Farming Family of the Year in 1968. She says credit became almost impossible to get around the time she married her husband, Keith, in 1979. Like Holder, she is Native American and said she remembers when the loan practices of her local USDA office took what she called "an aggressive stance."

Mandan, who was a borrower from the USDA for years, is now a plaintiff in the lawsuit against it.

"It became apparent we were receiving different treatment," she said. "We were given loan amounts that were lesser than we already requested, and we were encouraged to buy the oldest machinery instead of stuff adequate and [the] equivalent to white farmers. We started to receive a lot of resistance from the local county staff."

Mandan said the regional office's stance toward lending was aimed not only at putting Native American farmers at a disadvantage, but at benefiting their non-Native American counterparts. Many Native American farms are on land -- usually in reservations -- that the federal government holds in trusts for the benefit of future generations. The land falls under tribal government authority, but Mandan charged that as more Native American farms defaulted on loans from the government, more farms were offered by the federal government for purchase to farmers who were not Native Americans.

A 1997 report from a civil rights action team to the USDA on the treatment of minority farmers generally, cited in the lawsuit, said that as minority farmers were unable to afford their lands, "The land is lost finally and sold at auction, where it is bought by someone else at half the price being asked of the minority farmer. Often it is alleged that the person was a friend or relative of one of [the USDA's Farm Service Administration] county officials."

The Mandans are members of the Mandan, Hidatsa and Arikara Nation, also known as Three Affiliated Tribes. The couple still resides on land that was allocated by the Dawes General Allotment Act of 1887, which aimed at settling Native American tribes and turning them into farmers and ranchers.

Mandan, who now works as a Native American credit outreach counselor, said she and her family struggled without access to affordable credit. After she failed to secure a USDA loan, the Mandans raised four children in a two-bedroom mobile home for 12 years. Without proper loans, she said, she couldn't afford a larger home. It wasn't until 2007 that she moved her family into what she felt was adequate housing, purchased through a local housing authority.

Ultimately, Mandan said, they won't be able to hand down working farms to their children.

"We aren't able to pass on farms with buildings and irrigation. A lot of us just have the bare land with fences. Many of us don't even have buildings," she said. "Many of us just finally achieved standard housing. For this to be happening in the U.S. today, with an agency that was supposed to fund us equally, is just wrong."

Agriculture Secretary Tom Vilsack said in a recent statement to CNN that the USDA is "committed to resolving allegations of past discrimination because we are intent on ensuring every farmer and rancher is treated equally and fairly. We have made significant progress on addressing USDA's civil rights record to close this chapter in the department's history."

USDA officials told CNN that they are in settlement discussions with Native American farmers and that they are putting the final touches on a plan that would turn the page on the discrimination claims by Hispanic and women farmers, as well.

"We want to put this behind us and focus on the future," a USDA official said. "We want to make sure we have a strong foundation moving forward."

Farmers such as George Keepseagle, for whom the case is named, have seen the years pass since the lawsuit was filed. In the 12 years that he and his wife, Marilyn, have been plaintiffs in the case, his health has deteriorated significantly because of stress, he said. Keepseagle, who is 70, was forced to sell his farm years ago. The couple now lives on the Standing Rock Reservation in North Dakota and said they want to change the way the USDA services loans to minority communities. They said they are optimistic, but Marilyn admits that George has misgivings.

"He worries a lot. He worries more than I do," she said. "I support him, I encourage him, I tell him it's not the end of the world and something good should come out of this."

For Porter Holder, the lawsuit isn't about the money; it's about the future for his four young daughters.

"I hope to see fairness in Oklahoma," he said. "I hope to see that it doesn't matter, the color of your skin, or nationality, if you're trying to make a productive living. This goes back to 1700; some things just don't change -- it's time."

Find this article at:

http://www.cnn.com/2010/US/07/09/native.american.farmers/index.html

Home > Briefing Room > Justice News

JUSTICE NEWS Department of Justice

Office of Public Affairs

FOR IMMEDIATE RELEASE

Tuesday, October 19, 2010

Attorney General Holder and Agriculture Secretary Vilsack Announce Settlement Agreement with Native American Farmers Claiming Discrimination by USDA

Settlement Addresses Discrimination Claims Made Over Farm Loan Programs

WASHINGTON --Attorney General Eric Holder and Department of Agriculture (USDA) Secretary Tom Vilsack today announced the settlement of a class action lawsuit filed against USDA by Native American farmers alleging discrimination by USDA. The settlement ends litigation concerning discrimination complaints from Native Americans generally covering the period 1981-1999.

"The settlement announced today will allow USDA and the Native American farmers involved in the lawsuit to move forward and focus on the future," said Attorney General Holder. "Under the process established in this agreement, Native American farmers who believe they suffered discrimination will have their claims heard. The Department of Justice is proud to partner with USDA in the agency's effort to ensure fair and equitable treatment of its clients."

"Today's settlement can never undo wrongs that Native Americans may have experienced in past decades, but combined with the actions we at USDA are taking to address such wrongs, the settlement will provide some measure of relief to those alleging discrimination," Secretary Vilsack said. "The Obama Administration is committed to closing the chapter on an unfortunate civil rights history at USDA and working to ensure our customers and employees are treated justly and equally."

Under the settlement agreement, \$680 million will be made available to eligible class members to compensate them for their discrimination claims. Two payment "tracks" are available. Under the first track, persons who meet the class definition and provide substantial evidence of discrimination to an impartial adjudicator will receive a uniform settlement of up to \$50,000. The second track is for those persons who meet the class definition and believe they have stronger evidence of economic losses caused by discrimination. This track requires a higher evidentiary standard and damage awards are capped at a maximum of up to \$250,000 per individual. Actual monetary awards are subject to reduction based on the amount of available funding and the number of meritorious claims.

The judgment fund maintained by the Departments of Justice and Treasury will fund any monetary awards provided under the settlement. USDA will provide up to \$20 million to administer the settlement.

In addition to the monetary award, the agreement provides up to \$80 million in debt forgiveness to successful claimants with outstanding USDA Farm Loan program debt. Also, a moratorium on foreclosures of most claimants' farms and a moratorium on accelerations and administrative offsets of class members' farm loan accounts will be put into place until after claimants have gone through the claims process or the Secretary of Agriculture has been notified that a claim has been denied.

The settlement also provides a broad range of programmatic relief for Native American farmers, including creation of a new Federal Advisory Council for Native American farmers and ranchers that will include Native American representation from around the country as well as senior USDA officials. Meanwhile, a new ombudsman position will be created to address farm program issues relating to Native American farmers and ranchers as well as all other socially disadvantaged farmers and ranchers. The department will also offer Native American farmers enhanced technical assistance services through the establishment of a network that provides intensive instruction to recipients concerning financial, business and market planning skills and supports the deployment of tribal agriculture advocates and third party outreach and education providers.

This lawsuit, Marilyn Keepseagle et al., v. Vilsack(Civil Action No. 99-3119 (D.D.C.)), was filed on Nov. 24, 1999. The settlement will not become final until it is formally approved by the U.S. District Court for the District of Columbia.

10-1169 Attorney General

Release No. 0539.10 Page 1 of 2



United States Department of Agriculture • Office of Communications • 1400 Independence Avenue, SW Washington, DC 20250-1300 • Voice: (202) 720-4623 • Email: oc.news@usda.gov • Web: http://www.usda.gov

Release No. 0539.10

Contact:

USDA Office of Communications (202) 720-4623

Agriculture Secretary Vilsack and Attorney General Holder Announce Settlement Agreement with Native American Farmers Who Claim to Have Faced Discrimination by USDA in Past Decades

Settlement Addresses Discrimination Claims Made Over Farm Loan Programs

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Under Secretary Vilsack's leadership, USDA is working to address past civil rights complaints and today's announcement is a major step in that effort. The Secretary and his leadership team are committed to addressing allegations of discrimination, and shortly after he took office he sent a memo to all USDA employees calling for "a new era of civil rights" for the Department. In February 2010, Secretary Vilsack announced the Pigford II settlement with black farmers; the Keepseagle settlement continues as part of that new era. Meanwhile, Secretary Vilsack continues to pursue the resolution of all claims of past discrimination against USDA, including claims from women and Hispanic farmers. Additional information on the efforts undertaken by the Secretary and USDA management is available at: http://www.ascr.usda.gov/.

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Awaijable on the iPad

American Indians to Get \$680 Million in Farm-Bias Case

By Alan Bjerga

(Updates with Obama comment in fourth paragraph.)

Oct. 19 (Bloomberg) -- The U.S. Department of Agriculture agreed to pay \$680 million to settle claims by American Indians who said they were discriminated against in federal farm-loan programs dating back to 1981.

The settlement includes an additional \$80 million of debt forgiveness and \$20 million in administrative fees, Agriculture Secretary Tom Vilsack said today in a conference call with reporters. The settlement does not require congressional spending authorization, Vilsack said.

The USDA has faced claims from black, women and Hispanic farmers for past racial discrimination. The largest lawsuit, Pigford v. Glickman, was filed by black farmers and led to a proposed \$1.25 billion settlement in February which required congressional funding that has yet to be approved. This case, Keepseagle v. Vilsack, was originally filed in 1999.

"With today's agreement, we take an important step forward in remedying USDA's unfortunate civil rights history," President Barack Obama said in an emailed statement. He called on Congress to implement the settlement in the Pigford case and others.

Non-Judicial Process

The settlement, which is structured similarly to that for black farmers, establishes a non-judicial process to settle claims. Growers who establish their creditrelated claims can receive as much as \$50,000.

A separate track for persons who have stronger evidence of economic losses caused by discrimination may provide actual damages of as much as \$250,000. The awards may be reduced based on the number of claims, the USDA said. That number isn't known, Vilsack said.

USDA's civil rights record, the subject of lawsuits since the 1990s, gained greater national prominence last summer when Vilsack forced the resignation of department employee Shirley Sherrod after an edited video clip released by the website biggovernment.com left the impression that she didn't fully help a white farmer she met with in 1986.

Vilsack and Obama apologized for the firing after the full video, which showed that she successfully helped the man save his farm, and Vilsack offered Sherrod either her old job back or a new job at USDA. Sherrod declined, saying the time wasn't right for her return.

Vilsack today said the department is committed to remedying its past injustices. "USDA has zero tolerance for any form of discrimination," he said.

The original lawsuit is Keepseagle v. Vilsack, Civil Action No. 99-3119, U.S. District Court, District of Columbia (Washington.) The settlement is subject to court approval.

--Editors: Daniel Enoch, Steve Stroth.

To contact the reporter on this story: Alan Bjerga in Washington at abjerga@bloomberg.net.

To contact the editor responsible for this story: Steve Stroth at abjerga@bloomberg.net.



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Government settles lawsuit with Native American farmers

By Tom Cohen and Alyse Shorland, CNN STORY HIGHLIGHTS

- · Plaintiffs say the long wait was worth it
- No congressional authorization required to pay settlement
- The agreement includes \$680 million in compensation for discrimination
- The U.S. Department of Agriculture was sued in the class-action lawsuit

Washington (CNN) -- The government will provide \$680 million in compensation to settle a class-action lawsuit by Native American farmers against the U.S. Department of Agriculture, according to a proposed agreement announced Tuesday.

Under the agreement, which requires federal court approval, Native Americans can file claims for discrimination involving farm loans that occurred in the period from 1981-1999, said statements by Agriculture Secretary Tom Vilsack and Attorney General Eric Holder.

"Today's settlement can never undo wrongs that Native Americans may have experienced in past decades, but combined with the actions we at USDA are taking to address such wrongs, the settlement will provide some measure of relief to those alleging discrimination," Vilsack said in his statement.

The \$680 million will compensate eligible members of the class-action suits with valid claims, the statements said. The agreement has two payment tracks -- one provides \$50,000 to those who provide substantial evidence of discrimination to an impartial adjudicator, and the other pays up to \$250,000 to those who can show economic losses caused by discrimination.

"Actual monetary awards are subject to reduction based on the amount of available funding and the number of meritorious claims," the statements said.

The settlement also includes \$80 million for debt relief, as well as other assistance for Native American farmers.

In a White House statement, President Barack Obama called the agreement "an important step forward in remedying USDA's unfortunate civil rights history."

The lawsuit alleged discrimination against Native Americans regarding their access to and participation in the Agriculture Department's farm loan programs, according to the statement. "This settlement marks a major turning point in the important relationship between Native Americans, our nation's first farmers and ranchers, and the USDA," said a statement by Joseph M. Sellers, the lead plaintiffs' attorney. "After three decades, Native American farmers and ranchers will receive the justice they deserve, and the USDA has committed to improving the farm loan system in ways that will aid Native Americans for generations to come."

George and Marilyn Keepseagle, whose name is on the lawsuit against the government, said they were unfairly denied operating loans and had to sell portions of their sprawling farm on the Standing Rock Reservation in North Dakota. "This is a great day for us, not only for us but our people," Marilyn Keepseagle said. "It's been a long time brewing and finally today it came to a positive end. And I'm happy about that."

She said she wants to use some of the money to pay off bills and to make much needed repairs to their home of 40 years. Claryca Mandan of the Mandan, Hidatsa and Arikara Nation, who is a member of the lawsuit, said she was unfairly denied farms loans in the past. Mandan and her husband still reside on land that was allocated by the Dawes General Allotment Act of 1887, which intended to settle Native American tribes and turn them into farmers and ranchers.

"It definitely was long, and it definitely was worth it, to voice some measure of justice for our community," Mandan said of the settlement. "It's always a rare day and one we rejoice in. We are very happy to be put back on equal footing again with the rest of America."

The settlement also calls for future changes to the USDA's farm loan program. It will create the Native American Farmer and Rancher Council, a new federal advisory committee, which lawyers said will bring together Native American and USDA officials to discuss the USDA's programs.

"I think the leadership in the USDA genuinely wants to see them succeed," Sellers said, adding that it will take time to implement the changes. "But we have the mechanism that will begin the process of delivering these services to Native Americans so [with] the next generation of farmers, the USDA will be a better partner than it has in the past."

He praised the leadership of Marilyn Keepseagle and Claryca Mandan and others, saying their perseverance showed such a case could succeed. "This illustrates the power of the individuals," Sellers said, adding they had "pursued this with great courage and determination, and it's a great tribute to them and others like them who may want to take on a mission like this."

The agreement follows a similar settlement in February on behalf of African-American farmers against the USDA, known as Pigford II. However, that settlement depends on congressional appropriation of the necessary funds, which hasn't happened. Obama's statement called on Congress to authorize the more than \$1 billion in funding for the Pigford settlement.

Payment to the Native American farmers will come from the Judgment Fund maintained by the Department of Justice. The fund was established to provide monetary awards for court judgments and settlements against the government, and therefore needs no separate congressional authorization for the Native American farmers settlement.

According to the 2007 Census of Agriculture, there are about 60,000 Native American farmers in the United States -- double the number of African-American farmers.

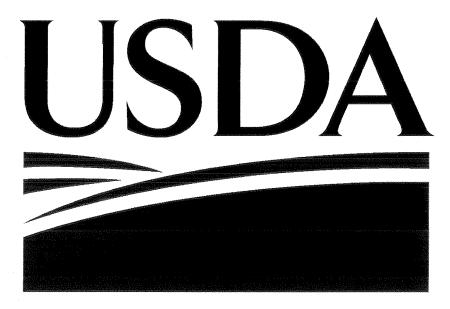
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Native American Legal Update

Posted at 8:17 AM on October 20, 2010 by Greg Guedel

USDA Settles Native American Farmer Discrimination Lawsuit for \$760 Million



The U.S. Department of Agriculture (USDA) has announced an historic agreement to settle a decadelong class action lawsuit known as *Keepseagle v. Vilsack*, wherein Native American farmers and ranchers alleged discrimination in the USDA's farm loan program dating back to 1981.

Under the agreement, the USDA will pay \$680 million in damages to thousands of Native American farmers and ranchers and forgive up to \$80 million worth of outstanding farm loan debt. The settlement also initiates new programs to improve USDA's farm loan services for Native Americans. Those initiatives include the creation of a Native American Farmer and Rancher Council, where top USDA officials and Native American advocates will collaborate to make USDA's programs more accessible for Native Americans farmers and ranchers, as well as enhanced delivery of technical assistance to Native American borrowers, the creation of sub-offices on tribal lands, a systematic review of the farm loan program rules to improve accessibility to Native Americans and other measures designed to improve the provision of farm loan services to Native Americans.

The Keepseagle lawsuit alleged that Native American farmers and ranchers were denied the same opportunities as white farmers to obtain low-interest rate loans from USDA. Congress has charged the USDA with serving as the "lender of last resort" for family farmers who can't obtain credit from

commercial banks. According to an expert report prepared by a former USDA economist, Native Americans suffered actual economic losses amounting to \$776 million between 1981 and 2007 as a result of receiving less than their fair share of credit opportunities from the USDA.

Lead plaintiffs Marilyn and George Keepseagle, ranchers in Fort Yates, N.D.,said "We have been waiting nearly three decades for this day to come. This settlement will help thousands of Native Americans who are still farming and ranching. But more important, through this settlement we will leave to our children and grandchildren a farm loan system far more responsive to our community than the system we inherited from our parents."

The settlement has three major components:

- 1) Payment of \$680 million in damages to class members for the economic losses they suffered due to the denial of loans or loan servicing by the USDA.
- 2) The USDA will forgive up to \$80 million in debt currently held by class members who succeed in obtaining damages. Once the Court gives preliminary approval to the agreement, the USDA will establish a moratorium on foreclosures, debt accelerations and debt offsets not already referred to the Treasury Department. The moratorium will last until the debt relief process has concluded and class members' debt has been forgiven. After the debt relief is provided, USDA will engage in a round of loan servicing for all class members who are delinquent on any outstanding USDA farm loan debt.
- 3) Changes to USDA's farm loan program to improve the delivery and responsiveness to Native American farmers and ranchers, including through the creation of the Native American Farmer and Rancher Council, a new federal advisory committee. The new Council will have 15 members, 11 of whom will be Native Americans or represent Native American interests and four of whom will be top USDA officials. Members will meet at least twice a year for the next five years to discuss how to make USDA's programs more accessible for Native Americans farmers and ranchers, including changes to Farm Service Administration (FSA) regulations and internal guidance. The Council will report its recommendations directly to senior USDA officials.

In addition to the Council, the USDA will: 1) create 10 to 15 USDA regional sub-offices that will provide education and technical assistance to Native American farmers and ranchers and their advocates; 2) undertake a systematic review of its farm loan policies to determine how its regulations and policies can be reformed to better assist Native American farmers and ranchers; 3) create a customer guide on applying for credit from the USDA; 4) create the Office of the Ombudsperson to address concerns of all socially disadvantaged farmers and ranchers; and, 5) regularly collect and report data on how well Native Americans fare under USDA's farm loan programs.

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Foster Pepper's Native American Law Group 1111 Third Avenue, Suite 3400, Seattle, WA 98101 West 422 Riverside Avenue, Suite 1310, Spokane, WA 99201

Toll-Free: (800) 995-5902 Editor: W. Gregory Guedel

Contributors: Joanna Plichta Boisen, Kym Eaton

Branding Consultation: Leslie Larson, Jennifer Ramirez



National Congress of American Indians (NCAI) - www.ncai.org

This page can found at: http://www.ncai.org/NCAI-Calls-Keepseagle-Settleme.19.0.html?&no_cache=1&tx_ttnews[tt_news]=757&tx_ttnews[backPid] =9&cHash=5e7c695fab&print=1

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NCAI Calls Keepseagle Settlement between American Indian Farmers and USDA "Long Awaited Justice"

USDA to pay \$760 million in damages and debt relief for discrimination against American Indian farmers and ranchers

Washington, D.C. – The National Congress of American Indians (NCAI) is praising today's settlement of the nationwide class action lawsuit (Keepseagle v. Vilsack) between American Indian farmers and ranchers and the U.S. Department of Agriculture (USDA). The agreement settles 11 years of litigation regarding discrimination against American Indian farmers and ranchers in the USDA's farm loan program.

"This settlement provides long awaited justice for American Indian farmers and ranchers who have only sought an equal opportunity to work hard and succeed," said Jefferson Keel, the President of NCAI. "We are pleased that the court and the Obama Administration have taken tangible steps today to right a wrong reinforce the trust relationship between the United States and American Indian tribal nations.

The Keepseagle settlement agreement, announced today in the U.S. District Court in Washington, D.C. before Judge Emmet Sullivan, orders USDA to pay \$680 million in damages to thousands of Native American farmers and ranchers and to forgive up to \$80 million worth of outstanding farm loan debt.

The settlement will also improve USDA's farm loan services for Native Americans. Initiatives outlined in the settlement include the creation of a Native American Farmer and Rancher Council, which will enable Native Americans farmers and ranchers to collaborate with top USDA officials on greater and equitable access to USDA's programs. Additionally USDA has agreed to work toward enhanced delivery of technical assistance to Native American

borrowers, the creation of sub-offices on tribal lands, a systematic review of the farm loan program rules to improve accessibility to Native Americans and other measures designed to improve the provision of farm loan services to Native Americans.

Additional information about the Keepseagle v. Vilsack settlement is available at www.IndianFarmClass.com or by calling, toll free, 1-888-233-5506.

<- Back to: Home

National Congress of American Indians (NCAI) 1301 Connecticut Ave NW, Suite 200, Washington D.C. 20036 Phone: (202) 466-7767, Fax: (202) 466-7797 Email: ncai@ncai.org

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ATTORNEY GENERAL HOLDER AND AGRICULTURE SECRETARY VILSACK ANNOUNCE SETTLEMENT AGREEMENT WITH NATIVE AMERICAN FARMERS CLAIMING DISCRIMINATION BY USDA

Published 10/20/2010 - 11:02 a.m. CST

Settlement Addresses Discrimination Claims Made Over Farm Loan Programs

WASHINGTON –Attorney General Eric Holder and Department of Agriculture (USDA) Secretary Tom Vilsack announced yesterday the settlement of a class action lawsuit filed against USDA by Native American farmers alleging discrimination by USDA. The settlement ends litigation concerning discrimination complaints from Native Americans generally covering the period 1981-1999.

"The settlement announced today will allow USDA and the Native American farmers involved in the lawsuit to move forward and focus on the future," said Attorney General Holder. "Under the process established in this agreement, Native American farmers who believe they suffered discrimination will have their claims heard. The Department of Justice is proud to partner with USDA in the agency's effort to ensure fair and equitable treatment of its clients."

"Today's settlement can never undo wrongs that Native Americans may have experienced in past decades, but combined with the actions we at USDA are taking to address such wrongs, the settlement will provide some measure of relief to those alleging discrimination," Secretary Vilsack said. "The Obama Administration is committed to closing the chapter on an unfortunate civil rights history at USDA and working to ensure our customers and employees are treated justly and equally."

Under the settlement agreement, \$680 million will be made available to eligible class members to compensate them for their discrimination claims. Two payment "tracks" are available. Under the first track, persons who meet the class definition and provide substantial evidence of discrimination to an impartial adjudicator will receive a uniform settlement of up to \$50,000. The second track is for those persons who meet the class definition and believe they have stronger evidence of economic losses caused by discrimination. This track requires a higher evidentiary standard and damage awards are capped at a maximum of up to \$250,000 per individual. Actual monetary awards are subject to reduction based on the amount of available funding and the number of meritorious claims.

The judgment fund maintained by the Departments of Justice and Treasury will fund any monetary awards provided under the settlement. USDA will provide up to \$20 million to administer the settlement.

In addition to the monetary award, the agreement provides up to \$80 million in debt forgiveness to successful claimants with outstanding USDA Farm Loan program debt. Also, a moratorium on foreclosures of most claimants' farms and a moratorium on accelerations and administrative offsets of class members' farm loan accounts will be put into place until after claimants have gone through the claims process or the Secretary of Agriculture has been notified that a claim has been denied.

The settlement also provides a broad range of programmatic relief for Native American farmers, including creation of a new Federal Advisory Council for Native American farmers and ranchers that will include Native American representation from around the country as well as senior USDA officials. Meanwhile, a new ombudsman position will be created to address farm program issues relating to Native American farmers and ranchers as well as all other socially disadvantaged farmers and ranchers. The department will also offer Native American farmers enhanced technical assistance services through the establishment of a network that provides intensive instruction to recipients concerning financial, business and market planning skills and supports the deployment of tribal agriculture advocates and third party outreach and education providers.

This lawsuit, Marilyn Keepseagle et al., v. Vilsack(Civil Action No. 99-3119 (D.D.C.)), was filed on Nov. 24, 1999. The settlement will not become final until it is formally approved by the U.S. District Court for the District of Columbia.

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USDA/Keepseagle: settlement \$680 million

Wed, 2010-10-20 17:31 David Bennett

The USDA has settled a decade-old case brought by Native American farmers alleging discrimination. As with the *Pigford* litigation, the Native American class action – commonly known as *Keepseagle* – claims USDA employees caused loans to not be processed and/or checks to arrive so late that it negatively impacted farming operations.

The \$680 million settlement will become final when it is formally endorsed by the U.S. District Court of the District of Columbia.

Those who have been following Pigford (*for more, see <u>Pigford</u>*) will notice many similarities in the construction of the two settlements. One key difference: how each is funded.

While the \$1.2 billion Pigford settlement still needs funding approval from Congress, Keepseagle has no such obstacle. The money provided under the Keepseagle settlement will come from a "judgment fund" maintained by the U.S. Department of Justice (DOJ) and Department of Treasury.

"In a sense, it's not a budgeted item and isn't required to have congressional action," said Agriculture Secretary Tom Vilsack during a press conference touting the settlement. "It's available for the United States to satisfy any claims that may exist. ... Pigford (requires) congressional action because when Congress reopened the Pigford case they specifically denied the USDA and DOJ the capacity to use the judgment fund."

As with Pigford, Keepseagle claimants will be able to choose between two payment tracks.

"Under the first track – if you meet the class definition and provide substantial evidence of discrimination to an impartial adjudicator – you'll receive a uniform settlement of up to \$50,000," said Vilsack. "The second track is for those who meet the class definition and believe they have stronger evidence of economic losses caused by discrimination. This track has a higher standard of evidence and damage awards are capped at a maximum of up to \$250,000 per individual...

"In addition to the monetary award, the agreement provides up to \$80 million in debt forgiveness to successful claimants with outstanding debts with the USDA farm loan program."

Vilsack – who would not venture a guess as to how many Keepseagle claimants there would be -- also said the settlement will usher in a "new, federal advisory council for Native American farmers and ranchers" along with a new ombudsman position "to address farm program issues relating to Native American farmers and ranchers as well as all other socially disadvantaged farmers and ranchers."

Further, the USDA will offer Native American farmers and ranchers "enhanced technical assistance services through a network that supports the deployment of tribal agricultural advocates and third party outreach and education providers."

According to Tony West, Assistant Attorney General, a "very extensive" notice process will soon inform Native Americans of the settlement and payment possibilities. "We'll send notices out, working with class counsel to make sure we reach as many class members as possible. In that notice there will be instructions on how (potential claimants) can make their claims heard."

Following that, said West, an actual claims process will be set up. "It's being set up as we speak, the groundwork is being laid."

Obama administration officials made it clear there is expectation that the Keepseagle settlement will boost Pigford funding chances.

"We'll continue to advocate for action to fully fund the (Pigford) settlement," said Vilsack. "Our hope is the announcement of this Keepseagle settlement will encourage folks to consider the congressional action necessary to finish the Cobell and Pigford litigation."

The Cobell case involves Native Americans who claim land trusts were mishandled by the government.

What about burden of proof in Keepseagle claims?

"We know there will be circumstances brought to the arbitrator ... that will fall along the lines of an individual who went into an FSA office at the same time as a white farmer asking for assistance and help," said Vilsack. Then, "they were either turned down or their application wasn't processed in a timely fashion. Or, the application processed but the check didn't arrive in a timely way resulting in their operation being compromised."

One of the "important principles" the DOJ tried to adhere to in structuring the Keepseagle agreement "was to create a claims process that is not adversarial," said West. "We didn't believe it made sense for people to have to litigate as if they were in court the fact they were discriminated against in order to demonstrate entitlement to compensation."

Under the first track, the standard is "substantial evidence of discrimination," continued West. Such evidence "can be documents, an affidavit."

Under the second track "there's a slightly higher standard of proof that must be met."

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Source URL: http://deltafarmpress.com/government/usdakeepseagle-settlement-680-million

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historic farm loan case - keepseagle v. vilsack - finally resolved

28Oct10

This case was a bit special.

The U.S. Department of Agriculture (USDA) short-changed some Native Americans; Native Americans *finally* secure compo (and more). This was a hard fought case, not about land or resource rights, but about a bureaucratic fluff up, which ignored the many obstacles — pertaining to capitalist agriculture — that stand before indigenous farmers today.

From native american legal update:

The U.S. Department of Agriculture (USDA) has announced an historic agreement to settle a decade-long class action lawsuit known as Keepseagle v. Vilsack, wherein Native American farmers and ranchers alleged discrimination in the USDA's farm loan program dating back to 1981.

Under the agreement, the USDA will pay \$680 million in damages to thousands of Native American farmers and ranchers and forgive up to \$80 million worth of outstanding farm loan debt. The settlement also initiates new programs to improve USDA's farm loan services for Native Americans. Those initiatives include the creation of a Native American Farmer and Rancher Council, where top USDA officials and Native American advocates will collaborate to make USDA's programs more accessible for Native Americans farmers and ranchers, as well as enhanced delivery of technical assistance to Native American borrowers, the creation of sub-offices on tribal lands, a systematic review of the farm loan program rules to improve accessibility to Native Americans and other measures designed to improve the provision of farm loan services to Native Americans.

The Keepseagle lawsuit alleged that Native American farmers and ranchers were denied the same opportunities as white farmers to obtain low-interest rate loans from USDA. Congress has charged the USDA with serving as the "lender of last resort" for family farmers who can't obtain credit from commercial banks. According to an expert report prepared by a former USDA economist, Native Americans suffered actual economic losses amounting to \$776 million between 1981 and 2007 as a result of receiving less than their fair share of credit opportunities from the USDA.

Lead plaintiffs Marilyn and George Keepseagle, ranchers in Fort Yates, N.D., said "We have been waiting nearly three decades for this day to come. This settlement will help thousands of Native Americans who are still farming and ranching. But more important, through this settlement we will leave to our children and grandchildren a farm loan system far more responsive to our community than the system we inherited from our parents."

The BLT: The Blog of Legal Times

November 01, 2010

Judge Preliminarily Approves \$760M Settlement in Discrimination Case

A federal judge in Washington today preliminarily approved a \$760 million settlement involving discrimination claims that a class of Native American farmers and ranchers brought against the U.S. Department of Agriculture.

U.S. District Judge Emmet Sullivan of Washington had met in court with the plaintiffs' attorneys and Justice Department team on Friday to go over the details of the settlement. This afternoon, Sullivan issued a four-page order granting preliminary approval.

The <u>settlement</u> calls for \$680 million in compensation for potentially thousands of Native American farmers and ranchers who the USDA discriminated against in government-run loan programs. The settlement also includes \$80 million in debt relief.

The plaintiffs' lawyers, including Joseph Sellers of Washington's Cohen Milstein Sellers & Toll, agreed to a fee range between about \$30 million and \$60 million.

After Friday's hearing, the initial settlement was revised over the weekend "to emphasize that any award of attorney fees or service awards to class representative would be 'subject to court approval,' " according to court records. Sullivan today set a fairness hearing for April 28, 2011.

Posted by Mike Scarcella on November 01, 2010 at 04:41 PM in <u>Current Affairs</u>, <u>Justice Department</u>, <u>Legal Business</u> | <u>Permalink</u>

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UNITED STATES DEPARTMENT OF AGRICULTURE

Farm Service Agency Washington, DC 20250 Notice FLP-577

1-FLP, 5-FLP

For: State and County Offices

Servicing of Native American Claimants in Conjunction With the Settlement in *Keepseagle v. Vilsack* Class Action Lawsuit

Approved by: Deputy Administrator, Farm Loan Programs

Chris P. Beyerhelm

1 Overview

A Background

A settlement agreement has been signed as of October 19, 2010, to resolve the class action lawsuit, *Keepseagle v. Vilsack*. The court in charge of this case has provided preliminary approval of the settlement agreement and has scheduled a fairness hearing to determine whether to grant final approval of the settlement agreement. The settlement provides for a combination of financial and programmatic relief for Native Americans. Once the court provides final approval, the National Office will be providing additional details and direction on each of these terms and what they mean for FSA and our customers.

However, by the terms of the settlement agreement, FSA is required upon preliminary approval of the settlement agreement to take immediate steps to advise County Offices of changes to the servicing requirements for Native American borrowers. Preliminary approval was granted by the Court on November 1, 2010. The changes to the servicing requirements therefore became effective November 1, 2010.

B Purpose

This notice provides State and County Offices information about servicing direct FLP loans to Native Americans.

Disposal Date	Distribution
October 1, 2011	State Offices; State Offices relay to County Offices

11-8-10 Page 1



Two tracks to discimination compensation in settlement agreement

By LORNA THACKERAY

Of The Gazette Staff

| Posted: Sunday, November 14, 2010 12:00 am

Native American farmers and ranchers can file for compensation under either of two distinct tracks once the settlement agreement is final in the Marylin Keepseagle vs. Tom Vilsack discrimination lawsuit, likely sometime next summer.

The key difference between Track A and Track B is the level of proof the claimant can produce.

Those seeking the compensation under Track A must establish discrimination by "substantial" sworn evidence. Those claims could be up to \$50,000, plus 25 percent to cover increases in income tax that might result. A paper trail might not be necessary, but sworn statements are.

Under Track B, claimants must provide a higher standard of proof — a "preponderance" of evidence, including documents that could include loan applications and correspondence, as well as written complaints of discrimination filed at the time a loan was requested. The evidence must be similar to what would be presented if the case were tried in a federal court. Awards in this category could be up to \$250,000, plus 25 percent for income tax coverage.

To establish economic damages under Track A, the claimant must show that he or she applied for or attempted to apply for a U.S. Department of Agriculture loan and how he or she planned to use money from the loan. Evidence that the operator was actively discouraged by USDA officials could include failure of USDA to provide application forms or statements that no funds were available, statements that USDA was not accepting or processing loan applications at the time, statements that the claimant would not qualify and should not bother applying, or statements that the operator must seek a loan through Bureau of Indian Affairs rather than the Farm Service Agency.

For Track B, it's not enough to show that an operator attempted to apply for a loan. The operator must show that he or she actually applied for a loan and that the loan was denied, provided late, approved for a lesser amount, approved with restrictive conditions or was not serviced appropriately by USDA.

Operators must also show that USDA officers treated the Native American operator less favorably than a specifically identified, similarly situated white farmer or rancher. Economic damages from the alleged discrimination must be clearly defined.

Total awards for Class B are capped at \$50 million. If the sum of all the awards exceeds that amount, individual awards could be reduced accordingly.

Only Native American farmers and ranchers who applied for USDA loans between Jan. 1, 1981, and Nov. 24, 1999, are eligible for compensation under the settlement. Each operator must have complained orally or in writing at the time of the alleged discrimination.

Lorna Thackeray can be reached at 657-1314 or lthackeray@billingsgazette.com

FOR IMMEDIATE RELEASE

Editor's Note: Settlement Summary and Fact Sheets Available at http://www.cohenmilstein.com/news.php?NewsID=384 Contact: Pamela Avery pam@turnerstrategies.com 402-305-0799

Historic Settlement Between Native Americans and USDA Granted Final Approval by U.S. District Court

USDA to pay \$760 million in damages and debt relief to settle credit discrimination claims and improve lending to Native American farmers and ranchers

(WASHINGTON, D.C. – April 28, 2011) U.S. District Judge Emmet G. Sullivan today granted final approval of the historic settlement between Native American farmers and ranchers and the United States Department of Agriculture (USDA), in a case known as *Keepseagle v. Vilsack*. Resolving a nationwide class action lawsuit, the *Keepseagle* settlement agreement requires USDA to pay \$680 million in damages to thousands of Native Americans, to forgive up to \$80 million in outstanding farm loan debt, and to improve the farm loan services USDA provides to Native Americans.

"Final approval of the *Keepseagle* settlement marks the end of an unfortunate chapter in our nation's history where USDA's credit discrimination against Native Americans was the norm. Under this settlement, Native American farmers and ranchers will finally receive the compensation and justice they deserve, and we will undertake a process to ensure that the USDA treats Native Americans equally and fairly." said lead plaintiffs' attorney Joseph M. Sellers, of Cohen Milstein Sellers & Toll, PLLC.

Named plaintiffs Claryca Mandan, of Mandaree, N.D., and Porter Holder, of Soper, Okla., who attended the fairness hearing on Thursday, were elated by the court's official ruling.

"We've waited three decades for the USDA to be held accountable to the Native American people. So today is a great day, indeed," said Mandan. "The changes to USDA's Farm Loan Program will mean that our children and grandchildren will inherit a system that is far more responsive and fair to Native Americans than the system that hampered our generation of farmers and ranchers."

Added Holder: "This settlement will help thousands of Native Americans who are still farming and ranching. The USDA has some terrific programs, but Native Americans must have equal access to them. That's what the law requires. We look forward to forging a new era of partnership with the USDA so that our communities can fully benefit from USDA's farm loan program."

The *Keepseagle* class action lawsuit was filed more than 11 years ago, on the eve of Thanksgiving 1999. The plaintiffs alleged that since 1981, Native American farmers and ranchers nationwide were denied the same opportunities as white farmers to obtain low-interest rate loans and loan servicing from USDA, causing them hundreds of millions of dollars in economic losses.

The settlement agreement approved by Court represents an extraordinary result for the plaintiffs. The settlement's \$760 million in monetary relief represents about 98 percent of what the plaintiffs could possibly have won at trial, according to an expert report prepared by a former USDA economist for the plaintiffs. All funds for the settlement will be paid from the federal Judgment Fund, which is controlled by the U.S. Department of Justice, and will not have to be approved by Congress.

"This case is especially noteworthy as it represents a successful effort by Native Americans, who understandably regard the United States government with mistrust as a consequence of the mistreatment they received for centuries, to use the judiciary of the United States to hold a major agency of the United States accountable for violations of laws of the United States," said Sellers.

Now that the settlement agreement has received final approval, Native American farmers and ranchers will have until Dec. 24, 2011 to file claims for damages and debt relief. *Keepseagle* class members will have an option to file individual claims under either Track A or Track B. Track A permits eligible class members to recover up to \$50,000 by providing information under oath that they are Native Americans, that they farmed or ranched (or attempted to farm or ranch) between 1981 and 1999, that they sought a loan or loan servicing from USDA during that period, and that they complained when they were denied a loan or otherwise treated unfavorably. Track B permits eligible class members to seek an award of damages up to \$250,000, with the amount based upon evidence of their actual economic loss. Track B claims must submit evidence that would be admissible in court to satisfy each of the same elements as Track A, and in addition must identify a similarly situated white farmer who received more favorable treatment.

Starting in July 2011, Class Counsel will conduct a series of meetings to assist Native American farmers and ranchers with filing claims under Track A. These meetings will occur throughout Indian Country from July through December 2011. Class members are encouraged to retain individual counsel for Track B claims, as far more is involved in preparing a successful Track B claim than a Track A claim. A list of attorneys willing to consider Track B claims will be provided to interested class members. Claims approved by a neutral adjudicator are expected to be paid in the summer of 2012.

Notification of meetings and information on how to file a claim can be found on the IndianFarmClass.com website or by calling 1-888-233-5506.

Under the settlement agreement, the USDA also will forgive up to \$80 million in debt currently held by class members whose claims are approved under Track A or Track B. When the U.S. District Court granted preliminary approval of the settlement in November 2010, that order put into effect a moratorium on foreclosures, debt accelerations and debt offsets not already referred to the U.S. Treasury Department. The moratorium currently applies to all Native American farmers and ranchers and for those who file Track A or Track B claims the moratorium will last until the claims process has concluded. After the debt relief is provided, if there are any class members with remaining debt, who are delinquent on any outstanding USDA farm loan debt, the USDA will engage in a round of loan servicing of that debt.

The third provision of the settlement agreement calls for the USDA to improve the delivery and responsiveness of its farm loan program to Native American farmers and ranchers. One of the

most important provisions is the creation of the Native American Farmer and Rancher Council, a new federal advisory committee. The Council will have 15 members, 11 of whom will be Native Americans or represent Native American interests and four of whom will be top USDA officials. The Council will meet at least twice a year for the next five years to discuss how to make USDA's programs more accessible for Native Americans farmers and ranchers. The Council will report its recommendations directly to senior UDSA officials.

In addition to establishing the Council, the USDA will take the following steps to improve its services: 1) create 10 to 15 USDA regional venues that will provide broad educational services to Native American farmers and ranchers and foster additional means of technical assistance and advocacy; 2) fund consolidated USDA Tribal sub-offices on select reservations to further enhance training, technical assistance, and loan outreach, subject to the availability of funds as determined by USDA; 3) undertake a systematic review of its farm loan policies to determine how its regulations and policies can be reformed to better assist Native American farmers and ranchers; 4) create a customer guide on applying for credit from the USDA; 5) create the Office of the Ombudsperson to address concerns of all socially disadvantaged farmers and ranchers; and, 6) regularly collect and report data on how well Native Americans fare under USDA's farm loan programs.

Additional information about the *Keepseagle v. Vilsack* settlement agreement is available at www.IndianFarmClass.com or by calling, toll free, 1-888-233-5506.

Aside from Cohen Milstein Sellers & Toll, PLLC, the plaintiffs are represented by the firms of Conlon, Frantz & Phelan; Jenner & Block, LLP; Sarah Vogel Law Firm; Patton Boggs, LLP; and Stinson Morrison Heckler.

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Keepseagle Indian farmer settlement gets final approval

Mon, 2011-05-02 11:48

U.S. District Judge Emmet G. Sullivan granted final approval of the historic settlement between Native American farmers and ranchers and the United States Department of Agriculture (USDA), in a case known as *Keepseagle v. Vilsack*. Resolving a nationwide class action lawsuit, the *Keepseagle* settlement agreement requires USDA to pay \$680 million in damages to thousands of Native Americans, to forgive up to \$80 million in outstanding farm loan debt, and to improve the farm loan services USDA provides to Native Americans.

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The settlement agreement approved by Court represents an extraordinary result for the plaintiffs. The settlement's \$760 million in monetary relief represents about 98 percent of what the plaintiffs could possibly have won at trial, according to an expert report prepared by a former USDA economist for the plaintiffs. All funds for the settlement will be paid from the federal Judgment Fund, which is controlled by the U.S. Department of Justice, and will not have to be approved by Congress.

Filing deadline for claimants

Now that the settlement agreement has received final approval, Native American farmers and ranchers will have until Dec. 24, 2011 to file claims for damages and debt relief. *Keepseagle* class members will have an option to file individual claims under either Track A or Track B. Track A permits eligible class members to recover up to \$50,000 by providing information under oath that they are Native Americans, that they farmed or ranched (or attempted to farm or ranch) between 1981 and 1999, that they sought a loan or loan servicing from USDA during that period, and that they complained when they were denied a loan or otherwise treated unfavorably. Track B permits eligible class members to seek an award of damages up to \$250,000, with the amount based upon evidence of their actual economic loss. Track B claims must submit evidence that would be admissible in court to satisfy each of the same elements as Track A, and in addition must identify a similarly situated white farmer who received more favorable treatment.

Starting in July 2011, Class Counsel will conduct a series of meetings to assist Native American farmers and ranchers with filing claims under Track A. These meetings will occur throughout Indian Country from July through December 2011. Class members are encouraged to retain individual counsel for Track B claims, as far more is involved in preparing a successful Track B claim than a Track A claim. A list of attorneys willing to consider Track B claims will be provided to interested class members. Claims approved by a neutral adjudicator are expected to be paid in the summer of 2012.

Notification of meetings and information on how to file a claim can be found on the IndianFarmClass.com website or by calling 1-888-233-5506.

Under the settlement agreement, the USDA also will forgive up to \$80 million in debt currently held by class members whose claims are approved under Track A or Track B. When the U.S. District Court granted preliminary approval of the settlement in November 2010, that order put into effect a moratorium on foreclosures, debt accelerations and debt offsets not already referred to the U.S. Treasury Department. The moratorium currently applies to all Native American farmers and ranchers and for those who file Track A or Track B claims the moratorium will last until the claims process has concluded. After the debt relief is provided, if there are any class members with remaining debt, who are delinquent on any outstanding USDA farm loan debt, the USDA will engage in a round of loan servicing of that debt.

The third provision of the settlement agreement calls for the USDA to improve the delivery and responsiveness of its farm loan program to Native American farmers and ranchers. One of the most important provisions is the creation of the Native American Farmer and Rancher Council, a new federal advisory committee. The Council will have 15 members, 11 of whom will be Native Americans or represent Native American interests and four of whom will be top USDA officials. The Council will meet at least twice a year for the next five years to discuss how to make USDA's programs more accessible for Native Americans farmers and ranchers. The Council will report its recommendations directly to senior UDSA officials.

In addition to establishing the Council, the USDA will take the following additional steps to improve its services: 1) create 10 to 15 USDA regional sub-offices that will provide education and technical assistance to Native American farmers and ranchers and their advocates; 2) undertake a systematic review of its farm loan policies to determine how its regulations and policies can be reformed to better assist Native American farmers and ranchers; 3) create a customer guide on applying for credit from the USDA; 4)

create the Office of the Ombudsperson to address concerns of all socially disadvantaged farmers and ranchers; and, 5) regularly collect and report data on how well Native Americans fare under USDA's farm loan programs.

 $\textbf{Source URL:} \ \underline{\text{http://westernfarmpress.com/government/keepseagle-indian-farmer-settlement-gets-final-approval}}$

Keepseagle and Cobell – Two Historic but Different Class Action Settlements for Native Americans

In 2011, settlement agreements were reached in two historic class action lawsuits filed on behalf of Native Americans against the United States government, *Keepseagle v. Vilsack* and *Cobell v. Salazar*. Both settlements require the United States to pay compensation to Native Americans and take other action for violations of rights occurring over many decades. But, that's where the similarity between the two cases ends. The two cases involve rights violations by different Departments of the U. S. government against different classes of Native Americans, different compensation and different remedial measures to protect against future violations. *Keepseagle* benefits Native American farmers and ranchers. *Cobell* benefits Indian trust beneficiaries – Individual Indian Money Account holders and those with an interest in trust land or restricted land – and also provides future educational opportunities for Native Americans.

Keepseagle is a lawsuit filed in 1999 on behalf of Native American farmers and ranchers for discrimination by the U.S. Department of Agriculture in the administration of farm loan programs. Key provisions of the settlement are:

- \$760 million in settlement funds:
 - \$680 million for compensation of Native Americans who were denied farm program loans or loan servicing, or were given loans with unfair terms from 1981 through late 1999. Class members may make claims in one of two ways. They may seek either
 - up to \$50,000 in compensation through a simplified claim process requiring no documentation, plus cancellation of USDA farm loans and tax benefits, or
 - up to \$250,000 in compensation for class members with documentation of discrimination and proof of damages, plus cancellation of USDA farm loans and tax benefits
 - o \$80 million for cancellation of USDA farm loans
- Moratorium on loan accelerations, foreclosures and offsets against Native Americans during the claims process
- Broad-based reform of USDA farm loan programs to assure fair treatment of Native Americans in the future:
 - 15 new USDA offices to provide enhanced technical assistance for Native Americans and new offices on Indian reservations.
 - Creation of a Native American Farmer and Ranchers Council comprised of 11 Native American representatives and 4 senior USDA representatives

that will meet regularly to recommend improvements to the farm loan programs and will work to remove barriers to Native American participation in the programs.

- Creation of an Ombudsperson within USDA to address issues relating to Native American and other socially disadvantaged farmers and ranchers.
- Collection and evaluation of farm loan program data from 15 key states to identify disparities between loans to Native Americans and white applicants.
- Payment of attorneys' fees and expenses from the settlement fund of up to \$60.8 million (8%)
- Payment of \$950,000 service award for 9 Native American class representatives

Cobell is a lawsuit filed in 1996 on behalf of Native American trust beneficiaries against the United States Department of Interior for violation of trust duties to individual beneficiaries. Key provisions of the settlement are:

- \$1.412 billion Accounting/Trust Administration Fund plus \$100 million Trust Adjustment Fund, plus interest
- \$1.9 billion Trust Land Consolidation Fund to purchase "fractionated" individual Indian trust lands. Uses of this Fund:
 - o Purchase of fractionated land interests
 - o Carry out the Trust land Consolidation Program
 - Up to \$60 million for an Indian Education Scholarship Fund to help Native Americans attend college or vocational school.
- Class members Native Americans alive on 9/30/2009 and certain estates of deceased individuals who had:
 - o an open Individual Indian Money ("IIM") account between October 25, 1994 and September 30, 2009 with at least one cash transaction (the "Historical Accounting Class")
 - o an IIM account recorded with the federal government from approximately 1985 to September 30, 2009, or can demonstrate ownership interest in trust land or land in restricted status ("Trust Administration Class")
- Compensation to class members:
 - o Each person of the Historical Accounting Class will receive \$1,000

- Each person of the Trust Administration Class will receive a minimum of \$500 plus a payment based upon the sum of the highest 10 years of income on an IIM accounts
- Reform of Indian trust management and accounting system
- Payment of attorneys' fees and expenses from the settlement fund of up to \$99.9 million. (Counsel have requested payment of up to \$223 million 14.75%)
- Payment of \$2.5 million service award for 4 Native American class representatives

For more information about the *Keepseagle* settlement, refer to the website www.indianfarmclass.com or call 1-888-233-5506. For more information about the *Cobell* settlement, refer to www.indiantrustfund.com or call 1-800-961-6109.

A summary schedule is attached.

Keepseagle and Cobell Comparison

Keepseagle Cobell Cobell		
Native American class	Farmers and ranchers	Indian trust beneficiaries
members	a minero mila rantonioro	mount trust beneficiaries
Time period	1/1/81 – 11/22/99	Varies, but may include IIM
w wave from the	II II OI II II II III II II II II II II	account holders: 1985 –
		9/30/2009
		Land in trust or restricted as of
		9/30/2009
U.S. Department	Department of Agriculture	Department of Interior
U.S. violations	Discrimination – Farm Loan Programs	Mismanagement of trust
		land/assets; improper accounting
		of funds
Cash settlement	\$680 million – compensation	\$1.412 billion Accounting/Trust
	*	Administration Fund plus \$100
	\$80 million – cancellation of farm loans	million Trust Adjustment Fund,
		plus interest
		\$1.9 billion Trust Land
		Consolidation Fund to purchase
		"fractionated" individual Indian
		trust lands.
Compensation	Track A (simplified) – up to \$50,000 plus	Historical Account members -
	loan cancellation and tax relief	\$1,000
	Track D (dagymentomy mags)	Tourse A description of the second
	Track B (documentary proof) – up to \$250,000 plus loan cancellation; tax relief	Trust Administration members –
	for loan cancellation	at least \$500 (more based upon income on IIM accounts)
	Tor Touri Caricertation	medifie off frivi accounts)
		Government purchase of
		fractionated shares
Other settlement terms	Moratorium on accelerations,	Reform of Indian trust
	foreclosures and offsets	management and accounting
		system
	Reform of USDA Farm Loan Programs:	
		\$60 million for an Indian
	 15 USDA offices to provide 	Education Scholarship Fund
	enhanced technical assistance	_
	 Sub-offices on reservations 	
	Native American Farmers and	
	Ranchers Council	
	 Ombudsperson at USDA 	
	 Review of farm loan data 	
Class representative	\$950,000 requested for 9 representatives	\$2.5 million requested for 4
service awards		representatives
Attorneys' fees and	\$60.8 million (8%) requested	\$223 million (14.75%) requested
expenses		·
More information	www.indianfarmclass.com	www.IndianTrust.com
	1-888-233-5506	1-800-961-6109